

## **A CRITICAL ANALYSIS ON THE RIGHTS OF HIV AND AIDS WORKERS FROM THE LENS OF ILO**

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### **ABSTRACT**

This paper consists of the concept of rights of HIV and AIDS workers from the lens of ILO. This paper discusses about the implementation status of the HIV and AIDS (Prevention and Control) Act, 2017 and how the other instruments see through the issue of the HIV and AIDS workers. Further, this paper discusses about the views of ILO on the rights and issues faces by the HIV and AIDS workers. It states the key principles, responsibilities of the government and employers as stated by the International Labour Organization. It also focuses on the changes which are required in the International and National codes to deal with the issues of the HIV and AIDS workers. Lastly, a survey was conducted to understand the issues and rights of the HIV and AIDS workers. The scope of the paper is limited to address the issues and rights of the HIV and AIDS workers from the lens of International Labour Organization.

**KEY WORDS:** HIV, AIDS, ILO, Workers, Rights.

BRILLOPEDIA

### **INTRODUCTION**

#### **BACKGROUND OF THE STUDY**

The HIV and AIDS epidemic is one of the biggest challenges faced by India. There are about three million people suffering from HIV and AIDS in India. The socioeconomic condition of the country combined with the traditional outlook has made this disease more vulnerable. The most popular reason for this epidemic is the poor literacy rate among the people which has contributed in spreading of this disease. This disease not only affects the physical health of the person but it also affects the mental health as it has lot of social stigma attached to it. People infected with HIV and AIDS are discriminated at each and every corner of the society.

They face the large part of discrimination at the workplace. The main problem with this disease is that it is not completely curable and no concrete treatment is available for it but certain measures can be taken to prevent the spread and infection of this disease. The

Universal Declaration of Human Rights have laid down certain principles of non-discrimination as it is fundamental to human rights law. When it comes to the employment, worst form of discrimination and stigma is seen towards the workers infected with HIV and AIDS. The fact it becomes more difficult for such workers is that no legal remedy is available to them when their right to employment and work is violated in the work sphere.

The workers infected with HIV and AIDS are discriminated in various ways at workplace. They are isolated from the crowd, they are denied to attend the gatherings, they are given less wages and they in most cases they are removed from their jobs without any prior notice or compensation. Thus making it difficult for the HIV and AIDS workers to lead a normal and comfortable life in the society.

Indian has come with the HIV and AIDS (Prevention and Control) Act, 2017 so as to understand and establish guidelines general with regards to this disease. But when it comes to the implementation of this act, it has got its own set back as there is a need of scrutinizing at the macro level. The International Labour Organization (ILO) has provided many recommendations and suggestions to improve the conditions and provide rights to the workers infected with HIV and AIDS. It has worked at the grass root level to make situations favourable for such workers. Though there are many suggestions, guidelines but the implementation of it is still not into practical force.

### **RESEARCH PROBLEM**

The HIV and AIDS epidemic is a global crisis and it hampers and challenges the development and social progress of the country. Beyond the suffering, the HIV and AIDS epidemic has severely affected the social and economic setup of society. HIV and AIDS is considered to be a major threat as it affects the labour force of the country as the workers with HIV and AIDS are not treated at par as compared to other workmen. Their fundamental rights at work are affected. The workers affected with HIV and AIDS are discriminated at every stage of their lives. They are not just discriminated and look down by the society but even at the workplace they face tremendous challenges to lead a normal life and cope up with the emerging situations. The International Labour Organization has come forward with many suggestions and recommendations to face the epidemic of HIV and AIDS. Moreover, the

Indian laws have also framed a National Policy on HIV and AIDS in lines with the ILO and also came with HIV and AIDS (Prevention and Control) Act, 2017. But the steps taken by the authorities are just on paper and has not been implemented in the practical sense. Thus, making the lives of the HIV and AIDS workers more problematic further leading to deprivation of their rights.

### **EXISTING LEGAL SITUATION**

In the year 2017, the Ministry of Health and Family Welfare announced the enforcement of the HIV and AIDS (Prevention and Control) Act, 2017 to safeguard the rights of the patients suffering with HIV and AIDS. This was done after the Supreme Court of India scrapped section 377 of Indian Penal Code, 1860 and decriminalized homosexuality in India.

