



HIV/AIDS AND HUMAN RIGHTS

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ABSTRACT

More than 35 years since the HIV/AIDS pandemic began, HIV continues to cause almost two million new infections every year, and therefore the “end of AIDS” by 2030 remains elusive. Violation of human rights still fuel high rates of recent infections among key populations and a generalized epidemic in much of Sub-Saharan Africa. Meanwhile, as political shifts worldwide threaten not only HIV funding but also progress toward the globalization of human rights, civil society mobilization and advocacy founded firmly on human rights principles have a more vital role to play than ever. Encouragingly, there are numerous samples of successful integration of human rights-based approaches into HIV prevention and treatment initiatives, and evidence increasingly demonstrates that norms enshrining the respect, protection, and full-fulfillment of human rights can translate into improved public health. This essay will succinctly trace the historic emergence of human rights as a difficulty at the centre of the HIV/AIDS response; it'll then provide samples of progress and setbacks in recent years and consider the potential for rights promotion to deal with the structural drivers of HIV. Finally, it'll consider how the primacy of human rights in HIV/AIDS has affected other fields of worldwide health and can highlight the continuing imperative to figure with civil society to safeguard and promote human rights to scale back the burden of HIV/AIDS.

KEY POINTS: HIV, AIDS AND HUMAN RIGHTS.

INTRODUCTION

After 70th anniversary of the Universal Declaration of Human Rights (UDHR) and also the bold acknowledgement by all the nations of the planet that “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is that the foundation of freedom, justice and peace within the world”. As we celebrate the UDHR anniversary, we also must examine to reflect on humanity’s journey on this incredible path of realizing human rights for all. In doing so, we must acknowledge that whilst the rhetoric has been on the inalienable rights of all members of the human family, the fact on the bottom

has been different, often characterized by the violation of rights of sexual minorities and other marginalized groups.¹

Human rights are basic titles that each one people have by virtue of being human. they're supported the thought that each person is equal and entitled to be treated with dignity and respect, no matter their race, sex, gender, age, disability or the other characteristic. they're universal and inalienable, and thus can't be transferred or lost.

HIV/AIDS

AIDS could be a disease which spread from a pestilence called human immune virus (HIV). HIV is transmitted through very limited ways. it's most typically transmitted through unprotected sexuality and thru contact with infected blood and other body fluids. someone may become infected with HIV by receiving blood transfusions or using blood contaminated needles. It is important to acknowledge that today, the chance of transmitting HIV through blood transfusions and thru blood banks blood. AIDS is way over just a medical/scientific phenomenon. It challenges our fundamental values like a commitment to a compassionate society, to justice and to the elimination of all aspects of discrimination that undermines these values.

Relationship between HIV/AIDS and Human Rights

In the 1980s, the connection between HIV/AIDS and human rights was just comprehended because it included individuals tainted with HIV and with AIDS and also the segregation to which they were subjected.

First, human rights law helps states respond appropriately to the difficulties of the HIV/AIDS plague by giving a structure on which they'll detail laws and approaches that coordinate general well-being goals and human rights principles.

Second, human rights provides a premise to apparatuses for nongovernmental associations and promotion gatherings to use to screen the execution of states in their arrangements and programs and to create a move for review when general well-being strategies disregard rights.

Third, human rights likewise address the commitments of general well-being experts with HIV and AIDS.

INTERNATIONAL PROSPECTIVES OF RIGHTS FOR HIV/AIDS PERSONS

It is now well known that HIV and human rights are inextricably linked. Human rights abuses are one among the drivers of the HIV epidemic and increase its impact. At the identical time, HIV undermines progress within the realization of human rights. Under international human rights laws and treaties, and international obligations like the Universal Declaration of Human Rights and also the 2030 Agenda for Sustainable Development, all and sundry features a right to health and to access HIV, and other healthcare services.

