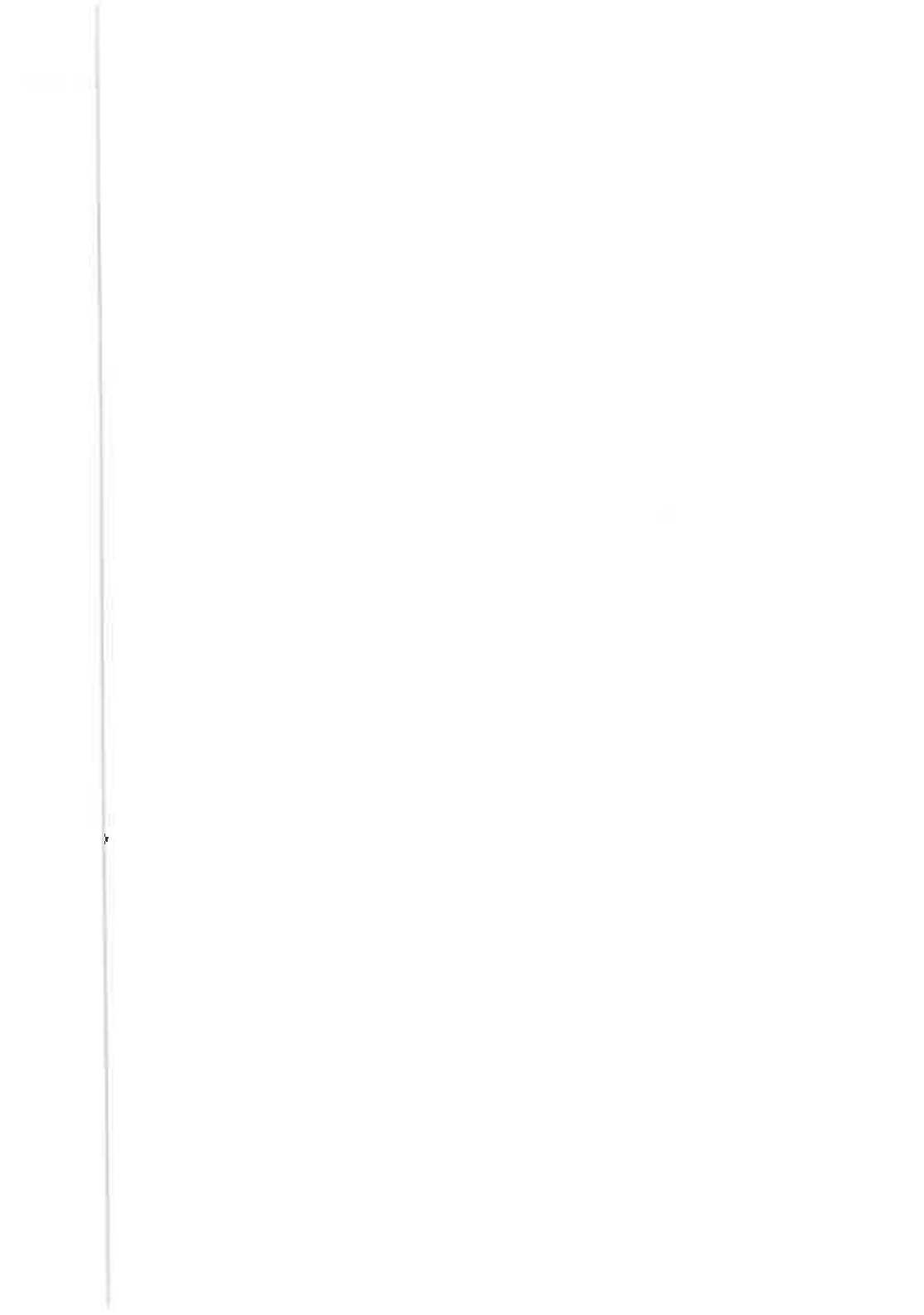


Persons with Disabilities

(Equal Opportunities,
Protection of Rights and Full Participation)
Act of 1995

(Training Module)

(A TOT Project Supported by Aus AID)
Human Rights Law Network



**TRAINING MODULE ON
THE PERSONS WITH DISABILITIES
ACT 1995**

**Developed for
The Human Rights Law Network**



By Mallika Iyer

HRLN Vision

- To protect fundamental human rights, increase access to basic resources for marginalized communities and eliminate discrimination.
- To create a justice delivery system that is accessible, accountable, transparent, efficient, affordable and works for the unprivileged.
- 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 the social movements to refine legal concepts and strategies.
- Work towards an increased awareness of rights as Universal and Indivisible, and their realization as an immediate goal.

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OVERVIEW OF THE LAWS RELATING TO DISABILITY

Presently there are four statutes in India in the area of Disability.

They are: -

- (A) Mental Health Act, 1987
- (B) Rehabilitation Council of India Act, 1992
- (C) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- (D) National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

A. Mental Health Act, 1987

The Mental Health Act, 1987 has been enacted to provide for the regulation of hospitals and nursing homes for the treatment of mentally ill persons in view of the advances made by modern medical science in understanding and treating mental illnesses.

It provides for the following: -

- (a) Regulation for admission to and discharge from psychiatric hospitals or nursing homes for mentally ill persons (defined as 'a person who is in need of treatment by reason of any mental disorder other than mental retardation');
- (b) Regulation of psychiatric hospitals and nursing homes for mentally ill persons;
- (c) Protection of rights of such persons in the course of their treatment;
- (d) Regulation of responsibility of charges of treatment of mentally ill person;
- (e) Legal aid to mentally ill persons;
- (f) Guardianship and custody of mentally ill persons;
- (g) Provision of Central and State Authority for regulation of mental health services;
- (h) Provisions for mentally ill prisoners.

B. Rehabilitation Council of India Act, 1992

The Rehabilitation Council of India Act, 1992 provides for the establishment of the Rehabilitation Council of India that regulates the training of rehabilitation professionals in India. A Rehabilitation professional is defined to mean audiologists, speech therapists, clinical psychologists, hearing aid and ear technicians, rehabilitation technicians and engineers, special teachers for educating and training the handicapped, vocational counsellors and employment officers dealing with the disabled, multi-purpose rehabilitation therapists etc. The Act prescribes educational qualifications, standards of professional conduct, code of ethics etc for such rehabilitation professionals. No person other than a rehabilitation professional who possesses a recognized rehabilitation qualification and is enrolled in the register of the Rehabilitation Council is permitted to practice as a rehabilitation professional anywhere in India. A person who does not possess such recognized qualification or who is not enrolled in the register of the Council is also not permitted to sign or authenticate any certificate required by law to be signed or authenticated by a rehabilitation professional and is not entitled to give evidence in any court as an expert relating to such disabled person.

C. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

In 1992, the Proclamation on Full Participation and Equality of People with Disabilities in the Asian and Pacific Region was adopted at the conference held in Beijing convened by the Economic and Social Commission for Asian and Pacific Region. India, having signed the said proclamation, was required to enact a statute in accordance therewith. It would not therefore be incorrect to say that the one piece of legislation in India to provide for the protection of rights of the disabled was a result of an obligation cast upon the Parliament and not a state welfare measure.

The said Act inter alia provides for the following: -

- (a) Setting up of the Central and State Level Co-ordination and Executive Committee having and planning, review, co-ordination, monitoring, advisory powers and executing powers;
- (b) Prevention and early detection of disability;
- (c) Free education for children with disabilities, non-formal education;
- (d) Employment, reservation of posts, special employment exchange for the disabled, non-discrimination in employment, incentives to employers;
- (e) Creation of a barrier free environment in buildings, road and transport;
- (f) Special concessions and benefits for persons with disabilities;
- (g) Social security for the disabled including unemployment allowance.

The Act defines 'disability' to mean blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness. Each of the aforesaid terms is also defined in the Act.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 forms the most comprehensive law for the benefit of persons with disabilities in India.

