

Survey of National AIDS Legislation : an Addendum

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AIDS related laws promulgated till July 1990 have been covered by Tomaveski's global survey. Relying upon the WHO Survey of AIDS related laws, this addendum outlines developments from August 1990 to July 1994.

The trend of extensive law making activity has continued thus and as many as 50 countries have engaged in making AIDS related laws in the above mentioned period. Continued use of the legal instrument though has been dictated by previous use. Countries with subsisting legislation on AIDS have continued to add to them. A major segment of the laws emanate from the developed world. Tomaveski in her Survey of National legislation had clarified that the term AIDS legislation did not only denote laws adopted by the national parliament. Also stood included : presidential decrees, ministerial regulations, instructions, notices and circulars. This liberal definition of legislation has also been adopted in this addendum. Considering the wide range of legislative materials included a word of caution on any comparative evaluation of legislations needs to be sounded. While a circular or a notice or a ministerial scheme may provide indicators on a country's governmental policy on AIDS it would be inappropriate to compare it with a parliamentary law of another country. It is necessary to appreciate the difference in the legal force of various legislative instruments in order to forge the vital link between substance and form. Illustratively the distinction assumes importance if provisions providing for mandatory testing and segregation are included in laws passed by the legislature and provisions curbing discrimination or providing for positive discrimination of persons with AIDS are included instruments such as circulars or notices.

Coercive law making

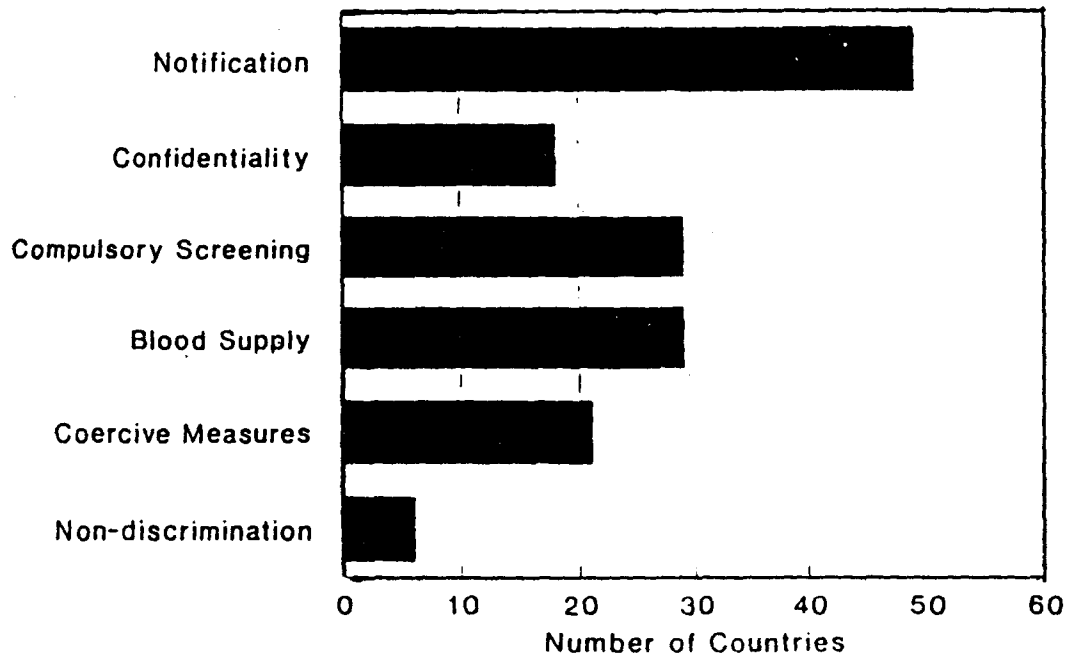
Tomaveski's survey shows that initial legal initiatives in the field relied upon the coercive force of law for AIDS control - thus provisions providing for mandatory testing and segregation of the infected were included in a large number of legislations. Whilst a number of countries have subsequently repealed these repressive laws, reliance on overtly coercive legal measures still continues.

Thus the Infectious Diseases Amendment Act 1992 of Singapore provides for compulsory notification of AIDS and empowers the Director of Medical Services to "undertake epidemiological surveys of people, animals or vectors to determine the existence, prevalence or incidence of any infectious disease...[S.7(1)].

