SUMMARY

HIV/AIDS is not merely a medical problem: the manner in which the virus is impacting upon society reveals the intricate way in which social, economic, cultural, political and legal factors act together to make certain sections of the society more vulnerable, making it a serious human rights concern. Many of the marginalized groups are ostracised by society at large, and their lifestyles criminalized, making it practically impossible for them to participate in mainstream processes whereby they could demand their rights. Coupled with this dismal situation, there is minimal awareness about HIV and no real options for safer lifestyles. The stark reality of the HIV/AIDS epidemic is thus that people are becoming HIV positive in larger numbers because they have no access to basic fundamental human rights such as right to life, dignity, personal liberty, food, health services, information etc.

It is time to recognise that HIV/AIDS epidemic itself has given rise to a range to human rights violations. The refusal to treatment, denial of access to essential drugs including antiretroviral therapy, discrimination in the health care and employment sectors, stigmatization of vulnerable groups like women and children, IDUs, MSM, sex workers, prisoners etc. are just some examples of these violations. Apart from having a serious physical as well as mental impact on the lives of HIV/AIDS victims, these violations are pushing the epidemic underground. There is need to understand the exact manner in which factors like gender, caste, class, region, sexual orientation influence the impact of human rights issues for different sections of society.

While the law cannot by itself half or even slow down the HIV epidemic, it can play an important role in the overall strategy adopted to combat the spread of HIV/AIDS. Fortunately our national strategy has moved away from isolationist and discriminatory response that characterized it in the initial days of the epidemic in India. Harm reduction strategies including needle exchange amongst injecting drug users and condom promotion amongst MSM and sex workers are now the norm. The Sonagachi intervention in Kolkata in this respect is best Indian example and is in line with experiences in other parts of the world. These experiences have to be considered, critically examined and accepted and adapted.
However, no legal response to an epidemic as complex as HIV/AIDS ought to be based on ad-hoc momentary responses. There has been a plethora of laws enacted in India as a result of knee jerk reactions. Rape laws, PNDT Act are classic examples of this. The resultant failure is self evident. It is high time that legal responses are based on evidence of what has worked and what has not. This must necessarily take us to legal and other responses the world over, including India, where we can adopt successful interventions through international experiences. In essence an examination of such responses reveals that HIV epidemic can be checked if the rights of those vulnerable to it and of PLHAs themselves are protected and promoted. No doubt that enactment of HIV/AIDS related legislation is the need of the hour, but it is also true that legal response alone cannot succeed. A law based on the human rights approach is an essential requirement to deal with the impact of the epidemic as it touches the most personal behaviours and aspects of people’s lives. Combating it therefore demands a multiple approach that integrates social, cultural, economic, legal and human rights perspective.

The idea of this research work was to support the process of developing a human rights -based response to the HIV/AIDS epidemic within the country. The suggestions at the end of the thesis are tentative, as no one can claim absolute knowledge in any area of the human condition. I sincerely hope that it will be a useful resource for people affected by HIV/AIDS, those working in the field, for teachers, lawyers, students, and for anyone else interested in accessible discussions on HIV/AIDS, human rights and the law.