

# Global health & HIV/AIDS - A critical debate on mandatory HIV testing policy

## Abstract

**Objective:** The main objective of this paper is to discuss and debate the pros and cons of mandatory testing among pregnant women and proposed mandatory premarital HIV testing in some countries. A growing number of religious communities and national and local governments have adopted mandatory premarital HIV testing (PHT) policies.<sup>1</sup> A mandatory approach to testing and treatment has the potential to significantly reduce perinatal transmission of HIV and defend the view that mandatory testing is morally required if a number of conditions like prevalence rate, high mortality rate etc. can be met. This paper further discusses the pros & cons including the medico-legal & ethical aspects of prenatal & premarital mandatory HIV testing. Though introduction of mandatory HIV testing of pregnant women & compulsory treatment of HIV-positive pregnant women can be made, there remain concerns regarding the protection of women's privacy. With implementation of mandatory HIV testing, the risk of becoming victims of various forms of stigmatization is there for both men & women.

**Conclusion:** After discussing the pros and cons from different field studies, there are large benefits to individuals, women, children and society as early detection and 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. Mandatory PHT prevents the person at the receiving end of the HIV mainly women, it reduces prenatal infection, and helps reduce orphanage due to loss of parents for HIV/AIDS associated complications. Mandatory PHT may not be a good policy if it is employed by governments for the sake of testing. Mandatory PHT should be a part of a grand strategy to address the problem of HIV infection provided there is accessibility & continuity of health services for management of HIV/AIDS.

**Keywords:** Mandatory HIV testing, Premarital HIV testing (PHT), Prenatal testing, Medico-legal & ethical, Human rights, Counseling

Volume 1 Issue 2 - 2014

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**Received:** May 29, 2014 | **Published:** June 24, 2014

**Abbreviations:** ART, Antiretroviral Treatment; BMGF, Bill & Melinda Gates Foundation; FSWs, Female Sex Workers; HAART-Highly Active Antiretroviral Treatment; HIV, Human Immunodeficiency Virus; IDUs, Intravenous Drug Users; MSMs, Men Having Sex With Men; PMT, Premarital HIV Testing; VCTs, Voluntary Counseling and Testing Centers

## Introduction

The epidemic of HIV has become a global phenomenon and every country or region has implemented sound policies and successful strategies to halt the spread. In spite of the counter mechanisms to stop the spread in some regions there is an increasing trend of new infections with special attention to regions with low prevalence converting to high prevalent zones. Though every country has voluntary counseling & testing facilities, they may not be having saturated coverage resulting in some gaps thereby giving a chance for further spread. As people who don't undergo testing, remain ignorant of their status and they continue to spread the infection in the community. This has resulted in rethinking of testing strategy in some countries to bring out and emphasize on mandatory testing which has reasonably gained more attention in the past decade.

Mandatory testing is nothing but testing the HIV status of a person without consent, confidentiality & privacy so that the test result (either positive or negative) could be linked to identify the person. This mandatory testing is contrast to the unlinked anonymous testing which is done in HIV sentinel surveillance. Usually mandatory testing is recommended only for screening of blood, or biological tissues to prevent transmission of HIV to the recipient.

It is seen in the recent past that mandatory testing has gained lot of political support in certain regions of gulf countries (Saudi Arabia, UAE), provinces in China, India, Ethiopia, Cambodia, Senegal etc. In India though the bill was proposed in few states, in the assembly of Andhra Pradesh state, the law couldn't be enacted because of various other logical arguments.

## Mandatory HIV testing & various population groups

The discussion in this section comes after going to the "Essay of Schuklenk & Kleinsmidt on Mandatory HIV testing" and from author's field experience as State Epidemiologist under National AIDS Control Organization and working with FHI 360 for the key population (high risk groups) under the India AIDS Initiative funded by BMGF.

I will discuss about the pros and cons of mandatory HIV testing implemented among various population groups. The population can be divided into the following categories depending upon the risk of acquiring HIV infection.

- General population which also includes pregnant women
- High Risk groups (FSWs, MSMs, IDUs)
- Bridge population (Truckers, migrant workers)
- Population suffering from 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 them underground due to fear and stigmatization thereby making it more difficult to launch/ implement the interventions. In the control of HIV epidemic among the key population, it is always better to implement HIV testing voluntarily with pre- test & post- test counseling so that there is informed consent, confidentiality & privacy guaranteed for the individual.

There is also a debate about mandatory testing among the healthcare workers and routine mandatory HIV test is not advised for healthcare workers. Instead there should be more focus and emphasis on the standard universal precautions which will be more beneficial because of the window period and other infections that are transmitted through blood.

