



An analysis in Aids and international law

S.Sreenivasa Rao,

Research Scholar, Dr.B.R.Ambedkar College of Law, Andhra University,
Visakhapatnam, 530016.

Abstract : *The acquired immunodeficiency syndrome (AIDS) epidemic poses a serious threat to public health ,but its impact goes far beyond health. .The burden of the disease in the united states falls predominantly on disfavoured populations intravenous drug users and gay men. Moreover, racial minorities –Africa, Americans and Hispanics are disproportionately burdened by the disease .Although HIV infection is spreading more rapidly among heterosexuals , they account for a relatively small section of the infected population.*

Key Words: *AIDS, Health ,Infection, population.*

Introduction

The UN Charter, which is modelled after the constitution of the united states, provides in Article 55 that the UN should promote, and all countries should respect, the fundamental rights of individuals regardless of their race, sex, language or religion. Shortly after promulgation of the UN charter, a Universal Declaration of Human Rights was unanimously enacted by the UN general assembly.

Article 1 of the Universal Declaration states that that all persons are born free and equal in diignity and rights. Article 2 underscores this by stating that no one is to be discriminated against by reason of their race, color, sex, language, religion, political opinion, national or social origin, property, birth or other status.

For purposes of AIDS Advocacy ,Article 2 is an important tool . Because of its instruction that persons are not to be discriminated against because of their" status " the reach of article 2, and thus of the Universal Declaration , goes further than that that of Article 55 of the UN Charter , which identifies only the characteristics of race, sex, language and

religion as improper bases of discrimination. Tthe universal declaration has several other articles than also speak to AIDS issues.¹

Article 7 states that all persons are equal before the law and may not be discriminated against by the law. Article 9 states that that no one may be exiled in an arbitrary fashion, while Article 12 extends to all persons the right to be free from arbitrary interferences with their privacy. Article 13(2) ensures the right to travel across national borders.

In unison these articles provide a powerful command to nations that they respect the privacy of persons with AIDS, In addition, articles 9 and 13 clearly prohibit countries from either advocating or implementing programs to keep persons with AIDS out of their territory or confining them to remote quarantine centers.

The most important articles ,however are Articles 21(2), 23(!) and 25(1). Article 21(2)states that everyone has the right of equal access to public services in his or her country,Article23(!) extends the right to work and to be free from unemployment to all people Finally,



article 25(1) states that people have the right to a standard of living adequate for the health and well being of themselves and their families, including food, clothing, housing, medical care and necessary social services. moreover Article 25(1) states that all persons have the right to security in the event that they are unable to provide for themselves due to circumstances beyond his Control Taken together, Articles 21(2), 23(1) and 25(1) can easily be read as requiring nations to ensure that persons with AIDS are not discriminated against in the workplace, obtain adequate medical care, and have a fair share of public funds allocated for AIDS research²

United states immigration law

Because of the current state of international law, the legal problems faced by people with AIDS must be addressed through domestic legal systems, one key area that has received extensive attention is the rights of such individuals to engage in international travel and to relocate from one country to another, either on a temporary or permanent basis. Because the United States has had a highly visible role in these matters, a review of its policies provides useful insight on the principal considerations that come into play whenever people with AIDS seek to travel across national borders,

Basic statutory framework

United States immigration policy is contained in two key pieces of legislation the Immigration and the National Policy Act of 1953 (INA) and Immigration and Reform Control Act of 1986 (IRCA). Although other statutes also come into play, the INA and the IRCA provide the basic statutory framework of American immigration policy. The INA and IRCA

have been enacted pursuant to Congress perceived to have power to exclusively regulate immigration. Although article 1, section 8, clause 4 of the United States Constitution provides that Congress has the power to establish a "Uniform Rule of Naturalization" the Constitution is silent with respect to Congress power to regulate the admission and expulsion of aliens. In a long time of cases, however, the United States Supreme Court has held, based on a combination of international and constitutional law principles, that Congress also enjoys the exclusive power to control immigration. Because of these cases no state may pass or attempt to enforce legislation that affects immigration or naturalization matters.

Responsibility for immigration matters is divided among the United States Departments of State, Justice, Labor and Health and Human Services. The State Department is responsible for issuing immigrant visas. Any alien who wishes to enter the United States must obtain a visa indicating that they have been found eligible to enter the United States. There are many different types of visas, although all visas fall into one of two categories: those that are subject to numerical limits and those that are not. A very typical sort of visa is the B-2 tourist visa. Aliens who wish to visit the United States for short periods of time (such as while travelling on vacation) must obtain a B-2 visa from the United States embassy or consulate located in their home country. Embassies and consulates are the responsibility of the State Department and are staffed by the State Department employees³.

