

# HANDBOOK ON RIGHTS OF PERSONS WITH DISABILITIES ACT 2016

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## SHWETA RAWAT

Chairperson | The Hans Foundation

### Foreword

*In 2009, The Hans Foundation (THF) first started working with the National Centre for Promotion of Employment for Disabled People (NCPEDP) on mainstreaming disability issues. Our joint work led to the country's first-ever comprehensive effort towards enumeration and inclusion of persons with disabilities in the Population Census of 2011. Over the years, THF has partnered with NCPEDP on several campaigns to advance the discourse on inclusion, particularly in terms of education, accessibility, youth targeted programs, amongst others.*

*This partnership aligns with THF's commitment to create an ecosystem where disability issues are one issue in the larger conversation of development. In order to achieve that, we have been working with national and international organisations as well as the Government. Our work with Keystone Human Services International focuses on prevention of institutionalisation of people with disabilities and promote living in the community. While our work with the Central and State Governments shall continue, one of our focus areas will be to work on building the capacity and awareness levels of primary stakeholders. This includes people with disabilities themselves, their families, organisations of and for people with disabilities, local Governments, service providers, among others.*

*The passage of the Rights of Persons with Disabilities Act 2016 has given us a new paradigm to work on disability issues on multiple levels. However, the provisions of this law need to be taken to the villages for the Act to be implemented in its truest sense. The handbook explains these provisions in simple language. It explains what they mean in terms of actual benefits and entitlements; and how and where to avail them. We hope that this handbook will be used widely and will be able to trigger a conversation around disability issues and help disabled people to avail their rights and services.*





## JAVED ABIDI

Honorary Director | NCPEDP

### Foreword

*In my three decades as a disability rights activist, I have been part of two pathbreaking legislations – the Disability Act of 1995 and now the Rights of Persons with Disabilities Act 2016. As someone who has seen the challenges that hindered the implementation of the 1995 law, me and others like me have a responsibility to ensure that the lessons we learnt from the 1995 experience guide us in the implementation of the 2016 law. I will come to this later.*

*I have on several occasions termed the Rights of Persons with Disabilities Act, 2016 as a paradigm shifting law that is a 'game changer' for millions of people with disabilities in the country. But a law is only as good as its implementation. Awareness about the provisions of this law among the rights bearers is one of the biggest determinants of its effective implementation.*

*In India, majority of the millions of people with disabilities, for whom this law is intended live in the small towns and villages. It would not be a far fetched idea to say that a significant section of them are not even aware of this new law. Even for those who are, the highly technical language of the legislation is more often than not difficult to comprehend. An ordinary person with disability is perhaps only concerned about knowing about her/his rights and entitlements, and how and where to avail them. This handbook prepared by The Hans Foundation (THF) in partnership with National Centre for Promotion of Employment for Disabled People (NCPEDP) is intended to bridge the gap between the legalese of the Act and the 'how & where' of availing them.*

*This handbook is primarily meant for people with disabilities, their family and friends. However, this is also a resource for other stakeholders who have a role in ensuring that the rights of persons with disabilities are upheld and protected. This could be schools, colleges, workplaces, local Governments, among others. This brings me to my initial note about lessons learnt from the 1995 experience. In 2000, five years after the 1995 law was enacted, we did a scan of case laws pertaining to the Act. We found only 7. After a vigorous campaign that included breaking the language of the law into an easy to understand version, coupled with awareness campaigns, this figure rose to a few hundred in just a few years.*

*With this handbook, we hope to achieve a similar if not greater impact – where hundreds and thousands of people with disabilities are not just aware of their rights but are also empowered enough to insist on securing them.*



## Chapter 1

# PRELIMINARY

### Salient Features:

- This chapter explains the most important terms used in the legislation, to give it a meaning which differs from its ordinary, everyday meaning.
- These definitions encapsulate a concept so that it does not have to be repeated every time a reference is made to it. It eliminates ambiguity and helps to understand the intention of the statute.
- The chapter explains terms like reasonable accommodation, universal design, public building, Certifying Authority, Person with Benchmark Disability, High Support, ICT-Information and Communication Technology.



## APPELLATE AUTHORITIES

### 1. There are three Appellate Authorities mentioned in the Act

The Act provides that when a person with disability has been provided satisfactory and suitable support in a certain circumstance and he/she is still not able to make legally binding decisions (decisions made consciously which will require or prohibit certain actions), then he/ she may be provided the support of another person who has the legal authority (and the corresponding duty) to care for the personal and property interests of the person with disability.

When a person is not satisfied with the decision of the authority which appoints the legal guardian, s/he may make a request to another authority which is perceived as a higher authority. This higher authority is required to look into the matter and reverse the decisions of the previous authority, if required. This authority is called an Appellate Authority and is notified by the State Government.

The Act provides that any person who wants to set up and maintain an institution for persons with disabilities, is allowed to do so only when s/he has obtained a certificate from an authority which is appointed by the State Government as Competent Authority (having the necessary ability, knowledge, or skill to certify an institution). This authority shall also have the power to revoke the license in certain circumstances. A person who is not satisfied with the decision of this authority when it refuses to issue a license or when it revokes a license may make a request to a higher authority to look into the matter and if required reverse the decisions of the previous authority. This higher authority is called an Appellate Authority.

The Act also provides that any person who has a specified disability (a disability listed in the Schedule of the Act), can apply to a certifying authority for a certificate of disability. If a person is not satisfied with the decision of this certifying authority, then s/he can request a higher authority to look into the matter and if required reverse the decisions of the previous authority. This higher authority is called an Appellate Authority.

## 2. **Appropriate Government:**

This means the Central Government in case of institutions/ establishments which receive their funds wholly or substantially from the Central Government and Cantonment Boards established under the Cantonments Act 2006.

It means the State Government in case of any local authority or establishments or institutions which receive their funds from the State Government.

3. The dictionary meaning of the word '**Barrier**' is – 'a fence or other obstacle that prevents movement or access'. But the Act defines it in a much wider manner so as to include communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hamper the full and effective participation of persons with disabilities in society. For instance, 'stereotyping' might be an attitudinal barrier, wherein people assume that the quality of life of a person with disability is poor or that they are unhealthy because of their impairments, and so such a person must live a dull life without seeking happiness. Lack of availability of books/ materials in Braille for a visually impaired person can be a communicational barrier. Social barriers are related to the conditions in which people are born, grow, live, learn, work and age – or social determinants of health – that can contribute to decreased functioning among people with disabilities. For instance, persons with disabilities are more likely to be unemployed than others. Institutional barriers include many laws, policies, strategies or practices that discriminate against people with disabilities. This may not be intentional but there are practices which do not accommodate persons with disabilities denying them equal rights in many circumstances.
4. **Care Giver** could be a family member or any other person who, with or without a payment, provides care support assistance to a person with disability.

## 5. **Certifying Authority:**

All rights which may be enjoyed by persons with disabilities can be enjoyed only when s/he has been certified or officially recognized to have a disability as mentioned in the Schedule which is part of the Act. This task of certification is done by persons, having requisite qualifications and experience, who are designated by the Government to issue a certificate of disability and are called Certifying Authority.

6. While ordinarily the word **Communication** includes both the process and means of imparting or exchanging of information, the Act uses the word to denote various means and formats which are used to ensure that information reaches or can be accessed by people with disabilities like display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, video, visual displays, sign language, plain-language, scribe. It also includes augmentative and alternative modes. (A term that includes the communication methods used to add on to or replace speech or writing for those with impairments. These methods are used by people to either produce spoken or written language or understand it.) This could be done without the use of aids, through body language, gestures, sign language as also with use of aids like paper, pencil, devices that produce voice output (speech generating devices or SGDs) and/or written output. Electronic communication aids allow the user to use picture symbols, letters, and/or words and phrases to create messages.

7. **Competent Authority** is an authority which is appointed by the State Government for the purpose of registration of institutions for persons with disabilities and for giving grants to such institutions.
8. **Discrimination** as per the Act includes situations where a person with disability is treated differently from others only because of the reason of his/her disability. For instance, a child who is refused admission into a school because he/she is visually impaired or has a learning disability, or when a person is denied the opportunity to apply for a job if he/she is a wheelchair user.

It also includes exclusion, which means not allowing or supporting a person with disability to become part of a process, organization or public life in general. Example, if a building/ public spaces like bus stands/ railway stations do not have lifts or ramps or signs to support the mobility of the visually impaired or the hearing impaired, or are otherwise not accessible they are effectively excluding persons with disabilities from ordinary public life.

Discrimination also includes restriction which means limiting a person's growth, or putting a bar at a point/ level beyond which a person's abilities are not allowed to grow or the person is not allowed growth in his career etc.

This results in persons with disabilities not being able to enjoy fundamental freedoms like right to life, liberty, speech expression, education and employment. It means that persons with disabilities are unable to participate in political, economic, social, cultural, civil life. The term discrimination also includes a situation wherein adequate adjustments/ accommodations are not made as required or as per the specific needs of a person with disability, to facilitate the process where he/she may be able to enjoy his/her rights equally with others.

## WHAT IS AN ESTABLISHMENT?

An '**Establishment**' means both a Government Establishment and a Private Establishment.



### **Government Establishment:**

Government Establishment has been defined as a corporation established by a Central Act or State Act, an authority or a body owned or controlled or aided by the Government, a local authority, a Government company as defined in the Companies Act, 2013 or a Department of the Government.



A **Private Establishment** means a company, firm, cooperative or other society, association, trust, agency, institution, organization, union, factory. The Government has the power to notify any other establishment as private establishment through notification.

9. The term **Fund** means the National Fund for persons with disabilities, to be established under the Act.
10. As per the Act, a **Person with Disability** is one who has a long term physical, mental, intellectual or sensory impairment which, coupled with different barriers around him, hinders his full and effective participation in society equally with others.

Thus, this term has been defined in relation with the existence of obstacles. For instance, a person with blindness/ low vision is disabled due to unavailability of Braille text for reading, or a hearing impaired person is disabled due to absence of audio visual mode for receiving communication. A person who uses a wheel chair is disabled due to inaccessibility of spaces in the absence of ramps, lifts, wider doorways and corridors.

## 11. PERSON WITH BENCHMARK DISABILITY



### WHO IS A PERSON WITH BENCHMARK DISABILITIES?

A person with disability affected by - Blindness, Low-vision, Hearing Impairment (deaf and hard of hearing), Dwarfism or a leprosy cured person-(Disabilities defined in measurable terms)

OR

A person with not less than 40% of the following disabilities as certified by a certifying authority - Locomotor Disability, Intellectual Disability, Mental Illness, Autism Spectrum Disorder, Cerebral Palsy, Muscular Dystrophy, Chronic Neurological conditions, Specific Learning Disabilities, Multiple Sclerosis, Speech and Language disability, Thalassemia, Hemophilia, Sickle Cell disease, Multiple Disabilities, Acid Attack victim, Parkinson's disease.

(Disabilities not defined in measurable terms in the Act)

12. The term **High Support** means comprehensive support or support that is related with all aspects of a person's life, required by a person with Benchmark Disabilities for performance of daily activities. These activities include basic activities of daily living like bathing, personal hygiene and grooming (including brushing/combing, dressing) toilet hygiene, walking, get in and out of bed, and get into and out of a chair; the broader definition (moving from one place to another while performing activities).

In addition to this, High Support includes psychological support which means, support relating to the mind and management of emotions and moods etc. This support is required so that a person with disabilities is able to make decisions and make use of various facilities for education, employment, etc. A sign language interpreter, for instance, enables a deaf person to work in a mainstream professional environment. A personal assistant helps a wheelchair user travel to meetings or work. A child with Autism Spectrum disorder might require regular guidance and counseling to understand the human relationships around him. A person with intellectual disability might require counseling support on a day to day basis to develop his/her communication skills or to perform daily activities.

The purpose of High Support is also to ensure that a person with disability is able to participate in family life and community life and also proactively participate in his/her own treatment and therapy.



## INCLUSIVE EDUCATION

The term refers to a system of education in which children with and without disability study together. To make this system work, it becomes essential that the methods used for teaching and learning are adapted to meet the individual needs and requirements of children with disabilities. For example, in a classroom with deaf children use of sign language along with speech becomes necessary and in a class with blind children the writing on the blackboard should be supplemented by speech. Clear instructions and their repetition, structured daily routines work better for children with autism. Using various means of presentation – visual, physical guidance, peer modeling, ensuring avoidance of overstimulation, removal of distractions, providing access to an individual work/study area are some techniques used to effectively work with children with developmental disabilities. Also, children with disabilities should be trained in alternative communication as applicable like sign language or braille. They should also be trained to use augmentative and alternative means of communication or assistive devices like hearing aids, speech generating devices.

### Article 8 of UNCRPD

The Convention on the Rights of Persons with Disabilities provides that at all levels of education system and amongst all children an attitude of respect for persons with disabilities must be fostered/nurtured. This is possible only when children with and without disabilities study together and understand each other's needs and methods of learning.

- 13. ICT- Information and Communication Technology** includes all those services which are related to information and communication, all services through which common people receive information about what is happening around them or the world over, through one to one communication or one to many. The term includes telecom services (all types of voice, data and video transmission), telephone services (wired/ wireless), satellite, radio and television broadcasting, internet and web based services like storage management services, to customer relationship management.

Electronic services include deeds, efforts or performances whose delivery is mediated by information technology, like e-tailing, customer support and service delivery. Digital service is a service delivered via the internet or an electronic network and involves minimal human intervention.

These explanations are crucial as the Act mandates that the Government should ensure that all communication through any of these formats should be accessible to persons with disabilities. Any communication through the electronic media should include sign language interpretation, audio description and close captioning. Closed captioning (CC) is a process of displaying text on a television, video screen, or other visual display to provide additional or interpretive information with an option of being turned on and off by the viewer. All websites should also to be made accessible for the print disabled.

