

THE HIV/AIDS BILL 2007

THE GAZETTE OF INDIA
EXTRAORDINARY
PART II - Section 1
PUBLISHED BY AUTHORITY
NO. 12 NEW DELHI, [Day], [Month, Date, Year] / PAUSA 24, 1924
Separate paging is given to this Part in order that it may be
filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)
New Delhi, the [Date] /Pausa [] (Saka)
The following Act of Parliament received the assent of the President on the []
and is hereby published for general information:-

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No. [] OF 2007
[Date]

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THE HIV/AIDS BILL, 2007
No. [] OF 2007
[Date]

A Bill to provide, keeping in view the social, economic and debilitating effects of the HIV epidemic in India, for the prevention and control of the HIV epidemic in India, the protection and promotion of human rights in relation to HIV/AIDS, for the establishment of National, State, Union Territory and District Authorities to promote such rights and promote prevention, awareness, care, support and treatment programmes to control the spread of HIV, and for matters connected therewith or incidental thereto.

Whereas the spread of HIV/AIDS is a matter of concern to all, and

Whereas there is a need to prevent and control the spread of HIV/AIDS, and

Whereas there is a need to protect and promote the rights of those who are HIV-positive, those who are affected by HIV/AIDS and those who are most vulnerable to HIV/AIDS in order to secure their human rights and prevent the spread of HIV/AIDS, and

Whereas there is a need for effective and accessible care, support and treatment for HIV/AIDS, and

Whereas there is a need to protect the rights of healthcare providers and other persons in relation to HIV/AIDS, and

Whereas the Union of India has signed various treaties, agreements and declarations relating to HIV/AIDS, the protection of rights of those who are HIV-positive, those who are affected by HIV/AIDS and those who are most vulnerable to

HIV/AIDS in order to secure their human rights and prevent the spread of HIV/AIDS, including the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights and the United Nations General Assembly Special Session Declaration of Commitment on HIV/AIDS, and

Whereas it is necessary to give effect to those treaties and declarations under Article 253 of the Constitution of India.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:

CHAPTER I
PRELIMINARY

1. **Short title, extent and commencement.** – (1) This Act may be called the HIV/AIDS Act, 2006.
 - (2) It extends to the whole of India.
 - (3) It shall come into force on such date 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, and is a condition characterised by a combination of signs and symptoms, caused by HIV, which attacks and weakens the body's immune system making the HIV-positive person susceptible to other life threatening conditions, or as may be defined by the National HIV/AIDS Authority from time to time;

 - (b) "Appropriate Government" means
 - (i) the Central Government in the case of the territory comprising the whole of India,
 - (ii) the state Government in the case of territory comprised in a state,
 - (iii) the Union Territory Government, in the case of territory comprised in a Union Territory having its own legislature, and
 - (iv) the Central Government, in the case of other Union Territories;

 - (c) "capacity to consent" means an individual's ability, determined on an objective basis irrespective of such individual's age, to understand and appreciate the nature and consequences of a proposed healthcare service, treatment, intervention, procedure or research, or of a proposed disclosure of HIV-related information, and to make an informed decision concerning such service, treatment, intervention, procedure or disclosure:

Explanation:– In determining the capacity to consent of an individual, the following factors may be considered: whether or not they are responsible for their own financial care or that of their family or dependants and whether or not they are living on their own;

 - (d) "children affected by HIV/AIDS" means persons below the age of 18 years who are HIV-positive, or have a parent or guardian who is HIV-positive, or have lost a parent or guardian to AIDS or live in households fostering children orphaned by AIDS;

 - (e) "court" means a civil, criminal or revenue court and includes any tribunal or any other authority, constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions;

- (f) "discrimination" includes any act or omission including a policy, law, rule, practice, custom, tradition, usage, condition or situation which directly or indirectly, expressly or by effect, immediately or over a period of time:
- (i) imposes burdens, obligations, liabilities, disabilities or disadvantages on, or
 - (ii) denies or withholds benefits, opportunities or advantages, from, or
 - (iii) compels or forces the adoption of a particular course of action by,
- any person or category of persons, based on one or more HIV-related grounds.

Explanation I— HIV-related grounds are:

- (i) HIV status, actual or perceived; or
 - (ii) actual or perceived association with an HIV-positive person; or
 - (iii) actual or perceived risk of exposure to HIV infection; or
 - (iv) any other ground where discrimination based on that ground (1) causes or perpetuates or has a tendency to perpetuate systemic disadvantage in respect of a category of persons, (2) undermines human dignity or (3) adversely affects the equal enjoyment of a protected person's rights and freedoms in relation to HIV/AIDS;
- (g) "domestic relationship" means a relationship between two or more persons who live or have lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;
- (h) "healthcare provider" means an individual whose vocation or profession is directly or indirectly related to the maintenance of the health of another individual including any physician, nurse, paramedic, psychologist, counsellor or other individual providing medical, nursing, psychological, or other healthcare services of any kind;
- (i) "HIV" means the Human Immunodeficiency Virus;
- (j) "HIV/AIDS Authority" means a National, State, Union Territory or District HIV/AIDS Authority, as the context requires, constituted and established under Chapter XI of this Act;
- (k) "HIV- positive person" means a person who tests positive for HIV with a confirmatory HIV test;
- (l) "HIV-related information" means any information related to the HIV status of a person including:
- (i) information related to or concerning the undertaking, performing or result of an HIV test; or
 - (ii) information related to or concerning the HIV or HIV antibody status of a person; or
 - (iii) information related to or concerning the care, support or treatment of a person;
 - (iv) any other private information concerning a person, collected, received, accessed or recorded in connection with an HIV-related test, HIV-related treatment or HIV-related research or the HIV status of a person; or
 - (v) information which may identify such person; or
 - (vi) any information relating or connected thereto;
- (m) "HIV status" means the actual or perceived presence in a person's body of HIV or symptoms of AIDS;

- (n) "HIV test" means a test to determine the presence of the antibody or antigen of HIV, or of HIV infection;
- (o) "HIV-related test" includes an HIV test and tests to determine the presence of conditions related to HIV;
- (p) "IEC" means information, education and communication;
- (q) "informed consent" means consent given, specific to a proposed intervention, without any force, undue influence, fraud, threat, mistake or misrepresentation and obtained after disclosing to the person giving consent adequate information including risks and benefits of, and alternatives to, the proposed intervention in a language and manner understood by such person;
- (r) "institution" means any person carrying on systematic activity by co-operation between two or more persons in the previous twelve months, in one or more places with functional integrity, for wages, consideration or otherwise, for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes.

Exception:– 'Institution' shall not include any seasonal agricultural operation;

- (s) "partner" means a spouse, *de facto* spouse or a person with whom another person has a relationship in the nature of marriage;
- (t) "person" includes an individual, a Hindu Undivided Family, any other 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, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956, 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;
- (u) "prescribed" means as prescribed in the Rules under this Act;
- (v) "protected person" means a person who is:
 - (i) HIV-positive; or
 - (ii) actually, or perceived to be, associated with an HIV-positive person; or
 - (iii) actually, or perceived to be, at risk of exposure to HIV infection; or
 - (iv) actually or perceived to be, a member of a group actually or perceived to be, vulnerable to HIV/AIDS.
- (w) "reasonable accommodation" means the alteration of policies, practices, or procedures or the modification of or adjustment to a job or work or other environment or the way things are usually done that enables an HIV-positive person who is otherwise qualified to enjoy equal benefits and privileges of the programme, service, or activity, or to perform the essential functions of a job or to fulfil the requirements of an educational programme or course as a similarly-situated person who is not HIV-positive and includes job restructuring, part-time or modified work or education schedules, or reassignment to a vacant position.
- (x) "Regulations" means Regulations under this Act;

- (y) "significant risk" means:
- (i) the presence of a significant risk body substance; and
 - (ii) a circumstance which constitutes significant risk for transmitting or contracting HIV infection; and
 - (iii) the presence of an infectious source and a non-infected person,
- or as may be defined by the National HIV/AIDS Authority from time to time.

Explanation 1:– "Significant risk body substances" are blood, blood products, semen, vaginal secretions, breast milk, tissue and the following body fluids: cerebrospinal, amniotic, peritoneal, synovial, pericardial and pleural.

Explanation 2:– "Circumstances which constitute significant risk of transmitting or contracting HIV infection" are:

- (i) 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;
- (ii) sharing of needles and other paraphernalia used for preparing and injecting drugs between HIV-positive persons and uninfected persons;
- (iii) the gestation, birthing or breast feeding of an infant when the mother is an HIV-positive person;
- (iv) transfusion or transplantation of blood, blood products, 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;
- (v) other circumstances not identified above during which a significant risk body substance, other than breast milk, of an HIV-positive person contacts or may contact mucous membranes including eyes, nose or mouth, non-intact skin including open wounds, skin with a dermatitis condition or abraded areas or the vascular system of an uninfected person. Such circumstances include but are not limited to needle-stick or puncture wound injuries and direct saturation or permeation of these body surfaces by the infectious body substance.

Provided that "significant risk" shall not include:

- (i) exposure to urine, faeces, sputum, nasal secretions, saliva, sweat, tears or vomit that does not contain blood that is visible to the naked eye;
- (ii) human bites where there is no direct blood to blood, or blood to mucous membrane contact;
- (iii) exposure of intact skin to blood or any other blood substance;
- (iv) occupational settings where individuals use scientifically accepted universal precautions, barrier techniques and preventive practices in circumstances which would otherwise pose a significant risk and such barriers are not breached and remain intact.

- (z) "State" shall have the meaning assigned to it under Article 12 of the Constitution of India.
- (za) "universal precautions" means infection 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.

3. **General Declaration of Principles and Interpretation.** – (1) Any person applying this Act must interpret its provisions to give effect to:
- (a) The letter and spirit of the Constitution of India, the provisions of which include the guarantee of equality, life and personal liberty and the freedoms of speech, expression and movement;
 - (b) Compliance with international law obligations including treaty obligations in terms of, amongst others, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the United Nations General Assembly Special Session Declaration of Commitment on HIV/AIDS and the Convention on the Elimination of All Forms of Discrimination against Women and customary international law; and
 - (c) The Preamble of this Act, thereby fulfilling the spirit, purpose and objects of this Act.
- (2) In the adjudication of any proceedings, which are instituted in terms of or under this Act, the Court shall apply the principle of purposive interpretation and in balancing rights, shall follow the principle of the least restrictive alternative.
- (3) In the adjudication of any proceedings, which are instituted in terms of or under this Act, the following principles shall apply:
- (a) The expeditious processing of cases, which facilitates participation by the parties to the proceedings;
 - (b) Access to justice to all persons in all judicial and other dispute resolution fora;
 - (c) The use of corrective or restorative measures in conjunction with measures of a deterrent nature; and
 - (d) The development of special skills and capacity for persons applying this Act in order to ensure effective implementation and administration thereof.
- (4) In the application of this Act, the following shall be recognised and taken into account:
- (a) The existence of systemic discrimination and inequalities, particularly in respect of gender, sexuality, class, disability, religion, race, caste, sex and place of birth in all spheres of life as a result of past and present discrimination, including that brought about by patriarchy; and
 - (b) The need to take measures at all levels to eliminate such discrimination and inequalities.

CHAPTER II

PROHIBITION OF DISCRIMINATION

4. **Prohibition of Discrimination.** – (1) No person shall be subject to discrimination in any form by the State or any other person in relation to any sphere of public activity including:
- (a) Denial of, or termination from, employment or occupation unless in the case of termination:
 - (i) a person, who is otherwise qualified, in the written assessment of an independent healthcare provider qualified to make such an assessment, poses a significant risk of transmission of HIV to other persons in the workplace, or is unfit to fulfil the duties of the job; and
 - (ii) the employer is unable to provide reasonable accommodation due to undue administrative or financial hardship and the employer shall along with the letter of dismissal provide a written statement to such person stating the nature and extent of such hardship.

Provided that if the employer fails to provide such written statement, it shall be presumed that there is no such undue administrative or financial hardship;

- (b) Unfair treatment in, or in relation to, employment or occupation;
- (c) Denial or discontinuation of, or unfair treatment in, healthcare services;
- (d) Denial or discontinuation of, or unfair treatment in, educational services;
- (e) 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) Denial or discontinuation of, or unfair treatment with regard to, the right of movement;
- (g) Denial or discontinuation of, or unfair treatment with regard to, the right to reside, purchase, rent, or otherwise occupy, any property;
- (h) Denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office;
- (i) Denial of access to, removal from, or unfair treatment in, a State or private institution in whose care or custody a person may be;
- (j) Denial of, or unfair treatment in, the provision of insurance unless such unfair treatment is based on and supported by actuarial studies;
- (k) 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.

Explanation:– Without prejudice to the generality of the provisions of this Act, Schedule I to this Act is intended to illustrate and emphasise some instances of unfair treatment, which are discriminatory, in order to address and eliminate such treatment and assist persons in interpreting their experiences and treatment.

- (2) Nothing in this Act shall prevent the State or any other person from taking measures for the protection, benefit or advancement of protected persons including the greater involvement of HIV-positive persons.
5. **Prohibition of Hate and Discriminatory Propaganda.** – No person shall, publish, propagate, advocate or communicate by words, either spoken or written, or by signs or by visible representations or otherwise against any protected person, or group or category of protected persons, in general or specifically, anything or disseminate or broadcast any information, or publish or display any advertisement or notice, that could reasonably be construed to demonstrate an intention to be harmful or to incite harm, promote or propagate hatred, or which is likely to expose protected persons to hatred, discrimination, harm or physical violence.
6. **Prohibition of victimisation.** – No person shall subject, or threaten to subject any other person or persons to any detriment on the grounds that such person or persons have taken or intend to take or are believed to have taken or intend to take any of the following actions:
- (a) make a complaint under this Act,
 - (b) bring proceedings under this Act against any person,

- (c) furnish any information, or produce any documents to a person exercising or performing any power or function under this Act,
- (d) appear as a witness in a proceeding under this Act,
- (e) assert their rights or the rights of any other person under this Act, or
- (f) allege that a person has done an act that is unlawful by reason of a provision of this Act.

CHAPTER III

INFORMED CONSENT

7. Right to autonomy. – Every person has the right to bodily and psychological integrity including the right not to be subject to medical treatment, interventions or research without that person's informed consent.

8. Informed Consent for HIV testing, treatment and research. – (1) Subject to the provisions of this Act, no HIV-related test or HIV-related treatment of a person or HIV-related research involving a person, shall be undertaken or performed except with the informed consent of that person or that person's representative in accordance with sub-section (2) below.

