ETHICAL AND LEGAL CONSTRAINTS IN PSYCHOTHERAPY

Prachi Sanghvi

[sanghviprachi@hotmail.com](mailto:sanghviprachi@hotmail.com)

Ph: 09429024840

Department of Clinical Psychology

Institute of Behavioural Science

Gujarat Forensic Sciences University

Sector 9, Gandhinagar

Gujarat

Smita Pandey

[advisor1947@gmail.com](mailto:advisor1947@gmail.com)

Ph: 08758628728

Department of Clinical Psychology

Institute of Behavioural Science

Gujarat Forensic Sciences University

Sector 9, Gandhinagar

Gujarat

ABSTRACT

Ethics are codes of conduct regulating an individual or a profession. Ethical issues that occur from time to time are often complicated, multidimensional and do not have definite solutions at all times. Ethical and legal challenges including professional competence, informed consent, confidentiality, boundary issues, responsibilities of therapist, psychometry, e-therapy, psychotherapy termination, documentation, research ethics and forensic participation have been discussed. To enhance the ethical behaviour of clinical psychologists, a system needs to be developed by which therapists can be held answerable for their actions. They must have knowledge of ethical guidelines and incorporate it into routine practice.

Keywords: Ethical constraints, legal constraints, psychotherapy

Psychotherapy has been comprehensively defined as, ‘a treatment, by psychological means, of problems of an emotional nature in which a trained person deliberately establishes a professional relationship with the patient with the object of removing, modifying or retarding existing symptoms; mediating disturbed patterns of behavior and promoting positive personality growth and development [1].’ Whereas, ethics are ‘principles of conduct governing an individual or a profession [2].’ Psychotherapists are challenged by options among “right versus wrong” and “right versus right at various junctures of their professional journey [3].” A necessity for a code of ethics was felt during World War II that recognized clinical psychology as a profession competent enough of meeting its responsibilities to the public [4]. Ethical challenges that appear from time to time are often difficult, multidimensional and do not contain have unequivocal resolutions [5].

In India, academic and professional psychology training curriculums generally refer to American Psychological Association (APA) code of ethics [6]. Rehabilitation Council of India (RCI) ethics code is brief and not tailored specifically to the psychotherapist–client context [7]. Indian Association of Clinical Psychologists (IACP) ethics code [8] is less comprehensive as compared to APA ethical guidelines [6]. Nearly all the national codes lack in well-defined guidelines on the process of ethical decision-making while confronting difficult alternatives [7]. Lack of adequate regulation of the profession renders possible consequences of ethical violations uncertain in India [7]. Whether the therapies and their constituents developed in the West are unequivocally pertinent to the patients in India is another concern [9]. Given that culture has an immense influence on the kind of therapies that work for us, it is important to develop manuals and test therapies for ethical practice [10]. Following are some of the commonly faced ethical and legal challenges:

**PROFESSIONAL COMPETENCE OF THERAPIST**

A psychotherapist needs to be aware of his proficiency pertaining to the degree of knowledge, training and supervised experience in a various types of psychotherapies [11]. Failure to practice a reasonable level of expertise as well as knowledge in diagnosis and delivering treatment can constitute professional negligence [12]. Past literature also discusses the importance of ‘emotional competence,’ i.e., whether the therapist is aware of his emotional condition while dealing with his patients [13]. When a therapist’s personal issues prevent him from carrying out his work proficiently, he should hold back from conducting therapy and obtain professional consultation or assistance [14].

**INFORMED CONSENT**

The ability to give consent is not an all-or-none capacity but a continuum [15]. The patient may not be capable in making an informed decision. Thus, a therapist must educate the patient concerning the processes included in therapy. He should also encourage discussion among the patient and his family members to make better decisions. Consent should be gained at the first possible occasion after the crisis has lessened. It includes appointment schedule, time period of every session, homework tasks, expected duration of therapy, confidentiality and its exceptions [11]. Informed consent conveys value for individuality and displays the collaborative nature of psychotherapy. It highlights the patient’s part in making treatment decisions and raising a feeling of ownership throughout the course and lessens the patient’s unease by elucidating the therapeutic process.

