

FIFTEENTH REPORT
STANDING COMMITTEE ON SOCIAL JUSTICE
AND EMPOWERMENT
(2014-2015)

(SIXTEENTH LOK SABHA)

MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
(DEPARTMENT OF EMPOWERMENT OF
PERSONS WITH DISABILITIES)

THE RIGHTS OF PERSONS WITH
DISABILITIES BILL, 2014

*Presented to Lok Sabha on 7.5.2015
Laid in Rajya Sabha on 7.5.2015*



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COMPOSITION OF THE STANDING COMMITTEE ON SOCIAL JUSTICE
AND EMPOWERMENT (2014-2015)

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PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Social Justice and Empowerment (2014-15) having been authorized by the Committee to present the Report on its behalf, do present this Fifteenth Report of the Committee on "The Rights of Persons with Disabilities Bill, 2014".

2. The Bill was introduced in Rajya Sabha on 7.2.2014 and was referred to the Standing Committee on Social Justice and Empowerment on 24.2.2014 for examination and Report. The examination and Report on the Bill could not be completed due to announcement of General Elections, 2014 and subsequently the dissolution of 15th Lok Sabha. The Bill was again re-referred to the Committee by the Hon'ble Speaker, Lok Sabha on 16.9.2014 under Rule 331E(b) of the Rules of procedure and Conduct of Business in Lok Sabha for examination and Report.

3. The Committee issued a Press Release inviting memoranda/views from individuals and other stakeholders. In response, a large number of individuals/organizations/stakeholders/NGOs submitted their representations to the Committee. The Committee threadbare considered all these representations/submissions.

4. The Committee held six sittings during the course of examination of the Bill, *i.e.*, on 27.11.2014, 2.12.2014, 3.12.2014, 22.12.2014, 9.4.2015 and 5.5.2015.

5. The Committee considered the draft Report and adopted the same on 5th May, 2015.

6. The Committee relied on the following documents in finalizing the Report:—

- (i) The Rights of Persons with Disabilities Bill, 2014 alongwith amendments proposed in Rajya Sabha.
- (ii) Report on United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
- (iii) Background Notes on the Bill received from the Ministry of Social Justice and Empowerment (Department of Empowerment of Persons with Disabilities).
- (iv) Presentation, clarifications, briefing and oral evidence of the Ministry of Social Justice and Empowerment (Department of Empowerment of Persons with Disabilities) and State Governments of Gujarat and Andhra Pradesh.

- (v) Memoranda received on the Bill from various institutes/bodies/associations/organizations/experts and replies of the Ministries on the memoranda selected by the Committee for examination.
- (vi) NGOs/stakeholders/experts who appeared before the Committee to express their views on the Bill in Delhi were:—
 1. Disability Rights Group, New Delhi
 2. National Federation of the Blind, New Delhi
 3. Rakshak Foundation, New Delhi
 4. PRS Legislative Research, New Delhi
 5. Action for Autism, New Delhi
 6. The Leprosy Mission Trust India, New Delhi
 7. Human Rights Law Network, New Delhi
 8. Tamana, New Delhi
 9. Action for Mental Illness, Bengaluru
 10. Council for Social Development, Hyderabad
 11. National Human Rights Commission, New Delhi
 12. Persons with Disabilities Association, Chandigarh
- (vii) Replies to the questions/queries from the Ministries of Social Justice and Empowerment (Department of Empowerment of Persons with Disabilities), Personnel, Public Grievances and Pensions (Department of Personnel and Training) and Law and Justice (Legislative Department).

7. The Committee also undertook on-the-spot study visit to Bengaluru, Chennai and Panaji in January, 2015 and interacted with representatives of Government of Karnataka, NGOs/organizations (Disability Rights Alliance, Tamil Nadu) on the Bill. The Committee also visited National Institute for Empowerment of Persons with Multiple Disabilities (NIEPMD), Muttukadu, Tamil Nadu.

The Committee during their study visit to Chennai in January, 2015 also extensively heard the views of the representatives of the following organizations:—

- (i) Women's Forum
- (ii) Taratdac
- (iii) Wecan

(vi)

- (iv) Anbagam
- (v) Anpalagan
- (vi) Vasantham
- (vii) Udavi Karankal
- (viii) Vijay Human
- (ix) MNC
- (x) Tamil Nadu Federation

8. On behalf of the Committee, I would like to acknowledge with thanks the contributions made by not only those who deposed before the Committee but also those who gave their valuable suggestions to the Committee through written submissions. The Committee have immensely benefitted by their views.

9. The Committee would like to dedicate the following inspiring quote by Oscar Pistorius and remind to all those specially abled people in the country, particularly those who took all the pain to appear before the Committee either in New Delhi or in Chennai:—

“You’re not disabled by the disabilities you have, you are able by the abilities you have” – Oscar Pistorius (South African sprint runner, also known as ‘fastest man on no legs’, was also a standout athlete at Olympics, 2012).

NEW DELHI;
05 May, 2015
15 Vaisakha, 1937 (Saka)

RAMESH BAIS,
Chairman,
Standing Committee on
Social Justice and Empowerment.

REPORT

PART A

INTRODUCTION

1.1 The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. The Act defines Persons with Disabilities as those having not less than forty per cent disability and identified seven categories of disabilities, namely, blindness, low vision, hearing impairment, locomotor disability, mental retardation, mental illness and leprosy-cured.

1.2 In recent times, the conceptual understanding of the rights of persons with disabilities has become more clear and there has been worldwide change in approach to handle the issues concerning persons with disabilities. Responses to disability too have changed, prompted largely by the self-organization people with disabilities and by the growing tendency to see disability as a human rights issue. National and international initiatives—such as United Nations Standard Rules on the Equalization of Opportunities of persons with Disabilities have incorporated the human rights of people with disabilities, culminating in 2006 with the adoption of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) laying down the principles to be followed by the States Parties for empowerment of persons with disabilities. India signed the said Convention and subsequently ratified the same on the 1st day of October, 2007. The Convention came into effect on 3rd May, 2008. India being a signatory to the Convention, has an international obligation to comply with the provisions of the said Convention.

Convention on the Rights of Persons with Disabilities (CRPD)

1.3 Convention on the Rights of Persons with Disabilities is the most recent and the most extensive recognition of the human rights of persons with disabilities and outlines the civil, cultural, political, social, and economic rights of persons with disabilities. Its purpose is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by people with disabilities and to promote respect for their inherent dignity”. The CRPD applies human rights to

disability, thus making general human rights specific to persons with disabilities and clarifying existing international law regarding disability. The Preamble to the CRPD acknowledges that disability is “an evolving concept”, but also stresses that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others”.

Article 3 of the CRPD outlines the following general principles:—

1. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices and independence of persons;
2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women; and
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

1. Constitutional Provisions

1.4 Article 39A deals with principles of policy to be followed by the State with regard to securing equal justice and free legal aid to all citizens. It says, “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

Article 41 prescribes that, “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.”

Further, Article 243G regarding powers, authority and responsibilities of Panchayats states that “Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such

powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- (a) The preparation of plans for economic development and social justice;
- (b) The implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

One of the matters listed in the Eleventh Schedule is social welfare, including welfare of the handicapped and mentally retarded. (26)

Again, Article 243W regarding powers, authority and responsibilities of Municipalities, etc. stipulates that Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow:

- (a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—
 - (i) the preparation of plans for economic development and social justice;
 - (ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;
- (b) the Committee with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

One of the matters listed in the Twelfth Schedule is safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded. (9)

Existing policies and Acts for welfare of PwDs in some neighbouring SAARC countries:

1.5 **Pakistan** is following the “National Policy for Persons with Disabilities, 2002” and has National Policy for PwDs, 2002 and National

Plan of Action, 2006 to implement the National Policy for PwDs. The policy document is based on 5 guiding principles basically focussing on non-discrimination, constitutional guarantees, right based approach and active collaboration amongst all stakeholders. The areas of focus are prevention and early intervention, counseling, education and training. It provides for 2% reservation for PwDs through disabled persons Employment and Rehabilitation Ordinance, 1981. Besides providing for incentives to employer to promote gainful employment of PwDs. It also covers other aspects such as sports and recreation, advocacy and mass awareness, research and development etc. However the provisions are general policy statements and not provides for any punitive measures for violation.

1.6 **Nepal** has an Act “Protection and Welfare of Disabled Persons Act, 2039 (1982) and “The Protection and welfare of the Disabled Persons Rules”. The Rules provides for a disability determination committee for identification of PwDs, function and duties of social welfare officers for protecting the interest of PwDs etc. The Protection and Welfare of the Disabled Persons Act, 1982 is the main governing Act in Nepal.

1.7 **Maldives** has passed Disability Act in 2010. It provides for legal assistance to PwDs for exercising their legal rights. It guarantees Right to own property, Right to employment and education without discrimination, Right to avail medical fitment. It also mandates the Government to take necessary measures to protect the PwDs from abuse and discrimination, assistive devices/equipment free of cost to economically weaker groups extra care and protection at situation basis.

1.8 **Sri Lanka** is following an Act of 1996 “Protection of the Rights of Persons with Disabilities Act. No. 28 of 1996”. It provides for establishment of National Council of PwDs. The functions of the Council are to advice the Government on promotion of welfare, protection and advancement of Rights of PwDs, to coordinate with all Government agencies including all local authorities, to recommend, initiate and implement schemes for welfare and protection of the Rights of PwD, to maintain accurate statistics, establish and maintain rehabilitation centres etc. Any volunteer organization working in the field is required to be registered with this Council. It also provides for panel provisions for violation of the provisions such as failure to furnish information and compliance to the Council through a Court of Magistrate.

Journey of current legislation relating to Rights of Persons With Disabilities:

1.9 In 2010, an Expert Committee, under the Chairmanship of Dr. Sudha Kaul, Vice-Chairperson, Indian Institute of Cerebral Palsy, Kolkata, submitted its report on 30 June, 2011 suggesting a draft Bill

relating to the Rights of Persons with Disabilities. The draft Bill was extensively debated and discussed at various levels involving State Governments and Union Territories. The Committee held several State Level consultations at 30 places (28 States and 2 UTs) and also a National Consultation involving civil society representatives and consultations with legal experts.

1.10 On the basis of the comments received from Central Ministries/ Departments as also the State Governments, the draft RPwD Bill was further revised and subsequently finalized in consultations with Ministry of Law and Justice (Legislative Department). The Union Cabinet considered the proposal of the Ministry and approved the proposed RPwD Bill, 2013 with the modification regarding exemption of National Fund from the purview of income tax (deletion of clause 102).

1.11 The Ministry further met the representatives of the cross disability groups under the banner of Joint Disabilities Forum. The issues raised by the cross disability Joint Disabilities Forum were discussed in detail in the National Advisory Council on 29.01.2014. Accordingly, the revised proposal to incorporate these amendments in the Bill was approved by the Cabinet on 06.02.2014.

1.12 The Bill was introduced in Rajya Sabha on 07.02.2014 and the amendments thereto were circulated in the Rajya Sabha on 11.02.2014. The Bill was, thereafter, referred to the Standing Committee on Social Justice and Empowerment for examination and report. However, due to dissolution of 15th Lok Sabha, the Bill was re-referred to the Standing Committee on Social Justice and Empowerment (2014-15) in the 16th Lok Sabha.

The salient features of the Rights of Persons with Disabilities Bill, 2014, *inter alia*, are:

- (i) Nineteen specified disabilities have been defined;
- (ii) the persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc. with others;
- (iii) duties and responsibilities of the appropriate Government have been enumerated;
- (iv) all educational institutions funded by appropriate Government shall provide inclusive education to the children with disabilities;
- (v) a National Fund is proposed to provide financial support to persons with disabilities;

- (vi) stakeholders' participation in the policy-making through Central and State Advisory Boards;
- (vii) increase in reservation in posts from existing three per cent. to five per cent. in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions;
- (viii) setting up of National Commission and State Commission to act as Grievance Redressal Mechanism, monitor implementation of proposed legislation replacing the Chief Commissioner and State Commissioners for persons with disabilities respectively;
- (ix) guidelines to be issued by the Central Government for issuance of certificates of specified disabilities;
- (x) penalties for offences committed against persons with disabilities; and
- (xi) Court of Session to be designated as special Court by the State Government in every district to try offences.

Persons with Disabilities in India

1.13 According to census 2011, there are 2.68 crore Persons with Disabilities (PwDs) in India who constitute 2.21% of the total population. Among these 1.50 crore are male and 1.18 crore are female. These include persons with visual, hearing, speech and locomotor disabilities; mental illness, mental retardation, multiple disabilities and other disabilities. The disability-wise details are as given below:

Persons with Disabilities by Type of Disability Census : 2011

Type of Disability	Persons	Male	Female
Total	2,68,10,557	1,49,86,202	1,18,24,355
In seeing	50,32,463	26,38,516	23,93,947
In hearing	50,71,007	26,77,544	23,93,463
In speech	19,98,535	11,22,896	8,75,639
In movement	54,36,604	33,70,374	20,66,230
Mental Retardation	15,05,624	8,70,708	6,34,916
Mental illness	7,22,826	4,15,732	3,07,094
Any other	49,27,011	27,27,828	21,99,183
Multiple disability	21,16,487	11,62,604	9,53,883

1.14 The Committee are of the view that the disabled group in our country still remains an invisible group in the mind of policy-makers. A vast number of the disabled are excluded from the existing services and programmes. No country or society can ever progress or develop ignoring needs and aspirations of millions of its people. The Committee are of the considered opinion that bringing such a comprehensive and landmark legislation will not only ameliorate the lives of these people but also empower them to lead a dignified life. The Committee appreciate the Ministry for this historic piece of legislation, which to a great extent, will usher a new era in the lives of PwDs as they will be no more on the charity of the people, society and government and will have all those rights which other citizens of the country possess.

PART B

ANALYSIS OF THE BILL

The Schedule

2.1 The Target Groups, as specified by the Department for Empowerment of Persons with Disabilities, have been defined in Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995, (also referred to as PwD Act, 1995). The PwD Act, 1995 defines “Person with Disability” as a person suffering from not less than 40% of any disability as certified by a medical authority. The disabilities being (a) blindness (b) low vision (c) leprosy cured (d) hearing impairment (e) locomotor disability (f) mental illness (g) mental retardation. Cerebral palsy has been defined but is part of locomotor disability.

2.2 The present Bill includes the following 19 disabilities in the Schedule to the Bill.

- (1) Autism Spectrum Disorder
- (2) Blindness
- (3) Cerebral Palsy
- (4) Chronic neurological conditions
- (5) Deafblindness
- (6) Hemophilia
- (7) Hearing impairment
- (8) Intellectual disability
- (9) Leprosy cured person
- (10) Locomotor disability
- (11) Low vision
- (12) Mental illness
- (13) Muscular dystrophy
- (14) Multiple sclerosis
- (15) Specific learning disabilities
- (16) Speech and language disability

- (17) Thalassemia
- (18) Sickle cell disease
- (19) Multiple disability
- (20) Any other category as may be notified by the Central Government.

2.3 When the Committee desired to know from the Ministry why other equally prominent and permanent disabilities such as kidney failure, blood cancer, diabetes type-I (Type-I IDDM), dyslexia, dysgraphia, dyscalculia, dyspraxia, slow learning disorders, dwarfism, epilepsy, stroke, dementia, paralysis of the limbs due to spinal cord injury/other reasons, etc. have not been included in the categories of disabilities as specified in the Schedule to the Bill? The Ministry in their written reply stated as under:

“Person with Disability has been defined as persons with long-term physical, mental, intellectual or sensory impairment which hinder full and effective participation in society equally with others. This implies the conditions which lead to affect a person to cause long-term impairment, severely restricting his/her participation in the society on an equal basis, may be termed as disability. The specified disabilities as mentioned in the Schedule are broad categories. The conditions of dyslexia, slow learning disorders are considered under specific learning disabilities. Similarly dwarfism is considered under locomotor disabilities as is being done today. Further, the broad category of chronic neurological conditions take care of paralysis, spinal injury (which can also be considered under locomotor disabilities), stroke, dementia etc. Moreover, it is felt that any new categories of disorders would require detailed examination *vis-a-vis* their effect on causing disability. Keeping this point in view, an enabling provision in the Schedule has been kept so that based on technological advancement and understanding of various other disorders, the Government can notify these conditions as specified disability after due consultation with medical and medico-social experts.”

2.4 The Committee having gone through the representations and claims of various Disability Groups across the country loudly demanding that disabilities such as kidney failure, blood cancer, diabetes type-I (Type-I IDDM), dyslexia, dysgraphia, dyscalculia, dyspraxia, slow learning disorders, dwarfism, epilepsy, stroke, dementia, paralysis of the limbs due to spinal cord injury/other reasons, etc. also needed to be included as disabilities in the Bill.

The Committee recommend the Ministry to consider inclusion of these disorders too as disabilities specially kidney failure, blood cancer, diabetes Type-I (IDDM), which are long term diseases, generally incurable and require substantive medical care and expenses throughout life. The Committee also desire that dwarfism should be considered as a distinct disability rather than a part of locomotor disability, since these people are able to perform all normal activities but need help as they are discriminated because of their height and other characteristics besides having other problems like travelling, driving as well as health related problems.

CHAPTER I

PRELIMINARY

Title of the Bill

3.1 While examining the views of individuals/stakeholders and organizations on the Bill, it was pointed out to the Committee that the title of the Bill sounded derogatory and disparaging and therefore, needs to be modified. Across all section of stakeholders, an unanimous view emerged that the title of the Bill, may be changed and made preferably as “Rights of Persons with Different Abilities or Special Abilities”.

3.2 When the Ministry was asked to justify the existing title of the Bill, they in their written reply stated as under:

“The Bill is in line with UNCRPD. The UNCRPD uses the term Persons with Disabilities. Some Persons with Disabilities have objection to use of words ‘differently abled’ or ‘specially abled’.”

3.3 The Committee are of the view that using the words “Persons with Disabilities” in the title of the Bill not only sound disparaging but also belittle the enormous talent, capacity and ability these persons possess to take up any challenge and compete with other normal human beings. Further, the present title itself declares them as ‘persons with disabilities’ whereas the intention and purpose of the Bill is to empower them and give them their rightful due. In fact, the Committee themselves were awe-struck when they witnessed, during their close interaction with these people, the special knack and endowment of these people. The Committee are of the considered view that the present title of the Bill does not justify the talent and aptitude these persons own. The Committee, therefore, recommend that the Bill could be titled either as “The Rights of Persons with the Different Abilities” or “The Rights of Persons with Special Abilities” or “The Rights of the Differently Abled persons” which is not only more progressive and encouraging but will also help correct the discourse about the disabled people besides reducing their psychological complexes.