D. National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

This Act constitutes a body called the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities enjoined with the purpose of enabling and empowering persons with disability (defined as 'a person suffering from any of the conditions related to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple

disability'). The Act provides for the procedure for the appointment of guardians and trustees for such disabled persons. The Board is required to constitute a local level committee for each area to which a parent of a person with disability may make an application for the appointment of any person as the guardian of the person with disability. A person appointed as guardian by the local level committee shall have the care of such person and his/her property or be responsible for the maintenance of such person with disability. The Act also provides for a system of accountability from the guardian and monitoring by the local level committee.

PRELIMINARY

Definition of Disability

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 identifies disability in seven categories and defines 'Disability' to mean the following:-

- (a) Blindness;
- (b) Low vision;
- (c) Leprosy-cured;
- (d) Hearing-impairment;
- (e) Locomotor disability;
- (f) Mental retardation;
- (g) Mental illness;

Each of these terms are also defined in the Act as follows: -

(a) Blindness

Refers to a condition where a person suffers from any of the following conditions, namely:

- (i) Total absence of sight
- (ii) Visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses
- (iii) Limitation of the field of vision subtending an angle of 20 degree or worse

(b) Low Vision

A person with low vision means a person with impairment visual functioning even after treatment or standard refractive correction but who uses appropriate assistive devices or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.

(c) Leprosy-cured

Means any person who has been cured of leprosy but is suffering from

- (i) 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;
- (ii) Manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;
- (iii) Extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation;

The expression "leprosy cured" is to be construed accordingly

(d) Hearing Impairment

Loss of sixty decibels or more in the better ear in the conversational range of frequencies

(e) Locomotor Disability

Means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.

(f) Cerebral Palsy

Means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, pari-natal or infant period of development.

(g) Mental Retardation

Means a condition of arrested or incomplete development of mind of a person which is specially characterized by sub normality of intelligence.

(g) Mental Illness

Means any mental disorder other than mentally retarded Person with Disability

A person with disability is a person suffering from not less than forty per cent of any disability as certified by a medical authority.

A Medical Authority is any hospital or institution specified for the purposes of the Act by notification by the appropriate government.

The provisions of the Act are therefore applicable to persons whose disability is 40% or more. Such certification is required to be obtained from a medical authority who has been notified and recognized for the purpose of granting such certificate under the Act.

AUTHORITIES UNDER THE ACT

(Chapters II and III)

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 identifies six authorities for the implementation and enforcement of the provisions of the Act:

- Central Co-ordination Committee
- Central Executive Committee
- State Co-ordination Committee
- State Executive Committee
- Chief Commissioner of Disabilities
- Commissioner of Disabilities

While the Central and State Committees are responsible for policy framing and implementation of the provisions of the Act, the Chief Commissioner and the Commissioner of Disabilities are entrusted with the function of addressing grievances of persons with disabilities and ensuring the implementation of the provisions of the Act.

Central Co-ordination Committee

It is a body constituted under Section 3 of the Act.

It comprises the following members: -

- The Minister in charge of the Department of Welfare in the Central Government is the *ex-officio* Chairman.
- The Minister of State in-charge of the Dept. of Welfare in the Central Government is the Vice Chairperson;
- Secretaries of the Government in charge of Department of Welfare, Education, Women and Child Development, Expenditure, Personnel, Training, Public Grievances, Health, Rural Development, Industrial Development, Urban Affairs and Employment, Science and Technology, Legal Affairs, Public Enterprises are *ex-officio* members;
- Chief Commissioner;
- Chairman of the Railway Board;

- Director General of Labour, Employment and Training;
- Three members of Parliament, two from the Lok Sabha and one from the Rajya Sabha;
- Three persons to be nominated by the Central Government to represent the interests, which in the opinion of that government ought to be represented, - Members
- Director of the National Institute of Visually Handicapped, National Institute for the Mentally Handicapped, National Institute for the Orthopaedically Handicapped and the Ali Yavar Jung National Institute for the Hearing Handicapped;
- Four persons to be nominated by the Central Government by rotation to represent the states and the union territories,
- Five persons as far as practicable being persons with disabilities to be nominated by the Central Government, one from each area of disability provided that at least one woman and one member belonging to Scheduled Caste or Scheduled Tribes;
- Joint Secretary to the Government of India, Ministry of Welfare dealing with the welfare of the disabled is the Member-secretary of the Committee.

The Committee is required to meet at least once every six months

The Functions of the Committee are as follows: -

- To review and co-ordinate activities of all government departments and other governmental and non-governmental organizations dealing with matters relating to persons with disabilities;
- To develop a national policy to address issues faced by persons with disabilities;
- Advise the Government on formulation of policy, programmes, projects related to disability;
- To take up the cause of persons with disabilities with the

- concerned authorities and international organizations with a view to provide for schemes and projects for the disabled in the national plans and other programmes;
- To review in consultation with donor agencies their funding policies;
- To take steps to ensure a barrier free environment in public spaces, work places, public utilities, schools and other institutions;
- To monitor and evaluate the impact of policies and programmes designed for achieving equality and full protection of persons with disabilities;
- To perform such other functions as may be prescribed;

Central Executive Committee

It is a body constituted under Section 9 of the Act.

It comprises the following members: -

- Secretaries of the Government of India in the Ministry of Welfare is the ex-officio Chairman;
- Chief Commissioner;
- Director General of Health Services;
- Director General of Employment and Training;
- Six persons not below the rank of Jt. Secretary to the Government of India representing the ministries or departments of Rural Development, Education, Welfare, Personnel, Training, Public Grievances, Pension, Urban Affairs and Employment, Science and Technology;
- Financial Advisor of the Ministry of Welfare;
- Advisor (Tariff) Railway Board;
- Four persons to be nominated by the Central Government by rotation to represent the states and the union territories,
- One person to be nominated by the Central Government to represent the interests, which in the opinion of that government ought to be represented;
- Five persons as far as practicable being persons with disabilities to be nominated by the Central

Government, to represent non-governmental organizations or associations concerned with disabilities, one from each area of disability, provided that atleast one woman and one member belonging to Scheduled Caste or Scheduled Tribes;

- Jt. Secretary to the Government of India in the Ministry of Welfare dealing with the welfare of disabled persons is the secretary to the Committee;

The Committee is required to meet at least once in three months.

The Functions of the Committee are as follows: -

- It is the executive body of the Central Co-ordination Committee and required to carry out the decisions of the Central Co-ordination Committee;

It is required to perform such other functions as may be delegated to it by the Central CO-ordination Committee.

State Co-ordination Committee

It is a body constituted under Section 13 of the Act.

- It comprises the following members: -
- The Minister in-charge of the Department of Welfare in the State Government. is the ex-officio Chairman.
- The Minister of State in-charge of the Dept. of Welfare in the State Government is the Vice Chairperson;
- Secretaries of the Government in-charge of Department of Welfare, Education, Women and Child Development, Expenditure, Personnel, Training, Public Grievances, Health, Rural Development, Industrial Development, Urban Affairs and Employment, Science and Technology, Legal Affairs, Public Enterprises are ex-officio members;
- Secretaries of other departments, which the state government considers necessary;
- Chairman of the Bureau of Public Enterprises;
- Three members of the State Legislature, two from the

- Legislative Assembly and one from the Legislative Council;
- Three persons to be nominated by the State Government to represent agriculture, industry or trade or which in the opinion of that government ought to be represented;
 - The Commissioner;
 - Five persons as far as practicable being persons with disabilities to be nominated by the State Government, one from each area of disability provided that at least one woman and one member belonging to Scheduled Caste or Scheduled Tribes;

Secretary of State Government dealing with welfare of the disabled is the member, secretary of the Committee.

The Committee is required to meet at least once every six months.

