



LEGAL & ETHICAL ISSUES IN HIV

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ABSTRACT The human immunodeficiency virus (HIV) causes HIV infection and over time acquired immunodeficiency syndrome (AIDS). “Stigma and discrimination is an affront to human rights and puts the lives of people living with HIV and key populations in danger. Currently the critical areas of concern include access to treatment and developing newer, more effective therapeutic and prevention methods while taking care of ethical values in health care and research. The ethical issues mainly revolve around the standard of care, informed consent across cultures, maintenance of privacy and confidentiality, stigma and discrimination, protection of vulnerable groups, community consultation, ethical review mechanisms, international collaboration, epidemiological studies, clinical trials and also socio-behavioral studies on HIV/AIDS that have medico legal implication. HIV Act 2017 has given a strength and framework for hospitals as well patients suffering from disease. Disclosure and discrimination in HIV cases now will be reviewed seriously.

KEYWORDS : HIV , AIDS, medical practitioners , Disclosure , ethics , laws applicable

INTRODUCTION

The human immunodeficiency virus (HIV) is a lentivirus (a subgroup of retrovirus) that causes HIV infection and over time acquired immunodeficiency syndrome (AIDS).^{1,2} AIDS is a condition in humans in which progressive failure of the immune system allows life-threatening opportunistic infections and cancers to thrive. Without treatment, average survival time after infection with HIV is estimated to be 9 to 11 years, depending on the HIV subtype.³ “Stigma and discrimination is an affront to human rights and puts the lives of people living with HIV and key populations in danger.” Often, people living with HIV avoid going to clinics for fear of having their status disclosed or of suffering further stigma and discrimination based on their HIV status.⁵ The study will help in development of appropriate policies for disease control and prevention.

AIM & OBJECTIVES

AIM

Aim of study is to assess the various laws applicable to HIV and AIDS patients and ethical issues related to them.

OBJECTIVES

1. To study the various laws applicable to HIV patients.
2. To explore the ethical issues related to HIV & AIDS patients.
3. To recommend do's & don'ts for healthcare professional.

METHODOLOGY

STUDY SETTING & DESIGN

The study was designed to do meta-analysis of various laws , acts and ethical issues elaborated in various articles and cases discussed in various court of law and in publication. The author has relied upon doctrinal works for most of the inputs and theoretical deliverance of this paper. For the purpose of this research work, theoretical knowledge based on the provisions of the various Acts and guidelines , the existing literature and the decisions of various judicial bodies of India are sufficient to draw the conclusions and suggest apt measures to the Government of India to improve the provisions of the Act.

DISCUSSION

Various laws & ethical guidelines applicable to HIV and AIDS were critically examined and recommendations were given for healthcare professionals.

LIFE OF A PERSON LIVING WITH HIV

A person with HIV can live a full and active life, as long as they adhere to treatment. Due to the added risk of other infections and disease, people living with HIV must make lifestyle adjustments to accommodate their reduced immunity. However, stigma around the condition continues in many parts of the world. People living with HIV

may feel excluded, persecuted, and isolated. An HIV diagnosis can be very distressing, and feelings of anxiety or depression are common.

Legal provisions in international conventions with respect to HIV/AIDS

Union of India has signed various treaties, agreements and declarations relating to HIV/AIDS, the protection of rights of those who are HIV positive, those who are affected by HIV/AIDS and those who are most vulnerable to HIV/AIDS in order to secure their human rights and prevent the spread of HIV/AIDS.

The Universal Declaration of Human Rights⁶ also lays down that the principle of non-discrimination is fundamental to human rights law. It equally applies to people suffering from HIV/AIDS because they have to suffer a very high level of stigma and discrimination.

People diagnosed with HIV+ are also entitled the rights enshrined in Art. 25(1) of the Declaration which includes the right to adequate standard of living, assistance, medical care and necessary social services, and the right to security in the event of unemployment according to their needs and their treatment choices.

