

Disease, Damsel and Dict

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This paper addresses legal relationship between 'AIDS' and 'Woman'. Before we embark upon the subject matter, it is essential to talk about AIDS itself. The AIDS problem is a multi dimensional one, requiring in-depth study from a multi faceted prism, the individual facts being medical,ethical, economical, humanitarian, social,spiritual,psychological,legal and so on .Often these facts overlap and interact.

This disabling,dreaded and deadly disease raises a number of challenging medicolegal, social-legal and ethical-legal problems which have clouded the minds of even the intelligentsia thus highlighting an urgent need for reflection, understanding, study, reasoning, analytical dissection, and above all an open dialogue.

For example, the impact of HIV in developing countries is magnified by poverty, illiteracy and under development in general which in turn largely circumvent the effectivity of health care schemes and health education programmes, thereby reducing the chances of limiting the spread of disease in the community at large. In the meanwhile, while we prevaricate and indulge our complacency, global studies shoot out statistics that the toll of HIV infection is rising rapidly, specially in developing countries, with India fast becoming the AIDS capital of Asia.

Reports from India show that HIV is making rapid inroads. Over one lakh blood donations tested in Bombay in 1989 reveal that 0.14 percent of those who gave blood voluntarily were HIV positive.

The positive percentage was as high as 2.4 amongst donors who sell blood, generally as a means of livelihood¹.

The worst dilemma before us is that till today even money cannot buy a cure for AIDS, although in the North, advances in drug therapy have made it possible to postpone progression in adults from the stage of infection without symptoms to clinical AIDS. Intensive research to prolong the survival of children with AIDS is now under way. The hope of a possible vaccine and the optimism shown of being able to arrest the monster, are often diminished with factual data of the global spread of the virus which it is doing much faster than the minds of scientists for its prevention. The World Health Organisation are hopeful of an effective vaccine by the end of the century. However they also estimate that by the time such a vaccine does see the light of the day, at least 20 million people world wide would have been affected by the rampantly growing organism. Even so, it has to be

1 S Apte and others, "prevalence of anti-HIV antibodies among blood donors in Bombay", *abstract of the sixth International Conference on AIDS*, Sanfransisco, June 1990 F C 611

borne in mind that on account of the long latent period for the transference of the symptoms from HIV to full blown AIDS, estimates of AIDS cases can at best touch an approximation. Therefore the subject matter of AIDS, estimates of AIDS cases can at best approximation. Therefore the subject matter of AIDS as it needs to be presently projected is from the point of prevention rather than cure.

AIDS is a communicable viral disease which destroys the power of the human body to protect itself against various other diseases. It is caused by the Human Immun-Deficiency Virus (HIV). The important point to note is that the virus after entering the human body slowly and gradually over a period of years destroys the body's defence mechanism or the immunity system. Therefore, there is a latent period which may extend through several years when a person infected with HIV gets weakened and can develop AIDS.

The common means of transmission of HIV virus is through blood and seminal or vaginal fluid. It is generally transmitted via unprotected physical relation with an infected person; via impure or infected blood transfusions and use of infected needles, syringes or surgical instruments or again via infected mother to new born baby during pregnancy or at birth. Pronounced heterosexual promiscuity is believed to be largely responsible for spread of HIV in the countries as men and women were found to be equally affected. In short, it can safely be adduced that HIV needs a nutritive medium and therefore cannot survive outside the body.

It is true that the stage of disease often determines the risk of transmission of the infection. Some individual may be most infectious just after becoming infected themselves by the HIV although they may yet not have developed the symptoms themselves. On the other hand, those exhibiting symptoms may not be infective to others. Therefore, development of the symptoms does not seem to bear a significant correlation to the infectious stage of the disease making it probable that the person most infectious may be a person who himself knows not his own plight and also is blissfully ignorant about the grave misery he may cause to his partner.

Within this framework of variability, there are some points of certainty about the actual mechanics of HIV transmission. Men appear to pass on HIV more efficiently than women during unprotected physical relation, making women more likely to be infected by men than men to be infected by women, twice as likely say some researchers².

