



Medico legal Aspects of AIDS

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KEYWORDS :

Introduction:-

Acquired immune deficiency syndrome is causing both health and legal problems. Much of the controversy about AIDS and its victims involve the legal rights of the public whose health should be protected; the risks and methods of transmission of AIDS; the right of those with the disease to receive full medical attention and to receive public services like schooling and the right of the victims to their privacy. This is further complicated by the need of the AIDS victim for protection from communicable diseases that are life threatening to the victim but not to the general public. Health personnel are concerned because of greater chance of contact with patients with the disease. According to estimates from the Joint United Nations Programmed on HIV/AIDS (UNAIDS) 37 million adults and 2.5 million children were living with HIV at the end of 2003. This is more than 50 percent higher than the figures projected by WHO in 1991 on the basis of the data then available. A UNDP sponsored study in 1995 found that one percent increase in HIV/AIDS prevalence rates leads to 2.2 years lost in human development as measured by the Human Development Index. The worst affected are the countries of Sub-Saharan Africa and South and South East Asia, which are among nations with lowest human development indices, large pools of poverty, huge gender inequity, powerlessness, social instability etc. Out of the 40 million people living with HIV/AIDS in the world, more than 25 million are in Sub-Saharan Africa followed by 9 million are in Asia. During the period 2003, the total 5.3 million people were affected in India, which increased to 5.7 million during the period 2005 (Study 2005). During 2003, some 5 million people became infected with the Human Immunodeficiency Virus. An estimated 700,000 children aged 15 or younger became infected with HIV. Over 90 percent were babies born to HIV-positive women, who acquired the virus at birth or through their mother's breast milk. Of these, almost nine-tenths were in sub-Saharan Africa. The full blown syndrome is believed to be both incurable and almost inevitably fatal, striking most frequently among certain high-risk groups, such as male homosexuals, intravenous drug users, recipients of blood transfusions and hemophiliacs.

WHO Definition: - The patient should present with at least one major and two minor signs to be diagnosed as a case of AIDS.

Major Signs: - 1. Weight loss >10% of body weight. 2. Chronic diarrhea for more than one month. 3. Prolonged fever for more than one month.

Minor signs: - 1. Cough for more than one month. 2. General pruritic dermatitis. 3. Recurrent Herpes zoster infections. 4. Or pharyngeal candidiasis. 5. Chronic progressive disseminated H. simplex.

Pathogenesis The incubation period for AIDS is from 4 months to 57 months. HIV attaches itself to the T4 receptor molecule on T-helper lymphocytes in order to infect them. These T-helper lymphocytes are found in most fluids such as breast milk, semen, tears, and saliva. HTLV-III/LAV has been isolated in a wide range of body fluids including blood, semen, saliva, tears, breast milk and urine. How much exposure is needed for the syndrome to develop is unknown. Random

exposure is not sufficient and in the absence of contamination with blood products by direct passage and/or sexual contact AIDS is unlikely.

Routes of Transmission AIDS may be transmitted in any of the following ways: 1. By way of unprotected (vaginal, anal or oral) sexual intercourse either homosexual or heterosexual. 2. by exchange of contaminated blood and blood products by way of sharing needles by drug abusers and through blood transfusions. 3. Needle type exposure resulting from cuts by knife while carrying out surgeries in operation theatres and in the autopsy rooms. 4. Perinatal transmission From HIV positive mother to her unborn child.

Medico legal Problems Surrounding AIDS Apart from the diagnostic and treatment problems; AIDS has thrown up many legal and social issues. It should be kept in mind that, AIDS patients, like all other patients are entitled to equality, confidentiality, right to information etc. At the same time the doctor has the social duty of making a privileged communication in the larger interest of the society. Recently Supreme Court of India has ruled that the sexual partner of an AIDS/HIV positive patient is to be informed of the fact. The treating doctor also has the duty to inform the paramedical staff involved in the treatment of such patients, the mortuary staff, pathologist and the staff of the crematorium so that due precautions can be taken by these people who are likely to come in direct contact with the infected biological material. The hospital administrators as well as the nursing officers' in-charge of safe custody of medical documents should ensure that HIV positivity is not revealed to unauthorized persons.

Medical Practitioners and their Freedom to Treat A private medical practitioner is free to decide who he wants to accept as a patient. The relationship between patient and doctor is the result of an agreement which often comes about on an ad hoc and tacit basis.