14. The term **Institution** includes organizations which are established/set up for the purpose of working with persons with disabilities, for their education, reception, care, protection, training and rehabilitation - e.g. schools for children with disabilities, institutions set up for long term stay of people with intellectual or psychosocial disabilities. Every institution working for persons with disabilities needs to meet standards and facilities prescribed by the State Government and will only operate on issuance of a license by a competent authority.
15. **Local Authority** means a Municipality, Panchayat or a Cantonment Board or any other authority established to look into civic affairs.
16. **'Person with disability having High Support needs'** means a person with Benchmark Disability who needs intense support - physical, psychological or otherwise, to carry out activities of daily living, access facilities/services and to take decisions.
17. **Public facilities and services include** delivery of all forms of services/ public needs like transport, housing, education, shopping or marketing, religious, cultural, leisure or recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice and public utilities. Examples of the same include bus services run by state transport department, hospitals, parks, museums, banks, schools, malls, and markets. The Act mandates that all these spaces/ services must be made accessible to persons with disabilities.
18. The term **Reasonable Accommodation** means any adjustment or modification made without imposing any undue burden to ensure that persons with disabilities exercise their rights equally with others. What is considered reasonable depends on various factors like the effectiveness of any adjustment in assisting persons with disabilities to access, interact and/or work in society; whether it is practical to make an adjustment; the financial (or other costs) associated with the adjustment; the availability of resources to undertake an adjustment; and how much disruption, if any, will be caused to other people by the adjustment. Example: an employer might lower the height of a desktop to accommodate a worker in a wheelchair; or provide a quiet, distraction-free workspace for a worker with attention deficit disorder. Lesser work times, frequent breaks are examples of reasonable accommodation.



## THE RULE OF REASONABLE ACCOMODATION HAS BEEN PROPOUNDED IN MANY CASES IN INDIA

In **Syed Bashir-ud-Din Qadri v. Nazir Ahmed Shah**, the Supreme Court observed that that 'In order to overcome the impediment of writing on the black board, an electronic external aid could be provided to the appellant, which could eliminate the need for drawing a diagram and the same could be substituted by a picture on a screen, which could be projected with minimum effort. With these directions for providing reasonable accommodation, the Supreme Court held that the disengagement of the appellant goes against the grain of the PWD Act and hence the order was set aside by the court'.

In **Disabled Rights Group vs. Union of India and Others** a petition was filed on behalf of a student who used a wheelchair, Ms. Pooja Sharma, who was unable to pursue her studies at a nationally recognized institute for law because of lack of adequate facilities and reasonable accommodation of her special needs. In specific the institution refused to modify her bathroom to accommodate her wheelchair. The Court observed that 'Each Centre of Legal Education shall be equipped to provide appropriate facilities in terms of the physical infrastructure, academic infrastructure and any other facilities required for the effective participation of students with disabilities, teachers and staff in their respective activities'.

In **Javed Abidi vs. Union of India and Others** the petitioner argued that orthopedic disabled persons face significant difficulty in making use of air transport facilities and that Indian Airlines, the domestic carrier, should accommodate such passengers by providing "ambulifts" to take such passengers from the ground level on to the aircraft, and aisle wheel chairs to reach their seats. While granting the plea, the Court observed that 'to create a barrier free environment for persons with disabilities and to make special provision for the integration of persons with disabilities into the social mainstream are some of the prime objectives of the Act'.

19. Another term of great significance is **Universal Design**. It 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 specialized design and shall apply to assistive devices including advanced technologies for particular group of persons with disabilities.

The Centre for Excellence in Universal Design, of Ireland describes the term as 'The design and composition of an environment so that it can be accessed, understood and used to the greatest extent possible by all people, regardless of their age, size or disability'.

Examples of the same are - ground level entrances without stairs, buttons and other controls that can be distinguished by touch, wide interior doors and hallways, and alcoves with wide turning space at doors and dead-ends, lever handles for opening doors rather than twisting knobs, color contrast of floors and staircase.



## PUBLIC BUILDING

20. The term Public Building has been defined in the Act to include both a Government Building and a Private Building used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways. This explanation has immense importance in the context of the rights of persons with disabilities as the Act requires that all public buildings be made accessible in accordance with guidelines/standards recognised by the Government within 5 years of the date of notification of the Rules of the RPWD Act.
21. **Registered organizations** could be any of the following:
- an association of persons with disabilities,
  - a disabled persons organization,
  - an association of parents of persons with disabilities,
  - an association of persons with disabilities and family members,
  - a voluntary or Non-Governmental or charitable organization or trust, society or
  - a non-profit company working for the welfare of persons with disabilities.
- It must be registered under an Act of Parliament or state legislature.
22. **Rehabilitation** is a process which aims at ensuring that persons with disabilities achieve the best possible level of functioning in all aspects of their being - physical, social, sensory, intellectual, psychological or environmental.
23. **Special Employment Exchange** is an office that is to be set up by the Government to facilitate the employment of persons with disabilities. It will have the responsibility of collecting and also providing information to facilitate this process. It will maintain information about persons who want to employ persons with disabilities, a database of persons with Benchmark Disabilities seeking employment and also a list of vacancies wherein persons with Benchmark Disabilities may be appointed.
24. **Specified disability** refers to disabilities which are listed in the Schedule.
25. **Transportation systems** include all forms of transport - rail, road, air, water and the means of transport which support last mile connectivity. It also includes road and street infrastructure which supports road transport.

## Chapter 2

# RIGHTS AND ENTITLEMENTS

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### Salient Features:

- This chapter explains the rights that persons with disabilities are entitled to under the Act.
- At the outset, it lays down the right to equality and non-discrimination of persons with disabilities which can be more effective with reasonable accommodation.
- Women and children with disabilities are more vulnerable than others. Thus they find a special mention and the Act establishes that they shall have equal rights with others.
- Families being the basic unit of a whole community, persons with disabilities are entitled to live with their families and within the community.
- They have the right to be protected against cruelty, inhuman treatment, abuse and violence.
- Persons with disabilities have the right to live an informed and healthy reproductive life without interference from others.
- An important right of persons with disability is that of being seen as a legal person in the eyes of law, allowing a person with disability to have his/her own bank account and own property.
- The Act also has a provision of limited guardianship for those persons with disabilities who require it.

### Introduction

People with intellectual disabilities and mental illnesses have been seen as those attacked by evil spirits. Abuse, ill-treatment and violence has thus been a regular part of their lives, sometimes to do away with the evil spirits at other times to bring their behavior in line with societal expectations. Sailani village in Maharashtra and Dargah of Hazrat Munawwar Ali Shah Baba in Allahabad are live examples to show that people with disabilities are being treated with extreme violence and faith related rituals.

Even in urban households where persons with disability may not be seen as symbols of divine misfortune/curse, they are considered inferior to others. This enhances their vulnerability to abuse and ill-treatment. Historically disability was hardly perceived as something resulting from scientific reasons which could even be prevented in many circumstances. Families having persons with disabilities were looked down upon, resulting in abandonment of the family member with disability.

Any positive work that happened on the issue of disability was charitable in nature - giving away of food, clothing or medicine to persons with disability. Slowly with changes in the global scenario and with the rise of disability rights movement, there was a shift from the welfare model to the development model. As a result of this persons with disability started to participate in their own development.

For the first time the people with disability were counted as part of the 2001 Census, but the final figure was an underestimation as only few of the actual disabilities were captured. That was, nevertheless a start of treating persons with disabilities as a separate class deserving rights in line with their special needs. The situation improved with the passing of the Mental Health Act of 1987, and setting up of Rehabilitation Council of India in the year 1986. In the year 1995 the Parliament passed the Persons with Disabilities Act which had provisions related with early detection, education, employment, affirmative action, non-discrimination, barrier free access. It gave a substantial push to the Disability Rights Movement. After years of advocacy the Rights of Persons with Disability Act has been passed which brings about a big change in the rights of persons with disabilities. This legislation has been enacted to bring the Indian law in line with the UN Convention on the Rights of Persons with Disabilities. It brings to life the principles of respect for the dignity, individual autonomy (means freedom to make choices as per ones' own wishes), non-discrimination and effective participation.

Ketki, a two-and-a-half-year-old girl with physical and learning disability was killed by her 55-year-old grandmother who drowned her in a nullah, in Kalyan, a city in Thane district of Maharashtra on 17th August 2014. The grandmother did this out of frustration regarding the future of the child and due to the taunts that she had to hear from neighbors about her stunted physical and mental development. Ketki is not alone in having become a victim of such a heinous crime. History is replete with instances where people with disabilities have been seen as an unproductive burden on their families and society and have been left on the margins either to die or to barely survive.



## EQUALITY AND NON-DISCRIMINATION

The Act puts an onus on the Government to make sure that persons with disabilities have the right to equality and are treated in a respectful manner. The Government has the responsibility of creating an environment, through which capacity of persons with disabilities can be fully utilized. The Act prohibits any discrimination on the basis of disability, except when it is essentially required for achieving a logical end. In addition to this, the Rules provide that this provision of allowing for discrimination in select cases shall not be misused, and the responsibility of its being used positively lies with the head of the establishment. Also, every person with disability has the right to freedom which cannot be denied on the basis of disability. This means various things, like a person cannot be detained in an institution, or chained or given any medical treatment, forced to become the subject of a research without consent.

The Government also has the responsibility of making modifications and adjustments in line with the needs of people with disabilities so that they are able to access all facilities available for them.

### Women and Children with Disabilities

Women have occupied a vulnerable position in our society, doubly aggravated when the women has a disability because they are more likely to be abused and abandoned. This Act provides that women will have equal rights as others.

Similarly, children with disabilities are in a position where they are considered inferior, unaware of their own needs and requirements and thus their opinion not given any weight. This Act gives them the right to express their opinion freely on matters that affect them. This ensures that any action taken or efforts made for their well-being will include their say and participation and for that reason will be an effective decision.

#### Article 7 of UNCRPD

The UNCRPD recognizes that women and girls with disabilities are subject to multiple discrimination and thus state parties must take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.



### COMMUNITY LIFE

Due to lack of accessibility, assistive devices, personal care assistance, health care and equal opportunities, it becomes difficult for persons with disabilities to live independently. As a result of which they become a burden on their families financially or otherwise. This pushes families to abandon their members who are persons with disabilities. As a result, people with disabilities end up in institutions as a matter of last resort having no other place to go. Also, lack of an enabling environment pushes people to move into institutions even without the intervention of families. The Act says that every person with disability shall have a right to live in the community and must not feel bound to live in a certain kind of arrangement. To make this possible the Government has also been given the responsibility of making sure that people with disabilities have access to all/ any of the in house, residential/ community based services. This means that residential and public spaces should be accessible for those affected by locomotor disabilities. Assistive devices like wheelchairs, hearing aids, prosthetic limbs, and personal assistance for care giving should be made available. Community support services would include healthcare, accessible hospitals/ health centers, availability of psychologists, psychiatrists, therapists, counselors for people with psychosocial and intellectual disabilities and trainers for children to learn activities of daily living.

#### Article 19 of UNCRPD

Persons with Disabilities have the right to be included in the community. They have the freedom to choose their place of residence, where and with whom they wish to live. The term community based services include all those services which prevent isolation or segregation from the community. The services and the facilities that are available to the general public should also be available to persons with disabilities and should be responsive to their needs, like all market places, places of recreation; public transport should be made accessible.

### Protection from cruelty and inhuman treatment

The Act provides protection to persons with disabilities from torture, cruel, inhuman and degrading treatment, affecting someone's self-respect or resulting in humiliation. Historically, persons with disabilities have been seen as a vulnerable class of people with no sense of autonomy or not having the ability to voice their opinions. As a result of this they have been subject of research without their awareness. This Act prohibits this practice. It states that no person with disability can be part of any such research without his/ her consent which must be obtained through accessible modes. Additionally, the Rules framed under the Act say that no person with disability shall be a subject of research except when the research involves physical impact on his body.

The three conditions that must be satisfied before some research can be carried out with a person with disability as a subject are-

1. The research involves some physical impact on his body.
2. Consent should have been obtained from him through accessible modes (means through which the individual can communicate).
3. Prior permission of the Committee for Research on Disability should have been taken.

This Committee is to be constituted by the Government. Half or more than half the number of persons in the Committee shall be persons with disabilities or members of registered organizations working with persons with disabilities.



## PROTECTION FROM ABUSE, VIOLENCE AND EXPLOITATION

Persons with disabilities have been victims of abuse and violence due to their vulnerabilities and dependence on others. The onus of ensuring protection from abuse, violence and ill-treatment has been placed on the Government.

The Act explains that the Government must follow a mechanism to ensure that it comes to the rescue of a person with disability at every stage, with regard to a situation of abuse, violence and exploitation. The first step being making people aware of their rights so that incidences of abuse may be prevented and incase such incidents happen, prescribing a process for reporting such incidents. The Government shall have the responsibility of taking notice of such incidents and provide legal remedies for the same. The next step involves rescuing, protecting and rehabilitating victims of such abuse.

### Article 16 of UNCRPD

The UNCRPD provides that state parties are to ensure that protection services are age, gender and disability sensitive. Also, these facilities are to be monitored by independent authorities. It also emphasizes that physical, psychological recovery and rehabilitation of persons with disabilities who become victims of any form of exploitation must be carried out by the state.



*The mechanism to be followed by the Government, for protection of persons with disabilities violence, abuse and exploitation.*

The Act empowers people and registered organizations to raise their voice against incidents of abuse or violence which has been, or is being, or is likely to be committed against a person with disability. In any such situation, the person or organization must inform the Executive Magistrate under whose jurisdiction the incident occurred. Executive Magistrates are appointed by the State Government and their local jurisdiction (the area within which they may exercise their power) is determined by the District Magistrate.

In such a situation, the Executive Magistrate is required to take immediate steps to prevent or stop the act of abuse. In addition to that s/he may pass any other order.



