



## Human Rights is important in the Context of HIV—A Legal Deliberation

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### Introduction

The HIV/AIDS epidemic today is not simply a health issue. Its spread and impact cuts across all levels of society causing important consequences for human security in terms of human rights, dignity of live and existence. Human Immunodeficiency Virus (HIV) and Acquired Immuno-Deficiency Syndrome (AIDS) therefore is not just a health issue but also brings to the fore a gamut of pertinent issues. It is widely recognised that, just as the causes of HIV/AIDS have a number of facets, so too must the response be multipronged and protecting the human rights of the affected individuals or populations must be the corner stone of any such strategy.

HIV /AIDS has become the most devastating disease human kind has ever faced it is the fourth biggest cause of death world-wide. More than half of new infections strike people aged below 25; girls are hit harder than boys. 14 million children are now orphans because of the disease<sup>i</sup>. The World Health Organisation estimates that nearly 35 million people have died from AIDS-related causes as of July 2016 and 36.7 million people worldwide were living with HIV/AIDS at the end of 2015<sup>ii</sup>. HIV attacks the body's immune system, destroying cells that fight off infections. The human body can never get rid of HIV completely causing it to be a lifelong disease. When left untreated, HIV can lead to AIDS, which

is the final stage of HIV when the immune system becomes severely damaged and vulnerable to opportunistic infections. Depending on the degree of severity, people who are diagnosed with AIDS survive about 1-3 years<sup>iii</sup>.

HIV/AIDS reverses years of development in some countries, especially as it mostly affects the younger generation which is the future. It is also recognised that human rights are fundamental to managing the HIV/AIDS epidemic.

Human rights are basic entitlements that all people have by virtue of being human. They are based on the idea that every person is equal and entitled to be treated with dignity and respect, regardless of their race, sex, gender, age, disability or any other characteristic. They are universal and inalienable, and therefore cannot be transferred or lost. Today, human rights are reflected in international treaties, regional documents and the national constitutions of countries across the world. However, human rights are not a modern concept. There are references to human rights in documents from ancient times.

### HUMAN RIGHTS LAW AND HIV

Discrimination against people with HIV is a deep and evasive problem exacerbated by the fact of the people who have been and will be affected by the epidemic are people in a socially and economically disadvantaged position. No



programme to address the epidemic can afford to ignore the fact that HIV treatment human rights and profound as it threatens public health

The principles that should guide legal policy on HIV are very simple.

a) The law can and must be used to establish protective and supportive framework for people affected

by the epidemic and not punitive one;

b) Careful and informed ethical debate can guide the direction of the evolution of the law in this area;

c) The law can be used actively as an instrument to bring about change in personal behavior;

d) Only by having an informed group of engaged lawyers will the legal and human rights issues associated with the epidemic be properly tackled.

#### **Legal issues that arise in the hiv context**

##### **Discrimination**

##### **Several cases of discrimination in the workplace were noted in the following**

- a) Badan Singh vs union of India (2002) – Delhi high court Case against state band of India (2002) Bombay high court.
- b) Case against New India Assurance co (2004) Bombay high court.
- c) Case against The chairman, state level 2006 police recruitment board & others.
- d) South Indian inhabitant of number vs director general of polices, CISF & others (2004) Bombay High court

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After the Second World War, human rights and the need to protect them emerged strongly, resulting in the

Universal Declaration of Human Rights (UDHR) being adopted in 1948. The UDHR has been translated into over 300 languages<sup>iv</sup>. It inspired and underlies later, binding international instruments like the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Regional instruments, like the African Charter on Human and People's Rights and the American Convention on Human Rights, also draw on the UDHR.

Universality of human rights is a cornerstone of international human rights law. Every person has the right to health. At its most basic level, this means that every person has the right to services to prevent HIV transmission, as well as to treatment, care and support services for HIV and AIDS. "The protection of human rights is essential to safeguard human dignity in the context of HIV/AIDS and to ensure an effective, rights-based response. An effective response requires the implementation of all human rights, civil and political, economic, social and cultural, and fundamental freedoms of all people, in accordance with existing international human rights standards. Public health interests do not conflict with human rights. When human rights are protected, fewer people become infected and those living with HIV/AIDS and their families can better cope with HIV/AIDS."<sup>v</sup>

Human rights are interconnected and work together to promote the development of people.