For the purpose of this investigation the Director may require "any person to submit to such medical examination as he thinks fit. [S.7(2) (b)] Failure to submit to the medical examination has been declared an offence. In consonance with its coercive tenor the legislation requires a person with AIDS or a HIV infected person "to undergo counselling by a registered medical practitioner" and "to comply with such precautions and safety measures as may be specified by the Director" [S.20 A].

Legislation by Topic

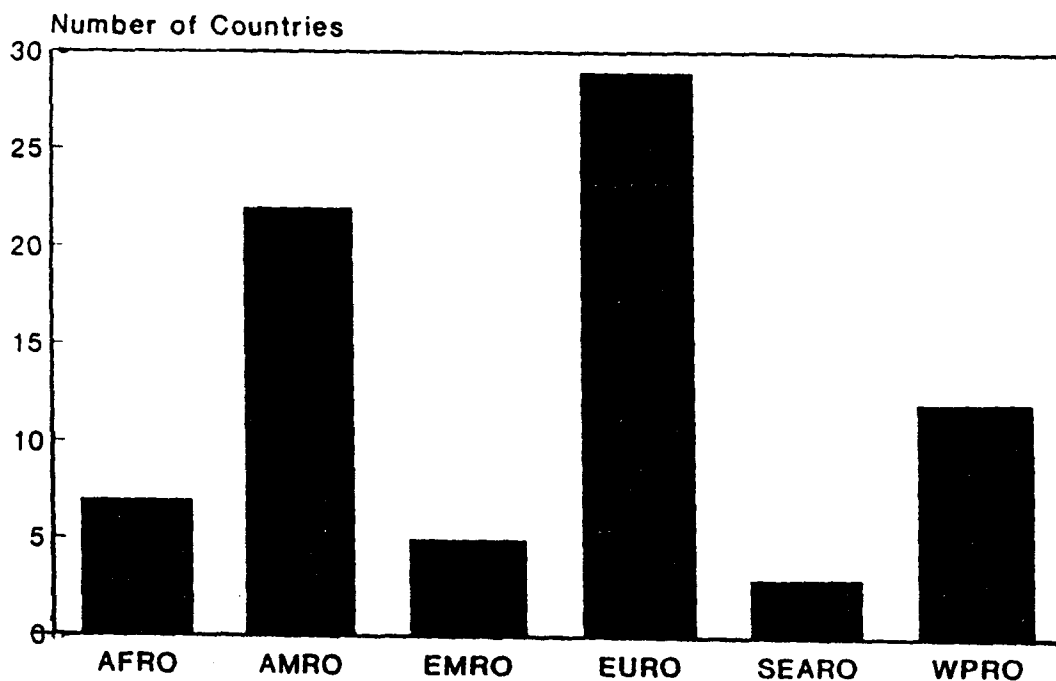
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WHO