Classification of HIV as dangerous contagious disease.



Through its history, the united states has sought to exclude certain types of aliens thought to pose special risks . currently , the INA lists thirty- three types of aliens who are to be excluded,

These categories are very comprehensive and include beggars ,polygamists , prostitutes ,stowaways ,drug users ,illiterates , anarchists , ,certain foreign medical school graduates and Nazi war criminals .There also is category for those aliens” who are inflicted with and any dangerous contagious disease+ .

Global efforts

Aids has been the subject of government action in many countries. At the same time a number of international organizations have undertaken AIDS – related progress and initiatives.

Foreign countries

Response to aids in countries other than the united states have ranged from reasonable to illogical. In many countries, quarantine proposals have been put forward one means of dealing with AIDS, cuba England and Australia, for example, have each adopted some form of quarantine for persons with AIDS , By far , Cuba’s method of dealing with HIV- infected individuals in the harshest in the world. persons who are found to be suffering from HIV are taken into permanent custody and live out their final days o a farm outside Havana. A similar proposal was made in Sweden but was shelved after intense public opposition arose to the idea⁴

In the City of klagenfurt, Austria, an attempt to refuse work permits to foreigners who could not prove that they were HIV- negative failed .But in the state of Bavaria in Germany, a law requiring certain foreigners to submit

HIV screening tests was passed. A short time later , an American citizen was sentenced , to two years in prison for having practiced unsafe sex after he learned that he had AIDS., In Bangladesh , the government at one point considered banning the importation of used clothes from the united states for fear that the clothes might spread AIDS .In Japan , there is a lingering belief among some members of the public that AIDS can be transmitted by foreigners through the sharing of w swimming pools and rest rooms

.In addition to these formal practices , a number of countries have adopted unofficial policies ,designed to stem the spread of AIDS by foreigners. When the Chinese government learned that an American citizen in Beijing had AIDS ,it ordered to leave the country. when the government was unable to get international airlines to cooperate with it and many tourist officials worried that visitors would shun the Carnival , the effort was dropped,

International organizations

Numerous international organizations now are involved in the fight against AIDS .Chief among them is the World Health Organisation (WHO) . The WHO is a specialized agency within the United Nations system. It was created in 1948 to coordinate international health efforts and to replace what had become an unwieldy collection of other health organizations , such as the office international Hygiene Publique, The Health Organisation of the League of Nations and the Pan-American sanitary organization.

In 1983, WHO at its headquarters in Geneva ,Switerland , began reviewing the existing information on AIDS. In 1984



regional WHO meetings were organized in Europe and in the America .In 1985,the WHO convened the first international congress on AIDS In Atlanta in cooperation with the CDC .Following the congress a network of twenty- six WHO collaborating centers were established . In 1986, a second international congress on AIDS was held by the WHO in Paris, followed by third congress in 1987 In Washington, D. C . since then, the WHO has sponsored or co-sponsored a number of other international aids conferences at various sites around the world, .including an international gathering in London in 1988 .Many observers believe that the London conference was a critical turning point in the effort to gain widespread governmental agreement on the need to move aggressively against AIDS.

By the end of 1986,the WHO'S expanding role in the coordination of the international effort against AIDS required greater administrative expertise . As a result, the WHO created a special programme on aids to bring together within one department all of its aids related activities, the program's name subsequently was changed to the Global programme on AIDS (GPA.) Today, the GPA is universally acknowledged as being the worlds" preeminent AIDS organization.⁵

AIDS EDUCATION

From the earliest moments of the HIV epidemic, educational messages were influenced not only by public health need , but also by morality and politics . consequently federal funds could not be used to provide AIDS prevention materials that" promote or encourage" homosexual activities or used to support educational content that could be"

by a reasonable person to be offensive to most educated adults". Similar legislation has been enacted in the states.

The conflict between public health and morals is no where more evident than in educational programmes in schools . A devout religious group challenged New York's mandatory AIDS. education programme as a violation of its freedom of religion .New york's highest court ordered a full hearing on the groups challenges because" we cannot summarily brush aside the passionate assertions of a unique religious group that exposure to [Aids Education] could destroy the foundations of their faith" . in another case , a New york court invalidated a free in school children condom distribution programme .The court found that condom distribution programme. the court found that condom distribution violated the parents right to raise their children as they saw fit. In addition to being educational , the programme was considered a public health service and therefore , required parental consent.

