

THE HIV & AIDS POLICY FOR ESTABLISHMENTS, 2022



रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003-05

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II – खण्ड 3 – उप-खण्ड (II)
PART II – Section 3 – Sub-section (ii)



सत्यमेव जयते

आलोक सक्सेना
अपर सचिव एवं महानिदेशक

Alok Saxena
Additional Secretary &
Director General



Foreword



राष्ट्रीय एड्स नियंत्रण संगठन
स्वास्थ्य और परिवार कल्याण मंत्रालय
भारत सरकार
National AIDS Control Organisation
Ministry of Health & Family Welfare
Government of India

India is committed to achieve Sustainable Development Goal 3.3 of ending AIDS epidemic as a public health threat by 2030. The current National AIDS and STD Control Programme (NACP) Phase-V will take the national response towards attainment of this goal. One of the objectives of the NACP-V is less than 10% of people living with HIV and key populations experience stigma and discrimination.

The Ministry of Health and Family Welfare remains unwavering in its commitment to secure health for all. The HIV and AIDS (Prevention & Control) Act, 2017 came into force in September 2018. It is the primary legislation protecting and promoting the rights of people infected and affected with HIV. The Act takes a multi-sectoral approach and prohibits discrimination in multiple settings.

HIV/AIDS is a major threat to the world of work. Healthy working condition is important for improving the lives of people infected and affected by HIV/AIDS. From the evidences, it has been observed that the impact of HIV is mosily on the productive segment of the labour force. I am happy to share that under Section 12 of the HIV and AIDS (Prevention and Control) Act, 2017, the Central Government has notified the 'HIV and AIDS Policy for Establishments'. The fundamental purpose of this policy is to generate awareness on HIV and AIDS in establishments, prevent transmission of HIV infection amongst workers, protect rights of those infected with and affected by HIV and AIDS, ensure safe, non-stigmatised and non-discriminatory environment assuring equity and dignity at establishments and standardise the obligation of every establishment in providing conducive working environment and maintaining the confidentiality of HIV-related data of protected persons.

The employers and workers organisations, government ministries or departments at the National, State and district levels, public or private sector companies, multi-national companies operating in India, and other social partners are mandated to use this policy framework at their respective works. As guided by the policy, every establishment is obligated to adopt the three guiding principles of non-discrimination, confidentiality related to HIV status and HIV-related data and lastly to establish a grievance redressal mechanism by designating Complaints Officer.

It gives me immense pleasure to share with you the 'HIV & AIDS Policy for Establishments'. I am confident that this policy will play an important role in eliminating stigma and discrimination related to HIV and make way towards attaining Sustainable Development Goal 3 of 'Good Health and Well Being'

(Alok Saxena)

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अपनी एचआईवी अवस्था जाने, निकटतम सरकारी अस्पताल में मुफ्त सलाह व जाँच पाएँ
Know your HIV status, go to the nearest Government Hospital for free Voluntary Counselling and Testing



सत्यमेव जयते

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निदेशक

Nidhi Kesarwani, I.A.S.
Director



Preface



राष्ट्रीय एड्स नियंत्रण संगठन
स्वास्थ्य और परिवार कल्याण मंत्रालय
भारत सरकार

National AIDS Control Organisation
Ministry of Health & Family Welfare
Government of India

The People Living with HIV and their families face discrimination due to either their known or perceived HIV positive status. They are discriminated at the society, workplace, healthcare setting and educational institutions. There are people who are HIV positive who have lost their jobs, forced to live in poverty, and their mental health is immensely effected. These effects often result into person not adhering to the Anti-Retroviral treatment.

We are currently standing at Phase V of the National AIDS and STD Control Programme (NACP). One of the major goals of the programme is to eliminate HIV/AIDS related stigma and discrimination by ensuring that less than 10% PLHIV and key populations experience stigma and discrimination.

NACP Phase V prioritizes workplace, healthcare and educational as key setting to respond to the HIV/AIDS related stigma and discrimination. The Government of India has formulated the HIV and AIDS Policy for Establishments, 2022. This document is a guiding tool to help all employers and workers organisation, making their organisations a better workplace for people who are affected by HIV. The policy outlines the roles of employers' associations, employers and rights of employees to prevent, manage and mitigate HIV and AIDS impact.

I urge all establishments in the public as well as private sector to adopt this policy to provide a conducive, healthy and productive working environment for people infected and affected by HIV and AIDS.

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Know you HIV status, go to the nearest Government Hospital for free Voluntary Counselling and Testing



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Message

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HIV-related stigma and discrimination affects people in different walks of life, namely family, community, workplace, education and healthcare settings. India has been successful in addressing the AIDS epidemic and from the inception, the National AIDS and STD Control Programme (NACP) has put the focus on communities and placed their needs first. The NACP is committed to eliminate stigma and discrimination associated with HIV/AIDS.

The Government of India brought out one of the most progressive legislative pieces of the country, in form of the HIV and AIDS (Prevention and Control) Act, 2017. The Act provides the legal framework for the Government's commitments that includes elimination of stigma and discrimination against people affected by HIV. The 'HIV and AIDS Policy for Establishments' has been notified by the Central Government under the Section 12 of the HIV and AIDS (Prevention and Control) Act, 2017.