Clause 1: Short title, extent and commencement

3.4 Clause 1(2) says that “it extends to the whole of India except the State of Jammu and Kashmir”.

3.5 The Committee are of the view that the present Bill is based on the UN Convention on the Rights of Persons with Disabilities to which India is one of the signatories. Further, India ratified the same on 1st October, 2007. Being a signatory to the Convention, India not only has an international obligation to comply with the provisions of the said Convention but it is obligatory also for the Government to align the policies and laws of the country with the Convention which are applicable throughout the country. The Committee find that one similar legislation namely, 'The Mental Health Act, 1987' (since repealed or proposed to be repealed by The Mental Health Care Bill, 2013), which is also based on UNCRPD, extended to whole of India including Jammu and Kashmir. Similarly, the new legislation, The Mental Health Care Bill, 2013 also proposed to be extended to whole of India including Jammu and Kashmir. The Committee do not find any rationale as to why the present Bill, after enactment, cannot have provision for extension to Jammu and Kashmir.

3.6 The Committee are of the view that disabled persons should get all the desired benefits under the Constitution and also those given to them by various central legislations across the country. The Committee desire that the extent of the Bill should include Jammu and Kashmir too.

Definitions

3.7 'Barrier' in the Bill has been defined as any factor including communicational, cultural, economic, environmental, institutional, political, social or structural factors which hamper the full and effective participation of PwDs in society. During interaction with stakeholders as well as through their written submissions, the Committee were informed that the proposed definition of 'Barrier' is incomplete and should cover all factors which prevent or obstruct with the full and effective participation of persons with benchmark disabilities in society. When the Committee sought the views of the Ministry to include factors such as attitudinal and psychological in the definition of 'Barrier', the Ministry responded as under:

“The terms used in the definition are practicable and can be ensured through various measures to remove such barriers. The words 'attitudinal' and 'psychological' are not quantifiable and hence would be difficult to enforce. Moreover, this would lead to undue litigations. Therefore, barrier has been defined in the context of ensuring accessibility to the PwDs which could be enforced.”

3.8 The Committee are not convinced with the above reasoning of the Ministry stating that “The terms used in the definition are practicable and can be ensured through various measures to remove

such barriers. The words ‘attitudinal’ and ‘psychological’ are not quantifiable and hence would be difficult to enforce. Moreover, this would lead to undue litigations. Therefore, barrier has been defined in the context of ensuring accessibility to the PwDs which could be enforced”. The Committee are of the view that even the terms such as ‘environmental’ and ‘social’ are also not quantifiable either but have been used successfully in the Bill. The Committee are of the unyielding view that the ‘attitude’ and ‘psychology’ of the people are also major hindrance for full and effective participation of persons with disabilities in society. The Committee, therefore, recommend that ‘attitude’ and ‘psychology’ also be included in the definition of ‘Barrier’.

Communication

3.9 In the Bill, ‘communication’ includes means and formats of communication, languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, plain-language, human-reader, augmentative and alternative modes and accessible information and communication technology.

A large number of organizations and Institutions, in their written representations to the Committee, have stated that sign language and video & visual displays should also be included in the definition of communication.

3.10 When the Ministry were asked to respond in the matter, the Ministry responded as follows:

“As per the definition included in the Bill, communication includes signs also. However, keeping in view the fact that the deaf associations are pressing for recognition of sign language, it is felt that in the definition of communication, sign language could also be included.”

3.11 The Committee are in agreement with the claims of large numbers of organizations that inclusion of sign language and video & visual displays is imperative in the definition of the ‘communication’. The Committee, therefore, recommend words ‘sign language’ and ‘video and visual displays’ may also be included in the definition of ‘communication’.

Establishment

3.12 The Bill defines the term ‘Establishment’ as a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local

authority or a Government company as defined in section 2 of the Companies Act, 2013 and includes Department of a Government.

3.13 The Committee had wide range of interactions/discussions with many disabled groups/NGOs and individuals, who were of the collective view that the definition of 'Establishment' should also include the private bodies as lot of activities of the Union Government as well of State Governments have been outsourced.

3.14 The Committee find justification for inclusion of 'private bodies' also in the definition of 'Establishment'. The Committee too feel that it is a present day fact that a large number of government services are outsourced/have been outsourced to or provided by private bodies/agencies and will remain inaccessible for people with disability unless these are brought under the ambit of 'Establishment'. The Committee desire that the definition of 'Establishment' may be enlarged appropriately by considering inclusion of 'private bodies/agencies' also.

Persons with Disability

3.15 The Bill defines persons with disability as "a person with long term physical, mental, intellectual or sensory impairment which hinder his full and effective participation in society equally with others".

3.16 When the Committee enquired whether the definition of 'persons with disabilities' further needs to be defined in terms of long term and short term disabilities, the Ministry informed the Committee as under:

"The specified disabilities identified in the Schedule generally those concerning long-term disabilities. The evaluation and assessment criteria for each disability would be different and will be prescribed under Guidelines in terms of Clause 55 of the Bill after thorough deliberations with concerned experts. The issue of certification of long-term *i.e.* permanent and short-term *i.e.* temporary certificate of disability will be addressed in the Guidelines. Since it is not feasible to quantify the extent to qualify for short-term or long-term disabilities without a detailed guideline, it may not be appropriate to have segregated definition in the Bill. The Guidelines will take care of the issue subsequently."

3.17 The Committee are convinced with the reply of the Government. The Committee yet desire that detailed guidelines/rules may be framed carefully and thoroughly in consultation with

experts so that both long term and short term disability can be defined relatively and specifically in order to benefit the people in need.

Reasonable Accommodation

3.18 'Reasonable Accommodation' has been defined in the Bill as necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

3.19 When the Committee enquired how the reasonable accommodation could be defined in the Bill more satisfactorily and appropriately so that it becomes mandatory to make appropriate modifications and adjustments to ensure that disabled persons can enjoy the same rights as others, the Ministry in their written reply stated as under:

“As per Article 2 of the UNCRPD, reasonable accommodation means necessary and appropriate modification and adjustments, not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. The definition provided in the Bill is purely based on the definition of UNCRPD and appears appropriate and satisfactory.”

3.20 When asked what about deleting the words 'without imposing a disproportionate or undue burden in a particular case', the Ministry clarified as under:

“These words are also used in the definition of UNCRPD. This is so because in some cases there may not be any possibility to make arrangement for reasonable accommodation. For example, in defence establishments, organizations/establishments involved in the process of handling/manufacturing chemical/hazardous substances, any modification in infrastructure may lead to disproportionate use of resources to ensure reasonable accommodation *vis-a-vis* PwDs. In order to take care of such scenario, it is felt necessary to have such a provision.”

3.21 The Committee find that the present definition of 'Reasonable Accommodation' links it with undue burden which might result into negation of rights of persons with disabilities instead of

promoting it. The Committee desire that the words ‘without imposing a disproportionate or undue burden in a particular case’ be considered substitution suitably with the words ‘to the maximum of its economic resources’. The Committee further desire that the Ministry also consider, alternatively, definition of ‘Reasonable Accommodation’ as ‘means necessary and appropriate modification and adjustments, where needed in a particular case, to ensure to persons with benchmark disabilities the enjoyment or exercise on an equal basis with other of all human rights and fundamental freedoms and also to ensure their full participation in society’.

Registered Organization

3.22 ‘Registered Organization’ has been defined in the Bill as “an association of persons with disabilities or a disabled person organization, association of parents of persons with disabilities, association of persons with disabilities and family members, or a voluntary or non-governmental or charitable organization or trust, society, or non-profit company working for the welfare of the persons with disabilities, duly registered under an Act of Parliament or a State Legislature”.

3.23 The Committee are of the view that there are many non-profit companies working for the empowerment, protection, rights and welfare of the persons with disabilities who have been left out from the ambit of the ‘Registered Organization’. The Committee find sense in the reasoning given by the disabled groups. The Committee, therefore, desire that the present definition of ‘Registered Organization’ be modified so as to mean ‘an association of persons with benchmark disabilities or a disabled person organization, association of parents of persons with benchmark disabilities, association of persons with benchmark disabilities and family members, or a voluntary organization or non-governmental or charitable organization or trust, society, non-profit company working for the empowerment, rights & welfare of the persons with benchmark disabilities, duly registered under an Act of Parliament or a State Legislature’.

Rehabilitation

3.24 ‘Rehabilitation’ in the Bill has been referred to “a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual, psychiatric or social function levels.”

3.25 During Committee’s interaction, it was desired by many organizations/NGOs/stakeholders that while defining the term ‘Rehabilitation’, ‘environmental and psychological rehabilitation’ should also be added so as to cover holistic rehabilitation.

3.26 When the Ministry were asked to respond, they stated as under:

“The word ‘psychological’ may be added in place of ‘psychiatric’ in the definition. It is felt that physical, sensory, psychological or social scenario are components of environment and thus the use of the word environment could be superfluous.”

3.27 The Committee are not convinced with the reply of the Ministry. The Committee find that the proposed definition does not embrace all facets of rehabilitation process. The Committee, therefore, desire that the words ‘environmental and psychological rehabilitation’ too may be considered in the definition. Further, the Ministry may, alternatively, consider redefining the present definition of ‘Rehabilitation’ on the following lines:

“Rehabilitation is the process of taking effective and appropriate measures by identifying and lowering the barriers, including but not limited to through peer support, speech therapy, sign language, audio-visual etc. to enable persons with benchmark disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.”

Special Employment Exchange

3.28 Special Employment Exchange means any office or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, regarding—

- (i) persons who seek to engage employees from amongst the persons suffering from disabilities;
- (ii) persons with benchmark disability who seek employment;
- (iii) vacancies to which persons with benchmark disabilities seeking employment may be appointed;

3.29 When it was pointed out by the Committee that the words ‘suffering from disabilities’ sound derogatory and need to be changed, the Ministry while agreeing with the suggestions of the Committee, stated that for the words ‘*suffering from disabilities*’, the words ‘*with disabilities*’ can be substituted.

3.30 The Committee recommend that words such as ‘suffering from disabilities’ wherever find place in the Bill, may be substituted with the words ‘with disabilities’. The Committee also want the

Ministry to consider the feasibility of renaming such an exchange as “Employment Exchange for Differently Abled People” as it appears more progressive and dynamic.

Inclusion of the definition of the term ‘Discrimination’

3.31 The UNCRPD defines ‘*Discrimination*’ on the basis of disability as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

3.32 The Committee find that the above definition of discrimination has been left out in the present Bill for the reasons best known to the Ministry. However, the Committee have received numerous representations and suggestions in this regard. All of them have stated that the definition of the term ‘Discrimination’ as finds mention in the UNCRPD must be included in the Bill. The Committee have thoroughly examined these suggestions and find that the word discrimination has occurred at many places in various substantive provisions of the Bill pertaining to different areas of life. Hence this term requires to be defined to avoid misinterpretation of any substantive provision. The Committee are convinced that definition of term ‘Discrimination’ needs to be included in the Bill.

3.33 The Committee also received plethora of suggestions from various stakeholders stating that the definition of abuse, exploitation, violence, hate speech and victimization may find mention in the Bill. When the Ministry was confronted in the matter, they in their written submission stated as follows:–

- (i) The clause 6(1) provides for all forms of abuse, violence and exploitation. This implies abuse, violence and exploitation in any manner are covered within the ambit of this clause and therefore there is no necessity to have separate definition for these terms which could be restricted to some form or the other.
- (ii) This Clause further provides that the appropriate government shall take measures to protect the PwDs from all forms of abuse. This takes care of abuse in any manner to harass the PwDs. Further, a clause 105(a) provides for penalty/ punishment for intentionally insults or intimidates with intent to humiliate a PwD in any place within public view. This covers the aspect of hate speech.

3.34 The Committee while agreeing with the contention of the Ministry, however, desire that the Government may consider possibility of defining the terms, viz., abuse, exploitation, violence, hate speech and victimization to the extent possible. Nevertheless, the Committee recommend that the definition of the term ‘Discrimination’ as stated in the UNCRPD may be included in the Bill.

Habilitation

3.35 The Committee note that Article 26 of the UNCRPD speaks about ‘Habilitation’ and ‘Rehabilitation’. The Committee also received several representations regarding the definition of ‘Habilitation’ who suggested that the following definitions of ‘Habilitation’ also be included appropriately in the Bill:

Habilitation:

2(a)(a) “Habilitation”	Addition by way of new definition of “Habilitation”	This is required to include measures to be taken for persons with benchmark disabilities born. Therefore it is suggested that the definition given to the term “Habilitation” in 2011 draft Bill may be included	New Sub-Section 2(a)(a) Habilitation is a process by which persons born with impairments learn life skills.
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Public Infrastructure:

2 (c)© “Public Infrastructure”	Add a new definition of the term “Public Infrastructure”	This term is very relevant for proper interpretation and understanding the provisions relating to accessibility. As such, the definition of this term requires inclusion in the definition clause	New Sub Section 2(c)(c) Public Infrastructure: shall mean and include; (a) Building – means a building, irrespective of ownership, which is used and accessed by the public at large; including but not limited to buildings used for educational & vocational purposes; Workplaces; Commercial Activities; public utilities, religious, cultural, leisure &
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recreational activities; Medical & Health Services; Law enforcement agencies, reformatories & judicial foras; Transportation services such as Railway stations, platforms, Roadways, Bus Q shelters/ Terminus, Airports, Waterways; etc.

- (b) **Transportation Systems** includes Road Transport, Rail Transport, Air Transport, Water Transport, Para Transit Systems for last mile connectivity, road & street infrastructure etc.
- (c) **Information & Communication Technologies** includes all services & innovations relating to communication and information such as telecom services, web based services, electronic & print services, digital & virtual services etc.
- (d) **Public facilities & services** includes all forms of delivery of service provisions to the public at large; including but not limited to housing, educational & vocational trainings; employment & career advancement, shopping/marketing, religious, cultural, leisure & recreational; Medical, Health & rehabilitation, banking, finance & insurance, communication, postal & information, access to justice, public utilities, transportation etc.

3.36 The Committee note that the terms ‘habilitation’ and ‘rehabilitation’ are used together in Article 26 of the UNCRPD and desire that the definitions of ‘habilitation’ and ‘public infrastructure’ may also be suitably incorporated to help the disabled to get access to all the facilities which are provided by the Government/local bodies to all citizens.

CHAPTER II

RIGHTS AND ENTITLEMENTS

Rights of women and girls with disabilities [Clause 3(2)]

3.37 The Committee received the claims of various organizations/ stakeholders that certain clauses may be added in the Chapter 'Rights of Women and Girls with Disabilities'. The Committee also note that the UNCRPD also addresses the concerns of women and girls with disability as follows:

“Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.”

3.38 The Ministry was asked why the same could not be included in the Bill, the Ministry stated in a written reply:—

“The Rights of Persons with Disabilities Bill provides for Rights and Entitlements applicable for all PwDs, including children and women with disabilities. Moreover, the Bill also casts responsibility on the appropriate Government and local authorities to take measures to ensure that these rights and entitlements are effectively enjoyed by all persons with disabilities including women and children with disabilities. It is felt that in case of women and children with disabilities certain special measures are required to be taken to ensure equitable justice. As such Clause 3(2) casts responsibility on the appropriate Government to take special measures to protect the rights of women and children with disabilities and also take steps to utilize the capacity of PwDs by providing appropriate environment. This provision would take care of any specific measure that is required for women and children with disabilities. Certain offences specifically against women have been mentioned in the Bill and also punishment thereto.”

3.39 One of the representatives who appeared before the Committee submitted as under:—

“There are similar rights for women with disabilities. If we specify then it can go to the Ministry of Women and Child Development. ...When we see specifically because in people with disabilities,

women with disabilities are always neglected. That is why, when this Bill is for the people with disabilities and if we could specifically focus with women with disabilities, it will help them as they have been neglected all these years and nothing has been done for them. This legislation will help them as it will become a tool for their own development and realization of their rights as well. My humble request to you is please accept and include specific section on women with disabilities in the present Bill as has been done in UNCRPD. Not only here but it has also been internationally acknowledged that women and children with disabilities have been always neglected. Unless until we do not focus on them, we can not talk about their rights and needs leave alone empowering them because the attitude of the our society towards these people is as such.”

3.40 The Committee while taking note of the fact that the present Bill does not have a separate section on women and children with disabilities since women with disabilities face multiple discrimination and children with disabilities too are vulnerable section. This is also recognized by UNCRPD. The Committee urge the Ministry to consider and include a sub-section on the Rights of Women and Children with Disabilities which would help the women and children get rights of equality and empowerment.

3.41 Clause 3(3) states:

“No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is appropriate to achieve a legitimate aim.”

3.42 During their meetings with the large number of individuals, organizations and stakeholders and also after going through all the written submissions which were received in the matter, the Committee were informed that the word ‘legitimate aim’ restricts the people from the right to equality and discrimination under certain circumstances should either be re-worded or deleted from the Bill. Further, it was also pointed out to the Committee that the proposed provisions in Clause 3 restrict the fundamental right to equality of persons with disabilities by giving the Executive arbitrary power to discriminate on the ground of disability under the pretext of certain circumstances.

3.43 When the Ministry was asked to clarify the position, the Ministry stated in a written reply:

“The stipulation in the Bill is only a safeguard clause to take of situations where any action of the public authority intends to achieve a legitimate aim without intending to discriminate against PwDs, at

the same time, it could be perceived as discrimination by PwDs. For example, one of the responsibilities of the public authority is to ensure proper management and reduce risk while commuting on road. With a view to achieving this goal, the Law is framed which may not rightly allow grant of driving licences to drive a motor vehicle to blind and other class of disabilities.”

3.44 The wordings of Article 5 of the UNCRPD are as follows:–

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

3.45 The Committee are of the view that the present Bill does not prohibit discrimination on the ground of disability completely and also does not explicitly recognize the right of equality and non-discrimination. It also to some extent dilutes even the fundamental right of equality guaranteed to all citizens under Articles 14 to 16 of the Constitution. The Committee also take into consideration the fact that the words ‘legitimate aim’ could hamper the right to equality and appear to be against the discrimination provisions. The Committee desire that the Ministry recast the words of clause 3(3) on the lines of Article 5 of UNCRPD.

New Clause 3(5)

3.46 The Committee note that a new clause 3(5) has been added by the Government by the notice of amendments (to be moved in Rajya Sabha) which is as under:–

The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

3.47 The Committee are in agreement with the said amendment. The Committee desire that the same may be added in the Bill and an appropriate roadmap developed so that these persons too get hassle free access to all the facilities which other people have.

Clause 11 – Access to justice

3.48 The Committee find that the provisions in the Bill regarding access to justice are not exhaustive enough to cover all aspects relating to access to justice by persons with benchmark disabilities. Many stakeholders and NGOs with whom the Committee interacted also were of the view that more facilities should be provided to PwDs for access to justice and the provisions made in the Bill are inadequate.

3.49 When the Committee enquired about the free legal aid and other facilities like access to forms of communication and petty expenses including transportation for appearing before the court, the Ministry stated as follows in their written reply:—

“The provision for free legal aid has been provided under Clause 11(1)(3) of the Bill. Further, Clause 11(2) of the Bill mandates the appropriate Government to put in place suitable support measures for PwDs especially those living outside family and those disabled requiring high support for exercising legal rights.”

