

Applicability of Sec 39 Cr. P. C. to Doctors: A Restriction to “Right to Life” As Indian Citizen

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ABSTRACT

Medico-legal/ criminal cases which requires treatment has seen an upsurge in the last decades. It has been a common observation that the doctors (especially private practitioners) fail or refuse to take up such cases that have legal implications thereby restricting the proper and timely treatment resulting in increase in morbidity and mortality of cases which could have been saved or at least better managed. One of the reasons of refusal is section 39 of Cr. P.C. which makes the doctor punishable if he fails to inform the police about the incidences due to various reasons.

Section 126 to 129 of IEA provides privilege to the law personnel for exemption from the provisions of 39 Cr.P.C. Journalists, although not mentioned in any law but by convention enjoying the exemption from the aforementioned section. By the recent Supreme Court judgment even common people have been provided privileged under the principle of “Good Samaritan Doctrine”. But for the doctors all provisions of the laws are strictly applied due to which injured/sick person whether victim or accused are refraining from getting treatment from qualified medical man thus exposing their life/health at

risk. Here question arises why not provisions of section 126 to 129 of IEA should be extended to the doctors also. The question also arises what is more important, Right to legal defense or Right to life?

Keywords: Doctors, Exemption, Medico-legal, Right to Life, Sec 39 Cr. P. C.

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INTRODUCTION

Medico-legal/criminal cases which requires treatment has been an upsurge in the lat decades. It has been a common observation that the doctors fail or refuse to take up such cases that have legal implications thereby restricting the proper and timely treatment, resulting in increase in morbidity and mortality of cases which could have been saved or at least better managed. One of the reasons of refusal is section 39 of Cr. P.C which makes the doctors punishable if he fails to inform the police about the incidences due to various reasons.

The Black's Law dictionary defines confidentiality as secrecy or the state of having the dissemination of certain information restricted.

Breach of confidentiality, then refers to the violation of this trust that has been place in another in a fiduciary relationship, such as which exists between a doctor and his patient, or between spouses in a marriage, or between a lawyer and his client or even between a bank and their customer.

Breach of confidence has been seen as an independent tort in the United Kingdom, where the Law Commission in 1981 suggested that provisions be made for recognition of breach of confidentiality as a statutory tort.

The right of privacy has been derived by the Supreme Court of India using the provisions of Articles 21, 19 (1) (a) and 19 (1) (g) given in the constitution.¹

Even though doctors have professional obligations imposed by law in the form of MCI regulations. In practice they are compelled by law enforcing agency to divulge the information suo-moto under the garb of 39 Cr.P.C. considering the doctors as common citizen. In case failure to do so doctors are being harassed by law enforcing agencies processed under 176 IPC.

Whereas doctors are expected to discharge their duties as more responsible special professionals.

Section 39 Cr.P.C particularly directs the doctors to report each and every medico-legal case to the police or magistrate.

Therefore, in fear of being caught, accused even in dire need, they escape from the qualified and competent doctors, thus endangering their life.

But in the rare situation 39 Cr.P.C is not applicable to lawyer by law and Journalist by convention.

By notification of central Government vide no. 25035/101/2014-RS dated 12/05/2015 even common people in the name of good Samaritan doctrine have been exempted from 39 Cr.P.C, but no escape has been created to doctors, who is main person to save the life.²

Less than 20% of critically injured patients in Kolkata receive treatment within an hour of sustaining injury, considered the most crucial period in such cases. Nearly a half are refused treatment and forced to shift elsewhere, losing valuable time and risking death. This, despite a Supreme Court ruling and a state health department circular that prohibits hospitals from refusing seriously injured or ill patients.³

The right of life (Article 21 of Indian Constitution) is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it.

Now question arises whether right of the legal defense and right at expression in press are more important or "right to life?"