The policy applies to all establishments as defined under the Act. The most inviolable feature of the 'HIV and AIDS Policy for Establishments' is that it is applicable on all employers and workers organisations, government ministries or departments and public or private sector companies, multi-national companies operating in India, and other social partners and therefore they are bound to implement this policy. This policy also stresses on the key principles mentioned in the HIV and AIDS (Prevention and Control) Act, 2017 are to be adopted by all establishments in the spirit in which they are mentioned. It is also important to strengthen the grievance redressal mechanism by placing Complaints Officer in every establishment. Having a mechanism across sectors to inquire into the violations of the provisions of the HIV and AIDS (P&C) Act, 2017 against people infected and affected by HIV and AIDS at the establishment level will aid in the process of eliminating the incidences of HIV-related stigma and discrimination.

I am sure that this policy document will be helpful in ensuring safe, non-stigmatised and non-discriminatory working environment and maintaining the confidentiality of HIV-related data for protected persons.

(Anoop Kumar Puri)

TABLE OF CONTENTS

Abbreviations	11
CHAPTER I: Background and Indian Situation	12
1. Background	
2. Situation in India	
CHAPTER II: Rationale, Aim and Scope of the Policy	13 - 14
1. Rationale	
2. Aim	
3. Scope	
CHAPTER III: Guiding Principles for Establishments	14
CHAPTER IV: Non-Discrimination	15 - 16
1. Non-discrimination	
(1) Absence of discrimination at Employment and Occupation	
(2) Healthcare and education settings	
(3) Public utilities and resources	
(4) Holding public and private offices	
(5) Under custody	
(6) Right to Movement	
(7) Segregation	
(8) HIV testing as pre-requisite for obtaining employment is prohibited	
(9) Right to residence	
CHAPTER V: Confidentiality related to HIV status and HIV-related data	17 - 18
1. Confidentiality related to HIV status	
2. Disclosure of status to partner of HIV positive person	
3. Confidentiality of data related to HIV	
CHAPTER VI: Grievance Redressal Mechanism	19 - 20
1. Complaints Officer: Duty, Power and Responsibility	
(1) Acceptance of complaints	
(2) Assistance in filing complaint	
(3) Acknowledgement and registration of complaints	
(4) Timeline for decision making	
(5) Decision making powers	
(6) Informing the complainant	
(7) Reporting Mechanism	
(8) Confidentiality	
(9) Data Management	
CHAPTER VII: Key Strategies and Responsibility of the Stakeholders, Employers, Employees etc.	21 - 24
1. Key Strategies	
2. Role of Employer Associations/Chambers/Industries	
3. Role of Employers including the administrative staff	
(1) Implementation of guiding principles defined in the Policy	
(2) Regular capacity building of staff members on basics of the HIV and AIDS (Prevention and Control) Act, 2017	
(3) Designation of Complaints Officer	
(4) Training of Complaints Officer	
(5) Maintenance of confidentiality	
(6) Functioning of the office of Complaints Officer	
(7) Awareness generation	
4. Role of Employees or co-workers	
5. Role of person infected with HIV	
6. Role of Ministry of Health and Family Welfare (National AIDS Control Organisation) and State AIDS Control Societies	
APPENDIX A	25

ABBREVIATIONS

AIDS	Acquired Immuno-Deficiency Syndrome
ART	Anti-Retroviral Therapy
CSR	Corporate Social Responsibility
DALSA	District Legal Services Authority
DAPCU	District AIDS Prevention and Control Unit
DMC	Data Management Committee
HIV	Human Immunodeficiency Virus
ICTC	Integrated Counselling and Testing Centers
IEC	Information, Education and Communication
LFA	Legislative Forum on AIDS
NACO	National AIDS Control Organisation
NACP	National AIDS and STD Control Programme
PEP	Post Exposure Prophylaxis
PLHIV	People Living with HIV
SACS	State AIDS Control Society
SCA	State Council on AIDS
SDG	Sustainable Development Goals
SOP	Standard Operating Procedures
STI	Sexually Transmitted Infections

CHAPTER I

Background and Indian Situation

1. **Background:** Health is one of the priorities for assuring perceptible economic and social development in today's fast-growing world. Health and economy have been hands in gloves with one another, countries who have aimed at ensuring universal access to health, equity and raising quality of care have excelled. Strong and able workforce contributes to national prosperity by increasing overall productivity and helping the government and the country to thrive via positive economic outcomes.

HIV and AIDS is a threat to productive workforce. It has affected many lives where people face discrimination due to either their known or perceived HIV positive status. They lose their jobs, thus, are forced to live in abject poverty with immediate ripple effect on their close family members and children in terms of poor expenditure on education and health. Thus, HIV affected person is compelled to face double jeopardy of losing income and livelihood on one hand and facing discrimination on the other.

People living with HIV are greatly impacted by multifarious discrimination (societal, workplace, healthcare setting, educational institutions), loss of livelihood, inequality and infringement of rights. Since HIV infection is lifelong, People Living with HIV have to live with it for the rest of the life.

