

## **HUMAN RIGHT, HIV AND AIDS: AN INDIAN PERSPECTIVE<sup>1</sup>**

*"The full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic, including in the areas of prevention, treatment, care and support."*

- Political Declaration on HIV/AIDS: Intensifying our efforts to eliminate HIV/AIDS adopted by the UN General Assembly on 10 June 2011

### **INTRODUCTION**

Acquired Immune Deficiency Syndrome (AIDS) is the term given to diseases in which there is a severe loss of the body's cellular immunity, greatly lowering the resistance to infection and Malignancy. It is caused by a Human immunodeficiency virus which causes severe damage to the immune system and leaves the body vulnerable to a variety of life-threatening infections and cancers. HIV/AIDS is one of the most cataclysmic epidemics human kind has ever witnessed.

HIV is transmitted primarily through sexual intercourse viz. oral, vaginal and anal sex, through transfusion of infected blood, by use of non-sterile HIV infected or contaminated syringes and needles and from an infected mother to her unborn child. In India, HIV infection was the first detected in 1986. It has become the 6<sup>th</sup> biggest reason of death. More than 70 million people have been infected with this virus and nearly 40 million people have died.

The conventional outlook coupled with the misconception associated with this epidemic and the socioeconomic condition of the country has made it more vulnerable to the disease. Illiteracy or we can say lack of knowledge is one of the biggest causes of the spread of the disease. The disease has a very serious social besmirchment attached with it. People suffered with HIV/AIDS are discriminated at every place. Their fundamental right and rights guaranteed being as a human being i.e. human rights are violated.

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## MEANING OF HUMAN RIGHTS

*"Dignity is the entitlement of all as long as life exists"*

*-Justice J.S. Verma, Chairperson, NHRC.*

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights, being the birth right are, therefore, inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people.

Chief Justice of India, J.S Verma has rightly stated that "human dignity is the quintessence of human rights."<sup>2</sup>

The World Conference on Human Rights held in 1993 in Vienna stated in the Declaration that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms.

D.D Basu defines human rights as those minimum rights which every individual must have against the State or other public authority by virtue of his being a member of human family, irrespective of any other consideration<sup>3</sup>.

According to Bennett "Human rights include areas of individual or group freedom that are immune from governmental interference or that, because of their basic contribution to human dignity or welfare, are subject to governmental guarantees, protections, or promotion"<sup>4</sup>

Human rights are, therefore, those rights which belong to an individual as a consequence of being human as a means to human dignity. Human rights are indivisible and interdependent and therefore precisely there cannot be different kinds of human rights. All human rights are equal in

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<sup>2</sup> The New Universe of Human Rights, p.3.

<sup>3</sup> "Human Rights in Constitutional Law", (1994) p.5.

<sup>4</sup> International Organizations, Third Edition p.258.

importance and are inherent in all human beings. The universal declaration of human rights therefore did not categorize the different kinds of human rights. It simply enumerated them in different articles. However, the subsequent developments made in the human rights field under the United Nations system make it clear that human rights are of two kinds (1) Civil and Political Rights and (2) Economic, Social and Cultural Rights.

Civil rights are those rights which are related to the protection of the right to life and personal liberty. Such rights include right to life, liberty and security of persons, right to privacy, home and correspondence, right to own property, freedom from torture, inhuman and degrading treatment, freedom of thought, conscience and religion and freedom of movement. Political rights are those rights which allow a person to participate in the government of a state like right to vote, right to be elected at genuine periodic elections, right to take part in the conduct of public affairs.

### **RELATIONSHIP BETWEEN HUMAN RIGHTS AND HIV/AIDS**

The relationship between human rights and HIV/AIDS can only be understood as it involved people infected with HIV and with AIDS and the discrimination to which they were subjected. People infected with HIV may suffer from violations of their rights which they, as humans, have like right to employment, right to education, right to medical care, right to travel etc. These issues are serious and almost 30 years into the epidemic, they have not been resolved. This makes protecting, promoting, respecting and fulfilling people's human rights essential to ensure that they are able to access these services and enable an effective response to HIV/AIDS.

