

CHAPTER - 3 HUMAN RIGHTS AND HIV/AIDS

3.1 Introduction

Human rights are those freedoms to which every individual has an inherent right just by virtue of being a human. They are based on imperatives that are fundamental human needs. A few of these requirements are essential to one's survival and physical health. Others are necessary for the psyche's survival and well-being. Human rights can therefore be recognized and enumerated. The well-established concept of natural law is linked to these rights.

The promise that some actions cannot or ought not to be taken against a person's will is known as an immunities concept. This theory holds that due to their humanity, people ought to be protected from cruel and degrading treatment. Stated differently, human rights constitute an exemption to the application of arbitrary power. A person can only exercise their human rights in an organized community, like a state, or, alternatively, anywhere there is a civil social order. No one can imagine using them in a state of anarchy where there is scarcely any just power to which a citizen can appeal against violations of their rights. The fundamental ideas guiding the defense of human rights stem from the idea of man as an individual and his interaction with a social structure, both of which are inextricably linked to the essence of humanity.

3.2 Human Rights

Because they are essential to the overall development of every person's personality, human rights must be upheld and made available to all members of society. They must be cherished, dependable, and safeguarded in order to bring about peace and prosperity. Because human rights are the cornerstone of a meaningful life, upholding human dignity is the government's ultimate goal. The unavoidable growth of government power over citizens' conduct has led to a need for protection, which is something that is never, ever desirable. Many states do not uphold the fundamental standards of human behavior. Human awareness of their rights has also contributed to the need for state protection. It has come to light that all laws—whether they be local ordinances or

principles of international law—should work to safeguard individuals for the benefit of all living things.

The acceptance of human dignity and honor is one of the achievements of contemporary international law. The person is now of legal age according to international law. Additionally, it has been determined that the state should no longer act as a person's guardian ad litem in order to give them protection from the state abroad. This is clear from the many conventions with various purviews that have been adopted under the United Nations Organization's auspices over the course of the last 60 years or so. The adoption of several declarations by the UN and its specialized agencies demonstrates the commitment of its members to advancing the promotion of universal respect for and observance of fundamental freedoms and human rights. States are conscious of their personal accountability for protecting human rights. By including the necessary clauses in their constitutions, they have taken action to safeguard individual rights. They have also established national conventions to establish regional agreements. On a national, regional, and worldwide level, non-governmental organizations are also honored for their efforts in exposing human rights abuses and devising solutions to prevent them in the future. The importance of human rights in the international system is now widely acknowledged due to their impact on politics, morality, and the law.

Because they involve the fulfillment of the obligations and rights specified in international treaties, human rights are legitimate. As a value-based system designed to protect human dignity, human rights are political in the widest sense of the word. Additionally, they seek to curtail the power that governments wield over the populace. Regarding the protection of these rights, one will not hesitate to admit that there is uncertainty about the precise nature, extent, and application of international law.

3.3 Kinds of Human Rights

There are no distinct categories of human rights since they are all interconnected and indivisible. Every person is born with the equal importance of all human rights. Consequently, the Universal Declaration of Human Rights lacked definitions for the

various categories of human rights. It just listed them in different articles. However, the subsequent developments in the field of human rights under the United Nations System demonstrate that there are two distinct categories of human rights:

- (1) Civil and Political Rights, and
- (2) Economic, Social and Cultural Rights.

Since humans are sentient beings, they possess a variety of basic, inalienable rights that are bound together and called human rights. According to the New International Webster's Comprehensive Dictionary of the English Language, the word "right" literally means anything done in accordance with or conformable to truth or fact, correct, true, accurate, not mistaken, conformable to a standard of propriety, fit, suitable, and the word "human" means pertaining to characterizing man or mankind.¹

3.4 Origin and Development Meaning and Nature of Human Rights

Conversely, human rights encompass a broad range of rights, including civil, cultural, economic, and social rights. As such, it is difficult to give a clear definition of the term "human rights." However, human rights are those that every individual possesses just by virtue of being a human. These rights were already theirs by virtue of their very existence, and they became operative at birth. Everyone by default has human rights because they are fundamental human rights, irrespective of caste, creed, religion, sex, or nationality. Since they preserve people's freedom and dignity and promote their physical, moral, social, and spiritual well-being, human rights are essential to everyone. Their importance is indisputable, especially in the present era, as they establish the proper foundation for people's moral and material progress. Because of their immense importance to people, human rights are also occasionally referred to as fundamental rights, basic rights, inherent rights, natural rights, and birth rights. The philosophical and pragmatic approaches are the two main ways that have occasionally been used to explain

¹ H.O. Agarwal, Human Rights, Universal Book Traders, New Delhi. 2002. p.2

the nature of human rights. i) The Philosophical or Theoretical Approach: This method has produced five different theories that each attempt to explain a human right.

These are:

3.4.1 The Natural Rights Theory

According to this theory, all people are born with certain basic rights. Humans have these rights because they are complete beings who are masters of themselves and their actions in accordance with natural law.² Because of this, the evolution of "the Rights of Man" has been strongly associated with conventional theories of natural law. In actuality, these theories never presented the concept of individual rights as a distinct aspect, and law itself implies both duties and rights.³ Rights and obligations are therefore connected to one another. As D. D. Raphael rightly noted, "Duties are obligations to other people, and rights are rights against other people." Consequently, a framework of inherent rights that protect people from one another."⁴

3.4.2 The Legal Right Theory

The theory of legal rights is supported by the theory of natural rights, which has been criticized by many scholars. According to this theory, rights were established by the state. As such, they are neither absolute nor a component of what constitutes man. Every right, including the rights to property, liberty, and life, is a construct of the legal system. This theory went on to say that the state could only acknowledge these rights in order to enforce them; otherwise, it would be impossible for the state to do so. Among these fundamental rights is the right to self-preservation, which the state can only safeguard in a way that is superior to any other.

² H.O. Agarwal. Human Rights, p.2.

³ J. Maritain, The Rights of Man and Natural law, Macmillan. 1951, p.65.

⁴ D.D. Raphael. „Human Rights Old and New”. In D.D. Raphael, (ed.). Political Theory and the Rights of Man, Macmillan, 1967, p.55.

3.4.3 The Historical Theory of Rights

Historical theory holds that rights are the result of historical processes. A long-standing tradition eventually acquires legal status. In this context, Ritchie states that "those rights that people believe they should have been simply those that they have grown accustomed to having, or that they have a 'tradition' (true or false) of having previously possessed." Primitive law is custom.

3.4.4 The Social Welfare Theory of Rights

This theory is also known as the Social Expediency theory. This theory's proponents assert that social expediency shapes natural rights, custom, and the law in all respects. The contributions of the social welfare theory have benefited several human rights. Consequently, a large number of social and economic rights are included in the Universal Declaration of Human Rights.

3.4.5 The Idealistic Theory of Rights

The idealistic theory of rights is also known as the personality theory of rights. This theory emphasizes the importance of man's inner development and reaching his greatest potential. It therefore considers the right to one's own privacy to be of utmost importance. According to this theory, all other rights have restricted and denied the right to personal integrity.

3.5 Concept of Human Rights

All major world religions have been deeply committed to the concept of human rights since the dawn of human civilization. It often shows itself quite clearly, whether it is a duty to one's neighbor. The concept of the universal brotherhood and fraternity of humanity, as well as empathy for one's fellow humans, originates from various pre- and post-Christian religious doctrines. Thus, in spite of appearances to the contrary, human rights are not a modern concept; rather, they have very ancient roots.⁵ From a humanist standpoint, all of the major world religions uphold human rights, notwithstanding their differences in doctrine. The concepts of "natural law" and "natural rights," as well as

ancient philosophy, are the sources of human rights. A few classical Greek and Roman philosophers agreed with the idea of natural rights. Plato (427-348 B.C.) was among the

⁵(ed.). Human Dimity- The Internationalization of Human Rights. Oceana Publication, 1979.p. 16. Dr.Gokulesh Sharma, Human Rights and Legal Remedies. Deep and Deep Publications, New Delhi, 2001.p

first writers to advocate for a general code of ethics. Thomas Buergenlhal, cited in Alicc H. Hankim, asserts that both ancient and contemporary texts contain references to the codification and application of international human rights.

