

Law, Ethics and HIV, Proceedings of the UNDP Intercountry Consultation. Robert A. Glick, ed. UNDP, New Delhi. 246, pp., 1993.

AIDS is big news today, disturbing and fearsome to people everywhere. The fact that most people are unaware of the potential threat for which there is no vaccine nor cure makes the problem challenging to policy planners and decision makers in the areas of health, human rights and social security. Because of the prospect of undermining social and economic development, HIV/AIDS epidemic is perceived as a development problem to be attacked through available strategies of prevention and containment. Little is achieved by generating a scare in society, though the problem warrants nothing less from all concerned. Still less is accomplished by sitting back and lamenting on the catastrophe about to befall humanity, particularly in those parts of the world where poverty and backwardness have already put life in jeopardy for many people. Statesmen are worried about nuclear weapons, and their proliferation in the world. They, therefore, put nuclear non-proliferation issue as the number one item in the international agenda. They are probably unaware of the silent but sure killer developing in their backyard for which no treaty nor declaration can be an adequate response. The HIV/AIDS issue is at once a challenge and an opportunity for united action for the entire world to prevent human suffering and promote the ultimate human right to life and happiness.

If the problem is overstated, it is deliberately so done. Even educated people refuse to believe the terrible consequences of this dreaded disease. When the potential threat to human survival from the HIV/AIDS was narrated in a social gathering recently, an old lady in the neighbourhood paused and added that it might well be so because such a calamity is predicted in the scriptures several centuries ago. A feeling of helplessness and a sense of inevitability seem to be the reaction of the old and elderly. On the other hand, the younger generation refuse to believe it to be so serious and think that modern medicine does have a cure for every illness, including AIDS. The medical profession,

at least in India, seems to have not taken up the issue with the attention it deserves and the media is indifferent excepting on occasions when a sensational story makes news. In this context, the initiative of the Regional Bureau for Asia and the Pacific of the United Nations Development Programme to study the legal, ethical and policy framework in different societies in the region is to be welcomed. Information is the key for intelligent policy-making. Law can succeed only when it is based on correct information as to the behavioural patterns, motivations and beliefs of people whose conduct it is supposed to influence. It is, therefore, of great advantage to the countries in the region that the volume under review has brought together a wealth of information which provides at least a base for further inquiry and research to guide policy on this vital area of public health and human rights.

The volume essentially is a collection of papers written by experts organized around issues and countries in the Asia-Pacific region. A third section addresses questions on strategies and priorities, giving policy choices in the available legal framework. The foreword by Justice Michael Kirby comprehends the objective and thrust of the whole exercise. A collective appreciation of the strengths and weaknesses of the myriad legal regimes of the region in responding to the unlimited peril of HIV/AIDS resulted in the identification of a variety of strategies varying from increased availability of condoms, safe sexual practices through family education and equal states of women in decision-making processes. More popular education and better policies on drug use, public health and prostitution are recommended by the paper writers as possible initiatives in preventive action. The object of networking in the region for dissemination of information on policies and programmes directed towards HIV/AIDS is indeed a commendable outcome insofar as not much is known about the disease and about how to counteract its spread, given the attitudes and behaviour towards sex of the people. As the editor of the volume expects, the papers should assist in defining a research agenda for the future and in assembling a practical action programme.

For a student of law, the HIV/AIDS debate raises a number of issues for interrogation. It is accepted that, in the interest of public health, individual

rights can be restricted. In the present context, can we articulate the limits and limitations which can possibly be imposed on freedom and liberty? How do religious freedom and minority rights in a democratic, pluralist society get affected by public health considerations and to what extent are they constitutionally justified?

Regulating sex behaviour has been a most difficult and controversial area of law. It is common knowledge that observance of safe sexual practice is the best strategy for prevention of HIV/AIDS. To what extent can law facilitate such practices? Under what circumstances can law punish unsafe sexual behaviour? Should prostitution be prohibited, regulated or legitimized in the interest of safe sex? Can HIV-infected persons be isolated and their sexual activity controlled?

Issues are complicated in several jurisdictions in the region because of the prevalence of customary, cultural and religious practices not always conducive to safe sex approaches. Ethical and moral standards of communities are developed not necessarily on rational and scientific arguments. They are of mixed origin and followed by habit without challenge. Obscurantism, superstition and exploitative customs complicate the situation, posing serious challenges to social engineering through law.

In an incisive essay contributed by Julie Hamblin on the role of law in developing HIV/AIDS policy, three models are suggested, namely, the proscriptive model, where conduct is influenced by penal sanctions, the protective model, wherein the law tries to uphold the rights and interests of those affected or likely to be affected by HIV/AIDS through rights-sensitive legal responses; and the instrumental model, where law is a proactive instrument to advance social policies through value changes. Keeping in mind the record of criminal law, it is argued that the proscriptive model could become counterproductive. Compulsory testing and reporting with concomitant sanctions for noncompliance may impede preventive efforts. Nonetheless, the temptation for policy makers is to go for the quick and easy response of prohibition and penalization. Today, when decriminalization in drug use and in prostitution is widely canvassed, the proscriptive role of law has to be invoked

for negative prohibition rather than for positive criminalization.

