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புதுச்சேரி மாநில அரசிதழ்
La Gazette de L'État de Poudouchéry
The Gazette of Puducherry

PART - II

சிறப்பு வெளியீடு **EXTRAORDINAIRE** **EXTRAORDINARY**
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GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (HEALTH)

(G.O. Ms. No. 76, Puducherry, dated 03rd October 2022)

NOTIFICATION

Approval of the Hon'ble Lieutenant-Governor of Puducherry is hereby accorded to notify "The Puducherry Human Immunodeficiency Virus And Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceedings) Rules, 2022", for implementation in the Union territory of Puducherry, as detailed in the Annexure.

2. This issues with the concurrence of the Finance Department vide their ID. No. 0172/FD/F3/2022-23, dated 01-06-2022.

(By order of the Lieutenant-Governor)

A. PUNITHAMARY,
Under Secretary to Government (Health).

[1005]

**THE PUDUCHERRY HUMAN IMMUNODEFICIENCY VIRUS (HIV)
AND ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)
(OMBUDSMAN AND LEGAL PROCEEDINGS) RULES, 2022**

In exercise of the powers conferred by section 49 read with sections 23, 24 and 25 of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, (Act No. 16 of 2017), the Lieutenant-Governor, Puducherry, hereby makes the following rules to provide for the appointment, terms and conditions, qualifications and manner of inquiry by Ombudsman, namely:-

1. Short title, extent and commencement.— (i) These rules may be called the ‘Puducherry Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) (Ombudsman and Legal Proceedings) Rules, 2022’.

(ii) These rules shall extend to the whole of the Union territory of Puducherry.

(iii) These rules shall come into force on and from the date of its publication in the Official Gazette.

2. Definitions.— (i) In these rules, unless the context otherwise requires,-

(a) “Act” means, the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (No. 16 of 2017);

(b) “Appropriate Authority” mean, unless otherwise notified, the National AIDS Control Organization (NACO) in case of the Central Government and the Secretary (Health) to Government of Puducherry in the case of the Government of Puducherry;

(c) “ART” means, Anti-Retroviral Therapy;

(d) “ARTC” means, Anti-Retroviral Therapy Centre;

(e) “CWC” means, Child Welfare Committee, constituted under section 27 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (Central Act No. 2 of 2016);

- (f) "CLHIV" means, Children Living with HIV/AIDS;
- (g) "Complaint" means, any information or grievance made in a manner as mentioned in rule 7 to the Ombudsman or to the Competent Court as mentioned in rule 10 of these Rules;
- (h) "District" means, Revenue Districts of the Union territory of Puducherry;
- (i) "FIR" means, First Information Report;
- (j) "Form" means, the Form annexed to these rules and such Form as may be notified from time to time by Government of Puducherry, to be used for the purposes of the Act and these Rules;
- (k) "F-ICTC" means, Facility Integrated Counseling and Testing Centre;
- (l) "Government of Puducherry" mean, the Administrator of the Union territory of Puducherry appointed by the President under Article 239 of the Constitution;
- (m) "ICTC" means, Integrated Counselling and Testing Centre;
- (n) "IEC" means, Information, Education and Communication;
- (o) "LAC" means, Legal Aid Clinic functioning at ART Centre;
- (p) "L-ARTC" means, Link ARTC;
- (q) "NACO" means, National AIDS Control Organization;
- (r) "NGO" means, Non-Governmental Organization;
- (s) "OI" means, Opportunistic Infections like tuberculosis, diarrhea, *etc.*;
- (t) "Ombudsman" means, an Officer appointed by the Government of Puducherry under section 23 of the Act;
- (u) "PACS" means, Pondicherry AIDS Control Society;
- (v) "PLHIV" means, People Living with HIV/AIDS;
- (w) "Protected Person" mean, the HIV infected and affected who cohabit and reside with HIV positive person;

(x) "Rules" means, 'The Puducherry Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Ombudsman and Legal Proceedings) Rules, 2022';

(y) "Section" means, section of the Act;

(z) "Stakeholders" are agencies, organizations and persons who are involved in the prevention, treatment, care and support programmes or who are directly or indirectly contributing to programmes of PACS;

(aa) "UTPCPS" means, Union territory of Puducherry Child Protection Society;

(ii) All other words and expressions used in these rules but, not defined shall have the meaning respectively assigned to them in the Act.

