

THE HIV/AIDS BILL 2007
- A summary

Introduction

The HIV/AIDS Bill 2007 is the culmination of a rigorous three-year research, drafting and consultative process that has involved stakeholders from across the country and from every region. Regional level consultations organised in co-ordination with the National AIDS Control Organisation and State AIDS Control Societies and their representatives along with NGOs were held in the North, South, East, West and the Northeast of the country. Groups and communities with specific perspectives on the epidemic like HIV-positive persons, sex workers, men who have sex with men, injecting drug users, healthcare providers, workers, women, children and legal experts have discussed and debated the Bill at length. Ultimately it is these discussions, debates and consultations that have shaped this Bill on HIV/AIDS that is holistic, democratic and egalitarian; that places people, communities and society at the heart of legislation.

This Bill envisages a detailed and carefully planned strategy for addressing the HIV epidemic in India through an extensive prevention, care, treatment and support programme that entails widely disseminated and easily accessible information and education, an accountable and accessible government structure in the form of HIV/AIDS Authorities, protection and promotion of prevention programmes, access to healthcare services and treatment and the protection and promotion of the rights of persons who are HIV-positive and those affected by HIV. One of its key visions is the establishment of a government initiative on HIV/AIDS that is completely accountable to all persons and that is implemented at every stage with consultations. Most importantly, it presents an approach to tackle the HIV epidemic where every person is a stakeholder, every voice is included and no one is left behind. It envisions the emergence of the epidemic from the underground so that HIV/AIDS is no longer a synonym for fear, neglect, discrimination and violence but for empowerment, compassion, united action and triumph.

The following sections provide a summary of the provisions of the HIV/AIDS Bill 2007. The Bill is currently being considered by NACO and the Ministry of Health and Family Welfare.

RIGHTS RECOGNISED IN THE HIV/AIDS BILL

1. Right to Equality. – No person shall be subject to discrimination in any form by the State or any other person.
2. 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 her or his informed consent.
3. Right to Privacy. – Every person has the right to privacy.
4. Right to Health. – Every person has the right to enjoy the highest attainable standard of physical and mental health.
5. Right to Safe Working Environment. – Every person has the right to a safe working environment
6. Right to Information. – Every person has the right to information and education relating to health and the protection of health from the State.

Prohibition of Discrimination

The HIV/AIDS Bill specifically prohibits discrimination related to HIV/AIDS within the public and private spheres and under the Bill no person may be discriminated against based on HIV-related status. The HIV/AIDS Bill adapts a definition of discrimination from a South African anti-discrimination legislation, which covers all acts and omissions that are discriminatory on the basis of HIV status, whether it is actual or perceived and whether the person discriminated against is HIV positive, a relative, a friend, or is associated with HIV as in the case of groups that are considered in the public imagination as 'vectors' of the epidemic such as sex workers or injecting drug users or truckers or migrants. Collectively, in the Bill, these persons are referred to as 'protected persons.'

The Bill is inclusive and does not define every situation of discrimination that is prohibited as the definition is intended to be a flexible one. Some of the specific areas that are covered by the Bill include:

- Employment
- Healthcare
- Education
- Public and private office
- Travel
- Residence and property
- Access to services
- Access to institutions
- Isolation or segregation
- Insurance
- Mandatory HIV testing as a pre requisite to access employment, healthcare etc.

In addressing these areas, the Bill, broadly speaking, prohibits denial, discontinuation and unfair treatment. To explain, in a healthcare setting for instance, denial and discontinuation could take the form of refusal to treat or stopping treatment while unfair treatment could take the form of untimely discharge, charging higher rates, imposing conditions in the form of research, public identification, pressure to leave the healthcare institution and so on.

The Bill also prohibits hate and discriminatory propaganda against HIV positive persons or those associated with the epidemic. It also prohibits victimisation; a necessary component of any anti discrimination law, this provision protects person who may intend taking action against discrimination from threats and intimidation.