“Further clause 11(3) of the Bill provides that the National Legal Services Authorities and the State Legal Services Authorities shall make provisions including reasonable accommodation to ensure that Persons with Disabilities have access to any scheme, programme, and facility equally with others. In order to provide for transportation and other facilities to the PwDs the Legal Services Authorities of the appropriate government are required to frame schemes accordingly.”

3.50 The Committee take note of the fact that some provisions do exist in the Bill for free legal aid for PwDs. However, in the opinion of the Committee, provision of petty expenses, transportation allowance and other related requirements like forms of communication etc. may be made available to the PwDs and the same may form part of law and rules made thereunder.

Clause 12(1) – Legal capacity

3.51 Clause 12(1) states:—

“The appropriate Government shall ensure that the persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit.”

3.52 When asked to comment, the Ministry stated that following new clause as 12(1) before the existing clause is proposed to be inserted by moving an amendment to the Bill and the clause 12(1) shall become 12(2) and subsequent clause shall be accordingly renumbered:—

“The appropriate Government shall ensure that the persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other persons before the law.”

3.53 When the Committee specifically enquired whether the deaf and dumb and the blind can be recognized as witnesses before the court of law, the Ministry in their written reply stated:—

“Clause 11(4)(c) casts responsibility on the appropriate Government to make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by PwDs in their preferred language and means of communication. It has now been agreed that the words sign language can be included under the definition of communication. Thus it would be incumbent upon the Government to make provision for recording of testimonies of the hearing impaired persons in sign language *i.e.* the preferred mode of communication in terms of Clause 11. As regards blind and other PwDs, the clause takes care of this aspect. Indian Evidence Act and other relevant laws could be considered for similar amendment, if necessary.”

3.54 The Committee welcome the move of the Government to change the wordings of clause 12 to give the right to full legal capacity in terms of all aspects of life of PwDs. The Committee hope that once the Act is in place, all PwDs specially deaf, dumb and blind will have full legal capacity before the law.

Clause 13(1)—Provision for guardianship

3.55 The original clause 13(1) in the Bill is as follows:—

“13. (1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a District Court records a finding that a mentally ill person is incapable of taking care of himself or herself and of taking any legally binding decisions on his or her own, it shall make an order for appointment of limited guardian to take care of such

mentally ill person and take all legal binding decisions on his or her behalf in consultation with such person:

Provided that the District Court may grant plenary guardianship to the mentally ill person under extraordinary situations where limited guardianship could not be awarded.

Explanation.— For the purposes of this section,—

- (i) “plenary guardianship” means a guardianship whereby subsequent to a finding of incapacity, a guardian substitutes for the person with disability as the person before the law and takes all legally binding decisions for him and the decisions of the person with disability have no binding force in law during the subsistence of the guardianship and the guardian is under no legal obligation to consult with the person with disability or determine his or her will or preference whilst taking decisions for him; and
- (ii) “limited guardianship” means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any law for mentally ill person shall be deemed to function as limited guardian:

Provided that where a guardian appointed prior to the commencement of this Act, is unable to function as limited guardian, the concerned District Court may grant plenary guardianship afresh taking into account all relevant records of the concerned mentally ill person within six months from the date of commencement of this Act.”

Explanation.—For the purposes of this section “District Court” means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which the State Government may, by notification, specify as the court competent to deal with all or any of the matters specified in this Act.

3.56 The Ministry desired to substitute the above clause 13(1) of the Bill by the following:—

“13(1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a persons with disability, who had been provided adequate and appropriate support but is unable

to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his or her behalf in consultation with such persons, in such manner, as may be prescribed by the State Government.

Explanation.— For the purpose of this section,—

- (i) “Limited guardianship” means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability:

Provided that the limited guardianship shall be for a specific period and for specific purpose and shall work in accordance with the will of the person with disability.

Provided further that the District Court or designated authority may grant total support to the person with disability requiring such support or when the limited guardianship has to be granted repeatedly and the decision regarding the support to be provided may be reviewed by the Court or designated authority to determine the nature and manner of support.

(2) From the date of commencement of this Act, every plenary guardian appointed under any provision of any law for persons with disabilities shall be deemed to function as limited guardian.

(3) The person with disability shall have the right to appeal against the decision of appointment of a limited guardian before an appellate authority appointed by the State Government for that purpose.”

3.57 One of the representatives of an NGO, who appeared before the Committee stated as under:—

“This provision in this legislation should be extended to all disabled persons who may be, during their life time, in need of a limited guardian or a plenary guardian. It is not by identifying or earmarking it as an exclusive provision for only mentally ill persons; not only we are stigmatising them, but again we are violating the UNCRPD. UNCRPD is very emphatic on the equalities within the disabilities groups amongst themselves and with other citizens. So, by saying that only mentally ill persons need guardians and others don't need it, is not fair... it is not only that mentally ill persons who need limited guardianship or plenary guardianship as per this law, but all disabled persons, at some stage or the other, need it because this

law provides for high support needs. Therefore, this provision should also be extended to all the disabled persons as a right to free legal capacity.”

3.58 Further the Committee were also informed during their study visit to Chennai in January, 2015 that:

“Section 13 of the RPDB does not only contradict the UNCRPD but the Indian Constitution as well. The Constitution speaks about non-discrimination and equality among all the citizens of India. Article 12 of the UNCRPD speaks about equal recognition before the law on an equal basis with others. Yet when it comes to section 13 of the RPDB, it speaks about plenary guardianship and limited guardianship which is in total contradiction with the other laws mentioned above.”

3.59 The Committee note that though the Government have already decided to substitute/recast clause 13(1) and (2) suitably by extending provisions of the clause to all disabled persons yet they feel that there is a possibility of the same going against the right to equality and non-discrimination provisions in the Bill and the Constitution of India as well. The Committee desire the Ministry to have a revisit on the aspect of guardianship and if necessary invite views of some prominent NGOs and stakeholders in the matter.

CHAPTER III

EDUCATION

3.60 The Right of Children to free and Compulsory Education or Right to Education Act (RTE) spells out the modalities of free and compulsory education for children between 6-14 years of age.

3.61 The clause 15 of the Bill states:—

“15. The appropriate Government and the local authorities shall endeavour that all educational institutions funded by them provide inclusive education to the children with disabilities and towards that end shall—

- (i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
- (ii) make building, campus and various facilities accessible;
- (iii) provide reasonable accommodation according to the individual’s requirements;
- (iv) provide necessary support individualized or otherwise in environments that maximize academic and social development consistent with the goal of full inclusion;
- (v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;
- (vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;
- (vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;
- (viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.”

3.62 The Ministry have informed that they propose to move an amendment proposed to add the words “or recognized” after the words “funded”.

3.63 A representative of an NGO who appeared before the Committee stated that education and welfare of children with different abilities has to be taken care of by different Ministries under the Government of India *i.e.* Ministry of Social Justice and Empowerment, the Ministry of Human Resource Development and the Ministry of Women and Child Development and there was a need of defining specific aspects of education for the different types of disabilities in the Bill.

3.64 When the Ministry was asked to specify whether addition of “making available, aids and appropriate therapies, like speech therapy and occupational therapy for inclusive education of disabled children, the Ministry stated in a written reply:—

“Clause 15 (vi) casts responsibilities on the appropriate government and local authorities, for the purpose of providing inclusive education, to detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them. This takes care of the situation where the child with speech difficulties is admitted in an educational institution so as to detect his disability at the earliest as well as providing for suitable therapeutical measures in addition to adaptable teaching methodology to enhance his/her learning abilities.”

3.65 The UNCRPD states:—

- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- (c) Reasonable accommodation of the individual’s requirements is provided;
- (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3.66 The Committee carefully examined and deliberated upon the issue of duties of educational institutions *vis-a-vis* UNCRPD. The Committee are of the considered view that the term ‘endeavour’

should be replaced by the term ‘ensure’ which is more binding in nature and further, ‘Educational Institutions’ should also include ‘Boards’, ‘Councils’, and ‘Certifying authorities’. The Committee also feel that Clause 15(ii) should be reframed as to make buildings, campuses and various facilities including technologies, toilets, drinking water etc. accessible incorporating the principles of universal design and gender specific where required. The Committee also desire that special facilities like making available kits, aids and appropriate therapies, like speech therapy and occupational therapy for inclusive education be made available free of cost to disabled children may be added in the provisions of clause 15 of the Bill. The Committee, in their Report on Demands for Grants (2014-15) also emphasized the need to give pre-matric and post-matric scholarships to all disabled children which would greatly help to empower the children with disabilities.

Clause 16 (a)

3.67 Clause 16 (a) states

The appropriate Government and the local authorities shall take the following measures:—

“to conduct survey of school-going children for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met.”

3.68 When the Ministry was asked to state why in the provisions of this clause, the periodicity of conducting such a survey has not been mentioned, the Ministry stated as under:—

“This survey to be conducted for school-going children for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met is to be done based on requirement. It may be noted that there are States and UTs where number of such PwDs are very low and are concentrated in certain localities. In cases where their numbers are already known and adequate measures are put in place, making a mandatory provision for periodical survey will not serve any additional purpose, rather than can be attributed as wastage of otherwise useful public resources. The purpose of conducting survey is to enhance the measures/modification in the system for the purpose of effecting meaningful education for PwDs in an inclusive environment. Thus the periodicity of the survey would depend on the actual need and may not be appropriate to specify a definite period for the same.”

3.69 The Committee strongly feel that if appropriate periodicity is not mentioned in conducting such a survey in this clause, it would be difficult to identify the children with disabilities, ascertaining their special needs and preparing a road map for their education. The Committee, therefore, recommend that Clause 16(a) may be reframed as under:

16(a) “to conduct a survey every 5 years, of all school-going children, in and out of school, for identifying children with disabilities, ascertaining their specific needs and the extent to which these are being met/not met and work out appropriate strategies to fill the gaps.”

The Committee also desire that in Clause 16(c), there is a need for insertion that teachers with disabilities who are employed should be employed at all levels of education with equal grade and salary as given to other teachers of the school. Similarly, in Clauses 16(d) and (e), at the end of the current text the words ‘at all levels of education’ and ‘including those providing services for children between 3 and 6 years’ respectively should also be added. The Committee also desire that all the children having disabilities should be entitled to free education including learning materials, appropriate assistive devices to students with disabilities free of cost till the completion of their school education. Lastly, the Committee further desire that Clause 16(i) of the Bill be recast as under:

16(i) ‘to make suitable modifications in the curriculum and evaluation system, incorporating the principles of universal design that meets the needs of students with disabilities such as formats, extra time for completion of examination paper, facility of scribe or amanuensis, etc. exemption from second and third language courses, provided that no student is denied the opportunity of studying a subject or course on account of the syllabus not being accessible to the student.’

Clause 17: Adult Education

3.70 Clause 17 stated that ‘the appropriate Government and the local authorities shall take measures to promote participation of persons with disabilities in adult education and continuing education programmes equally with others’.

3.71 The Committee note that under this provision ‘appropriate Government and the local authorities are supposed to take measures to promote participation of persons with disabilities in adult education...’. The Committee feel that mere measures to promote are not enough unless these are protected and ensure too. The Committee, therefore, desire that after the terms ‘measures to promote’, the terms ‘protect and ensure’ be added to make the import of this provision more stringent and binding too on the part of appropriate Government and local authorities.

CHAPTER IV

SKILL DEVELOPMENT AND EMPLOYMENT

Clause 18

3.72 Clause 18 of the Bill states:—

“The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.”

3.73 When it was pointed out to the Ministry that many individuals/ NGOs have desired that free educational training may be made available to Central and State run vocational training colleges and skill development programmes be added so as to make it easier for the PwDs to get trained for suitable employment as per their disability. The Ministry stated in a written reply:—

“Clause 18 of the Bill casts responsibility on the appropriate Governments *i.e.* the States and Central Government to frame schemes for the purpose of vocational training and self-employment. The scheme to be framed under this clause would have elaborate mechanisms such as the institutions eligible for this purpose, the quantum of assistance, the programmes to be conducted, etc. to achieve the desired objective. Moreover, the programmes to enhance self-employment automatically include skill development/ professional development. Therefore, in the schemes to be framed by the appropriate governments would have all these details rather than embodying in the Bill itself.”

3.74 The Committee note that Clause 18, is regarding skill development of and employment to the PwDs. The Clause, however, has left certain other related aspects of skill development and employment which are equally essential for their all round and inclusive empowerment and employment. These aspects broadly, *viz.* are, training schemes and programmes must be in accessible environments, appropriate exclusive skill training programmes for these people should be provided with active links with the market, need to provide specific training in order to ensure that a person with disability has adequate support then these facilities should be made available besides ensuring that appropriate government must play a proactive role in marketing the products made by PwDs.

3.75 The Committee are of the considered opinion that at the end of Clause 18, the Ministry may consider adding the following text to detail out the guidelines for their empowerment:

“This would include *inter alia*:

- (a) Inclusion of person with disability in all mainstream formal and non-formal vocation/skill training schemes, programmes in accessible environments, with appropriate support, which is gender sensitive and comprise reasonable accommodation, where appropriate;
- (b) If, in the opinion of the person enlisted, there is a need to impart specific training in order to ensure that a person with disability has adequate support, then such facilities should be made available;
- (c) Where appropriate exclusive skill training programmes for persons with disabilities are required especially for those with developmental, intellectual, multiple disabilities and autism, such trainings will be provided with active links with the market;
- (d) Create necessary modifications or formulate schemes and programmes with provisions of loans at concessional rates including that of microcredit to support persons with disabilities for their self-employment including that of supported workshops;
- (e) The appropriate government shall take a proactive role in marketing the products made by persons with disabilities;
- (f) The appropriate government and establishment shall maintain disaggregated data on the progress made in the skill training and self-employment of all the participants including that of persons with disabilities. This should be used to reformulate strategies on a regular frequency.

Since vocational training is an important aspect of self reliance of the PwDs, the Committee recommend that all disabled persons should get access to free vocational training in the nearest possible polytechnic/vocational training centre so as to help them to attain livelihood skills by making them financially independent. This should be made mandatory and a binding provision for these institutions to give them admission and impart training as per their disability in consultation with the Ministry of Human Resource Development.

Clause 19

3.76 Clause 19(1) states:—

“No establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.”

3.77 When the Committee enquired whether the order regarding exemption of any establishment by notification to this clause needs reconsideration and appropriately worded so that it is not misused, the Ministry, in their written reply, responded as under:—

“This Clause is similar to that of Clause 47 of PwDs Act. Only the defence establishments and para-military establishments have so far been granted exemption under Clause 47 of the PwD Act, 1995 keeping in view the nature of duties of these agencies. Thus, any perception about misuse of this clause is unfounded. So far there has not been any ambiguity in implementing the provision.”

3.78 In regard to the transfer policy of PwDs, the Ministry stated in a written reply that, “DoPT has issued circulars with respect to posting/transfer of PwDs and this issue can be addressed through executive orders as is now being done”.

3.79 The Committee while accepting the contentions of the Ministry, however, desire that the Ministry should be extremely cautious towards the provisions of this Clause so that they are not misused by any other organization(s) under one pretext or the other albeit this clause may go against the principles on non-discrimination enshrined in the CRPD. The Committee also desire that provisions regarding posting/transfer policy for PwDs may be specified in the Bill or rules made thereunder, so that PwDs remain close to their native place/home.

3.80 Clause 19(2) states:

“Every establishment shall provide appropriate environment to employees with disabilities.”

3.81 The Committee feel that establishments should not only provide ‘appropriate environment’ but such environment has to be barrier free and conducive too. The Committee, therefore, desire

that the current text of the Clause 19(2) be replaced with the following text:

‘Every establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disabilities.’

Clause 22- Appoinment of Grievance Redressal Officer

3.82 Clause 22 (1-4) provides for a mechanism for grievances redressal.

3.83 When the Committee desired to know whether the grievance redressal mechanism provided under Clause 22 should not be under a separate chapter in the Bill, the Ministry informed that, “the grievance redressal mechanism provided under Clause 22 is only with reference to Clause 19 of the Bill which is regarding non-discrimination in employment and thus has been kept under appropriate chapter. For all other purposes, the grievances can be lodged with district level Committees, State/National Commissions as their functions mandate the same.”

3.84 The Committee have been informed that the grievance redressal mechanism has to be put in place in every establishment and office where there are PwDs. Since the PwDs suffer mostly on account of discrimination, the Committee desire that this issue needs to be addressed appropriately under a separate heading.

CHAPTER V

SOCIAL SECURITY, HEALTH, REHABILITATION AND RECREATION

3.85 Clause 23(1) states:—

“The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community:

Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.”

3.86 When the Ministry was asked to state whether the words ‘the appropriate Government to the maximum of resources’ be substituted for ‘limit of its economic capacity’, the Ministry stated that, “Article 41 of the Constitution, which is relevant for empowerment of PwDs, uses the phrase “limit of its economic capacity and development”. To maintain the same spirit and alignment with the Constitution, the same phrase has been used in the Bill”.

3.87 The Committee strongly feel that re-substituting the words in clauses 23(1) and clause 26(1) with the words “the appropriate Government to the maximum of resources” would ensure the appropriate Government to make all out efforts to use the maximum of its resources for social and economic development of PwDs.

3.88 When the Committee pointed out to the Ministry whether the basic ingredients of social security *i.e.* food, shelter and clothing and healthcare could become a part of Chapter-V to provide minimum social security to all the PwDs irrespective of any BPL criteria and income ceiling, the Ministry responded as under:—

“The Food Securities Act provides for social security on account of food for all citizens across gender, caste, creed and disabilities. Thus, having provision for food in another Act may not be appropriate. The provision for shelter and clothing can be addressed through appropriate schemes/programmes of the Government. The

Government has been implementing various programmes to provide shelter to economically weaker sections of the society including PwDs under the Ministry of Rural Development. Similarly, State Governments have also their own schemes for this purpose. However, the scheme also provides for framing of schemes by the appropriate Governments to provide facilities for persons including children with disabilities who have no family or have been abandoned or are without shelter or livelihood under Clause 23(3)(b). This implies framing of schemes to provide shelter, clothing and food that are basic prerequisites for PwDs.”

3.89 The Committee are conscious of the fact that difficulties faced by persons with disability to earn their livelihood to sustain themselves and their families are more challenging than normal persons. The Committee, therefore, are of the considered view that basic social security such as, food, shelter, clothing and healthcare should be provided to PwDs free of cost, to the extent possible, that too without any riders of BPL or income ceiling.

3.90 Clause 23(h) states:

“Unemployment allowance to persons with disabilities registered with Special Employment Exchange for more than two years and who could not be placed in any gainful occupation.”

3.91 The Committee heard many representatives of the State Governments/NGOs in the matter who desired that the unemployment allowance provided, under this Clause, for 2 years is not going to benefit these people much as they would need little more time to get into any gainful occupation.

3.92 The Committee are in agreement with the contentions made by the stakeholders that period of unemployment allowance to PwDs for two years is insufficient and should be at least for five years. The Committee hence desire that period of unemployment allowance to be given to the PwDs should be at least for five years.