The natural law was what nature and history guaranteed to every human being, according to the Roman jurist Ulpian. This meant that even though the scriptures don't name basic human rights, it is still expected of foreigners to uphold them. The concept of the 1215 CE Magna Carta is attributed to contemporary history. In reality, every human being possesses inherent dignity and worth, which is the source of human rights. The human person is the primary focus of both fundamental freedom and human rights. Stated differently, even though the concept of human rights took some time to fully emerge, anything that improves a person's capacity to live in dignity and freedom should be considered a development of those rights. The concept of human rights was originally developed as something different from the natural rights that political philosophers had previously espoused; nevertheless, the latter have come to be understood as a single, comprehensive concept.⁵ Despite being fundamental to international law, few people really comprehend the concept of human rights. Regarding its nature, meaning, or content, no one can agree. It is a notion akin to how one interacts with fellow citizens. It also meant that conflicts would be waged in a civilized manner. It was proposed in The Republic (c. 400 BC) that there were universal truths that ought to be recognized and that collaboration was necessary for the benefit of all. Aristotle claimed in Politics that the effects of various circumstances and constitutions on justice, virtues, and rights vary. Caesar lived from 104 to 43 BC. A Roman statesman outlined the fundamentals of human

⁵ Thomistic Reflection" in Alan S. Rosenbaum, (ed.), The Philosophy of Human Rights International Perspectives. 1980. See also H.O. Agarwal Human Rights, pp. 7-8. "Vijay Kumar. Human Rights Dimensions and Issues. Vol. I. Anmol Publications Pvt. Ltd., New Delhi, p 42.

rights and natural law in his writings. The laws date back to 52 B.C. Cicero believed that laws pertaining to human rights should be universal and take precedence over both civil and customary law. Sophocles (495–406 BC) was one of the writers on the list who promoted the idea of free speech against the government. Stoics used the term "natural law" to allude to a higher law, especially Christian law, that is in harmony with nature and is to serve as the standard for laws governing civil society and the government. Based on a divine law that Sir Thomas Aquinas (1225–1274) thought was partially discoverable by man using his divinely endowed rational faculties, this "natural law" was established. Greece, a city-state, guaranteed equality before the law and equal freedom of speech. The *Jus Civile* of Roman law gave the Roman people similar rights, such as the ability to trade, vote, and hold public office as well as the ability to access justice for their citizens. The idea of human rights is widely recognized to have its roots in the Greco-Roman natural law doctrines of Stoicism, the philosophical school founded by Zeno and Citium. These doctrines held that human conduct should be judged according to the law of nature because a universal force permeates all of creation. S.J. Henie, "A Catholic understanding of human rights, hotly debated between developed and developing nations, as well as between the East and West (representing former socialist states and liberal-democratic states). Every group of countries has a different perspective on human rights. They are as follows:

3.5.1 Western View of Human Rights

Human rights do not have special status in the West. They don't meet the cosmic order's requirements for an eternal source. All of the sources combined are either entirely fictional, or, similar to the French Charter of Human Rights, the French Declaration of Human Rights, the Magna Carta, and the ten amendments to the United States Constitution, they are regional texts that arose out of the distinct political and social contexts of Britain, France, and the United States. The concept of fundamental rights has developed there in tandem with human awareness. And these rights were born one by one out of the agreements made for the balance of power, the decision of the parliament, charter declarations, and the theories put forth by political thinkers during the long

struggle between the people and the king or other rulers. The more this conflict went on, the more rights were granted. That is to say, yesterday's "fundamental rights" were not what they are today. They weren't really rights in the true sense of the word until the Constitution and local laws acknowledged each of these rights and granted them legal standing. But in most Western countries, the main goal of these rights is to shield the person from the government. As a result, these rights are valued higher in the West than the common laws established by the state. Because of their inclusion in the Constitution, the state's legislative power is limited, and the judiciary is tasked with protecting fundamental rights.

3.5.2 Socialist View of Human Rights

The dialectical process of history, according to Karl Marx and Lenin, is the real source of fundamental rights. These rights are not natural; rather, they are the outcome of this process, which has contributed to various historical periods; in the "classless society" that Communists support, these rights must ultimately be eliminated. At first, these rights helped the bourgeois class establish the "Capitalist Society" and free itself from the feudal system. They were later used as a weapon by the proletariat in their fight against the capitalist class. For the sake of equality and freedom, human rights will ultimately be eliminated under communism since, in the current socialist system, they serve to defend the interests of the working class. This philosophy holds that neither these rights nor the impressionable are innate to man or fundamental to his identity. They are not very significant or noteworthy. The general law of the land applies to them. I'm asking the question while keeping the previously mentioned point of view in mind. Socialists believe that a person's pursuit of financial success is their only reason for existing. Their worldview logically dictates that, once it has been decided what other rights a person can be granted aside from food and shelter, nations will only guarantee these material rights and will not recognize any other rights based on moral principles. It is unreasonable to expect them to expand and widen the definition of fundamental rights unless and until they adopt a more human-centered viewpoint.

3.5.3 Religious View of Human Rights

All of the world's major religions are humanist in nature and support human rights, despite differences in content. One of the ancient religions' holy books, the Vedas, may have inspired the concept of mercy, kindness, and sympathy for humans.

This idea clarifies amicable relationships and conduct with all living things, not just humans.

"Oh Lord! Let my eye view be firm in order that all creatures may look at me by friendly sight. In the same way I also may see all creatures with friendly sight and all of us(creatures) may see others in friendly view."⁶

The same concept can be extracted from the text of the Bible that Paul used to explain his theory of equality. Paul wrote the following in his letter: "There is no such thing as Jew and Greek, slave and freedom, male and female, for you are all one person in Christ Jesus".⁷

Buddhism's doctrine of nonviolence, both in words and deeds, is unparalleled in its compassion, having its roots in the third century B.C. In addition, similar human rights doctrines have been preached and upheld by other religions, both ancient and modern, including Sikhism, Jainism, Zorastarism, and Judaism. Islam has a solid base and has always been a major religion in theocracies, having been established as a divine religion. The belief that human rights can only be bestowed by Allah Himself is reinforced by Islamic customs. The world has not produced more just and fair laws than those that were established over a millennium ago. Consequently, one could contend that religion itself provides the essential basis for human rights throughout history and at all ages and that no religion, ideology, or ism encouraged the cruel treatment of society's members.

Although they have been around for a long time—since antiquity, in fact—human rights have only lately gained popularity. The United Nations' establishment in 1945,

⁶ Nayyar Shamsi, *Human Rights and Islam*, p 28.

⁷ H.O. Agarwai, *Human Rights*, p 6.

which reaffirmed its belief in the fundamental rights, dignity, and worth of every human being at every level and in every situation, was the catalyst for its official recognition. All of the rights that are fundamental to our identity and without which we would cease to be human are collectively referred to as "human rights."⁸ Human rights are a social phenomenon because they include remedies, despite being essentially individual in nature because they are meant to be enjoyed by individuals. Of those for whom they are fixed.⁹ Some researchers claim that human evolution began with the ancient Greeks. An illustration of how human rights have evolved to be recognized as fundamental human rights is found in the Greek play *Antigone*. All of the world's major religions and the legal systems of Babylonia, Assyria, and the Hittite civilizations contain the foundations for protecting an individual's rights. The concept of a man's natural rights developed philosophically in large part thanks to the contributions of the stoic philosophers. They first created the natural law theory to explain the nature of human rights, which are rights that every person has merely by virtue of being a human.

The battle for human rights in the West is generally thought to have started around the time that the well-known English charter known as Magna Carta was released in the early thirteenth century. In actuality, though, the battle had started 200 years earlier—in 1037 C.E.⁵³, with the publication of the charter outlining the rights of the parliament.

Sophocles tells the story of Antigone's brother, who was killed while rebelling against the king, and how Creon, the king, refused to bury him. When Antigone was imprisoned for defying the order, she buried her brother against the orders. She maintained that she had behaved in accordance with the immutable, "unwritten laws of heaven," which even the king could not change. Sophocles' *Antigone*.

King Alfonso later agreed to the Habeas Corpus Principle in 1188. The second important document was the Draft of Right (1689). Another important document was the English Bill of Rights. 1689; American Declaration of Independence, 1776.

⁸ Mawdudi..Human Rights in Islam. MarkaziMaktaba Islamic. Delhi, 1982, p 56.

⁹ Teaching Human Rights. United Nations, New York. 1989, p 5.

There were rights in place before the Magna Carta, or Bill of Rights, was drafted. On the other hand, Magna Carta is acknowledged as a pivotal moment in the history of human rights. Henry I, Stephen, and Henry II betrayed their pledge to accept this charter. King John, who was known by his rough exterior as "The Tyrzint," signed this charter. The term "fundamental rights of man" was used in the declaration. Consequently, the phrase "human rights" came into common usage somewhat belatedly. It is a 20th-century term for concepts that were previously known as "natural rights" or "the rights of man." Thomas Paine was the one who first translated the French Declaration of the Rights of Man and Citizen into English. Later, "natural law" was dropped because it was no longer widely accepted, and "the rights of man" was rephrased to avoid offending anyone who wasn't in favor of women's rights.

During the 1990s and the beginning of the 20th century, the idea of total state sovereignty prevailed, and concerns about human rights were seen as falling under the purview of each state's Protection of Human Rights (National and International Perspectives). Consequently, the notion that international law could supplement local law in defending human rights emerged gradually.

Additional instances comprise the thirteen American States' 1776 Declaration of Independence from Great Britain. (The Declaration of Virginia, 1776): A number of human rights were established by the United States Constitution of 1778, as amended in 1789, 1865, 1869, and 1919. The Virginia Declaration of Rights states that every man has certain inherent rights and is inherently free and independent. The French Declaration of the Rights of Man and of the Citizens, which was published in 1789, led other European countries to incorporate human rights protections into their legal frameworks. Humans have their own domestic legal system and are completely unsuited for international law enforcement, H. Aganval. International human rights laws were seen as an attack on the concept of state sovereignty. The adoption of the Slavery Conventions in 1926 and the establishment of the International Labor Organization in 1919, along with its subsequent operations, are two instances where the aforementioned rule was clearly broken. The League of Nations covenant, which was ratified following World War One,

did not mention human rights. A paradigm shift in the traditional understanding of international law occurred in the 1940s, amid the grave human rights violations that were taking place in war-torn Europe during World War II. Basic human rights were totally suppressed, and heinous crimes against humanity were committed.