Informed consent for testing treatment and research

The Bill recognises the right of each person to autonomy and bodily integrity. It requires specific, free and informed consent for HIV related testing, treatment and research. This chapter statutorises existing standards of informed consent and the exceptions to it while also increasing access to healthcare services for children and young persons. HIV testing can be conducted only for the voluntary determination of HIV status or if it is medically indicated and in the interest of the person being tested. Consent must be in writing. The Bill makes provision for proxy consent in the case of death, incapacity or emergency or for young persons.

The term 'informed consent' has different implications for the kind of information to be given depending on the intervention undertaken. Thus, HIV testing must be accompanied by pre- and post-test counselling, HIV treatment may commence only after an explanation of risks, benefits and alternatives available while HIV research may take place only after the research subject is informed of aims, methods, sources of funding, possible conflicts of interest, institutional affiliations of the researcher, potential benefits and risks, possible discomfort and the right to withdraw consent.

Informed consent is vital in the HIV context because HIV is different from other diseases. The incurability of HIV, its life-threatening implications, and the stigma attached to it can create untold trauma on being informed of HIV status. Therefore, seeking permission before conducting an HIV test is crucial as is the pre and post test counselling that is mandated as part of the informed consent process. For HIV-related treatment, consent is critical since ARV treatment is highly toxic and requires lifetime adherence - information that must be given to a patient before s/he agrees to take the treatment.

One particular concern in relation to consent relates to women and young persons who face very different obstacles in accessing healthcare and in receiving proper information and counselling before tests or treatment. Spouses or family members often accompany women making a full, frank and confidential discussion of health related matters almost impossible. Young persons are considered universally and generally incapable of making decisions regarding their healthcare. Often a healthcare provider will ask for the presence of a parent making it unlikely that a young person would come forward for an HIV test for fear of disclosure not just of their HIV status but also of actions that may have put them at risk. The Bill requires special attention to be given to women and young persons and for specific counselling regulations that would create an atmosphere conducive to individual decision-making.

Consent for HIV testing under the Bill is not required when it is ordered by courts, required for testing blood, organs, semen etc., or for surveillance.

HIV tests may be conducted only at voluntary counselling and testing centres, recognised pathology laboratories and blood banks.

Disclosure of Information

The HIV/AIDS Bill recognises the right to privacy of all persons and accordingly guarantees the confidentiality of HIV-related information (including the HIV status of a person) and outlines the few exceptions where this information can be disclosed. A person cannot be compelled to disclose their status and persons to whom they may reveal it in confidence are bound not to reveal the information. The Bill requires informed consent for disclosure whether by a person or their proxy in the same way that consent is required for testing, treatment and research. Written consent is required in the case of fiduciary relationships such as healthcare provider-patient, lawyer-client, etc.

Informed consent for disclosure is not required when it is necessary and in the best interest of a patient, if it is ordered by court, in the initiation of legal proceedings, or if it is in the form of statistical information or data.

Two important provisions relating to disclosure are 'partner notification' and the 'duty to prevent transmission.' The Bill specifies the exact protocol for a healthcare provider to notify the partner of an HIV-positive person of such person's status in specific circumstances. Partner notification would typically take place as follows:

- Step 1: The healthcare provider would assess whether an HIV-positive person's partner is at significant risk of transmission of HIV.
- Step 2: She would then counsel the HIV-positive person to inform his or her partner.
- Step 3: The HIV-positive person refuses to do so or the healthcare provider is satisfied that he or she will not inform the partner.
- Step 4: The healthcare provider would then inform the HIV-positive person that she is going to inform the partner.
- Step 5: The healthcare provider would make the disclosure to the partner in person and with appropriate counselling or referrals for counselling.

The protocol is very clear and specific and requires the healthcare provider to hold her beliefs genuinely and after reasonable assessments. It should be noted that there is no obligation on the healthcare provider to notify a partner nor is there any liability on the healthcare provider for informing or not informing the partner. The Bill also recognises the particular vulnerability of women to violence in situations of partner notification and specifies that partner notification should not take place if there is an apprehension of violence.

