



REPORT NO.

85

PARLIAMENT OF INDIA
RAJYA SABHA

**DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON HEALTH AND FAMILY WELFARE**

EIGHTY-FIFTH REPORT

On

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

(Ministry of Health and Family Welfare)

(Presented to the Rajya Sabha on 29th April, 2015)
(Laid on the Table of Lok Sabha on 29th April, 2015)



Rajya Sabha Secretariat, New Delhi
April, 2015/ Vaisakha, 1937 (SAKA)

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COMPOSITION OF THE COMMITTEE (2013-14)

RAJYA SABHA

1. Shri Brajesh Pathak - **Chairman**
2. Shri Rajkumar Dhoot
3. Shrimati B. Jayashree
4. Shri Mohd. Ali Khan
5. Dr. Prabhakar Kore
6. Dr. R. Lakshmanan
- & 7. Shri Rasheed Masood
8. Shri Jagat Prakash Nadda
9. Dr. Vijaylaxmi Sadho
10. Shri Arvind Kumar Singh

LOK SABHA

11. Shri Kirti Azad
12. Shri Mohd. Azharuddin
13. Shrimati Sarika Devendra Singh Baghel
14. Shri Kuvarjibhai M. Bavalia
15. Shrimati Priya Dutt
16. Dr. Sucharu Ranjan Haldar
17. Mohd. Asrarul Haque
18. Dr. Monazir Hassan
19. Dr. Sanjay Jaiswal
20. Shri Chowdhury Mohan Jatua
21. Dr. Tarun Mandal
22. Shri Mahabal Mishra
23. Shri Zafar Ali Naqvi
24. Shrimati Jayshreeben Patel
25. Shri Harin Pathak
26. Shri Ramkishun
27. Dr. Anup Kumar Saha
28. Dr. Arvind Kumar Sharma
29. Dr. Raghuvansh Prasad Singh
30. Shri P.T. Thomas
31. Vacant

SECRETARIAT

Shri P.P.K. Ramacharyulu	Joint Secretary
Shri R.B. Gupta	Director
Shrimati Arpana Mendiratta	Joint Director
Shri Dinesh Singh	Deputy Director
Shri Pratap Shenoy	Committee Officer

& vacant vide disqualified as a member of the Council of States (Rajya Sabha) w.r.t. 19th September, 2013.

COMPOSITION OF THE COMMITTEE (2014-15)

1. Shri Satish Chandra Misra - **Chairman**

RAJYA SABHA

2. Shri Ranjib Biswal
3. Shri Rajkumar Dhoot
%4. Shri Vijay Goel
^5. Dr. Bhushan Lal Jangde
5. Shrimati B. Jayashree
6. Dr. R. Lakshmanan
7. Shrimati Kahkashan Perween
&8. Dr. Vijaylaxmi Sadho
9. Chaudhary Munvvar Saleem
10. Dr. T.N. Seema
@11. Shri Jairam Ramesh

LOK SABHA

12. Shri Thangso Baite
13. Dr. Subhash Bhamre
14. Shri Nandkumar Singh Chouhan (Nandu Bhaiya)
15. Dr. Ratna De (Nag)
16. Dr. Heena Vijaykumar Gavit
17. Dr. Sanjay Jaiswal
18. Dr. K. Kamaraj
19. Shri Arjunlal Meena
20. Shri J. J.T. Natterjee
21. Shri Chirag Paswan
22. Shri M.K. Raghavan
23. Dr. Manoj Rajoriya
24. Shri Alok Sanjar
#25. Dr. Mahesh Sharma
26. Dr. Shrikant Eknath Shinde
27. Shri Raj Kumar Singh
28. Shri Kanwar Singh Tanwar
29. Shrimati Rita Tarai
30. Shri Manohar Untwal
31. Shri Akshay Yadav
*32. Shrimati Ranjanaben Bhatt
**33. Dr. Pritam Gopinath Munde

SECRETARIAT

Shri P.P.K. Ramacharyulu	Joint Secretary
Shri R.B. Gupta	Director
Shrimati Arpana Mendiratta	Joint Director
Shri Dinesh Singh	Joint Director
Shri Pratap Shenoy	Committee Officer

% resigned from the membership of the Committee w.e.f. 2nd December, 2014

^nominated as a member of the Committee w.e.f. 19th December, 2014

&ceased to be member of the Committee w.e.f. 28th November, 2014.

@ nominated as a member of the Committee w.e.f. 28th November, 2014.

ceased to be member of the Committee w.e.f. 9th November, 2014.

