

The Rights of Persons with Disabilities Bill, 2011

**Presented by Committee appointed by
Ministry of Social Justice and Empowerment
Government of India**

30 June 2011

**Prepared by
Centre for Disability Studies
NALSAR University of Law
Hyderabad, India
30 June 2011**

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FINAL REPORT OF THE COMMITTEE ON DRAFTING THE RIGHTS OF PERSONS WITH DISABILITIES BILL 2011

1. INTRODUCTION

1.1 Appointment of Committee

The Ministry of Social Justice and Empowerment, by notification F.No. 16-38/2006-DD.III dated 30th April 2010, constituted a Committee chaired by Dr Sudha Kaul with members representing persons with disabilities, NGO's and experts from the disability sector, to draft a new legislation to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("PwD Act"). The Committee was advised that it could invite other experts, and representatives of other Ministries/ State Governments/ Autonomous bodies to participate in its deliberations, as Special Invitees. On the demand from a certain section of the Disability Rights Group, two more persons with disabilities were inducted in the Committee as Member and a Special invitee, to ensure representation across all disability groups (List of Committee members - Annexure 1).

On the Committee's recommendation, the Centre for Disability Studies, NALSAR University of Law Hyderabad was appointed as Legal Consultants to the Committee on the 2nd of August 2010.

During the course of the Committee's deliberations three committee members (Ms Syamala, Shri Rajiv Rajan and Ms Bhargavi Davar) sent their resignations to the Ministry in January 2011 due to differences in perception of the Committee's work and mandate given to it by the MSJE. Their resignations were accepted by the Ministry on 25th January 2011. Their contribution to the discussions is gratefully acknowledged by the Committee.

1.2 Terms of Reference for the Committee

While drafting the new legislation, the Committee was directed to keep the following in view:-

- i. To ensure that the New Law should be in harmonisation with the UNCRPD
- ii. To keep in view the provisions of the Constitution and other laws, and avoid duplication of provisions already existing in them
- iii. To give the Financial, logistical and administrative feasibility of the proposed provisions

-
- iv. To give the financial implications whether recurring or non-recurring on the Central Government, State Government. or other Local Authorities for implementing the new statute

1.3 Extension of Committee's timeline

The Committee was initially asked to submit the draft of the new legislation by 31st August, 2010. Due to administrative delays at the MSJE on the appointment of the Legal Consultant, which came about only on 2nd August, the Committee had to seek extension till the end of December 2010. As work progressed, the Committee felt a further extension was necessary, to fulfil its obligation and the mandate laid down by the UNCRPD, and to have direct consultations with civil society. A further extension was given till 31st March 2011. The Disability sector then demanded that there be more widespread State level consultations across the country. The Committee, in order to imbibe the true spirit of participation of the disability sector, supported this demand and the Ministry gave a further extension till 30th June 2011.

1.4 Meetings

The Committee held 14 meetings that included a National Consultation with Civil Society representatives and consultations with Legal Experts. It also held State Consultations in 28 States and two union territories across the country to seek the views of Stakeholders. Details of these are in given in the following Annexures:

Committee Meetings – List of Participants (Annexure 2)

National Consultations with Civil Society representatives (Annexure 3)

State Level consultations (Annexure 4)

Legal Consultation held on 10th and 11th April - A Report (Annexure 5)

2. PRINCIPLES GUIDING THE FORMULATION OF THE NEW DISABILITY RIGHTS BILL

2.1 The UNCRPD

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) has undertaken the obligation to ensure and promote the full realization of all human rights and fundamental freedoms

for all Persons with Disabilities without discrimination of any kind on the basis of disability. In fulfilment of this international commitment, India is obligated to enact suitable legislation in furtherance of the rights recognized in the UN Convention.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 has been on the statute book for nearly 15 years. This Act has been the basis of a largely empowering jurisprudence on the Rights of Persons with Disabilities. Whilst the need to retain the empowering jurisprudence is unequivocally acknowledged, it is also recognized that the present Act, either does not incorporate a number of rights recognized in the UNCRPD or the recognized rights are not in total harmony with the principles of the Convention.

2.2 Basic Principles guiding the New Bill

In formulation of this Bill the Committee has been guided by the basic principles mentioned in Article 3 of the UNCRPD .These are:

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

2.3 The Paradigm Shift

The CRPD has introduced a paradigm shift in the discourse relating to persons with disabilities. The new paradigm is based on the presumption of legal capacity, equality and dignity. These are the basic tenets/pillars on which the present Disability Bill has been formulated, recognizing all rights of all persons with disabilities. This statute recognizes that persons with disabilities are an integral part of

human diversity, enriching it with their vision, their experience & their creativity. The statute seeks to provide a platform/vehicle that ensures participation in society on an equal basis with others and seeks an equality of outcome by recognizing multiple discrimination faced by women and children.

2.4 Persons needing high support

The statute also recognizes that for persons with disabilities needing high support and for those in aggravated circumstances, pro-active efforts would be required to get them their just due.

2.5 The Indian Context

While formulating the statute the Committee has taken a pragmatic approach and kept in view the specific requirements of persons with disabilities in India.

3. Methodology and Process adopted by the Committee

The spirit of inclusiveness is clearly seen in the way we have taken these discussions forward in the process of formulating the new legislation. This Bill has been put together by the Committee through a process of dialogue and deliberation with the Disability sector, through group discussions with disability rights activists, members of civil society, and widespread State Level consultations across the country and deliberations with legal consultants.

3.1 A Consultative Process

The Chair at the first meeting, laid down certain guidelines for the Committee to follow in order to ensure that New Law is formulated within the framework of the UN CRPD, taking a Rights Based approach and the spirit of participation from the disability sector. The following process was approved by the Committee:

- a. Disability groups in the country to be consulted at every stage and be part of the discussions. In order to do this Sub Groups were formed to deliberate on the various parts of the New Law. Committee members took responsibility of different sections of the Bill and held small group discussion meetings with different civil society members (Annexure 3).
The demands and suggestions of civil society were put together as the substantive content of the chapter on that issue by the concerned sub group who then met the legal consultant to deliberate

on the legal form and feasibility of the various demands and suggestions. These meetings with the Legal Consultant were used to firstly arrive at a consensus on that area with the sub group. This consensus of the various sub-group was brought out as a consensus paper in October 2010. The full Committee undertook detailed deliberations on the Consensus paper to instruct the Legal Consultant on the substantive content of the Working Draft. The Working Draft prepared by the Legal Consultant on 20th November 2010 was then deliberated upon by the Committee in meetings from November to January.

- b. Demands for more proactive Consultations from the disability sector were acknowledged and State Level Consultations, with the active support and participation of the Disability groups across the country, were held. The working draft was translated into 14 Indian Languages (Assamese, Bengali, Garo, Gujarati, Hindi, Khasi, Kannada, Malayalam, Manipuri, Marathi, Oriya, Tamil, Telugu and Urdu) and Braille, so that persons with disabilities, at the grass root level, would have access to information in the new draft law in their own language, and, could make recommendations to the draft based on this knowledge. The State level consultations were a huge awareness raising exercise. The State consultations were organized by the SNAC Centres of the National Trust supported by HRLN and different disability groups across the country. Their efforts must be and are gratefully acknowledged by the Committee. The Committee deliberated upon the suggestions received at the State Consultations and the Working Draft was partly modified before the Legal Consultations accordingly.
- c. A Legal Panel constituted by Committee members, with recommendations from the Disability Sector, was formed with approval of the Ministry. Legal consultations were held to seek the opinion of experienced legal luminaries before the finalization of the draft.

3.2 Transparency and Access to information

In order to ensure that stakeholders from different disability groups & members of civil society have equal access to the discussions of the Committee, the minutes of meetings were posted on the MSJE website as well as on the NALSAR website. Copies of working drafts, as they are formulated, were in the public domain (circulation through email & website) and comments from different disability groups were received and processed on an ongoing basis by the Committee.

4. Financial Implications

A sub-group was constituted to draft the Financial Implications of the new Bill. The group studied the list of provisions under the new draft. Detailed Financial Implications of the Bill are given in a separate Memorandum.

5. Recommendations

Whilst every effort was made to study the various representations made to the Committee, evidently all the recommendations do not find a place in the Bill. The two most common reasons for this omission are that: the recommendations are constitutionally impermissible; or are better incorporated as rule, regulation, scheme or programme.

A Legislation is not born in a legal vacuum and it requires a range of executive measures for its effective implementation. The Committee wishes to make the following recommendations to the Government of India through the Ministry of Social Justice and Empowerment.

Persons with disabilities were in the contemplation of the makers of the Constitution only as recipients of charity. This outlook continued to occupy the field till as late as 1992 when the 73rd amendment to the Constitution was made. It is important therefore that the Constitution of the country refers to persons with disabilities as full citizens who cannot be discriminated against on grounds of disability. It is suggested that the following amendments may be effected in the Constitution in order to achieve this purpose.

1. In Articles 15 and 16 'disability' should be included as one of the prohibited grounds.
2. Disability prejudicial references should be removed from the Constitution. For example, "disabled and the unemployable" in list II and "handicapped and mentally retarded" in Schedules XI and XII.
3. In order to fully respect this Right of citizenship and participation, a unanimous demand came across state consultations for providing legislative reservations in State legislative assemblies, both houses of the parliament and in local authorities to persons with disabilities.

5.1 Amendments of other laws

In order to ensure that the vision of this legislation is not fractured, it is important that the National Trust Act, the Rehabilitation Council of India Act and the Mental Health Act are in harmony with this statute and the CRPD. It is important that the amendment of those legislations be undertaken along with the enactment of this legislation.

The prejudicial disability related references in all other laws should be weeded out and the Disability Rights approach should inform all legislations addressing the issue of disability.

5.2 Administrative changes

1. In order to proactively pursue the rights of persons with disabilities and to deal with the disability intersections with other ministries, it is important that a Ministry on Empowerment of Persons with Disabilities be created.
2. The same Rights approach requires that the education of persons with disabilities should be the concern of the Ministry of Human Resource Development.
3. All major schemes and programmes of GOI should include a component of disability.
4. There should be convergence with other Ministries in respect of comprehensive coverage of children with disabilities.
5. All Government authorities / organizations should have a Disability Experiential Expert and a Disability cell

6. Acknowledgements

All stakeholders involved in this debate: Disability activists/ Parent Groups/ NGO's in the disability sector /Ministry of Social Justice / RCI /National Trust/ National Institutes/Disability Commissioners across the country and other Government Departments and Members of civil society , need to be commended and acknowledged for their contribution to this exercise in formulating the law .

We would like to thank Hon'ble Minister Shri Mukul Wasnik for his support to the Committee and his keen interest in the Disability Sector. We would also like to thank Shri K M Acharya, Secretary MSJE for his guidance to the Committee and all the Ministry officials who helped the Committee in administrative

arrangements; in particular we thank Shri Sunil Pattanayak Director (DD) MSJE for his cooperation and constant support to the Committee and other staff in his department. Our thanks to Dr.Dharmender Kumar Director IPH and his staff for administrative support. Our appreciation to Maj. H P S Ahluwlaia and the staff at the SCIC for providing the venue and making excellent arrangements for holding Committee meetings. We would also like to record our appreciation to Dr. Amita Dhanda and her legal team for their legal expertise in guiding the Committee in formulating this statute.

Conclusion

The journey in making this new Legislation has been a humbling as well as an exhilarating experience. This is the first time that such a widespread exercise in awareness raising in formulating a statute, has been done in India. The Committee is deeply indebted to all the Activists and concerned civil society, who with their perseverance, ensured that this statute be formulated truly based on the principle of “nothing about us without us”. There have been passionate debates and many disagreements along this long journey .The Committee in all sincerity has endeavoured to encapsulate that vision, passion as well as pragmatism in the statute. In the making of this Law we have constantly drawn upon what worked and what did not work in the old law. What did not work has been changed, but what worked and has helped persons with disabilities has been retained.

In the World Report on Disability just released by W.H.O the famous British theoretical physicist Stephen Hawking, who has amyotrophic lateral sclerosis (ALS) has stated in its Foreword-

“We have a moral duty to remove the barriers to participation for people with disabilities, and to invest sufficient funding and expertise to unlock their vast potential. It is my hope this century will mark a turning point for inclusion of people with disabilities in the lives of their societies”

This Law we hope, will usher a new era of social economic and political participation of persons with disabilities. This is a path breaking step for us and we hope that India can show a way forward to many countries around the world.

For and on behalf of the Committee



Dr Sudha Kaul

Chairperson

New Delhi, 30 June 2011

ANNEXURES

ANNEXURE 1 – List of Committee Members

F.No. 16-38/2006-DD.III
Government of India
Ministry of Social Justice & Empowerment

Shastri Bhavan, New Delhi
Date: 30/04/2010

Office Memorandum

Sub: Constitution of a Committee to draft a new legislation to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (“PwD Act”).

The PwD Act, 1995, has now been in force for over 14 years. Keeping in view the experience of its working over this period, and the need to harmonize its provisions with those of the United Nations Convention on the Rights for Persons with Disabilities (UNCRPD), 2008, and of other legislations on the subject, extensive consultations with various stakeholders including State Governments, NGOs and experts have been carried out. The Central Coordination Committee considered the matter in its meeting dated 21.07.2009, after which a comprehensive draft of amendments necessary in the Act was formulated and circulated to State Governments/Union Territories and concerned Union Ministries in September, 2009, for comments. The draft was also posted on the Ministry’s website seeking comments from the public.

In response to the above, comments have been received from several State Governments, Central Ministries, Non-Government Organizations and others.

2. A Committee is hereby constituted to examine the above responses and draft a new legislation to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
3. Composition of the above Committee shall be as follows:-

Chairperson Dr. (Mrs.) Sudha Kaul

Members

- i) Experts/NGO representatives-
 - i. Shri Bhushan Punani, Executive Director, Blind People's Association, Ahmedabad
 - ii. Dr. Vikas Amte, Secretary & Chief Functionary, Maharogi Sewa Samiti, Chandrapur, Maharashtra
 - iii. Smt. Jayashree Ravindran, Managing Trustee, Ability Foundation, Chennai
 - iv. Dr. G.N.Karna, President, Society for Disability and Rehabilitation Studies, Jawaharlal Nehru University, New Delhi
 - v. Dr. L. Govinda Rao, Former Director, NIMH, Secunderabad, Andhra Pradesh
 - vi. A nominee of Director, NIMHANS, not below the rank of a Professor
 - vii. Ms. Merry Barua, Director, Action for Autism, New Delhi
 - viii. Ms. G. Syamala, Executive Director, Action for Ability Development and Inclusion (AADI), New Delhi

-
- ix. Shri. Rajive Raturi, Director, Human Rights Law Network (DRI), New Delhi
 - x. Dr. Uma Tuli, Founder Managing Secretary, Amar Jyoti Rehabilitation & Research Centre, Delhi
-
- ii) Principal Secretaries In-charge of Disability in the State Governments-
 - i. Assam
 - ii. Tamil Nadu
 - iii. Rajasthan
 - iv. Maharashtra
 - v. West Bengal
 - iii) Representatives of the following Central Ministries/Departments not below the rank of a Joint Secretary-
 - i. M/o Health and Family Welfare
 - ii. M/o Urban Development
 - iii. Dept. of School Education and Literacy (M/o HRD)
 - iv. Dept. of Personnel and Training
 - v. Planning Commission
 - iv) A senior representative nominated by the Head of the National Institute of Public Finance and Policy (NIPFP)
 - v) Members, ex officio
 - i. Chief Commissioner of Persons with Disabilities
 - ii. Chairperson, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities
 - iii. Chairman, Rehabilitation Council of India
 - iv. Financial Advisor, M/o SJ & E, or his nominee
 - vi) Member Secretary

Joint Secretary (Disability Bureau), M/o SJ & E

- 4. The Committee may invite other experts, and representatives of other Ministries/ State Governments/ Autonomous Bodies to participate in its deliberations, as Special Invitees.
- 5. While drafting the new legislation, the Committee shall keep the following in view:-
 - v. Provisions of the Constitution and other laws, and the need to avoid duplication of provisions already existing in them,
 - vi. Financial, logistical and administrative feasibility of the proposed provisions.

6. The Committee will also make an assessment of the financial implications – recurring and non-recurring – of the draft legislation prepared by it for the (i) Central Government, (ii) State Governments, (iii) Local Authorities, and (iv) others on whom obligations may be cast.
7. The Committee will submit draft of the new legislation, as mentioned in para 2 above, by 31st August, 2010, together with the following-
 - i. A report on the process adopted by it in drafting the legislation, as also explaining the rationale for its salient provisions, and
 - ii. A note on the financial implications of the recommended draft, as mentioned in para 6 above.
8. TA/DA, as admissible under Central Government rules, will be paid to the non official members of the Committee for attending its meetings.
9. Secretarial assistance to the Committee will be provided by Pandit Deendayal Upadhyay Institute for the Physically Handicapped, New Delhi, and expenses on the Committee's work will also be borne by the said Institute.

(Sunil Kumar Pattanayak)
Director- Disability

Copy to:

1. Dr. (Mrs.) Sudha Kaul, Executive Director, Indian Institute of Cerebral Palsy, Kolkata
2. Shri Bhushan Punani, Executive Director, Blind People's Association, Jagdish Patel Chowk, Surdas Marg, Vastrapur, Ahmedabad-380015
3. Dr. Vikas Amte, Maharogi Sewa Samiti At and PO Anandwan, via Waroa, District Chandrapur, Maharashtra 442914
4. Smt. Jayashree Ravindran, Managing Trustee, Ability Foundation, 28, Second Cross Street, Gandhi Nagar, Adyar, Chennai - 600 020, Tamil Nadu. India
5. Dr. G.N.Karna, President, Society for Disability and Rehabilitation Studies, JNU, New Delhi. Head Office: B-285, Vasant Kunj Enclave, New Delhi-110070, India
6. Dr. L. Govinda Rao, Kameswari Kuteer, H.No.8-7-193/13/2, Wesley Teachers Colony, Road No.3, Old Bowenpally, Secunderabad - 500 011
7. Director, NIMHANS, Bangalore-560029
8. Ms. Merry Barua, Director, Action for Autism, Pocket 7&8, Jasola Vihar, New Delhi-110025
9. Ms. G. Syamala, Executive Director AADI - Action for Ability Development and Inclusion, 2, Balbir Saxena Marg, Hauz Khas, New Delhi-110016
10. Shri. Rajive Raturi, Director, Human Rights Law Network (DRI), 576, Masjid Road, Jungpura, Delhi-110 014
11. Dr. Uma Tuli, Founder Managing Secretary, Amar Jyoti Rehabilitation & Research Centre, Karkardooma, Vikas Marg, Delhi -110092

12. Principal Secretary In-charge of Disability, Governments of Assam
13. Principal Secretary In-charge of Disability, Governments of Tamil Nadu
14. Principal Secretary In-charge of Disability, Governments of Rajasthan
15. Principal Secretary In-charge of Disability, Governments of Maharashtra
16. Principal Secretary In-charge of Disability, Governments of West Bengal
17. Secretary, M/o Health and Family Welfare
18. Secretary, M/o Urban Development
19. Secretary, Dept. of School Education and Literacy (M/o HRD)
20. Secretary, Dept. of Personnel and Training
21. Secretary, Planning Commission
22. Director, National Institute of Public Finance and Policy (NIPFP)
23. Chief Commissioner of Persons with Disabilities
24. Chairperson, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities
25. Chairman, Rehabilitation Council of India
26. Financial Advisor, M/o SJ & E
27. Joint Secretary (Disability), M/o SJ & E
28. Director, Pt. DDU Institute for the Physically Handicapped, New Delhi

Copy for information to-

1. PPS to Secretary, M/o Social Justice & Empowerment
2. PS to Additional Secretary, M/o Social Justice & Empowerment

F.No. 16-38/2006-DD.III
Government of India
Ministry of Social Justice & Empowerment

Shastri Bhavan, New Delhi
Date: 08/06/2010

Office Memorandum

Sub: Constitution of a Committee to draft a new legislation to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (“PwD Act”).

The Committee constituted to draft a new legislation to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, vide OM of even no dated 30/04/2010, is reconstituted with the inclusion of the following members against para 3 (i) of the said OM in the category of experts/NGO representatives:

- i. Shri K. Ramakrishna
Acting Secretary General,
National Association for the Blind, Mumbai
- ii. Shri J.P. Gadkari
President
PARIVAAR, Bangalore
- iii. Shri Rajiv Rajan
Coordinator
Disability Law Unit, South, Vidya Sagar, Chennai
- iv. Ms. Bhargavi Davar
NAAJMI (National Alliance on Access to Justice for Persons Living with Mental Illness)
- v. Ms. Rukmani Pillai
Founder “Torch Bearers”
New Delhi
- vi. Shri Akhil Paul
Director
Sense International India

(Sunil Kumar Pattanayak)
Director- Disability

Copy to:

1. Dr. (Mrs.) Sudha Kaul, Executive Director, Indian Institute of Cerebral Palsy, Kolkata
2. Shri Bhushan Punani, Executive Director, Blind People's Association, Jagdish Patel Chowk, Surdas Marg, Vastrapur, Ahmedabad-380015
3. Dr. Vikas Amte, Maharogi Sewa Samiti At and PO Anandwan, via Waroa, District Chandrapur, Maharashtra 442914
4. Smt. Jayashree Ravindran, Managing Trustee, Ability Foundation, 28, Second Cross Street, Gandhi Nagar, Adyar, Chennai - 600 020, Tamil Nadu. India
5. Dr. G.N.Karna, President, Society for Disability and Rehabilitation Studies, JNU, New Delhi. Head Office: B-285, Vasant Kunj Enclave, New Delhi-110070, India
6. Dr. L. Govinda Rao, Kameswari Kuteer, H.No.8-7-193/13/2, Wesley Teachers Colony, Road No.3, Old Bowenpally, Secunderabad - 500 011
7. Director, NIMHANS, Bangalore-560029
8. Ms. Merry Barua, Director, Action for Autism, Pocket 7&8, Jasola Vihar, New Delhi-110025
9. Ms. G. Syamala, Executive Director AADI - Action for Ability Development and Inclusion, 2, Balbir Saxena Marg, Hauz Khas, New Delhi-110016
10. Shri. Rajive Raturi, Director, Human Rights Law Network (DRI), 576, Masjid Road, Jungpura, Delhi-110 014
11. Dr. Uma Tuli, Founder Managing Secretary, Amar Jyoti Rehabilitation & Research Centre, Karkardooma, Vikas Marg, Delhi -110092
12. Principal Secretary In-charge of Disability, Governments of Assam
13. Principal Secretary In-charge of Disability, Governments of Tamil Nadu
14. Principal Secretary In-charge of Disability, Governments of Rajasthan
15. Principal Secretary In-charge of Disability, Governments of Maharashtra
16. Principal Secretary In-charge of Disability, Governments of West Bengal
17. Secretary, M/o Health and Family Welfare
18. Secretary, M/o Urban Development
19. Secretary, Dept. of School Education and Literacy (M/o HRD)
20. Secretary, Dept. of Personnel and Training
21. Secretary, Planning Commission
22. Director, National Institute of Public Finance and Policy (NIPFP)
23. Chief Commissioner of Persons with Disabilities
24. Chairperson, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities
25. Chairman, Rehabilitation Council of India
26. Financial Advisor, M/o SJ & E
27. Joint Secretary (Disability), M/o SJ & E
28. Director, Pt. DDU Institute for the Physically Handicapped, New Delhi
29. Shri K. Ramakrishna, Acting Secretary General, National Association for the Blind, Department of Employment, 2nd Floor, 11 / 12, Khan Abdul Gaffar Road, WorliSeaface, Mumbai - 400 025
30. Shri J.P. Gadkari, President, PARIVAAR, AMC Compound, Off Hosur Road, Near Kidwai Memorial Hospital, Bangalore- 560029
31. Shri Rajiv Rajan, Coordinator, Disability Law Unit, South, Vidya Sagar, No. 1, Ranjit Road, Kottupuram, Chennai
32. Ms. Bhargavi Davar, NAAJMI (National Alliance on Access to Justice for Persons Living with Mental Illness),Bapu Trust, Pune

33. Ms. Rukmani Pillai, Founder “Torch Bearers”, New Delhi
34. Shri Akhil Paul, Director, Sense International India, 2nd Floor,Admin Block, Andhjan Mandal Campus, Opp. IIM, Vastrapur, Ahmedabad-380015

(Along with a copy of OM No 16-38/2006-DD.III dated 30/04/2010)

Copy for information to-

- i. PPS to Secretary, M/o Social Justice & Empowerment
- ii. PS to Additional Secretary, M/o Social Justice & Empowerment

ANNEXURE 2

COMMITTEE MEETINGS HELD

First Meeting-held on 10th June, 2010

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Dr. Vikas Amte
- 3) Smt Jayshree Raveendran
- 4) Dr. G.N.Karna
- 5) Dr. L. Govinda Rao
- 6) Shri Akhil Paul
- 7) Ms Merry Barua
- 8) Ms G. Syamala
- 9) Shri Rajive Raturi
- 10) Dr. Uma Tuli
- 11) Ms Rukmani Pillai
- 12) Ms Bhargavi Davar
- 13) Shri Rajiv Rajan
- 14) Shri K. Ramakrishnan
- 15) Shri J.P. Gadkari
- 16) Prof. Srikala Bharat

II Representatives of the State Governments

- i) Ms Malabika Barua, Commissioner for PwDs, Govt. of Assam
- ii) Shri Mahavir Gupta, Dir. SJED, Jaipur, Govt. of Rajasthan
- iii) Shri M.S. Savant, Commissioner for PwDs, Govt. of Maharashtra
- iv) Ms Mita Banerjee, Commissioner for PwDs, Govt. of West Bengal

III Representatives of Central Ministries/Departments

- i) Dr. S.Y. Kothari, Addl. DGHS, M/o Health and Family Welfare
- ii) Shri S.C. Khuntia, Joint Secretary, M/o HRD

iii) shri K.G. Verma, Director, Representing DOPT

IV Representative of the National Institute of Public Finance and Policy

Prof. Chandan Mukherjee, National Institute of Public Finance and Policy.

V Members, ex-officio

- i) Poonam Natarajan, Chairperson, National Trust
- ii) Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)
- iii) Dr. Pitam Singh- Representative of Chief Commissioner for Persons with Disabilities

VI Member Secretary

Dr Arbind Prasad, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitees

- i) Shri S N Menon
- ii) Shri A.S.Narayanan
- iii) Major H.P.S. Ahluwalia

Ministry of Social Justice & Empowerment

- i) Dr. Dharmender Kumar, Director IPH
- ii) Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Second Meeting-held on 22nd July, 2010

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Smt Jayshree Raveendran
- 3) Dr. G.N.Karna
- 4) Dr. L. Govinda Rao
- 5) Shri Akhil Paul

-
- 6) Ms Merry Barua
 - 7) Ms G. Syamala
 - 8) Shri Rajive Raturi
 - 9) Dr. Uma Tuli
 - 10) Ms Rukmani Pillai
 - 11) Ms Bhargavi Davar
 - 12) Shri Rajiv Rajan
 - 13) Shri K. Ramakrishnan
 - 14) Shri J.P. Gadkari
 - 15) Prof. Srikala Bharat

II Representatives of the State Governments

- i) Ms Malabika Barua, Commissioner for PwDs, Govt. of Assam
- ii) Shri M.H. Savant, Commissioner for PwDs, Govt. of Maharashtra
- iii) Ms Mita Banerjee, Commissioner for PwDs, Govt. of West Bengal
- iv) Shri S.S Jawahar, Secretary, G/o Tamil Nadu.
- v) Shri C. Vijayaraj, State Commissioner for Disability, G/o Tamil Nadu.

III Representatives of Central Ministries/Departments

- i) Dr. S.Y. Kothari, Addl. DGHS, M/o Health and Family Welfare
- ii) Shri S.C. Khuntia, Joint Secretary, M/o HRD
- iii) Shri Sharad K. Shrivastava, Under Secretary, Representing DOPT
- iv) Shri A.K. Rathore, Associate Architect, M/o Urban Development

IV Members, ex-officio

- i) Smt Poonam Natarajan, Chairperson, National Trust
- ii) Shri T D Dhariyal, Dy. Chief Commissioner for Persons with Disability.
- iii) Dr. Pitam Singh, Representative of Chief Commissioner for Persons with Disabilities

V Member Secretary

Dr. Arbind Prasad, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitees

- i) Shri S N Menon
- ii) Shri A.S.Narayanan
- iii) Major H.P.S. Ahluwalia
- iv) Shri Keshav Desirajan, Adl. Secretary, M/o Health and Family Welfare

Ministry of Social Justice & Empowerment

-
- i) Dr. Dharmender Kumar, Director IPH
 - ii) Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Third Meeting-held on 12th August, 2010

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Smt Jayshree Raveendran
- 3) Dr. L. Govinda Rao
- 4) Shri Akhil Paul
- 5) Ms Merry Barua
- 6) Shri Rajive Raturi
- 7) Dr. Uma Tuli
- 8) Ms Rukmani Pillai
- 9) Ms Bhargavi Davar
- 10) Shri Rajiv Rajan
- 11) Shri K. Ramakrishna
- 12) Shri J.P. Gadkari
- 13) Dr. Anupam Gupte

II Representatives of the State Governments

- i) Shri Mahavir Gupta, Dir. SJED, Jaipur, Govt. of Rajasthan
- ii) Ms Mita Banerjee, Commissioner for PwDs, Govt. of West Bengal
- iii) Shri S.S. Jawahar, Secretary to Govt., Differently Aabled Welfare Dept. Chennai.

III Representatives of Central Ministries/Departments

- i) Shri Sharad Kumar Srivastava, Under Secreatry, Representing DOPT
- ii) Shri A. Kachhap, Dy. Advisor (AH), Planning Commission

IV Representative of the National Institute of Public Finance and Policy

Prof. Chandan Mukherjee, National Institute of Public Finance and Policy.

V Members, ex-officio

- i) Smt Poonam Natarajan, Chairperson, National Trust
- ii) Shri T.D. Dhariyal- Representative of Chief Commissioner for Persons with Disabilities

VI Member Secretary

Dr Arbind Prasad, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitees

- i. Shri A.S.Narayanan
- ii. Major H.P.S. Ahluwalia
- iii. V.B Arora, Dy. Director (Media & Communication), Press Information Bureau

Centre for Disability Studies, NALSAR University of Law (Legal Consultant)

- i. Dr. Amita Dhanda (Professor and Head)
- ii. Shri Nilesh Singit (Research and Advocacy Officer)
- iii. Ms Subhadra Banda [Research Associate]
- iv. Mr Arun Mohan [Research Associate]
- v. Mr Manav Kapoor [Research Associate]

Ministry of Social Justice and Empowerment

- i. Dr. Dharmender Kumar, Director IPH
- ii. Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Observers from Disability Rights Group

- i. Shri Javed Abidi
- ii. Shri G. Ramanathan
- iii. Shri M. Srinivasulu
- iv. Shri M.A.Khokhar
- v. Shri A. Dhanasekar
- vi. Shri Arman Ali
- vii. Shri Amitabh Malhotra
- viii. Shri Suhaskarni
- ix. Shri Aatam Kothari
- x. Ms Meenakshi

- xi. Ms Marry
- xii. Ms Bertha G. Adhkar
- xiii. Ms Shivani Gupta
- xiv. Shri R.C. Sharma
- xv. Shri Javed Ahmad

Fourth Meeting-held from 29th Sep to 1st Oct 2010

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Smt Jayshree Ravindran
- 3) Dr. G.N.Karna
- 4) Dr. L. Govinda Rao
- 5) Shri Akhil Paul
- 6) Ms Merry Barua
- 7) Ms G. Syamala
- 8) Shri Rajive Raturi
- 9) Dr. Uma Tuli
- 10) Ms Rukmani Pillai
- 11) Ms Bhargavi Davar
- 12) Shri Rajiv Rajan
- 13) Shri K. Ramakrishnan
- 14) Shri J.P. Gadkari
- 15) Prof. Srikala Bharat

II Representatives of the State Governments

Ms Mita Banerjee, Commissioner for PwDs, Govt. of West Bengal

III Representatives of Central Ministries/Departments

- i) Dr. S.Y. Kothari, Addl. DGHS, M/o Health and Family Welfare
- ii) Shri S.K. Shrivastava, Under Secretary, Representing DOPT

V Members, ex-officio

-
- i) Smt Poonam Natarajan, Chairperson, National Trust
 - ii) Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)
 - iii) Shri T.D. Dhariyal- Representative of Chief Commissioner for Persons with Disabilities

VI Member Secretary

Dr Arbind Prasad, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitees

- i) Shri A.S.Narayanan
- ii) Major H.P.S. Ahluwalia

Ministry of Social Justice & Empowerment

- i) Dr. Dharmender Kumar, Director IPH
- ii) Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

NALSAR Team

- 1. Dr. Amita Dhanda
- 2. Shri Nilesh Singit
- 3. Ms Neha Pathakji
- 4. Shri Aditya Singh
- 5. Shri Rohan Singh

List of participants from civil society

- 1. Shri P. Sudhakar Reddy
- 2. Ms Reena Sen
- 3. Ms Jeeja Ghosh
- 4. Shri Deepak T.M.N
- 5. Shri Javed Ahmad Tak
- 6. Shri Arman Ali
- 7. Ms Hemamalini Jairam
- 8. Ms Parul Kumtha
- 9. Ms Vaishnavi
- 10. Ms Shanti
- 11. Ms Radhika
- 12. Shri Ajin Kumar Sen
- 13. Shri M.Pavan Kumar
- 14. Shri Rajul Padmanabhan
- 15. Shri Arun C. Rao
- 16. Ms Kanchan Pamani
- 17. Shri Abdul Mabood

18. Shri Rahul
19. Ms Kuhu Das
20. Shri Gautam Chaudhary
21. Ms Snigdha Sarkar
22. Dr. Achal Bhagat
23. Shri D.M Naidu
24. Shri Arun Kumar Singh
25. Shri M. Srinivasulu
26. Ms Meenakshi B.
27. Ms Nirmita Narasimhan
28. Ms Shivani Gupta
29. Shri Javed Abidi
30. Shri C. Mahesh
31. Shri Ketan Kothari
32. Shri Sonu Golkar
33. Dr. Sruti Mahapatra

Fifth Meeting-held on 19th - 20th October, 2010

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Smt Jayshree Raveendran
- 3) Dr. L. Govinda Rao
- 4) Shri Akhil Paul
- 5) Ms Merry Barua
- 6) Shri Rajive Raturi
- 7) Dr. Uma Tuli
- 8) Ms Bhargavi Davar,
- 9) Shri Rajiv Rajan
- 10) Shri K. Ramakrishna
- 11) Shri J.P. Gadkari
- 12) Ms G.Syamala

II Members, ex-officio

- i) Smt Poonam Natarajan, Chairperson, National Trust
- ii) Shri T.D. Dhariyal- Representative of Chief Commissioner for Persons with Disabilities
- iii) Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)

III Member Secretary

Dr. Arbind Prasad, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitee

Shri A.S.Narayanan

Centre for Disability Studies, NALSAR University of Law (Legal Consultant)

- i) Dr. Amita Dhanda (Professor and Head)
- ii) Mr Nilesh Singit (Research and Advocacy Officer)
- iii) Ms Neha Pathakji (Assistant Professor)
- iv) Mr Aditya Singh
- v) Mr Ajey Sangai
- vi) Mr Danish Sheikh
- vii) Ms Jyotika Kaushik
- viii) Ms KalpanaYadav
- ix) Mr Khalyaan Karunakaran
- x) Mr Malak Bhatt
- xi) Ms Raadhika Gupta
- xii) Mr Rohan Saha
- xiii) Mr Rohan Singh
- xiv) Ms Sadhika Jalan
- xv) Ms Shreya Atrey
- xvi) Ms Shreya Parikh
- xvii) Ms S Smitha
- xviii) Ms Tashi Wangmo

Sixth Meeting-held on 26th – 27th November, 2010

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Smt Jayshree Ravindran
- 3) Dr. G.N.Karna
- 4) Dr. L. Govinda Rao
- 5) Shri Akhil Paul
- 6) Ms Merry Barua
- 7) Ms G. Syamala
- 8) Shri Rajive Raturi
- 9) Dr. Uma Tuli
- 10) Ms Bhargavi Davar,
- 11) Shri Rajiv Rajan
- 12) Shri K. Ramakrishnan
- 13) Shri J.P. Gadkari
- 14) Prof. Srikala Bharat

II Representatives of State Governments

Smt Aditi Mehta, Principle Sec., Govt. of Rajasthan

III Representatives of Central Ministries/Departments

Dr. S.Y. Kothari, Addl. DGHS, M/o Health and Family Welfare

IV Representative of the National Institute of Public Finance and Policy

Prof. Rita Pandey, National Institute of Public Finance and Policy

V Members, ex-officio

- i) Smt Poonam Natarajan, Chairperson, National Trust
- ii) Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)
- iii) Dr. T.D. Dhariyal- Representative of Chief Commissioner for Persons with Disabilities

VI Member Secretary

Dr Arbind Prasad, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitee

Shri A.S.Narayanan

Ministry of Social Justice & Empowerment

-
- i) Dr. Dharmender Kumar, Director IPH
 - ii) Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Legal Consultant

- i) Dr. Amita Dhanda
- ii) Ms Neha Pathakji (Assistant Professor)
- iii) Mr Aditya Singh
- iv) Mr Ajey Sangai
- v) Mr Danish Sheikh
- vi) Ms Jyotika Kaushik
- vii) Ms KalpanaYadav
- viii) Mr Malak Bhatt
- ix) Ms Raadhika Gupta
- x) Mr Rohan Saha
- xi) Mr Rohan Singh
- xii) Ms Sadhika Jalan

Seventh Meeting-held on 2nd January, 2011

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Smt Jayshree Ravindran
- 3) Shri Akhil Paul
- 4) Ms Merry Barua
- 5) Shri Rajive Raturi
- 6) Dr. Uma Tuli
- 7) Shri K. Ramakrishna
- 8) Shri J.P. Gadkari
- 9) Ms Rukmini Pillai

II Representatives of State Governments

Shri S.S Jawahar, Secretary, Government of Tamil Nadu, Department for Welfare of Differently Abled Persons.

