

Bill No. III of 2014

THE HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED
IMMUNE DEFICIENCY SYNDROME (PREVENTION AND
CONTROL) BILL, 2014

ARRANGEMENT OF CLAUSES

CLAUSES

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

PROHIBITION OF CERTAIN ACTS

3. Prohibition of discrimination.
4. Prohibition of certain acts.

CHAPTER III

INFORMED CONSENT

5. Informed consent for undertaking HIV test or treatment.
6. Informed consent not required for conducting HIV test in certain cases.
7. Guidelines for testing centres, etc.

CHAPTER IV

DISCLOSURE OF HIV STATUS

8. Disclosure of HIV status.
9. Disclosure of HIV positive status to partner of HIV positive person.
10. Duty to prevent transmission of HIV.

CHAPTER V

OBLIGATION OF ESTABLISHMENTS

11. Confidentiality of data.
12. HIV and AIDS Policy for establishment.

CHAPTER VI

ANTI-RETROVIRAL THERAPY AND OPPORTUNISTIC INFECTION
MANAGEMENT FOR PEOPLE LIVING WITH HIV

13. Central Government and State Government to take measures.
14. Anti-retroviral therapy and Opportunistic Infection Management by Central and State Government.

CHAPTER VII

WELFARE MEASURES BY THE CENTRAL AND STATE GOVERNMENT

15. Welfare measures by Central and State Government.
16. Protection of property of children affected by HIV or AIDS.

CLAUSES

17. Promotion of HIV and AIDS related information, education and communication programmes.
18. Women and Children infected with HIV or AIDS.

CHAPTER VIII

SAFE WORKING ENVIRONMENT

19. Obligation of establishments to provide safe working environment.
20. General responsibility of establishments.
21. Grievance redressal mechanism.

CHAPTER IX

PROMOTION OF STRATEGIES FOR REDUCTION OF RISK

22. Strategies for reduction of risk.

CHAPTER X

APPOINTMENT OF OMBUDSMAN

23. Appointment of Ombudsman.
24. Powers of Ombudsman.
25. Procedure of complaint.
26. Orders of Ombudsman.
27. Authorities to assist Ombudsman.
28. Report to State Government.

CHAPTER XI

SPECIAL PROVISIONS

29. Right of residence.
30. HIV-related information, education and communication before marriage.
31. Persons in care or custody of State.
32. Recognition of guardianship older sibling.
33. Living wills for guardianship and testamentary guardianship.

CHAPTER XII

SPECIAL PROCEDURE IN COURT

34. Suppression of identity.
35. Maintenance applications.
36. Sentencing.

CHAPTER XIII

PENALTIES

37. Penalty for contravention.
38. Penalty for failure to comply with orders of Ombudsman.
39. Penalty for breach of confidentiality in legal proceedings.
40. Prohibition of victimization.
41. Court to try offences.
42. Offences to be cognizable and bailable.

CLAUSES

CHAPTER XIV

MISCELLANEOUS

43. Act to have overriding effect.
44. Protection of action taken in good faith.
45. Delegation of powers.
46. Guidelines.
47. Power of Central Government to make rules.
48. Laying of rules before both Houses of Parliament.
49. Power of State Government to make rules and laying thereof.
50. Power to remove difficulties.

Bill No. III of 2014

THE HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED
IMMUNE DEFICIENCY SYNDROME (PREVENTION AND
CONTROL) BILL, 2014

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BILL

to provide for the prevention and control of the spread of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome and for the protection of human rights of persons affected by the said virus and syndrome and for matters connected therewith or incidental thereto.

WHEREAS the spread of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome is a matter of grave concern to all and there is an urgent need for the prevention and control of said virus and syndrome;

AND WHEREAS there is a need to protect and secure the human rights of persons who are HIV-positive, affected by Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome and vulnerable to the said virus and syndrome;

AND WHEREAS there is a necessity for effective care, support and treatment for Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome;

AND WHEREAS there is a need to protect the rights of healthcare providers and other persons in relation to Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome;

AND WHEREAS the General Assembly of the United Nations, recalling and reaffirming its previous commitments on Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome, has adopted the Declaration of Commitment on Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (2001) to address the problems of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome in all its aspects and to secure a global commitment to enhancing coordination and intensification of national, regional and international efforts to combat it in a comprehensive manner;

AND WHEREAS the Republic of India, being a signatory to the aforesaid Declaration, it is expedient to give effect to the said Declaration;

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

Short title, extent and commencement.	<p>1. (1) This Act may be called the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2014.</p> <p>(2) It extends to the whole of India.</p> <p>(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p>	5
Definitions.	<p>2. In this Act, unless the context otherwise requires,—</p> <p>(a) “AIDS” means Acquired Immune Deficiency Syndrome, a condition characterised by a combination of signs and symptoms, caused by Human Immunodeficiency Virus, which attacks and weakens the body’s immune system making the HIV-positive person susceptible to life threatening conditions or other conditions, as may be specified from time to time;</p> <p>(b) “capacity to consent” means ability of an individual, determined on an objective basis, to understand and appreciate the nature and consequences of a proposed action and to make an informed decision concerning such action;</p> <p>(c) “child affected by HIV” means a person below the age of eighteen years, who is HIV-positive or whose parents or guardian (with whom such child normally resides) is HIV-positive or has lost a parent or guardian (with whom such child resided) due to AIDS or lives in a household fostering children orphaned by AIDS;</p> <p>(d) “discrimination” means any act or omission which directly or indirectly, expressly or by effect, immediately or over a period of time,—</p> <p>(i) imposes any burden, obligation, liability, disability or disadvantage on any person or category of persons, based on one or more HIV-related grounds; or</p> <p>(ii) denies or withholds any benefit, opportunity or advantage from any person or category of persons, based on one or more HIV-related grounds, and the expression “discriminate” to be construed accordingly.</p> <p><i>Explanation.</i>—For the purposes of this clause, HIV-related grounds include—</p> <p>(i) being an HIV-positive person;</p> <p>(ii) ordinarily living, residing or cohabiting with a person who is HIV-positive person;</p>	10 15 20 25 30

(iii) ordinarily lived, resided or cohabited with a person who was HIV-positive;

43 of 2005. (e) “domestic relationship” means a relationship as defined under clause (f) of section 2 of the Protection of Women from Domestic Violence Act, 2005;

5 (f) “establishment” means a body corporate or co-operative society or any organisation or institution or two or more persons jointly carrying out a systematic activity for a period of twelve months or more at one or more places for consideration or otherwise, for the production, supply or distribution of goods or services;

10 (g) “guidelines” means any statement or any other document issued by the Central Government indicating policy or procedure or course of action relating HIV and AIDS to be followed by the Central Government, State Governments, governmental and non-governmental organisations and establishments and individuals dealing with prevention, control and treatment of HIV or AIDS;

15 (h) “healthcare provider” means any individual whose vocation or profession is directly or indirectly related to the maintenance of the health of another individual and includes any physician, nurse, paramedic, psychologist, counsellor or other individual providing medical, nursing, psychological or other healthcare services including HIV prevention and treatment services;

(i) “HIV” means Human Immunodeficiency Virus;

20 (j) “HIV-affected person” means an individual who is HIV-positive or whose partner (with whom such individual normally resides) is HIV-positive or has lost a partner (with whom such individual resided) due to AIDS;

(k) “HIV-positive person” means a person whose HIV test has been confirmed positive;

25 (l) “HIV-related information” means any information relating to the HIV status of a person and includes—

(i) information relating to the undertaking performing the HIV test or result of an HIV test;

(ii) information relating to the care, support or treatment of that person;

30 (iii) information which may identify that person; and

(iv) any other information concerning that person, which is collected, received, accessed or recorded in connection with an HIV test, HIV treatment or HIV-related research or the HIV status of that person;

35 (m) “HIV test” means a test to determine the presence of an antibody or antigen of HIV;

(n) “informed consent” means consent given by any individual or his representative specific to a proposed intervention without any coercion, undue influence, fraud, mistake or misrepresentation and such consent obtained after informing such individual or his representative, as the case may be, such information, as specified in the guidelines, relating to risks and benefits of, and alternatives to, the proposed intervention in such language and in such manner as understood by that individual or his representative, as the case may be;

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(o) “notification” means a notification published in the Official Gazette;

45 (p) “partner” means a spouse, *de facto* spouse or a person with whom another person has relationship in the nature of marriage;

(q) “person” includes an individual, a Hindu Undivided Family, a company, a firm, an association of persons or a body of individuals, whether incorporated or not, in India or outside India, any corporation established by or under any Central or State Act or any company including a Government company incorporated under the Companies Act, 1956, any Limited Liability Partnership under the Limited Liability Partnership Act, 2008, any body corporate incorporated by or under the laws of a country outside India, a co-operative society registered under any law relating to co-operative societies, a local authority, and every other artificial juridical person; 5 1 of 1956.
6 of 2009.

