

THE HUMAN IMMUNODEFICIENCY VIRUS AND ACQUIRED IMMUNE DEFICIENCY  
SYNDROME (PREVENTION AND CONTROL) ACT, 2017

ACT NO. 16 OF 2017

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An Act 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-eighth Year of the Republic of India as follows:◆◆

## CHAPTER I

### PRELIMINARY

1. Short title, extent and commencement.

(1) This Act may be called the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017.

(2) It extends to the whole of India.

(3) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.

In this Act, unless the context otherwise requires,◆

(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;

(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;

(c) ♦child affected by HIV♦ means a person below the age of eighteen years, who is HIV-positive or whose parent 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;

(d) ♦discrimination♦ means any act or omission which directly or indirectly, expressly or by effect, immediately or over a period of time,♦

(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

(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.

Explanation 1.♦For the purposes of this clause, HIV-related grounds include♦

(i) being an HIV-positive person;

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

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

Explanation 2.♦For the removal of doubts, it is hereby clarified that adoption of medically advised safeguards and precautions to minimise the risk of infection shall not amount to discrimination;

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

(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;

(g) ♦guidelines♦ means any statement or any other document issued by the Central Government indicating policy or procedure or course of action relating to 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;

(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;

(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;
- (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; (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;
- (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;
- (o) ♦notification♦ means a notification published in the Official Gazette;
- (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 (1 of 1956), any Limited Liability Partnership under the Limited Liability Partnership Act, 2008 (6 of 2009), 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;
- (r) ♦prescribed♦ means prescribed by rules made by the Central Government or the State Government, as the case may be;
- (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;
- (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♦♦

(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;

(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♦♦

(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,♦♦

(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♦♦

(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;

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

(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

(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, nonintact-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 by the significant-risk body substances:

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;

(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

(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;

(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

(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

#### 3. Prohibition of discrimination.

No person shall discriminate against the protected person on any ground including any of the following, namely: ♦

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

(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;

(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;

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

(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;

(j) the denial of, or unfair treatment in, the provision of insurance unless 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:

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.

#### 4. Prohibition of certain acts.

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.

### CHAPTER III

#### INFORMED CONSENT

#### 5. Informed consent for undertaking HIV test or treatment.

(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.

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

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

(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:

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;

(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.

7. Guidelines for testing centres, etc.

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.

## CHAPTER IV

### DISCLOSURE OF HIV STATUS

8. Disclosure of HIV status.

(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 of the court that the disclosure of such information is necessary in the interest of justice for the determination of issues in the matter before it;

(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:

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

(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;

(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;

(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.

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

(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

(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

(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:

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.

(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.

#### 10. Duty to prevent transmission of HIV.

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:

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.

### CHAPTER V

#### OBLIGATION OF ESTABLISHMENTS

##### 11. Confidentiality of data.

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.

##### 12. HIV and AIDS policy for establishments.

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

### CHAPTER VI

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

##### 13. Central Government and State Government to take measures.

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.

14. Antiretroviral Therapy and Opportunistic Infection Management by Central Government and State Government.

(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, diagnostic facilities relating to HIV or AIDS, Anti-retroviral Therapy and Opportunistic Infection Management to people living with HIV or AIDS.

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

## CHAPTER VII

### WELFARE MEASURES BY THE CENTRAL GOVERNMENT AND STATE GOVERNMENT

15. Welfare measures by Central Government and State Government.

(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.

(2) Without prejudice to the provisions of sub-section (1), the Central Government and State Governments shall frame schemes to address the needs of all protected persons.

16. Protection of property of children affected by HIV or AIDS.

(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.

(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.

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

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.

18. Women and children infected with HIV or AIDS.

(1) The Central Government shall lay down guidelines for care, support and treatment of 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.

(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

19. Obligation of establishments to provide safe working environment.

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, ♦

(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

(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.

20. General responsibility of establishments.

(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.

(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.

21. Grievance redressal mechanism.

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 dispose of complaints of violations of the provisions of this Act in the establishment, in such manner and within such time as may be prescribed.

## CHAPTER IX

### PROMOTION OF STRATEGIES FOR REDUCTION OF RISK

#### 22. Strategies for reduction of risk.

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 organisations 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.

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;
- (ii) the provisions and use of safer sex tools, including condoms;
- (iii) drug substitution and drug maintenance; and
- (iv) provision of comprehensive injection safety requirements.

#### 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.
- (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.
- (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.
- (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

### 23. Appointment of Ombudsman.

(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,

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 respect of such area or areas as the State Government may, by notification, specify.

### 24. Powers of Ombudsman.

(1) The Ombudsman shall, upon a complaint made by any person, inquire into the violations of the provisions of this Act, in relation to acts of discrimination mentioned in section 3 and providing of 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 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.

### 25. Procedure of complaint.

The complaints may be made to the Ombudsman under sub-section (1) of section 24 in such manner, as may be prescribed, by the State Government.

### 26. Orders of Ombudsman.

The Ombudsman shall, within a period of thirty days of the receipt of the complaint under sub-section (1) of section 24, and after giving an opportunity of being heard to the parties, pass such order, as he deems fit, giving reasons therefor:

Provided that in cases of medical emergency of HIV positive persons, the Ombudsman shall pass such order as soon as possible, preferably within twenty-four hours of the receipt of the complaint.

### 27. Authorities to assist Ombudsman.

All authorities including the civil authorities functioning in the area for which the Ombudsman has been appointed under section 23 shall assist in execution of

orders passed by the Ombudsman.

## 28. Report to State Government.

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

### SPECIAL PROVISIONS

## 29. Right of residence.

Every protected person 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.

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.

## 30. HIV-related information, education and communication before marriage.

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

## 31. Persons in care or custody of State.

(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 (56 of 2000), the Immoral Traffic (Prevention) Act, 1956 (104 of 1956) or any other law and persons in the care or custody of State run homes and shelters.

## 32. Recognition of guardianship of older sibling.

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:◆

- (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.

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.

### 33. Living wills for guardianship and testamentary guardianship.

(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.

(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.

(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

### SPECIAL PROCEDURE IN COURT

#### 34. Suppression of identity.

(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:◆

- (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.

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

### 35. Maintenance applications.

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.

### 36. Sentencing.

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.

## CHAPTER XIII

### PENALTIES

### 37. Penalty for contravention.

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.

### 38. Penalty for failure to comply with orders of Ombudsman.

Whoever fails to comply with any order given by an Ombudsman within such time as may be specified in such order, under section 26, 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.

### 39. Penalty for breach of confidentiality in legal proceedings.

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

### 40. Prohibition of victimisation.

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;

(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.

41. Court to try offences.

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

42. Offences to be cognizable and bailable.

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

43. Act to have overriding effect.

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.

44. Protection of action taken in good faith.

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.

45. Delegation of powers.

The Central Government 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.

46. Guidelines.

(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: ♦

- (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 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;
- (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.

#### 47. Power of Central Government to make rules.

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

(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: ♦

(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.

#### 48. Laying of rules before both Houses of Parliament.

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.

49. Power of State Government to make rules and laying thereof.

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

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

(a) measures to provide diagnostic facilities relating to HIV or AIDS, Antiretroviral 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 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;

(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.

50. Power to remove difficulties.

(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:

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.