IIIMembers, ex-officio

- i) Smt Poonam Natarajan, Chairperson, National Trust
- ii) Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)

IVMember Secretary

Ms Poornima Singh, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Ministry of Social Justice & Empowerment

Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Legal Consultant: Dr. Amita Dhanda

8th Meeting-held on 13th -14th January 2011

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Shri Akhil Paul
- 3) Ms Merry Barua
- 4) Shri Rajive Raturi
- 5) Dr. Uma Tuli
- 6) Shri K. Ramakrishnan
- 7) Shri J.P. Gadkari

II Representative of the National Institute of Public Finance and Policy

Prof. Rita Pandey, National Institute of Public Finance and Policy

III Members, ex-officio

-
- i) Smt Poonam Natarajan, Chairperson, National Trust
 - ii) Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)
 - iii) Shri T.D. Dhariyal- Representative of Chief Commissioner for Persons with Disabilities

IV Member Secretary

Ms Poornima Singh, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitee

Ms Rajeshwari, Programme Coordinator, ACMI

Ministry of Social Justice & Empowerment

Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Legal Consultant

- i) Mr Nilesh Singit (Research and Advocacy officer)
- ii) Ms Smitha (Research Fellow)
- iii) Mr Ajey Sangai
- iv) Ms Raadhika Gupta
- v) Ms Jyothika Kaushik

9th Meeting-held from 31st January-2nd February 2011

List of Participants for 31st January

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Dr. L. Govinda Rao
- 3) Shri Akhil Paul
- 4) Ms Merry Barua
- 5) Shri Rajive Raturi
- 6) Dr. Uma Tuli
- 7) Shri K. Ramakrishnan
- 8) Shri J.P. Gadkari

-
- 9) Prof. Srikala Bharat
 - 10) Ms Rukmini Pillai

II Representatives of State Governments

- i. Smt Aditi Mehta, Principle Sec., Govt. of Rajasthan
- ii. Shri B.R. Jadhav, Commissioner Persons with Disabilities, Pune
- iii. Shri Pradeep Singh, Commissioner (Disabilities) Govt. of Delhi.
- iv. Ms Mita Banerjee, Commissioner for PwDs, West Bengal

III Representative of the National Institute of Public Finance and Policy

Prof. Rita Pandey, National Institute of Public Finance and Policy

IV Members, ex-officio

- i) Smt Poonam Natarajan, Chairperson, National Trust
- ii) Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)
- iii) Shri T.D. Dhariyal- Representative of Chief Commissioner for Persons with Disabilities

V Member Secretary

Ms Poornima Singh, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitees

- 1) Smt Anuradha Mohit
- 2) Shri R S Pandey
- 3) Prof. R.B. Subramaniam
- 4) Dr. Ratnish Kumar
- 5) Dr. L. GovindaRao
- 6) Shri P.K. Pincha
- 7) Shri Atul Prasad
- 8) Dr. R.K.Hora
- 9) Dr. Neeradhana Chandramohan
- 10) Dr. Alka Bhargav
- 11) Shri Colin Gonsalves

Ministry of Social Justice & Empowerment

- i) Dr. Dharmender Kumar, Director IPH
- ii) Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Legal Consultant

-
- i) Dr. Amita Dhanda
 - ii) Ms Neha Pathakji (Assistant Professor)
 - iii) Mr Aditya Singh
 - iv) Ms Shreya Parikh

List of Participants for 1st February, 2011

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Dr. L. Govinda Rao
- 3) Shri Akhil Paul
- 4) Ms Merry Barua
- 5) Shri Rajive Raturi
- 6) Dr. Uma Tuli
- 7) Shri K. Ramakrishnan
- 8) Shri J.P. Gadkari
- 9) Prof. Srikala Bharat
- 10) Ms Rukmini Pillai

II Representatives of State Governments

- i. Shri B.R. Jadhav, Commissioner Persons with Disabilities, Pune
- ii. Ms Mita Banerjee, Commissioner for PwDs, West Bengal

III Representative of the National Institute of Public Finance and Policy

Prof. Rita Pandey, National Institute of Public Finance and Policy

IV Members, ex-officio

- i. Smt Poonam Natarajan, Chairperson, National Trust
- ii. Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)

V Member Secretary

Ms Poornima Singh, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitees

- i. Prof. R.B. Subramaniam
- ii. Shri P.K.Pincha

Ministry of Social Justice & Empowerment

- i) Dr. Dharmender Kumar, Director IPH
- ii) Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Legal Consultant

- i) Dr. Amita Dhanda
- ii) Ms Neha Pathakji
- iii) Mr Aditya Singh
- iv) Ms Shreya Parikh

List of Participants for 2nd February, 2011

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Dr. L. Govinda Rao
- 3) Shri Akhil Paul
- 4) Ms Merry Barua
- 5) Shri Rajive Raturi
- 6) Dr. Uma Tuli
- 7) Shri J.P. Gadkari
- 8) Prof. Srikala Bharat
- 9) Ms Rukmini Pillai

II Representatives of State Governments

- i. Shri B.R. Jadhav, Commissioner Persons with Disabilities, Pune

III Members, ex-officio

-
- i. Poonam Natarajan, Chairperson, National Trust
 - ii. Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)

IV Member Secretary

Ms Poornima Singh, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitees

- i) Prof. R.B. Subramaniam
- ii) Shri P.K.Pincha

Legal Consultant :

- i) Dr. Amita Dhanda
- ii) Ms Neha Pathakji (Assistant Professor)
- iii) Mr Aditya Singh
- iv) Ms Shreya Parikh

10th Meeting- held on 23rd - 24th March, 2011

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri Bhushan Punani
- 2) Dr. L. Govinda Rao
- 3) Shri Akhil Paul
- 4) Ms Merry Barua
- 5) Shri Rajive Raturi
- 6) Dr. Uma Tuli
- 8) Shri J.P. Gadkari
- 9) Prof. Srikala Bharat
- 10) Ms Rukmini Pillai
- 11) Ms Jayshree Raveendran

II Representatives of State Governments

-
- i. Ms Mita Banerjee, Commissioner for PwDs, West Bengal

III Representatives of the Union Ministries

- i. Shri Anil Kumar Rathore, Associate Architect, TCPO, M/o Urban Development.
- ii. Shri Sharad Kumar Srivastava, US, DoPT

IV Representative of the National Institute of Public Finance and Policy

Prof. Rita Pandey, National Institute of Public Finance and Policy

V Members, ex-officio

- i) Smt Poonam Natarajan, Chairperson, National Trust
- ii) Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)
- iii) Shri T.D. Dhariyal- Representative of Chief Commissioner for Persons with Disabilities

Special Invitee

Shri S.N.Menon

Ministry of Social Justice & Empowerment

- i) Dr. Dharmender Kumar, Director IPH
- ii) Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Legal Consultant

- i) Dr. Amita Dhanda
- ii) Ms Neha Pathakji (Assistant Professor)
- iii) Mr Ajey Sangai
- iv) Ms Shreya Atrey
- v) Ms Saadhika Jalan

11th Meeting-held on 11th April, 2011

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

-
- 1) Shri Bhushan Punani
 - 2) Dr. L. Govinda Rao
 - 3) Shri Akhil Paul
 - 4) Ms Merry Barua
 - 5) Shri Rajive Raturi
 - 6) Dr. Uma Tuli
 - 7) Shri J.P. Gadkari
 - 8) Prof. Srikala Bharat
 - 9) Ms Rukmini Pillai

II Representatives of State Governments

- i. Ms Mita Banerjee, Commissioner for PwDs, West Bengal
- ii. Shri B.R. Jadhav, Social Welfare Deptt. Government of Maharashtra
- iii. Shri Dilbag Singh, CPO, Deptt. of Social Justice & Empowerment, Govt. of Rajasthan

III Representatives of the Union Ministries

- i. Shri Sharad Kumar Srivastava, US, DoPT

IV Members, ex-officio

- i) Smt Poonam Natarajan, Chairperson, National Trust
- ii) Maj. Gen. Ian Cardozo, Rehabilitation Council of India (RCI)

V Member Secretary :

Shri Abhilaksh Likhi, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Ministry of Social Justice & Empowerment

Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

Legal Consultant

- i) Dr. Amita Dhanda
- ii) Mr Nilesh Singit
- iii) Ms Neha Pathakji
- iv) Ms S Smitha

12th Meeting-held on 21st& 22nd June

Chairperson

Dr. (Mrs) Sudha Kaul

Members

I Expert/NGO Representatives

1. Shri Bhushan Punani
2. Dr. L. Govinda Rao
3. Shri Akhil Paul
4. Shri Rajiv Raturi
5. Dr. Uma Tuli
6. Shri J.P.Gadakari
7. Dr. Srikala Bharat
8. Ms Jayshree Raveendran
9. Ms Rukmini Pillai
10. Dr. Rita Pandey
11. Dr. Ramkrishanan

II Representatives of State Governments

- i. Shri Kannegi Packianathan, Secretary, Welfare of Disabled Persons, Tamilnadu
- ii. Shri H.R. Kamble, Dy. Commissioner Persons with Disabilities, Maharashtra

III Representatives of the Union Ministries

- i. A.N Jha, JS & FA, Ministry of Social Justice & Empowerment
- ii. Shri Anil Rathore, Associated Architect, TCPO, MoUD
- iii. Sharad Kumar Srivastava, US, DoPT

IV Members, ex officio

- i. Mrs Poonam Natrajan, Chairperson, National Trust
- ii. Maj. Gen. Ian Cardozo, Chairman, Rehabilitation Council of India
- iii. T.D. Dhariyal, Dy. CCPD, Representative of Chief Commissioner for Persons with Disabilities

V Member Secretary

Shri Pankaj Joshi, Joint Secretary (Disability Division)

VI Special Invitees:

- i) Shri S. N. Menon
- ii) Major H.P.S. Ahluwalia

VII Ministry of Social Justice & Empowerment

Sunil Kumar Pattanayak, Director, Disability Division

VIII Legal Consultant

- i) Dr Amita Dhanda
- ii) Ms Neha Pathakji
- iii) Mr Aditya Singh
- iv) Mr Ajey Sangai
- v) Mr Manav Kapoor
- vi) Ms Raadhika Gupta

ANNEXURE 3

NATIONAL LEVEL CONSULTATION WITH Civil Society representatives FROM THE DISABILITY SECTOR held from 29th Sep to 1st Oct 2010

List of Participants

Chairperson

Dr. (Smt) Sudha Kaul

Members

I Expert/NGO representatives

- 1) Shri. Bhushan Punani
- 2) Smt. Jayshree Ravindran
- 3) Dr. G.N.Karna
- 4) Dr. L. Govinda Rao
- 5) Shri Akhil Paul
- 6) Ms Merry Barua
- 7) Ms G. Syamala
- 8) Shri Rajive Raturi
- 9) Dr. Uma Tuli
- 10) Ms Rukmani Pillai
- 11) Ms Bhargavi Davar
- 12) Shri Rajiv Rajan
- 13) Shri K. Ramakrishnan
- 14) Shri J.P. Gadkari
- 15) Prof. Srikala Bharat

II Representatives of the State Governments

Ms Mita Banerjee, Commissioner for PwDs, Govt. of West Bengal

III Representatives of Central Ministries/Departments

- i) Dr. S.Y. Kothari, Addl. DGHS, M/o Health and Family Welfare
- ii) Shri S.K. Shrivastava, Under Secretary, Representing DOPT

V Members, ex-officio

- i) Smt Poonam Natarajan, Chairperson, National Trust
- ii) Maj. Gen. Ian Cardozo, Chairman, Rehabilitation Council of India (RCI)

-
- iii) Shri T.D. Dhariyal- Representative of Chief Commissioner for Persons with Disabilities

VI Member Secretary

Dr. Arbind Prasad, Joint Secretary (Disability Division), Ministry of Social Justice & Empowerment.

Special Invitees:

- i) Shri A.S.Narayanan
- ii) Major H.P.S. Ahluwalia

Ministry of Social Justice & Empowerment

- i) Dr. Dharmender Kumar, Director IPH
- ii) Shri Sunil Kumar Pattanayak, Director, Disability Division, M/o SJ&E

NALSAR Team

- i) Dr. Amita Dhanda
- ii) Shri Nilesh Singit
- iii) Ms Neha Pathakji
- iv) Shri Aditya Singh
- v) Shri Rohan Singh

List of participants from civil society

- i) Shri P. Sudhakara Reddy
- ii) Ms Reena Sen
- iii) Ms Jeeja Ghosh
- iv) Shri Deepak T.M.N
- v) Shri Javed Ahmad Tak
- vi) Shri Arman Ali
- vii) Ms Hemamalini Jairam
- viii) Ms Parul Kumtha
- ix) Ms Vaishnavi
- x) Ms Shanti
- xi) Ms Radhika
- xii) Shri Ajin Kumar Sen
- xiii) Shri M.Pavan Kumar
- xiv) Shri Rajul Padmanabhan
- xv) Shri Arun C. Rao
- xvi) Ms Kanchan Pamani
- xvii) Shri Abdul Mabood
- xviii) Shri Rahul
- xix) Ms Kuhu Das

- xx) Shri Gautam Chaudhary
- xxi) Ms Snigdha Sarkar
- xxii) Dr. Achal Bhagat
- xxiii) Shri D.M Naidu
- xxiv) Shri Arun Kumar Singh
- xxv) Shri M. Srinivasulu
- xxvi) Ms Meenakshi B.
- xxvii) Ms Nirmita Narasimhan
- xxviii) Ms Shivani Gupta
- xxix) Shri Javed Abidi
- xxx) Shri C. Mahesh
- xxxi) Shri Ketan Kothari
- xxxii) Shri Sonu Golkar
- xxxiii) Dr. Sruti Mahapatra

ANNEXURE 4**State Level Consultations Held in the Following States**

Sr.	State	Dates & venue	Organised by	Participation	Translation
1.	North East				
1-2	Assam & Arunachal Pradesh	4 th & 5 th March, 2011, NEDFI House, Guwahati	Mr. Arman Ali, CEO, Shishu Sarothi, Assam	90	Assamese Bengali
3	Meghalaya	14 th and 15 th Mar 2011 Bethany Society, Shillong	Mr. Carmo Noronha, Executive Director Bethany Society	85	Garo Khasi
4	Nagaland	9 th March, 2011, Red Cross Building, Raj Bhawan Road, Kohima	Ms. K. Ela, Director Prodigals' Home	35	English
5	Manipur	9 th and 12 th Mar 2011 State Guest House, Sanjenthong, Imphal	Laishram Tokendra Ricky Re-Creation, Spastic Society of Manipur	More than 70	Manipuri
6	Mizoram	12 th Mar 2011 Hotel Clover, Chanmari Road, Aizawl	Ms Chhingpuii Secretary Spastic Society of Mizoram	More than 40	English
7	Tripura	6 th Mar 2011 Conference Hall of DDRC, ShymaliBazar, Agartala	Dr. Sreelekha Ray, Executive Director Voluntary Health Association of Tripura	117	Hindi Bengali English
8-9	NCR-Delhi/- Haryana	28 Feb, 1 st and 2 nd Mar 2011 Indian Spinal Injuries Centre, VasantKunj, New Delhi	Dr. Uma Tuli Amar Jyoti Charitable Trust	161	Hindi

Annexure 4 –State level Consultations

Sr.	State	Dates & venue	Organised by	Participation	Translation
10	Karnataka	15 th Mar 2911 Mobility India, JP Nagar, Bengaluru	Mrs. Ruma Banerjee Seva-in-action Association Bangalore Association for Persons with Disabilities – K.N. Gopinath, CBR Forum - Julien Peter, C. Mahesh, Nicholas Guia Rebelo, KARO, Karnataka State Federation of Persons with Disabilities - Paul Ramanathan	District Level State level 700-1000 Through district facilitators 50 District facilitators were trained Small teams from 5 organizations met to consolidate the report	Kannada
11	Orissa	10 th & 11 th March, 2011 Hotel Suryansh, Bhubaneshwar	Ms. Sneha Mishra Board Member National Trust AAINA, Orissa State Commissioner Disability	PWDs, Parents of CWDs, duty bearers, Govt. officials, disability advocates and members of the community from all the districts of Odisha 4 Zonal Consultations 50-80 in each (250) Advocates Consultation – 25 participants 1 students with disabilities consultation – 100 participants National Consultation – 130 participants	Oriya

Sr.	State	Dates & venue	Organised by	Participation	Translation
12	West Bengal	9 th and 10 th Mar 2011 MONOBITAN, Kolkata	Ms. Sonali Nandi Indian Institute of Cerebral Palsy Kolkata Jointly organized by Office of the Commissioner (Disabilities), Government of West Bengal State Level Nodal Agency of National Trust (SNAC – West Bengal), Disability Activists Forum (DAF), West Bengal	203 Disability Commission and SNAC organized meetings in Purba Midnapur (total participants 105), Burdwan (participants: 50), North Bengal(104) and DAF organized pre consultation meetings in Hooghly (participants: 40). In those meetings representatives from DPOs, parents' associations, regular school teachers, doctors, cross disability NGOs & representatives from govt. sectors	Bengali
13- 14	Tamil Nadu & A&N Islands	9 th & 10 th March, 2011	Ms. Madhumati Achutan Spastics Society of Tamil Nadu Chennai	Around 200 participants The State Commissioner, Director of NIEPMD, NIVH and many people with disabilities who had come from the rural places from Tamilnadu with visual impairment, orthopaedic handicaps, cerebral palsy and parents and professionals, associations of Persons with Disabilities	Tamil

Sr.	State	Dates & venue	Organised by	Participation	Translation
15	Kerala	9 th & 10 th March, 2011 Hotel Geeth, Thiruvananthapuram	Ms. Sandhya, HRLN, Trivandrum Local organizing committee comprising members of National Association of Blind, Kerala Association for the Deaf, Vikalanga Sanghatana Ekopana Samithi and Human Rights Law Network Ms.Lida Jacob IAS, Dr.Pavithran (Director,NISH), Mr. Rana Prathap(CBR Forum, Kerala Network), Smt. Brahada ,Ms. Annie Syam and Dr.Syam.	115 people from all the 14 districts of Kerala participated in the deliberations. Participants comprised of disabled people, Advocates, activists / experts working in the area of disability, DPO's etc	Malayalam
16	Bihar	13 th & 14 th March, 2011 J.M. Institute of Speech & Hearing Patna	Ms. Manisha Kumari/Ms. Shikha J.M. Institute of Speech & Hearing Patna	160	Hindi
17	Jharkhand	7 th & 8 th March, 2011 HPDC, Ranchi	Ms. Alka Nizame Deepshikha Institute for Child Development & Mental Health Ranchi, Jharkhand	75 participants of different levels ranging from Disabled activists of JVM representing 20 districts of Jharkhand, PWDs & WWD advocates from various parts of Jharkhand, representatives from NGOs working in the field of disability and Rehabilitation professionals from various Civil Society Organisations, representatives from media houses writing on disability and social issues.	Hindi
18	Uttar Pradesh	1 st March, 2011	Mr. R.K. Dubey Chetna Lucknow	109	Hindi

Annexure 4 –State level Consultations

Sr.	State	Dates & venue	Organised by	Participation	Translation
19	Rajasthan	4 th & 5 th March, 2011 OTS, JLN Marg, Jaipur	Ms. Deepak Kalra Umang, Jaipur	Total 206 1 st day – 190 participants 2 nd day – 30 participants- 86 N.G.O Members 64 D.P.o.S / Experts /concerned citizens ---- 23 Parents -- 33 Sp. educators ---	Hindi
20-23	Uttrakhand, Punjab, Himachal Pradesh and Chandigarh	2 nd and 3 rd Mar 2011 NIVH, Rajpur Road, Dehradun	Ms. Anuradha Mohit Director, NIVH Dehradun	51 participants + 3 experts	Hindi
24	Gujarat	19 th Feb 2011 & 5 th March 2011 Blind People's Association, Ahmedabad	Mr. Bhushan Punani Blind People's Association Ahmedabad	1 st day – around 150 participants 2 nd day – 45 participants Stage 1: State Level Consultation on 19 th February, 2011 with 146 participants Stage 2: District level consultation between 19 th February to 5 th March, 2011 Stage 3: State Level Consultation of District Level Coordinator on 5 th March, 2011	Gujarati

Sr.	State	Dates & venue	Organised by	Participation	Translation
25	Madhya Pradesh	15 th Feb 2011 State Nodal Agency Centre of the National Trust, Digdarshika, Bhopal	Mr. Sumit Roy Digdarshika Punarvas Evam Anushandhan Sansthan Bhopal, Madhya Pradesh State Nodal Agency centre of the National Trust, AAKANKSHA, LSMH, Avanti Vihar, Raipur (C.G.) Supported by :- Disability Commissioner, Mr. Dipankar Banerjee,	111	Hindi
26	Chattisgarh	5 th Mar 2011 Babylon International, VIP Road, Raipur	Dr. Meeta Mukherjee Aakanksha, Lion School for the Mentally Handicapped	About 141 28 Govt. participants Social welfare department Health department/ DDRC/ Employment department 21 Persons with disabilities 43 NGOs Special Educators Rehabilitation Psychologist Parents Law students Media Local level committee Member of National Trust.	Hindi
27	Maha-rashtra	28 th February & 1 st March, 2011	Mr. Ramakrishnan National Association for the Blind Mumbai	114 Particiapnats Jidd Special School, Sindhudurg Special School, Jai Vakeel School, Yashwant Rao Pratishtan Organization, Maharashtra State Handicapped Finance & Dev. Corporation (MSHFDC), Maharashtra Helpers of the Handicapped AYJNIIH, Spastic Society of India-Adapt Trinayani.	Marathi

Annexure 4 –State level Consultations

Sr.	State	Dates & venue	Organised by	Participation	Translation
28	Andhra Pradesh	24 th February – 21 march, 2011	Dr. Shiv Kumar, Director NIMH, Secunderabad	TOTAL- 2108 17 ditrics- total-1338 802 PwD Others (NGO's/Professionals) 770 Faciliators Dr Govinda Rao + Mr Gadkari	Telugu
29	Jammu & Kashmir	8 th and 9 th Mar 2011 Hotel Meridien	Narjees Nawab State Director HRLN Humanity Welfare Organization Helpline Supported by JKHWA, JKHA and JK Land Mine Survivors	80 participants + 10 resource persons & staff	Urdu
30	Goa		Ms. Percy Cardozo Sangath, Goa	27	English

ANNEXURE 5 – LEGAL CONSULTATION

No. 16-38/2006-DD.III
Government of India
Ministry of Social Justice and Empowerment

Shastri Bhavan, New Delhi
Dated the 10th March, 2011

To

As per list.

Subject: **Legal Consultation with Panel of Experts.**

Sir/Madam,

The Committee, set up by this Ministry under the Chairpersonship of Dr. Sudha Kaul, to prepare a draft legislation in place of the existing, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act 1995, is holding legal Consultation with a panel of legal experts **on 10th and 11th April, 2011 in Delhi**. The Chairperson of the Committee desires that you should join the panel of experts for the Consultation.

2. You are, therefore, requested to kindly make it convenient to attend the Consultation meeting on the above mentioned date. The venue and other details of the meeting will be intimated to you in due course.

Yours faithfully,

(Sunil Kumar Pattanayak)
Director (DD)

List of Legal Experts Invited

1. Jaydip Kar
2. Anju Talukdar
3. Justice A P Shah
4. Rahul Cherian
5. Santosh Rungta
6. PK Pincha
7. Colin Gonsalves
8. Sheila Jaiprakash
9. Prof. Dr. S.B.N. Prakash
10. Ashok Arora
11. Krishan Mahajan
12. Pankaj Sinha
13. Sheela Ramanathan
14. K.K Roy
15. Veena Sharma
16. Faizal Qadri
17. M A Shakeel
18. Ritu Kumar
19. Roma Bhagat
20. Ashok Agarwal
21. Mihir Desai
22. Kanchan Pamnani
23. Jamshed Mistry
24. Bhushan Oza
25. Ms Shailaja Pillai
26. Kalpana Kannabiran
27. Prof Shirish Deshpande
28. Subhash Vasishth
29. Jayna Kothari
30. Tanu Bedi
31. Vasudha Nagaraj
32. Babu Mathew
33. Upendra Baxi
34. Raju Ramachandran
35. Nandita Haksar

Report of the Legal Consultation on the New Disability Rights Law held on 9th – 10th April 2011.

Introduction

The Legal Consultation on the Working Draft on the Rights of Persons with Disabilities Bill was scheduled on 9th and 10th April 2011. The Consultation was organized with law persons who were concerned with questions of social justice and human rights generally and disability human rights more particularly. The Consultation was structured to obtain peer feedback on issues and questions which had proven to be either controversial or problematic in the drafting of the legislation. In addition, provision was made for an open house to obtain general feedback on the proposed legislation.

Even as a large number of the persons invited did attend the Consultation, some of the key invitees could not make due to last minute emergencies or personal ill health. A number of those invitees have however shared their views individually with the Committee and the Legal Consultant. A number of the participants have also sent written memorandums to the Committee either before or after the Legal Consultation. This report however only documents the discussions and suggestions made at the Consultation.

Inaugural Proceedings

The Consultation was inaugurated by the Chairperson of the Committee Dr Sudha Kaul apprising the invitees of the process the Committee has been following in obtaining the opinion of the disability sector, the duty bearers and the larger civil society in the length and breadth of the country. Prof Amita Dhanda, the Head of the Legal Consultant's team, in her presentation spoke of how the principles of the CRPD and the aspirations of persons with disabilities have been the guiding principles for the Committee. In the performance of this task the Committee had followed precedents where available but also acted on first principles where required. Dr Dhanda then referred to the problematic dimensions of each of the issues under discussion. The Consultation she stressed was an effort at promoting deliberative and reasoned law making. The Committee and the Legal Consultant were there to listen and learn. The Legal Consultant hoped that in dialogue with peers they would be able to both weed out errors in the draft and devise alternative solutions to the questions concerning the Committee.

Session I: The Definition of Person with Disability

Tejaswi Shetty in her presentation explained that the dual definition of person with disability was introduced in the Working Draft so that whilst the right of non discrimination was universally available to all persons with disabilities the constituency of programmatic entitlements could be restricted to the enumerated disabilities.

In the ensuing discussion the dual definition, though for varied reasons, was predominantly viewed to be problematic. Such a definition, it was pointed out, could inject confusion in the implementation of the legislation. Further the entire issue of the socio-medical scale could leave persons with disabilities at the mercy of administrative or judicial discretion. Moreover since both civil-political and socio-economic rights had positive and negative duties even the motivation which had given birth to the dual definition may not be realized.

It was therefore suggested that the Draft law should have only one definition of disability which could be a combine of a generic and an enumerative one. However the beneficiaries of the law should be clearly identified in the legislation and not be left to be incorporated in subordinate legislation. The evolving nature of disability

could be addressed by using the technique followed in the UK Disability Discrimination Act of using a generic definition and then provide the more detailed requirements in the Schedule to the statute.

Participants also asked that the use of the phrase “not of a temporary nature” may be re-examined as it could give rise to interpretational disputes. Could “not temporary” be read as permanent and in that case was “long term” a better choice?

Some of the participants wondered whether the country was ready for the adoption of the social model of disability. Others desired to know how situations of impairments without barriers would be addressed and still others desired that the statute itself should elaborate upon what was viewed as a barrier. As far be, it was desired that administrative and judicial discretion should be minimal in the matter of determining who is a person with disability.

A number of participants also expressed concern on the process of certification and desired that the statute should protect persons with disabilities from the requirements of having to obtain multiple certificates. It was suggested that the full faith and credit clause in Art 261 of the Constitution should be extended to medical certificates.

Session 2: Legal Capacity, Support and Guardianship

The second session on universal Legal Capacity, Support and Guardianship was initiated by a presentation by Ajey Sangai on the CRPD paradigm on legal capacity and how it has been incorporated in the new law. The challenge before the Committee was to induct this new paradigm into a legal system which perceived the lack of capacity of persons with disabilities as a truth not an ascription. The strategy being employed was primarily to lay down the principles of the new paradigm and to have it prevail over laws which state to the contrary.

The ensuing discussion followed distinct pathways.

One group of interventions desired a distinction to be forged into the law between those persons with disabilities who were being expressly denied legal capacity in the existing law and the others whose legal capacity was recognized by the law. The first group may not be able to function without support whilst the latter group the question of support was a matter of their choice. There was some difference of opinion on whether such a categorization could be advanced in the wake of the CRPD. However there was an insistence by some of the invitees that such a distinction must be incorporated in the law to ensure that those whose legal capacity stands recognized even prior to the CRPD were not disadvantaged by the new regime.

The fact that the protection of the law was only required by persons with certain impairments was questioned by other members who pointed out that such a contention could only be raised in relation to persons with disabilities residing in the urbanized parts of the country. This distinction did not operate on the ground for persons with disabilities who came from the remote and under resourced regions of the country. In their case the social economic and educational barriers provided a disenfranchisement which was no different from that experienced by persons with impairments disenfranchised by the law.

Questions were also raised on the best way of inducting the new paradigm of legal capacity in the new legislation and the committee was cautioned on the utilization of overriding clauses to alter existing legal presumptions on decision-making capacity.

The other set of questions revolved around the issue of abolition of plenary guardianship and whether such abolition was mandated by the CRPD. Would such abolition also extend to natural guardianship and how should the setting up of regimes of support take place?

Whilst opinions on the need to consult with concerned stakeholders before deciding on questions surrounding guardianship in law were expressed, views were also voiced on the need to continually examine the altering relationship between an individual and the community whilst formulating a law. Further the whole issue of support should not be perceived as a task which needs to be performed by specialized bodies. It could be easily inducted, at least in urban areas, within the responsibilities of resident welfare associations.

Queries were also raised around questions of conflict of interest and what should or would happen if a person who was required by the law to desist failed to do so.

Another connection was made in relation to the recognition of legal capacity and criminal responsibility and how equal rights could be provided without equal responsibility.

In response whilst some interveners opined that questions of legal capacity were best regulated by the Courts as they were most often required to intervene in such matters. This statement was however challenged by other lawyers who pointed out how the legal system was primarily operating on a set of beliefs in relation who were also associated with the case wondered whether such a presumption could be made considering that judges and courts were primarily interpreting and implementing the prejudice based old paradigm.

In response to the various questions it was clarified by the Legal Consultant's team that the new legislation was extending to all persons with disabilities in all areas of life the same presumptions which existed for non disabled persons. The new law was severing the connection that existed between incompetence and support for persons with disabilities. Persons with disabilities could, like non disabled persons, obtain support without being labeled incompetent.

The session in the main operated as a dialogue between the old and new paradigm on legal capacity of persons with disabilities with some members holding that issue of legal capacity and support were not equally or similarly relevant for all persons with disabilities.