(r) “prescribed” means prescribed by rules made by the Central Government or the State Government, as the case may be; 10

(s) “protected person” means a person who is—

(i) HIV-Positive; or

(ii) ordinarily living, residing or cohabiting with a person who is HIV-positive person; or

(iii) ordinarily lived, resided or cohabited with a person who was HIV-positive; 15

(t) “reasonable accommodation” means minor adjustments to a job or work that enables an HIV-positive person who is otherwise qualified to enjoy equal benefits or to perform the essential functions of the job or work, as the case may be;

(u) “relative”, with reference to the protected person, means— 20

(i) spouse of the protected person;

(ii) parents of the protected person;

(iii) brother or sister of the protected person;

(iv) brother or sister of the spouse of the protected person;

(v) brother or sister of either of the parents of the protected person; 25

(vi) in the absence of any of the relatives mentioned at sub-clauses (i) to (v), any lineal ascendant or descendant of the protected person;

(vii) in the absence of any of the relatives mentioned at sub-clauses (i) to (vi), any lineal ascendant or descendant of the spouse of the protected person;

(v) “significant risk” means— 30

(a) the presence of significant-risk body substances;

(b) a circumstance which constitutes significant risk for transmitting or contracting HIV infection; or

(c) the presence of an infectious source and an uninfected person.

Explanation.— For the purpose of this clause,— 35

(i) “significant-risk body substances” are blood, blood products, semen, vaginal secretions, breast milk, tissue and the body fluids, namely, cerebrospinal, amniotic, peritoneal, synovial, pericardial and pleural;

(ii) “circumstances which constitute significant risk for transmitting or contracting HIV infection” are— 40

(A) sexual intercourse including vaginal, anal or oral sexual intercourse which exposes an uninfected person to blood, blood products, semen or vaginal secretions of an HIV-positive person;

(B) sharing of needles and other paraphernalia used for preparing and injecting drugs between HIV-positive persons and uninfected persons; 45

(C) the gestation, giving birth or breast feeding of an infant when the mother is an HIV-positive person;

5 (D) transfusion of blood, blood products, and transplantation of organs or other tissues from an HIV-positive person to an uninfected person, provided such blood, blood products, organs or other tissues have not been tested conclusively for the antibody or antigen of HIV and have not been rendered non-infective by heat or chemical treatment; and

10 (E) other circumstances during which a significant-risk body substance, other than breast milk, of an HIV-positive person contacts or may contact mucous membranes including eyes, nose or mouth, non-intact skin including open wounds, skin with a dermatitis condition or abraded areas or the vascular system of an uninfected person, and including such circumstances not limited to needle-stick or puncture wound injuries and direct saturation or permeation of these body surfaces
15 by the significant -risk body substance:

Provided that “significant risk” shall not include—

(i) exposure to urine, faeces, sputum, nasal secretions, saliva, sweat, tears or vomit that does not contain blood that is visible to the naked eye;

20 (ii) human bites where there is no direct blood to blood, or no blood to mucous membrane contact;

(iii) exposure of intact skin to blood or any other blood substance; and

25 (iv) occupational centres where individuals use scientifically accepted Universal Precautions, prohibitive techniques and preventive practices in circumstances which would otherwise pose a significant risk and such techniques are not breached and remain intact;

30 (w) “State AIDS Control Society” means the nodal agency of the State Government responsible for implementing programmes in the field of HIV and AIDS;

(x) “State Government”, in relation to a Union territory, means the Administrator of that Union territory appointed by the President under article 239 of the Constitution; and

35 (y) “Universal Precautions” means control measures that prevent exposure to or reduce, the risk of transmission of pathogenic agents (including HIV) and includes education, training, personal protective equipment such as gloves, gowns and masks, hand washing, and employing safe work practices.

CHAPTER II

PROHIBITION OF CERTAIN ACTS

40 **3.** No person shall discriminate against the protected person on any ground including any of the following, namely:—

Prohibition of discrimination.

(a) the denial of, or termination from, employment or occupation, unless, in the case of termination, the person, who is otherwise qualified, is furnished with—

45 (i) a copy of the written assessment of a qualified and independent healthcare provider competent to do so that such protected person poses a significant risk of transmission of HIV to other person in the workplace, or is unfit to perform the duties of the job; and

(ii) a copy of a written statement by the employer stating the nature and extent of administrative or financial hardship for not providing him reasonable accommodation;

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

(c) the denial or discontinuation of, or, unfair treatment in, healthcare services; 5

(d) the denial or discontinuation of, or unfair treatment in, educational, establishments and services thereof;

(e) the denial or discontinuation of, or unfair treatment with regard to, access to, or provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege or opportunity dedicated to the use of the general public or customarily available to the public, whether or not for a fee, including shops, public restaurants, hotels and places of public entertainment or the use of wells, tanks, bathing ghats, roads, burial grounds or funeral ceremonies and places of public resort; 10

(f) the denial, or, discontinuation of, or unfair treatment with regard to, the right of movement; 15

(g) the denial or discontinuation of, or, unfair treatment with regard to, the right to reside, purchase, rent, or otherwise occupy, any property;

(h) the denial or discontinuation of, or, unfair treatment in, the opportunity to stand for, or, hold public or private office;

(i) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a person may be; 20

(j) the denial of, or unfair treatment in, the provision of insurance unless such unfair treatment is based on and supported by actuarial studies;

(k) the isolation or segregation of a protected person;

(l) HIV testing as a pre-requisite for obtaining employment, or accessing healthcare services or education or, for the continuation of the same or, for accessing or using any other service or facility; 25

Provided that, in case of failure to furnish the written assessment under sub-clause (i) of clause (a), it shall be presumed that there is no significant risk and that the person is fit to perform the duties of the job, as the case may be, and in case of the failure to furnish the written statement under sub-clause (ii) of that clause, it shall be presumed that there is no such undue administrative or financial hardship. 30

Prohibition of certain acts.

4. No person shall, by words, either spoken or written, publish, propagate, advocate or communicate by signs or by visible representation or otherwise the feelings of hatred against any protected persons or group of protected person in general or specifically or disseminate, broadcast or display any information, advertisement or notice, which may reasonably be construed to demonstrate an intention to propagate hatred or which is likely to expose protected persons to hatred, discrimination or physical violence. 35

CHAPTER III

INFORMED CONSENT 40

Informed consent for undertaking HIV test or treatment.

5. (1) Subject to the provisions of this Act,—

(a) no HIV test shall be undertaken or performed upon any person; or

(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. 45

(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.

6. The informed consent for conducting an HIV test shall not be required—

5 (a) where a court determines, by an order that the carrying out of the HIV test of any person either as part of a medical examination or otherwise, is necessary for the determination of issues in the matter before it;

(b) for procuring, processing, distribution or use of a human body or any part thereof including tissues, blood, semen or other body fluids for use in medical research or therapy:

10 Provided that where the test results are requested by a donor prior to donation, the donor shall be referred to counselling and testing centre and such donor shall not be entitled to the results of the test unless he has received post-test counselling from such centre;

15 (c) for epidemiological or surveillance purposes where the HIV test is anonymous and is not for the purpose of determining the HIV status of a person:

Provided that persons who are subjects of such epidemiological or surveillance studies shall be informed of the purposes of such studies; and

(d) for screening purposes in any licensed blood bank.