The Bill also imposes a duty on all HIV-positive persons to prevent transmission through various measures like using safer sex practices or informing their partners. Here again the duty does not exist if there is a threat of violence.

The Bill obligates institutions to put in place data protection measures to protect HIV related information. It also prohibits the publication of HIV related information of a person without their informed consent.

Right to access treatment

The right of access to treatment related to HIV/AIDS as an integral part of the right to health is recognised under the Indian Constitution and the International Covenant on Economic, Social, and Cultural Rights to which India is a signatory. The Bill accordingly recognises the right of all persons to the highest attainable standard of health.

In keeping with this right, the Bill provides for universal and free access to comprehensive HIV related treatment, prevention, care and support. This includes:

- Services
- Information
- Voluntary testing and counselling services in every sub-district
- Counselling
- Medicines for opportunistic infections
- Post exposure prophylaxis
- Anti-retroviral therapy
- Nutritional supplements
- Prevention of mother-to-child transmission
- Diagnostics, etc.

Many of these services are already part of the National HIV/AIDS programme including the ARV rollout plan of the Indian government. Under the Bill, access to treatment must be provided in a sustained, accessible and acceptable manner. The Bill also requires the National HIV/AIDS Authority to notify protocols for HIV related treatment and testing.

In order to fulfil its obligations under the Bill, governments, whether state or central, are also required to take measures including providing travel subsidies to access treatment, training and capacity building of healthcare providers, ensuring that all other laws are in consonance with the Bill and that the right to health is not in any manner restricted or compromised on account of the protection of intellectual property rights, introducing tax incentives and exemptions on HIV-related treatment, regulating drug prices and encouraging research.

Safe Working Environment

In healthcare settings, denial of treatment or unfair treatment generally occurs because of the fear of occupational exposure or the lack of resources for healthcare providers to protect themselves or get adequate treatment. Discrimination in healthcare settings is thus, attributed largely to the lack of any right to a safe working environment for healthcare providers to demand universal precautions.

The Bill recognises this right and imposes an obligation on healthcare institutions to provide universal precautions and training on how to adopt and use such precautions for all healthcare providers and other persons whose occupation may put them at risk of exposure to HIV. In cases where there may be exposure, post exposure prophylaxis must also be provided. A healthcare institution comprising 20 or more persons will also provide HIV-related treatment and compensation to those occupationally exposed to HIV.

Healthcare providers are required to use universal precautions and institutions are required to ensure this. The National HIV/AIDS Authority is also required to publish regulations on the use of universal precautions and post exposure prophylaxis.

Risk Reduction

Strategies for risk reduction are actions that minimise a person's risk of exposure to HIV/AIDS and/or mitigate adverse impacts related to HIV/AIDS. These can be programmes that promote safer sex behaviour, provide clean needles or provide information to children. Typically they are provided to communities and persons who are otherwise subject to criminal sanction under various laws like sex workers, injecting drug users etc. Their criminalisation severely hampers their access to healthcare services and information exacerbating their vulnerability to HIV.

Chapter VII specifically protects the promotion of these strategies from law enforcement harassment and from being hampered by the operation of criminal or civil laws. The experience with targeted interventions in India has been useful in identifying the problems with keeping them effective and running. Often, while programmes are not shut down, they are used to target persons accessing them. Thus, sex workers who access condom promotion programmes will often be harassed by law enforcement for carrying condoms; the reasoning being that this is indicative of preparation on their part to solicit. Similarly, injecting drug users accessing clean needles are arrested by the police. Naturally, these programmes will no longer be accessed if they are the sites of harassment or the strategies they provide are used against them.

The Chapter thus protects not only the implementation of programmes but also their use. Specifically, the supply or use of tools or paraphernalia is exempt from the purview of civil and criminal laws. These programmes cannot be prohibited, impeded, restricted or prevented. Illustrations in this chapter make it clear that the protection of the Bill extends to strategies for risk reduction aimed at sex workers, IDUs, men who have sex with men and young persons. The language of the Chapter itself is broad enough to capture all sorts of risk reduction strategies so as not to be restricted only to existing strategies. This chapter also provides for the registration of needle and syringe exchange programmes to ensure their proper implementation. In particular, the Chapter offers specific protection from law enforcement harassment and provides for misconduct proceedings against officials who attempt to disrupt services providing risk reduction.

