

Inclusive Education Practices and Their Impact on Student Engagement and Academic Achievement

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I. INTRODUCTION

Human immunodeficiency virus (HIV) is a lentivirus (a member of the retrovirus family) that causes acquired immunodeficiency syndrome (AIDS) a condition in humans in which progressive failure of the immune system allows life-threatening opportunistic infections and cancers to thrive. Infection with HIV occurs by the transfer of blood, semen, vaginal fluid, pre-ejaculate, or breast milk. HIV infection in humans is considered pandemic by the World Health Organization (WHO). Most untreated people infected with HIV-1 eventually develop AIDS. AIDS is one of the most serious, deadly diseases in human history. More than twenty five years after the first clinical evidence of acquired immunodeficiency syndrome was reported, AIDS has become one of the most devastating diseases humankind has ever faced. Since the epidemic began, some 58 million people have been infected with the virus. HIV/AIDS has become the sixth-largest cause of death worldwide. HIV/AIDS is a major threat to the world of work: it is affecting the most productive segment of the labour force and reducing earnings, and it is imposing huge costs on enterprises in all sectors through declining productivity, increasing labour costs and loss of skills and experience. In addition, HIV/AIDS is affecting fundamental rights at work, particularly with respect to discrimination and stigmatization aimed at workers and people living with and affected by HIV/ AIDS. The epidemic and its impact strike hardest at vulnerable groups including women and children, thereby increasing existing gender inequalities and exacerbating the problem of child labour. This is why the ILO is committed to making a strong statement through a code of practice on HIV/AIDS and the world of work. It covers key principles, such as the recognition of HIV/AIDS as a workplace issue, non-discrimination in employment, gender equality, screening and confidentiality, social dialogue, prevention and care and support, as the basis for addressing the epidemic in the workplace.

II. INTERNATIONAL PERSPECTIVE

As International measure, Universal Declaration of Human Rights, Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights, United Nations HIV/AIDS and Human Rights International Guidelines , ILO Employment Policy Convention, 1964 (No. 122) and ILO Termination of Employment Convention, 1982, ILO Convention No. 111 on Discrimination (Employment and Occupation), ILO Occupational Safety and Health Convention, 1981, International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child protecting the worker rights in general International perspectives and not specifically focus on right of the HIV AIDS Infected workers in Global Legal regime.

In Specific reference to United Nations HIV/AIDS and Human Rights International Guidelines, 2006, which mandates the State parties to establish an effective national framework for their response to HIV which ensures a coordinated, participatory, transparent and accountable approach, integrating HIV policy and programme responsibilities, across all branches of government. Furthermore obligates the State parties to community consultation occurs in all phases of HIV policy design, programme implementation and evaluation and that community organizations are enabled to carry out their activities, including in the fields of ethics, law and human rights, effectively and mandates appropriate Public Health legislations and Criminal Law Reforms which not misused in the HIV AIDS context. The above Guidelines also mandates appropriate state Legislations for Anti-Discrimination principles, provisions for access to Treatment, Care and Support and Provisions for Legal Assistance to HIV infected Victims. The above Principles also discussed about the supportive and enabling environment for women, children and other vulnerable groups through

Community Dialogue. Further discussed about Changing of Discriminatory attitudes through Education, Training and Media.

The Guidelines also mandates the Government and the private sector to develop codes of conduct regarding HIV issues that translate human rights principles into codes of professional responsibility and practice, with accompanying mechanisms to implement and enforce these codes. The Core obligation discussed in the guidelines was State in Cooperative with International agencies should ensure effective mechanisms to protect human rights in the context of HIV at the international level.

In reference to International Labour Organisations Recommendation Concerning HIV and AIDS and the world of work, 2010 (No. 200) which covers all workers working under all forms or arrangements, and at all workplaces, including persons in any employment or occupation, those in training, including interns and apprentices, volunteers, jobseekers and job applicants and laid-off and suspended workers, This Recommendation also extends to all sectors of economic activity including the private and public sectors and the formal and informal economies and armed forces and uniformed services. The International Labour Organization's HIV/AIDS recommendation emphasis on General principles of Equality, Anti-discrimination in workplace, Prevention of Transmission in workplace, prevention, treatment, care and support to workers, families and dependent. Further the recommendation discussed about the Workers privacy on HIV/AIDS, no mandatory HIV test, Specific Occupational Sector protection to HIV/AIDS workers. This Recommendation also suggest Occupational health services and workplace mechanisms related to occupational safety and health should address HIV and AIDS, taking into account the Occupational Health Services Convention, 1985, and Recommendation, 1985, the Joint ILO/WHO guidelines on health services and HIV/AIDS, 2005, and any subsequent revision, and other relevant international instruments.

Regional instruments, namely the American Convention on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the African Charter on Human and Peoples' Rights also enshrine State obligations applicable to HIV. In addition, a number of conventions and recommendations of the International Labour Organization are particularly relevant to the problem of HIV, such as ILO instruments concerning discrimination in employment and occupation, termination of employment, protection of workers' privacy, and safety and health at work.