20 7. No HIV test shall be conducted or performed by any testing or diagnostic centre or pathology laboratory or blood bank, unless such centre or laboratory or blood bank follows the guidelines laid down for such test.

Informed consent not required for conducting HIV tests in certain cases.

Guidelines for testing centres, etc.

CHAPTER IV

DISCLOSURE OF HIV STATUS

25 8. (1) Notwithstanding anything contained in any other law for the time being in force, —

(i) no person shall be compelled to disclose his HIV status except by an order that the disclosure of such information is necessary in the interest of justice for the determination of issues in the matter before it;

30 (ii) no person shall disclose or be compelled to disclose the HIV status or any other private information of other person imparted in confidence or in a relationship of a fiduciary nature, except with the informed consent of that other person or a representative of such another person obtained in the manner as specified in section 5, as the case may be, and the fact of such consent has been recorded in writing by the person making such disclosure:

35 Provided that, in case of a relationship of a fiduciary nature, informed consent shall be recorded in writing.

(2) The informed consent for disclosure of HIV-related information under clause (ii) of sub-section (1) is not required where the disclosure is made—

40 (a) by a healthcare provider to another healthcare provider who is involved in the care, treatment or counselling of such person, when such disclosure is necessary to provide care or treatment to that person;

(b) by an order of a court that the disclosure of such information is necessary in the interest of justice for the determination of issues and in the matter before it;

45 (c) in suits or legal proceedings between persons, where the disclosure of such information is necessary in filing suits or legal proceedings or for instructing their counsel;

Disclosure of HIV status.

(d) as required under the provisions of section 9;

(e) if it relates to statistical or other information of a person that could not reasonably be expected to lead to the identification of that person; and

(f) to the officers of the Central Government or the State Government or State AIDS Control Society of the concerned State Government, as the case may be, for the purposes of monitoring, evaluation or supervision. 5

Disclosure of HIV positive status to partner of HIV positive person.

9. (1) No healthcare provider, except a physician or a counsellor, shall disclose the HIV-positive status of a person to his or her partner.

(2) A healthcare provider, who is a physician or counsellor, may disclose the HIV-positive status of a person under his direct care to his or her partner, if such healthcare provider— 10

(a) reasonably believes that the partner is at the significant risk of transmission of HIV from such person; and

(b) such HIV-positive person has been counselled to inform such partner; and

(c) is satisfied that the HIV-positive person will not inform such partner; and 15

(d) has informed the HIV-positive person of the intention to disclose the HIV-positive status to such partner:

Provided that disclosure under this sub-section to the partner shall be made in person after counselling:

Provided further that such healthcare provider shall have no obligation to identify or locate the partner of an HIV-positive person: 20

Provided also that such healthcare provider shall not inform the partner of a woman where there is a reasonable apprehension that such information may result in violence, abandonment or actions which may have a severe negative effect on the physical or mental health or safety of such woman, her children, her relatives or someone who is close to her. 25

(3) The healthcare provider under sub-section (1) shall not be liable for any criminal or civil action for any disclosure or non-disclosure of confidential HIV-related information made to a partner under this section.

Duty to prevent transmission of HIV.

10. Every person, who is HIV positive and has been counselled in accordance with the guidelines issued or is aware of the nature of HIV and its transmission, shall take all reasonable precautions to prevent the transmission of HIV to other persons which may include adopting strategies for the reduction of risk or informing in advance his HIV status before any sexual contact with any person or with whom needles are shared with: 30

Provided that the provisions of this section shall not be applicable to prevent transmission through a sexual contact in the case of a woman, where there is a reasonable apprehension that such information may result in violence, abandonment or actions which may have a severe negative effect on the physical or mental health or safety of such woman, her children, her relatives or someone who is close to her. 35

CHAPTER V

OBLIGATION OF ESTABLISHMENTS 40

Confidentiality of data.

11. Every establishment keeping the records of HIV-related information of protected persons shall adopt data protection measures in accordance with the guidelines to ensure that such information is protected from disclosure.

Explanation.— For the purpose of this section, data protection measures shall include procedures for protecting information from disclosure, procedures for accessing information, provision for security systems to protect the information stored in any form and mechanisms to ensure accountability and liability of persons in the establishment. 45

12. The Central Government shall notify model HIV and AIDS policy for establishments, in such manner, as may be prescribed.

HIV and AIDS Policy for establishments.

CHAPTER VI

ANTI RETROVIRAL THERAPY AND OPPORTUNISTIC INFECTION MANAGEMENT FOR PEOPLE

LIVING WITH HIV

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13. The Central Government and every State Government, as the case may be, shall take all such measures as it deems necessary and expedient for the prevention of spread of HIV or AIDS, in accordance with the guidelines.

Central Government and State Government to take measures.

14. (1) The measures to be taken by the Central Government or the State Government under section 13 shall include the measures for providing, as far as possible, Anti-retroviral Therapy and Opportunistic Infection Management to people living with HIV or AIDS.

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Anti-retroviral therapy and Opportunistic Infection Management by Central and State Government.

(2) The Central Government shall issue necessary guidelines in respect of protocols for HIV and AIDS relating to Anti-retroviral Therapy and Opportunistic Infection Management which shall be applicable to all persons and shall ensure their wide dissemination.

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CHAPTER VII

WELFARE MEASURES BY THE CENTRAL AND STATE GOVERNMENT

15. (1) The Central Government and every State Government shall take measures to facilitate better access to welfare schemes to persons infected or affected by HIV or AIDS.

Welfare measures by Central Government and State Government.

(2) Without prejudice to the provisions of sub-section (1), the Central and State Governments shall frame schemes to address the needs of HIV and AIDS affected women and children.

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16. (1) The Central Government or the State Government, as the case may be, shall take appropriate steps to protect the property of children affected by HIV or AIDS for the protection of property of child affected by HIV or AIDS.

Protection of property of children affected by HIV or AIDS.

(2) The parents or guardians of children affected by HIV and AIDS, or any person acting for protecting their interest, or a child affected by HIV and AIDS may approach the Child Welfare Committee for the safe keeping and deposit of documents related to the property rights of such child or to make complaints relating to such child being dispossessed or actual dispossession or trespass into such child's house.

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Explanation.— For the purpose of this section, “Child Welfare Committee” means a Committee set up under section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

56 of 2000.

17. The Central Government and the State Government shall formulate HIV and AIDS related information, education and communication programmes which are age-appropriate, gender-sensitive, non-stigmatising and non-discriminatory.

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Promotion of HIV and AIDS related information, education and communication programmes.

18. (1) The Central Government shall lay down guidelines for care, support and treatment of children infected with HIV or AIDS.

Women and Children infected with HIV or AIDS.

(2) Without prejudice to the generality of the provisions of sub section (1) and notwithstanding anything contained in any other law for the time being in force, the Central Government, or the State Government as the case may be, shall take measures to counsel and provide information regarding the outcome of pregnancy and HIV- related treatment to the HIV infected women.

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(3) No HIV positive woman, who is pregnant, shall be subjected to sterilisation or abortion without obtaining her informed consent.

CHAPTER VIII

SAFE WORKING ENVIRONMENT

Obligation of establishments to provide safe working environment. **19.** Every establishment, engaged in the healthcare services and every such other establishment where there is a significant risk of occupational exposure to HIV, shall, for the purpose of ensuring safe working environment,— 5

(i) provide, in accordance with the guidelines,—

(a) Universal Precautions to all persons working in such establishment who may be occupationally exposed to HIV; and 10

(b) training for the use of such Universal Precautions;

(c) Post Exposure Prophylaxis to all persons working in such establishment who may be occupationally exposed to HIV or AIDS; and

(ii) inform and educate all persons working in the establishment of the availability of Universal Precautions and Post Exposure Prophylaxis. 15

General responsibility of establishments. **20.** (1) The provisions of this Chapter shall be applicable to all establishments consisting of one hundred or more persons, whether as an employee or officer or member or director or trustee or manager, as the case may be:

Provided that in the case of healthcare establishments, the provisions of this sub-section shall have the effect as if for the words “one hundred or more”, the words “twenty or more” had been substituted. 20

(2) Every person, who is in charge of an establishment, referred to in sub-section (1), for the conduct of the activities of such establishment, shall ensure compliance of the provisions of this Act.