3.93 Clause 24(1) states:—

“The appropriate Government and the local authorities shall take necessary measures for the persons with disabilities to provide,—

- (a) free healthcare in the vicinity specially in rural area subject to such family income as may be notified;
- (b) barrier-free access in all parts of the hospitals and other healthcare institutions and centres run or aided by them;
- (c) priority in attendance and treatment.”

3.94 Clause 24(1) which specifies that barrier free access should be available in all hospitals and healthcare institutions aided by the appropriate Government can be modified so as to include all institutions—Government and private as well, the Ministry stated as follows:—

“The Government has full administrative and financial authority over all government hospitals and healthcare institutions/centres run or aided by it. And thus the Bill appropriately provides for free healthcare facilities through these institutions. In case of private institutions the Government does not have either financial or administrative control. Making a mandatory provision may not be appropriate. However, being a progressive nation the issue can be addressed through developing universal building code to ensure that all new buildings, including hospital institutions, to comply with this code in the future.”

3.95 Since the PwDs are frequently required to visit hospitals/ healthcare centres, the Committee are of the firm opinion that these places ought to be barrier free and easily accessible to them. The Committee, therefore, desire that all hospitals/healthcare centres, whether public or private, should come under the ambit of the Bill/Act and necessary amendments to this effect be made in the byelaws of various Municipalities, Corporations etc. The Committee further desire that family income criteria may also be done away with for providing free healthcare facilities to the PwDs.

Clause 25 (Insurance Schemes)

3.96 Clause 25 states:—

“The appropriate Government shall, by notification, make insurance schemes for their employees with disabilities.”

3.97 The Committee find that the present provision does not provide any safeguard against refusal to extend insurance policies by the Insurers on the ground of disability and also against discrimination in the matter of extending benefits and charging extra premium on the ground of disability. When desired the response of the Ministry in the matter, the Ministry in their reply stated:—

“Clause 25 of the Bill only proposes insurance scheme for employees of the appropriate government, whereas Clause 23(j) provides for comprehensive insurance scheme for PwDs as a social security measure by the appropriate governments. The scheme will spell out the details of the insurance premium to be paid by the

Government, insurance coverage etc. As regards mandatory provision enabling the financial institutions not to charge higher premium for PwDs can only be addressed appropriately through an amendment in the IRDA Act, if necessary.”

3.98 The Committee strongly feel that provisions for all insurance related matters of PwDs should be incorporated explicitly in the Bill. The Committee desire that a mandatory provision enabling the insurance companies not to charge any higher premium for PwDs *vis-a-vis* other people, in their insurance schemes, should be addressed appropriately through an amendment in the IRDA, Act, if necessary. The Committee also desire that details of insurance schemes to be formulated by the appropriate Government may be spelt out appropriately in the Bill.

Clause 28(a-g) (Culture and recreation)

3.99 Clause 28 of the Bill states that, “the appropriate Government and the local authorities shall take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with others...”

3.100 The Committee perused the provisions of this Clause rather closely and found critical issues of deaf persons *viz.*, promoting deaf culture, giving them access to more TV programmes with sign language, interpreters/subtitling missing in this Clause. The Committee, however, find that the Ministry have stated that Clause 28(g) provides that the appropriate government and local authorities for the purpose of promoting participation of PwDs in cultural and recreational activities are required to take measures in developing technologies, assistive devices and equipments and access and inclusion of Persons with Disabilities in recreational activities, which implies adaptation of technology such as captioning, provision of sign language interpreters etc. to provide an equitable environment for hearing impaired persons to participate in recreational activities in T.V.

3.101 The Committee, while taking note of the wordings of Clause 28(g), are still not convinced that this Clause befittingly addresses the decisive issues of promoting deaf culture, giving them access to more TV programmes with sign language, interpreters/subtitles etc. The Committee, therefore, desire that this Clause should appropriately also include issues of promotion of deaf culture, access to more TV programmes with sign language, interpreters/subtitles etc.

Clause 29—Sporting activities

3.102 Clause 29 states:—

“(1) The appropriate Government shall take measures to ensure effective participation in sporting activities of the persons with disabilities,—

(2) The sports authorities shall accord due recognition to the right of persons with disabilities to participate in sports and shall make due provisions for the inclusion of persons with disabilities in their schemes and programmes for the promotion and development of sporting talents.

(3) Without prejudice to the provisions contained in sub-sections (1) and (2), the appropriate Government and the sports authorities shall take measures to,—

- (a) restructure courses and programmes to ensure access, inclusion and participation of persons with disabilities in all sporting activities;
- (b) redesign and support infrastructure facilities of all sporting activities for persons with disabilities;
- (c) develop technology to enhance potential, talent, capacity and ability in sporting activities of all persons with disabilities;
- (d) provide multi-sensory essentials and features in all sporting activities to ensure effective participation of all persons with disabilities;
- (e) allocate funds for development of state of art sport facilities for training of persons with disabilities;
- (f) promote and organize disability specific sporting events for persons with disabilities.”

3.103 The Committee do not find any specific mention of sports activities, awards and recognition at State and National level for PwDs in the absence of which Persons with Disabilities might not feel motivated enough to take up such sports activities. When confronted with the Ministry, they stated in a written reply that:

“It is obvious that when a competition of any discipline is held, the winners are awarded. Similarly in sports activities when there will be state and national level programmes, it will definitely have awards for successful participants. The details of these can only be spelt out in the schemes of appropriate governments.”

3.104 The Committee are of the view that the Ministry need to give instructions to the appropriate Government to organize sporting events and institute suitable awards for the PwDs and these need to be notified in the Act because then only it will be binding on the State Governments to hold such events. The Committee also desire that PwDs should not only get due representation in international, national and district sports bodies but all sports awards too be extended to them.

CHAPTER VI

SPECIAL PROVISIONS FOR PERSONS WITH BENCHMARK DISABILITIES

3.105 Clause 30(1) states:—

“Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, if necessary.”

3.106 The Committee perused the relevant provisions in the UNCRPD and feel that the right to free education in a neighbourhood school or in a special school, the decision of which should be taken by the child itself, needs to find a mention in the Clause. When asked the Ministry to respond, they stated, in a written reply, as under:—

“The wording of the Clause 31 provides that every child with benchmark disability between the age of 6-18 years shall have the right to free education in a neighbourhood school which implies that it is the right of the child and thus can be exercised with the consent of the child only. Any further modification in this regard may create ambiguity and other implementation issues.”

3.107 Further, the Committee also feel that the persons with benchmark disabilities should have an upper age relaxation for more than five years. The Ministry on the issue submitted that:—

“It may perhaps be appropriate to leave it open to appropriate governments to frame schemes for providing upper age relaxations to the PwDs. This will provide the flexibility for the appropriate governments to give relaxation for more than five years.”

3.108 The Committee feel that early intervention is very important part of education for the PwDs. The Committee recommend that free pre-school education *i.e.*, before the age of six years should be extended to the children of PwDs. Further, the Committee desire the Ministry to (i) delete the word “special” from the title of Chapter VI, (ii) replace the phrase “if necessary” with “of her/his choice”, (iii) extend upper age relaxation of five years for PwDs and their children to get admission in institutions of higher education,

and (iv) extend the upper age limit of free education to PwDs and their children upto 21 years instead of 18 years since the PwDs may take more time to complete their school education as compared to normal students.

3.109 Clause 33(1) states:—

“Every appropriate Government shall reserve in every establishment under them, not less than five per cent. of the vacancies meant to be filled for persons or class of persons with benchmark disability, of which one per cent. each shall be reserved for the persons with following disabilities:—

- (a) blindness and low vision;
- (b) hearing impairment and speech impairment;
- (c) locomotor disability including cerebral palsy, leprosy cured and muscular dystrophy;
- (d) autism, intellectual disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities;

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

Explanation: For this purpose of this section, the computation of reservation of vacancies for the persons with benchmark disabilities shall be computed on five per cent. of the total cadre strength.

3.110 When the DoPT was asked to clarify the present Reservation Policy being followed for appointment of persons with disabilities by the Central Government, the DoPT in a written reply stated as under:—

“The existing instructions on reservation for the persons with disabilities were issued *vide* Office Memorandum No. 36035/3/2004-Estt.(Res.) dated 29.12.2005.

According to these instructions, 3% of the vacancies in case of direct recruitment to Group A, B, C and D posts shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing

impairment, and (iii) locomotor disability or cerebral palsy in the posts identified for each disability.

These instructions also provide that 3% of the vacancies in case of promotion to Group D and C posts in which the direct element of direct recruitment, if any, does not exceed 75% shall be reserved for persons with disabilities of which one per cent. each shall be reserved for persons suffering from (i) blindness or low vision, (ii) hearing impairment, and (iii) locomotor disability or cerebral palsy in the posts identified for each disability.

Based on the directions of the Hon'ble Supreme Court and the Hon'ble High Court of Delhi, certain modifications were issued to the said instruction of 29.12.2005 on 3rd December, 2013 and 6/7 January, 2015.

It has been stated by the Hon'ble Supreme Court in its judgement dated 08.10.2013 in the matter of Civil Appeal No. 9096 of 2013 [arising out of SLP (Civil) No. 7541 of 2009] titled Union of India & Anr. Vs. National Federation of Blind & Ors. Has, *inter-alia*, held:—

“Thus, after thoughtful consideration, we are of the view that the computation of reservation for persons with disabilities has to be computed in case of Group A, B, C and D posts in an identical manner viz., ‘computing 3% reservation of total number of vacancies in the cadre strength’ which is the intention of the legislature.”

Further, in accordance with the directions of the Hon'ble Supreme Court in its judgment dated 08.10.2009, in the matter of Civil Appeal No. 9096 of 2013 [arising out of SLP (Civil) No. 7541 of 2009] titled Union of India & Anr. Vs. National Federation of the Blind & Ors., para 14 of the said OM dated 29.12.2005 was amended to the following extent:—

“Reservation for the persons with disabilities in Group ‘A’ or Group ‘B’ posts shall be computed on the basis of total number of vacancies occurring in direct recruitment quota in all the Group ‘A’ posts or Group ‘B’ posts respectively, in the cadre.”

3.111 Whether there is any special promotion policy followed by the Government for the PwDs, the DoPT furnished as under:—

“Department of Personnel & Training has not issued any instructions providing for any special promotion policy for persons with disabilities. However, reservation in promotion in Group D and

Group C posts are available as per existing instructions. The issue relating to reservation in promotion in Group A and Group B is under litigation in various Courts.”

3.112 When the Committee further asked the DoPT regarding the policy of the Government for PwDs in Group ‘A’ and Group ‘B’ posts, the DoPT responded as under:–

“After the judgement of 8th October, 2013 of the Supreme Court as in the case of Group ‘C’ and ‘D’, we compute the number of vacancies of both the identified and unidentified posts. Some posts are identified for the persons with disabilities or unidentified for them. Suppose, for the post of Driver, the posts are not identified for the persons with disabilities. In Group ‘C’ and ‘D’, we compute the number of vacancies on the basis of vacancies arising in both identified and unidentified posts. In Group ‘A’ and ‘B’, the vacancies were being computed on the vacancies arising in the identified posts only, not the unidentified posts. After the Supreme Court judgement, we issued instructions to compute the vacancies of both identified and unidentified posts. Now we received information that the Ministries and Department are computing the vacancies in all Groups in both identified and unidentified posts... Sir, I would like to supplement that a meeting of Committee of Secretaries was held on 1.4.2015 and 15 Ministries, which contribute about 90% of the vacancies, were called. They were sensitized for providing information on filling up of vacancies. They will give their replies quickly and we will be filing an affidavit urgently before the Supreme Court before 28th April.”

3.113 On the issue of providing 1% reservation to each category as proposed in the Bill and *inter-se* exchange of reservation in case of direct recruitment, the DoPT stated that, “the existing instructions already provide *inter-se* exchange of reservation in case of direct recruitment. Therefore, 1% reservation to each category proposed in the Bill may be implementable. In case persons from one category for making reservation in direct recruitment is not available, such vacancies can be carried forward and it can be inter-changed among the other category of disabilities”.

3.114 The Committee note that the DoPT has differed with the Ministry of Social Justice and Empowerment on the proposal of providing reservation in Government services for persons suffering from autism, intellectual disability and mental illness reasoning that “it might not be the best approach to help the disabled persons or

for working of the Government. Article 335 of the Constitution prescribes that the policy of reservation has to be consistent with the maintenance of efficiency of administration and this provision would also apply to reservation for persons with disabilities. This view had been conveyed to the Ministry of Social Justice and Empowerment in October 2013, while they had circulated the draft cabinet note on the Bill.” The Committee desire that there is a need for consensus between the Ministry and DoPT regarding the new scheme of vacancies as proposed in the Bill as well as promotion policy for effective and smooth implementation of the provisions of this new legislation.

3.115 Further, the Committee have gone through numerous representations and submissions from various stakeholders and NGOs, stating that the proposition of vacancies for different disabilities in the cadre strength also needs to be reviewed by the National Commission once every 5 or 10 years. When asked the Ministry to respond, the Ministry stated that:

“The National Commission is empowered to monitor implementation of the provision of the Act and as such is authorized to monitor implementation of Clause 33 of the Bill. Further, the National Commission is also authorized to call for any information/document from any organization. Further, the National Commission is required to submit Annual Report or Special Report to the Government in a manner to be prescribed by the Government in terms of Clause 85 of the Bill. Thus, the National Commission is at liberty to indicate the position in the Annual Report itself reflecting the status every year. Further to ensure this, the requirement of specific indication with respect to status of implementation of Section 33 will be specified in the Rules in terms of Clause 85.”

3.116 The Committee, while accepting the reply of the Ministry, however, desire that the National Commission should have powers to review the proportion of vacancies for different disabilities in the various cadre strength of any organization and make recommendations accordingly.

3.117 Clause 34 states:—

“The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent of their workforce is composed of persons with benchmark disability.”

The Clause does not specify the nature of incentives which will be provided or made available to the employer in the private sector by the appropriate Government and local authorities. In the absence of such incentives private sector will barely feel motivated to provide suitable employment opportunities to PwDs.

3.118 The Committee desire that some broad category of incentives may be specified in the Bill itself which will motivate the private sector to give suitable employment to the PwDs. Further, as the phrase “within the limit of their economic capacity and development” appears to be not very specific and likely to be interpreted differently and, more so, in the interest of the incentive giver rather than in the interest of employer in the private sector, the Committee desire that this phrase may be deleted.

CHAPTER VII

SPECIFIC PROVISIONS FOR PERSONS WITH DISABILITIES WITH HIGH SUPPORT NEEDS

Needs

3.119 The provisions of Clause 37 of the Bill give the details of the functioning of an Assessment Board to certify that a person is a 'high support need'.

3.120 When the Ministry was asked why there is no need to specify the time period for the Assessment Board within which it must certify that a person is a high support need person, the Ministry stated in a written reply:

“As per Clause 37(3) of the Bill, the manner of making assessment and reporting of the case referred to the Assessment Board will be prescribed under Rules. Therefore, the time period for disposing of each case will be prescribed under the Rules.”

3.121 The Committee are satisfied with the assurance of the Ministry. The Committee expect that appropriate rules will be framed so that persons, having high support need, do not face harassment of any kind and also need not wait too long to get help and benefits which are provided to them. The Committee also wish to add that while framing these rules, it must also be mentioned therein that the applicant is entitled to make his/her case directly to the Assessment Board and in the event of rejection of his/her case, an explanation in writing shall be provided and the applicant shall have the right to request a review if the explanation is not satisfactory. As regards, the title of the chapter VII, the Committee desire that words “Special” and “High” may be removed and the chapter be renamed as “Provisions for Support for Persons with Benchmark Disabilities”. Further, the terms “persons with high support needs” may also be replaced with the terms “persons with benchmark disabilities”.

CHAPTER VIII

DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENTS

3.122 Clause 38(1) puts obligation on the appropriate Government to conduct, encourage and promote awareness campaigns and sensitization programmes, in consultation with the National Commission or the State Commission to ensure that the rights of the persons with disabilities provided under this Act are protected.

Clause 38(2) states the programmes and campaigns specified under sub section(1) shall also—

38(2)(f)—“ensure that the rights of persons with disabilities are included in the curriculum in Universities and colleges”

3.123 The Committee note that rights of persons with disabilities have been left out in the curriculum of schools for the reasons best known to the Ministry. The Committee feel that the rights of these people ought to be part of school curriculum too so that PwDs students are aware of their rights at an early stage of their life. The Committee, therefore, desire that in Clause 38(2)(f), the word “schools” be added before the word “universities”.

3.124 Clause 44(1) states:—

“All existing public buildings shall be made accessible in accordance with the regulations formulated by the National Commission within a period not exceeding five years from the date of notification of such regulations:

Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters.”

3.125 When asked to specify whether the existing public buildings are to be made accessible in consultation with the National Commission or State Commission within a period not exceeding five years and whether it is desirable to give extension beyond five years to comply with the provision of the Bill for creating infrastructure, the Ministry, in a written reply, submitted as follows:

“Making the infrastructure available, accessible for PwDs would require mobilization of financial resources. The financial capability

of the States varies from State to State and so as their requirement. Though the State Governments are required to comply with the provision in five years, a safeguard provision has been kept to take care of exigency situations on case to case basis.”

3.126 The Committee are of the view that the term ‘infrastructure’ includes many big and small facilities ranging from huge buildings to toilets. As infrastructure, such as bus stops, railway stations, airports, parking spaces, toilets, ticketing counters, ticketing machines and modes of transport etc. neither entails major structural changes nor incurs substantial expenditure and, therefore, could be made PwD friendly within the stipulated limit of five years. As regards, other big infrastructure such as building, hospital, office etc. extension for its completion and updation may be reviewed and given on case to case basis. The Committee, therefore, desire that types of small infrastructure be specified in the Bill and time period for their completion should be five years. Similarly, types of huge infrastructure be also specified in the Bill and extension for their completion be given on case to case basis. The Committee also desire that the Ministry explore the feasibility of bringing the private sector, being service providers, also under the ambit of Clause 45.

CHAPTER IX

REGISTRATION OF INSTITUTIONS FOR PERSONS WITH DISABILITIES AND GRANTS TO SUCH INSTITUTIONS

3.127 Clause 50 of the Bill deals with application and grant of certificate of registration in respect of institutions for PwDs. When the Ministry was asked to specify why the time period for issuing certification or registration of the institution has not been given, the Ministry stated in a written reply:

“Clause 50(2) may be modified as under so as to prescribe the time period for grant of registration:—

“On receipt of an application under sub-section (1), the competent authority shall make such enquiries as it may deem fit and on being satisfied that the applicant has complied with the requirements of this Act and the Rules made thereunder, shall grant a certification of registration to the applicant **within a period as prescribed by the State Government** and if not satisfied, the competent authority shall by order refuse to grant the certificate applied for.”

3.128 The Committee appreciate the Ministry for bringing the desired amendment with the hope that the Ministry will make it mandatory for specifying the time period of granting a certificate of registration.

