POPULATION , AIDS AND LAW

R.K. Roy,*

The International conference on the implicaiton of AIDS for Mothers & Children was held in Paris in 1990. The conference made an appeal to all Governments, the United Nations system, within which the World Health Organisation has the responsibility of directing and Co-ordinating, the global fight against AIDS, Inter-Governmental and non-Governmental Organisations, the scientific community, health and Social professionals and the public of the world at large. December 1, 1990 was observed as world AIDS Day and the World Health Organisation adopted "WOMEN & AIDS" as the theme to mark the day. While main focus of AIDS Centres around the U.S.A., Africa and other Western & Eastern Countries, India is also not free from the grips of AIDS scare. More than 4 million people have died from AIDS and 17 millions are affected by the HIV virus which causes AIDS. Over 5 million children would have lost one or both parents to AIDS by the year 2000. About 26 million people will be affected and 2 million annually will be suffering from AIDS by 2000 A.D.

The HIV invades particular cells in human body. Being neuclear they take up the protein from the host cell and start reproducing. Unfortunately HIV has affinity for the T-4 Cells which form the part of the body's immune system along with B- lympnocytes and macrophages. The HIV turns over the DNA code of the T-4 cells and starts producing reverse DNA Code causing them to cluster together and die. As a result, the whole malfuntioning of the immune system begins and the body starts falling prey to infections. The contracting elements of AIDS virus are (1) injections of infected blood directly into blood stream through intravenous, intramuscular or subcutaneous injections (2) contract by infected semen or vaginal and cervical secretions with mucuous menstrouances in vagina, rectum, Urethra and possibly mout and throat-in shor, mostly through sexual contact. These are the basic facts about AIDS.

Much has been written about legal rights and duties in the AIDS epidemic and the importance of an appropriate legal response. With many policy responses being shaped by the all too familiar and often misconceived debate about public health versus individual rights, the delineation of legal rights and duties has been a necessary part of the policy debate. Moreover, the ongoing reports of serious and unjustified encroachment on the civil liberties of people with HIV have established beyond doubt that the law has a Central role to play in HIV/AIDS policy. The complex social and ethical dimensions of HIV/AIDS, however, have called for more creative approaches to how the law can contribute to HIV/AIDS policy. This requires and exploration of not only the proscriptive function of the law but also the ways in which the law can be used - or on occasions not used - in a constructive way to promote and reinforce the goals of HIV/AIDS strategies.

* LL.M, Senior Lecturer, Balasore Law College, Balasore, Orissa

The main models by which the law can be incorporated into HIV/AIDS policy are (1) the traditional proscriptive model that penalises certain forms of conduct, (2) the protective function of law and the need to uphold the rights and interest or particular classes of people, notable those infected with HIV or at risk of infection. (3) to use the law actively to promote the changes in values and patterns of social interaction that lead to suscptibility to HIV infection. Unless these different rules are recognised, there is a risk that the full potential of the law to assist HIV/AIDS policy will be overlooked or, worse, that the law may actively obstruct an approach reaponse to HIV/AIDS.

THE PROSCRIPTIVE ROLE OF LAW:

The impact of the law in its proscriptive mode on HIV/AIDS policy become apparent very early in the epidemic because of the particular epidemeology of HIV infection in developed countries. The two groups most affected by HIV in the West - homosexual men and injecting drug users-were people whose sexual or drug-using activities constituted (and in some cases still constitute) a ciminal offence in many jurisdictions. The existences of these criminal sanctions meant that legal concerns were drawn into the policy debate right from the outset. Our response to the activities that were placing people at risk of HIV infection had to be formulated in the context of legal prohibitions on these activities. The involvement of law in HIV/AIDS policy can be seen to have often obstruct rather than facilitate effective policy implementation. The enactment of Proscriptive laws directed specifically at HIV/AIDS has been counterproductive in the context of broader HIV/AIDS strategies. In the case of proscriptive and punitive laws, therefore, an appropriate legal response to HIV/AIDS will most often have as its desired outcome, the absence rather than the presence of applicable law. The particular dynamics of AIDS and HIV infection suggest that proscriptive laws will rarely be an appropriate policy response if they seek merely to target the conduct of people with HIV or activity that gives rise to HIV infection risk. In this guise, the role of the law is a negative rather than a positive one, and the challenges of HIV/AIDS are such that an affective policy required more than negative prohibition. Of all the different models the law can follow, the proscriptive model has the least scope for a creative application to policy formulation.

THE PROTECTIVE ROLE OF LAW :

A second model for the rule of law in HIV/AIDS policy focuses upon how the law can protect individuals or classes of individuals from harmful and undesirable occurences. This model has been of central importance in the context of the legal response to HIV/AIDS because of the proliferation of discrimination against people with HIV (1) and because of the increasing recognition, both nationally and internationally, of the inter-paly between AIDS and human rights (2).

Accordingly, legal instruments such as human rights and anti-discrimination legislation that embody the protective role of the law have been proposed as practical and effective ways in which the law can assist HIV & AIDS policy.

The legal response to HIV./AIDS has drawn on the protective role of the law in many ways, but two protective functions of the law have been dominant, namely protection against discrimination and the protection of confidentiality for people with HIV or suspected HIV infection. In the area of protection against discrimination, human rights instrument have been invoked in the interests of people with HIV and in some jurisdictions, new legislation has been passed strengthening human rights protection in this context(3). Judges have been called upon to decide whether pre- existing human rights legislations can or should be given a sufficiently broad intrepretation to cover new circumstances presented by HIV/AIDS related discrimination consideration has been given to drawing upon international law to strengthen human rights (4), protection within domestic legal framework(5).