*nominated as a member of the Committee w.e.f. 22nd December, 2014.

** nominated as a member of the Committee w.e.f. 22nd December, 2014.

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Health and Family Welfare, having been authorized by the Committee to present the Report on its behalf, present this Eighty-fifth Report of the Committee on the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention And Control) Bill, 2014*.

2. In pursuance of Rule 270 of the Rules of Procedure and Conduct of Business in the Council of States relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred** the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Bill, 2014 (Annexure I) to the Committee on the 24th February, 2014, as introduced in the Rajya Sabha on the 11th February, 2014 for examination and report within two months. However, the previous Committee could not consider the Bill and present its Report due to dissolution of the 15th Lok Sabha. Subsequently Hon'ble Chairman granted **extension upto 30th April, 2015** for presentation of Report on the Bill.

3. The Committee held **Eleven** sittings during the course of examination of the Bill, i.e., on **10th September, 18th September, 25th September, 27th November, 2014, 9th February, 10th February, 3rd March, 19th March, 17th April, 23rd April and 27th April, 2015.**

4. The Committee considered the draft Report and adopted the same on 27th April, 2015.

**NEW DELHI;
April 27, 2015
Vaisakha 7, 1937 (Saka)**

***Satish Chandra Misra*
Chairman,
Department-related Parliamentary
Standing Committee on Health and Family Welfare**

* Published in Gazette of India Extraordinary Part II Section 2, dated 11th February, 2014.

** Rajya Sabha Parliamentary Bulletin Part II, No.51823, dated 26th February, 2014.

REPORT

1. The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome hereinafter referred to as the Bill was introduced in the Rajya Sabha on 11th February 2014 and referred to the Department- related Parliamentary Standing Committee on Health and Family Welfare on 24th February, 2014 for examination and report.
2. As per the information provided by the Ministry of Health and Family Welfare, the first HIV/AIDS Bill was drafted in 1989 and subsequently withdrawn as it contained provisions such as mandatory testing and confinement of infected persons. Subsequently, in 2003, at an international conference organized by NACO, the NGO Lawyers Collective was asked to develop a draft legislation on HIV. The draft was completed by Lawyers Collective in 2006 and forwarded to NACO for further processing.
3. Since 2007, the Bill has been modified based on the inputs of the Legislative Department and also from NACO. In addition, draft was also examined by the then-Solicitor General of India in 2010. By 2011, the HIV scenario in India had changed – the prevalence had reduced, the programme was scaled up and service uptake was encouraging. Thus the draft was again modified by NACO and made more concise. In 2012, comments on the Bill were sought from all departments of the Government of India and the draft was subsequently modified again. The current Bill has been drafted to safeguard the rights of the people living with HIV and affected by HIV. The Bill aims to enhance access to health care services by ensuring informed consent and confidentiality for HIV-related testing, treatment and clinical research. Furthermore, it was strongly felt that systems for redressing grievances need to be established. These were long-term goals to ensure that an effective prevention, care, support and treatment programme was implemented in the country.
4. Due to the change of Government in the year 2014, the matter was reconsidered by NACO and the provisions were looked into. After approval of the then Minister of Health and Family Welfare, the Note for Cabinet was sent to the Cabinet Secretariat for placing before the Cabinet. The Cabinet Secretariat advised to obtain fresh Inter-Ministerial consultations. Thus, the Cabinet note was circulated to all the Ministries/Departments with a copy to PMO for their comments. The issues that were raised in the comments have been adequately dealt with and no changes have been

made in the Cabinet Note. The Ministry in its background note has mentioned the following as the salient highlights of Bill –

- (i) Many instances of discrimination have been seen because a person is HIV- infected or affected. The Bill aims to ensure that HIV status does not influence the right to education, employment, health care and insurance. For example, the Bill seeks to prohibit HIV-testing as a pre-requisite for employment, healthcare access or education.
- (ii) Internationally, a rights-based approach (involving informed consent and voluntary disclosure of HIV-status) is known to be effective in increasing access to services. The provisions in the Bill ensure that HIV tests, treatment or research can only be conducted with the person's informed consent.
- (iii) Disclosure of one's HIV-status is a sensitive issue due to the stigma associated with sexual transmission. The Bill aims to ensure that no one is compelled to disclose his/her status.
- (iv) Many cases of discrimination have been observed in health-care settings which stem from providers fearing infection as HIV positive people are under their care. The Bill provides for training, Universal Precautions and Post Exposure Prophylaxis which can reduce instances of discrimination in health care settings by addressing the fears of health care workers.
- (v) Preventive efforts with Most at Risk Populations such as Sex Workers, Men-who-have-sex-with-men, Transgender and Injecting Drug Users are at times disrupted because of law enforcement. Provisions in the Bill ensure that efforts of NGOs working on HIV prevention are not hampered and that necessary outreach is not interrupted.
- (vi) National AIDS Control Organisation under the National AIDS Control Programme implements a strong Antiretroviral Therapy (ART) programme, however its sustainability needs to be ensured. The Bill has provisions which make a legal commitment on behalf of the Central and State Governments to provide ART and management of related infections, as far as possible.

