

HIV EPIDEMIC : A CHALLENGE TO DEVELOPMENT

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In may 1995, six west Asian countries (Saudi Arabia, UAE, Oman, Kuwait, Qatar and Bahrain), through the Gulf Cooperation Council announced that they would deny jobs to persons suffering from HIV-AIDS.² Although this is clearly in contravention of the United Nations mandate against discrimination, which is the main premise of all the human rights documents brought out by the United Nations, but it is an indicator of the things to come in the future that will have far reaching consequences for the nation States. Those countries which depend on the foreign earnings of their population to a great measure will be the major sufferers. The lose of foreign exchange earnings will effect their development needs. On the other hand, it may be stated that the obligation of non-discrimination imposed by the human rights instruments is not found to be absolute and the modern international legal order equally demonstrates its imperfect nature, which cannot impose any sanction against the violations of this obligation. The sovereign equality of the States precludes States from intervening into the domestic affairs of any other nation, and such actions, though apparently violative of international obligations, nonetheless are permissible to protect their nationals. But such actions of State against the HIV-infected persons has made the HIV epidemic a development issue which requires immediate and long-term responses to the problem

THE HIV EPIDEMIC: A PROFILE

Since the reporting of the first case in 1981, it is now well documented that the HIV (Human Immunodeficiency Virus), that causes AIDS (Acquired Immunodeficiency Syndrome), is transmitted only through direct exposure to the bodily fluids of an infected person, which can occur in three different ways:

1. Through sexual intercourse - from an HIV-infected person to his or her sexual partner, or donated semen;

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2 The Times of India, June 30, 1995, p.13.

2. Through blood transfusion, exposure to blood products or by transplanted organs or tissues, including contaminated syringes and needles, for example, by intravenous drug users;
3. From an HIV-infected mother to her foetus or infant³ HIV- infected women can infect their babies during gestation, delivery or through breast-feeding.

According to WHO's estimates, out of the 10-12 million people currently infected with HIV, 3-4 million are women.⁴ It is further estimated that by the turn of this century, there will be 30-40 million cumulative cases of HIV infection in men, women and children out of which more than ninety percent will be in developing countries. In the Asia and Pacific region alone, there will be about 8.5 million HIV infected persons.⁵ India, alongwith Thailand and Philippines, has the dubious distinction of being leading the tally in this region and currently having the highest number of reported cases. These figures also indicate that what has thought to be a disease of homo-sexuals, has not taken the shape of a pandemic, affecting all segments of the society, in particular women and infants. Women can become infected with the virus and also transmit the same. The spread of the virus from male to female is much more efficient than the reverse as women are the "silent epidemic".⁶ Two-thirds of the HIV infections are due to heterosexual transmission, a development which is of immediate significance to women and their babies. By the year 2000, about 75-80% of all new cases will occur among the heterosexuals making women and children more vulnerable to AIDS/HIV infection.

These facts and figures reflect a gloomy picture for developing countries, many of which are now confronted with the formidable conclusion of the loss of whole generations of people within their communities and shrinking of their productive work force. This will also bring to a naught all the governmental efforts made so far in human resource development required for the economic growth of the country. It will compound and aggravate their existing social and economic problems of poverty, inadequate health care and medical services, food shortages, and further deprivation of women, and inadequate allocation of resources for social welfare. These together would affect the existing development programmes which need to be recasted in the light of new realities. The epidemic will force a rethinking of approaches to development and means to improve the

3 D.C. Jayasuriya, "AIDS-Related Legislative Strategies Relating to Women and Infants", IJL& Family 7, (1993), 1-17, p.1.

4 WHO, Current and future dimensions of the HIV-AIDS Pandemic: A Capsule Summary, Geneva, 1992.

5 Geoff Manthey. "The Global Epidemiology of HIV/AIDS", in Glick ed. Law, Ethics & HIV (1993), 201.(UNDP).

6 J.E.Osborn, "Women and HIV/AIDS: The Silent Epidemic", (1990-91) 19 (2) SIECUSR Report, 2-4.

human condition. The modalities so far used to achieve this include credit and social investment schemes, labour market flows, employment creation and investment in education and training. But these very modalities are being questioned by the epidemic.

THE IMPACT OF THE EPIDEMIC

The effects of the HIV infection will be experienced at all social, cultural and economic levels. HIV is moving rapidly from high-risk groups like commercial sex-workers (CSWs) to the "second phase" where the virus is affecting victims with no high-risk behaviour, like housewives for instance. In this scenario, the common pattern is the promiscuous husband getting infected with the virus, and then transmitting his wife. Spread of the infection will engulf an increasing number of people within its fold. Those infected will increasingly become ill and die. This will have perceptible impact at the individual, community and national levels.

At Individual and Community Levels

The epidemic will cost dearly the individuals and their families. They will have to undergo great psychological and economic trauma. The families will have to find ways and means to care for those who are infected and find themselves, if the infected person is the sole earning member of the family. There will be decrease in the family income and an increase in expenditure on health care at the same time. It will also mean that the upbringing and education of the children will suffer. There is also threat that the unborn babies will be affected by the virus.