The Functions of the Committee are as follows: -

- To review and co-ordinate activities of all government departments and other governmental and non-governmental organizations dealing with matters relating to persons with disabilities;
- To develop a state policy to address issues faced by persons with disabilities;
- Advise the state Government on formulation of policy, programmes, projects related to disability;
- To take up the cause of persons with disabilities with the concerned authorities and international organizations with a view to provide for schemes and projects for the disabled in the national plans and other programmes;
- To review in consultation with donor agencies their funding policies;
- To take steps to ensure a barrier free environment in public spaces, work places, public utilities, schools and other institutions;

- To monitor and evaluate the impact of policies and programmes designed for achieving equality and full protection of persons with disabilities;
- To perform such other functions as may be prescribed;

State Executive Committee

It is a body constituted under Section 19 of the Act.

It comprises the following members: -

- Secretary, Department of Social Welfare is the ex-officio Chairman;
- The Commissioner of Disabilities;
- Director General of Health Services;
- Nine persons not below the rank of Jt Secretary to the State Government representing the ministries or departments of Finance, Health, Rural Development, Education, Welfare, Personnel, Public Grievances, Pension, Urban Affairs and Employment, Science and Technology;
- One person to be nominated by the State Government to represent the interests, which in the opinion of that government ought to be represented;
- Five persons as far as practicable being persons with disabilities to be nominated by the State Government, to represent non-governmental organizations or associations concerned with disabilities, one from each area of disability, provided that at least one woman and one member belonging to Scheduled Caste or Scheduled Tribes;
- Jt. Secretary dealing with the disability division in the department of Welfare is the Member Secretary;

The Committee is required to meet at least once in three months.

The Functions of the Committee are as follows: -

It is the executive body of the State Co-ordination Committee and required to carry out the decisions of the State Co-ordination Committee;

It is required to perform such other functions as may be delegated to it by the State Co-ordination Committee.

The Central Co-ordination Committee is bound by the directions of the Central Government.

The State Government is bound by the directions of the State Government.

Where a direction given by the State Government is inconsistent with the direction given by the Central Co-ordination Committee, the matter is to be referred to the Central Government for its decision.

The Chief Commissioner of Disabilities Commissioner of Disabilities

[These authorities are covered under the chapter Grievance Redressal]

PREVENTION AND EARLY DETECTION OF DISABILITIES

(Chapter IV)

Steps to be taken by the central and state governments and the local authorities for the prevention of occurrence of disabilities. (Section 25)

The State and Central Governments and local authorities are required to take the following measures with a view to preventing the occurrence of disabilities. This provision has also however been pre-fixed with the words 'Within the limits of their economic capacity and development' which leaves room for justifying the inaction on the part of the governments and local authorities.

- (i) Undertaking surveys, research and investigations concerning the cause of occurrence of disabilities;
- (ii) Promoting methods of preventing disabilities;
- (iii) Screen all children at least once a month in a year for the purpose of identifying the cases which are at risk.
- (iv) Providing facilities for the training of staff at primary health care centres;
- (v) Sponsoring awareness campaigns and dissemination of information pertaining to general hygiene, health and sanitation;
- (vi) Measures for pre-natal, parinatal and post-natal care of the mother and child;
- (vii) Educating the public through pre-schools, schools, primary health care centres, village level and anganwadi workers;
- (viii) Creating awareness amongst masses through mass media on the causes of disability and preventive measures to be adopted.

EDUCATION

(Chapter V)

Free education for children with Disabilities (Section 26)

The State and Central Governments are required to ensure that:-

- (1) Every child with a disability has access to free education in an appropriate environment till he attains the age of 18 years;
- (2) Endeavour to promote the integration of students with disabilities in normal schools;
- (3) Promote the setting up of special schools in government and private schools for those in need of special education in such a manner that children with disabilities living in any part of the country have access to such schools;
- (4) Endeavour to equip the special schools with vocational training facilities;

Comment

Free education is guaranteed by this provision to every child below the age of 18. However the provision pertaining to integration and vocational training facilities appears to be substantially diluted by the insertion of the words 'Endeavour to promote'. This does not cast an obligation upon the government to ensure the integration of students with disabilities in regular schools.

Schemes for non-formal education (Section 27)

The State and Central Governments and the local authorities are required to make schemes for the following: -

- (1) Conduct part time classes in respect of children with disabilities who have completed education upto standard five and could not continue with studies on a whole-time basis;
- (2) Conduct special part time classes for providing functional literacy for children in the age group of sixteen and above;
- (3) Impart non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;

- (4) Imparting education through open schools and universities;
- (5) Conduct classes and discussions through interactive electronic or other media;
- (6) Provide every child with disability special books and equipment needed for his education free of cost.

Research for the design and development of new assistive devices and teaching aids (Section 28)

The State and Central Governments are required to initiate or cause to be initiated research by official and non-governmental agencies for the purpose of devising and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

Teacher training institutes and manpower for schools for children with disabilities (Section 29)

The State and Central Governments are required to set up teachers training institutes and assist the national institutes and other voluntary organizations to develop teachers training programmes specializing in disabilities so that trained manpower is available for special schools as also integrated schools for children with disabilities.

Comprehensive Education Scheme (Section 30)

The State and Central Governments are required to prepare a comprehensive education scheme which provides for the following: -

- (7) Transport facilities to children with disabilities or in the alternative financial alternatives to parents and guardians to enable their children to attend schools;
- (8) Removal of architectural barriers in schools, colleges and institutions imparting vocational and professional training;
- (9) Supply of books and uniforms and other material to children with disabilities;
- (10) Grant of scholarship to children with disabilities;
- (11) Setting up fora for the redressal of grievances of parents with children with disabilities regarding placement;

- (12) Modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;
- (13) Restructuring of curriculum for the benefit of children with disabilities;
- (14) Restructuring the curriculum for the benefit of students with hearing impairment to facilitate them to take only one language/

Comment

This provision allows for what is known as 'Reasonable Accommodation' in the area of Education. Reasonable Accommodation involves modification in systems, procedures and environments to enable persons with disabilities to participate equally along with persons without disabilities.

Amanuensis (Section 31)

All educational institutes are required to provide amanuensis to students with visual impairments.

Comment

This provision requires all educational students to provide a writer for students with visual disabilities.

Reservation of seats (Section 39)

All governmental educational institutes and other educational institutions receiving aid from the government are required to reserve not less than three per cent seats for persons with disabilities.

Comment

This provision falls under Chapter VI of the Act on Employment. However, in *All Kerala Parents' Association [of the] Hearing Impaired v State of Kerala*, the Supreme Court has clarified that the provision pertains to reservation of seats for students with disabilities in government and government aided educational institutions and not for reservation of vacancies for employment

in such schools although the provision appears in the Chapter VI on Employment.

Education

Education – Issues and Questions

My student is a slow learner. Are there any provisions in the Act for her benefit?

No. The PWD Act does not include slow learners in the definition of the term 'disability'. However, the term persons with disabilities in the UN Convention which India ratified on 29th March, 2007 includes those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The use of the term intellectual impairments would perhaps include those with learning disabilities. India is required to include the said provisions in the domestic law on disability in order for the provisions of the Convention to become enforceable. Hence, as the law stands today, slow learners are not within the purview of the Act.

My child is dyslexic. Can I avail of the benefits under the Act for her?

It is not clear whether persons with dyslexia and slow learners fall within the ambit of the law. By an interim order in the matter of Disabled Rights Group v Delhi University & Ors, the Delhi High Court had directed the Delhi University to provisionally process applications by persons with dyslexia as persons covered under Section 39 of the Act for the purpose of reservation of seats in educational institutions.

Are schools and colleges required to reserve 3% of their seats for persons with disabilities?

Government schools and schools run with aid from the government which could be in the form of financial aid or if the land is given by the government, are required to reserve 3% of its seats for persons with disabilities. Private schools and schools

run without aid from the government are not bound under the Act to reserve seats for persons with disabilities.