International law recognises that protecting health and well being means more than simply



<sup>v</sup>International guidelines on HIV/AIDS and human rights providing health services. It requires protecting a range of related human rights, such as rights to information and education, and to equality and non-discrimination.

The United Nations General Assembly affirms that the “full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic”. Yet, there are numerous governments with discriminatory laws and practices that effectively criminalise key populations, driving them away from HIV services.

HIV-related stigma and discrimination, and discrimination against key populations, are major barriers to achieving health rights. Human rights violations impact on both the spread of HIV and the impact of HIV on families and communities. Where populations have limited access to health and other human rights, they may be at increased risk of HIV exposure and less able to cope with the impact of HIV on their lives. HIV continues to spread throughout the world, shadowed by increasing challenges to human rights, at both national and global levels. The virus continues to be marked by discrimination against population groups: those who live on the fringes of society or who are assumed to be at risk of infection because of behaviours, race, ethnicity, sexual orientation, gender, or social characteristics that are stigmatized in a particular society. As the number of people living with HIV and with AIDS continues to grow in nations with different economies, social structures, and legal systems, HIV/AIDS-related human rights issues are not only becoming more apparent, but also becoming increasingly diverse.

Human Rights law is a body of universal human entitlements to be enjoyed by all people irrespective of their sex, nationality, religion, culture or other status. Human rights are inherent to human beings; they are the rights one has simply by being human<sup>vi</sup>. They are a product of our humanity; they are intrinsic to all persons, not just privileges which governments extend to their people. Human rights are the birth right of all persons as they arise from no special undertaking beyond membership in the human race. To have human rights, one does not have to do anything other than be born a human being<sup>vii</sup>.

Human rights law has a major relevance for shaping appropriate responses to the HIV epidemic<sup>viii</sup>. An absence or poor protection of healthcare rights aggravates the impact of HIV/AIDS. The pandemic denigrates the realisation of human rights, notably by disproportionately affecting women, children and the poor<sup>ix</sup>. For instance, women and children are particularly at risk of HIV infection where cultural norms and poverty endorse discrimination such as gender-based violence, lack access to information, lack of education and other services necessary to safeguard their sexual and reproductive health<sup>x</sup> also notes how HIV/ AIDS generates poverty as it affects the development of affected people. Persons infected or affected by HIV and AIDS face dangers of discrimination which emanate from ignorance, prejudice and mythical beliefs.

Human rights are inextricably linked with the spread and impact of HIV on individuals and communities around the world. A lack of respect for human rights fuels the spread and aggravates the impact of the disease, while at the same time HIV undermines progress in the



realisation of human rights. This link is apparent in the disproportionate incidence and spread of the disease among certain groups which, depending on the nature of the epidemic and the prevailing social, legal and economic conditions, include women and children, and particularly those living in poverty. It is also apparent in the 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<sup>xi</sup>.

The relationship between HIV/AIDS and human rights is highlighted in three areas such as increased vulnerability, discrimination & stigma<sup>xii</sup> and as an impediment to effective response. Certain groups are more vulnerable to contracting the HIV virus because they are unable to realize their civil, political, economic, social and cultural rights. For example, individuals who are denied the right to freedom of association and access to information may be precluded from discussing issues related to HIV, participating in AIDS service organizations and self-help groups, and taking other preventive measures to protect themselves from HIV infection. Women, and particularly young women, are more vulnerable to infection if they lack of access to information, education and services necessary to ensure sexual and reproductive health and prevention of infection. The unequal status of women in the community also means that their capacity to negotiate in the context of sexual activity is severely undermined. People living in poverty often are unable to access HIV care and treatment,

including anti-retrovirals and other medications for opportunistic infections.

The rights of people living with HIV often are violated because of their presumed or known HIV status, causing them to suffer both the burden of the disease and the consequential loss of other rights. Stigmatisation and discrimination may obstruct their access to treatment and may affect their employment, housing and other rights. This, in turn, contributes to the vulnerability of others to infection, since HIV-related stigma and discrimination discourages individuals infected with and affected by HIV from contacting health and social services. The result is that those most needing information, education and counselling will not benefit even where such services are available<sup>xiii</sup>.

Further strategies to address the epidemic are hampered in an environment where human rights are not respected. For example, discrimination against and stigmatization of vulnerable groups such as injecting drug users, sex workers, and men who have sex with men drives these communities underground. This inhibits the ability to reach these populations with prevention efforts, and thus increases their vulnerability to HIV. Likewise, the failure to provide access to education and information about HIV, or treatment, and care and support services further fuels the AIDS epidemic. These elements are essential components of an effective response to AIDS which is hampered if these rights are not respected.

