

A Handbook on
Rights of
Persons with Disabilities
Act 2016



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Rights of
Persons with Disabilities
Act 2016**

HUMAN RIGHTS LAW NETWORK

- To protect fundamental human rights, increase access to basic resources for the marginalised communities, and eliminate discrimination.
- To create a justice delivery system that is accessible, accountable, transparent, efficient and affordable, and works for the underprivileged. Raise the level of pro bono legal expertise for the poor to make the work uniformly competent as well as compassionate.
- Professionally train a new generation of public interest lawyers and paralegals who are comfortable in the world of law as well as in social movements, and who learn from social movements to refine legal concepts and strategies.

A Handbook on Rights of Persons with Disabilities Act 2016

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FOREWORD

The Rights of Persons with Disabilities Act 2016 came into force with effect from 19 April, 2017.

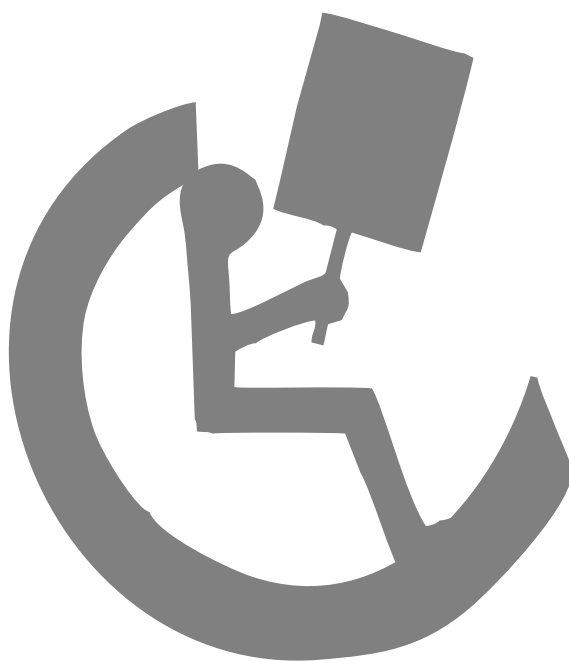
This new law articulates social, economic, civil and political rights of persons with disabilities and lays down procedures for making them realisable. More disabilities have been included to be brought under the rights framework and rights to skill development, public employment and inclusive education have been detailed in the act. For those belonging to the lower socio economic strata provisions for free education, health, pensions, caregiver allowances, aids and appliances and preferential and concessional allotment of land for setting up business ventures as well as an enhanced reservation in poverty alleviation and development schemes made.

In this handbook, important provisions relevant for persons with disabilities and DPO's have been set chapterwise in a question and answer format. The handbook draws from the text of the Rights of Persons with Disabilities Act of 2016.

We hope this handbook will serve as a ready reckoner for lawyers, NGOs, DPOs and activists.

Rajive Raturi

Director



RIGHTS AND ENTITLEMENTS

Do persons with disabilities have the right to equality, dignity and respect for integrity?

Yes, Section 3.1 of the RPD Act requires the appropriate government to ensure that persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

Can disability be grounds for discrimination?

No. The law in Section 3.3 states that no person with disability shall be discriminated on the grounds of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

Can disability be reason for denying liberty?

The law clearly states in Section 3.4 that no person shall be deprived of his or her personal liberty only on the ground of disability.

Are persons with disabilities entitled to reasonable accommodations?

Yes, Section 3.5 states that the appropriate government is to take necessary steps to ensure reasonable accommodation for persons with disabilities and that a denial of reasonable accommodation amounts to discrimination.

Does the law ensure rights of women and children with disabilities?

Yes. Section 4 states that the appropriate government and local authorities shall take measures to ensure that women and children with disabilities enjoy their rights equally with others. The section further states that all children with disabilities have the right to freely express their views on all matters affecting them and that, for this, support will be provided to them keeping in view their age and disability.

Do persons with disabilities have the right to live in the community.

Yes. Section 5 of the Act states that appropriate government shall endeavor that persons with disabilities are not forced to

live in any particular living arrangement and are given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

Does the law provide protection to persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment?

Yes. Section 6 of the law requires the government to take measures to prevent torture, cruel, inhuman or degrading treatment and ensure that no person with disability shall be a subject of any research without his or her free and informed consent. This is to be obtained through accessible modes, means and formats of communication and prior permission of a Committee for Research on Disability.

