

CHALLENGES TO HUMAN RIGHTS OF AIDS PATIENTS - THE NEED FOR PROTECTION

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Health is wealth, but is usually subjugated to other needs like wealth, power prestige, knowledge and security etc. and its value is not fully understood until it is lost. Health is a state of complete physical, mental and social well-being and not merely an absence of disease or infirmity. Besides the physical, mental and social dimensions, the increase knowledge base may expand the list of dimensions by including spiritual, emotional, vocational, political and many such other dimensions. The physical dimension of health implies the notion of perfect functioning of the body. Good mental health is the ability to respond to the many varied experiences of life with flexibility and a sense of purpose. Social well-being implies harmony and integration within the individual, between each individual and other members of society and between individuals and the world in which they live. The medical and non-medical dimensions symbolise a huge range of factors to which sources other than health must contribute if all people are to attain a level of health that will permit them to lead a socially and economically productive life.

Health being accepted as the key to a socially and economically productive life, the right to health has been historically recognized as a basic human right. Human rights are those minimal rights which every individual must have against the state or other public authority by virtue of his being a "member of the human family" irrespective of any other consideration.¹ At the international level this basic right received the recognition when the Universal

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¹ BASU D.D.- "Human Rights in Constitutional Law", Prentice Hall of India(P) Ltd. New Delhi - 1994, P-5.

Declaration of Human Rights 1948 declared "Everyone has the right to standard of living adequate for the health and well-being of himself and his family, including food, clothing housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, oldage or other lack of livelihood in circumstances beyond his control.² The preamble to the WHO constitution also affirms that it is one the fundamental rights of every human being to enjoy the highest standard of health. The legal systems of most of the modern nations have supported right to health as a fundamental right and hence in an increasing number of societies, health is no longer accepted as a charity or the privilege of the few, but demanded as a right for all. Lack of resources has however prevented people in many countries from enjoying the benefits of this right in its fullest vigor because of the limitations on the part of the Government to provide all the needed a health services. Under such circumstances right to health becomes limited to a right to equality in availing health care services.

With the growth of civilization the concept of right to health has generated a series of socio-political, economic and legal issues calling upon the lawyers, politicians, ethicists, economists and medical scientists to find out acceptable solutions in conformity with social and human values. Right to health also gives rise to many other corollary rights like right to medical care, right to healthy environment, right to food, right to procreate, right of not to procreate, right to live and right to die etc. The recognition and protection of these basic human rights depend on the socio-economic condition and the value system of a particular society at a particular point of time.

Even though health is recognized as a fundamental human right, it is essentially an individual responsibility. Individuals ought to promote, their own

² Article 25 of the Universal Declaration of Human Rights, 1948.

health, prevent their own disease, limit their own illness and restore their own health. Such self-care activities comprise observance of simple rules of behaviour, attention to personal hygiene, cultivation of healthful habits and life-style, submitting one self to medical examinations and screening, accepting immunization and carrying out disease prevention measures, accepting treatment and prevention of the spread of the disease to others. As individuals are part of the community the health condition of individuals tend to affect the community as whole. Therefore in situations where individual effort is insufficient, community efforts become unavoidable. In view of wide range of socio-economic and cultural variations, no standard pattern of community participation can be recommended. The responsibility for health does not end with the individual and community effort. The modern welfare state assumes the responsibility for the health and welfare of its citizen. Considering mankind as a whole, health problems become globalised and challenges the international community and consequently strategies are adopted at international levels to counter such threat to human health.

The basic human right to health envisages a favourable social environment and opportunities for man to achieve a sense of fulfillment and add to the quality of life. Diseases are the opposite of health and are potential threat to the enjoyment of the right to health. When diseases take the form of epidemic or pandemic, various human right problems arise mainly connected with the diagnosis, treatment cure and prevention of such diseases.

In the history of mankind humanity has encountered many a epidemics posing serious threat to its very existence but, thanks to development of modern science for invention of curative therapy and providing the means to eradicate many killer disease from this earth. When mankind was starting to feel relaxed being re from the devastating effects of epidemics like plague, T.B., cholera and smallpox, nature exhibited its tyranny by presenting another health hazard in form of AIDS - a new disease that has burst on the scene with

devastating consequences. HIV infection probably began to spread in 1970s and cases of AIDS and other manifestation were first reported in U.S.A. in 1981. During the last fourteen years HIV virus has spread all over the world to infect about 11 million people and by 2000 A.D. there number is expected to reach the 40 million figure.