German Nazi leaders brutally disregarded human values and dignity in the territory they occupied, installing an authoritarian government that disregarded the law. It was later discovered that the restoration of freedom to the majority of people is one of the most important conditions for the establishment of world peace and security. Human rights abuses were considered to be a major cause of international conflict, and upholding human rights was thought to be crucial to preserving global peace. President Franklin D. Roosevelt declared what became known as the "Four Freedoms" (freedom of speech, freedom of religion, freedom from want, and freedom from fear) on January 6, 1941, in accordance with this belief. "Freedom means that human rights prevail everywhere," he said in his message.

The same attempts were being made to create a worldwide organization to bring about peace even as World War II raged on. Following several conferences and meetings, the international organization known as the United Nations was established in 1945. A number of declarations emphasizing the importance of human rights were adopted by the conference. Later, at the San Francisco conference, a number of delegates proposed that the UN draft a "International Bill of Rights." Members of the organization realized that, despite the impossibility of it, the international community ought to work together to put an end to the scourge of war. Consequently, they decided that the United Nations Charter should include the promotion and respect for human rights, which are so important and well-known right now. Because of this, the preamble of the charter contains clauses pertaining to the advancement and protection of fundamental freedoms and human rights. The most important task facing the UN following its entry into force was the implementation of the principles outlined in Article 55 of the UN Charter, which include respect for human rights and freedom for all without distinction as to race, sex, language,

or religion. The December General Assembly decided to draft a "International Bill of Rights" in order to achieve this.¹⁰

3.6 Universal Declaration of Human Rights of 1948

It is obvious that, despite appearances to the contrary, the concept of human rights is not a modern one but rather has very deep roots in eternity since it is rooted in the very beginnings of human civilization and is upheld by all major world religions, both before and after the birth of Christ. All of the world's major religions are humanist in nature and support human rights, despite differences in content. Which is seen in the compassion, mercy, and empathy for people described in different scriptures as its manifestation. Human rights are also based on the philosophical notions of natural law and "natural rights." Ancient texts and historical accounts mention the fundamental human rights, though they are not always referred to by the same name. The wellknown English charter known as Magna Carta, which was written in 1215 CE, is regarded as a watershed in the development of human rights. Most people agree that the Western world saw the start of the human rights movement in the early 13th century. But the history of human rights has only just begun to take off. Following the two World Wars, the League of Nations and the United Nations were established with the goal of preserving human fraternity and thereby restraining humanity's inclination toward barbarism. Through a number of international agreements and conventions, the concepts of human rights were acknowledged and accepted as the fundamental laws of national borders in the form of draft constitutions. In 1948, the United Nations formally adopted the Universal Declaration of Human Rights as a moral precept with corresponding legal obligations.

On December 10, 1948, the United Nations General Assembly adopted and proclaimed the Universal Declaration of Human Rights. The pages that follow contain

¹⁰ For instance, see Declaration of ST. James Palace (1941); Atlantic Chancr (1941);United Nation Declarations (1942); Moscow Declaration (1943); Tehran Declaration (1943); Dumbarton Oak's Conference (1944); Sun Francisco Conference (1945); etc. " 10, 1948 through a resolution adopted an

the declaration's entire text. The Assembly then called on all signatory states to "cause it to be disseminated, displayed, read and expounded in principal in schools and other

'International Bill of Human Rights' known as 'Universal Declaration of Human Rights' The resolution was adopted without dissent by forty votes with eight states abstaining The Declaration consisted of thirty articles besides a preamble.

educational institutions, without distinction based on the political status of countries or territories," and to make the text of the Declaration widely known. According to the preamble of the Declaration, the foundation of world freedom, justice, and peace is the recognition of each and every member of the human family's inherent dignity and unalienable rights. The advent of a world free from fear and want, coupled with freedom of speech and belief, has been declared the highest aspiration by the General Assembly in Resolution 217(111), passed on December 10, 1948. Humanity has been outraged by barbaric acts that have been committed with disregard and contempt for human rights.¹¹

The nations that make up the United Nations have reaffirmed their commitment to the equality of men's and women's rights under the Charter, to fundamental human rights, and to the value and dignity of every individual. In a more libertarian world, they also pledged to promote social progress and higher living standards. Together with the UN, Member States have pledged to advance universal respect for and observance of human rights. Because it is essential for the full realization of this commitment that all people and all nations have a common understanding of these rights and freedoms, the General Assembly declares the Universal Declaration of Human Rights to be a common benchmark of achievement for all people and all nations. In the end, every person and every institution of society must strive toward these goals by teaching and educating to promote respect for these rights and freedoms in order to secure these rights and freedoms' universal and effective recognition and observance, both among the peoples of member States themselves and among the peoples of territories under their jurisdiction.

Every human being is born free and with an equal sense of dignity and rights, according to Article 1 of the Declaration. Treating each other with brotherly affection is

¹¹ H.O.Aganval. Human Rights, p 30.

appropriate since they are sentient entities with conscience and reason. Regardless of race, color, sex, language, religion, political opinion, national origin, or any other status, everyone has the right to all the freedoms and rights outlined in this declaration.

Furthermore, there should be no differentiation based on the political, legal, or international standing of the country or territory of which an individual is a citizen. This includes whether the country or territory is an independent, trust, non-self-governing, or subject to any other forms of sovereignty limitations. Everybody has the right to personal safety, liberty, and life. All forms of slavery and the slave trade shall be prohibited, and no one shall be forced into servitude or slavery. No one shall be subjected to torture or cruel, inhuman, or degrading treatment. Everyone has the right to be treated by the law as a person, everywhere. "There should be no discrimination in the application of the law; everyone is equal before it."

Every individual is entitled to equal protection from discriminatory practices that contravene this Declaration, as well as from any encouragement of such practices. Everyone has the right to a successful remedy from the relevant national tribunals in the event that their fundamental rights under the law or the Constitution are violated. Nobody may be arbitrarily arrested, detained, or banished. Every individual is entitled, without exception, to a fair and public trial before an impartial tribunal that will ascertain both the legitimacy of any criminal charges filed against them as well as the individual's rights and obligations. Everyone who is charged with a crime has the legal right to have all necessary protections for their defense before being found guilty in an open courtroom. Anyone who does an act or omission that did not, at the time of the act, violate any national or international law is not guilty of a criminal offense. Moreover, no punishment that is harsher than the one that was in effect at the time the criminal offense was committed may be applied. Nobody shall be the object of malicious attacks on their honor or reputation, or of deliberate encroachment upon their personal space, that of their loved ones, their homes, or their correspondence.

Everyone is entitled to the protection of the law against these kinds of attacks or intrusions. Everyone has the right to live and move anywhere within the borders of their state. It is everyone's right to travel and return from any country, including their own. Everyone is free to apply for and be granted asylum if they are being persecuted abroad. This right is not applicable in situations where the accusations are genuinely related to non-political offenses or behavior that contravenes UN objectives and principles. Everyone has the right to be a national. Nobody's ability to maintain or change their nationality may be arbitrarily denied. Men and women of legal age have the right to marry and form families without hindrances based on race, nationality, or religion. They are entitled to equal rights under Article 10 of the Universal Declaration of Human Rights.

Nonetheless, the General Assembly declares the "Universal Declaration of Human Rights" to be the universal standard of success for every person and every nation. But it could not be enforced against the states. The commission on human rights decided to draft a separate covenant in 1947 while reviewing the drafting committee's initial draft of the Universal Declaration of Human Rights (UDHR) because it was not intended to be legally binding on the member states. The rights that could give rise to legally enforceable obligations would be the main focus of this covenant. The documents were collectively referred to as the International Covenant on Human Rights. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were thus adopted by the General Assembly on December 16, 1966.

There are 53 articles in the six parts that make up the Covenant on Civil and Political Rights. Parts I, II, and III list the various freedoms and rights; the remaining three parts deal with the actual application of those freedoms and the concluding remarks. Article 1 (the right of peoples to self-determination) states that every people has the freedom to select their political status and to actively pursue their economic, social, and cultural advancements. These articles impose obligations on the state parties to uphold and promote the right to self-determination. Part II set forth the rights and obligations of the covenant's parties. It included the state's obligations to take the necessary steps to incorporate the covenant's provisions into domestic laws as well as to adopt any

legislative or other measures that might be needed to give effect to the rights recognized in the covenant. It was requested of the state parties to ensure equal access to all civil and political rights for men and women. Part III addresses the responsibilities of the States Parties as well as the individual's specific rights. As specified in the covenant, these rights are not unconditional and are subject to limitations.

The Covenant on Economic, Social, and Cultural Rights is composed of 31 articles that are categorized into five sections. The first section of the Covenant of Civil and Political Rights, Article 1, addresses peoples' right to self-determination. One of the additional rights that Article 6 protects is the right to life. Article 9 guarantees the right to liberty and security; Article 7 prohibits slavery, servitude, and forced labor; and Article 8 prohibits inhuman or degrading treatment. Treatment based on humanity is mandated by law (Article 10). exemption from jail time for not fulfilling a legal duty (Article 11). the freedom to travel around and choose where to live (Article 12). freedom for foreigners to be expelled without cause (Article 13). Article 14 guarantees the right to a fair trial. No criminal law can be used retrospectively (Article 15).

Articles 16 and 17 of the constitution guarantee the rights to privacy, family, home, and correspondence, respectively. Conscience, thought, and religion are all liberated (Article 18). liberty of speech and ideas (Article 19). Propaganda during war is forbidden (Article 20). The right to peaceful assembly (Article 21). Freedom of association (Article 22) and the right to marry and have children (Article 23). rights of children (Article 24). the capacity to cast a ballot, take part in elections, and manage governance (Article 25). Equality before the law (Article 26). Article 21: Rights of Minorities. The Covenant/s lists people in Part III. The Covenant's second part lists the promises given by the signatory states. In order to fully realize the rights recognized in the covenant, each state party is required by Article 2 to take the necessary actions, including the adoption of legislative measures, both on an individual basis and through international assistance and cooperation, especially economic and technical assistance, to the fullest extent of its resources.