Will measures be introduced to ensure protection of persons with disabilities from abuse, violence and exploitation?

Yes. The law in Section 7 states that cognizance of such incidents will be taken, legal remedies provided, steps taken for avoiding such incidents and procedures will be prescribed for their reporting. Victims of such incidents shall be rescued, protected and rehabilitated, and information will be made available among the public to create awareness.

- Any person or registered organization who or which has reason to believe that an act of abuse, violence or exploitation has been, is being, or is likely to be committed can inform the Executive Magistrate of the incident. The Executive Magistrate shall take immediate steps to stop or prevent its occurrence or pass orders for protection of the victim. The Executive Magistrate may also order a rescue by authorizing the police or any organization working for persons with disabilities to provide safe custody, rehabilitation and maintenance;
- If the alleged act or behaviour constitutes an offence under the Indian Penal Code, the Executive Magistrate shall forward the complaint to the Judicial or Metropolitan Magistrate having jurisdiction;

- Any police officer who receives a complaint or otherwise comes to know of such incidents shall inform the victim of their right to apply for protection, free legal aid, right to file a complaint and the particulars of the Executive Magistrate and the nearest organization/institution working for the rehabilitation of persons with disabilities.

Are persons with disabilities entitled to equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters?

Yes. Section 8 of the Act requires the National and State Disaster Management Authorities to ensure inclusion of persons with disabilities in its disaster management activities for their safety and protection.

The District Disaster Management Authority is to maintain record of details of persons with disabilities in the district and take suitable measures to inform them of any situations of risk to enhance disaster preparedness. Further, the accessibility needs of persons with disabilities shall be ensured by authorities engaged in reconstruction activities subsequent to any situation of risk, armed conflict or natural disasters in consultation with State Commissioner Disabilities.

Can children with disabilities be separated from their parents?

Section 9 states that no child with disability shall be separated from his or her parents on the grounds of disability except on an order of competent court, if required, in the best interest of the child. In instances where the parents are unable to take care of a child with disability, the competent court shall place such child with his or her near relations, and failing that within the community in a family setting or in exceptional cases in shelter home run by the appropriate government or non-governmental organisations.

Does the law recognize the reproductive rights of persons with disabilities?

Yes. Section 10 states that the appropriate government shall ensure that persons with disabilities have access to appropriate information regarding reproductive and family planning and that

no person with disability is subject to any medical procedure which leads to infertility without his or her free and informed consent.

What are the Election Commissions required to do so as to ensure that persons with disabilities can cast their vote?

Section 11 states that the Election Commission of India and the State Election Commissions shall ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them.

Does the law address challenges faced by persons with disabilities in accessing the justice system?

Yes. Section 12 states that persons with disabilities have the right to access any court or any body with judicial or quasi-judicial or investigative powers without discrimination and that steps will be taken to provide suitable support measures for persons with disabilities, especially those living without a family and those requiring high support for exercising legal rights

Further, the section states that the National and State Legal Services Authority shall make provisions, including reasonable accommodation, to ensure access to any scheme, programme, facility or service offered by them. All public documents will be made available in accessible formats and for this, all filing departments, registry, etc, will be supplied with necessary equipment. All necessary facilities and equipment to facilitate the recording of testimonies, arguments or opinions given by persons with disabilities in their preferred language and means of communication will be made available.

LEGAL CAPACITY

Do all persons with disabilities have legal capacity?

Yes, Section 13 states that the appropriate government shall ensure that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law.

Do persons with disabilities have right to inherit and own property and engage in financial transactions?

Yes, Section 13 also states that persons with disabilities have the right to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit

What happens if a conflict of interest arises between the person with disability and the support arrangement in any transaction?

Section 13 states that any person providing support to the person with disability shall not exercise undue influence and shall respect the person's autonomy, dignity and privacy. If 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.

Can a support arrangement be terminated or altered by a person with disability?

Yes, the person with disability may alter, modify or dismantle any support arrangement and seek the support of another. However, alteration, modification or dismantling shall be prospective in nature and shall not nullify any third party transaction entered into by the person with disability with the aforesaid support arrangement.

What is a limited guardian?