The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 is a landmark legislation to provide a conducive environment to people infected with and affected by HIV and AIDS. The Act aims to address stigma and discrimination so that people infected with and affected by HIV and AIDS are not discriminated in household settings, establishment settings and healthcare settings. Their right to insurance, movement, holding public and private office, residence etc. should be maintained as per the prevailing laws and policies. The Act also reinstates constitutional, statutory and human rights of people infected with and affected by HIV and AIDS. It also provides for a robust grievance redressal mechanism in form of Complaints Officer at establishments and Ombudsman at state level.

2. **Situation in India:** According to India HIV Estimates 2019 Report, there are an estimated 23.49 lakh people living with HIV, with an adult (15 to 49 years) HIV prevalence of 0.22 per cent. It is estimated that there were around 69,220 new HIV infections in the country during 2019, indicating a 37.4 per cent decline in new HIV infections during 2010 to 2019. During the same period, HIV and AIDS related deaths also declined by 66.1 per cent.

CHAPTER II

Rationale, Aim and Scope of the Policy

The chapter outlines the rationale, aim and scope of the Policy along with basic facts about HIV and AIDS.

1. **Rationale:**

- (1) Section 12 of the HIV and AIDS (Prevention and Control) Act, 2017 mandates the Central Government to draft 'HIV and AIDS Policy for Establishments'. Thus, the Policy emanates from the HIV and AIDS (Prevention and Control) Act, 2017. The manner of notifying the Policy is laid down under the Central Government Rules.
- (2) Under sustainable development goal 3 of 'Good Health and Well Being', target of 3.3 states ending the epidemic of AIDS by 2030. Furthermore, elimination of stigma and discrimination related to HIV is a prerogative to achieve this goal.

2. **Aim:** The Policy aims to:

- (1) Generate awareness on HIV and AIDS in establishments.
- (2) Prevent transmission of HIV infection amongst workers.
- (3) Protect rights of those infected with and affected by HIV and AIDS.
- (4) Ensure safe, non-stigmatised and non-discriminatory environment assuring equity and dignity at establishments.
- (5) Standardise the obligation of every establishment in providing conducive working environment and maintaining the confidentiality of HIV-related data for protected persons.

3. **Scope:** The Policy applies to all establishments, an establishment is a body corporate or co-operative society or any organisation or institution or two or more persons jointly carrying out a systematic activity for a period of twelve months or more at one or more places for consideration or otherwise, for the production, supply or distribution of goods or services.

The employers' and workers' organisations, government ministries or departments at the national, state and district levels, public or private sector companies, multi-national companies operating in India, and other social partners are mandated to use this Policy framework in implementing the HIV and AIDS Policy at their respective works.

The Policy is based on following facts about HIV and AIDS:

- (1) The known routes of transmission of the Human Immunodeficiency Virus are through:

(a) Unprotected sexual contact with a HIV infected person;

(b) Sharing of HIV infected needles or syringes;

(c) From HIV infected mother-to-child during pregnancy, childbirth or breast feeding and

(d) Transfusion of HIV infected blood or blood products.

- (2) With the advent of Anti- Retroviral Therapy, HIV is now a chronic manageable disease like many other non-communicable diseases, including diabetes, hypertension and asthma. There is no scientific or epidemiological evidence to suggest that HIV can be transmitted through ordinary workplace contact (talking to or touching the person, using the same office equipment, tools, utensils or bathroom as a person infected with HIV). In special situations where there may be a potential risk of exposure, for example healthcare workers who may be exposed to blood or blood products, there are specific and appropriate infection-control measures known as Universal Precautions that ought to be followed. Transmission is therefore not likely in the regular workplace setting.
- (3) People with HIV who are regular on Anti- Retroviral Therapy remain healthy and fit to work for several years despite their infection.
- (4) With the availability of Anti- Retroviral Therapy, the life of people living with HIV has prolonged substantially and they lead a normal productive life.

CHAPTER III

Guiding Principles for Establishments

The HIV and AIDS Policy for Establishments adopts three key principles mentioned in the HIV and AIDS (Prevention and Control) Act, 2017. These principles are to be adopted by all establishments in the spirit in which they are mentioned.

These principles include:

Non-discrimination against people infected with and affected by HIV and AIDS.

Confidentiality related to one's HIV status and HIV-related data.

Grievance redressal mechanism in the form of Complaints Officer at establishments and Ombudsman at State level. These tenets have been deduced from the Act and are pivotal to provisioning of an enabling environment to people infected with HIV.

CHAPTER IV

Non-Discrimination

1. **Non-discrimination:** Non-discrimination is a fundamental principle of all international and human rights laws. There should be no discrimination at establishments on the basis of perceived or real HIV status. This protection is provided not only to an HIV positive person, but also extends to immediate family members and progeny who reside or have resided in the same house of HIV infected person too.

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

A person cannot be discriminated on the basis of HIV status at any setting and the following tenets require compliance,–

- (1) **Absence of discrimination at Employment and Occupation:** A person should not be discriminated in the establishments on the basis of HIV status. Discrimination here includes the denial of, or termination from, employment or occupation and also unfair treatment at establishments. The employer may also provide a reasonable accommodation to people living with HIV if need be. Reasonable accommodation means minor adjustments to a job or work that enables an HIV positive person who is otherwise qualified to enjoy equal benefits or to perform the essential functions of the job or work, as the case may be.