Session 3: Interplay between new law and other laws

This session began with a presentation from Rohan Saha on the inter play between the new law and other laws. The discussion focused on the discrimination encountered by persons with disabilities who had no law under which they could marry and obtain divorce. Also provision was made to address the discrimination encountered by persons with disabilities in relation to voting rights.

In the ensuing discussion most speakers questioned provisions whereby a specific procedure for the marriage and divorce of persons with disabilities was created in the new law. Such a procedure, it was pointed out, would only result in confusion especially as it could not address all the various issues arising around the matrimonial rights of persons with disabilities such as the marriage between a person with disability and a non disabled person; or the succession rights under their personal law of those persons with disabilities who married under this law.

The question how the matrimonial rights of those persons with disabilities, who due to their disability were denied the opportunity to get married in both personal and secular law should be addressed, yielded several responses.

One response was that this matter could only be resolved by amending the statutes which were imposing the exclusion and this law should not be employed to resolve all discriminations faced by persons with disabilities. The other response was that this statute should only incorporate the principle of non discrimination and this principle could be used by individual persons with disabilities to challenge discriminatory matrimonial statutes. In a varied formulation it was suggested that the law should recognize that persons with disabilities marrying with consent and with full disclosure of their impairment, should not be prevented from getting married by reason of their disability.

A third response was that this law could be employed to override the discriminatory provision in the Special Marriage Act but the same could not be done in relation to the personal laws. It was accepted that there may be a case to have a carefully crafted Right to Marry under this law for those persons with disabilities who have no religious or secular option available. Yet there was little support for the proposition that this option should in fact be provided in the new law.

Even as the induction of a distinct marriage and divorce procedure for persons with disabilities was not viewed with favour by the participants, the use of the law to introduce supplemental provisions to strengthen the matrimonial entitlements of persons particularly women with disabilities was strongly suggested. Thus, the legislation, it was opined, should make provide additional protection on maintenance and custody of children to persons with disabilities.

On the political rights front, the Committee was urged to seek an amendment of the Constitution in order to weed out the disability discriminatory provisions. Without such constitutional amendment, only a legislative provision protecting the right to vote was seen as insufficient. It was also suggested that the amendment of the Constitution to grant legislative reservations to persons with disabilities.

Session 4: Liberty Force and Consent

The session began with Shreya Atrey making a presentation on the CRPD paradigm on Liberty and how the new law provisions on Liberty were formulated by drawing upon the CRPD and Article 21 of the Indian Constitution.

In the ensuing deliberation it was pointed out that it was important to ensure that the provision is not a reenactment of article 21 for persons with disabilities. Instead the legislation should look at those laws and procedures, most majorly the legal regulation of institutionalization of persons with disabilities which depart from the CRPD standard and to ensure that such like discrimination did not happen. The need to coordinate with the MHA amendment process was also stressed in order to ensure that the Disability Rights and Mental Health Legislation were not at cross-purposes.

Insofar as the provision of reasonable accommodation was stated to be an integral part of the Right to Liberty as formulated in the law, a lot of discussion time was spent on the relative merit of the concepts of protective discrimination and reasonable accommodation. A body of opinion in the room put forth the contention that in the wake of the disadvantaging jurisprudence surrounding reasonable accommodation, India should not import this concept and should instead rely upon the more empowering concept of protective discrimination. The other school of thought however pointed to situations which could not be addressed through reasonable accommodation, and thus induction of the concept in the new law in no way disadvantaged persons with disabilities.

Session 5: Inclusion of the Private Player in the Definition of Establishment

Malak Bhat presented the definition of Establishment as inducted in the new legislation and explained how the Art 12 and labour law jurisprudence were married to create this crucial definition.

In the ensuing discussion whilst the definition was broadly endorsed an anxiety was voiced that the definition may encounter resistance at the enactment stage. To address that resistance various suggestions were proffered. One was to split the definition of establishment into two parts: in one include the Article 12 authorities and in the other include private establishments; and then depending upon the nature of responsibility use one or both parts of the definition. The other was to make provision for a practice code which could be accepted by the private players on a voluntary basis. The third was to limit the role of the private player only to issues of avoiding discrimination and not impose any affirmative action obligations upon them.

Session 6: Disability Rights Authority

The latest version of the Disability Rights Authority was presented by Neha Pathakjee and Shreya Parikh where they sought the opinion of the participants on:

- the best way to ensure that DRA has a presence in all States and States cannot put forth the argument of paucity of resources to skittle provisions obligating the establishment of the DRA.
- the question of giving voice to all persons with disabilities in both the establishment and functioning of the DRA.
- the strengths and weaknesses of the proposed electoral process.

The ensuing deliberation can be thematically reported as follows:

Use of Elections to constitute DRA

Two kinds of questions were raised by some of the participants on the use of elections to constitute the DRA. One kind pointed out that the use of elections would mire the DRA in dispute and controversy and stranglehold its functioning as a monitoring body. Further, elections were an expensive and cumbersome process which would make just the establishment of the authority a very resource-intensive exercise. The other kind of question was raised on the use of indirect election to constitute the body. Herein the participant pointed to the inequity of weighing small and big organizations on the same scale. The recommendation then was either abandon the use of elections to constitute the DRA or go for direct elections whereby each person with disability has one vote. The impracticality of direct elections was then commented upon by several participants.

The Allocation of powers and duties between national and state DRA

The participants next required a sharper delineation of responsibilities between the National and State DRA. The use of the constitutional lists as in the Protection of Human Rights Act was endorsed. At the same time there was a need to forge a connection between the national and State DRAs so that there was cohesion in the functioning of the monitoring bodies.

Separation of Powers

The Legislative and Adjudicative Functions could not be combined in same Authority. These overlaps in the functioning of the DRA needed to be reexamined. The Committee and Consultant were asked to look at some of the written suggestions provided to meet this objection.

Disability Rights Fund and Resources for the DRA

Whilst some participants opposed the situating of the Disability Rights Fund in the DRA as the fund was meant for schemes and programs for persons with disabilities., others required it to be made explicit that the Fund was not a resource, which was to be employed by the DRA for its own functioning; hence it was important that the resource entitlements of the DRA should be provided for explicitly.

Implementation and Monitoring

There was need to forge a closer connection between the implementation and monitoring responsibilities. Whilst monitoring was provided for in the shape of the DRA, the question of implementation remained amorphous. Consequently keeping in view the cross-cutting nature of obligations in the realm of disability it was suggested that the statute should require the establishment of Disability Rights Desk in every Ministry. This desk would both help address the cross-cutting issues as also help the DRA to effectively fulfill its monitoring duties.

Other Questions

The need to fine tune the relation between the governing board and the executive board

Time frame needs to be built in to ensure that the various activities in fact happen.

Should only persons with disabilities function on the DRA?

Session 7: Grievance Redress

Aditya Singh in the session on Grievance Redress presented the distinction between the DRA and the Grievance Redress authorities of the law; the desirability or otherwise of setting up tribunals and Commissioner's court at the state and central level; the methods by which grievance redress was being provided as close as be to persons with disabilities.

In the ensuing deliberation it was pointed out that in order to address questions of grievance redress it would be useful to define court so that there is clarity on where a person who is aggrieved should go. The hierarchy and relation between the ordinary courts and the grievance redress bodies under the statute need to be clearly demarcated.

Consequently the statute needs to clearly disaggregate between issues that need to go to the Grievance Redress Forums established by the statute and those which need to go to the existing courts and forums. On this count it was suggested that whilst the adjudication of offences and penalties needed to stay with the criminal courts, provisions relating to civil liability should go to the specially constituted bodies. The grievance redress body was only concerned with realizing the rights recognized under the Act. Other civil disputes involving persons with disabilities would need to go to the ordinary courts.

It was next suggested by some of the participants that it may be appropriate to term the adjudicatory authority a tribunal so that it does not get trapped in the rigors of the Civil Procedure Code and has the freedom to devise its procedure whilst observing the principles of natural justice. The TRAI Act or FEMA or the Consumer Protection Act could provide suitable models. This tribunal could function at the State level with provision for appeal to the High Court.

It was also suggested that the possibility of establishing a Tribunal under article 323B of the Constitution should be explored.

It was suggested that in addition there could be Disability Rights Facilitation Centres in the service provider model of the Domestic Violence Act.

Session 8: Socio-Economic Rights and Open House

In this last session the opinions of the participants were obtained on the socio-economic rights and other provisions of the new law. The opinions proffered are being thematically reported.

Accessibility

- There should be a provision for E-workplace accessibility.
- The Definition of ICT is limited and doesn't include computer software, it requires rewording.
- When dealing with government and private websites providing consumer services, the term consumer services needs to be defined.
- It should be mandated that all Indian language websites use Unicode characters, otherwise screen reader problems arise.
- Under 4 (e), delete "non commercial" but retain "not for profit".
- The Delivery of Books Act should be amended: accessible version of books should be deposited in the repository as per the Act.
- Further elaboration is required on accessibility of Telecom services
- As per 24(3), where it is stated that all establishments shall facilitate reasonable accommodation: Explanation must refer to adequate measures and not facilities.
- Under Adequate measures : add "changes to electronic infrastructure"
- There should be a time frame within which the suitable measures specified by the statute are to be undertaken.

Education

- All authorities engaged in higher education should be brought under the scope of the law.
- Basic guiding principles relating to scribes must be incorporated in the statute: only eligibility criteria for scribes should be that at the time person is acting as scribe, person shouldn't be eligible to appear for

the exam, or should not have been eligible over last 3 years. Further, the Scribe should be selected at the discretion of candidate. Competence of the scribe is important.

- There should be provision for lab assistance and readers.
- Time frame for physical accessibility.
- Trained Staff within time limit.
- Reservation should be provided for wards of parents with disabilities.
- The School management committee should include parents with disabilities.
- School should be located within a radius of 1 km for primary education, 3 km for secondary education.
- The banding provided in employment should also be extended to education.
- There was need to explicitly provide for the strengthening and expanding of special schools.
- Funding and facilities of resource centres need to be more explicitly stated.

Employment

- The issue of banding of low vision and blindness needs to be reexamined.
- The reservation of vacancies instead of posts needs to be reexamined.
- Identification of posts should not be totally done away with. Identification list can be put forth as illustrative and not exhaustive.
- The power to grant exemption should not be totally removed. This power could be conferred on the DRA but the advantages of retaining this power in the context of reservation needs to be appreciated.
- Carry Forward should be done for a period of three years. When interchange is done there needs to be provision for compensating the category of disability.
- Transfer and posting should be in vicinity of residence or in place of choice. If transfer unavoidable due to administrative exigencies then the choice of place should be with person with disabilities.
- In retrenchment the principle of last come first go should not apply in relation to persons with disabilities.
- NREGA like scheme should be created for urban areas for persons with disabilities.
- It should be presumed that the removal of a person with disability during probation is by reason of disability and the burden of dispelling that presumption should be on the employer.

Social Security

- Needs to be strengthened to allow for disability specific expenses; this could be done by suitably modifying the taxation provisions relating to persons with disabilities.

- Include all types of insurances.
- Time limits must be included.
- State the categories of land on which preferential treatment shall be accorded. Thus for example a certain percentage of Gram Sabha land should be made available for persons with disabilities.
- Minimum level of concession without riders needs to be defined so that there is proportionality between the concession and the conditionalities. For example DDA gives a concession of one lakh to persons with disabilities but then binds the person with disability to retain the flat for 15 years.

Offences and Penalties

- The use of severance of water and electricity as sanctions should be reconsidered.
- Section 30A should extend to both omission and commission.

Other Miscellaneous Provisions

- There should be a mandatory obligation to conduct a disability audit of all schemes and programs in the law.

ANNEXURE 6 – SUB-GROUP MEETING REPORTS

PROCESS REPORT FOR DRAFTING NEW PERSONS WITH DISABILITIES ACT

The committee set up by the Ministry of Social Justice and Empowerment at the initial meeting decided to form subgroups which would draft chapters on issues of concern for persons with disabilities which needed to be addressed in the new law in an effort to bring the law in harmony with the UNCRPD.

The grouping was done on the consent, interest of each member and has been detailed below. This report is an attempt to briefly document the process followed by individual committee members and on the issues they chose to work on.

Group Name	Members
Preamble and Definition	Shri Akhil Paul, Shri Karna, Smt Poonam Natarajan (Ms Merry Barua to provide her suggestions on Autism to this group)
Rights and Legal Capacity	Shri Govinda Rao, Ms G Syamala, Shri J P Gadkari, Shri Rajiv Rajan, Ms Jayshree Ravindran.
Civil and Political Rights	Ms Bhargavi, Shri Rajiv Rajan, Ms G Syamala, Ms Jayshree Ravindran.
Education	Shri Bhushan Punani, Ms Poonam Natarajan, Ms Uma Tuli, Shri Narayanan, Ms Merry Barua.
Health, Habilitation and Rehabilitation	Ms Srikala Bharath, Dr. Dharmender Kumar, Ms Rukmini, Shri Vikas Amte.
Employment and Occupation	Shri Rajiv Raturi, Ms Jayshree Ravindran, Shri Ramakrishna, Shri Punani, Ms Srikala, Shri J P Gadkari.
Accessibility	Ms Rukmini, Shri Narayanan, Shri Rajiv Raturi, Shri Rajiv Rajan.
Human Resource Development	Gen Cardozo, Ms G Syamala, Shri Akhil Paul, Representative (M/o HRD)
Authorities	Ms Uma Tuli, Shri Pritam, Smt Poonam Natarajan, Gen Cardozo, Comm (D) Assam, Comm (D), WB.
Financial Authority	Shri Ramakrishna, Dr. Rita Pandey. Dr. Pritam, Dr. Govinda Rao, Shri Bhushan Punani, Shri S N Menon

REPORTS SUBMITTED BY SUBGROUP LEADERS

RAJIVE RATURI

ACCESSIBILITY

Rajive Raturi was part of the sub group on Accessibility along with Rajiv Rajan, A S Narayanan and Rukmini Pillai.

The sub group studied all the papers provided by the MSJE to prepare a draft chapter on Accessibility. The following reports were studied for preparation of the first draft of the chapter.

NGOs: HRLN, Action for Autism, NAB Delhi, AICB Delhi, CBR Forum Bangalore, All India Deaf Bank Employees Association Chennai, Sense International

Individuals: V Bedi

Statutory bodies: NIMH, RCI, DDRC Tripura, Ali Yavar Jung NIHH, CCPD, SDC Karnataka, CCPD (Rajasthan)

The subgroup first met on 19th July, 2010 at the Indian Spinal Injury Centre to discuss the draft prepared on Accessibility for an initial round of discussions within the sub group. The outline of the chapter was decided.

The full committee met on the 22nd July to discuss draft chapters but the Accessibility chapter was not discussed in this meeting and more time was sought by the sub group to prepare a draft chapter for discussion with full committee.

The subgroup again met at AADI in Delhi on 2nd August. Experts Shivani Gupta, Anjali Agarwal and Sanjeev Sachdeva were invited to this meeting. Sanjeev attended, Shivani sent her version and Anjali sent her suggestions later by email. The draft chapter was subsequently revised with considerable inputs from Shivani Gupta of Access Ability.

This draft was then circulated within the committee members and suggestions given were incorporated.

The sub group met again at NALSAR with the Legal Consultant on the 4th and 5th September to discuss the draft chapter on Accessibility which by now had substantial contributions from experts.

On 8th September Shivani Gupta of Access Ability was again met with at her residence for extensive discussions on the draft chapter and in particular, the provisions on the NIUD. Her suggestions were incorporated in the draft chapter.

On 29th and 30th Sept subgroups made presentation on chapter to civil society members at Vigyan Bhawan and their feedback was incorporated in the draft chapter.

On 19th and 20th October the committee again met at NALSAR where the Legal Consultant presented the consensus paper and inputs received from committee members were then incorporated by the Legal Consultant.

On 26th and 27th Nov, the committee met at ISIC in Delhi to further discuss the consensus paper presented by Legal Consultant. Further meetings of the committee also had the chapter on Accessibility discussed and the state level consultation inputs were also incorporated. The committee met again over the final draft presented by the consultant post the legal consultation.

In particular, contributions were made by Nilesh Singit, Adv Subhash Vashisht, and Adv Cherian George who gave substantial inputs on Copyright issues and Nirmita Narasimhan on electronic accessibility.

Amongst the other groups who contributed substantially have been Astha in Delhi, AICB, NFB, CBR forum and DAF in Kolkata. Access India too contributed to the deliberations.

SOCIAL SECURITY

In the initial meeting of the committee there was no sub group for Social Security. However the committee in one of its earlier meetings decided to increase the chapters in the draft law and it was decided to incorporate a chapter on Social Security. It was also decided that the sub group working on Work and Employment would also work on Social Security

An initial draft on Social Security was made after culling out information from reports given to the committee by the MSJE and this was circulated within the sub group as file dated 24th August inviting their comments.

Inputs received from sub group members were incorporated and again circulated as file dated 2nd September to the full committee for their comments. This chapter was again presented at NALSAR by the subgroup on the 4th and 5th of September.

The chapter was revisited and updated and circulated as file dated 9th September to committee members for their comments.

On 29th and 30th Sept subgroups made presentation on chapter on Social Security dated 9th September to Civil society members at Vigyan Bhawan and their feedback was incorporated in the draft chapter.

On 19th and 20th October the committee again met at NALSAR where the Legal Consultant presented the consensus paper and inputs received from committee members were subsequently incorporated by the Legal Consultant.

On 26th and 27th Nov, committee met at ISIC in Delhi to further discuss the consensus paper presented by the Legal Consultant. Further meetings of the committee also had the chapter on Social security discussed and the state level consultation inputs incorporated. The committee met again over the final draft which was presented by the Consultant post the legal consultation.

Amongst the groups who contributed substantially have been DAF and CBR Forum.

As committee member, Rajive Raturi participated in the state level consultation on the draft law in Jaipur for the state of Rajasthan and in Srinagar for the state of Jammu and Kashmir. In addition the state level consultations in the states of Kerala and Jammu and Kashmir were organized through Human Rights Law Network, the organization he represents.

MERRY BARUA

Merry Barua was sub group member for Education and Definition and also participated in the subgroups on Employment and Accessibility. As sub group member, her discussions with civil society groups and individuals had a greater focus on Legal Capacity and CPR, Education, Employment, Accessibility and Definitions; however discussions ranged over all areas of the law since no section could be addressed in isolation.

Meetings were held in Delhi as well as in other places between June 2010 and February 2011. Discussions also took place over email. All emailing also was roughly within these dates. Some participants contributed in an individual capacity. However, most participants who contributed to these discussions belonged to organisations listed below, as well as from a few others.

Aarambh
Anandini
Asar
Academy for Severely Handicapped and Autism
Ashish Centre for Autism
Autism Society of India
Autism Society West Bengal
Autism Spectrum Rights Alliance
Change4Challenged
Child Raise Trust
Creating Connections
Forum for Autism
Indian Epilepsy Association
Institute of Psychological Health
National Centre for Autism
Pathways
Rays of Hope Charitable Trust
Soch
Sopan
Step By Step
The Fragile X Society
Ummeed Child Development Centre
Vishwas
We CAN

UMA TULI

Uma Tuli participated as sub group member on Education, Authorities and also contributed on the chapters on **Girls and Women with Disabilities, Children with Disabilities, Leisure, Culture & Sports**. She was informally also associated with discussions with a large number of stake holders, beneficiaries, and parent support groups etc., to gather inputs across all the chapters. Extensive views and suggestions were exchanged and qualitative information was collated and given as inputs to the Drafting committee.

A large number of consultative meetings were held with individuals and organisations as a part of consultations. As a preparation for conducting the State Level consultations with civil society for Delhi, NCR & Haryana, she constituted an organising committee which included State Commissioners of Delhi, Haryana and Chairman ISIC. There were a number of other members also. The organising committee held two meetings where the programme for the state level consultations was finalised.

A Hindi Translation of the working draft along with Braille (in Hindi & English) and Unicode version was also made available for distribution for the state level consultation on the new draft.

She also participated in the pre consultation meetings conducted by AADI & Khushboo at Delhi & Gurgaon. A two day State level consultation with civil society and persons with disabilities was organised at Delhi where a total of over 160 individuals and organisations, parent groups, activists participated. As decided in the State level consultation, a special meeting on Regulatory & Adjudicatory Authority was again organised at Amar Jyoti where participants from the civil society and different organisations and members of the committee were present and submitted a report which was discussed by the working group. This meeting was attended by the national organizations AICB and NFB amongst others.

In addition she helped and participated in the conduct of consultations with civil society for Madhya Pradesh. She also coordinated the finalisation of the draft of chapters on Children with Disability, Leisure, Recreation & Sports, Girls and Women with disabilities.

The organisations that participated in the state level consultation for Delhi NCR and Haryana included

State Commissioners Delhi & Haryana	
Government Officials from Delhi & Haryana	28
Representatives from NGOs	72
Members of Parents Support Group	5
Academic Institutions	16
Individuals working in Disability field	15
Care givers	20
Families	05
Total	161

GOVINDA RAO

Govinda Rao was associated with the subgroups on **Legal Capacity, Civil and Political Rights, HRD** and Financial Estimates. The meetings of the sub groups were mostly held at NIMH, NALSAR, AADI and Ministry of HRD according to the theme. Subgroup meetings usually involved many Parents, persons with disabilities who were engaged in rights advocacy of the PWDs and also NGO representatives. Besides the formal participation of the civil society members in these subgroup meetings, informal consultations with many stakeholders, Parents, NGO representatives, Professionals and civil society members were held and the inputs and information gathered from such interactions were shared in the main Committee meetings. Some names of organizations which were consulted extensively are as under:

-
1. Swaadhikar
 2. NPdO
 3. Swayamkrushi
 4. Parent Associations
 5. NIMH
 6. RCI
 7. IKP, Govt. of AP.
 8. Devnar
 9. Sweekaar-Upkaar.
 10. Krushi Orthopaedic Centre
 11. MORE
 12. ACT7

POONAM NATARAJAN

Poonam Natarajan was part of three Sub-Groups: (1) Education, (2) Authorities and (3) Definitions.

Education: The Education sub-Group met at Amar Jyoti Charitable Trust and Action for Autism. Dr. Bhushan Punani, Dr. Uma Tuli and Ms. Merry Barua were part of this group and Ms. G. Syamala also joined the group on two occasions.

Extensive discussions on Inclusive Education and the Special School System were held within the sub group. Consultations were also held with –

- (i) Arth Aastha
- (ii) Vidya Sagar
- (iii) Ministry of HRD Officials
- (iv) NUEPA
- (v) NT Registered Organizations
- (vi) Let's Make Inclusion Possible in Delhi (The Special Schools Group in Delhi)
- (vii) People with disabilities and Parents Organizations who are members of NT.

Authorities: The **Authorities** sub group first met at the CCPD's office and later at the National Trust Office. It was decided by the sub group working on Authorities that a SWOT analysis would be done at the start. It was also felt that this chapter would need to be constructed in the end, once the rest of the chapters were ready.

The Authorities chapter was discussed by the entire Committee at NALSAR, at the Legal Consultation and at committee meetings at ISIC Centre, Vasant Kunj. The State Consultations helped, to get a clearer idea of what the aspirations and views of the stakeholders were.

A meeting at Amar Jyoti was organized to get the views of national DPOs on the subject of Authorities. This meeting was attended by Mr. Rungta, General Secretary of the National Federation of the Blind and also by Mr Mittal, President of AICB and other members.

Definition: The **Definition** sub-group had its first meeting on Skype and the discussion centred around the definition of disability. The entire Committee at NALSAR agreed to take the two definition route, one generic and one for entitlements.

Suggestions came from stakeholders and from the State Consultations and were carefully considered by the sub group. Mr Akhil Paul, Ms Merry Barua, Ms Rukmini Pillai and Ms Poonam Natarajan also worked on writing a concept paper for the final report. This will be to give views on how the disability Scale for certification should be developed.

State Consultation: Ms. Poonam Natarajan also represented the New Law Committee at four State Consultations – Jharkhand, Chhattisgarh, Meghalaya and Tamil Nadu

As Chairperson of the National Trust, Ms Poonam Natarajan requested State Nodal Agency Centres (SNAC) of the National Trust to conduct the State Consultations in the following States:

1. Rajasthan
2. Uttar Pradesh
3. West Bengal
4. Orissa
5. Madhya Pradesh
6. Jharkhand
7. Bihar
8. Chhattisgarh
9. Tamil Nadu
10. Karnataka
11. Assam (coordinated the enter North East)
12. Mizoram
13. Manipur

JAYSHREE RAVEENDRAN

Process Report - WORK, EMPLOYMENT & OCCUPATION

The Sub Group on Employment comprised:

Shri Rajive Raturi
Shri Bhushan Punani
Shri Ramakrishna
Dr. Srikala Bharat
Shri Gadkari
Ms Jayshree Raveendran

The Sub Group studied all the papers provided by the MSJE to prepare a draft chapter on Employment and first met on July 14, 2010, at NAB Sabita & Saradindu Basu Centre for Blind Women, Hauz Khas, and New Delhi. Apart from the members of the Sub Group present on that day, also present were Mr. Santosh Rungta, [Secretary General, National Federation of the Blind, New Delhi], Mr. A. K. Mittal, President and Dr. Anil Aneja Vice President, All India Confederation of the Blind. Preliminary discussions were floated about the draft to be prepared on Work Employment & Occupation and the outline of the chapter was decided. Following this meeting, the members of the Sub Group interacted actively on telephone and email and also had discussions on their own level with various organizations and individuals

Following this was the full committee meeting on July 22, 2010 wherein the draft chapter was discussed. The Committee once again met on August 12, 2010. The draft chapter was discussed once again and the suggestions made therein were taken up for incorporation.

The Sub Group again met at NALSAR with the Legal Consultant on September 4 & 5, 2010, to discuss the draft chapter together with all suggestions and contributions made by several experts.

Following these meetings and detailed discussions, the Sub Group made a presentation on chapter on **Employment Work and Occupation** to the Civil Society on Sept 29 & 30, 2010 at Vigyan Bhawan, New Delhi. Subsequently all inputs and responses received, after detailed study, were incorporated in to the draft chapter.

The Committee then met at NALSAR on October 19, 2010, where the Legal Consultant presented the concept paper, and the inputs received from Committee members were incorporated by Legal Consultant.

The meeting of the full fledged Committee was held in New Delhi on November 26 & 27, 2010 where further discussions, additions and deletions were made to the concept paper. Following this were **more** rounds of meetings of the Committee in December, January and February at Delhi.

The full committee along with the National Coordinators under the Chairmanship of Shri Mukul Wasnik met on Feb 11, 2011, where each chapter was summarized and presented and the decision on State Consultations was made.

To streamline all loose ends, the full committee met on Feb 28, Mar 1 & 2, 2011.

The State Consultations were held subsequently across the country and all recommendations and suggestions were discussed and those found appropriate by the Committee, were incorporated since many of the suggestions made, lent themselves to plans, policies and programmes.

Several activists, leaders and NGOs were involved in the making of this chapter. Amongst these were:

- Ms. Jeeja Ghosh, Kolkata
- Mr. C. Mahesh, Bangalore
- Mr. Pincha, New Delhi
- Mr. Rajesh Adusudani
- Mr. V K Agarwal, Advocate, High Court - Rajasthan
- Mr. Mukesh Kumar, Faridabad
- NCPEDP (vide NCPEDP's suggestions on Employment)
- C B R Forum
- AICB
- N F B
- N A D
- N A B
- B P A
- N A M I
- Sense International (India)
- Clarke School for the Deaf & Mentally Retarded
- A C M I
- I I C P

AKHIL PAUL

Akhil Paul was part of four Sub-Groups (**Preamble and Definition; Education; Health, Habilitation and Rehabilitation; Human Resource Development**). Primarily, as a representative of ‘deafblind’ people, their families and of the organisation working on deafblindness, Akhil Paul ensured the inclusion of this excluded and marginalised group within the draft of the Bill.

Preamble and Definition

As far as the proceedings of the Sub-Group on “Preamble and Definitions” were concerned, the sub group had lengthy, informed and detailed discussions, which mainly focussed on defining the ‘disability’. The Sub-Group comprised - Dr. Karna, Ms Poonam Natarajan, Ms Merry Barua and Akhil Paul. Apart from these members support from other Committee Members like- Ms. Jayashree Ravindran, Dr. Bhushan Punani, Mr. Rajive Raturi and Ms. G. Syamala too was made available. The Sub-group met five times to discuss various issues related to Preamble and Definitions and it was unanimously agreed to include “Objects and Reasons” for drafting a new bill of the Rights of Persons with Disabilities to replace the Persons with Disability Act 1995. The sub group also agreed to add a chapter on “Guiding Principles for Implementation and Interpretation” of the proposed Bill after its due enactment.

There have been detailed discussions about defining ‘disability’ in a generic manner v/s giving enumerative definitions of all disabling conditions and the members unanimously agreed to include both definitions. In the “definition’ section we proposed to include only a generic definition and an enumerative list of disabling conditions under the Section on “Capability Developments”. As the “Definition” section needs to explain/ define all the important terminologies used in the text of the Statute, it was finalised only when other chapters were fully completed.

Subsequently the draft was translated in all major regional languages and sent out for consultations in each state where representatives from remote districts and villages participated to enrich the content and provisions of the Bill. As a committee member Akhil Paul was part of these consultations at four different states - Gujarat, Uttar Pradesh, Mizoram and Meghalaya.

List of Agencies Consulted by the subgroups During the Drafting:

S. No.	Name of the Organisation	State	Name of the Contact Person
1.	Akanksha Lion’s School for the Mentally Handicapped	Raipur, Chhattisgarh	Mr. K.K. Nayak
2.	Andhjan Kalyan Trust	Dhoraji, Gujarat	Mr. Prafulbhai N. Vyas
3.	Ashadeep Rehabilitation Centre for the Handicapped	Patna, Bihar	Sr. Lissy
4.	Association for the welfare of Handicapped	Faridabad, Haryana	Ms. Himani Arora

Annexure 6 –Sub-group Meeting Reports

S. No.	Name of the Organisation	State	Name of the Contact Person
5.	Association for the welfare of the Handicapped	Calicut, Kerala	Mr. K. P. Mohammed
6.	Bethany Society	Shillong, Meghalaya	Mr. Carmo Noronha
7.	Blind People's Association	Ahmedabad, Gujarat	Ms. Nandini Rawal
8.	Blind Welfare Council	Dahod Gujarat	Mr. Yusufi Kapadia
9.	Cheran Region Christian Society for the Disabled Children	Coimbatore, Tamilnadu	Mr. H. Samson
10.	Clarke School for the Deaf and Mentally Retarded	Chennai, Tamilnadu	Dr. Leelavathy Patrick
11.	Digdarshika	Bhopal, Madhya Pradesh	Mr. Sumit Roy
12.	Helen Keller Institute for the Deaf and Deafblind	Mumbai, Maharashtra	Mrs. Beroz Vacha
13.	Holy Cross Service Society	Trichy, Tamilnadu	Prof. S. Prabakar Immanuel
14.	Jeevan Jyoti School for the Blind	Varanasi, Uttar Pradesh	Sr. Jyotika
15.	Kutch Vikas Trust	Bhuj, Gujarat	Fr. George Kunnath
16.	L. V. Prasad Eye Institute	Hyderabad, Andhra Pradesh	Ms. Beula Christy
17.	L.K.C. Sri Jagdamba Andh Vidyalaya	Sriganganagar, Rajasthan	Shri. Swami Brahmdevji Maharaj
18.	Madhya Pradesh Welfare Association for the Blind	Indore, Madhya Pradesh	Dr. M. V. Shirdhonkar
19.	National Association for the Blind	New Delhi	Mr. T. C. Alakh
20.	National Association for the Blind	Navsari, Gujarat	Mr. Deepak Rawal
21.	National Association for the Blind	Idar, Gujarat	Prof. Bhaskerbhai Mehta
22.	National Association for the Blind	Kullu, Himachal Pradesh	Ms. Shalini Vats Kimta
23.	National Association for the Blind	Bangalore, Karnataka	Mrs. Saroja Ramachandra

S. No.	Name of the Organisation	State	Name of the Contact Person
24.	National Association for the Blind	Nashik, Maharashtra	Mr. Ashok Bang
25.	National Association for the Blind	Trivandrum, Kerala	Mr. Manoj Kurian
26.	National Association for the Blind	Mumbai, Maharashtra	Mr. Raman Shankar
27.	National Inst. For the Empowerment of Persons with Multiple Disabilities	Chennai, Tamilnadu	Dr. Neeradha Mohit
28.	National Institute for the Hearing Handicapped	Mumbai, Maharashtra	Dr. R. Rangasayee
28.	National Institute for the Mentally Handicapped	Secunderabad, Andhra Pradesh	Ms. Shaileja Rao
29.	National Institute for the Visually Handicapped	Dehradun, Uttaranchal	Dr. Anuradha Mohit
30.	Nehru Seva Sangh	Banpur, Orissa	Ms. Sarojini Das
31.	Saksham Daksh	Noida, Uttar Pradesh	Ms. Bipasa Sengupta
32.	Shikshit Yuva Sewa Samiti	Basti, Uttar Pradesh	Mr. Gopal Krishna Agrawal
33.	Shishu Sarothi	Guwahati, Assam	Mr. Arman Ali
34.	Society for the Visually Handicapped	Kolkata, West Bengal	Dr. Ruma Chatterjee
35.	Swabalamban	Agartala, Tripura	Mr. Shyamal Deb
36.	Uma Educational Trust Society	Kakinada, Andhra Pradesh	Mr. S. P. Reddy
37.	Upahar Madurai	Madurai, Tamilnadu	Mr. L. Shanmugam
38.	Andhjan Vividh-laxi Talim Kendra	Jamnagar, Gujarat	Mr. Prakash Mankodi

BHUSHAN PUNANI

Process Report – Education

A Sub Group was constituted in the first meeting of the Drafting Committee on New Disability Rights Act held on 10th June, 2010 to address issues of Education of persons with disabilities in the new law. The members of the sub group to draft the chapter on 'Education' included the following: Dr. Uma Tuli, Ms. Merry Barua, Ms Poonam Natarajan, Mr. S. Narayanan and Dr. Bhushan Punani.