Section 14 states that 'limited guardianship' means a system of joint decision which operates on mutual understanding and

trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

When can a limited guardian be appointed?

Section 14 also states that from the date of commencement of the Act, if a notified district court or any designated authority finds that a person with disability, who had been provided adequate and appropriate support, is unable to take legally binding decisions, then he may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the state government. The notified court or authority may grant total support to the person with disability and in case limited guardianship is granted repeatedly, the decision regarding the support to be provided shall be reviewed by the court or the designated authority to determine the nature and manner of support to be provided.

What can a person with disability do if he is not satisfied with the appointment of a guardian?

Any person with disability, aggrieved by the decision of the designated authority appointing a legal guardian, may prefer an appeal to such appellate authority, as may be notified by the state government for the purpose.

How can persons with disabilities requiring high support and those living in institutions access support arrangements?

Section 15 of the RPD Act states that the appropriate government shall designate one or more authorities to mobilize the community and create social awareness to support persons with disabilities in exercise of their legal capacity. The authorities so designated shall take measures for setting up suitable support arrangements to enable persons with disabilities living in institutions and those with high support needs to exercise their legal capacity.

EDUCATION

Are all schools now required to impart inclusive education for children with disabilities?

Yes. Section 16 requires the appropriate government and the local authorities to ensure that all educational institutions funded or recognised by them provide inclusive education.

What are mainstream schools required to do to ensure inclusive education?

- Admit children with disabilities without discrimination;
- Provide education and opportunities for sports and recreation activities equally with others;
- Make buildings, campuses and various facilities accessible;
- Provide reasonable accommodation according to the individual's requirements;
- Provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;
- Ensure that education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;
- Detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;
- Monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;
- Provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs;

What measures will be undertaken by the government to make inclusive education a reality?

Section 17 requires the Government and local authorities to:

- Conduct survey of school-going children every five years to identify children with disabilities, ascertaining their special needs and the extent to which these are being met. The first survey is to be conducted within two years from the date of commencement of this Act;
- Establish adequate number of teacher training institutions;
- Train and employ teachers, including teachers with disability who are qualified in sign language and Braille, and also teachers trained in teaching children with intellectual disability;
- Train professionals and staff to support inclusive education at all levels of school education;
- Establish adequate number of resource centres to support educational institutions at all levels of school education;
- Promote the use of appropriate augmentative and alternative modes, including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfill the daily communication needs of persons with speech, communication or language disabilities;
- Provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of 18 years;
- Provide scholarships in appropriate cases to students with benchmark disabilities;
- Make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;
- Promote research to improve learning;

Does the law also detail the education needs of adults with disabilities?

Yes. Section 18 requires the appropriate government and local authorities to take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others.

What does the law say about education of persons with benchmark disabilities?

The law in Section 31 states that notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with a benchmark disability between the age of 6 and 18 years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

Are institutions of higher education required to reserve seats and provide age relaxation?

Yes. Section 32 requires all government institutions of higher education and other higher education institutions receiving aid from the government to reserve not less than 5% seats for persons with benchmark disabilities and to give an upper-age relaxation of five years for admission.

SKILL DEVELOPMENT AND EMPLOYMENT

Is the Government required to frame schemes for skill development and employment of persons with disabilities?

Yes, Section 19 requires the appropriate government to formulate schemes and programmes, including provision of loans at concessional rates, to facilitate and support the employment of persons with disabilities, especially for their vocational training and self-employment.

What will these government schemes and programmes focus on?

- All mainstream formal and non-formal vocational and skill training schemes and programmes shall ensure inclusion of person with disability with adequate provision of support and facilities;
- Exclusive skill training programmes will be devised for those with developmental, intellectual, multiple disabilities and autism with active links with the market;
- Maintenance of disaggregated data on the progress made in the skill training and self-employment;
- Loans at concessional rates including that of microcredit;
- Marketing products made by persons with disabilities;

Do persons with disabilities have protection against discrimination in employment?

Yes. Section 20 states that no government establishment shall discriminate against any person with disability in any matter relating to employment, provided that the appropriate government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

Are government establishments required to provide reasonable accommodation and a conducive work environment?

Yes, section 20 also requires every government establishment to provide reasonable accommodation and appropriate barrier-free and conducive environment to employees with disability

Can persons with disabilities be denied promotions on the grounds of disability?