Consequently, the covenant has set the bar that the State Parties will need to keep going forward. However, the development of international humanitarian law—a body of laws pertaining to the protection of war victims and the conduct of war—has been greatly influenced by the expansion of legal protection for human rights that followed World War II. In the field of human rights, the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1966 International Covenant on Economic, Social, and Cultural Rights were all important international instruments that contributed to the affirmation of the idea that everyone has the right to exercise their human rights, regardless of whether they are in times of peace or war.

3.7 Human Rights and Fundamental Rights

In the modern world, the right to privacy is still important. According to the New Oxford Dictionary, privacy is defined as "the absence or avoidance of publicity or display; the state or condition of being withdrawn from the company of others, or from public interest; seclusion." The Black's Law Dictionary defines the right to privacy as the freedom from unwarranted publicity, the ability to live without unjustified public interference in matters that are not necessarily of public interest, and the ability to be left alone. "The state of being alone and not watched or disturbed by other people, the state of being free from the attention of the public," is what the Oxford Advanced Learners Dictionary defines as privacy.

In a democracy, the concept of privacy is fundamental. The Indian Constitution makes no mention of privacy guarantees at all. But in the 1963 case of *Kharak Singh v. State of Uttar Pradesh*¹³. The Supreme Court holds that privacy is adequately covered by Article 21, which deals with personal freedom (protection of life and personal liberty). The worst thing that can happen to a man's physical happiness and health, according to the court, is an intentional invasion of privacy.

In almost every democratic nation where fundamental liberties are guaranteed, there has been fierce debate over the scope of the state's authority to conduct searches and seizures and the right to privacy. Returning to the *Semayne* case in history¹⁴, is the

source of the proverb "A man's castle is his home." William Pitt's 1763 speech to the British Parliament is among the best examples of the proverb. "The poorest man may

¹³1963 AIR 1295, 1964 SCR (1) 332

¹⁴(1603) 7 ER 194 (KB)

bid defiance to all the force of the crown," he declared from his cottage. None of the forces of the King of England dares to cross the tenement, no matter how weak it is, how its roots shake, how the wind blows through it, how the storm enters, and how the rain enters.

In Article 12 of the 1948 Universal Declaration of Human Rights, the following is stated regarding privacy:

"No one shall be the target of a hateful assault on their honor or reputation, or of a random intrusion into their family, house, or correspondence. Everyone has a right to legal defense against these types of attacks or invasions."

The following is stated in relation to privacy in Article 17 of the International Covenant on Civil and Political Rights, to which India is a party:

1. No one shall be the victim of malicious or illegal attacks on their honor or reputation, or of malicious or illegal intrusions into their right to family, home, or correspondence.
2. Everyone is entitled to a legal defense against these types of attacks or incursions.

Article 8 of the European Convention on Human Rights, which went into force on September 3, 1953, goes on to state further Individuals are entitled to privacy, encompassing their living quarters, family members, and correspondence.

Public authorities are not permitted to intervene in a democratic society unless it is mandated by law, required to protect others' rights and liberties, or required to protect the security, safety, or economy of the country. Everyone has the right to be free from arbitrary search and seizure, according to the Canadian Charter of Rights and Freedoms.

As per the New Zealand Bill of Rights, Section 21, every individual is entitled to protection from unjustified searches and seizures of their person, belongings, or correspondence.

American courts attribute the "Right to Privacy" to the English Common Law, which regarded it as a right related to the "Right to Property." The case of *Entick v. Carrington* (1765) established that the right to privacy extended to cover trespassing on private property. Respected Lord Camden:

Men entered society primarily to safeguard their possessions. If a public law acting in the public interest hasn't limited or revoked a right, it is presumed that the right is untransferable and sacred. Any access to private property, no matter how small, is considered trespassing in England. No one is allowed on my property without my permission, and even if they don't break any laws, they could still face legal consequences.

After four decades, in *Ohnstead v. United States*¹⁵, The majority determined that the action in question—which involved wiretapping and electronic surveillance—was not subject to Fourth Amendment restrictions because there was no actual physical invasion involved. According to Justice Brandeis' dissent, the amendment protected the right to privacy, which he defined as "the right to be left alone." Its goal was to "secure conditions favorable to the pursuit of happiness." "To protect Americans in their belief, their thoughts, their emotions, and their sensations," he continued, was the goal of the right. Forty years later, the law finally acknowledged the dissent.

3.8 Development of Privacy Law in India

In India, the first case to address privacy issues was *M.P.Sharnia v. Satish Chandra*¹⁶ wherein the argument that a search and seizure infringed upon Articles 19(1) and 20(3) of the Constitution was dismissed by the Supreme Court. The Court found that although a seizure did affect a person's right to property, it only did so in a realistic and transparent way. In *Govind vs. State of M.P.*¹⁷ Justice K.K. Mathew stated that

"Any right to privacy must encompass and protect the personal intimacies of the home,

¹⁵277 US 438

¹⁶1954 AIR 300, 1954 SCR 1077

¹⁷1975 AIR 1378, 1975 SCR (3) 946

the family, marriage, motherhood, procreation, and child rearing," and "right to privacy was not absolute."

Unless there is a valid reason for it, the Constitution protects citizens' rights and liberties by guaranteeing their freedom from governmental interference. Included are the person, his personality, and everything that reflects his personality. It could be argued that the right to privacy is one of the many fundamental liberties that citizens enjoy. Two theories could be used to safeguard domestic privacy. First, activities conducted within the home only cause harm to others to the extent that they raise suspicions that they may be doing so; furthermore, the state's constitutional protections do not apply to this kind of "harm." People require a place to hide from social control, which is the second reason. This kind of place is crucial because it allows people to take off their masks and temporarily stop projecting the version of themselves that they hope to be accepted for—a version that may actually reflect the values of their peers rather than who they truly are.

In *ADM Jabalpur v. Shivakant Shukla*¹⁸ when the Supreme Court examined any restrictions on an individual's right to personal liberty that weren't made clear by the Constitution or other legal statutes. Justice Khanna noted that the right to personal liberty is derived from both common law and statutory law, including the personal law that is in force in India, and that Article 21 is not the only source of this right. No one may be deprived of their life without the permission of the law.

In *R. Rajagopal & Another v. State of T.N. & Others*¹⁹ As another Vehicle After being found guilty of six murders and given the death penalty, Shankar wrote his autobiography while he was in prison. With the permission of the jail administration, he gave it to his wife, who then gave it to his lawyer and asked for it to be published in the petitioner's magazine. The prisoner's close friendships with multiple IAS, IPS, and other officers—some of whom were his criminal partners—were detailed in his autobiography. The petitioner made an announcement in their magazine about their

¹⁸1976 AIR 1207, 1976 SCR 172

¹⁹1995 AIR 264, 1994 SCC (6) 632

decision to start serializing the autobiography. Subsequently, the original petitioner received a letter from the Inspector General of Prisons stating that Auto Shankar was not the real author of the disputed serial and requesting that he cease publishing it immediately. To contest the letter and assert their right to press freedom and book publication, the petitioner filed a writ with the Supreme Court of India in compliance with Article 32. The writ petition did not name Auto Shankar or his spouse as parties. After examining whether the State or its officials had the legal right to forbid the publication of anything that was defamatory of the State or its officials, Justice B.P. Jeevan Reddy concluded that the respondents could not place any prior restrictions or prohibitions on the petitioners' proposed publication of the alleged autobiography of "Auto Shankar." This is not something that the State and its operatives can do. The rights to life and liberty that are granted to the citizens of this country by Article 21 are intrinsically linked to the right to privacy. "The right to be left alone" exists. In addition to other things, a citizen has a right to protect their private information regarding their family, pregnancy, childrearing, and education. Nothing about the aforementioned subjects, whether positive or negative, may be published without his permission. If he does, he will be infringing the person's right to privacy and could face legal repercussions.

In *Mr. vs. Mr. Z & Another*²⁰, Justice V.S. Aggarwal of the Supreme Court has stated that the right to privacy is not an unqualified right, despite being a fundamental right and a component of the right to life guaranteed by Article 21. A specific relationship, like marriage, or a contract may grant the right to privacy. However, once that right has been made public, the individual in question cannot claim that any such test infringes upon their right to privacy.

Whereas in another case *Sharada v. Dharnipal*²¹ Even parties to a divorce had to undergo a medical examination, according to the Supreme Court. In this instance, the court had mandated the spouse's medical examination, and the privacy claim was

²⁰ 96 (2002) DLT 354, I (2002) DMC 448

²¹ AIR 2003 SC 3450

disputed. Referring a party to a medical examination may be required in matrimonial disputes where divorce is sought due to impotence, schizophrenia, or another illness. The Supreme Court maintained the validity of these judicial powers, arguing that following them would be necessary to get the correct decision. However, even in cases where a party had received such an order against him, the Supreme Court held that he could not be made to submit to the medical examination. The following conclusions were reached by the Supreme Court:

- 1) A matrimonial court may order medical testing;
- 2) The respondent's right to personal liberty under Article 21 was not violated by the court's issuance of the order; and
- 3) The respondent may refuse to submit to a medical examination, in which case the court may infer a negative outcome against him.

