Ethical and Legal Issues in Psychotherapy

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INTRODUCTION

Psychotherapeutic interventions are part and parcel of the management of various psychiatric disorders. Pharmacotherapy for most psychiatric disorders is often combined with psychotherapy to improve the overall outcome. Over the years, different types (Psychoanalytic, Cognitive Behaviour, Family, Interpersonal, Supportive, Eclectic, and Brief therapies) and different schools of psychotherapy have emerged and the modality of carrying out psychotherapy has also changed from in person psychotherapy to e-therapy. E-therapies are being carried out by using synchronous and asynchronous methods. Despite all this, it is evident that there are certain common ingredients for all kinds of psychotherapies.[1]

The Government of India has recently issued Telemedicine Practice Guidelines[2] which formalize teleconsultations. These guidelines, however do not talk much about psychotherapeutic interventions. These changing methods of carrying out psychotherapy are going to bring in more and more ethical and legal issues. Hence, it is important to understand various ethical and legal issues pertinent to the practice of psychotherapy.

Multiple efforts have been made to define psychotherapy. However, till today the definition of psychotherapy given by Wolberg[1] is considered to be comprehensive, which defines it 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 objective of removing, modifying or retarding existing symptoms; mediating disturbed patterns of behavior and promoting positive personality growth and development."*

Indian Psychiatric Society (IPS) formulated the guidelines for various specific psychotherapies in the year 2010. However, the guidelines for ethical and legal issues in psychotherapy, which were published for the first time by the IPS was not updated. Accordingly, these guidelines are an update of the previous version of guidelines[3] for ethical and legal issues in psychotherapy. The basic aim of these guidelines is to establish minimum ethical standards for practice of psychotherapy by the psychiatrists. These guidelines provide a broad outline, which can be applied to the wide range of approaches used by individual psychiatrists in their clinical practice. These guidelines address the common ethical and legal issues arising out of common ingredients of psychotherapy.[1]

The three most important issues for the best ethical practice include *positive ethics, risk management, and defensive practice*.[4] *Positive ethics* basically focuses on the constant efforts made by the psychotherapist for achieving the best possible ethical standards. This is mainly guided by aspirational virtues of the therapist to do good and provide maximum benefit to the client (beneficence), avoid exploitation and harm to the clients and those associated with the client (non-maleficence), faithful to the explicit and implicit obligations that a therapist is expected to be with their client (fidelity), promoting independence, rather than dependence of the client on the therapist through own actions (autonomy), providing fair and equal treatment, and access to treatment, to all individuals (justice) and taking care of own physical and psychological wellbeing so that they are able to implement the required virtues effectively (self-care).[5] *Risk management* specifically focuses on reducing the risks for the therapist in the form of complaints to the ethics bodies or malpractice claims. Risk management basically addresses the issues of informed consent, effective documentation, and consultation.[5,6] *Defensive practice* focuses on the direct protection of the psychotherapist and involves decision-making based on reducing the possibility of adverse outcomes for the psychotherapist.[4,6] For example, restricting the type of clients taken up for the therapy and refusing to take up a certain type of clients, such as those with active suicidal ideation and suicidal behavior or those with severe personality disorders, in view of the increased risk.[5,7]

Based on these three principles, these guidelines cover the ethical and legal issues in psychotherapy under the broad headings of competence of therapist, responsibilities of therapists towards their clients, therapeutic contract, informed consent, confidentiality, privilege and psychotherapy supervision, documentation, self-disclosure, matters of business (advertising, fees, etc.), research,

Table 1: Basic tenets of a good psychotherapist

Competence
- Possess skill and knowledge required to carry out a particular kind of therapy
- Awareness of own emotional state while dealing with their clients
- Irrespective of the level of training, seek supervision from colleagues

Responsibility for the client and self
- Remain aware of their responsibilities towards the clients and self
- Take the therapy with a professional intent
- Draw realistic treatment contract
- Not to harm the client in any way
- Seek supervision from colleagues or supervisors
- Be prepared to refer the client when they feel that they are incompetent to handle a particular situation
- Maintain confidentiality
- Maintain professional boundaries
- Maintain own personal functioning and effectiveness

Seeks proper informed consent
- Someone seeking help, need not be interpreted as "implied consent"
- Therapist should obtain informed consent/assent from the client after providing information to the client as to what is psychotherapy, what is expected out of the patient, what is expected from the therapist, what are the limitations of the therapy and therapist, fees involved, alternative modalities of treatment along with efficacy of each in condition which the client is suffering from

Draws a detailed therapeutic contract
- A therapeutic contract be signed by the client and the therapist before initiation of the psychotherapy
- Issues of confidentiality/privileged communication regarding the information obtained during therapy should be clearly mentioned in the contract

Is aware of and avoids boundary violations

Provides information about the termination of therapy, right at the beginning

Has good understanding about ethical issues during the posttermination phase

counter-transference, boundaries, professional negligence, termination, and post-termination issues.

However, it is important to remember that these guidelines provide a broad framework, and these are not a substitute for professional knowledge, clinical judgment, and formal legal advice. These guidelines cannot specifically address every situation or dilemma that a therapist may face.

BASIC TENETS OF A GOOD PSYCHOTHERAPIST

A good therapist is expected to be competent, responsible for the client and self, seek proper informed consent and assent (if required) [Table 1].

COMPETENCE OF THERAPIST

Competence is defined as *"the possession of required skill, knowledge, qualification or capacity."*[8] Accordingly, in terms of ethics, the psychotherapists are expected to be aware of their competence and limitations, i.e., the level of their knowledge, training, and supervised experience for particular kind of therapies. Another issue which is often considered while discussing competence includes "emotional competence,"[9] i.e., whether the therapist is aware of his emotional state while dealing with their clients. The therapists are expected to refrain from starting or continuing with a therapy, when they themselves are aware that there is a substantial chance that their personal problems will hinder in their performance as a therapist in a competent manner. The therapist is also expected to seek professional help, when they become aware that their personal problems might interfere in performing their role of a therapist adequately. For the ongoing therapies, the therapist can limit, suspend, or terminate the therapy.[10] For new therapies, they should refrain from starting any kind of therapy, till they themselves feel that they can perform their role as a therapist effectively. Seeking the opinion of other therapists/clinicians or their supervisors can be very useful in determining the same. Further, all the therapists, irrespective of their level of training are expected to seek supervision from their mentors or fellows colleagues, so as to be aware of their competence.

In India, many of the clinicians are not formally trained in specific kind of psychotherapies. In such a scenario, while offering a particular psychotherapy, the psychotherapists need to clearly mention the same to the prospective client during the initial interactions itself. The therapist can mention that they have not had any formal training in the module of psychotherapy; however, they have expertise in the practice and based on that they may be in position to help him/her.

RESPONSIBILITIES OF THERAPIST

From an ethical point of view, it is important that the therapists are aware of their responsibility towards their clients and self [Table 2].[11] It is important to note that any irresponsible behavior on the part of the therapist may not only be in conflict with the ethical principles but might also give rise to situations, which can have legal implications.