The Act also puts an onus on **police officials** to take action in case they receive a complaint or come to know of a situation of abuse or violence. Such a police officer has the prime responsibility of sharing some crucial information with the person facing a situation of abuse. The person must be told that he/she has a right to seek protection by writing to the Executive Magistrate and he/she must also be given details of the Executive Magistrate with whom the complaint is to be filed and who has the jurisdiction to provide assistance to the person. The police official must also inform the affected person the details of the nearest organization or institution working with person with disabilities and the fact that he/she has the right to access free legal aid from National or State Legal Services Authority. The person must also be told that she/he has a right to file a complaint under this Act or any other law which deals with the

offence. When a cognizable offence is being or has been committed, the police official shall be duty bound to act according to the law and not only as per this Act. Cognizable offences are those which are very serious in nature like murder, rape, dowry death, kidnapping, theft and unnatural offences. As per the Criminal Procedure Code, the police official receives an FIR, and can investigate such an offence without a magistrate's permission. S/he can make an arrest without a warrant.



## PROTECTION AND SAFETY

The Act also makes special provision for protection and safety of persons with disabilities in times of risk, armed conflict (war between communities/countries), humanitarian emergencies and natural disasters. Humanitarian emergencies mean a single event/ series of events that are threatening in terms of health, safety or well-being of a community or large group of people. Special protection is required as persons with disabilities are likely to be neglected in such situations.

The National and State Disaster Management Authority are required to conduct certain activities to deal with disaster situations, as per the Disaster Management Act. These activities include measures to prevent any disaster, reduction of the risk or severity or consequences of any disaster, building the capacity of the people to deal with the disaster. In case the disaster has already occurred, these authorities are required to assess the severity of the disaster, and carry out evacuation rescue and relief work.

The Rights of Person with Disability Act provides that the National Disaster Management Authority and the State Disaster Management Authority are required to ensure that persons with disabilities are included in these activities. To be able to do this effectively it becomes essential that a record of persons with disabilities is maintained. This is to be done by District Disaster Management Authority.

To ensure that the reconstruction work is done in line with the needs of person with disability accessibility standards have to be maintained. All reconstruction work must be carried out in consultation with the State Commissioner. The disaster management team needs to be trained in various reasonable accommodation measures required for persons with disabilities during disaster preparedness, rescue and rehabilitation.



## HOME AND FAMILY

The Act creates some special rights for **children** with disabilities. One of them being that every child has the right to live with his/ her parents and cannot be separated from them only for reasons of disability, except when a court makes an order in that regard as the next best alternative for the child – for the child's happiness, security, mental and emotional development. The alternatives for placing the child with disability have to be exercised in the following order of preference

1. With near relations (when the parents are unable to take care of the child)
2. Within the community in a family setting,

3. In a shelter home run by the Government or a Non-Government Organization (as a matter of last resort under exceptional circumstances when no other alternative is possible).

This provision is based on the underlying idea that the best possible environment for the development of a child can be provided by the family and if that is not possible the child must stay within a community setting and not be institutionalized.

#### **Article 23 of UNCRPD**

The UN Convention on Rights of Persons with Disabilities holds a wider provision in relation to home and family. It says that the Government shall be responsible for ensuring that persons with disabilities are not discriminated against in matters related to marriage, parenthood and relationships. It recognizes the right of all persons with disabilities who are of marriageable age to marry and to form a family on the basis of free and full consent of the intending spouses.

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#### **Reproductive Rights**

The Act provides that it is the responsibility of the Government to ensure that people with disabilities have access to information related with reproduction and family planning.

Within institutions especially those meant for people with psychosocial and intellectual disabilities it is common practice to remove the uterus of women in the name of hygiene and maintenance. Such practices adversely impact their health with lifelong results of infertility. The Act prohibits any medical procedure on persons with disability which leads to infertility without his or her free and informed consent.

#### **Article 23 of UNCRPD**

The UN Convention on Rights of Persons with Disabilities' provides that persons with disability shall have the right to decide the number and spacing of their children and must have access to age appropriate information with respect to reproduction and family planning.

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#### **Accessibility in voting**

The Act puts an onus on the Election Commission of India and the State Election Commission to make sure that all polling stations are accessible to people with disabilities and all the materials related with the elections is understandable and accessible to them. Accessibility in this aspect can be achieved by ensuring that the built environment, voting systems, websites are accessible.



## ACCESS TO JUSTICE

The Act says that a disability must not come in the way of a person trying to access court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers. This means that a person must not be discriminated against while trying to access any of these institutions to seek justice. For persons with disabilities to access courts in an equal manner, support measures have to be put in place by the Government so that people living away from families and those with High Support needs can exercise their legal rights.

The National and State Legal Services Authority have been made responsible for ensuring that every scheme, programme, facility or service provided by them must also be accessible to persons with disabilities. This can be done only when these authorities make reasonable adjustments or modifications to all their programs so that they may be accessed equally by disabled and also non-disabled people.

The Act says that all public documents must be in accessible formats. Some examples of public documents are electoral rolls, census reports, town planning reports, village records, records of the national banks, birth and death registers. All those departments/ offices in courts where documents are to be filed, registered or stored should have equipment to ensure that processes like filing, storing and referring could be done through accessible formats. This means that all documents should be accessed in audio/braille format by people with visual/ hearing impairments.

Court facilities should be such that all communication that happens within the court like recording of testimonies, giving of arguments or opinion could be done by persons with disabilities in their preferred language and means of communication. This could mean use of sign language for people with speech and hearing impairments, use of amplifiers, speech generating devices for people with speech disabilities or learning disabilities.

### Article 29 of UNCRPD

The Convention on Rights of Persons with Disabilities defines participation in political and public life in a wider sense and says that people with disability should have a right to participate in political and public life and it extends not only to equality in voting but also in being elected. It means they should be able to vote by secret ballot without intimidation, should be able to stand for elections and hold office and perform all public functions. Assistive technology (Interpreters, sign language, audio/ visual aids) should be used wherever required.

### Article 13 of UNCRPD

UN Convention on the Rights of Persons with Disabilities provides that States parties shall promote appropriate training for those working in the field of administration of justice including police and prison staff.

### **Legal Capacity**

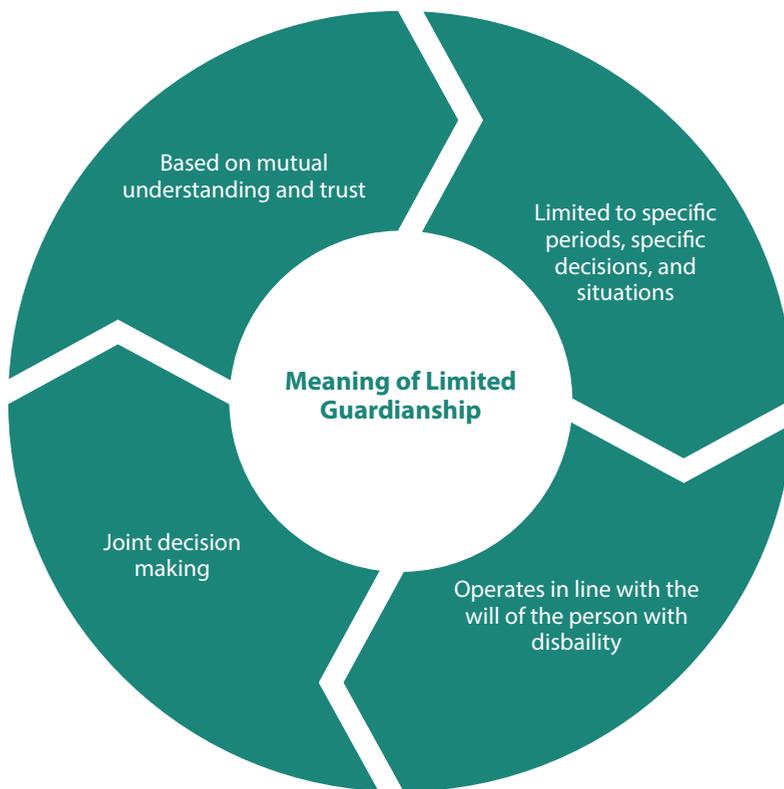
The Act provides that people with disabilities enjoy the right to legal capacity and recognition equally with others and be treated like autonomous, independent individuals having a unique identity before the law. Like any other individual a person with a disability shall have the right to have a bank account and manage his/her own financial affairs in his/her own name. He/she also has the right to own and inherit movable and immovable property.

Persons with disabilities usually have a support system around them but the Act now provides the person with disability control on the sort of support he/she requires. The Act further provides that in event of a conflict of interest between a person providing support and a person with disability in a financial transaction, then such a supporting person should not provide support to the person with disability in that transaction. There should also not be a presumption of conflict of interest just on the basis that the supporting person is related to the person with disability.

A person with disability may change/remove any support arrangement and seek the support of another. Such alteration, modification or dismantling is for future transactions only and not for previous transactions done by person with disability with the previous support arrangement. Any person providing support to the person with disability should not exercise undue influence or force his decisions and should respect the disabled person's choice, dignity and privacy.

The Act also mandates that a person providing support must respect the dignity, privacy and autonomy of the person with disability.

Provision for Guardianship



Limited Guardianship is provided to a person with disability for specific decisions / situations, for a specific period of time, when a district court or any other designated authority finds that suitable and sufficient support has been provided to the person but he/she is not able to make legally binding decisions. This person, called a Limited Guardian, is consulted by the person with disability and makes a decision on behalf of the latter.

There may be persons who require the support of a Limited Guardian repeatedly. In such cases, under the Act, the court may grant total support if required by a person with disability. The decision to provide total support will be reviewed on a periodic basis to understand the kind of support that has to be provided and the way in which it is to be provided. The Government has the responsibility of designating one or more authorities to mobilize the community and create social awareness to support persons with disabilities in exercising of their legal capacity. This authority also has the responsibility of creating support systems so that persons with disabilities living in institutions and having High Support needs are able to exercise legal capacity.

## Chapter 3

# EDUCATION

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### Salient Features:

1. The chapter specifically makes provisions for education of children with disabilities.
2. It provides for measures that the Government and local authorities must take for maintaining a system of inclusive education.
3. Additionally it provides for specific measures for ensuring that the system of inclusive education may be run sustainably, with the support of human, financial and other resources.

With respect to education, the Act puts an onus on the Government, Municipality, Panchayat or Cantonment Board to ensure that all educational institutions funded or recognized by them are required to create a setup where children with and without disability learn and study together. To make this possible the system of teaching and learning has to be adapted to meet the learning needs of children with disabilities. To begin with, the Act mandates that every child with disability must be admitted to these schools without any discrimination. To ensure that the children are able to study in this school, efforts must be made to make the campus and other facilities accessible. Various other modifications also need to be made in line with the individual requirements of children. The Act makes a special provision for blind and deaf children who must be taught through appropriate means of communication. Learning disabilities must be detected early in a child's life and changes should be made in the teaching and learning practices followed by the school so that the needs of children with learning disabilities are met. The progress of each child with disability in terms of completion of education should be met. To aid or facilitate the access of education by children with disability, transportation facilities must be provided to such children and their attendants, if any.

A survey of school going children is required to be undertaken every five years, to identify children with disabilities, determining their needs and the extent to which they are being met. The first such survey must be done within two years of the Act coming into force.

To make the above-mentioned system a reality the Act also provides that specific measures will have to be taken by the Government, Panchayat, Cantonment Board, or Municipality to build capacities of various stakeholders within the education system. It provides that teacher training institutions shall be established. Teachers should be employed, especially those with disabilities, who are trained in sign language and braille and who are also trained at teaching children with intellectual disabilities. Professionals and staff members too will be required to be trained to support and facilitate inclusive education in school.

The Act also lays down the specific measures that must be taken to ensure that inclusive education becomes a reality. These may be classified into two categories. One is related to increasing the capacities of the human resources which are part of the education system. As

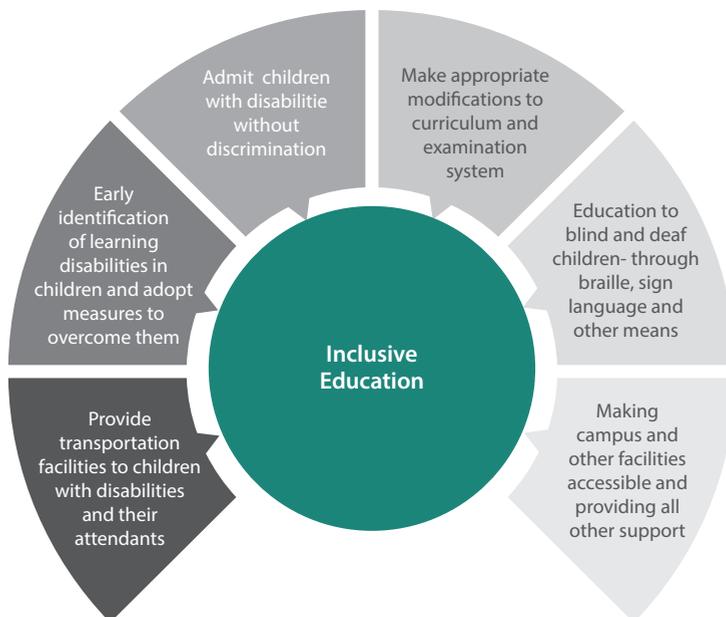
part of these efforts the Government is required to establish teacher training institutes, train and employ existing teachers, including teachers with disabilities who are trained in braille and sign language and teachers trained in teaching children with intellectual disabilities. All staff members must be trained to support this system of education. This means that the housekeeping staff and the administrative staff must also understand that children with disabilities must be treated equally with others.