¹ <https://orc.owwhn.ca/en/policy-hiv-aids-related-discrimination>

People even have a right to equal treatment before the law and a right to dignity.² The protection of human rights is crucial to safeguard human dignity within the context of HIV/AIDS and to confirm a good, rights-based response. When human rights are protected, fewer people become infected and people living with HIV/AIDS and their families can better deal with HIV/AIDS. Human rights are a group of universal entitlements that individuals enjoy no matter their sex, nationality, religion, culture or other status, that are inherent to masses which are proclaimed and guarded by law. Human rights have major relevance for shaping appropriate responses to the HIV epidemic and other global health challenges, including offering system-wide public health responses and identifying deficiencies publically health research agendas. International human rights law developed within the context of worldwide revulsion at the horrors of the second war and therefore the establishment of the international organization (UN) in 1945. In accepting the Charter of the international organisation, its member states recognize that non-interference in their internal affairs may be a principle that may be overridden where international peace and security are threatened . little question pertaining to the genocide and other war crimes of Third Reich, the drafters of the 1948 Universal Declaration of Human Rights were moved to see “disregard and contempt for human rights [which] have resulted in barbarous acts [that] have outraged the conscience of mankind ..”. Although the declaration isn't in itself a legally binding document, it reiterates that “human rights should be protected by the rule for law” (At the 2006 UN High Level Meeting on HIV/AIDS, world leaders reaffirmed that “the full realization of all human rights and fundamental freedoms for all is a necessary element within the global response to the HIV/AIDS pandemic.” Yet, 25 years into the AIDS epidemic, this “essential element” remains the missing piece within the fight against AIDS. in line with the WHO, there are an estimated 1 billion migrants within the world, of whom 258 million are international migrants and 763 million internal migrants—one in seven of the world’s population. The rapid increase of population movement has important public health implications and must be addressed so as to attain the vision of the 2030 Agenda and therefore the Sustainable Development Goals. Stigma and discrimination have fuel the transmission of HIV and increased the negative impact of the epidemic. How can HIV-related discrimination be addressed so as to attain public health goals and overcome the epidemic? UNAIDS examines this question, drawing on a variety of case studies from everywhere the globe. Stigma, discrimination and human rights violations are intimately linked, reinforcing and legitimizing one another. Multi-faceted action, sustained over time, is required to stop stigma, challenge discrimination and promote and protect HIV-related human rights. Stigma is that the dynamic process of devaluation that ‘significantly discredits’ a personal within the eyes of others. Discrimination is actions or omissions that are derived from stigma and directed towards those individuals who are stigmatized. With HIV/AIDS this could occur in family/ community/ institutional/ national settings. Discrimination may be a violation of human rights .Jonathan Mann, the primary Director of the globe Health Organization (WHO)’s Global Programme on AIDS, identified the jurisprudence of human rights as a comprehensive framework to which public health practitioners could anchor responsibility for addressing the underlying causes of HIV/AIDS, trauma and other threats to health. As outlined below, such a “rights-based

² United Nations (UN). New York: UN; 1948. Available from: <http://www.un.org/en/universal-declaration-human-rights/>

approach” to public health normally, and HIV/AIDS specifically, supports sound public health practice by providing additional tools to motivate governments to act to attain public health goals. Rights considerations can help facilitate the setting and monitoring of public health targets and supply a complementary language to spot failures, or incipient failures, of public health programs. The rights-based approach also provides links with other social movements that use the identical language — for instance, the ladies movement, the struggles of indigenous peoples and also the movement of individuals working to shield the environment. In 1996, a world expert consultation group convened by UNAIDS and therefore the Office of the diplomat for Human Rights, including human rights experts, representatives of national AIDS programs, people living with HIV/AIDS, and nongovernmental organizations, prepared guidelines for states on the applying of international human rights law within the context of HIV/AIDS. the rules (consisting of twelve succinct paragraphs) were included within the report of the consultation tabled at the 53rd session of the Commission on Human Rights in 1997. The Commission welcomed the report and invited states to contemplate the rules (now referred to as the “International Guidelines on HIV/AIDS and Human Rights”). Subsequent resolutions in 1999 and 2001 asked states to report on measures taken, where appropriate, to market and implement these guidelines (24, 25), and tools are prepared to assist specific groups implement the rules in their areas of responsibility (26, 27).³ The commentary that accompanies the rules addresses complex issues in areas like confidentiality and disclosure of HIV status by applying international legal principles to those dilemmas. the rules note that the law of human rights allows states to impose limitations on certain personal freedoms, like the correct to liberty of movement, but only where the state can establish that the restriction is:

