



HIV/AIDS Act, 2017 Implemented

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The Ministry of Health and Family Welfare has issued a notification for bringing the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 in force from 10th September 2018.

HIV and AIDS (Prevention and Control) Act, 2017

Role of the central and state governments

By this act, the central and state governments shall take measures to:

- prevent the spread of HIV or AIDS.
- provide anti-retroviral therapy (ART) for persons with HIV or AIDS.
- facilitate HIV affected person access to welfare schemes especially for women and children.
- formulate HIV or AIDS education communication programmes that are age appropriate, gender-sensitive and non-stigmatizing.
- lay guidelines for the care and treatment of children with HIV or AIDS.
- provide HIV prevention, testing, treatment, and counseling services for every person in the care and custody of the state.

Prohibits discrimination Against HIV positive person and Family Members

The Act lists various grounds on which discrimination against HIV positive persons and those living with them is prohibited.

These include the denial, termination, discontinuation or unfair treatment with regard to:

- employment.
- educational establishments.
- health care services.
- residing or renting property.
- standing for public or private office.
- provision of insurance.
- Every HIV infected or affected person below the age of 18 years has the right to reside in a shared household and enjoy the facilities of the household.

Informed consent and disclosure of HIV status

- The Bill requires that no HIV test, medical treatment, or research will be conducted on a person without his informed consent.
- No person shall be compelled to disclose his HIV status except with his informed consent, and if required by a court order.
- Informed consent for an HIV test will not be required in case of screening by any licensed blood bank, a court order, medical research, and epidemiological purposes where the HIV test is anonymous and not meant to determine the HIV status of a person.
- Establishments keeping records of information of HIV positive persons shall adopt data protection measures. The requirement for HIV testing as a pre-requisite for obtaining employment or accessing health care or education is also prohibited.

Appointment of the Ombudsman

- An ombudsman will be appointed by each state government to inquire into complaints related to the violation of the Act and the provision of health care services.
- The Ombudsman shall submit a report to the state government every six months stating the number and nature of complaints received, the actions taken and orders passed.

Guardianship

- A person between the age of 12 to 18 years who has sufficient maturity in understanding and managing the affairs of his HIV or AIDS-affected family shall be competent to act as a guardian of another sibling below 18 years of age.
- The guardianship will be applied in matters relating to admission to educational establishments, operating bank accounts, managing property, care and treatment, amongst others.

Court proceedings

- Cases relating to HIV positive persons shall be disposed of by the court on a priority basis.
- In any legal proceeding, if an HIV infected or affected person is a party, the court may pass orders that the proceedings be conducted (a) by suppressing the identity of the person, (b) in camera, and (c) to restrain any person from publishing information that discloses the identity of the applicant.
- When passing any order with regard to a maintenance application filed by an HIV infected or affected person, the court shall take into account the medical expenses incurred by the applicant.

Punishment on violation of Act

Violation of the Act by the publication of information about people living with HIV or advocating hatred against them will attract imprisonment ranging from three months to two years or a maximum fine of Rs. 1 lakh.

Way Forward

- Implementation of the act is a step in the right direction with regard to the rights of the person affected by HIV and to prevent discrimination against the person living with HIV and their family members. By the provisions of this act, Anti-retroviral Therapy treatment is now a legal right for the person affected with HIV/AIDS.
- However, the provisions of this act only protect infected individuals from prejudiced behavior and attitudes. Communities that are vulnerable to infection, individuals who are yet to be tested and kin of those infected are still subjected to stigma and discrimination. Thus, the need is to adopt a holistic approach to successfully combat discrimination against the infected and the vulnerable, and create safe spaces for them.
- Enforcement of this act in spirit is need of the hour with the legalization of homosexual relationships. LGBTQ are more vulnerable to HIV and AIDS. With the Supreme Court striking down section 377 and the HIV and AIDS Act also coming in force, the social stigma on the LGBTQ community will gradually go away. They will have more rights and more people will come forward for medical treatment with ease.

According to UNAIDS, in 2016, India had 80,000 new HIV infections and 62,000 AIDS-related deaths. There were 2.1 million people living with HIV in 2016 of whom only 49% were accessing antiretroviral therapy.

The UNAIDS data also shows that men who have sex with men had an HIV prevalence of 4.3%, while HIV prevalence among transgender people was 7.2%.

LGBTQ stands for Lesbian, gay, bisexual, transgender, queer.