EXISTING LAWS AND JUDICIAL EXPLANATIONS REGARDING PROFESSIONAL SECRECY AND RIGHT TO LIFE **Section 39 Cr. P.C.: - Public to Give Information of Certain Offences⁴**

Public to give information of certain offences: -

(1) Every person aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860) namely:-

- i. Sections 121 to 126, both inclusive and section 130 (that is to say offences against the State specified in chapter VI of the said code)
- ii. Sections 143, 144, 145, 147 and 148 (that is to say offences against the public tranquility specified in chapter VIII of the said code)
- iii. Sections 161 to 165, A both inclusive (that is to say offences related to illegal gratification)
- iv. Sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs etc.)
- v. Sections 302, 303 and 304 (that is to say, offences affecting life)
 - (va). Sections 364A (That is to say, offence relating to kidnapping for ransom etc.)
- vi. Section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);
- vii. Sections 392 to 399, both inclusive, and section 402 (that is to say offences of robbery and dacoity)
- viii. Sections 409 (that is to say, offences relating to criminal breach of trust by public servant, etc.
- ix. Sections 431 to 439, both inclusive (that is to say, offences of mischief against property)

- x. Sections 449 and 450 (that is to say, offences of house-trespass)
- xi. Sections 456 to 460, both inclusive (that is to say, offences of lurking house-trespass); and
- xii. Sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes)

Shall in absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest magistrate or police officer of such commission or intention.

(2) For the purpose of this section, the term "offence" includes any act committed at any place out of India which would constitute an offence if committed in India.

Article 21 of Constitution of India: Protection of Life and Personal Liberty⁵

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Sec. 122. of IEA : Communication During Marriage⁶

No person who is or has been married, shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against other.

Sec 124 of IEA⁷

Official communications: No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by disclosure.

Sec 125 of IEA⁸

Information as to commission of offences: No magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Sec 126 of IEA⁹

Professional Communication: No barrister, attorney, pleader or vakil shall any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure-

- (1) Any such communication made in furtherance of any illegal purpose;
- (2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since commencement of his employment.

Sec 127 of IEA¹⁰

Section 126 to Apply to Interpreters, etc: The provision of section 126 shall apply to interpreters, and the clerks or servants of barristers pleaders, attorneys and vakils

Sec 129 of IEA¹¹

Confidential Communications with Legal Advisers: No one shall be compelled to disclose to the court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

Chapter 2 Regulation 2.2: Patience, Delicacy and Secrecy¹²

Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the deposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the laws of the state.

Chapter 7.14 The registered medical practitioner shall not disclose the secrets of a patient that have been learnt in the exercise of his/her profession except-

1. In court of law under the order of the presiding judge;
2. In circumstances where there is a serious and identified risk to a specific person and/or community; and
3. Notifiable diseases.

Appendix -1 Declaration, clause g. I will respect the secret which are confined in me.

PROFESSIONALS PROTECTED BY LAW OF PROFESSIONAL SECRECY

Section 126 to 129 of IEA provides to the law personals for exemption from the provisions of 39 Cr.P.C.

Lawyers are often required by law to keep confidential anything pertaining to the representation of a client.

Both the privilege and the duty serve the purpose of encouraging clients to speak frankly about their cases. This way, lawyer can carry out their duty to provide clients with zealous representation.

PROFESSIONALS NOT PROTECTED BY LAW BUT ENJOYING THIS BY CONVENTION

In India there is no legal protection given to professional secrecy of the press.

Although the press in India has not enjoyed any legal protection to professional secrecy the cases in which the journalists have been compelled by the courts to disclose the sources of their information, or where the journalists have been penalized for non-disclosure, are very few indeed, if any at all.

JUDGEMENT OF SUPREME COURT OF INDIA: DATED- 28/08/1989 Pt. Parmanand Katara Vs Union of India & others 1989 AIR 2039, 1989 SCR (3) 997¹³

Hand note:

1. There can be no second opinion that preservation of the human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man.

2. The patient whether he may be an innocent person or a criminal liable to punished under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished.

