

Ensuring rights and dignity of people living with HIV/AIDS

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Institutional responses to HIV & AIDS at individual, familial and community level have tended to mirror personal responses including stigma and discrimination and a varied level, degree and composition of acceptance with infection and overcoming stigma and discrimination. It is a complex and variable impeding factor in the recognition of infection; it arouses stigma and discrimination towards persons living with the infection.

From the perspective of the Indian Constitution

Human Rights refer to the basic rights and freedom to which all human beings are entitled, including life, liberty, freedom of thought and expression, equality before law and material wellbeing. The universal declaration of human rights and subsequent human rights treaties and documents describe what Governments and societies should not do to people (such as torture or cause to live under inhuman conditions), and what they should guarantee for all people in society.

When and where human rights and dignity are respected, there will still be social distinctions but all will be ensured of a basic minimum standard in which their individual potential can be freely and fully developed.

In the context of HIV & AIDS, modern human rights discourse does provide a coherent conceptual framework for identifying and analyzing the social root causes of vulnerability to infection, a common vocabulary for describing the conditions that underlie specific situations, and clarity about necessary and possible directions for health promoting societal transformation.

The strategic link between HIV & AIDS and human rights has proceeded through two distinct phases (UN, 1994) reflecting a deepening awareness of the complexity of interactions between human rights and basic needs.

The first phase focused on the stigma and discrimination and marginalization of PLHAs (People living with HIV & AIDS). Such stigma and discrimination, although unfortunately typical of societal responses to epidemics, was identified as counter productive in HIV & AIDS prevention. In this regard, a firm and committed stand to preventing stigma and discrimination against PLHAs had been adopted and this became an integral part of the global strategy for epidemic control.

The second phase highlighting the relationship between human rights and HIV & AIDS started in the late 1980's and has been further refined during the intervening period.

According to UNESCO (2002), Human Rights consist of civil and political rights, as well as economic, social and cultural rights. They express recognition and respect for human dignity, are universal and pertain equally to all human beings.

The fundamental rights of all citizens, accorded by the Constitution of India and the Human Rights covenants, together ensure that PLHAs have rights in the following ways:

1. The rights to confidentiality while announcing HIV+ status.
2. HIV testing without consent is not permitted.
3. PLHAs have rights to admittance to hospital for quality treatment and surgery.
4. There is a provision of syringe exchange service for injecting drug users.
5. PLHAs have rights to employment and continuation of the services.
6. PLHAs have rights to information and education for improving quality of life.
7. PLHAs have right to marry.

More specifically, the most relevant human rights principles for protecting the dignity of PLHAs, including non-discrimination, focus on:-

1. Right to information.
2. Right to access and availability of the services.
3. Right to freedom of movement.
4. Right to participation.
5. Right to liberty.
6. Right to development.

This means the availability and accessibility of, and access to functioning public health care facilities, educational and employment opportunities, involvement of PLHAs in development activities and providing care and support for improving quality of life.

Right to treatment without discrimination

The obligation of the State to ensure the creation and the sustaining of conditions congenial to good health is clarified by the constitutional directives contained in Articles 38, 39 (e) (f), 42, 47 and 48 A in the part IV of the Constitution of India.

The preamble and article 38 of the Constitution of India envision the duty of the State to ensure that life is meaningful and livable with human dignity.

Article 25(1) of the Universal Declaration on Human Rights guarantees the right to standard of living adequate for health and well being.

The Supreme Court of India in *Mr. X vs Hospital Z* [(1998)8 SCC 296,], states that people living with HIV & AIDS, "...deserve fully sympathy and are entitled to all respect as human beings. Their society can not, and should not be avoided, which otherwise would have bad psychological impact upon them. They have to have their vocation and government jobs or services can not be denied to them."

"Article 21 of the Constitution of India imposes an obligation on the State to safe guard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the state and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21" said the Supreme Court in the case of *Paschal Banga Khet Mazdoor Samiti*

vs State of West Bengal (AIR 1996 sc 2426 at 2429 para 9).

Further, WHO guidelines hold that AIDS patients or those who test positive for HIV can not be refused treatment. The state should establish adequate infrastructure to tackle the special needs of HIV positive persons/AIDS patients without segregating them from mainstream society. Private hospitals should also be encouraged to invest in adequate facilities to treat HIV positive/AIDS patients.

Right to Employment

In the case of Chhotulal Shambhai Salve vs State of Gujrat,(Special Civil Application No. 11766 of 2000) High Court said that the respondents have no right to delete the name of the petitioner from the select list on the basis that he is HIV positive. The action of the respondents in deleting the name of petitioner from the select list is illegal and violative of Article 14 and 16 of the Constitution. (Special Civil Application No. 11766 of 2000).

Article 14 of Constitution guarantees to every person the right to equality before law or the equal protection of law.

Article 16 says that:

(i) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(ii) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.

Article 16 is an instance of the application of the general rule of equality before law laid down in Article 15 (1) with respect to the opportunity for employment or appointment to any office under the State.

The sense of above:

“In India, all people are entitled to basic or fundamental rights in the eyes of the law. It does not matter what the religion, race, sex, or place of birth of the person is; neither do these rights change just because an individual is infected or affected by HIV.”

Guideline (5) of International Guidelines on HIV & AIDS and Human Rights says that the State should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV & AIDS and people with disabilities from discrimination in both the public and private sector, ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation, and provide for speedy and effective administrative and civil remedies.

Rights to continuation of the employment and service means rights to equality:

“On December 3, 1999 at Mumbai, an Industrial Court passed an order to reinstate the complainant whose employment in a glass manufacturing factory had been terminated due to his HIV+ status. The employer filed a reply stating that in the factory the worker often get cuts and bruises as glass often breaks during the course of work, and the complainant’s presence could pose a risk to the co-workers in factory.

The complainant filed an affidavit as to the specific nature of his job functions. J.J. Hospital provided the complainant a certificate of medical fitness with particular reference to the kind of job functions he performed. An investigation officer also submitted a report to the Court favoring the re-employment of the complainant.

The Court directed the employer to pay the complainant full back wages. The order further stated that the employer should provide the complainant with work and pay him his wages from month to month.” (Source: Lawyers Collective, Positive Dialogue, News Letter# 12, Dec. 2002)

The above cases reflect the judicial efforts towards helping to improve quality life of PLHAs and strengthening HIV & AIDS prevention program. At the same time rights based approach to HIV & AIDS has received further support and PLHA’s rights have been strengthened.

The right to existence

This is the only effective way in dealing with HIV & AIDS - protecting and providing people living with AIDS strengthens understanding and empowerment, and offers a chance to survive well and with dignity.

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