With the illness and death of the infected person, the survivors, particularly dependents, viz., children, spouse and elderly will be left without support. It is not only a loss in material terms but psychologically also it will affect them. Children will undergo a trauma and will grow up with deep emotional and psychological wounds. With the death of one of the parent's and of other's looming large, they will be left without any support of any kind. On the other hand, the death and disability caused by AIDS/HIV may lead to increasing number of families without parents or providers, or to single parent families and of orphans, which further increase their chance to be infected by HIV. Further, knowing little about this monster, they will have to sacrifice their childhood and face the prospects of being withdrawn from the school in order to earn to support the family and in caring for the sick. This will have an immense impact on the human resources development, which is crucial for national growth.

Women will be the worst sufferers in the face of HIV epidemic. Being mostly the "passive" participant in sex activities, they are frequently defenceless against the risk of AIDS and HIV infection because of their subordinate and servile family and social status. In marriage, they have no control over the timing of sexual intercourse, their husbands' sexual activity outside marriage, or husbands' use of condoms to reduce sexually

transmitted diseases, including HIV infection, yet they become the victims and pay dearly.⁷ The AIDS/HIV infection is fast rising among the women of reproductive age. Because of the sex and gender discrimination prevalent in almost all societies, and particularly in Asia and the Pacific, they do not get the best health care services available around. On the other hand, with more and more women getting infected and dying, the surviving women are increasingly becoming occupied with the care of the sick. This will give them less time in caring for their own children and force them to withdraw from the paid workforce and being gainfully employed in productive work. This will have the telling effect on the national development. Those who are already employed will be forced to leave their jobs. This may force them towards socially disruptive activities and a situation of destitute. This may also led to the erosion of family remaining of focal unit of the society.

In order to arrest the threat of erosion of family, a community- based concerted approach is necessary to provide a much-needed support system at both the emotional and economic level. The programme like project CHILD - Children of HIV positive Individuals Living in Dignity-launched by the Communities Development Trust, and NGO, that offers voluntary services from counselling to promoting home-based care, would be worthwhile.⁸ Apart from counselling and home based care, such community based organisations can provide emergency support to families, device training and employment programmes, income generation and coordination of external assistance and its channalisation. These organisations can be very effective in responding to the full spectrum of the needs of their particular community and allow the utilization of the local resources to the fullest extent.⁹

At the National Level

the epidemic will be a drain on the already scarce national resources of the country. There will be increased demand on health, medical and social services. Lack of or inadequate health services and hygienic environment will further exacerbate the spread of HIV and accelerate the progression from HIV infection to AIDS. In order to provide adequate health services, the governments will have to withdraw investments from the productive sectors. There will also be direct effect on the population and economic growth which will be reduced with the onset of the epidemic.

With more people coming within the net of the epidemic, the national economies will be affected seriously. The AIDS by causing death will result into the loss of manpower with the consequent loss of economic output and national income. Those who are

7 Rebecca J.Cook, "Human Rights, HIV Infection and Women" in the forthcoming book, HIV Law, Ethics and Human Rights (1996).

8 Sunday Review, Nov.26, 1995, p.5.

9 Elizabeth Reid, "The HIV epidemic as a Development Issue", in Glick ed. Law, Ethics & HIV (1993), 193 at p. 196.(UNDP).

suffering from the virus will increasingly remain absent from work on health grounds. The withdrawal of the work force due to death or absenteeism due to illness will have its impact on the national economy. Many crucial sectors of the economy will be severely affected, viz., mining, agriculture, transport and construction because of the fact that infection is clustered in particular occupations and areas, like truck drivers, construction workers, slum dwellers or commercial sex workers, the impact will be more profound on the national economy. There will be complete lack of basic services at the lower level with its perceptible consequences, like the truck drivers who provide an essential service in carrying goods to different places and thus help in knitting together the markets for outputs and inputs, can bring the national economy to a grinding halt by withdrawing from the scene. It will also be difficult to replace the lost labour, accompanied by the loss of output skills and experience.

The non-availability of the manpower will discourage investment and many enterprises may be forced to close. At the international level, it may discourage foreign investment, impose hindrances to foreign travel, and restrictions on the entry of the foreigners. This may affect the tourism industry and in consequence the foreign exchange earnings. A country will also suffer by the drops in the exports because of lowering of productivity.

The epidemic will prove to be great financial burden on the State as people with HIV require more medical facilities and for a longer period of not be catered adequately and the new strategy has to be devised to maintain the present level of health services. The burden put on the State exchequer for health services will be two fold: (i) expenses incurred in providing health care, which will be enormous due to attendant factors, such as large population, unhygienic living conditions, poverty resulting into malnutrition and ill-health, illiteracy, etc.; (ii) expense incurred in training health care professionals, providing expensive health care facilities and drugs at subsidized rates or free of charges.