### **LITERATURE REVIEW**

- 1) **Alice Ouedragoe, Access to and Effects of Social Protection on Workers living with HIV and their Households (21 Sept, 2021, 01:05 PM)**- In this report, the researcher states that the policies does not exclude people living with HIV and AIDS. They face challenges in accessing the existing social protection services. They face the stigma and discrimination in the society. But the issues of the workers effected by HIV and AIDS needs to be addressed. This report further analyses and promotes HIV-sensitive social protection with gender equality at its centre and provide guidance to stakeholders in expanding the coverage of HIV-sensitive social protection programmes at the global, regional, country and local levels.
- 2) **Alice Ouedragoe, HIV and AIDS and Labour Rights, (21 Sep, 2021, 01:07 PM)**- In this report, the researcher has stated that judges and legal professionals play a crucial role in ensuring respect for fundamental labour rights. The ILO supports the objective of achieving “Zero new HIV infections, Zero discrimination and Zero AIDS-related deaths”. The author further states that the changes and providing labour rights is essential part of the managerial setup and violation of it will bring the legal professionals in picture and act upon to provide rights to labourers.

- 3) **Kamran Fanniezadh, Multiple Discrimination in the world of Work (21 Sep 2021, 01:10PM)**-In this paper, the researcher makes an attempt to address the additive, compound and intersectional discrimination faced by the HIV and AIDS workers at the workplace. This paper makes an attempt to understand the difficulties in defining, training and measuring the discrimination. The paper calls for an affirmative action to be taken by the traditional approach so as to address the issue of discrimination on a general ground.
- 4) **Chandrika Bhattacharya, Human Rights Perspective and Right to Employment of persons living with HIV AIDS, (21 Sep 2021, 01:12 PM)**-This article talks about the human rights and the concept of right to employment of the HIV and AIDS workers. This article elaborates the Indian scenario with regards to HIV and AIDS workers and the steps taken by the International instruments to deal with this epidemic. Further this article throws light on the cases wherein it has been declared that people contracted with HIV and AIDS have a right to work with dignity and self-respect.

### **RESEARCH QUESTIONS**

- 1) Whether the HIV and AIDS (Prevention and Control) Act, 2017 has been implemented in a proper manner to address the issues and rights of HIV and AIDS workers?
- 2) How the International Labour Organization (ILO) has viewed the issues faced by the HIV and AIDS workers?
- 3) What changes can be introduced in the International and National Codes so to improve the conditions of HIV and AIDS workers?

### **HYPOTHESES**

- 1) The HIV and AIDS (Prevention and Control) Act, 2017 came into force in the year 2017 but its implementation status needs to be updated. The implementation of it to address the issues of the HIV and AIDS workers have yet to be scrutinized at all levels.

- 2) The ILO has viewed the issues faced by the HIV and AIDS workers at the micro level. They have recommended all the signatories to consider this matter as a primary responsibility as everyone has right to work with dignity and self-respect.
- 3) There can be certain changes introduced in the International and National codes to improve the conditions of the HIV and AIDS workers such as addressing the issues of the workers by providing them appropriate training, timely testing etc.

### **SCOPE AND LIMITATION**

The **scope of the paper** is limited to address the issues and rights of the HIV and AIDS workers from the lens of International Labour Organization.

### **OBJETIVES OF THE STUDY**

**The objectives of the paper is;**

- 1) To analyze the implementation status of the HIV and AIDS (Prevention and Control) Act, 2017 for addressing the issues and rights of HIV and AIDS workers.
- 2) To understand the views of ILO while addressing the issues and rights of the HIV and AIDS workers.
- 3) To evaluate the changes which can be introduced in the International and National Codes to improve the conditions of the HIV and AIDS workers.

### **METHODOLOGY**

The paper is based on doctrinal research method. The paper has followed the secondary data collection. The researcher has utilised various books, articles, notes and commentaries and other writings so as to incorporate the views of many juristic scholars with an intention to present a holistic view. Moreover, the author has also followed the primary data collection such as statutes, case laws and conducted an online survey. The sample size of the survey is 29 and the survey is undertaken by law students and legal professionals.

## **IMPLEMENTATION OF HIV AND AIDS (PREVENTION AND CONTROL) ACT, 2017 TO ADDRESS THE ISSUES AND RIGHTS OF THE HIV AND AIDS WORKERS**

This section comprises of the implementation status of HIV and AIDS (Prevention and Control) Act, 2017. This section also throws light on the Constitution of India, National Human Rights Commission, National AIDS Control Organisation and The National AIDS Prevention and Control Policy, 2002. This section is based on the research question; **Whether the HIV and AIDS (Prevention and Control) Act, 2017 has been implemented in a proper manner to address the issues and rights of HIV and AIDS workers?**

### **IMPLEMENTATION STATUS OF HIV AND AIDS (PREVENTION AND CONTROL) ACT, 2017**

The Human Immune deficiency virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 came into force in the year 2018. The section 3 of this act it talks about the prohibition of discrimination. It states that, “No person shall discriminate against the protected person on any ground including any of the following, namely: — (a) the denial of, or termination from, employment or occupation.

