HIV and AIDS: Legal and Ethical Issues

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ABSTRACT

Human Immunodeficiency Virus Infection/ Acquired Immuno Deficiency Syndrome (HIV/AIDS) is a disease of the human immune system caused by infection with human immunodeficiency virus (HIV). During the initial infection, a person may experience a brief period of influenza-like illness. This is typically followed by a prolonged period without symptoms. As the illness progresses, it interferes more and more with the immune system, making the person much more likely to get infections, including opportunistic infections and tumors that do not usually affect people who have working immune systems.

This article has been written to discuss the legal and ethical issues relating to HIV/AIDS and to provide suggestions for the better implementation of the laws.

I. INTRODUCTION

AIDS (Acquired Immuno Deficiency Syndrome) is also known as 'the black death of our times'. AIDS was first discovered in the year 1981 in United States. Since then, HIV epidemic remains an unprecedented human catastrophe inflicting immense suffering on countries and families throughout the world. Now-a-days, 33 million people are living with HIV.

Although the prevalence of HIV/AIDS is still low in India, no part of country is free from the disease. The highest number of people living with HIV/AIDS is in Maharashtra and Andhra Pradesh, with nearly about half-a-million people in each state. The total number of people living with HIV/AIDS in India in 2007 is estimated to be 2.31 million. Females constituted around 39% of the burden (0.9 million). Children below 15 years constitute 3.5% of the estimated number of people living with HIV/AIDS, whereas, elderly people with age greater than 49 years constitute 7.8%. Adults aged 15-49 years constitute 88.7% of the estimated number of people living with HIV/AIDS.

The spread of HIV/AIDS has thrown many ethical, moral and legal challenges to medical professionals as well as to the health policy planners.

II. Historical Development of HIV/AIDS:

AIDS was first recognized in the United States in 1981. In 1983, AIDS was identified in France and USA. It is a retro virus and its central core structure is composed of ribonucleic acid (RNA). HIV belongs to the lenti virus sub-family of the large family of retro viruses (retro viridae) and it was formerly called LAV (lymphadenopathy associated virus).

III. How HIV Functions?

HIV infects the "immune-related" cells in the body like B-Cells and causes macrophage dysfunction. Once these cells are infected, HIV can remain dormant for many months or years in a process which is, as yet, incompletely understood. However, because viral activity continues over a sustained period, millions of viruses are produced. As the virus replicates itself, many CD4 cells are lost which the body cannot replace. The immune system increasingly depressed and becomes vulnerable to opportunistic infections and tumors. This stage is known as AIDS. The damage caused by HIV occurs after a prolonged period, though the exact time is largely undetermined in individual patients. It is a mystery that what factors influence the length of the "dormant period".

IV. Transmission of HIV:

HIV is transmitted by both homosexual and heterosexual contact; by blood and blood products; and by infected mothers to infants either intrapartum, perinatally, or via breast milk. There is no evidence that HIV is transmitted by casual contact or that virus can be spread by insects, such as by a mosquito bite.

V. Known Routes of HIV Transmission:

The following are the known routes of HIV transmission:-

1. Penetrative Sexual Intercourse
   - Women who have sex with men, men who have sex with women (heterosexual).
   - Men who have sex with men (gay, lesbians etc. are homosexual people).
   - Individual who have sex with women and men (bisexual).
   - Oral sex.
In many developed countries, there is an association between AIDS and homosexuality or bisexuality and this association is correlated with higher levels of sexual prejudice, such as anti-homosexual/ bisexual attitudes. There is also a perceived association between AIDS and all male- male sexual behavior including sex between uninfected men. However, the dominant mode of spread worldwide for HIV remains heterosexual transmission.

IX. Legal v. Ethical Aspect of HIV/ AIDS: The legal and ethical issues are discussed under the following heads

1. Doctor’s Duty to Care: The Code of Medical Ethics states that the principal objective of the Doctor is to render service to humanity with full respect for human dignity. Doctors should extend the same high standard of medical care and support to all patients otherwise it is considered as unethical. It is equally unethical for a doctor to withhold treatment from any patient based on a moral judgment that the patient's activities might have contributed to the condition for which treatment was being sought. Unethical behavior of this kind raises a finger for serious professional misconduct.

2. Notification: The Code of Medical Ethics also states that:

"...the physician should notify the constituted public health authorities of every case of communicable disease under his care, in accordance with the laws, rules and regulations of the health authorities...."