### **HUMAN RIGHTS APPROACH TO HIV/AIDS**

*"The face of HIV has always been the face of our failure to protect human rights".*

— Navi Pillay, UN High Commissioner for Human Rights

The impact of HIV/AIDS is reduced where individuals and communities are able to realize their rights, have an open and supportive environment and are protected from discrimination, treated with dignity, and provided with access to treatment, care and support. In other words, if HIV/AIDS patients deal with their status more effectively, by looking for and getting treatment

and psychosocial support, and by taking measures to thwart transmission to others, thus reducing the impact of HIV on themselves and on others in society.

The promotion and protection of human rights are, therefore, indispensable in preventing the spread of HIV and to extenuating the socio-economic impact of the endemic. The reasons for this are threefold-

- Firstly, the promotion and protection of human rights reduces vulnerability to HIV infection by addressing its root causes.
- Secondly, the adverse impact on those infected and affected by HIV is lessened.
- Thirdly, individuals and communities have greater ability to respond to the pandemic.

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

## **LEGAL FRAMEWORK FOR PROTECTING AND PROMOTING HUMAN RIGHTS OF HIV/AIDS PATIENT**

India's socio-economic status, conventional outlook, cultural folklore on sex and sexuality and a huge population of marginalized people make it awfully vulnerable to the HIV/AIDS epidemic. In fact, the epidemic has become one of the most serious challenges faced by the country since Independence. A large number of steps have been taken at international and national level to overcome this epidemic.

### **1. International Documents**

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. It provides States with direction and assistance in the implementation of HIV-related rights.

India has signed various conventions, treaties, agreements and declarations relating to HIV/AIDS in order to prevent the spread of HIV/AIDS and to protect the rights of those who are HIV positive, those who are affected by HIV/AIDS and those who are most vulnerable to HIV/AIDS.

Some of the International Instrument deals with the protection and promotion of human Right of HIV/AIDS are as follows:

**a. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights(ICESCR):** ICCPR and ICESCR are two covenants that protect a range of economic, social, and cultural rights without discrimination based on creed, political affiliation, gender, or race. Nondiscrimination is a basic tenet of the human rights movement, enshrined in these two covenants, and countless other human rights treaties and declarations.

**b. The Universal Declaration of Human Rights:** The Declaration lays down that the principle of non-discrimination is one of the fundamental principle to human right 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 provisions for the protection of 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.

People diagnosed with HIV+ are also entitled the rights enshrined in Art. 25(1) of the Declaration which includes the right to adequate standard of living, assistance, medical care and necessary social services, and the right to security in the event of unemployment according to their needs and their treatment choices. Article 30 of the declaration provides for promoting and encouraging respect for human rights and fundamental freedoms. The declaration proclaims the personal, civil, political, economic, social, and cultural rights of humans, which are limited only by recognition for the rights and freedoms of others and the requirements of morality, public order and general welfare.

**c. UNAIDS:** The UNAIDS Guidelines, 1996 emphasizes on the duty of the states to engage in law reform. It also guides the states to identify legal obstacles so as to form an effective strategy of HIV/AIDS prevention and care. It also lays stress on enactment of anti-discrimination and

other protective laws that would protect HIV/AIDS diagnosed people from discrimination in both the public and private sectors would ensure their privacy, confidentiality and ethics in research involving human subjects and would lay emphasis on education and conciliation and provide for speedy and effective administrative and civil remedies.

## 2. National Documents

There is no comprehensive law in India to deal with menace of HIV/AIDS and protect the people infected with the disease from discrimination and the social stigma attached with this disease. But provisions are given in various laws:

**a. Constitution of India:** The law of land, the Constitution of India, 1950 guarantees Equality justice and liberty to all. Article 14 guarantees the right of equality of treatment to the HIV/AIDS patients. Articles 15 and 16 protect them against discrimination. Article 21 of the Constitution protects their right to life and personal liberty and ensures their right to privacy. The Directive Principles of State Policy direct the States to ensure right to livelihood and prevent discrimination. Article 39 of the Constitution provides that States shall ensure that all the citizens including the HIV/AIDS patients have an adequate mean of livelihood. Article 42 direct States to make provisions for securing just and humane conditions of work and Under Article 47 States have been entrusted with the duty to improve public health.