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

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

(d) The denial or discontinuation of, or unfair treatment in, educational, establishments and services thereof etc.”<sup>1</sup>

It states that, the persons suffering with HIV and AIDS cannot be discriminated on the grounds of employment, healthcare services, standing for public or private offices etc. This section also comprises of the denial, termination and unfair treatment which is given to the persons suffering with HIV and AIDS.

Section 5 of the HIV and AIDS (Prevention and Control) Act, 2017 talks about the informed consent which is required at the time of HIV testing. It states that, “(1) Subject to the provisions of this Act, — (a) no HIV test shall be undertaken or performed upon any person; or

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<sup>1</sup> Section 3 of The HIV and AIDS (Prevention and Control) Act, 2017

(b) No protected person shall be subject to medical treatment, medical interventions or research, except with the informed consent of such person or his representative and in such manner, as may be specified in the guidelines.

(2) The informed consent for HIV test shall include pre-test and post-test counselling to the person being tested or such person's representative in the manner as may be specified in the guidelines."<sup>2</sup>

It states that before getting a person tested for HIV, the prior concern and that specific person needs to be informed. The section further elaborates that such a test comes attached with pre-test and post-test counselling in the way as prescribed by the authorities and mentioned in the guidelines.

So, when it comes to the issues and rights of HIV and AIDS workers under this act, they are not addressed in a direct manner. They are mentioned within the ambit of employment and hence the implementation of this act remains quite sceptical and upon the discretion of the government. But before this act came into force, there are certain other instruments which has looked upon issues and rights of HIV and AIDS workers in an indirect way.

## BRILLOPEDIA

### **OTHER INSTRUMENTS WITH REGARDS TO ISSUES AND ISSUES AND RIGHTS OF HIV AND AIDS WORKERS**

The other instruments have looked upon the issues and rights of the HIV and AIDS workers in an indirect way. Those instruments are Constitution of India, National Human Rights Commission, National Aids Control Organisation, The National Aids Prevention and Control Policy, 2002 and State Aids Control Societies.

### **THE CONSTITUTION OF INDIA**

Under the Constitution of India, Article 14, 16 and 21 have covered this aspect within its ambit. Article 14 talks about equality before law. It states that every person is equal in eyes of law and no person shall be discriminated on the grounds of religion, race, caste, sex or place

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<sup>2</sup>Section 5 of The HIV and AIDS (Prevention and Control) Act, 2017

of birth. While covering the aspect of HIV and AIDS workers it has also taken into consideration that equality means likeliness and discrimination is antonym of equality.<sup>3</sup> Moreover, Article 16 also talks about the equality of opportunity at workplace and states that no person shall be discriminated on any basis whatsoever. When it comes to Article 21 it talks about the right to life and personal liberty. The concept of privacy is covered within the ambit of this article. The rights of the HIV and AIDS workers are always violated when it comes to the testing and maintain the confidentiality of such sensitive issue.

### **NATIONAL HUMAN RIGHTS COMMISSION**

The National Human Rights Commission popularly known as NHRC was established in India because India is a signatory to the International Covenant on Civil and Political Rights and also to the International Covenant on Economic, Social and Cultural Rights.<sup>4</sup> Therefore, it becomes the duty of NHRC to follow the principles set up in these covenants. The NHRC takes up many individual cases dealing with discrimination at workplace or any other place due to HIV and AIDS, the lack of medical facilities for the infected individuals etc. The NHRC has played a major role in India while spreading awareness among the public regarding HIV and AIDS epidemic.

### **NATIONAL AIDS CONTROL ORGANISATION**

The first case of HIV and AIDS was reported in India in the year 1986 in Chennai. Looking at the effects of this disease in other countries, a committee was setup by the Ministry of Health and Family Welfare in the year 1986. Thus, a National Aids Control Organisation was formed in the year 1987. The NACO is given the responsibility of forming policies and control programmes to curb down the epidemic. They work at the apex level and is chaired by the Union Health Secretary.

### **THE NATIONAL AIDS PREVENTION AND CONTROL POLICY, 2002**

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<sup>3</sup>Chandrika Bhattacharya, Human Rights Perspective and Right to Employment of persons living with HIV AIDS, (16 Oct 2021, 01:12 PM), [https://www.legalserviceindia.com/articles/hu\\_aids.html](https://www.legalserviceindia.com/articles/hu_aids.html)

<sup>4</sup>Ibid



The reason behind The National Aids Prevention and Control Policy, 2002 is that the government is of the view that the HIV and AIDS epidemic can be curbed down by effective response and development which needs to be enforced in a multi- sectorial collaboration. According to this policy, human rights protection cannot be viewed as mere strategy, but they are to be viewed in the light of development and as a goal to be accomplished.<sup>5</sup> The policy had framed certain objectives such as bringing the transmission rate of epidemic to zero by the end of year 2007, to bring about horizontal integration of the HIV and AIDS response and collaborate with health sectors at all levels.

