

## HIV Bills, Maharashtra and Karnataka

**Anand Grover, Mandeep Dhaliwal and Sandeep Dadwal,  
Lawyers' Collective HIV/AIDS Unit**

Contrary to international public health experience, identical versions of a Human Immunodeficiency Virus (HIV) Bill are being considered in the respective state assemblies of Maharashtra and Karnataka. These are private members' bills. The National AIDS Control Organisation (NACO) has categorically stated that the Bills do not have the support of either the central or the state governments.

The apparent objective of the Bill is to promote the overall security of society through the prevention and control of the spread of HIV infection whilst providing optimal medical care for people living with HIV/AIDS. However, the provisions of the Bill, if implemented, would result in breach of HIV-positive people's rights to consent before testing, right to confidentiality of sero-status and right to non-discrimination. In effect, the Bill would serve to drive the epidemic underground and thus exacerbate the further spread of HIV.

### Discrimination

Section 3 of the Bill seeks to prevent discrimination against people living with HIV/AIDS in relation to access to public places [and facilities]. The Bill does not take into account that, in reality, [such] discrimination is not practised against HIV-positive persons... In fact, people living with HIV/AIDS encounter discrimination and are denied their rights in the areas of health care, employment and insurance. The Bill is silent on these key areas of discrimination.

### Intentional transmission

Section 4 of the Bill sets out a provision that makes 'a person who in all reasonable probability would have known her/his status' liable for punishment. The provision does not

indicate guidelines for deciding what 'reasonable probability' of an individual having knowledge of her/his HIV status would be... Thus, even if a person merely has never tested for HIV and does not know her/his HIV status, s/he may be penalised under this provision. Section 4 also states that actual transmission is not necessary to make a person liable. ...the mere marriage of an HIV-positive person to another person who is not HIV-positive though with the free and full informed consent of the other partner would be an offence. Furthermore, a sexual act between an HIV-positive person and a non-positive partner even if it is with full and free informed consent and does not result in transmission of HIV would result in making the HIV-positive partner liable. This section is also unclear as to what kind of 'practice or behaviour' would be considered as having tendency to place another person at risk... No safeguards are provided for the abuse of this provision, which could easily result in the victimisation of people living with HIV/AIDS.

In India there exist sufficient provisions in the Indian Penal Code (IPC) providing for punishments for the offence of intentional transmission of HIV... Thus the penal provisions of the Bill are redundant and unnecessary.

### Health care

[Under] Section 5 of the Bill... a medical professional, before conducting any invasive medical procedure which would place her/him at risk, can refuse to perform such a procedure unless the patient undergoes an HIV test and the practitioner is informed of the result. This is clearly not based on any sound scientific study or data... The data available on occupational exposure of health care workers show that the risk of transmission from patients is so minuscule that it can be ignored... At the time of the test the patient may be in the window period resulting in a false negative test. By the Bill's logic, in case of an HIV-negative report, the

medical practitioner can be complacent about taking precautions... This will only give the medical practitioner a false sense of security. Doctors must realise that every patient is a possible HIV case and they must take universal precautions in case of all patients coming to them for treatment... There is also a possibility that the result is a false positive; this is very high in the case of low sero-prevalence setting such as India...

According to the testing policies and guidelines of NACO and the World Health Organisation (WHO), there cannot be any HIV testing without the consent of the individual being tested. Already in most public and private hospital, doctors conduct HIV tests as a matter of routine without consent though such practice is illegal. This provision will only encourage such mandatory 'routine' testing. International experience clearly indicates that public health strategies which provide for coercive and mandatory testing have negative public health repercussions. The tendency is for people living with HIV/AIDS not to avail of treatment that requires mandatory testing thus negating the very objective of providing treatment.

According to Section 5, medical professionals could 'legitimately' deny treatment to individuals, thus misusing this provision... This provision would only let the private sector off the hook and the burden of treatment would have to be disproportionately borne by the public health care sector.

Ostensibly to safeguard patients from contracting HIV infection from HIV-positive doctors, the Bill provides for the disclosure of the HIV-positive status of medical practitioners to the HIV Prevention Board – an additional administrative body to be instituted under Section 6 of the Bill. The creation of an additional administrative body... is a flagrant waste of precious resources... This provision apparently seeks to safeguard the interest of the patient in not becoming HIV-positive during the medical procedure. It is unsupported by any scientific data.

