

Criminal Responsibility of Transmitters of HIV Virus

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Abstract: Increase of AIDS in recent decades on one hand and Lack of special Law for criminalizing the transmission of this disease on the other hand make criminal organizations pay attention to this issue, as we know criminal law has a strong preventing effect and because of importance of preventing the mentioned fetal disease criminalizing the virus transmission will reduces the growth ratio of the AIDS in the society. Lawyers try to use some other crimes such as intentional murder, attempt to murder, and invasion to describe criminal responsibility of transmitters of HIV Virus. But law making organization should understand the situation and establish special codes and Articles related to criminal responsibilities of transmitters of HIV virus. In this article we will try to describe this issue.

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1. Introduction

In recent years countries, for example Finland, Sweden, Netherland and England try to criminalize transmission of HIV virus. At the same period of time countries in eastern and middle Europe try to criminalize this issue, too. As we know criminal law has a great role to prevent commitment of crimes and because AIDS disease makes a threat to mankind, it is necessary to prevent transmission of HIV virus by criminalize it. Although there is an opposite feelings which describe that by criminalizing HIV transmission the minority of people with HIV will have more problems. In this article we refer to attempts of some countries and their codes in this issue.

2-AIDS Disease and Some Legal Matters

We need to describe AIDS and HIV virus first to make readers familiar with the article and legal matters of the transmission of the mentioned disease.

HIV means Human Immunodeficiency virus, these words try to describe a situation in which (because of this virus) Immunity system of the body get deficiency and become unable to do its natural duty. HIV virus is weak against heat. The power of serum with HIV virus in 56°C for 30 minutes, become 100 times less than its natural power to cause disease, but this virus is strong against ionization ray and ultraviolet ray. This virus is transmitted by blood contact or sexual contact. Pregnant women who are infected with HIV virus may transmit it to their babies. HIV virus is also transited by milk of the infected mothers. Blood transmission and some product of blood can also transmit the virus. Tools which are used in surgery or dentistry if are infected to

HIV virus can transmit the virus, for this reason the mentioned tools should be use only one time or be sterilized.

Viruses such as HIV, flu and Rubella can only increase in the body of animals and cannot be increased by themselves. Viruses affect a special organ of the body and HIV virus affect immune cells of the blood. Immune cells of the blood fights against bacteria, virus, fungi, etc. therefore HIV virus cause immune cells cannot do their duty and the infected person become ill more than unaffected people.

An infected person by HIV virus who is called HIV positive (It means that the test of antibody for HIV is positive) may do not know that is infected, Because infected people have no signs and medical HIV test is not very routine. This person can infect other people. The period which the person is infected but feels healthy is called window period.(1) Therefore he or she may transmit the virus unintentionally and as we know a criminal responsibilities for an unintentional person is hard to establish. When Immune cells called CP4 + T become weak and killed by HIV virus, the amount of these cells reduced in the blood , so the body cannot fights against infections. Reduction of HIV cells in the blood can be done by anti HIV medicine but AIDS has no treatment. AIDS means Acquired Immunodeficiency syndrome and is called to the period which the Immune system get deficiency.

Because of the mentioned deficiency, infections is serious and severe, cancers is also occurred, so infecting a person by HIV virus will kill the infected person at the end of the period therefore lawyers use attempt to murder or unintentional murder to describe

the criminal responsibilities of the HIV virus transmitters in some countries.

3. The Law of Iran

In Iran there is no special code related to the crime of HIV virus transmission, But there is some other codes and Articles which are used in this matter:

3-1. In the code of prevention methods of sexual and contagious disease (1320 Hejri – Shamsi), the name of AIDS is not seen, but we can use this code to prevent AIDS, because AIDS is a sexual and contagious disease.

In Article 1 of this code is written that:

“Contagious disease means canker soft, syphilis or gonorrhea which occurred anywhere in the body.”

Based on this Article and Article 9 of this code which is:

“Anybody who is aware that is infected with contagious disease or his/her situations and illness, and because of having sexual relation with him or her, another person become infected(if infect another one, infected party can make a complaint to the judicial authorities, guilty person , will be punished for a punitive imprisonment from three months to one year. Criminal prosecution depends on complaint of the person who is infected, if the infected person withdrew his/her complaint, criminal prosecution and punishment will be stopped.”

Article 7 of the code is:

“Health system should oblige the people who because of their job may transmit contagious disease to attend in the Health organs at the special days in order to be tested and if their test is positive, should stop their job and until the time that organ or the doctors who are defined by the health organs certify that their disease is not contagious should stop their work, unless, (without getting that certification) continue of working will be punished punitive imprisonment 8 days to two months. Also they are obliged to pay 51 to 500 Rials.

It is possible that only one of the above punishments is taken.”

Perhaps we can use these Articles of the codes but because of the principal and maxim of legality of the crimes and punishments, and also because the article 1 (1) of the mentioned code is defined the contagious disease which are on the competence of the code, use of these Articles and the mentioned code for AIDS has a legal ban. This code is in use now and by making an amendments it can be related to AIDS.(2)

Because this article is related to contagious and sexual disease such an amendment in order to provide opportunity for using it in the matter of AIDS is a good solution.

3-2. Article 614 of the Islamic punishment code.

Article 614 of the Islamic punishment is related to mayhem made by a person against another person. According to the mentioned article ,a person who mayhem another person intentionally and in the way that cause deficiency or breaking or conk of a limb of the body, or conk one of the senses or cause a permanent disease or mental problem, and nemesis (qesas) is impossible, and if the crime cause disruption in the society or there is threat that the committer or others, commit this crime again, or this crime has a bad influence on the public order, the punishment is two to five years punitive imprisonment, and by the request of the victim of the crime, the criminal should pay atonement.