Who can have a writer to write the examination? Is the college required to provide a writer for the blind student or is the student required to get his/her own writer? Who can be a writer?

Besides students who are blind, persons with locomotor disabilities and cerebral palsy persons who have disability in both hands and arms are required to be provided with writers and scribes. Such persons are also exempt from typing test. The terms and conditions for selecting writers/scribes is as follows: -

- (15) The writer/scribe must be one grade junior in academic qualification from the candidate;
- (ii) The writer/scribe should be one possessing 50% of less marks;
- (iii) Scribe /writer may be provided by the examining authority or can be arranged by the candidate. This is left to the discretion of the examining authority. In subjects such as Algebra, Arithmetic, Geometry etc, care must be taken while providing an option for alternative questions in lieu of purely visual sections particularly involving graphs, pictures and maps.

[As per the Ministry of Home Affairs, Government of India office Memorandum No. 15/3-61 - Estt (p) dated 23.12.1961]

CASE LAW ON EDUCATION

Reservation of seats in Educational Institutions under Section 39 is mandatory.

Upon a petition filed by a candidate for the MBBS course who was denied a seat under Section 39 of the Act, the Madras High Court held that the provision of reservation of seats for persons with disabilities in educational institutions is mandatory and not directory. 'A bare reading of the above Section itself would not leave any doubt that it is mandatory and not directory. Further the very object and intendment in enacting Disabilities Act is to

provide equal opportunities to the disabled and reading of the decision *Javed Abidi v Union of India* (1999) 1 SCC 467 makes it clear that the said provision is mandatory and not directory.'

Educational Department & Ors. v Master J. Rajkumar (Minor) rep by his father and natural guardian D Joseph reported in. Decided by the Madras High Court on 30.04.2003 (W.A. No. 595 of 2003 and W.A.M.P. No. 783 of 2003)

Free Education for students with disability below the age of 18 under Section 26 cannot be made conditional upon family income or domicile of child.

A Rule of a school in Delhi stating that education will be free only upto class 10 and that too only for residents of Delhi was found by the Delhi High Court to be contrary to the provisions of the statute and therefore struck down. The Court held that '....the Act is very specific and does not make family income a relevant consideration at all.' 'The assistance is specific to the disability of the student and not to his financial state. The Act fastens the responsibility to ensure that every child with the disability has access to free education in an appropriate environment in the State.

National Federation of the Blind. vs Government of NCT of Delhi & Ors.

Decided by the Delhi High Court on 06.11.2003 (CWP 6456 of 2002)

Threshold of 40% disability cannot be increased.

On the question of whether an institution can raise the 40% threshold prescribed under the Act to more than 40% disability, the Delhi High Court held that '...it appears to me to be impermissible for any institution to introduce conditions, which would have the consequences of defeating statutory provisions contained in any welfare legislation.'

Dr. Raman Khanna v University of Delhi with Rekha Tyagi v The Vice Chancellor & Ors. with Parul Jhunjunwala v University of Delhi.

Decided on 11.08.2003

(CW 2670/2003 with CW Nos. 2912 & 4345/2003 with CM Nos. 7440& 8658-59/2003)

Extra time for writing examinations.

A candidate with cerebral palsy for the Chartered Accountancy examinations was allowed one extra hour to write the examinations while he required three extra hours. Upon a Petition by the student, the Bombay High Court directed the Institute of Chartered Accountants of India to permit the student three extra hours to finish the examination as was permitted by the Bombay University for the student's Graduation Examinations.

Dhawal S. Chotai v Union of India & Ors.

Decided by the Bombay High Court on 30.04.2003

(WP (L) No. 1256 of 2003)

No candidate with disability to be deprived of admission merely on grounds of disability

A orthopaedically disabled candidate was called for the interview after successfully completing the written entrance test for the MBA course conducted by the Indian Institute of Management. It was communicated to him that the IIMs provide reservation only to SC/STs and not to disabled candidates. Upon a petition filed by the candidate before the Chief Commissioner of Disabilities, the following directions are issued: -

- (5) No candidate with disability will be deprived of admission to various courses conducted by them merely on the grounds of disability;
- (6) 3% reservation in admission is to be provided to candidates with not less than 40 % disability blindness, low vision, locomotor impairment and partial deafness,
- (7) Reasonable relaxation must be provided to candidates with disability as an equalizing action;

- (8) Respondents to take immediate steps to ensure that classrooms, cafeterias, libraries, toilets, hostel building and other facilities are suitably modified to making a barrier free environment;
- (9) Respondents to ensure that a module on disability is included in the courses offered by them. This would sensitize trainees and orient trainee managers;
- (10) Respondents to initiate necessary action to modify examination system to ensure that candidates with disability are not discriminated against in the matter of written test, group discussion, interview.
- (11) Following modifications were suggested: -
- (12) Provision of writers /scribes for blind and low vision candidates and candidates with locomotor disabilities;
- (13) Allotment of extra time in writing tests and examination;
- (14) Alternative questions for blind candidates and candidates with low vision;
- (15) Interpreters for hearing impaired persons at interviews.

**Vikas Gupta v Indian Institute of Management
Case No. 518/2000 Decided by the Court of the Chief
Commissioner of Disabilities on 13.02.2001**

EMPLOYMENT

(Chapter VI)

Who is an employer?

An employer has been defined under Section 2(j) to mean as follows: -

- (i) In relation to a government, the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department;
- (ii) In relation to an establishment, the chief executive officer of that establishment.

Eg: - *In relation to the Ministry of Railways, in the absence of a notified authority, the (Minister or Secretary?) who is the Head of the Ministry/Department is the employer.*

- In relation to an establishment like State Bank of India, its Chief Executive Officer is the employer.

Identification of posts (Section 32)

Central and State Governments to identify posts in their establishments that can be reserved for persons with disabilities.

Identified posts to be reviewed and updated at least once in three years.

Identification of posts to consider development in technology. (For instance JAWS is a software that allows blind persons to use the computers. Instruments that permit deaf persons to use the telephone are also available.)

Establishment in which posts are identified (Sec 2(k))

Posts are identified in establishments. An establishment is defined under the Act to mean a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned

or controlled or aided by the Government or a local authority or a Government company and includes Government departments.

Eg: Central Railways, The Reserve Bank of India, Bharat Petroleum Corporation Limited, Indian Institute of Technology, State Bank of India, Government Departments at State and Central level.

Reservation of posts (Section 33)

Central and State Governments to reserve 3% of the vacancies in identified posts in their establishments for persons with disabilities.

1% for persons with blindness or low vision

1% for persons with hearing impairment

1% for persons with locomotor disability or cerebral palsy

Exemption from Reservation (Circular of Ministry of Social Welfare)

No establishment on its own discretion can exclude any post out of the purview of identified post for effecting reservation envisaged for persons with disabilities.

If an establishment feels that it requires an exemption from filling up the vacancy against a post identified by the Appropriate Government, it can approach the inter departmental committee constituted for the purpose. The Inter-departmental committee comprises representatives of the Department of Social Welfare, Personnel and Training, the Department of Health and the Administrative Department.

No other authority has the jurisdiction to accord an exemption from filling up the vacancy against an identified post.

Special Employment Exchange (Sections 2(x) and 34)

A Special Employment Exchange is any office or place established and maintained by the Government for the collection and furnishing of information either by keeping of registers or otherwise, respecting -

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

Central and State Government are required to set up a special employment exchange for persons with disabilities.

Employers in every central or state government establishment to furnish to the Exchange, information in relation to vacancies that have or are about to occur in posts identified for persons with disabilities.

Establishment is thereafter required to comply upon the requisition.

Vacancies not filled up (Section 36)

If vacancy identified and reserved for person with disability is not filled up in a certain year, due to non-availability of a suitable candidate with disability or for other sufficient reason, it shall be carried forward to the following recruitment year.

If in the succeeding recruitment year also no suitable disabled candidate is available, it shall be interchanged with another category of disability.