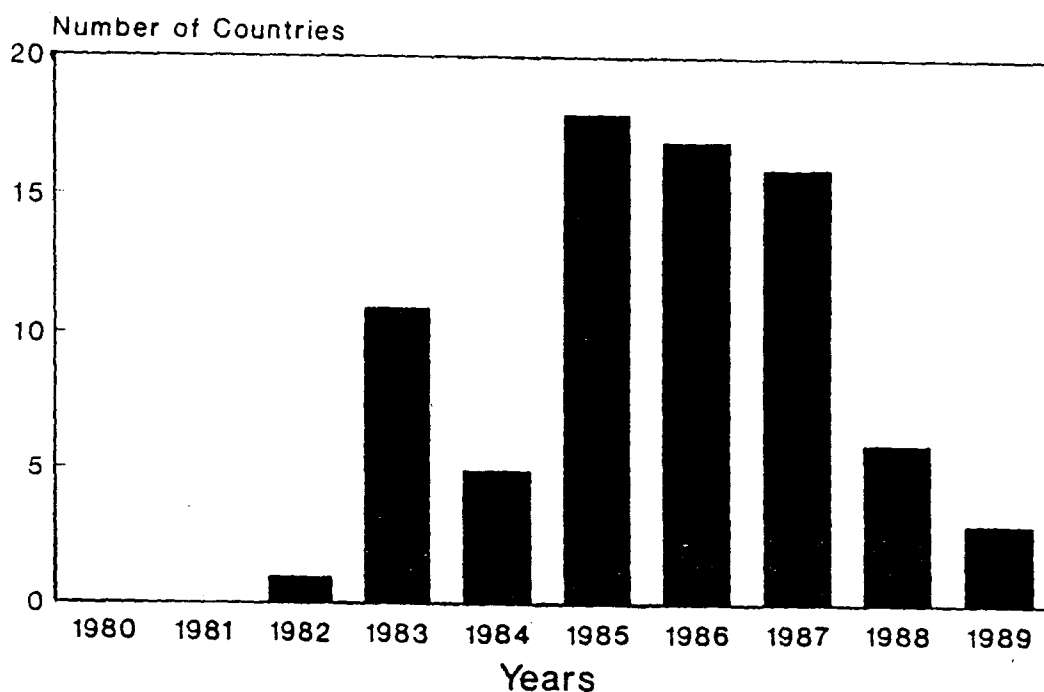
AIDS Legislation by WHO Region

January 1990



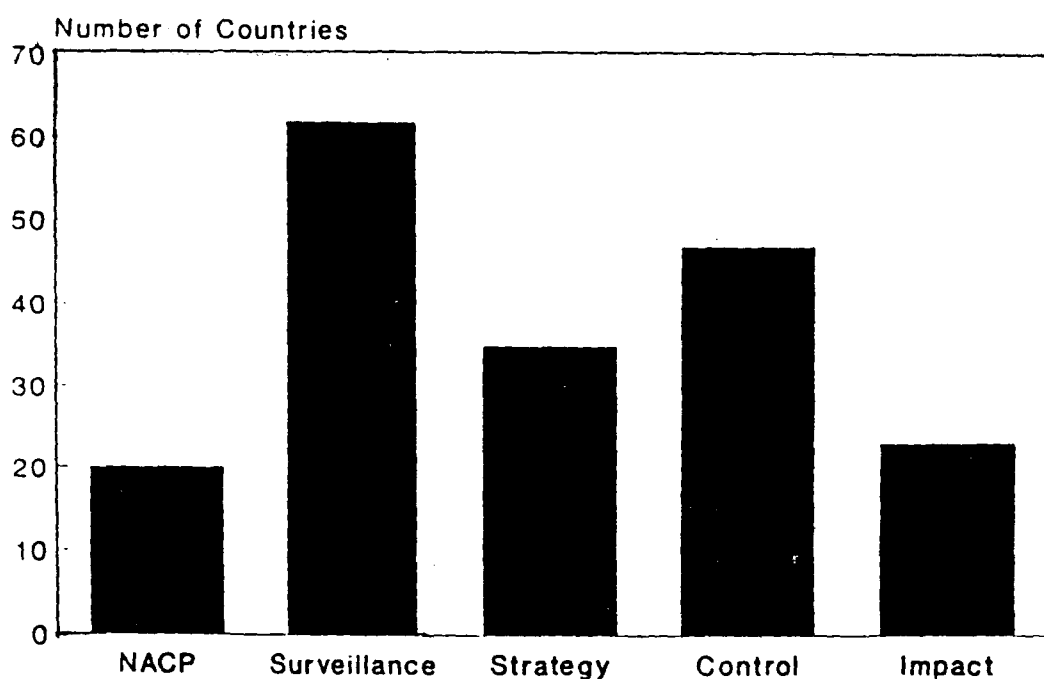
WHO

Chronology of AIDS Legislation January 1990



WHO

Legislation by Global Strategy Component January 1990



WHO

AIDS LEGISLATION IN THE AMERICAS

	NATIONAL AIDS COMMITTEE	SURVEILLANCE	PREVENTION STRATEGY	CONTROL MEASURES	REDUCING IMPACT
ANGUILLA					
ANTIGUA & BARBUDA					
ARGENTINA	1989				
BAHAMAS					
BARBADOS	1985				
BELIZE		1987			
BERMUDA		1985			
BOLIVIA					
BRAZIL	1986	1986	1986	1987	
BRITISH VIRGIN ISL.					
CANADA		1985	1985	1985	
CAYMAN ISLANDS					
CHILE	1986	1984	1985	1985	
COLOMBIA				1988	
COSTA RICA		1986	1988	1986	1988
CUBA				1986	
DOMINICA					
DOMINICAN REP.	1987	1987	1987	1987	
ECUADOR		1985			
EL SALVADOR		1988			
GRENADA			1986		
GUATEMALA	1987	1986			
GUYANA					
HAITI					
HONDURAS					
JAMAICA					
MEXICO		1986		1986	
MONSERRAT					
NETHERL. ANTILLES					
NICARAGUA					
PANAMA	1987	1985	1987	1985	
PARAGUAY		1985			
PERU	1987	1987	1987		
ST KITTS & NEVIS					
ST LUCIA					
ST VINCENT & GREN.					
SURINAME					
TRINIDAD & TOBAGO					
TURKS & CAICOS					
USA/FED	1987	1987	1987	1987	1986
URUGUAY		1988		1988	
VENEZUELA	1984	1984	1984	1986	1986

