

Prevention of Stigmatisation of HIV/AIDS and The Role of Law

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Abstract

With a change in trends of society law too transforms itself with the changing needs. Where law has an important significance in the development of the society, education also plays a vital role. Human Immunodeficiency Virus, Acquired Immunodeficiency Syndrome popularly known as HIV AIDS has been the most devastating disease humanity has ever faced. It has been a major health concern amongst every people in today's time. Along with health constraints AIDS brings with them stereotypes, prejudices and unfair treatment. Despite enactment of laws for the prevention of discrimination amongst people with HIV, there has been a steady increase in the cases of societal stigma and vices amongst HIV infected persons. Thus, the only resort or mechanism in eradicating this grief is through the medium of education. Thus, the present paper aims at studying various national and international legal frameworks for the protection and rights of HIV AIDS victims and the need to educate common people as well as the person infected with HIV about their rights and given protection. As in most cases the reason for discrimination has always been lack of proper knowledge and awareness about given rights and protection.

Key words: HIV, AIDS, discrimination, stigma, education and awareness.

I. Introduction

Human Immune-Deficiency Syndrome popularly known as HIV is the most tragic disease humanity has ever faced. It is a major health problem in today's time. It brings with itself not only health constraints but also social stigma and vices where people are discriminated, looked down and generalized. On 30th May, 2006, the UNAIDS (United Nations Programme on HIV and AIDS) launched a 630-page global survey report on AIDS. The report showed that nearly 40 million people around the world are infected with HIV and the report

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is alarming for India which says that almost 5.5 million people in India are infected with HIV and is the country with largest number of AIDS infections.²

India being a country with second largest population and highest rate of HIV patient, there is an increasing number of cases where people die because of the fear of society, where people with HIV are denied health care facility as well as their right to work. Therefore, law can be a major resort in societal change. But despite of several laws and legislation, constitutional mandate and several international protections the burnt of societal outlook against HIV patient fails to make them feel safe and secure in the society.

Thus, the researcher in the present study is making an attempt to throw a light upon several national and international legislations for the protection of people with HIV as well as the rights that are provided to them. It makes an attempt to analyze the given law or legislation for the protection of HIV patient and point out the loopholes in it. Lastly, Law being a means of social transformation, which plays an important role in transforming the society as per the need likewise the researcher also makes an attempt to discuss as how law if used wisely can become a means of revolution and social transformation. A means to transform society where every people are treated equally, with equal respect and dignity.

II. Meaning of HIV/AIDS

Acquired Immunodeficiency Syndrome (AIDS) caused by the virus Human Immuno Deficiency Virus (HIV), commonly referred to as HIV/AIDS attacks the immune system of human beings, destroying cells that can fight of infection. HIV is the initial stage, which if left untreated would result into AIDS, which is the final stage of HIV where immune system are completely damaged and are vulnerable to sickness and infections. There is no vaccine to cure AIDS or to protect people against it.

III. International Instruments for the Protection of HIV Patient

The Universal Declaration of Human Rights, 1948 promotes and protects human rights; it is the basic international pronouncement of the inalienable and inviolable rights of all members of the human family. The preamble of the declaration promotes recognition of the inherent dignity and of the equal and

²NANDITA ADHIKARI, LAW AND MEDICINE 270 (4thed. 2015)

inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.³ Therefore it provides that everyone is entitled to equal freedom and right without any discrimination. The International Covenant on Civil and Political Rights also obliges the state parties to undertake the responsibility for protecting the rights of individual and prohibits discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁴ ICCPR also states that every person has the inherent right to life.⁵ Therefore all the International human rights law has established an obligation on states to respect, protect and fulfill the right to the highest attainable standard of health of all persons including those who use drugs. International Covenant on Economic, Social and Cultural Rights obliges the state parties to recognize the right of every person to enjoy “the highest attainable standard of physical and mental health. They also have a binding legal obligation to take steps to realize fully this right, including those step “necessary for prevention, treatment and control of epidemic, epidemic and other diseases” and “the creation of conditions which would assure all medical services and medical attention in the event of sickness.”⁶

Although the convention does not directly mention about HIV/AIDS patients and were not directly related to HIV patients but as this convention deals with the concept of equality before law and equal protection of every individual so directly or indirectly it serves the purpose in granting equality.

IV. Status of HIV Patients in India

In India, the first case of HIV was reported on mid-80s. The cause of HIV being primarily sexual, the disease is accompanied with social stigma and discrimination. There are several cases of denial of proper health care, education facility as well as right to work. The 2006 report of UNAIDS lays that there are 65% of male living with HIV/AIDS and more than 75% of female living with HIV/AIDS faces discrimination at the government facility. The report also says that nearly 40% felt that they were neglected and isolated, about 30 percent were

³Universal Declaration of Human Rights.

