

Rights of Persons with HIV-AIDS in India

Dr. Bahiram Vijay Yuvraj
Assistant Professor

I] Introduction-

The Indian Parliament has passed the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) (Prevention and Control) Act, 2017. It is the first national HIV law in South Asia. There is a need to protect and secure the human rights of persons who are HIV-positive, affected by Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome and vulnerable to the said virus and syndrome; There is a need to protect the rights of healthcare providers and other persons in relation to Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome. HIV or Human Immunodeficiency Virus is, simply put a sexually transmitted virus that attacks your immune system or more specifically a type of white blood cell called the T-helper cell. This means that if left untreated, a person over time will gradually become vulnerable to even the most common of infections or diseases. HIV is such a dangerous disease which kills the patient silently. Moreover, the HIV infected persons psychological depressed and frustrates. HIV is a lifelong disease that people must live with; however, more than the disease itself it is the public stigma and prejudice attached to this particular disease that can make it difficult for a person to live peacefully. With people having gross misconceptions of what exactly is HIV, thinking it is contagious like a common cold and more, an HIV positive person must suffer through a lot of discrimination by the society.

Helping HIV infected person with his legal rights is necessary as that will help him to survive little longer. Union of India has signed various treaties, agreements and declarations relating to HIV/AIDS, the protection of rights of those who are HIV positive, those who are affected by HIV/AIDS and those who are most vulnerable to HIV/AIDS in order to secure their human rights and prevent the spread of HIV/AIDS. The two conventions that aim at non discrimination on the basis of creed, political affiliation, gender, or race are the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights. They also cover within their ambit non-discrimination of the people infected with HIV. Discussing all such rights is very necessary at this moment.

II] International Law-

The United Nation had taken lot of steps to protect HIV /AIDS persons by providing number of covenants. The Universal Declaration of Human Rights also lays down that the principle of non-discrimination is fundamental to human rights law. It equally applies to people suffering from HIV/AIDS because they have to suffer a very high level of stigma and discrimination. It lays down certain work related provisions for a HIV/AIDS infected people which includes right to life, liberty and security of person, no person should be subjected to forced testing and/or treatment or otherwise cruel or degrading treatment, all people including HIV+ persons have the right to work and participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits and all persons including the people living with a positive 'HIV' diagnosis are equal before the law and are entitled

without any discrimination to equal protection by the law. The International Community is always searching various measures for protecting the HIV/AIDS persons. The world at large is facing the problem in every part.

III] Domestic Law-

The Indian Parliament had passed various laws for keeping privacy of HIV/AIDS persons intact. Indian Constitution is the supreme law for providing protection to the rights of HIV/AIDS persons. The Indian Constitution and Constitutional Machinery is fully responsible for protection of the rights of persons with HIV/AIDS. The protection needed to such persons is expected to be given with every angle like social security, educational employment, non-discrimination etc. Let us go through the present scenario of Indian Legislations in this regard.

IV] Indian Constitution-

In general, all the rights in Indian Constitution are available to the persons living with HIV/AIDS who are Indian Citizens. The legal rights of HIV/AIDS persons are not affected only because of the disease. The basic rights guaranteed in Indian Constitution can fully be enjoyed by the HIV/AIDS persons. Not only that but when the rights of such persons were violated the Indian Constitution stands besides the HIV/AIDS persons. The HIV/AIDS persons are normally vested with all fundamental rights guaranteed in Indian Constitution.

a) Art.14. - Equality before law

b) Art.15. - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

c) Art.19.- Protection of certain rights regarding freedom of speech, etc

d) Art.21.- Protection of life and personal liberty

e) Art. 32. Remedies for enforcement of Fundamental right

V] Indian Medical Council Act, 1956-

The Medical Council Act lays down certain duties that have to be observed by the doctors towards the HIV/AIDS patients. These are enumerated below-

- Duty to take care and to take informed consent from the patient.
- Disclosure of information and risks to the patient. Provide information of options available and benefits.
- Duty to warn. To admit patient in emergency without consent.
- The physician should not abandon his duty for fear of contracting the disease himself.

VI] Rights of HIV/AIDS Patients-

Recently the Indian Parliament has passed the The Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (Prevention and Control) Act, 2017 which recognises the rights of HIV/AIDS persons. This Act makes anti-retroviral therapy a legal

right of HIV/AIDS patients and states that “every person in the care and custody of the state shall have right to HIV prevention, testing, treatment and counselling services. It also asks the central and state governments to provide such treatment along with infection management. This Act also asks the state and central governments to facilitate access for the HIV/AIDS community to welfare schemes

I) Right to Treatment- This Act provides a special right of HIV/AIDS persons regarding treatment. While providing the treatment, this Act especially mentions regarding treatment of Anti Retroviral Therapy (ART) and makes the governments responsible for providing such treatment. The following provisions are very important in this regard.

Section 13.- The Central Government and every State Government, as the case may be, shall take all such measures as it deems necessary and expedient for the prevention of spread of HIV or AIDS in accordance with the guidelines.

Section 14.- (1) The measures to be taken by the Central Government or the State Government under section 13 shall include the measures for providing, as far as possible, diagnostic facilities relating to HIV or AIDS, Anti-retroviral Therapy and Opportunistic Infection Management to people living with HIV or AIDS.