AIDS LEGISLATION IN AFRICA

	NATIONAL AIDS COMMITTEE	SURVEILLANCE	PREVENTION STRATEGY	CONTROL MEASURES	REDUCING IMPACT
ALGERIA					
ANGOLA					
BENIN					
BOTSWANA					
BURKINA FASO					
BURUNDI	1987				
CAMEROON					
CAPE VERDE					
CENTRAL AFRICAN REP.					
CHAD					
COMORES	1988				
CONGO					
COTE D'IVOIRE					
EQUATORIAL GUINEA					
ETHIOPIA					
GABON					
GAMBIA					
GHANA					
GUINEA					
GUINEA-BISSAU					
KENYA		1987			
LESOTHO					
LIBERIA					
MADAGASCAR					
MALAWI					
MAURITANIA					
MAURITIUS		1987			
MOZAMBIQUE	1986				
NAMIBIA					
NIGER	1987				
NIGERIA					
REUNION					
RWANDA					
SAO TOME ET PRINCIPE					
SENEGAL					
SEYCHELLES					
SIERRA LEONE					
SOUTH AFRICA		1987		1987	
SWAZILAND					
TANZANIA					
TOGO					
UGANDA					
ZAIRE					
ZAMBIA					
ZIMBABWE					

AIDS LEGISLATION IN EASTERN MEDITERRANEAN

	NATIONAL COMMITTEE AIDS	SURVEILLANCE	PREVENTION STRATEGY	CONTROL MEASURES	REDUCING IMPACT
AFGHANISTAN					
BAHRAIN					
CYPRUS					
DJIBOUTI					
EGYPT		1986			
IRAN					
IRAQ				1987	
JORDAN		1987			
KUWAIT					
LEBANON					
LIBYA		1987			
MORROCO					
OMAN					
PAKISTAN					
QATAR					
SAUDI ARABIA					
SOMALIA					
SUDAN					
SYRIA		1987	1987	1987	
TUNISIA					
UNITED ARAB EMIRATES					
YEMEN DEM. REP					

AIDS LEGISLATION IN SOUTH-EAST ASIA

	NATIONAL AIDS COMMITTEE	SURVEILLANCE	PREVENTION STRATEGY	CONTROL MEASURES	REDUCING IMPACT
BANGLADESH					
BHUTAN					
BURMA					
DPR KOREA		1987	1988	1988	1988
INDIA					
INDONESIA					
MALDIVES					
MONGOLIA		1989	1989	1989	
NEPAL					
SRI LANKA					
THAILAND		1985		1986	

AIDS LEGISLATION IN WESTERN PACIFIC

	NATIONAL AIDS COMMITTEE	SURVEILLANCE	PREVENTION STRATEGY	CONTROL MEASURES	REDUCING IMPACT
AUSTRALIA		1985	1987?	1985	
BRUNEI DARUSSALAM		1987			
CHINA		1987	1987	1987	1989
COOK ISLANDS					
KAMPUCHEA					
F.S. OF MICRONESIA					
FIJI					
FRENCH POLYNESIA	1986	1986	1986	1985	
GUAM					
HONGKONG			1988		
JAPAN		1988	1988	1988	
KIRIBATI					
LAOS					
MACAO					
MALAYSIA		1984			
MARSHALL ISL.					
NARAU					
NEW CALEDONIA					
NEW ZEALAND		1982			1985
NIEUE					
NORTH MARIANA ISL.					
PALAU					
PAPUA NEW GUINEA					
PHILIPPINES		1986		1988	
REPUBLIC OF KOREA		1987	1987	1988	1988
WESTERN SAMOA					
SINGAPORE		1985			
SOLOMON ISL.					
TOKELAU					
TONGA					
TUVALU					
VANAUTU					
VIETNAM				1989	
WALLIS & FUTUNA					