Legal provisions available in Indian laws for HIV/AIDS Patient⁷

The law of land, the Constitution of India, 1950 guarantees every justice, liberty and equality. Article 14 guarantees the right of equality of treatment to the HIV/AIDS patients. Articles 15 and 16 protect them against discrimination. Article 21 of the Constitution protects their right to life and personal liberty and ensures their right to privacy. The Directive Principles of State Policy also cast a duty upon the States to ensure right to livelihood and prevent discrimination. Article 39 of the Constitution directs the States to ensure that all the citizens including the HIV/AIDS patients have an adequate mean of livelihood. Article 42 casts a duty upon states to make provisions for securing just and humane conditions of work. States have been entrusted with the duty to improve public health vide Article 47 of the Constitution.

Law applicable to HIV/AIDS

- LEGAL PROVISIONS IN INDIAN MEDICAL COUNCIL ACT, 1956 (Professional Conduct, & Ethics) Regulations, 2002)
- Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Bill, 2010
- National Policy on HIV/AIDS and the World of Work” Policy
- HIV act 2017

Guidelines applicable to HIV/AIDS

- *Antiviral Therapy Guidelines for HIV infected Adults and Adolescents including Post-exposure.*
- *Condom Promotion by SACS - Operational Guidelines*
- *Daman, Diu Public Health Act, 1985 Goa, Amended in 1986*

- *Data Sharing Guidelines*
- *Drugs and Cosmetic Act, 1940*
- *Guidelines for HIV Care and Treatment in Infants and Children, Nov 2006*
- *Guidelines for HIV Testing, March 2007*
- *Guidelines for Network of Indian Institutions for HIV/AIDS Research (NIHAR)*
- *Guidelines for Prevention and Management of Common Opportunistic*
- *Guidelines for Setting up Blood Storage Centers*
- *ILO Code of Practice on HIV/AIDS and the World of Work*
- *Indian Penal Code, 1860*
- *Joint Statement of Commitment on HIV/AIDS of the Central Trade Unions in India*
- *Juvenile Justice (Care and Protection of Children) Act, 2000 and 2006.*
- *Link Worker Scheme (LWS) Operational Guidelines*
- *Maharashtra Protection of Commercial Sex Workers, Bill, 1994.*
- *Medical Termination of Pregnancy Act, 1971*
- *NACO Ethical Guidelines for Operational Research*
- *NACO IEC Operational Guidelines*
- *NACO Research Fellowship-Scheme Under NACP-III*
- *Narcotic Drugs and Psychotropic Substances Act, 1985*
- *National AIDS Control and Prevention Policy (NACPC)*
- *National AIDS Control Organization (NACO), Department of AIDS Control, Policies and Guidelines.*
- *National AIDS Control Programme (NIHFW)*
- *National AIDS Prevention and Control Policy*
- *National AIDS Prevention and Control Policy*
- *National Blood Policy (NIHFW)*
- *National Guidelines on Prevention, Management & Control of Reproductive Tract Infection*
- *National Guidelines on Prevention, Management & Control of RTI including STI*
- *National Human Rights Commission guidelines*
- *National Policy on HIV/AIDS and the World of Work*
- *Procurement Manual for National AIDS Control Programme (NACP-III)*
- *Standards for Blood Banks and Blood Transfusion Services*
- *State AIDS Control Societies*
- *Suppression of Immoral Traffic in Women and Girls Act, 1956*
- *Surveillance Operational Guidelines*
- *Targeted Intervention for Migrants – Operational Guidelines*
- *Targeted Interventions for High Risk Groups (HRGs)*
- *Targeted Interventions for Truckers – Operational Guidelines*
- *The Indian Employers' Statement of Commitment on HIV/AIDS*
- *Voluntary Blood Donation – An Operational Guidelines*
- *Young Persons (Harmful Publications) Act, 1956*

Indian Medical Council Act, 1956 (Professional Conduct, & Ethics) Regulations, 2002⁸ for HIV / AIDS Cases lays down certain duties that have to be observed by the doctors towards the HIV/AIDS patients are as under :

- Duty to take care and to take informed consent from the patient.
- Disclosure of information & risks to the patient
- Provide information of options available & benefits
- Duty to warn
- To admit patient in emergency without consent
- The physician should not abandon his duty for fear of contracting the disease himself.

Confidentiality with respect to privacy and disclosure of HIV / AIDS :

A person who has been diagnosed with HIV/AIDS has the right to keep his/her HIV/AIDS status confidential. Even the Courts have delivered judgments in their favour that if they do not want to disclose their identity they can use a pseudonym before the Courts to suppress their identity.

