

HIV & AIDS (P&C) Act, 2017

Implementation structure and Legal Redress Forums and Status of Implementation

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Introduction

- LIKE most legislation, the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 was not enacted out of the blue.
- It was the result of years of civil society mobilisation of persons living with HIV, at-risk groups such as gay men, transgender persons, sex workers, drug users and other constituencies— starting from the drafting of the law in 2003 up to parliamentary advocacy (Lawyers Collective) for its passage in 2017.
- The law has been in force for more than seven years now since its notification in September 2018. That means enough time has passed to examine the impact of the law in terms of enforcement by the government, compliance by the private sector and agitation of concerns by affected groups.

Forums of legal redress

Apart from the courts, the HIV/AIDS Act provides for two additional sources of legal redress: a complaints officer at the institutional level and an ombudsman at the State / regional level.

Section 28 of the law which requires the State ombudsman to send bi-annual reports to the concerned state government on the number and nature of complaints received and action taken on each complaint.

Ombudsman

- Only 28 states and Union territories (28 states and 8 UT) have appointed ombudsmen at the regional level and eight do not report any progress on this front as of 2023.
- Of the 28 states and Union territories that have appointed ombudsmen, a vast majority have rules that provide for the exclusive eligibility of chief medical officers (CMO) or officials from within the local Health and Family Welfare Departments for appointment as ombudsmen.
- Only three states, Karnataka, Manipur and Nagaland, allow the appointment of public health experts, activists, retired judges and academic professionals as ombudsmen. The broader representation of independent stakeholders provides a fairer opportunity for monitoring the implementation of the law by concerned parties.

Ombudsman in Tamil Nadu

- Project Director / Member Secretary ,TANSACS is the Ombudsman .The spirit of HIV/AIDS (Prevention & Control) Act, 2017, is that the Ombudsman is an independent post with persons with specialized knowledge and practical experience in respect of the matters relating to Comprehensive care, support and treatment to all persons living with HIV/AIDS. As he/she would not only be in better position to understand the problems of persons living with HIV/AIDS, but sensitive too towards their needs/requirements. Criteria for the use of the term “Ombudsman” should only power to investigate; effectiveness; fairness and public accountability. Ombudsman should be independent, impartial institution, promoting transparency, accountability and fairness within the public
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Complaints Officers

- Similarly, as per Rule 12 of the Rules, 2018, complaints officers at every establishment (including in the private sector) are mandated to bi-annually report the nature and number of complaints received and action taken to the Union Government as well as publish the same on its website.
- The complaints officers must submit anonymised records to perform the reporting obligation in order to protect the confidentiality of the parties. Hence, the private sector's compliance with the mandate to appoint the complaints officers must be monitored by seeking such data from the Union government through right-to-information applications.

Court interventions

HIV-related law and policy concerns are often litigated without invoking the provisions of the HIV/AIDS Act, which merits consideration in terms of training all stakeholders on the law.

In 2022, ART centres in various states including Maharashtra, Andhra Pradesh, NCT of Delhi, Gujarat, Manipur, Rajasthan and Bihar reported stockout of ART drugs for a large part of the year.

Court Interventions

- In *Girish versus Union of India*, the Delhi High Court adjudicated a matter concerning homeless and migrant persons living with HIV which raised concerns relating to employment assistance, housing and shelter, food security, general healthcare services and hospice care for terminally ill persons.

Undue delay in notifications

- *The undue delay in notification of the law is representative of a broader lack of political will to ensure effective implementation of the law.*
- Despite receiving presidential assent on April 20, 2017, the HIV/AIDS Act was not brought into force by the government until September 10, 2018. The notification of the law occurred in the backdrop of a petition filed before the Delhi High Court (Shenani Rose Verma versus Ministry of Health and Family Welfare) in August 2018, which sought a response from the Union Ministry of Health and Family Welfare on the status of the law.

Anti-discrimination and reasonable accommodation in employment matters

- Since the enactment of the HIV/AIDS Act, anti-discrimination litigation has focussed largely on unfair treatment in employment conditions within the armed or para-military forces.
- A Border Security Force (BSF) officer was placed in the lower medical category (LMC) on testing positive for HIV and subsequently withheld for promotion in *Kavendra Singh Siddhu versus Union of India*.
- The 'lower' medical category is a condition under the Standing Order where personnel is considered temporarily unfit for service due to sick leaves or hospitalisation.

Lack of Awareness about the Act

- Awareness of the HIV/AIDS Act provisions is lacking in the Health care Professionals , media and judiciary.
- Faced with discrimination and poverty, those with HIV/AIDS appeal to govt. for houses.
- Being able to rent a house is part of the larger problem for hundreds of people in Tamil Nadu
- One of the key difficulties for TN to craft an AIDS prevention and control programme for the general population is the population's huge size and diversity, cutting across multiple socio-economic, cultural, occupational, demographic, and educational strata. For such a scale, the costs of awareness campaigns and prevention programmes will pose a great challenge.

Complaints officers

The HIV/AIDS Act covers the private sector by virtue of the definition of establishment under Section 2(f).

Hence, workplaces in the private sector have a legally binding duty to appoint complaints officers to provide institutional grievance redress.

Budgetary Constraints

- Although the government's obligations with respect to access to treatment, diagnostic facilities, etc. are qualified on the basis of budgetary constraints as provided under Section 14(1), the government has a bounden duty to provide a justification in case of inability to provide such goods, services and facilities under judicial review, as per its commitments under the ICESCR.

Confidentiality

- The routine practice of nominated medical consultants disclosing the HIV status of candidates directly to the employer without seeking informed consent in writing results in a clear violation of doctor-patient confidentiality under Section 8(1) of the HIV/AIDS Act. The mandate of the medical consultant is to assess the functional fitness of the candidate, irrespective of HIV status.

Discrimination in employment

- Organisational policies and service regulations that authorise pre-employment HIV tests must be amended to discard this practice as they are explicitly forbidden under Section 3(l) of the HIV/AIDS Act.
- Pre-employment HIV tests will disproportionately rob vulnerable communities of equal employment opportunities and perpetuate social and economic inequalities. Such acts would constitute indirect discrimination and the aggrieved person can claim damages for the same, as Article 15 is horizontally applicable to the private sector.

Fear and economic constraints

- Many persons living with HIV who face discrimination in employment are unable to pursue legal remedies due to a lack of support systems or economic resources.
- Persons living with HIV lived in fear and precarity due to the unavailability of treatment and rampant exclusion from society.

Need Amendment in the Act

- Removal of the phrase “as far as possible” from clause 14 (1) in the chapter of treatment .
- There have been numerous reports of HIV drugs and diagnostic shortages and stockouts which may irreversibly compromise the health of PLHIV.
- Retaining the phrase ‘as far as possible’ allows the government an escape route and absolves the government of the duty of meeting the treatment needs of each and every person living with HIV.
- The policy of free treatment available to PLHIVs has been critical to the success of the national HIV programme

Way Forward

Tamil Nadu State AIDS Control Society approach, programme, intervention should be based HIV/AIDS (P&C) Act, 2017, Central and State rules, HIV and AIDS Policy for Establishments, 2022.

It is a sad affair. At present the Department of Health and Family Welfare Policy Note 2024-2025 of the Government of Tamil Nadu not mentioned about the HIV/AIDS Act, 2017.

A close-up photograph of a pair of hands, palms up, holding a small, rectangular piece of white paper with deckled edges. The paper has the words "Thank You" written in a black, elegant cursive font. The background is dark, making the hands and the paper stand out.

Thank You

