



HIV transmission and the law: what do people living with HIV understand?

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Background

In England and Wales, it remains possible to be prosecuted for 'Reckless Transmission' of HIV, where an unintended transmission takes place. Since the first prosecution occurred, the usefulness and appropriateness of this use of the law has been debated by scholars and advocacy groups. Despite this debate, people living with HIV and AIDS (PLWHA) must continue to negotiate their sex lives under the Damoclean threat of imprisonment in the event of a transmission. The aim of this study was to examine what PLWHA understood about the law.

Method

PLWHA attending our clinic which is a large, urban HIV centre were invited to complete a questionnaire. This contained 4 key prompts to discuss personal understanding of the law in relation to HIV. Participants were invited to write as much or as little as they wished in response to each of the prompts. The methods to analyse the qualitative data were Grounded Theory and thematic analysis.

Results

Grounded theory analysis requires data to be collected continuously until no further relevant data are emerging. This required 33 completed questionnaires. Demographics: Male 28 (85%), female 5 (15%). Mean age 36 years (range 19-53). Heterosexual 10 (30%), homosexual 21 (64%), bisexual 1 (3%), no answer 1 (3%).

Understanding

"...it is illegal to have unsafe sex when you know you are HIV +ve"
Male, 45, British

"I don't know much about the law"
Female, 40, African

"No idea"
Male, 38, European

Some participants showed little or inaccurate understanding

"...being charged with manslaughter or murder"
Male, 24, Asian

Practices

"When is the best time to disclose?"
Male, 29, British

"...already disclosed to my long term negative partner"
Male, age unknown, British

"If it is a low risk activity, what is my risk with the law?"
Male, 19, British

Participants related their sexual and disclosure practices to their understanding of the law

Relationships

"It is essential to disclose...your status before entering a relationship"
40, Female, African

"if there [is] a difference between casual encounters & regular or partner sexual activity"
Male, 53, British

Relationship status, rather than actual risk of transmission, played a key part in the understanding of some participants

"If I am obliged to inform people - not necessarily sexual partners"
Male, 33, British

4 main themes of discussion were identified in response to the prompts, and 3 new themes emerged from the narratives. The main themes were understanding, practices, relationships and information sources. The emergent themes were morality, rights & responsibilities and prosecution & discrimination. Many of the participants had either a flawed understanding of the law, the sentences that could be passed, or both. Sexual practices were seen as relevant to the law, with responsibilities of a PLWHA potentially varying based on duration and status of a relationship. Conspicuous by its absence was any discussion of partner responsibility in attempting to avoid acquisition of HIV.

Information Sources

"George House Trust"
Male, 43, British

"[None] other than this questionnaire"
Male, 37, British

Participants were asked if the law had ever been discussed in clinic, or where they got their information from. Many answered "no" or "none"

Conclusion

PLWHA sometimes have a weak grasp of how the law relates to their behaviours, which places them at greater risk of prosecution in addition to unfounded fears about what is actually prosecutable in England and Wales. Relating HIV to the law brought out a complex range of issues, ranging from technicalities of how to disclose in relationships to morality of transmission. Participants considered relationship status to be important in relation to the law rather than actual transmission risk. Using Grounded Theory to inform a hypothesis, we can hypothesise that information regarding the law in relationship to HIV transmission is not reaching those actually living with HIV. Effort must be made by clinicians and advocacy groups to ensure that PLWHA have accurate information about the circumstances under which prosecution may occur, with sensitive exploration of beliefs which may impact on this understanding.

Morality

"Passing it onto others is ungodliness"
Male, 36, African

"I feel it is immoral to knowingly pass on HIV"
Male, 34, West Indian

Some participants had very strong views on the morality of HIV transmission

"...legal responsibilities and where these agree/ disagree with moral ones"
Male, 44, British

Rights and Responsibility

"Understand where I stand in terms of responsibility"
Male, 36, British

"...the rights of an individual"
Male, 37, British

"[I need more information on] legal responsibilities"
Male, 44, British

Participants discussed rights and responsibilities in relationship only to themselves

Prosecution and Discrimination

"...anyone who [transmits HIV knowingly] should be prosecuted"
Male, 34, West Indian

"[more information on] discrimination rights under the law"
Male, 37, British

Participants demonstrated opposing views on prosecution

"[prosecution] would compound stigma and discrimination of HIV positive people"
Male, 42, British

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