

LAWS ARE NECESSARY TO PROTECT RIGHTS OF POSITIVE PEOPLE

India's HIV/AIDS Bill yet to become a law

By Anand Grover

Estimates of the number of people living with HIV/AIDS (PLHA) in India may well have been reduced to nearly half, but does that mitigate the human trauma or change society's discriminatory attitudes around it? A person living with HIV once said more than the virus it is the stigma associated with it that is more debilitating and difficult to fight. Unfortunately, the stigma has only increased over the years.

How does one tackle an issue as complex as stigma? Because of its irrationality, it has to be addressed through education and sensitisation. But when people are denied their rights to employment or health care, it can be addressed only by bringing in anti-discriminatory provisions under a law. Under the Indian Constitution, at present, such provisions are applicable only to the government and the public sector. The private sector is not covered under any anti-discriminatory laws.

Informed consent for testing and maintaining a person's confidentiality are some other critical issues. At the moment, these are dealt under what is known as common law. There is an inherent danger with common law. It is not uniform but depends on the views of the individual judge.

We now know that laws and policies based on the protection of those infected and affected by HIV and those most vulnerable to it such as sex workers, Injecting Drug Users (IDUs), Men having Sex with Men (MSM), women and children, are likely to check the transmission of the virus, whereas laws and policies that infringe on their rights are likely to facilitate transmission.

Examples of this are available within India from Sonagachi in Kolkata and data from southern India. In Sonagachi, sex workers were empowered and condom use was promoted which helped reduce prevalence of sexually transmitted diseases including HIV. Similarly, epidemiological data from southern states in India have shown that empowering sex workers and the community helped in negotiating safer sex which reduced the incidence (new cases) of HIV.

Therefore, one can confidently say that rights of people living with HIV need to be protected to check the spread of the virus. It has been well said by Justice Michael Kirby, Justice of the High Court of Australia, that, "paradoxically enough, the only way in which we will deal effectively with the rapid spread of HIV/AIDS is by respecting and protecting the rights of those already exposed to it and those most at risk."

This is the basis of the HIV/AIDS Bill that has been approved by the National AIDS Control Organization (NACO), the Union health ministry and the Union health minister himself. The Bill is awaiting the final nod of the Union law ministry. On its part, NACO has been following policies that protect the rights of those living with HIV/AIDS. However, policies are not sufficient to protect rights.

One needs a statutory law to have uniformity and to adequately protect the rights of those affected and most vulnerable. The HIV/AIDS Bill does all this. In addition, it seeks to fulfill India's international obligations, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR), UNGASS Declaration of Commitment and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

The HIV/AIDS Bill was drafted by the Lawyers Collective after extensive research on experiences of different countries. This was followed by nationwide consultations with various stakeholders including people living with HIV, vulnerable communities, women and children's groups, healthcare workers and other civil society groups as also national and state AIDS control societies. The draft of the Bill was circulated and fresh inputs were taken from all stake holders. The final draft of the HIV/AIDS Bill was submitted to the Central government in August 2006.

Salient Features of HIV/AIDS Bill

The Bill attempts to cover practically all areas of HIV which need a legal approach. It is proposed that the main chapters within the law will include:

- i. **Prohibition of discrimination related to HIV/AIDS within public and private spheres.** No person can be discriminated against in employment, education, healthcare, travel, residence, accommodation, insurance etc. in the public as well as the private sphere.
- ii. **The right to a safe working environment for health care workers and other persons who maybe at risk of occupational exposure to HIV.** In the health sector it is felt that discrimination occurs as a result of a lack of a safe working environment for health care workers. This needs to be addressed by imposing obligations on health care institutions to provide universal precautions and providing training for health care workers. The Bill also addresses the issue of hate and discriminatory speech in the context of HIV.
- iii. **Informed consent.** The Bill requires specific, free and informed consent for HIV-related testing; HIV-related treatment and HIV-related research. It also provides for lowering the age of consent to provide independent access to young children to health care services.
- iv. **The Bill guarantees confidentiality of HIV-related information (including HIV status of a person) and the exceptions to it.** The Bill stipulates specifically the circumstances and the protocol for the health care worker to notify the partner of the HIV patient. It recognizes the vulnerability of female HIV patients to violence in case of informing her spouse or a partner in which case the notification should not take place. The Bill also imposes an obligation on HIV positive persons to prevent transmission by using safer practices such as using condoms.
- v. **The right to access to treatment related to HIV/AIDS as part of the right to health** recognized under the Indian Constitution and the International Covenant on Economic, Social, and Cultural Rights to which India is a signatory. The Bill provides for access to comprehensive HIV-related treatment including diagnostics, antiretroviral drugs, nutritional supplements etc.
- vi. **Strategies for risk reduction are those which minimize a person's risk of exposure to HIV.** These programmes for safer sex behaviour include condom use promotion amongst sex workers and men who have sex with men, provision of clean needles and information to all persons including children. Unfortunately, such strategies are subject to criminal sanction under various laws and have severely impeded risk reduction work in the past. The Bill provides that such strategies should not be subject to criminal sanction.
- vii. The Bill provides for the **prohibition of quackery** in the context of HIV/AIDS.
- viii. The Bill sees the provision of **Information, Education and Communication** as a key and an essential component to any successful programme of containing HIV. It obliges the Government to frame their messages on the basis of evidence and not myth and prejudices.
- ix. The Bill provides for **special provisions for those who are particularly vulnerable** and those who are disproportionately affected by the epidemic, especially women, children, persons in the care and custody of the State who due, to social, economic, legal and other factors find themselves more vulnerable to HIV. The Bill provides for the right of a woman to reside in a matrimonial home, repeal of the exemption of rape within marriage, and review of all laws and policies which leave women vulnerable to HIV.
- x. The Bill creates innovative **implementation mechanisms including institutional grievance**

redressal machinery, Health Ombudsperson for each district and HIV/AIDS as statutory authorities to replace NACO and the SACS. It provides for an independent and accountable structure for such authorities.

xi. This Bill provides **special procedures to be followed in courts**, including suppression of identity, speedy trials and proceedings etc.

Despite the fact that the Bill was presented to the Central government in August 2006, and the Union ministry for health and family welfare forwarded the same to the Union law ministry in August 2007, it has still not made it to Parliament. Meanwhile, instances of discrimination against PLHAs have only increased.

In Kerala, two children were denied admission in schools because their parents were living with HIV. Such instances mobilised the PLHA community throughout the country to start a signature campaign, demanding the HIV/AIDS Bill should be tabled in Parliament at the earliest.

As a result a signature campaign was launched in August 2007 and apart from 19 state level networks of Indian network of positive people, INP+, leading civil society organizations working in the field of HIV/AIDS were also a part of this campaign. A letter to the Prime Minister, urging an early tabling of the HIV/AIDS Bill in Parliament, was signed by around 20,000 PLHAs around the country.

Thousands of post cards demanding the tabling of the Bill were also sent to the Prime Minister. Under the same campaign, a rally was organized in Lucknow in August 2007 in which around 200 PLHAs marched together raising slogans in support of the HIV/AIDS Bill and demanded its tabling at the earliest.

As the Bill has not yet reached Parliament, all the groups have come together to form a national coalition for the HIV Bill. One sincerely hopes that it is indeed tabled as demanded. For it will be a tragedy if it becomes a victim of political apathy.

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