

# HIV/AIDS: IT'S MEDICOLEGAL AND SOCIAL ASPECTS

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## Abstract

In recent years, acquired immunodeficiency Syndrome has emerged as the biggest ever threat to humanity all over world. Rapid spread of this dreaded killer viral disease has inflicted great terror in the minds of people all over the world. HIV, the etiological agent of AIDS, belongs to the lentivirus subgroup of the family retroviridae & has no cure as yet.

There are many medical, legal & social problem arises due to HIV infection. There is an active debate in India on the legal & social rights of HIV/AIDS patient. Efforts to protect individual rights while safeguarding the public from a fatal virus are presenting many legal questions on public health, education, employment, insurance, widow pension, medical law, family law, criminal & civil law etc. There are also many social questions prevailing like blaming to the patient, ignorance, prejudice, discrimination, stigmatization etc. The existing AIDS law in India consists of state amendments and a proposed central bill. In August 1989 a bill was proposed in the parliament called the AIDS prevention bill.

Thus medical, legal & social problems faced by HIV/AIDS patient and their consequential rights to face these problems are discussed.

## INTRODUCTION

Human immunodeficiency virus (HIV) infection came to light in 1981 when first case was detected in USA. However in retrospect, the virus appears to have been seeded in the united states at least in the mid 1970s & a few unrecognized cases of acquired immunodeficiency Syndrome, (AIDS) had occurred in New York in 1978<sup>1</sup>. HIV infection was detected rather late in India, the first case was found in female sex workers in Chennai in 1986 & the first AIDS patient was detected in the same year from Mumbai<sup>1</sup>.

HIV infection has grown into a major global public health problem during the last few decades and whatever has surfaced is just the tip of the iceberg. The number of people living with HIV continues to grow as does the number of death due to AIDS. A NACO survey shows a total of 39.5 million people are living with HIV in year 2006 as compared to total death of 2.9 million due to AIDS in year 2006.

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A great majority of the HIV infections (88.55%) are occur in the age group of 15-49 years, out of which 31.8% are in the age group of 15-29 years. Male account for (70.59%) of AIDS cases & females 29.40%, M : F ratio being 2.4:1<sup>2</sup>.

HIV is spread by different modes. Globally unprotected heterosexual route is the predominate route of transmission of the virus. In the USA it was transmitted predominantly among male homosexual whereas in developing countries transmission is almost always heterosexual and can take place in both directions. In more than 85% of cases, the route of infection is via sexual route as per NACO data.

There is a need for formulation & implementation of appropriate policies for providing health care to HIV infected individuals so that as and when needed they receive humane & sympathetic handling, counseling & appropriate health care & at the same time there is no risk of accidental infection. Basically it is not only necessary to care for the patient, but also to care for our self. At present in India there is no legislation integrating all issues concerning HIV & AIDS. In the UK, the AIDS control Act 1987, provides for the reporting of statistics relating to HIV infection & AIDS and the availability of facilities and staff for testing, consulting, treatment and other measures designed to prevent the spread of HIV infection. Section 23 of the act prevents the sale, supply or application of any equipment or reagents to detect HIV antibodies (test kits) in centers without supervision & the availability of competent Pre & Post test counseling services<sup>3</sup>. AIDS testing is not compulsory in India. Nobody can be forced to go for such testing however, government has the right to enforce it during screening tests for government jobs. Law prohibits the discrimination against people infected with HIV in employment, housing & medical treatment. Despite, this various instances have occurred when a health care worker refused to provide treatment to an infected individual. Refusal to provide services to AIDS patients out of fear or prejudices, could also amount to professional negligence.

Doctors working with individual, who are considering HIV testing need also to maintain an awareness of the major psychological issues in conducting the antibody test. Three major reasons that individuals refrained from testing are (a) anxiety about taking the test, (b) fear of loss of confidentiality, and (c) fear of discrimination. Doctors serving people with HIV infection & people who are being tested for the virus must be alert to the possibility of suicidal risk. In addition to treatment of possible coexisting depression, behavioral improvements must be achieved<sup>4</sup>.

All patients have rights, including those who are living with HIV. If a person in full knowledge of the fact that he is suffering from AIDS, sexually assaults a man/woman with added intention to infected him/her so that he/she will die can also be come under section 307 (attempt to murder) or under section 302 IPC (Murder) if Person die because of that<sup>5</sup>. There are many duties of doctors to their HIV positive patients which are summarized as follows:

### **Consent for testing for HIV infection**

AIDS testing is not compulsory in India. Nobody can be forced to go for such testing. In HIV testing written-consent should be obtained the testing should only be performed on clinical grounds<sup>3</sup>.

### **Right to treatment without discrimination**

WHO guidelines hold that AIDS patients or those whose test positive for HIV can not be refused treatment. NACO does not support separate ward for AIDS patients. AIDS patients are to be treated at par with the general patients and there should be no discrimination. Private hospital should also be encouraged to invest in adequate facilities to treat HIV positive/AIDS patients<sup>6</sup>.

### **Duties & Rights of health care worker**

The health care workers who are most sensitive to this issue include surgeons, operating room staff, laboratory technicians and persons using invasive procedures. If a person gets AIDS during discharge of professional duties he can sue hospital authorities if sufficient infrastructure facilities are not available. No worker can be discharged from services only on the fact that he is HIV positive<sup>3</sup>.

### **Doctor's duty to Care**

It is unethical for a medical practitioner to refuse treatment or investigation for which there are appropriate facilities on the ground that the patient suffers or may suffer, from a condition, which could expose the doctor to personal risk. WHO guidelines strongly object to the practice of isolating AIDS patients, it states that there is no public health rationales to justify isolation, quarantine or discrimination based on a person's HIV status or sexual behavior<sup>3</sup>.