Grievance redressal mechanism. **21.** Every establishment referred to in sub-section (1) of section 20 shall designate such person, as it deems fit, as the Complaints Officer who shall, on a day-to-day basis, deal with complaints of violations of the provisions of this Act in the establishment, in such manner as may be prescribed. 25

CHAPTER IX

PROMOTION OF STRATEGIES FOR REDUCTION OF RISK 30

Strategies for reduction of risk. **22.** Notwithstanding anything contained in any other law for the time being in force any strategy or mechanism or technique adopted or implemented for reducing the risk of HIV transmission, or any act pursuant thereto, as carried out by persons, establishments or organizations in the manner as may be specified in the guidelines issued by the Central Government shall not be restricted or prohibited in any manner, and shall not amount to a criminal offence or attract civil liability. 35

Explanation.—For the purpose of this section, strategies for reducing risk of HIV transmission means promoting actions or practices that minimise a person’s risk of exposure to HIV or mitigate the adverse impacts related to HIV or AIDS including—

(i) the provisions of information, education and counselling services relating to prevention of HIV and safe practices; 40

(ii) the provision and use of safer sex tools, including condoms, and safe intravenous drug use practices; and

(iii) drug substitution, drug maintenance, needle and syringe exchange programmes. 45

Illustrations

- (a) A supplies condoms to B who is a sex worker or to C, who is a client of B. Neither A nor B nor C can be held criminally or civilly liable for such actions or be prohibited, impeded, restricted or prevented from implementing or using the strategy.
- 5 (b) M carries on an intervention project on HIV or AIDS and sexual health information, education and counselling for men, who have sex with men, provides safer sex information, material and condoms to N, who has sex with other men. Neither M nor N can be held criminally or civilly liable for such actions or be prohibited, impeded, restricted or prevented from implementing or using the intervention.
- 10 (c) X, who undertakes an intervention providing registered needle exchange programme services to injecting drug users, supplies a clean needle to Y, an injecting drug user who exchanges the same for a used needle. Neither X nor Y can be held criminally or civilly liable for such actions or be prohibited, impeded, restricted or prevented from implementing or using the intervention.
- 15 (d) D, who carries on an intervention programme providing Opioid Substitution Treatment (OST), administers OST to E, an injecting drug user. Neither D nor E can be held criminally or civilly liable for such actions or be prohibited, impeded, restricted or prevented from implementing or using the intervention.

CHAPTER X

APPOINTMENT OF OMBUDSMAN

- 20 **23.** (1) Every State Government shall appoint one or more Ombudsman,—
- (a) possessing such qualification and experience as may be prescribed, or
- (b) designate any of its officers not below such rank, as may be prescribed, by that Government,
- 25 to exercise such powers and discharge such functions, as may be conferred on Ombudsman under this Act.
- (2) The terms and condition of the service of an Ombudsman appointed under clause (a) of sub-section (1) shall be such as may be prescribed by the State Government.
- (3) The Ombudsman appointed under sub-section (1) shall have such jurisdiction in
- 30 respect of such area or areas as the State Government may, by notification, specify.
- 24.** (1) The Ombudsman shall, upon a complaint made by any person, inquire into the violations of the provisions of this Act, in relation to healthcare services by any person, in such manner as may be prescribed by the State Government.
- (2) The Ombudsman may require any person to furnish information on such points or
- 35 matters, as he considers necessary, for inquiring into the matter and any person so required shall be deemed to be legally bound to furnish such information and failure to do so shall be punishable under sections 176 and 177 of the Indian Penal Code.
- 45 of 1860. (3) The Ombudsman shall maintain records in such manner as may be prescribed by the State Government.
- 40 **25.** The complaints may be made to the Ombudsman under sub-section (1) of section 26 in such manner, as may be prescribed, by the State Government.
- 26.** The Ombudsman shall, after giving an opportunity of being heard to the parties, pass such order, as he deems fit, giving reasons therefor.
- 27.** All authorities including the Civil authorities functioning in the area for which the
- 45 Ombudsman has been appointed under section 23 shall assist in execution of orders passed by the Ombudsman.

Appointment of Ombudsman.

Powers of Ombudsman.

Procedure of complaint.

Orders of Ombudsman.

Authorities to assist Ombudsman.

Report to State Government.

28. The Ombudsman shall, after every six months, report to the State Government, the number and nature of complaints received, the action taken and orders passed in relation to such complaints and such report shall be published on the website of the Ombudsman and a copy thereof be forwarded to the Central Government.

CHAPTER XI

5

SPECIAL PROVISIONS

Right of residence.

29. Every protected person, who is a woman or who is a person below the age of eighteen years, shall have the right to reside in the shared household, the right not to be excluded from the shared household or any part of it and the right to enjoy and use the facilities of such shared household in a non-discriminatory manner.

10

Explanation.—For the purposes of this section, the expression “shared household” means a household where a person lives or at any stage has lived in a domestic relationship either singly or along with another person and includes such a household, whether owned or tenanted, either jointly or singly, any such household in respect of which either person or both, jointly or singly, have any right, title, interest or equity or a household which may belong to a joint family of which either person is a member, irrespective of whether either person has any right, title or interest in the shared household.

15

HIV-related information, education and communication before marriage.

30. The Central Government shall specify guidelines for the provision of HIV-related information, education and communication before marriage and ensure their wide dissemination.

20

Persons in care or custody of State.

31. (1) Every person who is in the care or custody of the State shall have the right to HIV prevention, counselling, testing and treatment services in accordance with the guidelines issued in this regard.

(2) For the purposes of this section, persons in the care or custody of the State include persons convicted of a crime and serving a sentence, persons awaiting trial, person detained under preventive detention laws, persons under the care or custody of the State under the Juvenile Justice (Care and Protection of Children) Act, 2000, the Immoral Traffic (Prevention) Act, 1956 or any other law and persons in the care or custody of State run homes and shelters.

25

56 of 2000.
104 of 1956.

Recognition of guardianship of older sibling.

32. Notwithstanding anything contained in any law for the time being in force, a person below the age of eighteen but not below twelve years, who has sufficient maturity of understanding and who is managing the affairs of his family affected by HIV and AIDS, shall be competent to act as guardian of other sibling below the age of eighteen years for the following purposes, namely:—

30

(a) admission to educational establishments;

35

(b) care and protection;

(c) treatment;

(d) operating bank accounts;

(e) managing property; and

(f) any other purpose that may be required to discharge his duties as a guardian.

40

Explanation.— For the purposes of this section, a family affected by HIV or AIDS means where both parents and the legal guardian is incapacitated due to HIV-related illness or AIDS or the legal guardian and parents are unable to discharge their duties in relation to such children.

5 **33.** (1) Notwithstanding anything contained in any law for the time being in force, a parent or legal guardian of a child affected by HIV and AIDS may appoint, by making a will, an adult person who is a relative or friend, or a person below the age of eighteen years who is the managing member of the family affected by HIV and AIDS, as referred to in section 33, to act as legal guardian immediately upon incapacity or death of such parent or legal guardian, as the case may be.

Living wills for guardianship and testamentary guardianship.

(2) Nothing in this section shall divest a parent or legal guardian of their rights, and the guardianship referred to in sub-section (1) shall cease to operate upon by the parent or legal guardian regaining their capacity.

10 (3) Any parent or legal guardian of children affected by HIV and AIDS may make a will appointing a guardian for care and protection of such children and for the property that such children would inherit or which is bequeathed through the will made by such parent or legal guardian.

CHAPTER XII

15 SPECIAL PROCEDURE IN COURT

34. (1) In any legal proceeding in which a protected person is a party or such person is an applicant, the court, on an application by such person or any other person on his behalf may pass, in the interest of justice, any or all of the following orders, namely —

Suppression of identity.