HIV infection is a persistent one. Once the virus enters the body it becomes a part of genetic material of different cell lines. Hence it is impossible to eliminate the virus and infection throughout life time. HIV is insidious. It corrupts vital body fluids, turning blood and semen from sources of life into instruments of death.³ AIDS affects mainly those in the age group of 20 to 50 years, depriving the community of people in their most productive years in work, labour and reproduction thus posing a serious threat to economic and social development.⁴ With the absence of a cure for AIDS and of a vaccine to prevent HIV infection, control of the disease is all that can be done at the present juncture to avoid devastating effects in future. Disease control aims at reducing the incidence of disease, the risk of transmission, the affects of infection and the financial burden to the community. The goals of medicine are to promote health to preserve health, to restore health when it is impaired and to minimize suffering and distress. Successful prevention depends upon a knowledge of infection, dynamic of transmissions identification of risk factors and risk groups, early detestation and treatment measures and a continuous evaluation of the measures adopted.

In absence of an effective treatment for cure of AIDS all efforts are to be putting for prevention and control. The basic approach in controlling diseases is to identify certain weak points that every disease has and to break

³ Rireberg H.V. - "The Social Dimensions of AIDS", Scientific American, October 1988, P-106.

⁴ Saple D.G. & Maniar J.K. - "AIDS", Valia R.G.(Ed) , Text book and Atlas of Dermatology", Vol-II Bhalani Publishing House, Bombay 1994, P-1283.

the weakest links in the chain of transmission. This involves attack on the source of infection, the route of transmission and the susceptible host. Disease control involves all the measures designed to prevent or reduce as much as possible the incidence, prevalence and consequences of disease. When any community is affected by a disease a large portion of such disease is hidden from the view of the physician of the general public. The exposed portion is just tip of an iceberg. The submerged portion of the iceberg represents the hidden and unrecognized mass of the disease and its detection and control becomes a challenge to modern science. Therefore disease prevention requires the identification persons infected with the disease. The active search for disease among apparently healthy people in a community is called screening. Screening involves tests, examinations or other procedures in apparently healthy individuals. Screening may be mass screening, high risk or selective screening or multiphase screening.

AIDS is a communicable disease and epidemiologically it has three modes of transmission , transmission by infected blood products or transplanted organs for tissues and by vertical and prenatal transmission. Unlike some other infectious diseases, the AIDS virus is carried and transmitted by the human host, there is no apparent insect or other animal vector and the virus has no special climatic requirements.⁵ The virus insinuates itself into the generic material of selected cell, where it may remain quiescent for prolonged periods of time. When it is active, the virus gradually undermines the body's immune system, eventually render it vulnerable to opportunistic infections. During the Latency period which may average eight years or longer, the patient feels perfectly well yet is capable of transmitting the virus to others.⁶ As the disease has no external manifestation most of the infected persons remain unidentified with capacity to transmit the disease to others. Therefore submerged portion of the iceberg in HIV/AIDS is

⁵ Supra, Note-3.

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much greater in comparison to other epidemics and hence greater is the need for screening to identify victims of HIV infection in a community.

Screening involves various practical difficulties and gives rise to many socio-economic and legal issues. The first difficulty in screening arises in deciding as to who should be the person / persons to be subjected to the screening test. It is practically difficult to decide whether the whole population or a sub-group only selective high-risk groups should be subjected to screening test. In most of the countries particularly in the developing one economic constraints makes it difficult to subject large section of population to such tests. In low risk population screening tests can only be recommended for a selective high risk groups. The main legal issue that is involved in screening tests is with respect to the consent of the person to be subjected to tests. Testing without consent infringes the right to freedom of an individual. But in case of high risk groups mandatory screening can be undertaken as the right of an individual or a group is to be sacrificed for protecting the interest of the community as a whole.

Once an infectious disease has been detected it should be notified to the local health authority, whose responsibility is to put into operation, control measures including the provision of medical care to patients. Certain diseases are statutorily notifiable. Mainly the Municipal laws prescribe the procedure of notification which may vary from country to country. Once an individual is identified or known to be infected with HIV, he is forced to encounter various socio-economic problems like less of jobs, homes and friends. Children with AIDS have been denied access to public schools. People with AIDS have been denied transportation to hospitals, treatment or medical care by health care persons and even denied transportation to grave after their death. Under such circumstances confidentiality of medical information plays an important role. It is a general rule that the information a physician

possesses about a patient is confidential and may not be divulged without consent. This rule is derived from a long history of medical ethics and practice in connection with doctor-patient relationship. Confidentiality assures the patient to disclose sensitive facts about themselves so that the doctor could make effective diagnostic and treatment decisions. The protective umbrella of confidentiality is no doubt available to a HIV/AIDS patient. However the right of confidentiality of medical information is not absolute. The notification of HIV/AIDS patients to public health authority even though affect the right to confidentiality of the victim is held to be justified in view of its social necessity. Besides notifying to the public health authority the situation at times demands the disclosure to some other persons. It is necessary that sexual or needle-sharing partners of patients should be warned about the potential risk to which they are exposed. As such warning reduce the risk of HIV transmission statutory protection should be afforded to the physician or other health care persons making a disclosure in the interest of other individual likely to be infected by HIV.