This is of course the minimum protection any public health response to the epidemic requires. However, consistent feed back from the consultations have called for a broader approach which may include legalising sex work so as to allow sex workers basic rights available to all other persons including to access healthcare services, protect themselves from violence and to unionise; to reform drug use law which former drug users and persons working in the field over many years point out have pushed drug users to injecting drug use to avoid minimum statutory limits of drug use; the repeal of Section 377 of the Indian Penal Code (IPC) that is used to extort and harass men who have sex with men; and the removal of the marital rape exemption from the IPC.

Social Security

Chapter VIII of the Bill recognises the broader impact of the epidemic as well as its underlying causes. The lack of access to healthcare services keeps a large proportion of the population away from preventive information, sexual health information and treatment. Most often persisting ill health, one of the symptoms of HIV is ignored by many persons, not just those living in poverty, due to the daunting costs of tests, check ups etc. Access to treatment (provided in Chapter V) addresses only one aspect of the very individualised impact of HIV on a person's life. Once persons test positive for HIV, they may lose their jobs, be thrown out of their families, not have access to the correct nutritional care – for young persons who may be HIV-positive or have parents who are HIV-positive, there is an extreme impact on their food, shelter and education needs.

The Bill accordingly mandates the Government to introduce health insurance and social security schemes related to HIV. While several schemes relating to health are already in place, these do not address the varied issues raised by the HIV/AIDS epidemic. This is not an immediate obligation and the Government has about a year to introduce these schemes or reframe existing schemes to ensure that HIV is also addressed. In particular, the Bill requires schemes:

- that address HIV/AIDS and related illnesses and mitigate the social and economic impact of HIV/AIDS and related illnesses;
- that cover HIV-positive persons, other protected persons, women, children, healthcare providers and older persons;
- that provide access to shelter, food, education and treatment for children affected by HIV/AIDS; and
- between the Appropriate Government, healthcare institutions and healthcare providers as a contributory insurance scheme.

Information, Education and Communication

Information is the key to any successful prevention programme. Information in the HIV context is considered particularly important as it tends to define the epidemic and shape societal responses to it; it can alleviate fear, shame and guilt related to sexuality; it can equip women and girls to negotiate and say 'no' in sexual relationships; it can enable people to protect themselves and others from the risk of infection; it can equip women and girls to seek support for sexuality and reproductive health concerns and can create awareness of rights. It has further been seen that the lack of information and knowledge about HIV has in fact fuelled the epidemic and has also led to stigma and discrimination against PLHAs.

The HIV/AIDS Bill treats the Government IEC programme as an essential component of the fight against HIV/AIDS. Feedback from all the consultations rejected fear and morality based messages and supported positive and evidence based messages related to IEC that speak, not just about prevention but also care, support and rights.

The Bill recognises the right of all persons to information and education relating to health and the protection of health from the State. It obligates the State to institute IEC programs, which are:

- evidence based;
- age-appropriate;
- gender-sensitive;
- non-stigmatising; and
- non-discriminatory

In particular the programmes should not promote gender and sexual stereotypes and should promote gender equality.

The IEC programme has to be sustained, multi-lingual, easily understood, and regularly updated at national, state and local levels. It should be accessible and available to all persons. These programmes are to be supported by a public education and information programme that promotes an understanding and acceptance of the Bill. Most importantly, the entire programme must be based on consultation with various stakeholders and must ensure community mobilisation and participation, in the provision of HIV/AIDS-related IEC at all levels throughout the country.

The Bill also obligates the State to make special efforts to promote IEC for girls and women, employees and other groups. It provides for IEC at travel points, health care institutions; the inclusion of HIV education medical, legal and social work curriculum; HIV information to be provided with prophylactic materials etc.