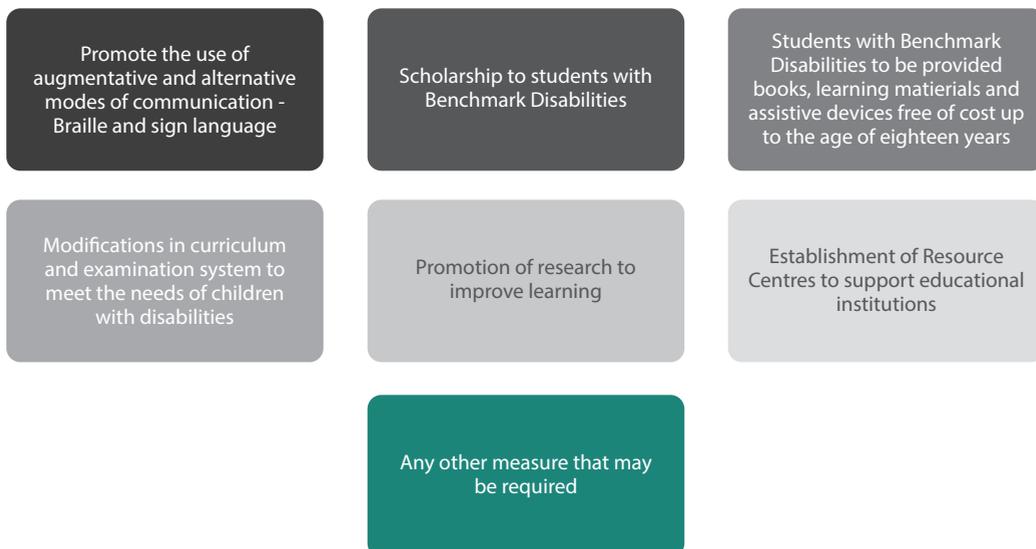
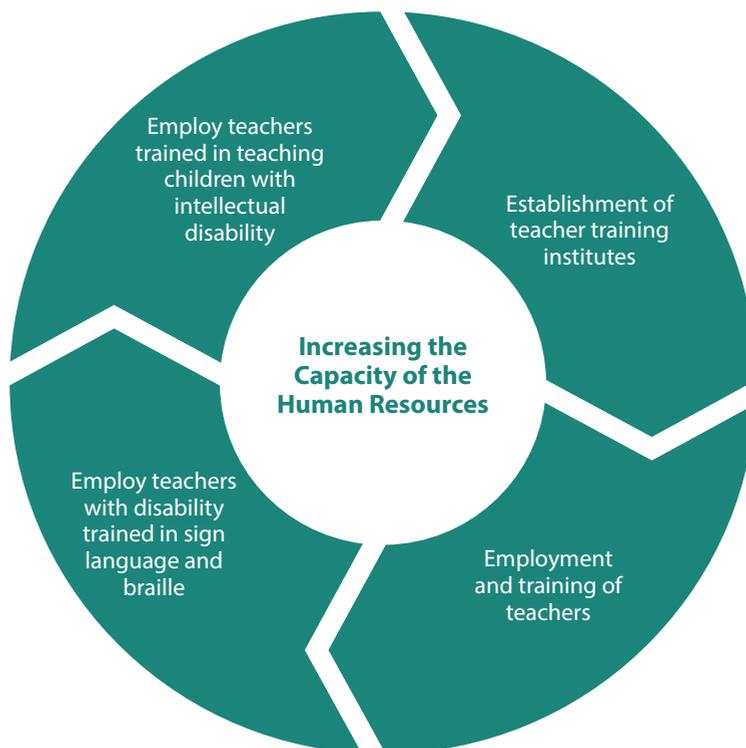
The second category of efforts needs to be made in the areas of logistics, materials and financial support to children with disability. The Act provides that children with Benchmark Disabilities should be provided scholarships in addition to books, materials, assistive devices till the age of 18 years free of cost. Use of augmentative and alternative modes of communication, like sign language and braille, need to be promoted for children with speech, communication or language disabilities.

Changes need to be made in the curriculum and examination system to bring them in line with the needs of children with disabilities. The Act provides for establishment of resource centers to support the work of educational institutions. The Government and local authorities also have the responsibility of promoting participation of persons with disabilities in adult education programmes equally with others.

**Article 24 of UNCRPD**

The UN Convention on the Rights of Persons with Disabilities highlights that inclusive education is to be provided with the aim of full development of human potential and sense of dignity and self-worth for development of personality, talent and creativity of persons with disabilities, enabling them to participate in a free society.





***Measures that must be taken by the Government to support education of persons with disabilities***

## Chapter 4

# SKILL DEVELOPMENT AND EMPLOYMENT

### Salient Features:

- This chapter explains the steps the Government needs to take for promoting development of skills and employment amongst persons with disabilities, such as providing loans, training, and marketing of products made by persons with disability.
- It prohibits any discrimination in employment on the basis of disability (even when the disability is acquired during service).
- It lists the various measures that may be taken when an employee acquires disability while in service.
- The Government establishments are required to make their workplaces accessible. This has to be done by making any changes required to suit the specific needs of persons with disabilities.
- It provides for making of an Equal Opportunity Policy with all information on the facilities and provisions made for persons with disabilities.
- It also requires maintenance of records such as the total number of employees with disabilities, the nature of work done by them and the facilities provided to them.
- It provides for appointment of a Grievance Redressal Officer to respond to and resolve problems or complaints by persons with disabilities.

### Article 27 of UNCRPD

The Convention on the Rights of Persons with Disabilities provides that people with disability have the right to favorable conditions of work. This would include equal opportunities and equal remuneration for work of equal value. They also have the right to safe and healthy working conditions, including protection from harassment, and the redress of grievances. In addition to this it says that persons with disability must also be able to exercise their labor and trade union rights on equal basis with others.

### Vocational Training and Self Employment

The Act puts an onus on the Government to make schemes and programs to support the employment and vocational training of persons with disabilities. A special mention is made for provision of the loans at a rate much lower than the normal rate of interest in the banks. Some examples of vocational training include automobile repair, weaving, repair of gadgets and instruments (mobile phones and computers) electrical repairs, tailoring, printing, culinary skills, hardware and software repairing, marketing of agricultural produces, rain water harvesting and watershed management. Vocational skills include public speaking, personality development, writing skills, communication / soft skills.

The Schemes formed by the Government must be of such nature that they include persons with disabilities whether in formal training or non-formal vocational training. In addition to this there must be facilities to ensure that mainstream trainings are accessible to persons with disabilities. These could include notifications of trainings in accessible formats, transportation facilities, fee waivers, sign language interpreters, and documents in braille, accessible training centres and any other modification required for persons with disabilities.

Market linked special skill training programmes need to be organized for those with developmental, intellectual, multiple disabilities and autism. Loans should be given at concessional rates including microcredit (a system of lending where a small amount is lent at a low interest to new businesses.) Products that are made by persons with disabilities must be marketed by the Government. Data needs to be maintained about the progress that has been made by persons with disabilities as part of training in skills or employment.

Thus, the Act creates a system of facilitating/supporting the economic independence of persons with disabilities at every stage of the process – starting with providing skills and training, to ensuring loans to start business and then marketing of products.



## NON-DISCRIMINATION IN EMPLOYMENT

The Act prohibits Government establishments to discriminate against a person on the basis of his/her disability in matters of employment unless exempted by the Government, through a notification, based on the type of work carried on there.

Within all Government establishments suitable changes and adjustments have to be made so that the persons with disabilities are able to function and do their work as easily as others. The environment of the workplace must be such that there are no barriers (whether physical, communicational, cultural, economic, environmental, institutional, political, social or attitudinal).

A promotion cannot be denied to a person on the basis of disability. If a person meets with an accident or for any other reasons acquires disability during the period of service, no Government establishment has the right to remove this person from service or reduce him/her in rank.

If this employee is no more able to do the work which he/she is required to do in the present position he/she shall be shifted to any other position with the same pay and service benefits. If it is not possible to shift the employee to any post, then he/she must either be kept in a position that is created or maintained specifically for this purpose in excess of the required number till a suitable position arises. The other alternative is to keep the person in service till the age when he can start receiving pension from the establishment.

### Article 27 of UNCRPD

As per the United Nations Convention on the Rights of Persons with Disabilities, persons with disabilities cannot be held in slavery or servitude and must be protected from forced or compulsory labor.



## EQUAL OPPORTUNITY POLICY

Both Government and private establishments are required to notify an Equal Opportunity Policy which will include measures that the establishment has decided to take for supporting the employment of persons with disabilities. A copy of this policy has to be registered with the Chief Commissioner or the State Commissioner, for persons with disabilities. The Policy needs to be put up on the website and needs to be displayed in a clearly visible place in the office where it can be seen or can attract the attention of the people working in the office. The Equal Opportunity Policy of an establishment which has less than 20 employees should contain details of basic facilities and amenities available to employees with disabilities but organisations with 20 or more employees or that of Government establishment must contain certain essentials as per the Rights of Persons with Disability Rules. They are:

1. Facilities that are to be provided to the persons with disabilities so that they may do their work smoothly in the establishment.
2. A list of posts identified for persons with disabilities in the establishment.
3. Assistive devices provided and steps taken to ensure that people with disabilities are easily able to access and move around within the workspace.
4. Details of the selection procedure for persons with disabilities for various posts, their training after the recruitment or before promotion to a new position, preference that they shall be given in transfer and posting, special leave and preference in allotment of residential accommodation.
5. The policy must also make a mention of the appointment of a liaison officer for the purpose of recruitment of persons with disabilities.

### Maintenance of Records

The Act makes it mandatory for establishments to maintain records regarding matters of employment of persons with disabilities, the facilities provided and the various ways in which the establishment has decided to comply with the provisions related to skill development and employment of persons with disabilities. The records that have to be maintained must contain the following:

1. The number of persons with disabilities who are employed and the date from when they are employed.
2. The name, gender and address of persons with disabilities.
3. The nature of disability of such persons.
4. The nature of work being rendered by such employed person with disability and
5. The kind of facilities being provided to such persons with disabilities.

Employment exchanges are required to maintain records of those persons with disabilities who are looking for employment. These records maintained by the establishment shall be open to inspection by the authorities appointed by the Government, at all reasonable hours, or to check whether the provisions of the Act have been complied with.



## GRIEVANCE REDRESSAL OFFICER

A Grievance Redressal Officer needs to be appointed by every establishment to deal with complaints from persons with disabilities regarding non compliance of the provisions of the RPWD Act. There are several situations in which a person with disability working with an establishment may register a complaint with the Grievance Redressal Officer. They are:

1. When a person with disability has been discriminated against in matters relating to employment.
2. When an establishment refuses to make changes, or create a barrier free environment to suit the needs of a person with disability.
3. When a person is denied promotion on the ground of disability.
4. When a person is removed from service or is reduced in rank after he/she acquires a disability while in service.

It is the responsibility of the Grievance Redressal Officer to investigate such complaints within two weeks of registering a complaint and to maintain a register of all complaints. If the complainant is not satisfied with the action taken then he/she might then approach the District Level Committee on Disability.

## Chapter 5

# SOCIAL SECURITY, HEALTH, REHABILITATION AND RECREATION

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### Salient Features:

- This chapter consists of provisions relating to social security of persons with disabilities including features like caregiver allowance, pension, aids and appliances.
- It lays down measures that the Government must adopt for prevention of disability and promotion of health.
- It highlights measures that need to be taken for rehabilitation of persons with disabilities.
- The chapter makes provisions for promotion of art, culture, recreation and sporting activities amongst persons with disabilities.

### Social Security

It is the responsibility of the Government to ensure that persons with disabilities have a decent standard of living which allows them to live independently or within the community. For this the Government needs to formulate appropriate schemes and programs. The Act specifically mandates that assistance provided to persons with disabilities under any scheme must be 25% higher than the assistance provided to others. The reason for this provision is that the living costs for people with disabilities are always higher than for all others – largely due to costs of medical care, assistive devices, support to overcome lack of accessibility and healthcare etc. The factors that the Government needs to keep in mind while formulating these Schemes are disability, gender, age, and socio-economic status are some of the factors the Government needs to consider while formulating any schemes and programmes.

These Act details the support the Schemes must include community centers with good living conditions in terms of safety, sanitation, health care and counseling, facilities for children and adults who have been abandoned by their families and are without shelter or livelihood

The Act also provides that support is to be provided to persons with disabilities in times of disasters both natural and man-made and in areas of conflict. Women must be provided support whether financial or otherwise for livelihood and for bringing up their children. Persons with disabilities must have access to safe drinking water and accessible facilities for sanitation both in urban and rural areas. People registered with the Special Employment Exchanges for two years or more and without being placed should get unemployment allowance. Comprehensive insurance, caregivers allowance in case of persons with High Support needs and other facilities like medicines, aids and appliances, medical and diagnostics services and corrective surgeries for persons with disabilities (subject to income ceiling) are some of the other provisions under this chapter.





## HEALTHCARE

The Government has also been given the responsibility of ensuring that it protects and promotes the health of persons with disabilities. The provision on health is divided into two parts. One part is related with ensuring that healthcare facilities reach people with disabilities.

In the second part the Government is required take steps for prevention of disabilities. To ensure that people with disabilities are able to access healthcare facilities the Government has to provide

1. Free health care closer to the place where persons with disabilities reside especially in villages, but this facility is provided free of cost only to those who fall within a particular income ceiling as determined by the Government.
2. People with disabilities should be able to access all parts of a Government, private hospital or healthcare institution without facing any barriers. The building should be accessible. The cost of healthcare is to be such that it can be afforded by those with disabilities. The facilities within these hospitals should be such that persons with disability are able to easily access.
3. When persons with disabilities visit the hospital they should be attended to and treated in priority. This means that hospitals could create separate queues for them or treat them first in a line of patients.

The Government has also been given the responsibility of preventing occurrence of disability broadly by two methods – through awareness and training amongst people and through active interventions in the area of health.

### Article 25 of UNCRPD

The UN Convention on the Rights of Persons with Disabilities provides that specific healthcare facilities must be provided for early identification and for prevention of furtherance of any disabilities. In addition to that healthcare facilities need to be provided with free and informed consent of people with disabilities.



### Insurance schemes

The medical needs of a person with disability are different from others and vary on the basis of their age, nature and extent of disability. Ageing might also bring changes in the nature of the disability. Thus, support through the medical and corrective procedures or other milestones of life becomes essential to make sure that a person with disability is able to sustain himself/herself. The Act provides that the Government must make insurance schemes specifically for people with disabilities.

### Rehabilitation

Rehabilitation is the process that helps people with disability live an independent life and allows them to participate in public life. It may also mean the process which facilitates the person to attain and maintain optimum level of functioning.

