

“Health & HIV/AIDS”- Issue of Mandatory HIV Testing & Need for Effective Global Health Governance Mechanisms to Safeguard Human Rights & to Fight against Stigma & Discrimination

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ABSTRACT

Objective: The main objective of this paper is to discuss and bring out the consequences of introducing the mandatory HIV testing strategy in some countries and also highlight the advantages of undergoing HIV testing.

The paper elaborates on certain social & security issues like violation of basic human rights, increased stigma & discrimination of people who are affected. Countries like Saudi Arabia, Bahrain, UAE have enacted laws mandating premarital testing, provinces in China, Ethiopia, India & DR Congo have introduced or passed similar laws or regulations. The paper also elaborates on pros & cons of this testing strategy and the rationality in choosing this strategy among pregnant women & premarital. A mandatory approach to testing and treatment has the potential to significantly reduce perinatal transmission of HIV, it is definitely not the effective and acceptable choice by everyone as the approach is opposing to the rights based approach.

Conclusions: There is an urgent need for effective global health governance mechanisms/institutions that critically analyses the pros & cons of such controversial strategies before they are enacted ignoring the threats & insecurity they bring to the people who are HIV positive. Since the issues like Human Rights, Stigma & discrimination issues are not just bound by geographical borders, these issues should be given a priority at global level thereby providing security, stigma- free & non discriminative conducive environment for the HIV positives.

Keywords: Mandatory HIV testing, premarital & prenatal, Health & HIV/AIDS, Stigma & discrimination, Human Rights, Global Health Governance

1. INTRODUCTION

Global HIV incidence may have peaked¹ but calls for scaling up prevention have not diminished. The World Health Organization (2011) reported that there were 2.6 million new HIV infections in 2009 alone, contributing to the current global prevalence of 33.3 million. With the number of

new infections worldwide remaining high, some low prevalent regions experiencing high incidences of HIV, there has been a pressure for more pragmatic approach to halt the epidemic with routine and mandatory testing gaining increasing attention.

When testing is done without the consent of the patient and the data could be linked to identify the person is called Mandatory testing. It is recommended only for screening of blood, semen, organs or tissues in order to prevent transmission of HIV to the recipient.

The US Centers for Disease Control and Prevention recently proposed a new approach for HIV testing in adults, adolescents and pregnant women under which the testing will be routinely offered in all health care settings. No signed consent from patients would be required under this new proposal; the general consent for medical care would be considered sufficient to encompass consent for HIV testing.^{2,3}

Former US President Bill Clinton has also lent support for mandatory HIV testing in countries where the prevalence rate is 5% or higher⁴. Political support for mandatory testing has been seen in countries like India, (especially Andhra Pradesh, Maharashtra, Kerala, Jharkhand and government of Goa) has proposed mandatory premarital testing and in China which plans to test all workers in the tourism industry.⁵ Mandatory HIV testing of pregnant women gained the support of the American Medical Association and was defended by most of the physicians on the Committee for the Care of Children and Adolescents with HIV infection.

A growing number of religious communities and national & local governments have adopted mandatory premarital HIV testing policies but they still remain controversial.

2. MANDATORY HIV TESTING & VARIOUS POPULATION GROUPS

The discussion & debate in this paper comes after reviewing available scientific literature on Mandatory HIV testing and from the author's vast field experience as State Epidemiologist under National AIDS Control Organization and also working at national level in India with FHI 360 for the key population (high risk groups) under the Avahan program funded by Bill & Melinda Gates Foundation. The next sections of this paper will have discussions about the pros and cons of mandatory HIV testing implemented among various population groups, its impact on human rights & privacy of the individual apart from other ethical considerations. The population can be divided into the following categories depending upon the risk of acquiring HIV infection

1. General population which also include pregnant women,
2. Bridge population (Truckers, migrant workers)
3. High Risk groups (Female Sex Workers, MSMs, IDUs,)
4. Population suffering from Sexually Transmitted Diseases (STDs).

Mandatory Testing is a must whenever there is screening for blood in blood banks, semen, organs & tissues or any other biological samples.

Mandatory testing among high risk groups especially Female sex workers, MSMs is not advised because it drives these people underground due to fear and stigmatization thereby making it more difficult to launch/ implement the interventions. In the control of HIV epidemic among these key population, its always better to have HIV testing voluntarily with

pre- test & post- test counseling ensuring informed consent, confidentiality & privacy of the individual.