Fisher & Oransky [16] have suggested following principles while taking written or verbal informed consent:

1. Use the language that is understandable to the patient.

2. Understand the competence issues of the patient to give consent.

3. Obtain informed consent as early as possible.

4. Consider informed consent as a procedure and discuss all the issues in piece-meal, rather than in one go.

5. Provide information about the alternative treatments.

6. Provide information about the expectations from the patient.

7. Provide information about the fees and payments.

8. Discuss about confidentiality and its exceptions.

9. If the therapist is a trainee, inform the patient about the same status and the role of supervisor

**CONFIDENTIALITY**

Confidentiality is the basis of psychotherapy. Patients cannot be expected to uncover disconcerting information in treatment setup without assurance of confidentiality [17]. Upholding confidentiality conserves the privacy of patients and endorses trust in the profession [18]. The informed consent should mention that the therapist will maintain confidentiality of the information disclosed in the course of psychotherapy. It should also specify the exceptions under which the information would be revealed [11]. The exceptions include:

1) Child Abuse and Confidentiality

When a therapist has basis to suspect that a child has been or is being sexually abused, he is obligated to mandatorily report it to the police or the pertinent person within his organization who will then have to report it to the police under the Protection of Children against Sexual Offences Act [19]. Failure to act would result in imprisonment of up to 6 months, with or without fine.

2) Suicidal/Homicidal patients

If the therapist fails to make certain patient’s safety in a great risk for suicide situation, it might end in patient’s harm or death. Therefore, a psychotherapist must consider the consequences of breaching confidentiality as opposed to probable patient harm and devise ‘suicide prevention contract’ with the patient, notify the family, arrange for the patient to be hospitalized and discuss the planned action to work out the circumstances. In case of a homicidal threat, therapist has the obligation to warn the potential victim or notify the police concerning the danger when a warning is important to prevent the risk emerging from patient’s state [12].

3) When the information gathered in the professional relationship ought to be submitted as evidence in a legal proceeding.

4) If the patient has threatened the therapist for his life or filed a lawsuit against the therapist.

5) Therapist will reveal the information to a third person, if patient provides in written to disclose the information [11].

**BOUNDARY ISSUES DURING PSYCHOTHERAPY**

Past literature has focused on boundary issues like dual relationships, bartering, non-sexual touch, meeting therapy patients outside the office for social visits, etc. [20]. According to Gutheil and Gabbard [21], there are two types of boundary issues:

(a) Boundary crossings are harmless unconventionalities from customary clinical practice. They neither hurt nor manipulate the patient, e.g., accepting cake on patient’s birthday. Crossing boundaries might on occasion be constructive, neutral or sometimes damaging and the nature, clinical usefulness and effect can only be evaluated by thorough consideration to the clinical circumstance.

(b) Boundary violations are characteristically damaging and typically manipulative of patients’ needs like erotic, affiliative, monetary, dependence or authority, e.g., having sexual relationship with patient or making financial demands beyond the fee, etc. Boundary violations have to be comprehended on case to case basis by taking into consideration the circumstances in which the violation occurred and potential damage it does to the patient. A psychotherapist needs to understand the best and the ‘worst possible outcome’ from both crossing this boundary and not crossing and whether it includes considerable danger of undesirable outcomes [20].

**RESPONSIBILITIES OF THERAPIST**

Responsibilities of therapist include responsibilities to the client and to the self as therapist [11].

**1) Responsibilities to the patient:**

A psychotherapist must have only professional intent and not any other hidden motive to conduct psychotherapy. Goals in therapeutic setting should be realistic and well-defined. A therapist must prevent harm as an outcome of therapy and seek supervision or refer the patient when issues are beyond his proficiency. He should endorse autonomy and independence in the patient. He must uphold professional boundaries and maintain confidentiality. His publicity information ought to display the kind of services offered, training, qualifications and pertinent experience correctly. He must not involve in discrimination based on age, culture, disability, ethnicity, race, religion, gender, sexual orientation, marital status, language preference, socio-economic status, etc. [22].

**2) Responsibilities to self as a therapist:**

As a psychotherapist, he must preserve his efficiency, resilience and skill to assist the patients. He must monitor his personal functioning, seek help or refrain from therapy when personal resources are exhausted. He should seek regular supervision to acquire skills, monitor performance and provide accountability for practice [11].