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

III. NATIONAL INSTRUMENTS

The Indian Parliament has passed the Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) (Prevention and Control) Act, 2017. It is the first national HIV law in South Asia. This Act recognises the rights of HIV/AIDS persons and makes anti-retroviral therapy a legal right of HIV/AIDS patients and states that "every person in the care and custody of the state shall have right to HIV prevention, testing, treatment and counselling services. It also asks the central and state governments to provide such treatment along with infection management. This Act also asks the state and central governments to facilitate access for the HIV/AIDS community to welfare schemes. This Act only discuss about the Safe Working Environment in Health care and other establishment, Responsibilities of Establishment and Complaint officers but not discuss about Rights of HIV AIDS Infected in depth.

National Policy on HIV/AIDS and the World of Work was formulated by the Ministry of Labour and Employment on 2009 in order to fulfil the international commitments, the core principles and policies discussed herein was HIV/AIDS, a workplace issue, Non-discrimination, Gender equality, Healthy work environment, Social dialogue, No Screening for purpose of Employment, Confidentiality, Continuation of Employment relationship, Prevention, Care and Support.

In 2022, The HIV& AIDS Policy For Establishments was published by Ministry of health and Family Welfare. which emphasis Non Discrimination in par with Absence of discrimination at Employment and Occupation, accessing Healthcare and educational settings,

using Public utilities and resources, Holding public and private offices, Under custody, Right to Movement, Anti segregation, HIV testing as pre-requisite for obtaining employment is prohibited, Right to residence. Then Focus on Confidentiality related to HIV status and Privacy, Disclosure of status to partner of HIV positive person and Confidentiality of data related to HIV and Grievance Redressal Mechanism including appointment of Complaint officer and their power and Functions to disposal of the Complaints. This Policy also discussed about the and Responsibility of the Stakeholders, Employers, Employees and HIV infected employees in workplace.

IV. JUDICIAL RESPONSE

In the landmark Decision of Bombay High Court in *MX of Bombay Indian Inhabitant v. ZY and Ors* a casual labourer working in a public sector undertaking was made to undergo a medical examination, which revealed that he was HIV positive hence not fit to work and finally terminated from his employment. The affected individual challenged the termination, contending that it was a violation of his fundamental rights to equality, livelihood, life and liberty. The Bombay High Court held that a person cannot be deprived of his right to livelihood simply because he is HIV positive, if he is otherwise capable of performing his regular duties and does not pose a threat or health hazard to other persons or property at the workplace. The court recognized the stigma associated with HIV and AIDS, and as a result, the identity of the aggrieved employee was kept private during the course of the hearing. In several other cases, HIV-positive individuals have chosen to not disclose their identity.

In recent decision of Hon'ble Delhi High court in *Mr. ABC Vs Border Security Force*, the court held that the RPWD Act, in a vein similar to the HIV Act, does not permit any government establishment to discriminate against any person with disability in any matter relating to employment. Section 20(2) requires reasonable accommodation to be provided by the government to employees who suffer from disability. Section 20(4) specifically proscribes dispensing with the services of an employee who acquires a disability during his service. Further the petitioner could not have been treated as unfit to discharge his duties in the BSF solely on the ground that he was HIV positive.

In *Kumar Dashrath Kamble v. Bombay Hospital*, Bombay High Court held that denial of permanency to a sweeper on account of being HIV+ was arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution. The Court observed that the employee continued to perform his duties despite his medical condition and that

refusal of permanency amounted to unfair labour practice. Accordingly, the employee was declared permanent, though financial benefits were confined to the period prior to filing of the complaint in view of limitation.

In *Shailesh Kumar Shukla v. Union of India*, wherein it is a significant judgment by the **Allahabad High Court** that struck down the denial of promotion to Central Reserve Police Force (CRPF) personnel solely based on their HIV-positive status. The High Court held that denying promotion purely on the basis of an HIV-positive status is **discriminatory** and violates the **HIV-AIDS (Prevention and Control) Act, 2017**, as well as the fundamental rights guaranteed under Articles 14, 16, and 21 of the Constitution of India.

In *Satyan and Singh v. Union of India*, the Supreme Court of India awarded ₹50 lakhs in compensation to an ex-Army Havaldar wrongfully discharged in 2001 due to a misdiagnosis of AIDS. The court set aside the Armed Forces Tribunal's ruling, finding the discharge unlawful and inhumane, emphasizing that the Army failed to prove the illness was self-inflicted.

In the case of *Suraj Mal Chhajer v. State and Others* the Rajasthan High Court ordered the state to provide adequate infrastructure and protective measures for resident doctors and hospital staff and measures to protect against occupational risks like HIV.

V. CONCLUSION

In International Context, United Nations and its Specialized agencies such as International Labour Organization and World Health Organization are trying to make action plan to combat spread of HIV- AIDS in Workplace and emphasized key principles on discrimination, safety and Confidential in workplace. There is no specific international binding instrument for Protecting the Rights of the HIV AIDS infected Workers in Workplace. In Indian Context, Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 was passed to protect the rights of people living with HIV and AIDS. It also aims to prevent the spread of HIV and AIDS and also provide measure for Safe Working Environment. There is no specific Legislation in India for Protecting the Rights of the HIV AIDS infected Workers in Workplace. There are many Legal disputes arise across India before the Various High Court and Supreme Court regarding the Rights of HIV AIDS infected Workers in Workplace in the matter of Discrimination, Termination from Employment, Confidential and mandatory Test before Employment and the decisions held in affirmative.

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