It must be recognised that both proscriptive and the protective model for legal intervention involve fundamental value judgements and often, value conflicts in relation to what should be protected and what prohibited. As a result, each model operates on two levels , first by defining specific legal rights and obligations and second by creating or reflecting certain values and rejecting others. These statements of values which are inherent in the law can influence and shape other policy responses.

THE INSTRUMENTAL ROLE OF LAW

An appreciation of the potential role of the law in this context requires an appreciation of the emerging socio-economic patterns of HIV infection during 1990s. In April, 1991 the World Health Organisation estimated that out of the cumulative total of people infected with HIV world wide, more infections were in the developing countris of sub-saharan Africa, the Caribbean and South and South East Asia (6). It has been said that the disease affects poor women of colour(7) as race and gender patterns emerge in the demography of HIV infection. In the United STates, for example, the incidence of new cases of HIV infection is affecting blacks and Hispanics dispropertionately, while in some areas of Sub-Saharan Africa the rate of new infections is estimated to be almost three times higher among women than among men(8). The most significant risk factor during the 1990 relates not to sexual or drug-use activities as such but rather to socio- economic dependence. Because HIV infection is preventable, people who have access to information and appropriate preventive measures and have the means to implement these, will be able to protect themselves against infection. At this point in the epidemic therefore, the people who remain most vulnerable are those who are denied the means of protecting themselves against the risks of HIV because of economic need of powerlessness to control the basis upon which their sexual relationship take place. This may occur, for example, because a persons sexual activity is directed by his or her need for economic support, because preventive measures, such as condoms and not accesible and affordable, or because poor health care (in particular inadequate treatment of sexually transmitted diseases) increases transmissions risks. For women it may occur, because their sexual relationship with man are determined by cultural values which are beyond their control and which are often compounded by lack of economic independence or because of the absence of HIV prevention measures, such as virucides that are exclusively within the control of women(9).

LEGAL MANAGEMNET FOR AIDS IN INDIA :

In India , a surveillance programme of AIDS was initiated in 1985, till 31st July 1989, 3.33 lakhs persons mainly belonging to "high risk groups" like sexually promiscuous men and women have been screened and 1,392 individuals were found to have HIV infection. The long incubation period (about 8 years) renders identification based on clinical symptoms alone inadequate at the initial state of infection. Therefore, surveillance based on serology is necessary to prevent the spread of HIV, which causes AIDS. Having regard to the potential of rapid spread of infection and the mode of its transmission, it is necessary to take effective measures to prevent the spread of HIV, by detecting persons infected, preventing transmission by them of infection to others and by providing counselling, health, education and social support to and rehabilitation of infected persons.

The existing laws are not so much effective. Isolation of HIV patients is the promise of the Goa Act. The Present Goa ACt on AIDS is unfair, unjust and unreasonable. In 1981, the Goa public Health Act was amended under which authorities were mandatorily required to isolate a person found to be seropositive. The Act both in substance and procedure is unreasonable and violative of constitutional privileges (10).

A controversial Bill (11) which was secretely introduced in Rajya Sabha on August 18, 1989, is a foolish, hysterical response to a major public challenge and is not founded on a proper understnading of the problem. The Bill provides for the prevention and control of Human Immuno Deficiency Virus (HIV) infection and for specialised medical treatment and social support to and rehabilitation of, persons suffering from Acquired Immuni Deficeiency Syndrome (AIDS) and for matters connected therewith and incidental thereto. It was enacted by the Parliament in 1989(12). The bill is a classic example of a medical problem being used to further a puritenical, moralistic anti-people agenda - devoid of both common sense and compassion. In order to grasp the far reaching, repressive nature of the proposed legislation, we first need to examine certain assumptions behind the "scientific fact" about AIDS scare by medical professional, public health official, politicians, the assumptions which perpetuate ignorance and confusion about the nature of the illness and the most effective means of protection and prevention. Hatred and prejudice are already seen against groups of people (who are branded as "high risk") viz, prostitutes, homosexuals, professional blood donors and drug- addicts.

Every registered medical practitioner is required by Law to inform the Local health authority about the presence of an AIDS patients.(13) The Health authorities can forcibly question, test and isolate an HIV infected patient in a hospital (14). Further there is no confidentiality provision to protect an individual HIV status from public disclosure.

Law can be used to bring about social and ecomomic change, the potential of the law to complement and reinforce other policy initiatives in this regard should not be overlooked, because legal interventions can address some fo the social and economic factors that render particular group of individuals susceptible to HIV infection. In may developing countries, for example, there exist legal regimes that entrench the economic dependence of women through landownership and marital property laws which deny women's idependent ownership of property or through laws which deny women access to certain forms of paid employment (15). Law reform in this area could have an immediate

impact on patterns of economic support in these countries, which in turn could assist in permitting access to health care and in reducing reliance upon sexual activity as a source of income. Similarly Law can be enacted which require minimum level of participation and representation of socially disadvanteaged groups in the policy process either in relation to HIV/AIDS specifically or to more general matters such as economic assistance and health care. Such laws can help to ensure access to relevant information about HIV and by the mere fact of participation, help to redress the social imbalance.

One of the Primary reasons why law reform has the potential to be effective in this way is that law in any form is an improtant expression of social and cultural values and can therefore be used to change these values. Where law upheld certain customs or behaviours that give rise to HIV transmission risks, such as traditional marriage patterns in some cultures (15), the abolition of these laws can provoke a questioning of the customs and values that underpin them. The active prohibition of certain conduct which may hither to have been considered acceptable but which places individuals at risk of HIV can also be powerful force for change. There is, therefore, a need to harness the symbolism of the law in all its manifestations - a proscriptive, protective instrumental or otherwise add to use it to promote rater than impede the changes necessary to reduce the spread of HIV.

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