Rights To Employment And Right Against Discrimination At Workplace :

Right against discrimination is a fundamental right possessed by a citizen of India. No one can be discriminated on the basis of his HIV/AIDS status in India. HIV/AIDS patients have a right of equal treatment everywhere and they cannot be denied job opportunity or discriminated in employment matters on the ground of their HIV/AIDS status.

HIV ACT 2017⁹

The Act seeks to prevent and control the spread of HIV and AIDS, prohibits discrimination on various grounds which include the denial, termination, discontinuation or unfair treatment with regard to: (i) employment, (ii) educational establishments, (iii) health care services, (iv) residing or renting property, (v) standing for public or private office, and (vi) provision of insurance (unless based on actuarial studies), provides for informed consent and confidentiality with regard to their treatment, places obligations on establishments to safeguard their rights, and creates mechanisms for redressing their complaints, [xxxii] the role of Central and State government is also mentioned, it discusses about guardianship and court proceedings, too.

The HIV/AIDS (Prevention and Control) Act, 2017 has certain lacunas or shortcomings. At one place the Act tried to recognize lot of rights to HIV/AIDS patients but on other hand the contentious clause 'as far as possible' dilutes it from being legal right as it only obliges the government to take measure to provide the services as to diagnostic facilities, ART therapy and opportunistic, clearly indicating that it does not make this available to people as a matter of right. Section 46(2)(e) provides that the State may lay down guidelines for providing such treatment, thus leaving the entitlement completely in the hands of executive authorities thereby further, defeating the purpose of universal precautions.

The insurance industry is allowed to use actuarial calculations to limit access to products to people with HIV. Though the Act provides for the grievance redressal mechanism, the wordings used "in such manner and within such time as may be prescribed" further dilutes the objective with which the Act is introduced, as it defeats the whole purpose of the Act by not prescribing procedure and time frame for disposal of complaints.

Medico legal issues of window period of HIV infection¹⁰:

Window period of HIV infection remains a cause of concern. The court very categorically observed that inspite of observing all mandatory safety precautions in accepting blood from a donor and then transfusing it to a patient, it always has a risk, especially the risk that the donor may have donated blood during the window period for which a doctor/hospital could not be held liable. The court observed that the PGI had acted according to the standard medical practice and blood transfusion services were conducted as per the provisions of The Drug and Cosmetic Act.

Courts are accepting that even after taking all the mandatory safety precautions, there will always be the risk that the donor had donated blood during the window period and hence merely because the patient has contracted HIV a doctor/ hospital will not be held negligent.

Duty of HIV positive person:

As per HIV act 2017, Duty of HIV positive person is to prevent transmission of HIV to others. Every person, who is HIV positive and has been counselled in accordance with the guidelines issued or is aware of the nature of HIV and its transmission, shall take all reasonable precautions to prevent the transmission of HIV to other persons which may include adopting strategies for the reduction of risk or informing in advance his HIV status before any sexual contact with any person or with whom needles are shared with:

Provided that the provisions of this section shall not be applicable to prevent transmission through a sexual contact in the case of a woman, where there is a reasonable apprehension that such information may result in violence, abandonment or actions which may have a severe negative effect on the physical or mental health or safety of such woman, her children, her relatives or someone who is close to her.

The Supreme Court observed that so long as the person is not cured of the communicable venereal disease or impotency, the right to marry can't be enforced through a court of law & shall to be treated as a suspended right¹¹.

DISCLOSURE OF HIV STATUS IS PERMITTED IN LAW

Notwithstanding anything contained in any other law for the time being in force,—

- (i) No person shall be compelled to disclose his HIV status except by an order of the court that the disclosure of such information is necessary in the interest of justice, for the determination of issues in the matter before it;

(ii) no person shall disclose or be compelled to disclose the HIV status or any other private information of other person imparted in confidence or in a relationship of a fiduciary nature, except with the informed consent of that other person or a representative of such another person obtained in the manner as specified in section 5 of HIV act, as the case may be, and the fact of such consent has been recorded in writing by the person making such disclosure: Provided that, in case of a relationship of a fiduciary nature, informed consent shall be recorded in writing.