**b. Indian Medical Council (Professional Conduct, & Ethics) Regulations, 2002 passed under Section 20A and 33(m) of the Indian Medical Council Act, 1956:** The Medical Council of India lays down certain duties on 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 & risks to the patient
- Provide information of options available & 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.

**c. Immoral Trafficking Prevention Act, 1986:** The Act provides for conducting compulsory medical examination for detection of HIV/AIDS. It also made provisions for compulsory testing.

**d. Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017:** This is good news for people suffered from HIV AIDS that a new Act named as Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act received the assent of the President on the 20th April, 2017. It is one of the unique Act as it is the first disease-centric Act in India<sup>5</sup> and also gives effect to India's international obligations as a signatory to the Declaration of Commitment on Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (2001) adopted by the United Nations General Assembly.<sup>6</sup> The prime object of the Act is to provide for the prevention and control of the spread of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome and for the protection of human rights of persons affected by the said virus and syndrome and for matters connected therewith or incidental thereto.

Chapter II of the Act provides for prohibition of discrimination against protected person. As it is earlier said by the researcher that the Act is unique in nature because it is the first disease centric Act in India. One another reason is that it is for the first time that any Act prohibits discrimination in the private sector. The Supreme Law of the Land i.e. Constitution of India only prevents discrimination by the state but this Act prevent discrimination both by the state and private sector.

Discrimination in this Act means denial, termination, unfair treatment, removal or discontinuation in or in relation to employment or occupation; healthcare services; educational, establishments and services; 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

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<sup>5</sup> Landmark Legislation to Provide Succour to AIDS/HIV-affected, Shalet Jimmy, Indian Express, 10th April 2014.

<sup>6</sup> United Nations General Assembly. Declaration of commitment on HIV/AIDS, New York: United Nations, 2001(A/RES/S-26/2). It notes that "the full realization of human rights and fundamental freedoms for all is an essential element in a global response to the HIV/AIDS pandemic" and also sets concrete, time-bound targets for the introduction of national legislation and other measures.



ghats, roads, burial grounds or funeral ceremonies and places of public resort; the right of movement; the right to reside, purchase, rent, or otherwise occupy, any property; the opportunity to stand for, or, hold public or private office; in insurance<sup>7</sup>.

The Act also prohibit 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<sup>8</sup>.

In a landmark judgment of *MX v. ZY*<sup>9</sup>, the Bombay High Court has held that no person could be deprived of his or her livelihood except by procedure established by law and that the procedure must be just, fair and reasonable. It is further held by the court that if a person is fit to perform his job functions and is otherwise qualified and does not pose a substantial risk to fellow workers he cannot be denied the job. A public sector employer cannot deny a person employment solely because he is HIV positive. Each determination of whether a person is incapable of performing the job must be made by conducting an individual inquiry taking into account the state of medical knowledge at the time. It was also held that in proper cases where a person can show that he or she would not be able to prosecute his or her career if his status is disclosed and in the interests of the administration of justice, the Court will permit the party before it to suppress his or her identity and prosecute or defend the proceedings under an assumed name. In another case of *G v. New India Assurance Co. Ltd*<sup>10</sup>, the Bombay High Court has held that a person's HIV status cannot be a ground for rejection for employment as it would be discriminatory and would violate the principles laid down in Articles 14, 16 and 21 of the Constitution. . This has been upheld in subsequent decisions such as *X v. State Bank of India*<sup>11</sup>, in *X v. The Chairman, State Level Police Recruitment Board & Ors*<sup>12</sup> by the Andhra Pradesh High Court and in *CSS v. State Of Gujarat*<sup>13</sup> by the Gujarat High Court.

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<sup>7</sup> Section 3(a) of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>8</sup> Section 3(1) of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>9</sup> AIR 1997 Bom 406.

<sup>10</sup> (2004)Bombay High Court

<sup>11</sup> X v. State Bank of India (2002) - Bombay High Court

<sup>12</sup> X v. The Chairman, State Level Police Recruitment Board & Ors, 2006 ALT 82.

<sup>13</sup> CSS v. State Of Gujarat, Special Civil Application No. 11766 of 2000, Gujarat High Court, 17 February 2001.