Imaginatively used, law has a significant role in promoting the desirable conduct by intelligent arrangements of incentives and disincentives in a broad spectrum of activities. There are many examples of such use of law in society and the scope of similar use in the control of HIV/AIDS needs to be examined. The proactive role of law is one which requires a variety of informational input, policy coordination, monitoring, research and development. It envisages a sophisticated legal system with established institutions and standards. A law reform process should be built into the system. Interaction among different professionals, continuing education for actors in the system and adequate research and media support are necessary for law to influence social change in complex issues of human behaviour. Every society does use law in this role with varying degrees of success. Here law can well reinforce other forces of change in society. According to Julie Hamblin, the instrumental role of law to buttress other HIV/AIDS strategies is critical in the 1990s.

The papers raising these issues make interesting reading, particularly for those from outside the countries of their reference. A case study on labour legislations and labour relations from the Phillippines seeks more specific standards and guidelines from the law to compel employers to adopt more enlightened and human-rights-friendly approaches. Another case study from the same country examines the law on privacy and information in the context in HIV/AIDS and projects its potential for influencing positive behavioural change.

Family law buttressed by religious beliefs and the unequal and discriminatory status of women, particularly in family relationships, are the issues examined by participants from Malaysia and India, respectively. They bring out a variety of inadequacies in the existing law which inhibit proper awareness and positive responses to the AIDS syndrome.

The section on country papers includes ten contributions from as many countries in the region. They are a valuable source of information on the existing legal framework and to plan further action in the legal and ethical fronts. Comparative experiences from different countries are of great value to research-

ers and policy planners, particularly when the problem affects the entire humanity across political boundaries.

The third section, which claims to contain policy/strategy papers, is perhaps the weakest segment of the publication. Much of the ideas contained are repetitive and placement-rhetorical. The presentation of HIV epidemic as a development issue is not convincing enough. Critiquing the health care systems in the context of the demands of individual rights does not make much sense in the framework of a market-driven economy. However, a beginning is made by articulating the problem and questioning some of the established public health policies. Law has to be used, but with caution and restraint.

On the whole, UNDP Regional Project has done a great service in bringing the issues together and inviting the attention of researchers and policy makers, health administrators and human rights activists to the implications of an epidemic which may be the worst human disaster unless preventive strategies are adopted well in time. This is an issue as important as nuclear disarmament or environment protection. It deserves as much attention to world leaders and scientists as is being given to environment and nuclear arms. Perhaps the Secretary General may consider declaring the UN year for AIDS Awareness and Prevention and may take steps to convene a World Summit before the turn of the century to evolve concerted action to face the challenge.

N. R. MADHAVA MENON

*National Law School of India
University, Nagarbhavi,
Post Bag No. 7201,
Bangalore 560 072, India*

The Collected Papers of Albert Einstein - Volume 5 - The Swiss Years: Correspondence, 1902-1914. English Translation, Princeton University Press, Princeton, New Jersey. 1995.

Well before his passing away in 1955 at the age of seventy-six, Albert Einstein's name had become a household word

throughout the world. Aptly characterized as 'creator and rebel', through his work he profoundly altered forever our understanding of the natures of space and time; created a new theory of gravitation unparalleled for its beauty and significant for bringing geometry once more into the domain of science; and with Planck before him and Bohr after, opened the doors to the stunningly unfamiliar and rich quantum view of nature.

Already in 1950 Einstein had signed and sealed his last will and testament. His secretary since 1928, Helen Dukas, and his friend Otto Nathan were named joint trustees of his estate, with the latter being sole executor. Possibly due to their attitudes and perceptions of their responsibilities, the world has had to wait for almost four decades before Einstein's papers became available for open study and publication. Predictably, in the last couple of years and in tune with today's 'bare all' journalistic tendencies, there has appeared a rash of accounts 'exposing' Einstein's affairs, especially his relation to his first wife Mileva. On the scientific side, his collected works are yet to appear in final and definitive form; in contrast, those of Neils Bohr have been available now for a quarter century or so.

The book under review is the fifth volume of Einstein's collected papers, being published in English translation by Princeton University Press. It covers the Swiss years, 1902 to 1914, and is a collection of over five hundred letters written to or by Einstein. At about the beginning of this period, in early 1901, he had become a Swiss citizen. He came to Bern in February 1902 and a few months later, as all the world knows, he obtained employment in the Patent Office as 'Technical Expert, Third Class'. His father died later that year, and he married Mileva in January 1903. His sons Hans Albert and Eduard were born in 1904 and 1910 respectively. After seven years at the Patent Office, in 1909 he resigned to become Associate Professor at the University of Zurich. Soon there was a brief move to Prague, then a return to Zurich but this time as Professor at the ETH. This too was not to last very long, as an irresistible offer took him away to Berlin in early 1914. Also, towards the end of this period, the relationship with Mileva was breaking up, and he was getting very