In the first meeting of the sub group held at Action for Autism on the 13th July, 2010 the members decided the Plan of Action as first preparing the first draft of the Chapter, modifying it based upon comments of the members, circulating revised draft among Civil Society, presenting of draft to Legal Consultant, circulating the same among members of Drafting Committee, presenting the same in the meeting of the Civil Society and uploading on the website of the NALSAR University of Law, and revising it further after State Consultations.

The second Meeting of the Committee was held on 22nd July in New Delhi.

On the Copyright Act the sub group suggested inclusion of the following in the draft of the new law: Notwithstanding anything contrary to Copyright Act, all the Braille, audio and large print material specially required by persons with disabilities and print material that can be understood by Augmentative & Alternative Users shall be exempt from the Copyright laws and such other provisions.

In subsequent deliberations the sub group decided on the shifting of some Paragraphs to Other Chapters. The Members also found that a number of provisions included in the chapter on Education actually could be shifted to other chapter as the same were more relevant to that chapter.

The group also recommended the following;

Educational Activity: The Appropriate Government and Local Authorities shall consider, initiate, promote, support and guide education of children with disabilities as an educational activity and not a welfare activity. The education and allied activities shall be carried out under the auspices of the Ministry of Human Resources Development. The Ministry of Social Justice shall provide and support for assistive devices, use of technology and residential accommodation etc.

The working Draft: Based on revised chapter on Education, the Legal Consultant prepared the Working Draft. The chapter on Education was discussed once again on 2nd January, 2011 and again discussed in the meeting of the committee held on 13th and 14th January, 2011.

The State Consultations: The State Consultations were held across the country during the month of February, 2011. The major suggestions in respect of Education were: Free Education up to Post-Graduation and Research Fellowship; Transfer of parent with a child with disability to a place where facilities are available; if it is sought for by the parent such transfer shall be considered on priority; No parent with a child with disability will be transferred arbitrarily without taking into account the facilities of education, services to his or her child and other convenient factors; Special Teacher to be trained by RCI with relaxed norms; Special teacher to be employed in all schools; 10% reservation instead of 6% in employment.

Efforts were made to include all these suggestions that came in at the state consultation level.

Advocates Meeting: Finally the draft law including chapter on Education was discussed in the meeting with lawyers.

All the suggestions made by the lawyers are under consideration of the Legal Consultant and the final version of the draft law will be based on inputs received during meetings of the Committee, state consultations, and meeting with Civil Society and consultation with the lawyers. The most unique observation about the chapter on "Education" is that in every meeting, this chapter was discussed at length; all suggestions received during the period of consultation were incorporated in the revised draft and this chapter contributed towards various components of other chapters as well.

DR. SRIKALA BHARATH

Process Report – Health, Habilitation and Rehabilitation

The Ministry of Social Justice and Empowerment in its mandate to formulate a new act for the Persons with Disability decided to establish a committee.

Director/Vice Chancellor of NIMHANS was invited to be a member of the committee to provide inputs as an expert in relation to persons with disabilities due to psychosocial illnesses and neurological illnesses. Dr. Srikala Bharath Professor of Psychiatry & Consultant – Adult and Geriatric Psychiatric Services, NIMHANS was delegated to be a representative committee member.

Dr. Bharath was a member of the Sub group on Health, Habilitation and Rehabilitation Sub committees. Other members included Dr, Dharmender – Director of the IPH (an orthopaedic surgeon), Mrs Rukmini Pillai – Torch Bearers (NGO) also a care giver, Dr. Kothari – Rehabilitation Specialist – AIIMS Trauma Centre and Dr. Vasanth Amte.

The sub group on Health, Habilitation and Rehabilitation met two times and members also had meetings with groups in their individual capacities. During one of the Health Sub group meetings which was attended by the Chairperson Dr. Sudha Kaul and the Legal Consultant Prof Amita Dhanda, a shadow report was presented.

Dr. Bharath also Participated in the Disability Act meeting organized twice by the Richmond Fellowship Society at Bangalore to discuss the working draft with the various stakeholders. Presentations were made to understand the current working draft of the New Disability Act. Many stakeholders especially those with Mental Illness participated in the discussions. Other mental health professionals like Dr. Kalyanasundaram, Dr. Mohan Isaac, Dr. Pratima Murthy and Dr. T Murali and lawyers participated in the meeting. In the second meeting organized by Richmond Fellowship Dr. Nirmala – of ACMI also participated.

Two meetings organized by Dr. Srikala Bharath were held in NIMHANS for discussion of certain specific issues pertaining to Civil and Political Rights of the PWDs and removal of Plenary Guardianship for persons with high support needs. The first meeting was with a small group of mental health professionals working in the area of disability and the second meeting was with a large multidisciplinary group involving all clinical departments of NIMHANS (Department of Psychiatry, Child and Adolescent Psychiatry, Clinical Psychology, Psychiatric Social Work, Health Education, Nursing, Neurological and Psychiatric Rehabilitation). The Director of NIMHANS provided a written feedback to the Chairperson of the Committee regarding NIMHANS position on the aforementioned issues and the current working draft.

Issues pertaining to the New Disability Act were raised in the Annual Conference of the Indian Psychiatric Society at New Delhi by Dr. Bharath and the IPS president was urged to communicate with the chairperson of the Committee to enable both the New Disability Act and the Mental Health Care Act to support mentally ill persons and their care givers in unison and not in contradiction.

Dr. Srikala Bharath also attended the Karnataka State Consultation on the draft law organized by CBR Forum at Bangalore.

Dr. Srikala also attended two meetings of the MHA to discuss harmonizing PwD and MHCA. One was a Southern Regional Level meeting at NIMHANS by the Ministry of Health and Family Welfare and the other one was the NAAJMI meeting held at Bangalore on MHCA.

Dr. Srikala Bharath as a representative of NIMHANS has repeatedly tried to raise awareness to deal with all stakeholders of the psychosocially affected – to have a psychosocial-medical model and not to take an anti-medical or anti-therapeutic model. Need for balanced view with family members as interested partners was stressed. Need for collaboration and liaison between the Ministries of SJE and Health and Family Welfare in harmonizing the acts was also urged. The need to include the mentally ill in the highly vulnerable group in the New Disability Act, need to recognize the differential needs of the persons with severe mental illness and developmental disabilities were other issues stressed by Dr. Bharath. The need for providing certain caveats in the Civil and Political Rights of the mentally ill understanding the nature of the illness was pointed out repeatedly.

IAN CARDOZO

Process Report - Human Resource Development

The sub group for drafting the chapter on Human Resource Development comprised the following members:

Mr Khuntia
Mr Akhil Paul
Dr. Govinda Rao
Maj. Gen. Ian Cardozo
Ms G Syamala

The first meeting of the sub group was held on 25th June 2010 at the RCI office. Members present: Maj. Gen. Ian Cardozo and Ms G Syamala.

The second Meeting was held at Ministry of Human Resource Development on 19th July 2010. The group had extensive discussions on the subject and Ms Syamala was asked to collate all information for a presentation to be made before the next meeting for the full committee. Members present: Mr Khuntia, Mr Akhil Paul, Dr. Govinda Rao, and Ms G Syamala.

The full committee met at ISIC on 22nd July and a presentation on HRD was made by Ms Syamala before the full committee. Sub group members present, Dr. Govinda Rao, Mr Akhil Paul and Gen Cardozo also participated in the presentation and full committee inputs were gathered.

The sub group again met for the fourth Meeting at AADI in New Delhi on 1st Sep 2010. Experts too were invited for this meeting and their inputs on the draft chapter were taken. Experts included Dr. Sudesh Mukhopadhyay, Dr. Sunanda Reddy, Dr. Anita Ghai, Dr. Mishra, Ms, Radhika Alkazi and Ms. Madhu Grover. Members of sub group present included Dr. Govinda Rao, Dr. Sudha Kaul and Ms G Syamala.

On 17th Sep 2010 Sub group member Ms G Syamala made a presentation on the chapter on HRD to the Legal Consultant and some committee members at NALSAR in Hyderabad.

Presentation on the refined chapter on HRD was made by Maj. Gen. Ian Cardozo and Ms G Syamala at Vigyan Bhawan on Oct 2010 before civil society members and inputs were gathered for consideration.

The committee again met at the ISIC on 12th and 13th January and a presentation on the chapter with inputs from experts and other civil society members was made by Ian Cardozo to the full committee.

Subsequently the chapter was presented in the meeting for national coordinators which was attended by Hon'ble Minister Shri Mukul Wasnik and was then also presented in the state level consultations and the Legal Consultation.

ANNEXURE 7 – ACKNOWLEDGMENTS

The Committee acknowledges with gratitude the following persons for their support in this endeavour:

Legal Consultant team:

Dr. Amita Dhanda – Prof and Head, Centre for Disability Studies, NALSAR, Hyderabad

Team members

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Part 2

The Rights of Persons with Disabilities Bill, 2011

JUSTIFICATORY NOTE ON PROPOSED BILL

Construction of the Terms of Reference

The proposed bill recognizes the equality of persons with disabilities and prohibits direct or indirect discrimination on the basis of disability. The Bill also makes provision for the practical implementation of all the civil political rights included in the Convention on the Rights of Persons with Disabilities (CRPD). Many of these rights are also affirmed by the Constitution of India. The inclusion of provisions on these rights in the Bill is in accordance with the terms of reference given to the Committee as the Bill, unlike the Constitution, is not the source of these rights for persons with disabilities. The Bill is the implementation primer of these rights as it details out how these rights should be realized for persons with disabilities. The Right to Information Act and the Right to Education Act of 2009 were enacted with similar objectives.

The Constitution of India includes persons with disabilities generically within the universal categories of person and citizen; it does not even mention disability in the prohibited grounds specified in articles 15 and 16. Consequently, when the Bill lays down procedures by which the civil-political rights guaranteed in the CRPD and the Constitution of India will be realized for persons with disabilities, it provides for matters which are not addressed in the Constitution. The rights guaranteed by the Constitution need adaptation to be of value for persons with disabilities. For example, the right to equality and non-discrimination is of little value to persons with disabilities without accessibility and reasonable accommodation. The freedom of speech and expression holds little meaning without recognition of the means, modes and formats of communication practiced by persons with disabilities. The Bill undertakes this exercise in order to implement the CRPD and the Constitutional mandate for persons with disabilities. Consequently, the provisions of the Bill are distinct from and not a duplication of the provisions of the Constitution.

Preference to Generic over Specific Language

Article 4 (3) of the CRPD requires that there shall be close consultation with persons with disabilities through their representative organizations for making any legislation to implement the

convention. The Committee's report outlines in detail this process of consultation. The text of the legislation explicitly footnotes the suggestions received at the various state consultations as also in the legal consultation and the manner in which the working text of the proposed bill was altered to incorporate the various suggestions received. Insofar as the suggestions put forth at the state consultations were informed by the lived experience of persons with disabilities, they were often, though not always, very specific in their import. Keeping in view the inflexible nature of the legal text, these specific suggestions have been converted into generic ones. Thus for example, the naming of every kind of transportation, public building or service has been avoided and generic terminology used. In some parts of the legislation however illustrative naming has been practiced. In the main, this illustrative naming has been used for those groups, services or institutions or areas who may be lost within generic language unless explicitly named. Thus, for example, jails, prisons and places of detention have been explicitly named in the definition of public building. On a similar reasoning, the requirements of persons with disabilities in rural areas, tribal regions, hilly areas and conflict zones have been explicitly named.

Principles Guiding Inclusion in Legislation, Rules, Schemes and Programs

The mandatory nature of law makes it an attractive medium for ensuring entitlements. Consequently, both during the civil society consultations prior to the working draft; as also in the state consultations on the working draft; a number of memorandums were received which sought very particular protections in the text of the new legislations; or made very specific suggestions on the procedure of implementation. In order to respect the sentiment behind these suggestions, without making their acceptance a stranglehold on future development, this legislation has been guided by the following principles of incorporation. The rights and the principles informing the implementation of the rights have been incorporated in the text of the law. Matters of detailed procedure which may need revision have been left to be addressed in the rules. The guaranteeing of entitlements is in the text of the law; the details of the scheme or programme through which the entitlement shall be implemented has been left to be notified in the particular scheme or program. This has been done to avoid the dangers of both over prescription and excessive flexibility and to obtain the optimum degree of compulsion and flexibility.

Nature of Duty Bearer

The Supreme Court of India has in its interpretations of Article 12 of the Indian Constitution continually underlined the fact that the entity of State is much wider than just the central, state and local governments. Hence, the duty to respect the rights guaranteed under Part III of the Indian Constitution does not only reside in these governments alone. In relation to practices of social discrimination, the Constitution of India has even placed obligations on the people. Thus, the Constitution has horizontal application when it addresses the issue of social exclusion. The CRPD also requires state parties to “take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise”. Keeping in view, the mandate of the CRPD and the text and jurisprudence of the Indian Constitution, the proposed legislation makes appropriate governments, concerned establishments and individual persons, as the case may be, responsible for fulfilling the obligations of the statute.

Judicial Precedents and Juristic Theory as Source of Law

Indian and foreign judicial precedents; non-discrimination legislation of other countries and juristic theory has been drawn upon to shape the content of the proposed Bill. Thus, for example, the equality and non-discrimination provision especially the definition of reasonable accommodation has been constructed after studying the manner in which the concept has been interpreted by courts of countries which have incorporated the concept in their domestic legislation. The legislative provisions and judicial decisions which deny certain rights such as legal capacity to persons with disabilities antedate disability rights jurisprudence. These precedents were made in the absence of persons with disabilities and hence are to that extent decisions arrived at without providing a hearing to an essential party in the matter. In the face of this reality certain parts of the proposed legislation have only drawn from the text of the CRPD; the juristic writings on the CRPD and the pronouncements of the Committee on the Rights of Persons with Disabilities which is the authoritative body of the United Nations on the nature of the obligation under the Convention.

The New Disability Rights Paradigm

The CRPD has ushered in a new paradigm of disability rights. The social model of disability; universal legal capacity with support and no forced interventions are critical components of this new paradigm. The proposed recognizes all three features of the new paradigm in its text and makes a commitment to make them the driving force of disability rights. Consequently it mandates a range of ground level initiatives such as the development of a socio-medical scale; regimes of support and alternatives to institutions so that the new paradigm in fact informs the lived reality of persons with disabilities. As these alternatives do not exist at present, to guard against a situation of a legal vacuum, it makes a range of transitional arrangements on questions such as definition of disability; guardianship and compulsory care. These transitional arrangements have been made in such manner as to ensure that the values of the new paradigm even inform the transitional period.

Status of Jammu and Kashmir

Article 370 of the Constitution accords a distinct status to the state of Jammu & Kashmir in matters of law making. It is due to this constitutional status that the standard statutory formulation is that a statute “extends to the whole of India except the state of Jammu and Kashmir”. The consultations on the working draft of this statute were also undertaken in the state of Jammu and Kashmir. In view of this active participation, Clause 1 (2) has departed from the standard statutory formula of referring to the State of J&K and drafted this clause by specifying the constitutional procedure by which this law could be extended to Jammu and Kashmir.

CRPD as Guiding Principle

The statement of objects and reasons outline that the legislation has been enacted in order to bring the Indian Disability Law in harmony with the CRPD. However, the statement of objects and reasons is examined by Courts only when there is an ambiguity in the text of the law. Consequently in order to ensure that the CRPD shall operate as a guiding principle for both administrators and adjudicators clause 3 has been included. This clause has been explicitly

incorporated to underscore that the CRPD should inform implementation and adjudication at all times and should not be only looked at when there is an ambiguity in the text of the law.

Structure of the Law

Other than preliminary part, the legislation has been divided into six parts. Part I contains the rights and entitlements; Part II provides for powers, duties and responsibilities; Part III elaborates on regulatory and monitoring authorities; Part IV addresses grievance redressal; Part V deals with offences and penalties; and Part VI is miscellaneous segment which is followed by a schedule on the named list of disabilities which accompanies the generic definition.



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THE RIGHTS OF PERSONS WITH DISABILITIES BILL, 2011

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Statement of Objects and Reasons

India has ratified the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and undertaken the obligation to ensure and promote the full realization of all human rights and fundamental freedoms for all Persons with Disabilities without discrimination of any kind on the basis of disability. In fulfillment of this international commitment, the country is obligated to enact suitable legislation in furtherance of the rights recognized in the UN CRPD.

India enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 in fulfillment of its obligation as a signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region. This legislation has been on the statute book for nearly 15 years and has been the basis of an empowering jurisprudence on the rights of persons with disabilities. Whilst the need to retain the empowering jurisprudence is unequivocally acknowledged; it is also recognized that the present Persons with Disabilities Act, 1995 does not incorporate many of the rights recognized in the UN CRPD.

Furthermore, the UN CRPD recognizes that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. The Persons with Disabilities Act, 1995 on the other hand has provided for an impairment based exhaustive definition of disability. Consequently, people with impairments not expressly mentioned in the Act have often been denied the rights and entitlements recognized in the Act.

It is proposed to repeal the extant legislation and replace it with a comprehensive law which is in conformity with the UN CRPD and hence this Bill.

The salient features of the proposed legislation are as follows:

- a. to guarantee equality and non-discrimination to all persons with disabilities;

- b. to recognize legal capacity of all persons with disabilities and make provision for support where required to exercise such legal capacity;
- c. to recognize the multiple and aggravated discrimination faced by women with disabilities and induct a gendered understanding in both the rights and the programmatic interventions;
- d. to recognize the special vulnerabilities of children with disabilities and ensure that they are treated on an equal basis with other children;
- e. to mandate proactive interventions for persons with disabilities who are elderly, confined to their homes, abandoned and segregated or living in institutions and also those who need high support;
- f. to establish National and State Disability Rights Authorities which facilitate the formulation of disability policy and law with active participation of persons with disabilities; dismantle structural discrimination existing against persons with disabilities and enforce due observance of regulations promulgated under this Act for the protection, promotion and enjoyment of all rights guaranteed in this Act;
- g. to specify civil and criminal sanctions for wrongful acts and omissions.

Preamble

The Constitution of India resolves to secure to all its citizens justice; liberty; equality; and fraternity. Citizens with Disability are an essential part of human diversity;

India has signed and ratified the United Nations Convention on the Rights of Persons with Disabilities and thereby made an international commitment to promote, protect and ensure the rights recognized in that Convention;

Persons with Disability have a right:

- to integrity, dignity and respect with full participation and inclusion;
- to live a life free of shame, ridicule, or any form of disempowerment and stereotyping;
- to be entitled on an equal basis with others to all civil-political and socio-economic rights guaranteed by international and national law.

To this end the Union of India, in its sixty-third year, enacts the Right to Persons with Disabilities Act as follows:

PRELIMINARY

1. Short Title, Extent and Commencement

- (1)** This Bill may be called the “**The Rights of Persons with Disabilities Act, 2011**”;
- (2)** It extends to the whole of India. However, its application to the State of Jammu & Kashmir shall be specified by the President of India by order only after the State of Jammu & Kashmir gives its concurrence on the application of this law to that State;
- (3)** It shall come into force on such date as the Central Government may by notification appoint but in no case later than one year after its assent by the President.

2. Definitions

In this Act, unless the context otherwise requires:

- (1) ‘Abuse’** means any act or series of acts including physical force on the body of the person with disability; or insulting, ridiculing or humiliating; or any conduct of a sexual nature that violates the dignity of the victim; or depriving with economic and financial resources; or depriving or denying support which the person with disability had demanded or which could be reasonably understood to have been demanded; with the intention to cause physical, emotional, mental, physical, or sexual injury and includes regular attempts at doing such act;
- (2) ‘Appropriate Government’** means:-
 - a. in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonment Act, 1924, the Central Government;

- b. in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, any government or body constituted under the sixth schedule of the Constitution of India, the State Government;
- (3) **'Augmentative and Alternative Communication (AAC)'** are alternative systems or methods of communication that may supplement or complement the use of one's own speech to fulfil the daily communication needs of persons with speech, communication or language disabilities in accordance with their requirements and enables them to participate and contribute to their community and society;
- (4) **'Barrier'** means any factor that impedes, prevents or obstructs the full and effective participation, of persons with disabilities in society. This will include attitudinal, communicational, cultural, economic, environmental, institutional, political, religious, social and structural obstructions;
- (5) **'Care giver'** is a person who provides paid care, support and assistance to the person with disability;
- (6) **'Communication'** includes languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;
- (7) **'Convention'** means The United Nations Convention on the Rights of Persons with Disabilities;
- (8) **'Direct Discrimination'** occurs when whether intentionally or unintentionally:
- a. a person or group of persons to whom one or more prohibited grounds apply is treated less favourably than another person or another group of persons is, has been, or would have been treated in a comparable situation; or
 - b. for a reason which is at least in part related to one or more prohibited grounds, a person or group of persons is subjected to a disadvantage; or
 - c. there is failure to provide reasonable accommodation;
 - d. a person or a group of persons is harassed or victimized.
- (9) **'Disadvantage'** means any restriction on or denial of a right, freedom, entitlement, remuneration, goods, benefit, accessibility, service provision,

opportunity, license or any other social, political, economic, cultural, spiritual, religious or civil interest; and includes any segregation of a person or a group of persons with disabilities to whom one or more prohibited grounds apply in comparison to others;

Explanation

It is immaterial that such restriction, denial or segregation is unintentional, or that it is intended for the purpose of protecting a person to whom one or more prohibited grounds apply.

- (10) **‘Disabled Persons’ Organizations’** (DPOs) means organizations controlled by a majority of persons with disabilities at the board and membership levels which undertake service delivery and advocacy and provide the opportunity to develop skills in the negotiation process, organizational abilities, mutual support, information sharing and other vocational skills and opportunities;
- (11) **‘Discrimination on the basis of disability’** means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;
- (12) **‘District Disability Rights Tribunal’** means the District Disability Rights Tribunals established under Section 134 of this Act;
- (13) **‘Establishment’** means and includes:
- a. Departments and Ministries of Government;
 - b. Local authorities and authorities or bodies owned, controlled or aided by the Central or State Government;
 - c. Any statutory or non-statutory body created, owned, financially or administratively controlled or aided by the Central or State Government or any such body performing public or civic functions and includes Government Companies as defined in Section 617 of the Companies Act, 1956;
 - d. Any contractor who has been awarded a public tender;
 - e. Any company, firm, cooperative or other society, association, trust, agency, institution, organization, union, landlord, industry, supplier of goods or services, factory or other non-statutory body which is not covered under

- clause (i) to (iv) and provides education, employment, health care ,rehabilitation or other services in rural and urban areas;
- f. Any establishment as the Central or State Government may notify in the Official Gazette.

Explanation

The term 'industry' shall have the same meaning as in Section 2 (j) of the Industrial Disputes Act, 1947.

- (14) **'Experiential expert'** is a person with disability who has through personal experience, advocacial intervention or service provision acquired expertise in relation to the impairment and the related barriers; or a family care giver who has through personal experience, advocacial intervention or service provision acquired expertise in relation to the impairment and the related barriers;
- (15) **'Exploitation'** occurs when any person having a relationship whether personal, professional or fiduciary or otherwise holding the trust and confidence of the person with disability, knowingly, or by deception or intimidation, obtains or uses or tries to obtain or use her or his funds, assets, or property with an intent to temporarily or permanently deprive such person of their use, benefit, or possession, or to benefit someone other than the person with disability without obtaining her or his consent;
- (16) **'Family care-giver'** is a person who is a member of the family of person with disability who provides voluntary care, support and assistance to the person with disability;
- (17) **'Fund'** means the National Fund for Persons with Disabilities established under this Act;
- (18) **'Harassment'** means unwanted conduct related to any prohibited ground which takes place with the purpose or effect of violating the dignity of a person or of creating an intimidating, humiliating or offensive environment;
- (19) **'Hate Speech'** means any kind of expression through any media whether through writing, giving speeches or holding discussions at meetings of groups of individuals with an intention to cause mental trauma, or incite hatred against persons with disabilities or their families;

- (20) **‘High Support’** means that support, which may be needed by individuals who require ongoing intensive support for activities of daily living; independent and informed decision-making; accessing facilities and participating in all areas of life including education; employment; family and community life; treatment and therapy; recreation and leisure. The need for high support often arises due to significant disability in a single area or multiple or cumulative disabilities in cognition, communication, sensory – perceptual processing (not including blindness), emotional regulation, socialization, behaviour and mobility in interaction with attitudinal or environmental barriers;
- (21) **‘Indirect Discrimination’** occurs when a provision, criterion or practice, even though neutral on the face of it, has the effect of putting persons to whom one or more prohibited grounds apply at a disadvantage compared with others;
- (22) **‘Language’** includes spoken and signed languages and other forms of non spoken languages;
- (23) **‘National Disability Rights Authority’** means the National Disability Rights Authority established under Section 94 of this Act;
- (24) **‘National Disability Rights Tribunal’** means the National Disability Rights Tribunal established under Section 141 of this Act;
- (25) **‘Persons with disabilities’** are persons with any developmental, intellectual, mental, physical or sensory impairments including those mentioned in Schedule 1¹ of the Act, which are not of a temporary nature, and which in interaction with various barriers may hinder full and effective participation in society on an equal basis with others;
- (26) **‘Premises’** includes (i) a structure, building, aircraft, vehicle or vessel; and (ii) a place (whether enclosed or built on or not); and (iii) a part of premises (including premises of a kind referred to in sub-clause (i) or (ii));
- (27) **‘Prescribed’** means prescribed by rules made under this Act;
- (28) **‘Prohibited grounds’** are the grounds on the basis of which persons with disabilities may be discriminated against, and include the following grounds:
- a. Disability;
 - b. Perceived disability, whether the perception is accurate or otherwise, or;
 - c. Association of a person with persons to whom one or more prohibited grounds apply, or;

¹As suggested at the Legal Consultation

- d. A combination of disability and any other ground such as religion, race, caste, tribe, place of birth, age, language, sex, gender identity, sexual orientation, pregnancy, maternity, marital status, care giver status, economic status, political or other opinion.

(29) 'Public building' means a building, irrespective of ownership, which is used and accessed by the public at large; and includes jails, prisons and places of detention;

(30) 'Reasonable Accommodation' means:

- a. where a provision, criterion or practice puts a person to whom one or more prohibited grounds apply at a disadvantage in relation to a relevant matter in comparison with other persons, to take such steps as it is reasonable to have to take to avoid the disadvantage;
- b. where a physical feature puts a person to whom one or more prohibited grounds apply at a disadvantage in relation to a relevant matter in comparison with other persons, to take such steps as it is reasonable to have to take to avoid the disadvantage;
- c. where a person to whom one or more prohibited grounds apply would, but for the provision of an auxiliary aid, be put at a disadvantage in relation to a relevant matter in comparison with other persons, to take such steps as it is reasonable to have to take to provide the auxiliary aid;
- d. where clause (i) or (iii) above relates to the provision of information, the steps which it is reasonable to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(31) 'Registered Organization' means an association of persons with disabilities or a Disabled Persons' Organisations, association of parents of persons with disabilities, association of persons with disabilities and family members, or a voluntary, non-governmental or charitable organization or trust, society, non-profit company working for persons with disabilities duly registered under relevant Acts for the time being in force;

(32) 'Self Help Group' means an organization formed by persons with disabilities with joint resources, for gathering information, undertaking advocacy, providing economic support, schemes for income generation, offering community based support services or care through mutual support mechanisms;

- (33) **‘Services’** means services provided by members of any profession or trade, or provided by any government, local authority or establishment and includes services relating to banking and finance; education; health; insurance; rehabilitation; entertainment, recreation and hospitality; transport or travel; and telecommunications;
- (34) **‘State Disability Rights Authority’** means the State Disability Rights Authority established under Section 115 of this Act;
- (35) **‘State Disability Rights Tribunal’** means the State Disability Rights Tribunal established under Section 138 of this Act;
- (36) **‘Subject expert’** means a person whether with or without disability who has through a formal course of study acquired recognized educational qualifications and has also obtained experience through the practical application of such knowledge;
- (37) **‘Support network’** refers to a group which supports a persons with disabilities in carrying out his or her life activities. This network may be made of family caregivers, family members, friends, service providers, Disabled Persons’ Organizations, self help groups and others who have a personal connection and are in a trusted relationship with the person with disability;
- (38) **‘Systemic violation’** refers to policies or procedures that violate the rights of persons with disabilities;
- (39) **‘Universal design’** means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall also apply to assistive devices including advanced technologies for particular groups of persons with disabilities;
- (40) **‘Victimization’** means subjecting or threatening to subject any following persons to any disadvantage:
- a. one who brings a proceeding under this Act; or
 - b. gives evidence or information in connection with a proceeding under this Act; or
 - c. takes any other steps in connection with or in furtherance of the purpose of this Act; or
 - d. reports (whether express or not) that another person has contravened this Act.

- (41) **‘Violence’** means any random or unprovoked act or threat of such act on any persons with disabilities that harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so;

3. Guiding Principle for Implementation and Interpretation

Any court, person or authority interpreting this Act shall be guided by the United Nations Convention on the Rights of Persons with Disabilities which has been signed and ratified by India.

PART I: RIGHTS AND ENTITLEMENTS

4. Right to Equality and Non-Discrimination

- (1) All persons with disabilities are equal before the law and are entitled to equal protection and equal benefit of the law without any direct or indirect discrimination;
- (2) No person with disability shall be discriminated on the basis of any of the prohibited grounds; unless it can be shown that the impugned act, provision, criterion, practice, treatment or omission is a proportionate means of achieving a legitimate aim;

Provided that harassment, victimisation or a failure to provide reasonable accommodation may not be justified under any circumstance;

- (3) In no case shall a person with disability be forced or compelled to partly or fully pay any of the costs incurred to provide reasonable accommodation or any of the other obligations imposed in this section;
- (4) All persons with disabilities are entitled to equal and effective legal protection from discrimination on any of the prohibited grounds;
- (5) Any measure, intervention, interpretation which has the effect of denying or withdrawing or eliminating the legal capacity of any person with disability shall constitute discrimination;

- (6) Any affirmative action or measure aimed to accelerate or achieve de facto equality of persons with disabilities shall not constitute discrimination;
- (7) In any case upon it being found that an establishment or person has practiced discrimination which such establishment or person has failed to justify, the District Disability Rights Tribunal or the State or National Disability Rights Tribunal as the case may be, shall make declaratory, mandatory, injunctive, compensatory, supervisory or any other suitable orders against such establishment or person or to redress the victim for any disadvantage or mental anguish, suffered because of such discrimination and stop any further discrimination against the victim or persons situated in a position similar to the victim;
- (8) The concerned Disability Rights Tribunal shall also require such establishment or person to bear the costs of the proceedings and to pay any interest that may be due.

5. Pro-Active Interventions for Persons with Disabilities with Increased Vulnerability

- (1) The appropriate governments shall devise and implement pro-active, dedicated and timely interventions in order to guarantee full enjoyment of all rights and benefits by persons with disabilities with increased vulnerability, on an equal basis with others.

Explanation

Persons with disabilities with increased vulnerability shall mean persons with disabilities who due to the nature of their impairment combined with attitudinal, economic, or locational barriers are subject to familial or social exclusion; and shall include persons with disabilities who are elderly; or confined to their homes²; or are concealed, neglected, abandoned or segregated; or living in institutions; or destitute or homeless.

- (2) The interventions referred to in sub section (1) shall be designed to progressively obtain the full inclusion and total participation of persons with disabilities with increased vulnerability in all spheres of life;

² As suggested at Andhra Pradesh State Consultation

- (3) The appropriate governments shall consult persons with disabilities and their families to design schemes and programmes for persons with disabilities with increased vulnerability which will pro-actively ensure their meaningful participation in familial and social interactions; assist their access to all services, facilities and information; and ensure on an equal basis the enjoyment of all rights and benefits guaranteed to persons with disabilities;

6. Women and Girls with Disabilities

- (1) All women and girls with disabilities are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law;
- (2) The appropriate governments and concerned establishments shall take all suitable measures, including devising and implementing gender-specific programmes and schemes, to ensure the full and equal enjoyment of all rights by women and girls with disabilities;
- (3) The appropriate governments and concerned establishments shall accord due recognition to the concerns of women and girls with disabilities by making adequate provision for them in all existing and future women specific schemes and programmes³;
- (4) Every scheme or programme devised for the benefit of persons with disabilities under this Act or under any other law for the time being in force shall make a proportionate allocation for women and girls with disabilities and maintain records in such manner as may be prescribed of the utilization of such allocation;
- (5) Nothing in this section shall prevent the appropriate government or any establishment from taking specific measures for, or providing special entitlements to, women and girls with disabilities to promote full and equal enjoyment of their rights.

³ As suggested at the Delhi, Haryana and Jharkhand State Consultation.

7. Right to Education of Women and Girls with Disabilities

- (1) All appropriate governments and concerned establishments shall take all necessary steps to ensure that no girl or woman with disability shall be excluded from the education system on the grounds of sex or disability;
- (2) The appropriate government shall take all suitable measures to ensure that all girls and women with disabilities have access to an inclusive education system, without discrimination and on an equal basis with others, at all levels;
- (3) In order to devise the aforesaid suitable measures for girls with disabilities the appropriate government shall whilst conducting the local survey in Section 36 of this Act, especially collate data on the number of girls with disabilities in the locality; the nature of their impairment and the barriers faced by them to realize the right to education
- (4) Without prejudice to the measures that may be devised pursuant to the local survey the appropriate government may:
 - a. Provide scholarships for girls with disabilities and special allowance for families of girls with disabilities to meet expenses incurred on their education or vocational training⁴;
 - b. Ensure that all girls with disabilities have access to necessary, adequate and appropriate support for the completion of elementary, secondary and higher education such as accessible transport facilities or other financial incentives to parents and guardians to enable girls with disabilities to attend schools and accessible residential facilities if such facilities are provided for other students;
 - c. Ensure that all schools have appropriate toilet facilities for girls with disabilities.

8. Right to Work and Employment of Women with Disabilities

- (1) No woman with disability shall be directly or indirectly discriminate against in recruitment, promotion, or any other related matter arising in the course of or through the length of employment;

⁴ As suggested at the Karnataka State Consultation.

- (2) The appropriate government shall take all effective and appropriate measures, including formulation of schemes and programmes, to ensure that women with disabilities have access to opportunities for employment, vocational training, micro-credit and self-employment on an equal basis with others;
- (3) Without prejudice to the generality of sub-section (2), such measures shall include:
- a. according access to working women's hostels for women with disabilities;⁵
 - b. Mechanisms of support such as personal assistance; mother-hood allowance⁶; extended maternity leave,⁷ flexible working hours and accessible crèches;
 - c. Ensuring that all establishments have appropriate toilet facilities for women with disabilities;
 - d. All committees against sexual harassment shall be under a duty to promote and protect the right of all women with disabilities to a safe working environment; in fulfilment of this duty the committees shall inter-alia: undertake appropriate awareness raising programmes and devise accessible complaint mechanisms.

