Contemporary Issue

AIDS-MEDICOLEGAL ASPECTS

Lt Col RB KOTABAGI *, Col PR PATHAK +,
Dr. (Mrs) VV APTE #

ABSTRACT

AIDS/HIV Positivity has been the most widely debated disease of this century. Reasons for this are manifold, viz-the non-availability of cure and consequent 100% mortality of a full blown case; its mode of transmission-homosexual and heterosexual activities; widespread occurrence amongst 'main liners'; and patients receiving blood and blood products etc. These aspects have created a dreaded halo around AIDS as well as social stigma. Even the medical community is not exempt from these problems. Unfortunately, legislatures around the world, more so in India, have lagged behind in clarifying many legal issues involved by not enacting specific laws pertaining to AIDS. Consequently many legal & ethical doubts arise in the minds of doctors when confronted with a case of AIDS either in a live patient or in a dead body. In addition, the disease being incurable & 100% fatal, makes it essential to adopt effective preventive measures which in turn need thorough knowledge of social aspects of the epidemic. Certain medicolegal, and ethical aspects of the problem of AIDS are recapitulated in this article for the benefit of the medical community.

MJAFI 1999; 55 : 144-147

KEY WORDS: Access, AIDS, Confidentiality.

Introduction

The continuously rising incidence of AIDS, specially in the developing countries of Africa, South and South East Asia has necessitated studying all the aspects of the disease as to develop and adopt effective preventive measures. To emphasise the urgency of adopting effective prevention, it is a wise method to re-capitulate some statistical facts. Since the start of the pandemic, close to 30 million people are thought to have been infected with the HIV, 26.8 million adults and 2.6 million children. Of this, an estimated 5 million adults and 1.4 million children have died [1]. 42% of existing HIV positive/AIDS adults are women. Another disturbing trend is that the majority of the newly infected adults are under 25 yrs of age. The Indian scenario is more disturbing than that of the world. HIV is spreading rapidly, in some parts of India. By 2000 AD, it is estimated that around 7 million HIV positive cases will be present in India alone-1/6th of all HIV positive cases the world over.

Although, it is stated that the high risk groups have remained same since the onset of the epidemic, there is a growth of the heterosexual epidemic in South East Asia. Since, any epidemic cannot be effectively tackled unless the social inequalities it exposes are not eliminated, the study of medico-legal aspects of AIDS, which includes the social aspects as well, is essential.

Aptly the World AIDS Day of 1995, on 1st December, was observed under the banner 'The HIV/AIDS Pandemic: Shared Rights, Shared Responsibilities [2].

In this article we intend to draw the attention of the medical community to the rights of AIDS/HIV positive person, especially various aspects of right to confidentiality; doctor patient relationship-ethical aspects-and the existing as well as suggested legal status of AIDS/HIV positivity in our country.

Rights of AIDS Victims

Right to confidentiality

As with any other patient, the AIDS victim has the right to confidentiality. This right to confidentiality in case of AIDS victim extends even after death. However, this is not an absolute right. During life, notification to the public health authorities is mandatory in many Indian states. Considering the danger of spread to the sexual partner, partner notification is also allowed. After death, autopsy report is submitted to the public health & registration authorities, the funeral personnel are informed of the disease in the body. Organ transplantation teams are informed, if such a procedure is being contemplated and in case of third party insurance, the insurance company is entitled to the information. There is no reason why information should not be distributed to concerned people when situation warrants, otherwise consequences can be disastrous.

* Reader, + Professor & Head, Department of Forensic Medicine, Armed Forces Medical College, Pune 40, # Professor & Head, Department of Forensic Medicine, TN Medical College & BYL Nair Hospital, Mumbai 400 008.

No matter how much we educate the public regarding true nature and consequences of the disease, AIDS will remain an illness that arouses stigmatization and discriminations [3]. Hence utmost discretion is warranted even under situations where the advantages of revealing the AIDS/HIV status of an individual to a third party evidently outweigh those of maintaining strict confidentiality.

Another aspect of the right to confidentiality is that the woman has the right to confidentiality and freedom from discrimination when her child is found infected.

The Indian Constitution guarantees right to liberty, freedom of movement and employment to the AIDS victim, as to any other citizen. But these, at least, at least some, are not absolute rights. They can be demanded only when there is no conflict between individual rights and public health.

The AIDS patient of any social class and category has

- (a) The right to be able to avoid infection.
- (b) The right to health care
- (c) The right to be treated with dignity and without discrimination when sick and to die with dignity.