20 (a) that the proceeding or any part thereof be conducted by suppressing the identity of the applicant by substituting the name of such person with a pseudonym in the records of the proceedings in such manner as may be prescribed;

(b) that the proceeding or any part thereof may be conducted in camera;

(c) restraining any person from publishing in any manner any matter leading to the disclosure of the name or status or identity of the applicant.

25 (2) In any legal proceeding concerning or relating to an HIV-positive person, the court shall take up and dispose-off the proceeding on priority basis.

30 **35.** In any maintenance application filed by or on behalf of a protected person under any law for the time being in force, the court shall consider the application for interim maintenance and, in passing any order of maintenance, shall take into account the medical expenses and other HIV-related costs that may be incurred by the applicant.

Maintenance applications.

36. In passing any order relating to sentencing, the HIV-positive status of the persons in respect of whom such an order is passed shall be a relevant factor to be considered by the court to determine the custodial place where such person shall be transferred to, based on the availability of proper healthcare services at such place.

Sentencing.

35 CHAPTER XIII

PENALTIES

40 **37.** Notwithstanding any action that may be taken under any other law for the time being in force, whoever contravenes the provisions of section 4 shall be punished with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine which may extend to one lakh rupees, or with both.

Penalty for contravention.

38. Whoever fails to comply with any order given by an Ombudsman within such time as may be specified in such order, under section 25, shall be liable to pay a fine which may extend to ten thousand rupees and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues.

Penalty for failure to comply with orders of Ombudsman.

45 **39.** Notwithstanding any action that may be taken under any law for the time being in force, whoever discloses information regarding the HIV status of a protected person which is obtained by him in the course of, or in relation to, any proceedings before any court, shall

Penalty for breach of confidentiality in legal proceedings.

be punishable with fine which may extend to one lakh rupees unless such disclosure is pursuant to any order or direction of a court.

Prohibition of victimization.

40. No person shall subject any other person or persons to any detriment on the ground that such person or persons have taken any of the following actions, namely:—

(a) made complaint under this Act;

5

(b) brought proceedings under this Act against any person;

(c) furnished any information or produced any document to a person exercising or performing any power or function under this Act; or

(d) appeared as a witness in a proceeding under this Act.

Court to try offences.

41. No court other than the court of a Judicial Magistrate First Class shall take cognizance of an offence under this Act.

10

Offences to be cognizable and bailable.

42. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 2 of 1974. offences under this Act shall be cognizable and bailable.

CHAPTER XIV

MISCELLANEOUS

15

Act to have overriding effect.

43. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time in force or in any instrument having effect by virtue of any law other than this Act.

Protection of action taken in good faith.

44. No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Central Government or AIDS Control Society of the State Government Ombudsman or any member thereof or any officer or other employee or person acting under the direction either of the Central Government, the State Government, the Central Government, or Ombudsman in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or guidelines made thereunder or in respect of the publication by or under the authority of the Central Government, the State Government, the Central Government or AIDS Control Society of the State Government Ombudsman.

20

25

Delegation of powers.

45. The Central and State Government, as the case may be, may, by general or special order, direct that any power exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be mentioned in the order, be exercisable also by an officer subordinate to that Government or the local authority.

30

Guidelines.

46. (1) The Central Government may, by notification, make guidelines consistent with this Act and any rules thereunder, generally to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such guidelines may provide for all or any of the following matters, namely :—

35

(a) information relating to risk and benefits or alternatives to the proposed intervention under clause (n) of section 2 ;

(b) the manner of obtaining the informed consent under sub-section (1) and the manner of pre test and post test counselling under sub-section (2) of section 5;

(c) guidelines to be followed by a testing or diagnostic centre or pathology laboratory or blood bank for HIV test under section 7;

40

(d) the manner of taking data protection measures under section 11;

(e) guidelines in respect of protocols for HIV/AIDS relating to Anti retroviral Therapy and Opportunistic Infections Management under sub-section (2) of section 14;

45

(f) care, support and treatment of children infected with HIV or AIDS under sub-section (1) of section 18;

(g) guidelines for Universal Precautions and post exposure prophylaxis under section 19;

5 (h) manner of carrying out the strategy or mechanism or technique for reduction of risk of HIV transmission under section 22;

(i) manner of implementation of a drugs substitution, drug maintenance and needle and syringe exchange programme under section 22;

10 (j) provision of HIV-related information, education and communication before marriage under section 30;

(k) manner of HIV or AIDS prevention, counselling, testing and treatment of persons in custody under section 31;

(l) any other matter which ought to be specified in guidelines for the purposes of this Act.

15 **47. (1)** The Central Government may, by notification, make rules to carry out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters, namely:—

20 (a) manner of notifying model HIV or AIDS policy for the establishments under section 12;

(b) any other matter which may be or ought to be prescribed by the Central Government.

25 **48.** Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be
30 without prejudice to the validity of anything previously done under that rule.

Laying of rules before both Houses of Parliament.

49. (1) The State Government may, by notification, make rules for carrying out the provisions of this Act.

Power of State Government to make rules and laying thereof.

(2) In particular, and without prejudice to the generality of foregoing power, such rules may provide for all or any of the following matters, namely :—

35 (a) measures to provide Anti-retroviral Therapy and Opportunistic Infection Management to people living with HIV or AIDS and for the prevention of spread of HIV or AIDS in accordance with the guidelines under section 14;

40 (b) qualification and experience for the appointment of a person as an Ombudsman under clause (a) or rank of officer of the State Government to be designated as Ombudsman under clause (b) of sub-section (1) of section 23;

(c) terms and conditions of services of Ombudsman under sub-section (2) of section 23;

(d) manner of inquiring into complaints by the Ombudsman under sub-section (1) and maintaining of records by him under sub-section (3) of section 24;

45 (e) manner of making the complaints to the ombudsman under section 25; and

(f) manner of recording pseudonym in legal proceedings under clause (a) of sub-section (1) of section 34;

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be, after it is made before the Legislature of that State.

Power to
remove
difficulties.

50. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty: 5

Provided that no order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. 10

STATEMENT OF OBJECTS AND REASONS

At present, India is estimated to have 2.39 million people living with HIV/AIDS (PLHIV), the third highest number after South Africa and Nigeria. Currently, the epidemic is "concentrated", *i.e.*, the Human Immunodeficiency Virus (HIV) is more prevalent in high-risk groups such as female sex workers, men-who-have-sex-with-men and injecting drug users. It is, therefore, important for these groups to access services such as treatment of sexually transmitted infections, HIV testing, condoms, clean needles and syringes to prevent transmission of HIV to the general population.

2. As the route of transmission is primarily sexual, there is a stigma arising out of HIV infection and those affected by it leading to discrimination which includes denial of, and access to, healthcare and treatment; discrimination against admission or continuance of their children in schools; denial of, and/or removal from, employment and denial of various services including insurance, medical benefits, etc., in both public and private establishments.

3. Given this situation, it is necessary to address the issue of stigma faced by those infected by HIV and AIDS, to ensure confidentiality and privacy while providing HIV and AIDS related services and to strengthen the existing National AIDS Control Programme by bringing in legal accountability. It is also important that existing establishments, both private and public, recognise the need to safeguard the rights of people infected with HIV/AIDS, particularly, women and children.

4. It is proposed, *inter alia*, to prohibit certain specific acts of HIV-related discrimination, provide for informed consent for undertaking HIV test or treatment and also for disclosure of HIV status to ensure confidentiality and privacy, obligation of the establishments to provide for safe working environment, safeguard the rights of people infected with HIV/AIDS, particularly women and children, and establish formal mechanisms for redressing grievances and inquiring into complaints.

5. The Bill seeks to achieve the above objects.

NEW DELHI;

GHULAM NABI AZAD.

The 31st January, 2014.

Notes on clauses

Clause 1.— This clause seeks to provide for short title, extent and commencement of the Act.

Clause 2.—This clause seeks to provide the definitions of certain words, such as, “AIDS”, “capacity to consent”, “discrimination”, “HIV-affected person”, “informed consent”, “significant risk”, etc., used in various provisions of the Bill.