9. Right of Women and Girls with Disabilities to be Protected against all Forms of Abuse, Violence and Exploitation

- (1) The appropriate government shall take all necessary measures to protect every woman and girl with disability from all forms of abuse, violence and exploitation including physical, mental, sexual, and emotional on the person of such woman with disability in all settings at all places including, home, care-houses, educational institutions, institutions, workplaces, and any other place where a woman with disability works or resides whether temporarily or permanently;
- (2) Without prejudice to the generality of sub-section (1), the appropriate government shall take measures for:

⁵ As suggested at by Orissa State Consultation

⁶ As suggested at Karnataka State Consultation

⁷ As suggested at Maharashtra State Consultation.

- a. Provision of accessible, safe and confidential complaint mechanism to report instances of abuse, violence and exploitation and to address such complaints in a time-bound manner⁸;
- b. Enable the use of short stay and other protection facilities established for women who are victims of abuse, violence and exploitation⁹;
- c. Provision of gender, disability and age sensitive protection services, assistance and support for victims of abuse, violence or exploitation, for physical, cognitive and psychological recovery and development, rehabilitation and social reintegration, in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person;
- d. Dissemination of information on avoidance, recognition and report of instances of abuse, violence and exploitation.

10. Right of Women and Girls with Disabilities to Health

- (1) The appropriate government shall take all suitable measures to ensure that all women and girls with disabilities have access to the highest attainable standard of health and health care in accessible environments through accessible procedures with reasonable accommodation without discrimination on the basis of disability or sex;
- (2) The appropriate government shall take all suitable measures to ensure the full and effective enjoyment of the right to health by women with disabilities, including measures to:
 - a. ensure that all healthcare services, including family planning programmes and services aimed at early identification and intervention, are gender-sensitive, and are available and accessible to women with disabilities, whether in urban or rural areas;
 - b. provide information in accessible formats in relation to all areas of healthcare, including sexual and reproductive health, to women with disabilities.
 - c. The surveys, investigations and research undertaken or caused to be undertaken by appropriate governments and establishments under Section 72

⁸As suggested at Karnataka State Consultation.

⁹As suggested at Orissa State Consultation

of this Act shall specifically include data or information with respect to women with disabilities¹⁰.

11. Right of Women with Disabilities to Home and Family

- (1) The appropriate government shall take all suitable measures to eliminate discrimination against women with disabilities in all matters relating to marriage, family, parenthood and relationships, whether the disability is acquired before or after marriage¹¹. Such measures include:
- a. Providing early and comprehensive information, services and support to women with disabilities and their families to prevent concealment, abandonment, neglect and segregation of women with disabilities in relation to home and family life;
 - b. Providing and making accessible information on reproductive health and family planning to enable women with disabilities to take decisions involving their reproductive rights and family planning freely and responsibly.

12. Access to Justice by Women with Disabilities

The appropriate government shall take measures to ensure that all police stations, courts, tribunals, or any other body having adjudicatory powers or otherwise connected to the legal system are accessible to women with disabilities.

13. Obligations of the National Commission for Women

The National Commission for Women constituted under section 3 of the National Commission for Women Act 1990 (Act No.20 of 1990) shall in addition to the functions assigned to it under that Act, also perform the following functions, namely:

¹⁰ As suggested at West Bengal State Consultation.

¹¹ As suggested at West Bengal State Consultation.

- (1) examine the extent to which the concerns of women with disabilities have been inducted in existing statutes, rules and regulations on women and make appropriate recommendations for such inclusion in consultation with women with disabilities;
- (2) scrutinize whether all proposed legislations for protecting the rights of women duly incorporate the concerns of women with disabilities;
- (3) examine the extent to which the concerns of women with disabilities have been incorporated in existing schemes and programs for women and to recommend requisite modification in consultation with women with disabilities¹².

14. Rights of Children with Disabilities

- (1) The Registrar General appointed under section 3 of the Births and Deaths Registration Act 1969 shall whilst carrying out the superintendence duties of registering births and deaths in the country ensure, including by issuing general directions to all Chief Registrars and other concerned officials, that the registration of births and deaths of all children with disabilities is undertaken in accordance with the procedure specified in the Births and Deaths Registration Act of 1969;
- (2) All children with disabilities have the right to equality before the law and equal treatment of the law and not to be denied any of the guaranteed rights by reason of their age or disability;
- (3) The appropriate governments and concerned establishments shall ensure that all children with disabilities enjoy their human rights and fundamental freedoms on an equal basis with other children and ensure that no child is discriminated on the basis of disability;
- (4) The appropriate governments and concerned establishments shall accord due recognition to concerns of children with disabilities with reasonable accommodation in all existing child specific schemes and programmes;
- (5) All children with disabilities have on an equal basis with all other children a right to freely express their views on all matters affecting them; and all appropriate governments and concerned establishments are under a duty to provide them age and disability appropriate support for the exercise of this right.

¹² As suggested at Manipur State Consultation

15. Right of Children with Disabilities to Health

All appropriate governments and concerned establishments shall ensure screening of new born babies in order to facilitate early intervention and to prevent aggravation of disabilities in children.

16. Right of Children with Disabilities to Leisure, Culture and Sports

- (1) All children with disabilities have a right to play and participate in sports, recreation and cultural activities on an equal basis with other children;
- (2) All appropriate governments and establishments shall provide for disability and age appropriate opportunities for children with disabilities to participate in sports and have access to playgrounds along with other children;
- (3) All appropriate governments and establishments shall ensure that children with disabilities have access to cultural materials in an accessible format and access to cultural activities, performance and services along with other children.

17. Access to Justice for Children with Disabilities

- (1) The National and State Legal Services Authorities shall create panels of Child Rights Defenders to proactively address any discrimination experienced by children with disabilities;
- (2) The National Commission for Protection of Child Rights constituted under section 3 of the National Commission for Protection of Child Rights Act, 2005 (Act no. 4 of 2006) shall whilst performing the functions assigned to it under section 13 of that Act, expressly address the concerns of children with disabilities;

18. Right to Legal Capacity and Equal Recognition before the Law

- (1) Notwithstanding anything contained in any other law to the contrary, persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as persons before the law;

- (2) Any express or implied disqualification on the grounds of disability prescribed in any legislation, rule, notification, order bye-law, regulation, custom or practice which has the effect of depriving any person with disability of legal capacity shall not be legally enforceable from the date of enforcement of this Act;
- (3) Notwithstanding anything contrary contained in any other law, all persons with disabilities have right, on an equal basis with others, to own or inherit property; control their financial affairs; obtain access to bank loans, mortgages and other forms of financial credit, and not to be arbitrarily deprived of their property;
- (4) All persons with disabilities have the right to access all arrangements and support necessary for exercising legal capacity in accordance with their will and preferences;
- (5) The legal capacity of a person with disability shall not be questioned or denied, irrespective of the degree and extent of support, by reason of accessing support to exercise legal capacity;
- (6) When a conflict of interest arises between a person providing support and a person with disability in a particular financial, property or other economic transaction, then such supporting person shall abstain from providing support to the person with disability in that transaction.

Explanation

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

- (7) No person providing support either individually or as part of a network shall exercise undue influence on a person with disability. Such support when provided by an individual or a network shall be so provided that it respects the autonomy, dignity and privacy of persons with disabilities;
- (8) A person with disability may alter, modify or dismantle any support arrangement and substitute it with another.

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

19. Replacement of Plenary Guardianship with Limited Guardianship

- (1) After the commencement of this Act, any provision in any legislation, rule, regulation or practice which prescribes for the establishment of plenary guardianship shall be hereinafter deemed to be establishing a system of limited guardianship;

Explanation

Plenary Guardianship¹³ is a system whereby subsequent to a finding of incapacity a guardian substitutes for the person with disability as the person before the law and takes all legally binding decisions for him or her. The decisions of the person with disability have no binding force in law during the subsistence of the guardianship. The guardian is under no legal obligation to consult with the person with disabilities or determine his will or preference whilst taking decisions for him or her.

- (2) Subsequent to the enforcement of this Act all plenary guardians shall operate as limited guardians;
- (3) All limited guardians shall act in close consultation with the person with disability to arrive at legally binding decisions.

Explanation

A limited guardianship is a system of joint decision making which operates on mutual understanding and trust between the guardian and the person with disability.

20. Duty to Provide Support

- (1) The appropriate governments shall establish or designate one or more authorities to mobilize the community and create social networks to support persons with disabilities in the exercise of their legal capacity. Such authorities shall :
- a. take immediate steps to put in place suitable support measures for the exercise of legal capacity by persons with disabilities living in institutions and persons with disabilities who need to have high support;

¹³ As suggested at the Delhi, Harayana, Karnataka, Manipur and West Bengal State Consultations

- b. take suitable steps including, where appropriate, mediation proceedings, in order to assist persons with disabilities who have exited from plenary guardianship to set up where required by such persons with disabilities suitable support arrangements other than limited guardianship for the exercise of their legal capacity;
 - c. take steps to review how the system of deemed limited guardianship is operating for persons with disabilities including those living in institutions and to assist such persons with disabilities in establishing suitable support arrangements to exercise their legal capacity;
- (2) The review process referred to in sub clause (1) (c) is facilitative in nature and no person with disability can be denied legal capacity or refused the benefit of limited guardianship arrangements due to the delay or non occurrence of the review.

21. Denial of Legal Capacity

- (1) Any act, order or proceedings which has the effect of denying the legal capacity of a person with disability in any matter or which questions the legal capacity of a person with disability on the grounds of disability shall be void;
- (2) Upon a person with disability being denied legal capacity, the aggrieved person with disability may file a complaint before the District Disability Rights Tribunal in addition to other statutory or constitutional remedies.

22. Right to Life and Living

- (1) The appropriate governments shall take all measures to ensure that persons with disabilities enjoy the right to life guaranteed by Article 21 of the Constitution of India on an equal basis with others;
- (2) These measures shall be in furtherance of the right to live with dignity for persons with disabilities and to ensure that full value is accorded to the lives of persons with disabilities;
- (3) Any procedure or practice which diminishes the value of the life of persons with disabilities is hereby prohibited;

- (4) In order to assist in the enforcement of the prohibition specified in sub-section (3) the National and State Disability Rights Authority shall through social investigations, public hearings or research studies collate information on such procedures and practices and forward the same to the Central or State Government as the case may be

Provided that if the State Disability Rights Authority is enquiring into a particular practice or procedure then the National Disability Rights Authority shall refrain from doing so.

- (5) Any person who through an act or omission endangers the life of a person with disability or damages or injures or interferes with the use of any limb, or faculty of a person with disability shall be punishable under Section 151 of this Act.

23. Right to Liberty

- (1) The Appropriate Governments and establishments shall take all measures including through the provision for reasonable accommodation and support to ensure that persons with disabilities enjoy the right to personal liberty guaranteed by Article 21 of the Constitution of India on an equal basis with others;
- (2) These measures shall be so designed as to further the right to a non-coercive, non-restrictive and supportive environment for persons with disabilities which respect their sense of space, safety and security;
- (3) No person shall be deprived of personal liberty on the grounds of disability;
- (4) The liberty of persons with disabilities including prisoners with disabilities shall not be deprived except by a procedure which is fair just and reasonable. Such procedure shall require the appropriate government and concerned authorities to provide reasonable accommodation to persons with disabilities including prisoners with disabilities;
- (5) Right to personal liberty for persons with disabilities includes:
- a. freedom from restrictions or encroachments on person, whether those restrictions or encroachments are directly imposed or indirectly arise;
 - b. freedom from non-consensual civil commitment
- (6) In furtherance of the right specified in sub section (5):

- a. the care and treatment of all persons with disabilities shall be so organized that it advances personal liberty and consensual care; whilst restricting and phasing out procedures of compulsory care and non consensual treatment;
 - b. All appropriate governments shall subsequent to the commencement of this Act order a review of all cases of persons placed under non consensual civil commitment to determine the circumstances which necessitated compulsory confinement and the initiatives required to promote community living and consensual care of persons with disabilities.
- (7) In order to protect and promote the freedoms guaranteed in sub sections (5) and (6) of this section, the appropriate governments and establishments shall, in consultation with the State and National Disability Rights Authority, in partnership with non-governmental organizations or otherwise launch programs by which *inter alia*:
- a. values of peace, love, non-violence and respect for difference and diversity in schools is promoted;
 - b. safe havens, time out sites and respite places are available to diffuse situations of conflict and violence;
 - c. the importance of difference is appreciated and skills of dealing with diversity developed;
 - d. Community leaders trained who can address conflict situations through conciliation and arbitration between the community and within the family so as to protect the liberty of all persons with disabilities and especially women, children and the elderly.

24. Right to Live in the Community

- (1) All persons with disabilities shall have the right to live in the community in furtherance of their right to have a meaningful and full life on an equal basis with others;
- (2) The Appropriate Governments shall launch suitable schemes and programs including community based rehabilitation and such other initiatives in order to realize the right recognized in sub section (1). Such schemes and programs shall:

- a. provide choices to persons with disabilities in the place and manner of living and shall not direct or order persons with disabilities to live in any particular arrangement;
 - b. accord due recognition to the age and gender needs of persons with disabilities;
 - c. be accompanied with such support as may required by persons with disabilities to realize their choice.
- (3) The Appropriate Governments shall accord due consideration to gender and age needs whilst establishing independent and community living environments;
- (4) The Appropriate Governments shall further ensure that such independent living environments will be accompanied with access to such support as may be necessary to persons with disabilities to fully realize their choice in the matter of living arrangements, on an equal basis with others.

25. Right to Integrity

- (1) Every persons with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others;
- (2) All appropriate governments and establishments shall ensure that the identity of all persons with disabilities is respected and they are able to function safely as such persons;
- (3) The respect mandated by sub-sections (1) and (2) shall in no way be influenced by the living arrangements of the person with disabilities. The right of homeless persons with disabilities and persons with disabilities in institutions are to be respected on an equal basis with others;
- (4) Any communication, address or greeting which diminishes the identity of persons with disabilities is hereby prohibited;
- (5) No person with disability shall be subjected to any research protocol without his or her free and informed consent. Such consent must be obtained through accessible modes means and formats of communication;
- (6) All research projects which relate to persons with disabilities or involve them in any manner shall be undertaken only subsequent to obtaining clearance from an

Ethics Committee which either has a member of a Disabled Persons' Organizations or a Disability Rights Defender as member.

26. Protection from Abuse, Violence and Exploitation

- (1)** No person shall act or abstain from acting where such action or inaction causes or is likely to cause abuse, violence and exploitation to a persons with disabilities at any place including, home, care-houses, institutions, educational institutions, workplaces, or any place where such persons with disabilities reside, co-habit, work or in other manner inhabits whether temporarily or permanently;
- (2)** The appropriate governments shall take all appropriate administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of abuse, violence and exploitation;
- (3)** Any person, or registered organization who has reason to believe that an act of abuse, violence and exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it to the District Disability Rights Tribunal in whose jurisdiction such incident occurs is or is likely to occur, who on the receipt of such information shall take immediate steps to stop it or prevent its occurrence as the case may be or pass any order it deems fit for the protection of such person with disability including an order:
 - a. to rescue the victim of such act, authorizing the police or any reliable organization working with the persons with disability to provide for the safe custody, or rehabilitation of such person with disability, or both, as the case may be;
 - b. for providing protective custody of the person with disability if the person with disability so desires it;
 - c. to provide maintenance to such person with disability.
- (4)** No civil or criminal liability shall be incurred by any person who in good faith furnishes information for the purpose of sub section (3);
- (5)** Any police officer who receives a complaint or comes to know otherwise of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of:

- a. the right to apply for protection under subsection (3).
- b. the particulars of the nearest organization or institution working for the rehabilitation of persons with disabilities who have been subject to abuse, violence or exploitation;
- c. the particulars of the nearest office(s) of the authorities mentioned under this Act, which shall assist the complainant;
- d. of the right of persons with disabilities to free legal services under the **Legal Services Authorities Act, 1987 (Act No. 39 of 1987)** and any other services offered by the National Legal Services Authority or the State Legal Services Authority for the benefit of persons with disabilities;
- e. of the right to file a complaint under the relevant provisions of the Indian Penal Code or any other legislation dealing with such crimes.

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

- (6) If the District Disability Rights Tribunal finds that the alleged act or behavior would also be an offence under the Indian Penal Code, 1860 (Act No. 40 of 1860) or under any other law imposing criminal sanctions on such acts, it may direct the Disability Rights Defender to file the complaint before the judicial or metropolitan magistrate, as the case may be, having jurisdiction in the matter and the Disability Rights Defender shall act forthwith in accordance with such direction;
- (7) The appropriate government shall take all appropriate measures to prevent all forms of abuse, violence and exploitation by, inter alia, providing information and raising awareness on:
 - a. identification and recognition of the incidents of abuse, violence and exploitation;
 - b. the legal remedies available against such incidents;
 - c. steps to be taken for avoiding such incidents;
 - d. steps to be taken for reporting such incidents;
 - e. steps required for the rescue, protection and rehabilitation of persons with disabilities who have been the victims of such incidents.

27. Protection and Safety of Persons with Disabilities in Situations of Risk

- (1)** All persons with disabilities shall have the right to suitable protection and safety in situations of risk, including situations of armed conflict, humanitarian emergencies and natural disasters;
- (2)** In furtherance of the right recognized in sub-section (1), the appropriate governments and local authorities shall take effective and appropriate measures to enable the protection and safety of persons with disabilities in these situations on an equal basis with others;
- (3)** Without prejudice to the generality of the obligation in sub-section (2), the appropriate governments shall formulate or alter as need be, all existing and proposed plans and interventions, in consultation with the National and State Disability Rights Authority as the case may be, for the inclusion of persons with disabilities;
- (4)** The National and State Disaster Management Authority shall take appropriate measures to ensure inclusion of persons with disabilities in every scheme, program, mission as well as its 'disaster management activities' as defined under S 2(e) of the Disaster Management Act, 2005 (Act No 53 of 2005) during the occurrence of any 'disaster' as defined under S. 2(d) of the (Disaster Management Act, 2005 for the safety and protection of persons with disabilities;
- (5)** The National and State Disaster Management Authority shall prepare and maintain records with contact of persons with disabilities in an area and take suitable measures to inform such persons of any situations of risk so as to enhance disaster preparedness¹⁴;
- (6)** The appropriate governments shall take suitable measures to ensure the safety and protection and to offer immediate relief and rehabilitation to victims with disabilities in situations of communal violence or internal disturbance;
- (7)** If due to the activities of the government in a conflict zone, any person acquires an impairment; or a person with disability acquires further impairments or an existing impairment is further aggravated; the Appropriate Government shall provide compensation and reimbursement of medical expenses within the time

¹⁴ As Suggested at Maharashtra State Consultation

and in accordance with the scales as may be prescribed. Such scales shall accord due weightage to considerations of gender and age¹⁵;

- (8) The Armed Forces shall, in all situations of armed conflict, take appropriate measures to ensure the safety and protection of persons with disabilities in the light of the obligations under International Human Rights law and International Humanitarian law;
- (9) All authorities engaged in reconstruction activity subsequent to any situation of armed conflict, humanitarian emergencies or natural disasters shall undertake such activity, in consultation with the National Disability Rights Authority, in accordance with the accessibility requirements of persons with disabilities.
- (10) The appropriate governments and concerned authorities shall in consultation with the National and State Disability Rights Authority:
 - a. undertake research and development on issues relating to protection, relief, rescue or safety of persons with disabilities in situations of risk;
 - b. provide training to personnel dealing with persons with disabilities in situations of risk, including security forces in conflict areas¹⁶, so as to enable them to offer effective support in these situations and sensitize them to the needs and requirements of persons with disabilities; and
 - c. inform and train persons with disabilities on appropriate responses to the interventions of the authorities in situations of risk.

28. Right to Home and Family

- (1) All persons with disabilities especially children and elderly shall have the right to home and family on an equal basis with others;
- (2) Every person with disability shall have the right to marry a person of his or her choice without discrimination on basis of disability;
- (3) No person with disability shall be denied guardianship or custody of his or her child on the grounds of disability;
- (4) All persons with disabilities are entitled to adopt a child or to give a child in adoption on an equal basis with others;

¹⁵ As Suggested at the J&K State Consultation.

¹⁶ As Suggested at the Manipur State Consultation

- (5) No child with disability shall be separated from his or her parents on grounds of disability except on an order of competent Court if required in the best interest of the child;
- (6) The competent Court shall make every effort to place the child with disability within the extended family and failing that within the community in a family setting.

Explanation

Family means a group of people related by blood, marriage or adoption to the person with disability

29. Additional Provision for Disability-Related Needs in Maintenance and Alimony

- (1) Where maintenance or alimony is awarded to a woman with disability under the relevant applicable law, the court shall consider the disability related needs of the woman while determining the amount of such maintenance or alimony;
- (2) While awarding maintenance or child support for a child with disability under the relevant applicable law the Court shall consider the disability related needs of the child while determining the amount of such maintenance or alimony to be awarded.¹⁷

30. Reproductive Rights of Persons with Disabilities

- (1) All persons with disabilities, particularly women and children with disabilities, shall have the right to retain their fertility;
- (2) The appropriate government shall ensure that persons with disabilities have access to information regarding family and reproductive planning on an equal basis with others;
- (3) No person with disability shall be subject to any medical procedure which leads to or could lead to infertility without their free and informed consent;
- (4) Any contravention of this provision shall be penalized under Section 153.

¹⁷ As suggested at the Legal Consultation

31. Freedom of Speech and Expression

- (1) All persons with disabilities have the freedom to express their thoughts and opinions on an equal basis with others;
- (2) No person, establishment, or government shall censor or curtail the thought, speech, expression or communication of a person with disability on grounds of disability; any such censorship or curtailment shall be discrimination on the grounds of disability;
- (3) The expression of dissenting opinions by persons with disabilities enjoys the same constitutional respect as other voices of dissent; any curtailment or gagging of such dissent shall be discrimination on the grounds of disability;
- (4) Any person practicing hate speech will be punishable under Section 154 of the Act.

32. Right to Political Participation

- (1) Notwithstanding anything contained in the Representation of the People Act (No. 43 of 1950), the Representation of the People Act (No. 43 of 1951) or any other law for the time being in force, every person with disability who fulfills all the eligibility requirements shall be entitled to be registered as a voter and shall not be held disqualified to exercise his or her right to vote on the ground of disability irrespective of any stipulation to the contrary in any law for the time being in force¹⁸;
- (2) Notwithstanding anything contained in the law for the time being in force, any person with disability who is unable to cast vote in person due to his or her disability or because of admission in any establishment maintained wholly or mainly for the reception and treatment of persons with disabilities at the time the poll is taken shall be entitled to vote by postal ballot and provisions shall be made, by rules made under the Representation of the People Act (No. 43 of 1951) to enable such voting;

¹⁸ As suggested at the Uttarakhand State Consultation.

- (3) The Election Commission shall ensure that all polling stations are accessible to persons with disabilities and that all materials related to the electoral process are easily understandable by and accessible to persons with disabilities;
- (4) Without prejudice to the generality of the provisions contained in sub-section (3), the measures undertaken by the Election Commission in pursuance of that sub-section shall include:
 - a. the construction and availability of ramps at all polling booths;
 - b. separate queues for persons with disabilities at all polling booths with clear pictorial signs;
 - c. the availability of ballot papers and/ or electronic voting machines with candidates' information available in Braille and other accessible formats;
 - d. the fitting of audio devices to electronic voting machines;¹⁹
 - e. training programs to sensitise polling officers about the special requirements of persons with disabilities.
- (5) If the presiding officer is satisfied that, due to disability, a person with disability is unable to recognise the symbols or to record vote without assistance, the presiding officer shall permit the elector to take a companion of not less than eighteen years of age to the voting compartment for recording/ casting the vote;
- (6) Every person with disability is entitled to form and be a member of any organization or association in accordance to choice.

33. Access to Justice

- (1) All persons with disabilities and Disabled Persons' Organizations shall, in their individual or representative capacity, as the case may be, have the right to access any court; tribunal; authority; commission; or any other body having judicial or quasi judicial or investigative powers on an equal basis with others;
- (2) The authorities in subsection (1) shall ensure that persons with disabilities are able to exercise the right to access these authorities without discrimination on the basis of disability and provide reasonable accommodation whenever required;

¹⁹ As suggested at the Karnataka State Consultation. .

- (3) The right of access to justice in subsection (1) includes, initiating a legal proceeding, participate in any legal proceeding as a party, complainant, accused, advocate, witness, expert, or amicus curiae or in any other capacity relevant for and to assist in adjudication of any dispute. No person with disability shall be denied the right to participate on the grounds of disability;
- (4) Every person with disability shall be entitled to use any means of communication along with support which such person desires and finds appropriate to participate in legal proceedings;
- (5) All communication under sub – section (3) shall be deemed to be oral communication for all purposes including under the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) and the Indian Evidence Act, 1872 (Act No. 1 of 1872);
- (6) All the authorities mentioned in subsection (1) shall evaluate the testimony, opinion or argument given by a person with disability on an equal basis with others and ensure that there is no discrimination whether directly or indirectly on the basis of disability;
- (7) National Legal Services Authority and the State Legal Services Authority of the respective State shall make provisions including reasonable accommodations to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them on an equal basis with others.
- (8) The National Legal Service Authority and the State Legal Service Authority of all the states shall formulate such schemes, procedures, facilities, support systems and arrangements to enable persons with disabilities to effectively exercise their right under sub-section (1), (2) and (3) of this section;
- (9) Every appropriate Government shall take immediate steps to ensure that all police stations are accessible to all persons with disabilities and the necessary equipments, support or arrangements are made available to enable persons with disabilities to file a First Information Report, join investigation, and get their statement recorded before the police.
- (10) All the concerned agencies or authorities including the courts and tribunals at different levels shall take steps to make their premises, offices and infrastructure accessible to persons with disabilities;
- (11) The authorities in sub-section (1), shall take immediate steps to:

 - a. ensure that all their documents are in accessible formats;

- b. ensure that filing departments, registry or any other office of records are supplied with necessary equipments to enable filing, storing and referring to the documents and evidence in accessible formats;
 - c. make available all the necessary facilities and equipments to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication;
- (12) All Judicial Academies; Police Academies and Training Organizations for Prison Officials and Legal Service Authorities undertake regular training programmes on disability rights as a part of their induction and continuing education programmes.
- (13) All authorities mentioned in subsection (1) shall take steps to ensure, that matters involving the rights and interests of persons with disabilities are disposed of expeditiously.

34. Definitions for Right to Education

- (1) For the provisions relating to this right unless the context otherwise requires:
- a. **'child'** means a child with disability who is below the age of eighteen years;
 - b. **'neighbourhood school'** is any educational institution providing elementary education within a radius of one kilometer or secondary education within a radius of three kilometers which is suitably equipped to provide education to children with disabilities and shall also include schools that are exclusively or dominantly catering to children with disabilities;

Provided that in areas which have a difficult terrain, or are prone to landslides, floods, or any other barrier the school may be located outside this radius so as to avoid these dangers. And would include home or hostel based schools if no such site is available near the home of the child.

- c. **'secondary education'** means education from the ninth class to the twelfth class;
- d. **'special educator'** includes teachers, trainers, resource persons trained to address the general and particular learning needs of children with disabilities;

- e. **'special school'** means a school established and run mainly²⁰ for students with disabilities;
 - f. **'support'** includes:
 - a. educational instruction, through appropriate means and methods of communication by educators who have the requisite qualifications and training;
 - b. the free supply of books, preparatory materials for entrance examinations and study materials in appropriate means and methods of communication;
 - c. the free supply of assistive devices required by persons with disabilities for the completion of elementary, secondary or higher education;
 - d. the provision of scribes or other technological support as required;
 - e. transport facilities for children or in the alternative financial incentives to parents and guardians to enable children to attend school;
 - f. scholarships for students with disabilities with preference to women and girls with disabilities;
 - g. extra time to complete tests and examinations as appropriate;
 - h. spelling concessions in written assignments, tests and examinations;
 - i. exemption from second and third language courses if so desired by a child's parents or guardian and deemed necessary by the school administration;
 - j. suitable technological equipment which assists in the learning of all disciplines including but not limited to mathematics, geography, economics and science courses;
 - k. necessary physical adaptations including classroom, sports facilities, libraries and laboratories²¹ ;
 - l. any other appropriate aid required for the completion of elementary, secondary and higher education.
 - m. alternative questions to visual questions in examinations or assessments papers²².
- (2) The definition of **'capitation fee'** **"elementary education"** "guardian" "parent" and "screening procedure" shall be as provided in the Right of Children to Free and Compulsory Education Act, 2009 (Act No 35 of 2009)

²⁰ As suggested at the Mizoram State Consultation

²¹ As suggested at the Uttarakhand consultation

²² As suggested at the MP State Consultations

- (3) The provisions of sections 5, 10, 13, 14 of the Right of Children to Free and Compulsory Education Act, 2009 (Act No 35 of 2009) shall mutatis mutandis apply.

35. Right to Education

- (1) All persons with disabilities have a right to education to enable the full development of their human potential, sense of dignity and self-worth; to develop their personality, talents and creativity, mental and physical abilities to their fullest potential; and to enable their effective participation in an inclusive²³ society;
- (2) No persons with disabilities shall be excluded from the education system on the basis of disability, and the appropriate government shall ensure that all persons with disabilities, especially girls and women with disabilities, have access to education, without discrimination and on an equal basis with others, at all levels.

36. Surveying for Children with Disabilities

- (1) Subsequent to the enactment of this Act and before its enforcement the appropriate government shall conduct local level surveys throughout the country in order to determine the physical presence of children with disabilities and to devise educational plans for the establishment of suitable neighbourhood schools resource centers or special schools as the case may be;
- (2) The appropriate governments shall conduct such surveys every five years

37. Establishment of Neighbourhood Schools, Resource Centers and Special Schools

- (1) For carrying out the purposes of this Act, the appropriate governments shall:

²³ As suggested at the Karnataka State Consultation.

- a. establish neighbourhood schools and special schools within such area or limits of a neighbourhood as may be prescribed and all such schools shall be equipped to provide education to all persons with disabilities;
- b. resource centers equipped with requisite personnel and equipment which shall support students and teachers in the pursuit of their education in neighbourhood schools;
- c. develop and enforce standards for training educators to teach children with disabilities;
- d. provide infrastructure including school buildings, educators who have the requisite qualifications and training to teach children with disabilities; learning materials and any other materials required to support a child with disability in the completion of his elementary and secondary education;
- e. Ensure and monitor the admission, attendance and completion of elementary and secondary education of every child with disability;
- f. Ensure the availability of a sufficient number of educators who have the requisite qualifications and training to teach persons with disabilities;
- g. Provide training facilities for teachers such that they are trained to cater to the needs of children with disabilities;
- h. Establish an adequate number of teacher training institutions and assist the National Institutes and other voluntary organizations to develop teacher training programs specializing in training special educators so that the requisite special educators are available for students with disabilities;
- i. Develop and establish an inclusive undergraduate and postgraduate degree in education which trains all teachers to cater to the needs of a child with disability in an inclusive classroom; and
- j. Initiate or cause to be initiated research by official and non – governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials, or such other items as are necessary to give a child or person with disability the support required to complete his or her education.

38. Right to Free Childhood Care and Preschool Education

Every child below the age of six years has a right to free childhood care and pre - school education.

39. Entitlements of Children with Disabilities

- (1) Every child shall have a right to free and compulsory education in an appropriate neighbourhood school or special school , as chosen by the parents or guardian, between the age of six and eighteen years or until the completion of secondary education whichever is later;
- (2) No child shall be liable to pay any kind of fee, charge or expenses towards any support or otherwise which may prevent him or her from pursuing for completing both elementary and secondary education.

40. Reasonable Accommodations in Education

- (1) The appropriate governments and establishments shall ensure that reasonable accommodation of the individual's requirements is provided at all levels of the education system, taking into consideration both gender and age²⁴ specific needs;
- (2) The appropriate governments and establishments shall ensure that persons with disabilities receive individualised support, within the education system, to facilitate their effective education provided in environments that maximize academic and social development, consistent with the goal of full inclusion;
- (3) In order to ensure appropriate quality²⁵ education for persons with disabilities, the appropriate governments and establishments shall take measures, including:
 - a. facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - b. facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

²⁴ As suggested at the Uttarakhand State consultation

²⁵ As suggested at the Uttarakhand State consultation

- c. employing teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education.

41. Student-Teacher Ratio for Children with Disabilities

Every school shall maintain such suitable pupil – teacher ratio between students with disabilities and educators who have the requisite qualifications and training as may be prescribed. In determining the ratio the appropriate authority shall ensure that the ratio should be so specified that it enables persons with disabilities to reach the goals of education specified in this chapter.

42. Right to School Admission

If a child has not been admitted to a school at the stipulated age or was admitted but was unable to complete his education due to his or her disability then such child shall be admitted to a class suitable to his or her age.

Provided that, where a child is directly admitted to an age appropriate class such child has a right to suitable training in order to enable effective participation.

Provided further, that the aforementioned training will be imparted through means of communication and in a language which the child understands by educators equipped and trained to perform such training.

43. Right to Support and Accessibility

- (1) Every child has a right to receive necessary, adequate and appropriate support for the completion of elementary and secondary education;
- (2) Every child has a right to access all school buildings, sports recreation and library facilities on an equal basis with others and it shall be the duty of appropriate

governments and establishments to render the aforementioned facilities accessible to children with disabilities.

44. No Detention

No child, who is admitted in a school, shall be held back in a class or expelled from school prior to the completion of secondary education.

45. Impermissible Disciplinary Measures

- (1) No child shall be subjected to physical punishment or mental harassment or in any manner discriminated on the basis of disability;
- (2) The denial of support or reasonable accommodation as a disciplinary measure is prohibited.

46. Parents of Children with Disabilities in School Management Committees

- (1) Parents or guardians of children with disabilities shall be members of the School Management Committees established under Section 21 of the Right of Children to Free and Compulsory Education Act, 2009 (Act No 35 of 2009);
- (2) The percentage of parents or guardians of students with disabilities on aforementioned committees shall be proportionate to the ratio of such students in the school;

Provided that in no case shall there be less than two such parents or guardians on the Committee.