Government and local authorities must organize services and programs for persons with disabilities so that they are able to live a comfortable and wholesome life with independence. This means that plans for their rehabilitation need to be made which will include healthcare facilities, opportunities for education and employment. Rehabilitation is a wider term and might include many other measures which may be required to ensure that people with disability are able to participate in public life with others. It could include providing training to visually impaired persons in mobility, and assistive devices especially to poor persons with disabilities.

These efforts are regularly made by NGOs who are in touch with persons with disabilities and understand their issues in depth. Thus, the Act also mandates that the Government consults these organizations while formulating some special programs and services meant for people with disabilities. The purpose is to ensure that any service or program should be effective and must satisfy the needs of the person with disabilities. In addition to this the Government is also required to give financial support to Non-Government Organizations which are working for the cause of people with disabilities.

The Act mandates that appropriate Governments shall initiate research and development or cause it to be initiated 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 and which help them attain and maintain maximum independence, full physical, mental, social, and vocational ability, and full inclusion and participation in all aspects of life.

### **Article 26 of UNCRPD**

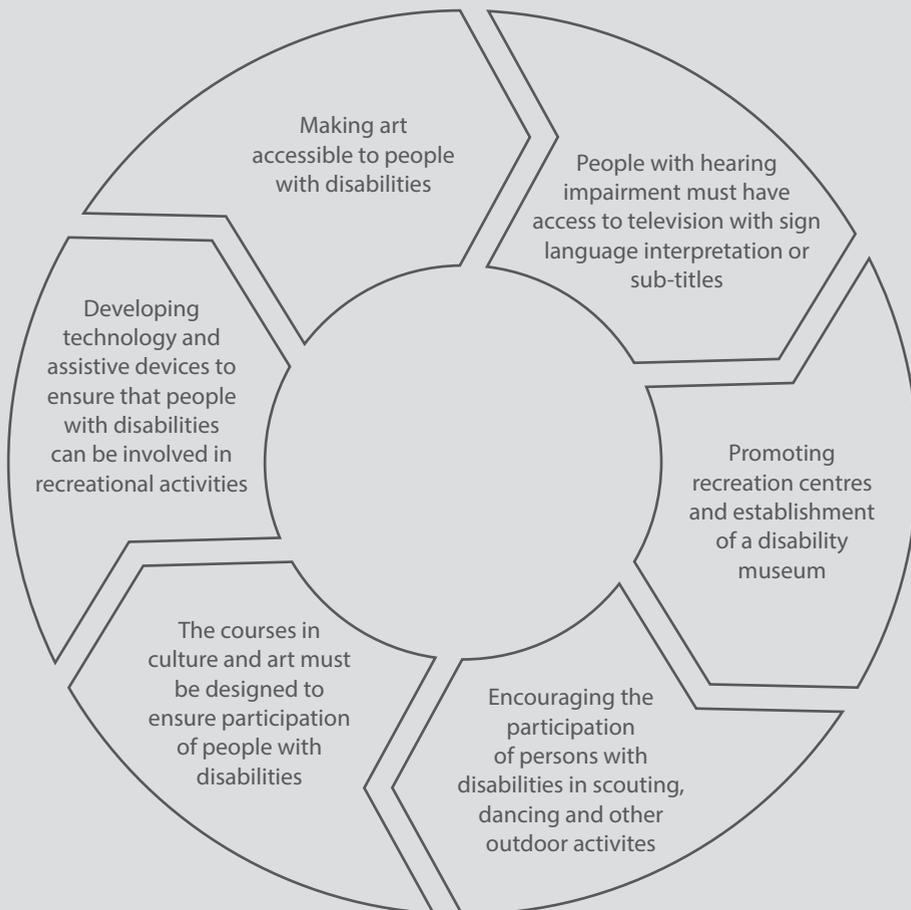
As per the UN Convention on the Rights with Persons with Disabilities rehabilitation must begin at the earliest possible stage and should be based on multidisciplinary assessment of individual needs and strengths.



## CULTURE AND RECREATION

The Act provides that the Government must protect the rights of persons with disability to participate in cultural and recreational activities. To do so the Government must take two kinds of measures.

The Government must provide for specific facilities and monetary support for artists and writers with disabilities so that they are able to freely pursue their interest and talents. Other efforts have to be directed towards ensuring that all recreational activities, whether indoor or outdoor, must be made accessible for people with disabilities or need to be structured in a manner that persons with disabilities may be able to participate in them easily.





## SPORTING ACTIVITIES

The Government has the responsibility of ensuring that people with disabilities are able to participate in sporting activities. The sports authorities have been given a greater responsibility under the Act of understanding/acknowledging that people with disabilities have an equal right to engage in sporting activities. The schemes and programs that sporting authorities develop must have a structure and plan so as to include people with disabilities.

1. The Act recommends a two pronged approach-
  - By ensuring that the existing infrastructure, facilities, courses and programmes are redesigned and redeveloped in such a manner that people with disabilities are able to access them.
  - By making specific efforts targeted at people with disabilities like allocation of funds for developing infrastructure and organizing sporting events for people with disabilities.

Government must organise sporting events specifically for persons with disability where the winners are duly recognised to create a sense of achievement amongst them.

Funds need to be allocated for development of sports facilities for training people with disabilities.

Technology must be developed to enhance the talent and capacity in sporting activities of people with disabilities.

Multi sensory features need to be added to all sporting facilities so that people with disability are able to participate in them.

*Specific efforts that are needed for participation of people with disabilities in sporting activities*

## Chapter 6

# SPECIAL PROVISIONS FOR PERSONS WITH BENCHMARK DISABILITIES

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### Salient Features:

- This chapter focuses on the special provisions for people with Benchmark Disabilities.
- Children with Benchmark Disabilities have the right to free education till the age of 18 years.
- Seats have to be reserved for persons with Benchmark Disabilities in institutions for higher education and Government jobs.
- The chapter also lays down the manner in which the vacancies reserved for persons with disabilities have to be filled.
- Employers in the private sector should be given incentives to encourage them to employ persons with disabilities.
- Establishments are required to file returns to employment exchanges about the vacancies created for persons with disabilities.

### **Article 24 of UNCRPD**

The United Nations Convention on the Rights of Persons with Disabilities provides that in addition to formal education state parties must facilitate the learning of Braille, alternative script, augmentative and alternative modes of communication and orientation and mobility skills and facilitating peer support and mentoring.

### Free education for children with Benchmark Disabilities

This chapter highlights the specific rights of persons with Benchmark Disabilities. Every child with a Benchmark Disability has been given the right to free education in a school in his neighborhood or a special school of his choice. The responsibility for ensuring that each child has access to free education has been placed with the Government or local authorities. Also, the Government and local authorities have been given the responsibility of ensuring that the environment within which the education is provided is conducive/favorable/encouraging for the child. This provision is extremely important especially in the light of the discrimination that children with disabilities regularly face while accessing education.



## RESERVATION IN INSTITUTIONS OF HIGHER EDUCATION

The Act provides that 5% of the total number of seats in all Government institutions of higher education and those that receive financial aid from the Government are to be reserved for people with Benchmark Disabilities. For admission to all educational institutions of higher education the upper age limit for persons with Benchmark Disabilities shall be 5 years more than the upper age limit for others.



## RESERVATION AND IDENTIFICATION OF POSTS FOR RESERVATION

Government has the responsibility of reserving at least 4% of the total number of vacancies in each group of posts for persons with Benchmark Disabilities. The reservation framework as per the Act is:

1. 1% reservation for persons with blindness/low vision
2. 1% reservation for persons who are deaf or hard of hearing
3. 1% reservation for persons with Locomotor disability
4. 1% reservation for persons with autism, intellectual, learning disability, mental illness, multiple disabilities (which means a combination of any of the disabilities mentioned above).

The reservation in promotion shall be according to instructions issued by the Government. Any Government department may be excused from following this system of reservation only when the Government has declared this through a notification which must mention the conditions for the exemption. The Government may make such a decision in consultation with the Commissioner or the State Commissioner on the basis of the nature of work carried out in an establishment.

The Government is required to identify jobs which can be reserved for persons with Benchmark Disabilities. To be able to do this effectively, it is the responsibility of the Government to form an expert committee that will have the responsibility of identification of jobs and which shall have people with Benchmark Disabilities. The Government also has the responsibility of reviewing the identified posts at regular intervals, the period or interval not exceeding three years.



**Process of filling up vacancies**

If the nature of the vacancies is such that persons with a certain disability cannot be employed in those positions, then the vacancies may be filled by an interchange amongst the various categories. This can be done only by the approval of the Government. This means that when a blind person cannot be employed in an establishment the vacancy shall be filled by a person who is deaf or hard of hearing or who has locomotor disability or one who is affected by autism, intellectual or learning disability or mental illness. The Government can also increase the upper age limit for employment of people with Benchmark Disabilities through a notification.

**Incentives to Employers in Private Sector**

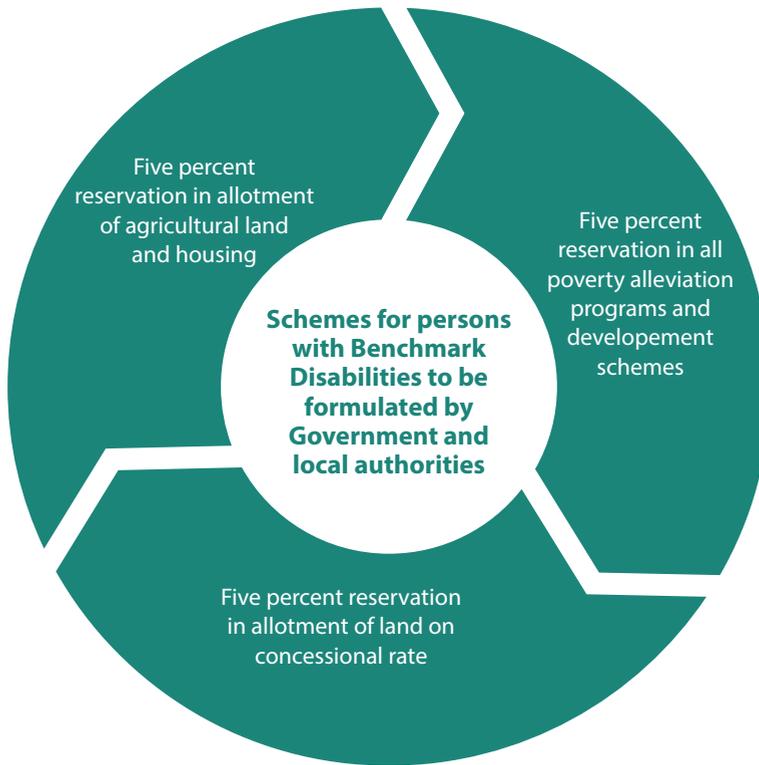
The Government and the local authorities have been given the responsibility of giving incentives to employers in the private sector with the purpose of encouraging them to employ persons with Benchmark Disabilities to the extent of 5% of their workforce.

**Special Employment Exchange**

It is an office established and maintained by the Government which keeps and provides information about people who seek to engage employees from amongst persons with Benchmark Disabilities, and about people with Benchmark Disabilities who are seeking employment and about vacancies for people with Benchmark Disabilities.

Under the Act, the Government may pass a notification which requires that employer at each establishment submits a document to the Special Employment Exchange which has details about the vacancies which exist, or are about to come up, for persons with Benchmark Disabilities. All establishments shall be required to follow this notification and submit this information with the Employment Exchange.

Special Schemes and Development Programmes



Land allotted at a concessional rate is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres. For reservation in agricultural land and poverty alleviation programs, priority is to be given to women with Benchmark Disabilities.

**Computation of Vacancies**

4% of the total numbers of vacancies are to be reserved for people with Benchmark Disabilities. Reservation in promotions shall be according to the instructions issued by the Government.



Every Government establishment is required to maintain a vacancy based roster to calculate the vacancies reserved for persons with Benchmark Disabilities. In this roster or register, the establishment is required to put down all vacancies arising, whether in identified posts or non-identified posts, so that calculation of reserved vacancies is possible. When advertisements in relation to vacancies are made, it must clearly mention the number of vacancies reserved for persons with each category of Benchmark Disability.

An interchange of vacancies can be done in a Government establishment only after the process prescribed for filling up the posts reserved for persons with Benchmark Disabilities has been followed properly.

#### **Submission of returns on vacancies**

Every Government establishment must submit to local Special Employment Exchange returns in Form - I once in every six months,

- For the period from 1st April to 30th September- within the month of October
- For the period 1st October to 31st March- within the month of April

Every Government establishment must submit to local Special Employment Exchange returns in Form – II, once every two years, within the month of April, at the time of closing of every alternate financial year.

- The first two yearly return is required to be submitted for the financial year closing on 31st March, 2019.
- Every Government establishment is required maintain a record of employees with disability.

## Chapter 7

# SPECIAL PROVISIONS FOR PERSONS WITH DISABILITIES WITH HIGH SUPPORT NEEDS

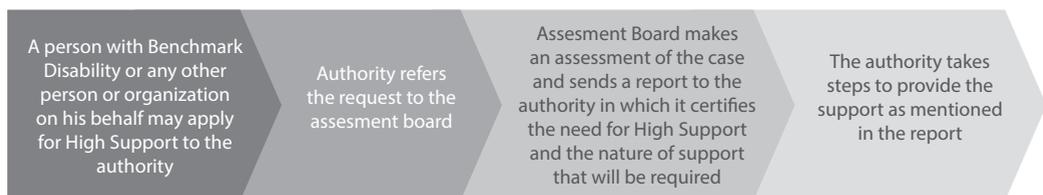
## Salient Features:

- This chapter highlights the process by which persons with Benchmark Disabilities who need High Support may apply to an authority for seeking such support.
- This chapter also highlights the rights of persons with Benchmark Disabilities who have High Support needs.

The term High Support means an intensive support, physical, psychological and otherwise, which may be required by a person with Benchmark Disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy.