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 through their laws and legislations which are implemented in some places.<sup>1</sup>

### Views on pros of mandatory HIV testing among pregnant women

By implementing mandatory HIV testing strategy among pregnant women though there are issues related to privacy, stigma, false positives, treatment inadequacy and disturbance in doctor-patient relationship that are common in the field, I support this strategy especially in high prevalent zones as it has more advantages that are appreciated at a public health point of view in the management of HIV prevention programs. Of course there need to be other aspects that should be taken care before we implement as discussed in detail below.

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

### Arguments that support voice for mandatory testing among pregnant women (author's opinion)

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 (this again depends on the prevalence rate and the number of lives saved through testing & prompt initiation of Zidovudine<sup>2</sup> therapy etc.). To support one opinion where mandatory HIV testing is required on moral grounds, there are definitely certain prerequisite conditions (e.g. prevalence, burden of the infection, morbidity & mortality) are needed to be met. In case if such programs are to be introduced then the government/ health system should also have certain policies providing the other alternatives or options for mandatory HIV testing and subsequent treatment with ART.<sup>3</sup> But to advocate and continue these programs there must be accessibility & availability of medical care, medical personnel, ART (Anti-retroviral treatment) for the diagnosed patients.

**Impact at broader public health level:** Since it's evident that HAART, elective Cesarean section and formula feeding can significantly decrease the transmission of HIV from mother to child. But in reality in most developing countries where HIV is a major problem, if we look in the field from the VCT registers we find that still there is perinatal transmission since many pregnant women are

ignorant of their HIV status and most of them have not undergone any testing.

In the state of Andhra Pradesh in India, there was a new 0/7 initiative (0 infections by 2007) which was started to halt & reverse the epidemic which aims to cover each & every pregnant woman in the community through the health workers in all the villagers and referring them to VCTCs. This drive has resulted in increase in the testing & utilizing the counseling services rampantly resulting in decreased infections over these years. It also resulted to achieve saturated coverage of counseling & testing services in the state. Even with such measures like counseling & free testing, some women still don't prefer to be tested for HIV and this ultimately results in increasing the risk for the mothers as well as for their unborn babies. But by implementing this mandatory testing, we can prevent these infections to their unborn babies.

**Appreciating the beneficence principle:** Under 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. If we apply the same logic for mandatory HIV testing for pregnant women, firstly the mother gets to know about her status and the required treatment if positive. There is also another advantage of halting the transmission of HIV to the fetus by timely initiation of Zidovudine therapy.

### Introduction- mandatory premarital HIV testing (PHT)

- The countries of Bahrain, Guinea, United Arab Emirates, and Saudi Arabia have enacted national laws and policies mandating premarital testing. Local governments and legislatures in five Indian states, districts in the Yunnan province of China, Ethiopia, and the Democratic Republic of the Congo have introduced or passed similar laws or regulations.<sup>1</sup> Uzbekistan requires a premarital consultation with a medical practitioner, who has the discretion to mandate an HIV test. In Cambodia, Senegal, and Zimbabwe, some women's and mothers' groups have called on the government to enact mandatory HIV testing policies in the hope that it will reduce the spread of HIV to young women who are often powerless in choosing a husband.
- Mandatory premarital testing has become a common practice in some nations<sup>1</sup> including India, and in fact the proposal is not new and rationale to introduce is that women are more vulnerable for HIV infection and by introducing this strategy we can protect women from being infected by their husbands or future partners. Though some advocate this strategy, there are no evidence based research findings to promote mandatory premarital testing as an effective strategy to stop HIV prevention in the community.
- In fact 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 in some African & Asian countries.<sup>1</sup> Considering the lack of evidence based studies that strongly support the mandatory PHT as an effective prevention strategy, I feel that this won't be an effective strategy if these governments/ states introduce mandatory PHT just for sake of testing people but the strategy should address at more comprehensive and broader level 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.

## My arguments against mandatory premarital HIV testing (PHT)

Some governments, religious organizations and women groups support this mandatory PHT as they believe it will influence to develop a moral behavior (e.g. not indulging in sex, abstinence etc.) They believe practicing fidelity for married couples will contribute to reduce the speed at which the HIV infection spreads. It also may protect the women from being infected with HIV from their would-be spouses but it has more violations of human rights<sup>4</sup> & other aspects which dominate than the benefits. In fact it's not even a cost effective strategy and rather causes disastrous consequences for the person whose result is disclosed in public both emotionally and socially.

The patient may not immediately die/ end life because of HIV infection but there are more chances of losing his/ her life by committing suicide due to the stigma and discrimination and the after effects of mental stress due to the added burden because of HIV infection, fear of family and social isolation. On the other case they may turn anti-social, remain underground and continue to spread the infection in the community and so a proper pre & post -test counseling for HIV is recommended.