ASSESSMENT FOR PSYCHOTHERAPY

Assessment for psychotherapy has prime importance in practice of psychotherapy and clinical psychiatry. The success of any psychotherapy depends on offering the right therapy to the right patient. It is important to consider that all patients seeking help may not be suitable for psychotherapy, or they may be suitable for one kind of psychotherapy and not the other. Hence, assessment for psychotherapy is one of the most important aspects of psychotherapy. Besides suitability, another important aspect to consider while assessing for psychotherapy is the feasibility of psychotherapy, although, with the availability of the tele-psychiatry services, the feasibility issues related to distance have now been addressed to some extent. The basic components need to be considered while assessing for psychotherapy [Table 3] and depending on the need,

Table 2: Responsibilities of the therapist towards their clients and self

Responsibilities towards the clients

- To undertake therapy with a professional intent and not casually and/or in extra professional relationships
- Carryout a proper assessment for psychotherapy
- Draw a clear and realistic contract with the client
- Take all possible steps to avoid harm to their clients due to the therapeutic process
- Seek supervision while carrying out the therapy
- Refer the client, when the required kind of therapy is beyond their competence
- Promote client autonomy and encourage the client to make their own responsible decisions
- Maintain the professional boundaries
- Avoid any other relationship with the client, which can be detrimental to the therapy
- Maintain confidentiality (this applies to all verbal, written, recorded or computer stored material, stored material pertaining to the therapeutic context). All records, whether in written or any other form, need to be protected with the strictest of confidence
- If confidentiality has to be broken, due to unavoidable reasons or legal compulsions, attempts must be made to seek permission from the client
- Maintain confidentiality, even after the demise of the client, unless there are overriding legal considerations
- Not to exploit clients (past or present), in any form, such as financial, sexual, emotional or any other way
- Sexual relations in any form (not just sexual intercourse, but also includes any form of physical contact, initiated either by the client or the therapist, with an intent of sexual gratification) between the therapist and their client are unacceptable
- Not to accept or offer payments for referrals, or engage in any financial transactions, apart from negotiating the ordinary fee charged for the therapy
- Before considering to make a relationship with a former client, seek supervision
- In case a client is incapable of providing informed consent, obtain consent from a legally authorized person (i.e., nominated representative or guardian)
- In case the client is a minor, seek consent from the parents/guardian along with the assent of the minor client
- Any publicity material and all written and oral information should reflect accurately the nature of the service offered and the training, qualifications and experience of the therapist

Responsibilities to self as a therapist

- Maintain own effectiveness and ability to help clients
- Monitor own personal functioning, and seek help and not carry out therapy when personal psychological or emotional resources are sufficiently impaired
- Not to undertake therapy when own functioning is significantly impaired by personal or emotional difficulties, illness, alcohol, drugs or any other cause
- Seek regular supervision to enhance skills and monitor their own performance

Confidentiality

- Maintain confidentiality

further detailed evaluation may be carried out. Ethically, it is important to convey to the patient that assessment is an ongoing process and it may not be feasible to complete the same in the initial 1–2 sessions. Hence, initially, the assessment and supportive psychotherapy sessions may go hand in hand, before switching to more intensive therapy, if the patient is found suitable for the same. The therapist needs to inform the client clearly that at the end of the assessment, it is also possible that patient may not be taken up for more intensive therapy, if they are not found suitable for the same. In that case, only supportive psychotherapy may be used. The payment related issues for the assessment phase need to be clearly mentioned right at the beginning, as at times, proper therapeutic contract is signed only when a reasonable level of assessment has been done.

INFORMED CONSENT

Informed consent in an invaluable aspect of any kind of psychotherapy as it ensures that the client's decision to take part in psychotherapy is informed, voluntary, and rational.[12] It is often presumed that if the client is seeking help for their problems, it implies consent, but it is important to remember that this does not amount to "informed consent."

Informed consent needs to be seen as means of protecting the rights of clients as it gives the client an opportunity to make an informed decision about engaging in psychotherapy. It also emphasizes making treatment decisions and increasing a sense of ownership over the process on the part of the client.[12] A proper informed consent procedure [Table 4] also facilitates the therapist and the client to establish a partnership with a common goal, decreases the likelihood that the client will put the therapist on a pedestal and become overly dependent on the therapist.[12,13] Last but not the least, a proper informed consent can reduce the client's anxiety as it demystifies the therapeutic process.[12]

Some of the components of the informed consent, as discussed, will also be covered under the heading of "therapeutic contract." However, it is important to note that the therapeutic contract is made only after both client and the therapist have mutually discussed and have agreed on the issues to be included in the contract. It is also possible that some of the patients may not agree for the therapy if they are provided proper information about the various aspects of therapy, especially their role in the therapy. Hence, including various aspects of psychotherapy as part of the informed consent procedure is of utmost importance.

Whenever the psychiatrist plans to obtain an informed consent (either written or verbal), efforts must be made to take into consideration the cognitive impairments of the clients arising due to conditions such as intellectual disability, schizophrenia, or Alzheimer's disease. Although in India, clinicians often depend on the family members or a legally appointed guardian for medical and mental health care decisions of the clients, psychiatrists must nevertheless provide patients with an appropriate explanation of services, consider the patient's preferences

Table 3: Assessment for psychotherapy

Usual situations in which psychotherapy is considered
- Mild/moderate depression
- Anxiety disorders incl. OCD
- Stress-related disorders
- Dissociative/somatoform disorders
- Personality disorders
- Patient prefers psychotherapy to drugs
- Inadequate response or poor tolerance to medications
- Situations where drugs may be unsafe e.g., pregnancy

When to avoid psychotherapy
- Diagnosis: OBS, acute exacerbation of schizophrenia/psychotic illness, Mania, severe depression with suicidality, initial stages of drug addiction (e.g., intoxication, acute withdrawal)
- Intellectual disability (except BT)
- Lack of motivation: Patient hostile, uncooperative, agitated
- Poor ego strength, poor impulse control, acting out (dealing with emotional conflicts through actions rather than reflection or feelings e.g., disinhibited or aggressive behavior)

Feasibility
- Distance (able to attend sessions)
- Capacity to pay requisite fees
- Motivated and co-operative (e.g., homework assignments in CBT)
- Follows the contract: Maintains ethical boundaries, punctuality, rules regarding missed appointments
- Reasonable goals/expectations

Type of psychotherapy
- Psychoanalytically oriented psychotherapy (POP)
- CBT
- Couple family therapy
- Supportive psychotherapy

Clients suitable for psychotherapy
- Appropriate ego strength
- Adequate motivation
- Ability to become involved in and contribute to treatment
- History of meaningful relationships
- Adequate intelligence or psychological sophistication
- A relatively circumscribed problem or symptom presentation
- Diagnosis of mild neuroses or personality disorders

Evaluation for psychotherapy
- Age
  - Psychoanalytically oriented/cognitive psychotherapy in adults
  - In advanced age, learning not easy: Reconstructive therapy difficult
- Duration of symptoms
  - Longstanding problems dating back to childhood need psychoanalytic approach
- Presenting problems and clinical diagnosis
  - These are important determinants regarding choosing patient for therapy and determining the type of therapy to be offered
- Severity of symptoms
- Impact on the personal/family/social/occupational level
- Intelligence and verbal felicity
- Minimum degree necessary in POP and CBT (indicators of "psychological sophistication")

Psychological sophistication
- Motivation for treatment
  - Predicts adherence, resistance
  - Why does the patient want to get better?
  - What are the plans for immediate future (after treatment)
  - Other personal motives, if any, leading to treatment
- Insight into illness
- Introspective ability about illness and emotional matters (POP)

Past therapeutic contact
- Ego strength
  - Hereditary factors e.g., genetic loading

Contd...

Table 3: Contd...