So, in the above mentioned instruments it can be seen that they have addressed the issues of HIV and AIDS in a larger spectrum. They have not specifically mentioned certain groups affected by the HIV and AIDS epidemic in all ways. Thus, no specific legislation exists in India to address the issues and rights of the HIV and AIDS workers even though they are the driving force of our economy and development.

### **LANDMARK JUDGEMENTS ON RIGHT TO EMPLOYMENT FOR PERSON INFECTED BY HIV AND AIDS**

#### **1. MX .V. ZY<sup>6</sup>**

In this case, the petitioner was working in the public sector company and was removed from his job after he was tested positive for HIV and AIDS. He filed a PIL in the High Court stating that he cannot be removed from a job after testing positive for HIV as long as he is does not poses threat and risk for others.

The High Court stated that, there is no evidence which shows that HIV transmission takes place by person to person contact in any workplace and hence no person can be removed on these grounds as it violates Article 14 and 16 of the Indian Constitution. The Court further stated that, there is stigma attached to HIV and AIDS which makes it difficult for the persons suffering with it to approach the courts and seek justice. Hence, in such cases the petitioner can present his case under a pseudonym.

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<sup>5</sup>Chandrika Bhattacharya, Human Rights Perspective and Right to Employment of persons living with HIV AIDS, (16 Oct 2021, 01:12 PM), [https://www.legalserviceindia.com/articles/hu\\_aids.html](https://www.legalserviceindia.com/articles/hu_aids.html)

<sup>6</sup>AIR 1998 SC 4641

**2. Chhotulal Shambhai Salve .V. State of Gujarat<sup>7</sup>**

In this case, the petitioner was selected for the post of unarmed police constable and his name appeared in the state list as well. During the medical fitness test it was held that the petitioner is not medically fit as he has been tested positive for HIV. Hence, the petitioner's name was cancelled from the state list and he was not appointed. The petitioner filed PIL stating that the actions of the respondents are violative of articles 14 and 16 of the Indian Constitution and he is perfectly fit to carry his duties as unarmed police constable though being tested positive for HIV.

The Court stated that and mentioned the case of MX .V. ZY and stated that the actions of respondents violates articles 14 and 16 of the Indian Constitution and no person can be denied a government job on the grounds of being tested positive for HIV.

**3. G. V. New India Assurance Co. Ltd<sup>8</sup>**

In this case the petition was filed by a widow, whose husband was an employee in the respondent's company. She has applied to the company for job at her husband's place on compassionate grounds but was rejected as she was tested HIV positive and hence medically unfit.

The Court held that, the actions of the respondent are not justified and are illegal. They cannot deny employment to a person on the grounds of getting tested positive for HIV. This is highly discriminatory and violates article 14, 16 and 21 of the Indian Constitution.

Therefore, from the above mentioned case laws it can be assumed that the courts takes the help of the constitution of India while delivering justice to the people who face discrimination at workplace because of HIV and AIDS. But if there had been a concrete legislation for the HIV and AIDS workers, the situation might have been different today and probably the judgments would have been more apt rather being rhetorical.

**VIEWS OF INTERNATIONAL LABOUR ORGANISATION (ILO) ON THE ISSUES FACED BY THE HIV AND AIDS WORKERS**

This section comprises of the views of International Labour Organisation (ILO) on the issues faced by the HIV and AIDS workers. This section specifically states the key principles of

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<sup>7</sup>AIR 1994

<sup>8</sup>AIR 1989

ILO while dealing with the issues of HIV and AIDS workers, responsibilities stated by ILO to deal with the issues of HIV and AIDS workers. This section is based on the research question; **How the International Labour Organization (ILO) has viewed the issues faced by the HIV and AIDS workers?**

### **KEY PRINCIPLES FOLLOWED BY INTERNATIONAL LABOUR ORGANISATION (ILO) WHILE DEALING WITH ISSUE FACED BY HIV AND AIDS WORKERS**

There are certain principles stated by ILO to deal with the issues faced by HIV and AIDS workers. They have provided guidelines to their signatories to follow the principles and make laws accordingly to curb down the pace of epidemic. While framing these principles, ILO has made a point that such responsibilities and principles are scrutinized at the micro level and then it proceeds upto the apex level.