**PSYCHOMETRY**

Ethical and legal norms are important to be taken care of in case of psychotherapy for pre- and post-assessment, progress in the therapy or to understand the patient better. For this reason, informed consent needs to be obtained which includes purpose of testing, intended use and range of probable outcomes and what testing information will uncover. Test data ought to incorporate test protocols, test results, raw test data, written/computer generated reports, global scores/individual scaled scores, manual, test items and scoring keys. Tests with outdates or irrelevant norms cannot be interpreted and reported [6]. Only such assessments, whose validity and reliability have been ascertained for use with members of the population tested, must be used. When such has not been determined, the strengths and limitations of test results and interpretation must be noted in the report [8]. Those who are unqualified for test use and interpretation should not be provided access to test material or raw test data. Results ought to be described in a simple manner in which the patient can understand. Patient has a right to raw test data and to have test results explained in detail [6]. Not providing full results of psychological tests can be compared to not providing full results of blood tests or MRIs [10]. Testing material should be used keeping in mind copyright laws as well as ownership issues [6].

Some of the practical issues that are frequently faced in psychotherapeutic setting are as follows:

When the patients are late for the session, it is difficult to conduct psychotherapy due to time constraints. Therefore, the therapist and the patient must review the problems in arriving on time and the potential solutions for the same. Also, patients are requested to notify the therapist at least 24 hours in advance if they want to cancel a session. Although, there is a practice of charging the patients if they fail to do so, it is seldom done in the Indian setting. A psychotherapist needs to avoid telephone counselling in regular services. It ought to be used only in emergencies as ethical as well as legal norms have not been well established in telephone counselling [12].

Another important issue is that of emergency contact. Patient as well as family members have to be informed that therapist’s privacy and personal time have to be respected. It would be necessary to explain the patient regarding the professional relationship if a patient makes frequent phone calls and request to call only in times of emergencies. Therefore, providing personal mobile number, residential phone number as well as residential address must be avoided. The therapist must get in touch with the family if the patient threatens self-harm over the phone and make a referral to the closest emergency mental health centre/hospital. He must notify the law enforcing agencies regarding patient’s self-injurious behaviour to protect him if no family members are available. Legal enquiries regarding to child custody, divorce, alimony, abuse or other wrongful behavior, etc. can likewise arise in the therapeutic setup. A therapist should be aware of the laws involving mental health issues, however, it is essential to refer them to legal counsel [23].

**E-THERAPY**

E-therapy is defined as ‘internet based modality in delivering psychological support that can be synchronous (simultaneous) or asynchronous (time-delayed) communications [8].” The ethical challenges in e-therapy include:

1) Appropriate concerns for E-therapy: Some disorders are not indicated for e-therapy like immediate crisis, e.g., eating disorder or severe psychosis.

2) Possibility of misunderstanding: There is a probability of overlooking non-verbal cues. E-therapy has been criticized for non-accessibility of non-verbal cues [24].

3) Maintenance of professional boundaries: Boundary concern is that of availability of personal information on the internet. The therapist needs to be aware of the type of personal information that is accessible online to the public.

4) Electronic confidentiality and privacy issues: A therapist needs to preserve confidentiality as well as privacy. E-mails, online support groups and instant messaging leave a digital trail which could be compromised if not protected.

5) Interruption of therapy due to technological problems: The informed consent should involve the possibility of disturbance in therapy because of technical issues. This is an in-built concern of e-therapy, as the servers may crash, equipment may breakdown or there may be a loss of internet connection.

**PSYCHOTHERAPY TERMINATION**

Termination of psychotherapy is not a point but an intended procedure that occurs when the patient has attained the objectives of treatment, he no longer needs psychotherapy, is not expected to benefit or is being more harmed than benefited from continuing psychotherapy [25]. It should occur in a pre-arranged manner instead of deserting the patient, which can communicate betrayal as well as misuse of authority [11]. Therefore, a pre-termination counseling session needs to be conducted where the psychotherapist provides an early notification or discusses an end date with the patient. He must evaluate what the patient is capable of managing handling outside the sessions, what all he considers as improvement in terms of his capacity to cope with previously unmanageable circumstances. The deficits that are remaining also need to be considered. The therapist should emphasize on when to return back for psychotherapy by preparing the patient for relapses and possible stressors as well.

**DOCUMENTATION IN PSYCHOTHERAPY**

Information in the case record must be considered a legal document that could be ordered by the court at any given time [12]. Proper documentation can help the therapist in the court of law or when the evaluation is conducted by the Council in cases of complaints [11]. If the therapist is unsuccessful in keeping appropriate records, it might lead to a negligence claim because it violates the standard of care as expected [26]. The Mental Health Care Act [27] mandates adequate record keeping. It also states that the patient as well as their nominated representative possess the rights to retrieve the records. However, psychotherapy includes disclosing sensitive and personal information. Patient discloses this information in confidence that it will be used to further the treatment and won’t be revealed without informed consent. But, the records are open to disclosure where such a demand is made by the court of law [11]. Therefore, a psychotherapist needs to use clinical judgement, i.e., evaluate the pros and cons to maintain precise and accurate record of the information revealed in psychotherapy at the same time recognizing the privacy of the patient.