Existing Indian Laws Applicable to AIDS

(a) *Laws Helpful to Prevent spread of AIDS*

Health being a state subject, the local state governments have to enact laws pertaining to this subject. At the outset, it is high-lighted that none of the Indian States except Goa, have enacted any specific law in connection with AIDS.

(i) Section 51 of Goa Public Health Act is specific for notification of AIDS. In addition to notification, the act has provision for obligatory medical examination of any suspect of AIDS. Nobody including foreigners can refuse to undergo blood examination for AIDS.

(ii) As regards to Bombay, the BMN act, Bombay Communicable Diseases Act, Section 421, provides for notification; section 424 provides for forcible removal of a person infected with communicable & dangerous disease and section 5480 restricts the entry of such person into public conveyance.

Although these provisions are applicable to AIDS, they are not specific for it. Similarly, laws enacted by different local governments in connection with epidemic & infectious diseases can be applied to contain spread to AIDS.

(iii) Blood Transfusion Services & AIDS:-

Every one has a right to receive safe blood and

blood products. Considering the high risk of transmission of AIDS through blood and blood products, the 11 July 1989 Govt of India circular makes it mandatory for all blood banks to adopt the WHO Biosafety Guidelines. According to these guide-lines, it is mandatory that each bottle of blood being issued from any blood bank should be tested and declared free of HIV contamination. Even blood collected for auto transfusion is to be treated similarly. Health care workers, especially those handling blood & blood products have the right to be instructed in universal safety precautions and to be provided with the essentials to follow these precautions.

In Singapore blood donor has to inform the blood bank regarding his sexual practices. This provision helps the blood bank in assessing the potential dangerousness of his blood.

(iv) Miscellaneous Laws:-

(aa) In many countries it is mandatory for immigrants and over-seas students to produce HIV free certificate to obtain a Visa. In this connection, all members of our contingents to UN Peace Keeping Missions were subjected to HIV testing before their departure as well as on return.

(ab) Considering the uncertain and prolonged incubation period, no quarantine laws have been enacted anywhere.

(ac) During 1988, Malaysia made co-operation and participation compulsory in AIDS surveillance programmes.

(ad) If any person leads to unlawful spread of any dangerous infection including AIDS-he can be punished under Section 270 of IPC with 2 yrs of imprisonment.

(ae) Under sections 269 & 271 of IPC any person causing spread of dangerous infection unlawfully or negligently, knowing that the act can be dangerous to life, can be punished with 6 months imprisonment.

(af) In case the foetus is found HIV positive, Medical Termination of Pregnancy can be undertaken. Similarly AIDS in either spouse can be ground for divorce, like any other STD.

(b) *Laws Detrimental to the Prevention of Spread of AIDS*

Certain existing laws act as hindrance, albeit indirectly, to AIDS prevention programme.

(i) When HIV first surfaced in 1980s, it was known as Gay Plague. Even now homosexuals form an important reservoir and risk group. In India, Section 377 of IPC considers homosexuality a crime. This attitude

of law hinders efforts to reach homosexuals with information and education.

(ii) On the similar lines, intravenous drug abusers get out of the reach of primary & tertiary preventive measures. The fact that 60 to 70% of IV drug abusers in Manipur, the state with highest degree of prevalence of HIV infection, are seropositive, highlights the need for more sympathetic and reform oriented measures towards this group of HIV infected persons rather than labelling them criminals.

Ethical Considerations

Knowledge of ethical aspects of AIDS/HIV positivity is essential to all medical practitioners and health care persons.

Apart from the right to health care guaranteed to an AIDS patient, ethically every doctor is bound to treat patients of all diseases. Refusal to entertain/treat an AIDS victim on the grounds that it is a dreaded communicable disease to which the doctor will be exposed or on the basis of a moral judgement about patient's life style, may lead to action against the doctor, by the medical council.

Although the right to confidentiality of the AIDS victim is guaranteed, the doctor is ethically duty bound to communicate the information to the following persons: the public health authorities; the sexual partner; paramedical workers like nurses, who are involved in the treatment of the patient etc with the aim of preventing the spread of the disease in the community.

Doctors have the ethical obligation of maintaining confidentiality even after death of the patient. The following guidelines are useful in revealing the HIV status in autopsy reports [4].