Health Ombud

The HIV/AIDS Bill creates innovative implementation mechanisms including Health Ombuds to be appointed in every district. It allows flexibility in the appointment of Ombuds to the concerned government as different strategies have worked in different states. While some states have seen proactive individuals in healthcare from the bureaucratic machinery, others have had more success with independent persons. An ombud may be any person who has working experience or extensive knowledge of public health or healthcare delivery systems, is independent, and sensitive to issues addressed in the Bill. He or she may be from the IAS, a healthcare provider or a person working in an NGO.

Primarily, Health Ombuds will, in relation to healthcare services, inquire into violations of the provisions of the Bill on their own, based on a complaint or if asked to by a court. The complaint has to be decided within 15 days; 1 day in case of an emergency. Health Ombuds will provide easy and quick access to health services for all persons should they be discriminated against or denied treatment. They will also help healthcare providers get gloves, masks and other universal precautions to ensure that there is no impediment in treatment. Further, they will act as a watchdog in cases of quackery and will activate existing anti quackery mechanisms such as the police or by filing a case or reporting to the government or concerned authority.

When it comes to violations the Health Ombud may:

- pass orders in cases of emergency including directing admissions, operations or treatment and the provision of universal precautions;
- pass orders for the withdrawal and rectification of a violation of the Bill;
- 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;
- direct specific steps or special measures; or
- direct any person who has committed a violation to make regular reports regarding the implementation of his or her order.

This scheme of functioning allows flexibility in dealing with the problems of the healthcare system vis-à-vis HIV and any other health condition if the concerned government sees fit to delegate further responsibilities to the Health Ombud. Instead of an acrimonious, confrontational and expensive strategy, the Health Ombud can deal with problems on a daily basis and offer creative strategies such as counselling, training, etc., to get to the heart of the matter whether it be discrimination, denial of treatment or using universal precautions. Health Ombuds will act as a pressure valve for the legal system by providing quick and alternate remedies rather than encouraging litigation although persons may go directly to court should they so choose.

HIV/AIDS Authority

The HIV/AIDS Authorities under the Bill are envisaged as accountable, transparent and independent bodies that will take over from the existing HIV/AIDS bodies i.e. NACO, SACS and DACS. These will be the National HIV/AIDS Authority, the State and Union Territory HIV/AIDS Authorities and District HIV/AIDS Authorities. While the Bill retains many of the features of the existing structure, several new and important changes are made to make the government response representative and accountable. In the makeup of the Authorities for instance, along with existing administrative expertise, there is an equal emphasis on experience related to the epidemic and public health as well as community involvement.

The National Authority will thus comprise, among others, a full-time Director who would have special knowledge or practical experience in matters relating to HIV/AIDS, one person each representing the regional State and Union Territory Authorities (North, South, East, West and North-Eastern State and Union Territory HIV/AIDS Authorities), an HIV-positive person and five persons representing HIV-positive persons, protected persons, healthcare providers, women, etc. apart from central government nominees and other experts.

To ensure the highest level of government commitment to the epidemic, an advisory committee comprising the Prime Minister, the Minister of Health and Family Welfare, leader of the opposition, the chairperson of the National Human Rights Commission as well as representatives of various stakeholders (healthcare providers, ICMR, women, HIV-positive persons etc.) will meet every six months to offer guidance and advice to the National Authority.

It is the function of all the authorities to:

- Prevent and control the spread of HIV;
- Promote and protect the rights of protected persons;
- Provide care, support and treatment to HIV-positive persons and those affected by HIV/AIDS;
- Reduce the vulnerability of individuals and communities to HIV/AIDS;
- Promote awareness, information and education about HIV/AIDS; and
- Alleviate the socio-economic and human impact of HIV/AIDS.

In so doing, all the authorities are to institute and implement in their jurisdictions HIV-related programmes including prevention, risk reduction, providing care, support and treatment, blood safety, STI Control, Condom Programming, IEC and social mobilisation, prevention of mother to child transmission, voluntary testing and counselling, access to treatment, etc. They will also make lists of HIV-related services, inquire and report on violations of the Bill, advise and report to the concerned government, carry out HIV/AIDS surveillance, encourage the efforts of non-governmental organisations and institutions working in the field of HIV/AIDS, human rights and public health and so on.

