

CHAPTER XIII
**RIGHTS OF PEOPLE LIVING WITH HIV-
AIDS (PWAs)**

Sarita and Suresh are husband and wife and both suffer from HIV-AIDS. A few years ago, Suresh met with an accident and acquired the disease from transfusion of HIV infected blood. Before his infection could be detected, the disease got transmitted to his wife Sarita. They were extremely tensed now, because Suresh had been thrown out of his job and no school was ready to take their son for the reason that his parents were HIV infected. Their societal relationships also got sour as people had started talking behind their back and almost everyone assumed that they had bad characters. Their son had no friends and they started leading a life of penury and seclusion. Meera didi understood their condition and instead of merely sympathizing with them, told them about their rights and also organized awareness camps for public at large with the purpose of spreading awareness about the disease.

- HIV stands for Human Immunodeficiency Virus.
- The virus weakens the body's immune system. This results in the body losing its natural ability to fight diseases, and succumbing to common infections like TB, pneumonia, diarrhea, etc. AIDS is the last stage of the HIV infection which leads to death.

❖ What is AIDS?

- AIDS stands for Acquired Immuno Deficiency Syndrome

ACQUIRED	:	Not hereditary
IMMUNE	:	Defence mechanism of the human body to fight infections
DEFICIENCY	:	Weakening of immune system
SYNDROME	:	A group of symptoms

Stages of HIV infection

Stage 1 (primary / acute infection)

Begins at the time of infection and lasts until the body's initial immune response gains some control over viral replication (a few weeks time). This is a highly infectious period. During this period a blood test will not reveal the presence of HIV anti-bodies.

Stage 2 (asymptomatic)

During this stage the HIV antibodies can be detected in the bloodstream. The infected individual remains clinically healthy and does not display any symptoms. This asymptomatic period can last from as little as 3 months, to as long as 15 years depending upon the immune response of the patients.

Stage 3 (symptomatic)

The HIV destroys a subset of immune system cells. The replacement rate of the cells destroyed cannot quite keep up with the rate of loss of these cells. Loss of these cells makes the individual susceptible to diverse opportunistic infections such as Tuberculosis, Candidiasis, herpes, etc. This marks the beginning of the final stage of HIV infection i.e. clinical AIDS.

How Does HIV/AIDS spread?

The only modes of transmission of HIV are:

- Unprotected sexual intercourse with an HIV infected person
- Sharing of HIV contaminated syringes /needles
- Transfusion of HIV infected blood
- From HIV infected mother to child during pregnancy, childbirth or breast feeding

Prevention of HIV/AIDS

- The ABC of Prevention: A: Abstinence, B: Being Faithful to your partner, C: Condom use
- Accessing only tested (HIV free) blood and blood products
- Use of only new/sterilized syringes and needles
- Accessing services for Prevention of Parent to Child Transmission Programme
- Seeking early and proper treatment for Sexually Transmitted Infections/Reproductive Tract Infections (STIs/RTIs)

These DO NOT spread HIV

- Touching, shaking hands with, or hugging an infected person.
- Through mosquito bites
- Sharing utensils, food, clothes or using the same toilet as an infected person
- Sharing telephones, computers, or other instruments with an infected person
- Caring or looking after persons living with HIV
- Sneezing or coughing
- Donating Blood



Symptoms for the Diagnosis of AIDS

- Weight loss of over ten percent of body weight
- Fever that lasts for more than a month
- Diarrhea for more than a month
- Persistent cough for over a month
- Itchy skin problems
- Thrush (white patches) in the mouth and throat
- Long lasting swelling of the lymph glands, etc.

DO NOT BE SHY OF TALKING ABOUT AIDS. TALK TO

YOUR CHILDREN, FRIENDS AND FAMILY ABOUT THIS DISEASE. RIGHT INFORMATION IS THE FIRST STEP TOWARDS PROTECTION FROM AIDS.

Basic rights of the PWAs:

- **Right to Informed consent:** 'consent' implies two people agreeing to the same thing in the same sense. Before any medical procedure is to be undergone, the doctor has to inform the patient of the risks involved and the alternatives available to him, so that he can make an informed decision about the test and decide for himself as to whether he wants to undergo the same or not. The consent for HIV test has to be specifically taken and a consent for any other test cannot be taken to be consent for an HIV test.
- **Right to confidentiality:** a relationship between a doctor and his patient is one of trust, and a doctor is duty bound not to disclose the condition of his patient to anyone. In other words the information that a doctor has about his patient is confidential in nature and he cannot reveal such information. Also, the PWAs can also suppress their identity and litigate under a name that is not their real name, i.e. under a pseudonym. This helps them get rid of their fear of social discrimination and biases.
- **Right against discrimination:** 'Right to equality' is a fundamental right enshrined in the Constitution of India and guaranteed to everyone. The law is that no person can be discriminated against on the grounds of religion, caste, creed, gender etc. Thus, even the PWAs have a right to equality. They cannot be discriminated only on the ground that they are HIV infected, either socially or professionally by the State or State run organizations.
- **Right to health:** right to health is a fundamental right and is an important part of one's right to life. Also it is the duty of the State to provide adequate medical facilities to its citizens. If one is denied treatment for being HIV positive, he can seek his remedies in law.

- **Right to employment:** no one can be discriminated in employment only on the basis of his HIV status. Any PWA who is fit to work and his health does not affect his work and whose physical condition does not pose any substantial risk to others, cannot be removed from employment and if he is so removed, he can seek his remedies in law. Also remember that:
 - ✓ There can be no compulsory HIV test as part of medical examination at the time of recruitment in the Government sector jobs, as the purpose of such medical examination is only to test a person's functional abilities, and HIV status as such does not indicate a person's capacity to work.
 - ✓ Unless required by law, it is not necessary to divulge ones HIV status to the employer.
 - ✓ In case a person is removed from job illegally and unlawfully only on the basis of his HIV status, then he has a remedy to approach the Industrial Tribunal/ Labour Court/Central Administrative Tribunal, or file a writ petition in the High Court or file a civil suit for breach of contract of employment or for damages.



IMPORTANT JUDICIAL PRONOUNCEMENTS

- ***Mr X v Hospital Z (Right to marry), (2003)1SCC500***

This case was filed seeking clarifications and challenging the judgment of the Supreme Court in the case of Mr.X v. Hospital Z (mentioned above) in which the court had suspended the right of PWAs to marry although it was never an issue before it. The Supreme Court in this case clarified that its judgment in Mr. X v Hospital Z to the extent that it suspended the right of People living with HIV/AIDS to marry is no longer good law. The right of an HIV + person to marry is restored. However, this does not take away from the duty of those who know their HIV+ status to obtain informed consent from their prospective spouse prior to marriage.

- ***X v The Chairman, State Level Police Recruitment Board & Ors, 2006 ALT 82***

In this case the Petitioner was a Reserve Police Constable and had applied for the post of Sub-Inspector of Police (Civil). Though he qualified both the physical and written tests and was provisionally selected as Sub-Inspector of Police, he was denied appointment on the ground that he had tested HIV positive, relying on Order 70(3) of the A.P. Revised Police Manual which prohibited the appointment of HIV positive candidates, otherwise qualified, as Sub-Inspector of Police. In these fact the Andhra Pradesh High Court held that a person, who was fit, otherwise qualified and posed no substantial risk to others, cannot be denied employment in a public (state) sector entity and accordingly struck down the impugned order 70 (3).