A person with Benchmark Disabilities who needs High Support can apply to an authority requesting them to provide High Support. Any other person or organization may also apply on behalf of the person who needs High Support. When such an application is received by the authority it will be referred to an Assessment Board, which after assessing the case should submit a report to the authority. The Assessment Board certifies the need for High Support and the nature of that support. As per this report the authority is required to provide support to the person with Benchmark Disability.

*(The authority to which such an application for High Support can be made is yet to be notified by the Government. Similarly who shall constitute the Assessment Board has also not been notified by the Government)*



***The process for seeking support for people with Benchmark Disabilities who have High Support needs***

**Chapter 8**

# DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENTS

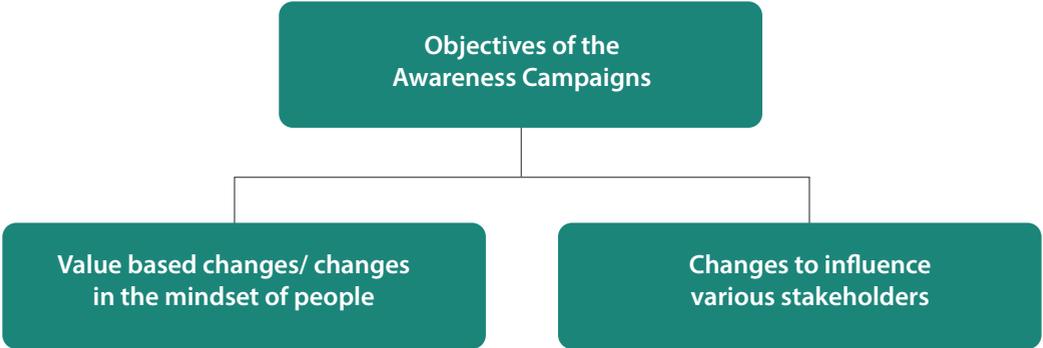
**Salient Features:**

- This chapter highlights the specific responsibilities of the Government under this Act.
- The Act provides that the Government must spread awareness and sensitize the general public about issues of persons with disabilities.
- The Government is required to lay down standards of accessibility for physical environment, transport and communication.
- It is also the responsibility of the Government to promote the production of goods in accordance with the principle of Universal Design, which can be used by people with diverse needs.
- Not only the new establishments but also the old ones are required to be made accessible under the Act.
- The Government is also required to develop human resources for the purposes of this Act.

**Awareness campaigns**

The Government has the responsibility of ensuring that the rights of persons with disabilities are protected. For this purpose, it is required to make people aware and sensitive towards the issues faced by persons with disabilities and their rights. To achieve this aim the Government has been given the responsibility of organizing and supporting campaigns for spreading awareness about the rights of persons with disabilities. These campaigns are to be organized in consultation with the Chief Commissioner or the State Commissioner.

The objectives of the awareness campaigns that are to be organized by the Government may be divided in two categories,



**Value based changes include:**

1. Encouraging the values of respect for diversity, inclusion and empathy.
2. Recognizing the skills and abilities of persons with disabilities and the contribution they make to the country's workforce.
3. Decisions made by persons with disabilities about having a family life and raising children must be respected.

**Changes to influence various stakeholders:**

1. Orienting and sensitizing schools, colleges and universities on issues faced by persons with disabilities and also their fundamental rights.
2. Employers, administrators and co-workers must be oriented to various disabilities and their individual needs along with the rights of persons affected by these disabilities.
3. The rights of persons with disabilities must be made part of the curriculum in schools, colleges and Universities.



## ACCESSIBILITY

It is the responsibility of the Central Government to make rules and lay down Standards of Accessibility of physical environment, transportation, information and communications. This means that the Central Government will lay down Standards regarding the specific features of a built environment or system of transport or in the field of information and communication that will have to be met or complied with. These standards for public buildings have been specified in the Harmonized Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly Persons which were issued by the Government of India, Ministry of Urban Development in March, 2016. Standards for Bus Body Code for Transportation system were specified in the notification (number G.S.R. 895(E)) of the Government of India in the Ministry of Road Transport and Highways, dated the 20th September, 2016. For Information and Communication Technology, GIGW (Guidelines for Indian Government Websites) Standards need to be adhered to. Documents placed on websites must be in Electronic Publication (ePUB) or Optical Character Reader (OCR) based pdf format.

Various Ministries and Departments are required to ensure that the Rules laid down regarding accessibility are complied with. The Accessibility Standards that have been notified must be reviewed by the Central Government keeping in mind the improvements in technology and latest scientific knowledge.

### **Article 9 of UNCRPD**

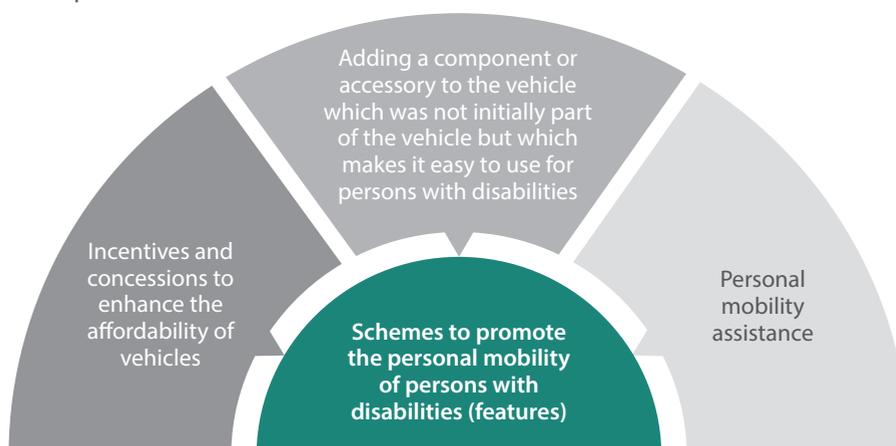
The UNCRPD in addition to providing for creation of accessible built environment also highlights that live assistance and intermediaries, including guides, readers and professional sign language interpreters should be provided in buildings open to the public.



## ACCESS TO TRANSPORT

The Government has been held responsible for ensuring that facilities are made available for persons with disabilities to use various modes of transport like buses, trains, airplanes. For this purpose, facilities have to be provided at the bus stops, railway stations and airports. These facilities must be in line with the standards of accessibility determined by the Central Government for parking spaces, toilets, ticketing counters and ticketing machines. The Government is required to take measures ensure accessibility of all modes of transport for persons with disabilities. To achieve this objective, a component or accessory could be added to the system of transport which was not part of it at the time of its manufacturing. This should be done only if it is safe, practicable and not too expensive to do. It should also not change the structure/design of the system in a substantial manner. It shall also be the responsibility of the Government to make sure that roads are also accessible and easy to navigate by persons with disabilities.

In addition to making changes in and upgrading the system of transport the Government must also promote the personal mobility of person with disability. It must encourage the use of vehicles that individuals with disabilities may themselves be able to use after adaptation to suit their requirements.



### Access to Information and Communication Technology

The Government has been given the responsibility of ensuring that all content that is available in audio (radio), print (newspapers/ magazines) and electronic media (television) should be in accessible formats or alternative formats in which persons with disability may be able to understand it. Content must be made available in sign language and braille to be easily understood by people with hearing disabilities and people with blindness. Specifically, in case of electronic media, facilities like the audio description (an explanation of a visual in voice format for those who are blind or with low vision), sign language interpretation and close captioning of the content must be done to make it reach persons with disability. Close captioning is the narrative of the spoken part and sounds of a television programme, movie, or computer presentation. Electronic goods, meant for everyday use, should be developed in accordance with the principles of Universal Design.

All products, infrastructure, programmes and services should be usable by all people to the greatest extent possible, without the need for adaptation or specialized design.

### **Consumer goods**

The Government has the responsibility of promoting the development, production and distribution of goods of general use which are of such design that they may be used by the maximum categories of people including persons with disability and the elderly.

### **Mandatory observance of accessibility norms**

Every new building that is built must comply with the norms of accessibility which have been notified by the Central Government. Thus, all features of the building must be such that they match the features mentioned in the Harmonised Guidelines for the built environment. If the building plan is not in line with these norms the establishment will not be granted permission to build the structure. If the building itself after construction does not comply with the norms it will not be given a certificate of completion and the owner of the building will not be allowed to take occupation of the building. This means that every new building must comply with the norms that have been laid down for making spaces accessible for persons with disability.

### **Time limit to ensure accessibility in public buildings (both Government and private) in a prescribed time-frame**

The Act requires that all existing public buildings must also be made accessible within five years of the Rules having been notified. The Rules were notified on 15th June 2017. Thus, all public buildings are to be made accessible before 15th July 2022. Public Buildings here refer to Government or private buildings, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways. The Central Government can give extension of time to different states depending on the preparedness of individual states to make the existing buildings accessible. To achieve this goal the Government and local authorities are required to make an action plan.

### **Time limit for accessibility by service providers.**

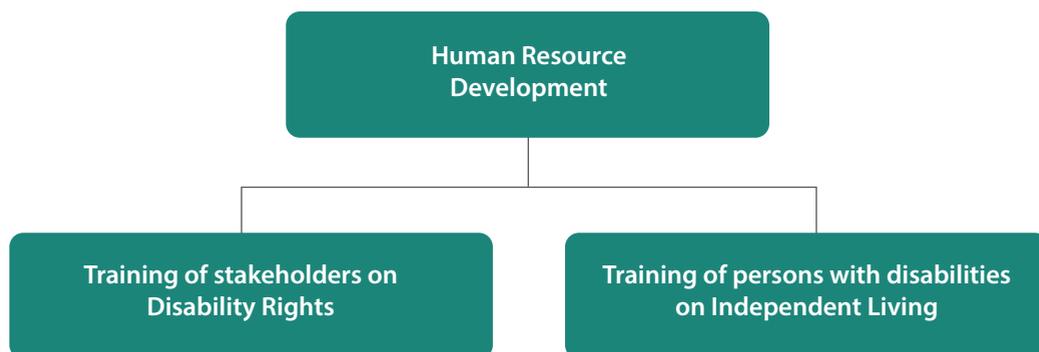
All Government and private service providers must start providing services in line with the accessibility guidelines as mentioned in the Rules within a period of two year from the date of notification of the Rules i.e. within or before 15th July 2019.



## **HUMAN RESOURCE DEVELOPMENT**

As per the Act the Government is required to develop the human resources for the proper implementation of the Act. These efforts must be made in addition to the efforts made by the Rehabilitation Council of India for the same purpose. The development of human resources involves two aspects:

1. Training all stakeholders and civil society members on the rights of persons with disabilities.
2. Training of persons with disabilities to lead an independent life.



### *Training of stakeholders*

1. In all courses for the training of Panchayati Raj members, legislators, administrators, police officials, judges and lawyers a component on disability rights must be included.
2. Disability rights should also be included within all educational 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.
3. Family members and care givers of persons with disabilities should be given training on independent living and building community relationships.
4. Training for sports teachers with focus on adventure.

The capacity of persons with disabilities must also be increased through training in Independent and community living. Universities must also promote research on disability studies by setting up study centers for this purpose.

For the purpose of development of human resources, the Government must conduct a needs assessment every five years and formulate a plan for the recruitment and training of people for performing of various functions under the Act.

### **Social audit**

It is the responsibility of the Government to do an independent assessment of all the schemes and programs, to check that there is no negative impact on persons with disabilities and their needs are being properly met through the same.

## Chapter 9

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

*(The Rules mentioned in this chapter are not applicable to institutions that have been established by the Central or State Government)*

### Salient Features:

- This chapter lays down the process of registration of institutions maintained for the care of persons with disabilities.
- It also explains the situations in which the certificate of registration may be cancelled.
- There is also a provision for appeal against the decision of the authority granting the certificate of registration.
- It lays down the time limits for grant of certificate after the application has been made and the time period within which an appeal should be filed if the applicant is not satisfied with the decision of the certification authority.

### Competent Authority

The State Government is required to appoint an authority with the necessary ability, knowledge, and skills to perform the function of registration of institutions for persons with disabilities.



## REGISTRATION

An institution can be established and maintained for the welfare of persons with disabilities only if it has been registered under the RPWD Act and it has obtained a certificate by the above-mentioned authority. Those institutions which have been set up for the care of mentally ill and obtained a license under the Mental Health Care Act, 2017 are exempted from the requirement of registration under this Act.

### Application and grant of certificate of registration

Application for the registration of the institution must be made in a specified format which is to be prescribed by the State Government. After the application is received the authority

responsible for the registration will find out if the applicant has followed all the provisions and rules that have been laid down in the Act and the Rules. If the authority is satisfied it is required to grant the certificate within a period of 90 days of receipt of the application. If dissatisfied with the inquiry the authority can refuse to grant the certificate. The refusal must also be communicated to the applicant. In case the authority plans to refuse the granting of the certificate of registration it must also give an opportunity to the applicant of being heard.

The certificate of registration will be provided only if the institution is in a position to provide facilities and meet the standards that have been prescribed by the State Government. The certificate will remain in force for a certain time period prescribed by the State Government after which it must be renewed. Renewal must be made at least 60 days before the validity of the certificate expires. The nature of the certificate must be determined by the State Government. The certificate must be displayed at a place where it will be clearly visible to everyone. On every application, which is made for grant or renewal of the certificate of registration a decision must be made within a certain time period which is to be prescribed by the State Government.

### **Revocation of registration**

There are two situations in which a certificate of registration can be revoked

1. When the applicant/ institution has presented incorrect/false information to the authority to get the certificate made or to get it renewed.
2. When the applicant/ institution has broken rules or not followed conditions which it was supposed to follow after the certificate had been granted, conditional to certain rules and norms being followed.

Before the certificate is cancelled/ withdrawn the holder must be given an opportunity to present the reasons for why the certificate should not be cancelled.

### **Functioning after cancellation of the certificate**

The institution must stop functioning from the date of cancellation of the certificate. If the people in charge of the institution have not filed an appeal against the cancellation, the functioning must stop on the day when the time limit for filing the appeal expires.

If an appeal has been filed against the decision of the authority but the order of the cancellation of the certificate has been maintained, then the institution must stop functioning on the date of the order of the cancellation.