⁴International Covenant on Civil and Political Rights, 1966, art.2(1).

⁵International Covenant on Civil and Political Rights, 1966, art. 6.

⁶ International Covenant on Economic, Social and Cultural Right, 1966, art. 12.

abused and teased and about 4.5% of the people were reported to have been denied with admission to health facilities.⁷

Where people with HIV are to be given more care and protection so as to fight with dreadful disease rather, they are discriminated and dejected by the society. It is reported that nearly half of the people infected with HIV die due to the ostracism faced by them where they are refused to be treated by the hospital authority and are denied to provide with basic health facility. Neglect and isolation faced by them leads to depression, hence most of the affected person is a victim of depression.

Therefore, the government being a foremost stakeholder for securing adequate health facility to each individual irrespective of any form of discrimination and provide them with equal opportunity to obtain basic health facility but increase in reports of cases of discrimination shows the different side of the story.

a. Predicament Faced By HIV/AIDS Patients in India

Due to the nature of the disease the problems faced by HIV/AIDS patients are enumerable and immeasurable. HIV along with it being a life-threatening disease, this disease is also seen as something which affects people living on the margins of society and whose lifestyles are considered immoral. Unlike other disease, HIV brings social stigma attached with it for it being transmissible disease and can be transmitted from infected to a healthy one also it is an incurable disease.

Discrimination is the major problem faced by the people infected with HIV whether in the normal course of life or in the field of employment. Denial of job opportunities, pressure to quit the job, harassment is the common instances faced by people tested with HIV. It affects emotional well-being as well as mental health of the people living with HIV. People with HIV tend to internalize the discrimination faced by them which often leads to having a negative image of oneself leading to feeling of shame, fear of disclosure, isolation and despair.

⁷RiddhimaKedia, *HIV/AIDS Legislation in India – A Primer*, INDIAN LAW JOURNAL, (Oct. 10, 2019, 7:24 PM), <https://www.indialawjournal.org/hiv-aids-legislaion-in-india-a-primer-.php>

The fear of this feeling keeps people away from getting tested and treated for HIV.⁸

A case was reported in the state of West Bengal where a boy who was six year of age was struck off the rolls of his school when it was found that his father was HIV positive. Understanding the grief nature of the infection it is essential that the person infected with HIV is provided with proper care and treatment but in reality, it is in contrary. Denial of care, treatment and discriminatory attitude towards person infected with HIV by any health care authority are the common instances towards infected person which not only infringes one's personal rights but also violatesthe fundamental right guaranteed under the Constitution of India.⁹

A study in 2006 found that almost 25 percent of people living with HIV in India had been refused to medical treatment on the basis of their HIV status. There are instances of discrimination amongst HIV patient with regard to the accommodation. Eviction, locking out or harassing a tenant, refusal to give the property on rent are the common instances. It was reported in the state of west Bengal a young married couple was harassed in the village and were evicted by the landlord for they being tested HIV positive.¹⁰ According to the research conducted in India by the researcher of International Center for Research on Women several instances of discrimination and sub- standard treatment and refusal of services was found amongst the people living with HIV in India.¹¹

b. Rights of the HIV/AIDS Patients

With the increase in discrimination amongst HIV/AIDS patients it has become very essential to protect the rights of the patients so that they may enjoy the equal right and have an access to the protection that has been granted to them

⁸*HIV Stigma*, CENTERS FOR DISEASE CONTROL AND PREVENTION, (Jul. 31, 2020, 1:34 am), <https://www.cdc.gov/hiv/basics/hiv-stigma/index.html>

⁹INDIAN CONST. art. 14

¹⁰*West Bengal couple discriminated against for being HIV positive*, INDIA TODAY, (Jul. 31, 2020, 1:00 am) <https://www.indiatoday.in/india/story/west-bengal-couple-discriminated-against-for-being-hiv-positive-1319668-2018-08-21>

¹¹*Taking Action Against HIV Stigma and Discrimination*, DEPARTMENT FOR INTERNATIONAL DEVELOPMENT, (Oct. 13, 2019, 2:30 pm) <https://www.icrw.org/wp-content/uploads/2016/10/DFID-Taking-Action-Against-HIV-Stigma-and-Discrimination.pdf&ved>

both by national and international instrument. Therefore, every person infected with HIV or AIDS are to be entitled to basic right without any distinction on the basis of caste, creed, sex or any other form of discrimination.

