Disability laws in India and Persons with HIV/AIDS:A Discourse [1]

Abstract

The growing problem of the sub-continent and the world at large is HIV/AIDs. India is the second most populous country therefore the HIV /AIDS in the region have far-reaching global ramifications. The protection of civil liberties and elimination of discrimination is critical to any sustainable public health strategy. This article looks specifically at India's Persons with Disabilities Act (PWDA) as a potential tool in addressing HIV/AIDS discrimination. Disability law, as a mechanism for protecting persons living with HIV/AIDS, remains relatively unexplored and underutilized. Currently India stands at an important crossroads in regards to both its disability laws and its fight against HIV/AIDS. India's ratification of the UN Convention of Rights of Persons with Disabilities (UNCRPD) obligates India to make a complete overhaul of its disability laws and adopt a rights-based approach. This paper has given the example of American laws and its comparison with India's Persons with Disabilities Act (PWDA). While the rights guaranteed under the PWDA are limited and narrowly construed, the ADA is broadly construed and was amended in January 2009 to statutorily protect the rights of people affected with HIV/AIDS. Ultimately, by analyzing both systems, this paper hopes to give guidance to India in reforming PWDA to not only meet its international obligation but also to serve as an effective mechanism against the epidemic.

Key words: disability laws, HIV/AIDS, epidemic, protection, safeguards

Introduction:

HIV/AIDS has plagued our human race. Since early 1980's 20 million people have died from HIV/AIDs related illness.[2]UNAIDS and WHO has estimated that approximately 33.2 million people live with HIV worldwide.[3]The disease has adversely affected the education, health systems, economic set ups, family structures and overall social setups across the nations. It has orphaned the children. The countries like Africa are worst effected while the countries like China and India has also witnessed the far reaching effects.

India is vulnerable to uncontrollable and devastating epidemic.Infact India has complicated social norms and conservative attitudes which have increased stigmatization. It has made the fight against HIV/AIDs much more difficult. Moreover the people with HIV/AIDs are denied medical treatment, education and employment which further exaggerate their plight.

In India an important tool to address HIV/AIDS is Persons with Disabilities Act, 1995.India has ratified UN convention on Rights of Persons with Disability (UNCRPD) in 2008.UNCRPD mandates signatories to adopt an expansive right based approach to disability. It is important to note that the countries like United Kingdom and United States of America have explicit statutory civil right protection for HIV affected individuals in their disability laws.Therefore, India need to restructure its Persons with Disability Act to conform to

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[2] Avert, World Wide HIV/AIDS Statistics Including Deaths, http://www.avert.org/worldstats.htm

[3] Joint U.N. Programme on HIV/AIDS [UNAIDS] & World Health Organization [WHO], *AIDS Epidemic Update*, 1, U.N. Doc. UNAIDS/07.27E/JC1322E (Dec. 2007), *available at* http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf.

international agreement they have signed. India needs to expand its protection to not only to meet its international obligations but also to combat HIV/AIDS discrimination.

It must be remembered that the American society has approached the disease with similar amount of fear and prejudice as we did. In America the first case of HIV/AIDS was associated with homosexuals and drug users.Consequently, the congress was encouraged to pass American Disability Act (ADA), 1990.The central aim was to protect the qualified individuals from discrimination in employment and in enjoyment of public goods. No doubt the parties had to hotly contest the status of HIV/AIDS because the original language of the statute did not explicitly guarantees such rights and protection to HIV/AIDs individuals. Thereafter the congress had to amend ADA in 2008 to unambiguously include HIV/AIDS in disability.

National Scenario:

In India the first case was diagnosed in 1986 and the number of HIV/AIDS cases has increased alarmingly since then. According to an estimate by NACO (National HIV/AIDS Control Organization of India) around 5 million people are living with AIDS in India[4].It has affected the poor and marginalized sections of the society disproportionately. The general believe is that those engage in risky and morally questionable behavior are affected. The startling fact is that married monogamous women are at bigger risk of contracting virus. The date of sexually transmitted disease (STD) clinic in Mumbai has shown that seventy percent women infected by this virus are housewives. They contracted the virus through their husbands.[5]There is lack of awareness in the general population regarding this disease. Many persons label it as 'other's disease' and show resistance to attain any knowledge about this disease. This resistance is of course is similar to the one faced by American Society in 1980's.In America this disease was labeled as 'gays disease' because the first case was diagnosed in gay population.