When the certificate of registration has been cancelled, the competent authority may decide that inmates or a residents of that institution shall be sent back to the custody/ care of their parent/ spouse/ guardian or transferred to any other institution.

### **Appeal**

When a person is not satisfied with the order of the authority responsible for refusal or cancellation of a certificate, he may file an appeal to an authority which will be notified by the State Government. This must be done within the time period prescribed by the State Government.

### **Assistance to registered institutions**

It is the duty of the Government to give financial support to registered institutions so that they may be able to provide services and implement the schemes and programs related with welfare of people with disabilities.

## Chapter 10

# CERTIFICATION OF SPECIFIED DISABILITIES

### Salient Features:

- This chapter explains the process of obtaining a disability certificate.
- It explains what are the essential requirements while applying, who can apply and to whom.
- The steps that the Medical Authority takes while processing an application are also outlined.
- The person whose application has been rejected has the option of an appeal against the decision of the Medical Authority.

### Guidelines for assessment of Specified Disabilities

It is the responsibility of the Central Government to set down rules/ principles for assessing the extent of Specified Disabilities.

### Designation of certifying authorities

It is also the responsibility of the Government to determine the people who will have the qualification/experience to become certifying authorities or who are capable enough or have the required skill and knowledge to issue a certificate of disability. In addition to this the Government will also lay down the geographical area within which each certifying authority will function and the rules and conditions that it must follow while functioning.



## PROCEDURE FOR CERTIFICATION

Any person applying for a certificate of disability must apply in form IV which is part of the Rights of Person with Disability Rules, 2017. The application may be made to the Medical Authority where the applicant was undergoing treatment in connection with his/her disability. The applicant can also apply to a Medical Authority which is notified as a competent authority to issue a certificate within the district where the applicant lives. When the person with disability is a minor or is suffering from an intellectual disability because of which he will not be able to make such an application, it must be made by the legal guardian or any organization registered under the Rights of Persons with Disabilities Act, which is responsible for the minor applicant. The application form must be submitted along with a proof of residence, two recent passport size photographs and the applicant's Aadhar card.

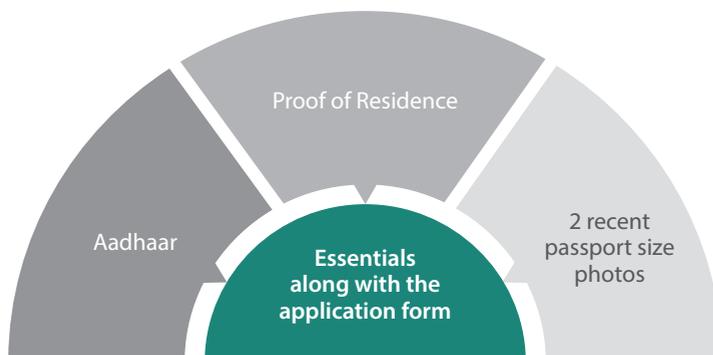
### Process followed for making of a disability certificate



On receipt of the application, the Medical Authority:

1. Verifies the information given by the applicant.
2. Conducts assessment of disability in terms of the guidelines issued by the Central Government in this regard.

After satisfying itself about all the details the authority issues a Disability Certificate. The certificate is in Form V as per the Rules if the disability is related with amputation or complete permanent paralysis of limbs or dwarfism or blindness. The certificate will be in Form VI in case the applicant has multiple disabilities. Form VII will be used in case the applicant has any disability other than those mentioned above. The certificate issued could be a permanent certificate where there is no chance of any changes in the disability - in its nature or degree. In case of the probability of some change in the disability the certificate will mention the time for which the certificate will remain valid. If the applicant is not eligible for a certificate of disability, he should be informed of the same in form VIII along with reasons for rejection of his application. It is the responsibility of the State and Union Territory Government to ensure that there is an online facility for providing the certificate of disability. The certificate issued to a person with disability shall be valid all over the country. Through the process of this certification the person with disability becomes entitled to apply for facilities, concessions and benefits. If a certificate was issued under the previous Act it will remain valid for the time period specified in the certificate.



*<sup>1</sup>Form V, VI, VII and VIII are various formats for disability certificates which have been included in the Rights of Persons with Disability Rules.*

### Appeal

If any person is not satisfied with the decision of the certifying authority, then he may apply to the Appellate Authority to be determined by the State Government. The process to be followed while considering the appeal also needs to be determined and notified by State Government.

## Chapter 11

# CENTRAL AND STATE ADVISORY BOARDS ON DISABILITY AND DISTRICT LEVEL COMMITTEE

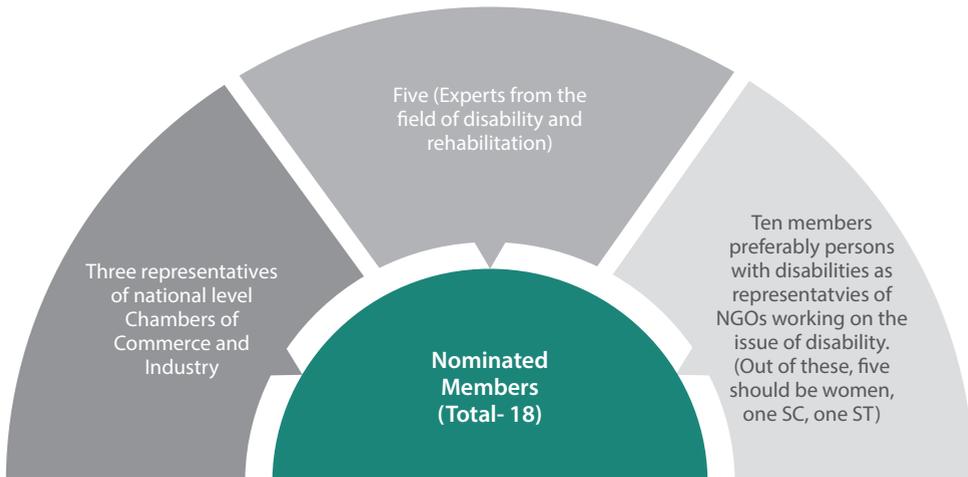
### Salient Features:

- This chapter provides for setting up of a Central Advisory Board at the National Level and the State Advisory Board in all the States.
- It provides a list of all persons who will be part of the Board at the Central and State Level.
- It describes the functions that are to be performed by the State and Central Advisory Boards.
- It also prescribes the terms and conditions of service and disqualifications for the members who will be on the Central and State Board.

The Central Government is required to set up a Central Advisory Board on Disability. It will be a national-level consultative and advisory body on issues related with disability. It will have the responsibility of ensuring that a comprehensive policy evolves for the empowerment of persons with disabilities and the full enjoyment of rights. The Board will have several members like the Minister in - charge of Department of Disability Affairs in Central Government and of all State Governments, Secretaries of the Government of India in charge of Departments/ Ministries of Social Justice and Empowerment, School Education and Literacy, and Higher Education, Women and Child Development Panchayati Raj, Industrial Policy and Promotion, Urban Development, Housing and Urban Poverty Alleviation, Secretary of NITI Aayog. The Board will also have as its members Chairpersons and Managing Directors of various corporations involved in some work related with Persons with Disabilities, like National Handicapped Finance Development Corporation, National Institute for the Visually Handicapped, and other institutions associated with education or medical education (Medical Council of India), or Higher Education (University Grants Commission) etc.

<sup>2</sup>As per the Act the Board will consist of more than 90 members, for a full list please refer to Page 19 of the law, it can be found on the following link.

([http://www.ncpedp.org/sites/all/themes/marinelli/documents/Rights%20of%20Persons%20with%20Disabilities%20\(RPWD\)%20Act%202016.pdf](http://www.ncpedp.org/sites/all/themes/marinelli/documents/Rights%20of%20Persons%20with%20Disabilities%20(RPWD)%20Act%202016.pdf))



18 Members are to be nominated by the Central Government. Out of these, five (5) members have to be experts in the field of disability and rehabilitation; ten (10) members have to be persons with disabilities from Non-Governmental Organizations working on the issue of disability. (The law mentions that these members have to be persons with disabilities as far as practical, which means it is a recommendatory provision and exception to it can be allowed, but preference must be given only to persons with disabilities). Out of these ten (10) members at least five (5) have to be women, one must be from Schedule Caste and one from Schedule Tribes. Also three (3) members out of the total eighteen members must be representatives of national level Chambers of Commerce and Industry.

A nominated member of the Board is required to hold office for a term of three years from the date of his nomination. Even if a member’s term has expired he/she is required to hold office till the entry of a successor.



A nominated member can be removed by the Central Government before the expiry of the term if required but only after giving the member a chance to explain why this should not be done. A nominated member can resign simply by just writing to the Central Government. Nominated Members who are experts on the issue of disability and those who represent the national level chambers of Commerce and Industry are eligible to be nominated again. The Central Advisory Board must meet once in six months.



## FUNCTIONS OF THE CENTRAL ADVISORY BOARD

1. To advise the Central Government and the State Governments on policies, programmes, legislation and projects with respect to disability.
2. To develop the National Policy to address issues associated with disability.
3. To review and coordinate the activities of all the Government Departments and other Government and Non Government Organizations working on issues related with persons with disabilities.
4. To proactively ensure that schemes and projects for persons with disabilities must become part of the national plans by raising the issue with concerned authorities and international organizations.
5. To make suggestions related to accessibility, reasonable accommodation, and non discrimination for persons with disabilities with respect to information, services and built environment.
6. To assess the impact of laws, policies and programmes to ensure full participation of persons with disabilities.
7. To perform any other function assigned by the Central Advisory Board.

Just like a Central Advisory Board is required to be set up by the Central Government at the national level, State Governments are required to set up State Advisory Boards with a composition similar to the Central Advisory Board. Its members will include the Minister in charge of the Department of Disability Affairs in the State Government, Secretaries to State Governments in charge of Department of Disability Affairs, School Education, Health and Family Welfare, Panchayati Raj, Industrial Policy and Promotion, Labour and Employment etc. The provision for nominated members is the same as it was for the Central Advisory Board. Terms and conditions of service and disqualifications are also the same. The functions performed by the State Advisory Board are also the same, only at the State Level. Also, just like the Central Advisory Board, the State Advisory Board must also meet at least once in six months.

The State Government is required to set up a District Level Committee on disability which is required to perform functions as determined by the State Government.

## Chapter 12

# CHIEF COMMISSIONER AND STATE COMMISSIONER FOR PERSONS WITH DISABILITIES

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### Salient Features:

- This chapter provides for appointment of Chief Commissioner at the Central Level and State Commissioner at the State Level for Persons with Disabilities.
- It also lays down their requisite qualifications, salary, allowances, and employees to be appointed under their supervision.
- The Chapter also lists the functions and powers of the Commissioners.

Under this chapter, the Central Government has been given the power to appoint a Chief Commissioner for Persons with Disabilities. The Central Government can also appoint two Commissioners to assist the Chief Commissioner. Out of these two Commissioners one must be a person with disability. The minimum criterion to become a Chief Commissioner or a Commissioner is that the person must have special knowledge or practical experience in the area of rehabilitation. The salaries, allowances and other conditions of service of the Commissioners, the Chief Commissioner and of any employees working under their supervision are to be determined by the Central Government. It will also be the responsibility of the Central Government to assess the kind of people/ employees who will be required to assist the Chief Commissioner to perform his/ her functions. These employees are required to work under the control and supervision of the Chief Commissioner, who in turn will receive assistance from an Advisory Committee which will have a maximum of eleven members who will be experts from different disabilities.



## FUNCTIONS OF A CHIEF COMMISSIONER

**Some of the functions that are to be performed by the Chief Commissioner are:**

1. To identify provisions of any laws, policies, programs or procedure which are not in line with the Rights of Persons with Disabilities Act, and suggest corrective measures to make changes.
2. To look into cases of violation of rights of persons with disabilities and the safeguards available to them, with respect to the Central Government. Additionally, he/she is required to take up the matter with concerned authority for corrective action. Safeguards for persons with disabilities with respect to other laws/policies are also to be reviewed and recommended.

3. To make recommendations about the effective implementation of those provisions in various laws that protects the rights of persons with disabilities.
4. To make recommendations about the effective implementation of the treaties and international instruments like the UN Convention on the Rights of Persons with Disabilities.
5. To promote research in the field of rights of persons with disabilities.
6. To promote awareness about the rights of persons with disabilities.
7. To monitor the implementation of the RPWD Act and any other schemes and programs meant for persons with disabilities.
8. To monitor the use of funds that have been spent by the Central Government for the benefit of persons with disabilities.

The Chief Commissioner is required to take the advice of other Commissioners while performing the above-mentioned functions. When the Chief Commissioner advises or gives a direction to an authority, that authority needs to take the corrective action and inform the Chief Commissioner about the same within three months from the date when the direction was received.

When an authority does not accept a direction or recommendation, it is required to inform the reasons for the same to the Chief Commissioner and the aggrieved person within three months from the date when the direction was received.



## POWERS OF A CHIEF COMMISSIONER

Just like the Civil Court has certain powers while it is trying a case under the Code of Civil Procedure, the Chief Commissioner has the same powers while performing his/her functions under this Act. **Those powers are:**

1. To authoritatively call on a witness or order him/her to be present in his Court.
2. To ask for any document to be looked for or searched and produced before him/ her.
3. To look into any public record or a copy of it from any Court or office.
4. To receive evidence on affidavits.
5. To issue orders for the examination of those witnesses or documents that, for any reason, are not able to be present or produced before him or her.

Giving false evidence intentionally or fabricating false evidence in any stage of a judicial proceeding is punishable under the Indian Penal Code with imprisonment with a penalty of upto seven years in prison and a fine. Similarly giving false evidence in a proceeding before Chief Commissioner is also punishable, and in this regard the proceeding before the Chief Commissioner is treated as a judicial proceeding.

Intentional insult or interruption to a public servant who is sitting in judicial proceeding is punishable under the Indian Penal Code with simple imprisonment for six months and a fine of up to Rs 1000. A proceeding before the Chief Commissioner is treated in the same manner and is punishable in the same manner.