3.129 As large number of representations were received by the Committee stating that there is no mention in the Clause, whether the institutions so registered and receiving grants for working for disabled women/girls, mandatorily have the governing body/executive with large representation of women to ensure that girls/women with disability are not exploited. When the response of the Ministry was sought in the matter, the Ministry stated:

“The Bill deals with the registration of institutions for Persons with Disabilities. It does not differentiate between an organization for women with disabilities and other institutions generally working for PwDs. It is felt that registration of institutions in the field of PwDs may not be too restrictive. However, while extending financial assistance to these institutions, stricter eligibility criteria could be prescribed in the relevant schemes in respect of organizations involved in rehabilitation women/men with disabilities.”

3.130 The Committee are not fully satisfied with the response of the Ministry and are of the view that they should be extremely cautious in granting registration to institutions working for the welfare of girls/women with disabilities and this should be suitably incorporated while framing relevant rules under the Act.

3.131 Clause 53 states:—

“Nothing contained in this Chapter shall apply to an institution for persons with disabilities established or maintained by the Central Government or a State Government.”

3.132 When the Ministry was asked to specify the reasons for making such a provision in this Clause and why all institutions should not follow the same set of rules, the Ministry in their written reply submitted that:

“The registering authority as per the Bill will be a government authority. The government agencies/institutions are bound to abide by the rules and regulations of the government. Their bye-laws and governing principles are laid down in the Act or through a notification in the Government which is a legally binding document. In case of other institutions, this very aspect is not there. Thus there is a necessity to have a process of registration other than Government institutions wherein they are required to declare their bye-laws and other governing principles so as to make them accountable in case of lapses. Thus the requirement of a Government organization, which is otherwise responsible/legally questionable for each of activities, with another Government authority will be a superfluous activity and is not required.”

3.133 The Committee are convinced, to a great extent, with the reasoning given by the Ministry for giving exemption to the institutions established or maintained by Central or State Governments. The Committee hope that keeping these institutions out of the purview of the Act will not result in denial any justice to PwDs.

CHAPTER X

CERTIFICATION OF SPECIFIED DISABILITIES

3.134 Clause 56 (1) & (2) states:—

“(1) The appropriate Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability.

(2) The appropriate Government shall also notify the jurisdiction within which and the terms and conditions subject to which, the certifying authority shall perform its certification functions.”

3.135 When it was pointed out to the Ministry that the above Clauses do not specify any time period under which certifying authorities are required to issue certification of specified disabilities, the Ministry stated:—

“Clause 57(2)(a) may be substituted as under to provide for indicating the time period for grant of certificate of disability in the Rules as under:—

“(a) Issue a certificate of disability to such persons, in such form and within such period as may be prescribed by the Central Government”.

3.136 Further, in Clause 57, there is no mention about the extent of validity of such a certificate. When reasons were sought from the Ministry, the Ministry stated in a written reply:—

“A new sub-clause 57(3) may be inserted namely,—

“(3) The certificate so issued will be valid throughout the country”

3.137 The Committee welcome such move of the Ministry to bring in the required and necessary amendments to the Clauses 56 and 57 regarding time period for certification of specified disability and its validity in the Bill. The Committee are quite hopeful that time period so specified for certification of disability will be fairly reasonable and such certificates or ID cards will be universally valid-across all departments and for all purposes.

CHAPTERS XII AND XIII

NATIONAL COMMISSION AND STATE COMMISSIONS

3.138 Chapters XII and XIII deal with the powers and working of the National Commission and State Commissions. A large number of institutions/organizations have desired that the Chairperson of the National and State Commissions should be a person with disability as he/she would not only be in better position to understand the problems of PwDs but sensitive too towards their needs/requirements. Further, there was a demand that two members of the National Commission should also be from PwD community. When the Ministry was asked to comment on the same, the Ministry stated in a written reply:—

“The existing clause does not debar the PwD to be the Chairperson. Keeping in view the function of Chairman, National Commission, it may be appropriate to leave it open for the most appropriate person to take up the job rather than restricting it to only PwDs. It is a negative notion that only the Persons with Disabilities can look after the welfare of PwDs. There are examples where persons other than PwDs have been doing exceptional work for the cause of PwDs. However, it may be noted that in order to safeguard the interest of PwDs one member of the National Commission will be a Person with Disability.”

3.139 The Committee suggest that if a provision is made for two members in the National Commission to be from the PwD community, one preferably a woman with disability, it will not only give due recognition to the contribution of PwDs in the society but also inculcate a sense of immense psychological satisfaction too, to the PwDs. The Committee, therefore, desire the Ministry to consider their suggestion accordingly.

3.140 When the Committee pointed out to the Ministry whether Clause 76(1)(c) and Clause 89(1)(c) regarding disqualification of a member on account of physical or mental incapacity either need deletion or revision, the Ministry submitted as follows:—

For Clause 76(1) (c) the following may be substituted:

“(c) is of unsound mind and stands so declared by the competent court; or”

3.141 The Committee are satisfied with the proposed amendment by the Ministry. The Committee, however, hope that similar amendment will also be made to Clause 89(1)(c) or at any place in the Bill.

CHAPTER XIV

SPECIAL COURT

3.142 As regards formation of Special Court to try the offences under this Act, when the Committee mooted the idea of having setting up Disability Rights Tribunal instead for adjudication of the cases of deprivation and violation of rights of PwDs conferred under this Act and wanted the response of the Ministry, the Ministry in a written reply stated as under:—

“Clause 98 of the Bill provides for designation of Court of Session to function as Special Court to try the offences against the PwDs under the Act for the purpose of providing speedy trials. Such designated Courts can only be notified by the State Governments with the concurrence of respective Chief Justice of Hon’ble High Court. The designated Special Courts will be set up in each District so as to take care of the concerns of PwDs at nearby Courts. Setting up of separate Tribunals at the District level would therefore be superfluous. Further, the Bill mandates setting up of State and National Commissions to function as monitoring agencies for implementation of the Act. The National Commission will have quasi judicial powers.”

3.143 The Committee feel that title ‘Disability Rights Tribunal’ is more explicit, progressive and constructive *vis a vis* “Special Court’ which does not sound very positive. The Committee, therefore, desire the Ministry to consider renaming of a ‘Special Court’ as ‘Disability Rights Tribunal’ which appears more focused and sounds more precise.

CHAPTER XV

NATIONAL FUND FOR PERSONS WITH DISABILITIES

3.144 When the Committee asked the Ministry why there can't be a State Fund for Persons with Disabilities on the lines of National Fund, the Ministry replied as under:—

“It is for the States to decide as to whether they would create a separate fund similar to that of National Fund or they would meet the expenses from their yearly budgetary allocations.”

3.145 When further asked whether compulsory donation under this section can be added for banks, corporations and financial institutions including MNCs and for the public/private sector as a Corporate Social Responsibility (CSR), the Ministry replied:—

“The Companies Act 2013 allows CSR funding in disability sector. There is a separate set of guidelines to regulate CSR funding. The banks, corporations, financial institutions, etc., and all other private sector organizations registered under the Companies Law are required to follow these guidelines for utilization of their contribution towards CSR. It would, therefore, not be appropriate to include the above suggestion within the ambit of the Bill. However, Clause 100(1)(c) allows donations to the fund. Moreover, Clause 100(1)(e) also allows receipt of all sums from other sources as may be decided by the Central Government. As and when situation so arises, the Central Government may notify other sources of funding for the National Fund.”

3.146 The Committee also pointed out to the Ministry that this section does not give any details of the management and utilization of funds to which the Ministry stated that Clause 100(2) provided that the manner of utilization and management of the National Fund will be prescribed under the rules.

3.147 The Committee are concerned that if decision to create a State Fund for persons with Disabilities is left to States and is not made binding for them, that too, within a definite time period, there is every possibility of this fund not seeing the light of the day under some pretext or the other. However, modalities of such a fund could be left to State Governments. The Committee, therefore, desire

that the Bill should have a provision for setting up of State Fund for Persons with Disabilities too, to preclude any anxiety in the minds of PwDs. Further, broad manner of utilization and management of the National Fund should also be prescribed in the Bill.

CHAPTER XVI

OFFENCES AND PENALTIES

Clause 105-Punishment for offences of atrocities

3.148 When the Committee wanted to know from the Ministry, whether this Clause can also include punishment for those deliberately making a person/child disabled for the purpose of begging, the Ministry stated in a reply:—

“The Bill provides for punishment for use of force to any person with disabilities with intent to dishonour. Making a person or child with disability for begging may be covered under Clause 105(b).”

3.149 Clause 105(f) states:— Whoever,—

“performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

3.150 The Committee find that this Clause is silent regarding the opinion of the woman and her consent may be added in this section. When the Ministry was asked to clarify, the Ministry stated in a written reply:—

“The above provision has been provided based on the suggestions received from Women and Child Development Ministry. From the reading of the Clause it would be seen that no medical procedure could be conducted on any woman with disability without her express consent under normal circumstances. The clause provides for conducting such medical procedure under exceptional cases *i.e.* without her consent with the stipulations proposed in the Bill. It may be noted that in case of certain categories of disabilities the Women with Disabilities may not be in a position to express her consent and in that scenario with a view to save her life if it is considered necessary to terminate the pregnancy, the proposed clause has been kept to address that scenario.”

3.151 The Committee are of the considered view that as these medical procedures directly affect the dignity of the women and girls as well, taking away the right to have their opinion and/or consent can hardly be justified. The Committee hence desire the Ministry to reframe the wordings of the Clause 105(f) accordingly.

3.152 Clause 107 states:—

“No Court shall take cognizance of an offence alleged to have been committed by an employee of the appropriate Government under this Chapter, except with the previous sanction of the appropriate Government or a complaint is filed by an officer authorized by it in this behalf.”

3.153 The Committee received a large number of representations apprehending that under the provision of this section all Government officials would easily escape penalty as there may not only be an inordinate delay in giving the sanction by the appropriate Government but the required sanction may not be given at all. To this, the Ministry responded as under:—

“There is an established procedure in the Government to look into the irregularities/negligence on the part of any Government servant. Any Government servant facing any allegation with respect to misconduct/irregularities/negligence is required to go through disciplinary proceedings. As such making it mandatory for any Government employee to be charged under the provisions of the law with the prior sanction of the Government would not in any way dilute the case against the official concerned but on the other hand would enhance the scope of justifying the case once sanction is granted which would preliminarily indicate that there is a case *prima facie* against the erring official.”

3.154 The Committee are in agreement with the reply of the Ministry stating that Government servants facing allegations over misconduct/irregularities/negligence are required to go through disciplinary proceedings and making it mandatory for them to be charged under the provisions of the law with the prior sanction of the Government would not dilute the case against them rather enhance the scope of justifying it once sanction is granted which would preliminarily indicate that there is a *prima facie* case against the erring officials.

CHAPTER XVII

MISCELLANEOUS

3.155 The State Governments under Clause 114(1) have been given the power to make rules under this Act. Since this is a central legislation, the set of rules should be framed by the Central Government and made applicable in all States and UTs. When the opinion of the Ministry was sought on this, the Ministry stated in their written reply as follows:—

“Welfare of PwDs being a State subject by virtue of entry 9 of State list of the Constitution of India. The Central Government is legislating the law by virtue of signing UNCRPD attracting international obligation by virtue of Article 253 of the Constitution of India. There is no bar in a central law authorizing the States to frame rules. For example, the Motor Vehicles Act, 1988, though a Central Act on a subject on a Concurrent List allows framing of rules by the States as well on certain issues. It may further be noted that the existing PwD Act, 1995 also allows framing of Rules by the States in certain cases.”

3.156 The Committee, while accepting the reasoning of the Ministry in the matter, as there is no mention of any timeframe to frame the rules, however, feel that since State Governments are likely to take a considerable long time in framing these rules, either some monitoring needs to be done or some realistic period may be specified in the Bill under which State Governments would make such rules.

3.157 There were large number of representations as well as suggestions from various quarters desiring that the words ‘his/her’ should be deleted from the Bill and be made gender neutral. When the Committee desired the response from the Ministry of Law and Justice (Legislative Deptt.), The Legislative Department of the Ministry of Law and Justice responded as under:—

“Relating to language of gender neutral, we have written to Administrative Ministry as per section 13 of the General Clause Act, in all Central Acts and Regulations, unless there is anything repugnant in the matter of context words importing the masculine gender shall be taken to include female gender...we can use gender neutral language here. There is no problem.”

3.158 The Committee are of the considered view that the language of the Bill should be gender neutral. The Committee also desire that transgender should also be brought under the ambit of the Bill and all provisions may be applicable to them too.

PART C

MISCELLANEOUS

3.159 The Committee further recommend that the Ministry should consider suitably incorporating the following suggestions in ‘The Rights of Persons with Disabilities Bill, 2014’:-

1. The provisions of this Act or the rules made thereunder should be in addition to and not in derogation of any other legislation, orders, rules or instructions which provide for entitlements or benefits to persons with disabilities.
2. As per the different disabilities enumerated in Schedule to the Bill, change in nomenclature of certain impairments and the recognition of new impairments shall not invalidate any existing disability certificate issued by the Authority as on date.
3. There should be a ‘disability budget’ allocated to all Ministries, Departments, Organizations at State and Central level including Panchayats/Districts on the lines of SC and ST Sub-Plan. The expenditure of allocation for this budget under the various schemes should be monitored by the Department of Empowerment of Persons with Disabilities being a nodal Department for the empowerment of persons with disabilities.
4. The Government should take adequate steps to provide a platform for active political participation of PwDs and encourage them to be a part of policy making at panchayat level and District level for the general wellbeing of the PwDs.
5. To give better healthcare facilities to the PwDs, Public-Private-Partnership mode should be encouraged and private healthcare providers be given some tax concessions on treatment of PwDs.
6. It should be made mandatory for the National Commission as well as State Commissions to maintain websites giving explicit details of their working and transparency on the complaints and cases received and pending with them.

7. A specific timeframe should be laid down for disposal of cases relating to PwDs in Special Courts or Disability Rights Tribunal (as suggested by the Committee). The normal time period may range from six months to one year, maximum.
8. Grants received by the National Fund from various sources including Corporate Social Responsibility should be displayed on the internet and annual and quarterly reports on expenditure may be made available to the general public.
9. The penalty should be increased for different types of offences which include:
 - (a) Discrimination in employment—Fine upto Rs. 10 lakhs.
 - (b) Discrimination in schools—revoke the license of the school/academic establishment.
 - (c) Non-compliance to building, vehicle—Fine for non-compliance Accessibility.
10. Since acquired disability is growing rapidly, especially in old age, a fund should be created, such as, disability insurance and a payroll deduction can be made to support the costs of programmes for such people.
11. Since inclusive education of PwDs has been specified in the present legislation, the same should be exclusively monitored by the Education Department at State and District level and at the Central level, the Ministry of Human Resource Development should be made the nodal Ministry for monitoring the inclusive education of PwDs with special funds and release of grants for the purpose.
12. For school going children who are enrolled in normal schools as per the concept of inclusive education specified in the Bill, some modifications may be made in the curriculum and examination system to meet the needs of students with disabilities, like – extra time for completing the examination paper, facility of scribe or amanuensis or computer, exemption from second and third language courses, access to special equipments for their special learning capabilities.
13. The HRD Ministry should make it mandatory to integrate disabled children in mainstream education and not deny any admission on the pretext of disability of the child.

The schools should be asked to display data on the PwDs children enrolled in the schools on the lines of Economically Weaker Section (EWS) students.

14. Service animals like dogs should be provided to PwDs, especially for the blind and hearing impaired. Training should be imparted to these animals and they should be allowed to enter buildings along with the PwDs.
15. As large number of stakeholders/institutions have varied with the view of defining blindness, and autism spectrum disorder in the Schedule of the Bill, the same may be considered in consultation with the Rehabilitation Council of India.
16. It should be specifically provided in the Bill that any provision in any other law for the time being in force which is inconsistent and which negates the object and spirit of this Act, shall be deemed to be repugnant.
17. As the financial memoranda appended to the Bill does not give a specific amount needed for execution of the schemes at Centre and State level, there is a need to specify the manner of funding to implement the various schemes/ aspects of the Bill.
18. An Inter-Departmental Committee having representatives of various Ministries *i.e.*, mainly Education, Health, Women and Child Development, DoPT, etc. at Joint Secretary level may be constituted prior to implementation of this new legislation.
19. Family-centric model for development and rehabilitation of the PwDs should be given weightage over special centres to allow holistic and overall development of PwDs in society. This can be appropriately incorporated in the Bill.
20. In order to effectively implement the Act and to ensure that PwDs derive maximum benefit from the Act, the first and foremost agenda of the Government should be to create awareness about the Act. Efforts should be made to disseminate information about the Act through regional and national channels on TV and radio and this should be done by the Department of Empowerment of Persons with Disabilities rather than by any other agencies.
21. The Government should ensure that appropriate/ consequential amendments are made in other laws which

govern the life, education, legal rights etc. of PwDs, which may be required.

22. Specific efforts should be made by the Government to provide housing to leprosy cured people who may not be allowed to live in other colonies on the grounds of discrimination by the society.
23. The rules applicable to PwDs enabling them to get pension should be adopted by all States and UTs to give equal benefits to all PwDs and provisions of criteria such as income ceiling or below poverty line may be waived off. Rules issued by State and Central Governments should be modified to the above extent.

In the Schedule

24. 6: “haemophilia “ : delete the word “only” in the definition.
7: Replace the term “hearing impairment” with the term “deafness and hard of hearing”. Definition may be drafted in consultation with persons with disabilities and be notified too.
12: Replace the term “mental illness” with “psycho-social disabilities” Add “Spinal Cord Injury “to the Schedule. Definition can be drafted in consultation with persons with disabilities and notified too.
25. To sum up, the Committee are of the considered and firm view that the proposed legislation should be very carefully calibrated so as not only to guarantee security, safety, health and welfare of the Persons with Disabilities but also to facilitate their growth and empowerment.

NEW DELHI;
05 May, 2015
15 Vaisakha, 1937 (Saka)

RAMESH BAIS,
Chairman,
Standing Committee on
Social Justice and Empowerment.

ANNEXURE I

AS INTRODUCED IN THE RAJYA SABHA

Bill No. I of 2014

THE RIGHTS OF PERSONS WITH DISABILITIES BILL, 2014

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AS INTRODUCED IN THE RAJYA SABHA

Bill No. 1 of 2014

THE RIGHTS OF PERSONS WITH DISABILITIES BILL, 2014

A

BILL

to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

WHEREAS the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006;

AND WHEREAS the aforesaid Convention lays down the following principles for empowerment of persons with disabilities,—

(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) non-discrimination;

(c) full and effective participation and inclusion in society;

(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) equality of opportunity;

(f) accessibility;

(g) equality between men and women;

(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

AND WHEREAS India is a signatory to the said Convention;

AND WHEREAS India ratified the said Convention on the 1st day of October, 2007;

AND WHEREAS it is considered necessary to implement the Convention aforesaid.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Rights of Persons with Disabilities Act, 2014.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appellate authority” means an authority notified under sub-section (1) of section 52 or designated under sub-section (1) of section 58, as the case may be;

(b) “appropriate Government” means,—

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006, the Central Government;

41 of 2006.

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.