- Constitutional factors: e.g., physical deformities
- Early environmental factors: e.g., parental deprivation or traumatic experience (e.g., CSA)
- Development history: Unwanted child; mother not involved in early care; neurotic traits; intellectual development and school adjustment; reaction to developmental changes like adolescence, leaving home, menarche, marriage, child birth, death of significant members
- Present Interpersonal relationships with significant others (intensity rather than quality)
- Methods of handling stress

Defense mechanisms
- Previous patterns of relationships and adjustment
  - Understanding conflicts, transference
- Secondary gain
  - POP, strong persisting secondary gain is a poor prognostic marker

Other assessments
- Life situation, relationships and practical problems
- Altered thinking
- Altered emotions (also called mood or feelings)
- Altered physical symptoms
- Altered behaviour or activity levels
- Debts, housing or other difficulties
- Problems in relationships with family, friends, colleagues, etc.
- Life events such as deaths, redundancy, divorce, court appearance

CSA – Child sexual abuse; CBT – Cognitive behaviour therapy; OCD – Obsessive compulsive disorder; POP – Psychoanalytically oriented psychotherapy; OBS – Organic brain syndrome ; BT – Behaviour therapy

and best interests, and seek the patient's assent.[12] Further, it is important for the therapist to view consent capacity not as an all-or-none ability but as a continuum.[6] It is suggested that the therapist should aim to formulate a "goodness-of-fit model of the informed consent process" that fits to each client's cognitive strengths, vulnerabilities, and decision-making capacities and styles.[14,15] Often clients from India can understand the reasons for and nature of therapy, but may not be able to take decision, because of lack of experience in making healthcare decisions on their own, or undue trust on their doctors. Keeping this in mind, the informed consent procedure need to be approached with the motive of educating the client about the procedure and things involved in the therapy. Any kind of discussion between the client and other family members need to be encouraged to make more informed decisions. However, it is also important that just on the basis of clinical diagnosis, the therapists should not assume that the patients cannot give consent. Data suggests marked within diagnosis heterogeneity, with the level of cognitive confusion or distortion, particularly verbal and executive functioning skills to be a more reliable predictor of consent capacity than diagnostic criteria.[16,17] Further, as per the MHCA, if a client does not possess competency at the beginning of the treatment, the consent should be obtained from the client whenever the client is competent to understand the procedure of the therapy. Further, as per the MHCA, if the therapy has been started when the client was a minor, and crosses the age of 18 years, the client should be treated as a major, and assent should be replace with the informed consent.

Table 4: Basic tenets for drawing an informed consent form/seeking verbal informed consent[10]

- Use the language that the client understands easily and comfortably
- Evaluate and understand the competence issues of the client to provide consent
- Obtain informed consent at the earliest
- Consider obtaining informed consent/assent as a separate procedure and discuss all the relevant issues in piece-meal, rather than in one go
- Inform about the other available alternative treatments
- Inform the client about what is expected from them during and in between the therapy sessions
- Inform about the fees, payments methods
- Discuss about confidentiality and exceptions to the confidentiality clauses
- Inform the client about your status (example, trainee), need for supervision and the role of supervisor

Ideally, first session should be utilized to obtain informed consent, but this is not always possible or clinically feasible because sometimes the clients presents with the crisis, which requires urgent attention. In such a scenario, consent needs to be obtained at the first possible opportunity once the crisis has resolved.

Further, it is also important to understand that informed consent to psychotherapy be conceptualized as an ongoing process designed around a client's evolving treatment needs and the subsequent treatment plans to which they must consent.[18] While some parts of the informed consent process can reliably be covered at the beginning phase of the psychotherapy (e.g., confidentiality and disclosure procedures, fees and payment options, and cancellation policies), more substantive parts of the informed consent process may be covered in subsequent sessions. Issues like specific goals of the therapy, the techniques to be used, and the estimated duration of the therapy may not be clear during the initial meeting; in such cases, it is neither in the best interest of the client nor the therapist to establish such matters in haste.[12,19]

The therapist is obliged to provide full information about the nature of treatment and goals of therapy, and viable alternative treatment with the level of evidence for their effectiveness for the condition which the client is suffering, both to the client and the family members or the legal guardian.[13]

During the informed consent procedure, it is very important that the therapist informs the client about the appointment schedule, the duration of each session, homework assignments, anticipated duration of therapy with due importance given to various eventualities during the therapy and the general treatment objectives and therapeutic techniques which are going to be used.

The confidentiality issues need to be discussed at length, along with the exception clauses.

When a trainee is providing psychotherapy the therapist needs to inform the client that she/he is a trainee, that his supervisor is responsible for the therapy, and that the trainee meets regularly with the supervisor for guidance and advice.[12]

THERAPEUTIC CONTRACT

The therapeutic contract should be in the form of a written document, which needs to include information about the responsibilities of the therapist and the client(s) participating in a particular psychotherapy. A "model therapeutic contract" is provided [Table 5], which can be modified as per the need. If the client has any issues with the therapeutic contract, the option of legal opinion should be kept open.

ISSUES SPECIFIC TO ONLINE PSYCHOTHERAPY

At present, the Telemedicine Guidelines, as Issued by the Government of India, is silent about the online psychotherapeutic interventions. However, this should not be interpreted as psychotherapeutic interventions cannot be done by tele-mode. However, the clinicians, who are carrying out online psychotherapy intervention, should inform their clients about the same.

In case someone wants to carryout an online psychotherapy intervention, then the feasibility aspect should take into consideration the mode of communication (i.e., synchronous/asynchronous; voice call/video call; text chat; a mix of various modes). These facts need to be discussed in detail, and the client should be appraised about the same. American Counselling Association,[20] National Board for Certified Counsellors,[21] and International Society for Mental Health Online[22] were among the initial few organizations, which discussed the ethical and legal issues of online/e-therapies. Other organizations have also come up with some of the recommendations for the online therapy. Some of the issues, which are ethical obligations on the part of the therapist and may be of some legal protective value for the therapist, are listed in Table 6. These issues need to be taken into consideration during the process of informed consent and making the therapeutic contract.

CONFIDENTIALITY

Ensuring confidentiality of the information is the foundation of any kind of psychotherapy. Until and unless the clients are assured about the confidentiality of the information which is likely to be disclosed, the clients cannot be expected to share the embarrassing, and sometimes personally damaging information in the treatment setting.[23] As part of the medical profession,