AIDS LEGISLATION IN EUROPE

	NATIONAL AIDS COMMITTEE	SURVEILLANCE	PREVENTION STRATEGY	CONTROL MEASURES	REDUCING IMPACT
ALBANIA					
AUSTRIA		1983	1983	1985	1986
BELGIUM	1987		1986	1985	1986
BULGARIA				1987	
CZECHOSLOVAKIA		1984	1987	1988	
DENMARK		1985			1988
FINLAND		1985		1985	1985
FRANCE		1986	1985	1983	1985
GERMANY D.R.		1987	1988	1988	1987
GERMANY F.R.		1987	1987	1985	
GREECE		1984		1983	1986
HUNGARY		1985	1985	1986	1988
ICELAND		1986			
IRELAND					
ISRAEL		1983	1987		
ITALY	1985?	1983	1983	1985	1985
LUXEMBOURG		1984		1985	
MALTA		1986			
MONACO		1986			
NETHERLANDS				1987	1987
NORWAY		1983	1986	1985	1985
POLAND		1986			1986
PORTUGAL			1986		
ROMANIA	1987	1985		1987	
SPAIN	1985	1985	1987	1985	1987
SWEDEN		1983	1985	1985	1987
SWITZERLAND		1987		1986	
TURKEY	1987	1985	1987	1987	
USSR		1987	1987	1987	
UNITED KINGDOM		1985		1985	1985

AIDS

Australia (1984-1985)
 Austria (1983, 1985, 1986)
 Bermuda (1985)
 Brazil (1986)
 Brunei Darussalam (1987)
 Canada (1984-1987)
 Chile (1985)
 China (1987)
 Costa Rica (1986)
 Czech & Slovak, Rep. (1988)
 Denmark (1983, 1985)
 Dominican Republic (1987)
 Ecuador (1985)
 Egypt (1986)
 El Salvador (1988)
 Finland (1985)
 France (1986)
 French Polynesia (1986)
 Germany, D.R. (1987, 1988)
 Germany, F.R. (1987)
 Greece (1986)
 Israel (1983)
 Italy (1986)
 Jordan (1987)
 Kenya (1987)
 Korea, Rep. (1987)
 Liechtenstein (1987)
 Luxembourg (1984)
 Malaysia (1985)
 Malta (1986)
 Mexico (1986, 1987)
 Monaco (1986)
 New Zealand (1982, 1983)
 Norway (1983, 1987)
 Panama (1987)
 Paraguay (1985)
 Peru (1987)
 Philippines (1986)
 Poland (1986)
 Romania (1987)
 Singapore (1985)
 South Africa (1987)
 Spain (1986-1988)
 Sweden (1983, 1987)
 Switzerland (1987)
 Thailand (1985)
 United Kingdom (1985-1987)
 Venezuela (1986, 1987)
 Yugoslavia (1989)

HIV INFECTION

Australia (1984)
 Bermuda (1986)
 Canada (1984-1988)
 Costa Rica (1986)
 Czech & Slovak Rep. (1988)
 Finland (1986)
 French Polynesia (1986)
 Germany, D.R. (1987, 1988)
 Germany, F.R. (1987)
 Iceland (1986)
 Liechtenstein (1987)
 Mexico (1986, 1987)
 Norway (1986)
 Philippines (1986)
 Spain (1988)
 Switzerland (1987)
 Venezuela (1986, 1987)
 Yugoslavia (1989)

DEATH FROM AIDS

Austria (1985)
 Dominican Republic (1987)
 Germany, D.R. (1988)
 New Zealand (1985)
 Yugoslavia (1989)

ANONYMOUS NOTIFICATION

Chile (1985)
 France (1986)
 Germany, F.R. (1987)
 Greece (1986)
 United Kingdom (1987)

SPECIAL PROTECTION OF
CONFIDENTIALITY

Australia (1985)
 Austria (1986)
 China (1987)
 Costa Rica (1988)
 Germany, D.R. (1988)
 Iceland (1986)
 Liechtenstein (1987)
 New Zealand (1985/1986)
 Norway (1986/1987)
 Panama (1987)
 Sweden (1986)
 Switzerland (1987)
 USA (1989)