- (vii) As there is no platform for grievances and complaints related to HIV-status and health care, the Bill provides for ombudspersons at the State level and Complaints Officers at the institutional level to redress grievances related to provisions of Bill.
- (viii) Schemes pertaining to people living with HIV need ownership of the State Governments and different ministries and departments. The Bill puts an obligation on Central and State governments to take measures to facilitate better access to welfare schemes for HIV-affected persons.
- (ix) Women living with and affected by HIV are often subject to discriminatory practices. The Bill provides that they have the right to reside in the shared household, and receive counseling regarding pregnancy so that they can make their own informed decisions.
- (x) The Bill has sections aimed at benefiting children who are affected /orphaned by HIV and AIDS. The Bill contains provisions to safeguard the property of HIV-affected children and recognizes the guardianship of older siblings for admission to educational institutions, managing property, operating bank accounts etc.
- (xi) Court matters pertaining to PLHIV need to be dealt with sensitively. The bill aims to ensure that HIV-positive persons, if convicted, shall be placed in custodial facilities where treatment is available.
- (xii) The Bill provides for the redressing of grievances and addressing contravention of the Bill's provisions through the following mechanisms – i) One or more Ombudspersons appointed by the State Governments; ii) Complaints Officers designated in establishments, including healthcare institutions; (the manner in which Complaints Officers will deal with complaints of violations under the Act will be prescribed in the Rules), (iii) The court of a Judicial Magistrate of First Class and through iv) Systems established under legislations such as Juvenile Justice Act, for example, the Child Welfare Committee (CWC).
- (xiii) The Bill provides for a penalty for hatred and discriminatory propaganda against people infected and affected by HIV. The penalty is imprisonment (which shall not be less than three months but which may extend to two years) and a fine that may extend to One Lakh rupees or both. In addition there are penalties (in the form of

finer) for non-compliance of orders of Ombudsman and also for breaching confidentiality in legal proceedings.

5. According to Statement of Objects and Reasons of the Bill, India is estimated to have 2.39 million people living with HIV/AIDS (PLHIV), the third highest number after South Africa and Nigeria and the epidemic 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 general population.

6. 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 insurances, medical benefits, etc., in both public and private establishments.

7. In view of the situation it was 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 was also important that existing establishments, both private and public, recognize the need to safeguard the rights of people infected with HIV/AIDS, particularly, women and children.

8. During the course of his oral evidence before the Committee on 9th February, 2015, Shri N.S. Kang, Additional Secretary & DG, CGHS delineated the following points with reference to the Bill, namely, (i) chronology of HIV/AIDS Bill; (ii) objectives of the Bill i.e. to remove stigma & discrimination related to HIV/AIDS in the public and private sector, (iii) create an enabling environment for service access; (iv) establish systems of grievance redressal by way of appointment of Ombudsman and complaints officers; (v) key beneficiaries of the Bill, (vi) salient features of the Bill i.e. reducing HIV- related discrimination; (vii) a rights –based approach involving informed consent and disclosure of HIV- status; (viii) ensuring safety of Health Care Providers; (ix) reducing risk among Most at Risk Populations; (x) legal commitment for treatment of HIV; (xi) promotion of

Information, Education, Communication (IEC) on HIV; (xii) penalties for HIV related hatred and discrimination; (xiii) welfare measures by the Government including welfare of HIV- affected women and HIV- affected children, etc.