The clinical signs and symptoms of the disease are: A mild bout of illness often follows infection; then there may be a latent asymptomatic period which may even extend to about 10 years, although during this period too, laboratory tests would indicate that the body's immune system is weakening all the time. During this phase, oral thrush and skin problems are not uncommon. This is then followed by more serious symptoms such as night sweats, weight loss and diarrhea or major illnesses such as prolonged fever, severe form of

2 A Johnson and M Laga, "*Homosexual transmission*", in *HIV and AIDS*, Chapter 2, p. 14-17, (UK Health Department and Health Education Authority, November 1989)

pneumonia, *peumocystic carinii*(PCP) or an aggressive tumor *Kaposi's sarcoma*(KS), various other opportunistic infections which attack several organs including the brain. This is the most critical stage of an AIDS patient.

In the case of women, early manifestations of HIV infection may include, in additions to the above mentioned symptoms, persisent gynaecological complaints such as cervical inflammation, vaginal thrush and possibly pelvic inflammatory disease(PID). Genital warts are also more commonly detected among HIV positive women.

The global epidemiological data shown that 1/3rd of HIV infected persons are women; infants born to these women are infected to the extent of 26-50% the life span does not exted beyond the second year in nearly 50% of such unfortunate infected toddlers; about one-fifty of all people who have developed AIDS to date are in their twenties³. Yet, due to the latent period of development from HIV infections to AIDS, it is understandable, that most must have been affected in their teens. The spread of AIDS in women and children has been found to be relatively slower. Even so, estimates of AIDS cases can at best touch an approximation, bearing in mind the latent period for the development of the disease from HIV positive to full blown AIDS.

At this juncture, it is necessary to cursorily go through a few important social and economic problems encountered by the diseased which are relevant to deciding upon the legal protective measures for and against the inflicted persons vis-avis the society and more so the women. The difficulties that a woman has to face during pregnancy when she gets the death knell that she is HIV positive are multiplied ten fold when she is educated on the grave risk of infecting her unborn babe with this dreaded disease. It is by now an established fact that maternal HIV infec tion oft times leades to pre-mature delivery and intra uterine growth retardation. Thus she is faced with the double jeopardy of having to deal with her own malady as well as the grave danger that her progeny might also be infected.

And this is not all. Pregnancy itself weakens the immune system of a woman iccreasing her vulnerability to several infections caused by bacteria, for example salmonella, which causes a type of food poisoning; and viruses such as herpes simple, the source of cold sores or genital herpes and herpes zoster which causes chicken pox or shingoes and their accompanying complications.

It is indeed known that progression of HIV infection is rapid in infancy and peditric AIDS has a rapid fatal prognosis. Therefore the fate of the unborn child has today become a major concern of HIV infection during pregnancy. A baby whose mother is HIV positive

3 According to "*AIDS and Youth*", a leaflet prepared for the 1989 WHO World Health Assembly, WO, 1989

can be infected in three ways: in the womb before birth (HIV has been detected very early when the fetus is infected by blood through the blood of the umbilical cord); possibly during delivery by the mother's infected blood or vaginal secretions; or in a very few documented cases, from breast feeding⁴.

Available data indicates that atleast 25% of infants are infected at birth and a large percentage of infected kids succumb to the disease within the first five years of age. The doors of death are opened wide before them even before they can enter fullness of life. The unaffected 75% are likely to be orphaned before they reach five years of age and thereby suffer all its consequential harsh realities.

The doom of an AIDS affected small girl child is still more heart wrenching. Her calamitous conditions is in turn intimately correlated to her mother suffering from AIDS from whom it is transmitted and therefore co-related to the issue of woman and AIDS. Lets take an example: a young girl child dies before her fifth birth day, the only crime of this toddler being that she is born of a father who is a drug addict and who became infected with HIV while injecting himself some drug using a contaminated needle and syringe. He in turn passed on the infection to his wife. The little child was thus born infected with AIDS transmitted to her by her mother who herself acquired it due to the deadly use of intravenous drugs and unprotected physical relation forced on her by the diseased husband.

In addition because HIV infection attacks the body's immune mechanism, scientists have been increasingly concerned that pregnancy would automatically accelerate an infected woman's progression from HIV to AIDS. The current view, however, is less harsh in this prediction but what ever it be, the fate of an HIV infected pregnant woman is like an accused who always lives with a democles sword not knowing when the final conviction and punishment would befall her, in this case, the open sword pointing to the possibility of development of AIDS, the birth of an infected child and the entire rigmarole of social stigma, economic diaster and so on and so forth.