Only upon the failure of finding such a candidate in any other category of disability can the post be filled up with a person without a disability.

Schemes for employment of persons with disabilities (Section 38)

Central and State Governments and local authorities to formulate schemes for employment of persons with disabilities providing for the following: -

- (1) Training and welfare of persons with disabilities;
- (2) Relaxation of upper age limit
- (3) Regulating the employment
- (4) Health and safety measures and creation of barrier free employment where persons with disabilities have been employed
- (5) Defrayal of cost to person operating the scheme;
- (6) Constituting monitoring authority.

Involving the Private Sector (Section 41)

Central and State Governments and local authorities to provide, within the limits of their economic capacity, incentives to employers in the private and public sector to ensure that at least 5% of their work force is composed of persons with disabilities.

Non-discrimination in government employment (Section 47)

No establishment to reduce in rank or dispense with an employee who has acquired a disability in the course of his employment;

If the employee is not suitable for the post after acquiring the disability, he/she should be shifted to a suitable post with the same pay scale and service benefit;

If shifting him/her to another post is not possible, he/she must be retained in a super-numerary post until a suitable post is available or he/she attains the age of superannuation;

Promotion not to be denied to a person merely on the ground of his/her disability.

Employment - Issues and Questions

Is there a reservation for persons with disabilities in employment?

Every appropriate government is required to appoint not less than 3% of persons with disabilities in every establishment in the posts identified for each disability in the following manner: -
1% is reserved for persons with blindness or low vision
1% is reserved for persons with hearing impairment
1% is reserved for persons with locomotor disability or cerebral palsy.

Who is the appropriate government?

The Central Government is the appropriate government in relation to an establishment wholly or substantially financed by the Central Government and the State Government is the appropriate government in relation to an establishment wholly or substantially financed by the State Government.

In which organizations are posts identified?

Posts are identified in establishments. An establishment is defined under the Act to mean a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company and includes Government departments.

What is an identified post?

Government Departments, Ministries and Public Sector Undertakings are required to identify posts in addition to posts already identified by the Appropriate Government for employment of persons with disabilities. The Central Government constituted an Expert Committee to identify/review the posts in Group A,B,C and D to be reserved for the Persons with Disabilities in its Ministries/Departments and Public Sector Undertakings which has submitted a detailed Report enlisting the posts identified for persons with disabilities in Group A,B, C and D.

Can an establishment exclude an identified post from being filled up with a person with disability?

No establishment on its own discretion can exclude any post out of the purview of identified post for effecting reservation envisaged for persons with disabilities. If an establishment feels that it requires an exemption from filling up the vacancy against a post identified by the Appropriate Government, it can approach the inter departmental committee constituted for the purpose. The Inter-departmental committee comprises representatives of the Department of Social Welfare, Personnel and Training, the Department of Health and the Administrative Department. No other authority has the jurisdiction to accord an exemption from filling up the vacancy against an identified post.

My friend is a person with low vision. She has applied for a job advertised by the Municipal Corporation. It is not an identified post. The Municipal Corporation has replied saying that she cannot be considered as the post applied for is not an identified post.

Identified posts are open for candidates belonging to the categories identified under Section 33 of the Act. However, any person can apply in the open category. There is no rule that persons with disabilities cannot apply for non-identified posts or posts in the open category.

Can a person with 30% disability apply under the category reserved for the disabled?

No. The benefits of the Act are available only for persons who are 40% disabled or more.

How is 3% calculated for reservation in the identified posts?

Rule 36 of the PWD Rules, 1996 states that the computation of the vacancies for persons with disabilities in Groups A, B, C and D posts shall be as determined by the government by instructions or orders in that regard. As far as the Central Government

and its establishments are concerned, 3% reservation for persons with disabilities in Group C and D posts signifies 3% of the total strength of the cadre i.e. the total number of posts in the cadre being the posts filled up plus number of posts proposed to be filled up. However, in so far as Group A and B posts are concerned, 3% is calculated with reference to the identified posts in the cadre. (Office Memorandum No. 36035/4/99 - Estt. (Res) dated 29/3/2000 issued by Dept of Personnel and Training, Government of India). In state government establishments, the computation will be done in accordance with the instructions issued by the state government in that regard.

I belong to a Scheduled Tribe and I am 60% disabled. I propose to apply to a nationalized bank for a vacancy advertised by them. The post is an identified post.

Do I fall under the quota reserved for Scheduled tribes or the reserved for persons with disabilities?

The reservation of posts for persons with disabilities is 'horizontal' and the reservation of posts for persons belonging to the scheduled tribes or scheduled castes is 'vertical'. What this means is that a disabled candidate belonging to a reserved category will be adjusted against that reserved category i.e. against the quota for SC/ST/OBC. In other words, the reservation for persons with disabilities is over and above the reservation of posts for the SC/ST/OBC categories. (Office Memorandum No. 36035/19/91 - Estt. (SCT) dated 20/9/1994 issued by Dept of Personnel and Training, Government of India)

CASE LAW - EMPLOYMENT

- Reservation made in a post for a person with disability cannot be withdrawn.

This matter was prior to the Persons with Disabilities Act. The Government of UP had reserved 2% vacancies for physically handicapped persons by a G.O. in 1972. Thereafter there was a proposal not to reserve any post in the Provincial Civil Service

but no order was issued in this respect and nor was the earlier G.O amended. The State Government was directed to appoint the appellant with service benefits and cost.

Daya Ram Tripathi v The State of Uttar Pradesh & Anr. Reported in (1986) Supp SCC 497

- Conditional Reservation such as only for persons with congenital disability or not for persons who have received compensation in accidents resulting in disability - not valid Condition for reservation of allotment of petrol outlet dealership to persons with disability was such that it was restricted to those with congenital disability (i.e. persons born with the disability and not for those who had acquired a disability). The High Court of Kerala held that the statute did not distinguish between a disability that is congenital or acquired and such distinction would be violative of the provisions of the Act. The high Court further clarified that it is also immaterial whether the disabled person who has acquired the disability by accident, has received compensation for the accident or not.

Shaji Kumar v Bharat Petroleum Corporation reported in 2004 (1) KLT 961

- Identification of suitable posts for persons with disability - a statutory obligation of the government.

The Bombay High Court, when looking into a matter wherein a blind applicant had been refused a job as a Probationary Officer in the State Bank of India. As posts had not been identified by the government as required under the provisions of Section 32 of the Act, the Court directed the Government to identify posts reserved for persons with disabilities within six months of the order.

Ashok M. Shrimali & Ors. v State Bank of India & Ors
Decided by the Bombay High Court on 16.06.1999
(W.P. No. 410 of 1999)

- Failure of government to identify posts and recruit persons with disabilities in such posts - candidate entitled to back wages and suitable benefits.

As posts had not been identified for persons with disability, the Petitioner who was a disabled candidate, appeared for and cleared the examinations for Group 'A' in general category. In the absence of posts identified for that category, he took up employment in Group 'B'. The Delhi High Court held that the petitioners were entitled to a Group A post with effect from the date when he had passed the examinations for Group A and ordered that the Petitioner be given merit, seniority, promotion and monetary emoluments for the past and the future.

Ravi Kumar Arora v Union of India reported in 111 (2004) DLT 126

- Advertisement of vacancy in Identified post without declaring reservation for persons with disabilities.

The Court of the Chief Commissioner of Disabilities ordered the Central Public Works Department to publish a corrigendum to indicate that the post was identified for the purpose of reservation for persons with disabilities when the original advertisement for the vacancy did not mention reservation for persons with disabilities although the post was an identified post.

Piyush Agarwal v Central Public Works Department
Decided by the Court of the Chief Commissioner on Disabilities on 23.3.2004 (Case No. 2854/2004, CCPD, 2004)

- No disabled persons recruited in identified posts. Backlog ordered to be filled in by special recruitment drive.