The Medical Council Act, 1956 and the International Code of Medical Ethics requires the physician to respect the privacy of the patient and keep the information given to the doctor in complete confidence. Every person infected with HIV is entitled to right to privacy, liberty and security of a person. Along with this every person has a right to movement; deprivation of this right would be violation of fundamental right.¹²The code of Medical Ethics states that the principal objective of the medical profession is to render service to humanity with full respect for human dignity. It also lays down that doctor should extend the same high standard of medical treatment or support to all the patients. It is unethical for a medical practitioner to refuse treatment or investigation for which there are appropriate facilities on the ground that the patients suffers, or may suffer, from a condition which could expose doctor at personal risk, however, the report of UNAIDS says that 25% of people infected with HIV were refused to medical treatment by the doctors or were referred to another health facility.¹³

Right to work is a fundamental right as it appears in the Constitution of India as well as in the Universal Declaration of Human Rights. No person should be deprived of these rights if a person possesses adequate qualification, he/she should be provided with the job and should not be deprived of a person fundamental right to work. However, despite of possessing adequate qualification there are several instances of people infected with HIV are denied to grant to employment.

c. Indian Legal Scenario

There is no doubt as to the availability of fundamental rights amongst people living with HIV. Fundamental right being a magna carta of Indian Constitution every individual is inherited with rights and freedom enshrined under Indian Constitution regardless of their HIV status, sexual orientation or gender identity. Article 14 explicitly guarantees that the state shall not deny any

¹²NANDITA ADHIKARI, LAW AND MEDICINE 287- 289 (4 ed. 2015)

¹³*HIV/AIDS Legislation in India – A Primer*, INDIAN LAW JOURNAL, (Oct. 10, 2019, 2:35 pm) <https://www.indialawjournal.org/hiv-aids-legislation-in-india-a-primer-.php>

person equality before law and equal protection of law.¹⁴ Article 15 also prohibits any form of discrimination against any person based on religion, race, caste, sex, birth or any of them.¹⁵ Article 21 also cast an obligation on the state to safeguard the life and liberty of every person.¹⁶ The Directive Principle of State Policy directs the state of ensure all the citizen including HIV/AIDS patient to have an adequate means of livelihood, to make provision for securing just and humane condition of work for every people and to provide with adequate health facility.¹⁷ However these general provision of constitution was inadequate and insufficient in dealing with the specific problem of HIV/AIDS¹⁸.

So as to fill in the gaps of general provision of constitution in dealing with specific problem of HIV/AIDS, a historic move was made by India against the prevailing discrimination against HIV/AIDS person by incorporation of a legislation known as HIV AIDS (Prevention and Control) Act, 2017. This act criminalizes any discriminatory action against the patients suffering from HIV. This act can be considered to be as a milestone as it empowers a person living with HIV to report discrimination meted out against them in the field of employment, services, educational rights, holding public office and insurance. This act also provides for penal provision in violation of any provision provided under the act. It also provides for the appointment of ombudsman who is empowered to hear complaints and issue relevant orders and also oversee the violation of the law by the people.¹⁹

Gulam Nabi Azad, then Minister of Health and Family Welfare stated that the purpose of the said legislation is to address the issue of stigma faced by those infected by HIV and AIDS, to ensure confidentiality and privacy while providing HIV and AIDS related services and to strengthen the existing National AIDS control Programme by bringing in legal accountability. It also

¹⁴INDIAN CONST. art.14.

¹⁵INDIAN CONST. art.15.

¹⁶INDIAN CONST. art.21.

¹⁷INDIAN CONST. art. 39, 42, 47

¹⁸RiddhimaKedia, *HIV/AIDS Legislation in India – A Primer*, INDIAN LAW JOURNAL, (Oct. 10, 2019, 7:24 PM), <https://www.indialawjournal.org/hiv-aids-legislaion-in-india-a-primer-.php>

¹⁹The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, No. 16 of 2017.

aims at realizing the existing private and public establishment, to recognize the need to safeguard the rights of people infected with HIV/AIDS particularly women and children.²⁰ This act has been a symbolic achievement for the protection of person infected with HIV, providing them equal treatment and has also advocated the right for HIV patient. Steve Kraus of the UN AIDS Regional Support Team for Asia and the Pacific said that the “legislation begins to remove barriers and empowers people to challenge violation of their human rights”.²¹

Thus, India being a first country in South Asia to pass a legislation penalizing any kinds of discrimination against people infected with HIV can be considered to be as a remarkable step for the protection of 2.1 million²² people infected with HIV against social boycott and ostracism which has the tendency to not only affect one’s personal right but may also leads to distressing one’s mental health.

However, despite given act having a preventive approach in preventing any form of discrimination and protecting the susceptible one’s but the lack of proper implementation of laws is the major concern in today’s time. Prevailing discrimination against people infected with HIV shows the inadequacy of the state machinery in proper implementation of law. Therefore, black letters of law will not serve its purpose unless they are properly implemented. Every State Government should take effective measures to implement the given laws, right from the grass root level, as the people from the rural areas are mostly affected.