9. The Committee also heard the views of some stakeholders/experts on the provisions of the Bill. The Committee received several memoranda from the stakeholders on the provisions of the Bill. Some of the views/amendments put forth by the Experts/Stakeholders before the Committee are listed below:

- To include most at risk population who have been left out in the definition of 'discrimination in Section 2(d)
- To amend the definition of the term 'protected person' in Section 2(s) by addition of sub-section (iv) which reads as follows " A sex worker, an injecting drug User, a man who has sex with another man and a transgender person" or "most at Risk of HIV";
- To delete the word 'minor' from the definition of 'reasonable accommodation' in Section 2(t);
- Deletion of the words "as far as possible" from section 14 as the words are not inclusive and goes against the rights based approach of treatment for all.
- Addition of the term "diagnostics" after "Anti-retroviral" in Clause 14.
- To replace the words "HIV status" with the terms "HIV related information" in Sections 8(1)(i), 8(1)
- Fixing a time frame of 15 days and in emergency, 24 hours for passing orders by the Health Ombudsman with regard to the complaint made;
- Lowering the age of consent for HIV test and treatment from 18 to 16;
- Need for removal of offensive words like 'needles', 'people living with HIV' in the provisions pertaining to non-discrimination;
- Lack of clarity on the structure and linkages of Ombudsman and how binding would be action taken by her/him'

- Co-infections should be mentioned in the present Bill;
- Emphasis must be placed on protection of data collected and analysed for prevention and spread of disease; etc.

Presentation by the Forum of Parliamentarians on HIV/AIDS

10. During the course of his oral evidence before the Committee on the 19th March, 2015, Shri Oscar Fernandes, MP and President, Forum of Parliamentarians on HIV/AIDS in India (FPA) gave a brief account on the role of the Forum. Thereafter, Shri J.D. Seelam, MP, a member of the Forum highlighted the following points on the Bill, namely, (a) need to include a new sub-section (iv) in Clause 2(S) (Protected Person) which may be framed as “Most vulnerable to HIV”; (b) need to include Sub-section (iv) in Clause 2(D) (Discrimination) which may be framed as “Most vulnerable to HIV”; (c) need to partially shift the burden of proving discrimination to the person alleged to have discriminated by inserting the following provisions in the Bill “When the question is whether a person has been discriminated under this Act and it is shown that the person against whom such discrimination is alleged to have taken place is a protected person and that the act or omission alleged as being discriminatory took place, the Court shall presume, unless the contrary is proved, that such act or omission is discrimination under this Act.”; (d) need to replace the term “possible” with “feasible” and addition of term diagnostic after “antiretroviral” in clause 14; (e) need to reduce the age of consent to 16 years for HIV test and treatment in Clause 22; (f) need to make provision for procedure for receiving evidence or procedure for enforcement in Clause 23-24 (Health Ombudsman); (f) need to make certain additions to the Grievance Redressal Mechanism by Complaints Officer in Clause 21 on the following lines viz. disposal of complaints in time-bound manner, empowering complaints Officer to issue order for sensitization and counselling of accused persons under the HIV, taking suo-motu cognizance of breach of HIV/AIDS law at an institutional level; and (g) need to make the Bill gender neutral, etc.

11. The various suggestions/views/amendments put forth before the Committee were forwarded to the Ministry of Health and Family Welfare for its comments. A statement containing the suggestions/views/amendments proposed by various stake holders and response of the Ministry thereto is placed at Annexure - I.

CLAUSE-BY-CLAUSE EXAMINATION OF THE BILL

12. During the course of the examination of the Bill the Committee took note of the concerns, suggestions and amendments as expressed by various experts/ stakeholders. The Committee also considered the comments of the Ministry of Health and Family Welfare on the suggestions of the stakeholders and of the Members of the Committee. The Committee's observations and recommendations contained in the Report reflect an extensive scrutiny of all the viewpoints put forth before it. Upon examination of the comments received from the Ministry, the Committee makes the following suggestions/ recommendations:-

Chapter I - Preliminary

13. Clause 2(c)

2(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.

Observation/Recommendation

14. The Committee recommends that the word 'parents' may be read as 'parent' to be in consonance with the verb 'is'.

15. Clause 2(g)

"2 (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;"

Observation/Recommendation

16. The Committee recommends that the word "to" may be inserted after the word " relating" being a typographical error.

Subject to the above, the clause is adopted.

Chapter II - Prohibition of Certain Acts

17. Clause 3

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

Suggestions

18. The Committee has received suggestions for inclusion of a provision in Clause 3 that no person affected with HIV/AIDS will be denied both life as well as health insurance on the count of merely his/her being HIV/AIDS **positive** and such person shall have the right to life as well as medical insurance. Any claim by such persons shall not be denied.

Comments

19. The Ministry has informed that such a provision already exists in the Bill in Clause 3(j). They have also informed that the NACO was working with the IRDA on the issue for providing life as well as health insurance to all the HIV positive people. However, the IRDA was not in favour of providing insurance cover to such persons at normal rate of premium.