### **Confidentiality**

Doctor should never reveal anything about patient during medical attendance unless their revelation is required by the laws of the states, sometimes however a physician must determine whether his duty to society requires him to employ knowledge obtained through confidence as a physician to protect a healthy person against a communicable disease to which he is about to be exposed. In such instance, the physician should act as he would wish another to act toward one of his own family in like circumstance<sup>3</sup>.

### **Informing spouse or other sexual partner**

It is imperative that the doctor must discuss with the patient the question of informing a spouse or other sexual partner when a patient is found to be HIV positive or is diagnosed with AIDS.

If the patient refuses to consent for such disclosure, the doctor may consider informing the partner in order to safeguard such person from infection<sup>3</sup>.

### **Right to Marry**

The person's right to get married is suspended during the period when a person is HIV positive. If a person who suffers from HIV wants to marry, he or she may be guilty of an offence punishable under sections 269 & 270 of the Indian Penal Code<sup>3</sup>.

### **Medical Records**

When patients have undergone test for HIV, their doctors must maintain separate records to prevent test results from being inadvertently disclosed along with other records. A doctor posted for Postmortem duty cannot refuse to conduct the autopsy on a dead body of a known HIV positive patient. If he does so, the doctor may be charged under criminal negligence on account of failure to provide compulsory duty<sup>7</sup>.

Medico-legal experts play a crucial role particularly in respect to autopsy of AIDS case. Since a dead body can also spread HIV infection, its proper autopsy and final disposal is of prime importance. Besides, services of medico-legal personnel are required for the final disposal of rubber items e.g. gloves, scalpel blades, cotton, linen, towel etc. and for sterilization of postmortem room as per prescribed norms following conduction of such autopsy.

Cao et al and Douceron et al, cultured the blood & effusion from the refrigerated bodies obtained viable virus at nearly 17<sup>th</sup> day of postmortem<sup>8</sup>. The virus in high concentration has been found to remain viable for 3 weeks. So there is no well defined safe period at which the virus ceased to be infective. Risk. The dead bodies may be the potential source of HIV infection nearly up to 21 days after death. Hence, doctors and attending staff should take proper measures to safeguard themselves. They should also make aware the relations of the deceased regarding proper precautions to be taken during the disposal of the dead bodies since the virus is present in blood, tissue and other body fluid of infected person.

### **Social Aspects**

The problem of HIV infection is growing at an explosive rate and this multifaceted problem has defied a medical cure till date. Thus, long term goals of combating this scourge comprise of integrated measures of prevention and rehabilitation of HIV infected individuals and finally to reintegrate them into the society. Ministry of Welfare, social organization and community are basically concerned with prevention and rehabilitation aspects of these cases. Of course, an active co-operation and involvement of family members, relatives, friends will take care of nervous breakdown, depression and suicidal tendencies which are more commonly encountered. Proper

rehabilitation of AIDS patients is the crying need of the hour although it is a tedious and risky affair. AIDS patients are inadequately prepared for social integration owing to poor self-image and social stigmatization. They should be allowed to reevaluate their goals and aims. Government, NGOs, social welfare organization, celebrities, sports personalities, cine stars, politicians should come forward in a big way for all-round awareness programme for an effective containment against AIDS and should evoke AIDS charity appeal for the depressed lot. They should also propagate a drastic change in life style particularly in respect to sexual orgies.

Government should provide HIV/AIDS patients the facility for time to time free testing of their blood samples. They also should have free insurance benefit. Cross infection in hospitals is a common event. It should be enforced by law for the hospital, where AIDS patients will be treated along with other patients, that, all precautionary steps are taken to prevent cross infection to the normal individual<sup>9</sup>.

Intersectoral coordination & involvement of non-governmental agencies might be needed to tackle the social, economical and other problems faced by HIV infected persons. All seropositive individuals & their families should be provided with appropriate counseling in view of the fatal outcome of the infection & social stigma associated<sup>10</sup>.

HIV seropositive women may elect to terminate their pregnancy and contraception or sterilization can be offered them. Pre & post test counseling may educate pregnant women about methods to prevent HIV infection & its transmission<sup>11</sup>.

Continuous systematic changes in relevant laws in the form of deletions, alterations and/or additions, must necessarily cope with volcanic changes of fast development social environment including health hazards.

The concept of collective responsibility emphasizes that all of us, infected or not, low risk or high risk bear a responsibility to change our attitudes and behavior that may promote HIV infection<sup>12</sup>. Besides both government & social organization should shoulder the responsibility.

### **Legal Aspect**

There are not many laws, which are applicable for the prevention of HIV/AIDS or the rights of the people living with HIV/AIDS in India. The various laws which are initiated by the government of India are –

#### **Article 21 of Indian constitution of India**

It guarantees right to life & personal liberty to every HIV positive individual & it is the fundamental right of every AIDS patient to have access to adequate treatment provided by the government. The HIV infected person also has the right to privacy which is considered as part of the right of life with human dignity. The right to privacy of a person has been also stated in Article 12 of Universal Declaration of humane rights<sup>13</sup>.

### **Article 14 & 16 of the Indian constitution-**

It guarantees equality & provide against discrimination in employment. Article 16 prohibits discrimination in public employment on grounds of religion, caste, sex, colour etc<sup>13</sup>.

### **Article 47 of Indian constitution**

Under it the state was under an obligation to take all steps for the improvement of the public health<sup>14</sup>.

There are a few sections of the Indian penal code which could be relevant while dealing with the issue of HIV/AIDS like –

269 IPC- Negligent Act likely to spread infection of disease dangerous to life.

270 IPC- Malignant Act likely to spread infection of disease dangerous to life.

302 IPC- Punishment for Murder.

304-A IPC- Causing Death by Negligence<sup>14</sup>.

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