47. Disability Related Needs in School Development Plans

- (1) All School Development Plans prepared under sub – section (1) of Section 22 of the Right of Children to Free and Compulsory Education Act, 2009 shall specify the resource requirements needed to:

- a. Make the school buildings accessible;
- b. Provide support to children as mentioned in Section 43 and
- c. fulfill education entitlements of children with disabilities.

48. Education Reform Commission for Advancement of Disability Rights Perspective

There shall be established an Education Reform Commission for such period of time, not less than three years, as the central government may by notification provide.

- (1) The Commission shall, to the maximum extent possible, involve an effective participation of all stakeholders in the process of formulation, implementation and monitoring of the curriculum and related programmes and policies, including disabled and non-disabled children, teachers and parents;
- (2) The terms of reference of the Education Reform Commission shall be:
 - a. To review the existing curriculum being adopted in schools from the standpoint of persons with disabilities and their lived experiences;
 - b. To develop an inclusive curriculum based on the principles of non-discrimination and appreciation of diversity and tolerance;
 - c. To make recommendations on the pedagogical methodology to be adopted for the teaching to and learning by persons with disabilities in the creation of such inclusive curriculum;
 - d. To suggest measures for the adoption and integration of the inclusive curriculum in mainstream education and to monitor its progress²⁶;
 - e. Make such other recommendations as the Commission may consider necessary.
- (3) The Commission may initiate studies and analysis or take any other measures that may be necessary for performing any function in relation to its terms of reference.

49. Right to Higher Education

²⁶ As suggested at the Maharashtra State Consultation.

(1) No person with disability particularly women with disabilities shall be denied admission in a higher education institution on the grounds of his or her disability; Provided that, if a person with disability is unable to seek admission to a higher educational institution at or before the age prescribed for such admission then he or she shall be given admission in such institution if he or she fulfills all other eligibility requirements.

(2) All appropriate governments and educational authorities may if they deem fit to promote equality of opportunity relax according to prescribed procedure the minimum qualification criteria required to be obtained by persons with disabilities who seek admission to a higher education institution.

50. Reservation in Higher Educational Institutions

All institutions of higher education shall reserve not less than six percent of total seats in each course for persons with disabilities.

Provided that persons with disabilities shall not be prevented from competing for seats which are not reserved for them.

51. Support in Higher Education

(1) Every person with disability appearing for an entrance examination for any higher educational institution has a right to adequate, necessary and appropriate support for the purposes of such examination;

(2) Every person with disability has the right to receive necessary, adequate and gender sensitive support for the completion of higher education and for any other extra – curricular and co – curricular activities;

(3) All universities and other institutions of higher learning shall establish equal opportunity offices to ensure the dedicated provision of such support.

52. Qualifications of Educators

- (1) Every school and higher educational institution shall have a staff of educators who have the requisite qualifications and training to cater to the needs of students with disabilities;
- (2) Teachers in all types of schools should be imparted orientation and training to understand specific needs of children with disabilities.

53. No Capitation Fee in Higher Education

No institution of higher education shall charge or collect any capitation fee whilst admitting a person with disability.

54. Leisure Culture Sport in Schools and Higher Educational Institutions

- (1) All schools shall ensure that children with disabilities shall have the right to participate in sporting, recreational and leisure activities on an equal basis with others;
- (2) All higher educational institution shall ensure that persons with disabilities have the right to participate in sporting, recreational and leisure activities on an equal basis with others.

55. Adult Education for Persons with Disabilities

All appropriate governments and establishments shall ensure participation of persons with disabilities in adult education and continuing education programmes on an equal basis with others

56. Non Discrimination in Employment

- (1) No establishment shall directly or indirectly discriminate against any person with disability in any matter relating to employment including but not limited to

recruitment, promotion and other related issues arising in the course of or through the length of employment in any establishment²⁷.

- (2) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during service, such employee may if required by the nature of disability, be shifted to another post with the same pay scale and service benefits.

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

- (3) The protection accorded in sub section (2) shall also be extended to persons employed with the defense forces;

Provided that this sub section in no way precludes the defense establishment to formulate a more beneficial employment retention and rehabilitation scheme for persons employed with the defense forces.

- (4) Every establishment shall facilitate reasonable accommodation of persons with disability by taking adequate measures to guarantee that persons with disabilities are not disadvantaged in any manner at any stage of employment.

Explanation

'Adequate Measures' include, but are not limited to the provision of necessary aids and equipment, adequate healthcare facilities, necessary physical changes in buildings to ensure accessibility at workplaces, flexible work timings, continuous monitoring with regard to necessary support, or any arrangements or facilities created for equality with regard to competitive public service examinations and other such service related tests.

- (5) Any person with disability, if eligible for any post which is sought to be filled, shall have the right to appear for selection and hold the post if selected;
- (6) An establishment shall not ordinarily post and transfer a person with disability in a place other than his or her native place or within the vicinity²⁸ of such place unless such transfer becomes necessary due to exigencies of the job and expertise possessed by the person with disabilities;

²⁷ As suggested at the Uttarakhand State Consultation

²⁸ As suggested at the Uttarakhand State Consultation

- (7) The appropriate government may frame such rules and regulations as may be necessary from time to time for the purposes of achieving the objectives outlined above;
- (8) Every establishment undertaking an exercise of retrenchment or declaring its staff surplus shall as far be not include persons with disabilities in such exercise or process. In the event of persons with disabilities being included in such exercise or process, enhanced benefits shall be payable to them.

57. Reservations

- (1) All establishments shall reserve not less than seven percent of all posts and in promotions for persons with disabilities in accordance with the following banding of disabilities, with each band being entitled to 1% ;
 - a. Persons with blindness;
 - b. Persons with hearing impairment and speech impairment;
 - c. Persons with locomotor disability and leprosy cured;
 - d. Persons with cerebral palsy and muscular dystrophy;
 - e. Persons with autism, intellectual disability and mental illness;
 - f. Persons with multiple disabilities, deaf-blindness and multiple sclerosis.
 - g. Persons with Low vision and persons who are hard of hearing

Provided that posts identified under Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 (Act No 1 of 1996) shall operate as guidelines for implementing this reservation.

- (2) The percentage stated can be renewed and the classification altered upon review once every 3 years;
- (3) If sufficient number of qualified persons with disabilities are not available in a particular year, then the reservation may be carried forward to the subsequent year, and if in the subsequent recruitment year also a suitable person with disability is not available, then the post may be first filled by interchange among the categories, and if the vacancy is still not filled then the establishment shall identify, train and then induct persons with disabilities on the post. In no case shall a post to which a person with disability is entitled to be appointed be allowed to lapse;

- (4) The entitlement outlined in sub section (2) and the process in sub section (3) shall also extend to schemes guaranteeing employment, or the creation of posts for employment, by way of any legislation, notification or rule formulated by the appropriate government, including but not limited to the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

58. Equal Opportunity Policies

- (1) Subject to the requirements of Section 8 of this Act, within six months of the commencement of this legislation, all establishments shall put in place an Equal Opportunity Policy detailing measures and commitments initiated by the establishment in pursuance of the provisions of this Chapter and any Rules thereof;
- (2) An Equal Opportunity Policy shall:
- a. delineate measures taken in order to comply with the provisions of the Act;
 - b. provide strategies to increase employment opportunities with specific attention to all schemes and reasonable accommodation measures;
 - c. specifically detail measures taken and strategies employed to reasonably accommodate and increase employment opportunities for women with disabilities.
- (3) The State Disability Rights Authority may, if it deems fit, devise the form and structure of Equal Opportunities Policies;
- (4) Once formulated, a copy of the Equal Opportunity Policy shall be deposited and registered with the State Disability Rights Tribunal.

59. Maintenance of Records

- (1) Every establishment shall maintain records in relation to employment, facilities provided and other necessary information with regard to compliance with the provisions of this Chapter in such form and in such manner as may be prescribed by the appropriate government;

- (2) These records shall specifically include information on women with disabilities in relation to their employment, facilities provided and other information as prescribed;
- (3) Every employment exchange shall register in accordance with prescribed procedure and thereby maintain records of persons with disabilities seeking employment. These records shall specifically include data on women with disabilities;
- (4) Such records shall be relevant and authentic evidence of a person with disability seeking unemployment allowance under Section 64 (6) (d) of this Act;
- (5) Any person authorized by the State Disability Rights Authority may inspect the records during the working hours of the establishment.

60. Vocational Training, Rehabilitation and Self-Employment

- (1) The appropriate governments shall take all necessary measures with respect to formulation of schemes and programmes such as Apylimpics to facilitate and support employment of persons with disabilities, with special reference to self-employment and vocational training of persons with disabilities;
- (2) Without prejudice to the general obligation stated in sub-section (1), the appropriate governments shall establish in each district work centres where persons with disabilities in rural areas can be imparted necessary skills and provided work opportunities in different trades including rural trades²⁹;
- (3) Without prejudice to the general obligation stated in sub-section (1), the appropriate governments shall ensure imparting of skills through convergence in existing training centers and institutions³⁰ and establish centers where none exists so that persons with disabilities in rural areas can be imparted necessary skills in crafts, trades and domiciliary occupations and provide work;
- (4) The appropriate governments shall provide adequate loans at concessional rates under the existing microcredit and loan schemes to persons with disabilities in order to facilitate self-employment schemes;
- (5) If, in the opinion of the person recruited, there is a need to impart specific training prior to recruitment in order to ensure that a person with disability has adequate support, then such facilities should be made available;

²⁹ As suggested at the Uttarakhand State Consultation

³⁰ As suggested at the Uttarakhand State Consultation

- (6) The appropriate governments shall institute suitable schemes to promote and support the creative skills of persons with disabilities in rural and urban areas³¹ by establishing networks between the artisans and marketing federations and handicraft boards.

61. Incentives to Establishments

The appropriate governments shall within a period of one year of the enforcement of this Act provide incentives to all establishments to ensure that at least ten per cent of their work force is composed of persons with disabilities.

62. Grievance Redressal

- (1) Each establishment shall, as part of their Employment policy, set up a grievance redressal cell. The officer-in-charge of such grievance redressal cell shall be termed the grievance redressal officer, and shall be registered with the State Disability Rights Tribunal;
- (2) Any person may register a complaint with the grievance redressal officer, who shall maintain a register of complaints in the manner prescribed by the appropriate governments, and any such complaint shall be looked into within two weeks of such registration;
- (3) Without prejudice to the general nature of the above obligation, the grievance redressal officer shall ensure that every establishment shall fulfill the obligations stated in sub-section (3) of Section 56. In case of any lapse on the part of the establishment in the fulfillment of this obligation, the grievance redressal officer shall be liable unless he is able to demonstrate that the establishment has defaulted despite his efforts to ensure otherwise;
- (4) If the grievance redressal officer fails to address the complaint within two weeks of being registered, then the person with disability may approach the District Disability Rights Tribunal.

63. Special Employment Exchanges

³¹As suggested at the Maharashtra State Consultation

- (1) The appropriate governments may, retain the special employment exchanges established under Section 34 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and establish new exchanges;
- (2) After the enforcement of this Act any notification issued by the appropriate government under Section 34(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 shall continue to be effective and establishments shall adhere to any new notifications issued by the appropriate government in this regard.

64. Right to Social Security

- (1) In furtherance of the right to life and living elaborated in Section 22 and the right to live independently and in the community in Section 24 of this Act, all persons with disabilities shall have a right to social security which includes but is not limited to securing adequate standard of living for persons with disabilities and their families in terms of food security, shelter, housing, social care, pension, unemployment allowance, health care, medical support, medical and life insurance;
- (2) The appropriate governments shall promulgate necessary schemes and programmes to safeguard and promote the realization of the rights of persons with disabilities recognized in sub-section (1) to provide adequate standard of living and improve their living conditions to enable them to live independently and in the community. In devising these schemes and programmes the diversity of disability, gender, age, and socio-economic status shall be relevant considerations;
- (3) These plans shall inter alia provide in rural, urban, tribal and hilly areas for:
 - a. safe and hygienic community centres with decent living conditions in terms of nutritional food, sanitation, health care and counseling;
 - b. facilities for persons including children with disabilities who have no families or have been abandoned, or are without shelter or livelihood;
 - c. support required during times of natural or man-made disasters and in areas of conflict;
 - d. social care to women with disabilities who have no livelihood; and family support for upbringing of their children;

- e. a person with disability to be considered as a single unit for the purpose of availing benefit under any food security scheme;
 - f. access to safe drinking water and appropriate and accessible³² sanitation facilities especially in urban slums and rural areas.
- (4) The appropriate government shall formulate schemes to provide for social security benefits, aids and appliances, medicine and diagnostic, corrective surgery³³ without cost to persons with disabilities belonging to economically weaker sections of society;
- (5) Any refusal of insurance on the grounds of disability is unlawful. Any rule in standard form contracts that persons with disabilities constitute higher or unacceptable risk constitutes discrimination and is invalidated; and any practice to that effect stands invalidated;
- (6) In furtherance of right to live independently and in the community, the appropriate government shall *inter alia*:
- a. frame disability pension schemes to cover persons with disabilities requiring support in all such schemes, the person with disability shall be the recipient for award of disability pension;
 - b. frame rules for making provisions for transfer of pension benefits of government employees to their children with disabilities;
 - c. provide for special initiatives such as enhanced disability pension for persons with multiple disabilities, persons needing high support, women and elderly persons with disabilities;
 - d. provide an unemployment allowance to all persons with disabilities proportionate to a uniform applied standard of qualification and skill; irrespective of the tenure of registration with the employment exchanges;
 - e. provide adequate care-giver allowance to all persons with disabilities meeting high support;
 - f. pay enhanced post retirement benefits to persons with disabilities;
 - g. organise special camps at Gram Panchayat level, at least once a year, to give information on, and to introduce persons with disabilities to, various government schemes.

³² As suggested at the Karnataka State Consultation

³³ As suggested at the Karnataka State Consultation

- (7) The appropriate government shall, in furtherance of the right to habilitation and rehabilitation and the right to living independently, provide *inter alia*:
- a. for not less than six percent reservation of land and housing to persons with disabilities in all government housing schemes and/or urban or rural development programmes with priority to women and elderly persons with disabilities;
 - b. ensure that not less than six percent of the beneficiaries, in all poverty alleviation and various developmental schemes, shall be persons with disabilities with priority to women and elderly persons with disabilities;
 - c. provide for not less than six percent reservation in allotment of land on concessional rate, where such land shall be used for the purpose of promoting housing, shelter, setting of occupations, businesses, enterprises, self help groups, gainful occupations, recreation centers, production centers exclusively for persons with disabilities whether or not such facilities are owned and managed by persons with disabilities;
 - d. to provide incentives to house owners by way of reduction in property tax who lease out premises to persons with disability for residential or commercial purposes;
- (8) No person with disability who is willing to work under the employment guarantee schemes or such other developmental schemes shall be denied work.

65. Right to Health

- (1) All appropriate governments and establishments shall ensure that:
- a. all persons with disabilities enjoy the highest attainable standard of health on an equal basis with others and that persons with disabilities are not directly or indirectly discriminated on the grounds of disability;
 - b. all persons with disabilities are provided health care in accessible environments through accessible procedures and with reasonable accommodation. Domiciliary services shall be available wherever required to attain universal coverage;
 - c. all schemes and programmes devised to realize health care rights, entitlements and benefits are universally available with due consideration accorded to gender, age and socio-economic status;

- d. persons with disabilities have access to free or affordable quality health care close to their communities particularly in the rural areas;
- e. health care services may be provided through multi-disciplinary teams who may undertake early identification, intervention and referrals to more specialized agencies wherever required.

(2) In fulfillment of its obligation under this section the appropriate governments shall make schemes and programmes with the participation and involvement of persons with disabilities and care-givers that *inter alia* makes provision for:

- a. the minimization and prevention of further disabilities with requisite education, training, information and intervention;
- b. the health care of persons with disabilities during times of natural disasters and other situations of risk ;
- c. disability specific equipments and accessible infrastructure at all health care centres; public buildings and places; and all other such places that may be notified by the appropriate government from time to time;
- d. 'essential medical facilities' for all life saving emergency treatment and procedures;
- e. sexual and reproductive health especially of women with disabilities;
- f. pre-natal, peri-natal and post natal care of mother and child;
- g. nutritional intervention for children with disabilities³⁴;
- h. psychosocial care and support at every stage of the medical process be it investigation, evaluation, diagnosis, treatment or intervention;
- i. access to all Primary Health Care services especially within rural areas and for the urban poor³⁵;
- j. free or subsidized treatment and medical services for weaker and indigent sections, as required;
- k. coverage of medical expenses, travel allowances and therapeutic intervention within a comprehensive insurance scheme for persons with disabilities.

Explanation

'Medical Services' include surgery, therapy, medicines, pathology and follow up.

66. Insurance

³⁴ As suggested at the Karnataka State Consultation

³⁵ As suggested at the Maharashtra State Consultation

- (1) All establishments shall provide medical and life insurance to persons with disabilities on an equal basis with others;
- (2) The denial of such insurance or its provisions on disproportionate premiums or iniquitous conditions would constitute as discrimination.

67. Ethical Guidelines

- (1) All health professionals shall not discriminate against persons with disabilities in the observance of ethical guidelines on informed consent and confidentiality whilst providing health care and other services to persons with disabilities;
- (2) Without prejudice to the general obligation stated in sub-section (1) all health care professionals shall when making impairment specific interventions take special care to provide complete information to persons with disabilities through accessible modes, methods and formats;
- (3) Any negligent departure from the ethical guidelines shall invite action for professional misconduct or poor and inadequate service;
- (4) The medical practice guidelines shall be suitably revised to incorporate accessible procedures of communicating with persons with disabilities and delete any prejudicial references.

68. Awareness Raising Responsibilities

- (1) The appropriate governments and concerned establishments in collaboration with the National Disability Rights Authority and the State Disability Rights Authority, as the case may be, shall carry out sensitization and awareness-raising amongst care-givers, service-users and the general public as regards the human rights, dignity, autonomy and needs of persons with disabilities;
- (2) The appropriate governments and concerned establishments shall:
 - a. Undertake or cause to be undertaken surveys, investigation and research on the health status and needs of persons with disabilities;
 - b. Provide for training of primary health care centres personnel and paramedics³⁶ to address the needs of persons with disabilities;

³⁶As suggested at the Uttarakhand State Consultation

- c. Sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information on general hygiene, health and sanitation as impacting the health status of persons with disabilities.

69. Prohibition on Denial of Food and Fluids

- (1) The denial of foods and fluids to persons with disabilities including infants with disabilities by reason of their disability is hereby prohibited;
- (2) Any person found to either deny food and fluids to any person with disability or to aid and abet in such denial shall be liable to criminal prosecution and penalties under Section 155. Any contravention of this Section shall be penalized under Section 155.

70. Right to Habilitation

- (1) In furtherance of the right to life recognized by Article 21 of the Constitution of India and Section 22 of this Act all persons with disabilities have a right to habilitation in order to realize the rights guaranteed under this Act;

Explanation

Habilitation is a process by which persons born with impairments learn life skills. Rehabilitation refers to a process by which persons readapt to society after acquiring impairment.

- (2) The appropriate governments and establishments shall in furtherance of the right recognized in sub-section (1) take effective and appropriate measures to enable persons with disabilities to maximize their physical, mental, personal, social, educational, vocational and professional abilities to enable them to live a full, inclusive and dignified life. In devising these measures the diversity of disability; gender; age; and socio-economic status shall be relevant considerations;
- (3) Without prejudice to the generality of the obligation in sub-section (2), in order to ensure that children with disabilities have the same life development opportunities as other children, the appropriate governments and local authorities shall formulate habilitation plans for children with disabilities with strategies for ensuring that it starts as early as possible;
- (4) These plans shall inter alia provide for:

- a. Appropriate support and guidance to parents of infants and young children with disabilities to enable them to perform their parenting responsibilities;
 - b. The training of children and young persons with disabilities in self care and self reliance depending upon the nature of impairment;
 - c. The promotion of total communication among children and adults with different types of impairments;
 - d. Provision of social skills and social networking between children with disabilities; other children; extended family and larger community;
 - e. Therapeutic, surgical or other corrective interventions and for aids and appliance;
 - f. Ensuring the provision of adequate training in mobility, orientation of environment, use of assistive devices and application of technology.
- (5) In order to ensure that every child with disability obtains access to habilitation at the earliest possible time the appropriate government shall:
- a. Proactively survey the presence of infants and children with disabilities;
 - b. disseminate information on nature of disabilities and the plan of habilitation to the community generally; and to community workers, doctors and teachers particularly.
- (6) The habilitation plan shall have a dynamic approach and would change in its interventions and outcomes in accordance with the age, gender, local environment and functional goals of the persons with disabilities;
- (7) Every person with disability shall have the right to take a decision with regarding their own habilitation plan; and due consideration should be given to the evolving capacity of children in supporting and obtaining their participation.

71. Right to Rehabilitation

- (1) All persons with disabilities have the right to live a full and meaningful life irrespective of the nature of the impairment and the manner, gender, age, caste,³⁷ place, situation or circumstance in which such impairment is acquired;
- (2) In furtherance of this right to life and living all persons with disabilities have a right to peer, professional, community and state support to resume and continue their

³⁷ As suggested at the Maharashtra State Consultation

personal, social, economic and political participation on an equal basis with others;

- (3) In enforcement of this abovementioned right the appropriate governments and local authorities shall put in place suitable peer and professional intervention to enable the persons with disabilities to accept the altered nature of their mind and body;
- (4) All persons with disabilities have a right to be provided aids and appliances of recognized quality at an affordable cost along with the requisite training to utilise it;
- (5) Every person with disability has the right to be informed of the various rehabilitation options and make the final decision on the course of rehabilitation;
- (6) The appropriate governments and concerned establishments shall put in place suitable infrastructure and expertise for the rehabilitation of persons with disabilities.

72. Research and Development

The appropriate governments and the National and State Disability Rights Authority as the case may be shall initiate or cause to initiate research and development through individuals and institutions on issues which would enhance the habilitation and rehabilitation processes for persons with disabilities.

73. Right to Leisure, Culture and Recreation

- (1) All appropriate governments and establishments shall take all suitable measures to promote and protect the right of all persons with disabilities to have a cultural life and to participate in leisure and recreational activities on an equal basis with others;
- (2) Without prejudice to the general obligation in sub-section (1) such measures shall include
 - a. Providing facilities support and sponsorships to artists and writers with disabilities to pursue their interests and talents;
 - b. Sponsoring of disability film, theatre, music and dance festivals;
 - c. Establishment of a disability history museum which recovers, chronicles and interprets the historical experiences of persons with disabilities;
 - d. Making art accessible to persons with disabilities;

- e. Promoting the launch of leisure clubs, recreation centers, and other associational activities;
- f. Facilitating participation in scouting, dancing, art classes, and outdoor camps;
- g. Redesigning courses in cultural and arts subjects to enable participation and access of persons with disabilities;
- h. Developing technology, assistive devices and equipments to facilitate access and inclusion for persons with disabilities in recreational activities.

(3) All Cultural Academies whether of, art, literature, music, or dance shall include persons with disabilities in their programs schemes, and activities. And shall thereby provide recognition, support, and awards to the cultural contribution of persons with disabilities on an equal basis with others.

74. Right to Participation in Sports, Games and Athletics

- (1)** All persons with disabilities have a right to participate in sports at all levels on an equal basis with others;
- (2)** All appropriate governments shall take appropriate measures to guarantee the effective participation in sporting activities for all persons with disabilities. Such measures shall expressly provide for the inclusion of persons with disabilities in all mainstream sporting events and activities;
- (3)** All National and State Sports bodies shall accord due recognition to the right of all persons with disabilities to participate in sports and shall make due provision for the inclusion of persons with disabilities in all their schemes and programs for the promotion and development of sporting talent;
- (4)** The Central Government shall establish a National Body for Disability Sports to promote the sports of persons with disabilities³⁸;
- (5)** All international and national sporting events for persons with disabilities including Special Olympics and Paralympics shall be accorded the status due to international and national sporting events and the sportspersons participating in such events shall be allocated resources, sponsorships, awards and jobs on an equal basis with others³⁹;

³⁸ As suggested at the Manipur State Consultation

³⁹ As suggested at the Orissa State Consultation

- (6) Without prejudice to the general obligations stated in sub-section (2) and (3), the appropriate governments and the National and State Sports bodies shall take specific measures including to:
- a. restructure courses and programmes to ensure access, inclusion and participation of persons with disabilities in all sporting activities;
 - b. redesign and support infrastructure facilities of all sporting activities for persons with disabilities;
 - c. develop technology to enhance potential, talent, capacity and ability in sporting activities of all persons with disabilities;
 - d. provide multi-sensory essentials and features in all sporting activities to ensure effective participation of all persons with disabilities;
 - e. allocate funds for development of state of art sport facilities for training of persons with disabilities;
 - f. promote and organize disability specific sporting events for persons with disabilities.

PART II: POWERS, DUTIES AND RESPONSIBILITIES

75. Awareness Raising

- (1) All appropriate governments in consultation with the National or State Disability Rights Authority as the case may be shall conduct, sponsor, encourage, support or promote on a regular and continuous basis⁴⁰ information campaigns and sensitization programmes to ensure that the rights recognized in this legislation are respected, protected and promoted. Such campaigns should aim at enabling both state and civil society to comprehend disability as an integral part of the human condition; to recognize the capabilities and contributions of persons with disabilities; and to combat the stereotypes, prejudices and harmful practices which impede the participation of persons with disabilities on an equal basis with others;

⁴⁰As suggested at the J&K State Consultation

- (2) Without prejudice to the general objectives of the information campaigns and sensitization programmes stated in sub section (1), the appropriate governments shall ensure that the aforementioned awareness programmes especially draw attention to the direct and indirect discrimination faced by women and children with disabilities;
- (3) Subsequent to the coming into force of this Act the nomenclature and terminology developed in this legislation shall be employed in all rules, regulations, notifications, orders and in all communications and transactions by and with the State;
- (4) The appropriate governments shall launch and support stigma reduction programmes; mass education campaigns; information and technology linked dissemination programmes; and sensitization workshops on disability rights to achieve the objectives outlined in subsection (1) which amongst others shall address the educational authorities⁴¹; medical fraternity; the family; government officials; policing authorities; armed forces⁴²; political representatives; the media and the legal community;
- (5) In order to achieve the objectives outlined in subsection (1) every establishment shall undertake suitable sensitization and information dissemination programmes on disability rights within their organization; and may launch and support stigma reduction programmes, mass education campaigns, information and technology linked dissemination programmes;
- (6) Without prejudice to the general awareness raising obligation in sub section 2 such programmes, campaigns and workshops shall *inter alia*:
 - a. Promote values of inclusion, tolerance, empathy and respect for diversity;
 - b. Advance recognition of the skills, merits and abilities of persons with disabilities and of their contributions to the workforce, labour market and professional fee;
 - c. Foster respect for the decisions made by persons with disabilities on all matters related to family life, relationships, bearing and raising children;
 - d. Provide orientation and sensitization at the school, college, university and professional training level on the human condition of disability and the rights of persons with disabilities;

⁴¹As suggested at the Delhi-Haryana State Consultation

⁴²As suggested at the Manipur State Consultation

- e. Provide orientation and sensitization on disabling conditions and Rights of Persons with Disabilities to employers, administrators and co-workers⁴³.
- (7) The appropriate governments and establishments shall launch legal literacy and information dissemination programmes on disability rights generally and this law more particularly.

76. Accessibility

- (1) All persons with disabilities have the right on an equal basis with others to the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services open or provided to the public, both in urban and in rural areas;
- (2) All appropriate governments and establishments shall be required to ensure that the rights of persons with disabilities to accessibility as outlined in sub section (1) of this section are fully protected.

77. Accessibility Standards

- (1) The National Disability Rights Authority shall formulate regulations which lay down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services open or provided to the public, both in urban and in rural areas;
- (2) The National Disability Rights Authority shall formulate these Regulations, in consultation with subject and experiential experts, by adopting or adapting prevailing international standards on physical environment and information and communication technologies and systems to local conditions. It shall ensure that the regulations are age and gender appropriate and are applicable to:
 - a. All buildings and facilities used by the public;
 - b. Permanent, temporary or emergency conditions;
 - c. All new community residential places and private residences to make them

⁴³ As suggested at the Karnataka State Consultations.

- visitable and live-able;
 - d. Pedestrian infrastructure;
 - e. Ports;
 - f. Road based transport; Aviation; Railways; Maritime transport; Rural Public Transport System; and all other modes of transport so as to ensure that persons with disabilities travel in safety and comfort.
- (3) The National Disability Rights Authority shall within a period of one year develop and notify the aforesaid accessibility standards regulations for both urban and rural areas. It shall review these regulations every five years and revise them if required in order to ensure universal coverage of all transport and built environment;
- (4) The appropriate governments and establishments shall take suitable measures:
- a. to provide facilities for persons with disabilities at stations and airports that meet the accessibility standards relating inter alia to parking spaces, toilets, ticketing counters and ticketing machines;
 - b. to provide access to all modes of transport that conform to design standards, including retrofitting old modes of transport;
 - c. to formulate rules for providing driving licenses to persons with disabilities;
 - d. to ensure that where no modifications are possible, human assistance shall be made available to persons with disabilities;
 - e. to provide support services to assist persons with disabilities to negotiate and interact with unfamiliar people, environs and spaces;
 - f. to provide for rural modes of transport and accessible roads⁴⁴ to address mobility needs of persons with disabilities in rural areas.

78. Personal Mobility

- (1) All appropriate governments and establishments shall develop schemes and programmes to promote the personal mobility of persons with disabilities at affordable cost, according to their choice;
- (2) Such schemes may *inter alia* provide:
- a. incentives and concessions to provide accessible transport facilities to persons with disabilities;

⁴⁴As suggested at the Karnataka State Consultation.

- b. for retrofitting of vehicles for persons with disabilities at no extra cost;
- c. appropriate personal mobility assistance;
- d. rural modes of transport to address mobility needs of persons with disabilities in rural areas.

79. Access to services

- (1) All appropriate governments and establishments shall ensure that all services and facilities provided by them are available to persons with disabilities on an equal basis with others; and that such services are provided in such mode or format which is responsive to the needs of persons with disabilities but at no extra cost to them;
- (2) All appropriate governments and establishments shall ensure that all announcements inviting public response including those made for procurement, entitlement, employment, public health and disaster preparedness must be accessible to all persons with disabilities;
- (3) The National and State Disability Rights Authority shall make available to all service providers information on how they can make their services accessible to persons with disabilities.

80. Access to Information and Communication Technology

- (1) All appropriate governments and establishments shall take measures to ensure that:
 - a. All content in whichever medium whether audio, print or electronic shall be made available to persons with disabilities in accessible format;
 - b. Persons with disabilities shall have access to electronic media by providing for audio description, sign language interpretation and close captioning;
 - c. Accessibility to telecommunication services where telecommunications will include any kind of transmission of information of the user's choosing without change in form or content of information as sent or received;⁴⁵
 - d. Electronic goods and equipment of everyday use shall follow the principles of universal design;
 - e. Schemes are formulated or amended to ensure affordable access to Information and Communication Technology & Electronics for persons with disabilities in rural as well as urban areas;
 - f. All government websites, and private websites providing consumer services conform to the most updated version of the World Wide Web Consortium web

⁴⁵As suggested at the Legal Consultation

accessibility standards;

- g. Incentives and concessions are provided to support existing websites to make them accessible to persons with disabilities.

- (2) The conversion, reproduction, adaptation and communication of all copyrighted materials into accessible versions for exclusive use of persons with disabilities on 'not-for-profit'⁴⁶ basis shall be deemed fair dealing;

Explanation

Accessible version includes any version or form which gives a person with disability access to the work as flexibly and comfortably as a person without a disability, and shall include, but not be limited to, audio recordings, audio –visual works with audio and/or text descriptions, Braille, e-text including DAISY formats, digital copies compatible with assistive technology or refreshable Braille, tactile material, large print, with different type-faces and sizes and sign language.

- (3) All government and private websites shall be made accessible, in accordance to the regulations formulated by the National Disability Rights Authority, within a maximum period of one year from the date of notification of such regulations;
- (4) Any contravention of this Section shall be penalized under Section 150⁴⁷

81. Access to Consumer Goods and Services

- (1) All appropriate governments and establishments shall:
 - a. take measures to promote development, production and distribution of universally designed consumer products and accessories for general use;
 - b. take measures to provide accessible consumer services including personal grooming, fitness and beautification services.

82. Service Animals

- (1) The National Disability Rights Authority shall formulate regulations for Service Animal training facilities so as to ensure that persons with disabilities are provided suitable Service Animals⁴⁸;

⁴⁶ As suggested at the Legal Consultation

⁴⁷ As suggested at the Legal Consultation.

- (2) The appropriate governments and establishments shall permit and facilitate the use of Service Animals by persons with disabilities on roads, buildings, all transport systems, public facility or service;
- (3) A person with disability needing assistance shall have a right to be accompanied by a Service Animal without being required to pay an extra charge for the Service Animal.

83. Mandatory Observances of Accessibility Norms

- (1) No individual, organization or establishment shall be granted permission to build any structure if the building plan does not adhere to the regulations formulated by the National Disability Rights Authority;
- (2) No individual, organization or establishment shall be issued a certificate of completion or allowed to take occupation of a building if it has failed to adhere to the regulations formulated by the National Disability Rights Authority;
- (3) Any contravention of this Section shall be penalized under Section 156.

84. Time Limit for Making Existing Infrastructure and Premises Accessible

- (1) All existing public buildings used for government purposes shall be made accessible in accordance with the regulations formulated by the National Disability Rights Authority, within a period not exceeding three years from the date of notification of such regulations;
- (2) All other public buildings shall be made accessible in accordance with regulations formulated by the National Disability Rights Authority, within a period not exceeding five years from the date of notification of such regulations;
- (3) Any contravention of this Section shall be penalized under Section 150.

85. Time Limit for Accessibility Duties of Service Provider

- (1) All service providers shall provide services in accordance with the regulations on accessibility formulated by the National Disability Rights Authority within a period of one year from the date of notifications of such regulations;

⁴⁸As suggested at the Karnataka State Consultation.

(2) Any contravention of this Section shall be penalized under Section 157.

