
The HIV/AIDS Bill 2009

HIV/AIDS: need for a law

People living with HIV are discriminated against merely because of their HIV status. Children living with HIV or having parents with HIV are refused admission in schools; HIV positive patients are denied treatment in hospitals. Such HIV-related discrimination is directed not only towards people living with HIV but also their families and to communities vulnerable to HIV. This discourages people infected or affected by HIV from accessing healthcare services, driving the epidemic underground.

On the other hand, when people are assured of their rights, they will not be afraid to seek testing and know their HIV status. Assurance of non-discrimination, as also provision of voluntary and confidential services, encourages adoption of HIV prevention and treatment, making it easier to control the epidemic. It is only by protecting the rights of the people who are infected with HIV or are vulnerable to it; that we can effectively fight the epidemic.

Countries like Cambodia, Vietnam and Philippines have comprehensive HIV-specific rights-based legislation. Others such as U.S.A, South Africa and Australia address issues related to HIV/AIDS through their respective anti-discrimination, disability, or public health legislation. In India, there is no comprehensive law on HIV.

Constitutional remedies against discrimination are only available against the public sector. The duty to obtain consent and maintain confidentiality is recognized at common law, which is practised inconsistently, depending on the predilection of judges. Though the National AIDS Prevention and Control Policy 2002, espouses a rights-based approach, it does not have the force of law and cannot be enforced in courts. In the absence of a comprehensive statute, HIV positive people remain vulnerable to rights violations, thus weakening the response to AIDS. The need for an HIV law is urgent.

The HIV/AIDS Bill: the process

The process of drafting the HIV/AIDS Bill started with the 'International Policy Makers Conference on HIV/AIDS,' held in May 2002 in New Delhi, where the need for a law on HIV was highlighted. An advisory working group was formed, chaired by the Project Director of the National AIDS Control Organisation (NACO), under the Ministry of Health and Family Welfare. The responsibility of drafting the HIV/AIDS Bill was given to Lawyers Collective HIV/AIDS Unit, a non-profit organisation, based on its work and expertise in the field of HIV and law.

The Bill was prepared after extensive research and nationwide consultations with stake-holders including HIV positive people, high risk groups, women and children's groups, healthcare service providers, employers and employee organisations, lawyers and civil society organisations.

The HIV/AIDS Bill was submitted to NACO in August 2006 after taking feedback from State Governments, State AIDS Control Societies (SACS) and Central Government Ministries. Presently the Health Ministry is in discussion with the Law Ministry regarding some provisions of the Bill. **The Bill is still to be tabled in Parliament.**

Salient Features of the HIV/AIDS Bill:

1. **Prohibition of discrimination:** The Bill provides protection against discrimination in employment, education, healthcare, travel and insurance in both public and private sector.
2. **Informed consent** for HIV testing, treatment and research: The Bill mandates the provision of non-coerced, written consent after giving full details about risks, benefits and alternatives.
3. **Non-disclosure** of HIV related information: The Bill recognizes a person's right to privacy and confidentiality of HIV status with certain exceptions.
4. **Access to treatment:** The Bill requires that the State provide for free-of-cost access to comprehensive HIV related treatment including diagnostics, ARVs and nutritional supplements.
5. **Right to a safe working environment** for doctors, healthcare workers and other persons whose occupation may put them at risk of exposure to HIV. The Bill imposes an obligation on healthcare institutions to provide necessary universal precautions and prophylaxis.
6. **Promotion of risk reduction strategies for groups at higher risk of HIV infection:** Targeted interventions like promotion of condoms among sex workers and men who have sex with men and distribution of clean needles to people who inject drugs have proven to prevent HIV transmission. certain criminal laws, however, impede these services by threatening providers and recipients with prosecution. The Bill provides legal immunity to risk reduction programmes, thus strengthening efforts to prevent HIV.
7. **Information, education, and communication:** The Bill obliges the government to make HIV related information accessible to all. It also mandates the government to create IEC material with community inputs, showing sensitivity across gender and age. These resources should be multi-lingual, easily understood and regularly updated.
8. **Implementation mechanisms** including **institutional grievance redressal, health ombudsmen and HIV/AIDS authorities.** This will be supported by **special procedures to be followed in courts**, including suppression of identity and expeditious hearing to make justice accessible to HIV affected persons. .
9. **Special provisions** for those who are disproportionately affected by the epidemic, particularly **women, children, and persons in the care and custody of the State-**. This set of provisions defines specific rights for women, children and people in the care and custody of state in order to counter the wide-ranging societal discrimination faced by them.

For more information, contact :

Lawyers Collective HIV/AIDS Unit :
First Floor, 63/2, Masjid Road, Jangpura,
New Delhi - 110 014. INDIA.
Tel: 011 - 46866666 / 24377101/2
Fax: 011 - 24372236
Email: aidslaw1@lawyerscollective.org

Jalaram Krupa, Ground Floor,
61, Janmabhoomi Marg,
Fort, Mumbai - 400 001.
Tel: 022 - 43411600 / 22875482/3
Fax : 022 - 22821724
Email: aidslaw@lawyerscollective.org

First Flr, No. 4A, M.A.H. Road, Off Park Road,
Tasker Town, Shivajinagar,
Bangalore 560 051. INDIA.
Tel: 080 - 41239130/1 Fax: 080 - 41239289
Email: aidslaw2@lawyerscollective.org
Website : www.lawyerscollective.org

Indian Network For People Living With HIV/AIDS (INP+)
New No 41, Old No. 42/3
Second main road, Kalaimagal Nagar,
Ekkaduthangal, Chennai 600 097. INDIA
Phone - + 91 44 42641580, 2225 4671 / 2 / 3 / 4
Fax + 91 44 2225 4670

Email - inp@inppplus.net ; inppplus@vsnl.com ;
inppplus@eth.net Website - <http://www.inppplus.net>

Indian Network For People Living With HIV/AIDS (INP+)
G-46, first floor, Green Park Main, Delhi – 110016. INDIA
Phone - +91 11 42657673, +91 11 42657674
Fax - +91 11 42657671
Email - npac@inppplus.net

Indian Medical Parliamentarians Forum (IMPF)
9, Feroz Shah Road, New Delhi – 110001
Telefax – 23070756
Email – info@clairindia.org