

Medico-legal Aspects of AIDS

Bijay Kumar Gupta*

¹Dept.of Agadatantra, SBLD Ayurved Vishwabharati, Gandhi Vidya Mandir, Sardarshahar, Churu, Rajasthan, India

Abstract

As the incidence and awareness on AIDS increases among the public, the ethical, legal and regulating mechanisms are becoming more significant. Effort to protect individual rights while safeguarding the public from a fatal communicable virus are presenting many unprecedented legal question in public health, education employment, insurance, medical law, family law, civil rights etc. An effort is made here to discuss briefly on ethical and legal aspect of AIDS in the contest of developing country like India. At present there is no legislation particularly integrating all issues concerning HIV and AIDS. There can be no valid or effective response to HIV/AIDS without respect for the human rights, fundamental freedom and the dignity of human beings. Effective prevention, care and support for HIV/AIDS is possible in an environment where human rights are respected and where those infected or affected by HIV/AIDS live a life without stigma and discrimination. The protection of human rights is essential to safeguard human dignity in the context of HIV/AIDS. Efforts need to be made to train all medical and other auxiliary medical health care workers to create a congenial environment where HIV/AIDS patients are admitted and treated without any fear and scare.

Keywords

AIDS / HIV, Medical aspect, Legal aspect, Ethical aspect



Greentree Group

Received 21/4/15 Accepted 16/6/15 Published 10/7/15

INTRODUCTION

The HIV/AIDS epidemic constitutes one of the most formidable challenges to development and social progress. The epidemic exacerbates poverty, inequality and increases the burden on the most vulnerable people in society i.e. the elderly, the women, children and the poor.

HIV/AIDS epidemic has posed an array of legal and ethical challenges. These challenges include limits and significance of confidentiality; obligatory informed consent before testing and initiating treatment; counseling of women to make reproductive decision; burden on infected individuals to protect their sexual partners; obligation of the state to prevent spread of disease; obligation of physicians to care for HIV infected; issues related to insurance, men, women and children, etc.

In India people in the age group of 15-29 years comprise almost 25% of the country's population; however, they account for 31 percent of AIDS burden. This clearly indicates that young people are at high risk of contracting HIV infection. Most young people become sexually active during adolescence. In the absence of right

guidance and information at this stage they are more likely to have multi-partner unprotected sex with high risk behaviour groups.

Young women are biologically more vulnerable to HIV infection than young men. A situation aggravated by their lack of access to information on HIV and even lesser power to exercise control over their sexual lives. Early marriage also poses special risks to young people, particularly women. This is especially relevant for India, where almost 50% girls are married off by the time they are 18 years of age.

The effects of stigma attached to HIV/AIDS are devastating. Discrimination against people living with HIV/AIDS denies them access to treatment, services and support. There have been cases of refusal of treatment and other services to AIDS patients in hospitals and nursing homes both in Government and private sectors. This has compounded the misery of the AIDS patients. More often it is mistaken to be a contagious disease and patients are isolated in the wards creating a scare among the general patients. In the workplace also there

are cases of discrimination leading, on some occasions, to loss of employment.

No laws have been enacted on legal and ethical issues in India so far. These issues are under active consideration. However, there are some basic considerations on legal and ethical issues on HIV testing, confidentiality, consent and discrimination, etc. which need to be discussed. Many countries and even the World Health Organization have put forward certain recommendations on these issues. The issues may be as relevant to India and are discussed below

AIDS and related laws^{4,5}

A legal action can be initiated against a person who is infected with HIV if;

1. A person unlawfully or negligently do the act to spread infection of disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine or both (Under section 269 of IPC)
2. A person willfully or malignantly does any act to spread the infection of disease dangerous to life shall be punished with imprisonment of either description for a term which

may extend to 2 yrs or with fine or with both (Under section 270 of IPC)

- Under section 270 of IPC- Action against blood bank can be initiated supplying infected blood to a person resulting in death of that person due to HIV infection
- Article 21 of the constitution of India guarantees right to life and personal liberty. It is fundamental right of HIV positive individuals to have access to adequate treatment provided by the government.