(c) “barrier” means any factor including communicational, cultural, economic, environmental, institutional, political, social or structural factors which hampers the full and effective participation of persons with disabilities in society;

(d) “care-giver” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability;

(e) “certifying authority” means an authority designated under sub-section (1) of section 56;

(f) “communication” includes means and formats of communication, languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, plain-language, human-reader, augmentative and alternative modes and accessible information and communication technology;

(g) “competent authority” means an authority appointed under section 48;

(h) “establishment” means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 and includes Department of a Government;

(i) “Fund” means the National Fund constituted under section 100;

(j) “high support” means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, accessing facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;

(k) “inclusive education” means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;

(l) “institution” means an institution for the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities;

(m) “local authority” means a Municipality or a Panchayat, as defined in clause (e) and clause (f) of article 243P of the Constitution; a Cantonment Board constituted under the Cantonments Act, 2006; and any other authority established under an Act of Parliament or a State Legislature to administer the civic affairs;

41 of 2006.

(n) “National Commission” means the National Commission for persons with disabilities constituted under section 73.

(o) “notification” means a notification published in the Official Gazette and the expression “notify” or “notified” shall be construed accordingly;

(p) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

(q) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which hinder his full and effective participation in society equally with others;

(r) “person with disability having high support needs” means a person with benchmark disability certified under clause (a) of sub-section (2) of section 57 who needs high support;

(s) “prescribed” means prescribed by rules made under this Act;

(t) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;

(u) “registered organisation” means an association of persons with disabilities or a disabled person organisation, association of parents of persons with disabilities, association of persons with disabilities and family members, or a voluntary or non-governmental or charitable organisation or trust, society, or non-profit company working for the welfare of the persons with disabilities, duly registered under an Act of Parliament or a State Legislature;

(v) “rehabilitation” refers to a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual, psychiatric or social function levels;

(w) “Special Employment Exchange” means any office or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, regarding—

(i) persons who seek to engage employees from amongst the persons suffering from disabilities;

(ii) persons with benchmark disability who seek employment;

(iii) vacancies to which persons with benchmark disabilities seeking employment may be appointed;

(x) “specified disability” means the disabilities as specified in the Schedule;

(y) “State Commission” means a State Commission for persons with disabilities constituted under section 86 of this Act;

(z) “universal design” means the design of products, environments, programmes and services to be usable by all people to the greatest extent possible, without the need for adaptation or specialised design and shall apply to assistive devices including advanced technologies for particular group of persons with disabilities.

CHAPTER II

RIGHTS AND ENTITLEMENTS

Equality and non-discrimination.

3. (1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take special measures to protect the rights of women and children with disability and also take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is appropriate to achieve a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

Community life.

4. (1) The persons with disabilities shall have the right to live in the community.

(2) The appropriate Government shall endeavour that the persons with disabilities are,—

(a) not obliged to live in any particular living arrangement; and

(b) given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

5. (1) The appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.

Protection from cruelty and inhuman treatment.

(2) No person with disability shall be a subject of any research without,—

(i) his or her free and informed consent obtained through accessible modes, means and formats of communication; and

(ii) prior permission of an Ethics Committee constituted in the prescribed manner for the purpose by the appropriate Government in which not less than half of the Members shall themselves be either persons with disabilities or Members of the registered organisation as defined under clause (u) of section 2.

6. (1) The appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation, and to prevent the same, shall—

Protection from abuse, violence and exploitation.

(a) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents;

(b) take steps for avoiding such incidents and prescribe the procedure for its reporting;

(c) take steps to rescue, protect and rehabilitate victims of such incidents; and

(d) create awareness and make available information among the public.

(2) Any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it to the Executive Magistrate within the local limits of whose jurisdiction such incidents occur.

(3) The Executive Magistrate on receipt of such information, shall take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as he deems fit for the protection of such person with disability including an order—

(a) to rescue the victim of such act, authorising the police or any organisation working for persons with disabilities to provide for the safe custody or rehabilitation of such person, or both, as the case may be;

(b) for providing protective custody to the person with disability, if such person so desires;

(c) to provide maintenance to such person with disability.

(4) Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of—

(a) his or her right to apply for protection under sub-section (2) and the particulars of the Executive Magistrate having jurisdiction to provide assistance;

(b) the particulars of the nearest organisation or institution working for the rehabilitation of persons with disabilities;

(c) the right to free legal aid; and

(d) the right to file a complaint under the provisions of this Act or any other law dealing with such offence:

Provided that nothing in this section shall be construed in any manner as to relieve the police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

45 of 1860. (5) If the Executive Magistrate finds that the alleged act or behaviour constitutes an offence under the Indian Penal Code, or under any other law for the time being in force, he may forward the complaint to that effect to the Judicial or Metropolitan Magistrate, as the case may be, having jurisdiction in the matter.

7. (1) The persons with disabilities shall have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters. Protection and safety.

53 of 2005. (2) The National Disaster Management Authority and the State Disaster Management Authority shall take appropriate measures to ensure inclusion of persons with disabilities in its disaster management activities as defined under clause (e) of section 2 of the Disaster Management Act, 2005 for the safety and protection of persons with disabilities.

53 of 2005. (3) The District Disaster Management Authority constituted under section 25 of the Disaster Management Act, 2005 shall maintain record of details of persons with disabilities in the district and take suitable measures to inform such persons of any situations of risk so as to enhance disaster preparedness.

(4) The authorities engaged in reconstruction activities subsequent to any situation of risk, armed conflict or natural disasters shall undertake such activities, in consultation with the concerned State Commission, in accordance with the accessibility requirements of persons with disabilities.

Home and family.

8. (1) No child with disability shall be separated from his or her parents on the ground of disability except on an order of competent court, if required, in the best interest of the child.

(2) Where the parents are unable to take care of a child with disability, the competent court shall place such child with his or her near relations, and failing that within the community in a family setting or in exceptional cases in shelter home run by the appropriate Government or non-governmental organisation, as may be required.

Reproductive rights.

9. (1) The appropriate Government shall ensure that persons with disabilities have access to appropriate information regarding reproductive and family planning.

(2) No person with disability shall be subject to any medical procedure which leads to infertility without his or her free and informed consent.

Accessibility in voting.

10. The Election Commission of India and the State Election Commissions shall ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them.

Access to justice.

11. (1) The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

(2) The appropriate Government shall take steps to put in place suitable support measures for persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights.

(3) The National Legal Services Authority and the State Legal Services Authorities

39 of 1987.

constituted under the Legal Services Authorities Act, 1987 shall make provisions including reasonable accommodation to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally with others.

(4) The appropriate Government shall take steps to—

(a) ensure that all their public documents are in accessible formats;

(b) ensure that the filing departments, registry or any other office of records are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats; and

(c) make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication.

12. (1) The appropriate Government shall ensure that the persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit. Legal capacity.

(2) When a conflict of interest arises between a person providing support and a person with disability in a particular financial, property or other economic transaction, then such supporting person shall abstain from providing support to the person with disability in that transaction:

Provided that there shall not be a presumption of conflict of interest just on the basis that the supporting person is related to the person with disability by blood, affinity or adoption.

(3) A person with disability may alter, modify or dismantle any support arrangement and seek the support of another:

Provided that such alteration, modification or dismantling shall be prospective in nature and shall not nullify any third party transaction entered into by the person with disability with the aforesaid support arrangement.

(4) Any person providing support to the person with disability shall not exercise undue influence and shall respect his or her autonomy, dignity and privacy.

Provision for guardianship.

13. (1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a District Court records a finding that a mentally ill person is incapable of taking care of himself or herself and of taking any legally binding decisions on his or her own, it shall make an order for appointment of limited guardian to take care of such mentally ill person and take all legal binding decisions on his or her behalf in consultation with such person:

Provided that the District Court may grant plenary guardianship to the mentally ill person under extraordinary situations where limited guardianship could not be awarded.

Explanation.—For the purposes of this section,—

(i) “plenary guardianship” means a guardianship whereby subsequent to a finding of incapacity, a guardian substitutes for the person with disability as the person before the law and takes all legally binding decisions for him and the decisions of the person with disability have no binding force in law during the subsistence of the guardianship and the guardian is under no legal obligation to consult with the person with disability or determine his or her will or preference whilst taking decisions for him; and

(ii) “limited guardianship” means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any law for mentally ill person shall be deemed to function as limited guardian:

Provided that where a guardian appointed prior to the commencement of this Act, is unable to function as limited guardian, the concerned District Court may grant plenary guardianship afresh taking into account all relevant records of the concerned mentally ill person within six months from the date of commencement of this Act.

Explanation.—For the purposes of this section “District Court” means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which the State Government may, by notification, specify as the court competent to deal with all or any of the matters specified in this Act.

14. (1) The appropriate Government shall designate one or more authorities to mobilise the community and create social awareness to support persons with disabilities in exercise of their legal capacity.

Designation of authorities to support.

(2) The authority designated under subsection (1) shall take measures for setting up suitable support arrangements to exercise legal capacity by persons with disabilities living in institutions and those with high support needs and any other measures as may be required.

CHAPTER III

EDUCATION

15. The appropriate Government and the local authorities shall endeavour that all educational institutions funded by them provide

Duty of educational institutions.

inclusive education to the children with disabilities and towards that end shall—

(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;

(ii) make building, campus and various facilities accessible;

(iii) provide reasonable accommodation according to the individual's requirements;

(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;

(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;

(vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;

(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;

(viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

Specific measures to promote and facilitate inclusive education.

16. The appropriate Government and the local authorities shall take the following measures for the purpose of section 15, namely:—

(a) to conduct survey of school going children for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met;

(b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education;

(e) to establish adequate number of resource centres to support educational institutions;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfil the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years and either free or at affordable cost, thereafter;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(j) to promote research to improve learning; and

(k) any other measures, as may be required.

Adult education.

17. The appropriate Government and the local authorities shall take measures to promote participation of persons with disabilities in adult education and continuing education programmes equally with others.

CHAPTER IV

SKILL DEVELOPMENT AND EMPLOYMENT

Vocational training and self employment.

18. The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.

Non-discrimination in employment.

19. (1) No establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every establishment shall provide appropriate environment to employees with disabilities.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

20. (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

Equal opportunity policy.

(2) Every establishment shall register a copy of the said policy with the National Commission or the State Commission, as the case may be.

21. (1) Every establishment shall maintain records of the persons with disabilities in relation to the matter of employment, facilities provided and other necessary information in compliance with the provisions of this Chapter in such form and manner as may be prescribed by the Central Government.

Maintenance of records.

(2) Every employment exchange shall maintain records of persons with disabilities seeking employment.

(3) The records maintained under subsection (1) shall be open to inspection at all reasonable hours by such persons as may be authorised in their behalf by the appropriate Government.

22. (1) Every establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the National Commission or the State Commission, as the case may be, about the appointment of such officer.

Appointment of Grievance Redressal Officer.

(2) Any person aggrieved with the non-compliance of the provisions of section 19, may file a complaint with the Grievance Redressal Officer, who shall investigate it and shall take up the matter with the establishment for corrective action.

(3) The Grievance Redressal Officer shall maintain a register of complaints in the manner as may be prescribed by the Central Government, and every complaint shall be enquired within two weeks of its registration.

(4) If the aggrieved person is not satisfied with the action taken on his or her complaint, he or she may approach the District-Level Committee on disability.

CHAPTER V

SOCIAL SECURITY, HEALTH, REHABILITATION AND RECREATION

Social
security.

23. (1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community:

Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

(2) The appropriate Government while devising these schemes and programmes shall give due consideration to the diversity of disability, gender, age, and socio-economic status.

(3) The schemes under sub-section (1) shall provide for,—

(a) community centres with good living conditions in terms of safety, sanitation, health care and counseling;

(b) facilities for persons including children with disabilities who have no family or have been abandoned, or are without shelter or livelihood;

(c) support during natural or man-made disasters and in areas of conflict;

(d) support to women with disability for livelihood and for upbringing of their children;

(e) access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas;

(f) provisions of aids and appliances, medicine and diagnostic services and corrective surgery free of cost to persons with disabilities with such income ceiling as may be notified;

(g) disability pension to persons with disabilities subject to such income ceiling as may be notified;

(h) unemployment allowance to persons with disabilities registered with Special Employment Exchange for more than two years and who could not be placed in any gainful occupation;

(i) care-giver allowance to persons with disabilities with high support needs;

(j) comprehensive insurance scheme for persons with disability, not covered under the Employees State Insurance Schemes, or any other statutory or Government sponsored insurance schemes;

(k) any other matter which the appropriate Government may think fit.

24. (1) The appropriate Government and the local authorities shall take necessary measures for the persons with disabilities to provide,— ^{Healthcare.}

(a) free healthcare in the vicinity specially in rural area subject to such family income as may be notified;

(b) barrier-free access in all parts of the hospitals and other healthcare institutions and centres run or aided by them;

(c) priority in attendance and treatment.

(2) The appropriate Government and the local authorities shall take measures and make schemes or programmes to promote healthcare

and prevent the occurrence of disabilities and for the said purpose shall—

(a) undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities;

(b) promote various methods for preventing disabilities;

(c) screen all the children at least once in a year for the purpose of identifying “at-risk” cases;

(d) provide facilities for training to the staff at the primary health centres;

(e) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene, health and sanitation;

(f) take measures for pre-natal, perinatal and post-natal care of mother and child;

(g) educate the public through the pre-schools, schools, primary health centres, village level workers and anganwadi workers;

(h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted;

(i) health care during the time of natural disasters and other situations of risk;

(j) essential medical facilities for life saving emergency treatment and procedures; and

(k) sexual and reproductive health care especially for women with disability.

Insurance schemes.

25. The appropriate Government shall, by notification, make insurance schemes for their employees with disabilities.

26. (1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities. Rehabilitation.

(2) For the purposes of sub-section (1), the appropriate Government and the local authorities may grant financial assistance to non-Government Organisations.

(3) The appropriate Government and the local authorities, while formulating rehabilitation policies shall consult the non-Governmental Organisations working for the cause of persons with disabilities.

27. The appropriate Government shall initiate or cause to be initiated research and development through individuals and institutions on issues which shall enhance habilitation and rehabilitation and on such other issues which are necessary for the empowerment of persons with disabilities. Research and development.

28. The appropriate Government and the local authorities shall take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with others which include,— Culture and recreation.

(a) facilities, support and sponsorships to artists and writers with disability to pursue their interests and talents;

(b) establishment of a disability history museum which chronicles and interprets the historical experiences of persons with disabilities;

(c) making art accessible to persons with disabilities;

(d) promoting recreation centres, and other associational activities;

(e) facilitating participation in scouting, dancing, art classes, outdoor camps and adventure activities;

(f) redesigning courses in cultural and arts subjects to enable participation and access for persons with disabilities; and

(g) developing technology, assistive devices and equipments to facilitate access and inclusion for persons with disabilities in recreational activities.

Sporting activities.

29. (1) The appropriate Government shall take measures to ensure effective participation in sporting activities of the persons with disabilities.

(2) The sports authorities shall accord due recognition to the right of persons with disabilities to participate in sports and shall make due provisions for the inclusion of persons with disabilities in their schemes and programmes for the promotion and development of sporting talents.

(3) Without prejudice to the provisions contained in sub-sections (1) and (2), the appropriate Government and the sports authorities shall take measures to,—

(a) restructure courses and programmes to ensure access, inclusion and participation of persons with disabilities in all sporting activities;

(b) redesign and support infrastructure facilities of all sporting activities for persons with disabilities;

(c) develop technology to enhance potential, talent, capacity and ability in sporting activities of all persons with disabilities;

(d) provide multi-sensory essentials and features in all sporting activities to ensure effective participation of all persons with disabilities;

(e) allocate funds for development of state of art sport facilities for training of persons with disabilities;

(f) promote and organise disability specific sporting events for persons with disabilities.

CHAPTER VI

SPECIAL PROVISIONS FOR PERSONS WITH BENCHMARK DISABILITIES

35 of 2009. **30. (1)** Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, if necessary.

Free education for children with benchmark disabilities.

(2) The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years.

31. (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities.

Reservation in higher educational institutions.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

32. The appropriate Government shall—

Identification of posts for reservation.

(i) identify posts in the establishments to be reserved for the persons with benchmark disability;

(ii) review and update the list of identified posts, taking into consideration the developments in technology, at periodical intervals not exceeding five years.

Reservation.

33. (1) Every appropriate Government shall reserve in every establishment under them, not less than five per cent. of the vacancies meant to be filled for persons or class of persons with benchmark disability, of which one per cent. each shall be reserved for the persons with following disabilities,—

(a) blindness and low vision;

(b) hearing impairment and speech impairment;

(c) locomotor disability including cerebral palsy, leprosy cured and muscular dystrophy;

(d) autism, intellectual disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

Explanation.—For the purposes of this section, the computation of reservation of vacancies for the persons with benchmark disabilities shall be computed on five per cent of the total cadre strength.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it

may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government shall, by notification, provide relaxation of upper age limit up to five years for employment of persons with benchmark disability.

34. The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent. of their work force is composed of persons with benchmark disability.

Incentives to employers in private sector.

35. The appropriate Government may, by notification, require that from such date, the employer in every establishment shall furnish such information or return as may be prescribed by the Central Government in relation to vacancies appointed for persons with benchmark disability that have occurred or are about to occur in that establishment to such Special Employment Exchange as may be notified by the Central Government and the establishment shall thereupon comply with such requisition.

Special Employment Exchange.

36. The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—

Special schemes and development programmes.

(a) five per cent reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;

(b) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;

(c) five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centers and production centers.

CHAPTER VII

SPECIAL PROVISIONS FOR PERSONS WITH DISABILITIES WITH HIGH SUPPORT NEEDS

Special provisions for persons with disabilities with high support.

37. (1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

(2) On receipt of an application under sub-section (1), the authority shall refer it to an Assessment Board consisting of such Members as may be prescribed by the Central Government.

(3) The Assessment Board shall assess the case referred to it under sub-section (1) in such manner as may be prescribed by the Central Government, and shall send a report to the authority certifying the need of high support and its nature.

(4) On receipt of a report under sub-section (3), the authority shall take steps to provide support in accordance with the report and subject to relevant schemes and orders of the appropriate Government in this behalf.

CHAPTER VIII

DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENTS

Awareness campaigns.

38. (1) The appropriate Government, in consultation with the National Commission or the State Commission, as the case may be, shall

conduct, encourage, support or promote awareness campaigns and sensitisation programmes to ensure that the rights of the persons with disabilities provided under this Act are protected.

(2) The programmes and campaigns specified under sub section (1) shall also,—

(a) promote values of inclusion, tolerance, empathy and respect for diversity;

(b) advance recognition of the skills, merits and abilities of persons with disabilities and of their contributions to the workforce, labour market and professional fee;

(c) foster respect for the decisions made by persons with disabilities on all matters related to family life, relationships, bearing and raising children;

(d) provide orientation and sensitisation at the school, college, University and professional training level on the human condition of disability and the rights of persons with disabilities;

(e) provide orientation and sensitisation on disabling conditions and rights of persons with disabilities to employers, administrators and co-workers; and

(f) ensure that the rights of persons with disabilities are included in the curriculum in Universities and colleges.