Confidentiality of a person's HIV serostatus is considered important because knowledge of it could lead to discriminative practices against him. Discrimination affects many human rights of the HIV/AIDS patients. The social taboo associated with HIV infection deprives a victim of his right to freedom of movement, right to work, right to shelter, right to education and above all the right to medical care and decent burial. As the patient remains perfectly well during the latency period there is hardly any justification of curtailing his above mentioned human rights. As because AIDS is a sexually transmitted disease question arises regarding protection of the infected person's human right to marry and procreate. Marriage between an infected persons with an uninfected one would lead to transmission of the disease to the uninfected and also to their off springs. Hence such marriages should not only be discouraged but also be prohibited. If both the parties to a marriage are already infected there is no justification in the imposition of a prohibition if

the couple opt to be permanently disable to procreate. Encouragement of marriage between HIV infected man and women serves a social purpose. Sex is a human instinct. Marriage between infected person provide them with opportunity of mutual satisfaction of the sex instinct, thereby the risk of other uninfected persons to be infected by them is reduced to a considerable extent.

Right to medical care is a basic human right of all patients. It has been observed that on many occasions HIV/AIDS victims are denied of this right by the medical professional. This discriminatory treatment raises a few question relating to obligations of physicians to treat HIV/AIDS patients. Strong ethical and policy arguments suggest that physicians do have such an obligation. In 1988 , The American Medical Association (AMA) took the position that a physician may not ethically refuse to treat a patient sole because she/he is HIV infected.⁷ While the AMA'S position does not set a legal requirement, it establishes a professional standard of care for the medical community. Many other medical Associations have set such standards and those others which have not done so should do so immediately. On the other hand physicians do have the right to choose whom they wish to treat with the exception of an emergency patient. In view of the gravity of the situation that have arisen from the increase of HIV/AIDS patient and the situation that would arise in future it is advisable that instead of encroaching upon the rights of the physicians, the international community should persuade and motivate the medical fraternity to be duty-oriented on humanitarian grounds and provide all possible medical care and attendance to the unfortunate, helpless victims of the dreadful disease of AIDS.

AIDS is a disease with no cure as on date. Once a person gets AIDS he is definite to die in the disease. When death is inevitable a patient may

⁷ Council on Ethical and judicial affairs, "Ethical issues involved in the growing AIDS crises", J.A.M.A. Vol-259, 1988, P-1360.

refuse to accept treatment. Does such refusal amount to attempt commit suicide ? Refusal to take treatment is nothing but a decision to let a disease take its natural course. If any patient sufficiently able to understand the nature and consequences of a decision to refuse treatment, refuses treatment he should be allowed to do so; particularly in cases like AIDS where there is no effective treatment available. However making a treatment decision on behalf of an incompetent AIDS patient should always be avoided in absence of a living will by the patient concerned.

Prevention is better than cure but in case of AIDS as there is no cure prevention is the only means to contain the disease in its lowest possible magnitude. The various modes of prevention and control give rise to a series of human right problems. The impact of the violation of such right are felt differently in different countries depending upon the socio-economic status of the citizens. Even though AIDS is a global problem there is a marked difference in its impact in developing and developed nations. Availability of resources is an important factor in disease control and prevention. Huge resources in the hands of the rich nations and lack of resources with the poor countries brings in discrimination between the people of such countries in matter of health care. In the greater interest of humanity the economic disparity should be settled and the resources should be combined to lodge an effective battle against the epidemic of AIDS.

With the absence of cure for AIDS and of a vaccine to prevent HIV infection control of HIV infection relies on strategies to change behaviour of high risk persons. Currently , efforts to change behaviour have been largely based on educational programmes, directed both at general public and at high risk persons.⁸ The various strategies to prevent or control HIV/AIDS

⁸ Hull H.F. and Other, "Comparison of HIV-Anti body prevalence in patients consenting to and declining HIV-Antibody Testing in an STD Clinic ", J.A.M.A., Vol-260, No.7, 1988, P-936.

have their own limitations and tend to create human right problems. In spite of all inherent difficulties AIDS prevention , programmes would hardly become effective in absence of proper awareness among the masses about the disease and the need for its control. Behaviour related to sex and drugs is biologically based, socially conditioned and resistance to change.⁹ Hence any statutory measure to change such behaviour fails to achieve the desired result. Under such circumstances behaviour can only be changed through a persuasive manner by imparting proper education and counselling.

The disease of AIDS has not only challenged the medical scientists but also the legal community with new issues affecting the human rights of infected persons, the rights of health care professionals and also the interest of the society at large. Human rights not been absolute, the need of view of the gravity of the situation arising out of the spread of the epidemic, protection of human right should not obstruct the prevention and control measures provided there is no deliberate and oppressive violation of human right. People of the present time have to pay a small price in sacrificing their rights in certain cases to a certain extent so that world will be safer place to live in future.

⁹ Supra - Note-3.