HIV AIDS-MEDICO LEGAL POINT OF VIEW

Dr. Sumedh Wasnik¹, Dr. Vaibhav Sulakhe², Dr. Anita Ghodke³, Dr. Nilam Vaidya⁴

1. Professor, department of Shalya, PMT’S Ayurved Medical college, Shevgaon, Dist-Ahmednagar
2. Assistant Professor, department of Agadanta, PMT’S Ayurved Medical college, Shevgaon, Dist-Ahmednagar
3. Associate Professor, department of Dravyaguna, PMT’S Ayurved Medical college, Shevgaon, Dist-Ahmednagar
4. PG Scholar, department of Sharir Kriya, PMT’S Ayurved Medical college, Shevgaon, Dist-Ahmednagar

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Corresponding Author:
Dr. Sumedh Wasnik

Professor, department of Shalya, PMT’S Ayurved Medical college, Shevgaon, Dist-Ahmednagar

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ABSTRACT

Now a day, AIDS is the most burning issue of public health before medical world. Everyone is thinking about its every aspect. AIDS awareness is increasing day by day among the public, hence the ethical, legal and regulating issues are in focus. In developing country like India, every effort is made to protect individual rights while safeguarding the public from a fatal communicable virus. There are many unprecedented legal question in public health, education employment, insurance, medical law, family law, civil rights about HIV AIDS. Presently, there is no legislation particularly integrating all issues concerning HIV & AIDS. Without respect for the human rights, fundamental freedom and the dignity of human beings, there will be no valid treatment for the said disease. 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. All possible efforts should be made to train all medical, paramedical and other auxiliary medical health care workers to aware about environment where HIV/AIDS patients are admitted and treated without any fear & scare so that the patients don’t feel guilty and get ready for the treatment.

Introduction:

AIDS is an infectious medical condition caused by HIV where immune/defence system of the body gets hampered. It is one the major causes of the mortality. 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.

As the most spreading disease, it has created lot of legal & ethical challenges. These challenges include limits and significance of confidentiality; obligatory informed consent before testing and initiating treatment; counselling 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, 31% of the young age group is infected by AIDS which contributes 25% of the country’s population which means that young people are at high risk of contracting HIV infection. This is because of the most young people become sexually active during adolescence and 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. Here females dominates male. 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.

The most embarrassing thing is stigma attached to HIV/AIDS. The family members, relatives, friends and people living with HIV/AIDS deny for treatment, services and support. Even government as well as private hospitals tend to refuse treatment and other services to AIDS patients. Usually, it is mistaken to be a contagious disease and patients are isolated in the wards creating a scare among the Other 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. World Health Organization has put forward certain recommendations on these issues which are to be applied in India.

AIDS and related laws-

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 2 yrs or with fine or with both (Under section 270 of IPC)
2. A person will fully 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 269 of IPC)
3. 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
4. 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 practice:-

1. A doctor cannot refuse treatment or investigation of HIV infected person.
2. A doctor may be held guilty for professional misconduct for this unethical behaviour

Clinical trials and HIV-

The highest ethical standards must be upheld when collecting behavioural 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 & HIV-

It is compulsory for every blood collected centre of blood banks 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. They should not disclose the HIV status to blood donor. If the collected blood 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 counselling will be offered to him.

HIV testing Policy-

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Testing can be -
1. Compulsory testing is mostly done in all military recruitments, screening of prison inmates or applicants for immigrations
2. Mandatory testing for screening donors of blood, semen, organ or tissues in order to prevent the transmission of HIV to recipient of biological products.
3. for self assessment and knowledge, voluntary testing can be done.

Confidentiality and HIV/AIDS-

Confidentiality of doctor-patient is a basic medical ethic since ancient era, even mentioned 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 by law or the need to protect the welfare of the individual or public interest. Civil & criminal penalties may ensue for unlawful disclosure of HIV positive status.

Consent [Informed] for HIV testing-
The informed consent must be voluntary. It must in patient’s mother tongue or in the language which patient can understand. The 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.

Physician should perform any invasive procedure on a patient only after informed consent. 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. 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 physicians-

1. On a voluntary basis with appropriate pre-test and post-test counselling, HIV testing is to be carried out.
2. Disclosure of HIV status of the person should not any way affect his rights to employment, position at the workplace, right to medical care and fundamental rights.
3. 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 .
4. Surveillance of HIV positive cases in the country does not require reporting of the identification data of the patient.
5. HIV positive woman should have complete choice to make decisions about pregnancy and childbirth.
6. Woman should be advocated to avoid pregnancy as there are chances of an infected child.
7. There should be no forcible abortion or even sterilization

NACO Guidelines at workplace-

1. 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.
2. 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

3. 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

4. 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.

5. 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.

6. Widen scope of social security coverage to include HIV in employee and family assistance programmes, health insurance etc

7. HIV/AIDS policy and programmes should be established in all constituents

8. All enterprises, in public/private and formal/informal sectors, are encouraged to establish workplace policy and programmes at their workplaces

9. Insurance companies are encouraged to develop and offer all-inclusive health insurance policies/products to cover people living with HIV

10. 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


**Autopsy precautions in HIV/AIDS infection**-

1. Admission: - No unauthorized person should be admitted to the autopsy and body preparation rooms

2. Clothing:- Compete covering of the body by wearing double gloves, gowns, waterproof aprons, caps, masks, goggles etc

3. Instruments: -Minimum instruments as required should be kept

4. Disposal requirement:- All materials used must be disinfected, sterilized or incinerated

5. 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

6. Disinfection:- 1:10 dilution of common household bleach or freshly prepared sodium hypochlorite solution are recommended

7. Careful handling of sharp instruments. Avoid any cuts and pricks

8. In case of accidental injuries or cuts should be immediately washed thoroughly under running water, bleeding encouraged and disinfected

9. All soiled gauze; cottons are collected in plastic bag and incinerated

10. To minimize aerosol splatter, skull can be opened with an electrical oscillating saw attached to a vacuum dust exhaust and filter

11. Handling specimen for lab examination: They should be properly labelled and kept in 10% formalin solution and should be handled with gloved hands

12. After completing autopsy hands and face should be washed with soap and water and ringed in 70% methylated spirit

13. Finally the body should be burnt or incinerated

14. All infected bodies should be wrapped and tied in double layer tough plastic bag with a red color tag mentioning “ biological hazardous”

15. Workers who have exudative lesion or weeping dermatitis or external injury should not handle AIDS victims

16. The best key to control to the dissemination of HIV is prevention of unnecessary contamination at the work area

**Partner notification** –

It refers to activities aimed at identifying, notifying and counselling 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.

**Prevention and care ethics** -

It is always said that prevention is better than cure. As AIDS is a rapidly spreading condition worldwide which is a transmitted disease, so transmission of HIV can only be interrupted through modifications in behaviour 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 behaviour (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. Lastly, prevention is better than cure is golden rule to overcome the burning issue and associated problems.

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