As regards medical autopsies, done with the intention of studying the disease process and establishing the cause of death, these autopsy reports become part of the patient's medical records and hence confidentiality is automatically maintained. However, even in such cases the HIV status is revealed to the funeral directors, for obvious reasons. On the contrary, if the autopsy is being performed on the orders of Coroner/Police officer, the autopsy report becomes part of the public record. Under such circumstances, autopsy surgeons may be reluctant to enter the HIV status in the autopsy record, unless AIDS is the sole and direct cause of death. Instead, diagnoses like viral encephalopathy. Pneumocystis carinii pneumonia etc may be listed as cause of death. This may lead to under reporting of HIV positivity or AIDS on death certificates. However, it is important that HIV or

AIDS information not be excluded from autopsy reports where it is pertinent to cause death. Otherwise one of the most important aims of conducting autopsy, study of the disease process, will be defeated. Autopsies have played a critical role in improving the diagnosis and treatment of AIDS. In addition, under reporting of a disease will have detrimental effect on national vital statistics, health care planning etc.

Considering all this, the decision to include AIDS-related information in the autopsy report as well as the decision to perform an AIDS related test, should be based on medical rather than confidentiality concerns. To minimise the ethical conflict for physicians where the autopsy report may be made public, the laws should be changed so that all autopsy reports are kept confidential. Although all hospitals take general precautions to maintain confidentiality of all medical records, something more than that may have to be done where AIDS related information is involved, for example, adopting procedures to limit access to the reports of only those individuals with a justifiable medical need or right to see them. Another such set of individuals are those conducting bonafide scientific or medical research. Naturally these persons should have access to medical & autopsy records. In such cases, from ethical standpoint, the preferred course would be for the researchers to have access to the pertinent medical information but not to the identities or any individually identifying factors of the decedents. In addition, the researchers and the health care persons involved in the treatment of the AIDS victim should be obligated to maintain the same confidentiality as are physicians.

In a nutshell, confidentiality of the HIV status of a patient has to be maintained by the doctor except under exceptional circumstances. These exceptions are, disclosure with consent; or in the best interests of the patient; in compliance of a court order or other legally enforceable duty and in a very limited circumstances, where the public interest so required. However these ethical codes do not have statutory force and are interpreted on individual case basis.

Consent for treatment and blood test

Before proceeding to the treatment and collection of blood sample of any patient, the doctor must have valid expressed consent of the patient. This applies even to the post-mortem collection of blood, where one of the decedent's relatives gives consent. Overlooking this common law requirement may result in action for battery.

Although the English & US laws differ in the re-

quirement of the type of consent, it is advisable to have informed written consent. In English law, the consent is deemed to be informed as long as all the questions by the patient have been answered. If the patient does not ask any questions about the nature of tests being carried out etc. the doctor is not obliged to inform him. But the US law makes mandatory all consents to be fully informed, even if the patient does not ask any clarifications. However, even in places where British law is applicable, not informing the patient about the nature & implications of the treatment and blood test, may make the doctor liable for medical negligence. Ethically the doctor is duty bound to inform the patient of the nature and purpose of any proposed treatment and test, and of the risks and implication of it. However, the details of the information required to be given to the patient depends upon the clinical judgement of the case. The yard stick used is based upon what a responsible body of medical opinions practicing in the area concerned believes should have been done in the same circumstances (The Bolam test). Only in the most exceptional circumstances, when a test is imperative to ensure the safety of persons other than the patient, testing without explicit consent can be justified. Similarly in case of children, additional problems come up, as most likely one of the parents is the source of infection. In such cases if the child is not old enough to give consent, in the best interests of the child, it is considered proper to test without actual consent. Finally, in view of the general opinion of the health authorities and medical profession, testing without express consent will, except in

most rare circumstances, be a breach of duty of care and actionable in negligence.

Conclusion

Doctors have overriding duty towards society when the benefits of disclosure outweigh its harm.

When patient of HIV acts, irresponsibly inspite of counselling without warning the partner, medical man should protect the society. All sexual partners, needle sharers, medical & nursing personnel must be provided with information without any prejudice to confidentiality. It also should be extended to relevant mortuary personnel who handle the AIDS dead bodies.

In blood transfusion and organ transplantation, HIV status of donor blood and organ should be fully evaluated. In litigation arising out of alleged HIV transmission caused by blood transfusion or organ transplantation, the plaintiff may seek the identity of the donor. In the greater interest of the public, courts should not allow such disclosure as its benefit is often only for an individual, where as the benefit of blood and organ donation is for the whole society.

REFERENCES

1. WHO Weekly Epidemiological Record. Jan 24, 1997; 72(4):17-24.
2. Rodrigues JJ. The HIV/AIDS pandemic: Shared rights, Shared responsibilities. ICMR bulletin, Dec 1995; 25(12): 113-7.
3. AMA Council. Confidentiality of human immunodeficiency virus status on autopsy reports, Arch Pathol Lab Med, Nov 1992; 116: 1120-3.