There are many misconceptions of HIV/AIDS in our societies. In India as well as in American society there is systematic discrimination and stigmatization against affected populations. It not only affects the HIV positive individuals but also HIV negative individuals who are closely related to the persons with HIV/AIDs, such as children of HIV positive parents. The kinds of discrimination faced by the affected individuals are as follows:

1. Discrimination in Education
2. Discrimination in employment
3. Discrimination in access to health

HIV/AIDS affected children face barriers in obtaining education. These children or children closely associated with someone infected are separated from other students are denied admission to school. In case such children lose their parents, are unable to afford school fees and other expenses. Hence they withdraw from school. Apart from this they are maltreated, humiliated and actively discriminated by their teachers and peers. Similarly despite protection given in Article 14 and 16 of the constitution of India such as equality before laws,equal protection of laws etc.person with HIV/AIDS face discrimination at the workplace. They are often ostracized for the condition. In landmark judgment of Bombay High Court it was viewed that an HIV positive person could not be denied employment if the person is otherwise fit for

[4] MARK LOUDON ET AL., UNICEF INDIA, BARRIERS TO SERVICES FOR CHILDREN WITH HIV POSITIVE PARENTS 1 (2007), http://www.unicef.org/india/The_Barrier_Study.pdf.

[5] N Chatterjee, *They Have Not Heard of AIDS: HIV/AIDS Awareness Among Married Women in Bombay*, 113 PUB. HEALTH 137, 137 (1999).

work.[6] The court opined that if a person were fired from his employment solely because of his or her HIV positive condition, it would be condemning a person to "virtual economic death."[7]Moreover, in 2004, the Bombay High Court directed New India Assurance Company to employ an HIV positive individual after she was denied employment because she tested positive on an employer-required HIV test.[8] The court ruled that denial of employment on the grounds of HIV status was discriminatory and a violation of human rights.[9]Certainly these court cases have made a positive change in addressing employment discrimination against HIV positive individuals, but HIV/AIDS sufferers, still face discrimination in the workplace and are forced to quit because of mistreatment by employers and co-workers. Therefore, in order to quell the epidemic, India must require greater employment protections for HIV/AIDS affected individuals.

Many HIV positive individuals are discriminated in the area of health care also. They are unable to receive regular access to health care. UNAIDS India conducted a study about HIV/AIDS discrimination and found that nine out of ten medical service providers confirmed encountering cases of children of HIV-positive parents being denied of care by physicians and other health care workers in Maharashtra, a high prevalence state.[10] For instance the physicians or nursing staff may overtly refuse to render care to HIV/AIDS affected individuals by turning them away because of their status as HIV patient.[11] Additionally, physicians and nurses may passively mistreat HIV positive individuals by making them wait for treatment, charging them more than other patients, placing them in separate waiting rooms, or giving them substandard care.[12] In labor and delivery procedures, some report that doctors have refused to perform Caesarean sections or help in the procedure when the physician knows that the mother is HIV positive. Similarly, nursing staff have the fear of infection and therefore sometimes refuse to give HIV patients necessary injections, dress wounds, or dispose of used bandages. Additionally, many HIV positive individuals receiving treatment in hospitals are ridiculed because of their status attended to less frequently by the nurses and physicians and are forced to stay in filthy rooms.[13]

Thus in India the discrimination in education, employment and health care is rampant. Indian government has made minimal attempts to address discrimination against persons with HIV/AIDS. However, in 2003, the National AIDS Control Organization (NACO) directed the Lawyers Collective HIV Unit (LCHAU) to draft an HIV/AIDS bill to address discrimination.[14] In 2006, NACO presented this bill to the Indian Parliament. Although NACO envisioned this bill to be an important component to India's response to the HIV/AIDS epidemic, the Indian Parliament has demonstrated much resistance in passing the bill.[15] Parliament has delayed review of this bill and recommended changes that would greatly curtail protection.