Observation/Recommendation

20. **The Committee is of the opinion that all HIV positive people should be provided insurance cover without any discrimination preferably at normal rate of premium or they may be charged slightly higher rate of premium but in no case exorbitant rate of premium should be charged from HIV positive people for providing insurance cover for both life and health insurance. The Committee, therefore, recommends that the Ministry should pursue the matter with the IRDA for providing insurance cover to all the HIV positive people without any discrimination. The Committee is also not satisfied with the existing provision of the Bill and recommends that the words 'such unfair treatment is based on and' may be deleted in order to make the provision more people friendly.**

Subject to the above, the clause is adopted.

21. Clause 4

This clause is adopted without any change.

Chapter III - Informed Consent

22. Clauses 5, 6 and 7

These clauses are adopted without any change.

Chapter IV - Disclosure of HIV Status

23. Clause 8.

“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;”

Observation/Recommendation

24. The Committee recommends that the words "of the court" may be added after the word "order" since there is ambiguity.

Subject to the above, the clause is adopted.

25. Clauses 9 and 10

These clauses are adopted without any change.

Chapter V - Obligation of Establishments

26. Clause 11 and 12

These clauses are adopted without any change.

Chapter VI- Anti Retroviral Therapy and Opportunistic Infection Management for People Living With HIV

27. Clause 13

This clause is adopted without any change.

28. Clause 14

“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.

(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.”

Suggestion :

29. Following suggestion has been received from the stakeholders:

In Clause 14 (1) & (2), 'free diagnostics' may be included as part of provision of treatment.

Comment

30. The Ministry informed that the Government of India is already providing free diagnostics to people living with HIV as part of the treatment.

Observation/Recommendation

31. **The Committee recommends that the words "diagnostics facilities relating to HIV" may be added before the words "Anti-retroviral Therapy" in both the sub-clauses since the Government of India is already providing free diagnostics to people living with HIV as part of the treatment.**

Subject to the above, the clause is adopted.

Chapter VII - Welfare Measures by the Central and State Government

32. Clause 15, 16, 17 and 18

These clauses are adopted without any change.

Chapter VIII - Safe Working Environment

33. Clause 19 and 20

These clauses are adopted without any change.

34. Clause 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.”

Suggestion

35. A suggestion was received that the Complaints Officer should dispose of complaints in a time-bound manner.

Comments

36. The representative of the Ministry during the course of the meeting agreed that the clause can be amended to ensure that the complaints are attended as soon as possible.

Observation/Recommendation

37. The Committee felt that the words "on-a-day-to-day-basis, deal with", should be replaced with **the words** "dispose of" and the words "as soon as possible" may be inserted after the word "prescribed", so that the complaints are disposed of without any delay.

38. The Committee, therefore, recommends that clause 21 may be reframed as follows:-

"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 as may be prescribed, as soon as possible".

This may be incorporated after Legislative vetting.

Subject to the above, the clause is adopted.

Chapter IX - Promotion of Strategies for Reduction of Risk

39. Clause 22

This clause is adopted without any change.

Chapter X - Appointment of Ombudsman

40. Clause 23

This clause is adopted without any change.

41. Clause 24

"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."

42. Clause 25

Observation/Recommendation

43. The Committee took note of the fact that this sub-clause brings only healthcare services under the purview of the ombudsman. The Committee felt that all other acts of discrimination as stipulated under clause 3 should also be brought under the purview of the ombudsman. The Committee, accordingly, recommends that the words "acts of discrimination as stipulated under section 3 and providing of" may be added after the words "in relation to".

Subject to the above, the clause is adopted.

44. Clause 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.

Observation/Recommendation

45. The figure "26" may be replaced with the figure "24" being a typographical error.

Subject to the above, the clause is adopted.

46. Clause 26

"The Ombudsman shall, after giving an opportunity of being heard to the parties, pass such order, as he deems fit, giving reasons therefor."

Suggestions

47. The Bill should provide that Ombudsman should pass orders within a particular time frame like 15 days and in emergency within 24 hours for providing medical treatment.

Comments of the Ministry

48. The representative of the Ministry of Health and Family Welfare agreed to the proposal and suggested a proviso could be added to the clause in this regard.

Observation/Recommendation

49. The Committee after considering all aspects felt that in case of medical exigencies of HIV positive person, a timeframe of 15 days should be fixed for passing orders and in case of life saving treatment of HIV positive person in emergency the orders should be passed within 24 hours.

