

CONTROVERSY

Doctors do not have the right to refuse treatment to HIV-positive patients

ANANT PHADKE

Centre for Enquiry into Health and Allied Themes (CEHAT), 8, Amey Ashish Co-operative Housing Society, Near Kokan Express Hotel, off Karve Road, Kothrud, Pune 411029, India. e-mail: amol_p@vsnl.com

There is no doubt that the human immunodeficiency virus (HIV) epidemic has added to the professional hazards of some doctors and other health professionals. HIV infection is fatal and without a cure, though there are chances that it can be eradicated if drug therapy is started immediately after the onset of the infection. Hence, it is quite natural that medical professionals are afraid of acquiring HIV infection from patients. This issue of risk to medical professionals is serious. Despite these facts, I believe doctors and hospitals should not be allowed to refuse treatment to patients for the reason that they are HIV positive.

Unscientific and unethical policy

The boycott policy is unscientific. It is neither an effective way to slow down the HIV epidemic nor does it achieve its purported aim of protecting doctors from being infected by HIV-positive patients.

First, doctors will certainly come in contact with an HIV-positive patient's blood in emergency situations, before the patient undergoes a blood test. In non-emergency situations, the attending staff will come in contact with the blood, urine and stools of patients who are HIV infected before they are tested.

Second, a test conducted in the early stages of HIV infection will not show a positive result. During this 'window period' the person can transmit the infection to others, despite a negative test result. It is for this reason that all health professionals are advised to take universal precautions and assume that all patients they treat are HIV-positive. Overall, the boycott policy is based on the irrational panic of doctors.

Limited grounds to refuse treatment

There are only a few grounds on which medical professionals can refuse treatment to a patient. One is when the patient refuses to follow the treatment advised by the doctor. Another is when a patient already under the care of one doctor approaches another for treatment. Such patients cannot be accepted unless they are referred by their first doctor, or they leave the care of the first doctor. Finally, a patient whose treatment is beyond the ex-

pertise of the doctor can be directed to an expert.

In a capitalist society, however, other considerations creep in. Since medical care is a commodity, laws of the market cast their shadow on medical ethics. Thus, a doctor can refuse patients if they cannot pay his fees, or if they approach the doctor outside his consultation timings (emergency situations excluded). But if a patient approaches the doctor, is ready to pay the fees and has an illness which is not beyond the expertise of the doctor, the doctor must accept the patient. This duty towards the patient is underscored by the fact that the medical profession is a noble one and doctors should not refuse any patient who is ready to follow the basic rules of the doctor–patient relationship.

It has been argued that doctors have a right to refuse to enter into a contract with any given patient, for whatever reason, just as other professionals have this right. I think that this is a misinterpretation of the right of the doctor as the seller of a medical service. The Medical Council of India has limited the rights of the patient to be treated by a particular doctor to the conditions mentioned above. Even with the limited framework of such ethics in a capitalist society, it would be inhumane and unethical for a doctor to refuse any patient on any other grounds.

Even in the case of a shopkeeper, so long as the buyer approaches during business hours and is ready to pay a reasonable price for the available commodities, the shopkeeper cannot turn away the buyer. It is true that a profession is different from a business, but a claim towards the doctor's unlimited right to refuse to enter into a contract with a patient has no roots in the logic of the specificities of the medical profession.

The debate between health activists and doctors

In the proposed 'Maharashtra Clinical Establishments (MCE) Act, 2001' (which is a modified version of the current Bombay Nursing Homes Registration Act, 1949) the section 'Obligations of Clinical Establishment' specifies the obligations that every clinical establishment will have to fulfil. In this section, the draft says, 'The clinical establishment shall not refuse admission of any patient suffer-

ing from human immunodeficiency virus (HIV) infection or acquired immunodeficiency syndrome (AIDS).’

Actually, the government cannot make it compulsory for all doctors to treat AIDS patients. Doctors who do not have the necessary expertise cannot be made to treat AIDS patients. On the contrary, such doctors can be legally punished for treating AIDS patients. The government wants to make legal provisions to ensure that HIV-positive persons seeking medical treatment for some other condition are not discriminated against. The formulation quoted above from the draft of the forthcoming MCE Act, 2001 needs to be changed accordingly.

Many doctors are opposed to this provision. CEHAT took the initiative to convene a meeting of doctors and health activists to discuss such controversial provisions in the draft Act. Dr Ketan Parikh of the Association of Medical Consultants (AMC), Mumbai, said that though he himself does not refuse HIV-positive patients, he would strongly argue in favour of the right of doctors to refuse a patient on the grounds of HIV positivity (1). All the health activists strongly argued in favour of the right of the HIV-positive person not to be discriminated against. Our argument has been outlined above.

The doctors put forth a practical difficulty. They said that their staff would not treat HIV-positive patients properly even if they themselves were willing to treat such patients. However, one senior consultant pointed out that, in his experience, many doctors have an irrational phobia about treating any HIV-positive patient. He argued that if doctors themselves behave in a non-discriminatory way, paramedics tend to follow their example.

Health activists conceded that some doctors face this difficulty. They suggested a way out. A systematic educational programme in the form of a certificate course can be launched to orient all health professionals and remove their excessive anxiety, based on ignorance, about the occupational risk of HIV transmission to health professionals. This can be organised in such a way that it covers all health professionals in the state within two

years. After two years, no clinical establishment would be permitted to employ personnel who have not received a certificate. Representatives of the AMC finally agreed to this suggestion. The consensus statement was: ‘Refusal to entertain any patient who also has HIV infection should not be allowed. But it cannot be made obligatory that all doctors must treat all patients for HIV disease, as this treatment is many a times a specialist job which not every doctor would be able to handle competently.’

Finding rational, practical solutions

The government, with the help of concerned experts in the field, including non-governmental organisations (NGOs), should prepare standard orientation courses on the care of HIV-positive patients, for different types of medical care workers ranging from doctors to attendants. Such courses would include the basics of HIV/AIDS, including its social aspects, universal precautions, and the duty of doctors and other medical professionals towards HIV-positive patients. This course should be publicly funded. Half the funds can come from the service charges collected from medical establishments under the MCE Act. The Maharashtra government must set up adequate facilities so that all medical workers in these establishments can undergo this course within a year after the enforcement of this amended Act and all medical workers must register themselves to undergo this course within this time. As soon as all the staff of an establishment complete the course, it must implement a policy ensuring that there is no discrimination against HIV-positive patients. After two years, no medical establishment may employ medical staff who have not undergone this certificate course.

This debate shows that even the most enlightened, rational doctors tend to argue the case of average medical professionals. However, faced with rational, alternative arguments, they can agree to rational, practical solutions that can emerge during a dialogue.

Reference

1. Parikh K. The right to refuse treatment. *Issues in Medical Ethics* 2003;11:75–76