(2) The informed consent of a person's representative shall be taken only in the following circumstances:

- (a) where the person has died, from that person's partner or relative or administrator or executor;
- (b) where in the case of an HIV-related test or HIV related treatment:
 - (i) the person is under the age of 12 years, from that person's parent or legal or de facto guardian or next friend;
 - (ii) the person is between the ages of 12 and 16 years and, in the written assessment of the concerned healthcare provider lacks the capacity to consent, from that person's parent or legal or de facto guardian or next friend;
- (c) where in the case of HIV-related research, the person is below the age of 18 years, from that person's parent or legal or de facto guardian or next friend;
- (d) where, in the written assessment of the concerned healthcare provider, the person lacks the physical or mental capacity to consent, from that person's partner, or relative or legal or de facto guardian;
- (e) in an emergency situation, where the person is unconscious, or otherwise unable to give informed consent, from that person's partner, or relative or legal or de facto guardian;
- (f) in clauses (a) to (e) above, where a representative of the person is not available to give informed consent, or in clause (e) above, in the opinion of the healthcare provider, is not acting in the best interest of the person, then the same shall be taken from an authorised representative of the concerned institution or an independent healthcare provider.

Provided that where informed consent is given by a person's representative under sub-clause (2)(b), (c) and (d) best efforts shall be made to involve the person for whom informed consent is being given in the informed consent process and where informed consent is being given by the representative under sub-section (2)(e) the person for whom informed consent is being given shall as soon as possible be informed of the decision.

(3) Informed consent taken under sub-section (1) or (2) shall be recorded in writing.

Provided that where a person is unable to give informed consent in writing, informed consent may be taken verbally from that person and a contemporaneous record of such informed consent shall be entered into records maintained in the regular course of business by the person taking the informed consent.

- (4) The National HIV/AIDS Authority shall within 180 days of its constitution and establishment notify counselling protocols that shall be applicable to all persons including counselling protocols for HIV tests, HIV related tests, HIV-related treatment and HIV-related research and counselling protocols for children who are HIV-positive including how such children should be involved in the informed consent process and how and who should disclose their status to them.
- (5) Every institution involved in HIV-related testing, HIV-related treatment or HIV-related research shall follow counselling protocols for women and children to ensure they have access to conducive settings that facilitate their individual decision making for HIV-related testing, HIV-related treatment or HIV-related research.
- (6) Informed consent for an HIV test shall be valid only when the person being tested is provided pre-test and post-test counselling in accordance with the Regulations.

Provided that where a representative of the person is giving informed consent such representative shall also receive counselling.

- (7) Informed consent for HIV-related treatment shall be valid only when the person who is to be administered the treatment, and such person's representative, in case the informed consent is being given by a representative under sub-section (2), is explained the risks and benefits of the proposed treatment, including the nature of HIV/AIDS, the treatments available for it, the alternatives that may be available, the stages when they can be administered, their duration, their side-effects, the likely expenses and the adherence requirements of such treatment.
- (8) Informed consent for HIV-related research shall be considered valid only when the potential research subject, and such person's representative, in case the informed consent is being given by a representative under sub-section (2), is comprehensively informed of the aims, methods, sources of funding, any possible conflicts of interest, institutional affiliations of the researcher, the anticipated benefits and potential risks of the study, the discomfort it may entail and the right to abstain from participation in the research or to withdraw consent to participate in the research at any time without any adverse consequences.

9. Exceptions to Informed Consent for an HIV-related test. – Informed consent for an HIV-related test is not required in the following circumstances:

- (a) when an HIV-related test is ordered by a court;

Provided that no court shall order an HIV-related test to be carried out either as part of a medical examination or otherwise, unless the court:

- (i) determines by an order that the carrying out of the HIV-related test is necessary for the determination of issues and in the interest of justice in a matter before it; and

- (ii) ensures that the person being tested receives pre-test and post-test counselling and that the HIV-related information of that person is not disclosed except in accordance with the provisions of this Act;
- (b) for HIV-related testing in the procuring, processing, distribution or use of a human body or any part thereof, including organs, tissues, blood, semen or other body fluids for use in medical research or therapy or for transplantation, transfusion to, or artificial insemination of persons;

Provided that if the test results are requested by a donor prior to donation, then the donor will be referred to a Voluntary Counselling and Testing Centre and shall not be entitled to the results of the test unless the donor has received post-test counselling from the Voluntary Counselling and Testing Centre;

- (c) for epidemiological or surveillance purposes where the HIV test is anonymous and unlinked 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 such studies in accordance with the Regulations.

10. HIV Testing. – (1) Notwithstanding any law for the time being in force, no person shall be subject to an HIV test except in accordance with the provisions of this Act.

(2) Subject to the provisions of this Act, no HIV test may be recommended or performed except:

- (a) for the voluntary determination of the HIV status of a person; or
- (b) if it is medically indicated for the appropriate treatment or care and in the best interest of the person being tested.

(3) An HIV test may be performed only by:

- (a) A Voluntary Counselling and Testing Centre; or
- (b) A pathology laboratory, either independent or attached to a healthcare institution; or
- (c) A blood bank licensed under the law for the time being in force.

Provided that the Central Government shall, within 360 days of the commencement of this Act, formulate and notify Regulations for the recognition of Voluntary Counselling and Testing Centres and pathology laboratories by the concerned HIV/AIDS Authority which shall provide inter alia the requirements for recognition and the time period within which a decision on recognition shall be taken and existing Voluntary Counselling and Testing Centres and pathology laboratories shall, within 90 days of the notification of such Regulations apply for such recognition and from the date of such notification only recognised Voluntary Testing and Counselling Centres, pathology laboratories and blood banks shall perform HIV tests.

(4) A person who seeks to voluntarily determine their HIV status and who wishes to remain anonymous shall have the right to do so, and to provide informed consent in writing by using a coded system that does not link their individual identity with the request or result of the HIV test.

- (5) Any person marketing or selling technologies for self-testing of HIV shall do so only in accordance with the Regulations.

CHAPTER IV

DISCLOSURE OF INFORMATION

11. **Right to Privacy.** – Every person has the right to privacy.
12. **Disclosure of Information.** – (1) Notwithstanding anything contained in any law for the time being in force, no person shall be compelled to disclose HIV-related information or any other private information concerning themselves except when a court determines by an order that the disclosure of such information is necessary for the determination of issues and in the interest of justice in a matter before it.

- (2) Notwithstanding anything contained in any law for the time being in force, no person shall disclose or be compelled to disclose HIV-related information or any other private information of another person, imparted in confidence or in a relationship of a fiduciary nature, except with the informed consent of that person or a representative of the person as specified in Section 8(2).

Provided that where the relationship is of a fiduciary nature, informed consent shall be recorded in writing.

Provided further that all HIV-related information shall be presumed to have been imparted or received in confidence unless otherwise shown.

- (3) Informed consent for disclosure of HIV-related information or private information is not required in case the disclosure is made:
- (a) by a healthcare provider to another healthcare provider who is involved in the provision of care, treatment or counselling of a person, when such disclosure is necessary to provide care or treatment in the best interest of that person; or
 - (b) by an order of a court when it determines by such order that the disclosure of such information is necessary for the determination of issues and in the interest of justice in a matter before it; or
 - (c) in suits or legal proceedings between persons, where the disclosure of such information is necessary in the initiation of such proceedings or for instructing counsel; or
 - (d) in accordance with Section 13; or
 - (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; or
 - (f) in accordance with the Regulations under Section 15.
- (4) Any person to whom disclosure is made under this Chapter is prohibited from making further disclosure except as provided in this Chapter.
- (5) Any person to whom disclosure under sub-section (3)(e) is made shall not use such information to identify the person to whom it pertains or present it in a manner whereby such identification is possible.

13. **Partner Notification.** – A healthcare provider who is a physician or a counsellor, may inform the partner of a person under their direct care of such person's HIV-positive status only when:

- (a) the healthcare provider bona fide and reasonably believes that the partner is at significant risk of transmission of HIV from such person; and
- (b) the HIV-positive person has been counselled to inform such partner; and
- (c) the healthcare provider is satisfied that the HIV-positive person will not inform such partner; and
- (d) the healthcare provider has informed the HIV-positive person of the intention to disclose the HIV-positive status to such partner; and
- (e) such disclosure to the partner is made in person and with appropriate counselling or referrals for counselling.

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

Provided further that no criminal sanction or civil liability shall arise against a healthcare provider for the disclosure or non-disclosure, as the case may be, of confidential HIV-related information to a partner in accordance with Section 13.

Exception: The healthcare provider shall not inform a partner, particularly in the case of women, 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 and safety of the HIV positive person, their children or someone who is close to them.

- 14. Duty to prevent transmission.** – Every person who is HIV-positive, is aware of such status and, has been counselled in accordance with this Act or is aware of the nature of HIV and how it is transmitted, shall take all reasonable measures and precautions to prevent the transmission of HIV to others which may include adopting strategies for the reduction of risk or informing in advance any sexual contact or person with whom needles are shared of that fact.

Exception: There shall be no duty to prevent transmission, particularly in the case of women, where there is a reasonable apprehension that the measures and precautions may result in violence, abandonment or actions which may have a severe negative effect on the physical or mental health and safety of the HIV-positive person, their children or someone who is close to them.

- 15. Data Protection.** – Every institution that records or stores HIV-related information of a person shall, within 180 days of the commencement of this Act, formulate and implement data protection measures in accordance with the Regulations, to ensure that such information is protected from disclosure.

Explanation:– Data protection measures shall include procedures for protecting information from disclosure, procedures for accessing information, particularly in exceptional circumstances, provision for security systems to protect the information stored in any form and mechanisms to ensure accountability and liability of persons in the institution.

- 16. Prohibition on publication.** – No person shall print, publish, broadcast or in any manner release HIV-related information or private information of a person without the informed consent in writing of such person.

CHAPTER V

ACCESS TO TESTING, TREATMENT AND COUNSELLING

17. **Right to Health.** – (1) Every person has the right to enjoy the highest attainable standard of physical and mental health.
- (2) The State shall respect, protect and fulfill the right to the highest attainable standard of physical and mental health of all persons.
- (3) Without prejudice to the generality of sub-sections (1) and (2), the State shall based on principles of availability, accessibility and acceptability, provide:
- (a) free of cost HIV-related prevention, care and support facilities, goods, measures, services and information, including centres providing voluntary testing and counselling services in every sub-district in accordance with the Regulations; and
 - (b) free of cost treatment for HIV/AIDS for all persons.

Explanation:– For the purposes of this Chapter 'treatment' includes health facilities, goods, measures, services and information for the curative and palliative care of HIV/AIDS and related opportunistic infections and conditions including:

- (i) counselling;
 - (ii) the effective and monitored use of medicines for opportunistic infections;
 - (iii) post exposure prophylaxis;
 - (iv) anti-retroviral therapy;
 - (v) nutritional supplements;
 - (vi) measures for the prevention of mother-to-child transmission;
 - (vii) infant milk substitutes; and
 - (ix) other safe and effective medicines, diagnostics and related technologies.
- (4) To fulfil its obligations under this Chapter, the State shall, *inter alia*, ensure that continuous and sustainable access to HIV-related prevention and treatment is not hampered or impeded by procedural or other requirements and shall ensure that the process whereby its obligations are fulfilled is transparent and accountable and is evaluated on a regular basis.
- (5) The Appropriate Government shall within 180 days of the coming into force of this Act ensure the availability of medical infrastructure, including diagnostic technologies, required for the prevention and treatment of HIV/AIDS within its jurisdiction.
18. **Protocols for HIV-related treatment.** – The National HIV/AIDS Authority shall, within 180 days of its constitution and establishment, notify protocols for HIV/AIDS-related testing and HIV-related treatment that shall be applicable to all persons through a consultative process and ensure the wide dissemination of the same.
19. **Measures to be taken by State.** – The Appropriate Government shall take effective legislative, administrative and fiscal measures including:
- (a) ensuring the use of all options to promote access to healthcare including provision of travel subsidies for HIV-positive persons to facilitate access to treatment;
 - (b) the training and capacity building of healthcare providers and public health authorities, in consultation with HIV-positive persons and other protected persons, for the provision, prescription and monitoring of HIV-related treatment and prevention;
 - (c) ensuring that all other laws are in consonance with the provisions of this Chapter and in particular that the right to health is not in any manner restricted or compromised on account of the protection of intellectual property rights;

- (d) introducing tax incentives and exemptions on HIV-related treatment in order to promote its affordability, accessibility and availability;
- (e) ensuring that the pricing of medication, diagnostics and related technologies pursuant to any statute, regulation or order is fixed in a manner that is transparent, accountable and open to public scrutiny and that promotes its affordability, accessibility and availability;
- (f) ensuring that incentives to encourage investment in research and development are provided to entities, particularly those run by the State to develop, manufacture, market and distribute affordable and accessible preventive, curative and palliative care and treatment.

CHAPTER VI

SAFE WORKING ENVIRONMENT

- 20. Right to Safe Working Environment.** – (1) Every person has the right to a safe working environment.
- (2) Every institution providing healthcare services and every institution where there is a significant risk of occupational exposure to HIV, shall provide free of cost:
- (a) universal precautions to all persons working or present in such institution who may be occupationally exposed to HIV, including employees, interns, attendants and contract workers, and appropriate training for the use of such universal precautions; and
 - (b) Post Exposure Prophylaxis to all persons working in such institution who may be occupationally exposed to HIV/AIDS, including employees, interns and contract workers, with appropriate counselling services.
- (3) Every institution referred to in sub-section (2) comprising 20 or more persons shall provide HIV-related treatment and compensation to persons working in such institution who are occupationally exposed to and acquire HIV.
- (4) Every institution referred to in this Chapter, shall within 60 days of the commencement of this Act:
- (a) ensure that the universal precautions and Post Exposure Prophylaxis protocols in accordance with the Regulations are complied with in the institution and inform all persons working in the institution of the details of availability of Universal Precautions and Post Exposure Prophylaxis in the institution and shall make special efforts to ensure that lower cadre workers in such institutions are trained in using and can access universal precautions; and
 - (b) where applicable, notify and widely disseminate a treatment and compensation policy in accordance with the Regulations specifying the procedure for persons to claim treatment or compensation or both as provided in sub-section (3) including the medical records, tests and incident reports required to make the claim.

Provided that such policy shall not specify mandatory HIV testing including pre employment testing as a requirement for claiming treatment or compensation.