The Recordkeeping guidelines outlined by APA [18] include:

1. General information like demographic details, chief complaints, diagnosis, intervention plan, billing information and informed consent.

2. Documentation of services like date, duration, type of psychotherapy as well as session notes.

3. Additional information like assessment data, crisis management documentation, consultation along with other professionals.

**RESEARCH ETHICS**

Research ethics are important to understand where a particular psychotherapy is used as a part of research. In such a case, the researcher needs to safeguard the rights as well as well-being of the participants and reduce the risk of physical and mental discomfort. He needs to obtain ethical clearance from authorized committee. Informed consent needs to be taken prior to conducting research. Three concerns for data management are important to be tackled including ethical and truthful data collection, responsibility of collected data and data sharing. Fabrication and falsification of data along with plagiarism are considered serious ethical and legal misconduct [8].

**FORENSIC PARTICIPATION**

A psychotherapist must be aware of personal boundaries of competence as well as undertake only those forensic cases involving those areas in which a level of proficiency has been obtained. He also ought to be aware of the rules of discovery in therapy and presume non-confidentiality as a rule. He must make sure that the patient is aware of boundaries of confidentiality as well as provide comprehensive informed consent before the evaluation. He needs to know the legal statutes and case law upon which the psycho-legal question turns; if unsure, ask for clarification and carefully and precisely document the evaluation procedure [8].

The strategies for that have been discussed for ethical practice include positive ethics, risk management and defensive practice [28]. Positive ethics directs the psychotherapist on continuously making every effort to attain the highest ethical standards which is directed by a series of aspirational virtues like beneficence, non-maleficence, fidelity, autonomy, justice and self-care). Risk management concentrates on reducing the risks for the psychotherapist that might end in negligence or malpractice claims [15]. Defensive practice encompasses taking decisions centered on lessening the probability of unfavourable consequences for the psychotherapist.

**CONCLUSION**

The key distinction concerning the Indian and American ethical code is that of accountability. To increase the ethical behaviour of clinical psychologists, a system is essential to be created by which they can be held answerable for their actions [29]. This is currently looked after by the Consumer Protection Act [30]. Under this legislation, a therapist is obligate to certain duties to the client, who consults him for his psychological problems. Inadequacy in these duties causes negligence. A client can approach the consumer court, if he has experienced any loss or damage due to any deficit in services [12]. Therefore, the therapist needs to know patient’s rights, ethical issues as well as the current legal system. The ability to think analytically and apply general ethical principles to particular circumstances is essential. A psychotherapist must have knowledge of ethical guidelines and incorporate it into routine practice [10].

Conflict of interest: Nil

Funding Support: Nil

**REFERENCES**

1 Wolberg LR. The technique of psychotherapy, Parts 1 & 2. Grune & Stratton, Inc/Harcourt, Bra; 1988.

2 Gove PB. Webster's third new international dictionary of the English language, unabridged: A Merriam-Webster. G. & C. Merriam Co.,; 1966.

3 Kidder RM. How good people make tough choices: resolving the dilemmas of ethical living. New York: Morrow; 1995.

4 Pettifor JL. Ethics: Virtue and politics in the science and practice of psychology. Canadian Psychology/Psychologie canadienne. 1996 Feb;37(1):1.

5 Corey G, Corey MS, Callanan P. Issues and ethics in the helping professions. 4th. Ed. Pacific Grove, CA: Brooks/Cole Publishing. 1999

6 American Psychological Association. Ethical principles of psychologists and code of conduct (2002, Amended June 1, 2010 and January 1, 2017). <http://www.apa.org/ethics/code/index.aspx> (accessed 3 Aug 2017)

7 Bhola P, Sinha A, Sonkar S, Raguram A. Ethical dilemmas experienced by clinical psychology trainee therapists. Indian Journal of Medical Ethics. 2015 Oct-Dec; 12(4): 206-212.

8 Indian Association of Clinical Psychologists. Ethics and code of conduct of clinical psychologists: Guidelines 2012–13. 2015. <http://www.iacp.in/node/159> (accessed 20 Aug 2017)

9 Kapur M. Training observations from the perspective of clinical psychology. In M. Kapur, C Shamasundar, R.S. Bhatti (Eds.). Psychotherapy training in India - Proceedings from the National Symposium on Training in Psychotherapy.(2nd ed.). 2001. Bangalore: NIMHANS Publication. Chapter 1.