39. The National Commission shall, Accessibility. formulate regulations for the persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

Access to transport.

40. (1) The appropriate Government shall take suitable measures to provide,—

(a) facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines;

(b) access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design;

(c) accessible roads to address mobility necessary for persons with disabilities.

(2) The appropriate Government shall develop schemes programmes to promote the personal mobility of persons with disabilities at affordable cost to provide for,—

(a) incentives and concessions;

(b) retrofitting of vehicles; and

(c) personal mobility assistance.

Access to information and communication technology.

41. The appropriate Government shall take measures to ensure that,—

(i) all contents available in audio, print and electronic media are in accessible format;

(ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;

(iii) electronic goods and equipment which are meant for every day use are available in universal design.

Consumer goods.

42. The appropriate Government shall take measures to promote development, production and distribution of universally designed consumer products and accessories for general use for persons with disabilities.

43. (1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the regulations formulated by the National Commission under section 39.

Mandatory observance of accessibility norms.

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the regulations formulated by the National Commission.

44. (1) All existing public buildings shall be made accessible in accordance with the regulations formulated by the National Commission within a period not exceeding five years from the date of notification of such regulations:

Time limit for making existing infrastructure and premises accessible and action for that purpose.

Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters.

(2) The appropriate Government and the local authorities shall formulate and publish an action plan based on prioritization, for providing accessibility in all their buildings and spaces providing essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops.

45. The service providers shall provide services in accordance with the regulations on accessibility formulated by the National Commission under section 39 within a period of two years from the date of notification of such regulations:

Time limit for accessibility by service providers.

Provided that the Central Government, in consultation with the National Commission, may grant extension of time for providing certain category of services in accordance with the said regulations.

46. (1) Without prejudice to any function and power of Rehabilitation Council of India constituted under the Rehabilitation Council of India Act, 1992, the appropriate Government

Human resource development.

shall endeavour to develop human resource for the purposes of this Act and to that end shall,—

(a) mandate training on disability rights in all courses for the training of Panchayati Raj Members, legislators, administrators, police officials, judges and lawyers;

(b) induct disability as a component for all education courses for schools, colleges and University teachers, doctors, nurses, para-medical personnel, social welfare officers, rural development officers, asha workers, *anganwadi* workers, engineers, architects, other professionals and community workers;

(c) initiate capacity building programmes including training in independent living and community relationships for families, members of community and other stakeholders and care providers on care giving and support;

(d) ensure independence training for persons with disabilities to build community relationships on mutual contribution and respect;

(e) conduct training programmes for sports teachers with focus on sports, games, adventure activities;

(f) any other capacity development measures as may be required.

(2) All universities shall promote teaching and research in disability studies including establishment of study centres for such studies.

(3) In order to fulfil the obligation stated in sub-section (1), the appropriate Government shall in every five years undertake a need based analysis and formulate plans for the recruitment, induction, sensitization, orientation and training of suitable personnel to undertake the various responsibilities under this Act.

47. The appropriate Government shall undertake social audit of all general schemes and programmes involving the persons with disabilities to ensure that the scheme and programmes do not have an adverse impact upon the persons with disabilities and need the requirements and concerns of persons with disabilities.

Social audit.

CHAPTER IX

REGISTRATION OF INSTITUTIONS FOR PERSONS WITH DISABILITIES AND GRANTS TO SUCH INSTITUTIONS

48. The State Government shall appoint an authority as it deems fit to be a competent authority for the purposes of this Chapter.

Competent authority.

49. Save as otherwise provided under this Act, no person shall establish or maintain any institution for persons with disabilities except in accordance with a certificate of registration issued in this behalf by the competent authority:

Registration.

14 of 1987. Provided that an institution for care of mentally ill persons, which holds a valid licence under section 8 of the Mental Health Act, 1987 or any other Act for the time being in force, shall not be required to be registered under this Act.

50. (1) Every application for a certificate of registration shall be made to the competent authority in such form and in such manner as may be prescribed by the State Government.

Application and grant of certificate of registration.

(2) On receipt of an application under sub-section (1), the competent authority shall make such enquiries as it may deem fit and on being satisfied that the applicant has complied with the requirements of this Act and the rules made thereunder, it shall grant a certificate of registration to the applicant and if not satisfied, the competent authority shall, by order, refuse to grant the certificate applied for:

Provided that before making any order refusing to grant a certificate, the competent authority shall give the applicant a reasonable

opportunity of being heard and every order of refusal to grant a certificate shall be communicated to the applicant in writing.

(3) No certificate of registration shall be granted under sub-section (2) unless the institution with respect to which an application has been made is in a position to provide such facilities and meet such standards as may be prescribed by the State Government.

(4) The certificate of registration granted under sub-section (2),—

(a) shall, unless revoked under section 51 remain in force for such period as may be prescribed by the State Government;

(b) may be renewed from time to time for a like period; and

(c) shall be in such form and shall be subject to such conditions as may be prescribed by the State Government.

(5) An application for renewal of a certificate of registration shall be made not less than sixty days before the expiry of the period of validity.

(6) A copy of the certificate of registration shall be displayed by the institution in a conspicuous place.

(7) Every application made under sub-section (1) or sub-section (5) shall be disposed of by the competent authority within such period as may be prescribed by the State Government.

Revocation
of
registration.

51. (1) The competent authority may, if it has reason to believe that the holder of a certificate of registration granted under sub-section (2) of section 49 has,—

(a) made a statement in relation to any application for the issue or renewal of the certificate which is incorrect or false in material particulars; or

(b) committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted,

it may, after making such inquiry, as it deems fit, by order, revoke the certificate:

Provided that no such order shall be made until an opportunity is given to the holder of the certificate to show cause as to why the certificate of registration shall not be revoked.

(2) Where a certificate of registration in respect of an institution has been revoked under sub-section (1), such institution shall cease to function from the date of such revocation:

Provided that where an appeal lies under section 52 against the order of revocation, such institution shall cease to function,—

(a) where no appeal has been preferred immediately on the expiry of the period prescribed for the filing of such appeal; or

(b) where such appeal has been preferred, but the order of revocation has been upheld, from the date of the order of appeal.

(3) On the revocation of a certificate of registration in respect of an institution, the competent authority may direct that any person with disability who is an inmate of such institution on the date of such revocation, shall be—

(a) restored to the custody of his or her parent, spouse or lawful guardian, as the case may be, or

(b) transferred to any other institution specified by the competent authority.

(4) Every institution which holds a certificate of registration which is revoked under this section shall, immediately after such revocation, surrender such certificate to the competent authority.

Appeal. **52. (1)** Any person aggrieved by the order of the competent authority refusing to grant a certificate of registration or revoking a certificate of registration may, within such period as may be prescribed by the State Government, prefer an appeal to such appellate authority, as may be notified by the State Government against such refusal or revocation.

(2) The order of the appellate authority on such appeal shall be final.

Act not to apply to institutions established or maintained by Central or State Government. **53.** Nothing contained in this Chapter shall apply to an institution for persons with disabilities established or maintained by the Central Government or a State Government.

Assistance to registered institutions. **54.** The appropriate Government may within the limits of their economic capacity and development, grant financial assistance to registered institutions to provide services and to implement the schemes and programmes in pursuance of the provisions of the Act.

CHAPTER X

CERTIFICATION OF SPECIFIED DISABILITIES

Guidelines for assessment of specified disabilities. **55.** The Central Government shall notify guidelines for the purpose of assessing the extent of specified disability in a person.

Designation of certifying authorities. **56. (1)** The appropriate Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability.

(2) The appropriate Government shall also notify the jurisdiction within which and the terms and conditions subject to which, the certifying authority shall perform its certification functions.

57. (1) Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability.

Procedure for certification.

(2) On receipt of an application under subsection (1), the certifying authority shall assess the disability of the concerned person in accordance with relevant guidelines notified under section 55, and shall, after such assessment, as the case may be,—

(a) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government;

(b) inform him in writing that he has no specified disability.

58. (1) Any person aggrieved with decision of the certifying authority, may appeal against such decision, within such time and in such a manner as may be prescribed by the State Government, to such appellate authority as the State Government may designate for the purpose.

Appeal against decision of certifying authority.

(2) On receipt of an appeal, the appellate authority shall decide the appeal in such manner as may be prescribed by the State Government.

CHAPTER XI

CENTRAL AND STATE ADVISORY BOARDS ON DISABILITY AND DISTRICT LEVEL COMMITTEE

59. (1) The Central Government shall, by notification, constitute a body to be known as the Central Advisory Board on Disability to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

Constitution of Central Advisory Board on disability.

(2) The Central Advisory Board shall consist of,—

(a) the Minister in-charge of Department of Disability Affairs in the Central Government, Chairperson, *ex officio*;

(b) the Minister of State in-charge dealing with Department of Disability Affairs in the Ministry in the Central Government, Vice-Chairperson, *ex officio*;

(c) three Members of Parliament, of whom two shall be elected by Lok Sabha and one by the Rajya Sabha; Members, *ex officio*;

(d) the Ministers in-charge of Disability Affairs of all States and Administrators or Lieutenant Governors of the Union territories, Members, *ex officio*;

(e) Secretaries to the Government of India in-charge of the Ministries or Departments of Disability Affairs, Social Justice and Empowerment, School Education and Literacy, and Higher Education, Women and Child Development, Expenditure, Personnel and Training, Administrative Reforms and Public Grievances, Health and Family Welfare, Rural Development, Panchayati Raj, Industrial Policy and Promotion, Urban Development, Housing and Urban Poverty Alleviation, Science and Technology, Communications and Information Technology, Legal Affairs, Public Enterprises, Youth Affairs and Sports, Road Transport and Highways and Civil Aviation, Members, *ex officio*;

(f) Secretary, Planning Commission, Member, *ex officio*;

(g) Chairperson, Rehabilitation Council of India, Member, *ex officio*;

(h) Chairperson, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, Member, *ex officio*;

(i) Chairman-cum-Managing Director, National Handicapped Finance Development Corporation, Member, *ex officio*;

(j) Chairman-cum-Managing Director, Artificial Limbs Manufacturing Corporation, Member, *ex officio*;

(k) Chairman, Railway Board, Member, *ex officio*;

(l) Director-General, Employment and Training, Ministry of Labour and Employment, Member, *ex officio*;

(m) Director, National Council for Educational Research and Training, Member, *ex officio*;

(n) Chairperson, National Council of Teacher Education, Member, *ex officio*;

(o) Chairperson, University Grants Commission, Member, *ex officio*;

(p) Chairperson, Medical Council of India, Member, *ex officio*;

(q) Directors of the following Institutes:—

(i) National Institute for the Visually Handicapped, Dehradun;

(ii) National Institute for the Mentally Handicapped, Secundrabad;

(iii) Pandit Deen Dayal Upadhyay Institute for the Physically Handicapped, New Delhi;

(iv) Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai;

(v) National Institute for the Orthopaedically Handicapped, Kolkata;

(vi) National Institute of Rehabilitation Training and Research, Cuttack;

(vii) National Institute for Empowerment of Persons with Multiple Disabilities, Chennai;

(viii) National Institute for Mental Health and Sciences, Bangalore;

(ix) Indian Sign Language Research and Training Centre, New Delhi, Members, *ex officio*;

(r) Members to be nominated by the Central Government:—

(i) five Members who are experts in the field of disability and rehabilitation;

(ii) ten Members, as far as practicable, being persons with disabilities, to represent Non-Governmental Organisations concerned with disabilities or disabled persons organisations:

Provided that out of the ten Members nominated, at least, five Members shall be women and at least one person each shall be from Scheduled Castes and Scheduled Tribes;

(iii) up to three representatives of national level chambers of commerce and industry;

(s) Joint Secretary to the Government of India dealing with the subject of disability policy, Member-Secretary, *ex officio*.

Terms and conditions of service of Members.

60. (1) Save as otherwise provided under this Act, a Member of the Central Advisory Board nominated under clause (r) of sub-section (2) of section 59 shall hold office for a term of three years from the date of his nomination:

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The Central Government may, if it thinks fit, remove any Member nominated under clause (r) of sub-section (2) of section 59, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(3) A Member nominated under clause (r) of sub-section (2) of section 59 may at any time resign his office by writing under his hand addressed to the Central Government and the seat of the said Member shall thereupon become vacant.

(4) A casual vacancy in the Central Advisory Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(5) A Member nominated under sub-clause (i) or sub-clause (iii) of clause (r) of sub-section (2) of section 59 shall be eligible for renomination.

(6) The Members nominated under sub-clause (i) and sub-clause (ii) of clause (r) of sub-section (2) of section 59 shall receive such allowances as may be prescribed by the Central Government.

61. (1) No person shall be a Member of the Central Advisory Board, who— Disqualifi-
cation.

(a) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent court, or

(c) is, or has been, convicted of an offence which, in the opinion of the Central Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has so abused his position in the opinion of the Central Government as a Member so as to render his continuance in the office prejudicial to the interests of the general public.

(2) No order of removal shall be made by the Central Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (5) of section 60, a Member who has been removed under this section shall not be eligible for renomination as a Member.

Vacation of seats by Members.

62. If a Member of the Central Advisory Board becomes subject to any of the disqualifications specified in section 61, his seat shall become vacant.

Meetings of the Central Advisory Board on disability.

63. The Central Advisory Board shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

Functions of Central Advisory Board on disability.

64. (1) Subject to the provisions of this Act, the Central Advisory Board on disability shall be the national-level consultative and advisory body on disability matters, and shall facilitate the continuous evolution of a comprehensive policy for the empowerment of persons with disabilities and the full enjoyment of rights.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Central Advisory Board on disability shall perform the following functions, namely:—

(a) advise the Central Government and the State Governments on policies, programmes, legislation and projects with respect to disability;

(b) develop a national policy to address issues concerning persons with disabilities;

(c) review and coordinate the activities of all Departments of the Government and other Governmental and Non-Governmental Organisations which are dealing with matters relating to persons with disabilities;

(d) take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the persons with disabilities in the national plans;

(e) recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for persons with disabilities *vis-à-vis* information, services and the built environment and their participation in social life;

(f) monitor and evaluate the impact of laws, policies and programmes to achieve full participation of persons with disabilities; and

(g) such other functions as may be assigned from time to time by the Central Government.

65. (1) Every State Government shall, by notification, constitute a body to be known as the State Advisory Board on disability to exercise the powers conferred on, and to perform the function assigned to it, under this Act.

State
Advisory
Board on
disability.

(2) The State Advisory Board shall consist of—

(a) the Minister in charge of the Department in the State Government dealing with disability matters, Chairperson, *ex officio*;

(b) the Minister of State or the Deputy Minister in charge of the Department in the State Government dealing with disability matters, if any, Vice-Chairperson, *ex officio*;

(c) secretaries to the State Government in charge of the Departments of Disability Affairs, School Education, Literacy and Higher Education, Women and Child Development, Finance, Personnel and

Training, Health and Family Welfare, Rural Development, Panchayati Raj, Industrial Policy and Promotion, Labour and Employment, Urban Development, Housing and Urban Poverty Alleviation, Science and Technology, Information Technology, Public Enterprises, Youth Affairs and Sports, Road Transport and any other Department, which the State Government considers necessary, Members, *ex officio*;

(d) three Members of the State Legislature of whom two shall be elected by the Legislative Assembly and one by the Legislative Council, if any, and where there is no Legislative Council, three Members shall be elected by the Legislative Assembly, Members, *ex officio*;

(e) Members to be nominated by the State Government:—

(i) five Members who are experts in the field of disability and rehabilitation;

(ii) five Members to be nominated by the State Government by rotation to represent the districts in such manner as may be prescribed:

Provided that no nomination under this sub-clause shall be made except on the recommendation of the district administration concerned;

(iii) ten persons as far as practicable, being persons with disabilities, to represent non-Governmental Organisations or associations which are concerned with disabilities:

Provided that out of the ten persons nominated under this clause, at least, five shall be women and at least one person each shall be from the Scheduled Castes and the Scheduled Tribes;

(iv) not more than three representatives of the State Chamber of Commerce and Industry;

(f) officer not below the rank of Joint Secretary in the Department dealing with disability matters in the State Government, Member-Secretary, *ex officio*.

66. (1) Save as otherwise provided under this Act, a Member of the State Advisory Board nominated under clause (e) of sub-section (2) of section 65, shall hold office for a term of three years from the date of his nomination:

Terms and conditions of service of Members.

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The State Government may, if it thinks fit, remove any Member nominated under clause (e) of sub-section (2) of section 65, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(3) A Member nominated under clause (e) of sub-section (2) of section 65 may at any time resign his office by writing under his hand addressed to the State Government and the seat of the said Member shall thereupon become vacant.

(4) A casual vacancy in the State Advisory Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(5) A Member nominated under sub-clause (i) or sub-clause (iii) of clause (e) of sub-section (2) of section 65 shall be eligible for renomination.

(6) the Members nominated under sub-clause (i) and sub-clause (ii) of clause (e) of sub-section (2) of section 65 shall receive such allowances as may be prescribed by the State Government.

Disqualifi-
cation.

67. (1) No person shall be a Member of the State Advisory Board, who—

(a) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent court, or

(c) is, or has been, convicted of an offence which, in the opinion of the State Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has so abused in the opinion of the State Government his position as a Member as to render his continuance in the State Advisory Board detrimental to the interests of the general public.

(2) No order of removal shall be made by the State Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (5) of section 66, a Member who has been removed under this section shall not be eligible for renomination as a Member.

Vacation of
seats.

68. If a Member of the State Advisory Board becomes subject to any of the disqualifications specified in section 67 his seat shall become vacant.

Meetings of
State
Advisory
Board on
disability.

69. The State Advisory Board shall meet at least once in every six months and shall observe such rules or procedure in regard to the transaction of business at its meetings as may be prescribed by the State Government.

70. (1) Subject to the provisions of this Act, the State Advisory Board shall be the State-level consultative and advisory body on disability matters, and shall facilitate the continuous evolution of a comprehensive policy for the empowerment of persons with disabilities and the full enjoyment of rights.

Functions of State Advisory Board on disability.

(2) In particular and without prejudice to the generality of the foregoing provisions, the State Advisory Board on disability shall perform the following functions, namely:—

(a) advise the State Government on policies, programmes, legislation and projects with respect to disability;

(b) develop a State policy to address issues concerning persons with disabilities;

(c) review and coordinate the activities of all Departments of the State Government and other Governmental and non-Governmental Organisations in the State which are dealing with matters relating to persons with disabilities;

(d) take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the persons with disabilities in the State plans;

(e) recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for persons with disabilities, services and the built environment and their participation in social life on an equal basis with others;

(f) monitor and evaluate the impact of laws, policies and programmes designed to achieve full participation of persons with disabilities; and

(g) such other functions as may be assigned from time to time by the State Government.

District-level
Committee
on
disability.

71. The State Government shall constitute District-level Committee on disability to perform such functions as may be prescribed by it.