In 1987, the Goa Public Health Act was amended to include clause (vii) of Section 53 (1). Under this clause, authorities were required to isolate those found positive to serological tests for HIV. As AIDS was considered as a contagious disease, it provided for the compulsory collection of blood for investigation by the health officer on the ground of "reasonable suspicion" that a person was suffering from AIDS.

In Lucy R D’Souza v. State of Goa, the petitioner challenged this section of the Goa Public Health Act on the ground that discretionay powers given to the health officers to isolate was unguided and uncontrolled, and the provision for isolation was procedurally unjust in the absence of the right to a hearing. A bench comprising of JJ. P.A. Mehta and G.F. Couto, upheld the Goa government’s order providing for isolation of AIDS patients for three months. The Division Bench held that:

"...while isolation was an invasion upon the liberty of a person, in matters like this (the) individual's right has to be balanced against public interests. Second, isolation would protect an AIDS patient from himself in case he becomes 'desperate and loses all hopes of survival.' Third, segregation was necessary since current preventive measures had failed to check the spread of AIDS. Finally, the provisions of Section 53 of the Goa Public Health (Amendment) Act, 1987, were reasonable and valid and not in violation of either Article 14 or Article 19(1) or Article 21 of the Constitution of India."

Similarly, in Shyamala Natraj v. State, the Division Bench of Madras High Court ordered the release of four women detained at the government vigilance home in Mylapore. These women, identified as HIV positive, had completed their period
of sentence under the Immoral Traffic (Prevention) Act, 1986, but were to be held because they were HIV positive.

3. **Confidentiality**: The Code of Medical Ethics states "...confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the laws of the state. In such cases, the physician should act as he would wish another to act towards one of his own family in like circumstances."

In addition Article 21 of the Constitution of India guarantees a person's right to privacy.

4. **Informing Health Care Professionals**: This is the right of the patient that his fact about HIV/AIDS should not be disclosed by the doctors to other health care professionals. The only exception to this general principle is when the doctor judges that the failure to disclose would put the health of any member of the health care team at risk. This view has been accepted by the Supreme Court in X v. Hospital Z.

5. **Informing Spouse or Other Sexual Partner**: When the doctor decides to inform a third party other than a health care professional, without the patient's consent- it amounts to the infringement of the patient's right to privacy unless and until there is a justified reason for doing so.

But when there is a question of informing a spouse or other sexual partner, when a patient is found to be HIV positive- if the patient refuses to consent for such disclosure then it becomes the ethical, moral and legal obligation of the doctor to inform the other sexual partner in order to safeguard such person from infection. This thing was approved by the Supreme Court in X v. Hospital Z. In this case, the petitioner was employed as a senior officer in the health service of a North Eastern State. While in service, he was asked by the government to accompany a patient to Apollo Hospital, Chennai. As the patient required blood, the petitioner volunteered to donate blood but it was found that he was HIV positive or is diagnosed with AIDS. Besides informing the petitioner, the hospital revealed the information to the patient. When the patient went home, he publicized information on the patient's condition with in his community. The petitioner's wedding was called off and he was socially ostracized. As a result, the petitioner was put to mental trauma and stress.

The petitioner moved the National Dispute Redressal Commission and claimed damages from the hospital for breach of privacy. But the Commission dismissed his case and he moved the Supreme Court.

The Division Bench of Supreme Court comprising of J.J. S. Sather Ahmad and B.N. Kirpal, dismissed his appeal. The Apex Court opined that the right to privacy which is an essential component of the right to life under Article 21 of the Constitution is not treated as absolute and is subject to such action as may be lawfully taken for the prevention of crime or disorder or protection of health or morals or protection of rights and freedom of others.

**Secondly**, disclosure of petitioner's HIV status, did not violate either the rule of confidentiality or his right to privacy as the woman to whom he would have been married would have been infected if marriage had taken place and consummated.

**Thirdly**, so long as a person is not cured of a communicable venereal disease or impotency, the right to marry cannot be enforced through a court of law and shall be treated to be a 'suspended right'.

**Fourthly**, a person suffering from 'virulent venereal disease' must be banned from entering into marital ties to prevent him from spoiling the health and life of an innocent person.

**Fifthly**, where there is a clash of two fundamental rights, (as in this case, the Appellant's right to privacy as part of his right to life and his prospective wife's right to lead a healthy life, which is her fundamental right under Article 21), the right, which would advance the public morality or public interest would alone be enforced through the court.