DISCLOSURE OF INFORMATION
RELATING TO HIV-STATUSHIV-INFECTED PERSON

Australia (1985)
 Austria (1985)
 Finland (1985)
 France (1985)
 Germany, D.R. (1988)
 Germany, F.R./Bav. (1987)
 Greece (1986)
 Hungary (1986)
 Italy (1985, 1986)
 Japan (1988)
 Norway (1986)
 Sweden (1986)
 Venezuela (1986)

PARTNER

Germany, F.R./Bav. (1987)

ATTENDING PHYSICIAN

Germany, F.R./Bav. (1987)

MINISTRY OF THE INTERIOR

Germany, F.R./Bav. (1987)

MINISTRY OF JUSTICE

Costa Rica (1988)

IMMIGRATION AUTHORITIES

Philippines (1988)
 USA (1987)

The Law of Ukraine on the prevention of AIDS and the social protection of the population promulgated on 12.12.1991 affords another illustration of a legislation in the coercive mode. Section 7 of the law provides for mandatory testing of persons engaging in prostitution and drug dependent persons "depending upon epidemiological indicators other persons may likewise be required to undergo the said compulsory medical tests."

To demonstrate that compulsion is intended section 13 provides that "in the event of such persons failing to appear for the test without valid reasons, they shall be escorted by the militia to legal medical institutions, at the request of these institutions and with the consent of the office of the public prosecutor. Mandatory testing of specified risk groups has been provided in the special regulations of the Vietnamese Ministry of Health promulgated on 5.3.1993. Cuba requires compulsory testing of foreign students. Whilst immigrants have to be mandatorily tested in Argentina, Costa Rica repealed law requiring aliens desirous of residence to undergo the HIV test.

Number of countries opting for the coercive model have not constructed a distinct legal regime for AIDS but have added AIDS to subsisting legal regimes for communicable diseases. Saudi Arabia and Tunisia provide two examples in the survey period.

In line with the coercive tenor of law making are the legislative efforts introducing penal provisions. A number of countries [New South Wales - Australia, Singapore, Estonia] have made transmission of HIV infection criminally punishable. Whilst the Australian Law renders punishable "failure to take reasonable precaution to prevent transmission", knowingly placing another at risk of infection by AIDS" has been penalised by the Law of Estonia. Singapore law enjoins a person who knows that he has AIDS or is HIV infected not to have sexual intercourse with another person unless before the sexual intercourse takes place, the other person has been informed of the risk of contracting AIDS or HIV infection and has voluntarily agreed to accept that risk. In tune with the requirement of voluntariness, Nicaraguan legislation has provided enhanced punishment if the offence of rape is committed by a person with AIDS or by a HIV infected person. In further endorsement of the principle of individual responsibility a HIV infected person or a person with AIDS has been forbidden from donating blood at any blood bank in Singapore or do any act which is likely to transmit or spread AIDS or HIV infection.

The Austrian law has singled out commercial sex workers for imposition of criminal sanctions. Both the Australian and the Ukrainian laws have introduced penal sanctions against health workers. The Australian law renders punishable a doctor's failure to fulfil the notification requirements. Whilst the law of Ukraine renders the improper conduct of professional duties by medical workers, pharmacists and workers in other fields on account of negligence or carelessness punishable with corrective labour upto five years and cancelation of registration upto a period of three years. If the negligence affects more number of persons, provision for enhancement of punishment has been made.

Facilitative law making

In contrast to the legislations denying choice are the laws where the liberty to take decision has been conferred on the affected individual. Thus the circular of the AIDS division of France [Jan. 1993] provides that as part of the pre-nuptial or pre-natal medical

examination the HIV test "shall be proposed to the couple or pregnant woman respectively. And the Swiss Ordinance of June 1993 on epidemiological studies aimed at collecting data on HIV requires the competent cantonal authority to inform the public of any planned anonymous study and also of the manner in which anonymity is to be assured.