Section 4 of the Act provides that No person shall, by words, either spoken or written, publish, propagate, advocate or communicate by signs or by visible representation or otherwise the feelings of hatred against any protected persons or group of protected person in general or specifically or disseminate, broadcast or display any information, advertisement or notice, which may reasonably be construed to demonstrate an intention to propagate hatred or which is likely to expose protected persons to hatred, discrimination or physical violence.

Chapter III of the Act lays down right based approach. It provide that no protected person shall be subject to medical treatment, medical interventions or research, except with the informed consent, which shall include pre-test and post-test counseling, of such person or his representative and in such manner, as may be specified in the guidelines .

Chapter IV deals with the disclosure of HIVS status<sup>14</sup>. It provides that no person shall be compelled to disclose his HIV status or of any other person who impart such or other private information in confidence or in a relationship of a fiduciary nature except

- (1) 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;
- (2) with the informed consent of that other person or a representative of such another person;
- (3) by a healthcare provider to another healthcare provider who is involved in the care, treatment or counseling of such person, when such disclosure is necessary to provide care or treatment to that person;
- (4) 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;
- (5) if it relates to statistical or other information of a person that could not reasonably be expected to lead to the identification of that person; and

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<sup>14</sup> Section 5 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.

(6) to the officers of the Central Government or the State Government or State AIDS Control Society of the concerned State Government, as the case may be, for the purposes of monitoring, evaluation or supervision<sup>15</sup>.

The Act further provides that HIV status of person shall be disclose to his/her partner in person after counseling only by a healthcare provider who is a physician or counselors in the following circumstances<sup>16</sup>:

- a) reasonably believes that the partner is at the significant risk of transmission of HIV from such person; and
- (b) such HIV-positive person has been counseled to inform such partner; and
- (c) is satisfied that the HIV-positive person will not inform such partner; and
- (d) has informed the HIV-positive person of the intention to disclose the HIV-positive status to such partner.

In one of the case *Mr. X v Hospital Z*<sup>17</sup>, the Supreme Court has held that its earlier judgment in *Mr. X v Hospital Z* to the extent that it suspended the right of HIV/AIDS patients to marry is no longer good law and restored the right of an HIV + person to marry. However, it further held that this does not cart off the duty of those who know their HIV+ status to obtain informed consent from their prospective spouse prior to marriage.

It is further provided that Healthcare provider shall not inform the partner of a woman where there is a reasonable apprehension that such information may result in violence, abandonment or actions which may have a severe negative effect on the physical or mental health or safety of

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<sup>15</sup> Section 8 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>16</sup> Section 9 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>17</sup> (2003)1SCC 500

such woman, her children, her relatives or someone who is close to her<sup>18</sup>. This highlights that protection of the affected person is of foremost importance.

Chapter V lays down 'Obligations of Establishments' that keep records of HIV related information that they will ensure that such information is protected from disclosure<sup>19</sup>.

Chapter VI provides that the Central Government and every State Government, as the case may be, shall take all such measures for providing diagnostic facilities relating to HIV/AIDS, Anti-retroviral Therapy and Opportunistic Infection Management to people living with HIV/AIDS for the prevention of spread of HIV/AIDS<sup>20</sup>.

Chapter VII deals with 'Welfare measures taken by the Central and the State Government'. It provides that the government shall-

- frame schemes for HIV infected or affected person,
- take appropriate steps for protecting the property of children affected by HIV or AIDS.
- formulate HIV and AIDS related information, education and communication programmes which are age-appropriate, gender-sensitive, non-stigmatizing and non-discriminatory<sup>21</sup>.
- lay down guidelines for care, support and treatment of children infected with HIV or AIDS<sup>22</sup>.
- take measures to counsel and provide information regarding the outcome of pregnancy and HIV-related treatment to the HIV infected women.

The Act further provides that no HIV positive pregnant woman shall be subjected to sterilization or abortion without obtaining her informed consent<sup>23</sup>. Thus, it can be said that the Act provides for soft law supportive mechanisms as well.

