

Important Issues Related to Hiv/Aids Infected Persons

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Confidentiality

In the long run, preservation of confidentiality is the only way of securing public health; otherwise doctors will be discredited as a source of education, for future individual persons 'will not come forward if doctors are going to squeal on them'¹. The maintenance of confidentiality of an individual's health status is one of the cornerstones of public health and rights-based legal responses to HIV/AIDS. Not only does the principle rest on human rights norms of autonomy and respect for privacy, but it has also been viewed as crucial to encouraging those most at risk to come forward for HIV testing, counseling and clinical attention. Public health experiences and research over the last two decades have revealed that non-consensual disclosure of a person's HIV-positive status has resulted in social stigmatisation, denial of work, denial of medical services and is likely to fail in controlling the spread of infection. The revelation of HIV-positive status in the community has seen the violent death of HIV-positive persons and even isolation in inhuman circumstances leading to severe stigma, callous neglect and death. India, too, has recognized the protection of confidentiality and human rights as vital in its response to the epidemic. Confidentiality is also recognized in international instruments as a central component both of the human rights framework and to the HIV/AIDS response. This principle is not absolute and has been circumscribed in law by defining certain limits and exceptions within it. The debate around the maintenance of confidentiality of HIV-positive status has taken place within the paradigm of the 'private good' (to maintain confidentiality) versus the 'public good' (to disclose).²

The important question that has arisen in the HIV scenario is whether the HCW is obliged to disclose her/his person's HIV positive status to others including his/her spouse or partner. Traditionally common law has dealt with this resorting to the balancing of interests approach. Given that confidentiality is maintained in public interest, disclosure would arise only if the competing interest is also a public interest and it overrides the interest to maintain confidentiality. Courts have also held that where a physician determines that the person poses a serious danger to a foreseeable victim then the physician owes a duty to warn and protect the third party.³

The ILO Code of Practice on HIV/AIDS and the World of Work suggests that the workers shall not be asked to disclose HIV related personal information. Nor should co-

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