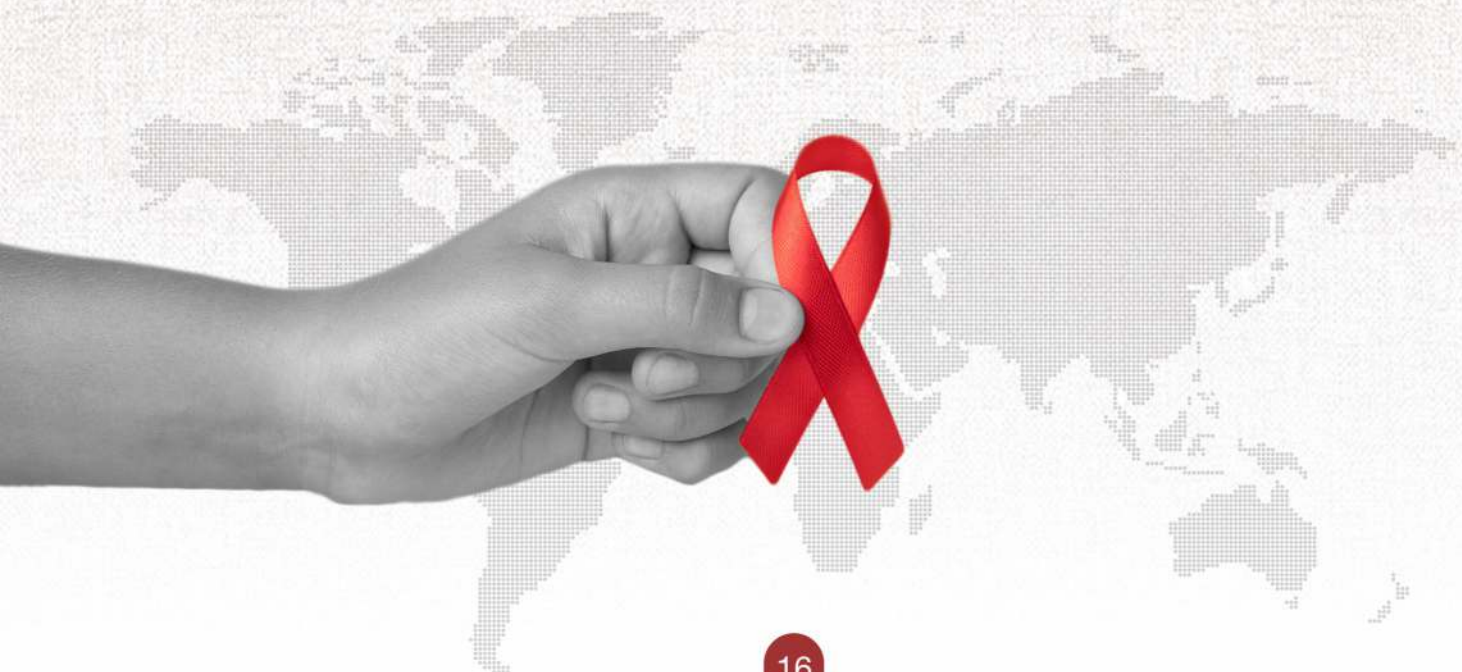
Termination without reasonable accommodation should be an exception and should require furnishing of various documents by the healthcare provider as well as the employer. A qualified and independent healthcare provider who is competent should submit a copy of the written assessment stating that the person poses a significant risk of transmission of HIV to other person in the establishment or is unfit to perform the duties of the job. Employer should also submit a copy of a written statement stating the nature and extent of administrative or financial hardship for not providing the person reasonable accommodation.

- (2) **Healthcare and educational settings:** A person should not be discriminated at healthcare and educational setting on the basis of HIV status. Discrimination here includes unfair treatment, denial or discontinuation of services in educational settings and healthcare settings.
- (3) **Public utilities and resources:** A person should not be discriminated against using public utilities and sharing resources on the basis of HIV status. Discrimination here includes denial or discontinuation of access and usage of goods, accommodation, shops, public restaurants, hotels and places of public entertainment, wells, tanks, bathing ghats, roads, burial grounds or funeral ceremonies and places of public resort, etc.
- (4) **Holding public and private offices:** Irrespective of HIV status, a person can hold public or private offices and cannot be discriminated. Discrimination here includes the denial, discontinuation or unfair treatment in the opportunity to stand for or hold public or private offices

- (5) **Under custody:** A person should not be discriminated and treated unfairly in government/private organisations on the basis of HIV status. Denial of access to or unfair treatment in government or private establishment in whose care or custody a person may be is prohibited. People who are in care and custody of State have also been entitled to the right to HIV prevention, counselling, testing and treatment services in accordance with the guidelines issued by National AIDS Control Organisation from time to time.
- (6) **Right to Movement:** Right to movement is a fundamental right entrusted under article 19 of Fundamental Rights of Part- III of the Constitution. No person should be denied or subjected to discontinuation or unfair treatment with regard to the right to movement.
- (7) **Segregation:** A person should not be segregated on the basis of HIV status. Thus, she or he or others cannot be isolated and ostracized on the basis of HIV status.
- (8) **HIV testing as pre-requisite for obtaining employment is prohibited:** HIV testing as a pre-requisite for obtaining employment, or accessing healthcare services, education services or for the continuation of the same or for accessing or using any other service and facility is completely prohibited.
- (9) **Right to residence:** A person should not be denied or treated unfairly with regard to the right to reside, purchase, rent and occupation of property. Every person infected with and affected by HIV should have the right not to be excluded from the shared household and right to enjoy and use facilities of such shared household in a non-discriminatory manner.