Provided further that any person claiming occupational exposure to HIV, in an institution that does not comply with sub-section (4)(a) and (b), shall be presumed to have been occupationally exposed to HIV and shall be entitled to treatment and compensation without any requirement of further proof.

- (5) Every healthcare provider and every other person who may be occupationally exposed to or may occupationally transmit HIV shall use Universal Precautions in accordance with the Regulations in the course of their work.
- (6) Every healthcare provider and every institution providing healthcare services shall ensure basic cleanliness and hygiene and the implementation of infection control measures in accordance with the Regulations and any other law for the time being in force.
- (7) The National HIV/AIDS Authority shall within 90 days of its constitution and establishment notify protocols for universal precautions and Post Exposure Prophylaxis that shall be applicable to all persons.

CHAPTER VII

PROMOTION OF STRATEGIES FOR REDUCTION OF RISK

- 21. Strategies for Reduction of Risk.** – (1) Notwithstanding anything contained in any law for the time being in force,
- (a) the implementation or use of any strategy for reducing the risk of HIV transmission; or
 - (b) the provision or possession of any tool or paraphernalia for reduction of risk of HIV transmission, or any act pursuant thereto, shall not, in any manner, be prohibited, impeded, restricted or prevented and shall not amount to a criminal offence or attract civil liability.

Explanation:– 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/AIDS including:

- (i) the provision of information, education and counselling services relating to HIV prevention and safe practices;
- (ii) the provision and use of safer sex tools, including condoms, lubricants, female-controlled barrier methods, and safe drug use paraphernalia, including clean needles, syringes, bleach and other appropriate sterilising equipment accompanied by information on their use;
- (iii) drug substitution, drug maintenance and needle and syringe exchange programmes in accordance with sub-Section 2; and
- (iv) the provision of any strategy for reducing risk of HIV transmission including those contained in (i), (ii) and (iii) above to persons below the age of 18 years who in the opinion of the provider of strategies for reducing risk of HIV transmission have the capacity to consent to such strategy.

Illustrations

- (a) A, supplies condoms to B, a sex worker or to C, 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, an intervention project on HIV/AIDS and sexual health information, education and counselling for men who have sex with men provides safer sex information, material and condoms to N, a man 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, 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) R, an intervention programme for children living on the streets and K, a counsellor in a school, provide sexual health and safer sex information, education and counselling, material and small-sized condoms to S, a child living on the street and L, a student in school, respectively. Neither R, S, K nor L can be held criminally or civilly liable for such actions or be prohibited, impeded, restricted or prevented from implementing or using the intervention.
- (2) No person shall implement a drug substitution or drug maintenance or needle and syringe exchange programme unless such programme is implemented in accordance with the Regulations.
- (3) Any information obtained or maintained in records by a person implementing a drug substitution or drug maintenance or needle and syringe exchange programme or any other strategy for the reduction of risk of HIV transmission shall be considered to be private information for the purpose of Chapter IV of this Act.
- (4) (a) No public servant, including a law enforcement official shall arrest or detain, or in any manner harass, impede, restrict or otherwise prevent any person implementing or using strategies for reduction of risk of HIV transmission in accordance with the provisions of this Act.
(b) A public servant who violates the provisions of sub-section (4)(a) shall be subject to misconduct proceedings under the relevant Act including the relevant Police Act and the report of such misconduct shall form part of the confidential records of such public servant.

CHAPTER VIII

SOCIAL SECURITY

22 Social Security Scheme. — (1) The Appropriate Government shall, by notification within 360 days of the commencement of this Act formulate frame and implement health insurance and social security schemes including inter alia:

- (a) schemes that address HIV/AIDS and related illnesses and mitigate the social and economic impact of HIV/AIDS and related illnesses;
- (b) schemes that cover HIV-positive persons, other protected persons, women, children, healthcare providers and older persons;
- (c) a scheme that provides for access to shelter, food, education and treatment for children affected by HIV/AIDS;
- (d) a scheme that provides cash for HIV-positive women with children; and
- (e) a contributory insurance scheme between the Appropriate Government, healthcare institutions and healthcare providers.

CHAPTER IX

INFORMATION, EDUCATION AND COMMUNICATION

23. Right to Information. — (1) Every person has the right to information and education relating to health and the protection of health from the State.

- (2) No person shall be denied access to and availability of HIV/AIDS-related IEC, including information relating to sexual health, sexuality and safe drug use, by the State.

Provided that where the person is below the age of 12 years and, in the opinion of the provider of information, is incapable of understanding and appreciating the nature of the HIV/AIDS-related IEC, the provider may, in the best interests of the person, require the presence of a person above the age of 16 years of the person's choice before providing such information.

- 24. Duty of State to promote HIV/AIDS-related IEC.** — (1) The State, based on evidence or scientific information, and in a manner that does not promote gender and sexual stereotypes and is age-appropriate, gender-sensitive, non-stigmatising, non-discriminatory and promotes gender equality, shall in accordance with sub section (3):
- (a) formulate, institute and implement sustained multi-lingual, easily understood, and regularly updated national, state and local HIV/AIDS-related IEC programmes, which are accessible and available to all persons;
 - (b) develop and conduct a multi-lingual national programme of public education and information to promote an understanding and acceptance of this Act; and
 - (c) ensure community mobilisation and participation, in the provision of HIV/AIDS-related IEC at all levels throughout the country.
- (2) Without prejudice to the generality of sub- section (1), the State shall ensure:
- (a) that women of all ages have access to accurate and comprehensive HIV/AIDS-related IEC focussing on their needs;
 - (b) that every person below the age of 18 years has access to adequate and accurate HIV/AIDS-related IEC including sexual health information and education;
 - (c) that HIV/AIDS-related IEC is designed and developed for and readily accessible to and usable by all persons with disabilities;
 - (d) that in relation to education,
 - (i) a continuing HIV/AIDS-related IEC programme is implemented in all formal and non-formal educational settings for all learners, students, educators and other staff members;
 - (ii) age-appropriate HIV/AIDS-related IEC forms part of, and is integrated into, all aspects of the curriculum for all learners and students, including information on HIV/AIDS, stigma and discrimination related to HIV/AIDS, modes of transmission, prevention, care, support and treatment available for HIV;
 - (iii) all boards of education, authorities of education and all persons responsible for setting curricula shall, for the academic year following the commencement of this Act, formulate and institute curriculum, for HIV/AIDS education including in all curricula related to medical, health, State service, legal, teaching and social work education, for the following academic year;
 - (iv) the proper and ongoing training of all educators in relation to HIV/AIDS-related IEC and its dissemination takes place;
 - (e) that all persons in institutions not covered under Chapter XII receive minimum information and instruction on HIV/AIDS, particularly relating to discrimination and disclosure of information in the workplace and shall take proactive steps to impart HIV/AIDS-related IEC to such persons;
 - (f) that the Armed Forces, paramilitary forces, law enforcement and drug enforcement agencies provide all personnel with HIV/AIDS-related IEC particularly in relation to prevention, discrimination and disclosure of information;
 - (g) that every HIV/AIDS-related prophylactic including condoms offered for sale, sold or supplied in any other manner to any person shall be accompanied by information, including pictorial representations and literature on the proper use of the

- prophylactic device or agent, its efficiency against HIV and sexually transmitted infections, and the importance of adopting safer sexual practices, in English and the local language of the region where the prophylactic is supplied;
- (h) that HIV/AIDS-related IEC is adequately provided at places of entertainment and travel points including train stations, bus stations, international ports of entry and exit, domestic airports, and other travel centres;
 - (i) that HIV/AIDS-related IEC is provided in all State institutions, including in care and custodial settings; and
 - (j) that all HIV/AIDS-related IEC is widely disseminated through all forms of media including print, electronic, mass and digital media.
- (3) For the purposes of this Section, the State shall hold ongoing and sustained consultations with different stakeholders including HIV-positive persons, protected persons, women's groups, persons working in the field of HIV/AIDS, public health experts, children's groups, and parents and guardians of learners.
- 25. HIV/AIDS Information as a Health Service.**— (1) HIV/AIDS related information dissemination shall form part of the delivery of health services by healthcare providers.
- (2) It shall be the duty of every healthcare provider to make available to the public, subject to the provisions of this Act, such information as is necessary in the prevention, care, support and treatment of HIV/AIDS.
 - (3) Every healthcare institution shall enhance the knowledge and capacity of all healthcare providers working in or employed by it, to include skills for proper information dissemination and education on HIV/AIDS and the training of healthcare providers shall include discussions on HIV-related issues such as discrimination, confidentiality, informed consent and the duty to provide treatment.

CHAPTER X

APPOINTMENT OF HEALTH OMBUD

- 26. Appointment of Health Ombud.** — (1) The Appropriate Government shall, within 90 days of the commencement of this Act, appoint by notification in the Official Gazette, one or more Health Ombuds for each district to exercise the powers conferred upon and perform the functions assigned, under this Act.
- (2) The Appropriate Government may appoint as Health Ombud, any person who has working experience or extensive knowledge of public health or healthcare delivery systems, is independent, and sensitive to issues addressed in this Act, including a healthcare provider or a person working in a non-governmental organisation.
 - (3) A person appointed as Health Ombud under sub-section (1) shall -
 - (a) when appointed for a Union Territory, be conferred the rank of the Joint Director of Health and Family Welfare; and
 - (b) when appointed for a district of the State, be conferred the rank of the Officer responsible for Health for such district.
 - (4) The Health Ombud shall within seven days of being appointed, undergo training on HIV/AIDS and this Act in accordance with the Regulations.

- (5) The Appropriate Government shall within 30 days of the commencement of this Act establish a website or web page on the Internet dedicated to the offices of each Health Ombud appointed by it, which shall provide inter alia information relating to the functioning of the office of the Health Ombud, the procedure for filing and sending complaints, the number, nature and of complaints received, and decisions and directions given by the Health Ombud.

Provided that the provision of the information on the website shall ensure the maintenance of the confidentiality of complainants and other parties to the complaints.

- 27. Tenure of office of Health Ombud.** — (1) The Health Ombud shall hold office for a term of three years from the date on which such person enters office and shall be eligible for reappointment.

- (2) The Health Ombud may relinquish office by giving written notice of not less than three months to the Appropriate Government.

- (3) The Appropriate Government may remove a Health Ombud from office who:-
- (a) is, or at any time has been, adjudged as insolvent;
 - (b) has become physically or mentally incapable of acting as the Health Ombud;
 - (c) has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the Appropriate Government likely to prejudicially affect such person's functions as the Health Ombud; or
 - (d) has so abused the position as to render continuation in office detrimental to the public interest.

Provided that a Health Ombud shall not be removed from office without being given a reasonable opportunity of being heard in the matter.

- 28. Salary and allowances of Health Ombud.** — The salary and allowances payable to, and other terms and conditions of service of, the Health Ombud shall be such as may be prescribed.

Provided that such salary, allowances and other conditions of service shall not be varied to the disadvantage of the Health Ombud after appointment.

- 29. Functions of Health Ombud.** — (1) The Health Ombud, may suo motu and shall, on a complaint by any person, inquire, at the request of the Appropriate Government or its agencies or any court, into violations of the provisions of this Act by any person in relation to the provision of healthcare services in such Health Ombud's jurisdiction.

- (2) The Health Ombud shall inquire into and decide a complaint promptly and in any case within 15 working days.

Provided that in cases of emergency, the Health Ombud shall decide the complaint within one day.

Provided further that in case the complaint is not decided within the time period specified above, the proceedings before the Health Ombud shall not lapse and the Health Ombud shall record in writing reasons for the delay and provide copies of the same to both parties.

- (3) The Health Ombud shall inquire into instances or complaints of the manufacture, marketing, distribution, provision, prescription and sale of any licensed or unlicensed substance, service or therapy, or any advertisement or article or any broadcast or telecast falsely claiming to cure, prevent or alleviate medical conditions associated with HIV/AIDS and based on such inquiry may file a complaint with the concerned authority including law enforcement authorities or initiate legal proceedings, and shall report the findings of the inquiry, along with recommendations, if any, with the Appropriate Government and the concerned authority, if any, for action.

30. Powers and Procedure. - (1) The Health Ombud shall follow such procedure as may be prescribed.

Provided that all stages of such procedure shall be readily accessible to and usable by all persons including persons with disabilities and illiterate persons.

- (2) The Health Ombud may receive complaints via post, telephonically, via the Internet or in any other manner as may be prescribed.
- (3) The Health Ombud may decide the complaint based on representations of the parties to the complaint or may require a hearing of the parties to the complaint.
- (4) The Health Ombud shall, while inquiring into complaints under this Act, have all the powers of a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of witnesses and examining them on oath;
 - (b) discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) any other matter, which may be prescribed.
- (5) The Health Ombud shall have the power to require any person, to furnish information on such points or matters as, in the opinion of the Health Ombud, may be useful for, or relevant to, the subject matter of an inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code, (45 of 1860).
- (6) The Health Ombud or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Health Ombud may enter any building or place where the Health Ombud has reason to believe that any document relating to the subject matter of an inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.
- (7) The Health Ombud shall maintain records in such manner as may be prescribed.
- (8) The Health Ombud shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, (45 of 1860).

- (9) The Health Ombud may appoint such number of persons as may be necessary to assist in the functioning of the Health Ombud office including in relation to the inquiry of a complaint under sub-section (1) and (3) of section 29.
- (10) The Central Government shall prescribe rules for the purposes of this Chapter within 60 days of the commencement of the Act.

31. Findings and orders. — (1) The Health Ombud shall, in order to rectify the breach or withdraw the violation complained of under this Act, have the power to:—

- (a) pass orders, in cases of emergency without considering the representations of the parties to the complaints or without hearing them as the case may be, including directing admissions, operations or treatment and the provision of universal precautions.

Provided that the Health Ombud shall, as soon as may be, after the passing of such orders, consider the representations of the parties or give them an opportunity to be heard as the case may be, and pass appropriate orders;

- (b) pass orders for the withdrawal and rectification of the violation complained of;
- (c) pass orders directing the person who has committed the violation to undergo a fixed period of counselling related to the violation committed and a fixed period of social service;
- (d) direct specific steps or special measures or both to be taken; and
- (e) direct any person who has committed the violation to make regular reports to the Health Ombud regarding implementation of the Health Ombud's order.

- (2) The Health Ombud shall pass orders that contain brief reasons for the passing of such orders.
- (3) The Health Ombud, may, subject to any Rules made in this behalf, make such orders as to cost as are considered reasonable.
- (4) An order of the Health Ombud shall be binding on the parties to the complaint.