Under these circumstances, an awareness of the magnitude of the problem is essential for realisation to dawn on the world that hard core methodologies aiming at the root cause of the problem have to be found and attacked.

In this era of fantastic medico-scientific advancement, when health for all by 2000 A.D. is being aimed at by the nations, the alarming spread of AIDS has rightly focused the attention of many. As usual, in any crisis, we look to law and medicine, the two holy implements of service to humanity, for providing solutions in the context of increasing complexities.

4 S Blanche and other, "A prospective study of infants born to women seropositive for HIV", 320, No 25, *New England Journal of Medicine*, (22 June 1989),

As it is, the baffling dilemma of AIDS has enmeshed the physicians the world over in their own web of medical expertise, engulfing them with problems never encountered before. And the legal giants are flabbergasted with the problem of finding out some ways of protecting the innocent from the diseased, may be starting from the arena of matrimony.

For example: Should those with HIV positive be allowed to enter into matrimonial alliance, knowing full well the risk of transmission of HIV to the healthy spouse, the inability of a normal physical relation and the grave danger of transmission of the infection to the future offspring of the marriage?

If a person suffering from AIDS or Aids-related-diseases(ARD) or even asymptomatic HIV infection, knowingly enters into a matrimonial tie without disclosing the affliction to the normal spouse, should it not be recognised as a crime, a matrimonial fraud?

How should law aid such victims of fraud?

Should an AIDS victim be kept alive by indefinite medication?

Knowing the high incidence of prenatal transmission and fact that in all probability the child born to an AIDS affected mother will also carry the infection and be doomed to death bed before he can bloom to full life, there being no effective medication for treatment so far, should such an expectant woman not be advised to undergo abortion rather than bring into the world a liability? In case a child is born, in all probability he will have to grow up as an orphan and the management of life of an AIDS affected child orphan with compound psychological insecurity, would be, to say the least, a most devastating responsibility.

The discussion on AIDS and woman would be simpler if divided into the impact of AIDS on a married woman (which includes a woman who is entering the institution of matrimony) and that on a single woman.

Let us examine a few possible situations in the former category:

Consider this situation: A young girl with all the bright dreams of a rosy future enters into a marriage bond praying that the heavens be hers till death do us part. Possibility A: She is in blissful ignorance of the affliction of her husband who has already tested HIV positive but which fact has been skillfully hidden from her. They enter into a normal relation and she bears her first child. The virus which crosses through the placental barrier and infects the innocent victim has already done its job and by this time, she has been blessed with the virus by him. The latent period for HIV to progress to AIDS for the child being relatively small, the child develops AIDS within the first four years and dies.

This young girl who has borne her first little one lives to see the death of her only child. By now she learns about the HIV infection that took away the life of her treasure and knows that she cannot ever risk having a child again. Question arises: how should law extend its hands to her since in reality it is the husband who has, knowingly and fraudulently, infected her initially by marrying her concealing his affliction? No divorce can compensate or solve the problem of this young girl as she has not only got diseased for life but has lost all hopes

of the rosy future which she expected with her marriage, lost all hopes of ever being a mother, a just desire of every woman who enters the portals of matrimony.

Should the husband be criminally prosecuted for having committed such a fraud in marriage? Or, on the other hand, should he be allowed to go scotfree on mercy grounds of already being a victim of the draconian disease and his awaiting death in any case.

In case mercy handling is the answer, is it not equivalent to permitting crime against an innocent victim time and again? What would be the deterrent to other similar men from ruining the lives of young innocent victims at the very thresh hold of their bloom?

Let us take Possibility B: Suppose in the above case, the husband dies, since in any case, he nurtured the HIV virus for quite a few years prior to the marriage and now suffers from full blown AIDS. The Young girl would acquire the status of widowhood before ever having had the chance to bloom. Nor can she expect a sympathetic security from her insensitive-in-laws for whom she is now an outcast and a burdensome mouth to feed. If in the meanwhile she has already caught the disease, who is going to look after her for the rest of her diseased life? Does the law hold any hope for her?

Possibility C: The husband suffers from HIV infection of which he was not aware. The couple leads a normal life for some time till the knowledge dawns on them both and perhaps that of the immediate relatives. More often than not, the in-laws would blamer her for ruining the life of their son .It is not impossible that even the husband will turn around and blamer her for his misery. Depression and gloom cast their shadows not only on the couple but two households who have come together to celebrae the marriage. there is always the scare of becoming a young widow. But who is to be blamed for this misery?