Discrimination against people infected with and affected by HIV and AIDS is prohibited in all occupational, educational and health settings and in addition, HIV test cannot be pre-requisite for obtaining employment or accessing healthcare services or education. Discrimination at community places and for use of resources is also prohibited.

In case of contravention of the aforesaid rights, a robust grievance redressal mechanism should be provided in terms of Complaints Officer at establishments and Ombudsman in States. Aggrieved person has a choice to file a complaint either with Complaints Officer or the Ombudsman. There is no hierarchy with respect to filing of the complaint. Cognizance of offences under the Act will be taken by the court of Judicial Magistrate First Class.



CHAPTER V

Confidentiality related to HIV status and HIV-related data

1. **Confidentiality related to HIV status:** HIV positive person cannot be forced to disclose her or his or their status or any other HIV-related information. HIV-related information means any information relating to the HIV status of a person and includes: (a) information relating to the undertaking given for performing the HIV test or result of an HIV test; (b) information relating to the care, support or treatment of that person; (c) information which may identify that person; and (d) any other information concerning that person, which is collected, received, accessed or recorded in connection with an HIV test, HIV treatment or HIV-related research or the HIV status of that person.

No person should be compelled to disclose the HIV status except by an order of the court that the disclosure of such information is necessary in the interest of justice for the determination of issues in the matter before it.

There is a disclaimer in context with relationship of fiduciary nature. Here no person should disclose the HIV status or any other private information of the other person imparted in confidence or in a relationship of a fiduciary nature except by informed consent. The informed consent can be taken from the person themselves or through their representatives. There are exceptions where informed consent for disclosure of HIV-related information is not required,-

- (1) In case the disclosure is made by a healthcare provider to another healthcare provider who is involved in the care, treatment or counselling of such person.
 - (2) By an order of a court that the disclosure of such information is necessary.
 - (3) In suits or legal proceedings between persons, where the disclosure of such information is necessary and authorised legally.
 - (4) In relation to statistical information that could not be expected to lead to the identification of that person.
 - (5) For screening purposes in any licensed blood bank.
 - (6) Officers of the Central Government or the State Government or State AIDS Control Society of the concerned State Government for the purposes of monitoring, evaluation or supervision.
2. **Disclosure of status to partner of HIV positive person:** In case of disclosure of status to partner of HIV positive person, no healthcare provider, except a physician or a counsellor, shall disclose the HIV positive status of a person to their partner. This kind of disclosure can be made if,-
 - (1) The healthcare provider believes that the partner is at the significant risk of transmission of HIV from such a person.
 - (2) The HIV-positive person has been counselled to inform the partner.
 - (3) The healthcare provider is satisfied that the HIV positive person will not inform the partner.
 - (4) The healthcare provider has informed the HIV positive person of the intention to disclose the HIV-positive status to the partner.

One more very important pre-condition is that the disclosure has to be made in person and after proper counselling. The healthcare provider shall have no obligation to identify or locate the partner of an HIV- positive person.

In case of establishments, educational, occupational, prison settings, faith-based organisations, corporate-houses, etc., it is the responsibility of employers to ensure that all staff members are oriented on concepts of consent, disclosure and confidentiality related to HIV and AIDS and that they don't disclose HIV-related information. It is also the moral responsibility of co-workers and other staff members to not engage in activities which breach confidentiality.

3. **Confidentiality of data related to HIV:** HIV-related information is sensitive in nature and every establishment keeping the records of HIV-related information should adopt data protection measures to ensure prevention of unintended or unwanted disclosure and breach of confidentiality of the data.

HIV-related information includes–

- (a) Information relating to the undertaking performing the HIV test or result of an HIV test;
- (b) Information relating to the care, support or treatment of that person;
- (c) Information which may identify that person; and
- (d) Any other information concerning that person, which is collected, received, accessed, or recorded in connection with an HIV test, HIV treatment or HIV-related research and the HIV status of that person.

It is mandatory for every establishment keeping the records of HIV-related information of protected persons to adopt data protection measures. Data protection measures include- protecting information from disclosure, procedures for accessing information, provision for security systems to protect the information stored in any form and mechanisms to ensure accountability and liability of persons in the establishment:

- (1) **Protecting information from disclosure of HIV-related information:** Confidentiality and privacy is to be maintained while collecting HIV-related information. For each establishment which has collected/ is desirous of collection of HIV-related information pertaining to protected persons, authorised persons or staff should sign an undertaking for confidentiality of the information.
- (2) **Access to HIV-related information:** Access should be granted only to authorized persons or staff. There should be provision of signing a formal undertaking for confidentiality of the information from the authorised person.
- (3) **Provision for security systems for HIV-related information:** There should be secured almirahs or cabinet for physical records like registers, reports etc. and it should be carefully locked when left unattended. Personal computers or mobiles or tablets or any other hardware should be password protected and should be logged off or locked when left unattended for protecting electronic records.
- (4) **Data Management Committee:** Data Management Committee should be formed at each establishment to review and provide appropriate recommendation regarding the data security measures and the Data Management Committee should be responsible to ensure the same. Wherever establishment does not have the Data Management Committee, the head of the establishment should be entrusted with the responsibility and function of the Data Management Committee.
- (5) **Disposal of HIV-related information:** Establishment should have standard operating procedures in place regarding disposal of physical and electronic records or files containing HIV-related information of protected persons.
- (6) **Accountability and liability of security of HIV:** related information should be with Data Management Committees or the heads of concerned establishment.