Vacancies
not to
invalidate
proceedings.

72. No act or proceeding of the Central Advisory Board on disability, a State Advisory Board on disability, or a District-level Committee on disability shall be called in question on the ground merely of the existence of any vacancy in or any defect in the constitution of such Board or Committees, as the case may be.

CHAPTER XII

NATIONAL COMMISSION FOR PERSONS WITH DISABILITIES

Constitution
of National
Commission
for persons
with
disabilities.

73. (1) The Central Government shall, by notification, constitute a body to be known as the National Commission for persons with disabilities to exercise the powers conferred upon and to perform the following functions, namely:—

(a) identify, *suo motu* or otherwise, provisions of any law, policies, programmes and procedures, which are inconsistent with this Act, and recommend necessary corrective steps;

(b) inquire, *suo motu* or otherwise with respect to deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with the appropriate authorities for corrective action;

(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(e) study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;

(f) undertake and promote research in the field of the rights of persons with disabilities;

(g) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

(h) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(i) monitor utilisation of funds disbursed by the Central Government for the benefit of persons with disabilities; and

(j) such other functions as the Central Government may assign.

(2) The National Commission shall consist of a Chairperson from amongst persons of eminence with a distinguished record of service of not less than twenty-five years in the field of disability, and two Members with distinguished record of service of not less than twenty years in the field of rehabilitation, advocacy, law, management and technology concerning disability matters:

Provided that out of the two Members, one Member shall be a person with disability.

(3) The head office of the National Commission shall be in the National Capital Region, Delhi.

74. (1) The Central Government shall, for the purpose of selection of the Chairperson and the Members of the National Commission, constitute a Selection Committee consisting of—

Selection and appointment of Chairperson and Members.

(a) Cabinet Secretary—Chairperson;

(b) Secretary in charge of the Ministry or the Department responsible for administration of this Act as the convener—Member;

(c) Secretary in charge of the Ministries or the Departments of the Central Government dealing with health and personnel—Members;

(d) two experts in the field of empowerment and rehabilitation of persons with disability matters as may be nominated by the Central Government—Members.

(2) The Central Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member of the National Commission and three months before the superannuation or completion of the term of office of the Chairperson or any Member of that Commission, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the Chairperson and Members of the National Commission within two months from the date on which the reference is made to it.

(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(5) The Selection Committee, before recommending any person for appointment as a Chairperson or other Member of the National Commission, shall satisfy itself that such person does not have any financial or other interest, which is likely to affect prejudicially his functions as a Member.

(6) No appointment of the Chairperson or other Member of the National Commission shall be invalid merely by reason of any vacancy in the Selection Committee.

75. (1) The Chairperson and a Member of the National Commission shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-appointment for another term of three years.

Term of office of Chairperson and Members.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson or any Member may—

(a) relinquish his office by giving in writing to the Central Government a notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 76.

76. (1) Notwithstanding anything contained in sub-section (1) of section 75, the Central Government may, by order, remove from office the Chairperson or any other Members, if the Chairperson or as the case may be, such other Member,—

Removal of Chairperson and Members.

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interests as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) No Member shall be removed under clauses (d) and (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

Member to act as Chairperson and to discharge functions in certain circumstances.

77. (1) In the event of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Central Government may designate the senior-most Member to act as the Chairperson until the day on which a Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Central Government may authorise the senior-most Member to discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

(3) The senior-most Member designated to act under sub-section (1) or to discharge functions of the Chairperson under sub-section (2), of the Chairperson shall continue to draw salary and allowances of a Member.

Terms and conditions of service of Chairperson and Members.

78. The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members of the National Commission shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.

Vacancies, etc., not to invalidate proceedings of National Commission.

79. No act or proceeding of the National Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the National Commission; or

(b) any defect in the appointment of a person acting as a Member of the National Commission; or

(c) any irregularity in the procedure of the National Commission not affecting the merits of the case.

80. (1) The National Commission shall meet at such time and place as the Chairperson may think fit.

Procedure for National Commission.

(2) Subject to the provisions of this Act and the rules made thereunder, the National Commission shall have the power to lay down, by regulations, its own procedure.

(3) All orders and decisions of the National Commission shall be authenticated by the Secretary or any other officer of the National Commission duly authorised by the Chairperson in this behalf.

81. (1) The Central Government shall appoint an officer of the rank of an Additional Secretary to the Government of India, who shall be the Secretary to the National Commission.

Officers and other staff of National Commission.

(2) Subject to such rules as may be made by the Central Government in this behalf, the National Commission may appoint such other administrative and technical officers and staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the Central Government.

82. Subject to the provisions of this Act, every person employed in the Office of Chief Commissioner for persons with disabilities constituted under section 57 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 immediately before the date of establishment of the National Commission shall, on and from such date, become an employee of the National Commission with such designation as the National Commission may determine and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions as he would

Transfer of service of existing employees.

have held on such date if the National Commission had not been established and shall continue to do so unless and until his employment in the National Commission is terminated or until such tenure, remuneration and terms and conditions are duly altered by the National Commission:

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the previous approval of the Central Government.

Action by appropriate authorities on recommendation of National Commission.

83. Whenever the National Commission makes a recommendation to an authority in pursuance of clause (b) of sub-section (1) of section 73, that authority shall take necessary action on it, and inform the Commission of the action taken within three months from the date of receipt of the recommendation:

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the National Commission within the period of three months, and shall also inform the aggrieved person.

National Commission to have certain powers of civil court.

84. (1) The National Commission shall, for the purpose of discharging its functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits; and

(e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the National Commission shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the National Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

85. (1) The National Commission shall submit an annual report to the Central Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.

Annual and special reports of National Commission.

(2) The Central Government shall cause the annual and special reports of the National Commission to be laid before each House of Parliament, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any.

(3) The annual and special reports shall be prepared in such form, manner and contain such details as may be prescribed by the Central Government.

CHAPTER XIII

STATE COMMISSION FOR PERSONS WITH DISABILITIES

86. (1) A State Government shall constitute a body to be known as the State Commission for persons with disabilities or two or more States on mutual consent can have one Commission in respect of their States to exercise the powers conferred upon and to perform the following functions, namely:—

Constitution of State Commission for persons with disabilities.

(a) identify, *suo motu*, or otherwise, provisions of any law, policies, programmes and procedures of the State Government, which are inconsistent with the provisions of this Act, and recommend necessary corrective steps;

(b) inquire, *suo motu*, or otherwise, with respect to deprivation of rights of persons with disabilities and safeguards available to them, in respect of matters for which the State Government is the appropriate Government and take up the matter with the appropriate authorities for corrective action;

(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(e) undertake and promote research in the field of the rights of persons with disabilities;

(f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

(g) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(h) monitor utilisation of funds disbursed by the State Government for the benefit of persons with disabilities; and

(i) such other functions as may be assigned by the State Government from time to time.

(2) The State Commission shall consist of a Chairperson from amongst persons of eminence, with a distinguished record of service of not less than twenty years in the field of disability, and two Members, with distinguished record of

service of not less than fifteen years in the field of rehabilitation, advocacy, law, management, technology concerning disability matters:

Provided that out of the two Members, one Member shall be a person with disability.

(3) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.

87. (1) The State Government shall, for the purpose of selection of the Chairperson and the Members of the State Commission, constitute a Selection Committee consisting of—

Selection and appointment of Chairperson and Members.

(a) Chief Secretary—Chairperson;

(b) Secretary in charge of the Ministry or the Department responsible for administration of this Act as the convener—Member;

(c) Secretary in charge of the Departments of the State Government dealing with Health, and Personnel—Members;

(d) two experts in the field of rehabilitation of persons with disability matters as may be nominated by the State Government—Member.

(2) The State Government shall, within two months from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a Member of the State Commission and three months before the superannuation or completion of the term of office of the Chairperson or any Member of that Commission, make a reference to the Selection Committee for filling up of the vacancy.

(3) The Selection Committee shall finalise the selection of the Chairperson and Members of the State Commission within two months from the date on which the reference is made to it.

(4) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(5) Before recommending any person for appointment as a Chairperson or other Member of the State Commission, the Selection Committee shall satisfy itself that such person does not have any financial or other interest, which is likely to affect prejudicially his functions as a Member.

(6) No appointment of the Chairperson or other Member of the State Commission shall be invalid merely by reason of any vacancy in the Selection Committee.

Term of office of Chairperson and Members.

88. (1) The Chairperson and Members of the State Commission shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for re-appointment for another term of three years.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson or any Member may—

(a) relinquish his office by giving in writing to the State Government a notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 89.

Removal of Chairperson and Members.

89. (1) Notwithstanding anything contained in sub-section (1) of section 88, the State Government may, by order, remove from office the Chairperson or any other Members, if the Chairperson or, as the case may be, such other Member,—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interests as is likely to affect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) No Member shall be removed under clauses (d) and (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

90. (1) In the event of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the State Government may designate the senior-most Member to act as the Chairperson until the day on which a Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

Member to act as Chairperson and to discharge functions in certain circumstances.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the State Government may authorise the senior-most Member to discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

(3) The senior-most Member designated to act under sub-section (1) or to discharge functions of the Chairperson under sub-section (2), of the Chairperson shall continue to draw salary and allowances of a Member.

91. The salaries and allowances payable to, and other terms and conditions of service of, the Chairperson and Members of the State Commission shall be such as may be prescribed by the State Government:

Terms and conditions of service of Chairperson and Members.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or a Member shall be varied to his disadvantage after his appointment.

Vacancies, etc., not to invalidate the proceedings of State Commission.

92. No act or proceeding of the State Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the State Commission; or

(b) any defect in the appointment of a person acting as a Member of the State Commission; or

(c) any irregularity in the procedure of the State Commission not affecting the merits of the case.

Procedure of State Commission.

93. (1) The State Commission shall meet at such time and place as the Chairperson may think fit.

(2) Subject to the provisions of this Act and the rules made thereunder, the State Commission shall have the powers to lay down, by regulations, its own procedure.

(3) All orders and decisions of the State Commission shall be authenticated by the Secretary or any other officer of the State Commission duly authorised by the Chairperson in this behalf.

Officers and other staff of State Commission.

94. (1) The State Government shall appoint an officer of the rank of Additional Secretary to the State Government who shall be the Secretary to the Commission.

(2) Subject to such rules as may be made by the State Government in this behalf, the Commission may appoint such other administrative and technical officers and staff as it may consider necessary.

(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed by the State Government.

Transfer of service of existing employees to State Commission.

95. Subject to the provisions of this Act, every person employed in the Office of State Commissioner for persons with disabilities constituted under section 60 of the Persons with Disabilities (Equal Opportunities, Protection of

1 of 1996. Rights and Full Participation) Act, 1995 immediately before the date of establishment of the State Commission shall, on and from such date becomes an employee of the State Commission with such designation as the State Commission may determine and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions as he would have held on such date if the State Commission had not been established and shall continue to do so unless and until his employment in the State Commission is terminated or until such tenure, remuneration and terms and conditions are duly altered by the State Commission:

Provided that the tenure, remuneration and terms and conditions of service of any such person shall not be altered to his disadvantage without the approval of the Central Government.

96. (1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.

Annual and special reports of State Commission.

(2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the recommendations, if any.

(3) The annual and special reports shall be prepared in such form, manner and contain such details as may be prescribed by the State Government.

97. The Chief Commissioner for persons with disabilities and the State Commissioners for persons with disabilities appointed under the Persons with Disabilities (Equal Opportunities,

Transitory provisions.

Protection of Rights and Full Participation) Act, 1995, shall continue to so function and exercise the powers conferred on them under that Act, until the National Commission and the State Commission are constituted under this Act, but on the constitution of the National Commission and the State Commission, as the case may be, the Chief Commissioner for persons with disabilities and the State Commissioners for persons with disabilities shall cease to hold office.

1 of 1996.

CHAPTER XIV

SPECIAL COURT

Special Court.

98. For the purpose of providing speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district, a Court of Session to be a Special Court to try the offences under this Act.

Special Public Prosecutor.

99. (1) For every Special Court, the State Government may, by notification, specify a Public Prosecutor or appoint an advocate, who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

(2) The Special Public Prosecutor appointed under sub-section (1) shall be entitled to receive such fees or remuneration as may be prescribed by the State Government.

CHAPTER XV

NATIONAL FUND FOR PERSONS WITH DISABILITIES

National Fund for persons with disabilities.

100. (1) There shall be constituted a Fund to be called the National Fund for persons with disabilities and there shall be credited thereto—

(a) all sums available under the Fund for people with disabilities, constituted *vide* notification no. S.O. 573 (E), dated the 11th August, 1983 and the Trust Fund for

Empowerment of Persons with Disabilities, constituted *vide* notification No. 30-03/2004-DDII, dated the 21st November, 2006, under the Charitable Endowment Act, 1890.

(b) all sums payable by banks, corporations, financial institutions in pursuance of judgment dated the 16th April, 2004 of the Hon'ble Supreme Court in Civil Appeal Nos. 4655 and 5218 of 2000;

(c) all sums received by way of grant, gifts, donations, benefactions, bequests or transfers;

(d) all sums received from the Central Government including grants-in-aid;

(e) all sums from such other sources as may be decided by the Central Government.

(2) The Fund for persons with disabilities shall be utilised and managed in such manner as may be prescribed.

101. (1) The Central Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts of the Fund including the income and expenditure accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred by him in connection with such audit shall be payable from the Fund to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Fund shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India

generally has in connection with the audit of the Government account, and in particular, shall have the right to demand production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Fund.

(4) The accounts of the Fund as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be laid before each House of Parliament by the Central Government.

CHAPTER XVI

OFFENCES AND PENALTIES

Punishment for contravention of provisions of Act or rules or regulations made thereunder.

102. Any person who contravenes any of the provisions of this Act, or of any rule or regulation made thereunder shall for first contravention be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees or with both, and for any subsequent contravention with imprisonment for a term which may extend to two years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Offences by companies.

103. (1)Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

104. Whoever, fraudulently avails or attempts to avail any benefit meant for persons with benchmark disabilities, shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.

Punishment for fraudulently availing any benefit meant for persons with benchmark disabilities.

105. Whoever,—

(a) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view;

(b) assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability;

(c) having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her;

(d) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually;

Punishment for offences of atrocities.

(e) voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability;

(f) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Punishment for failure to furnish information.

106. Whoever, fails to produce any book, account or other documents or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, is duty bound to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder, shall be punishable with fine which may extend to twenty-five thousand rupees in respect of each offence, and in case of continued failure or refusal, with further fine which may extend to one thousand rupees for each day, of continued failure or refusal after the date of original order imposing punishment of fine.

Previous sanction of appropriate Government.

107. No Court shall take cognizance of an offence alleged to have been committed by an employee of the appropriate Government under this Chapter, except with the previous sanction of the appropriate Government or a complaint is filed by an officer authorised by it in this behalf.

108. Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any other law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

Alternative punishments.

CHAPTER XVII

MISCELLANEOUS

109. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of other laws not barred.

110. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any officer of the appropriate Government or any officer or employee of the National Commission or State Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Protection of action taken in good faith.

111. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions or give such directions, not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty:

Power to remove difficulties.

Provided that no such order shall be made under this section after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid as soon as may be, after it is made, before each House of Parliament.

112. (1) On the recommendations made by the appropriate Government or otherwise, if the Central Government is satisfied that it is necessary or expedient so to do, it may, by

Power to amend Schedule.

notification, amend the Schedule and any such notification being issued, the Schedule shall be deemed to have been amended accordingly.

(2) Every such notification shall, as soon as possible after it is issued, shall be laid before each House of Parliament.

Power of
Central
Government
to make
rules.

113. (1) The Central Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of constituting the Ethics Committee under sub-section (2) of section 5;

(b) the manner of notifying the equal opportunity policy under sub-section (1) of section 20;

(c) the form and manner of maintaining records by every establishment under sub-section (1) of section 21;

(d) the manner of maintenance of register of complaints by grievance redressal officer under sub-section (3) of section 22;

(e) the manner of furnishing information and return by establishment to the Special Employment Exchange under section 35;

(f) the composition of the Assessment Board under sub-section (2) and manner of assessment to be made by the Assessment Board under sub-section (3) of section 37;

(g) the manner of application for issuance of certificate of disability under sub-section (1) and form of certificate of disability under sub-section (2) of section 57;

(h) the allowances to be paid to nominated Members of the Central Advisory Board under sub-section (6) of section 60;

(i) the rules of procedure for transaction of business in the meetings of the Central Advisory Board under section 63;

(j) the salaries and allowances and other conditions of services of Chairperson and Members of the National Commission under section 78;

(k) the salaries and allowances and conditions of services of officers and staff of the National Commission under sub-section (3) of section 81;

(l) the form, manner and content of annual report to be prepared and submitted by the National Commission under sub-section (3) of section 85;

(m) the procedure, manner of utilisation and management of the Fund under subsection (2) of 100; and

(n) the form for preparation of accounts of Fund under sub-section (1) of section 101.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of State Government to make rules.

114. (1) The State Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner of constituting the ethics committee under sub-section (2) of section 5;

(b) the form and manner of making an application for certificate of registration under sub-section (1) of section 50;

(c) the facilities to be provided and standards to be met by institutions for grant of certificate of registration under sub-section (3) of section 50;

(d) the validity of certificate of registration, the form of, and conditions attached to, certificate of registration under sub-section (4) of section 50;

(e) the period of disposal of application for certificate of registration under sub-section (7) of section 50;

(f) the period within which an appeal to be made under sub-section (1) of section 52;

(g) the time and manner of appealing against the order of certifying authority under sub-section (1) and manner of disposal of such appeal under sub-section (2) of section 58;

(h) the allowances to be paid to nominated Members of the State Advisory Board under sub-section (6) of section 66;

(i) the rules of procedure for transaction of business in the meetings of the State Advisory Board under section 69;

(j) the composition and functions of District Level Committee under section 71;

(k) salaries, allowances and other conditions of services of Chairperson and Members of the State Commission under section 91;

(l) the salaries, allowances and conditions of services of officers and staff of the State Commission under sub-section (3) of section 94;

(m) the form, manner and content of annual and special reports to be prepared and submitted by the State Commission under sub-section (3) of section 96; and

(n) the fee or remuneration to be paid to the Special Public Prosecutor under subsection (2) of section 99.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House.

115. (1) The National Commission may, with the previous approval of the Central Government and after previous publication, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

Power of National Commission to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) standards for accessibility under section 39; and

(b) the rules of procedure for transaction of business under section 80.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days

which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form, or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of State Commission to make regulations.

116. (1) The State Commission may, with the previous approval of the Central Government and after previous publication, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act:

Provided that where any regulation has already been issued in any such matter by the National Commission, such regulations shall prevail over the regulations of the State Commission pertaining to the said matter.

(2) In particular, and without prejudice to the generality of the foregoing power, the State Commission shall make regulations relating to the rules of procedure for transaction of business under section 93.

(3) Every regulation made by the State Commission under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House.

Repeal and savings.

117. (1) The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 is hereby repealed.

(2) Notwithstanding the repeal of the said Act, anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act.