Despite the momentous steps that this bill proposes to take to address discrimination against persons living with HIV/AIDS, the

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[6] MX vs. ZY, AIR 1997 (Bom.) 406.
[7] Ibid
[8] G v. New India Assurance Co. Ltd., Bombay H.C. (2004).
[9] Ibid
[10] Supra note 4
[11] Joint U.N. Programme on HIV/AIDS [UNAIDS] & World Health Organization [WHO], AIDS Epidemic Update, 1, U.N. Doc. UNAIDS/07.27E/JC1322E (Dec. 2007), available at http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf.
[12] Ibid at 27-33.
[13] Ibid
[14] Lawyers Collective, Draft Law on HIV, http://www.lawyerscollective.org/hivaids/draft-law
[15] Lawyers Collective, Update on the HIV/AIDS Bill,http://www.lawyerscollective.org/hiv-aids/draft-law/update

government insists on narrowing its protections. For example, the Ministry of Health has recommended deleting provisions regarding strategies for risk reduction, expeditious grievance procedures, access to treatment and access to information, education, and communication.[16] Additionally, provisions pertaining to discrimination, informed consent, and confidentiality have also been greatly curtailed.[17]Instead of protecting the rights of HIV affected persons, the Ministry of Health has attempted to impose draconian measures like mandatory testing and the tracing and isolation of persons with HIV/AIDS.[18] These measures have been strongly opposed by NACO.

In such state of affairs whether the HIV/AIDS bill can effectively address discrimination against persons living with the disease is questionable. As the Ministry of Health has recommended changes to the bill, it is very unlikely that the bill will pass in its original form. If the bill passes with the recommended changes, it will of very little help in fighting the epidemic. In fact, if the draconian provisions requiring mandatory testing and disclosure are incorporated into this bill, the legislation may in fact increase stigmatization and discourage effective HIV/AIDS interventions.

India, therefore, presently is without an adequate solution for addressing the discrimination that persons living with HIV/AIDS face. Without an effective means to address discrimination, India will not be able to successfully combat the epidemic. With the HIV/AIDS bill severely curtailed, India must consider other ways to address discrimination against persons living with the disease. In this regard, disability law may be an effective tool, as India has already shown a commitment to protect the rights of persons with disabilities.

The Constitution of India premised on the principle of social justice and human rights. The Preamble, the Directive Principles of State Policy and the Fundamental Rights enshrined in the Constitution stand testimony to the commitment of the State to its people. But it has very few disability protections. In fact, one of the only references to disability protection in the Constitution is Article 41, which is a non-enforceable provision directing the states within their economic and development capabilities to "make effective provisions for securing the right to work, to education and to public assistance in cases of old age, sickness and disablement."[19] In 1986, the Rehabilitation Council of India was set up by the Government of India, as a society to regulate and standardize training policies and programmes in the field of rehabilitation of persons with disabilities. To comply with its international obligation, in 1995 the Indian Parliament passed the Persons with Disabilities Act (PWDA),which recognizes disability as a civil rights issue and guarantees access to certain public goods.[20] The Act was a landmark in the history of disability sector because for the first time it stated that people with disabilities had the right to equal opportunities and full participation and that these rights would be protected by the law. The Act elaborates, to some extent, duties of the government at various levels and the other establishments under their control. It also provides useful guidance regarding the type and nature of measure that would equalize opportunities for the enjoyment of basic rights and freedoms.

However, in 1992, India signed the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region, signaling its active commitment to

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16 *Restore Original HIV/AIDS Bill of 2006: NACO,* DECCAN HERALD, Dec. 9, 2008,available at http://archive.deccanherald.com/Content/Dec92008/state20081209105607.asp

17 Ibid

18 Ibid

19 Indian Constitution, Article 41

20 Ibid

protection of people with disabilities.[21]While in 2007, India has ratified the UN Convention on the Rights of Persons with Disabilities (UNCPRD). This convention obligates parties to the agreement "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."[22]The Convention mandates that the principles and rights explicated in the Convention be reflected in each country's relevant laws.[23]Therefore, in order to comply with its international obligations, India must ensure that its disability laws reflect the protections and purposes espoused in the UN Convention on the Rights of Persons with Disabilities.

Section 2(i) of the Persons with Disabilities Act defines disability as

- blindness,
- low vision,
- hearing impairment,
- locomotor disability,
- mental retardation,
- mental illness.