Clause 3.— This clause relates to prohibition of discrimination. It seeks to provide that no person shall discriminate against the protected person on any ground including the denial of, or termination from, employment or occupation, the unfair treatment in, or in relation to, employment or occupation, the denial or discontinuation of, or, unfair treatment in, healthcare services and in educational establishments and services thereof, the denial or discontinuation of, or, unfair treatment with regard to, access to, or, provision or enjoyment or use of any goods, accommodation, service, facility, benefit, privilege, or opportunity, dedicated to the use of the general public or customarily available to the public, the denial or discontinuation of, or, unfair treatment with regard to the right of movement, the right to reside, purchase, rent, or otherwise occupy, any property, the opportunity to stand for, or, hold public or private office, the isolation or segregation of a protected person, HIV testing as a pre-requisite for obtaining employment, etc.

The said clause further seeks to provide that in case of failure to furnish the written assessment under sub-clause (i) of clause (a), it shall be presumed that there is no significant risk and that the person is fit to perform the duties of the job, as the case may be, and in case of the failure to furnish the written statement under sub-clause (ii) of that clause, it shall be presumed that there is no such undue administrative or financial hardship.

Clause 4.— This clause relates to prohibition of certain acts. It seeks to provide that no person shall, by words, either spoken or written, publish, propagate, advocate or communicate by signs or by visible representation or otherwise the feelings of hatred against any protected person or group of protected person in general or specifically or disseminate, broadcast or display any information, advertisement or notice, which may reasonably be construed to demonstrate an intention to propagate hatred or which is likely to expose the protected persons to hatred, discrimination or physical violence.

Clause 5.— This clause relates to informed consent for undertaking HIV test or treatment. It seeks to provide that no HIV test shall be undertaken or performed upon any person or no protected person shall be subjected 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. 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.

Clause 6.— This clause relates to informed consent not required for conducting HIV tests in certain cases. It seeks to provide that informed consent for conducting HIV test shall not be required where a court determines, by an order that the carrying out of the HIV test of any person either as part of a medical examination or otherwise, is necessary for the determination of issues in the matter before it, for procuring, processing, distribution or use of a human body or any part thereof including tissues, blood, semen or other body fluids for use in medical research or therapy and where the test results are requested by a donor prior to donation, the donor shall be referred to counselling and testing centre and such donor shall not be entitled to the results of the test unless he received post-test counselling from such centre and provide for epidemiological or surveillance purposes where the HIV test is anonymous and is not for the purpose of determining the HIV status of a person and the

persons who are subjects of such epidemiological or surveillance studies shall be informed of the purposes of such studies and for screening purposes in any licensed blood bank.

Clause 7.—This clause relates to guidelines for testing centres, etc. It seeks to provide that no HIV test shall be conducted or performed by any testing or diagnostic centre or pathology laboratory or blood bank, unless such centre or laboratory or blood bank follows the guidelines laid down for such test.

Clause 8.— This clause deals with disclosure of HIV status. Sub-clause (1) seeks to provide that no person shall be compelled to disclose his HIV status except by an order that the disclosure of such information is necessary in the interest of justice for determination of issues in the matter before it and no person shall disclose or be compelled to disclose the HIV status or any other private information of other person imparted in confidence or in a relationship of a fiduciary nature, except with the informed consent of that other person or a representative of such another person obtained in the manner as specified in clause 5, as the case may be, and the fact of such consent has been recorded in writing by the person making such disclosure and in case of a relationship of a fiduciary nature, informed consent shall be recorded in writing. Sub-clause (2) provides for circumstances when the informed consent is not required where the disclosure is made.

Clause 9.— This clause deals with disclosure of HIV positive status to partner of HIV positive person. Sub-clause (1) seeks to provide that no healthcare provider, except a physician or a counsellor, shall disclose the HIV-positive status of a person to his or her partner.

Sub-clause (2) of the said clause seeks to provide that a healthcare provider or a physician or counsellor may disclose in person the HIV positive status of a person under his direct care to his or her partner if he reasonably believes that the partner is at the significant risk of transmission of HIV from such person, and such HIV positive person has been counselled to inform such partner; and is satisfied that the HIV positive person will not inform such partner; and has informed the HIV positive person of the intention to disclose the HIV positive status to such partner but such healthcare provider shall not inform the partner of a woman where there is a reasonable apprehension that such information may result in violence.

Sub-clause (3) of the said clause seeks to provide that the healthcare provider under sub-clause (1) shall not be liable for any criminal or civil action for any disclosure or non-disclosure of confidential HIV-related information made to a partner under this section.

Clause 10.— This clause deals with duty to prevent transmission of HIV. It seeks to provide that every person, who is HIV positive and has been counselled in accordance with the guidelines issued or is aware of the nature of HIV and its transmission, shall take all reasonable precautions to prevent the transmission of HIV to other persons which may include adopting strategies for the reduction of risk or informing in advance his HIV status before any sexual contact with any person or with whom needles are shared with. The said clause further seeks to provide that in case where there is a reasonable apprehension that such information may result in violence, the provisions of the said clause shall not be applicable.

Clause 11.— This clause relates to confidentiality of data. It seeks to provide that every establishment keeping the records of HIV-related information of protected persons shall adopt data protection measures in accordance with the guidelines to ensure that such information is protected from disclosure. The said clause seeks to provide for an explanation relating to data protection measures.

Clause 12.— This clause relates to HIV and AIDS policy for establishments. It seeks to provide that the Central Government shall notify model HIV and AIDS policy for establishments, in such manner, as may be prescribed.

Clause 13.— This clause relates to Central Government and State Government to take measures. It seeks to provide that the Central Government and every State Government, as

the case may be, shall take all such measures as it deems necessary and expedient for the prevention of spread of HIV or AIDS, in accordance with the guidelines.

Clause 14.— This clause relates to Anti-retroviral Therapy and Opportunistic Infection Management by Central and State Government. It seeks to provide that the measures to be taken by the Central Government or the State Government under clause 13 and shall include the measures for providing, as far as possible, Anti-retroviral Therapy and Opportunistic Infection Management to people living with HIV or AIDS and the Central Government shall issue necessary guidelines in respect of protocols for HIV and AIDS relating to Anti-retroviral Therapy and Opportunistic Infection Management which shall be applicable to all persons and ensure their wide dissemination.

Clause 15.— This clause deals with welfare measures by Central Government and State Government. It seeks to provide that the Central Government and every State Government shall take measures to facilitate better access to welfare schemes to persons infected or affected by HIV or AIDS and further provides to frame schemes to address the needs of HIV and AIDS affected women and children.

Clause 16.— This clause deals with protection of property of children affected by HIV or AIDS. Sub-clause (1) seeks to provide that the Central Government or the State Government, as the case may be, shall take appropriate steps to protect the property of children affected by HIV or AIDS.

Sub-clause (2) of the said clause seeks to provide for a situation when the parents or guardians of children affected by HIV and AIDS, or any person acting for protecting their interest, or a child affected by HIV and AIDS may approach the Child Welfare Committee. An explanation has been provided to define “Child Welfare Committee” which means a Committee set up under section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Clause 17.— This clause deals with promotion of HIV and AIDS related information, education and communication programmes. It seeks to provide that the Central Government and the State Government shall formulate HIV and AIDS related information, education and communication programmes which are age-appropriate, gender-sensitive, non-stigmatising and non-discriminatory.

Clause 18.— This clause relates to women and children infected with HIV or AIDS. Sub-clause (1) seeks to provide that the Central Government shall lay down guidelines for care, support and treatment of children infected with HIV or AIDS. Sub-clause (2) seeks to provide that the Central Government, or the State Government, as the case may be, shall take measures to counsel and provide information regarding the outcome of pregnancy and HIV-related treatment to the HIV infected women. Sub-clause (3) seeks to provide that no HIV positive woman, who is pregnant, shall be compelled to undergo sterilisation or abortion without obtaining her informed consent.