Table 5: Components of the therapeutic contract

- **Time:** the time of the day and when the therapy session will be conducted and provision of change in exigencies
- **Duration:** duration of each session (say 40 min)
- **Frequency of sessions:** Frequency of the sessions will be_____ per week. This should be mutually agreed between the client and therapist depending on the type of problems and symptoms and the psychotherapy planned
- **What happens when someone is late to the session:** In case therapist is getting late, they will try to inform the client about the same in advance, irrespective of the duration of delay. In case the session starts late due to the fact that the therapist was late, and the client can stay longer, then the therapy session would be conducted for the stipulated decided time. If the client arrives late, then the session may still end at the scheduled time, however if it is feasible on the part of the therapist, then the session may go to the full time. If either the therapist or the client is late by more than 15 min and don't inform the other party than the session will stand cancelled. However, in such a situation the party responsible for the "no show" will have to bear the financial liability
- **Cancellation:** In the event of either the client or therapist is not available for the predetermined appointment, they are required to provide at least 24 h notice of cancellation or they will have to make payment for the session
- **Fees:** The fee for each session need to be predetermined. The contract can read as "the client is supposed to pay Rupees ____ for each 50 min session. It can be mentioned that the client is expected to make the payment prior to the beginning of the session. Further, it can be mentioned, after mutual negotiation that, if the duration of the session extends beyond the stipulated time frame than an additional fee may be/will be charged
- **Emergency contact:** If the client needs to contact the therapist in between the sessions, they can call/send message at _____number and leave the message and also mention that it is an emergency. If the therapist doesn't call back the client in _____ time (say 30 min), patient should attend the emergency outpatient department of the hospital or the nearest health care facility
- **Issues of confidentiality:** The therapeutic contract needs to mention that the therapist will maintain confidentiality of the information revealed during the psychotherapy. However it also needs to provide the provisions under which the information would be disclosed to others, for example the confidentiality clause can be worded as
  - Information shared by the client will be maintained strictly confidential except in the following situations
    - To ensure the best treatment, therapist will at times discuss the case with his colleagues or supervisor, without disclosing the identity of the client
    - In case the client is being seen by a team of doctors, then the details of the therapy will be discussed with the team members to seek supervision
    - If the client communicates threat of bodily injury to self or to another person then the information would be disclosed to the family members and the legal authorities
    - If the client is a minor, the details may be shared with the parents, as per the provisions of the mental health care act, 2017
    - When there is reasonable suspicion of child abuse or abuse of a dependent adult has occurred, or is likely to occur
    - If ordered by a court of law, the details of the treatment will be revealed to that court
    - In case of the couple and family therapy, the therapist may mention that "if you tell me a secret, you are asking me to help you disclose it, which I will assist you in doing." "I maintain the right to disclose confidential information to other participants in the therapy, if I feel it is in the best interest of the family or couple to do so. You have equal rights to release information to outside parties but I will withhold it unless it is in your best interest"
    - Therapist will disclose the information to a third person or agency, if client gives in written to release the information
    - If the client files a case in the court against the therapist then the client loses his privilege of confidentiality
- **Termination:** If the client decides to discontinue the therapy, he will make this known to the therapist within a session, so that an end date can be fixed and the client and therapist can work towards an appropriate termination of therapy. Termination of therapy cannot be done telephonically or by text messages, nor be a sole decision of the client (This is to safeguard the client as frequently, during the therapy, client may have to discuss underlying difficult material which has been kept suppressed for the years. Certain defenses/aspects of client may stop them to discuss the same and that may convince their ego that they can't afford therapy, don't have the time for therapy, therapy is not working, or nothing is progressing, when, actually a breakthrough is on the card. So it is important that they ask for inner guidance with the help of their therapist when they have these doubts, rather than quit the therapy, just when life can begin to have new meaning)
- **Gifts:** No gifts will be accepted by the therapist from the client and neither the therapist will offer any gifts to the client
- **Self-disclosure:** The therapy will focus on the issues of the client and the therapist will not respond to any questions regarding the personal details, and any such attempt by the client will be interpreted
- **Homework assignments:** As part of the therapy client may be given homework assignments in between the sessions, which they are expected to carry out. If the client comes to the session, without completion of the homework assignment, then the therapist will have the right to cancel the session. However, in such situation, the client has to pay the fee for the session
- **Documentation:** The therapist may take notes during the therapy session
- **Recording:** The therapist may tape record/video record the therapy session for documentation and supervision purposes. It should also explicitly mentioned that the client cannot record the sessions, without the permission of the therapist
- **Provision for revision:** If required either by the therapist or the client, then the therapeutic contract will be revised after mutual discussion
- **No suicide contract:** In case, the client is suicidal, the contract can include the clause that the client is not going to harm her/him, and in case she/he has the urge to indulge in the self-harming behaviour, she/he will contact the therapist/designated person
- **Termination of therapy:** In which situations the therapist will terminate the therapy; what would be the obligations of the therapists and the client, in case either of them decide to terminate the therapy prematurely
- **Complaints/dissatisfaction resolution procedure:** It is useful include a compliant/dissatisfaction resolution procedure, wherein the client agrees to discuss any problems he may have regarding the therapist/therapy with the therapist first, so as to allow the therapist to resolve the same, before the client lodges any formal complaint

the therapists are expected to maintain the confidentiality of their clients. However, it is important to remember that the ethical requirement of confidentiality overlaps with the law; hence, answers to some of the situations can only be predicted by an understanding of both ethics and law. Hence, in situations where things are not clear, the therapist can seek legal consultation. Despite the complexity of confidentiality issues, one must remember that in a majority of tricky situations often the best way of resolving legal and ethical dilemmas is to obtain the client's consent for disclosure.

It is also important to note that confidentiality is not absolute, and there are exceptions to the confidentiality of information. Accordingly, while drawing the therapeutic

Table 6: Specific issues related to online/e-therapies

- Therapist to develop their competency in carrying out the online psychotherapies
- During at least few, if not all, of the initial assessment sessions, in person contact need to be established
- Informed consent procedure and the therapeutic contract should be signed in person
- The informed consent and the therapeutic contract should clearly state that in case, there is a legal dispute, then case can be filed only in the place of work (where the clinician is practicing in person) of the clinician
- Similarly, issues of whom to contact and where to go at the time of emergency should be clearly stated
- Therapist should inform the patient about their experience with carrying out online therapy
- Therapist should inform the patient that, if required they may be required to come for in person consultations
- The therapeutic contract may mention that initial few sessions, may be done on trial basis to evaluate the feasibility issues and suitability
- Measures which would be taken to ensure confidentiality
- Use of software for encryption of information
- Discuss the mode of storage of material
- When the recorded material in stored in places (for example cloud server), where the therapist has no control over the material, consent of the client needs to be obtained beforehand and their opinion be respected in this regard
- In case the therapist wants to use the recorded material (especially videos) for teaching purposes, consent of the patient must be obtained for the same
- Ask the client to provide the number of a family member or nominated representative or guardian, who the therapist can contact, in case of exigencies. This should be incorporated in the therapeutic contract
- In case of asynchronous communication- upper time limit for both client and the therapist be specified
- Discuss the issues of professional boundaries, with respect to social media
- Boundary issues in cyberspace
- During the informed consent procedure and the therapeutic contract, include, back-up plan for interruption of the therapy session due to technological problems

Table 7: Confidentiality and its exceptions during the therapy

- Therapist will maintain confidentiality of the information obtained as part of the therapy
- In case, mandated by the law, the therapist will release the confidential information without the consent of the client
- If required as part of the legal proceeding and mandated by the court of law, the information collected in the professional relationship will be submitted as evidence in a legal proceeding
- The confidentiality will be breached if the client threatens the therapist for their life or files a case in the court of law against the therapist

contract and seeking informed consent/assent, the client needs to be informed about the exceptions to the confidentiality [Table 7]. Failure to do so can place both the therapy and the therapist at significant risk.[24] The exceptions to the confidentiality clause are disclosure of the confidential information without the consent of the client in different situations (example reporting abuse, protecting clients and their potential threatened victims, defending oneself from inappropriate, or threatening client behavior), disclosure of information as evidence in a legal proceeding and for protecting self, in case threatened or sued by the client.

Therapists should report child, elder, or dependent adult abuse to appropriate authority if it comes to their knowledge. It is an obligation to report child sexual abuse to police, directly or through an appropriate channel, under Section 21(1) of the Protection of Children against Sexual Offences.[25] Failure to do is punishable by imprisonment up to six months with/without fine.