In *Surjit Singh Thin vs. Kanwaljit Kaur*¹² a situation where the husband requested that the wife's virginity be verified through a medical examination. According to Justice J.M. Kumar, allowing a woman to have a medical examination to determine her virginity would definitely violate her right to privacy and personal liberty, which are guaranteed by Article 21 of the Constitution. An already helpless woman would be the subject of a roving investigation under such an order.

In *Rayala M Bhuvaneswari v. NagaphanenderRayala*²³, When the husband surreptitiously recorded his wife's phone conversations with her Indian parents and friends, the circumstances were comparable. Acting Chief Justice Bilal Nazki decided that the wife's right to privacy was violated when her husband listened in on her phone conversation to others.

¹² AIR 2003 P H 353

²³ AIR 2008 AP 98.

3.9 Crimes related to the Spread of Infectious Diseases: (Articles 269 to 272)

Maintaining law and order is the responsibility of the state government. It is imperative that we safeguard people's health. The largest threat to public health is disease, especially infectious diseases. The state health department needs to be vigilant enough to prevent the spread of infectious diseases. The department guards against illnesses that arise naturally, etc. Every member of society must also maintain discipline in order to protect their own health as well as the general health of the society. Nothing he does should throw the body's systems out of balance. However, when someone behaves irresponsibly and puts the community's health in jeopardy by spreading illnesses, disciplinary action must be taken against them. This sub-section's three sub sections, along with the next two and third, all contain guidelines for preventing behaviors that negatively affect social interactions.

Article 269 penalizes people who break the law or behave irresponsibly, knowingly or unknowingly dispersing diseases that can be fatal. The punishment is as much as six months in prison and a fine. Section 270 stipulates that such an act is a serious offense punishable by a fine and up to two years in prison if it is carried out with knowledge or malice.

Quarantine is the requirement that ships arriving from diseased areas be kept away from the port for a few days as a preventative measure if any kind of epidemic has started. In the interim, there are regulations governing the exchange of goods with the occupants of the ship or location. If this control is violated, the epidemic is likely to spread to the local populace. In accordance with Section 271, disobeying a quarantine order carries a fine and a six-month prison sentence.

This crime has all of the following components in equal measure:

- A. Communicable disease
- B. Information of the accused party
- C. Offensive behavior

3.9.1 Communicable disease

According to health sciences, diseases that are spread by people are contagious, which means that an infected person becomes infected or contagious when they are in close proximity to another person. The first type is dispersed by the weather, even in situations where there is no direct or physical contact between two people. Typhoid, cholera, smallpox, plague, and conjunctivitis are a few of them. Examples of tactile diseases include gonorrhea, AIDS, syphilis, and other STDs. This group cannot contain viral infections or viral diseases.

Either or both of these illnesses may be covered by section 269 of this section. Section 269 of the penal code stipulates that a person with this kind of disease faces a six-month prison sentence and a fine if they recklessly spread the disease, whether on purpose or accidentally.

3.9.2 Information of the accused

It can only be deemed a punishable offense if the accused knows that his actions could expose the general public to these diseases. It cannot be presumed, nevertheless, that the accused is informed about or conversant with every illness. The existence of such information or not is a factual matter substantiated by proof. The plaintiff need only present the particular facts of each case to substantiate this information. It's possible that judges are ignorant of the illness type. When even medical science itself is unsure about how a disease spreads, a judge cannot make an informed guess. The plague presents a dilemma.

3.9.3 Offensive behavior against the law

For the accused's initial act to be classified as a crime, it need not have been unlawful or illegal. A course of action may be illegal even if it is lawful but has a detrimental impact on the public at large. A person living in a remote place may purposefully avoid social contact, but he is not responsible if the illness spreads. Nevertheless, whether through negligence, malice, or breaking the law, it may be illegal for someone to engage with people in public while fully aware of the illness.

3.10 HIV/AIDS and Human Rights²⁴

A tripartite meeting of experts on HIV/AIDS and the World of Work, comprising representatives from international governments, employers, and workers, adopted the ILO Code of Practice on HIV/AIDS and the World of Work on May 21, 2001. The tripartite ILO constituents' request for guidance on workplace actions to mitigate the impact of HIV/AIDS on individuals, businesses, and communities led directly to the creation of this Code.

HIV/AIDS affects the most productive workers, reduces wages, and causes a decline in productivity in many countries as a result of increased labor costs and knowledge and experience loss. Furthermore, the epidemic worsens gender inequality and the problem of child labor by targeting vulnerable populations like women and children and endangering fundamental workplace rights. The issue directly affects the ILO and threatens decent work in the purest sense of the word.²⁵ In 1988, the ILO and WHO adopted a joint statement from the Consultation on AIDS and the Workplace (1988) that stressed the significance of protecting human rights and dignity in the fight against the pandemic. A moral and legal framework for the protection of workers affected by AIDS is established by the ILO Declaration on Fundamental Principles and Rights at Work, as well as by international labor conventions and recommendations.

Since none of these tools is a targeted response to the epidemic, ILO constituents urged the Organization to increase its involvement in the fight against AIDS at the June 2000 International Labour Conference. They passed a resolution advocating for the development of international guidelines to address HIV/AIDS and the workplace as well as the launch of an ILO program on the disease. The ILO Governing Body formally adopted the Code in June 2001, following the Program's

²⁴ Marie-Claude Chartier (2002). HIV/AIDS and Human Rights. ILO Programme on HIV/AIDS and the world of work Geneva, November 2002. Retrieved from https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/publication/wcms_117148.pdf

²⁵See the document submitted to the Special High-Level Meeting on HIV/AIDS and the World of Work: ILO, HIV/AIDS: A threat to decent work, productivity and development, Geneva, 8 June 2000. November 2000 launch. The application of the Code serves as the cornerstone for all Program activities, including advocacy, technical assistance, and advisory services. The world community is still responding in this way. It was presented at the UN General Assembly's Special Session on HIV/AIDS in June 2001.

Since the beginning of the epidemic, the United Nations, specialized agencies, and non-governmental organizations have strongly advocated for respect for human rights as the cornerstone of the fight against HIV/AIDS. This came about because of the knowledge that effective prevention can only take place in an environment where these rights are respected, as well as the desire to put an end to the widespread stigmatization and rejection of those who are infected. This paper aims to give a brief overview of the important role that the ILO Code of Practice on HIV/AIDS and the Workplace can play in safeguarding fundamental rights. The text's second section includes a summary of the Code's provisions as well as a brief examination of the specific rights it aims to uphold. The text's first section addresses how rights should be applied in the context of HIV/AIDS.

This section discusses the role that fundamental rights play in the fight against HIV/AIDS. As we'll see, states must work to protect and advance these rights, and they can only be prevented from doing so under very specific circumstances. Its climax is its examination of a few international laws that particularly deal with HIV/AIDS-related issues. The International Guidelines on HIV/AIDS and Human Rights, which aim to implement particular HIV/AIDS-related measures based on international human rights standards, will receive special attention.

3.10.1 The Relevance of Human Rights

Among the fundamental rights that are in jeopardy in the context of HIV/AIDS are the freedom from discrimination, the right to privacy, the right to sufficient social security protection, and the right to work. The protection of basic rights needs to be a

major focus of any effort to stop the HIV/AIDS epidemic. The fact that there are clear links between the HIV/AIDS epidemic and human rights helps to explain this. These links were clearly stated in a 1995 report that the Secretary-General gave to the Human Rights Commission:

"First of all, when human rights are violated, there is a greater chance that the illness will spread. Intimate and sometimes unlawful behavior must be changed, and this is a challenging and delicate process known as "transmission prevention." The prevention of transmission depends on people coming forward with information about how to stay healthy, how to have safe sexual relations, and how and why they should behave responsibly. This process of changing behavior is thwarted by coercive tactics such as mandatory screening, lack of confidentiality, and segregation, which drive people away from health care and preventive services.

Second, because they have limited or no access to HIV/AIDS-related programs for health care, prevention, and education, marginalized individuals and groups are particularly vulnerable to acquiring the virus. A few examples of these groups are women, children, people of color, immigrants, indigenous peoples, men who engage in inter-gender sex, commercial sex workers, and injecting drug users. It is possible that these groups lack the information and abilities needed to take appropriate action to stop infection. These organizations quickly infected the entire society.

Lastly, the devastating effects of HIV/AIDS on the lives of those who are infected or suspected of being infected, as well as their families and friends, are greatly exaggerated by stigmatization and discrimination against them.

This form of discrimination is widespread. Not only does it violate the rights of those affected, but it also makes it harder for them to function because it keeps them from accessing important social support networks like jobs, housing, and healthcare.¹³

¹³ Report of the Secretary-General on international and domestic measures taken to protect human rights and prevent discrimination in the context of HIV/AIDS, Commission on Human Rights, Fifty-first session, 1995. E/CN.4/1995/45, paragraphs 12-14.

Therefore, protecting human rights in the context of HIV/AIDS is essential, not only for the basic reason that it upholds the dignity of those who are infected but also because it is essential to combating the epidemic.

3.10.2 States' Responsibility to Uphold and Preserve Human Rights

Regardless of their political, economic, or cultural framework, states are obligated to uphold and protect all internationally recognized fundamental rights and individual freedoms in compliance with international human rights instruments. The Universal Declaration of Human Rights is distinct among these UN-adopted texts¹⁴, the Convention on the Rights of the Child, the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women. The adoption of the HIV/AIDS Declaration by the UN General Assembly on June 26, 2001, signified a further worldwide commitment to intensifying national, regional, and international efforts in the fight against the epidemic on all fronts, with a focus on human rights.