Where individuals and communities are able to realize their rights - to education, free association, information and, most importantly, non-discrimination - the personal and societal impacts of HIV and



AIDS are reduced. Where an open and supportive environment exists for those infected with HIV; where they are protected from discrimination, treated with dignity, and provided with access to treatment, care and support; and where AIDS is de-stigmatized; individuals are more likely to seek testing in order to know their status. In turn, those people who are HIV positive may deal with their status more effectively, by seeking and receiving treatment and psychosocial support, and by taking measures to prevent transmission to others, thus reducing the impact of HIV on themselves and on others in society.

The protection and promotion of human rights are therefore essential in preventing the spread of HIV and to mitigating the social and economic impact of the pandemic. The reasons for this are threefold<sup>xiv</sup>. First the promotion and protection of human rights reduces vulnerability to HIV infection by addressing its root causes. The adverse impact on those infected and affected by

HIV is lessened. Third individuals and communities have greater ability to respond to the

pandemic. An effective international response to the pandemic therefore must be grounded in respect for all civil, cultural, economic, political, economic and social rights and the right to development, in accordance with international human rights standards, norms and principles.

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**States' obligations to promote and protect HIV-related human rights are defined in existing** international treaties.

HIV/AIDS-related human rights include the right to life; the right to liberty and security of the person; the right to the highest attainable standard of mental and physical health; the right to non-discrimination, equal protection and equality before the law; the right to freedom of movement; the right to seek and enjoy asylum; the right to privacy; the right to freedom of expression and opinion and the right to freely receive and impart information; the right to freedom of association; the right to marry and found a family; the right to work; the right to equal access to education; the right to an adequate standard of living; the right to social security, assistance and welfare; the right to share in scientific advancement and its benefits; the right to participate in public and cultural life; and the right to be free from torture and other cruel, inhuman or degrading treatment or punishment.

The United Nations human rights instruments and mechanisms provide the normative legal framework as well as the necessary tools for ensuring the implementation of HIV-related rights. Through their consideration of States reports, concluding observations and recommendations, and general comments, the UN treaty monitoring bodies provide States with direction and assistance in the implementation of HIV-related rights. The Special Procedures of the Human Rights Council, including special representatives, thematic and country rapporteurs, and working groups also are in a position to monitor respect



for HIV-related rights. The Human Rights Council also requests the Secretary-General to solicit comments from Governments, United Nations bodies, programmes and specialized agencies and international and NGOs on steps they have taken to promote and implement, where applicable, programmes to address the urgent HIV-related human rights of women, children and vulnerable groups in the context of prevention, care and access to treatment.

Human rights have informed the global response to HIV in many ways. While the right to health is in itself an exhortation to respond broadly to the epidemic, numerous other rights are relevant to an effective response to the epidemic, including the rights to:

- privacy
- non-discrimination and equality before the law
- liberty and security of person
- freely receive and impart information
- freedom of movement
- participate in public life
- share in the benefits of scientific advancement.

These and other rights find expression in legal, policy, advocacy and programmatic approaches to HIV prevention and treatment. In the legal realm, for example, most countries are parties to international treaties that obligate them to legally respect, protect and fulfil key human rights. These rights also serve as norms guiding policy and advocacy work on many HIV-related issues. And, at the programmatic level, human rights provide an important framework for

developing and implementing HIV prevention and treatment interventions.

Since the early 1980s, HIV/AIDS has claimed 25 million lives. 40 million people are living with HIV. In the 1980s, the relationship between HIV/AIDS and human rights was only understood as it involved people infected with HIV and with AIDS and the discrimination to which they were subjected. For HIV-infected people and people with AIDS, the concerns included

- Sexual violence and coercion faced by women and girls
- stigmatization of men who have sex with men
- abuses against sex workers and injecting drug users
- violations of the right of young persons to information on HIV transmission
- mandatory HIV testing;
- restrictions on international travel;
- barriers to employment and housing,
- barrier to access to education,
- barriers to medical care, and/or health insurance;
- discrimination in society, workplace and in access to government services
- Discrimination faced by children whose parents were HIV positive, etc...