(2) The informed consent for disclosure of HIV-related information under clause (ii) of sub-section (1) is not required where the disclosure is made—

- by a healthcare provider to another healthcare provider who is involved in the care, treatment or counselling of such person, when such disclosure is necessary to provide care or treatment to that person;
- by an order of a court that the disclosure of such information is necessary in the interest of justice for the determination of issues and in the matter before it;
- in suits or legal proceedings between persons, where the disclosure of such information is necessary in filing suits or legal proceedings or for instructing their counsel;
- as required under the provisions of section 9;
- if it relates to statistical or other information of a person that could not reasonably be expected to lead to the identification of that person; and
- to the officers of the Central Government or the State Government or State AIDS Control Society of the concerned State Government, as the case may be, for the purposes of monitoring, evaluation or supervision.

Duties of doctor in Disclosure of HIV-positive status to partner of HIV-positive person:

(1) No healthcare provider, except a physician or a counsellor, shall disclose the HIV-positive status of a person to his or her partner.

(2) A healthcare provider, who is a physician or counsellor, may disclose the HIV-positive status of a person under his direct care to his or her partner, if such healthcare provider—

(a) reasonably believes that the partner is at the significant risk of transmission of HIV from such person; and

(b) such HIV-positive person has been counselled to inform such partner; and

(c) is satisfied that the HIV-positive person will not inform such partner; and

(a) has informed the HIV-positive person of the intention to disclose the HIV-positive status to such partner:

-Provided that disclosure under this sub-section to the partner shall be made in person after counselling:

- Provided further that such healthcare provider shall have no obligation to identify or locate the partner of an HIV-positive person:

-Provided also that such healthcare provider shall not inform the partner of a woman where there is a reasonable apprehension that such information may result in violence, abandonment or actions which may have a severe negative effect on the physical or mental health or safety of such woman, her children, her relatives or someone who is close to her.

(3) The healthcare provider under sub-section (1) shall not be liable for any criminal or civil action for any disclosure or non-disclosure of confidential HIV-related information made to a partner under this section.

Prohibited in discrimination related to HIV:

No person shall discriminate against the protected person on any ground.

Guidelines for Blood banks to prevent HIV transmission :

For the purpose of regulating its collection, storage and supply, blood is treated as a 'drug' under the Drugs and Cosmetics Act, 1940.

It is advisable that blood banks not only keep a record of blood that is

found to be fit for transfusion, but must also keep records of the blood that is discarded. It is a mandatory requirement to conduct tests on blood which is to be administered to a patient or to be issued to hospitals for transfusion. The blood so issued has to be free from AIDS, viral hepatitis, malaria, venereal diseases etc.

DO'S & DON'T FOR HEALTHCARE PROFESSIONAL

Do's for healthcare professional

- The duty of a medical practitioner is to treat all the patients 'irrespective of their HIV status. Though a medical practitioner is free to choose his patients, but in emergency or when no other treatment facility is available, he is bound to treat such patients.
- Provide care to patient without discrimination
- Sympathise and empathise with them
- Take immediate steps to treat even minor ailments.
- Advise them to use safe sex (condoms) with their sex partner, even if partner is already HIV positive.
- All pregnant women should be offered a test for HIV.
- The dead body should be disposed off at the earliest without delay.
- PPE should be taken care
- The HIV infected body should be labeled as HIV positive before shifting to morgue.

Don't For Healthcare Professional

- Don't accuse them for getting infected
- Don't scare them of suffering and death. In the terminal stage, prepare them for a smooth journey to death.
- Don't test for HIV repeatedly, once the presence of infection is established it remains there forever.

CONCLUSION

AIDS is one of the fastest spreading diseases which is believed to be incurable and deadly fatal. The challenges AIDS pandemic brings with it are social, legal, economic, and ethical issues. We are grappling to find new treatments, cures, preventive therapies and educational interventions that are both effective and appropriate for persons of diverse races, ethnicities, cultures, languages, religions, ages, gender, sexual orientations, etc. The obligations of governments to promote health and prevent disease should enable development of appropriate policies and programmes^{12,13}.

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