Naturally, the hierarchy of the National, State and District Authorities is maintained while allowing flexibility in programming to deal with different issues in different states and regions. The National Authority will also prepare a National HIV/AIDS Policy which will be reviewed every three years after widespread consultation. State and local authorities have the charge of translating the policy and disseminating it. The National Authority will also establish a committee to examine the impact of HIV/AIDS on women in a comprehensive manner. The Authorities will also in their jurisdictions monitor the implementation of the Bill and create a rating system to indicate how institutions are complying with the Bill.

The most important provisions of this chapter relate to consultations at every stage of the programming and planning of the national, state and local strategy to tackle the epidemic. Under the Bill, the Authorities must consult at all stages of policy and programme formulation and implementation including by calling on experts, holding community consultations and most importantly involving HIV-positive persons. Their functioning is expected to be transparent, evidence based and accountable.

Institutional Obligations

Chapter XII of the HIV/AIDS Bill specifies two broad obligations for every institution where 20 or more persons carry on systemic activity in co-operation for the satisfaction of human wants. All healthcare institutions are also required to comply with this provision. The definition of institution under the draft law is meant to apply to the organised and unorganised sectors and to all persons whether they are 'employees' or not.

The first is to designate a person of senior rank, holding a permanent post as a Complaints Officer. Any person whose rights under the law have been violated or her/his legal heir or representative can complain to the Complaints Officer. The Complaints Officer would deal with complaints on a daily basis and would take a decision within 7 days except in the cases of emergency when he or she would have to settle the complaint in one day. As most discrimination arises out of fear and ignorance, the Complaints Officer must first counsel the violator and direct the person to undergo training and social service. Where violations continue, disciplinary action is to be initiated and in all cases the complainant is to be informed of the action taken.

The second is to have an HIV/AIDS Policy. To decrease the administrative burden on institutions and ensure that the policy is in keeping with the Bill, model policies will be notified in the schedule to the Bill by the National HIV/AIDS Authority and be automatically applicable to the concerned institution. The policy would have to be prominently displayed in the institution in English and the language used and understood by most persons in the institution. Copies of the policy will be available free of charge to all persons accessing or working in the institution and to members of the public for a nominal fee. Educational institution will provide learners and their parents or guardians with a copy of the policy on admission.

Duties of State

This Chapter specifies some important areas for the Government to play an important and direct role for a successful national strategy to tackle the epidemic. These include:

- Healthcare: ensuring the right of access to and equitable distribution of health facilities, goods and services including essential medicines and the preparation of a national public health strategy.
- Protected persons: Protect and promote the rights of HIV-positive persons and those associated with HIV and ensure their involvement in all aspects of the implementation of the Bill.
- Programme: creating a national framework to address HIV/AIDS integrating HIV/AIDS policy and programme responsibilities, across all branches of government. Ministries and departments, particularly, education, law and justice, science and research, employment and public service, welfare, social security and housing, health, treasury and finance and defence must integrate HIV and human rights in relevant plans and policies.
- International: This Chapter envisages a leading role for India in the global fight against HIV and requires the government to initiate interaction with other countries so that our policies and programmes remain updated and cutting edge, to promote HIV related issues at international forums and consider international guidelines on HIV/AIDS as they develop in our own policy and programming.

Special provisions

The HIV/AIDS Bill contains special provisions aimed at persons and communities that are disproportionately affected by the epidemic. It specifically recognises certain rights for women, children and persons in the care and custody of the State who due to social, economic, legal and other factors find themselves more vulnerable to HIV.