THE CRIMINAL LAW

Numerous prosecution for risking transmission of HIV have been undertaken in the united states. ManY of these cases have been brought under the general criminal law for attempted murder ,assault with a dangerous Of deadly weapon or simple or aggravated assault. From a public health perspective ,a threshold question in assessing the value of prosecuting persons infected with HIV is whether their behavior poses a significant risk of viral transmission. Several cases involve sexual assaults needle- sharing , or prostitution where there is a risk of transmission . The majority of cases ,however involve



behaviours that are unlikely to transmit HIV infection. These include biting, spitting or splattering of blood. Federal courts of appeal have held that the mouth and teeth of an HIV infected person could be regarded as "dangerous" or "deadly" weapon. This is so despite the fact that the risk of transmission of HIV infection through spitting or biting is de minimis.

ROLE OF INTERNATIONAL LAW

Definition

At one time international law was defined as that body of legal principles that governed the relationships between and among countries. Under this definition were subject to international law and only they had rights and duties under it. Because individuals were thought to be beyond the reach of international law, many early writers referred to international law as the law of nations. The two terms are considered interchangeable although few commentators use the phrase law of nations except when describing historical matters.

Terminology

Before attempting to determine the exact parameters of modern international law and describe the enforcement mechanism that exist to deal with its violation. It is necessary to take note of the problem of jargon. There are several terms that have unique meanings in the field of international law. First international law refers to countries as states, This can be very confusing, since countries that are based on a federal union model, such as the United States, use the term states to refer to individual jurisdiction within the union, secondly international law use the term municipal law when speaking of the

law of a given country. It should be noted that the term municipal law is considered outdated by many commentators and is rapidly being replaced by the term domestic law.

Content

As a practical matter, the context of international law consists of the treaties that have entered into by states, the resolutions that have been promulgated by international organizations and the decisions that have been issued by international tribunals enforcement mechanisms

At the heart of the international legal system is the International Court of Justice (ICJ) of the United Nations (UN). The ICJ is often referred to as the world court, although in reality its jurisdiction is much more limited. The ICJ was founded in 1945 and continues the work of the permanent court of international justice, which was established in 1920 under the auspices of the League of Nations. All countries that are members of the UN automatically become parties to the statute of the ICJ. The statute of the ICJ serves as the constitution of the ICJ. Countries that are not members of the UN may become parties to the statute of the ICJ by meeting the conditions that the UN has set for such countries.

Private tort actions

The United States has become a highly litigious society, contracting a disease used to be perceived to be a matter of chance or inadvertent misfortune. Today it is not unusual for an ill person to search for fault and with it liability. Claims of lack of due care, even had faith or betrayal, by those who have been exposed to HIV have found their way to



the courts. The depth of mistrust spans many relationships patients against their hospitals or physicians, health care professionals against the facility that employs them, one health care professional against another and sexual partners against their heterosexual or homosexual partners

Privacy and confidentiality

Strong ethical reasons exist for protecting the privacy of persons with HIV infection. An important justification for privacy resides in the principle of respect for autonomy. To respect the privacy of persons with HIV/AIDS is to respect their wishes not to be observed or to have intimate information about themselves made available to others. Privacy also enhances the development of trust in the physician. One of the defining characteristics of the doctor-patient-relationship is that involves the sharing – freely given – of private information. Failure to respect the confidentiality of patient drives patients away from HIV testing, counseling and treatment, and discourages patients from confiding in their physicians.

Discrimination

Every major government “medical” and “public health” organisation to issue a report on the HIV epidemic has condemned discrimination because it violates basic tenets of individual justice and is detrimental to public health. Discrimination based on an infectious condition is just an inequitable as discrimination based on race, gender or disability.

Conclusion

The review of AIDS legislation and litigation in the United States reveals a mixed record. Many jurisdictions in the

United States have come to accept the health service research showing the sometimes remarkable efficacy of well-targeted education and counseling and the promise of therapy. Legal reform in the HIV epidemic ought to be guided by an overriding maxim follows “Good law ought to follow sound scientific and ethical principles.” As noted earlier, many countries including the United States have sought to keep out HIV infected individuals in the mistaken belief that doing so will keep the disease at bay. Although the right to freely is considered by many international law scholars to be one of the fundamental rights of any human being. Saudi Arabia and Liberia, for example have at times both requires AIDS free medical certificates to be arrived by certain visitors,

END NOTES

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