32. Civil Authorities to carry out Health Ombud Orders. – All authorities including civil authorities functioning within the jurisdiction of the Health Ombud shall be bound by the orders of the Health Ombud and shall assist in their execution.

33. Consequences of Breach of Health Ombud Orders. — (1) All orders passed by the Health Ombud under Section 31 shall be deemed to be orders under Order 39 Rule 1 of the Code Civil Procedure, 1908 and the breach of such an order shall be dealt with by applications to the Health Ombud which application shall be treated as an application under Order 39 Rule 2A of the Code Civil Procedure, 1908.

- (2) For the purposes of this Chapter "Court" in Order 39 of the Code of Civil Procedure, 1908 shall include the Health Ombud.

34. Report to Government. – The Health Ombud shall, every six months, report to the Appropriate Government, the number and nature of complaints received, the action taken and orders passed in relation to such complaints and a copy of such report shall be forwarded the National HIV/AIDS Authority and the concerned HIV/AIDS Authority.

35. **Right of Redressal.** – Nothing contained in this Chapter prohibits, limits or otherwise restricts the right of a person to other remedies provided under this Act or any other law for the time being in force to address violations of the provisions of this Act.

CHAPTER XI
HIV/AIDS AUTHORITY

36. **Constitution of HIV/AIDS Authorities.** — (1) The Central Government shall for the whole country, on the appointed date, constitute and establish, in accordance with the provisions of this Act, a body to be known as the National HIV/AIDS Authority to exercise the powers conferred upon and perform the functions assigned to it, under this Act.
- (2) The Appropriate Government for each Union Territory and for each State, shall, on the commencement of this Act, constitute and establish, in accordance with the provisions of this Act, a State or Union Territory HIV/AIDS Authority as the case may be, under such name as may be specified in the notification to exercise the powers conferred upon, and perform the functions assigned to it, under this Act.
- (3) The Appropriate Government for each district in a Union Territory and the State Government for each district in a State shall where a District AIDS Control Society exists, and may for other districts, constitute and establish, in accordance with the provisions of this Act a body to be known as the District HIV/AIDS Authority under such name as may be specified in the notification, to exercise the powers conferred upon and perform the functions assigned to it, under this Act.

Explanation:– For the purposes of this Chapter, the appointed date shall be such date, being a date no later than six months of the commencement of this Act, as the Appropriate Government may by notification appoint for the constitution and establishment of the concerned HIV/AIDS Authority.

37. **HIV/AIDS Authority to be body corporate.** — The HIV/AIDS Authority shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose off property and to contract, and may, by the aforesaid name, sue or be sued.
38. **Office of HIV/AIDS Authority.** — (1) The head office of the National HIV/AIDS Authority shall be at Delhi and the National HIV/AIDS Authority may establish offices at such other places in India.
- (2) The head office of State, Union Territory and District HIV/AIDS Authorities shall be at the State capital, Union Territory capital and District headquarters respectively and such HIV/AIDS Authorities may establish offices at other places in their jurisdiction as may be deemed necessary.
39. **Composition of HIV/AIDS Authorities.** — (1) The National HIV/AIDS Authority shall comprise-
- (a) a full-time Director, being a person with special knowledge or practical experience in matters relating to HIV/AIDS, to be nominated by the concerned Nomination Committee;
- (b) five full-time members to be nominated by the Central Government;

- (c) one person each from the Northern, Southern, Eastern, Western and North-Eastern State and Union Territory HIV/AIDS Authorities to be nominated by the Central Government on an annual rotating basis;
- (d) a full-time member being an HIV-positive person to be nominated by the concerned Nomination Committee;
- (e) five persons to be nominated by the Central Government in accordance with Section 42, to represent HIV-positive persons, other protected persons, healthcare providers, women, non-governmental organisations working in the field of HIV/AIDS or any other interest which, in the opinion of the Central Government, ought to be represented;
- (f) a full-time member-HIV/AIDS expert, being a person having special knowledge or practical experience in respect of matters relating to public health, human rights and HIV/AIDS, nominated by the Central Government in accordance with Section 42;
- (g) a full-time member-secretary, possessing qualifications, knowledge and experience of various aspects of HIV/AIDS, to be made available by the Central Government.

Explanation:— For the purposes of this sub-section, *Northern States* are Jammu and Kashmir, Punjab, Harayana, Chandigarh, Delhi, Rajasthan, Uttar Pradesh, Uttaranchal and Himachal Pradesh, *Western States* are Maharashtra, Gujarat, Madhya Pradesh, Daman and Diu, Lakshadweep and Dadra and Nagar Haveli, *Eastern States* are West Bengal, Orissa, Bihar, Chhattisgarh, Jharkhand, Sikkim and Andaman and Nicobar Islands, *Southern States* are Karnataka, Goa, Tamil Nadu, Kerala, Pondicherry and Andhra Pradesh and *North-Eastern States* are Manipur, Assam, Meghalaya, Mizoram, Nagaland, Tripura and Arunachal Pradesh.

- (2) A State or Union Territory HIV/AIDS Authority shall comprise –
 - (a) a full-time Director, being a person having special knowledge or practical experience in respect of matters relating to HIV/AIDS or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the concerned State or Union Territory Nomination Committee;
 - (b) five full-time members to be nominated by the Appropriate Government;
 - (c) five members, to be nominated by the Appropriate Government from amongst members of local authorities functioning within the State or Union Territory, as the case may be;
 - (d) a full-time member being an HIV-positive person to be nominated by the concerned Nomination Committee;
 - (e) five persons to be nominated by the Appropriate Government in accordance with Section 42, to represent HIV-positive persons, other protected persons, healthcare providers, women, non-governmental organisations working in the field of HIV/AIDS or any other interest which, in the opinion of the Appropriate Government, ought to be represented;
 - (f) a full-time member-HIV/AIDS expert, being a person having special knowledge or practical experience in respect of matters relating to public health, human rights and HIV/AIDS nominated by the Appropriate Government in accordance with Section 42;
 - (g) a full-time member-secretary, possessing qualifications, knowledge and experience of various aspects of HIV/AIDS, to be made available by the Appropriate Government.

- (3) A District HIV/AIDS Authority shall comprise —

- (a) a full-time Director, being a person having special knowledge or practical experience in respect of matters relating to HIV/AIDS or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the concerned Nomination Committee;
- (b) three full-time members to be nominated by the Appropriate Government;
- (c) two members, to be nominated by the Appropriate Government from amongst the members of local authorities functioning within the District;
- (d) a full-time member being an HIV-positive person to be nominated by the concerned Nomination Committee;
- (e) three persons to be nominated by the Appropriate Government in accordance with Section 42, to represent HIV-positive persons, other protected persons, healthcare providers, women, non-governmental organisations working in the field of HIV/AIDS in that District or any other interest which, in the opinion of the Appropriate Government, ought to be represented;
- (f) a full-time member-HIV/AIDS expert, being a person having special knowledge or practical experience in respect of matters relating to public health, human rights and HIV nominated by the Appropriate Government in accordance with Section 42;
- (g) a full-time member-secretary, possessing qualifications, knowledge and experience of various aspects of HIV/AIDS, to be made available by the Appropriate Government.

- 40. Nomination Committee.** — (1) The Central, State and Union Territory Nomination Committees shall, on the appointed date, and subsequently to fill vacancies in the concerned HIV/AIDS Authority, meet to consider, determine and nominate such persons, as they are required, under section 39, to appoint.
- (2) The Central Nomination Committee shall comprise the Prime Minister, the Minister for Health and Family Welfare, the leaders of the Opposition in the House of Representatives and the Council of States, the Chairperson of the National Human Rights Commission and an HIV-positive person appointed by the Central Government in accordance with Section 42.
 - (3) The State Nomination Committee shall comprise the Chief Minister, the Minister in charge of Health in the State, the leaders of the Opposition in the State Legislative Assembly and State Legislative Council, in cases where both Houses exist, the Chairperson of the State Human Rights Commission or where no State Human Rights Commission exists, an expert in public health, HIV/AIDS or human rights as appointed by the State Government in accordance with Section 42 and an HIV-positive person appointed by the State Government in accordance with Section 42.
 - (4) (a) The Union Territory Nomination Committee shall, where the Union Territory has its own legislature, comprise the Chief Minister, the Minister in charge of Health in the Union Territory, the leaders of the Opposition in the Union Territory Legislative Assembly and Union Territory Legislative Council, an expert in public health, HIV/AIDS or human rights as appointed by the Union Territory Government in accordance with Section 42 and an HIV-positive person appointed by the Union Territory Government in accordance with Section 42.
 - (b) The Union Territory Nomination Committee shall, where the Union Territory has no legislature, be the Central Nomination Committee under Section 38(2)

(5) No appointment by a Nomination Committee shall be invalid merely by reason of any vacancy in such Nomination Committee.

41. Advisory Committee. – (1) The National HIV/AIDS Authority shall be advised by an Advisory Committee on matters relating to the enforcement of this Act, the protection and promotion of rights of protected persons, the care, support and treatment of persons living with HIV/AIDS and the prevention and control of HIV/AIDS.

(2) The Advisory Committee shall comprise:—

- (a) the Central Nomination Committee; and
- (b) the following persons to be appointed by the Central Government for a period of 2 years with eligibility for reappointment in accordance with Section 42:
 - (i) Two representatives from non-governmental organisations working in the fields of HIV/AIDS or public health;
 - (ii) A representative of the Indian Council of Medical Research;
 - (iii) A representative of healthcare providers;
 - (iv) A representative of HIV-positive persons;
 - (v) A representative of protected persons;
 - (vi) A representative of women;
 - (vii) A representative of children;
 - (viii) A human rights activist;
 - (ix) An epidemiologist; and
 - (x) A public health expert.

(3) The Advisory Committee shall meet once a year.

42. Appointments to HIV/AIDS Authority and Nomination Committee by Appropriate Government.— (1) For any appointment to be made by an Appropriate Government under Sections 39, 40 and 41, such Appropriate Government shall, in the case of a member being appointed upon the constitution of an HIV/AIDS Authority or a Nomination Committee or the Advisory Committee and subsequently on the completion of tenure by a member, 30 days prior to the date upon which a member is to be appointed, call for nominations from all persons for the post through widespread advertisements including through national and local newspapers and the Internet.

(2) In cases where the need for appointing a member arises due to factors other than the constitution of an HIV/AIDS Authority or a Nomination Committee or the Advisory Committee or the completion of tenure, the Appropriate Government shall commence the process of appointment as specified in sub section (1) immediately upon such vacancy arising and shall make the final decision as to appointment within 30 days.

(3) In the appointment of any member of an HIV/AIDS Authority, a Nomination Committee or the Advisory Committee, the Appropriate Government shall take into consideration the track record of the persons nominated for the post in the field of HIV/AIDS and health and their experience in their respective fields.

(4) The Appropriate Government shall make the process of any appointment public immediately upon the person's appointment, including through the Internet, and in publicising such appointment shall include the name of the person appointed, their track record and experience and any other factors that were relevant in the appointment.

- 43. Tenure of office of Director and other members.** — (1) The Director and every other member of an HIV/AIDS Authority shall hold office for a term of five years from the date on which such person enters office and shall be eligible for reappointment.
- (2) A member may, relinquish office by giving written notice to the Appropriate Government of not less than three months.
- (3) The Appropriate Government may remove from office any member who:
- (a) is, or at any time has been, adjudged as insolvent;
 - (b) has become physically or mentally incapable of acting as a member of the HIV/AIDS Authority;
 - (c) has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the Appropriate Government likely to affect prejudicially such person's functions as a member of the HIV/AIDS Authority; or
 - (d) has so abused the position as to render continuation in office detrimental to the public interest.

Provided that a member shall not be removed from office without being given a reasonable opportunity of being heard in the matter.

- 44. Salary and allowances of Director and members.** — (1) The salary and allowances payable to, and other terms and conditions of service of, the members shall be such as may be prescribed.

Provided that such salary, allowances and other conditions of service shall not be varied to the disadvantage of the members after appointment.

- 45. Meetings of the HIV/AIDS Authority.** — (1) The HIV/AIDS Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

- (2) The Director shall preside at the meetings of the HIV/AIDS Authority.
- (3) If for any reason the Director is unable to attend any meeting of the HIV/AIDS Authority, any member of the HIV/AIDS Authority chosen by the members present shall preside at the meeting.
- (4) All questions which come before any meeting of the HIV/AIDS Authority shall be decided by a majority of votes of the members of the HIV/AIDS Authority present and voting and in the event of equality of votes, the Director of the HIV/AIDS Authority or the person presiding at the meeting shall have, and exercise, a second or casting vote.
- (5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at a meeting shall disclose the nature of such concern or interest, pecuniary or otherwise, and after such disclosure, such member shall not attend that item of the meeting.
- (6) No act or proceeding of the HIV/AIDS Authority shall be invalid merely by reason of:
- (a) any vacancy in, or defect in the constitution of, the HIV/AIDS Authority; or
 - (b) any defect in the appointment of a person acting as the Director or a member of the HIV/AIDS Authority; or

- (c) any irregularity in the procedure of the HIV/AIDS Authority not affecting the merits of the act or proceeding.
- 46. Committees.** — (1) An HIV/AIDS Authority may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.
- (2) Persons appointed as members of a committee under sub-section (1) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be prescribed.
- 47. Officers and other employees of the HIV/AIDS Authority.** — Subject to such control and restriction as may be prescribed, the HIV/AIDS Authority may appoint such officers and other employees as may be necessary for the efficient performance of its functions and the method of appointment, the salary and allowances and other conditions of service of such other officers and employees of the HIV/AIDS Authority shall be such as may be prescribed.
- 48. Director to be Chief Executive.** — The Director shall be the Chief Executive of the HIV/AIDS Authority and shall exercise such powers and perform such duties as may be prescribed.
- 49. Transfer of Undertakings, etc.** — (1) On the appointed date, the undertakings in relation to the National AIDS Control Organisation, a State AIDS Control Society and where a District AIDS Control Society exists, of that District AIDS Control Society, shall stand transferred to the National HIV/AIDS Authority, the concerned State HIV/AIDS Authority or the concerned District HIV/AIDS Authority as the case may be.
- (2) The undertaking of the National AIDS Control Organisation, the concerned State AIDS Control Society or the concerned District AIDS Control Society, which is transferred to, and which vests in the National HIV/AIDS Authority, the State HIV/AIDS Authority or the District HIV/AIDS Authority as the case may be, shall be deemed to include all assets, rights, powers, authorities and privileges and all properties, movable and immovable, real or personal, corporeal or incorporeal, in possession or reservation, present or contingent, of whatever nature and wheresoever situate, including lands, works, cash balances, capital reserves, reserve funds, investments, tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointed date in the ownership, possession or power of the National AIDS Control Organisation, the concerned State AIDS Control Society or the concerned District AIDS Control Society as the case may be in relation to its undertakings, whether within or outside India, all books of account and documents relating thereto and shall also be deemed to include all borrowings, liabilities and obligations of whatever kind then subsisting of the National AIDS Control Organisation or the concerned State AIDS Control Society or concerned District AIDS Control Society, as the case may be, in relation to its undertakings.
- (3) All contracts and working arrangements subsisting immediately before the appointed date and affecting the National AIDS Control Organisation, the State AIDS Control Society or the District AIDS Control Society, as the case may be, shall, in so far as they relate to their undertakings, cease to have effect or to be enforceable against the National AIDS Control Organisation, the State AIDS Control Society or the District AIDS Control Society, as the case may be, and shall be of as full force and effect against or in favour of the HIV/AIDS

Authority in which the undertaking has vested by virtue of this Act and enforceable as fully and effectually as if instead of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society as the case may be, the concerned HIV/AIDS Authority had been named therein or had been a party thereto.