- provided for and dole out in accordance with the law, i.e. per specific legislation that's accessible, clear and precise, in order that it's reasonably foreseeable that individuals will regulate their conduct accordingly;
- supported a legitimate interest, as defined within the provisions guaranteeing the rights;– proportional thereto interest and constituting the smallest amount intrusive and least restrictive measure available and really achieving that interest during a democratic society, i.e. established in an exceedingly decision-making process in keeping with the rule of law.⁴

The 1980s were critical in characterizing some of the associations between HIV/AIDS and human rights. Before the decade's over, the decision for human rights and for empathy and solidarity with individuals living with HIV/AIDS had been expressly exemplified within the principal WHO worldwide reaction to AIDS. This approach was spurred by moral shock yet additionally to the acknowledgment that assurance of human rights was a very important component of an overall general well- being reaction to the rising plague.⁵

India has the third-largest HIV epidemic within the world and it's one among the largest challenges faced by the country. Despite HIV prevalence among adults being just 0.2% in 2017, because of the country's huge population, this estimate equates to about 2.1 million people India, keeping in mind the human rights related

³ UNAIDS. AIDS epidemic update. Geneva: UNAIDS, 2000. Available from: URL: http://www.unaids.org/wac/2000/wad00/files/WAD_epidemic_report.

⁴ UNAIDS. AIDS epidemic update. Geneva: UNAIDS, 2000. Available from: URL: http://www.unaids.org/wac/2000/wad00/files/WAD_epidemic_report.

⁵ Amity International Journal of Juridical Sciences (Vol. 5, 2019)

to HIV AIDS, has signed several international conventions that include within their ambit the protection of the human rights linked with HIV/ AIDS. the govt. has also brought in several laws to secure human rights and stop the spread of the disease. HIV/AIDS and human rights are closely linked together. The protection of such rights is important not just to make sure the rights of the people infected aren't violated but also to forestall the spread of the disease and reduce its social and economic impact on society as an entire. There are several benefits for taking somebody's rights approach including, reducing the vulnerability to the HIV infection by providing proper means of prevention to vulnerable groups, reducing the impact of the disease on those infected by ensuring proper treatment to combat the disease, increasing the communities ability to raised reply to the pandemic by raising awareness so on.

HUMAN RIGHTS VIOLATION WITHIN THE CONTEXT OF HIV/AIDS

The societal outlook towards the disease has led to many instances where the human rights of the people are violated. Such violations of rights don't seem to be restricted to those that are infected by HIV alone. This section will accommodate human rights violations under two groups –

Rights of the people infected with HIV AIDS;

Rights of several other groups stricken by the disease.

THE GLOBAL COMMISSION ON HIV & THE LAW ⁶

On behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS) family, UNDP established an independent Global Commission on HIV and the Law in June 2010 to examine the impact of law on HIV responses and to catalyse country level action for legal environments that protect human rights and halt and reverse HIV. The Commission was built on three mutually reinforcing axes: high-level Commission that analysed evidence and added insight and weight to develop findings and recommendations, chaired by President Cardozo of Brazil a Technical Advisory Group that helped generate evidence and build consensus Regional Dialogues that ensured inclusion and participation of affected communicates and law- and policy-makers. The Commission issued its landmark 2012 report, Risks, Rights and Health, which includes key findings and recommendations on evidence-informed and rights-based responses to HIV. The report called on countries to outlaw discrimination, repeal punitive laws and enact protective laws to promote public health and human rights for effective HIV responses. Between 2012 and 2018, UNDP and its partners have supported 89 countries to advance the Commission's recommendations. The GCHL Fact Sheet and UNDP's Issue Brief: Advancing Human Rights, Equality and Inclusive Governance to End AIDS provide information and examples of across the globe of UNDP's work with country stakeholders.