AIDS and Medical practice⁴:

- It is unethical on part of a doctor to refuse treatment or investigation to a person infected with HIV
- A doctor may be held guilty for professional misconduct for this unethical behavior

Clinical trials and HIV⁵:

The highest ethical standards must be upheld when collecting behavioral and biological data on sexually transmitted infection, including HIV/AIDS. Because of stigma and human right issues around HIV/AIDS, sometime study participants may experience psychological, social, physical or

economical harm, even when strict precautions are taken. Data collection protocols or procedure should include an explicit description of measures that will be taken to protect the subjects.

Blood donation & HIV⁵:

It is mandatory for every unit of blood collected at blood banks in India to undergo screening and test negative for HIV-1 & HIV-2 prior to being fit for transfusion and further processing for preparation of blood products and blood components. The result of such testing must be clearly indicated on the label.

The status of HIV should not be disclosed to blood donor. If the blood drawn is positive, it should be discarded. If the donor wants to know the results of HIV test, he should be referred to an accessible HIV testing centre where supplemental tests with counseling will be offered to him.

HIV testing Policy⁵:

Testing can be

- a) Compulsory
 - b) Mandatory
 - c) Voluntary
- Compulsory testing is mostly done in all military recruitments, screening

of prison inmates or applicants for immigrations

- Mandatory testing is recommended only for screening donors of blood, semen, organ or tissues in order to prevent the transmission of HIV to recipient of biological products.
- Voluntary testing can be done for self assessment and knowledge

Confidentiality and HIV/AIDS⁵:

Confidentiality of physician-patient encounters is a basic medical ethic, even reflected in the Hippocratic Oath. Ethically, confidentiality is derived from the principles of autonomy (the patient determines who shall know his or her medical history) and fidelity (the fiduciary relationship of the patient and physician requires trust and confidence). Confidentiality allows the physicians to obtain all the information necessary to make a complete diagnosis and motivate the patient to participate in therapy. The patient has the right to confidentiality. The physician should not reveal confidential communications or information, without the consent of the patient, unless provided for by law or the need to protect the welfare of the individual or public interest. Civil and criminal penalties may ensue for unlawful disclosure of HIV positive status.

Informed consent for HIV testing¹

A physician who performs any invasive procedure on a patient must do so after informed consent, i.e. the patient must have or be given sufficient knowledge about the procedure to make an intelligent decision. The law of informed consent emanates from two sources i) the fiduciary relationship between a patient and a physicians, and ii) protection to the concept of patient autonomy. Full disclosure of the nature of HIV disease, nature of the proposed test, implications of a positive and a negative test result and the consequences of treatment must be made prior to taking consent. The consent must be voluntary a patient must be able to understand and competent to refuse. Informed consent for testing and disclosure must be in writing. Because “if it is not documented, it did not happen” literally applies to informed consent for HIV testing.

In case of marriage, if one of the partners insists on a test to check the HIV status of the other partner, such tests should be carried out by the contracting party to the satisfaction of the person concerned.

National AIDS control organization (NACO) Guidelines for physician^{5,9}:

- HIV testing is to be carried out on a voluntary basis with appropriate pre-test and post-test counseling
- Disclosure of HIV status of the person should not in any way affect his rights to employment, position at the workplace, right to medical care and fundamental rights
- The result of HIV test must be kept confidential and even health care workers who are not directly involved in the care of patient should not be told about the result
- Surveillance of HIV positive cases in the country does not require reporting of the identification data of the patient
- HIV positive woman should have complete choice to make decisions about pregnancy and childbirth
- Woman should be advocated to avoid pregnancy as there is chances of an infected child
- There should be no forcible abortion or even sterilization

NACO Guidelines at workplace¹⁰:

- Non discrimination: There should be no discrimination or stigmatization of workers on the basis of real or

perceived HIV status. Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention

- No Screening for purpose of Employment: HIV/AIDS screening should not be required of job applicants or persons in employment or for purposes of exclusion from employment or worker benefits
- Confidentiality: There is no justification for asking job applicants or workers to disclose HIV-related personal information. Nor should co-workers be obliged to reveal personal information about fellow workers
- Continuation of Employment relationship: HIV infection is not a cause for termination of employment. Persons with HIV-related illnesses should be able to work for as long as medically fit in appropriate conditions.
- Care and support: Solidarity, care and support should guide the response to HIV/AIDS at the workplace. Care and support includes the provision of voluntary

testing and counseling, workplace accommodation, employee and family assistance programmes, and access to benefits from health insurance and occupational schemes

