

# The tell-tale doctors

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**L**ast month, a 30-year-old man in Alipurduar in north Bengal went to donate blood for a patient admitted at the district hospital. After the routine tests, the hospital health workers informed him that he had tested HIV positive. Immediately, the young man was socially ostracised. When examined at a private clinic in Siliguri, however, HIV was not found in his blood. But his trauma continued.

Earlier, a student of Kharagpur IIT had a similar experience when Dr Anil Maity, superintendent of Kharagpur state hospital, made it public that the student's blood was HIV positive. In this case too, the student subsequently tested HIV negative.

Because of the stigma society attaches to AIDS, divulging information of HIV infection proves to be catastrophic in a person's life. But even in cases of less fatal but no less serious diseases, breach of confidentiality on part of the doctor can unhinge the life of a patient. In this scenario, does a patient have any legal protection against a doctor's indiscretion?

Both ethics and law decree that a doctor should keep matters that pass between him/her and the patient in

the course of a professional relationship.

The ethical duty can be traced to the Hippocratic oath, which states: "Whatever things I see or hear concerning the life of men, in my attendance on the sick or even apart therefrom, which ought not to be spoken abroad, I will keep silence thereon, counting such things to be as sacred secrets."

This has been restated in the World Association Declaration of Venice revised in 1983: "I will respect the secrets which are confided in me even after the patient has died."

Law, on the other hand, states that a doctor should maintain the confidentiality of a patient. Section 33(m) of the Medical Council Act, 1956, states that the Medical Council of India (MCI) has the power to make regulations with regard to "the standard to professional conduct and code of ethics be observed by medical practitioners." Any breach in the code of ethics amounts to professional misconduct.

In 1970, the MCI passed a code of ethics which was subsequently adopted by the West Bengal state. The code clearly states that a doc-



False AIDS scare spread by health professionals have unhinged the lives of several blood donors

tor should never reveal confidences entrusted by a patient about himself and his domestic life. Nor should he make public the defects in the patient's disposition or character that he had observed during medical check up.

If a doctor defies the code to reveal information about his patient, he can be accused of committing professional misconduct. The Bengal Medical Act, 1914, clearly states that if the West Bengal Medical Council finds a medical personnel guilty after due enquiry, it can either issue a warn-

ing or have his name struck from the register.

Under civil law, a patient can sue for damages if the doctor breaches his confidentiality. "The patient has to prove that the doctor violated his duty towards him the law, or any other instrument having the force of law," says advocate Protik Prakash Banerjee. "It also helps if the patient can show some actual loss or damage that he may have suffered."

However, says Mr Banerjee, it is not yet settled whether civil courts can try cases of breach in

confidentiality by doctors. Section 9 of the Code of Civil Procedure bars the civil courts from trying those cases of civil nature which are treated by tribunals, etc.

Unlike in some countries like the Australian State of Victoria, where a doctor may be indicted for criminal offence if he violates the patient's confidentiality, in India there is no criminal liability for breach of confidentiality under the Indian Penal Code.

**H**owever, one may question whether it is wise to withhold information about a patient's disease. What is the role of a doctor if he finds a patient with a potentially dangerous disease, which may threaten public safety?

There are certain conditions under which a doctor can divulge information regarding the patient (see box). But such cases are extremely rare. Neither in the Alipurduar case, nor in the case of the IIT student should the doctors the results have revealed public.

Says Mr Milon Mukherjee, legal adviser, Indian Medical Association, "The National AIDS Control guidelines have made it clear that when donated blood is tested for AIDS by the blood banks, if a unit of blood is found to be HIV positive, it is to be destroyed. The donor is not to be informed. This is called unlinked anonymous testing."

In the IIT student case, the defence of Dr Maity was: the authorities insisted on it. This does not seem to stand to reason. Says Mr Debasish Roy, criminal lawyer, "If there was any criminal intimidation on the part of the IIT authorities, Dr Maity should have lodged an FIR or filed a complaint with the police or the court."

Unfortunately, the law relating to breach of confidentiality and patient compensatory jurisprudence in India is quite underdeveloped. If the breach in the patient's confidentiality in any of the recent cases ends in litigation, it will be interesting to see how courts tackle the issue.

## RIGHT TO SPEAK OUT

**A doctor can divulge information regarding the patient only when:**

1. The patient gives written consent
2. Other health care professionals participating in the patient's treatment need the information
3. Ordered by a court of law
4. Information is needed for medical research (but identity of patient must be concealed)
5. In certain circumstances, information may be given in
6. In very rare cases, in public interest