

Advocacy, policy and support on male sexualities

## **Adding insult to injury: Making it worse**

### **Implications of criminalisation of HIV for MSM**

**Shivananda Khan**

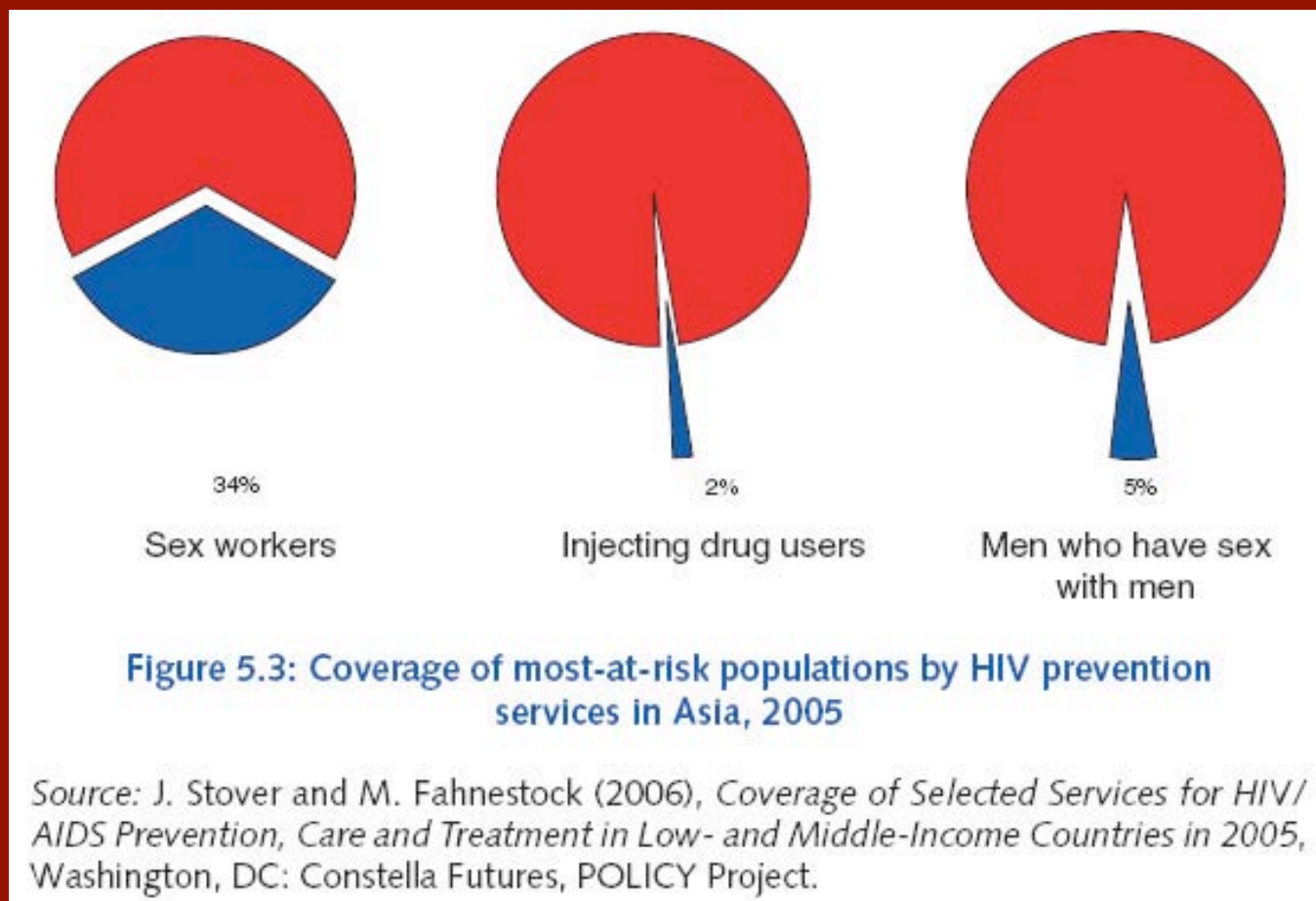
**5th August, 2008, Mexico City**

**XVII International AIDS Conference**

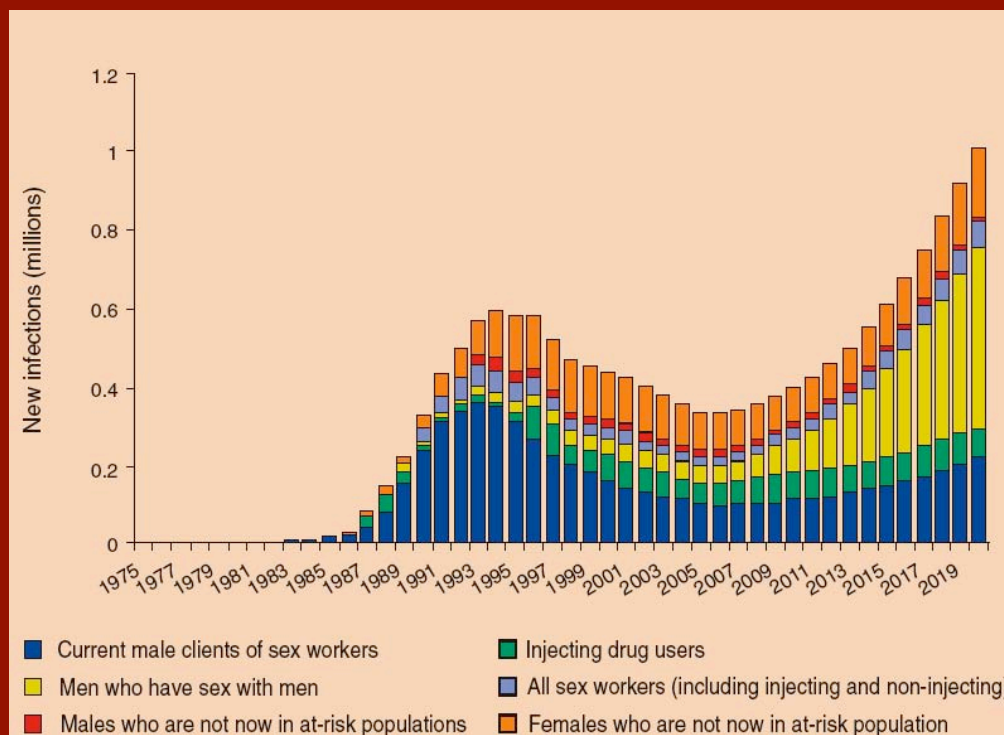


**Crime and punishment: Criminalisation of HIV**  
**International Planned Parenthood Federation Satellite Sessions**

# On the margins



# On the margins



**Figure 2.16: Annual new HIV infections in adults by population group: a decline from early prevention successes, an increase from current failures**

Source: Asian Epidemic Model estimates for the Asian region.

## **On the margins**

**MSM remains the group most affected by HIV in most regions:**

**In 2000, HIV prevalence among MSM in Latin America was estimated at 25%**

**In Asia, Australia, Africa, the Caribbean, Europe and North America, HIV prevalence studies yield higher than average estimates that range from 7% and 46%**

## **Against the law**

**In 2008, 86 member states of the UN still criminalise consensual same-sex acts among adults.**

**Of this, 41 countries are in the Commonwealth, a legacy of British colonialism.**

# Against the law

## British colonial law

### Section 377 of the Indian Penal Code

**Anyone who voluntarily has carnal intercourse against the order of nature with man, women or animal, shall be punished with imprisonment of either description which may extend to life, or to ten years and shall also be liable to a fine.**

**Explanation: Penetration is sufficient to constitute the offence as described in this section.**

## **Against the law**

**A new Nigerian law proposed to introduce criminal penalties for relationships and marriages of the same sex as well as for public advocacy or associations supporting the rights of lesbian and gay people, even reading books or looking at specific internet sites.**

**And we have all read the statements of various political leaders and presidents from several other African countries.**

**So what's new!**

## **Against religion**

### **Gender roles**

#### **Islam**

**It is reported by Imam Mohammad Baqar (A.S): The men should not act/dress like women. And the women should not try to be like a man. It is reported from the Prophet that God detest (sometimes referred as cursing) these persons.**

**Tahzebul Islam, Page 22**

***Source: <http://hadith.al-islam.com>***

**Receptive sex is seen as acting like a woman**

# From the frontline



# From the frontline



## From the frontline

- **42% reported that they had been sexually assaulted or raped by policemen.**
- **60% reported sexual assault or rape by *goondas*.**
- **75% of those reporting being sexually assaulted or raped by either policemen or *goondas*, stated that this occurred because they were effeminate.**