The Indian Institute of Management, Lucknow published an advertisement inviting applications for certain posts without indicating the reservation in those posts. The Court of the Chief Commissioner of Disabilities took suo motu cognizance of the matter. It found that no disabled person had been employed by the institution in cadre A and B amongst the 60 employees. Three persons of the 137 persons in the other staff were persons with disabilities. The Chief Commissioner ordered IIM Lucknow to conduct a special recruitment drive after calculating the backlog vacancies to recruit disabled persons in identified posts.

Chief Commissioner of Disabilities v IIM, Lucknow
Decided by the Court of the Chief Commissioner of Disabilities on 29.07.2003. (Case No. 2455/2002)

Similar orders for a special employment drive to clear the backlog in filling in the reservations in identified posts were passed by the Chief Commissioner of Disabilities in the case of Kailash Chand Kumawat v Bharat Sanchar Nigam Ltd in Case No, 817/2001)

- Post that is identified continues to be identified until explicitly exempted.

Candidates who applied for a post that had been identified and in which reservations had been made for persons with disabilities were told that they could not perform the job and hence could not be accepted despite the reservation. Held that identified posts can be excluded only if it is explicitly excluded as prescribed by the Government Notification.

Government of NCT of Delhi v Bharat Lal Meena and Surinder Singh reported in 100 (2002) DLT 157 (DB)

- Protection of the pay-scale of an employee before he/she acquired the disability

Employee's arm had to be amputated due to a medical problem. Prior to the operation, he was working in a pay scale of Rs. 1400-2300. Post the operation, he was absorbed at a lower pay scale. In an appeal from the High Court, the Supreme Court held that his last drawn pay must be protected. Respondent was ordered to relax its conditions and re-instate the employee on the same pay scale that he was drawing prior to acquiring the disability.

Narendra Kumar Chandla v State of Haryana & Ors.
Reported as (1994) 4 SCC 460.

The ratio in this judgment was followed by the Central Administrative Tribunal, Madras Bench in the case of M. Adiappan v Union of India on 18.09.2001.

- Where a disabled employee who is otherwise qualified for promotion, cannot be promoted, as the prospective post is not suitable for the disability, special salary equivalent to the post of prospective promotion made available to the disabled employee.

An employee who had acquired a disability in the course of his service could not be promoted. The Court of the Chief Commissioner of Disabilities ordered the Ministry of Railways to consider granting the employee the pay scale equivalent to that of the post to which he would otherwise have been promoted.

Sarabjit Singh v Ministry of Railway
Decided by the Court of the Chief Commissioner of Disabilities on 17.12.2002 (Case No. 1652/2001)

- Disability acquired by employee in the Army otherwise than in the course of employment. Whether employee entitled to Disability Pension.

Employee had an accident while on casual leave. Question is whether he is entitled to Disability Pension. An Army Personnel

on casual leave is treated to be on duty. Held that the Employee being in the regular Army, there was no reason why he should not be treated as on duty when on casual leave. Respondent ordered to pay Disability Pension to Employee.

Lance Dafadar Joginder Singh v Union of India & Ors. Reported in 1995 Supp (3) SCC 232

- Employee not to be removed from service on the grounds of a disability acquired during the course of employment.

The Petitioners acquired a disability in the course of their employment and they were therefore given orders of pre-mature retirement. The Delhi High Court directed the employer corporation to take the petitioners back into service with back wages. It was also directed that in case the Petitioners are unable to perform the duties that they had been performing before they acquired the disability, they ought to be accommodated in a suitable alternative equivalent post (supernumerary post) created for them in terms of Section 47 of the Act.

Baljeet Singh v Delhi Transport Corporation reported in 83 (2000) DLT 286

- Disability acquired by employee - In case no suitable alternative appointment - compensation to be paid.

Two employees who were working as drivers were removed from service when they lost their eyesight in the course of their service, although they requested for an alternative appointment. The Respondent was ordered to give the workmen their retirement benefits and also other alternative jobs that may be available and for which the workmen were eligible. And in case no alternatives were available, additional compensatory allowance was ordered to be paid to the employees in the manner set out in the judgment.

Jaswant Singh & Anr. V State of Punjab reported in (1996) 10 SCC 570

- Employee acquiring disability before the Act of 1995 - provisions still held to be applicable.

The High Court of Rajasthan held in this case, in respect of an employee who became disabled before the Act of 1995 was passed, that although in the strict sense the provisions of the Act are not applicable to the employee in question, the principle embodied in Section 47 can always be applied and the employee can be ordered to be restored back to the position he was holding before acquiring the disability.

University of Rajasthan v Surendra Kumar Goyal reported as (2003) III LLJ 475 Raj and RLW 2003 (2) Raj 837

The same principle was followed by the Delhi High Court in the case of Delhi Transport Corporation v Sh Harpal Singh & Anr. Reported in 105 (2003) DLT 113

- Possible future disability - cannot be a ground for discrimination.

The High Court held that what might happen in the future could not be made the basis to deny a person employment in the present. LIC found a candidate unfit for employment although he had passed the written test and interview because he had a disability that was likely to deteriorate with the passage of time.

LIC ofS India v Chief Commissioner of Disability reported in 2003 (67) DRJ 136

- Protection under Section 47 to an employee acquiring a disability during service is in addition to protection under other laws.

The employee was granted invalidity pension under the CCS Pension Rules. Held that merely because the employee was granted invalidity pension is not a ground to deny the protection under Section 47 of the Act, which is mandatory. If no alternative is available, the employee must be kept on a supernumerary post until a suitable post is available. The provisions of Section 47 cannot be overridden because of a benefit extended under another statute.

Kunal Singh v Union of India reported as (2003) 4 SCC 524

AFFIRMATIVE ACTION

(Chapter VII)

- Aids and Appliances for persons with disabilities (Section 42)

The State and Central Governments are required to make schemes to provide for aids and appliances for persons with disabilities.

- Preferential Allotment of land for persons with disabilities (Section 43)

The State and Central Governments and the local authorities are required to frame schemes for the preferential allotment of land at concessional rates for persons with disabilities. The said preferential allotment may be for the following purposes :-

- (a) house;
- (b) setting up business;
- (c) setting up of special recreation centres;
- (d) establishment of special schools;
- (e) establishment of research centres;
- (f) establishment of factories by entrepreneurs with disabilities;

- Reservation of posts for employment of persons with disabilities

The provisions related to affirmative action in so far as reservation of posts for employment of persons with disabilities in establishments is concerned are covered in the chapter entitled 'Employment'.

NON-DISCRIMINATION

Non-discrimination in transport (Section 44)

Transport establishment to do the following, within the limits of its economic capacity: -

- (16) Adapt rail compartments, buses, vessels and aircrafts to permit easy access to persons with disabilities;
- (17) Adapt toilets in rail compartments, buses, vessels, aircrafts and waiting rooms to permit wheelchair users to use them conveniently;

Non-discrimination on the road (Section 45)

Central and State government to do the following, within the limits of their economic capacity: -

- (1) Install auditory signals at red lights on public roads for the benefit of the blind;
- (2) Make curb cuts and slopes on pavements for easy access to wheelchair users;
- (3) Engraving on surface of zebra crossing for persons with blindness or low vision;
- (4) Engraving on edge or railway platforms for persons with blindness or low vision;
- (5) Devise appropriate symbols of disability;
- (6) Warning signals at appropriate places.

Non-discrimination in built environment (Section 46)

Central and State government to provide for the following, within the limits of their economic capacity: -

- (1) Ramps in public buildings;
- (2) Adaptation of toilets for wheel chair users;
- (3) Braille and auditory symbols in elevators/lifts;
- (4) Ramps in hospitals, primary health centres and medical and rehabilitation institutions.