Breach of confidentiality is permitted where an imminent danger to the client himself/herself or others exists. When a patient threatens to self-harm the therapist should explain the situation to his family and make an emergency referral to the nearest mental health care facility. In case a family member is not available, it would be prudent to inform the law enforcing agencies about the client's intentions. When imminent danger to others is sensed appropriate action, including informing the police is justified. Therapists need to consider pros and cons of breeching confidentiality versus potential harm. Nonserious harm to self or damage to property are not a strong enough reasons to infringe on confidentiality. In case the therapist decides to breech confidentiality, information conveyed should be limited to that necessary in the context of the situation. Marital negotiations such as during reconciliation/separation may be privileged from disclosure.[26]

Ensuring the confidentiality of the information is the foundation of any kind of psychotherapy. Until and unless the clients are assured about the confidentiality of the information which is likely to be disclosed, the clients cannot be expected to share the embarrassing and sometimes personally damaging information in the treatment setting.[23] As part of the medical profession, the therapists are expected to maintain the confidentiality of their clients. However, it is important to remember that the ethical requirement of confidentiality overlaps with the law, hence, answers to some of the situations can only be predicted by an understanding of both ethics and law. Hence, in situations where things are not clear, the therapist can seek legal consultation.

However, it is also important to note that there are exceptions to confidentiality of information. Accordingly, while drawing the therapeutic contract and seeking informed consent/assent, the client needs to be informed about the exceptions to the confidentiality [Table 7]. Failure to do so can place both the therapy and the therapist at significant risk.[24] The exceptions to the confidentiality clause are disclosure of the confidential information without the consent of the client in different situations (e.g., reporting abuse, protecting clients and their potential threatened victims, defending oneself from inappropriate or threatening client behavior), disclosure of information as evidence in a legal proceeding and for protecting self, in case threatened or sued by the client.

Besides the above, there are situations where the issues of confidentiality are not defined specifically for psychotherapy by the law enforcement agency the general laws related to confidentiality in medical practice will be applied. Some of the important situations where there are grey zones include confidentiality issues in case of minors, when the parents are having conflictual relationship or are undergoing the divorce proceedings; confidentiality in case the client is dead, and confidentiality issues in case of marital or family therapy. The therapist should anticipate these situations and discuss these issues while obtaining the informed consent and incorporate the same into the therapeutic contract. However, for things which are not clear, it is always advisable for the therapist and the client to seek the opinion of colleagues and lawyers before finalizing the contract.

BOUNDARY ISSUES DURING PSYCHOTHERAPY

The concept of boundaries emerges from ethical, cultural, moral, and jurisprudence underpinnings. When boundaries are not respected, therapists often start acting in their own interest rather than that of the client and this may lead to exploitation of the client. Terms such as, "Boundary crossings" and "Boundary violations," have been mentioned in literature. Boundary crossings are essentially harmless and do not lead to harm or exploitation. However, Boundary violations are typically harmful and are usually exploit clients' needs-erotic, affiliative, financial, dependency or authority.[26-28]

Boundary issues in psychiatry and psychotherapy *per se*, do not have black and white answers. Nonsexual boundary crossings as part of the therapy and treatment plan can strengthen the therapist–client working relationship.[22] Conversely, crossing the boundaries can also be detrimental to the psychotherapy, disrupt the therapeutic alliance, and can cause immediate or long-term harm to the client. Choice about whether to cross a boundary confront the therapists on day-to-day basis can be often subtle and complex, and at times have an influence on how therapy progresses, stalls, or ends.[25]

A large amount of data has accumulated over the years, mostly from the Western countries, in relation to the dual relationships, bartering, nonsexual touch, meeting therapy clients outside the office for social visits, and other nonsexual boundary issues.[29] People who consider the ethical boundaries to be inflexible mostly rely on the psychotherapeutic principles of Freud.[24] However, it is noted that Freud used to send postcards to his clients, gave gifts to his clients, lent them books, corrected them when they spoke in misinformed manner about his family members, provided financial support to his clients at the time of need, provided food to an analytic patient, conducted an analysis of a person while walking through the countryside during a vacation and shared meals with him, and analyzed his own daughter. Accordingly, some of the authors have tried to interpret the therapeutic alliance and boundary issues as followed by Freud as the relationship limited only to the analytic sessions, and other relationships are possible outside the therapy sessions. Some of the similar behaviors have also been noted for M. Klein and Winnicott.[24] It is claimed that latter on one occasion, held the hand of a client for hours together during the therapy, disclosed information about another client, and ended each session with coffee and biscuits. However, these historical descriptions don't mean that these are acceptable behaviors, and it is suggested that in ideal situation the therapists should limit themselves to interpretation only.[27] However, a major conflict arises when one moves from the classical analytic interpretative psychotherapy to expressive-supportive psychotherapy, where interpretation is not the main ingredient of psychotherapy and the commonly used ingredients include suggestion, confrontation, advice, and praise. In fact, in supportive psychotherapy actually partial gratification of the patient's transference needs may at times be therapeutic. Hence, there is an in-built confusion with regard to psychotherapeutic boundaries.

Considering all these, the issue of boundaries becomes more complicated when it comes to talking about boundaries of the clients, which are considered to be more flexible.[25] It is said that crossing boundaries "may at times be salutary, at times neutral, and at times harmful" and that the nature, clinical usefulness, and impact of a particular crossing "can only be assessed by a careful attention to the clinical context."[23] Hence, the issue of boundary violations should be understood on case to case basis by taking into consideration the situations in which violation occurred, type of therapy, and possible harmfulness it has on the client.

Boundaries and boundary violations can be understood under the subheadings of role, time, place and space, money, gifts, services and related matters, clothing, language, self-disclosure and related matters, and physical contact.[27] In the subsequent section, these are discussed briefly mainly in the context of dynamic therapy. *Role* as a boundary should answer the question *"Is this a therapist does or is expected to do."* Although the ideology of the therapist will have a significant impact on the answer to this question but is often a useful orienting device for avoiding pitfalls of role violations. Abiding by the *time* of the session is considered as an essential boundary, as it provides structure and containment to the clients, because some of the clients feel reassured by the fact that remembering and reliving of traumatic past will be for a set time only. Accordingly, beginning and ending the sessions beyond the schedule are susceptible to crossings of boundary. The time schedule for the therapy session is also equally important because knowingly or unknowingly scheduling/rescheduling psychotherapy at the end of the day's work, or beyond the

