

What is HIV & AIDS (P&C) Act 2017

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Introduction

- The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 came into effect on September 10, 2018, which made legal provisions for the prevention and control of HIV/AIDS and for the protection of human rights of PLHIV and those affected by HIV/AIDS and associated matters.
- One of the main reasons such a law was required in the country is that HIV/AIDS has been associated with a lot of stigma and discrimination.
- Chapters : 14 Sections 50
- Central Govt. Rules: September 2018 Chapters: 3 Sections: 16
- Model HIV & AIDS Policy on Establishments: 13th July, 2021
- TN Rules: 2020 Chapters: 5 Sections: 15

Key provisions of the Act

- The discrimination faced by infected people is prohibited in this Act.
- This Act prevents the spread of HIV and AIDS.
- A person who is found to spread hatred against any infected person would be punished with a minimum of three months to a maximum of two years imprisonment with a fine which may extend up to one lakh.

Rights based Approach

- For every infected person, Antiretroviral Therapy (ART) is a legal right.
- Any person who has been tested positive would qualify for 'test and treat' policy where he/she will be treated free of cost.
- HIV prevention, testing, treatment and counselling services are rights of every infected person under a State's guardianship

Prohibits discrimination Against HIV positive person and Family Members

- The Act lists various grounds on which discrimination against HIV positive persons and those living with them is prohibited.
- These include the denial, termination, discontinuation or unfair treatment with regard to:
 - employment.
 - educational establishments.
 - health care services.

Prohibits Discriminations

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

Discrimination

- Discrimination is prohibited not only against people infected with HIV and AIDS but also against people affected by HIV and AIDS.
- This may include other people living, cohabiting, and residing with an HIV positive person.
- It also encompasses other people who have lived, resided, or cohabited with an HIV positive person in the past.

Informed consent and disclosure of HIV status

- The Act requires that no HIV test, medical treatment, or research will be conducted on a person without his / her informed consent.
- No person shall be compelled to disclose his HIV status except with his/her informed consent, and if required by a court order.
- Informed consent for an HIV test will not be required in case of screening by any licensed blood bank, a court order, medical research, and epidemiological purposes where the HIV test is anonymous and not meant to determine the HIV status of a person.

Informed Consent and Disclosure

- Establishments keeping records of information of HIV positive persons shall adopt data protection measures.
- The requirement for HIV testing as a prerequisite for obtaining employment or accessing health care or education is also prohibited.

Appointment of Ombudsman

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

Complaints Officer: Duties, Powers and Responsibilities at the Institutional level

1. Acceptance of complaints
2. Assistance in filing complaint
3. Acknowledgement and registration of complaints
4. Timeline for decision making- within seven working days. In case of emergency or in the case of healthcare establishments should decide the complaint on the same day on which he receives the complaint.
5. Decision making powers

Complaints officer .contd

6. Additionally, social service should be done for a fixed period, which should include working with a non-governmental organization working on HIV and AIDS.
7. Informing the complainant:
8. Reporting mechanism: Govt
9. Confidentiality
10. Data management

Guardianship

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

Court proceedings

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

Penalties on violation of the Act

- The penalties faced by people who violate the Act mentioned under Chapter XIII are as follows:
- If Section 37 of the HIV and AIDS (Prevention and Control) Act, 2017 gets violated, the person would be punished with a term of not less than three months imprisonment to a maximum imprisonment of two years with fine which may extend to one lakh rupees or both.
- If a person violates the orders of the ombudsman as mentioned under Section 26 of the Act then he has to pay a fine of up to ten thousand and if he fails to pay the fine then he has to pay a fine of five thousand every day till he pays the fine.

Penalties contd

- An individual will be penalised with a fine that can stretch up to one lakh rupees if he discloses an infected person's HIV status without his or her permission or without a court order, or violates the ombudsman's order and without testamentary guardianship.
 - No person shall subject any other person or persons to any detriment on the grounds that such person or persons have taken any of the following actions, namely:
 - made a complaint under this Act;
 - brought proceedings under this Act against any person;
 - furnished any information or produced any document to a person exercising any power or function under this Act; or
 - appeared as a witness in a proceeding under this Act.
- Notwithstanding anything contained in the Code of Criminal Procedure Code, 1973, offences under this Act shall be cognizable and bailable.

Role of Central and state governments to ensure relief to infected people

- Better welfare schemes for the infected people are ensured by the Central government and every state government.
- The property of the infected people will be protected by the central and every state government.
- HIV and AIDS-related information, education and communication programmes which are age-appropriate, gender-sensitive, non-stigmatising and non-discriminatory programmes have been made by the state and Central government.

Role of Central and State Govt.

- Infected children would be taken care of by the Central /State government under the set of guidelines for care, support and treatment.
- The Central /State government makes sure that without consent, an infected pregnant woman is not be subjected to sterilisation or abortion.
- The central and state governments will also have to take measures to prevent the spread of HIV or AIDS and facilitate access of persons with HIV or AIDS to welfare schemes especially for women and children.

How does the Act prohibit discrimination against an infected person?

- There are various penalties mentioned in the Act regarding discrimination against an infected person.
- There are certain criteria for giving the penalty.
If an infected person is treated unfairly during their employment

How does the Act prohibit discrimination against an infected person

- If the infected person (below the age of 18 years) has been denied the right to reside in a shared household.

If an infected person has been treated unfairly in healthcare services.

If an infected person has been treated unfairly at the residing or renting property.

If an infected person on a personal or a professional level has been handled unfairly.

Where an infected person is handled unfairly in the provision of insurance.

**Thank
You**