**Finally**, a doctor may wish to disclose a diagnosis to a third party other than a health care professional. The only ground for this is when there is a serious identifiable risk to a specific person who, if not informed, would be exposed to infection. Thus, it becomes the duty of the doctor to inform any sexual partner regardless of the patient's own wishes.

6. **Right to Marry**: in the same case the Supreme Court also held that the person's right to get married is suspended during the period when a person is HIV positive and if a person who suffers from HIV positive were to marry, he or she may be guilty of an offence punishable under section 269 and 270 of Indian Penal Code, 1860.

J.J. P.B. Majumdar and R.P. Sondurbaldota of Bombay High Court in **Sunil Lakhotia v. Pratima Lakhotia**, granted a decree of divorce to a wife on the ground that the husband was suffering from AIDS and found the disease was sexually transmissible as contemplated under section 13(1) (v) of the Hindu Marriage Act, 1955.

7. **Medical Records**: It becomes duty of the doctors to maintain separate records of the patients when they have undergone tests for HIV. They can be guided by existing regulations for medical termination of pregnancy concerning the custody of consent forms and maintenance of admission registers.

8. **Consent for testing of HIV Infection**: In HIV testing, written consent should be obtained. The issues relating to the battery and negligence are depending upon the legality of testing. The testing should only be performed on clinical grounds.

9. **Right to Treatment without Discrimination**: In X v. Hospital Z, the Apex Court states that people with HIV/AIDS deserve full sympathy and are entitled to all respects as human beings. Their society should not and cannot be avoided, which otherwise would have bad psychological impact upon them. The government jobs or service should not be denied to them.

**CONCLUSIONS AND SUGGESTIONS**

From the above study it has been concluded that HIV is...
transmitted primarily via unprotected sexual intercourse (including anal and oral sex), contaminated blood transfusion, and hypodermic needles and from mother to child during pregnancy, delivery or breast feeding. Some bodily fluids such as saliva and tears do not transmit HIV. Prevention of HIV infection, primarily through safe sex and needle exchange programme, is a key strategy to control the spread of the disease. HIV/AIDS has had a great impact on society both as an illness and as a source of discrimination. This disease has also become subject to many controversies involving international and political attention as well as large scale funding since it was identified in the 1980s.

Suggestions

The following things are suggested to remove the controversies up to some extent:

- Section 269 and section 270 of the IPC, 1860 provided to punish those whose negligent or malignant acts are likely to spread dangerous diseases. This provision of IPC should strictly be invoked in the context of HIV transmission.

- Whether the infection was contracted only by blood transfusion is a question of fact. In M. Chinnaiyan v. Sri Gokulam Hospital and Ors, the petitioner filed a case for damages for negligence for the death of his wife after an episode of blood transfusion, when HIV was detected after a lapse of about 1½ years after the blood transfusion. The State Consumer Disputes Redressal Commission rejected his contentions and said that the death was caused not from the blood transfusion but from any other reason.

Thus, to remove such type of complaints Committees were to be formed at hospital levels whose function is to check and test the blood available in the blood bank, before it could be transfused into any individual. The committees should give the reports of the blood banks to the government so that if any HIV infected blood is found the government may take appropriate measures to dispose off that contaminated blood.

- At present, in India there is no legislation integrating all issues concerning HIV/AIDS. In UK, the AIDS Control Act, 1987 was there which provides for the collection and reporting of statistics relating to HIV infection and the availability of facilities and staff for testing, consulting, treatment and other measures designed to prevent the spread of HIV infection. Such type of legislation should also be there in our country.

- People who are infected with HIV through medical treatment can seek claims under law of Tort either in a civil court or in a Consumer Disputes Redressal Forum. The procedure of civil courts is very time consuming and expensive too. So, fast track courts should be established to settle the claims at the earliest.

- Strict regulations should be there for the proper functioning of blood banks. It includes the effective monitoring of the blood banks operating in the country to ensure the collection, storage and supply of safe blood for the patients requiring blood transfusion. The licenses of the blood banks should also be cancelled if any type of lacunae is found in the functioning of blood banks.

- In the last, the government should provide adequate infrastructure facilities to doctors working in hospitals dealing with Hepatitis B and HIV/AIDS, and to provide adequate preventive measures such as disposable gloves, syringes and needles.

REFERENCES

2. Homosexual means the men who have sex with men, for example, gay, lesbians etc.
3. Heterosexual means women who have sex with men, men who have sex with women.
5. AIR 1990 Bom 355.
6. Supra Note 1 at 173.
8. Supra Note 4.
10. Ibid.