- Non-discrimination in government employment (Section 47)

No establishment to reduce in rank or dispense with an employee who has acquired a disability in the course of his employment;

If the employee is not suitable for the post after acquiring the disability, he/she should be shifted to a suitable post with the same pay scale and service benefit;

If shifting him/her to another post is not possible, he/she must be retained in a super-numerary post until a suitable post is available or he/she attains the age of superannuation;

Promotion not to be denied to a person merely on the ground of his/her disability.

Access - Issues and Questions

A police officer was severely injured and rendered disabled in discharging his duties. The State has terminated his employment with the police force. Is this valid?

No. The State cannot dispense with an employee who has acquired a disability in the course of his/her employment. As the police officer has acquired the disability in the course of his employment, he ought to be shifted to a suitable post with the same pay scale and service benefit that he had earlier. If shifting him to another post is not possible, he is required to be retained in a super-numerary post created for him until a suitable post is available or until he attains the age of superannuation.

The public buses in my city are completely inaccessible for me as I use a wheelchair. Is there anything I can do to get them to be more accessible?

Yes. Under the provisions of the PWD Act, it is incumbent upon the state, albeit within the limits of its economic capacity to ensure that there is no discrimination in transport. You can write to the concerned authority and if no action is taken by the transport authority, you can approach the High Court by way of a Public Interest Litigation. The BEST buses in Bombay introduced buses accessible for persons with disabil-

ities upon orders of the Bombay High Court passed in a public interest litigation.

Someone I know lost his hearing due to exposure to loud sounds in the factory where he works. His employer has discontinued his services. What recourse does he have?

If he is working in an 'establishment', he can file a complaint with the Disability Commissioner at the State or Central level as his employer has clearly violated the provisions of Section 47 of the Act. Unfortunately however, if his employer is a company in the private sector, there is no recourse under the PWD Act as its provisions are not applicable to the private sector.

I joined the services of the Bank along with 5 other persons as a manager. They have all been promoted but I have not received a promotion and on being asked I was told that as I was blind, I cannot be promoted. Is there anything I can do?

If the Bank is a Nationalised Bank, the provisions of Section 47 of the PWD Act prevent it from denying promotion to any person on the ground of his/her disability. A complaint can be filed with the Chief Officer of the Bank and if the Bank does not take any measures to address the grievance, a complaint can be filed with the Commissioner of Disabilities or a Writ Petition can be filed in the High Court.

The railway platforms in my city are not designed for persons with locomotor disabilities using wheel chair or crutches. Besides the toilets in the railway stations are not accessible. Is there anything I can do to get them to be more accessible?

Yes. Under the provisions of the PWD Act, it is incumbent upon the state, albeit within the limits of its economic capacity to ensure that there is no discrimination in transport and further that railway compartments, stations and platforms as also toilets are made adaptable for persons with disabilities. You can write to the concerned authority and if no action is taken by the

transport authority, you can approach the High Court by way of a Public Interest Litigation. The platforms in Bhuj in Gujarat were ordered to be made more accessible for persons with disabilities upon orders of the Gujarat High Court passed in a public interest litigation.

I am a wheel chair user. The police station, the office of the Commissioner of disabilities and the High Court do not have ramps. How do I approach them to redress my grievances when I cannot reach their offices?

Under the provisions of Section 46 of the PWD Act, the appropriate government and the local authority is required to provide ramps in public buildings. This has however been qualified with the statement that it is required to be done within the economic capacity of the authority. However, if the authority does not respond despite requests to make its building more accessible, you can file a Public Interest Litigation asking that ramps be provided. For instance, the Bombay High Court installed a ramp and a toilet accessible to wheel chair users upon a petition filed for that purpose in public interest.

CASE LAW ON ACCESS

Concessions on air travel and other facilities for passenger with locomotor disabilities travelling on the airline.

In 1997, the Indian Airlines was granting concessions to blind passengers but a similar concession was not allowed for persons with locomotor disabilities. Upon a petition filed by Javed Abidi, an orthopaedically disabled person, the Supreme Court directed the Indian Airlines to make the same concession available to persons with 80% or more locomotor disabilities as was available for passengers who were blind.

Javed Abidi v Union of India & Ors. reported in (1999) 1 SCC 467.

Voting rights for the disabled

On 19th April, 2004, the Supreme Court directed the Chief Secretaries of all states to ensure in coordination with the Chief Election Officers of those states that as far as possible wooden ramps are to be made available for the elections to be held in the country in April 2004

Disability Rights Group versus Chief Election Commissioner & Anr. (Order dated 19.04.2004 in CWP No. 182/2004)

Accessible public transport buses and accessible public buildings for the disabled in Mumbai

On a petition filed by ILS College in Pune, the Bombay High Court ordered the State of Maharashtra to provide 30 buses that were accessible for the disabled by an order dated 31st March, 2004. By a subsequent order dated 6th May, 2005, Tata Motors to deliver the buses expeditiously. By the order of 6th May, 2005, ramps had also been ordered to be provided in all important office buildings of various departments, hospitals and courts at divisional and district head quarter levels.

ILS Legal Aid Centre versus the State of Maharashtra & Ors. being PIL No 70 of 2002 (interim orders dated 31.03.2004 and 6.05.2005)

Accessible public transport buses for the disabled in Delhi

The Chief Commissioner of Disabilities ordered the Delhi Transport Corporation to procure 12 buses with hydraulic ramps for lifting wheel chairs for which the Transport Department of the Government was to provide funds. The Delhi Transport Corporation and the Government assured the Commissioner of Disabilities that by 2010 all the buses plying in Delhi, including the existing buses would be converted to low floor, high capacity buses.

Case No. 58/1999 in the Court of the Chief Commissioner of Persons with Disabilities decided on 6.05.2004

Education Department to make government schools accessible and have specially trained teachers for children with disabilities.

(interim order)

Social Jurist versus Government. of NCT of Delhi & Ors. in CWP No. 1611/2001. Interim order dated 02.11.2001

RESEARCH

(Chapters IV, V and Chapter IX)

Research for the design and development of new assistive devices and teaching aids (Section 28)

The State and Central Governments are required to initiate or cause to be initiated research by official and non-governmental agencies for the purpose of devising and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

Research (Section 48)

The State and Central Governments and the local authorities are required to promote and sponsor research in the following areas:

- (1) Prevention of disability;
- (2) Rehabilitation including community based rehabilitation;
- (3) Development of assistive devices including psycho-social aspects;
- (4) Job identification
- (5) On site modifications in offices and factories.

Financial Incentives to Universities for Research (Section 49)

State and Central Governments are required to provide financial assistance to universities and other institutions of higher learning, professional bodies and non-governmental research units or institutions for undertaking research for special education, rehabilitation and manpower development.

INSTITUTIONS FOR PERSONS WITH DISABILITIES

(Chapter X)

The provisions of this Chapter are not applicable to institutions for persons with disabilities established or maintained by the Central or the State Government. (Section 55)

Institution for persons with disabilities (Section 2(m))

An institution for persons with disabilities means an institution for the reception, care, protection, education, training, rehabilitation or any other service of persons with disabilities.

Registration of Institution for persons with disabilities (Section 51)

No person shall establish or maintain any institution for persons with disabilities except under and in accordance with a certificate issued by the competent authority in this behalf.

Institutions for persons with disabilities that were in existence before the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came into force, are required to make an application for a certificate of registration within six months of the Act coming into force.

Certificate of Registration (Section 52)

The Application for certificate of registration is required to be made in the form and manner prescribed to the competent authority appointed by the State Government;

The competent authority shall on receipt of an application, make such enquiries and upon being satisfied that the applicant has complied with the requirements of the Act and the Rules made under the Act, grant a certificate of registration to the applicant. Where the authority is not satisfied, it shall refuse to grant the certificate of registration. Before such refusal, the competent author-

ity is required to give the applicant, a reasonable opportunity of being heard. Every order of refusal must be communicated to the applicant in the manner prescribed by the State Government;

The certificate of Registration shall not be granted unless the institution is in a position to provide such facilities and maintain such standards as may be prescribed by the State Government.