For additional information, Ministry of Health and Family Welfare (National AIDS Control Organisation's) guidelines and official website may be referred to from time to time.

CHAPTER VI

Grievance Redressal Mechanism

Grievance redressal mechanism is vital in order to provide a holistic non-discriminatory environment to people infected with and affected by HIV and AIDS. The Act also proposes a robust mechanism in the form of Complaints Officer at establishments and Ombudsman at State level.

It is obligatory for the establishment, having one hundred or more persons to designate a person, as it deems fit, as the Complaints Officer who shall dispose of complaints of violations of the provisions of this Act in the establishment. Healthcare establishments shall designate a Complaints Officer in case of twenty or more persons. Here person could be an employee or officer or member or director or trustee or manager, as the case may be. Similarly at State level, one or more Ombudsman shall be appointed or designated as the State desires. Ombudsman shall inquire into complaints of violations of provisions of the Act related to discrimination and providing of healthcare services.

It must be noted that there is no hierarchy in terms of filing of complaint; if any establishment does not qualify to have a Complaints Officer, then the aggrieved person belonging to that establishment can file a complaint to the Ombudsman. Also, if the establishment has a Complaints Officer, it is at the discretion of the aggrieved person to file the complaint to the Complaints Officer or Ombudsman.

1. **Complaints Officer: Duty, Power and Responsibility:**

- (1) **Acceptance of complaints:** Complaints Officer has to register the complaint. The complaint has to be made within three months from the date that the person making the complaint became aware of the alleged violation of the Act in the establishment. If the Complaints Officer is satisfied of circumstances that prevented the complainant from making the complaint within the stipulated period, extension of another three months should be granted.
- (2) **Assistance in filing complaint:** Every complaint would be made to the Complaints Officer in writing in the Form annexed at Appendix A. Where a complaint cannot be made in writing the Complaints Officer shall render all reasonable assistance to the complainant to file the complaint in writing.
- (3) **Acknowledgement and registration of complaints:** The Complaints Officer on receipt of a complaint should provide an acknowledgment to the complainant and record the complaint in electronic form. The time of the complaint and the action taken on the complaint should also be recorded. Every complaint should be numbered sequentially. The Complaints Officer should act in an objective and independent manner while deciding complaints made under the Act.
- (4) **Timeline for decision making:** The Complaints Officer should arrive at a decision of the complaint promptly and in any case within seven working days. In case of emergency or in the case of healthcare establishments where the complaint relates to discrimination in the provision of, or access to health care services or provision of Universal Precautions, the Complaints Officer should decide the complaint on the same day on which he receives the complaint.

- (5) **Decision making powers:** The Complaints Officer, if satisfied that a violation of the Act has taken place as alleged in the complaint, should firstly, direct the establishment to take measures to rectify the violation; secondly, counsel the person who has committed the violation and require such person to undergo training in relation to HIV and AIDS, provisions of the Act, rules, guidelines and aspects of stigma and discrimination. Additionally, social service should be done for a fixed period, which should include working with a non-governmental organisation working on HIV and AIDS. For this, assistance from respective District AIDS Prevention and Control Unit or State AIDS Control Society should be undertaken. Upon subsequent violation of the Act by the same person, the Complaints Officer may recommend the establishment to take disciplinary action in accordance with the law.
- (6) **Informing the complainant:** The Complaints Officer should inform the complainant of the action taken in relation to the complaint and of the complainant's right to approach the Ombudsman or to any other appropriate legal recourse in case the complainant is dissatisfied with the action taken.
- (7) **Reporting Mechanism:** The Complaints Officer shall ensure that the complaint, its nature and number and the action taken are reported to the appropriate authority under the Central Government (Deputy Director General, Information Education and Communication or Director Administration, National AIDS Control Organisation) every six months. In case there are no complaints in last six months, submission of a 'nil report' is not a compulsion.
- (8) **Confidentiality:** The Complaints Officer if requested by the complainant should ensure the protection of the identity of the protected person in the following manner, namely:-
- (a) The Complaints Officer should file one copy of the document bearing the full name, identity and identifying details of such protected person which shall be kept in a sealed cover and in safe custody with the Complaints Officer.
 - (b) The Complaints Officer shall provide pseudonyms to protected person involved in complaints before them.
 - (c) The identity and identifying details of the complainant should not be revealed by any person or their representatives including assistants and staff.
- (9) **Data Management:** The Complaints Officer shall comply with the data protection measures in accordance with the section 11 of the HIV and AIDS (Prevention and Control) Act, 2017 and Guidelines on Confidentiality of Data of protected persons there under. Section 5.3 of the HIV and AIDS Policy for Establishments may also be referred to.

CHAPTER VII

Key Strategies and Responsibility of the Stakeholders, Employers, Employees etc.