No. Section 20 states that no promotion shall be denied to a person merely on the ground of disability.

Can a government employee who acquires a disability whilst in service be dismissed from service?

No. No government establishment shall dispense with or reduce in rank an employee who acquires a disability during his or her service, provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits. And if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he or she attains the age of superannuation, whichever is earlier.

Will policies for transfers of persons with disabilities be framed by Government establishments?

Yes. Section 20.5 requires the appropriate government to frame policies for the posting and transfer of employees with disabilities.

What is an Equal Opportunity Policy and who frames this policy?

An Equal Opportunity Policy, as stated in Section 21, is a document detailing measures proposed to be taken by an establishment in line with provisions of this Act and is to be framed and notified by every establishment and is to be registered with the office of the Chief Commissioner or the State Commissioner as the case may be.

Are establishments required to maintain records of employees with disabilities and facilities provided to them?

Yes, Section 22 requires every establishment to maintain records of persons with disabilities employed, facilities provided and other necessary information.

What are Employment Exchanges required to do?

Section 22 requires every employment exchange to maintain records of persons with disabilities seeking employment and these records shall be open to inspection by government-authorized representatives.

What will the government do to identify suitable jobs for persons with benchmark disabilities?

Section 33 requires the appropriate government to

- (i) Identify posts in establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;
- (ii) Constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and
- (iii) Undertake periodic review of the identified posts at an interval not exceeding three years

What is the percentage of reservation provided to persons with benchmark disabilities in government employment and how is it to be distributed?

Section 34 requires every appropriate government to appoint in every government establishment not less than 4% of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, 1% each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and 1% for persons with benchmark disabilities under clauses (d) and (e), namely

- (a) blindness and low vision;
- (b) deaf and hard of hearing;
- (c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) autism, intellectual disability, specific learning disability and mental illness;
- (e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness:

Is there provision of reservations in promotions?

Reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time.

Can government establishments seek exemption from providing reservations in employment to persons with benchmark disabilities?

Yes. The appropriate government, in consultation with the Chief Commissioner or the State Commissioner, may, having regard to the type of work carried out in any government establishment, exempt the establishment from the provisions of Section 34. This exemption is to be notified and conditions of exemption specified.

What is to be done if suitable candidates are not available for posts identified for their category of benchmark disabilities?

Section 34 states that where, in any recruitment year, any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.

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

Will age relaxation be provided?

Section 34 states that the appropriate government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

What does the law state on employment in private sector?

Section 35 requires the appropriate government and the local authorities to, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least 5% of their work force is composed of persons with benchmark disability.

Are government establishments required to furnish records to Special Employment Exchanges?

Yes. Section 36 requires the appropriate government to notify that the employer in every establishment is to furnish such information or return as prescribed by the Central government in relation to vacancies appointed for persons with benchmark disability that have occurred or are about to occur. This information is to be provided to the Central government notified special employment exchanges.

What is the reservation provided in poverty alleviation and development schemes and programmes?

(a) 5% reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;

(b) 5% reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;

(c) 5% reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres;

SPECIAL PROVISIONS FOR PERSONS WITH DISABILITIES WITH HIGH SUPPORT NEEDS

Are there special provisions for persons with disabilities having 'high support needs'?

Yes, Section 38 states that any person with a benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

On receipt of this application, the authority may refer the application to an assessment board, which shall assess the case and shall send a report to the authority certifying the need of high support and its nature. The authority shall take steps to provide support in accordance with the report and will be subject to relevant schemes and orders of the appropriate government in this behalf.

SOCIAL SECURITY, HEALTH, REHABILITATION AND RECREATION

What is the government required to do to ensure adequate standard of living and living in the community for persons with disabilities?

Section 24 requires that within the limit of its economic capacity and development, the government shall formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community. The quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least 25% higher than the similar schemes applicable to others.

What kinds of schemes shall be devised to enable independent living and living in the community?

Schemes that shall be devised will address the following;

- (a) community centres with good living conditions in terms of safety, sanitation, health care and counselling;
- (b) facilities for persons including children with disabilities who have no family or have been abandoned, or are without shelter or livelihood;
- (c) support during natural or man-made disasters and in areas of conflict;
- (d) support to women with disability for livelihood and for upbringing of their children;
- (e) access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas;
- (f) provisions of aids and appliances, medicine and diagnostic services and corrective surgery free of cost to persons with disabilities with such income ceiling as may be notified;

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

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

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

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

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

What facilities will be provided for health care of persons with disabilities?