86. Role of the National Centre for Universal Design and Barrier-free Environment

- (1) The Central Government shall establish the National Centre for Universal Design and Barrier Free Environment in order to assist the country to become universally accessible and inclusive in terms of accessibility;
- (2) The National Centre shall support the National and State Disability Rights Authority in developing and monitoring Accessibility regulations for all services and facilities provided to the public at large both in the rural and urban areas;
- (3) In furtherance of the role outlined in sub-section (1) the National Centre shall undertake the following functions:
 - a. Research and Development in the field of universal design and barrier free environment;
 - b. Develop curriculum in the field of architecture, design, technology, electronics and engineering in order to incorporate the theory and practice of universal design;
 - c. Facilitate students in educational institutions to undertake projects pertaining to universal design;
 - d. Provide consultancy services to all establishments and individuals on such request.

Provided that the National Centre shall be the permanent consultant on all issues of universal design and barrier free environment to the National and State Disability Rights Authorities and the appropriate governments.

87. Implementation Plan

- (1) The National and State Disability Rights Authorities in collaboration with NIUD shall formulate an action plan based on prioritization of providing accessibility in all public buildings and spaces providing essential services such as all Primary Health Centres, Civil/District hospitals, Primary schools/ secondary schools, railway stations and bus stations within three years;
- (2) A plan shall include carrying out of access audits by authorized team of auditors and provision of accessible facilities based on standard accessibility guidelines;
- (3) All plans shall be public documents and shall be made available by the National

and State Disability Rights Authorities in formats accessible to persons with disabilities;

- (4) The National and State Disability Rights Authorities shall set up a system of monitoring all existing built infrastructure once the plans to provide accessibility have been made public.

88. Human Resource Development

- (1) The appropriate governments shall ensure that the social, economic and civil political rights guaranteed in this Act are duly implemented and to that end shall:
- a. undertake the development of human resource so that both inclusive and specialized services are made available to persons with disabilities⁴⁹;
 - b. orients, sensitizes and trains⁵⁰ existing personnel and creates curricula which is disability sensitive;
 - c. make provision for adequate numbers of professionals in such manner that such personnel are available in appropriate ratios to provide services for persons across all disabilities at the central, state, local and panchayat level;
 - d. the provision of personnel to monitor the conduct of training at central, state, district and local bodies and panchayat levels to ensure effective functioning of institutions and professionals.
- (2) In order to fulfill the obligation stated in sub section(1) the appropriate governments shall every three years⁵¹ undertake a needs based analysis and formulate plans for the recruitment, induction, sensitization, orientation and training of suitable personnel to undertake the various responsibilities outlined in this Act;
- (3) The appropriate governments shall ensure that the terms and conditions of service of all personnel, professionals, workers and any other person employed in whatsoever manner and in any capacity⁵² in the field of disability are

⁴⁹ As suggested at the Uttaranchal State Consultation

⁵⁰ As suggested at the Karnataka State Consultation

⁵¹ As suggested at the Karnataka state consultation.

⁵² As suggested at the Uttaranchal State Consultation

appropriate, just and equitable so as to ensure the induction and retention of quality personnel and professionals in the field in adequate numbers;

(4) Without prejudice to any function and power of Rehabilitation Council of India contained in the Rehabilitation Council of India Act and in addition to the cadre creating obligations outlined in sub section (2) the appropriate governments and establishments⁵³ shall ensure human resource development in this sector by *inter alia*:

- a. Mandating training on disability rights in all courses for the training of panchayati raj members⁵⁴, legislators⁵⁵, administrators, police officials, judges, lawyers and judicial officers;
- b. Induction of disability as a component for all education courses/ programmes for school, college and university teachers, doctors, nurses, para-medical personnel, social welfare officers, rural development officers, Aasha workers, Anganwadi workers engineers, architects, other professionals and community workers;
- c. Initiating capacity building programmes, including training in independent living and community relationships for families, members of community and other stakeholders and care providers on care giving and support;
- d. Ensuring independence training for persons with disabilities to build community relationships on mutual contribution and respect;
- e. Conducting training programmes for sports teachers with specific focus on sports, games, athletics and skill demonstration of persons with disabilities.

(5) All Universities shall promote teaching and research in disability studies including establishment of dedicated centres for such studies⁵⁶.

89. Financial Assistance to Registered Organizations

All appropriate governments shall grant financial assistance to registered organizations to provide services and to implement the schemes and programmes mandated under this Act.

⁵³ As suggested at the West Bengal State Consultation

⁵⁴ As suggested at the Odisha State Consultation

⁵⁵ As suggested at the Karnataka State Consultation

⁵⁶ As suggested at the Karnataka consultation

90. Disability Cell

There shall be set up a Disability Rights Cell in all appropriate governments and establishments to coordinate the implementation of this Act.

91. Disability Audit

All appropriate governments shall be under a duty to undertake an audit of all general schemes and programs in order to ensure that they do not have an adverse impact upon persons with disabilities and to induct the requirements and concerns of persons with disabilities⁵⁷.

92. Power to Amend Schedule

- (1) The Central Government may keeping in view the evolving nature of disability periodically constitute a committee with equal representation of subject and experiential experts periodically to determine whether any additions need to be made in the list of impairments included in Schedule 1;
- (2) The Committee constituted under sub section (1) shall develop a socio-medical scale to examine the interplay between a particular impairment and the barriers. The severity of the impairment and the scale of the barrier experienced by the persons with disabilities shall guide the Committee in making its recommendations.
- (3) The central government may suitably incorporate the socio-medical scale in the normative descriptions provided in Schedule 1.

93. Disability Certificates

- (1) The appropriate governments shall designate in every panchayat, municipal and notified area, officials or authorities who would be authorized to issue a disability certificate to persons with disabilities in accordance with prescribed procedure;
- (2) The prescribed procedure shall be devised so as to facilitate the obtaining of the certificate by persons with disabilities. The duration of the certificate shall be

⁵⁷ As suggested at the Legal Consultation

determined having regard to the nature of the impairment and a certificate issued by any one authority shall be given full faith and credit throughout the territory of India⁵⁸;

- (3) Notwithstanding any modification of standards in Schedule 1 the disability certificates obtained by persons with disabilities under the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act of 1995 (Act No 1 of 1996) or under this Act prior to such modification shall continue to remain valid for the period for which they have been issued.

PART III: REGULATORY AND ADJUDICATORY AUTHORITIES

94. Establishment and Incorporation of National Disability Rights Authority

- (1) There shall be established, for the purposes of promoting, protecting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms of all persons with disabilities, an Authority which shall be called the National Disability Rights Authority;
- (2) National Disability Rights Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued;
- (3) National Disability Rights Authority shall have its head and seat in New Delhi.

95. Composition and Management of the Authority

- (1) National Disability Rights Authority shall consist of a Chairperson and a Governing Board comprising of:
 - a. 12 members of whom at least 7 shall be full-time members who are persons with disabilities and shall be appointed by way of an election, by an electoral college that comprises of Disabled Persons Organizations, the organizations

⁵⁸ As suggested at the Legal Consultation

of parents and families of persons with disabilities and organizations working for the rights of persons with disabilities which are registered under this Act or the National Trust Act, 1999, by such procedure as may be prescribed by the Central Government;

Provided that the members of the first Governing Board shall be nominated by the President on obtaining recommendations of the Selection Committee under Section 100 from amongst the panel of names forwarded by Disabled Persons Organizations, the organizations of persons and families of persons with disabilities and organizations working for the rights of persons with disabilities.

- b. 5 members not below the rank of Joint-Secretary to the Government of India and shall be nominated by the Central Government, representing the Ministry of Social Justice and Empowerment (Disability Division), Health and Family Welfare, Urban Development, Rural Development and Human Resource Development;
 - c. 2 members who are from National Institutes on annual rotation represented by the Director of the National Institute;
 - d. 2 members nominated by the Federation of Indian Chambers of Commerce and Industry the Confederation of Indian Industries; and
 - e. a Member-Secretary with requisite knowledge and experience in the field of disability to be appointed in accordance with the procedure prescribed.
- (2)** The Chairperson may invite a representative of any other Ministry or Department or any professional or technical expert, when deemed necessary, for due deliberation on any matter, before the National Disability Rights Authority;
- (3)** The Chairperson of the National Trust and the Chairperson of the Rehabilitation Council of India shall be ex-officio members of the Board;
- (4)** The Governing Board may, by simple majority, appoint one of the members to be Vice-Chairperson who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed and as may be delegated by the Chairperson;
- (5)** The Chairperson shall be full time member;
- (6)** The Chairperson and the fulltime Members of the National Disability Rights Authority shall not hold any other office of profit;
- (7)** Any person elected as member to both the National Disability Rights Authority

and State Disability Rights Authority shall resign from the membership of any one of them in accordance to his or her choice.

96. Powers, Functions and Meetings of Governing Board⁵⁹

- (1) The Governing Board shall have the plenary powers of the National Disability Rights Authority. It shall envision the broad policies, and programmes of the Authority and periodically review them; and devise measures for the effective and efficient functioning of the Authority and shall also;
 - a. consider and pass the Plan of Action, regulations of practice prepared by the Executive Board and to adopt them with or without modification;
 - b. sign Memorandum of Understanding, forging national and international partnership and co-operation;
 - c. consider and pass the annual report, financial statement and the budget estimates prepared by the Executive Board and to adopt them with or without modification.
- (2) The Governing Board shall meet at least once in a year and shall hold an annual general meeting with Electoral College at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be specified;
- (3) When the Chairperson is unable to discharge the functions of office owing to absence, illness or any other cause, the Vice-Chairperson shall discharge the functions of the Chairperson until such date that the Chairperson resumes charge;
- (4) All questions which come up before any meeting shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote;
- (5) All orders and decisions of the Governing Board shall be authenticated by the Member-Secretary or any other officer duly authorised by the Chairperson in this behalf;

⁵⁹ As suggested at the Legal Consultation

- (6) No act or proceedings of the Authority shall be questioned or invalidated merely on the ground of existence of any vacancy or any defect in, the constitution of, the National Disability Rights Authority.

97. Executive Board

- (1) The National Disability Rights Authority shall operate through an Executive Board which shall be constituted from amongst the members of the Governing Board by such procedure as may be prescribed;
- (2) The Executive Board shall consist of the Chairperson and nine other members. The Chairperson of the Governing Board shall be the Chairperson ex-officio of the Executive Board; of the nine other members: five members from amongst the elected members; two members from Government; one member from the National Institutes and one member from commerce and industry; on deputation by such procedure as may be prescribed;
- (3) The Member-Secretary of the Governing Board shall be the Member-Secretary of the Executive Board, ex-officio;
- (4) The Executive Board may, by simple majority, appoint one of the members to be Vice-Chairperson who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed and as may be delegated by the Chairperson.

98. Powers, Functions and Meetings of the Executive Board

- (1) The general superintendence, direction and management of the affairs of National Disability Rights Authority shall vest in the Executive Board of members, which may exercise all powers and do all acts and things which may be exercised or done by National Disability Rights Authority;
- (2) The Executive Board shall have such powers and functions:
- a. to prepare and present a Plan of Action to the Governing Board;
 - b. to formulate and set standards by way of regulations;
 - c. to ensure compliance of regulations and initiate inquiries in alleged violation or non-compliance of regulations;
 - d. to prepare and present to the Governing Board at its annual meetings, report on the working of the Authority; a statement of accounts; and budget

- proposals for the awareness raising, capacity building and sensitization programmes;
- e. to promote research, collection of data and material;
 - f. to select a common seal for the Authority; and
 - g. to exercise such other powers and to perform such other duties as may be considered necessary; or imposed on it by or under this Act.
- (3) The Executive Board shall hold meetings at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be specified;
- (4) When the Chairperson is unable to discharge the functions of the office owing to absence, illness or any other cause, the Vice-Chairperson shall discharge the functions of the Chairperson until such date that the Chairperson resumes charge;
- (5) All questions which come up before any meeting shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote;
- (6) No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy in, or any defect in, the constitution of the National Disability Rights Authority.

99. Reservation within the Elected Members of the Governing Board

- (1) Of the 12 members comprising of persons with disabilities on the Governing Board, the following reservations shall be provided:
- a. 1 seat shall be reserved for persons with autism and intellectual disabilities;
 - b. 1 seat shall be reserved for persons with mental illness;
 - c. 1 seat shall be reserved for persons with multiple disabilities, deaf-blindness, multiple sclerosis;
 - d. seats shall be reserved for women with disabilities.

- (2) The provisions of sub section (1) shall be applicable only in the event and to the extent that the constituencies mentioned therein, do not find representation by way of general election;
- (3) In the event that the persons with disabilities under clause (a) of sub-section (1) or clause (b) of sub-section (1) are not available to stand for election, the seats so reserved shall be open for election to the care-givers of persons with the respective disabilities.

100. Selection Committee for the Chairperson

- (1) The Chairperson of National Disability Rights Authority shall be appointed by warrant under the hand and seal of the President of India; provided that every appointment shall be made on obtaining the recommendations of Selection Committee, from amongst the panel of names forwarded by Disabled Persons Organizations, Organizations of Parents of persons with disabilities and their families and organisations working in the disability sector;
- (2) For the purpose of sub-section (1), the Selection Committee shall comprise of:
 - a. the Prime Minister of India;
 - b. the Leader of the Opposition in the Lok Sabha;
 - c. the Leader of the Opposition in the Rajya Sabha;
 - d. the Union Minister for Social Justice and Empowerment;
 - e. the Union Minister for Corporate Affairs;
 - f. two experts who shall be persons of integrity and standing who have special knowledge of and experience in the field of disability, law, health, education, management, industry, economics, business, commerce and public affairs.
- (3) No appointment of Chairperson or other Member shall be invalid merely by reason of any vacancy in the Selection Committee.

101. Term of Office of Chairperson and Members

- (1) A person appointed as Chairperson shall hold office for a term of five years from the date of entering office or until seventy years, whichever is earlier;

- (2) A person appointed as a Member shall hold office for a term of five years from the date of entering office and shall be eligible for re-appointment for another term of five years; no person shall be appointed as member of National Disability Rights Authority for more than two consecutive terms or hold office after attaining the age of seventy years.

102. Terms and Conditions of Service of Chairperson and Members

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

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

103. Officers and Other Staff of the National Disability Rights Authority

- (1) Subject to such rules as may be made by the Central Government the National Disability Rights Authority may appoint such other administrative, technical and scientific staff as it may consider necessary;
- (2) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (1) shall be such as may be prescribed by the Central Government.

104. Resignation, Removal and Suspension of the Chairperson and Other Members

- (1) The Chairperson may resign office by tendering notice in writing to the President of India.
- (2) Any other member may resign office by tendering notice in writing to the Chairperson.
- (3) The President of India may remove the Chairperson from office if he or she:
- a. has been adjudged a insolvent; or
 - b. has been convicted of an offence which involves moral turpitude; or

- c. has so abused the position as to render continuance in office prejudicial to public interest.
- (4) The Governing Board may, by a resolution passed by two-third majority, remove from office any member, who:
- a. has been adjudged a insolvent; or
 - b. has been convicted of an offence which involves moral turpitude; or
 - c. has abused the position to render continuance in office prejudicial to the public interest.
- (5) No such member shall be removed from office under clause (c) or clause (d) of sub-section (3) and under clause (c) or clause (d) of sub-section (4) unless given a reasonable opportunity of being heard in the matter;
- (6) In the event of a vacancy in the office of the Chairperson by reason of death, resignation, suspension or removal; the Vice-Chairperson shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon office.

105. Functions of the National Disability Rights Authority

- (1) Subject to the provisions of this Act, it shall be the duty of the National Disability Rights Authority to promote, protect and monitor the enforcement of the rights of persons with disabilities by such measures as it deems fit;
- (2) Without prejudice to the generality of the foregoing provisions, the National Disability Rights Authority, to fulfil the objective outlined in sub-section (1) may inter alia provide for –
- a. assistance in developing an effective and comprehensive policy and regulatory framework to address issues faced by persons with disabilities;
 - b. reviewing and evaluating legislations, policies, rules, regulations, bye-laws, programmes, notifications or any other legal instrument at the Union, State and local level on a periodic basis to determine their conformity with rights of persons with disabilities;

- c. calling from or furnishing to or exchanging information for the efficient discharge of its functions with such agencies, regulatory authorities or enforcement bodies as required;
- d. co-ordinating and reviewing activities of appropriate government to ensure proper coverage of persons with disabilities in their activities and programmes with adequate resource allocation;
- e. making recommendations to appropriate government with regard to specific budgetary allocations by all its departments in their respective budgets outlays every year⁶⁰;
- f. monitoring utilization of funds allocated for persons with disabilities⁶¹;
- g. preparing and publishing a Plan of Action within six months of the date of formation of National Disability Rights Authority that shall identify principles and priorities and shall make a copy of the said Plan of Action, available to State Disability Rights Authority that shall adapt the same to accommodate the state specific priorities and requirements;
- h. listing the activities to be undertaken by the National Disability Rights Authority for a *two-year period* with provision for review and revision as and when necessary;
- i. developing and conducting information programmes to foster public understanding and guidance on this Act; the Convention; and the role and activities of National Disability Rights Authority so as to sensitize and raise awareness and foster respect for the rights and dignity of persons with disabilities throughout society, including at the family level;
- j. promoting understanding, capacity building and the development and exchange of good practices by forging partnerships with public and private sector organisations, employers and service providers, NGOs and public-spirited individuals;
- k. undertaking research, collecting data and materials relating to persons with disabilities and disseminating the same to promote evidence based understanding of disability rights;
- l. issuing binding Regulations on the standards of practice by National Disability Rights Authority, a copy of which shall be made available to State Disability

⁶⁰ As suggested at the Uttarakhand State consultations

⁶¹ As suggested at the Madhya Pradesh State Consultations

Rights Authority, who can adapt them, if required, with to the requirements of the state;

- m. ensuring effective compliance of regulations;
- n. co-ordinating and providing assistance and expert advice to State Disability Rights Authority in effective and efficient discharge of its functions including developing and conducting information programmes, sensitization and awareness raising with regards to the Convention;
- o. inquiring, suo motu or on receiving a complaint, into any non compliance of regulations, rules, orders notification under the Act; and
- p. performing any other functions that are incidental and ancillary thereto

(3) National Disability Rights Authority shall undertake functions outlined in sub-section (1) and (2); in respect of matters relatable to any of the entries enumerated in List I and List III in the Seventh Schedule to the Constitution.

Provided where National Disability Rights Authority has reasonable grounds to believe that it is necessary or expedient in the interest of rights of persons with disabilities, it may, by way of resolution supported by not less than two third members of the Governing Board present and voting, inquire into any matter relatable to List II.

106. Power to Conduct Inquiry⁶²

- (1)** Where the National Disability Rights Authority receives any petition, complaint or has reasons to believe that there is non-compliance of or violation of any regulations, it may, at any time by order in writing, direct any person specified in the order to investigate and report thereon to the Authority;
- (2)** While conducting such investigation, the National Disability Rights Authority shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular enjoy the following powers, namely:
 - a. summoning and enforcing the attendance of witnesses and examining them on oath;
 - b. discovery and production of any document;
 - c. receiving evidence on affidavits;
 - d. requisitioning any public record or copy thereof from any court or office;
 - e. issuing commissions for the examination of witnesses or documents;

⁶² As suggested at the Legal Consultation.

f. any other matter which may be prescribed.

- (3) The National Disability Rights Authority may, while investigating a complaint, make written requests for information, interview people, review documents or visit the premises to determine upon the nature of violation or non compliance of regulations;
- (4) Whoever willfully makes a statement which is false in any material particular knowing it to be false or willfully omits to make a material statement in any application, declaration, statement, information or particulars made, required or furnished by or under or for the purposes of any provisions of this Act before National Disability Rights Authority or any order, regulation or direction made or given thereunder by National Disability Rights Authority, shall be punishable under Section 159 of this Act;
- (5) Whoever fails to produce any book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction, whose duty it is to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder, shall be punishable under Section 160 of this Act.

107. Power to Issue Directions⁶³

- (1) Where during or upon the completion of an enquiry made or caused to be made, the National Disability Rights Authority is satisfied that it is necessary:
 - a. in the interest of promoting rights of persons with disabilities or
 - b. to prevent such acts of omission and/or commission that are in any manner detrimental to the interests of persons with disabilities; or
 - c. to secure proper compliance with the regulations issued, it may issue such directions or compliance notice, - to an appropriate government or establishment, as may be appropriate in the interests of persons with disabilities.

⁶³ As suggested at the Legal Consultation and added in the National Disability Rights Tribunal

- (2) Any person aggrieved by such directions or compliance notice under sub-section (1), may prefer an appeal before the National Disability Rights Tribunal within a period of 30 days;
- (3) When no such appeal has been preferred and dismissed, such person shall, within a period of 30 days of the expiry of the period of appeal or the date of dismissal, as the case may be, develop a written proposal or enter into a formal agreement on an action plan of compliance;
- (4) The National Disability Rights Authority may where it considers feasible, endeavour to ensure compliance of regulations by informal methods of mediation and conciliation;
- (5) The National Disability Rights Authority shall require a regular report on progress with regards to written proposal or formal agreement referred in sub-section (2) and monitor progress thereupon;
- (6) Whoever contravenes or fails to comply with any direction given or compliance notice issued under sub section (2) or formal agreement made under sub section (2) shall be punishable under Sec 161 (1);
- (7) Where any individual, establishment or appropriate government continues the breach of any order, regulation or direction made or given by the National Disability Rights Authority, shall be punishable under Section 161 (2) of this Act.

108. Power to Review and Advice

- (1) Where the National Disability Rights Authority finds that any law, policy or practice directly or indirectly discriminates against or violates the rights of persons with disabilities, it shall advise the appropriate government or establishment referred to under Section 2 (13) (a) to take measures to address the alleged discrimination or violation;
- (2) The appropriate government or aforementioned establishment may consult the National Disability Rights Authority on the advice tendered;
- (3) The appropriate government or aforementioned establishment shall report to the Parliament or State Legislative Assembly, as the case may be, measures taken in pursuance of the advice tendered under sub-section (1).

109. Power to Review, Advice and Report

- (1) Where the National Disability Rights Authority finds that any practice directly or indirectly discriminates against or violates the rights of persons with disabilities, it shall advise the establishment mentioned under Section 2 (13) (b), (c), (d), (e) and (f) to take time bound measures to address the alleged discrimination or violation;
- (2) If the aforementioned establishment fails to take measures under sub-section (1), then the National Disability Rights Authority shall give an opportunity to the establishment to be heard;
- (3) Subsequent to the hearing, the National Disability Rights Authority may forward a report on the establishment's failure to address the alleged discrimination or violation to the National Disability Rights Tribunal for further action.

110. Power to Associate, Co-ordinate with Individuals and Organizations

- (1) The National Disability Rights Authority shall, by way of signing memorandums of understanding, agreements, engaging in active partnerships or through any other procedure associate any person, organization, regulatory authority or authorities whose assistance and advice is desirable for carrying out the purposes of this Act;
- (2) The National Disability Rights Authority may constitute Working Groups in specific areas and regions of the Country for the purpose of carrying out its functions and duties.

111. Power to Grant Exemptions

The National Disability Rights Authority may exempt such establishments either generally or for such periods as may be specified, in relation to such matters including any regulation or schemes or programmes formulated under any provision of this Act and subject to such conditions, limitations or restrictions, as may be specified.

112. Establishment of Committees

- (1) The National Disability Rights Authority may establish such Committees as required, for the effective discharge of its functions under this Act and to exercise such powers and functions that may be conferred and such functions as may be assigned to it under this Act;
- (2) The composition, membership, qualifications, terms and conditions of appointment, removal, tenure, removal, tenure, meetings, quorum and resignation of the Committees shall be determined by the regulations.

113. Power of National Disability Rights Authority vis-à-vis the State Disability Rights Authority

- (1) For the purpose of enabling the National Disability Rights Authority to discharge its functions under this Act, it may at any time collect or furnish such information, or direct State Disability Rights Authority to submit to it such statements relating to such information and in such form and within such time as may be specified by the National Disability Rights Authority from time to time;
- (2) The National Disability Rights Authority may, if it considers necessary or expedient in the interest of rights of persons with disabilities, give directions to State Disability Rights Authority either generally or particularly, in respect of any matters relating to or connected with the efficient discharge of functions under this Act;
- (3) The National Disability Rights Authority may, require State Disability Rights Authority to undertake such research, collection data and material for such purposes and within such time as may be specified by the National Disability Rights Authority;
- (4) National Disability Rights Authority may in such as matters of non-compliance or violation of regulations, require State Disability Rights Authority to conduct an inquiry and investigation on its behalf under Section 106 and report thereon;
- (5) The National Disability Rights Authority may associate itself in such manner and for such purposes as required with State Disability Rights Authority;
- (6) The Chairperson of National Disability Rights Authority may convene such number of meetings every year as required, for the purpose of co-ordination,

exchange of information with the Chairpersons of State Disability Rights Authority.

Provided that one such meeting shall be necessarily held every year.

114. Annual Report of the National Disability Rights Authority

- (1) The National Disability Rights Authority shall submit an annual report to the Central Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report;
- (2) The Central Government shall cause the annual and special reports to be laid before each House of Parliament along with a memorandum of action taken or proposed to be taken on the recommendations of the National Disability Rights Authority and the reasons for non-acceptance of the recommendations, if any.

115. Establishment and Incorporation of State Disability Rights Authority⁶⁴

- (1) There shall be established, for the purposes of promoting, regulating and ensuring the full and equal enjoyment of all human rights and fundamental freedoms of all persons with disabilities, an Authority in each State which shall be called the State Disability Rights Authority;
- (2) State Disability Rights Authority shall be a body corporate having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued;
- (3) State Disability Rights Authority shall have its head and seat at such place as the State Government may specify;
- (4) State Disability Rights Authority may inquire into violations and non-compliance of regulations formulated by National Disability rights Authority in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution.

⁶⁴ As suggested by almost all State Consultations.

Provided that if any such matter is already being inquired into by the National Disability Rights Authority or any other Commission duly constituted under any law for the time being in force, the State Disability Rights Authority shall not inquire into the said matter.⁶⁵

116. Composition and Management of State Disability Rights Authority

(1) State Disability Rights Authority shall consist of a Chairperson and a Board comprising of:

- a. 5 members of whom at least 3 shall be full-time members who shall be persons with disabilities and shall be appointed by way of an election, by an electoral college that comprises of DPOs, the organizations of parents and families of persons with disability and organizations working for the rights of persons with disability which are registered under this Act or the National Trust Act, 1999, by such procedure as may be prescribed by the Central Government;

Provided that the members of the first Board shall be nominated by the Governor on obtaining recommendations of the Selection Committee under Section 117 from amongst the panel of names forwarded by DPOs, the organizations of parents and families of persons with disabilities and organizations working for the rights of persons with disabilities.

- b. 1 member not below the rank of Joint-Secretary to the State Government and shall be nominated by the State Government, representing the Department of Social Justice and Empowerment (Disability Division);
- c. 1 member nominated by the Confederation Of Indian Industries state office;
- d. 1 member heading the State National Trust office and
- e. a Member-Secretary with requisite knowledge and experience in the field of disability to be appointed in accordance with the procedure prescribed.

When deemed necessary, for due deliberation on any matter, before the State Disability Rights Authority, the Chairperson may invite a representative of any other Department of the State Government;

⁶⁵ As suggested at the Legal Consultation.

- (2) The Board may appoint one of the members to be Vice-Chairperson of the Authority who shall exercise and discharge such powers and functions of the Chairperson as may be prescribed and as may be delegated by the Chairperson;
- (3) The general superintendence, direction and management of the affairs of the State Disability Rights Authority shall vest in the Board, which may exercise all powers and do all acts and things which may be exercised or done by State Disability Rights Authority;
- (4) The Chairperson shall be full time member;
- (5) The Chairperson or any other Member of the State Disability Rights Authority, who is a full-time member, shall not hold any other office of profit;
- (6) The Board shall hold meetings at the head office or any other place at such time as the Chairperson may direct, and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be specified;
- (7) When the Chairperson is unable to discharge the functions of the office owing to absence, illness or any other cause, the Vice-Chairperson shall discharge the functions of the Chairperson until such date that the Chairperson resumes charge;
- (8) All questions which come up before any meeting shall be decided by a majority of votes of the Members present and voting, and in the event of an equality of votes, the Chairperson or the person presiding shall have the right to exercise a second or casting vote;
- (9) No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy in, or any defect in, the constitution of the State Disability Rights Authority.

117. Selection Committee for the Chairperson of the State Disability Rights Authority

The Chairperson of State Disability Rights Authority shall be appointed by warrant under the hand and seal of the Governor of the State; provided that every appointment shall be made after obtaining the recommendations of a Selection Committee from amongst the panel of names forwarded by DPOs, organisations of parents and families of persons with disabilities and organisations working in disability in the State.

(1) The Selection Committee shall comprise of:

- a. the Chief Minister of the State;
- b. the Leader of Opposition of the State Legislative Assembly;
- c. the State Minister for Social Justice and Empowerment;
- d. two experts who shall be persons of integrity and standing who have special knowledge of and experience in the field of disability, law, health, education, management, industry, economics, business, commerce and public affairs.

Provided further that where there is a Legislative Council in a State, the Chairperson of that Council and the Leader of the Opposition in that Council shall also be members of the Committee.

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

118. Term of Office of Chairperson and Members of State Disability Rights Authority

- (1) A person appointed as Chairperson shall hold office for a term of five years from the date of entering office or until the age seventy, whichever is earlier;
- (2) A person appointed as a Member shall hold office for a term of five years from the date on entering upon office and shall be eligible for re-appointment for another term of five years; no person shall be appointed as member of State Disability Rights Authority for more than two consecutive terms or hold office after attaining the age of seventy years.

119. Terms and Conditions of Service of Chairperson and Members of State Disability Rights Authority

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

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

120. Officers and Other Staff of the State Disability Rights Authority

- (1) Subject to such rules as may be made by the State Government in this behalf, the State Disability Rights Authority may appoint such other administrative, technical and scientific staff as it may consider necessary.
- (2) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (1) shall be such as may be prescribed by the State Government.

121. Resignation, Removal and Suspension of the Chairperson and Other Members of State Disability Rights Authority

- (1) The Chairperson may resign office by tendering notice in writing to the Governor of the State;
- (2) Any other member may resign office by tendering notice in writing to the Chairperson;
- (3) The Governor of the State may remove the Chairperson from office if he or she:
 - a. has been adjudged an insolvent; or
 - b. has been convicted of an offence which involves moral turpitude; or
 - c. has so abused the position as to render continuance in office prejudicial to public interest.
- (4) The Board may, by a resolution passed by two-third majority, remove from office any member, who:
 - a. has been adjudged an insolvent; or
 - b. has been convicted of an offence which involves moral turpitude; or
 - c. has so abused the position as to render his continuance in office prejudicial to the public interest.
- (5) No such member shall be removed from office under clause (c) or clause (d) of sub-section (3) and under clause (c) or clause (d) of sub-section (4) unless given a reasonable opportunity of being heard in the matter;
- (6) In the event of a vacancy in the office of the Chairperson by reason of death, resignation, suspension or removal; the Vice-Chairperson shall act as the

Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon office.

122. Application of Certain Provisions Relating to National Disability Rights Authority to State Disability Rights Authority

- (1) The provisions of Sections 105 to 110 and 112 shall apply to a State Disability Rights Authority and shall have effect, subject to the following modifications, namely:
- a. references to “National Disability Rights Authority” shall be construed as references to “State Disability Rights Authority”, except in clause (g) and (l) in sub-section (2) of section 105;
 - b. in sub-section(2) of section 105; clause (n) shall be omitted;
 - c. in sub-section (2) of section 105, in clause (b), the words “Union” shall be omitted;
 - d. references to National Disability Rights Tribunal under sub section (2) of Section 107 and sub section (3) of Section 109 shall be construed as references to State Disability Rights Tribunal.

123. Duties of State Disability Rights Authority vis-a-vis the National Disability Rights Authority

- (1) The State Disability Rights Authority shall furnish the statements, information or particulars called for, to comply with any direction given to it, undertake research and conduct inquiry and report to the National Disability Rights Authority under provisions of this Act;
- (2) The State Disability Rights Authority shall bring to the notice of National Disability Rights Authority, such matters where it is necessary and expedient to do so in the interest of rights of persons with disabilities;
- (3) The State Disability Rights Authority shall function in association and extend utmost co-operation to National Disability Rights Authority in furtherance of effective and efficient discharge of its own functions under this Act.

124. Annual and Special Reports of State Disability Rights Authority

- (1) The State Disability Rights Authority shall submit an annual report to the State Government and may at any time submit special reports on any matter which is of such urgency or importance;
- (2) The State Government shall cause the annual and special reports of the State Disability Rights Authority to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Disability Rights Authority and the reasons for non-acceptance of the recommendations, if any.

125. Registration of Organizations for Persons with Disabilities

- (1) The State Disability Rights Authority shall register, in accordance with the rules made by the Central Government, association of persons with disabilities or a Disabled Persons' Organizations, association of parents and families of persons with disabilities, or an organization working towards the interests of persons with disabilities under this Act or any such person who, being a person with disability, has experience in disability sector or has been disability rights activist and has completed twenty five years of age;
- (2) Every application for a certificate of registration shall be made to the State Disability Rights Authority in such form and in such manner as may be prescribed;
- (3) On receipt of an application under sub-section (1), the State Disability Rights Authority shall make such enquiries and where it is satisfied that the applicant has complied with the requirements of this Act and the rules made there under, it shall grant a certificate of registration to the applicant. Where the State Disability Rights Authority is not satisfied that the requirements have been complied with, it shall give a reasonable opportunity of being heard to the applicant. An order of refusal to grant a certificate shall be accompanied with reasons to be recorded in writing for such non-registration;
- (4) No certificate of registration shall be granted under sub-section (2) unless the organization with respect to which an application has been made is in a position to provide such facilities and maintain such standards as may be prescribed;

- (5) A certificate of registration granted under this section, unless revoked, shall remain in force for such period as may be provided in the rules and may be renewed from time to time for a like period; and shall be in such form and shall be subject to such conditions as may be prescribed;
- (6) An application for renewal of a certificate of registration shall be made not less than sixty days before the period of validity;
- (7) The State Disability Rights Authority may, if it has reasonable cause to believe that the holder of the certificate of registration granted under sub-section (3) of has made a statement in relation to any application for the issue or renewal of the certificate which is incorrect or false in material particulars; or committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted, it may, after making such inquiry, by order, revoke the certificate:

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

- (8) Where a certificate in respect of an organization has been revoked under sub-section (1), such organization shall cease to be in Electoral college from the date of such revocation:
- (9) Every organization which holds a certificate of registration which is revoked under this section shall, immediately after such revocation, surrender such certificate to the State Disability Rights Authority;
- (10) Any person aggrieved by the order of the State Disability Rights Authority refusing to grant a certificate or revoking a certificate may, within such period as may be provided, prefer an appeal to the State Disability Rights Tribunal against such refusal or revocation;
- (11) The order of the State Disability Rights Tribunal on such appeal shall be final.