In order to assure effective implementation of the Policy, Ministries/Departments, Employer associations, establishments including employers, employees, administrative staff and also HIV positive people have a pivotal role to play.

1. **Key Strategies:**

- (1) Prevention of HIV transmission and care and support to HIV infected workforce.
- (2) Awareness generation or training on basics of HIV, routes of transmission, undoing myths and misconceptions, behavior change, Universal Precaution, Post Exposure Prophylaxis.
- (3) Integration of HIV component at trainings of human resource department, welfare measures, corporate social responsibility etc.
- (4) Zero-discrimination Policy on the basis of HIV status at every establishment. Adapt flexibility and provide reasonable accommodation for People Living with HIV.
- (5) Grievance redressal mechanism to look into cases of discrimination.
- (6) Widen scope of social security coverage to include HIV in assistance programmes, health insurance etc.
- (7) Strengthening of existing interventions and setting up of newer interventions for informal sector workers and migrant workers based on vulnerability studies and risk assessment.
- (8) Enhance access to condoms, treatment of sexually transmitted infections, Universal Precautions and Post Exposure Prophylaxis for HIV.
- (9) Undertake epidemiological surveillance at the establishment to gather data or information for taking informed Policy and programmatic decisions.

2. **Role of Employer Associations or Chamber or Industries:**

- (1) Employer associations or chambers or industries are encouraged to implement the guiding principles defined under the establishment policy.
- (2) Employer associations or chambers or industries to encourage large member companies to set up HIV counselling or testing or treatment facilities and also appropriate funds under Corporate Social Responsibility for provisioning of welfare measures like skill-development, livelihood generation etc.
- (3) Employer associations or chambers or industries should undertake advocacy efforts to mobilize their member companies in implementing the establishment policy.
- (4) Employer associations or chambers or industries to partner with National AIDS Control Organisation or State AIDS Control Society for enhancing coverage of the establishment Policy and setting up public private partnerships for HIV prevention and care.
- (5) Employer organisations or chambers should strengthen their capacity, in partnership with National AIDS Control Society or State AIDS Control Society and relevant agencies, to be able to offer technical assistance to their members for starting HIV and AIDS workplace programmes. Also, information on HIV and AIDS could be integrated as part of their capacity building modules.

3. **Role of Employers including the administrative staff:**

- (1) **Implementation of guiding principles defined in the Policy:** Employer will have to ensure that no employee is discriminated on the basis of HIV status and that all the five guiding principles are being implemented in spirit. Employer has to ensure access of the Policy to wider public by uploading it on the website. Employer also has to ensure that no person is denied or terminated from employment because of HIV status. Any other form of discrimination like avoiding talking to that person, sharing of meals, travelling etc. is also fully prohibited. If need be, employer should ensure provisioning of reasonable accommodation where minor adjustments at work would enable HIV positive person to enjoy equal benefits at work. Here discrimination free behavior is not limited to person infected with HIV and AIDS but also includes the families affected by it. Establishments will also have to take appropriate steps for implementing other principles including confidentiality, Universal Precautions and grievance redressal mechanism. Every establishment engaged in healthcare services has to make sure that no HIV testing is done without informed consent, except for reasons mentioned under the HIV and AIDS (Prevention and Control) Act, 2017.
- (2) **Regular capacity building of staff members on basics of the HIV and AIDS (Prevention and Control) Act, 2017:** Employer has to make provisions for training of staff members on the basics of HIV and AIDS, transmission of HIV, myths and misconceptions, three guiding principles with focus on non-discrimination and the HIV and AIDS (Prevention and Control) Act, 2017. Employers engaged in healthcare services have to take appropriate measure for informing and educating people on use of Universal Precautions and Post Exposure Prophylaxis to people who are at significant risk of occupational exposure to HIV. Employers can contact nearby District AIDS Prevention and Control Units or State AIDS Control Society for further necessary help.
- (3) **Designation of Complaints Officer:**
 - (a) Any establishment having hundred or more persons, may designate a person of senior rank, as it deems fit, as the Complaints Officer;
 - (b) Healthcare establishments, having twenty or more persons may also designate a Complaints Officer. Complaints Officer shall dispose of the complaints with regard to violation of the provisions of the HIV and AIDS (Prevention and Control) Act, 2017 in the establishment;
 - (c) While computing the total strength of an establishment, all employees, officers, members, directors, trustees or managers may be included.
- (4) **Training of Complaints Officer:**
 - (a) The establishment has to ensure that the designated Complaints Officer is trained for carrying out the responsibilities efficiently;
 - (b) Employer may seek assistance from State AIDS Control Society for conducting training;
 - (c) HIV and AIDS Module developed for Complaints Officer by Ministry Of Health And Family Welfare shall be made available to the State AIDS Control Society.
- (5) **Maintenance of confidentiality:**
 - (a) The establishment is obligated to maintain confidentiality in terms of identity and identifying details of the protected person involved in a complaint before the Complaints Officer and any information shall not be revealed by any person or his representatives including staff;

- (b) The establishment has to ensure that no person shall print or publish any matter in relation to a complaint before a Complaint Officer unless the identity of the complainant in the complaint is protected;
- (c) The establishment and Complaints Officer shall comply with data protection measures in accordance with the provisions of section 11 of the HIV and AIDS (Prevention and Control) Act, 2017 and Guidelines on Confidentiality of Data of protected persons there under. Section 5.3 of the Model Policy may also be referred to.