10 Isaac R. Ethics in the practice of clinical psychology. Indian journal of medical ethics. 2009 Apr;6(2):69-74.

11 Avasthi, A., & Grover, S. Ethical and legal issues in psychotherapy. Indian Journal of Psychiatry. 2009: 148-163.

12 Vinay B, Lakshmi J, Math SB. Ethical and Legal Issues in Psychotherapy. In Ethical Issues in Counselling and Psychotherapy Practice 2016 (pp. 199-217). Springer, Singapore.

13 Pope KS, Brown LS. Recovered memories of abuse: Assessment, therapy, forensics. American Psychological Association; 1996.

14 Wise EH. Competence and scope of practice: Ethics and professional development. Journal of Clinical Psychology. 2008 May 1;64(5):626-37.

15 Bennett BE, Bricklin PM, Harris E, Knapp S, VandeCreek L, Younggren JN. Assessing and managing risk in psychological practice: An individualized approach. The Trust; 2006.

16 Fisher CB, Oransky M. Informed consent to psychotherapy: Protecting the dignity and respecting the autonomy of patients. Journal of clinical psychology. 2008 May 1;64(5):576-88.

17 Younggren JN, Harris EA. Can you keep a secret? Confidentiality in psychotherapy. Journal of Clinical Psychology. 2008 May 1;64(5):589-600.

18 American Psychological Association. Record keeping guidelines. American Psychologist. 2007. 62: 993–1004. <http://www.apa.org/pubs/journals/features/record-keeping.pdf> (accessed 10 Aug 2017)

19 The Protection of Children against Sexual Offences Act. The Gazette of India. Ministry of Law and Justice. 2012. [http://wcd.nic.in/sites/default/files/childprotection31072012. pdf](http://wcd.nic.in/sites/default/files/childprotection31072012.%20pdf) (accessed 5 Aug 2017)

20 Pope KS, Keith‐Spiegel P. A practical approach to boundaries in psychotherapy: Making decisions, bypassing blunders, and mending fences. Journal of clinical psychology. 2008 May 1;64(5):638-52.

21 Gutheil TG, Gabbard GO. The concept of boundaries in clinical practice: Theoretical and risk-management dimensions. The American journal of psychiatry. 1993 Feb.

22 American Counseling Association. ACA Code of Ethics. 2014. Alexandria, VA: Author. <http://www.counseling.org/docs/default-source/ethics/2014-aca-code-of-ethics.pdf?sfvrsn=fde89426_5> (accessed 19 Aug 2017)

23 Isaac R. The Ethical Private Practitioner. In Ethical Issues in Counselling and Psychotherapy Practice 2016 (pp. 19-36). Springer, Singapore.

24 Cook JE, Doyle C. Working alliance in online therapy as compared to face-to-face therapy: Preliminary results. Cyber Psychology & Behavior. 2002 Apr 1;5(2):95-105.

25 Vasquez MJ, Bingham RP, Barnett JE. Psychotherapy termination: Clinical and ethical responsibilities. Journal of Clinical Psychology. 2008 May 1;64(5):653-65.

26 Luepker ET. Record keeping in psychotherapy and counseling: Protecting confidentiality and the professional relationship. Routledge; 2012.

27 The Mental Healthcare Act. The Gazette of India. 2017. Ministry of Law and Justice. [http://www.prsindia.org/uploads/media/Mental%20Health/Mental%20Healthcare%20Act, %202017.pdf](http://www.prsindia.org/uploads/media/Mental%20Health/Mental%20Healthcare%20Act,%20%202017.pdf) (accessed 8 Aug 2017)

28 Barnett JE. The ethical practice of psychotherapy: easily within our reach. Journal of clinical psychology. 2008 May 1;64(5):569-75.

29 Verma SK. The development of standards and the regulation of the practice of clinical psychology in India. 1998. In Bellack, A.S., & Hersen, M. (eds.). *Comprehensive clinical psychology (Volume II)*. Amsterdam: Elsevier Science Limited.

30. The Consumer Protection Act. The Gazette of India, 1986, Part II, Section I, Ext., p.1 (no. 83). <http://chdslsa.gov.in/right_menu/act/pdf/consumer.pdf> (accessed 13 Aug 2017)