The main aim of this paper is no doubt to focus on the need to prevent unions where one partner is HIV infected. The ancient wisdom of man kind has always been that prevention is better than cure. To prevent marriages doomed to their end from their very inception would be one of the greatest service that the legislators can render to society and one of the greatest achievements of each one of us gathered here. But before I embark upon suggestions and recommendations in general, let me deal with one more subject of great concern, the single woman, for no discussion on Woman and AIDS would indeed be complete without analysing the fate of a single woman if so affected.

A single woman who is diagnosed HIV positive will find herself in the middle of a kind of social death, says a young African woman with HIV⁵. In the first place, being unable to conform to the traditional laws of marriage she is regarded as a failure. Sec ondly, life becomes much more difficult as the woman becomes reticent and introvert constantly avoiding company. She lacks the security and feeling of being wanted which is the basic requirement of every human being, specially the sick and diseased. Under these circumstances, she bcomes an economic burden, an apparition who cannot find employ-

5 Information from HIV-positive woman, anonymous, August 1990

ment or means of supporting herself. Even if she succeeds in finding one, she has to shun even her associates, for once it leaks out that she is HIV positive, in all probability, not only will she lose her job but even her reputation and society would surely raise its ugly head to adopt an attitude of social apartheid against her.

These issues must necessarily land up with several inconclusive academic debates but let us hope that they will not see the doom as has been the fate of many other ethico medico legal issues sought to be solved with debates but which have remained unsolved.

It needs to be emphasised that laws must continuously and systematically cope with the demands of a fast changing and developing world. In every case, law must be addressed to the necessities of times. To make a beginning, some recommendations are thrown open for deliberations this very day. I suggest that to begin the process, some innovative revolutionary mechanisms be introduced forthwith in the matrimonial laws.

The specific provisions so recommended for introduction on top priority basis are:

1. Registration of marriage must be made compulsory and non registration of marriage must *ipso-facto* declare the marriage *non-est*.

Isn't it a paradox that before an applicant is taken up on a job, compulsory health check up and medical certificate are prescribed as mandatory. You will readily agree that such employments are neither life long unions nor institutions which can lead to any progeny and yet these precautions are taken, then why have we left out the important life unions from this essential ingredient? Therefore I suggest :

2. Registration should require compulsory medical check up in all cases, including HIV, for, factually, a HIV positive person appears normal in every other way, the disease having a latent period of very many years.
3. The health check up should be done in competent laboratories by government authorised doctors and/or government hospitals specially equipped for the investigations.
4. In case of wrong certification, including the cases of HIV infection, severe punishment should be meted out to the culprit doctor/technicians expeditiously.
5. The provisions should be propagated through radio, TV, and other advanced communication technology in order to reach out the information regarding legislation to every nook and corner of rural India where illiteracy, ignorance and poverty abound.

Such and many more innovations are worth an open dialogue. At first, they may sound revolutionary and may seem harsh, but I'm sure, in cooler moments, you will see the logic in them and brand them as 'compassionate to innocents' and filled with inherent advantages. Of course, compulsory registration of marriage should in any case be introduced, for it has the clear cut advantage of establishing the relationship of husband and wife without any unnecessary hassles now required to be gone through specially in

matters involving matrimonial crimes. As of today, a number of cases are pending before the judiciary only or proving whether or not the parties are validly married.

It stands to reason that with no immediate prospect of a widely available vaccine or cure for HIV, the key to controlling the AIDS epidemic lies in regulating human behaviour. The basic rights of an AIDS victim in the form of right to life, right to live with human dignity, right to employment and the whole gamut of human rights need to be discussed thread bare at appropriate forums.

It cannot be gainsaid that a pathway to the solution to these problems would definitely require the active concern and concerted efforts of legal experts who have upto now remained almost hand-tied and lip-tied. When faced with pertinent questions, they seem to waiver at the very start as to how far law could and should invade the ethico – medico field of the medical profession. However, time has come for every faculty to act and not prevaricate, for the alarming spread of the disease is continuously giving out a clarion call to all concerned to awake, arise and act and save humanity from pain, suffering and doom.