50. The Committee recommends that the following proviso may be inserted to the clause 26:

"Provided that where the complaint relates to medical exigencies of HIV positive person, such orders should be passed within 15 days and in case of life saving treatment of HIV positive person in an emergency, the order should be passed within 24 hours of the receipt of such complaint."

This may be incorporated after legislative vetting.

Subject to the above, the clause is adopted.

51. Clause 27 and 28

These clauses are adopted without any change.

Chapter XI- Special Provisions

52. Clauses 29, 30, 31, 32 and 33

These clauses are adopted without any change.

Chapter XII- Special Procedure In Court

53. Clauses 34, 35 and 36

These clauses are adopted without any change.

Chapter-XIII- Penalty

54. Clause 37

This clause is adopted without any change.

55. Clause 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.

Observation/Recommendation

56. The figure “25” may be replaced with the figure “26” being a typographical error.

Subject to the above, the clause is adopted.

57. Clauses 39, 40, 41 and 42

These clauses are adopted without any change.

Chapter XIV- Miscellaneous

58. Clauses 43, 44, 45, 46, 47 and 48

These clauses are adopted without any change.

59. Clause 49

49 (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 :—

(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;

Observation/Recommendation

60. The Committee recommends that the words "diagnostics facilities relating to HIV" may be inserted before the words "Anti-retroviral Therapy" in view of the Committee's recommendation given under clause 14 (1) and (2).

Subject to the above, the clause is adopted.

61. Clause 50

This clause is adopted without any change.

Clause 1, Enacting Formula and Title are adopted without any change.

General Recommendations

62. The Committee notes that the provisions, as contained in Clauses 23 to 25 of the Bill empower the concerned State Governments to prescribe in the matter of appointment and functions of Ombudsman as follows:

- (a) Qualification and experience
- (b) Rank of the officers to be designated
- (c) Terms and condition of service
- (d) Jurisdiction
- (e) The manner in which to enquire into complaints
- (f) The manner in which to maintain records
- (g) The manner in which the complaints may be made.

63. The Committee observes that all the matters pertaining to appointment, qualification, jurisdiction and the manner in which Ombudsman will discharge his/her functions have been delegated to the State Governments and left to their discretion and this situation will certainly lead to gross variation and disparity from state to State. The Ombudsman has been mandated to inquire into the violation of the provisions of the proposed Legislation which is of critical importance. The Committee, therefore, feels that there is an imperative need to develop a set of model guidelines in all the matters referred to above to ensure that the persons of impeccable integrity are appointed as Ombudsman and parity is maintained in respect of all matters relating to the office of Ombudsman, amongst the States. The Committee, accordingly, recommends that the Ministry should formulate a set of model guidelines giving strong

procedures and systems in the matter for guidance of the States in the form of executive instructions as has been done in several previous legislations. The Committee also recommends that significant and substantive matters covered in the model guidelines may be appropriately included in the Bill itself instead of leaving them for delegated legislation. The Committee, simultaneously, recommends, for the sake of clarity, that simple procedural aspects which may require periodic review may continue to remain in the domain of rule making so that frequent amendments are not warranted in the main statute.

64. The Committee notes that certain clauses of the Bill provide for framing of guidelines and procedures on the part of the Ministry for implementation of various provisions of the proposed legislation such as:

- a) Clause 5(1) - Guidelines specifying who will be the representative of the affected person.
- b) Clause 7 - Guidelines for testing/diagnostic centres specifying the mechanism for implementation of these guidelines as also the monitoring mechanism for these testing/diagnostic centres.
- c) Clause 11(1) - Data protection guidelines.
- d) Clause 21 - Procedure for disposal of complaint by the complaint officer.
- e) Clause 30 - Guidelines for HIV related Information, Education and Communication (IEC) before marriage.

65. The Committee observes that all the guidelines / procedures are very crucial for implementation of various provisions of the proposed legislation. The Committee, therefore, recommends that the Ministry should frame all the guidelines and procedures mentioned in the Bill in such a manner so that various provisions of the proposed legislation may be implemented effectively and no scope is left for any discrimination towards the AIDS/HIV affected persons. The Committee also recommends that all these guidelines / procedures should be framed expeditiously and made available on the Ministry's website well before the date of implementation of the proposed legislation. All the guidelines / procedures so framed should be laid before

both the Houses of Parliament for their scrutiny, as per the existing rules and procedures.

66. The Committee adopts the Bill subject to the above observations. The Committee recommends that the Bill may be passed with the above changes without further delay.