126. Establishment of National Fund for Persons with Disabilities

- (1) There shall be constituted for the purposes of this Act, a Fund to be called the National Fund for Persons with Disabilities and shall be credited thereto with:

- a. all moneys payable by banks, corporations, etc., in pursuance of judgment dated 16.04.2004 of the Supreme Court in Civil Appeal No.4655 and 5218 of 2000;
- b. a sum equivalent to the moneys collected under clause (a) to be contributed by the Central Government;
- c. all moneys received by the Fund by way of grant, gifts, donations, beneficinations, bequests or transfers; and
- d. all moneys received by the fund in any other manner or from any other source.

(2) The money received by the Fund under clauses (a) and (b) of sub section (1) shall constitute the corpus of the Fund which shall be held in trust by the National Disability Rights Authority.

127. Dissolution of Erstwhile Fund for Persons with Disabilities and Transfer of their Rights, Assets and Liabilities to the National Fund for Persons with Disabilities.

- (1)** On and from the date of the constitution of the National Fund for Persons with Disabilities in accordance with Section 126 the Erstwhile Fund for Persons with Disabilities shall stand dissolved, and on such dissolution:
- a. all properties and assets, movable and immovable, of, or belonging to the dissolved fund shall vest in the National Fund for Persons with Disabilities;
 - b. all rights and liabilities of the dissolved fund shall be transferred to, and be the rights and liabilities of the National Fund for Persons with Disabilities;
 - c. without prejudice to the provisions of clause (b) all liabilities incurred, all contracts entered into, and all matters and things engaged to be done by, with or for the dissolved Fund, shall be deemed, as the case may be, to have been incurred, entered into, or engaged to be done by, with or for, the National Fund for Persons with Disabilities;
 - d. all sums of money due to the dissolved Fund immediately before their dissolution shall be deemed to be due to National Fund for Persons with Disabilities;
 - e. all suits and other legal proceedings instituted or which could have been instituted by or against the dissolved Fund immediately before their

dissolution may be continued or may be instituted by or against the National Fund for Persons with Disabilities.

128. Grants by Central Government

- (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the National Disability Rights Authority grants of such sums of money as the Government may deems fit for being utilised for the purposes of this Act;
- (2) The contribution by Public Sector Undertakings and Public Limited Companies towards the National Disability Fund shall be deemed fulfillment of their Corporate Social Responsibility.

129. Grants by State Government

The State Government may, after due appropriation made by the Legislature by law in this behalf, make to the State Disability Rights Authority grants of such sums of money as the State Government may deems fit for being utilised for the purposes of this Act.

130. Funding Pattern

- (1) The Central Government and State Government shall have concurrent responsibility for providing funds for establishing State Disability Rights Authority;
- (2) The Central Government shall prepare the estimates of capital and recurring expenditure for the establishment of the State Disability Rights Authority;
- (3) The Central Government shall provide to the State Government as grants in aids of revenues, such percentage of expenditure referred to in sub section (2) as it may determine from time to time in consultation with the State government;
- (4) Notwithstanding anything contained in sub section (3), it shall be duty of the State Government to provide funds for the establishment of the State Disability Rights Authority.

131. Exemption from tax on wealth and income

Notwithstanding anything contained in the Wealth-tax Act, 1957 (27 of 1957), the Income-tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the National Disability Rights Authority and State Disability Rights Authority shall not be liable to pay wealth-tax, income-tax, or any other tax in respect of their wealth, income, profits or gains derived.

132. Accounts and Audit

- (1) The National Disability Rights Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure accounts in such form as required by the Comptroller and Auditor-General of India;
- (2) The accounts of the National Fund and National Disability Rights Authority shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified and any expenditure incurred in connection with such audit shall be payable by the National Disability Rights Authority to the Comptroller and Auditor-General of India;
- (3) The Comptroller and Auditor-General of India and any other person appointed in connection with the audit of the accounts of the National Fund and National Disability Rights Authority shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of Government accounts, and in particular, shall have the right to demand production of books of accounts, connected vouchers, other documents and papers and to inspect any of the offices of the National Disability Rights Authority;
- (4) The accounts of the National Fund and National Disability Rights Authority as certified by the Comptroller and Auditor-General of India or any other person appointed in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government which shall cause the same to be laid before each House of Parliament.

133. Accounts and Audit of State Disability Rights Authority

- (1) The State Disability Rights Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India;
- (2) The accounts of the State Disability Rights Authority shall be audited by the Comptroller and Auditor-General at such intervals as may be specified and any expenditure incurred in connection with such audit shall be payable by the State to the Comptroller and Auditor-General;
- (3) The Comptroller and Auditor-General or any person appointed in connection with the audit of the accounts of the State Disability Rights Authority under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Disability Rights Authority;
- (4) The accounts of the State Disability Rights Authority, as certified by the Comptroller and Auditor-General or any other person appointed in this behalf, together with the audit report thereon, shall be forwarded annually to the State Government by the State Disability Rights Authority and the State Government shall cause the audit report to be laid, as soon as may be after it is received, before the State Legislature.

PART IV: GRIEVANCE REDRESSAL

134. District Disability Rights Tribunal:

- (1) There shall be established District Disability Rights Tribunals at the district level in each State;
- (2) The Tribunal shall consist of two members:
 - a. a presiding officer being an advocate who has practiced for not less than seven years;

- b. a member who is an experiential expert or a subject expert with experience in disability human rights or human rights;
- (3) The above appointments shall be in accordance in with prescribed procedure;
- (4) The salary allowances and other emoluments of the Presiding officer shall be of senior judge, civil division and that of the member Junior Judge civil division.

135. Jurisdiction of the District Disability Rights Tribunal

The tribunal shall have jurisdiction over such number of Revenue Districts as may be notified keeping in view the territorial expanse of districts in each state and the demographic concentration of persons with disabilities;

136. Panel of Disability Rights Defenders

- (1) Each District Disability Rights Tribunal shall have a panel of three advocates attached to it as Disability Rights Defenders;
- (2) The Disability Rights Defenders shall be attached to the respective Tribunal on a full-time basis and will assist the Tribunal in the conduct of the proceedings before it;
- (3) Advocates with five years practicing experience at the bar shall be eligible for appointment as Disability Rights defenders;
- (4) The pay and allowances of Disability Rights Defenders shall be as prescribed.

137. Proceedings before the District Disability Rights Tribunal

- (1) Any person with disability aggrieved by the deprivation of the rights guaranteed under this Act and the National Trust Act can petition the District Disability Rights Tribunal in person or by post by such procedure as may be prescribed;
- (2) The tribunal shall tour the entire area under its jurisdiction and hear dispose of matters at mandal, tehsil or taluk level headquarters closest to the place where the petitioner with disability resides;
- (3) On receipt of a complaint, the District Disability Rights Tribunal shall provide a copy of the complaint to the opposite party mentioned in the complaint directing such party to respond within a period of thirty days;

- (4) The District Disability Rights Tribunal shall, after considering the written response to the complaint, communicate to both parties the place where the proceeding is to be conducted and give a reasonable opportunity to both the parties to present their case in person or through legal counsel.

Provided that persons with disabilities shall be assisted by the Disability Rights Defenders attached to the Tribunal to present their case.

- (5) The decision of the District Disability Rights Tribunal shall be final.

138. State Disability Rights Tribunal

- (1) There shall be established State Disability Rights Tribunal in each state;

- (2) The tribunal shall have three members:

- a. A Presiding Officer from amongst the District Judges in the State with the concurrence of the Chief Justice of the High Court for a period of three or a person who has served as a presiding officer in one of the District Disability Tribunals in the state for at least a period of 5 years;
- b. Persons who have either held or were eligible to hold the office of the Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995; member
- c. A graduate in humanities, social sciences, psychology, special education or social work with at least 5 years experience in disability human rights or human rights; or a person who has served as a member of one of the District Disability Rights Tribunals in the state for at least a period of 5 years; member

- (3) The appointments shall be made in accordance with such procedure as may be prescribed.

139. Jurisdiction of the State Disability Rights Tribunal

- (1) If the District Disability Rights Tribunal is of the opinion that any matter before it involves important question of law then it may refer the same to the State Disability Rights Tribunal for its decision;

- (2) If there is a difference of opinion between the Presiding Judge and Member of the District Disability Rights Tribunal then the same shall be referred to the State Disability Rights Tribunal for its decision;
- (3) If the State Disability Tribunal is of the view that any case has been pending before the District Disability Rights Tribunal for an unduly long time then it may withdraw the same to its file and dispose it off;
- (4) If the State Disability Rights Tribunal is of the opinion that a similar question is pending for decision before more than one District Disability Rights Tribunal under its jurisdiction then it may withdraw all those cases from different Tribunals to its file and dispose them off in accordance with law;

Provided that the State Disability Rights Tribunal may either exercise this power suo motu or on application of any interested person

- (5) The State Disability Rights Tribunal may either suo motu or on application take cognizance, of any large scale or systemic infringement of rights of persons with disabilities and pass appropriate orders or directions;
- (6) Any person aggrieved by a compliance notice and/or direction of State Disability Rights Authority made under this Act, and the attendant regulations may appeal against the same to the State Disability Rights Tribunal within a period of 30 days.

140. Proceedings before the State Disability Rights Tribunal

- (1) The State Disability Rights Tribunal shall devise its own procedure to conduct its proceedings provided that such procedure is in accordance with the principles of natural justice;
- (2) The State Disability Rights Tribunal shall ordinarily sit as a full panel of three members;
However if the presiding officer is on leave he may authorize the other two members to function as a Tribunal. In the event of a member being absent by reason of leave or post being vacant the presiding officer and the other member will function as the Tribunal
- (3) In the event of difference of opinion, the majority opinion shall prevail;
- (4) The decision of the State Disability Rights Tribunal shall be final.

141. National Disability Rights Tribunal

- (1) There shall be established a National Disability Rights Tribunal in New Delhi;
- (2) The tribunal shall have three members:
 - a. A Presiding Officer from amongst the High Court Judges with the concurrence of the Chief Justice of India for a period of three or a person who has served as a presiding officer in one of the State Disability Rights Tribunals for at least a period of 5 years;
 - b. Persons who have either held or were eligible to hold the office of the Chief Commissioner or for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995: member
 - c. A graduate in humanities, social sciences, psychology, special education or social work with at least 7 years experience in disability human rights or human rights as member or a person who has served as a member of one of the State Disability Tribunals for at least a period of 5 years: member
- (3) The appointments shall be made according to prescribed procedure.

142. Jurisdiction of the National Disability Rights Tribunal

- (1) If the State Disability Rights Tribunal is of the opinion that any matter before it involves an important question of law which merits the consideration of the National Disability Rights Tribunal then it may refer the same to the National Disability Rights Tribunal for its decision; and upon such reference the National Disability Rights Tribunal shall entertain the matter and dispose it of;
- (2) If the National Disability Rights Tribunal is of the opinion that a similar question is pending for decision before more than one State Disability Rights Tribunal under its jurisdiction then it may withdraw all those cases from different Tribunals to its file and dispose them of in accordance with law;

Provided that the National Disability Rights Tribunal may either exercises this power suo motu or on application of any interested person

- (3) The National Disability Rights Tribunal shall either suo motu or on application, take cognizance, of any large scale or systemic infringement of rights of persons with disabilities and pass appropriate orders or directions;
- (4) Any person aggrieved by a compliance notice or direction of National Disability Rights Authority made under this Act, and the attendant regulations may appeal against the same to the National Disability Rights Tribunal within a period of 30 days.

143. Powers and Functions of the Disability Rights Tribunals

- (1) The Disability Rights Tribunals shall decide both questions of law and facts that may be raised before it and if it is satisfied that there has been a violation of any right guaranteed under this Act or violation of any provision of this Act, it shall issue an order to the opposite party directing one or more of the following things:
 - a. to remedy the infringement by removing the discriminatory practice or scheme;
 - b. to discontinue any activity that is violative of the provisions of this Act;
 - c. to award compensation to the victim for any loss or injury suffered;
 - d. to provide adequate costs to the parties.
- (2) Every order made by the Disability Rights Tribunals shall be signed by the members conducting the proceedings and published regularly on its website.

144. Powers of the Disability Rights Tribunals

- (1) For the purposes of this section, the Disability Rights Tribunals shall have the same powers as that of a Civil Court under the Code of Civil Procedure 1908 while trying a suit in respect of the following matters, namely:
 - a. summoning and enforcing the attendance of any person and examining him on oath;
 - b. requiring the discovery and production of documents;
 - c. receiving evidence on affidavits;
 - d. subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;

- e. issuing commissions for the examination of witnesses or documents;
- f. reviewing its decisions;
- g. dismissing an application for default or deciding it ex parte;
- h. setting aside any order of dismissal of any application for default or any order passed by it ex parte; and
- i. any other matter which may be prescribed by the Concerned Government.

145. Execution of the Orders of the Disability Rights Tribunals

- (1) An order or decision of the Tribunal under this Act shall be executable by the Tribunal as a decree of a civil court, and for this purpose, the Tribunal shall have all the powers of a civil court;
- (2) Every order passed by the District Disability Rights Tribunals shall be implemented within a period of four months and the authority to implement the same shall be the Revenue Divisional Officer or Sub Divisional Magistrate as the case may be having jurisdiction over the area where the person in whose favour the order is made resides. The orders of the State and National Disability Rights Tribunals shall be implemented by District Collector, District Magistrate or Deputy Commissioners as the case may be having jurisdiction over the area where the person in whose favour the order is made resides.

146. Conditions of Service of Members

The salaries and allowances payable to, and other terms and conditions of service of the members of the Disability Rights Tribunals, including the Disability Rights Defenders, shall be such as may be prescribed.

147. Officers and other Staff of Disability Rights Tribunals

- (1) The central government in the case of the NDRT and the respective state governments in the case of other tribunals shall be responsible for providing the staff and necessary infrastructure for the effective functioning of the Tribunals;
- (2) Subject to such Rules as may be made by the Central Government in this behalf, the Disability Rights Tribunals may appoint such other technical and scientific staff as it may consider necessary;

- (3) The salaries, allowances and conditions of service of the officers and other staff shall be such as may be prescribed.

PART V: OFFENCES AND PENALTIES

148. Cognizance of Offences and Jurisdiction of Courts

- (1) The Court of Metropolitan Magistrate or Judicial Magistrate first class having jurisdiction over the area in which the offence has taken place alone shall have the power to take cognizance of the offences under this Act;
- (2) No Court shall take cognizance of an offence under this Act except:
- a. on a written complaint of the aggrieved person or a friend or a relative or a registered organization as so defined in section 125 of this Act; or
 - b. on a written complaint for any offence committed under sub section (4) or (5) of Section 106 or under sub-section (5) or (6) of Section 107 by the National Disability Rights Authority or the State Disability Rights Authority, as the case may be or any person authorized by or on behalf of National Disability Rights Authority or State Disability Rights Authority as the case may be;
- (3) In addition to any sentence awarded or fine imposed under this Act, the Court may provide for the payment of appropriate monetary compensation proportionate to the injury caused or harm and injury suffered by the aggrieved person.

149. Offences by Establishments

- (1) Where any offence under this Act has been committed by an establishment, every person who, at the time the offence was committed, was the appointed head or was directly in charge of, and was responsible to the establishment for the conduct of its business, as well as the establishment, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proved that the offence was committed without

his knowledge or that all due diligence was exercised to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by an establishment and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any other officer of the establishment, such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

150. General Penalty for Offences

- (1) Whoever fails to comply or contravenes any of the provisions of this Act, or the rules made or orders or directions issued hereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both. In case the failure or contravention continues, with additional fine which may extend to one thousand rupees for every day to which such failure or contravention continues after the conviction for the first such failure or contravention;
- (2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to four years.

151. Punishment for Injury to Person with Disability

Whoever voluntarily injures, damages or interferes with the use of any limb or sense or faculty of a person with disability, permanently or temporarily shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to eight years, and with fine, or with both.

152. Penalty for Wrongful Medical Procedures

- (1) Whoever performs, conducts or directs any medical procedure to be performed on a person with disability which leads to or is likely to lead to infertility in contravention of Section 30 shall be punishable with imprisonment for a period

not exceeding seven years and with fine;

- (2) Any person acting as a care-giver of the person with disability, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to facilitate, or negligently fails to prevent such medical procedure from being performed, shall be punishable with imprisonment which may extend to five years and with fine.

153. Penalty for Forceful Termination of Pregnancy

- (1) Whoever performs conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent shall be punishable with imprisonment for a period not exceeding ten years and with fine;

- (2) Any person acting as a care-giver of the woman with disability, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to facilitate, or negligently fails to prevent such medical procedure from being performed, shall be punishable with imprisonment which may extend to seven years and with fine.

154. Penalty for Hate Speech

Whoever voluntarily or knowingly commits or abets the offence of uttering hate speech shall be inducted into one or more different community service programmes, or shall be punishable with fine, or with both.

Explanation

Community service programme means a programme developed by the appropriate government, which shall include, but not be limited to engaging individuals with working in various institutions housing persons with disabilities and participating in awareness programmes relating to persons with disabilities.

155. Penalty for Denial of Food and Fluids

Whoever voluntarily or knowingly denies food or fluids to any person with disability or aids or abets in such denial shall be punishable with imprisonment

for a term which shall not be less than six months but which may extend to three years, and with fine.

156. Penalty for Contravention of Accessibility Norms for Built Infrastructure

- (1) Any individual or any organization or establishment which fails to comply with the provisions under Section 83 shall be punished with:
 - a. Suspension of the supply of water and electricity till the accessibility requirements are fulfilled; or
 - b. Cancellation, revocation or suspension of the license of the builder; or
 - c. Fine which may extend to five percent of the market value or the estimated market value, as the case may be, of the building; or
 - d. A combination of two or more of the above.
- (2) If the offender fails to comply with the provisions of Section 83 within a period of six months from the date of conviction, the offender shall be punished with an additional fine which may extend up to one lakh rupees for every day during which such failure continues after the conviction for the first such failure.

157. Penalty for Contravention of Duties by Service Providers

- (1) Any service provider who fails to comply with the provisions under Section 84 shall be penalized with cancellation, revocation or suspension of service license or manufacturing; or with fine, which may extend up to one lakh rupees or with both;
- (2) If the offender fails to comply with the provisions of Section 84 within a period of six months from the date of conviction, the offender shall be penalised with additional fine which may extend up to five thousand rupees for every day during which such failure continues after the conviction for first such failure.

158. Penalty for Fraudulently Availing Benefit Meant for Persons with Disabilities

Whoever fraudulently avails or attempts to avail any benefit meant for persons with disabilities shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twenty thousand rupees or both.

159. Penalty for Willfully Making False Statement

Whoever in any application, declaration, statement, information or particulars made, required or furnished by or under or for the purposes of any provisions of this Act before National Disability Rights Authority or State Disability Rights Authority as the case may be, or any order, regulation or direction made or given thereunder by National Disability Rights Authority or State Disability Rights Authority, willfully makes a statement which is false in any material particular knowing it to be false or willfully omits to make a material statement shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.

160. Penalty for Failure to Furnish Information

Whoever fails to produce any book, account or other document or to furnish any statement, information or particulars which, under this Act or any order, regulation or direction made or given thereunder, whose duty it is to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, regulation or direction made or given thereunder, shall be punishable with fine which may extend to fifteen thousand rupees in respect of each offence and if in case of persistence in such failure or refusal, with further fine which may extend to one hundred rupees for every day, after the first during which the offence continues.

161. Penalty for Failure to Comply with Directions

- (1) Whoever contravenes or fails to comply with any direction given or compliance notice issued or formal agreement made under Section 107 by the National Disability Rights Authority or State Disability Rights Authority as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees;
- (2) Where any individual, establishment or appropriate government continues the breach of any order, regulation or direction made or given by the National Disability Rights Authority or State Disability Rights Authority as the case may be, every such individual or such person who at the time the breach continued was in charge of, and was responsible to, the establishment or appropriate government

for the conduct of its business and/or management, functioning, administration or had been the Managing Director, Secretary, shall be deemed to be guilty of the non-compliance and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if it is proved that the offence was committed without knowledge of such person or that all due diligence had been exercised to prevent the commission of such offence.

PART VI: MISCELLANEOUS

162. Effect of this Act on Other Laws

- (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and to the extent of such inconsistency that other law shall be deemed to have no effect.
- (2) The provisions of this Act or the rules made there under shall be in addition and not in derogation of any other legislation, rules, orders or instructions which provides any entitlement or benefit to persons with disabilities.

163. Action taken in Good Faith

No suit prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule there made under

164. Provision for Mandatory Review

- (1) There shall be a mandatory review of the functioning of this Act once in every ten years after all parts of this legislation have come into force in the entire country.
- (2) Such review shall evaluate whether the legislative provisions are meeting the rights requirements of persons with disabilities; and whether any additions,

modifications or deletions need to be made in the legislation in furtherance of the rights of persons with disabilities.

165. Removal of Difficulties Clause

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty;

Provided that no such order shall be made after the expiry of the period of two years from the date of commencement of this Act.

(2) Every order made under this section shall as soon as may be after it is made, be laid before each House of parliament.

166. Power of Central Government to Make Rules

(1) The Central Government may, by notification make rules, for the effective implementation and the purposes of this Act;

(2) Without prejudice to the generality of sub-section (1), the Central government shall make rules relating to:

- a. The issuance of driving licenses to persons with disabilities considering their accessibility requirements;
- b. Measures and conditions relating to the Equal Opportunity Policy to be formulated by establishments;
- c. Areas and limits for establishment of neighbouring schools;
- d. The minimum qualification criteria for the persons with disabilities seeking admission to higher educational institutions;
- e. Accessibility to infrastructure, facilities, services, information and communication technologies and personal mobility bearing in mind the diversity of disability and principles of universal design;
- f. The form of records to be maintained pertaining to allocation and utilization of funds for women and girls with disabilities in various schemes and programmes;

- g. The scales for providing compensation and reimbursement of medical expenses;
- h. Qualifications and requisite number of professionals to provide services to persons with disabilities;
- i. Elimination of discrimination in matters of employment, work and occupation;
- j. Qualifications and training of educators;
- k. procedure to constitute the Executive Board of National Disability Rights Authority;
- l. deputation of government officers to the Executive Board;
- m. the salaries and allowances and other terms and conditions of service of the Chairperson and members of the National Disability Rights Authority;
- n. Powers and functions of the Vice-Chairperson of the National Disability Rights Authority;
- o. the qualifications, duties and powers and terms of conditions of service of the Member-Secretary to the National Disability Rights Authority;
- p. the salaries, allowances and conditions subject to which other administrative, technical and scientific staff may be appointed by the National Disability Rights Authority;
- q. any other power of a civil court required to be prescribed under clause (vi) of Section 99;
- r. the qualifications for any person contesting the election to the membership to the Disability Rights Authority bearing in mind the experience and contribution required for such posts;
- s. rules of procedure for the registration of members of Electoral college;
- t. the form and manner of application for registration of members;
- u. the facilities and standards to be maintained by the organization;
- v. Reservation of posts within the National Disability Rights Authority for ensuring diversity and representation of various forms of disability;
- w. the appointment, salary and allowances payable to and the other terms and conditions of service of the Presiding Officer and members of the National Disability Rights Tribunal;
- x. the salary and allowances and other conditions of service of the officers and employees of the National Disability Rights Tribunal;

- y. the salaries, allowances and conditions subject to which other administrative, technical and scientific staff may be appointed by the National Disability Rights Tribunal;
 - z. the additional matters in respect of which the National Disability Rights Tribunal may exercise the powers of a Civil Court;
 - aa. the form in which and the time at which service of notices to any person or to the Central Government for the purpose;
 - bb. the manner of delivery of every notice, order or document to be served;
 - cc. any other power of a civil court required to be prescribed;
 - dd. Procedure relating to the preparation and publication of the annual reports of the National Fund, National Disability Rights Authority and the State Disability Rights Authority;
 - ee. Any other matter incidental or ancillary for the enforcement of this Act.
- (3) Prior to the formation of the rules, the central government shall make available the draft of the rules in accessible formats to the members of the public and invite their suggestions and objections to the same;
- (4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each house of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses agree in making any modification in the rule or both houses agree that the rule should not be made. The rule shall thereafter have effect only in such modified form, or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

167. Power of the State Government to Make Rules

- (1) The State Government shall have the power to make rules for the effective implementation and the purposes of this Act;
- (2) Without prejudice to the generality of sub-section (1), the State Government shall make rules relating to:

- a. The form of records to be maintained pertaining to allocation and utilization of funds for women and girls with disabilities in various schemes and programmes;
 - b. the salaries and allowances and other terms and conditions of service of the Chairperson and members of the State Disability Rights Authority;
 - c. powers and functions of the Vice-Chairperson of the State Disability Rights Authority;
 - d. the salary and allowances and other conditions of service of the officers and employees of the State Disability Rights Authority;
 - e. the salaries, allowances and conditions subject to which other administrative, technical and scientific staff may be appointed by the State Disability Rights Authority;
 - f. the qualifications, duties and powers and terms of condition of service of the Member-Secretary to the State Disability Rights Authority;
 - g. any other power of a civil court required to be prescribed;
 - h. the appointment, salary and allowances payable to and the other terms and conditions of service of the Presiding Officer and members of the State Disability Rights Tribunal of the State Disability Rights Tribunal;
 - i. the salaries, allowances and conditions subject to which other administrative, technical and scientific staff may be appointed by the State Disability Rights Tribunal;
 - j. the additional matters in respect of which the State Disability Rights Tribunal may exercise the powers of a civil court;
 - k. the form in which and the time at which service of notices to any person or to the State Government for the purpose ;
 - l. the manner of delivery of every notice, order or document to be served;
 - m. Procedure relating to the preparation and publication of the annual reports of the State Disability Rights Authority;
 - n. procedure of establishing Authorities for issuing disability certificates;
 - o. Rules relating to recognition of "National Disability Certificate and
 - p. Any other matter incidental or ancillary for the enforcement of this Act.
- (3)** Prior to the formation of the rules, the State Government shall make available the draft of the rules in accessible formats to the members of the public and invite their suggestions and objections to the same.

- (4) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each house of the state legislature where it consists of two houses, or where such legislature consists of one house, before that house.

168. Powers of National Disability Rights Authority to Make Regulations

- (1) The National Disability Rights Authority may, by notification make regulations consistent with this Act and the Rules for the effective implementation of the purposes of this Act, in respect of the matters relatable to any of the entries enumerated in List I and List III in the Seventh Schedule to the Constitution;
- (2) Without prejudice to the generality of sub-section (1), the National Disability Rights Authority shall make regulations relating to:
- a. Standards for accessibility to physical environment, transportation, information and communication technologies including appropriate technology and systems and other facilities and services with due consideration to the diversity of disability and principles of universal design;
 - b. Standards of facilities for Service animal training.
 - c. Standards for accessibility for existing infrastructure and premises;
 - d. Standards for accessibility for all service providers;
 - e. Training and educational qualifications for teachers having regard to the support requirements of persons with disabilities;
 - f. Procedure relating to matters;
 - g. The establishment, powers and duties of Committees formed by National Disability Rights Authority;
 - h. The composition, membership, qualifications, terms and conditions of appointment, removal, tenure, meetings, quorum and resignation of the Committees formed by the National Disability Rights Authority;
 - i. The rules of procedure for transaction of business;
 - j. The rules of procedure for convening meetings of Chairpersons;
 - k. Conditions, limitations and restrictions of exemptions;
 - l. The form in which and the time at which the meetings to be called;
 - m. The form and manner in which and the time at which research needs to be undertaken;

- n. The manner in which and the time at which meetings of National Disability Rights Authority to be convened;
- o. Any other matter incidental or ancillary for the enforcement of this Act.

(3) Prior to the finalization of the regulations, the National Disability Rights Authority shall make available the draft rules in accessible formats to the members of the public and invite their suggestions and objections to the same.

169. Power of the State Disability Rights Authority to make Regulations

(1) The State Disability Rights Authority shall have the power to issue regulations which are in conformity with the Act and the Rules for the effective implementation of the purposes of this Act, in respect of the matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution;

Provided that where any regulations has already been issued in any such matter pertaining to List III by the National Disability Rights Authority, such regulations shall prevail over the regulations of the State Disability Rights Authority pertaining to the said matter.

(2) Without prejudice to the generality of sub-section (1), the State Disability Rights Authority shall make regulations relating to:

- a. Establishment of such Committees as may be required for the efficient performance of its functions;
- b. The composition, membership, qualifications, terms and conditions of appointment, removal, tenure, meetings, quorum and resignation of the Committees formed by the State Disability Rights Authority;
- c. Any other matter incidental or ancillary for the enforcement of this Act.

(3) Prior to the finalization of the regulations, the State Disability Rights Authority shall make available the draft rules in accessible formats to the members of the public and invite their suggestions and objections to the same.

170. Repeal and Saving

- (1) The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act of 1995 (Act No.1 of 1996) is hereby repealed;

- (2) Notwithstanding such repeal anything done or any action taken under either of the said acts insofar as such thing or action is not inconsistent with the provisions of this Act be deemed to be have been done or taken under the corresponding provisions of this Act and shall continue in force until superseded by anything done or any action taken under this Act.

SCHEDULE 1

List of Disabilities

- (1) **Autism Spectrum Conditions / Autism Spectrum Disorders** refers to a neurological condition typically appearing in the first three years of life, that significantly affects a person's ability to communicate, understand relationships and relate to others, and is frequently associated with unusual or stereotypical rituals or behaviours. Autism is often accompanied by learning disability, severe sensory defensiveness, motor coordination difficulties, intellectual impairment, limitations in adaptive behavior, and seizure disorder, among others.
- (2) **'Blindness'** refers to a condition where a person has any of the following conditions, namely:
- Total absence of sight; or
 - Visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses; or
 - Limitation of the field of vision subtending an angle of 20 degree or worse.
- (3) **'Cerebral Palsy'** refers to a group of chronic conditions affecting body movements and muscle coordination. It is caused by damage to one or more specific areas of the brain, usually occurring during fetal development or infancy. It also can occur before, during or shortly following birth.
- (4) **'Chronic neurological conditions'** refers to a condition that has its origin in some part of the person's nervous system lasting for a long period of time or marked by frequent recurrence.
- (5) **'Deafblindness'** refers to a condition in which people may have a combination of hearing and visual impairments causing severe communication, developmental, and educational problems. Deafblindness may include:
- Moderate to profound hearing and significant visual impairments;
 - Moderate to profound hearing and significant visual impairments and other significant disabilities;
 - Central processing problems of vision and hearing;
 - Progressive sensory impairments/ significant visual impairment; and

- Possible loss of auditory processing mechanisms (associated with severe physical disability or severe cognitive disability) and severe communication delay”

- (6) **‘Dwarfism’** is characterized by disproportionate shortness of stature measured by height to age. It is usually it is less than three standard deviation of the average height to age.
- (7) **‘Hemophilia’** refers to an inheritable disease, usually affecting only males but transmitted by women to their male children, characterized by loss or impairment of the normal clotting ability of blood so that a minor wound may result in fatal bleeding
- (8) **‘Hearing Impairment’** refers to loss of 60 decibels or more in the better ear in the conversational range of frequencies; such impairment in hearing, whether permanent or fluctuating, that hinders the communication with others.
- (9) **‘Hard of Hearing’** refers to those persons with hearing impairments with a permanent or fluctuating hearing loss which permits the use of the auditory channel for a certain amount of speech/language and information gathering functions.
- (10) **‘Intellectual Disability’** refers to a disability characterized by significant limitations both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior, which covers a range of everyday social and practical skills.
- (11) **‘Leprosy cured’ person refers to** any person who has been cured of leprosy but is suffering from:
 - a. Loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;
 - b. Manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;
 - c. Extreme physical deformity as well as advanced age which prevents him/her from undertaking any gainful occupation, and the expression “leprosy cured” shall construed accordingly.

- (12) **‘Locomotor Disability’ refers to** a person’s inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal and/or nervous system
- (13) **‘Low-vision’** refers to a condition where a person has any of the following conditions, namely:

- a. Visual acuity not exceeding 6/18 or 20/60 and less than 6/60 or 20/200 (Snellen) in the better eye with correcting lenses; or
- b. Limitation of the field of vision subtending an angle of more than 20 degree and up to 40 degree.

(14) **‘Mental illness’** refers to a disorder of mood, thought, perception, orientation or memory which causes significant distress to a person or impairs a person’s behavior, judgment and ability to recognize reality or impairs the person's ability to meet the demands and activities of daily life and includes mental conditions associated with the abuse of alcohol and drugs.

(15) **‘Multiple disabilities’** refers to two or more impairments occurring at the same time the combination of which causes significant needs. The term does not include deafblindness.

(16) **‘Muscular Dystrophy’** A group of hereditary genetic muscle disease that weakens the muscles that move the human body. People with MD have incorrect or missing information in their genes, which prevents them from making the proteins they need for healthy muscles. It is characterized by progressive skeletal muscle weakness, defects in muscle proteins, and the death of muscle cells and tissue.

(17) **‘Multiple Sclerosis’** An inflammatory, nervous system disease in which the myelin sheaths around the axons of nerve cells of the brain and spinal cord are damaged, leading to demyelination and affecting the ability of nerve cells in the brain and spinal cord to communicate with each other.

(18) **‘Specific Learning Disabilities’** refers to a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia. **‘Dyslexia’** refers to difficulties in reading, writing and spelling; **‘Dysgraphia’** refers to difficulties in the ability to write, primarily in terms of handwriting and content; **‘Dyscalculia’** refers to difficulties in the ability to learn class/age appropriate mathematics; **‘Dyspraxia’** refers to difficulties of motor coordination usually apparent in childhood

- (19) **‘Speech impairment’** refers to an impairment of speech articulation, voice, fluency, or the impairment of language comprehension and/oral expression or the impairment of the use of a spoken or other symbol system.
- (20) **‘Thalassemia’** refers to a group of inherited disorders characterized by reduced or absent amounts of hemoglobin.