- (4) Any proceeding or cause of action pending or existing immediately before the appointed date by or against or in relation to the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, in relation to its undertaking may, as from that day, be continued and enforced by or against the HIV/AIDS Authority in which it has vested by virtue of this Act, as it might have been enforced by or against the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, if this Act had not been passed, and shall cease to be enforceable by or against the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be.
- (5) With effect from the appointed date, all licenses, permits, quotas and exemptions granted to the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society as the case may be, or in connection with the affairs and business of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, under any law for the time being in force, shall be deemed to have been granted to the HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has vested.
- (6) Where any exemption from, or any assessment with respect to, any tax has been granted or made or any benefit by way of set off or carry forward, as the case may be, of any unabsorbed depreciation or investment allowance or other allowance or loss has been extended or is available to or in relation to the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, under the Income Tax Act, 1961, (43 of 1961), such exemption, assessment or benefit shall continue to have effect in relation to the HIV/AIDS authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has vested.
- (7) Where any payment made by the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, is exempt from deduction of the tax at source under any provision of the Income Tax Act, 1961 (43 of 1961), the exemption from tax will continue to be available as if the provisions of the said Act made applicable to the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, were operative in relation to the HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has been vested.
- (8) The transfer and vesting of the undertaking or any part thereof in terms of this section shall not be construed as a transfer within the meaning of the Income Tax Act, 1961 (43 of 1961) for the purposes of capital gains.
- (9) Any guarantee given for or in favour of or in relation to the National AIDS Control Organisation or State AIDS Control Society or District AIDS Control Society, as the case

may be, with respect to any loan or lease finance shall continue to be operative in relation to the HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has vested by virtue of this Act.

- (10) Every officer or other employee of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, except the Director, of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, serving in its employment immediately before the appointed date shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in the HIV/AIDS Authority by virtue of this Act become, as from the appointed date an officer or other employee, as the case may be, of such HIV/AIDS Authority in which the undertaking has vested and shall hold office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, passage, insurance, superannuation scheme, provident fund, other funds, retirement, pension, gratuity and other benefits as such officer would have held under the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, if its undertaking had not vested in the HIV/AIDS Authority and shall continue to do so as an officer or other employee, as the case may be, of the HIV/AIDS Authority or until the expiry of a period of six months from the appointed date if such officer or other employee does not opt to be the officer or other employee of the HIV/AIDS Authority, within such period.
- (11) Where an officer or other employee of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, opts under sub-section (10) not to be in the employment or service of the concerned HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, has vested, such officer or other employee shall continue in the employment of the Appropriate Government.
- (12) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force, the transfer of the services of any officer or other employee of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, to an HIV/AIDS Authority shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court or other authority.
- (13) The officers and other employees who have retired before the appointed date from the service of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the HIV/AIDS Authority in which the undertaking of the National AIDS Control Organisation or the State AIDS Control Society has vested.
- (14) The trusts of the Provident Fund or Group Insurance and Superannuation Scheme of the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society, as the case may be, and any other bodies created for the welfare of officers or employees would continue to discharge their functions in the HIV/AIDS

Authority as was being done prior to the appointed date in the National AIDS Control Organisation or the State AIDS Control Society or the District AIDS Control Society as the case may be and tax exemptions granted to such schemes shall continue to be applied to the concerned HIV/AIDS Authority.

- 50. Functions of the HIV/AIDS Authority.** — (1) It shall be the function of the HIV/AIDS Authority to:
- (a) Prevent and control the spread of HIV;
 - (b) Promote and protect the rights of protected persons;
 - (c) Provide care, support and treatment to HIV-positive persons and those affected by HIV/AIDS;
 - (d) Reduce the vulnerability of individuals and communities to HIV/AIDS;
 - (e) Promote awareness, information and education about HIV/AIDS; and
 - (f) Alleviate the socio-economic and human impact of HIV/AIDS; in India or the State or the Union Territory or the District, as the case may be, and to co-ordinate any such programmes undertaken by any other persons or authorities on behalf of the Appropriate Government as may be necessary.
- (2) The HIV/AIDS Authority may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with any agency of any foreign country or any international organisation.
- (3) In particular, and without prejudice to the generality of the sub-section (1), the National HIV/AIDS Authority for the whole or any part of India, a State HIV/AIDS Authority for the whole or any part of the State, a Union Territory HIV/AIDS Authority for the whole or any part of the Union territory, and a District HIV/AIDS Authority for the whole or any part of the District, shall -
- (a) institute and implement HIV-related programmes including such programmes as are specified in Schedule II and plan and organise the training of persons, engaged or to be engaged, in HIV-related programmes and strengthen programme management capabilities of the Appropriate Government, municipal corporations, panchayat institutions and NGOs participating in HIV-related programmes;
 - (b) inquire, *suo motu*, on the request of the Appropriate Government or its agencies or any court or in the case of a State or Union Territory HIV/AIDS Authority on the direction of the National HIV/AIDS Authority or in the case of a District HIV/AIDS Authority on the direction of the National, State or Union Territory HIV/AIDS Authority or on a petition presented to it by any person, into complaints or instances of violation of the provisions of this Act or negligence in the prevention of such violation, by any person, wholly or partly in its jurisdiction, and shall submit the report of such inquiry to the Appropriate Government with recommendations as to steps to be taken to remedy the violation and may institute legal proceedings as provided in sub-section (c);
 - (c) institute, or assist complainants in instituting, or intervene in legal proceedings, involving any allegation of violation of the provisions of this Act in any court or challenge any order of a court where the HIV/AIDS Authority is a party or conduct investigations and make recommendations as directed by the court;
 - (d) maintain, publish and widely disseminate a list of HIV-related services including care, support and treatment centres and homes, healthcare providers and healthcare institutions providing care and treatment for HIV/AIDS, help lines, testing facilities and legal assistance;

- (e) advise and report to the Appropriate Government, suo moto or when requested by it, on any matters concerning HIV/AIDS or arising in the course of the performance of the HIV/AIDS Authority's functions, in particular related to persons below the age of 18 years and protected persons, including:
 - (i) a review of existing and proposed international and national laws and policies and recommendations on the effective implementation or amendment of the same;
 - (ii) a review of laws and policies affecting persons below the age of 18 years and children affected by HIV/AIDS including the Juvenile Justice (Care and Protection) Act, 2000 and rules related to foster care and adoption.
 - (iii) recommendations on the need for new laws and policies;
 - (iv) a review of the factors that inhibit the enjoyment of rights of persons; and
 - (v) recommendations for instituting programmes for sensitisation of law enforcement on matters related to this Act;
- (f) assess and recommend the strengthening of national, state or local healthcare systems, as the case may be, including related to the improvement of access to healthcare, the primary healthcare system, integrating HIV/AIDS within existing health programmes, improving health education and recommending and assisting in the formulation and implementation of action plans by the Appropriate Government to ensure the proper provision of healthcare through public healthcare institutions;
- (g) promote, commission and finance research in relation to HIV/AIDS and maintain and update a database of all HIV/AIDS related research being conducted in its jurisdiction;
- (h) carry out HIV/AIDS surveillance in accordance with the Regulations;
- (i) initiate and ensure ongoing interaction with international agencies and other countries to ensure that governmental responses to the HIV/AIDS epidemic will continue to make the best use of assistance, information and knowledge available from the international community;
- (j) encourage the efforts of non-governmental organisations and institutions working in the field of HIV/AIDS, human rights and public health including through the provision of material and human resources and allocation of sufficient funding to support, sustain and enhance their capacity and services;
- (k) promote the understanding, acceptance and public discussion of rights of protected persons and of the provisions of this Act;
- (l) formulate three-year action plans for the carrying out of functions under this Act in consultation with different stakeholders including HIV-positive persons, protected persons, non-governmental organisations and healthcare providers; and
- (m) do anything incidental or conducive to the performance of any of the preceding functions or for the purposes of this Act.

51. Additional Functions of National HIV/AIDS Authority. — In addition to the functions set out in Section 50, the National HIV/AIDS Authority shall -

- (a) formulate and implement a National HIV/AIDS Policy which shall be reviewed, and amended if necessary, every three years after widespread consultation;
- (b) establish a committee to examine the impact of HIV/AIDS on women, which shall inter alia:
 - (i) undertake a review of all laws, in particular personal laws;
 - (ii) determine the manner in, and extent to which such laws discriminate against women;
 - (iii) recommend the reform and repeal of such laws to the Appropriate Government;

- (iv) examine the role of women at home and in public life, their sexual, reproductive and economic rights, including their ability to negotiate safer sex and make reproductive choices;
- (v) examine strategies to increase educational and economic opportunities for women, sensitise service deliverers on issues related to women, improve healthcare and social support services for women; and
- (vi) examine the impact of religious and cultural traditions on women.
- (c) in relation to State, Union Territory and District HIV/AIDS Authorities-
 - (i) supervise their functioning;
 - (ii) provide technical assistance and guidance to carry out and sponsor investigations and research relating to HIV/AIDS;
 - (iii) co-ordinate their activities and resolve disputes among them;
 - (iv) make budgetary allocations and monitor their use of funds and resources
- (d) formulate, circulate and implement a model national HIV/AIDS policy for the care, support and protection of children affected by HIV/AIDS in educational institutions.
- (e) formulate, modify and publish guidelines, policies or standards including in relation to:
 - (i) programmes specified in Schedule II;
 - (ii) HIV/AIDS surveillance and counselling;
 - (iii) establishment of Voluntary Counselling and Testing Centres;
 - (iv) registration and support of non-governmental organisations, the disbursement of monies for this purpose while ensuring that such non-governmental organisations adopt and follow good practices and ethical guidelines in the running and management of their affairs; and
 - (iv) the avoidance of acts or practices that violate or breach the provisions of this Act.

52. Additional Functions of State and Union Territory HIV/AIDS Authority. —

In addition to the functions set out in Section 50, State and Union Territory HIV/AIDS Authorities shall within their jurisdictions-

- (a) translate the National HIV/AIDS Policy and other guidelines issued by the National HIV/AIDS Authority into local and regional languages, ensure their widespread dissemination and monitor their implementation;
- (b) report to the National HIV/AIDS Authority;
- (c) in relation to District HIV/AIDS Authorities where such Authorities exist-
 - (i) supervise their functioning;
 - (ii) co-ordinate their activities and resolve disputes among them; and
 - (iii) delegate such of their functions at the District level as they see fit;
- (d) establish HIV/AIDS help lines in partnership with NGOs, networks of HIV-positive persons or other stake holders in each District in accordance with the Regulations;
- (e) establish Voluntary Counselling and Testing Centres in accordance with Section 17 in every sub-district and at their head offices;
- (f) maintain a list of registered counsellors and Voluntary Counselling and Testing Centres which shall be available to the public free of cost;
- (g) under directions and guidelines of and in coordination with the National HIV/AIDS Authority establish mechanisms for:
 - (i) the registration of Voluntary Counselling and Testing Centres and counsellors;
 - (ii) the training of counsellors;
 - (iii) the provision of HIV-related pre-marital information and counselling services;

- (iv) the setting up of shelter homes for women and children living with HIV/AIDS; and
 - (h) co-ordinate with the National HIV/AIDS Authority and other State and Union Territory HIV/AIDS Authorities for the purposes of this Act.
- 53. Power of HIV/AIDS Authority.** — (1) In proceedings and inquiries before an HIV/AIDS Authority, it shall, have all the powers of a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:
- (a) summoning and enforcing the attendance of witnesses and examine them on oath;
 - (b) discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any court or office;
 - (e) issuing commissions for the examination of witnesses or documents;
 - (f) any other matter which may be prescribed.
- (2) The HIV/AIDS Authority shall have the power to require any person, to furnish information on such points or matters as, in its opinion, may be useful for, or relevant to, the subject matter of an inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code, (45 of 1860).
- (3) The HIV/AIDS Authority or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the HIV/AIDS Authority may enter any building or place where the HIV/AIDS Authority has reason to believe that any document relating to the subject matter of an inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.
- 54. Authentication of orders of HIV/AIDS Authority.** — All orders and decisions of the HIV/AIDS Authority shall be authenticated by the signature of the Director or any other member authorised by the HIV/AIDS Authority in this behalf.
- 55. HIV/AIDS Authority to monitor compliance of Act.** — (1) The HIV/AIDS Authority shall, within 180 days of its constitution and establishment, notify a voluntary, graded rating and compliance system for all organisations including companies, institutions and non-governmental organisations in its jurisdiction, which shall provide inter alia:
- (a) for the listing of organisations with the HIV/AIDS Authority;
 - (b) formats for reporting compliance with the provisions of this Act; and
 - (c) a public notification system for organisations who rate well on the compliance of this Act.
- (2) Based on the rating and compliance system, the HIV/AIDS Authority shall, on an annual basis, rate organisations on their compliance with the provisions of this Act and shall report to the Appropriate Government such organisations that rate well on compliance.
- (3) Based on the report of the HIV/AIDS Authority under sub-section (2), the Appropriate Government shall accord priority and preference to such organisations that rate well on compliance in relation to various matters including the granting of contracts, licences, funding and resource allocation.