The Declaration specifically asks States to guarantee that people who are HIVpositive and members of vulnerable groups can fully exercise their fundamental rights and to put an end to all forms of discrimination against them. States are also urged to enact, strengthen, or enforce laws, rules, and other policies as needed.¹⁵ There is also a strong emphasis on carrying out national strategies that "promote the advancement of women and women's full enjoyment of all human rights."¹⁶

It is important to remember that the ILO Declaration on Fundamental Principles and Rights at Work states that by voluntarily joining the ILO, all member states—including those that have not ratified the fundamental Conventions pertaining to these

¹⁴ Even though it is not a treaty, the Declaration is binding on all members of the United Nations as customary law. In addition, the mentioned Conventions have been widely ratified.

¹⁵ Articles 13,37 and 58

¹⁶ See especially sections 59-61

rights—affirm the principles and fundamental rights enshrined in the ILO Constitution and the Philadelphia Declaration.

3.10.3 Possible Restrictions on Human Rights

According to the Universal Declaration of Human Rights, states are allowed to restrict some rights, but only under very specific conditions. Similar to situations involving public health, other people's rights, public morality, or the general welfare, these situations would be recognized as legitimate concerns in a democratic society, and any restrictions would have to be kept to a minimum.¹⁷

In the context of HIV/AIDS, the most frequently cited defense used by governments and individuals to restrict human rights is public health.¹⁸ International human rights law, however, often finds these restrictions to be unreasonable. This is the case, for example, when HIV testing is required of employees at work and those who are infected are either denied employment or kept out of it. Mandatory screening does not effectively help in the fight against AIDS. Conversely, it is conceivable for individuals who are HIV positive to maintain excellent health for several years following infection. Moreover, in the vast majority of occupations, their presence at work does not raise the possibility of contracting an infection from another person.¹⁹ There's no reason to be concerned that infrequent, casual contact with HIV-positive people will spread the virus to coworkers or employers. The virus can spread through hand-to-hand contact, sneezing,

¹⁷ The exercise of certain rights cannot be limited under any circumstances. These include the right to life, the right not to be subjected to torture, the right not to be held in slavery or servitude, protection against imprisonment of debtors, the right not to be subjected to retrospective penal legislation, the right to the recognition of juridical personality, the right to freedom of thought, conscience and religion. For further details see the International Guidelines on HIV/AIDS and human rights:, paragraph 82 (see note 2 above).

¹⁸ Ibid. Paragraph 83

¹⁹ Exceptions include professions where there is a risk of contact with blood or other human organic liquids, such as health and laboratory workers. The risk is low but real. In these professions extra measures must be taken to ensure that workers are properly familiar of the universal precautions and of procedures to be followed in case of workplace accidents, so that universal precautions are always taken and the necessary equipment is available for that purpose. For further information on the universal precautions, see Appendix 2 of the ILO Code of Practice.

coughing, and the use of any of the following: public phones, door openings, sharing food or cutlery, water fountain use, toilet or shower use, and sharing food. On the other hand, mandatory HIV testing fuels the epidemic by creating a climate of fear and animosity among the public. People with HIV are more likely to conceal their status and spread the virus when they are worried about losing their jobs or being stigmatized. It is preferable to adopt a preventative approach in order to decrease the epidemic's effects. Examples of this include educating the public, encouraging voluntary, confidential HIV testing, and offering both initial and follow-up counseling. The following is specified in this regard by the international guidelines on HIV/AIDS and human rights:

A person's right to liberty is violated when their HIV status is used as an excuse for their confinement or denial of liberty. It's common knowledge that having to take an HIV test and disclosing one's status has restricted one's right to privacy. These treatments may work well for diseases that can be treated and are spread through casual contact, but they cannot treat HIV/AIDS because HIV cannot be spread through casual contact. Moreover, these coercive measures are not always the least restrictive options; rather, they often discriminate against already vulnerable groups. Lastly, as was already mentioned, the effectiveness of public health outreach is decreased when individuals are discouraged from taking part in prevention and care initiatives by these coercive measures.²⁰

3.10.4 Other International Instruments

Early in the 1990s, one of the Sub-Commission's experts was designated as a Special Rapporteur to investigate the problem of discrimination against HIV/AIDS patients and those who are infected with the virus. In a series of reports delivered between 1990 and 1993, the Rapporteur³⁴ which emphasized the need for educational initiatives supported by suitable legal safeguards to foster an environment that respects human rights. Since 1989, the Sub-Commission has also approved a number of resolutions

²⁰ International Guidelines on HIV/AIDS and Human Rights, op. cit. note 2, paragraph 83.

³⁴E/CN.4/1990/9, E/CN.4/Sub.2/1991/10, E/CN.4/Sub.2/1992/10, E/CN.4/Sub.2/1993/9.

addressing discrimination against people who test positive for HIV/AIDS.²¹²² On the other hand, the Human Rights Commission has also passed a number of resolutions restating that discrimination against an individual based on their perceived or actual HIV status is illegal under international human rights law, and that discrimination against an individual based on their health status, including HIV/AIDS status, is covered by the prohibitions against discrimination found in international human rights instruments.²³²⁴ These resolutions call on States to immediately implement the necessary measures to end this kind of discrimination, ensure that people with HIV/AIDS have access to medicine, permit them to fully exercise all of their civil, political, economic, social, and cultural rights, and involve non-governmental organizations, community organizations, and people living with HIV/AIDS in the process of formulating policies for the fight against AIDS.

3.11 The ILO HIV/AIDS Code of Practise and the Work Environment²⁵

Being the first international HIV/AIDS instrument that specifically addresses the workplace, the ILO Code of Practice on HIV/AIDS and the World of Work is a very significant document. The acknowledgement of HIV/AIDS as a workplace issue is one of its tenets. This is due to the fact that employers and employees play a critical role in the global effort to stop the spread and effects of the epidemic, as 75% of HIV-positive adults are employed. In accordance with the International Guidelines on HIV/AIDS and Human Rights, the writers below give an example of how the Code can support workplace human rights. To do this, first discuss the objectives, limitations, and structure of the Code, and then quickly review the human rights that it aims to safeguard.

²¹ Decisions and resolutions of the Sub-Commission: 1989/17, 1990/118, 1991/109, 1992/108, 1993/31, 1994/29, /21, 1996/33, 1997/40

²³ Resolutions of the Commission on Human Rights: 1990/65, 1992/56, 1993/53, 1994/49, 1995/44, 1996/43, /33, 1999/49, 2001/33, 2002/32. Reports of the Secretary-General to the Commission on Human Rights: E/CN.4/1995/45, E/CN.4/1996/44.

²⁵ Marie-Claude Chartier (2002). HIV/AIDS and Human Rights. ILO Programme on HIV/AIDS and the world of work Geneva, November 2002. Retrieved from https://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@ilo_aids/documents/publication/wcms_117148.pdf

3.12 Human rights contained in the Code

3.12.1 The right to non-discrimination and equality before the law

It is commonly acknowledged that international human rights law forbids discrimination of any kind against a person based on that person's HIV status.²⁶ As will be covered in more detail below, the Commission on Human Rights has affirmed that discrimination is against the law and that one of the prohibited practices is based on one's HIV status. In a similar vein, the UN and other international organizations have reiterated in a number of resolutions their commitment to the non-discrimination principle in relation to HIV/AIDS.

Many of the Code's provisions, including those that prohibit discrimination in the hiring process and in preserving the continuation of the employment relationship, are based on the fundamental precept of non-discrimination;³⁹ There are benefits from occupational schemes and social security programs²⁷, as well as in elements of the job, like pay, respectable working conditions, and opportunities for promotion.⁴¹ "There shall be no discrimination against employees based on their actual or perceived HIV status," the Code declares, "in the spirit of decent work and respect for the human rights and dignity of persons infected or affected by HIV/AIDS." The stigmatization and discrimination of people living with HIV/AIDS impedes efforts to promote prevention of the disease.²⁸

Other groups, like members of ethnic minorities and homosexual men, who experience discrimination and are thus more susceptible to infection, are also given special consideration under the Code. The Code contains a list of potential risk factors for infection for different worker groups. Other groups, like members of ethnic minorities

²⁶ Articles 2 and 7 of the Universal Declaration of Human Rights; Articles 2.2 and 3 of the International Covenant on Civil and Political Rights, Articles 2, 3 and 26 of the International Covenant on Economic, Social and Cultural Rights, Article 2 of the International Convention on the Rights of the Child. ³⁹Sections 4.8 and 8.1; see Section 2.2.3 of the present document on the right to work.

²⁷ Sections 4.10, 9.5, 9.6 and 5.1 f). See also Section 2.2.5 of the present document on the right to social security. ⁴¹Section 9.1

²⁸ Section 4.2

and homosexual men, who experience discrimination and are thus more susceptible to infection, are also given special consideration under the Code. The Code contains a list of potential risk factors for infection for different worker groups.²⁹ Governments and social partners are urged to take action in order to determine which worker populations are most vulnerable to infection, what factors contribute to that risk, and how to reduce it.⁴⁴ They ought to make sure these workers have access to the proper training and preventative measures, among other things.³⁰

3.12.2 The Freedom of Assembly and Association

International law protects the right to assemble and form associations³¹ particularly by two core ILO Conventions that have been widely ratified.⁴⁷ While the Code does not specifically mention freedom of assembly and association, it does establish social dialogue as a fundamental principle that is impossible to have without these two components. In relation to this, it says:³²

Employers, workers, and their representatives, along with the government, if applicable, must work together and have faith in one another for an HIV/AIDS policy and program to be implemented successfully. Employees who are HIV/AIDS positive must also take an active role.