Persons living with the disease are subject to stigmatization and discrimination in society, including in the workplace and in access to government services. Women whose husbands have died of AIDS are regularly rejected by their own and their husband's families



and their property is frequently taken from them. Thousands of children who have lost parents to AIDS or whose parents are living with the disease have lost their inheritance rights, have had to take on hazardous labor including prostitution, and have been forced to live on the streets where they are subject to police violence and other abuses. The many issues raised by names reporting, partner notification, and confidentiality are also prevalent. These issues are grave, and almost 20 years into the epidemic, they have not been resolved. In some ways, the situation has become even more complicated, as old issues appear in new places or present themselves in new or different ways. For example, in certain settings, access to employment has continued to be routinely denied to people infected with HIV. Even in places where this situation has improved, HIV- infected individuals now run the risk of finding themselves excluded from workplace health insurance schemes, with considerable impact on their health and, therefore, on their capacity to work. There are also new issues, with tremendous human rights implications, that have been raised for HIV-infected people, in particular the large and growing disparities and inequities regarding access to antiretroviral therapies and other forms of care

The effects of discrimination--particularly in the forms of racism, gender-based discrimination, and homophobia--continue to exacerbate the impact of the pandemic on the lives of individuals and populations around the world. It is increasingly recognized that realization of human rights is critical to protecting the rights and dignity of those infected and affected by HIV/AIDS, and to decreasing

the relative vulnerability of individuals

### Conclusion

The interaction between HIV/AIDS and human rights is most often illustrated through the impact on the lives of individuals of neglect, denial, and violation of their rights in the context of the HIV/AIDS epidemic. This applies, albeit in different ways, to women, men, and children infected with, affected by, and vulnerable to HIV. People affected by HIV may progress toward the realization of their rights and better health if the enabling conditions exist to alleviate the impacts of personal, societal, and programmatic issues on their lives. This requires policies and programs designed to extend support and services to affected families and communities. Children orphaned by HIV/AIDS illustrate this need. Vulnerability is heightened by the denial of such rights as the rights to information, education, association, or essential care. To reduce vulnerability requires actions that enable individuals and communities to make and effectuate choices in their lives and thereby effectively modulate the health risks to which they may be exposed.

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### References

<sup>i</sup>Maske, Niharika and Khare, Shubham Manoj, HIV/AIDS and Human Rights: An Indian Perspective (August 22, 2009)

<sup>ii</sup>This article has been authored by RiddhimaKedia, a 3rd year law student at the Government Law College, Mumbai. World Health Organisation, Fact Sheet No. 360, Media Centre, November, 2015, <http://www.who.int/mediacentre/factsheets/fs360/en/>



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<sup>iii</sup>What is HIV/AIDS, Aids.gov, 31 December, 2015, <https://www.aids.gov/hiv-aids-basics/hiv-aids-101/what-is-hiv-aids/index.html>.

<sup>xiii</sup><https://www.ohchr.org/EN/Issues/HIV/Pages/HIVIndex.asp0078>

<sup>iv</sup>International HIV/AIDS Alliance, Together to end AIDS, Good Practice Guide, May 2014<sup>ii</sup>UNAIDS (1996, 2006).

<sup>xiv</sup><https://www.ohchr.org/EN/Issues/HIV/Pages/HIVIndex.asp0078>

<sup>v</sup>International guidelines on HIV/AIDS and human rights

<sup>vi</sup>Morsink, J. (2009). *Inherent Human Rights: The Philosophical Roots of the Universal Declaration* (p. 6). Philadelphia, Pennsylvania: University of Pennsylvania Press. <https://doi.org/10.9783/9780812202854>

<sup>vii</sup>Universal Declaration of Human Rights. (1948). Paris, France: United Nations General Assembly

<sup>viii</sup>Grodin, M. (2013). *Health and Human Rights in a Changing World*. Abingdon, Oxon: Routledge

<sup>ix</sup>Ezer, T. (2007). Swaziland: Widows fighting for their rights. *HIV. AIDS Policy & Law*, 12(2-3), 72-73

<sup>x</sup>Gumedze, S. (2004). HIV/AIDS and human rights: The role of the African Commission on human and peoples' rights. *African Human Rights Law Journal*, 4(1), 181-185

<sup>xi</sup><https://www.ohchr.org/EN/Issues/HIV/Pages/HIVIndex.aspx>

<sup>xii</sup><https://www.ohchr.org/EN/Issues/HIV/Pages/HIVIndex.aspx>