3. Appointment of Ombudsman.— (i) The Government of Puducherry shall appoint any person who is a retired 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, or is a person working in an Non-Governmental Organization with similar experience and knowledge as an Ombudsman for whole or part of the Union territory of Puducherry;

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

(ii) The Capacity Building and sensitization shall be done by PACS within thirty days of appointing the Ombudsman. Whenever a new Officer is assigned as charge of Ombudsman, necessary orientation shall be provided.

4. Terms and conditions of Ombudsman.— (i) 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.

(ii) The Ombudsman shall be paid the nominal remunerations and other expenses for office maintenance from the Department of Health and Family Welfare Services, Puducherry, as follows:-

Sl. No.	Particulars of sittings	Sitting fees
(1)	(2)	(3)
1	4 to 5 Sittings per month preferably on Monday	₹ 3,500 per sitting.
2	Travelling Allowance (TA)	Travelling Allowance or A/C car will be provided during the sittings and for to and fro journeys between the place of residence and Office of Ombudsman (ART Centre-IGMCRI, Puducherry). If, own car is utilized for the above purpose, he shall be entitled to claim mileage allowance for the road journey as per the Class-I Officers of the Government of Puducherry.
3	Dearness Allowance (DA)	As applicable to the Class-I Officer of the Government of Puducherry.

(iii) As and when the grievance/case is brought to the Ombudsman by the complainant, the Ombudsman may undertake outstation travel in consultation with Project Director, PACS. Accordingly, actual TA/DA will be paid to the Ombudsman as per entitlement to Class-I Officer under TA/DA Rules in force in the Union territory of Puducherry.

(iv) The Ombudsman may get expert opinion in writing on the medical aspects of the complaint from the Medical Officer in-charge in the ARTC and on the administrative aspects from the Project Director, PACS.

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

(vi) The Government of Puducherry shall remove an Ombudsman from office who —

- (i) is, or at any time has been, adjudged insolvent;
- (ii) has become physically or mentally incapable of acting as Ombudsman;
- (iii) has been convicted of any offence or has acquired such financial or other interest which is in the opinion of the Government of Puducherry likely to prejudicially affect such person's functions as the Ombudsman; or
- (iv) has so abused the position as to render continuation in office detrimental to the public interest.

5. Responsibilities of Ombudsman.—

(1) The Ombudsman shall —

- (i) take cognizance of complaints and conduct inquiry into the violations of the provisions of the Act, in relation to acts of discrimination mentioned in section 3 of the Act;
- (ii) adjudicate and dispose of complaint of violations in relation to the provisions of the Act and these rules;
- (iii) ensure that the rights and entitlements of CLHIV/PLHIV or children/persons affected by HIV/AIDS are protected and issue necessary advice to authorities;
- (iv) transfer the complaints or matters concerning CLHIV/PLHIV or children/persons affected by HIV/AIDS, if needed, to other Competent Authorities like CWC and UTPCPS;
- (v) refer cases to Judicial Magistrate as defined in section 41 of Act dealing with the non-compliance of provisions of Act and these rules;
- (vi) take *suo moto* cognizance of cases and reaching out to CLHIV/PLHIV or children/persons affected by HIV/AIDS;

- (vii) deal with cases referred by the Government or other authorities concerning HIV/AIDS and coordinate with appropriate Government Departments, Agencies, Corporations, Societies and other Autonomous Bodies involved in the welfare of CLHIV/PLHIV or children/persons affected by HIV/AIDS; and
- (viii) recommend the Police Authorities for registration of FIR for offences committed against any CLHIV/PLHIV or children/persons affected by HIV/AIDS.