Clause 19.— This clause relates to obligation of establishments to provide safe working environment. It seeks to provide that every establishment, engaged in the healthcare services and every such other establishment where there is a significant risk of occupational exposure to HIV, shall, for the purpose of ensuring safe working environment shall provide in accordance with the guidelines the Universal Precautions to all persons working in such establishment who may be occupationally exposed to HIV and training for the use of such Universal Precautions and Post Exposure Prophylaxis to all persons working in such establishment who may be occupationally exposed to HIV or AIDS and inform and educate all persons working in the establishment of the availability of Universal Precautions and Post Exposure Prophylaxis.

Clause 20.— This clause relates to general responsibility of establishments. Sub-clause (1) seeks to provide that the provisions of Chapter VII shall be applicable to all establishments consisting of one hundred or more persons, whether as an employee or officer or member or director or trustee or manager, as the case may be, and provide that in the

case of healthcare establishments, the provisions of sub-clause (1) shall have the effect as if for the words “one hundred or more”, the words “twenty or more” had been substituted.

Sub-clause (2) seeks to provide that every person, who is in charge of an establishment, referred to in sub-clause (1), for the conduct of the activities of such establishment, shall ensure compliance of the provisions of this Act.

Clause 21.— This clause relates to grievance redressal mechanism. It seeks to provide that every establishment referred to in sub-clause (1) of clause 20 shall designate such person, as it deems fit, as the Complaints Officer who shall, on a day-to-day basis, deal with complaints of violations of the provisions of this Act in the establishment, in such manner as may be prescribed.

Clause 22.— This clause relates to strategies for reduction of risk. It seeks to provide that any strategy or mechanism or technique adopted or implemented for reducing the risk of HIV transmission, or any act pursuant thereto, as carried out by persons, establishments or organisations in the manner as may be specified in the guidelines issued by the Central Government and shall not be restricted or prohibited in any manner, and shall not amount to a criminal offence or attract civil liability. An explanation has been provided to define “the strategies for reducing risk of HIV transmission”. Illustrations have been provided in this regard.

Clause 23.— This clause relates to appointment of Ombudsman. Sub-clause (1) seeks to provide that every State Government shall appoint one or more Ombudsman possessing such qualification and experience as may be prescribed, or designate any of its officers not below such rank, as may be prescribed, by that Government, to exercise such powers and discharge such functions as may be conferred on Ombudsman under this Act.

Sub-clause (2) seeks to provide that the terms and condition of the service of the Ombudsman appointed under item (a) of sub-clause (1) shall be such as may be prescribed by the State Government.

Sub-clause (3) seeks to provide that the Ombudsman appointed under sub-clause (1) shall have such jurisdiction in respect of such area or areas as the State Government may, by notification, specify.

Clause 24.— This clause relates to powers of Ombudsman. Sub-clause (1) seeks to provide that the Ombudsman shall, upon a complaint made by any person inquire into violations of the provisions of this Act, in relation to healthcare services by any person, in such manner as may be prescribed by the State Government.

Sub-clause (2) seeks to provide that the Ombudsman may require any person to furnish information on such points or matters as he considers necessary, for inquiring into the matter and any person so required shall be deemed to be legally bound to furnish such information and failure to do so shall be punishable under sections 176 and 177 of the Indian Penal Code.

Sub-clause (3) seeks to provide that the Ombudsman shall maintain records in such manner as may be prescribed by the State Government.

Clause 25.— This clause relates to procedure of complaint. It seeks to provide that the complaints may be made to the Ombudsman under sub-clause (1) of clause 26, in such manner, as may be prescribed, by the State Government.

Clause 26.— This clause relates to orders of Ombudsman. It seeks to provide that the Ombudsman shall hear both the parties and pass orders, giving reasons for the same.

Clause 27.— This clause deals with authorities to assist Ombudsman. It seeks to provide that all authorities including Civil authorities functioning in the area for which the Ombudsman shall assist in execution of orders passed by the Ombudsman.

Clause 28.— This clause deals with report to the State Government. It seeks to provide that the Ombudsman shall, after every six months, report to the State Government, the

number and nature of complaints received, the action taken and orders passed in relation to such complaints and such report shall be published on the website of the Ombudsman and a copy thereof be forwarded to the Central Government.

Clause 29.— This clause relates to right of residence. It seeks to provide that every HIV infection or affected woman has the right to reside in a shared household.

Clause 30.— This clause deals with HIV-related information, education and communication before marriage. It seeks to provide that the Central Government shall specify guidelines for HIV-related information, education and communication before marriage.

Clause 31.— This clause relates to persons in care or custody of State. It seeks to provide that every person who is in the care or custody of the State shall have the right to HIV prevention, counseling, testing and treatment services in accordance with the guidelines issued in this regard.

Clause 32.— Clause 32 relates to recognition of guardianship of older sibling. It seeks to provide that a person below the age of eighteen but not below twelve years, who has sufficient maturity of understanding and who is managing the affairs of his family affected by HIV and AIDS, shall be competent to act as guardian of other sibling below the age of eighteen years for the following purposes, namely, (a) admission to educational establishments, (b) care and protection, (c) treatment, (d) operating bank accounts, (e) managing property and (f) any other purpose that may be required to discharge his duties as a guardian.

Clause 33.— This clause deals with living wills for guardianship and testamentary guardianship. It provides that a parent or legal guardian of a child affected by HIV and AIDS may appoint, by making a will, an adult person who is a relative or friend, or a person below the age of eighteen years who is the managing member of the family affected by HIV and AIDS, as referred to in section 33, to act as legal guardian immediately upon incapacity or death of such parent or legal guardian, as the case may be.

Clause 34.— Clause 34 relates to suppression of identity. It provides that in any legal proceeding in which a protected person is a party or such person is an applicant, the court, on an application by such person or any other person on his behalf may pass, in the interest of justice, any or all of the following orders, namely, (a) that the proceeding or any part thereof be conducted by suppressing the identity of the applicant by substituting the name of such person with a pseudonym in the records of the proceedings in such manner as may be prescribed; (b) that the proceeding or any part thereof may be conducted in camera; (c) restraining any person from publishing in any manner any matter leading to the disclosure of the name or status or identity of the applicant.

Clause 35.— This clause relates to maintenance applications. It provides that in any maintenance application filed by or on behalf of a protected person under any law for the time being in force, the court shall consider the application for interim maintenance and, in passing any order of maintenance, shall take into account the medical expenses and other HIV-related costs that may be incurred by the applicant.

Clause 36.— This clause relates to sentencing. It seeks to provide that in passing any order relating to sentencing, the HIV positive status of the persons in respect of whom such an order is passed shall be a relevant factor to be considered by the court to determine the custodial place where such person shall be transferred to, based on the availability of proper healthcare services at such place.

Clause 37.— This clause deals with penalty for contravention. It seeks to provide that whoever contravenes the provisions of section 4 shall be punished with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine which may extend to one lakh rupees or both.

Clause 38.— This clause deals with penalty for failure to comply with the orders of the Ombudsman. It seeks to whoever fails to comply with any order given by an Ombudsman

within such time as may be specified in such order, under section 25, shall be liable to pay a fine which may extend to ten thousand rupees and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues.

Clause 39.— This clause deals with penalty for breach of confidentiality in legal proceedings. It seeks to provide that whoever discloses information regarding the HIV status of a protected person which is obtained by him in the course of, or in relation to, any proceedings before any court, shall be punishable with fine which may extend to one lakh rupees unless such disclosure is pursuant to any order or direction of a court.

Clause 40.— This clause relates to prohibition of victimization. It seeks to provide that no person shall subject any other person or persons to any detriment on the ground that such person or persons who have made complaint under this Act; or brought proceedings under this Act against any person; or furnished any information or produced any document to a person exercising or performing any power or function under this Act; or appeared as a witness in a proceeding under this Act.

Clause 41.— This clause deals with the court to try offences. It seeks to provide that No court other than the court of a Judicial Magistrate First Class shall take cognizance of an offence under this Act.