DISCUSSION

Injury is a major cause of premature death and disability worldwide. In many instances the prompt provision of emergency care rapid movement of injured victim from the scene of injury to health-care facility can save lives, reduce the incidences of short-term disability improve long-term outcomes.¹⁴

Patient comes to us with their problems and they do so knowing that, as doctors, we have an obligation to confidentiality. We need to consider the importance of this fact: how many people would trust their doctor if they could not rely on them to protect their right of privacy/ What negative impacts might this have on their health? A society that is overzealous in guaranteeing safety can end up preventing its members from actively exercising their personal responsibility and, as a result, it can paradoxically end up restricting their freedom.¹⁵

The pre-hospital care system to function effectively, certain ethical and legal principals must be established and followed. Bystanders must feel both empowered to act and confident they will not suffer adverse consequences, such as legal liability, as a result of aiding someone who has been injured.

A bystander or good Samaritan an eyewitness of a road accident may take an injured person to the nearest hospital, and the bystander or good Samaritan should be allowed to leave immediately except after furnishing address by eyewitness only and no question shall be asked to such bystander or good Samaritan. The bystander or good Samaritan shall not be liable for any civil and criminal liability.

"Life" in Article 21 of the constitution is not merely the physical act of breathing. It has much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living. It is the only article in the constitution that has received the widest possible interpretation.

In **Sunil Batra v. Delhi Administration**, the Supreme Court reiterated with approval the above observations and held that the "right to life" included the right to lead healthy life so as to enjoy all faculties of the human body in their prime conditions. It includes the right to live in peace, to sleep in peace and the right to response and health.

In **State of Punjab v. M.S Chawala**, It has been held that- the right of life guaranteed under Article 21 includes within its ambit the right to health and medical care.

The right to privacy is considered a 'penumbral right' under the constitution, i.e a right that has been declared by the Supreme Court as integral to the fundamental right of life and liberty.

Constitution regulation 236(b), which permitted surveillance by "domiciliary visits at night", was held to be in violation of Article 21. A seven-judge bench held that.

The right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our Constitution does

not expressly declare a right to privacy as fundamental right but the said right is an essential ingredient of personal liberty. In the last resort, a person's house, where he lives with his family, is his castle; it is his rampart against encroachment on his personal liberty.

Therefore, we should have no hesitation in holding that right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy; Article 21 is attracted. The said cannot be curtailed except according to procedure established by law.⁵

Far from being a privilege of doctors, professional secrecy is an obligation adopted by the medical community to preserve the rights of individual to privacy.

The obligation to keep confidential "everything the doctor is told by the patient, whatever they may have seen or deduced, and all of the documentation produced in executing their responsibilities" is one of the values associated with our profession, and has deeply rooted for centuries.

Patient comes to us with their problems and they do so knowing that, as doctors, we have an obligation to confidentiality. We need to consider the importance of this fact: how many people would trust their doctor if they could not rely on them to protect their right of privacy/ What negative impacts might this have on their health? A society that is overzealous in guaranteeing safety can end up preventing its members from actively exercising their personal responsibility and, as a result, it can paradoxically end up restricting their freedom.

The important plea of journalist by International Press Institute "Professional Secrecy and the Journalist" published from Zurich in 1962 as follows

1. That the journalist has a moral and ethical duty to protect the anonymity of an individual who gives him information with the understanding that it is to be regarded as confidential as to source.
2. That the journalist must protect his sources as practical assurance that he will continue to receive information in confidence, if need be, and make it for the newspaper to publish information that should be made known to the public.
3. That if a journalist can obtain informations, the public agencies- including the police and the courts should be able to obtain the same information without putting pressure upon the individual journalist to do their work for them and, in the process, betray trust.

The protection given to communications between the lawyer and his client is for somewhat different reasons. The idea of protection is to encourage the client to consult the professional experts unhampered by any fears about the disclosure of his communications.

CONCLUSION

1. Although doctors as a responsible professional have also responsibility to help in the law enforcing agencies and judiciaries but their prime and main responsibility is to save the human life.

2. Doctors are the main agent to ensure implication of article 21 of constitution of India in letter and spirit.
3. But the certain provision of law like 39 Cr. P.C and their misuse by law enforcement agency are preventing the doctors to discharge their duties and restricting the fundamental right of common citizen guaranteed under article 21 at constitution of India.
4. Thus it is high time to extend the scope of 126 and 129 of I.E.A to the doctors also and at law provision of compulsion of suo-moto divergence and proper matter should be scraped.

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