We can use this Article when transmission of the disease is occurred by mayhem (for example by using an infected knife and syringe intentionally. But we should pay attention that transmission of HIV virus differs from mayhem in most of the time, besides the mentioned Article is only related to the intentional transmission of disease.

Another matter that we should note is the interpretation of the Articles, As we all know in criminal law we cannot use broad interpretation of the Articles, therefore broad interpretation of the article 614 of the Islamic punishment code in order to relate this Article to the criminal responsibilities of the transmitters of HIV virus has some problems.

But in cases in which a person intentionally use knife or something similar to it or syringe to cause AIDS in another person and because in the article 614 of Islamic punishments is written a permanent disease and we know that AIDS is a permanent disease which cause deficiency in the infected person, we may use this article, but it is obvious that we cannot use this Article in unintentional cases, for example when the transmitter himself/herself is not aware of his/her disease, besides in the case of sexual relations which is the cause of transmission of the HIV virus we cannot use the mentioned Article because in this situation no mayhem is occurred.

3-3. Attempt to Murder (Art.613)

Another legal item which can be used in order to criminalize the HIV virus is attempt to murder. Article 613 of the Islamic punishment code of Iran is related to attempt to murder. It indicated that: “When a person attempt to murder but he cannot achieve the result he will condemn to six month to three years punitive imprison.

It is clear that infection with HIV virus begins some stages which kills the infected person at the end of the these stages, but as we describe the mentioned Article if we want to use this article about

HIV virus transmission, the transmitter should be aware of his or her disease, (I mean infected with HIV) and moreover has the will to infect another person and has the aim to kill him or her as the result of the infection. In the case that the transmitter use something such as knife, syringe, etc. to transmit the HIV and kill another person intentionally also we can use the mentioned article.

It is obvious that most of the people who are HIV positive don't know anything about their disease and as we described before have no signs, therefore make sexual relation with other people and transmit this virus and law making organization don't criminalize the attempt to murder other kind of the murder, (3) therefore transmission of HIV virus when the transmitters have not the will to kill anybody the attempt to murder according to this article is not occurred.(4)

3-4. Art .688 Islamic punishments code

Some lawyers try to solve the problem by using the article 688 of the Islamic punishments code of the Iran.

This Article describes that:

Any actions which is recognized as a threat to public health, such as pollution the potable water, distribution of polluted potable water, unsafe avoidance of the excretion of the human or animals, disgorge of poison in the water of rivers, unsafe killing of animals which are the food of human, or use of waste water for agriculture purposes, is crime and anybody who commit these crimes will condemn to maximum one year punitive imprisonment, if other code has exacerbated any of the mentioned crimes, the guilty person would condemn to the contravened punishment.

Some lawyer is live that we can use this article in the case of transmission of the HIV virus. (5)

In order to make strong this thesis we can say that the crimes which are mentioned above are some examples and the Article have not the aim of recognized only these crimes as a threat to public health,(6) and transmission of HIV virus can be recognized as a threat to public health.(7)

Unfortunately lack of enough codes and article which are related to transmission of HIV virus which especially focused in this topic, in Iran is obvious, (8) and we have to relate these code with the issue.

4. Canada

4-1. sec.180 of the penal code

Section 180 of the penal code of Canada deals with threatening public health, according to it anybody who threatens the vitality or health of the

society or male a mayhem to third party commit the crime of public molestation. This Article is used in six cases in which a person transmit HIV virus. (9) For example in Thonton case (1989) (10), donating infected blood is recognized as a threat to public health. But applying this article in transmission of HIV virus by sexual relations or using common syringe is doubtful. For example in summer case (1989) (11) in which summer infected 5 people as a result of unsafe sexual relation, court first make a decision if his action can be recognized as a threat to public health and decided that his action was so insouciant that can be recognized as a threat to society and public health.

4-2. Intentional Murder

Until now no cases related to transmission of HIV virus in Canada is not prosecuted as intentional murder. If we want to relate these issues should transmission is occurred, there is a relation between the action of the transmitter and infection of the complainant, and complainant die as a result of the infection within one year. But we know that in AIDS death occurred longer than one year from infection.

4-3. Unintentional Murder

According to sec.219 of the penal code of Canada, if a person act against his legal responsibilities and it indicated an obvious neglect to public health and vitality commits a crime.

In Canada this Article is used in the case of transmission of HIV virus, for example in (RV Creighton, {1993} 3, 83 ccc (3d) 346 most of the high court members decided that a person may be prosecuted for his neglect because penal law may condemn a some standard.

5-Challenging the Criminalizing of HIV Transmission

Some lawyer describe that by Criminalizing of HIV transmission the minority of people whit HIV will suffer more problems and they need support. (12) But we should note here that the aim of this article is to prevent HIV transmission and by Criminalizing of HIV transmission risk full behavior will reduced.

6- Conclusion

Nowadays transmission of HIV virus is a public threat but in many countries there are no special codes and Article which are related to criminalizing this action. Therefore courts and lawyers try to use some other codes and Article which are related to other legal establishment such as attempt to murder, mayhem, unintentional murder or some other similar and related items to solve the problem. But because of principle of legality of crimes and

punishments and also some differences between transmission of HIV virus and then there are some deficiencies in this methods, therefore law making organs should establish some special codes and Articles in this issues. International organs such as United Nations International Law Commission can make a model law to guide this attempt.

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