Section 25 states that facilities that will be provided will include barrier-free access in all parts of government and private hospitals and other healthcare institutions and centres, priority in attendance and treatment and subject to an income criteria free healthcare in the vicinity specially in rural areas.

What measures will be undertaken to prevent occurrence of disabilities?

Section 25 also states that the appropriate government and local authorities shall take measures and make schemes or programmes to promote healthcare and prevent the occurrence of disabilities and towards this will

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

(b) promote various methods for preventing disabilities;

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

- (d) provide facilities for training to the staff at the primary health centres;
- (e) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene, health and sanitation;
- (f) take measures for pre-natal, perinatal and post-natal care of mother and child;
- (g) educate the public through the pre-schools, schools, primary health centres, village level workers and *anganwadi* workers;
- (h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted;
- (i) healthcare during the time of natural disasters and other situations of risk;
- (j) essential medical facilities for life saving emergency treatment and procedures; and
- (k) sexual and reproductive healthcare especially for women with disability

Will insurance schemes be devised for employees with disability in government service?

Yes. Section 26 requires the appropriate government to notify and make insurance schemes for their employees with disabilities.

What measures will be undertaken for rehabilitation in areas of health, education and employment?

Section 27 states that within the economic capacity and development of the government and local authorities, services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities shall be undertaken or cause to be undertaken. Rehabilitation policies shall be drawn up in consultation with NGOs and financial assistance shall be provided to NGOs for implementing services and programmes.

What will be done to ensure habilitation and rehabilitation of persons with disabilities?

Section 28 requires the appropriate government to initiate or cause to be initiated research and development through individuals and institutions on issues which shall enhance habilitation and rehabilitation and on such other issues which are necessary for the empowerment of persons with disabilities.

What measures will be taken to ensure persons with disabilities have a cultural life and participate in recreational activity?

Section 29 requires the appropriate government and local authorities to provide sponsorships to artists and writers with disability, establish a disability history museum which chronicles and interprets their historical experiences, make art accessible, promote recreation centres and other associational activities, redesign courses in cultural and arts subjects to enable participation and facilitate participation in scouting, dancing, art classes, outdoor camps and adventure activities.

Section 29 also requires the development of technology, assistive devices and equipment to facilitate access and inclusion for persons with disabilities in recreational activities and also ensuring that persons with hearing impairment can access television programmes with sign language interpretation or sub-titles.

What measures will be undertaken so that persons with disabilities participate in sporting activities?

Section 30 requires

- Sports authorities to make provisions for inclusion in schemes and programmes for promotion and development of sporting talents;
- Restructure courses and programmes to ensure access, inclusion and participation in all sporting activities;
- Redesign and support infrastructure facilities of all sporting activities;
- Develop technology to enhance potential, talent, capacity and ability in sporting activities;

- Provide multi-sensory essentials and features in all sporting activities to ensure effective participation;
- Allocate funds for development of state of art sport facilities for training;
- Promote and organise disability-specific sporting events and also facilitate awards to the winners and other participants of such sporting events.

DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENTS

What measures will be undertaken to create awareness on rights of persons with disabilities?

Section 39 requires the appropriate government, in consultation with the Chief Commissioner or the State Commissioner, to conduct, encourage, support or promote awareness campaigns and sensitization programmes to ensure that the rights of the persons with disabilities provided under this Act are protected.

Who defines accessibility standards and for which areas?

Section 40 requires the Central government to, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

What does the law say on personal mobility of persons with disabilities?

Section 41 (2) states that the appropriate government shall develop schemes and programmes to promote the personal mobility of persons with disabilities at affordable cost by providing incentives and concessions, retrofitting of vehicles and provision of personal mobility assistance.

Will audio visual and print formats be made accessible to persons with disabilities?

Yes, Section 42 requires the appropriate government to take measures to ensure that all content available in audio, print and electronic media are in accessible format and that persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning.

What does the law say on the universal design of goods?

Section 42 states that electronic goods and equipment which are meant for everyday use are made available in universal design and Section 43 mandates the appropriate government to take measures to promote development, production and distribution of universally designed consumer products and accessories for general use for persons with disabilities.