- (4) The HIV/AIDS Authority shall also report to the Appropriate Government such organisations that have been convicted of offences or awarded adverse orders in terms of this Act or those which may have been given a poor rating as 'HIV unfriendly' in relation to various matters including the granting of contracts, licences, funding and resource allocation.
- (5) The HIV/AIDS Authority shall publish for wide circulation its rating and compliance system, the names of organisations that perform well on the rating system and those that are given a poor rating as 'HIV unfriendly.'

56. HIV/AIDS Authority to Consult. — (1) The HIV/AIDS Authority shall:

- (a) call upon such experts, from the fields of public health, human rights, law and HIV/AIDS or from any other discipline as it deems necessary to assist it in the conduct of an inquiry under Section 50(3)(b);
 - (b) ensure, including through political and financial support, that consultation with all stake holders including HIV-positive persons, protected persons, healthcare providers, persons working in the field of HIV/AIDS, public health experts and human rights organisations occurs in all phases of HIV/AIDS policy design, programme implementation and evaluation;
 - (b) establish formal and regular mechanisms to facilitate ongoing dialogue with and input from such community representatives into HIV-related government policies and programmes including through regular reporting by community representatives to the various government, parliamentary and judicial branches, joint workshops with community representatives on policy, planning and evaluation of State responses and through mechanisms for receiving written submissions from the community;
 - (c) ensure a greater involvement of HIV-positive persons, other protected persons, non-governmental organisations, women, children, civil society and healthcare providers in the formulation and implementation of HIV-related policies, including through an initiative to strengthen the capacity and co-ordination of networks of people living with HIV/AIDS and community based organisations; and
 - (d) work with different stakeholders for the purposes of the performance of its functions.
- (2) All policies, programmes and guidelines formulated by the HIV/AIDS Authority shall be evidence-based, formulated in a transparent manner and through consultation as provided in sub-section (1) and shall be open to public scrutiny.
 - (3) The HIV/AIDS Authority shall continuously collect information on HIV/AIDS, human rights and health and use this information as a basis for policy and programme development and reform.

57. Duty to publish information. — (1) The HIV/AIDS Authority shall publish, including through the Internet, and make available to all persons, all reports and minutes of its meetings and the meetings of its committees and where applicable those of the Advisory Committee and the concerned Nomination Committee, its policies, programmes, guidelines, standards, all data relating to care, support and treatment, budgetary allocations, statements of audit and accounts and reports of the Comptroller and Auditor General of India related to its functioning.

- (2) Every person shall have the right to information from the HIV/AIDS Authority and this information shall be subject to the maintenance of confidentiality in relation to protected persons.
- 58. Appropriate Government to consider HIV/AIDS Authority reports.** — The Appropriate Government shall consider the reports and recommendations of the HIV/AIDS Authority, in particular in relation to review of laws and policies relating to women, and within three months of their submission, shall, together with its comments, views and the action it proposes to take in relation to such reports and recommendations, lay the same before the concerned legislature for their action and publish and make available the same to all persons.
- 59. Budgetary Provisions.** — (1) The Appropriate Government may, after due appropriation made by Parliament or the concerned legislature as the case may be, by law in this behalf, make in each financial year such contributions to the HIV/AIDS Authority as it may think necessary to enable the HIV/AIDS Authority to perform its functions under this Act.
- (2) Each HIV/AIDS Authority shall have its own fund, and all sums which may, from time to time, be paid to it by the Appropriate Government, and in the case of the State, Union Territory and District HIV/AIDS Authorities, by the National HIV/AIDS Authority and all other receipts (by way of gifts, grants, donations, benefactions, fees or otherwise) of that HIV/AIDS Authority shall be carried to the fund of the HIV/AIDS Authority and all payments by the HIV/AIDS Authority shall be made from there.
- (3) The HIV/AIDS Authority may expend such sums as it thinks fit for performing its functions under this Act and such sums shall be treated as expenditure payable out of the fund of that HIV/AIDS Authority.
- (4) The HIV/AIDS Authority shall during each financial year, prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipt and expenditure, and copies thereof shall be forwarded to the Appropriate Government and its supervising HIV/AIDS Authority.
- 60. Accounts and Audit.** — (1) The HIV/AIDS Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Appropriate Government in consultation with the Comptroller and Auditor-General of India.
- (2) The accounts of the HIV/AIDS Authority shall be audited by the Comptroller and Auditor-General of India every three years and any expenditure incurred in connection with such audit shall be payable by the HIV/AIDS Authority to the Comptroller and Auditor-General of India.
- (3) The Comptroller and Auditor-General of India or any person appointed by the Comptroller and Auditor General of India in connection with the audit of the accounts of the HIV/AIDS Authority under this Act shall have the same rights and privileges in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the HIV/AIDS Authority.

- (4) The accounts of the HIV/AIDS Authority as certified by the Comptroller and Auditor-General or any other person appointed by the Comptroller and Auditor General of India in this behalf, together with the audit report thereon shall be forwarded annually to the Appropriate Government by the HIV/AIDS Authority and the Appropriate Government shall cause the audit report to be laid as soon as may be after it is received before the concerned legislature and shall publish the same for wide circulation.

CHAPTER XII

INSTITUTIONAL OBLIGATIONS

- 61. Application.** – The provisions of this Chapter shall be applicable to all institutions comprising 20 or more persons.
- 62. General Responsibility of Institutions.** – Every person who is in charge of, or responsible to an institution for the conduct of the activities of such institution, or both, shall ensure compliance by such institution with the provisions of this Act on the commencement of this Act.
- 63. Grievance Redressal Mechanism.** – (1) Every institution shall appoint a person of senior rank with full administrative powers, working full time in the institution, as the Complaints Officer, who shall, on a day-to-day basis, deal with complaints of violations of the provisions of this Act by or in the institution, in such manner as may be prescribed.

Provided that where an institution carries on its activity in one or more places with 20 or more persons in any of such additional places, a separate Complaints Officer shall be appointed for each of such places.

- (2) Every person with a grievance about the violation of the provisions of this Act by or in an institution has the right to approach the Complaints Officer to attend to such grievance and shall be informed of such right by the institution.
- (3) The Complaints Officer, may inquire suo moto, and shall inquire, upon a complaint made by any person, into violations of the provisions of this Act by the institution or any person in the institution.
- (4) The Complaints Officer shall act in an objective and independent manner when inquiring into complaints made under this Chapter.
- (5) The Complaints Officer shall inquire into and decide a complaint promptly and in any case within seven working days.

Provided that in cases of emergency the Complaints Officer shall decide the complaint within one day.

- (6) The Complaints Officer, if satisfied, that a violation of the Act has taken place as alleged in the complaint, shall first direct the institution to take measures to rectify the breach or violation complained of, then counsel the person alleged to have committed the act and require such person to undergo training and social service, and upon subsequent violations shall recommend to the institution to, and the institution shall, initiate disciplinary action against such person.

- (7) The Complaints Officer shall inform the complainant of the action taken in relation to the complaint and shall be responsible for ensuring that the complaints, their nature and number and the action taken are published on the institution's web site or web page where such a web site or web page exists and are reported to the concerned HIV/AIDS Authority on a six-monthly basis.

Provided that the Complaints Officer shall ensure the maintenance of confidentiality of complainants and parties to a complaint.

- 64. HIV/AIDS Policy.** – (1) The National HIV/AIDS Authority shall within 90 days of its constitution and establishment, notify model HIV/AIDS policies for institutions formulated in consultation with different stakeholders including HIV-positive persons and persons working in the field of HIV/AIDS.
- (2) The model HIV/AIDS policies as may be applicable and as may be amended and updated from time to time by the National HIV/AIDS Authority, shall be deemed to be adopted by every institution upon their notification.
- (3) The text of the HIV/AIDS Policy shall be conveyed to all persons working in the institution and shall be prominently posted by the person in charge of or responsible to the institution, or both, in English and in the language understood by the majority of persons working in or accessing such institution on special boards to be maintained for the purpose at or near the entrance through which the majority of the persons working in or accessing the services of the institution enter such institution.
- (4) (a) The notice in sub section (3) shall state the manner in which copies of the HIV/AIDS Policy may be obtained and persons working in or accessing the services of the institution shall be entitled to a copy of such policy free of charge.
(b) The HIV/AIDS Policy of all institutions shall be available to all members of the public for a nominal fee.
(c) In the case of educational institutions, learners and their parents or guardians shall be given a copy of the HIV/AIDS Policy free of charge immediately upon admission of the learner to the institution.
- (5) The institution shall conduct annual training sessions for persons working in such institution in understanding and implementing the HIV/AIDS Policy of the institution.
- (6) The National HIV/AIDS Authority shall ensure that the institutional HIV/AIDS Policy is reviewed and if necessary, updated and amended on an annual basis.
- 65. Right of Redressal.** – Nothing contained in this Chapter prohibits, limits or otherwise restricts the right of a person to other remedies provided under this Act or any other law for the time being in force to address violations of the provisions of this Act.

CHAPTER XIII

DUTIES OF STATE

- 66. State obligations.** – (1) In compliance with the Constitution of India and India's commitments under international conventions to which it is party, the Appropriate Government shall:
- (a) ensure the right of access to and equitable distribution of health facilities, goods and services including essential medicines on a non-discriminatory basis;

- (b) based on epidemiological evidence and through a participatory and transparent process, adopt and implement a national public health strategy and plan of action, to be periodically reviewed, addressing the health concerns of the whole population and including methods such as right to health indicators and benchmarks, by which progress can be closely monitored; and
 - (c) enact, review and amend legislation to promote the rights of protected persons and to establish a legislative framework in consonance with the objectives of this Act.
- (2) In order to fulfill its obligations under this Act the appropriate government shall:
- (a) take measures to develop and promote awareness among protected persons of their rights and duties under this Act; and
 - (b) take measures to develop and implement programmes in order to promote the rights of protected persons under this Act including promoting and ensuring the greater involvement of HIV-positive persons and protected persons in programmes, action plans, policy formulation, decision-making processes and implementation of plans under this Act in particular and in the field of HIV/AIDS in general.

67. Programmatic and Implementational Obligations. – (1) The Central Government shall, in co-ordination with the HIV/AIDS Authorities establish an effective national framework to respond to HIV/AIDS which ensures a co-ordinated, participatory, transparent and accountable approach, integrating HIV/AIDS policy and programme responsibilities, across all branches of government.

- (2) Each Central, State and local ministry shall ensure that HIV/AIDS and human rights are integrated into all its relevant plans and activities, including ministries and departments related to:
- (a) Education;
 - (b) Law and justice, including police and corrective services;
 - (c) Science and research;
 - (d) Employment and public service;
 - (e) Welfare, social security and housing;
 - (f) Immigration, indigenous populations, foreign affairs and development cooperation;
 - (g) Health;
 - (h) Treasury and finance;
 - (i) Defence, including armed services.

68. International. – (1) The Central Government shall initiate and ensure the ongoing interaction with neighbouring and other States to ensure that governmental responses to the HIV/AIDS epidemic will continue to make the best use of assistance available from the international community. Such interaction shall, inter alia, reinforce cooperation and assistance to areas related to HIV/AIDS and human rights, in particular relating to access to treatment.

- (2) The Central Government shall promote HIV-related human rights in international forums and ensure that they are integrated into the policies and programmes of international organizations.
- (3) The Central Government shall consider international guidelines, as they develop, in the formulation of HIV-related policies and programmes in India.

CHAPTER XIV

SPECIAL PROVISIONS

- 69. Women and health.** – (1) The State shall develop and implement a comprehensive national strategy for promoting women's right to health throughout their life span that includes interventions aimed at the prevention and treatment of diseases affecting women, as well as policies to provide access to a full range of high quality and affordable healthcare, including sexual and reproductive healthcare services and policies that ensure the education and empowerment of the girl child.
- (2) In order to promote better health for women, the State shall integrate a gender-based approach that recognises that biological and socio-cultural factors play a significant role in influencing the health of women, in its health-related policies, planning, programmes and research.
- (3) The State shall ensure the disaggregation of health and socio-economic data according to sex for the purpose of identifying and remedying inequalities in healthcare access and provision.
- 70. Right of Residence.** – Every protected person who is a woman or who is a person below the age of 18 years shall have the right to reside in the shared household, the right not to be excluded from the shared household or any part of it and the right to enjoy and use the facilities of such shared household in a non discriminatory manner.

Explanation:– "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 and includes 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.

- 71. Registration of Marriages.** – (1) In addition to and not in derogation of existing laws,
- (a) all marriages solemnised after the commencement of this Act shall be registered in such manner as may be prescribed; and
- (b) a marriage that is not registered after two years from the commencement of this Act or one year from the date of its solemnisation, whichever is later, shall be voidable at the option of the woman; and
- (c) in the case of a marriage that has been declared void under this section, all rights and obligations including the right to maintenance, the right of legitimacy of children who would have been legitimate had the marriage not been dissolved and rights related to property, shall be such as they would have been had the marriage been dissolved under the applicable law.
- (2) The Appropriate Government shall appoint Registration Officers in every sub-district in the country.
- (3) The Central Government in consultation with the State Governments shall within 360 days of the commencement of this Act, prescribe the procedure for registration of marriages and shall design and implement a system for indexing and centralising marriage records.

- (4) No marriage shall be registered unless the Registering Officer is satisfied that the persons intending to marry have received HIV-related IEC in accordance with Section 72 of this Act.

72. HIV-related IEC before marriage. – (1) The National HIV/AIDS Authority shall, within 90 days of its constitution and establishment, formulate guidelines, content and protocols for the provision of HIV-related IEC before marriage.

- (2) The Appropriate Government shall establish a Counselling Centre at each Marriage Office in each district, which shall implement the protocols formulated under sub section (1) above.

- (3) All persons intending to get married or whose marriage has not been registered shall receive face to face and one-on-one HIV/AIDS related information provided and conveyed in an effective and interactive manner and shall be offered HIV/AIDS related counselling.

Explanation:– For the purposes of this section, HIV-related IEC includes information related to sexual health, contraception, condom usage, sexuality, the methods of transmission of HIV and other sexually transmitted infections, and voluntary HIV testing.

73. HIV-positive women who are pregnant. – (1) Without prejudice to the generality of the provisions of this Act and notwithstanding anything contained in any law for the time being in force, an HIV-positive woman who is pregnant shall have the right to receive such counselling and information as to enable her to make a decision about her pregnancy, whether or not to undertake HIV-related treatment and in relation to other matters affecting her health and pregnancy.

- (2) No woman who is pregnant and a protected person shall be subject to forced sterilisation or abortion.

- (3) The National HIV/AIDS Authority shall within 60 days of its constitution and establishment, develop protocols for the testing, treatment and counselling of HIV-positive women who are pregnant and every healthcare institution shall implement such protocols immediately upon their notification.