working time, rather than the usual working hours, may actually go against the therapist if they are alleged of sexual misconduct. This becomes much more important and calls for interpretation when the appointments are rescheduled. Essentially it is suggested that whenever possible, the psychotherapy should be scheduled in working, high movement/traffic hours when other people are around. The place of meeting of therapist and client should be limited to the psychotherapy sessions in the therapists working place, with exceptions being the client is admitted to emergency/ intensive care unit after a suicide attempt. In terms of the therapist meeting, the client outside the office (attending the personal/family get-togethers of the client), this does not have one answer and should be interpreted and scrutinized in the light of type of therapy being conducted and the situation. *Money or fee for the therapy is seen* as a boundary for the therapist, as an indicator of work during the therapy, for which they are paid. However, this doesn't mean that if the therapist decides to see a client free of cost at the beginning, he should not do so. However, if the therapist was charging earlier, but now ignores nonpayment of fees, or stops collecting fees, especially when there are no issues related to affordability, this needs to be scrutinized as a boundary violation. If the therapist decides to see a client free of cost, right from the beginning, this requires documentation in the therapeutic contract. Any kind of *gift (including medication samples)* from the therapist to the client, how small it may be, must be interpreted as a boundary violation. Similarly, seeking favor or services from the client for personal benefit by the therapist must be considered a boundary violation. However, some of the issues of social manners/obligations must not be out rightly interpreted as boundary violations. *Dressing* that is excessively revealing or frankly seductive, on the part of the therapist may represent a boundary violation as it can be potentially harmful to the client. *Language* as a boundary includes the words, tone of the speech (which can be seductive), and how the therapist addresses the client. In terms of dynamic therapy, *self-disclosure (especially about their personal fantasies, dreams, social, sexual, financial, vacation*) is interpreted as a boundary violation. However, some of the issues like using examples from their own life or trying to explain the effect of a borderline client on the therapist may not always represent a boundary violation and should be looked in the context in which it occurred. It is suggested that when self-disclosure is to be done, it is important for the therapist to answer to themselves – is it consistent with the client's clinical needs and the therapy goals? Is it consistent with the kind of therapy being provided and the theoretical orientation?, does it mainly reflect or express your own personal needs (to talk about yourself, to bring the focus to yourself?), what is your purpose in self-disclosing at this particular time?, what is therapists own assessment of the possible risks, costs, or downsides, if any, of self-disclosure with this client in this situation at this time?, does self-disclosure or disclosing this particular content or level of detail represent a significant departure from your usual practice? If so, why the change?, will you as a therapist hesitate to discuss this disclosure with your supervisor or consultant or document it in the client's record? If you would hesitate, what are the reasons?). Answers to these questions can often guide the therapist about self-disclosure. As far as *physical contact* is concerned, anything beyond hand shake needs to come under the scrutiny.[27]

Some of the authors suggest that rather than making decisions about boundary violation in the context in which it occurred, it is important to assess the boundary violation in the context of general approach to ethics.[29] Nine steps have been described [Table 8],[29] which could be helpful in considering whether a specific boundary crossing is likely to be helpful or harmful, supportive of the client and the therapy or disruptive, and in using due care when crossing boundaries. These steps can be followed by the therapist and others who may have to evaluate the conduct of a therapist when there is a complaint about boundary violation.

Besides, these other important factors which can influence the boundaries include the socio-cultural background of the therapist or the client. For example, in contrast, to the West, a therapist accepting a gift (box of sweet on a festival) from

Table 8: Steps in interpreting boundary violations

- Imagine what might be the "best possible outcome" and the "worst possible outcome" of both crossing not crossing this boundary. Does crossing or not crossing this boundary seem to be associated with significant risk of negative consequences, or any real risk of serious harm, in the short- or long term? If harm is a real possibility, are there ways to address it?
- Consider the available literature on this particular boundary violation (if there is none, consider bringing up the topic at the next meeting of your professional association or making a professional contribution in the form of an article)
- Be familiar with and go through the available literature on the particular boundary issue offered by professional guidelines, ethics codes, legislation, case law, and other resources
- Identify at least one colleague you can trust for honest feedback on the questions of the boundary issues being faced
- Pay attention to any uneasy feelings, doubts, or confusions you are going through while treating a particular client; try to figure out what is causing these feeling and what implications, if any, these may have for your decisions
- At the beginning of the therapy and as part of informed consent process, provide information to the client about how you work and what kind of psychotherapy you do. If the client appears to feel uncomfortable, explore further and, if warranted, refer to a colleague who may be better suited to this individual
- If you feel incompetent to handle a client, refer the client to a colleague who can handle it better. Reasons to refer range from insufficient training and experience to personal attributes of the client that make you extremely uncomfortable in a way that makes it hard for you to work effectively
- Do not overlook the informed-consent process for any planned and obvious boundary crossing (e.g., taking a phobic client for a walk in the local mall to window shop; supervising the exposure-response therapy sessions which may involve supervising the sessions in bathroom area, etc.)
- Maintain careful notes on any planned boundary crossing, describing exactly why, in your clinical judgment, this was (or will be) helpful to the client

his client in India (even if that has been mentioned in the therapeutic contract), where refusing a gift is considered as an insult, cannot be interpreted as a boundary violation in true sense.

Often therapist feel troubled in some way or the other about the path they took across a boundary, but that they had failed to take it seriously, had shrugged it off, or pushed it out of awareness for any number of reasons such as fatigue, stress, being in a hurry, not wanting to disappoint a client who wanted to cross that boundary, or failing to appreciate the potential of boundary on the clients and the therapy may lead to a variety of issues. Hence, it is advisable to seek supervision while conducting a therapy.

It is said that the therapists may have certain common cognitive errors about boundary violations [Table 9],[29] and certain steps have been suggested, which could be helpful to identify and avoid continuation of boundary violations.[29]

PROFESSIONAL NEGLIGENCE

Simply stated negligence means deficiency in the level of care. Professional negligence refers to the situation when any professional fails to uphold his professional duty to a required standard or breaches a duty of care that causes to harm to someone. All professional workers are considered to profess some special skill to a specific level of learning and are expected exercise it with a reasonable degree of care/caution. To allege professional negligence, the following must be established: (a) A duty of care exists, i.e., the therapist agreed to provide care/treatment. (b) A breach of duty occurred, i.e., the therapist failed to provide care of reasonable degree/standard accepted/established by the profession, and (c) The breach harmed the client or someone else, i.e., directly led to a physical, material, or emotional injury/damage.

Table 9: Cognitive errors with regard to boundary violations and steps[29]

Cognitive errors on the part of the therapist about boundary violations

- What happens outside the psychotherapy session has nothing to do with the therapy (this error may lead to undermine the interactions with clients outside of therapy sessions, which might influence the client and the therapy)
- Crossing a boundary with a therapy client has the same meaning as doing the same thing with someone who is not a client (Some of the activities which are considered as general courtesy and humanistic, [for example hugging someone], but when done with a client often have different meanings and effects when they occur in the context of therapy)
- Our understanding of a boundary crossing is also the client's understanding of the boundary crossing
- A boundary violation which was therapeutic for one client will also be therapeutic for another client
- A boundary crossing is a static, isolated event
- If we ourselves do not see any self-interest, problems, conflicts of interest, unintended consequences, major risks, or potential downsides to crossing a particular boundary, then there aren't any
- Self-disclosure is, per se, always therapeutic because it shows authenticity, transparency, and trust

Steps to identify and avoid boundary violations

- Monitor the situation carefully, even though paying attention to it may be uncomfortable
- Be open and nondefensive, if you are pointed out about any violation by others or your supervisors
- Seek supervision and talk about the situation with an experienced colleague who can provide honest feedback and thoughtful consultation
- Listen carefully to the client
- Try to see the matter from the client's point of view
- Keep adequate, honest, and accurate records of this situation as it evolves; these can also be helpful, while seeking supervision and interpreting the therapist behaviour
- If you believe that you made a mistake, however well intentioned, consider apologizing

Various acts which fall within the ambit of medical negligence include recklessness in undertaking/carrying out a treatment, indifference in handling the case, failure to act diligently and alertly at the appropriate time, wrong diagnosis or treatment which under no norms of practice can be justified, evident negligence like administering a prohibited or known counterproductive treatment and misrepresenting that one possesses the skill or expertise which he/she does not possess.