1. A doctor has to treat a patient in an emergency or when no treatment facility is available. If he refuses arbitrarily and reasonably to attend a seriously ill or injured person, he may be held liable if the patient cannot get another doctor to attend and suffers harm whether the doctor's failure was unreasonable, will be decided by taking various factors into account such as the seriousness of patient's condition; the professional ability of the doctor to do what is asked by him; the physical state of the doctor himself and availability of other medical care. If other medical care is available, it would not be unreasonable for the doctor to refuse treatment.
2. Where the likelihood of infection is minimal, as in case of normal health care setting and where necessary precautions can be taken, it would be unreasonable for a doctor to refuse emergency treatment to an AIDS patient.
3. The doctor may not commence treatment and then stop when he finds the patient to be HIV positive. He can escape liability if he can show that the patient made it impossible for him to continue the treatment or if he transferred the patient, with the latter's consent, to another doctor.
4. A doctor may be under a statutory duty to treat. However, the regulations issued in terms of the Health Act only grant the power, but not impose duty on medical officers to examine patients

in order to prevent the spread of AIDS. The medical officer will be obliged to exercise his discretion.

- The doctors in government employment are obliged to treat all patients who consult them or referred to them in the course of their duties. Failure to treat could lead to disciplinary action and liability for damages vicariously for the hospital or personally for the doctor.

Laws and regulations Governing HIV Infected Persons

Indian Contract Act 13:- two or more persons are said to consent when they agree upon the same thing in the same sense.

Indian Contract Act 14:- Consent is said to be free, when it is not caused by (i) coercion, as defined in section 15, or (ii) undue influence, as defined in section 16, or (iii) fraud, as defined in section 17, or (iv) misrepresentation, as defined in section 18, or (v) mistake subject to the provisions of sections 20, 21 and 22. The consent cannot be said to be implied when HIV testing is included in tests undertaken routinely in some medical or surgical treatment.

Article 14 and 16 of the Indian constitution:- - guarantees equality and provide against discrimination in employment respectively. Article 16 prohibits discrimination in public employment on grounds of religion, caste, creed, sex, color etc. however, these rights are available against the state and not against private employers. There is no specific employment law that provides protection from discrimination to people living with HIV/ AIDS. Laws have been enacted in every Australian State and territory and nationally to protect people from unwarranted discrimination on the grounds of Disability and perceived disability. To cover asymptomatic HIV infection, "disability" is usually defined as including the presence in the body of organisms causing disease or illness. It is unlawful to discriminate even on the ground of a belief that a person has HIV simply because they had a test for the virus.

1. Article 21 of the constitution of India guarantees right to life and personal liberty to every HIV positive individual and it is the fundamental right of every AIDS patient to have access to adequate treatment provided by the government. 2. 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 stated in Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on civil and political Rights and Article 21 of the constitution of India. 3. The WHO guidelines state that there is no public health rationale to justify isolation, quarantine or discrimination based on a person's HIV status or sexual behavior.

Relevant Clauses in Indian Penal Code

A person with HIV infection can be prosecuted under section 269 of I.P.C (Whoever unlawfully does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both) if he performs a negligent act likely to spread the infection of the disease. If the act is willful, he may be punished under section 270 of the I.P.C (Whoever negligently does an act which he knows or has reason to believe to be likely to spread the infection of any disease dangerous to life shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or, with both). A civil suit under the law of tort may be filed to claim compensation for violation of the fundamental rights to personal liberty.

- Sec. 54 I.P.C. injury. 2. Sec. 440 I.P.C.: The accused can be charged under various provisions of I.P.C. for fraud, deceit or misrepresentation. 3. Sec 320 I.P.C.: The accused can be prosecuted under the 8th clause of I.P.C. 4. Sec. 304-A I.P.C.: Causing death by rash and negligent act. Even if the accused did not know that he has AIDS or that AIDS is incurable and fatal may be charged under this section. 5. Sec. 302 I.P.C. Murder: This is the extreme for which an accused can be charged although the likelihood of this section being invoked for transmitting AIDS is not much.

Conclusion:-

Medical practitioner should not hesitate to treat HIV infected patients. It is their ethical and moral duty to treat HIV infected patients. Health care professionals can safely perform surgical and medical procedures on HIV infected patients using protective gears like gloves, gowns, mask, goggles etc. Government should frame comprehensive law which not only protects the fundamental human rights of HIV infected patients but also gives strict punishment to those involved in deliberate transmission of HIV infection with criminal intention.

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