Today with the development in science and technology, there has been significant decrease in the number of new patients infected with HIV, between 2010 and 2017, new infections declined by 27% and AIDS related deaths more

²⁰ *India: Law Bans Discrimination Against AIDS Patients*, LIBRARY OF CONGRESS (18 Oct. 2019, 9: 45 am) <https://www.loc.gov/law/foreign-news/article/india-law-bans-discrimination-against-aids-patients/>

²¹ *India: Law Bans Discrimination Against AIDS Patients*, LIBRARY OF CONGRESS (18 Oct. 2019, 9: 45 am) <https://www.loc.gov/law/foreign-news/article/india-law-bans-discrimination-against-aids-patients/>

²² Amrit Dhillon, *India takes flawed first step towards ending HIV and AIDS prejudice*, THE GUARDIAN, (Jul. 31, 2020, 3:43 pm) <https://www.theguardian.com/global-development/2017/apr/13/india-flawed-first-step-ending-hiv-aids-prejudice>.

than halved, falling by 56%²³. However, the discrimination and victimization of people are still rampant despite of legislative effort to eradicate the same.

V. Role of Education in Dissemination of Awareness

Law is an instrument of social change. With a change in trends of society law too mould and transforms itself to the changing need. Where law has an important significance in the development of the society, education also plays a vital role. Education is an effective tool to diminish social and economic vulnerabilities. Education raises awareness and creates empathy towards one another. Therefore, to diminish increasing vulnerabilities as well as to eradicate social stigma and ostracism amongst people education plays a very important role. Along with having a stringent law for emancipating and wrestling against the discrimination faced by them education amongst the people infected with HIV about the available rights as well as the disseminating correct information especially amongst common people as to the how the infection HIV is and is not transmitted plays an important role in empowering and envisaging people across the world to wrestle against the discrimination.

Therefore, the State government should also take adequate measures in educating people as well as making people aware of the disease by holding public campaign, putting up posters to clarify misconceptions as well as incorporating correct information about HIV in the school text book also plays a huge significance in diminishing the rate of HIV positive cases as well as lessening the stigma faced by them.

Therefore, sensitizing and educating people about their rights and also about the disease is the need of an hour.

VI. Conclusion: A Way Forward

HIV/AIDS is the most devastating ailment faced by people in today's time. Along with HIV having a devastating affect it also brings with them social stigma and discrimination. People are not only the victim of the life-threatening disease but is also the victim of social chaos. Despite of remarkable effort by the legislature by enacting Asia's first legislation for the protection of people infected with HIV, the devastating and pathetic condition of the people infected

²³*HIV and AIDS in India*, AVERT, (18th Oct. 2019, 3: 50 pm) <https://www.avert.org/professionals/hiv-around-world/asia-pacific/india&ved>

with HIV shows the different side of a story. Reportedly increase in number of cases of discrimination, stigmatization shows the failure of the machinery in proper implementation of law. However stringent penal provision can also be a major resort in eliminating discrimination amongst them.

India being a country where the literacy rate of rural area is minimal as compared to the urban area, it is usually due to lack of knowledge and proper education, people from rural area are the worst sufferer of discrimination. Therefore, several educative measures should be adopted by the Central and State Government joining hands with several NGOs so as to reach people of the primitive areas and educate them about the infection of HIV/AIDS, the method in preventing them, the facilities and protection provided to them for safeguarding their rights and interest. Therefore, slogans like “KNOW HIV/AIDS for NO HIV/AIDS” should be made popular amongst the people so as to create awareness amongst them.

From the foregoing discussion the researcher proposes following points of suggestion:

- There is a need to educate people about HIV/AIDS, the means and the method through which people are infected with HIV/AIDS and the ways in which people could be safeguarded from being infected. As education and awareness amongst people could be a biggest resort in combating the menace of HIV in India and the stigma attach with it. Thus, the government joining hands with Non-Government Organisation must hold a programme at a community level rather than national and international level as the people from marginalized area are mostly the victims of social stigma and discrimination.
- The laws enacted for the protection and upliftment of the HIV/AIDS patient are to be effectively implemented right from the grass root level as mere black letter of law would not serve its purpose unless it is adequately implemented and all the measures that have been laid in the legislative enactment are to effectively implemented.
- The stringent penal provision for punishing the person acting in contravention to the given laws is the need of an hour. As providing extreme punishment may cause a deterrent effect on person and helps in prevention of committing an act prohibited by law.

EDUCATION AND SOCIAL CHANGE

- Along with educational measure the government should also come up with the scheme to provide medical insurance to the HIV+ employee as there has been discriminatory attitude of insurance company towards the HIV+ person in granting the facility of insurance towards them.
- The person infected with HIV should also be educated about the rights provided to them under the prevailing act for their well-being and protection as ignorance and unawareness about the given rights and protection has been a major cause for increase in discriminatory approach towards them.
- The state government should facilitate free medicine in every public and private health care unit so as to decrease the mortality rate of person infected with HIV.