6. Inquiring by Ombudsman into complaints.— (i) The Ombudsman shall act in an objective and independent manner when inquiry into complaints is made under the Act and these rules;-

(a) On receipt of a complaint or while taking *Suo Moto* cognizance of the complaint, the Ombudsman shall hold an inquiry in such manner as deemed in order to ascertain the facts of the cases;

(b) The Ombudsman shall conduct the inquiry in a friendly manner and shall not use adversarial or accusatory words that adversely impact the dignity or self-esteem of the complainant/protected person especially if, they are infected/affected by HIV/AIDS;

(c) The Ombudsman shall be given equal and reasonable opportunity to be heard to both the complainant and the respondent/accused during inquiries satisfying the basic principles of natural justice and in appropriate cases, may receive evidence on affidavits and pass appropriate orders;

(d) The Ombudsman shall have the power to pass interim orders in the complaints relating to medical emergency for admissions, operations or treatment and to use the provisions of universal precautions;

(e) The Ombudsman shall, within a period of thirty days of the receipt of the complaint, pass such order, as he deems fit, giving reasons thereon. The period for deciding on the complaint shall be extended for further period of thirty days or more with the reasons that shall be recorded;

(f) The Ombudsman shall preserve strict confidentiality of the protected person while issuing the orders;

(g) The Ombudsman shall provide all parties to the complaint with copies of the written order within 7 days of deciding on the complaint;

(h) The Ombudsman shall inform the parties to the complaint of their right to seek Judicial review from the Ombudsman's Order;

(i) The Ombudsman shall submit status report on grievance received and redressed to the Project Director, PACS on quarterly basis;

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

7. Manner of making complaints to Ombudsman.— (i) Any person may make a complaint to the Ombudsman within whose jurisdiction, the alleged violation took place, within three months from the date that the person making the complaint became aware of the alleged violation of the Act and these rules;

Provided that the Ombudsman may, for reasons to be recorded in writing, extend the time-limit to make the complaint by a further period of three months, if, he is satisfied that circumstances prevented the complainant from making the complaint within the stipulated period;

(ii) All complaints shall be made to the Ombudsman in writing in accordance to the Form attached as Appendix to these rules;

Provided that where a complaint cannot be made in writing, the Ombudsman shall render all reasonable assistance to the complainant to reduce the complaint in writing;

(iii) In case of medical emergency, the Ombudsman or his assistant may visit the complainant at the location of the alleged violation or any other convenient place to enable written documentation of the complaint;

(iv) With written consent of protected person, representatives of Network/NGOs and Government Officers may complain to the Ombudsman on behalf of the protected person if, he/she fears of disclosure of his/her HIV status.

(v) The Ombudsman may receive complaints made in person or *via* post or telephonically, or through any other electronic forms like e-mail or through the Ombudsman's website created by PACS;

Provided that the Government of Puducherry shall within seven days of the appointment of the Ombudsman establish a website of the Ombudsman.

8. Manner of maintaining records by Ombudsman.— (i) The Ombudsman shall -

(a) on receiving the complaint, the Ombudsman shall immediately record it by assigning a unique sequential complaint number in a register maintained solely for that purpose in physical or computerized Form and record the time of the complaint;

(b) on receiving the complaint, acknowledge it including by sending the unique sequential complaint number by SMS or e-mail to the complainant where available;

(c) record the time of the complaint and the action taken on the complaint in the register; and

(d) maintain the register of complaints in a manner that ensures confidentiality of data; .

(ii) The Ombudsman shall maintain the register of complaints in a manner that ensures confidentiality and also shall comply with data protection measures in accordance with section 11 of the Act.