- (4) Protocols formulated under sub-section (3) shall provide inter alia counselling guidelines in relation to care and treatment for the HIV-positive woman and her child, that informed consent must form the basis for the woman's individual decision, recognition of the right of the woman to decide, that the decision to use any HIV/AIDS related treatment during pregnancy should be made by the woman following discussions with her healthcare provider regarding the benefits and risks to her and her foetus and counselling on feeding and infant milk substitutes.

74. Sexual assault Protocols. – (1) The Central Government shall, within 360 days of the commencement of this Act, formulate, notify and implement Regulations specifying protocols for the counselling and treatment of survivors of sexual assault and for the training of healthcare providers and other service providers in the implementation of such protocols.

- (2) The Appropriate Government shall, within 720 days of the commencement of this Act, establish one or more sexual assault crisis centres in each district in its jurisdiction.

- (3) In fulfilling its obligations under sub-section (1) and (2), the Appropriate Government shall consult different stake holders including women's groups, child rights groups, groups working on sexuality, sexual health, HIV/AIDS, healthcare providers and forensic experts.
- (4) Every survivor of sexual assault, whether or not they have reported the sexual assault to law enforcement agencies, shall have access to the following services on a confidential basis:
 - (a) counselling;
 - (b) prevention and management of sexually transmitted infections including access to testing and prophylactic treatment;
 - (c) prevention, treatment and management of other medical conditions or injuries associated with the sexual assault;
 - (d) HIV/AIDS related counselling and treatment if required and in the best interest of the survivor;
 - (e) follow up treatment and care; and
 - (f) referrals.

Provided that where the survivor of sexual assault is a person below the age of 12 years, the healthcare or other service provider under whose care such person is, may encourage the involvement of a parent or guardian, unless it is detrimental to and interferes with the progress and care of the survivor, in which case the consent of such parent or guardian for the provision of services shall not be required.

- (5) Notwithstanding anything contained in any law for the time being in force, no healthcare or other service provider or person in charge of an institution providing services to a survivor of sexual assault shall report or release information regarding the assault or the survivor without the written informed consent of the survivor.

Explanation I:– For the purposes of this section, sexual assault is any non-consensual contact with a sexual purpose including an offence against any person under section 376, section 376A, section 376B, section 376C, section 376D and section 377 of the Indian Penal Code, (45 of 1860), whether or not such an act is recognised as a crime by law for the time being in force and whether or not it is reported to the police.

Explanation II:– For the purposes of this section sexual assault includes non-consensual sexual contact by a man with his wife.

- 75. Persons in the Care or Custody of the 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.
- (2) The State shall, within 180 days of the commencement of this Act, introduce strategies for risk reduction including age appropriate information, education and communication for persons below the age of 18 years, sexual health information, condoms, needle exchange and drug substitution programmes for all persons in its care or custody.
 - (3) A person in the care or custody of the State who has been exposed to the risk of HIV transmission, shall be referred immediately to a State healthcare institution or a sexual assault crisis centre, as the case may be, for HIV-related counselling, treatment or other

services and shall be entitled to, if recommended, post exposure prophylaxis and HIV-related treatment from the State.

- (4) Every person in the care or custody of the State shall be entitled to receive their complete medical records upon their release or discharge.

Explanation:— 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 Juvenile Justice (Care and Protection of Children) Act, 2000, Immoral Traffic (Prevention) Act, 1956, and persons in the care or custody of State run homes and shelters.

- 76. Children.** – (1) The State shall ensure access to child-friendly information about preventive and health-promoting behaviour and support to families and communities in implementing these practices.

- (2) The State shall adopt effective and appropriate measures to abolish harmful practices affecting the health of children, particularly girls, including early marriage and preferential feeding and care of male children.

- (3) The State shall provide a safe and supportive environment for young persons, that ensures the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make.

- (4) The State shall ensure the development of youth-friendly healthcare, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services.

- (5) In all policies and programmes aimed at guaranteeing the right to health of children and young persons their best interests shall be a primary consideration and in the formulation of such policies and programmes, the State shall consult children and NGOs working with children at national, state and local levels.

- 77. Children affected by HIV/AIDS.** – (1) The Appropriate Government shall, in consultation with health professionals and organisations working with children affected by HIV/AIDS, formulate guidelines and train healthcare providers on various aspects of care, support and treatment of children affected by HIV/AIDS, including in relation to psychological care and HIV-related treatment.

- (2) The Appropriate Government shall ensure that children affected by HIV/AIDS can access educational institutions and shall formulate and implement programmes to address barriers to education including school fees and other costs.

- 78. Protection of Property of Children affected by HIV/AIDS.** – (1) The Appropriate Government shall protect the property of children affected by HIV/AIDS.

- (2) The Central Government shall, within 90 days of the commencement of this Act frame Rules for the protection of property of children affected by HIV/AIDS.

- (3) Parents or guardians of children affected by HIV/AIDS, or any person acting in their best interest, or a child affected by HIV/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 the threat of such child being dispossessed, actual dispossession or trespass into such child's house even in the absence of documents related to the property rights of such child.
- (4) The Child Welfare Committee shall properly maintain and protect all such documents and shall ensure the maintenance of confidentiality of all protected persons.
- (5) The Child Welfare Committee shall pass appropriate orders in the best interests of children affected by HIV/AIDS, including orders to preserve the property of such children, to make investments of the property or to take possession of documents related to the property where both the parents or legal guardian of such children have either died or are incapacitated.
- (6) The Child Welfare Committee shall take the assistance of different stakeholders including HIV-positive persons, persons working in the field of HIV/AIDS, child-line organisations and NGOs working with children in such matters.

Explanation:– "Child Welfare Committee" means a committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000;

- 79. Recognition of Guardianship of older sibling.** – (1) Notwithstanding anything contained in any law for the time being in force, a person below the age of 18 years who is the managing member of a family affected by HIV/AIDS shall be competent to act as guardian of any other persons below the age of 18 years who are members of such family for the following purposes:
- (a) admission to educational institutions;
 - (b) care and protection;
 - (c) treatment;
 - (d) operating bank accounts;
 - (e) managing property; and
 - (f) for all other purposes that may be require to discharge duties as a guardian.

Explanation:– For the purposes of this section, a family affected by HIV/AIDS, is one where both parents or the legal guardian is incapacitated due to HIV-related illness or AIDS, those living in households of children orphaned by AIDS or if they are not orphaned, then the legal guardian or parents are unable to discharge their duties in relation to such children.

- 80. De Facto guardian.** – (1) Notwithstanding anything contained in any law for the time being in force, a person who has no parental responsibilities and rights in respect of a child but who voluntarily cares for the child either indefinitely, temporarily or partially, including a care-giver who otherwise has no parental responsibilities and rights in respect of a child, shall, while the child is in that person's care, have the duty to –
- (a) safeguard the child's health, well-being and development; and
 - (b) protect the child from maltreatment, abuse, neglect, degradation, discrimination, exploitation and any other physical or mental harm or hazards.

- (2) A person referred to in sub-section (1) may exercise parental responsibilities and rights reasonably necessary to comply with sub-section (1), including the right to consent to HIV/AIDS related treatment of, or other healthcare service for, the child if such consent cannot reasonably be obtained from the parent or primary care-giver of the child or the concerned child.
- 81. Living wills, stand by 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/AIDS may appoint, by making a will, an adult person who is a relative or friend, or a person below the age of 18 years who is the managing member of the family affected by HIV/AIDS to act as legal guardian immediately upon the parent or legal guardian's incapacity or death.
- (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 the parent or legal guardian regaining capacity.
- (3) Parent or legal guardians of children affected by HIV/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 as per schedule 4 of the Act.

CHAPTER XV

SPECIAL PROCEDURES IN COURT

- 82. 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, that it is in the interest of justice may pass any or all of the following orders:
- (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 in any manner publishing any matter leading to the disclosure of the name or status or identity of the applicant.
- (2) Any proceeding where an order under sub-section (1) is passed shall be conducted in such manner as may be prescribed.
- 83. Priority.** – (1) In any legal proceeding concerning or relating to an HIV-positive person, the court shall take up and dispose off the proceeding on a priority basis.
- (2) In such a legal proceeding, the court shall, as soon as possible, but not later than 120 days of the institution of the proceedings, fix a timetable for the final hearing and disposal of the proceeding in consultation with the parties.
- (3) The timetable so fixed shall take into account any arbitration, mediation or settlement that may be ordered or the evidence that may be taken and the final oral and written arguments and judgement that may be pronounced, such that the time taken for disposing of the entire proceeding, from the date of its institution till final disposal shall, in a proceeding which requires evidence to be taken be not more than three years, and in any other case be not more than two years.

- (4) The timetable for a trial in any legal proceeding concerning or relating to an HIV-positive person shall be so fixed that it is conducted on a daily basis.
- (5) Evidence in such proceedings shall, to the extent possible, be taken before a commissioner as provided in Order XVIII of the Code of Civil Procedure, 1908.
- (6) Any interim application made in such a proceeding shall not affect the timetable or be a basis of enlarging the time fixed for the final disposal of the proceeding.
- (7) Any party not adhering to the timetable, except in cases of illness of the HIV-positive person, who is party to or a witness in the proceedings, shall be liable to pay costs of not less than one thousand rupees per day of the delay to the legal aid fund of the concerned court.

Provided that each party to the proceeding shall be entitled to three adjournments during the course of the proceedings to use as they choose to.

- (8) All interlocutory applications in any such proceedings shall be disposed off in a summary manner on the basis of document before the court without prejudicing the rights of the parties or delaying the final disposal of the main proceedings.
- (9) In a proceeding in which an HIV-positive person is a party, if the judge presiding over the matter is transferred, retires or otherwise vacates the court, the judge who has the power to transfer cases in such court, shall within 30 days transfer the proceeding to another judge.

Explanation:– For the purposes of this section 'judge' includes the President, Principal Judge, Chief Justice, Chief Metropolitan Magistrate or Chief Judge of the concerned court.

84. Maintenance. – (1) 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 on the first date after the application is filed, consider the application for interim maintenance and have the power to grant ad hoc maintenance on the basis of the application alone until the disposal of or further orders in, the application.

- (2) In passing any order of maintenance the court shall take into account medical costs and other HIV-related costs that may be incurred by the applicant.

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

86. Powers of Court. – (1) Notwithstanding any other law for the time being in force, in the adjudication or prosecution of any proceedings whether civil or criminal, which are instituted in terms of or under this Act a court shall, in addition to any other order that it may pass, order the person who has committed a breach of this Act to undergo a fixed period of counselling related to the breach committed or a fixed period of social service.

- (2) Notwithstanding any other law for the time being in force, in the adjudication of any proceedings, which are instituted in terms of or under this Act a court may pass appropriate orders in the circumstances of the case to:

- (a) prevent breaches of the provisions of this Act; or
 - (b) redress breaches of the provisions of this Act by directing:
 - (i) specific steps, special measures or affirmative actions or both to be taken;
 - (ii) the award of damages including specific, general, aggravated and exemplary damages with interest for past and future losses, personal injuries, and injury to reputation or feelings;
 - (iii) the withdrawal of, or ceasing and desisting from, committing breaches of this Act;
 - (iv) the employer of a person who has committed a breach of this Act to initiate disciplinary action against such person;
 - (v) the employer of the person who has committed a breach of this Act to put the matter in the employee's Annual Confidentiality Report;
 - (vi) the inclusion of the matter in the Annual or other report of the person who has committed a breach of this Act that is available to the public and that is filed with regulatory authorities, where such person is an institution;
 - (vii) the person who has committed a breach of this Act to undergo an audit of specific policies or practices as may be determined by the court, where such person is a registered company, institution, society or other body;
 - (viii) an appropriate order of a deterrent nature, including a recommendation to the appropriate authority, to suspend or revoke the licence of the person who has committed a breach of this Act;
 - (ix) any person who has committed a breach of this Act to make regular progress reports to the court regarding the implementation of the court's order;
 - (x) the Registrar of the court to report the matter where a criminal offence is disclosed during the course of the proceedings, to the concerned police station having jurisdiction for the possible institution of criminal proceedings; or
 - (xi) any other order as may be necessary in the interests of justice.
- (3) In a proceeding relating to discrimination in employment under this Act, the court shall have the power to pass any or all of the following orders:
- (a) that the person discriminated against be employed;
 - (b) that the person discriminated against be reinstated;
 - (c) that the person who has discriminated make arrangements for the reasonable accommodation of the person discriminated against;
 - (d) the payment of wages, salary, income, allowances, benefits, perquisites and privileges that may have been lost on account of non-employment or termination;
 - (e) award special, general and exemplary damages on account of the non-employment, termination, emotional distress and pain or loss of reputation.

87. Power of Court to order systemic audits. – (1) An HIV/AIDS Authority or any person may petition a court in relation to any institution with a record of continuous violations of the provisions of this Act.

- (2) Based upon a petition under sub-section (1), a court may appoint the concerned HIV/AIDS Authority or such other persons as it deems fit to conduct an audit of such institution to determine the causes of the continuous violations of the Act and based on the report of such audit may make such orders as may be necessary to address the systemic violations of the Act including any or all of the following orders:
- (a) rectification of the breaches of the Act;
 - (b) initiation of disciplinary proceedings;
 - (c) training and sensitisation programmes for all or any persons in such institution.

- 88. Presumption as to Discrimination.** – (1) When the question is whether a protected person has been discriminated against 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, that such act or omission is discrimination under this Act and
- (a) the respondent must prove, on the facts before the court, that the discrimination did not take place as alleged; or
 - (b) the respondent must prove that the conduct is not based on one or more of the prohibited grounds.

Provided that the presumption as to non-existence of undue hardship under Section 4(2)(a) (ii) shall operate without prejudice to the presumption under this provision.

- 89. Jurisdiction of Courts.** Nothing contained in this law prohibits, limits or otherwise restricts the jurisdiction of civil and criminal courts to address violations of the provisions of this Act.