Anti-discrimination

Tomaveski found a meagre use of the law to prevent discrimination of persons with AIDS and HIV infected persons whilst a burgeoning of legislative activity to curb discrimination has not been found, a greater sensitivity to discrimination issues can be discerned. Thus section 2 of the Argentina Law of 1990 expressly provided "that the provisions of the law and supplementary provisions to be laid down are to be interpreted in such a way that they can in no case adversely affect human dignity..... bring about marginalization, stigmatization, degradation or humiliation." In Spain the nodal body has been enjoined to prevent discrimination. Whilst the Lebanese law lays down that there should be no discrimination with regard to access to health services. Italian law provides that HIV infection may not constitute grounds for discrimination notably in registration for schools, conduct of sports activities and access or retention of jobs.

Alongwith the above legislative efforts protecting the negative rights of affected persons, legislative efforts have been made in some countries to guarantee positive rights to persons with AIDS. Thus USA and France make special provision for accommodation facilities for persons with AIDS. And Ukraine law grants a right of vacation to the carers of children suffering from AIDS.

Interestingly, law has been used both to curb and cause discrimination. The law of Vietnam bars HIV infected persons and persons with AIDS from getting married. HIV infection and AIDS have been made grounds of divorce and affected persons can be barred from employment in professions liable to transmit infection.

Compensation for affected persons

Source of infection has been a basis for differentiating between HIV infected persons. Denmark has promulgated laws to compensate infected haemophiliacs. Similar laws have been made in France, Italy, Ukraine and Switzerland. And the Swiss law provides that if the infected person died before receiving the earmarked benefit, then the persons who incurred or who are incurring costs as a result of his death may be compensated.

Law establishing policy making bodies

A number of countries have taken the view that AIDS control requires special policies and not special laws. Since the need for a centralized policy making body is felt to propagate uniform policies for the country a number of countries [France, Spain, Barbados, Belgium, Chad, Phillipines and Uganda] have made laws to establish nodal AIDS control agencies which delineate the functions to be performed by the policy making bodies. The Uganda body has been enjoined to plan for the welfare of bereaved orphans and find a drug for the cure of the AIDS disease.

Cleaning up of blood supply

This area has engaged legislative attention in a number of countries. Laws for cleaning up the blood supply were made in Algeria, France, Switzerland, Costa Rica, Italy Mali, South Africa, Lebanon, Phillipines and by the Council of Europe. Most of these regulations require mandatory testing of blood and blood products. Lebanese law requires all seropositive units to be destroyed and all seropositive blood donors to be excluded. Swiss provides that it should be ensured that donors can be identified at all times. In an effort to prevent professional blood donation the Italian rules for transfusion activities lay down that "human blood and its derivatives shall not constitute a source of financial gain; they shall be distributed free of charge to the recipient and shall be exclusive of any accessory charges or taxes."

Health care workers and duty to provide treatment

Refusal to provide treatment by health care workers to HIV infected persons and persons with AIDS is a problem which has been continually haunting the affected persons. The Ukraine law provides incentive based option. Rigorous sanctions for professional negligence and liberal provisions to compensate occupational disability of health workers have been provided in the law of Ukraine. The law provides for compulsory state insurance. HIV infection and AIDS have been included as occupational diseases. Whilst health workers getting infected by HIV have been guaranteed an allowance ten times minimum salary those who contract AIDS an allowance equivalent to 50 times minimum salary has been ensured. Provision for extra payment, extra annual vacation and early retirement with pension has also been made. The law permits medical personnel to refuse to provide treatment if protective gear is not provided to them.

AIDS has been included as an occupational disease in the law of Denmark.

Surveillance and Confidentiality

An obligation to notify to prescribed authorities continues to be the preferred method of surveillance. Efforts to protect the identity of the affected persons are also discerned. Thus the Danish Law requires the report to be made in an anonymized manner concerning the HIV antibody person's sex, age, place of residence and to the extent possible his risk behaviour. Demands of anonymity are also made in the French Law.

Provisions endorsing confidentiality norms alongwith the circumstances in which it can be excepted have been included in the laws of Singapore, Argentina, China, Tunisia, Ukraine and Vietnam. Whilst in most laws the circumstances' in which and persons to whom norms of confidentiality can be excepted have been specified allows for the inclusion of other agencies and the Vietnamese law requires norms of confidentiality to be observed with regard to voluntary tests only.

The survey shows that the issue of AIDS has been approached by the various countries from three angles, viz., coercive-penal, facilitative-pragmatic and compensatory-rehabilitative. Each of the approaches has influenced law making and countries generally relied on any one approach.