There is also a debate about mandatory testing among the healthcare workers and routine mandatory HIV test should not be undertaken for the benefit of healthcare workers, rather more focus and emphasis should be put on the standard universal precautions which will be more beneficial because of the window period and other infections that are transmitted through blood like Hepatitis B & C.

The Mandatory HIV testing has become more popular especially for pregnant women in different countries depending upon the prevalence, availability of health services, ART etc. Apart from that even some governments have taken a step ahead to implement mandatory premarital HIV testing which has been implemented in some places.

3. PROS OF MANDATORY HIV TESTING AMONG PREGNANT WOMEN

Considering the growing epidemic especially in high prevalent countries/ regions, mandatory HIV testing during the prenatal period can be considered to tackle the growing epidemic.

From the perceived “more good” to the mothers and unborn/ fetuses, I support this testing strategy in these special zones as it has the following advantages.

i. By implementing this Mandatory HIV testing strategy and ensuring prompt treatment there is a great potential to reduce the perinatal transmission of HIV from mother to child. To defend the view that mandatory testing is morally required there is a need to meet certain conditions. If such programs are to be introduced then women must also have reasonable alternatives to compulsory testing & treatment⁶. But to advocate and continue these programs there must be accessibility & availability of medical care, medical personnel, Anti-Retroviral Treatment (ART) for the diagnosed patients.

ii. **Impact at broader Public Health level:** Since we all know that the ART, elective Cesarean section and Formula feeding can reduce the mother to child spread of HIV infection from 25% to 2%, still we have perinatal transmission as the mothers are unaware of their HIV status. E.g. in state of Andhra Pradesh in India, there was a new initiative called 0/7 which means zero infections by 2007 which was started to halt & reverse the epidemic and aimed to cover each & every pregnant woman in whole the community through the health workers and referring them to Voluntary Counseling & Testing Centers (VCTCs). This drive has resulted in increase in the testing & utilizing the counseling services rampantly. Even with such measures like counseling & free testing, some women still refuse to be tested during pregnancy placing themselves and the unborn baby at greater risk. But by implementing this mandatory testing, we can prevent these infections to their unborn babies/ fetuses. Though the best solution can be voluntary counseling & compliance to the advice but in reality it is always not possible.

iii. **Appreciating the Beneficence principle:** Like we have the Expanded Program of Immunization, where we immunize all babies/ children against the infectious diseases without paying importance to individual autonomy looking at the greater health benefit by

generating the herd immunity to the public. By doing this, infact we are protecting the child as well as the society/ public by preventing the transmission of the infectious diseases. If we apply the same logic for mandatory HIV testing for pregnant women, firstly the mother gets the benefit by enabling her to get the necessary help from the health care provider and initiate the ART and also to the fetus by decreasing the risk of transmission of HIV infection. Testing may also reduce the negative economic impact of HIV/AIDS on society on a long run.

4. ARGUMENTS AGAINST MANDATORY HIV TESTING AMONG PREGNANT WOMEN

4.1. Issues related to Privacy: By implementing mandatory testing and treatment of HIV positive pregnant women, there will be many concerns regarding the protection of her privacy and her social interactions in the society.

4.2. Issues of Stigma: With a possible or probable disclosure of status of HIV result, the women may has to suffer discrimination not just in terms of health services but also in her day to day activities of life in the community.

4.3. Issues of False Positives: There must be a certainty that these tests are accurate and subsequent steps taken should benefit both mother and baby without any serious effects. But if the certainty of these tests is questionable which is due the false positives then it will cause disastrous effects rather than doing good.

4.4. Issues related to hiding: These testing policies will drive the people at risk underground, probably discourage testing at all leading to spreading the infection rather than to stop the spread of HIV.

4.5. Doctor-Patient Relationship: Mandatory testing will result in significant impairment of doctor-patient relationship which is based purely on the sense of trust which ultimately depends on the ability to keep a secret related to patient's medical condition.

4.6. Treatment Inadequacy: Implementing mandatory HIV testing in some regions like Africa may not be feasible due to lack of continuous supply for ART, health/ hospital staff and inadequate use of health services. Unless there is a continued medical care, ART, there will be disastrous effects.

5. Mandatory Premarital HIV Testing (PHT):

i. The countries of Gulf Cooperation Council namely Bahrain, UAE and Saudi Arabia have enacted national laws and policies mandating premarital testing. Provinces of China, Ethiopia and Democratic Republic of Congo and local governments in five Indian states namely Andhra Pradesh, Kerala, Jharkhand, Goa and Maharashtra have introduced or passed similar laws or regulations⁷.

ii. In India, the proposal is not new and rationale to introduce is to make an attempt to protect women from contracting HIV from their husbands but there is no evidence that premarital mandatory testing is effective in preventing transmission.

iii. Infact if we look at the global scenario these mandatory PHT policies are being promoted and encouraged not only from the governments but also religious organizations and communities. I feel that mandatory PHT may not be an effective policy if its employed by governments for the sake of testing but it should be a part of the main strategy to address the problem of HIV including provision of treatment services, public awareness campaigns and working to improve the stigma and discrimination issues to accept the positives as part of the society.