⁶UNAIDS. AIDS epidemic update. Geneva: UNAIDS, 2001. Available from: URL: http://www.unaids.org/epidemic_update/report_dec01/index.html <https://gsdr.org/document-library/hiv-related-stigma-discrimination-and-human-rights-violations-case-studies-of-successful-programs/> International human rights law and HIV/AIDS

THE INTERNATIONAL GUIDELINES ON HIV/AIDS & HUMAN RIGHTS⁷

OHCHR and UNAIDS published the International Guidelines on HIV/AIDS and Human Rights in 1998 as a tool for States in designing, coordinating and implementing effective national HIV/AIDS policies and strategies. The Guidelines were drafted by experts at an international consultation in 1996 and provide the framework for a rights-based response to the HIV/AIDS epidemic by outlining how human rights standards apply in the context of HIV/AIDS and translating them into practical measures that should be undertaken at the national level, based on three broad approaches: improvement of government capacity for multi-sector coordination and accountability; reform of laws and legal support services, with a focus on anti-discrimination, protection of public health, and improvement of the status of women, children and marginalized groups; and support and increased private sector and community participation to respond ethically and effectively to HIV/AIDS.

OHCHR encourages governments, national human rights institutions, non-governmental organizations and people living with HIV and AIDS to use the Guidelines for training, policy formulation, advocacy, and the development of legislation on HIV/AIDS-related human rights.

In light of developments in addressing the epidemic, a Third International Consultation in 2002 revised Guideline on access to prevention, treatment, care and support.

- To educate health providers and communities on the relationship between health rights and social accountability.
- To advocate and conduct media publicity for the observation of human rights to reduce stigma, discrimination and denial in dealing with people infected/ affected with HIV/AIDS and other health conditions.
- To conduct research in aspects of health, human rights and social accountability.

And to Network and collaborate with other health, human rights and social accountability organizations in order to achieve the above objects.⁸

RIGHTS OF HIV/ AIDS PERSONS IN INDIA

Human rights and HIV/AIDS are inextricably linked. The denial of human rights fuels the spread and exacerbates the impact of the disease, while at the identical time HIV undermines progress within the realization of human rights. This link is obvious within the disproportionate incidence and spread of the disease among Most in danger Populations which invariably includes women and youngsters, and particularly those living in poverty. The vulnerability furthermore as impact of HIV highlights the inequities and vulnerabilities resulting in increased rates of infection among women, children, the poor and

⁷ UNAIDS. AIDS epidemic update. Geneva: UNAIDS, 2001. Available from: URL: http://www.unaids.org/epidemic_update/report_dec01/index.html<https://gsdrc.org/document-library/hiv-related-stigma-discrimination-and-human-rights-violations-case-studies-of-successful-programs/> International human rights law and HIV/AIDS

⁸ Mann JM. Human rights and AIDS: the future of the pandemic. In: Mann JM, Gruskin S, Grodin MA, Annas GJ. Health and human rights. New York and London: Routledge, 1999:221.

marginalized groups, and thereby contributed to a renewed concentrate on economic, social and cultural rights. in sight of the identical, a National Consultation on legal protection for National Consultation on Legal Protection for People infected & Affected by HIV/AIDS was jointly organized by the National AIDS Control Organization (NACO), National Legal Services Authority (NALSA) and international organization Development Programme (UNDP) on 21st December 2015 at the India Habitat Centre, New Delhi. the target of the consultation was to deliberate on mechanisms for enhancing access to legal support by Persons living with HIV (PLHIV) and key populations and strengthen the mechanism of legal aid being provided by National Legal Service Authority State Legal Service Authority & District Legal Service Authority and Taluk Level Service Committee.

CASE LAWS RELATED HIV/AIDS IN INDIA

The first reported case of HIV that came up before the Courts was reported from Goa, whose judgment was eventually delivered by the Bombay court. The case was the Lucy D'Souza v State of Goa⁹. The case involved the famous HIV/AIDS activist Dominic D'Souza, an employee at the planet Wildlife Federation, when in 1986, he had learned that he had contracted AIDS because of this, he was fired from his job and refused treatment by doctors. According to Section 53 of the Goa Public Health (Amendment) Act, 195710, he was placed in isolation by virtue of his condition. Although D'Souza was released 64 days after being first detained, the rationale cited for his release wasn't the illegality of the act but rather the uncertainty of the biopsy given by him. In 1989, the law was further strengthened to create confinement mandatory in cases of HIV/AIDS. Angered by the shortage of logic and reasonableness, this Section was argued to be against Articles 14, 19(1) (d) and 21. However the Bombay tribunal out upheld the validity of the section, primarily within the interests of Public Health.