Under the statute, in order to be a person with a disability, the individual must be "suffering from not less than forty percent of any disability as certified by a medical authority."The definition of disability adopted by the Persons with Disabilities Act is problematic to the HIV epidemic. The enumerated list forecloses the possibility of including HIV/AIDS as a disability. Moreover, the statute endorses a mathematical approach by using percentages to define disability. An Indian court has interpreted the forty percent provision to mean that disability is to be determined through a quantitative comparison to an individual of "ordinary faculties".[24] Chapter four of the Act deals with the responsibility of identifying the causes of disability and it has been placed on the government and the government will screen all the children at least once in a year for the purpose of identifying 'at-risk' cases. It emphasized on creation of awareness among masses about causes of disabilities, undertaking research for the prevention and early detection of disability. Thus the focus is on the prevention and early detection of disability. The duties of the government in relation to the rights of persons with disabilities are not only limited to under education,[25] employment[26] affirmative action[27], non-discrimination,[28] research and manpower development'[29], recognition of Institutions for persons with disabilities[30]' institutions for persons with severe disabilities[31] but also makes provision for what is called 'affirmative action' in which preferential actions are designed to improve the status of people with disabilities. The appropriate government is required under the Act

21 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, No. 1 Acts of Parliament, 1996

22 United Nations Convention on the Rights of Persons with Disabilities, Mar. 30,2007, 46 I.L.M. 443 [hereinafter UNCRPD], available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en;

23 Ibid

24 Persons with Disabilities Act, Ch.1, 2(t).

25 Chapter 5,PWD Act

26 Chapter 6,PWD Act

27 Chapter 7,PWD Act

28 Chapter 8,PWD Act

29 Chapter 9,PWD Act

30 Chapter 10,PWD Act

31 Chapter 11,PWD Act

to provide free education to disabled children by setting up special schools with vocational training facilities.

Disability under UN Convention:

The restrictive statutory language of the Persons with Disabilities Act is problematic for India. The ratification of the UN Convention on the Rights of Persons with Disabilities requires countries to take a rights based approach to disability and view disability broadly. While India defines disability via an enumerated list, Article 1 of the UN Convention on the Rights of Persons with Disabilities defines disability it as "Persons with disabilities include those who have long-term physical, mental, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". The Convention requires countries to recognize disabled persons' right to marriage and family,[32] ensure access to primary, secondary, "tertiary education, vocational training, adult education and lifelong learning,"[33] provide equal rights to employment,[34]and protect a right to the "highest attainable standard of health without discrimination on the basis of disability."[35]

It is significant to note that the rights-based approach to disability that the UN endorses is contrary to the approach furthered in the Persons with Disabilities Act. The Persons with Disabilities Act views disability through a scientific lens and justifies its protections based on the idea that disability is an individual defect in need of social compensation. In contrast, the Convention recognizes that the social limitations of disabled persons are not the result of their impairment but the result of the discrimination that people with disability face. Rather than viewing persons with disability as incapable or handicapped, the UN recognizes that disabled persons can be fully functioning members of society if their rights are properly protected. Because the UN Convention on the Rights of Persons with Disabilities mandates that India reform its disability law to be more expansive, India should consider reforming the Persons with Disabilities Act to not only remove the social compensation view of disability that resonates throughout the statute but also to include protections for persons living with HIV/AIDS. The recognition of civil rights and protection against discrimination is paramount to creating sustainable public health interventions. If reformed correctly, India's disability law may become an effective weapon in the fight against the HIV/AIDS epidemic.

Disability and American approach:

Americans with Disability Act, 1990(ADA) has endorsed right based approach. It is quite similar to UN Convention .The object is to prevent unwarranted discrimination. It is unlike Indian law where emphasis is on compensating physical limitation. Hence we can use ADA as a useful framework to restructure our Indian laws. Here we need to understand important distinction between Indian laws and the American laws. Indian legislature has viewed the disability laws from the angle of social compensation because the basic idea is that the persons with disabilities are less competent and hence need social protection. On the other hand ADA focuses on the issue that disability as such does not stop an individual to fully participate in all aspects of society but they are excluded from the mainstream because of prejudice, negative attitudes or failure to remove societal and institutional barriers.

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[32] UNCRPD,Article 23
[33] UNCRPD,Article 24
[34] UNCRPD,Article 27
[35] UNCRPD,Article 25

On the other hand Congress passed the Americans with Disabilities Act "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and provide broad coverage.[36]Additionally, in contrast to the Indian Parliament, some members of Congress recognized the importance of guaranteeing the rights of persons living with HIV/AIDS when discussing passage of the ADA[37] Further despite the commitment expressed by some members of Congress, the courts in United States have disagreed on whether HIV is a disability under the statute. The controversy of HIV as a disability under the ADA began in 1998 when the Supreme Court held that HIV was a physical impairment but refused to determine whether HIV/AIDS was a per se disability.[38] After this Supreme Court case, a number of lower courts refused to consider HIV as a per se disability and looked at a number of factors to determine whether persons living with the disease were guaranteed protections under the ADA.[39]