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<sup>18</sup> Section 10 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>19</sup> Section 11 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>20</sup> Section 14 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>21</sup> Section 17 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>22</sup> Section 18 (1) of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

Chapter VIII provides that if there is a significant risk of occupational exposure to HIV than every establishment, whether engaged in the healthcare services or not, shall for the purpose of ensuring safe working environment provide<sup>24</sup>

- Universal Precautions to all persons working in such establishment who may be occupationally exposed to HIV; and
- training for the use of such Universal Precautions;
- Post Exposure Prophylaxis to all persons working in such establishment who may be occupationally exposed to HIV or AIDS; and

It is also the duty of the establishment to inform and educate all persons working in the establishment of the availability of Universal Precautions and Post Exposure Prophylaxis. The Act also provides for a Complaints Officer in the establishment who shall, on a day-to-day basis, deal with complaints of violations of the provisions. However, the success of this provision would depend on effective executive and administrative oversight over such officers.

Chapter IX aims to reduce risk amongst the ‘Most at Risk’ populations such as sex workers, transgender, men-who-have-sex-with-men and injecting drug users. For this purpose strategies or mechanism or techniques for reducing risk of HIV transmission shall be adopted or implemented<sup>25</sup>. Such strategies or mechanism or techniques include (i) provision of information, education, and counseling services relating to prevention of HIV and safe practices; (ii) the provision and use of safer sex tools, including condoms, and safe intravenous drug use practices; and (iii) drug substitution, drug maintenance, needle and syringe exchange programmes. These provisions ensure that minimization of HIV exposure is of utmost importance because sometimes precaution is better than cure.

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<sup>23</sup> Section 18(3) of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>24</sup> Section 19 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>25</sup> Section 22 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

Chapter X provides that state government shall appoint Ombudsman<sup>26</sup>. The Act further provide that on receiving a complaint made by any person, the Ombudsman shall inquire into the matter and within a period of thirty days of the receipt of the complaint after giving an opportunity of being heard to the parties, pass such order, as he deems fit, giving reasons there for<sup>27</sup>. In cases of medical emergency of HIV positive persons, the Ombudsman shall pass such order as soon as possible, preferably within twenty-four hours of the receipt of the complaint<sup>28</sup>. Such a provision enables speedy and inexpensive legal recourse to HIV infected persons as compared to ordinary litigation. However, in order for such a mechanism to be effective, it is mandatory to spread awareness about recourse to it among the population as well as ensure strict and regular oversight over such Ombudsman by the State Governments.

Chapter XI lays down special provisions. It provides that every protected person shall have the right to reside in the shared household and the right to enjoy and use the facilities of such shared household in a non-discriminatory manner<sup>29</sup>. Further, the Act requires that every person in the care or custody of the State shall have the right to HIV prevention, counseling, testing and treatment services<sup>30</sup>. It Also provides that a person below the age of eighteen but not below twelve years, who has sufficient maturity of understanding and who is managing the affairs of his family affected by HIV and AIDS, shall be competent to act as guardian of other sibling below the age of eighteen years for the following purposes<sup>31</sup>, namely:—

- (a) admission to educational establishments;
- (b) care and protection;
- (c) treatment;
- (d) operating bank accounts;
- (e) managing property; and

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<sup>26</sup> Section 23 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>27</sup> Section 24 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>28</sup> Section 26 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>29</sup> Section 31(1) of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>30</sup> Section 31(2) of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>31</sup> Section 32 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

(f) any other purpose that may be required to discharge his duties as a guardian.

Chapter XII dealing with 'Special Procedure in Courts' serves as a citadel to the objective of confidentiality and privacy enshrined in the Act. It provides that in any proceeding in which an HIV affected person is a party, the court may suppress the identity of the person or restrain publication of content which would disclose his/her identity. Such proceedings or any part of it may be conducted in camera<sup>32</sup>. Cases of HIV positive patients are to be dealt with on a priority basis. HIV status and corresponding expenses are to be taken into account while conferring maintenance orders and healthcare facilities must be available to an infected individual who is sentenced. This provision reinforces the primary importance of the health of the HIV affected individual.

Chapter XIII provides for penalties. The punishment for enticing hatred toward HIV persons is imprisonment for a minimum term of three months, which may extend to two years and with fine, up to one lakh rupees, or both<sup>33</sup>. Failure to comply with orders of the Ombudsman results in a fine, which may extend to ten thousand rupees with an additional fine of up to five thousand rupees for every day during which such failure continues<sup>34</sup>. Finally, the disclosure of information regarding the HIV status of a protected person is punishable with a fine which may extend to one lakh rupees unless pursuant to a court order. Such severe penalties serve as effective deterrents to violations of the provisions envisaged under the Act<sup>35</sup>.