Clause 42.— This clause deals with offences to be cognizable and bailable. It seeks to provide that notwithstanding anything contained in the Code of Criminal Procedure, 1973, offences under this Act shall be cognizable and bailable.

Clause 43.— This clause deals with the overriding effect of the Act. It seeks to provide that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Clause 44.— This clause relates to protection of action taken in good faith. It seeks to provide that no suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Central Government or AIDS Control Society of the State Government Ombudsman or any member thereof or any officer or other employee or person acting under the direction either of the Central Government, the State Government, the Central Government, or Ombudsman in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or guidelines made thereunder or in respect of the publication by or under the authority of the Central Government, the State Government, the Central Government or AIDS Control Society of the State Government Ombudsman.

Clause 45.— This clause relates to delegation of powers. It seeks to provide that the Central and State Government, may, by general or special order, direct that any power exercisable by it under this Act shall, in such circumstances and under such conditions, if any, as may be mentioned in the order, be exercisable also by an officer subordinate to that Government or the local authority.

Clause 46.— This clause relates to power of the Central Government to make guidelines. Sub-clause (1) of the clause provides that the Central Government may, by notification, make guidelines consistent with this Act and any rules thereunder, generally to carry out the provisions of this Act. Sub-clause (2) of the said clause seeks to provide that such guidelines may provide for all or any of the following matters, namely, (a) information relating to risk and benefits or alternatives to the proposed intervention under clause (n) of section 2; (b) the manner of obtaining the informed consent under sub-section (1) and the manner of pre test and post test counselling under sub-section (2) of section 5; (c) guidelines to be followed by a testing or diagnostic centre or pathology laboratory or blood bank for HIV test under section 7; (d) the manner of taking data protection measures under section 11; (e) guidelines in

respect of protocols for HIV/AIDS relating to Anti retroviral Therapy and Opportunistic Infections Management under sub-section (2) of section 14; (f) care, support and treatment of children infected with HIV or AIDS under sub-section (1) of section 18; (g) guidelines for Universal Precautions and post exposure prophylaxis under section 19; (h) manner of carrying out the strategies or mechanism or technique for reduction of risk of HIV transmission by any person, establishment or organisation under section 22; (i) manner of implementation of a drugs substitution, drug maintenance and needle and syringe exchange programme under section 22; (j) provision of HIV-related information, education and communication before marriage under section 30; (k) manner of HIV or AIDS prevention, counselling, testing and treatment of persons in custody under section 31; (l) any other matter which ought to be specified in guidelines for the purposes of this Act.

Clause 47.— This clause relates to power of the Central Government to make rules. Sub-clause (1) of the said clause seeks to provide that the Central Government may, by notification, make rules to carry out the provisions of this Act. Sub-clause (2) of the said clause seeks to provide that provide, such rules may provide for all or any of the following matters, namely:— (a) manner of notifying model HIV or AIDS policy for the establishments under section 12; (b) any other matter which may be or ought to be prescribed by the Central Government.

Clause 48.—This clause relates to laying of rules before both Houses of Parliament. It seeks to provide that every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Clause 49.— This Clause relates to power of State Government to make rules and laying thereof. Sub-clause (1) of the clause seeks to provide that the State Government may, by notification, make rules for carrying out the provisions of this Act. Sub-clause (2) of the said clause provides that such rules may provide for all or any of the following matters, namely :— (a) measures to provide Anti-retroviral Therapy and Opportunistic Infection Management to people living with HIV or AIDS and for the prevention of spread of HIV or AIDS in accordance with the guidelines under section 14; (b) qualification and experience for the appointment of a person as an Ombudsman under clause (a) or rank of the officer of the State Government to be designated as an Ombudsman under clause b of sub-section (1) of section 23; (c) terms and conditions of services of Ombudsman under sub-section (2) of section 23; (d) manner of inquiring into complaints by the Ombudsman under sub-section (1) and maintaining of records by him under sub-section (3) of section 24; (e) manner of making the complaints to the ombudsman under section 25; (f) manner of recording pseudonym in legal proceedings under clause (a) of sub-section (1) of section 34. Sub-clause the said clause provides that every rule made by the State Government under this Act shall be laid, as soon as may be, after it is made before the Legislature of that State.

Clause 50.— This clause deals with power to remove difficulties. Sub-clause (1) of the said clause seeks to provide that if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act within a period of two years from the commencement of the Act. Sub-clause (2) provides that every such order made shall be laid, as soon as may be after it is made, before each House of Parliament.

FINANCIAL MEMORANDUM

The current National AIDS Control Programme takes care of the concerns expressed in the Bill for prevention and control of HIV and AIDS. The Planning Commission has allocated Rupees 11,394 Crore for the Department of AIDS Control as part of the Twelfth Plan (2012-2017) Outlay. It is difficult to estimate the provision required for new activities such as number of persons who will be appointed as Ombudsman by the State Governments, the schemes to be drawn out by the Central Government and State Governments, etc. In addition, there are some schemes which need to be framed and implemented by other Departments and Ministries for people infected/affected with HIV or AIDS.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 46 of the Bill seeks to empower the Central Government to make guidelines consistent with the proposed legislation and rules thereunder to carry out its provisions. Sub-clause (2) of this clause enumerates the matters with respect to which guidelines may be made. These matters relate to (a) information relating to risk and benefits or alternatives to the proposed intervention under clause (n) of section 2 ; (b) the manner of obtaining the informed consent under sub-section (1) and the manner of pre test and post test counselling under sub-section (2) of section 5; (c) guidelines to be followed by a testing or diagnostic centre or pathology laboratory or blood bank for HIV test under section 7; (d) the manner of taking data protection measures under section 11; (e) guidelines in respect of protocols for HIV/AIDS relating to Anti retroviral Therapy and Opportunistic Infections Management under sub-section (2) of section 14; (f) care, support and treatment of children infected with HIV or AIDS under sub-section (1) of section 18; (g) guidelines for Universal Precautions and post exposure prophylaxis under section 19; (h) manner of carrying out the strategy or mechanism or technique adopted for reducing the risk of HIV transmission by person, establishment or organisations including the manner of implementation of drugs substitution, drug maintenance and needle and syringe exchange programme under section 22; (i) provision of HIV-related information, education and communication before marriage under section 30; (j) manner of HIV or AIDS prevention, counselling, testing and treatment of persons in custody under section 31 and any other matter which ought to be specified in the guidelines for the purposes of the proposed legislation.

2. Clause 47 of the Bill seeks to empower the Central Government to make rules to carry out the provisions of the Act. Sub-clause (2) of this clause seeks to provide for the manner of notifying model HIV or AIDS policy for the establishments under section 12 and any other matter which may be or ought to be prescribed by the Central Government.

3. Clause 48 of the Bill provides that the rules made under the proposed legislation are required to be laid before each House of Parliament.

4. Clause 49 of the Bill seeks to empower the State Government to make rules to carry out the provisions of the Act. Sub-clause (2) of this clause enumerates the matters with respect to which rules may be made. These matters relate to (a) measures to provide Anti-retroviral Therapy and Opportunistic Infection Management to people living with HIV or AIDS and for the prevention of spread of HIV or AIDS in accordance with the guidelines under section 14; (b) qualification and experience for the appointment of a person, or rank of officers of State Government to be designated, as an Ombudsman under sub-section (1) of section 23; (c) terms and conditions of services of Ombudsman under sub-section (2) of section 23; (d) manner of inquiring into complaints by the Ombudsman under sub-section (1) and maintaining of records by him under sub-section (3) of section 24; (e) manner of making the complaints to the Ombudsman under section 25; (f) manner of recording pseudonym in legal proceedings under clause (a) of sub-section (1) of section 34.

Sub-clause (3) of clause 49 of the Bill provides that the rules made by the State Government under the proposed legislation are required to be laid before the Legislature of that state.

5. The matters in respect of which rules may be made under the aforesaid provisions are matters of procedure and administrative detail and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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to provide for the prevention and control of the spread of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome and for the protection of human rights of persons affected by the said virus and syndrome and for matters connected therewith or incidental thereto.

(Shri Ghulam Nabi Azad, Minister of Health and Family Welfare)