

**Human Immunodeficiency Virus / Acquired Immunodeficiency Syndrome
(Prevention & Control) Bill, 2014**

Written Submissions

Solidarity and Action Against The HIV Infection in India (SAATHII) is a non-profit organisation (Charitable Trust) registered in 2002 that has been working on access to health and human rights for populations affected by and vulnerable to HIV/AIDS. Headquartered in Chennai, SAATHII works in 14 states of India in partnership with national, state and district level units of the Departments of AIDS Control, and with multilateral donors such as WHO, UNICEF, UNDP and the Global Fund to Fight AIDS, Tuberculosis and Malaria.

We are concerned about some provisions in the Bill, which has been tabled in Rajya Sabha. We feel that these issues need to be addressed in order to truly protect the rights of those living with and affected by HIV and to ensure prevention, care and treatment for HIV positive people. The issues which need to be addressed in the Bill are explained below in detail.

We make the following recommendations to the Parliamentary Standing Committee on Health and Family Welfare, Government of India.

1) Definition of “protected person”

As per Chapter I, sl no (s) of the 2014 draft, “protected person” means a person who is –

(i) HIV positive; (ii) ordinarily living, residing or cohabiting with a person who is HIV positive person; or (iii) ordinarily lived, resided or cohabited with a person who is HIV positive

We learnt that the provisions made in the bill are for the well-being of the “protected person” but the definition that explains “protected person” doesn’t cover populations that are especially vulnerable to HIV and at risk of HIV transmission. Hence, **we propose** that “protected person” should include the following individuals:

(i) HIV positive persons; (ii) individuals who are vulnerable to, or at risk of exposure to HIV infection, including a partner of an HIV positive person; (iii) a commercial sex worker, an injecting drug user, a man who has sex with another man, and a transgender; (iv) a woman or a child, who is actually or perceived to be vulnerable to, or at risk of exposure to, HIV infection; and (v) a child affected by HIV

Reasons for including the above mentioned groups under the purview of “protected person”

a) A legislation that seeks to uphold the human rights of the stigmatized, marginalized and vulnerable sections of society should take a broader view of who it seeks to protect and should be as inclusive as possible in its coverage.

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b) Criminalization of certain risk behaviours (like drug use, commercial sex and non-heterosexual sex, e.g. Section 377 of the India Penal Code criminalises penile non-vaginal sex) becomes a barrier for injecting drug users, female sex workers, men who have sex with men and transgender people in accessing health services, thus increasing their vulnerability to HIV.

c) In case of children affected by HIV, stigma and discrimination impacts their access to education, nutrition and shelter.

d) Women affected by HIV are more likely to be victims of domestic violence and property denial. Studies¹ show that widows living with HIV face additional burden: 90% of them do not live with their husband's family and 79% of them reported being denied a share in their husband's property.

2) Welfare Measures

Section 15 under Chapter VII of the Bill proposes welfare measures in the interest of people living with HIV. It states that:

a) The Central Government and every State Government shall take measures to facilitate better access to welfare schemes to persons affected by HIV and AIDS.

b) Without prejudice to the provisions of sub-section (1), the Central and State Governments shall frame schemes to address the needs of HIV and AIDS affected women and children.

Issues:

a) Welfare measures in the proposed bill should cover all protected persons, as explained under the "definition of protected person".

b) The welfare measures should have flexible inclusion criteria for protected persons.

c) The process of inclusion in welfare measures should maintain confidentiality about the HIV status of the beneficiaries.

d) The welfare measures should be delivered within specific timelines.

We propose that:

a) There should be provision for a flexible documentation process for inclusion of protected persons in social welfare schemes. This will contribute in countering stigma and better access to the schemes.

b) There should be strict confidentiality norms for government officials at all levels to follow while awarding social welfare schemes to the protected persons.

¹ Pradhan, Basanta K. and R. Sundar, 2006, Gender Impact of HIV and AIDS, National Council of Applied Economics Research, New Delhi

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- c) There should be provision for government officials to provide active guidance to the applicants who may not be literate or possess all relevant identity documents.
- d) Welfare schemes should specifically mention in the eligibility list people infected or affected by HIV or those particularly vulnerable to HIV – this will facilitate better compliance to provisions for protected persons at the ground level.
- e) There should be mention of specific timeline for delivery of welfare measures to protected persons.

3) Special procedure in court

Section 34 (2) under Chapter XII of the proposed draft explains that:

In any legal proceeding concerning or relating to an HIV positive person, the court shall take up and dispose off the proceeding on priority basis

Issues:

- a) The provision for special procedure in court should be applicable for all protected persons.
- b) Currently, women, people living with disability, individuals belonging to SC / ST or with annual income below Rs.100,000 are among the groups eligible for free legal aid and mediation services through the National, State and District Legal services Authorities. All protected persons should be brought into the purview of the Legal Services Act.

We propose that:

- a) *Priority basis* in the draft bill should be such that the time period for disposing off the cases of HIV positive litigants and other protected persons is specified.
- b) Pending cases of HIV positive litigants should be disposed off on an immediate basis by Lok Adalats or Alternative Disputes Redressal forum.
- c) Domestic violence and property rights violations faced by women living with and affected by HIV should be given due preference.
- d) There should be provision for inclusion of HIV positive people and all other protected persons within the scope of the Legal Services Act.
- e) The bill should emphasize sensitization of legal services authorities and other legal and judicial stakeholders on the health issues concerning all protected persons.

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