In 2008, Congress amended the ADA to clarify the definition of disability and thus overturn Supreme Court decisions that narrowed the scope of protections under the ADA.[40]More specifically, the amendment rejected the Supreme Court's mitigating measures analysis that required disability to be considered in light of whether mitigating measures were available. The definition of disability has been broadened and it has clearly classified HIV/AIDS as a disability under the statute. It has also clarified that the individual's impairment needs to substantially limit only one life activity to be considered a disability.[41]

Thus the history of the ADA also shows us that Congress had a long-standing commitment to provide protection to persons living with HIV/AIDS. But India, codifying rights protection for persons living with HIV/AIDS will be more difficult because parliament has not demonstrated an equivalent commitment to protection of these individuals. In addition to this India must also recognize the necessity of explicit language in guaranteeing the rights of persons with HIV/AIDS to prevent courts from curtailing protection.

ADA vs PWDA

Some of the protections under the Persons with Disabilities Act are similar to the protections given under the ADA. For example, the ADA provides civil rights protections in employment, education, and freedom from discrimination. The ADA, however, extends much further in its protections than India's Persons with Disabilities Act. Unlike the Persons with Disabilities Act, the rights guaranteed under the ADA extend to private schools and health care entities. Furthermore, though the Persons with Disabilities Act defines disability by an enumerated list, the ADA defines disability more broadly. The ADA defines disability as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual."[42] Because the UN Convention on the Rights of Persons with Disabilities mandates signatories to adopt a broad definition of disability, India should consider adopting a similar definition.

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36 42 U.S.C. § 12101(b)(1).

37 154 CONG. REC. H8279, 8297 (daily ed. Sept. 17, 2008) (statement of Rep. Baldwin).

38 Bragdon v. Abbott, 524 U.S. 624, 647, 655 (1998) (holding that HIV was a disability in this case because "it is an impairment which substantially limits the major life activity of reproduction").

39 EEOC v. Lee's Log Cabin Inc., 546 F.3d 438, 445-46 (7th Cir. 2008) (holding that HIV infection is not a per se disability and therefore plaintiff must show how the infection substantially limited her life)

40 ADA Amendments Act § 2 (Congress noted that the ADA amendment was to overturn Sutton v. United Airlines, 527 U.S. 471 (1999) and Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184 (2002)).

41 ADA Amendments Act, 4.

42 Americans with Disabilities Act, 42 U.S.C. § 12102 (1990).

Title I of the ADA prohibits employment based discrimination. The statute prohibits employers with 15 or more employees from discriminating based on disability in "job application procedures, the hiring, advancement, or discharge or employees, employee compensation, job training, and other terms, conditions and privileges of employment."[43]Unlike the Persons with Disabilities Act, the ADA does not reserve a certain percentage of the workforce for disabled individuals. Rather, the ADA generally prohibits discrimination and adverse employment actions based on a person's disability. The ADA's approach endorses a much more rights-based strategy to disability protection than the Persons with Disabilities Act. By reserving a certain percentage of the workforce for the disabled, India once again seems to be viewing disability as a condition that requires social compensation.

Both the ADA and the Persons with Disabilities Act require employers to make accommodations for disability. The ADA requires employers to make reasonable accommodations to persons with disabilities such as restructuring the job functions, increasing flexibility in work schedule, granting leniency with sick leave, and providing special equipment.[44] In addition to making reasonable accommodation, the statute also prohibits employers from making medical inquiries based on disability.[45] When institutions make medical inquiries, the statute requires that medical information be treated confidentially. This type of privacy protection is absent from the Persons with Disabilities Act. The Persons with Disabilities Act does not mention medical inquiries or confidentiality which is paramount to addressing HIV/AIDS epidemic. Without such protection, institutions will continue to discriminate against HIV/AIDS affected individuals by forcing medical evaluations and disclosing status. As a consequence, HIV/AIDS affected individuals may avoid employment opportunities altogether or be ridiculed and ostracized by others if their status is disclosed.

Title II and III of the ADA prohibit education and health care discrimination. It applies to public and private institutions, respectively. Similar to the employment provisions, health care and educational institutions must make reasonable accommodations in order to avoid the exclusion and discrimination of persons with disabilities.[46] Although all provisions of the ADA require reasonable accommodations, the ADA does not specifically define or include examples of reasonable accommodations within Title II and III.[47]By not defining the term, the ADA focuses on the reasonability of the accommodation and remains flexible in determining whether the entity did in fact provide appropriate accommodations. This flexibility allows parties to argue the propriety of the accommodation and allows courts to determine on a case by case basis whether the entity's response was adequate to the specific disability.