DISCREMINATION ON WORK PLACES

This Argument appears to possess been non-capricious 20 years ago, by analyzing the advances made in research project of HIV/AIDS, common myths regarding the disease have been debunked. This case has shown to be the beginning of HIV/ Jurisprudence in India, where it's from this case, many HIV/AIDS activists have concerned cases for the protection of this disadvantaged communities by redressing their grievances in court. A string of mixed cases post Lucy D'Souza highlights the confusion prevalent in the Indian judiciary's interpretation

and judgments on matters regarding HIV/AIDS. This section will however house protection of PLHA's within the workplace. this can be out and away the sole area of HIV jurisprudence where the Indian Courts have a way of clarity.¹⁰

⁹ AIR 1990 Bom 355

¹⁰ 1Jayanth K. Krishnan, The Rights of the New Untouchables: A Constitutional Analysis of HIV Jurisprudence, in India Human Rights Quarterly, Vol. 25, No. 3 (Aug., 2003) p 800, pp. 791-819

The MX case¹¹ of 1997 is understood as a case which has provided a ray of hope for the HIV/AIDS community. It's out and away the primary time any court in India had granted protection in terms of non-discrimination. The Bombay supreme court in MX of Bombay v. M/s. ZY considered the question of whether the state can deny job opportunities to a HIV positive persons. The moment labour law matter, involved an off-the-cuff labourer who sought full employment on a full time basis from the corporate which he worked for. In 1990, the company told the casual labourer that he was on an inventory of finalists for full time employment. While he passed the specified selection exam and therefore the medical, he was enrolled as a labourer to be appointed from a roster of candidates who would be appointed on a daily basis, though not as an everyday employee. 15 some years later, when the corporate requested a second medical examination, it absolutely was declared that he was HIV positive. Upon learning this, the company removed him from the list of normal basis employees and barred him from permanent consideration for any kind of employment within the company. a crucial point to note here is that doctors had categorically stated that he was unlikely to point out any kind of illness for years.

The labourer was unsuccessful in convincing the corporate to reconsider their position. Due to this, he filed a Public Interest Litigation under Article 226 before the Bombay supreme court claiming that the state had violated his fundamental right to earn a right to livelihood and for being denied the fair procedure established under Article 21 of the Constitution. The court candidly seen by invoking Article 21, no one may well be empty his right to livelihood except consistent with an affordable procedure established by law. Such procedure has to naturally be just, fair and reasonable. The court finally set the law straight on HIV within the workplace by declaring that a. A government/ public sector employer couldn't deny employment or terminate the service of an HIV-positive employee solely thanks to their HIV-positive status, and any act of discrimination towards an employee on the premise of their HIV-positive status was a

violation of Fundamental Rights¹². The services of HIV positive employees could only be terminated if they posed a considerable risk of transmission to their co-employees or were unfit or unable to perform the essential functions of their job. The Court searched a plethora of literature on HIV/AIDS including reports from the World Health Organization and medical evidence from India and abroad. It mentioned leading American cases where the Courts held that in essence the worker couldn't be removed thanks to the straightforward fact of his medical condition, wherein HIV/AIDS was no exception to the current rule.

CONCLUSION

Human rights are intimately linked with the spread and impact of HIV/AIDS. a scarcity of respect for human rights fuels the spread and exacerbates the impact of the disease, while at the identical time HIV undermines progress within the realization of human rights. This link is clear within the disproportionate incidence and

¹¹ AIR 1997 Bom 46

¹² Legal issues that arise in the HIV context Atiya Bose and Kajal Bhardwaj of the Lawyers Collective <http://www.hivaidsonline.in/index.php/HIV-Human-Rights/legal-issues-that-arise-in-the-hivcontext.html>

spread of the disease among certain groups which, reckoning on the character of the epidemic and therefore the prevailing social, legal and economic conditions, include women and youngsters, and particularly those living in poverty. it's also apparent within the incontrovertible fact that the overwhelming burden of the epidemic today is borne by developing countries, where the disease threatens to reverse vital achievements in human development. AIDS and poverty are now mutually reinforcing negative forces in many developing countries.