The key principles followed by ILO while dealing with issues faced by HIV and AIDS workers are as follows;

- 1. HIV and AIDS must be recognized as a workplace issue rather than a stigmatized disease-** HIV and AIDS cannot be treated just a stigmatized disease, but rather it should be treated as a workplace issue. It should be viewed in the light of any other serious disease. This disease not only affects the physical and mental capacity of an individual but it also affects the workforce at the workplace as they also part of the community.<sup>9</sup>
- 2. There should be discrimination towards the HIV and AIDS workers-**There should be no discrimination towards HIV and AIDS workers at the workplace. The spirit of decent work and respect for human rights must be maintained while dealing with HIV and AIDS workers. There should be no discrimination just on the basis of the perceived HIV status against the workman.<sup>10</sup>
- 3. Gender Equality must be followed to frame laws for the HIV and AIDS workers-** The dimensions of gender must be recognized while framing laws for the HIV and AIDS workers. Women are more vulnerable to get by the HIV/AIDS epidemic than

<sup>9</sup>Alice Ouedragoe, HIV and AIDS and Labour Rights, (17 Oct, 2021 11:22A.M), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/ilo\\_aids/documents/publication/wcms\\_228498.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/ilo_aids/documents/publication/wcms_228498.pdf)

<sup>10</sup>Alice Ouedragoe, Access to and Effects of Social Protection on Workers living with HIV and their Households (17 Oct, 2021, 11:30AM), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/ilo\\_aids/documents/publication/wcms\\_248447.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/ilo_aids/documents/publication/wcms_248447.pdf)

men because of the biological, socio-cultural and economic reasons. The gender discrimination in the society and the position of women are inversely proportional to each other. As the gender discrimination in the society increases, the position of the women deepens down. Hence, more empowering women is necessary for the successful prevention of the spread of HIV infection.

- 4. Healthy work environment must be promoted at the workplace-**Healthy work environment needs to be promoted at the workplace for all the concerned parties. This was mentioned in the provisions of the Occupational Safety and Health Convention, 1981.<sup>11</sup> There is a requirement of healthy workplace because it promotes optimal physical and mental health relations at workplace.
- 5. Social dialogue and confidentiality needs to be maintained at the workplace-**There is a need to maintain social dialogue and confidentiality at workplace. For the successful implementation of HIV and AIDS policy and programmes there is requirement of cooperation and trust between employers and employees. When it comes to the concept of confidentiality at workplace it is not necessary to ask the job applicants or employees to disclose HIV-related personal information. This is mentioned in the ILO's code of practice on the protection of workers' personal data, 1997.<sup>12</sup>
- 6. Prevention and Care and Support must be followed at the workplace-**The notion about HIV and AIDS is that it is a non-curable disease. But the infection can be prevented. It can be prevented by applying various strategies targeting the national conditions of the country. Care and Support from a unique combination for the prevention of HIV infection. Workers infected with HIV and AIDS are entitled to health services. They should not be discrimination against on any possible grounds.

### **RESPONSIBILITIES STATED BY INTERNATIONAL LABOUR ORGANIZATION (ILO) TO DEAL WITH ISSUES FACED BY HIV AND AIDS WORKERS**

#### **RESPONSIBILITIES OF GOVERNMENT**

<sup>11</sup> Alice Ouedrago, HIV and AIDS and Labour Rights, (17 Oct, 2021, 12:22 P.M), [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/ilo\\_aids/documents/publication/wcms\\_228498.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/ilo_aids/documents/publication/wcms_228498.pdf)

<sup>12</sup> Ibid

(a) **Coordination-** The governments should try to coordinate all the national levels that will provide an enabling environment for world of work interventions and should capitalize in the presence all public and private enterprises.

(b) **Prevention and health promotion-** The government authorities must work in partnership with other entities to promote awareness and prevention of HIV and AIDS in the workplace.

(c) **Clinical guidelines-**The government must offer guidelines to the employers to deal with the epidemic of HIV and AIDS in the workplace. These guidelines must be made in response to the existing services.

(d) **Social protection-** The government must ensure benefits under national laws for the HIV and AIDS workers at the workplace. While doing so the government must take into consideration the progressive nature of the disease.

(e) **Legislation-**In order to eliminate workplace discrimination with regards to HIV the government must consult with the all the authorities and experts in the field of HIV and AIDS and then must present with a regulatory framework to frame laws for the HIV and AIDS at workplace.

(f) **Enforcement-**The competent authorities must provide with technical information and advice to employers and employees for the most effective way of compel with legislation and regulations applicable to HIV and AIDS and its issues at the workplace

(g) **Workers in informal sector-** Government must extend and adapt their HIV/AIDS prevention programmes and policies to include the workers of informal sector within their ambit. This can be done by providing them income generation resources and social protection. The government can also take the help of local communities to frame policies for the informal sector.<sup>13</sup>

### **RESPONSIBILITIES OF EMPLOYERS**

(a) **Workplace policy-** The employers must consult with employees to develop and implement policies for their workplace so as to prevent the spread of the infection of HIV and AIDS.