There are certain activities which are considered offences in a civil court like absconding to avoid the service of a summon, omission to produce a document, omission to give notice or information to a public servant, giving false evidence, with malicious intentions to get a favorable order, false statement made in any declaration. With regard to these activities the Court of Chief Commissioner is treated as a civil court, and these activities will be treated as offences. The Chief Commissioner is required to submit an Annual Report to the Central Government but he/she is also required to submit Special Reports regarding an issue that is urgent or important and it should not be postponed till the submission of the Annual Report.

The Central Government has the responsibility of laying the Annual and Special Reports before both houses of the Parliament along with the Memorandum of Action taken or proposed to be taken on his recommendations and the reasons why the recommendations are not being followed. The manner in which the Annual and Special reports shall be prepared and the details they will contain will be determined by the Central Government.

All State Governments are required to appoint a State Commissioners for Persons with Disabilities. The provisions related to the qualifications, salary and allowances of the Commissioner and his/her employees, assistance given by the Advisory Committee to the State Commissioner are the same as those for the Chief Commissioner. The only difference is that the Advisory Committee assisting the State Commissioner can have a maximum of five members who will be experts from the field of disability.

The functions to be performed by the State Commissioner are also the same as those by the Chief Commissioner but only within and for the benefit of the particular state. Other provisions in relation to the action to be taken by authorities to whom the Commissioner makes the recommendation are also the same as in case of the Chief Commissioner. The State Commissioner has similar powers to the Chief Commissioner while hearing a case. The proceeding before it is also to be treated as a judicial proceeding.

The State Commissioner is required to submit an Annual Report to the State Government. Special Reports are to be submitted regarding matters which are urgent and important. The Annual and Special Report are to be tabled before each house of the State Legislature along with a Memorandum of Action taken or proposed to be taken, as per the recommendations of the Commissioner and the reasons for not following any of the recommendations.

## Chapter 13

# SPECIAL COURTS

### Salient Features:

This chapter provides for the setting up of Special Courts for speedy trial of offences committed in violation of the Rights of Persons with Disabilities Act.



## SPECIAL COURT

This chapter provides for the setting up of a Special Court for speedy trial of offences violating the Rights of Persons with Disabilities Act. The decision as to which Session Court will be designated as Special Court in each district is to be made by State Government in agreement with Chief Justice of the High Court of that State.



## SPECIAL PUBLIC PROSECUTOR

**For every Special Court the State Government will**

1. Either specify a public prosecutor
2. Or appoint an advocate who has been in practice as an advocate for 7 years or more.

This person will hold the position of a Special Public Prosecutor for the purpose of conducting cases in that court. He/she will receive a fee as decided by the State Government.

## Chapter 14

# NATIONAL FUND FOR PERSONS WITH DISABILITIES

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### Salient Features:

This chapter provides for constitution of a National Fund for Persons with Disabilities and also lays down how the accounts of this Fund are to be managed and the monies that shall constitute this Fund. In that Fund the following sums of money shall be credited:

1. All the sum available under the Fund for People with Disabilities which was created on 11th August 1983.
2. Sum available under the Trust Fund for Empowerment of Persons with Disabilities which was formed on 21st November, 2006, under the Charitable Endowment Act.
3. All sums which are to be paid by Banks, Corporations and Financial Institutions as a result of judgment dated 16th April, 2004 of the Honorable Supreme Court.
4. All the amounts which are received by way of grant, gifts, donations, benefactions, bequests or transfers.
5. Money received from the Central Government including Grants in Aid.
6. Money from other sources can also be made part of this fund as per the discretion of the Central Government.

Use and management of this Fund will be determined by the Central Government. It is also the responsibility of the Central Government to maintain accounts of this Fund including the Income and Expenditure Account. An Annual Statement is also to be prepared of the Accounts and the manner in which this is to be done is to be decided after consulting the Comptroller and Auditor General of India. The accounts of the Fund shall be audited by CAG. This means CAG has the duty to officially inspect the accounts or conduct a systematic review or assessment of the accounts. This is to be done at intervals which will be determined by CAG. The amount of money spent by CAG on conducting the audit of accounts of the Fund shall be payable from the Fund itself. The CAG or any other person appointed by the CAG for the purpose of auditing of accounts will have the same rights and authority as is enjoyed by it while auditing Government accounts. There is specific mention that CAG shall have the right to demand that books of accounts, vouchers other documents and papers required while auditing should be produced before him. CAG also has the right to inspect any of the offices of the Fund. When the CAG, or any other person appointed by CAG, has certified the National Fund Accounts then the Accounts along with the Audit Report is required to be laid before each House of the Parliament.

## Chapter 15

# STATE FUND FOR PERSONS WITH DISABILITIES

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### Salient Features:

- This chapter provides for creation of a State Fund for Persons with Disabilities by every State Government.
- It also establishes the responsibility of management of State Fund.
- CAG has a major role to play in auditing the accounts of the State Fund.

Under the Act, every State Government is required to initiate/create/begin/ form a Fund which will be called State Fund for Persons with Disabilities. How the Fund shall be used and managed shall be laid down and specified by the State Government. It is the responsibility of the State Government to ensure that the accounts and other records of this Fund are maintained properly, especially the Income and Expenditure Account.

The manner in which the accounts shall be maintained shall be decided by the State Government after consulting the Comptroller and Auditor General of India. The Accounts of all State Funds shall be audited by CAG. This means CAG has the duty to officially inspect the accounts or conduct a systematic review or assessment of the accounts. This is to be done at intervals which will be determined by CAG.

The amount of money spent by CAG on conducting the audit of accounts of State Fund shall be payable from the State Fund itself. The CAG or any other person appointed by the CAG for the purpose of auditing of accounts will have the same rights and authority as is enjoyed by it while auditing Government accounts. There is specific mention that CAG shall have the right to demand that books of accounts, vouchers other documents and papers required while auditing should be produced before him. CAG also has the right to inspect any of the offices of the State Fund.

When the CAG or any other person appointed by CAG has certified the State Fund accounts then the accounts along with the Audit Report is required to be laid before each House of the State Legislature.

## Chapter 16

# OFFENCES AND PENALTIES

### Salient Features:

- This Chapter highlights the punishments for individuals who violate the provisions of this Act.
- It puts the onus on the officials of the company for any offence committed by the company.
- The chapter also lists the acts which have been called atrocities under the Act.

### Punishment for not following the provisions of Act or rules

Any person who violates the provisions of the Rights of Persons with Disabilities Act or of any of its Rules for the first time will be punishable with a maximum fine of Rs 10,000/-. If the same person violates any provisions of the Act or any of its rules for the second time or more the same will be punishable with a fine ranging between Rs 50,000 to 5 lakh.



## OFFENCES BY COMPANIES

When an offence under the Rights of Persons with Disabilities Act is committed by a company or persons who were in charge of the company, meaning who were conducting the day to day affairs of the company and people who were responsible to the company shall be considered to have committed that offence. Also, the company as a separate legal entity would be considered to have committed that offence. The proceedings shall be carried out against the company and the individuals responsible.

### **There are two conditions under which people in charge of the company will not be considered guilty of the offence committed by the company**

1. When the offence was committed without the knowledge of these people.
2. When reasonable steps were taken by these people to avoid the commission of an offence.

If an offence has been committed by a company and it has been proved that it was committed with the agreement of Director, Manager, Secretary or any other officer of the company or these officers have willingly allowed or were secretly involved in the happening of the offence then they shall be considered guilty of having committed the offence and due proceedings will be carried out against them. In the context of these provisions, company means a body-corporate or a firm or any association of individuals. Director in relation to a firm means a Partner in the firm.

## **Punishment for fraudulently availing any benefit meant for persons with Benchmark Disabilities**

Any person who deceives or tries to deceive to obtain any benefits which have been provided in the Act for Persons with Benchmark Disabilities shall be punished with a maximum fine of Rupees one lakh or imprisonment up to two years or both.



## **PUNISHMENT FOR OFFENCES OF ATROCITIES**

(a cruel act involving physical violence or injury)

**Certain acts have been termed as offences of atrocities:**

1. The act of speaking to a person with disability with disrespect with the intention of making him/her feel ashamed and injuring his/her dignity in a place within public view.
2. A physical attack or using force on a person with disability with the intention to cause shame or disgrace, the act of physically harassing a woman with the intention of insulting her.
3. Having control over a person with disability and denying that person food or fluids out of one's own free will or with full knowledge.
4. Being in a position of power and being able to influence the will of a child or woman with disability and using that position to exploit him/her sexually.
5. Voluntarily causing injuries to any limb or sense or damaging any supporting device of a person with disability.
6. Performing a medical procedure or directing that a medical procedure be performed on a woman for termination of pregnancy without her express agreement to the process.

All the above-mentioned acts shall be treated as atrocities under the Act and shall be punishable with imprisonment for a term between six months to five years and with fine.

## **Punishment for failure to furnish information**

Any person who has the duty to provide information or a statement or answer a question or produce a book, account or other documents under this Act or as per any order or direction made under the Act must do so and if he/she either fails or refuses to provide the information or document he/she shall be guilty of an offence and shall be punishable with a fine extending up to Rs 25,000/-. If a person continues to refuse the sharing of the information a further fine will be imposed up to the maximum amount of Rs 1000 for each day of the refusal after the first day of the order of punishment or a fine.

### **Previous sanction of appropriate Government**

If an employee of the Government has committed an offence, then the court will acknowledge that the offence has been committed either after the approval from the Government or only when an officer makes a complaint about the offence on behalf of the Government.

### **Alternative punishments**

When a person commits an act which is an offence under the Rights of Persons with Disability Act and also under another Central or State Act, he/she shall be punished under that Act which provides for a harsher punishment or punishment of a greater degree.

## Chapter 17

# MISCELLANEOUS

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### Salient Features:

- This chapter highlights the powers of the Central Government with respect to the implementation of the Rights of Persons with Disabilities Act.
- It also lists the matters regarding which the Central Government and the State Government can make Rules.
- The chapter points out that the RPWD Act repeals the Persons with Disabilities Act, 1995.

The implementation of the RPWD Act is to be carried out in addition to the other laws and not in place of them. An action of a Government or any official of the Government or any officer or employee of the Chief Commissioner or the State Commissioner shall not face any adverse legal consequences if it is done in good faith or if the intention of the act committed was to carry out the provisions of the RPWD Act in a bona fide manner.

In the event of a difficulty in the implementation of the RPWD Act, the Central Government has been given the power to give directions or make provisions in line with the Act or compatible with the Act, which are necessary to remove the difficulties. This, the Central Government can do through an order published in Official Gazette.

The Government has the power to issue any such order only within the period of 2 years from the date of commencement of Act (from the day the Act became enforceable). Every order made by Central Government under this provision has to be laid before each house of the Parliament.



## THE **CENTRAL GOVERNMENT** HAS THE POWER TO MAKE RULES REGARDING THE FOLLOWING MATTERS

1. The manner in which the Committee for Research on Disability will be constituted.
2. The manner in which the Equal Opportunity Policy will be notified to the Chief Commissioner and the State Commissioner.
3. The manner in which records about persons with disabilities are to be maintained by various establishments.
4. The manner in which the register of complaints is to be maintained by the Grievance Redressal Officer.
5. How the information will be provided by the establishments to the Special Employment Exchange.
6. Who will be part of the Assessment Board which will determine who is a person with Benchmark Disability with High Support Needs and the manner in which this assessment is to be made.
7. Standards of accessibility for physical environment, transportation, information and communication.
8. The manner in which an application can be made for obtaining a disability certificate, format of the certificate of disability.
9. Allowances that are to be paid to the nominated members of Central Advisory Board.
10. The procedure to be followed for transaction of business in meetings of Central Advisory Board.
11. Salaries and allowances of Chief Commissioner and Commissioners.
12. Identification of experts and the process of empanelment in the Advisory Committee (which will assist the Chief Commissioner).
13. The content and the manner in which the Annual Report is to be prepared by the Chief Commissioner.
14. Rules about the process and management of the National Fund.
15. The manner in which the accounts of the Fund are to be prepared.



THE **STATE GOVERNMENT** OF EACH OF THE STATES HAS THE POWER TO MAKE RULES REGARDING THE FOLLOWING MATTERS

1. The manner in which the Committee for Research on Disability will be formed.
2. The manner in which support is to be provided to a Limited Guardian.
3. The manner in which an application is to be made to obtain a certificate of registration for institutions meant for welfare of persons with disabilities.
4. The facilities that are to be provided and the standards that are to be met by institutions so that they get a certificate of registration.
5. The period for which the certificate of registration will remain valid and the conditions under which the certificate will remain valid.
6. The time period within which an application for registration or renewal of the certificate of registration should be disposed off.
7. The time period within which an appeal to the Competent Authority is to be filed when the application for certificate of registration has been rejected.
8. The time and manner in which an appeal is to be filed against the order of certifying authority which has refused to give a certificate of disability.
9. The allowances that have to be paid to the nominated members of the State Advisory Board.
10. The procedure for transaction of business in the meetings of State Advisory Boards.
11. The decision on who will form part of the District Level Committee and the functions to be performed by it.
12. Salaries, allowances and conditions of service of State Commissioner and officers and staff of State Commissioner.
13. The appointment of experts and the process of appointment in the Advisory Committee constituted to assist the State Commissioner for Persons with Disabilities.
14. The manner and content of the Annual and Special Reports which are to be prepared by the State Commissioner.
15. The fee or remuneration that is to be paid to the Special Public Prosecutor who will be responsible for looking after cases under the RPWD Act in the Court of Session designated as a Special Court in each district.
16. The formation of the State Fund for Persons with Disabilities and its usage. How it is to be formed and how it is to be used.
17. The format in which the accounts for State Funds are to be prepared.

**The Rights of Persons with Disability Act nullifies the Persons with Disability Act (1995). This means that RPWD Act will now be implemented in place of the previous disability law. Even though the 1995 law has been nullified if any action is taken under the provisions of the old law it will be assumed to have been done under the corresponding provisions of the new law.**