(6) Functioning of the office of Complaints Officer:

- (a) There shall be Establishments to establish a method for receipt of complaints in electronic form either through dedicated website, webpage or by providing an official email address for the submission of complaints to the Complaints Officer for further clarity on development of website or link, establishment to contact respective State AIDS Control Societies;
- (b) In addition, the establishment shall also provide necessary facilities for the Complaints Officer for deciding the complaint; and also make available such information as the Complaints Officer may require addressing the complaint.

- (7) Awareness generation:** Every establishment which requires appointing a Complaints Officer shall on an annual basis, organise workshops and awareness programmes for sensitizing its employees with the provisions of the Act and Policy. Sensitization to also include functioning of grievance redressal mechanism including who can file a complaint, on what basis complaint can be filed, how the complaint can be filed etc. Contact details of the Complaints Officer to be made available to the people at the establishment.

4. Role of Employees or co-workers:

- (1) As a co-worker it is the responsibility of the person to not discriminate against colleagues on the basis of HIV status.
- (2) Employees also have to ensure that the HIV status if known to them is not disclosed to anyone without informed consent of the HIV positive person.
- (3) If they are witness to any form of discrimination against person on the basis of HIV status, they should discourage such behavior and advise the person to file a complaint with Complaints Officer at the organisation level or Ombudsman at the State level.
- (4) Employees cannot disclose the personal details including name and address of the person living with HIV to anyone including the employer, family members, other employees or media agencies.

5. Role of person infected with HIV:

- (1) Person infected with HIV, if discriminated, should file a complaint either with Complaints Officer at establishment where the person is working at or with the Ombudsman at State or District level.
- (2) Every complaint should be made in writing in the Form set provided on respective establishment or State website. Complaint can also be made via post, telephonically, or in electronic form, but at the end it has to be translated to the Complaint Form. Where a complaint cannot be made in writing, it is the responsibility of the Complaints Officer to render all reasonable assistance to the complainant to file the complaint in writing.
- (3) The complaints should be made within three months from the date the complainant became aware of the alleged violation of the Act in the establishment. If the Complaints Officer is satisfied that circumstances prevented the complainant from making the complaint within the stipulated period, then the time limit to make the complaint may be extended by a further period of three months.

- (4) Person infected with HIV has a duty to prevent transmission of HIV. Every person, who is HIV positive and has been counselled in accordance with the guidelines issued or is aware of the nature of HIV and its transmission, shall take all reasonable precautions to prevent the transmission of HIV to other persons. The person should adopt strategies for the reduction of risk or informing in advance his HIV status before any sexual contact with any person or with whom needles are shared with.

6. Role of Ministry of Health and Family Welfare (National AIDS Control Organisation) and State AIDS Control Societies:

Ministry of Health and Family Welfare (National AIDS Control Organisation) to facilitate regular surveys and risks assessment studies to map the vulnerable populations, their work habits and preferences, working conditions, perceptions and other related issues. These studies undertaken will facilitate in effective implementation of the Policy, ways of dissemination, identification of work areas requiring focus from Ministry of Health and Family Welfare (National AIDS Control Organisation) and also facilitate the monitoring of implementation of the Policy and its impact on the HIV vulnerabilities of the work force.

- (1) All State Council on AIDS to ensure adequate representation of the state labour departments, employers' and workers' organisations.
- (2) All States to hold meetings of Legislators Forum on HIV and AIDS each year and members of Legislators Forum on HIV and AIDS to ensure that the Policy for establishments is implemented in their respective States.
- (3) States to hold regular meetings with employer associations and State labour department to ensure setting up of grievance redressal mechanism in the form of Complaints Officer and effective implementation of the Policy.
- (4) Ministry of Health and Family Welfare (National AIDS Control Organisation) or State AIDS Control Society to ensure periodic reviewing and monitoring of the Policy and provide necessary handholding for various adjustments and customisation required due to constantly changing internal and external situation.



APPENDIX A

Form for making Complaint to Complaints Officer

1. Date of Incident _____
2. Place of Incident _____
3. Description of incident _____
4. Person/ institution responsible for the incident _____

Signature/ Thumb Impression of Complainant* Name: _____

Date: _____ e-mail ID: _____

Mobile: _____ Fax: _____

Address: _____

For Official Use only: _____

Complaint Number: _____

*Where the complaint is received orally or telephonically and reduced to writing by the Complaints Officer, the Complaints Officer shall sign and date the Form.

Has your establishment designated a **Complaints Officer?**

An illustration of a man in a dark suit and red tie sitting at a desk, smiling. He is using a laptop. A red mug is on the desk. In the background, there are other desks with computers and a person working, all in a red-tinted office environment. A white speech bubble with the text 'Complaints Officer' is positioned near the man.

**Complaints
Officer**

**As per Section 21 of the HIV & AIDS (P & C) Act, 2017,
If you are an establishment with 100 or more people or a healthcare establishment
with 20 or more people, you shall designate a Complaints Officer**



National AIDS Control Organisation

India's response to HIV & Sexually Transmitted Infections

Ministry of Health & Family Welfare, Government of India
www.naco.gov.in