Hence, all practitioners must bear in mind that they should bring in a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. Failure to exercise a reasonable degree of skill in diagnosis and providing care can constitute professional negligence.[26]

As therapist, it is important to understand the Bolam test and the Bolitho test of liability in the context of negligence. The *Bolam Test* states that to prove liability, one needs to prove that the therapist was negligent and acted in a manner that no other therapist would have. Hence, "A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art." The *Bolitho test* further qualifies "the Bolam test" with logical basis, i.e., the court has to be satisfied that the expert opinion had a logical basis. In India, clients may approach Consumer Protection Forum, a quasi-judicial body at district, state, and national levels.[26,30]

ETHICS IN PSYCHOTHERAPY TERMINATION

The formal termination of psychotherapy is understood as an intentional process that occurs over time when a client has achieved most of the treatment goals and/or when psychotherapy has to be terminated due to other reasons.[24] As formal termination involves, ending of a process (whether successful or unsuccessful), it has important ethical issues [Table 10]. First and most important issue is ending the therapy in a planned way, rather than abandoning the client. Unplanned termination of the therapy from the therapist side may convey betrayal and abuse of power.

While deciding a planned termination, it is important to note that "termination of psychotherapy" is not a point but is a process; hence, the termination of psychotherapy should be discussed with the patient, from time to time in the therapy (i.e., someday patient will be able to manage his/her affair without the help of the therapist, by the gains made in the therapy), so that it does not come as a shock to the client. Hence, the therapist, from time to time, should ask the patient to review what all she/he is able to manage outside the psychotherapy sessions, what all they consider as gains in terms of their ability to handle the previously unmanageable situations and how they see themselves in relation to the original goals of the therapy. The therapist can also give their feedback in terms of improvement/gains which they perceive in the client to validate or contradict the patient's self-assessment of psychological growth, resilience, and strengths. Further, while discussing the termination of therapy, the therapist can also convey to the patients as to when to return back for psychotherapy in future. This will help the patient understand that talking about termination of psychotherapy does not mean end of the therapeutic contact forever. Another way to proceed towards termination is by asking the client to imagine how they are going to handle the situations of life in the absence of the therapist.[31]

Sometimes premature termination of psychotherapy may be considered, either by the therapist, client or due to other external factors. One of the issues which may lead to premature termination of therapy by the therapist can be default on the part of the client to pay the fees due to various reasons. In such a situation, it is not ethical to communicate to the client that "we are not going to meet again," because of the payment-related issues. Rather, the therapist should anticipate the same and alternatives be discussed during the informed consent procedure and this must be mentioned in the therapeutic contract. In general, it is advisable that termination of therapy in such a scenario be considered as the last option when all other options have been exhausted. In such a scenario too, there should be ample time for the therapist and client to end the therapy in a congenial environment.

As far as therapist is concerned "psychotherapy should be terminated from the therapist side, when it is evident that client no longer needs psychotherapy, is not likely to benefit or is being more harmed than benefitting from continuing psychotherapy." Such a decision can be reached by continuously reviewing the progress in the psychotherapy from time to time and the goals (original or adjusted from time to time in therapy) of psychotherapy at the beginning. If review of the evidence suggests that the client's mental state is gradually deteriorating, then it is advisable to consider termination of psychotherapy. However, in such situations, if the therapist is in dilemma, proper supervision or a referral to another therapist can be very beneficial for the therapist to validate/contradict his decision. Other important issue which might lead to termination of psychotherapy from the side of the therapist is continued unmanageable counter-transference and distress to self while continuing with the therapy. Psychotherapy may also be terminated, if the client files a case (starts legal proceedings) against the therapist. Besides these, other reasons of termination of therapy from therapist's side may include shifting of work place of therapist, therapist falling sick or superannuating from their job. However, it is important to note that some of these situations can be anticipated before the initiation of psychotherapy, like end of tenure/training date and retirement date. Accordingly, it is advisable to include the same in the therapeutic contract. Similarly, the name of a colleague can be incorporated in the therapeutic contract, as an alternative therapist, in any unforeseen eventuality.[25]

Table 10: Basics principles of the termination of psychotherapy

- Patients with a complete description of the therapeutic process, including termination during the informed consent procedure
- Termination of psychotherapy should be discussed from time to time during the therapy
- If the therapist decides to terminate the therapy, pretermination counseling should be done
- When patient terminates the therapy on their own, therapist should express their willingness to resume therapy in future if the client desires so and willingness to suggest alternative therapist

In situations which warrant termination of psychotherapy from the therapist's side, the therapist should make all possible attempts to have a pretermination session before ending a therapeutic relationship. The pretermination session needs to be seen as an opportunity of providing advance notice to the client or an opportunity to negotiate an end date, discussing the gains made during the therapy and the deficits which are still persisting, planning for relapses and future stressors, and providing details of an alternative therapist's for future treatment needs.

In case the termination is initiated by the client, then too the therapist should follow the ethical obligations to their clients. Usually, when the therapy is terminated by the client, they either stop coming or stop responding to the phone calls due to various reasons. In such a scenario, it is ethical to let the client know (possibly by writing a letter, with the appointment date and time) that therapist is willing to continue treatment or meet for one/few sessions to sum up and end the therapy, willingness of the therapist to resume therapy in future if the client desires so, and if the patient wishes, then the therapist can refer them to another therapist.[31] The issue of termination of therapy can be discussed in the therapeutic contract, as this makes it easier for the client to convey discontinuation of the therapy to the therapist rather than making the therapist feel abandoned.

ETHICAL ISSUES DURING THE POSTTERMINATION PHASE

The relationships between therapist and the client after the termination of psychotherapy have always being debated. Although no law bar the physician to have a sexual relationship with their ex-patients, it is an accepted norm that it is unethical to terminate the psychotherapy for having a sexual relationship with the client. Regarding the sexual relationship, after the termination of psychotherapy, there are different views. Some of the therapists consider that the client may agree for such a relationship because of unresolved transference and hence such a relationship is unethical. Others therapists consider that if a proper termination of therapy has been done, transference should be considered as resolved, and hence having a sexual relationship after proper termination is not unethical. However, the issue of sexual relationship with a client, who was receiving the therapy (therapies other than dynamic), that does not encourage transference, becomes very much complicated. Hence, there is no clear consensus on the issue on sexual relationship with an ex-client. Accordingly, the sanctity of the same will depend on case to case basis. When faced with such a situation, therapist should seek supervision.

DOCUMENTATION IN PSYCHOTHERAPY

Documentation in psychiatry is considered to be of paramount importance. The psychiatric records should be regarded as a medical and legal record of assessment, diagnosis, investigations, decision-making, pharmacological and nonpharmacological management done in the specific case. From the medicolegal point of view, psychiatrists are expected to maintain factual, legible and accurate records because it serves as a guide to the clinician to provide and plan care for the patient. Treatment records also serve as a guide for the care of the patient in case of a change of clinician.[32] Another important usage of medical record is in the court of law in cases of litigations due to various reasons involving the patient or the clinician.[23] A proper documentation of what has transpired between the patient and clinician can at times come to the rescue of the psychiatrist in the court of law or when such an evaluation is done by Medical Council of India in cases of complaints against the clinicians.