- Widen scope of social security coverage to include HIV in employee and family assistance programmes, health insurance etc
- HIV/AIDS policy and programmes should be established in all constituents
- All enterprises, in public/private and formal/informal sectors, are encouraged to establish workplace policy and programmes at their workplaces
- Insurance companies are encouraged to develop and offer all-inclusive health insurance policies/products to cover people living with HIV.
- Trade unions are the key actors and advocates at workplaces and should play a crucial role to promote and protect the rights and dignity of workers
- Collaborate with Government and enterprises for workplace interventions.

Autopsy precautions in HIV/AIDS infection^{3, 4, 6, 7, 8}:

Precautions are necessary various stages

- Admission: No unauthorized person should be admitted to the autopsy and body preparation rooms
- Clothing: Complete covering of the body by wearing double gloves, gowns, waterproof aprons, caps, masks, goggles etc
- Instruments: Minimum instruments as required should be kept
- Disposal requirement: All materials used must be disinfected, sterilized or incinerated
- Clean up procedure: New intact disposal gloves should be worn. Spills of blood and other body fluid should be wiped with disposal tissues or towels
- Disinfection: 1:10 dilution of common household bleach or freshly prepared sodium hypochlorite solution are recommended
- Careful handling of sharp instruments. Avoid any cuts and pricks
- In case of accidental injuries or cuts should be immediately washed thoroughly under running water, bleeding encouraged and disinfected
- All soiled gauze, cottons are collected in plastic bag and incinerated
- To minimize aerosol spallter, skull can be opened with an electrical oscillating saw attached to a vacuum dust exhaust and filter
- Handling specimen for lab examination: They should be properly labeled and kept in 10% formalin solution and should be handled with gloved hands
- After completing autopsy hands and face should be washed with soap and water and ringed in 70% methylated spirit
- Finally the body should be burnt or incinerated
- All infected bodies should be wrapped and tied in double layer tough plastic bag with a red color tag mentioning “biological hazardous”
- Workers who have exudative lesion or weeping dermatitis or external injury should not handle AIDS victims
- The best key to control to the dissemination of HIV is prevention

of unnecessary contamination at the work area

Partner notification⁵ (Partner counseling/Contact tracing)

It refers to activities aimed at identifying, notifying and counseling the sexual and needle sharing partners of an individual with HIV about their exposure and offering services. There are approaches to partner notification:

1. **Patient referral:** HIV positive person are encouraged to notify partners of their possible exposure to HIV, without direct involvement of health care providers
2. **Provider referral:** HIV positive person give partners names to health care providers or other health workers who then confidentially notify the partners directly. There are again two approaches to informing third parties:
 - a) **Contact tracing:** It is based on patients' voluntary cooperation in providing the names of contacts. It occurs during sexual disease awareness programmes
 - b) **Duty to inform:** This approach acme out of clinical situation where the physician knew the identity of the person at risk.

Here physician discloses the endangered person without consent of the patient due to his moral duty to warn

Ethics of prevention and care¹¹:

AIDS is primarily a behaviorally transmitted disease and transmission of HIV can only be interrupted through modifications in behavior e.g. using condom during sexual intercourse, not sharing needles and using therapeutic intervention to reduce mother-to-child transmission of HIV. Public health system has to develop preventive strategies based on the above biological facts.

The basic principle of ethics dictates that individuals should be treated with respect and their dignity should not be violated. This also applies to their culture. Failure to respect the local cultural norms is regarded as the imposition of will and values of the dominant and powerful on the subordinate and marginal. One example is education of gay men and drug users to modify their behavior (use of condom and sterile needles through needle exchange programme) to protect themselves and others. Conservatives view these strategies as "legitimizing" homosexuality, extramarital sex and encouraging drug use. This opposition from conservatives on the basis

of morality limits the state's first ethical responsibility i.e. to protect the vulnerable.

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