CHAPTER XVI **PENALTIES**

- 90. Penalty for contravention of provisions of Section 5.** – Notwithstanding any action that may be taken under any law for the time being in force, whoever contravenes the provisions of section 5 shall be punished with imprisonment of either description for a term which shall not be less than three months but which may extend to two years and with fine that may extend to one lakh rupees or both.
- 91. Penalty for Misleading Information.** – Notwithstanding any action that may be taken under any law for the time being in force, misinformation on HIV/AIDS prevention and control, including through false and misleading advertising and claims in any media or the promotional marketing of drugs, devices, agents, or procedures without prior approval from the Drugs Controller General of India and the requisite medical and scientific basis, including markings and indications in drugs and devices and agents, purporting to be a cure or fail safe prophylactic for HIV/AIDS, shall be punished with imprisonment of either description for a term that shall not be less than three months but may extend to two years or a fine that shall not be less than twenty thousand rupees but may extend one lakh rupees or both.
- 92. Penalty for contravention of Section 21(4) by public servant.** – A public servant who contravenes the provisions of Section 21(4) shall, on conviction, be punished with simple imprisonment for a term which may extend to one year and with fine that may extend to one lakh rupees.
- 93. Failure to comply with orders of Health Ombud.** – (1) Whoever fails to comply with any order given by a Health Ombud within such time as may be specified in such order shall, on conviction, 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 after the conviction for the first such failure.
- (2) If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punished with imprisonment of

either description for a term which shall not be less than three months but which may extend to one year and with fine that shall not be less than ten thousand rupees but which may extend to one lakh rupees.

94. Penalty for contravention of provisions of Section 82(1)(c). – Notwithstanding any action that may be taken under any law for the time being in force, whoever contravenes an order under Section 82(1)(c) shall be punished with simple imprisonment for a term that may extend to one year or with a fine that may extend to one lakh rupees.

95. Offences By Companies. – (1) Where an offence under this Act has been committed by an institution, every person who at the time the offence was committed was in charge of, and was responsible to the institution for the conduct of its activities, as well as the institution, shall be deemed to be guilty of the offences and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if it is proved that the offence was committed without the person's knowledge or that such person exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by an institution and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the institution, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section "director" in relation to a firm means a partner in the firm.

96. Offences by Government Departments. – Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if it is proved that the offence was committed without such person's knowledge or that such person exercised all due diligence to prevent the commission of such offence.

97. Court competent to try offences under this Act and take cognizance of offence. – No court other than the court of a Judicial Magistrate of First Class shall take cognizance of or try an offence under this Act.

98. 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.

99. Offence under the Act to be tried summarily. – All offences under this Act shall be tried summarily in the manner provided for summary trial under the Code of Criminal Procedure, 1973 (2 of 1974).

CHAPTER XVII
MISCELLANEOUS

- 100. Act to have overriding effect.** – (1) The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
- (2) The provisions of this Act shall have overriding effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its board of directors, whether the same be registered, passed or executed, as the case may be, before or after the commencement of this act;
- (3) Any provision contained in the memorandum, articles, agreement or resolution aforesaid shall to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.
- 101. Member and Staff of HIV/AIDS Authorities etc. to be public servants.** – The Director, members, officers and other employees of the HIV/AIDS Authority shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).
- 102. Exemption from tax on wealth and income.** – Notwithstanding anything contained in the Wealth Tax Act, 1957 (27 of 1957), the Income-tax Act, 1961 (43 of 1961), or any law for the time being in force relating to tax on wealth, income, profits or gains, the HIV/AIDS Authority shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income or profits or gains derived.
- 103. Report of the HIV/AIDS Authority to be placed before Legislature.** – The Appropriate Government shall cause to be placed before both Houses of the concerned legislature once a year a report regarding the performance of the HIV/AIDS Authority under this Act.
- 104. Protection of action taken in good faith.** – No suit, prosecution or other legal proceeding shall lie against the Central Government or HIV/AIDS Authority, or against any officer of the Central Government or the Director or members or employees of the HIV/AIDS Authority or any person acting under such Government, or HIV/AIDS Authority for anything which is in good faith done or intended to be done under this Act or any Rule or Regulation thereunder.
- 105. Delegation of powers.** – The Appropriate Government may, by general order, direct that any power exercisable by it under this Act shall, in such circumstances and under such conditions, if any as may be prescribed in the order, be exercisable also by an officer subordinate to that Government or the local authority.
- 106. Power to make Rules and Regulations.** – (1) The Appropriate Government may, by notification in the Official Gazette, make rules and regulations to carry out the purposes of this Act.

- (2) Without prejudice to the generality of sub-section (1), the appropriate government may make rules to provide for all or any of the following matters:
- (i) the salary and allowances of the Health Ombud under Section 28;
 - (ii) the procedure to be followed by the Health Ombud under Section 30(1);
 - (iii) the receipt of complaints by the Health Ombud under Section 30(2);
 - (iv) additional powers of the civil court that a Health Ombud may enjoy in making an inquiry under Section 30(4)(f);
 - (v) the manner in which the Health Ombud will maintain records under Section 30(7);
 - (vi) orders as to cost to be made by the Health Ombud under Section 31(3);
 - (vii) the salary and allowances of Directors and other members of HIV/AIDS Authorities under Section 44;
 - (viii) the meetings of HIV/AIDS Authorities and rules of procedure under Section 45;
 - (ix) the allowances and fees of members of HIV/AIDS Authorities for attending meetings under Section 46(2);
 - (x) the controls and restrictions in appointment of officers and employees of the HIV/AIDS Authorities under Section 47;
 - (xi) the salaries and conditions of service of officers and employees of the HIV/AIDS Authorities under Section 47;
 - (xii) the powers and duties of Directors of HIV/AIDS Authorities under Section 48;
 - (xiii) additional powers of a civil court that an HIV/AIDS Authority may enjoy in conducting inquiries under Section 53(1)9(f);
 - (xiv) the budget of the HIV/AIDS Authorities under Section 58(4);
 - (xv) the records and annual statements of account of HIV/AIDS Authorities under Section 59;
 - (xvi) the procedure to be followed by a Complaints officer under Section 63;
 - (xvii) the procedure relating to registration of marriages under Section 71(1)(a);
 - (xviii) the protection of property of children affected by HIV/AIDS under Section 78(2);
 - (xix) the suppression of identity in court proceedings under Section 82(1);
 - (xx) the conduct of proceedings where suppression of identity and in camera orders are passed under Section 82(2); and
 - (xxi) the delegation of powers under Section 101.
- (3) Without prejudice to the generality of sub-section (1), the appropriate government may make regulations to provide for all or any of the following matters:
- (i) Pre and post test counselling under Section 8(6)
 - (ii) Epidemiological Studies under Section 9(c), proviso
 - (iii) Recognition of voluntary counselling and testing centres and pathology laboratories for conducting HIV tests under Section 10(3), proviso
 - (iv) Technologies for self testing of HIV under Section 10(5)
 - (v) Data Protection under Section 15
 - (vi) Establishment of voluntary counselling and testing centres under Section 17(3)
 - (vii) Universal Precautions and Post Exposure Prophylaxis Protocols under Section 20(4), proviso;
 - (viii) Drug Substitution, drug maintenance and Needle Syringe Exchange programmes under Section 21(2);
 - (ix) the training of the Health Ombud under Section 26;
 - (x) HIV/AIDS surveillance under Section 50(2)(h) and
 - (xi) The setting up of HIV/AIDS help lines under Section 52(e).
- (4) Every rule or regulation made by the Appropriate Government under this Act shall be laid, as soon as may be after it is made, before the Legislature of such Appropriate Government.

107. Power to remove difficulties. – (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty.

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

(2) However, orders made under this section shall be laid, within 30 days, before each House of Parliament.

108. Review and monitoring of Act. – The Central Government in consultation with the National HIV/AIDS Authority shall:

- (a) develop and implement effective and stringent monitoring and reporting mechanisms to oversee the implementation and enforcement of this Act by all persons; and
- (b) undertake a review of the working of this Act every three years to ensure that it adequately addresses the issues raised by the HIV epidemic, is successful in promoting and protecting the rights of protected persons and in preventing and controlling the HIV epidemic and it is consistent with constitutional and international human rights obligations.

SCHEDULE 1

Illustrative List of Unfair Treatment in certain sectors. (Section 4)

1. Employment

- a. Denial of terms and conditions or benefits and privileges of services that other persons in the same position would enjoy including in relation to:
 - i. Recruitment procedures, advertising and selection criteria;
 - ii. Appointments, and the appointments process, including job placement;
 - iii. Job classification or grading;
 - iv. Remuneration, employment benefits and terms and conditions of employment;
 - v. Employee assistance programmes;
 - vi. Workplace and facilities;
 - vii. Occupational health and safety;
 - viii. Training and development;
 - ix. Performance evaluation system;
 - x. Promotion transfer and demotion;
 - xi. Disciplinary measures; and
 - xii. Termination of services
 - xiii. Provident fund, xiv. Gratuity and health insurance,
 - xv. Non-renewal of employment contract,
- b. Pressure to leave the employment,
- c. Insistence for resignation/VRS,
- d. Being asked not to report for duty,
- e. Denial of promotions,
- f. Arbitrary suspension or disciplinary action,
- g. Creation of a non-conducive atmosphere for work,
- h. Prejudicial comments and behaviour,
- i. Public identification,
- j. Mandatory isolation or segregation.

2. Healthcare

- a. Provision of medically inappropriate treatment for the condition diagnosed,
- b. Untimely or arbitrary discharge,
- c. Charging higher rates for the same or similar services provided to another person at any stage (conditional treatment),
- d. Imposing conditions in the form of research,
- e. Prejudicial comments and behaviour,
- f. Public identification,
- g. Isolation or segregation unless medically indicated,
- h. Pressure to leave the healthcare institution,
- i. Undignified treatment of a corpse

3. Education

- a. Arbitrary suspension by or disciplinary action from an educational institution,
- b. Prejudicial comments and behaviour,
- c. Public identification,
- d. Isolation or segregation unless medically indicated,
- e. Denial of participation in benefits or services
- f. Pressure to leave an educational institution.
- g. Non provision of reasonable accommodation
- h. Demanding 'HIV-free' certificate at the time of admission

- i. Demanding disclosure of HIV test results (irrespective of positive or negative) from the students
- j. Denial of admission on the basis of HIV positive status.

4. Insurance

- a. Non-renewal of insurance contract
- b. Termination of insurance contract
- c. Higher premiums,
- d. AIDS caps,
- e. Delay in processing of claims,
- f. Denial of claims,
- g. HIV/AIDS exclusion clauses,
- h. Exclusion clauses based on actual or perceived association with an HIV-positive person or of exposure to HIV

5. Institutions

- a. Prisons, Juvenile homes, Rehab Centers, Mental homes, Adoption homes, Hospices, NGOs, Night shelters

SCHEDULE II

1. Prevention
2. Blood Safety: To ensure availability of adequate and safe blood and blood products for the general population through promotion of voluntary blood donation in the country.
3. Risk Reduction
4. STI Control
5. Condom Programming
6. IEC and social mobilisation.
7. Spread HIV related literacy among various sections of society and promote awareness of the safeguards available for the protection of the rights of protected persons through publications, the media, seminars and other available means;
8. Care and support for HIV-positive persons
9. Training on HIV/AIDS/STD prevention and control
10. National Family Health Awareness Programme
11. Prevention of Mother to Child transmission
12. Voluntary Testing and Counselling
13. Research and Development
14. Intersectoral collaboration
15. International and bilateral cooperation
16. Programme financing
17. Monitoring and Evaluation
18. External Quality Assurance Scheme
19. Access to Treatment - update WHO essential medicines list
20. Authority shall collect, update and disseminate scientific knowledge/collect, compile and publish technical and statistical data relating to HIV and the measures devised for its effective prevention and control and prepare manuals, codes or guides and disseminate information connected therewith;
21. Sensitisation programmes for judiciary, law enforcement etc.
22. Maintain list of care and support centers and homes, doctors providing care and treatment for HIV/AIDS, helplines, testing facilities, legal assistance,
23. Institute good practices for the proper surveillance of HIV/AIDS
24. Clinical Management of HIV/AIDS
25. Assist in the implementation of good practices within corporates
26. Corporate collaboration as part of social responsibility schemes
27. NGOs
28. Counselling Guidelines

RULES

- (1) Health Ombud (HO)
 - Salary and allowances of Health Ombud. (Section 28)
 - Procedure to be followed by Health Ombud. (Section 30(1))
 - Receipt of complaints by HO. (Section 30(2))
 - Other powers of civil court for HO in inquiring. (Section 30(4)(f))
 - HO maintaining records. (Section 30(7))
 - HO orders as to cost. (Section 31(3))
- (2) HIV/AIDS Authority
 - Salary and allowances of Director and members. (Section 44)
 - Meetings of the HIV/AIDS Authority and rules of procedure. (Section 45)
 - Allowances and fees of members for attending meetings. (Section 46(2))
 - Controls and restrictions in appointment of officers and employees. (Section 47)
 - Salaries and conditions of service of officers and employees. (Section 47)
 - Powers and duties of Director. (Section 48)
 - Other powers of civil court in inquiring. (Section 53(1)(f))
 - Budget. (Section 59(4))
 - Records and annual statements of account. (Section (60))
- (3) Procedure to be followed by Complaints officer. (Section 63)
- (4) Registration of Marriages. (Section 71(1)(a))
- (5) Protection of Property of Children affected by HIV/AIDS. (Section 78(2))
- (6) Suppression of Identity. (Section 82(1))
- (7) Conduct of proceedings where suppression of identity, in camera orders are passed. (Section 82(2))
- (8) Delegation of powers of Appropriate Government. (Section 105)

REGULATIONS

- Pre and post test counselling (Section 8(6))
- Epidemiological Studies (Section 9(c) proviso)
- Recognition of VCTCs and path labs for conducting HIV tests. (Section 10(3), proviso)
- Technologies for self testing of HIV (Section 10(5))
- Data Protection (Section 15)
- Establishment of VCTCs (Section 17(3))
- Drug substitution and NSEP programmes (Section 21(2))
- Training of Health Ombud (Section 26 (4))
- HIV/AIDS surveillance (Section 50(3)(h))
- Setting up of HIV/AIDS help lines (Section 52(d))

PROTOCOLS

- (1) National HIV/AIDS Authority (NHA)
- Counselling protocols for women and children to ensure they have access to conducive settings that facilitate individual decision making for HIV-related testing, HIV-related treatment or HIV-related research. (Section 8(4))
 - Protocols for HIV-related treatment. (Section 18)
 - Universal Precautions (UP) and PEP Protocols (Section 20(4), proviso)
 - Provision of HIV-related IEC before marriage. (Section 72)
 - Testing, treatment and counselling of HIV-positive pregnant women (Section 73)

Central Government

- Sexual assault protocols for counselling and treatment of survivors of sexual assault and for the training of healthcare providers and other service providers in the implementation of such protocols. (Section 74)