6. ARGUMENTS AGAINST MANDATORY PREMARITAL HIV TESTING (PHT)

6.1. Ineffective in HIV prevention: Mandatory PMT definitely is not the effective and acceptable choice by everyone. The approach is opposing to the rights based approach which we are advocating & implementing in our HIV prevention programs. It is fundamentally a wrong assumption that an HIV test prior to marriage guarantees protection from HIV and doesn't address the fact that it can be contracted during marriage either by spouse, by extra-marital sex, blood transfusion or sharing needles etc. Moreover the negative test would lure the spouses into false sense of security of being protected from HIV and also reduce the ability of women to negotiate safe sex.

6.2. Violation of Human Rights: Mandatory testing overrides an individual's right to make decisions about their body and thereby violates their right to informed consent. There is a more serious risk of the HIV status disclosure of a person becoming public thereby violating their right to confidentiality. Moreover when there is a requirement that people must be negative in order to marry then it violates the internationally guaranteed human rights especially the right to marry and found a family.

In India and most of the developing countries in Asia & Africa the marriages are arranged with participation of prospective spouses' families and if a person tests positive then the results would be shared with everyone involved thus making it public which will have grave consequences.

6.3. Issue of Window Period: In most countries including India, we use the antibody test to detect HIV and the limitation is that there is a window period upto 90 days during which the antibodies remain at insignificant levels. So because of this a positive person will be tested negative and so the HIV transmission cannot be prevented when a person is tested during the window period.

6.4. Improper Counseling services: In mandatory testing, particularly for the people who test positive for HIV, the counseling mainly focuses on encouraging the discordant couples to call off/ cancel their wedding plans and its more of judgmental counseling. Apart from that the information on counseling for couples who are required to take premarital HIV test is very limited.

6.5. Stigma & Discrimination: Since the main social problem in HIV/AIDS is stigma which is present in almost all countries and its quite evident that people who test positive for HIV face increased discrimination in every aspect of life including their failed marriage prospects, employment, societal & family life. And to overcome this people may also avoid the test by obtaining fake certificates or by opting out of marriage

7. PROS OF MANDATORY PREMARITAL HIV TESTING

Premarital testing may reduce the new HIV infections by containing the infection within the population of people living with HIV. Many people argue that the requirement of mandatory premarital HIV test will encourage to practice moral behavior e.g not indulging in sex/ abstinence and fidelity after marriage which will help to slow the HIV infection.

Many religious institutions & women groups also believe that mandatory premarital HIV testing and a ban on discordant marriages will protect women from being infected with HIV. But the mandatory testing has no role in empowering the woman to select or object her partner which is more crucial for the development.

8. CONCLUSIONS

- i. There are indeed lots of benefits to individuals, women, children and society as early detection & treatment of HIV has been proven to be a successful way to improve not only the survival but also the quality of life of HIV positive patients.
- ii. There is an urgent need for an effective global health governance mechanism/ institutions that critically analyses the pros & cons of such controversial strategy before the law is enacted ignoring the threats & insecurity it brings to the people who are HIV positive.
- iii. Since the issues like Human Rights, Stigma & discrimination issues are not just bound by geographical borders, these issues should be given a priority at global level thereby providing security, stigma- free & non discriminative conducive environment for the HIV positives.
- iv. In places with high prevalence, people have come to witness the benefits of early detection which eventually may help to overcome the stigma and its high time that we should fight for stigma & discrimination and safeguarding the human rights of all individuals.

9. RECOMMENDATIONS

- i. As we have seen and discussed the cons or arguments against mandatory HIV testing where there is violation of human rights, confidentiality, privacy etc the governments should focus more to tackle the epidemic in a more broader way.

ii. Governments/ Institutions should focus on rights based approach and prohibit the universal mandatory testing and pay more attention and install more efforts to expand the access to VCTs, ARTs, linkages to other services and enact laws to fight Stigma & discrimination.

iii. There is an urgent need to enact the correct laws and policies to safeguard the human rights and for community research to come-up with more successful strategies which are site/ country specific rather than copying from others.

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