What measures will be introduced to ensure that buildings are made accessible?

Section 44 states that no establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central government and no establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central government.

When will all public buildings be made accessible for persons with disabilities?

Section 45 states that all existing public buildings shall be made accessible in accordance with the rules formulated by the Central government within a period not exceeding five years from the date of notification of such rules. However, the Central government may grant extension of time to states on a case-to-case basis for adherence to this provision depending on their state of preparedness and other related parameters.

Further, the appropriate government and the local authorities are required to formulate and publish an action plan for providing accessibility in all their buildings and spaces that offer essential services -- such as all primary health centres (PHCs), civil hospitals, schools, railway stations and bus stops.

Are private service providers also mandated to provide accessible services to persons with disabilities?

Yes, Section 46 requires all service providers, whether government-run or private, to provide services in accordance with the rules on accessibility formulated by the Central government within a period of two years from the date of notification of such rules.

However, the Central government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules.

What will be done to train and develop human resources for the implementation of this Act?

Section 47 requires the appropriate government to endeavour to develop human resource for the purposes of this Act and shall:

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

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

Section 47 also requires the appropriate government to in every five years undertake a need based analysis and formulate plans for the recruitment, induction, sensitization, orientation and training of suitable personnel to undertake the various responsibilities under this Act.

Does the law also require training on independent living for persons with disabilities and their families and caregivers?

Yes. Section 47 also requires the government to initiate capacity building programmes, including training in independent living and community relationships for families, members of community and other stakeholders and care providers on care giving and support, and also ensure independence training for persons with disabilities to build community relationships on mutual contribution and respect;

Are sports teachers specially targeted for training?

Yes, Section 47 also requires the conducting of training programmes for sports teachers with focus on sports, games, adventure activities.

Are Universities required to research on disabilities studies?

Yes, Section 47 also requires all universities to promote teaching and research in disability studies including establishment of study centres for such studies.

Does the law also require social audits of schemes and programmes for persons with disabilities?

Yes, Section 48 requires the appropriate government to undertake social audit of all general schemes and programmes involving persons with disabilities to ensure that they do not have an adverse impact and meet the requirements and concerns of persons with disabilities.

GRIEVANCE REDRESSAL AND SPECIAL COURTS

What does the law state on the appointment of Chief Commissioner Disabilities?

Section 74 requires the appointment of a Chief Commissioner for Persons with Disabilities and two Commissioners to assist the Chief Commissioner, of which one Commissioner shall be a person with disability

Further, the Chief Commissioner shall be assisted by an advisory committee comprising of not more than 11 members drawn from the experts from different disabilities

What is the Chief Commissioner required to do to discharge his duties?

Sections 75 requires the Chief Commissioner to

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

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

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

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

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

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

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

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

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

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

What happens when a Chief Commissioner makes a recommendation?

Section 76 requires that whenever the Chief Commissioner makes a recommendation to an authority, that authority shall take necessary action on it, and inform the Chief Commissioner of the action taken within three months from the date of receipt of the recommendations.

What are the powers of the Chief Commissioner?

Section 77 states that the Chief Commissioner shall, for the purpose of discharging his functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of witnesses;

(b) requiring the discovery and production of any documents;

(c) requisitioning any public record or copy thereof from any court or office;

(d) receiving evidence on affidavits;

(e) issuing commissions for the examination of witnesses or documents.

Are state governments required to appoint State Commissioner Disability?

Yes. Section 79 requires the state governments to appoint a State Commissioner for Persons with Disabilities who shall be assisted by an advisory committee comprising of not more than five members drawn from the experts in the disability sector in such manner as may be prescribed by the state government.

What are the duties of the State Commissioner, Disabilities?

Section 80 requires the State Commissioner to

(a) identify, *suo motu* or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps;

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

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

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

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

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

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

(h) monitor utilisation of funds disbursed by the state government for the benefit of persons with disabilities; and

(i) perform such other functions as the state government may assign.

What happens when a State Commissioner makes a recommendation?

Section 81 states that whenever the State Commissioner makes a recommendation to an authority, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation.

Provided that where an authority does not accept a recommendation, it shall convey reasons for non-acceptance to the State Commissioner for Persons with Disabilities within the period of three months, and shall also inform the aggrieved person.

