

Action for AIDS's Feedback on Proposed Amendments to the Infectious Diseases Act 2007

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The proposal to amend the Infectious Disease Act (IDA) makes it an offence for a person who is unaware he (she) may be HIV infected to engage in 'high risk' sex without first informing his or her partner that he or she may be infected with HIV infection.

The stated objectives of this amendment are to encourage those persons who have high-risk behaviors to act responsibly, and to prosecute them if they place others at risk. Responsible behavior is defined as i) informing partners of that they may be at risk of HIV infected, ii) to have an HIV test, and iii) to take reasonable precautions during sexual activity that does not expose the partner to HIV infection.

The objectives for the amendments to the IDA may be reasonable and desirable; however there are several questions and problems arising from these amendments that we wish to highlight.

- 1 What is the meaning of "reasonable precautions during sexual activity that does not expose the partner to HIV infection"?

The exact meaning is not enunciated at all, the absence of a clear explanation makes the law difficult to understand. The meaning of the statement must be clearly explained in the IDA and the public must be informed of the official interpretation and meaning of this statement so that members of the public can act accordingly. These messages must also be consistently included in mass media AIDS prevention campaigns.

- 2 How will a third party verify if individuals have behaved in a risky or in a reasonable manner without it degenerating into a "He Says/She Says/He Says" match? We all know it is well near impossible to be certain of what actually happens in a relationship.
- 3 Who are the targets of these amendments? Are these amendments targeting high-risk groups – viz. MSM and sex workers? If this is indeed the case then it is unjust and unconstitutional.
- 4 What is the level of risk and what are the types of sexual exposures that should, in the eyes of the law, trigger members of the public to think they are at risk of HIV infection?

Some scenarios are quite clear-cut e.g. unprotected sex with sex workers and casual partners.

However what about an ex-boyfriend or girlfriend from a few years ago, or an ex-spouse?

A person may become infected with HIV even though he or she had only had one sexual partner. A large number of married women for example get infected from their spouses. If such a woman has a subsequent partner, does this law make her culpable?

- 5 What about the question of the window period? (the time between acquisition of infection and the time of appearance of detectable antibodies in the blood)

A person in the window period is potentially infectious to others.

- 6 It is not possible to be certain which direction transmission has occurred within a dyad, even with molecular typing of the HIV samples. The prosecution of this offence will be extremely difficult.

- 7 The proposed amendments will more likely be applicable to persons within relationships, rather than to those who have casual sex.

Will the proposed amendments in fact lead to more frequent anonymous and casual encounters where there is no exchange of identities or contact information between sexual partners? This will not be desirable.

- 8 The proposed amendments will aggravate stigmatization of HIV infected people, and discrimination against affected groups (e.g. MSM, sex workers).

Stigma and discrimination are major drivers of the HIV epidemic. The net effect will be poorer control of HIV infection.

- 9 Making HIV infection special in the eyes of the law goes against moves to regularize HIV infection into clinical medicine and public health in order to improve prevention, care and management of the infection.

- 10 The amendments will make an HIV infected individual who discloses names of his/her sexual contacts in the course of contact tracing interviews by counselors and doctors liable to prosecution if these contacts subsequently reveal that none of the 3 conditions in the amendments were fulfilled.

HIV-infected persons will be deterred from revealing details of their sexual contacts to health authorities. The amendments will compromise contact tracing programme and the doctor-patient relationship.

- 11 Are there any studies in countries that have laid down laws criminalizing HIV that have shown that this was an effective means of prevention e.g. whether there

was an increase in the uptake of HIV testing, condom use or a drop in new HIV infections?

In the absence of empirical evidence, the likely impact of the proposed changes to the IDA is left to guesswork.

In conclusion we feel that the proposed amendments to the IDA will hinder instead of help AIDS prevention and control programmes, and may even make the HIV epidemic worse.

We believe that energy and resources devoted to this law and its enforcement will be better spent on effective public education aimed at knowledge building for everyone, fighting AIDS-related discrimination and encouraging acceptance of the people with HIV. In this way members of the public will voluntarily undergo testing as well as become more knowledgeable.

AfA reiterates the principle that HIV prevention must be accompanied by provision of affordable care and treatment for infected individuals. There must be universal access to HIV prevention, education, care and treatment, and clear anti-discrimination statements and actions by government.

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