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<sup>13</sup>Kamran Fanniezadh, Multiple Discrimination in the world of Work (17 Oct 2021, 02:30 PM) [http://ilo.ch/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_170015.pdf](http://ilo.ch/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_170015.pdf)

(b) **National, sectoral and workplace/enterprise agreements-** The employers must adhere to national laws and practice the negotiating terms and conditions regarding employment about HIV and AIDS issues with employees.

(c) **Education and training-** The employers and their organizations must consult with all the workers and should initiate and support programmes at their workplaces to inform, educate and train workers about HIV and AIDS prevention, care and support .

(d) **Economic impact-** The employers, employees must work together to develop appropriate strategies to assess and appropriately respond to the economic impact of HIV and AIDS on their particular workplace and sector. <sup>14</sup>

(e) **Confidentiality-** The HIV and AIDS-related information of employees must be kept strictly confidential. This is mentioned in the Occupational Health Services Recommendation, 1985. <sup>15</sup>. Access to such sensitive information should be strictly limited to medical officers of the organization and such information can only be disclosed if it is legally required or with the consent of the person concerned.

(f) **Workplaces where workers come into regular contact with human blood and body fluids-** In such workplaces, the employers must take additional measures to ensure that all employees are trained in universal precautions and they are well versed with the knowledge and procedures to be followed in such a workplace.

These are the views of ILO on the issues faced by the HIV and AIDS workers. They have given the principles which needs to follow by the signatories while framing laws for the HIV and AIDS workers at the workplace. They have also provided with the responsibilities for the government and the employers to curb down the rate of the epidemic.

### **CHANGES TO BE INTRODUCED IN THE INTERNATIONAL AND NATIONAL CODES TO IMPROVE THE CONDITIONS OF THE HIV AND AIDS WORKERS**

This section comprises of the changes which needs to be introduced in the International and National Codes to improve the conditions of the HIV and AIDS workers. This section is based on the research question; **What changes can be introduced in the International and National Codes so to improve the conditions of HIV and AIDS workers?**

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<sup>14</sup>Ibid

<sup>15</sup>AliceOuedragoe,HIVandAIDSandLabourRights,(17Oct,2021,02:40P.M),[https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/ilo\\_aids/documents/publication/wcms\\_228498.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/ilo_aids/documents/publication/wcms_228498.pdf)

### **CHANGES TO BE INTRODUCED IN THE INTERNATIONAL CODE TO IMPROVE THE CONDITIONS OF HIV AND AIDS WORKERS**

The changes to be introduced in the International Code to improve the conditions of HIV and AIDS workers are as follows;

1. The recommendations and the guidelines provided by International Labour Organisation (ILO) for its signatories must be made mandatory for the states to be followed as it puts a sense of responsibility on their shoulders to look at the effects of the epidemic on the workplace from a different perspective.
2. The International Code must not only put an obligation on the states to make laws with regards to HIV and AIDS at workplace but rather it should aim at eliminating the stigma attached to the HIV and AIDS workers.
3. The International Code must prepare a different sectors according to the cases in different countries and try to frame laws accordingly because ILO has scrutinized this matter at the micro level. Therefore, it becomes easy for them to curb down the epidemic rate from grassroots levels to the apex levels.

### **CHANGES TO BE INTRODUCED IN THE NATIONAL CODE TO IMPROVE THE CONDITIONS OF HIV AND WORKERS**

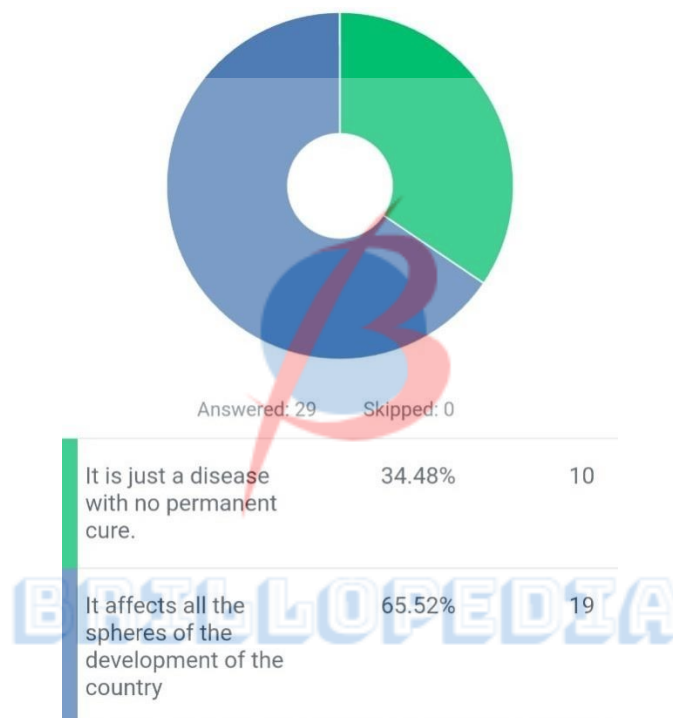
The changes to be introduced in the National Code to improve the conditions of HIV and AIDS workers are as follows;