...Health care workers have legitimate fears and apprehensions that

**Anand Grover, Dr. Mandeep Dhaliwal and Sandeep Dadwal** *Lawyers' Collective HIV/AIDS Unit, 7/10 Botawalla Building, 2<sup>nd</sup> floor, Horniman Circle, Fort, Mumbai 400 023.*



must be addressed. Their main apprehension is that of being exposed to HIV and the consequent measures that are required to be taken, which are unfortunately absent in the local scenario. It is well established that transmission of HIV to health care workers can be virtually prevented by taking universal precautions. However, in the unlikely event that health care workers do get exposed to HIV, post-exposure prophylaxis is available locally and is not prohibitively expensive...

Section 8 of the Bill states that any person who is aware of her/his HIV status is mandatorily required to give information of their status to the HIV Prevention Board. This provision also states that any medical practitioner who becomes aware of the HIV positive status of an individual is bound to give information of the patient's HIV status to the Board. This would result in an absolute breach of a citizen's fundamental right to keep their HIV status confidential.

The Central and state governments have... not made HIV status notifiable under the provisions of the Epidemic Diseases Act. However, this provision would result in making HIV status notifiable. Experience the world over has shown that making sexually transmitted diseases notifiable has had negative public health implications. People living with HIV/AIDS whose confidentiality is breached will not avail of service and the epidemic will be driven further underground.

### High-risk areas

Perhaps the most draconian section of the Bill, Section 10, is the one that confers upon the state government the power to notify certain areas as high-risk areas... if the incidence of HIV in such areas would be so high as to expose the public in that area to a high risk of infection.

The provision totally ignores the fact that it is engaging in unsafe behaviours which spreads HIV... Public notification of high-risk areas... would result in stigmatisation of citizens living in the said areas. People not living in notified high-risk areas would [have] a false sense of security and may resort to high-risk behaviours. The

notification of certain areas as high-risk areas would thus be counter-productive to preventing the further spread of HIV. Section 10 could easily result in further targetting and isolation of already marginalised vulnerable groups like sex workers, eunuchs, injecting drug users, men who have sex with men, etc. leading to the further spread of the epidemic.

### Mandatory testing

Section 8 of the Bill provides that the HIV Prevention Board is given power to require any person to furnish information, to submit him or herself for an HIV test and to remove him or herself forthwith to a hospital for special care and treatment.

As previously mentioned, international experience indicates that mandatory testing and isolation will discourage people living with HIV/AIDS from coming out in the open and availing of services and counselling facilities...

Section 11 directly interferes with the personal liberty of the individual. Under the Constitution and as common law, no person can be tested without his/her informed consent... the exercise of the power to interfere with an individual's liberty is left totally to the whims and fancies of the Board... The Bill does not provide for any safeguards to prevent against arbitrary action by the Board...

The testing policies and guidelines set down by NACO as well as WHO expressly prohibit mandatory testing.

These policies have been developed relying on a considerable amount of national and international experience...

There is no assurance that the HIV Prevention Board would treat the information received under the provisions of the Bill as confidential. This would have the effect of driving the epidemic further underground by discouraging people who are at risk or consider themselves to be at risk to access voluntary testing, counselling and health services.

... Furthermore, even after a person is removed to a hospital one fails to understand what treatment would be provided. Considering that the epidemic is progressing rapidly, relying on hospital-based or institution-based care would be too expensive, impractical and often unaffordable...

### Collective response

...the proposed Bill... is counterproductive to any and all strategies for preventing the further spread of HIV/AIDS. Thus it is of critical import that we, as concerned individuals all of whom are affected by HIV/AIDS, mobilise a collective response to ensure that this Bill does not become law.

*This edited statement has been reproduced with permission from the authors. The full text of this message, and of the Bill, can be found at [www.hri.co/partners/lc](http://www.hri.co/partners/lc).*

## ISSUES IN MEDICAL ETHICS Form IV (See Rule 8)

1. **Place of Publication : Forum for Medical Ethics Society, 310 Prabhu Darshan, S. Sainik Nagar, Amboli, Andheri (W), Mumbai - 400 058.**
2. **Periodicity : Quarterly**
3. **Printer's name : Dr. Anil Pilgaokar**  
**Nationality : Indian**  
**Address : 34-B, Naushir Bharucha Road, Mumbai 400 007.**
4. **Publisher's name : Dr. Anil Pilgaokar**  
**Nationality : Indian**  
**Address : 34-B, Naushir Bharucha Road, Mumbai 400 007.**
5. **Editor's name : Dr. Arun Bal**  
**Nationality : Indian**  
**Address : Flat 6, Mallika, Makranth Housing Society, SVS Marg, Mahim, Mumbai 400 016.**
6. **Name of Owner : Forum of Medical Ethics Society**  
**Address : 310 Prabhu Darshan, S. Sainik Nagar, Amboli, Andheri (W), Mumbai - 400 058.**

