

## INTRODUCTION

Possibly because the condition has no medical cure, control of AIDS has been often presented as a problem mandating solutions in law. The extensive legislative activity on the issue provides evidence for this belief. Despite this constant recourse to law, questions such as : whether law has a role to play in the prevention and management of the condition and if yes, should the legal regime be a coercive one or a facilitative one, continue to haunt national and international fora. Concerns of prevention and control have led to advocacy for reconsideration of the legal status of marginalised groups such as - homosexuals and prostitutes. Questions on the necessity of legal reinforcement of dominant perceptions of sexual morality have been raised. The need for issues of sexual preference to be outside the realm of legal regulation has been stressed. However, demands of withdrawal of law from the domain of sexual morality are not without their detractors; hence contentions on the necessity of penal sanctions to curb unsafe sexual behaviour also continue to be raised.

If the need for criminalising unsafe behaviour has been urged on grounds of protecting public health, the necessity for curbing discrimination of persons with AIDS has also been stressed on the same rationale. Even if the objective is promotion of public health and not protection of persons with AIDS, questions of appropriate legal strategy would still need to be addressed. Herein of crucial importance would be issues of informed consent, confidentiality and rights and liability of health care workers.

Also of vital significance are questions of safe behaviour victims i.e. persons who have become infected without indulging in any kind of risk behaviour and yet, once infected are subjected to the same process of stigmatization and discrimination reserved for risk behaviour victims.

These issues and a number of others would be addressed at conference . These background materials have been prepared to facilitate the deliberations.

The document has been divided into three parts. In recognition of the special focus being accorded to legal issues at this conference, the first part details the legislative efforts of various countries till 1994.

The second part is on - AIDS and the Law: the Indian experience. Though it was withdrawn by the government after being referred to a joint select parliamentary committee, the AIDS Prevention Bill of 1989 (II.1) is being reproduced to show the trend of legislative thought and to underscore the fact that the aborted Indian attempt was in consonance with global trends (see I.1 and I.2) of utilizing the force of law to prevent the transmission of HIV.

The Carriage of Passengers Suffering from Infectious or Contagious Diseases Rules, 1990 (II.3) and the Goa, Daman and Diu Public Health Act are examples of coercive extant law. The Goa Act has not been included because relevant provisions have been extracted in the Lucy D'Souza judgment (II.8). To demonstrate that mandatory HIV testing is not dependent on special legislative provisions, the use of medical examination procedure for HIV testing have been documented (II.7). Cleaning up of the blood supply has been high on the legislative agenda of a number of countries (see I.1 and I.2) and the Drugs and Cosmetics Rules, 1992 (II.4) evidence the Indian attempt.

Whilst legislatures have been engaged in arming public health officials with coercive powers, courts have been in the main activated to prevent discrimination of HIV infected persons, AIDS patients and risk groups. Lucy D'Souza's case (II.8) exemplifies this process. A public interest petition was filed in the Supreme Court asking the court to declare that no foreigner be permitted to enter India unless quarantine certificate was produced. The petition was dismissed.

The court proceedings of the Agra Protective Home show the routinised way segregation is ordered even by an apex court. And yet in July 1990 a division bench of the Madras High Court comprising Justices E.J. Bellie and S.Swami Kannu had ordered the release of four women detained at the government vigilance home in Mylapore. These women identified as HIV positive had completed their periods of sentence under the Immoral Traffic Prevention Act, 1986. Their detention was being continued on the ground that they were HIV positive. The court holding that their detention in the home was involuntary, ordered their release.

The medical reports of the Agra Protective Home inmates has been included to underscore the need to protect confidentiality even in court proceedings. As a welcome development however, the Bombay High Court has ordered the use of pseudonyms (II.13) whilst deciding the employment rights of an HIV infected person.

Efforts to clean up the blood supply have tended to single out the professional blood donor. In order to present the viewpoint of this vulnerable group, along with a summary of the Common Cause petition (II.10), an extract showing the social situation of professional blood donors has been included (II.11).

The issue of AIDS can and has been addressed from different disciplinary perspectives and a holistic understanding cannot be furthered from the confines of any one discipline. In Part III therefore selected extracts representative of the disciplines of: epidemiology, geography, medicine, law, political science, statistics, sociology, psychology and anthropology have been included.

In order to further rounded understanding the organisation of the materials has been done on the principle of juxtaposition. Illustratively, extracts on medical education (III.27), necessity of critical health care (III.29), problems of burn out (III.30), and liability of health care workers (III.31) have been presented as one cluster. Again along with the extract on education as a mode of prevention (III.21) and the plea for criminalising unsafe sexual behaviour (III.18) the extract on risk taker (III.20) has been including to stress the limits of education. Item (III.26) has been incorporated to show the kind of sex education which has been successful.

Extracts on either the law (III.22 and III.23) or the funding policy (III.8) of a particular country have been included primarily to provide comparative data for experiment and research.

To make the survey of literature extensive, selected abstracts of writings across disciplines have been included. To facilitate further study, an additional reading list has also been provided.

It is hoped that this document of background materials would be useful to the delegates for the deliberations at the Conference and would promote future interdisciplinary enterprises of dialogue and research.

4.12.1995

Amita Dhanda