1. The Ministry OF Health and Family Welfare proposed a legislation, HIV and AIDS (Prevention and Control) Act, 2017. It is a general legislation which deals with the issue of epidemic in general manner. This legislations needs to be amended so as to address this issue with particular sections of the society.
2. There should be a separate legislation for the workplace which focuses on the HIV and AIDS workers, their discrimination problems, and their dismissal orders. Such legislation must be especially made for the private sectors as it becomes difficult to handle the problems of dismissal and confidentiality in such sectors.

### **ANALYSIS OF THE SURVEY**

The survey is based on the rights of HIV and AIDS workers from the lens of ILO. The sample size of the survey is 29. The survey is undertaken by law students and legal professionals.

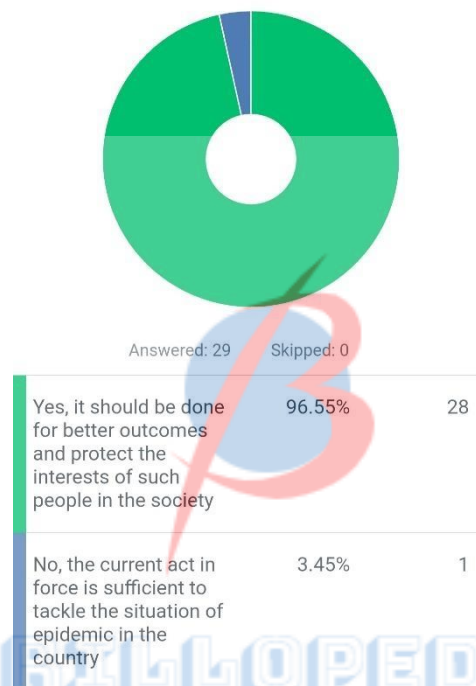
Q1)The epidemic of HIV and AIDS is the biggest challenge faced by India. Do you think it affects all the spheres of the development of the country or it is just a disease with no permanent cure?



The epidemic of the HIV and AIDS is the biggest challenge faced by India. In the survey conducted 65.62% of the pupils believe that HIV and AIDS affects all the spheres of the development of the country. It is not just a disease with no permanent cure. There is no proper legislation in India with regards to HIV and AIDS for particular sections of the society. There exists a generalized act, HIV and AIDS (Prevention and Control) Act, 2017 which lays down general laws about the epidemic. But still there is a need of legislation for particular sections of the society. Especially, there is a requirement of proper laws for the workers suffering with HIV and AIDS at workplace. Such workers face discrimination at workplace and thus this effects their mental and physical capacity. The workforce eventually gets hampered which in the long run affects the development of the country as workforce is the guiding factor for any developing country.



Q2)The HIV and AIDS (Prevention and Control) Act, 2017 was enforced by the Ministry of Health and Family Welfare in the year 2017 to safeguard the interests of the persons suffering with HIV and AIDS. It is a general legislation with no specific provision on rights of HIV and AIDS workers. Do you think specific provisions must be mentioned under the act to deal with the problems of different groups of people infected by HIV and AIDS?



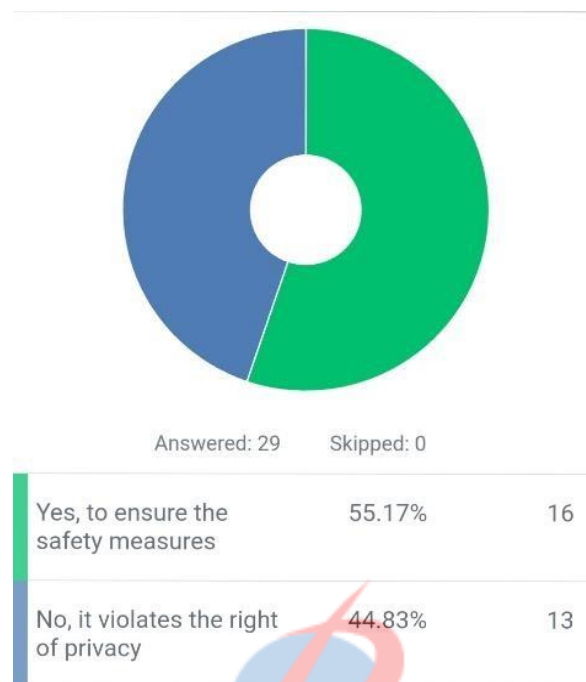
The HIV and AIDS (Prevention and Control) Act, 2017 was enforced by the Ministry of Health and Family Welfare in the year 2017. The aim of the legislation is to safeguard the interests of the persons suffering with HIV and AIDS. This act does not consists of any provisions on the rights of the HIV and AIDS workers. In this survey, 96.55% of the pupils believe that specific provisions must be mentioned in the Act to deal with the problems of different groups of people infected by HIV and AIDS. This is because it will lead to better outcomes and protect the interests of the people in the society.