3.12.3 The Right to Work

International agreements safeguarding human rights provide protection for the right to work.³³ " As stated in the International Guidelines on HIV/AIDS and Human

²⁹ For further details see Appendix 1 of the Code on factors increasing the risk of infection.

⁴⁴ Sections 5.1 q) and 5.3.l)

³⁰ Sections 5.1 q), 7 and 7.2

³¹ Articles 20 and 23.4 of the Universal Declaration on Human Rights; Article 8 of the International Covenant on Economic, Social and Cultural Rights; Articles 21 and 22 of the International Covenant on Civil and Political Rights; Article 15 of the International Convention on the Rights of the Child. ⁴⁷Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949. (No. 98).

³² Section 4.5

³³ Article 23 of the Universal Declaration of Human Rights, Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, the Employment Policy Convention, 1964 (No. 122) and the Termination of Employment Convention, 1982 (No. 158), among others.

Rights, "the right to work includes everyone's right to access employment without any requirements other than the required occupational qualifications." When an employee or candidate is forced to take an HIV test and, should the test yield positive results, they are either fired, denied benefits, or denied employment opportunities, which is a violation of their right. States should make sure that people living with HIV/AIDS can work if they are capable of doing the job.³⁴

Furthermore, the Code states that having an HIV infection is not a reason to be fired from a job. Like people with many other conditions, people with HIV-related illnesses should be able to work for as long as they are medically able in jobs that are suitable and available.³⁵ The Code requires employers to support employees living with HIV/AIDS to work for as long as they are medically fit for suitable work, in order to enable workers living with HIV/AIDS to continue in their current roles.³⁶ After consulting with the workers and their representatives, they should also take action to make reasonable accommodations for workers who are suffering from illnesses related to AIDS.³⁷ Modified work schedules, specialized equipment, opportunities for rest periods, time off for doctor's appointments, flexible sick leave, part-time employment, and return-to-work timelines are a few examples.⁵⁴

3.12.4 Privacy Rights

Human rights law generally recognizes the right to privacy.³⁸ This right involves duties to uphold the confidentiality of all information pertaining to an individual's HIV

³⁴ Op.cit. note 2, paragraph 127.

³⁵ Section 4.8; see also Section 8.1

³⁶ Section 5.2 e). Section 7.1 calls on management to be trained so that they can explain reasonable accommodations at the workplace.

³⁷ Section 5.2 j). Section 7.3 also calls for workers' representatives to be trained so that they can help and represent workers with AIDS-related illnesses to access reasonable accommodation when so requested.

⁵⁴Section 5.2 j)

³⁸ Article 12 of the Universal Declaration of Human Rights, Article 17 of the International Covenant on Civil and Political Rights, and Article 16 of the International Convention on the Rights of the Child. The Occupational Health Services Recommendation, 1985 (No. 171) likewise recommends that provisions should be adopted to protect the privacy of the workers and to ensure that health surveillance is not used for discriminatory purposes or in any other manner prejudicial to their interests. The WHO/ILO Statement from the Consultation on AIDS and the workplace (Geneva, 27-29 June 1988), promotes the

status and to protect the privacy of one's physical surroundings, including obtaining informed consent for HIV testing.⁵⁶ Either way, the Code lays out specific guidelines to guarantee that employees administering tests are qualified and follow stringent policies about disclosure and confidentiality. If an individual's HIV status is discovered without their consent, they won't have to worry about being stigmatized or facing discrimination. This will ease their mind about getting tested.⁵⁷ The Code further states that HIV testing should not be a requirement for enrollment in national social security programs, occupational plans, health insurance, or general insurance policies.⁵⁸

The following fundamental principle is stated in the Code regarding the confidentiality of HIV/AIDS data:

It is not appropriate to request private information about HIV from job candidates or staff members. Colleagues shouldn't have to divulge such private information to one another. According to the 1997 ILO Code of Practice on the Protection of Workers' Personal Data, confidentiality must be upheld by anybody who has access to a worker's personal information about their HIV status.⁵⁹

Information on HIV/AIDS also covers counseling, care, and treatment options, as well as how to apply for benefits.⁶⁰ Governments, employers, private insurance providers, trustees, and managers of social security and employment programs are all subject to secrecy laws.⁶¹ The Occupational Health Services Recommendation, 1985 (No. 171) is the only recommendation that should be followed when granting access to medical records, according to the Code. To be more specific, the Code mandates that employers make sure that all HIV/AIDS-related information is only retained in medical

right of all workers to medical confidentiality with respect to all medical data, including HIV/AIDS-related information.

⁵⁶International Guidelines on HIV/AIDS and Human rights, op.cit. note 2, paragraph 97.

⁵⁷For more see the International Guidelines on HIV/AIDS and Human Rights, op.cit. note 2, para - 97.

⁵⁸Section 8.2

⁵⁹Section 4.7

⁶⁰Section 9.7 a)

⁶¹Section 9.7

records and that worker organizations are not granted access to employee status information.³⁹

3.12.5 Social Security rights

Numerous international agreements recognize the right to social protection as a fundamental human right.⁴⁰ Everybody has the right to a living standard that includes enough food, clothing, housing, health care, and basic social services to ensure their own and their families' well-being. According to Article 25 of the Universal Declaration of Human Rights, they also have the right to security in the event of unemployment, disease, disability, widowhood, old age, or any other loss of livelihood brought on by events beyond their control.

3.12.6 The Right to Partake in the Benefits of Scientific Advancement

The right to benefit from scientific advancement is acknowledged by the Universal Declaration of Human Rights, along with the International Covenant on Economic, Social, and Cultural Rights.⁶⁴ The International Guidelines on HIV/AIDS and Human Rights specify the following:

"It is critical that people have the freedom to benefit from scientific progress and its applications in the context of HIV/AIDS, given the rapid and continuous advancements in testing, treatment therapies, and the development of a vaccine. More basic scientific advancements related to HIV/AIDS include safeguarding the blood supply from HIV infection and implementing general precautions that prevent HIV transmission in a range of contexts, including healthcare. However, in this regard, developing countries face

³⁹ Access to information, the undertaking of trade union responsibilities, rules of confidentiality and the requirement for the concerned person's consent must be in accordance with ILO Occupational Health Services Recommendation, 1985 (No. 171) and strictly restricted to medical personnel. See Sections 5.2.g) and 5.3.j)

⁴⁰ Articles 22 and 25 of the Universal Declaration on Human Rights; Articles 9 and 11 of the International Covenant on Economic, Social and Cultural Rights; Articles 26 and 27 of the International Convention on the Rights of the Child. ⁶⁴Article 15

severe resource shortages that severely restrict access to necessary pain prophylaxis and antibiotics for the treatment of HIV-related conditions, in addition to the accessibility of such scientific benefits. Moreover, socially marginalized and/or economically disadvantaged groups might not have much access to HIV-related treatments or chances to participate in clinical and vaccine development trials. Serious concerns exist regarding the need to equally distribute more expensive and complex treatment therapies as well as basic medications and treatments among States and among all groups within States.”⁴¹

3.12.7 The Right to Health

Many international instruments recognize the right to the best possible standard of physical and mental health, which is closely linked to the ability to benefit from scientific advancements.⁴² States must take the necessary steps to prevent, treat, and control epidemic diseases as well as to set up the conditions that guarantee access to healthcare and medical care in the event of illness in order to ensure the full exercise of this right.⁴³

The extent of this right in relation to HIV/AIDS is described as follows in the International Guidelines on HIV/AIDS and Human Rights:

States should "ensure the provision of appropriate HIV-related information, education, and support, including access to services for STDs, to preventive measures (like condoms and clean injection equipment), and to voluntary and confidential testing with pre- and post-test counseling" in order to empower people to protect themselves and others from infection.”⁶⁸ One of the main tenets of the Code is to care for and assist those who are affected by HIV and AIDS. In regard to this, it makes the following claims:

⁴¹ Paragraph 103.

⁴² Article 25 of the Universal Declaration on Human Rights; Article 12 of the International Covenant on Economic, Social and Cultural Rights; Articles 24 and 25 of the International Convention on the Rights of the Child.

⁴³ Article 12.2 c) and d) of the International Covenant on Economic, Social and Cultural Rights.

⁶⁸ Paragraph 121.

In the face of HIV/AIDS, the workplace should respond with compassion, solidarity, and support. Every employee has a right to easily accessible healthcare, even those living with HIV. It should not be discriminatory for them or their dependents to access or receive benefits from occupational schemes or statutory social security programs.⁴⁴

3.12.8 The Right to Education

Everyone has the right to an education.⁴⁵ Respect for human rights and fundamental freedoms, as well as the complete development of the human personality, must be the main goals of education.

The International Guidelines on HIV/AIDS and Human Rights state that⁷¹ "This right consists of three major parts that are relevant to the HIV/AIDS situation. First of all, it is legal for both adults and children to receive HIV education, especially regarding prevention and care...

States should, secondly, make sure that neither children nor adults with HIV/AIDS are unfairly denied access to education because of their HIV status...

Thirdly, through education, governments should encourage tolerance, respect, and non-discrimination toward people who have HIV/AIDS."