In support to oppose the mandatory PHT, the author has formulated his personal arguments based on the following aspects

**Ineffective in HIV prevention:** Mandatory PMT is not the effective and acceptable choice by everyone. The approach is opposing to the rights based approach which we are advocating and implementing in our HIV prevention programs. It is fundamentally a wrong notion or thinking that ensuring negative HIV test result will guarantee the future protection from HIV as the person lives. Moreover the testing strategy is not effective as the infection can be contracted at any stage of life either through sexual route, or by infected blood transfusion or by needle sharing among the IDUs. Moreover there is also a false security or misunderstanding to the spouses that negative test will protect them from being infected from HIV.

**Violation of human rights:** With mandatory testing strategy we are ignoring the basic human rights including ethical aspects like privacy, confidentiality and ignoring the informed consent. Moreover when the HIV status of a person becomes public, there is a clear violation of his privacy & confidentiality which he is entitled by the universal human rights declaration which also includes right to marry & right to find a family.

If we look at India and most of the developing countries in Asia and Africa the traditional marriages are arranged by families and with their full participation from both the sides and in case if a person gets the HIV test and gets a positive result then automatically ignoring the issues of privacy & confidentiality, these results would be shared with everyone in the family and it becomes public leaving the person in a very difficult and disastrous situation. Hence disclosure of the HIV status in public which can lead to disastrous effects e.g. suicide attempt by the positives to overcome the shame & stigma from the society, or runaway underground to avoid facing the society etc.<sup>4</sup>

**Issue of window period:** In most countries including India, we use the rapid test kits which use the antibodies to detect the HIV infection. Though the tests are rapid with high sensitivity and specificity, one of the main disadvantages of these Tridot or rapid tests is that they won't be able to detect the infections during the window period. As we know in HIV, the window period is up to 90 days during which the antibodies remain at insignificant levels. Hence it's not possible at all to prevent transmission of HIV if a person is tested during a

phase which falls under the window period as a positive person will be tested negative.

**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 cancel their wedding plans and the counseling is more of judgmental counseling which is prescriptive for the patients and have no other alternatives.

**Stigma and discrimination:** Since the main social problem in HIV/AIDS is stigma which is present in almost all countries and it is quite evident that the stigma and discrimination at work, in society and in their normal daily life will be much more affected if the person tests positive for HIV. In addition it may also result in their failed marriage prospects, employment, societal and family life. And to overcome this people may also avoid the test by obtaining fake certificates or by cancelling their marriage plans, who may in fact turn anti-social and contribute to further spread.

## Conclusion

- With testing, there are numerable advantages for everyone whether it may be a child or an adult or man or woman. By introducing the ART, it is proved that we can improve the quality of life, survival rate and life span of these infected individuals.
- However the author personally does not support or advocate for mandatory testing as a universal strategy though it can be implemented selectively after studying the epidemic, socio-legal factors and the treatment facilities available to the patients.
- Though there are policies that are targeted at individual level and mass level, the priority should be given to those which have an impact at a larger scale ignoring the individual priority as HIV infection is a global issue and not limited by geographical boundaries due to globalized world and improved travel facilities. Stigma and discrimination issues have to be addressed with more priority thereby providing a conducive environment for the HIV positives.
- In places with high prevalence, people have realized from witnessing daily the positive aspects and reaping the health benefits of early detection which has resulted in change in attitude and behavior towards the infection and the people who are infected which helps to overcome the stigma and discrimination. Moreover, it is the high time that we should fight for stigma and discrimination and safeguarding the human rights of all individuals through effective policies and social securities by improving the healthy spaces in the communities. Women empowerment is a key area to be looked into especially in developing countries.

## Recommendations

- As discussed above in the arguments against the mandatory PHT, there are serious implications for human rights' violations, confidentiality, and privacy issues. Hence it is very crucial that the governments should focus more to tackle the epidemic in a broader way. Mandatory testing has limited indications and can't be implemented everywhere as a prerequisite for marriage.
- Governments/ Institutions should focus on rights based approach and prohibit the universal mandatory testing wherever possible to make it more citizen friendly/ human friendly and pay more attention and install more efforts to expand the access to VCTs, ARTs and linkages to other services and enact laws to

fight Stigma and discrimination which are more productive than the mandatory testing.

- There is an urgent need to enact proper laws to safeguard the human rights and for community research to propose more effective strategies which are site/ country specific rather than applying universally just by looking at other countries or copying from other nations without considering other developmental aspects and legal systems.

### Acknowledgment

None.

### Conflict of interest

None.

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