Q3) The International Labour Organization has addressed the issues of rights of labour force infected by HIV and AIDS at micro level. It has provided with certain recommendations and guidelines to its signatories to address the issues of the HIV and AIDS workers. Do you think ILO should make it compulsory for its signatories to follow the measures provided by it?



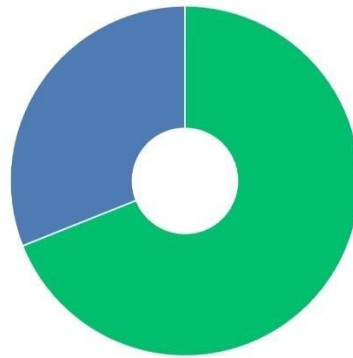
The International Labour Organisation (ILO) has addressed the issues and rights of the HIV and AIDS workers at the micro level. It has provided with certain recommendations and guidelines to its signatories to address the issues of the HIV and AIDS workers. It has also mentioned certain key principles for the signatories to frame laws for their countries, they have enshrined responsibilities to both the government and the employers to face the issues of HIV and AIDS at the workplace. In this survey, 72.41% of the pupils believe that ILO should make it compulsory for all the signatories to follow the measures provided by it as it will put a sense of responsibility on the shoulders of the states to look at the issue from a different perspective.

Q4) Does an employer have a right to ask for the HIV testing before recruiting the prospective employee?



In this survey, 55.17% of the pupils believe that employer have a right to ask for the HIV testing before recruiting the prospective employee so as to ensure the safety measures at the workplace. In the private sector, there exists no legal restriction preventing employers from putting prospective as well as existing employees through HIV/AIDS screening as part of the assessment of fitness to work. In general then, those who have developed HIV will be subject to the provisions relating to dismissal on grounds of ill health. The reasons for the dismissal can be the length and regularity of absence from work, the need to replace the employee because of the position held by them within the organisation and upto the extent to which the employee's absence creates a negative impact upon the business of the employer/organisation. But according to the landmark judgments given by the Apex Court, such a testing can be conducted as long as it does not discriminates with workers and such testing should not be a ground of dismissal from work as it violates Article 14 and 16 of Indian Constitution.

Q5) Does the employer have the right to release the information of the employee infected with HIV and AIDS?



Answered: 29 Skipped: 0

No, it violates the right to privacy	68.97%	20
Yes, to ensure the safety of other employees this is a correct step.	31.03%	9

In this survey, 68.97% of the pupils believe that employer do not have a right to release the information of the employee infected with HIV and AIDS as it violates the right to privacy which is covered within the ambit of Article 21 of Indian Constitution. The issue of privacy is correlated to the confidentiality and it depends on which information needs to be communicated at the larger extent to whom it needs to be communicated.

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### **SUGGESTIONS AND CONCLUSION**

The suggestions which can be put forward to deal with the issues and rights of the HIV and AIDS workers are as follows;

1. There is a need to put forward an anti-discrimination legislation which will be equally applicable to both public and private sectors in the country. The main aim of the act must be to prevent discrimination and illegal dismissal at the workplace. This legislation must also consists of ban on the pre-employment HIV testing etc.
2. There should be an increase in the private sector participation in the response to HIV and AIDS issue in the workplace. The private sectors must try to build capacity of the workforce both effectively and ethically.
3. The Government must introduce action positive plan in the form of insurances and health care benefits and health bonds to cover the HIV positive employees.

People infected by HIV and AIDS have to undergo a lot of discrimination in all the sectors of life. The disease of HIV and AIDS does not affect only the physical health but rather it affects the mental health as well. There is a stigma attached to this epidemic which makes it difficult for the individuals who have been discriminated on the grounds of HIV to seek justice. There is a vital need to bring HIV and AIDS in accordance with international human rights law. There is a need to control the HIV and AIDS epidemic and to mitigate its impact, there is a requirement for legal actions.

There are no laws which combat HIV and AIDS related discrimination. It is the need of the hour to create proper legislation to understand the problems and understand the perspectives of different sections of the society who are infected with HIV and AIDS. A more promising environment needs to be made to increase the visibility of the individuals suffering with HIV and AIDS as a 'normal' part of our society.

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