What are the powers of State Commissioner Disabilities?

Section 82 states that the State Commissioner shall, for the purpose of discharging their functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

What are Special Courts?

Section 84 requires that for providing speedy trial, the state government shall notify and specify for each district a Court of Session to be a Special Court to try the offences under this Act.

This has to be done with the concurrence of the Chief Justice of the High Court of the state.

Will public prosecutors be appointed in these courts?

Yes. Section 85 requires the state government to notify and specify a Public Prosecutor or appoint an advocate with experience of not less than 7 years as a Special Public Prosecutor for the purpose of conducting cases in the Special Court.

Is there another forum under this Act for persons with disabilities to approach if they face discrimination in employment?

Yes. Section 23 requires the appointment of a Grievance Redressal Officer (GRO) by every government establishment for grievance redressal relating to matters of employment. The appointment of a GRO has to be notified to the Chief Commissioner or State Commissioner Disabilities as the case may be.

Any person aggrieved with the non-compliance of the provisions relating to employment may file a complaint with the GRO who shall investigate it and shall take up the matter with the establishment for corrective action.

The GRO shall maintain a register of complaints in the manner as may be prescribed by the Central government, and every complaint shall be inquired within two weeks of its registration.

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

OFFENCES AND PENALTIES

What penalties are prescribed for offences committed under the Act?

- For first contravention of provisions or rules under the Act, a fine upto Rs 10,000, and for subsequent contravention, a fine of Rs 50,000 upto Rs 5 lakh.
- If a company commits an offence and is proved that the offence has been committed with the consent, connivance or neglect by any director or other officer, such officer of the company shall be deemed to be guilty and liable to be proceeded against and punished accordingly.
- For fraudulently availing benefits meant for persons with benchmark disabilities, imprisonment upto two years or with fine upto Rs 1 lakh or with both.
- For insulting, intimidating, humiliating a person with disability within public view; assaulting or using force with intent to dishonor or outrage the modesty of a woman with disability; denying food or fluids; sexually exploiting; injuring, damaging or interfering with the use of any limb or sense or any supporting device; performing, conducting or directing any medical procedure which leads to termination of pregnancy without her express consent, or that of a guardian and without the opinion of a registered medical practitioner; imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.
- For willfully failing to produce any book, account or other documents or failing to furnish any statement, information or particulars, punishment with fine upto Rs 25,000 for each offence, and in case of continued failure or refusal, with further fine upto Rs 1,000 for each day after the date of original order imposing punishment of fine.

SCHEDULE OF SPECIFIED DISABILITIES

1. Physical disability:
 - a. Locomotor disability including leprosy cured, cerebral palsy, dwarfism, muscular dystrophy, acidattack victims
 - b. Blindness and low vision
 - c. Deaf and hard of hearing
 - d. Speech and language disability
2. Intellectual disability including specific learning disabilities and autism spectrum disorder
3. Mental illness
4. Multiple Sclerosis, Parkinson's disease
5. Haemophilia, Thalassemia, Sickle Cell disease
6. Multiple disabilities including deaf-blindness.

Note: The Central government may notify any other category

WHAT CAN A PERSON WITH DISABILITY DO IF PROVISIONS OF THIS LAW ARE NOT IMPLEMENTED?

- Make representations to the concerned government and/ or the concerned establishment, if there is deprivation or violation of any right provided under the Disabilities Act.
- If there is no response or if the response is negative/ inadequate, approach the concerned Commissioner of Disabilities.
- Alternatively, file a Writ Petition under Article 226 of the Constitution of India, in the concerned High Court.
- If there is any violation of a Constitutional right also, of national importance, file Writ Petition under Article 32 of the Constitution before the Supreme Court.

What can be done against violations of the rights under the Disabilities Act, that affect an entire group of disabled persons?

In such cases, a disabled person or a group of disabled individuals or even a concerned NGO or any organization working for disabled persons, may, on behalf of the affected group or class, initiate Public Interest Litigations (PILs) in the High Court or, where it also amounts to violation of Constitutional rights of national importance, in the Supreme Court. For instance, PILs may be initiated on issues regarding education and/or employment of disabled persons, use and access in public transport system, civic amenities, public buildings, or the like, which affect and benefit more than one disabled person.

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