Title II and III protections in the ADA differ from the Persons with Disabilities Act in three important respects. First, the Persons with Disabilities Act does not apply to private institutions. This is extremely problematic for the HIV/AIDS epidemic because most of the education and health care in India occurs through the private sector. Second, although India requires accommodations, some of the accommodations mentioned in the Persons with Disabilities Act deny disabled individuals equal opportunity. For example, the Persons with Disabilities Act's educational accommodations include removing mathematical examinations for

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43 Ibid, 12112(a)
44 *Ibid.* §§ 12111(9), 12112(b)(5)(A), EEOC v. Yellow Freight Systems, Inc., 253 F.3d 943, 950-952 (7th Cir. 2001).
45 42 U.S.C. § 12112(d) (4) (a).
46 *Id.* §12182(b)(2)(a)(ii).
47 *Id.* § 12111.

blind individuals and limiting hearing-impaired students to the study of only one foreign language.[48] These accommodations endorse the social compensation view of disability. They assume that disability generally makes the individuals incapable of normal cognitive ability and therefore requires compensation. Lastly, unlike the ADA, the Persons with Disabilities Act does not include any protection for discrimination within the health care sector. In order to address the HIV/AIDS epidemic, India must also include provisions regarding discrimination in the health care sector. Many health care institutions in India deny services to HIV affected individuals, which increases morbidity and discourages testing.[49]Moreover, in order to be in compliance with the UN Convention on the Rights of Persons with Disabilities, India should extend disability protection to the health care sector.

The ADA, therefore, can serve as a good example for India in restructuring its disability laws. The protections in the ADA do not focus on the disability itself. Rather the ADA focuses on the social response to disability and endorses a rights based approach. The ADA also includes HIV/AIDS as a disability. By adopting a rights based approach similar to the ADA and expanding the PWDA to include HIV/AIDS, India will not only comply with the UN Convention on the Rights of Persons with Disabilities but also will create an effective framework to combat its own HIV/AIDS epidemic.

Conclusion:

India has ratified UNCRPD and it has given a unique opportunity to India to reform its laws. In order to reform its law, India should not only expand the definition of disability to reflect the United Nation's broad definition but also include HIV/AIDS as a disability. Furthermore, India should also include access to health care and confidentiality standards in the Persons with Disabilities Act. These requirements are mandated in by the UN Convention on the Rights of Persons with Disabilities, and are also critical to effective HIV/AIDS interventions. If this is done then the health care professionals will no longer be able to discriminate against persons affected by HIV/AIDS and deny necessary treatment. Additionally, because much of healthcare and education occurs through the private sector, the act should be extended to the private institutions such as schools and health care facilities.

It must be remembered that the inclusion of HIV/AIDS as a disability will not be sufficient to address discrimination unless India adopts the rights-based approach to disability that is mandated by the UN Convention on the Rights of Persons with Disabilities. In fact, India's current view of disability as a defect in need of social compensation may, in actuality, lead to greater discrimination. Viewing disability as a condition of inferiority further stigmatizes and alienates disabled populations. Therefore, the Persons with Disabilities Act should specifically recognize the right of disabled persons to be full-functioning members of society and acknowledge the importance of equality. Furthermore, the government should remove provisions in the Persons with Disabilities Act that deny persons with disabilities equal opportunity.

The present Indian law on disability is defective and it would lead to greater discrimination if this epidemic is not addressed properly. India need to include access to health care and confidentially standards in Persons with Disabilities Act. These requirements are quite effective in protection of the rights of the effected persons. Moreover the Indian disability laws

[48] Persons with Disabilities Act, § 30(f)-(h).
[49] Supra note 4,

should be extended to the private institutions such as schools and health care institutions. The Indian disability law should recognize rights of disabled persons as full functioning members of the society and the significance of equality should be acknowledged.

The ADA is a good example, its evolution may be useful in understanding the transformation of Indian laws. Though there are few loopholes such as lack of political will which makes the passing of law similar to ADA little difficult. Moreover Indian parliament has failed to show commitment. Secondly in India there is not much social awareness about the disease. So in order to avoid economic and political devastation India must quickly address this issue. Sooner the better.