However, the other side of the coin is that psychotherapy involves the disclosure of sensitive, personal information about the patient and other people in the patient's life. The patient reveals this information to the psychiatrist with the faith and trust that this will help in progress of the treatment and that no information will be revealed to any other person without informed consent for disclosure. However, despite ethical issue of confidentiality of the doctor–patient relationship, medical records are open to disclosure in unanticipated ways that are beyond the control of the patient or the clinician, as in the cases where such a demand is made by the court of law. In the United States, there are provisions in the law, where the therapist has the discretion as to what to disclose and what not to disclose in relation to information obtained during psychotherapy, but such is not the case in India. Another important aspect, which can lead to breach of confidentiality, is the use of computers and servers to store the data and clients treatment records. Such information can be assessed by or transmitted to unauthorized persons, inspite of use of all possible security systems.[32]

Thus weighing the pros and cons about documenting everything that transpired in the therapy or not documenting anything is often a big dilemma. From medicolegal aspects, not documenting anything can put the therapist at a bigger risk. However, documenting everything can lead to lot of damage to the client if these documents are disclosed or assessed by someone. From ethical point of view too, not documenting anything is unacceptable. Hence, the extent of documentation may vary rom session to session and will be heavily influenced by the kind and intensity of psychotherapy. Furthermore, the documentation must be based on the probability of records being assessed by others. Hence, the clinicians should use their clinical judgment to maintain concise, factual documentation of psychotherapy while respecting the privacy of the patient. However, documentation must include notable events in the treatment setting or the patient's life, clinical observations of the patient's mental and physical state, psychiatrist's efforts to obtain relevant information from other sources, investigation findings including psychological test findings, information provided to the client in relation to medications if any, suicidal ideation with intention to act, child abuse, threats of harm to others, consultation with other clinicians if any, and basic information required to maintain continuity of care in any eventuality. Documentation of information with regard to intimate personal relationships, fantasies and dreams, and sensitive information about other individuals in the patient's life must be based on the clinical judgment. However, documentation of any hypotheses or speculations must be avoided [Table 11].[26,32-34] The therapist can maintain a personal note which can be kept separately from the medical records, which can contain details of the intimate issues of the client, issues related to other people in the patient's life, therapists own observations, hypotheses, etc. These can act as a guide to future psychotherapeutic work. However, an important aspect of it is that it should not have any information which can disclose the identity of the clients to others. Further, informed consent must be obtained from the client in case the therapist wants to use such records for teaching purposes without the client being identified. Further, the notes should be destroyed as soon as these have served the purpose for which they were maintained. It is also important to note that the content of

Table 11: Basic principles of documentation of psychotherapy records

- It is important to maintain records of the psychotherapy sessions, and not maintaining any record of psychotherapy is unethical. Current law requires each session be documented. Care should be taken that record is legible and accurate, and preferably penned down as soon as possible after each session
- While documenting, clinicians can use their clinical judgment to maintain concise, factual documentation of psychotherapy while respecting the privacy of the patient
- Documentation must include notable events in the treatment setting or the patient's life, clinical observations of the patient's mental and physical state, psychiatrist's efforts to obtain relevant information from other sources, investigation findings including psychological test findings, information provided to the client in relation to medications if any, suicidal ideation with intention to act, child abuse, threats of harm to others, consultation with other clinicians if any, and basic information required to maintain continuity of care in any eventuality
- Information with regards to intimate personal relationships, fantasies and dreams and sensitive information about other individuals in the patient's life may be documented based on the clinical judgment

Documentation of any hypotheses or speculations must be avoided

such notes may not be useful for the therapist in case of legal proceedings.[32]

SPECIFIC LEGAL ISSUES

Some of the other issues which are related to psychotherapy and can have legal issue include duration of maintenance of records and appearing in the court of law to testify.

Sharing records

It may be noted that, as per the Medical Council of India guidelines,[35] treatment records need to be maintained for at least 3 years. Any request for medical records from a client or his/her authorized representative or legal authorities should be duly acknowledged, and copy of records should be provided within a 72 h period. However, records of medicolegal cases should not be handed over to anyone without a valid legal order from the court of law.

When a client's psychotherapy records are summoned by a court of law the client should be informed and his consent sought before submitting their records to the court of law. If the client does not agree, the same should be mentioned to the court, and the records need to be shared when the concerned court withdraws the privilege provided on account of confidentiality. At this point, the therapist must abide by the order of the court; otherwise, a contempt-of-court order may be issued. When the court mandates so, a summary of psychotherapy records is usually submitted. The proper procedure is that the summoned records should be submitted to the court under sealed cover and marked "Confidential." Tampering with or destroying records to avoid disclosing the information is unethical as well as illegal.[26,36,37]

When a therapist is asked to present evidence in a Court of Law, he or she must be aware regarding the basic requirements of presenting evidence. A witness report should be of adequate clarity and should help in resolving the case.

False memories versus true memories

A particular debate which arises during psychotherapy is the theme of "false memories," especially those concerning sexual abuse and can lead to psychotherapist being challenged in the court of law. The concept of false memory is at times abused as a defense by real perpetrators of crime which may divert attention from redressing the crime and can further lead to mental health issues in the client.

It is important that every therapist should take diligent precautions to avoid encouragement of false memories in a client during the course of the psychotherapy. Some of the common tributes found in allegations of false memories have characteristics of these memories involving sexual abuse are discontinuous, memories of abuse in childhood are recovered in a therapeutic setting, there is an absence of corroborative evidence, the reclamation of such memories is followed by a confrontation with the alleged accusers who deny these claims and the false memories are often very traumatic in nature and are based in high ritualistic settings.

Understanding the dynamics of the potential roles that a therapist can play in such legal proceedings can be made easier with the help of a model known as the Drama triangle. This model is based on the perceptions that other parties have about the therapist taking on the potential role of "rescuer," "persecutor," or "victim," even though this is not the therapist's intention. One of the inferences which can be drawn from the debate on false memories is that the therapist should understand the boundaries of responsible practice and also understand the limitations of retrieved memories and the role suggestion can play in shaping these memories. One should be aware of the implications of instantaneously assuming that the abuse has occurred without examining all aspects. In order to avoid future conflicts, it is important that therapist may record such sessions or can make simultaneous notes and avoid therapeutic techniques which can encourage false memories.[38]

EXPERT OPINION

At times a psychiatrist may be called by the court of law as an expert witness in a case and may be required to provide their opinion or report. Courts, in general, want an honest, impartial, and learned opinion from the expert. In such a situation, it is important to understand what is being asked and response need to be precise to the question asked [Table 12].

Table 12: Basic principles of writing an expert report

- Obtain thorough instructions from those requesting the evidence
- Collect all required information and consider all evidences, review if needed
- Stick to your area of expertise
- Provide an objective and unbiased opinion which will help rather than hinder
- The opinion/report should contain the facts and assumptions on which your opinions are based and should not include unnecessary opinions
- Begin with a timeline of events and provide a good narrative
- Review those views which could be challenged and consider why it could lead to disagreement

CONCLUSION

In contrast to routine clinical practice, psychotherapy is a special situation, especially in Indian setting where there is no much distinction between psychotherapists *per se* and the psychiatrist. Whenever a client approaches a psychiatrist and if he thinks that psychotherapy could be an appropriate treatment modality, or if the client requests for psychotherapy in the light of his competence, the therapist should obtain informed consent. This should include providing information to the client as to what is psychotherapy, what is expected from the patient, what is expected from the therapist, what are the limitations of the therapy and therapist, fees involved, alternative modalities of treatment along with efficacy of each of the alternative treatments in the condition which the client is suffering from. After an informed consent is obtained, the therapist along the client should draw a therapeutic contract, with do's and don't for either of them. Throughout the therapy and during drawing the therapeutic contract, the therapist should be aware of the confidentiality issues and also make the client aware about the exceptions to the confidentiality issues. Similarly, awareness of the boundaries and boundary violations is important, to work in the limits of the boundaries. However, if boundary violations occur, steps must be taken to minimize the harm. Whenever therapy ends, it needs to end in a congenial environment, with the scope for the client to seek treatment again if he desires so, or an opportunity to be referred to someone else.

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