T he AIDS emergency is already having extensive repercussions on the legal systems of most countries where the disease has taken hold. Established health laws and practices are being challenged, including those which confer immunity from lawsuits on the medical services, and those which protect an individual's right to privacy. Many countries (for instance, Switzerland) have found it prudent to repeal or suspend parts of their drug abuse legislation, and to allow the sale (or in some cases, as in the Netherlands, even the free issue) of needles to intravenous drug abusers. Furthermore, the ways in which AIDS is transmitted have underlined the need for new laws to cover such issues as personal liability for transmission of the disease.

The legal issues are rendered more complex because there is a conflict between those concerned with protecting the rights of the person with AIDS and those concerned with protecting the rights or interests of the general public.

Some of the legal issues that most frequently arise are connected with blood transfusion laws. Recently, many countries have found it necessary to pierce the veil of (Medical) Service Immunity laws which shield hospitals and blood product producers from liability if they inadvertently use contaminated blood. Lawsuits for negligence have been initiated by persons who developed the disease following transfusion. Now that there is a blood screening test, it is technically possible to prevent tainted blood from being transmitted to patients. Therefore, a good argument could be made in law (and has been made in cases in Australia and the United States) if a blood bank has failed to use reasonable care and allows tainted blood to slip through the screening process.

The issue of AIDS testing and of "informed consent," for mandatory screening of "high risk" groups of the population is another problem that many countries have to grapple with. Most of them have rejected legislation on mandatory screening because it is unlikely to lead to changes in behaviour necessary to impede the spread of the disease, and because of the potential for invasion of privacy and discrimination. But it has often been thought prudent at least to have regulations to encourage and facilitate testing of the "high risk" groups—with or without their consent.

The issue of protecting the rights of the person who contracts the disease through blood transfusion conflicts with the right to privacy which the constitutions of many countries recognise as being in an individual's interest. Courts in many countries recognise that the mere suspicion of AIDS can cause a social stigma and embarrassment which result in discrimination in employment, housing, medical care and treatment. In such instances, courts are faced with balancing the interests of the individual with the interests of the public in having such information.

A specially sensitive aspect of the privacy issue is the traditional confidentiality within physician-patient relationships. In most parts of the world, this is protected by medical codes and ethics as well as laws that define what is considered confidential information and cannot be disclosed without the patient's consent. In some countries, the interests of the society may be cited in defence of an action breaching this confidentiality, and doctors disclosing information about patients with AIDS may successfully assert this defence. The issue of privacy and confidentiality is further complicated in countries where AIDS is a notifiable disease, which means that it is obligatory for doctors to report AIDS cases to the appropriate authorities.

Paying for treatment may not be the least of the nightmares that persons with AIDS face. Treatment is so expensive that health insurers have been known to refuse to pay out in a number of cases, using various arguments as a defence. Since the incubation period is anything from several months to five years, some insurers say that AIDS is a pre-existing condition (inherent weakness) not covered by the policy. Or they may cite the grounds of
non-disclosure or misrepresentation by the insured of their medical history (a material fact). Or they may claim that AIDS patients receive “experimental treatment” not covered by most insurance policies. Unless the policy includes an “incontestability” provision, saying the policy cannot be challenged retrospectively after a certain lapse of time, there is little that can help an insured person who has AIDS. Things can be particularly awkward for those who are covered by insurance through their employer’s policy; if the employer, on learning of the disease, fires the employee, then the latter may lose insurance benefits as well as his or her job.

This issue of employment discrimination is going to be of mounting importance in the coming years. Those who have been diagnosed as having AIDS experience tremendous discrimination on the part of their employers and fellow employees. Because of unfounded fears that AIDS can be contracted through casual contact, they become pariahs in their workplace (or at school in the case of children who have contracted the disease through contaminated blood transfusion). Some countries (among them the United States) have found it prudent to institute an employer policy which allows employees with AIDS to work, grants them their full benefits and does not oblige them to inform co-workers about the disease. However, there are instances where there is an undoubted perception of risk to the public and to co-workers.

Because of the methods of transmission of the disease, and the indefinite length of time during which the virus may be transmitted, extreme measures of general isolation and quarantine, or detention in hospitals, seem neither justified nor feasible. Who itself is not in favour of such methods. But some authorities (for instance the English lawcourts) have considered it prudent to devise regulations designed to deal with the exceptional circumstances where a person with the disease does not take sensible precautions and thereby puts others at risk.

Which brings us to the issue of personal liability for transmission of AIDS. There have already been lawsuits for personal negligence where the defendant knew or should have known that he or she had AIDS, and this has been ruled to constitute a tort. But where a person has deliberately used the infection as a weapon to injure or attempt to injure others, that person could be found guilty of both a tort and a crime.

To combat AIDS successfully, in my view, governments must include legal issues in their national programmes. Health education must go beyond explicit sex education; it must seek to educate the public on upholding the civil liberties of people with AIDS or who test HIV sero-positive. Legislatures and policy makers will have to eliminate laws that permit employers, landlords, insurers, the health services and others to discriminate against them; where necessary, they will have to create new laws to deal with new situations as they arise. After all, the concept of legal responsibility or rights is not a static one, but one that evolves to meet changing social conditions and standards. The law is yet another field in which the advent of AIDS is going to precipitate change and adaptation.