(2) The Central Government shall issue necessary guidelines in respect of protocols for HIV and AIDS relating to diagnostic facilities, Anti-retroviral Therapy and Opportunistic Infection Management which shall be applicable to all persons and shall ensure their wide dissemination.

2) Confidentiality- This Act in Section 8. (1) Notwithstanding anything contained in any other law for the time being in force,—

(i) No person shall be compelled to disclose his HIV status except by an order of the court that the disclosure of such information is necessary in the interest of justice for the determination of issues in the matter before it;

(ii) no person shall disclose or be compelled to disclose the HIV status or any other private information of other person imparted in confidence or in a relationship of a fiduciary nature, except with the informed consent of that other person or a representative of such another person obtained in the manner as specified in section 5, as the case may be, and the fact of such consent has been recorded in writing by the person making such disclosure:

Provided that, in case of a relationship of a fiduciary nature, informed consent shall be recorded in writing.

(2) The informed consent for disclosure of HIV-related information under clause (ii) of subsection (1) is not required where the disclosure is made—

(a) By a healthcare provider to another healthcare provider who is involved in the care, treatment or counselling of such person, when such disclosure is necessary to provide care or treatment to that person;

(b) by an order of a court that the disclosure of such information is necessary in the interest of justice for the determination of issues and in the matter before it;

(c) in suits or legal proceedings between persons, where the disclosure of such Information is necessary in filing suits or legal proceedings or for instructing their counsel;

3) Right Against Discrimination and Right to Employment- This Act in Section 3. Provides that No person shall discriminate against the protected person on any ground including any of the following, namely:—

(a) the denial of, or termination from, employment or occupation, unless, in the case of termination, the person, who is otherwise qualified, is furnished with—

(i) a copy of the written assessment of a qualified and independent healthcare provider competent to do so that such protected person poses a significant risk of transmission of HIV to other person in the workplace, or is unfit to perform the duties of the job; and

(ii) a copy of a written statement by the employer stating the nature and extent of administrative or financial hardship for not providing him reasonable accommodation;

(b) the unfair treatment in, or in relation to, employment or occupation;

(c) the denial or discontinuation of, or, unfair treatment in, healthcare services;

(d) the denial or discontinuation of, or unfair treatment in, educational, establishments and services thereof;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public, whether or not for a fee, including shops, public restaurants, hotels and places of public entertainment or the use of wells, tanks, bathing ghats, roads, burial grounds or funeral ceremonies and places of public resort;

(f) the denial, or, discontinuation of, or unfair treatment with regard to, the right of movement;

(g) the denial or discontinuation of, or, unfair treatment with regard to, the right to reside, purchase, rent, or otherwise occupy, any property;

(h) the denial or discontinuation of, or, unfair treatment in, the opportunity to stand for, or, hold public or private office;

(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a person may be;

(j) the denial of, or unfair treatment in, the provision of insurance unless supported by actuarial studies;

(k) the isolation or segregation of a protected person;

(l) HIV testing as a pre-requisite for obtaining employment, or accessing healthcare services or education or, for the continuation of the same or, for accessing or using any other service or facility;

Provided that, in case of failure to furnish the written assessment under subclause

(i) of clause (a), it shall be presumed that there is no significant-risk and that the person is fit to perform the duties of the job, as the case may be, and in case of the failure to furnish the written statement under sub-clause (ii) of that clause, it shall be presumed that there is no such undue administrative or financial hardship.

VII] Role of Judiciary-

By considering the problems before the HIV/AIDS persons the Supreme Court and High Court had given relief to number of such parsons' at number of moments. These instances are as follows-

1) HIV positive pregnant woman denied treatment-

This petition focuses on the serious denial of reproductive rights, right to health and the right to food which have impacted on the right to dignity of a woman. The family of the victim belongs to Bihar and is living below the poverty line. Both husband and wife are HIV positive and have faced harassment at their native place on grounds of their HIV status. The woman faced denial of treatment during her advanced pregnancy stage. After which they came to Delhi on December 12, 2010, the treatment was then given to this lady.

2) Supreme Court rules that children living with HIV should not be discriminated-

In a public interest litigation brought by Naz (Organisation) India in 2015, India's Supreme Court held that children living with or affected by HIV (that is, children who are HIV positive and children who are HIV negative but whose parents are HIV positive) should be afforded protected status and included as a 'child belonging to a disadvantaged group' under India's Right of Children to Free and Compulsory Education (RTE) Act (2009). The extension of protected status to children living with or affected by HIV means that they are now entitled to special protections and measures, under the terms of the Right To Education Act.

Ix] Conclusion-

In April, 2017, the govt. of India gave its approval for an important bill that talked about ensuring that people suffering from HIV and AIDS are given equal rights in educational institutions, jobs and treatment centres. In this context it is obviously the point to mention that HIV/AIDS persons if treated just like other human beings their life will be extended. Treating these persons humanely is necessary and law will definitely help them in this regard.

References-

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- f) <http://www.hrln.org/hrln/hiv-aids/pils-a-cases.html>
- g) Indian Medical Council Act, 1956