9. Orders passed by Ombudsman.— (i) The Ombudsman on being satisfied through the inquiry, may pass one or more of the following orders, namely:

(a) Pass orders for the withdrawal and rectification of the violation;

(b) 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;

(c) Direct any person who has committed the violation to make a regular report to the Ombudsman regarding implementation of the Ombudsman's order;

(d) Make such orders for reasonable costs and such costs shall be utilized for the welfare of HIV positive people;

(e) Issue, as the case may be, directions to healthcare providers or persons or institutions or facilities in whose care the CLHIV or PLHIV is placed, regarding care, protection and rehabilitation of the said person, including directions relating to immediate treatment and services such as medical attention, therapy, psychiatric and psychological support including the need-based counselling, occupational therapy, *etc.*

(f) Any other order as deemed fit.

10. Legal Proceedings in Court – Manner of recording pseudonym for the suppression of identity.— (a) In any legal proceeding where a Court, pursuant to clause(a) of sub-section (1) of section 34 of the Act directs, on an application made by a protected person that in the interests of justice, the proceedings or any part thereof be conducted by suppressing the identity of such protected person, the Principal Judge/Registrar of the Court shall direct all parties involved to:

- (i) File one copy of the documents bearing the full name, identity and identifying details of the parties concerned before the Court, which shall be kept in a sealed cover and in safe custody with the Principal Judge/Registrar of the Court;
- (ii) Serve one copy of documents bearing the full name, identity and identifying details of the parties concerned upon other parties in the proceeding with a requirement to ensure that the full name and identity of the parties concerned are kept confidential;

(b) The Principal Judge/Registrar of the Court shall place the sealed-cover documents before the Court on the first date of the legal proceeding is listed for hearing before the Court and if so, required by the Court;

(c) The identities of the protected person involved in the legal proceeding and their identifying details shall be displayed in pseudonym in all documentation generated by the Court in relation to the legal proceeding, including listing of the case on the Court Board, interim orders and final judgments;

(d) The identity and identifying details of the protected person involved in the legal proceeding shall not be revealed by any person or their representatives or the assistants and staff of the Court;

Exception: Where, in the interest of justice the name and identity of the protected person needs to be revealed to a third party; it shall only be allowed by an order of the Court;

(e) Printing or publishing any matter in relation to the afore-mentioned legal proceedings concerning a protected person in electronic or any other form, shall be lawful only if, the same is done by ensuring the suppression of identities of the parties in the legal proceeding;

(f) In any legal proceeding before it under the Act, the Court shall comply with data protection measures in accordance with section 11 of the Act;

(g) The Ombudsman also, while holding the inquiry, shall protect the identity of the protected person by following above-mentioned provisions.

11. Disseminate information on Ombudsman.— PACS shall disseminate information to general public about the Ombudsman, including Ombudsman's jurisdiction, role, functioning and procedures of grievance redressal mechanism through IEC or PACS website.

12. Protection of action taken in good faith.— No suit, prosecution or other legal proceeding shall lie against the Ombudsman or Officer of the Government or any person acting under the directions of the Ombudsman or Government, as the case may be, in respect of anything which is done in good faith or intended to be done in pursuance of the Act or of any rules made thereunder.

13. Non-Compliance of the Act and Rules.— Ombudsman or healthcare provider or institution who fails to comply with the provisions of the Act and the rules framed thereunder, the Government of Puducherry shall take action under the provisions of the Act against such officer or healthcare provider or institution after due inquiry and simultaneously make alternative arrangements to discharge the functions for effective and uninterrupted implementation of the Act and these rules.

APPENDIX

Form for making complaint to the Ombudsman (under rule 7)***For Office Use only:***

1. Unique Complaint Number :
2. In-Referral: Self/ARTC/L-ARTC/LAC/NGO/Any other network :
.....

By the Complainant:

Date :

3. Name :
4. Phone/Mobile No. :
5. E-mail :
6. Fax :
7. Address for communication :
8. Complaint :
9. Date of incident :
10. Place of incident :
11. Description of incident :
12. Person/Institution responsible :
for the incident

*Signature/Thumb Impression of Complainant**

- * Where the complaint is received telephonically and reduced to writing by the Ombudsman, the Ombudsman shall sign the Form.