Women: Women are now the face of the HIV epidemic. Their vulnerability is manifold and institutionalised through laws that continue to discriminate and leave them open to violence and neglect despite constitutional guarantees of equality. The HIV/AIDS Bill 2007 attempts to recognise and address the underlying causes of this vulnerability. It suggests the registration of marriages, the provision of maintenance (in Chapter XV) and the right of residence of HIV-positive women as they are most often removed from the household and left destitute. The right of HIV-positive women who are pregnant to proper counselling and to decide on treatment options is specifically recognised. While the HIV/AIDS Bill cannot be the law through which women's rights are recognised and guaranteed, it tries to push the government towards a review of all laws and policies that leave women vulnerable to the HIV/AIDS epidemic. Any such review will show that the discrimination and violence, inequities of personal laws, lack of knowledge and education etc. are at the heart of the failure to protect women from HIV/AIDS. Any genuine public health initiative to control HIV/AIDS must ensure the empowerment of women.

Children and Young Persons: In India, marginalisation and paternalistic attitudes that disregard the needs, participation and privacy of children and young people and inhibit their decision-making abilities, are at the heart of their vulnerability to HIV/AIDS, neglect, abuse and destitution. Earlier chapters of the Bill protect children and young persons affected by HIV/AIDS from discrimination like being thrown out of schools while also recognising their right to access healthcare services and information in their own right. This is particularly important for street children and those living on their own to access services. This chapter provides for protection of inheritance and property rights and recognizes community-based alternatives to institutionalisation for vulnerable and affected children. It encourages parents and guardians to make living wills to ensure some system of support for young persons and children in times of extreme ill health. It also allows older siblings to take care of younger ones so as not to disrupt and institutionalise their lives. It also allows de facto guardians whether they are distant relatives or NGOs to take care of young persons and children while also providing a framework of their responsibilities towards them.

The Bill also provides for prisoners and detainees with specific access to risk reduction strategies, counselling and healthcare services. It also recognises the link between sexual violence and HIV and provides for counselling and treatment of sexual assault survivors while directing the Government to set up sexual assault crisis centres.

Special Procedures in Court

The Bill makes provisions for special procedures in courts in HIV-related matters or where protected persons are involved in cases. Stigma and discrimination contribute to a large extent to protected persons being unwilling to access justice through the legal system. The Bill provides various mechanisms allowing protected persons to conceal their identity in court proceedings such as 'suppression of identity' (i.e. substituting the name of the HIV-positive party in a court proceeding with a pseudonym), in camera trials (i.e. apart from the parties in the case no other persons or media would be allowed in court) and restraining any person from publishing any matter relating to the disclosure of identity. It also provides for expediting proceedings i.e. in HIV-related matters or those involving HIV-positive persons to be taken up on a priority basis and making it mandatory for courts to prepare a daily hearing timetable for the case with only summary proceedings for interlocutory matters.

The Bill also makes provision for courts to pass orders to rectify and prevent breaches of the Act and take measures including affirmative action, damages, withdrawal of breaches, suspend/revoke license, submit a matter to concerned police station in case of criminal proceedings.

In cases relating to employment discrimination, courts can order reinstatement, payment of salary, wages, benefits etc. that may have been lost due to the discrimination and can order damages. In matters relating to discrimination, the Bill shifts the burden of proof on the person alleged to have discriminated to show that either discrimination did not take place or the act was not discriminatory.

In the case of continuous violations of the provisions of the Bill by an institution, the courts may also order an audit of such institution to determine the causes of the continued violations and may pass orders or directions necessary to address these causes.

The emphasis in cases before courts will be on quick trials and creative redressal, which will address the root of the cases. Thus a case related to discrimination could see a court awarding damages or directing the person who discriminated to undergo sensitisation and training and doing community service.

Penalties

The penalties prescribed in the HIV/AIDS Bill for violation of its provisions are restricted to a few areas. As a social and rights based legislation, the Bill is designed to promote compliance rather penalisation. The Bill therefore prescribes penalties only for:

- Hate speech;
- Providing misleading information;
- Violation of the protection for risk reduction strategies by a public servant;
- Failure to comply with the orders of the Health Ombud; and
- Publishing information leading to the disclosure of the name, status or identity of a person involved in a legal matter in violation of court orders.