3.12.9 The Fundamental Rights of Children

International human rights law recognizes the need to give children extra protection.⁴⁶ The core ILO Conventions on the Abolition of Child Labor serve as a

⁴⁴ Section 4.10

⁴⁵ Article 26 of the Universal Declaration on Human Rights; Article 13 of the International Covenant on Economic, Social and Cultural Rights; Articles 28 and 29 of the International Convention on the Rights of the Child. ⁷¹Paragraph 10.

⁴⁶ The Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (especially Articles 23 and 24), the International Covenant on Economic, Social and Cultural Rights (especially Article 10), the statutes and instruments pertaining to specialized agencies and organizations concerned with child welfare. See on this subject the Preamble to the International Convention on the Rights of the Child.

safeguard against child labor exploitation in the workplace.⁴⁷ Children have the right to most of the same human rights as adults, in addition to those that are expressly stated in a number of international agreements. These programs should provide extra care to children who have lost one or both of their parents to AIDS because they may eventually be forced to drop out of school, find employment, and become more open to sexual exploitation.⁴⁸ This can be accomplished by giving direct or indirect financial assistance, as well as by offering apprenticeships and vocational training.⁴⁹

3.13 The HIV & AIDS (P & C) Act, 2017⁵⁰

A key piece of legislation that defends and advances the rights of those living with and impacted by HIV and AIDS is the HIV and AIDS (Prevention & Control) Act, 2017. With the intention of stopping the spread of HIV and AIDS and defending the legal and human rights of those who are infected with and impacted by the disease, the Act went into effect on September 10, 2018. The rights of healthcare providers are also intended to be safeguarded.

The Act aims to improve access to services by addressing stigma and discrimination and fostering an enabling environment. For those living with HIV and AIDS, it offers diagnostic services linked to antiretroviral therapy (ART) and opportunistic infection management. The Act also establishes a strong grievance redressal system with the goal of delivering prompt resolution, in the form of Ombudsman at the state level and Complaints Officer at the establishment level.

⁴⁷ The Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labour Convention, 1999 (No. 182). The 113 States which have ratified Convention No. 182 are under the obligation to take immediate measures to prohibit and eliminate the worst forms of child labour, whatever is their economic situation.

⁴⁸ Section 9.8 b)

⁴⁹ Section 9.8 c)

⁵⁰ <https://naco.gov.in/hiv-aids-p-c-act-2017>

Following are the key provisions as to the rights of people living with HIV/AIDS under the Act.⁵¹⁵²

Consent to receive an HIV test or treatment:

The Act, with some exceptions, requires informed consent. It aims to stipulate that no HIV test may be administered to any individual or subjected to medical treatment, interventions, or research without the individual's or his representative's informed consent and in a way that may be dictated by the guidelines. The person being tested or their representative must provide pre- and post-test counseling as part of their informed consent for an HIV test, in accordance with any guidelines that may be applicable. If an HIV test is anonymous and not intended to identify a person's HIV status, informed consent is not needed for screening by any licensed blood bank, court orders, medical research, or epidemiological purposes.⁵³

Disclosure of HIV Status:

With some limitations, the Act protects an individual's right to confidentiality and privacy regarding their HIV status. It states that no one can be forced to reveal their HIV status unless an order from a court determines that doing so is necessary to resolve issues in the case at hand. Additionally, no one can be forced to reveal their HIV status or any other private information that has been disclosed to them in confidence or through a fiduciary relationship without the other person's informed consent or that of their representative. Organizations that maintain data on HIV-positive individuals must implement data protection protocols.⁷⁹

Treatment accessibility:

⁵¹ Dr. Renu Pal Sood. Rights of people living with HIV/AIDS in India in the light of the human immunodeficiency virus and acquired immunodeficiency syndrome (prevention and control) act,2017, *IJRAR- International Journal of Research and Analytical Reviews*, VOLUME 5, ISSUE 4, OCT.– DEC.

⁵² . Pp.615-616.

⁵³ Sec 5, The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act,2017. ⁷⁹ Ibid, Sec 8 and 9

The Act aims to outline the steps that the Central Government or State Governments must take to provide, to the greatest extent feasible, Anti-retroviral Therapy and Opportunistic Infection Management to individuals living with HIV or AIDS. The Central Government will also issue the necessary guidelines regarding HIV and AIDS protocols pertaining to Opportunistic Infection Management and Antiretroviral Therapy, which will be universally applicable and ensured to be widely disseminated.⁵⁴

Encouragement of risk-reduction tactics for populations with elevated HIV infection risks:

It has been demonstrated that focused interventions, such as giving clean needles to drug injectors, stop the spread of HIV. However, some criminal laws make it difficult to provide these services by threatening to prosecute both recipients and providers. The Act gives risk-reduction initiatives legal immunity, bolstering HIV prevention efforts.⁵⁵

Right of Residence:

Under the Act, every protected person—a woman or someone under the age of eighteen—shall have the right to live in a shared household, the right to remain in the shared household or any part of it, and the right to use and enjoy its amenities without facing discrimination.⁵⁶

Individuals under state care or custody:

The Act aims to guarantee the right to HIV prevention, counseling, testing, and treatment services for all individuals under state care or custody, in compliance with the guidelines issued in this respect.⁸³

Special Procedure in Court:

The court will handle cases pertaining to individuals who test positive for HIV in a priority manner. If a party to a legal proceeding is HIV-positive or affected, the court may

⁵⁴ Id. Sec 14.

⁵⁵ Id. Sec 22.

⁵⁶ Id. Sec 29.

⁸³ Id. Sec31.

order that the proceedings be conducted in camera, with the party's identity suppressed, and that no information be published that would reveal the applicant's identity.⁵⁷

States all over the world have realized that the fight against the HIV/AIDS epidemic cannot be fully achieved if the human rights of those who are susceptible to the virus are not protected. When universal rights enshrined in international agreements have safeguarded and preserved human rights crucial to individuals afflicted with HIV/AIDS worldwide. In the absence of specific legislation regarding the rights of such individuals, the cause of HIV/AIDS patients in India is given new meaning and recognition by constitutional rights such as the right to equality and the various interpretations of the right to life under article 21. Under the auspices of international organizations like the World Health Organization and the Joint United Nations Programme on HIV and AIDS (UNAIDS), the Government of India in collaboration with the National Aids Control Organization has been formulating policies and guidelines pertaining to a range of topics that impact the situation of individuals living with HIV/AIDS in society. In addition, Indian courts have addressed claims made by HIV-positive individuals based on their rights. Courts have ensured that the law should be interpreted as liberally as possible to protect these people's various rights.

Section 34 of the HIV and AIDS (Prevention and Control) Act, 2017⁵⁸

In any legal proceeding in which a protected person is a party or an applicant, the court may, upon application from that person or from another person acting on their behalf, grant any or all of the following orders in the interest of justice:

- 1) that the applicant's identity be suppressed in the proceedings, either entirely or in part, by replacing their name in the proceedings records with a pseudonym in a way that may be prescribed;

⁵⁷ Id. Sec 34

⁵⁸ <https://kanoongpt.in/bare-acts/the-human-immunodeficiency-virus-and-acquired-immunodeficiency-syndrome-prevention-and-control-act-2017/section-34>

- 2) that the hearing, or any portion of it, may be held behind closed doors; (3) prohibiting anyone from disclosing the applicant's name, status, or identity through publication in any way.

The court will take up and handle any legal action pertaining to or involving an HIVpositive individual in a priority manner. Act Simplified Section 34 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 provides a simplified explanation of the law.

- 1) If a person covered by this law is a party or an applicant in a court proceeding, the court may, upon request, take specific actions to preserve the person's identity and privacy. These choices may consist of: (a) Using a pseudonym (false name) in court documents in a manner prescribed by law to conceal the true name of the individual. (b) Permitting the court case, or portions of it, to take place behind closed doors, unobserved by the public or media. (c) Preventing the dissemination of any information that might divulge the identity, health status, or name of the individual.
- 2) A court case involving an HIV-positive individual must be handled and resolved expeditiously, taking precedence over other cases.

Using an Example to Explain

Consider Jane makes the decision to file for divorce despite having HIV. She wants to make sure that her HIV status is kept private throughout the legal process because she is worried about the stigma and discrimination connected to her medical condition.

Jane or her legal representative may ask the court to: under Section 34 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017:

- a. To protect her identity, use a pseudonym in court documents instead of her real name.

- b. Hold the divorce proceedings behind closed doors, in a private setting (in camera).
- c. Forbid the media and other people from disclosing any information that would identify her or indicate that she is HIV positive.

Furthermore, because Jane is HIV-positive, the court must give her case top priority in order to expedite the proceedings.

Supreme Court Statement

Supreme Court directs Centre and states to ensure effective implementation of HIV Act. The court also directed all courts, tribunals, and quasi-judicial bodies to prioritise cases relating to HIV-infected persons for early disposal as per the mandate of Section 34(2) of the HIV Act.

3.14 Conclusion

In order to stop the spread of HIV/AIDS and lessen the impact the disease has on those who are already afflicted or infected, respect for human rights is crucial. The ILO Code of Practice on HIV/AIDS and the World of Work is another resource for protecting the rights of individuals living with HIV/AIDS. It specifically addresses workplace laws and the larger legal and policy framework that controls the workplace. The greatest strength of the Code is undoubtedly the fact that it exists at all, given that HIV/AIDS affects individuals, organizations, and governments, and that the ILO and its partners can assist local, national, and international efforts to combat the epidemic. This groundbreaking tool addresses the responsibilities of the social partners by giving them guidelines for effective action, in contrast to most international instruments that only address States.

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