**e. National Aids Control Programme:** NACP launched in 1992 as a comprehensive programme for prevention and control of HIV/AIDS in India. The objective of first phase of NACP was to slow down the spread of HIV infections so as to reduce morbidity, mortality and impact of AIDS in the country. National AIDS Control Board (NCBA) was constituted and an autonomous National AIDS Control Organisation (NACO) was set up. The second phase of NACP was launched in November 1999 with two objectives- first to reduce the spread of HIV

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<sup>32</sup> Section 34 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

<sup>33</sup> Section 37 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act,2017

<sup>34</sup> Section 38 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act,2017

<sup>35</sup> Section 39 of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act,2017

infection in India and second to increase India's capacity to respond to HIV/AIDS on a long term basis. Through this programme National Aids Prevention and Control Policy, 2002 is adopted. the object of this policy is to protect the human right of HIV/AIDS patient along with reduction of the impact of the epidemic, bringing about a zero transmission rate by 2007, bringing about an enabling socio-economic environment for prevention and control, decentralization of the programme and working towards a horizontal integration of the HIV/AIDS response with other national programmes relating to health. NACP-II also includes adoption of National Blood policy, a strategy for greater involvement of people with HIV/AIDS, launch of National Adolescent Education Programme, Introduction of Counseling, testing and PPTCT programmes, launch of anti- retroviral treatment programme, setting up of the National Council on AIDS and State AIDS Control Societies in all State for the implementation and management of HIV/AIDS programmes. The third phase of the national programme was launched in July 2007 with the goal of Halting and reversing the epidemic by the end of project period.

## **CONCLUSION**

The Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) were first reported in Chennai, India in 1986. Since then, India has come a long way in HIV prevention, treatment and care for people living or at the risk of HIV. After taking step at both national and international level we get success in controlling this epidemic. According to the 2017 UNAIDS data, new HIV infections in India have decreased by 46%, and AIDS-related deaths have decreased by 22% since 2010. In 2016, India had 80,000 new HIV infections compared to 1,50,000 in 2005, and 62,000 AIDS-related deaths compared to 1,50,000 in 2005. Data has shown that there was a 66% decline in new infections from 2005-15<sup>36</sup>. But a lot still needs to be done. National Strategic Plan (NSP) for HIV/AIDs and STI 2017-2024 aims to achieve by 2020<sup>37</sup>-

1. 75% reduction in new HIV infections.

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<sup>36</sup> HIV Cases Halved Since 2000: How India Plans To Become AIDS-Free by 2024 by Deepika Bhardwaj January 19, 2018, 6:57 pm

<sup>37</sup> HIV Cases Halved Since 2000: How India Plans To Become AIDS-Free by 2024 by Deepika Bhardwaj January 19, 2018, 6:57 pm



2.90-90-90:90% of those who are HIV positive in the country know their status ,90% of those who know their status are on treatment and 90% of those who are on treatment experience effective viral load suppression.

3. Elimination of mother -to -child transmission of HIV and Syphilis.

4. Elimination of stigma and discrimination.

And by 2024<sup>38</sup>, it hopes to achieve

1. 80% reductions in new HIV infections.

2. Ensuring that 95 of those who are HIV positive in the country know their status, 95% of those who know their status are on treatment and 95% of those are on treatment experience effective viral load suppression.

In 2017, there were two achievements that helped in reducing the number of people living with HIV in India. These were the enactment of and the announcement and implementation of the 'Test and Treat ' policy. The goal now is to achieve zero new infections, zero AIDS- related deaths and Zero discrimination. The NSP's priority is to accelerate HIV prevention in 'at risk group' and key population. It wants to expand quality-assured HIV testing with universal access to comprehensive HIV care. It also wants to address the critical enablers in HIV programming and reconstructing the strategic information system to be efficient and patient-centric<sup>39</sup>.

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<sup>38</sup> HIV Cases Halved Since 2000: How India Plans To Become AIDS-Free by 2024 by Deepika Bhardwaj January 19, 2018, 6:57 pm

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