Besides the depletion of the labour force, the other consequences of the HIV epidemic will be the adverse impact on the productive and social sectors, loss of military strength and consequent result of weakening of the defenses of the State. This will change the global strategic geopolitics and threaten the very survival of the State. In the longer run, there is the possibility of social and political unrest, widespread destitution, and social and economic disintegration, and also the widespread destitution, and social and economic disintegration, and also the disintegration of the family.¹⁰

POLICY RESPONSES

It is evident from the above discussion, that there will be serious consequences of epidemic and, in order to arrest their severity and effect, it is necessary to devise appropriate policies and programmes that should be able to redress the harm already caused by the epidemic and check the further spread of the epidemic. They should be aimed at the rehabilitation of the victims.

10 Ibid., at p. 197.

In devising any program and policy in this regard, it must be kept in mind that though all the consequences of the epidemic are mostly inter-dependent, but each of these consequences requires its own specific set of policy to effectively deal with the epidemic. Further, these policies and programmes to become meaningful, require the concerted efforts of many departments of the government - viz., economic, health, social welfare, labour, industry, department for the welfare of the women and children, and human resource development, etc., so as to monitor the impacts of the epidemic, strengthening and financing health and social sectors, including that of women and children, decide public sector allocations, and define the labour market policies, revenue generation and economic production. In taking any policy decision or in devising any programme, the future needs must be kept in mind.

The most effective national strategies should be based on the diversity of responses arising within the community because they will be directly responding to the needs of the community. But the location-specific and community based programmes need to be supported and supplemented by the government. Effective prevention programmes to minimize the adverse impact of the epidemic should be adopted. Such programmes should be gender specific as different information, skills and support may be required by men and women.¹¹

The government should also devise programmes and policies so that the inflicted persons and their families remain integral part of the communities.

Development Challenges & Modalities

The spread of the epidemic has brought to the centre-stage all the policies and programmes the governments had been following so far and forced them to rethink and recast them in the light of new realities. So far the policies in this direction have been followed in a haphazard manner and on an adhoc basis. Before devising any new policy, it is necessary to know the problem with all its dimensions. In fact, the gulf between what we know for the problem and the problem itself, and between the problem and the solution is widening. Government, particularly in India, is focussing on the prevention of AIDS and not looking at the rehabilitation of the victims. There is also no effective scheme to check the spread of virus. There is no public health sense to restrict the free movement of people with HIV or other communicable diseases. Communities all over the world are now harboring these infections, and curbing movement of people is not going to substantially reduce the risk of transmission. This is a lost model as there is no guarantee that a worker will not indulge in a high risk sexual behaviour at a later stage. The efforts should instead focus on education of communities against the epidemic to have a preventive effect. In fact, information and education are the main tools to achieve changed and responsible behaviour.

11 Ibid., at pp. 198-99.

To check the further spread of the virus among the workforce, the introduction of the pre-employment HIV tests on workers has been suggested by a section of the industry, both in the organised and unorganised sectors of the economy, as they are worried about the cost of ill health on the industrial growth. It is further been suggested that while nothing can be done about the existing employees with HIV/AIDS, because of strong unions and labour laws, new workers should be tested. However, such a move is discriminatory and will be violative of the constitutional guarantees provided to a citizen: equal protection of laws (Art.14), Prohibition of discrimination (Art.15), and equal opportunity in matters of public employment (Art.16). This will also be violative of a State's international obligation against discrimination. It is further significant to note in this regard that "mandatory" HIV testing is usually taken to mean that testing is required only if the individual want to avail himself a particular right, service or opportunity. For instance, donors of blood will be subject to mandatory testing, but they do not have to volunteer for blood donation.

As an alternative to pre-employment testing, industry could utilise its vast resources to set in place a programme of peer education on the campus, condom promotion and an affective care and management programme for sexually transmitted diseases to prevent HIV/AIDS. Rather than going for the pre-employment tests, industry may target at the areas where sex workers operate because most of the clientele of the sex workers are from their work force. These commercial sex workers, after all, form a part of the community around their locality. Furthermore to trace a few HIV positive persons, it makes no economic sense to screen several hundred persons in pre-employment testing. Moreover, demanding at HIV testing from an employee entering the organisation is also not humane.

Whatever programme is adopted to meet the challenge of the epidemic and with a development objective, should address the critical needs of those inflicted with the virus. It is necessary that the benefits of these programmes reach to them and they become the equal partners in carrying forward these programmes. Their human rights must be respected and protected. And the importance of health care in promoting the human rights cannot be over-emphasized. It is also necessary to ensure that the inflicted persons continues to be gainfully employed. Since there is every danger that there may be a rapid need of replacement at the workplace because of the illness and early death of the active labour force, resources should be generated and allocated to meet the need of replacement. Nevertheless, to meet the future need of replacement, the emphasis should be on preventive measures. There should also be a legal response to meet the challenge of development threatened by the epidemic, and laws should be framed to give meaning to the government policies and programmes effectively and there should not be any transgression of these laws.

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9. Ibid., at p. 197.
10. Ibid., at pp.198-99.