

Minutes of 1st Consultation Meeting for finalizing Draft Rules for HIV and AIDS (Prevention & Control) Act, 2017

The 1st State Consultation Meeting for finalizing Draft Rules for HIV and AIDS (Prevention & Control) Act, 2017 was conducted on 5th September 2018 at 11 AM in the Committee room of Punjab SACS under the Chairmanship of Dr Vanita Gupta, Project Director, Chandigarh SACS

The participants were as follows:

1. Ms. Garima , Consultant (IEC & Mainstreaming), NACO
2. Mr. Rajeshwar Singh, Law Officer, State Legal Authority Chandigarh
3. Mr. Yagyawant Singh, Representative from Chandigarh Police
4. Mr. Ram Phal Kataria, Labour Inspector, Department of Labour Welfare, UT, Chandigarh
5. Mr. Pranshu Kaushik, Representative from CII Chandigarh Chapter
6. Prof. H.K. Chopra, Chairperson Department of Psychology, Panjab University
7. Ms. Saroj Bala, Programme Manager, NGO SOSVA
8. Ms. Vijayata Sharma, Advocate, State Legal Services Authority Chandigarh
9. Mr. Neeraj Pathak, Sr. Programme Manager HLFPT
10. Mr. Vishal Acharya ,Regional Coordinator (IEC &MS),NACO
11. Representatives of other department of Punjab invited by Punjab SACS

Dr Vanita Gupta, Project Director, Chandigarh SACS welcome and informed all the participants that in response to the HIV and AIDS Act, 2017 the Central Government has framed draft rules. The States and UTs have to frame their rules as required under Section 49. Further, she added that Chandigarh has to frame the rules for which the model rules drafted by the Centre may be adopted or amended as per requirement and for this purpose the consultation is being conducted.

Dr Manpreet Chhatwal, APD, PSACS elaborated on the objectives of the consultation. She said the Act will address stigma and discrimination faced by PLHIV, create enabling environment for enhancing access to services and safeguard rights on PLHIVs.

Presentation and deliberation on HIV and AIDS (Prevention & Control) Act, 2017 and Model State Rules:-

Mrs. Garima, Consultant, NACO explained the Act and Draft Model State Rules through presentation. She informed that state has to frame draft rules under section 49 i.e. 49 (A) Sections 23, 24 and 25 of the Human Immunodeficiency Virus And Acquired Immune Deficiency Syndrome (Prevention And Control) Act, 2017 (16 of 2017), to provide for the appointment, terms and conditions, qualifications and manner of inquiry by Ombudsman.

3. Appointment & Jurisdiction of Ombudsman

It was proposed that for Chandigarh one Ombudsmen will be appointed for one hundred and eighty days from the date of commencement of the Act.

4. Qualification and experience of Ombudsman

Any retired person who has been either a District or Sessions Judge, or who has minimum ten years working experience or extensive knowledge in matters relating to public health or health delivery systems, or is a qualified healthcare provider who is a physician with a minimum of ten years work experience.

Provided that where a person other than a retired District or Session's Judge is appointed as an Ombudsman, the State Government shall provide him with assistance from the Department of Law and Justice on legal issues that may arise in the course of his work, if so requested.

-Capacity Building and sensitisation within thirty days of appointing the Ombudsman

5. Terms and conditions of services of Ombudsman

(1) A person appointed as Ombudsman shall be conferred the rank of Director, Health Services.

(2) The Ombudsman shall carry out his functions as an officer of the Department of Law and Justice.

(3) The Ombudsman shall be eligible for salary and allowances at such rates as the rank he holds in the State Government or according to the applicable Civil Service Rules.

(4) The salary and allowances of the Ombudsman shall be transferred from the Department of Health Services to the Department of Law and Justice.

(5) The Ombudsman shall hold office for a term of three years, and shall be eligible for reappointment for another three years

Provided that no Ombudsman shall hold office as such after he has attained the age of seventy years.

(6) The Ombudsman may relinquish office by giving written notice of not less than three months to the State Government.

(7) The State Government shall remove an Ombudsman from office who:

-is, or at any time has been, adjudged insolvent;

-has become physically or mentally incapable of acting as Ombudsman;

-has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the State Government likely to prejudicially affect such person's functions as the Ombudsman; or

-has so abused the position as to render continuation in office detrimental to the public interest.

-Provided that an Ombudsman shall not be removed from office without getting a reasonable opportunity of being heard in the matter.

6. Manner of inquiring into complaints by Ombudsman

-The Ombudsman shall act in an objective and independent manner when inquiring into complaints made under the Act

-While inquiring into complaints under the Act, the Ombudsman shall not be bound by any rules of evidence and may follow such procedure as he considers just and proper.

-No cross-examination shall be permitted in inquiries before the Ombudsman.

-The Ombudsman may, in the interests of justice, take the assistance of experts, including protected persons and persons vulnerable to HIV, and persons working in the fields of HIV and AIDS, public health or health delivery systems.

-The Ombudsman shall have the power to pass interim orders in cases of medical emergency without hearing the parties.

-The Ombudsman shall have the power to pass orders, including to, withdrawal and rectification of the violation, counselling, social service etc.

-The Ombudsman shall inform the complainant of the action taken.

-The Ombudsman shall inform the parties to the complaint of their right to seek judicial review from the Ombudsman's order.

Timelines decided were:

- 1) Ombudsman is to be appointed within 180 days of commencement of Act.
- 2) Minutes of meeting to be finalized 10th September 2018
- 3) Act and Draft state rules to be shared with all the participants and other as required for their inputs and inputs to be called by 15th September
- 4) Committee of 8 to 10 officers to be constituted to analyze the inputs final draft of model state rules
- 5) Final state rules to be submitted to Government for notification in 2 months

Promotion & Awareness:

- Material to be developed in local language;
- Generating toll-free helpline number for Act information
- Display of IEC material in all Health facilities, Railway Stations, Bus Stands, School, Colleges, SLSA office, publicity through Folk Media, Radio, TV, Websites of SLSA-Law-Health Department, social media and; sensitization of positive network groups.

It was also decided that IEC division, NACO will share the copy of draft state rules prepared by other states for reference.

It was decided that the copy of draft state rules will be uploaded on Chandigarh SACS website requesting for inputs from all the committee members as well as the community leaders, General public within 15 days from the date it is uploaded.

A committee comprising of six to seven members will also be formulated to work on the draft state rules and after the rules are formulated it would be submitted to NACO for approval.