- **70% of respondents reported facing harassment from police, ranging from extortion, blackmail, beatings, restrictions to movement, and disclosure of sexual practices to *goondas* and family members.**

## **Adding insult to injury**

**Evidence seems to indicate that increasingly many countries are enacting laws that criminalise HIV transmission, using words such as “actual”, “potential”, “negligent”, or “reckless”.**

**Thus in Europe, out of 45 countries, in at least 36, the actual or potential transmission of HIV can constitute a criminal offence.**

**In 14 of these countries there is HIV-specific legislation, while in others the use of more general criminal law prevails**

# Adding fuel to the fire

**Human Rights Watch 5/2/2008**

- **In October 2007, Cairo police arrested two men for having a street altercation. One told the police he was HIV positive.**
- **Police opened an investigation for homosexual conduct, beating them in the process and subjected them to forcible anal examinations to prove they were homosexual**
- **Following this, police arrest more men because the original two men had either phone numbers or photographs of these other men.**
- **Forcible anal examinations and HIV tests were conducted.**
- **Four were convicted under a law which criminalises “habitual practice of debauchery”, and four more face trial**

## **Adding fuel to the fire**

**Singapore: 12/2/08 - *Bloomberg*  
Headline**

**HIV ignorance is no defence in Singapore plan to curb risky  
sex.**

**Plan to curb infections by making it a crime for those who  
engage in such unsafe practices, and thus have “reason  
to believe” they may be HIV-positive**

# What implications?

## Easy to blame an already stigmatised population

- **Increasing stigma and discrimination**
- **Increased victimisation**
- **Increased violence**
- **Increased social exclusion**
- **Increased policing**
- **Increased arrests**
- **Driving the epidemic further underground among MSM**
- **Increase in anonymous sex (bath-houses, internet, etc.)**

## **Visions of hope?**

- **The Nepal Supreme Court ruling**
- **The Delhi High Court**
- **The Asia Pacific Coalition on Male Sexual Health - APCOM**
- **The Global Forum on MSM and HIV**
- **UNDP leadership**

## **Keeping the promise for universal access?**

**“You can be assured of the support of the UN family in your common endeavour to win the battle against HIV among the MSM and transgender communities.**

**If nobody else is there for you - we are here”**

**September 2006: Risks and Responsibilities - Male Sexual Health in Asia and the Pacific International Consultation meeting, New Delhi**

**Dr. Nafis Sadik, Special Advisor to the UN Secretary General, and Special Envoy for HIV and AIDS in Asia and the Pacific**