The Certificate of Registration shall remain in force for the period prescribed unless revoked;

The Certificate of Registration may be renewed from time to time. The application for renewal is required to be made not less than 60 days before the period of its validity;

The Certificate of Registration may be subject to such conditions as prescribed by the State Government;

The Certificate of Registration is required to be displayed by the institution in a conspicuous place.

Revocation of Certificate (Section 53)

The competent authority may revoke the certificate of registration of an institution for persons with disability if it has reasonable cause to believe that the holder has :-

- (a) made a statement in relation to any application for the issue or renewal of the certificate which is incorrect or false in material particulars;
- (b) committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted;

The order for revocation cannot be made unless the holder of the certificate is given an opportunity to show cause why the certificate should not be revoked;

Upon such order of revocation, the institution shall cease to function from the date of revocation;

If however, an appeal can be filed against such order under Section 54, the institution shall cease to function :-

- (a) where no appeal has been preferred, upon the expiry of the period prescribed for filing the appeal; or
- (b) where an appeal has been preferred and the order of revocation has been upheld, from the date of the order in the appeal;

On the revocation of the certificate of registration the competent authority may direct that such person with disability who is an inmate of the institution on the date of revocation shall be :-

- (a) restored to the custody of her or his parent, spouse or lawful guardian as the case may be; or
- (b) transferred to any other institution specified by the competent authority;

The institution is required to surrender the certificate of registration to the competent authority upon revocation of the registration.

Appeal against order of Refusal or Revocation of Certificate (Section 54)

A person aggrieved by the order of the competent authority refusing to grant certificate of registration or revoking the certificate may within the period prescribed by the State Government, prefer an appeal to the government against such refusal or revocation.

The order of the State Government upon such appeal, shall be final.

INSTITUTIONS FOR PERSONS WITH SEVERE DISABILITIES

(Chapter XI)

Person with severe disabilities (Section 56 (4))

A person with severe disabilities is a person with 80% or more, of one or more disabilities.

Institution for persons with severe disabilities (Section 56)

The Central and State Governments may establish and maintain an institution for persons with severe disabilities at such places as it thinks fit;

The Central or State Governments may recognize institutions fit for the rehabilitation of persons with severe disabilities as an institution for persons with severe disabilities. Such institution must have complied with the provisions of the Act and Rules made under the Act;

Every institution established under this Section shall be maintained in such manner and satisfy such conditions as may be prescribed by the appropriate government;

GRIEVANCE REDRESSAL

(Chapter XII)

Nature of Grievance

The PWD Act provides a mechanism for the redressal of the following grievances:-

- (h) Deprivation of rights of persons with disabilities;
- (i) Non-implementation of laws, rules, bye-laws, regulations, executive orders. Guidelines or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of rights of persons with disabilities.

Authority

Section 59 of the PWD Act authorizes the Chief Commissioner of Disabilities appointed under the Act to look into complaints of persons with disabilities and take up the matter with the appropriate authorities. He may do so either on his own motion or upon application of a person aggrieved.

The Chief Commissioner of persons with Disabilities is appointed by the Central Government and must be a person who has special knowledge or practical experience in respect of matters relating to rehabilitation.

The Commissioners appointed under Section 60 of the Act for each state also have the authority to look into complaints of persons with disabilities and take up the matter with the appropriate authorities.

Powers

The Chief Commissioner and the Commissioner have the powers vested in a court under the Civil Procedure Code. They therefore have the following powers :-

- (a) Summoning and enforcing attendance of witnesses;
- (b) Requiring discovery and production of any document;

- (c) Requisitioning a public record or copy thereof from any court or office;
- (d) Receiving evidence on affidavits;
- (e) Issuing commissions for examination of witnesses and documents.

Procedure

A complaint may be filed before the Chief Commissioner or the Commissioner by the person aggrieved or through the agent of the person aggrieved.

The complaint may be presented in person/through an agent or sent to the Chief Commissioner by registered post.

The complaint must contain the following particulars: -

- (a) Name, description and address of the complainant;
- (b) Name, description and address of opposite party or parties, so far as they can be ascertained;
- (c) Facts relating to the complaint, when and where they arose;
- (d) Documents in support of the allegations contained in the complaint;
- (e) Relief claimed by the complainant.

The Chief Commissioner will refer a copy of the complaint to the opposite party mentioned in the complaint to allow him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days.

On the date of the hearing, the parties are required to appear before the Chief Commissioner /the Commissioner, directly or through their agents/lawyers. If the complainant/ agent/lawyer is not present on the date of the hearing, the Chief Commissioner may dismiss the complaint for default or decide it on merits. If the opposite party or his agent /lawyer is not present on the date of the hearing, the Commissioner may issue orders and directions to summon or enforce the attendance of the opposite party.

The Chief Commissioner/ Commissioner also has the power to decide the matter *ex parte* i.e. in the absence of any one of the parties. The Chief Commissioner / the Commissioner has the powers to adjourn the matter to another date for hearing.

The complaint is to be decided, as far as possible, within a period of three months from the date of notice to the opposite party.

Every proceeding before the Chief Commissioner /the Commissioner is a judicial proceeding. The Chief Commissioner /the Commissioner is deemed to be a civil court.

Writ Jurisdiction

A person aggrieved by the action or the inaction of the state which includes statutory authorities and establishments run or funded by the state or those carrying out public functions, may file a writ petition in the High Court of the state to redress his/her grievances. The High Court has the power to issue writs (i.e. orders) to the state to perform its functions.

Public Interest Litigation

Matters that concern the public at large or a large group of persons can also be filed in the High Court / the Supreme Court. This category of matters is known as public interest litigation. Improving transport facilities for persons with disabilities, providing ramps in public buildings or providing braille balloting paper for voting etc are demands that have been effectively made and addressed through public interest litigation.

SOCIAL SECURITY

(Chapter XIII)

Rehabilitation (Section 2 (w))

Rehabilitation has been defined to mean a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels.

Rehabilitation measures to be taken by appropriate government (Section 66)

The Central and State Governments and the local authorities are required to undertake or cause to be undertaken rehabilitation for all persons with disabilities within the limits of their economic capacity and development;

For the said purpose, the state and central government are required to grant financial assistance to non-governmental organizations;

While formulating rehabilitation policies, the state and central governments and the local authorities are required to consult non-governmental organizations working for the cause of persons with disabilities.

Insurance (Section 67)

The Central and State Governments are required to frame an insurance scheme for the benefit of its employees with disability;

The Central or State Government may instead of framing an insurance scheme frame an alternative security scheme for its employees with disability.

Unemployment allowance (Section 68)

The Central and State Governments are required to frame, within the limits of their economic capacity and development, a

scheme for payment of an unemployment allowance to persons with disabilities registered with the Special Employment Exchange for more than two years and who could not be placed in any gainful occupation.

EXERCISE

Words can hurt : Match them

spastic	black (person)
retard	older person / elders
psycho	accessible toilet
handicapped Person	disabled person
nigger	someone with a mental health issue
wheelchair bound	someone with a learning disability
mental handicap	disabled person
disabled toilet	a person with cerebral palsy
wrinkley	wheelchair user
cripple (crip)	disabled person

Questionnaire

What does the phrase "disabled person" mean to you?

Can you name five famous disabled people?

1. _____

2. _____

3. _____

4. _____

5. _____

What do these words mean?

Prejudice : _____

Discrimination : _____

Stereotype : _____

What might prevent a child, who uses Braille, from taking part in lessons?

Can you think of something that would prevent a person with a hearing impairment getting a job?

Which negative words are used to describe disabled people?

Which positive words are used to describe disabled people?

Group Activities

(Access)

- D suffers from visual impairment. His vision is blurred which makes it impossible for him to read. He finds that he has an aptitude for computer programming and applies for a job in a reputed software company. The company he applies to rejects his application on the grounds that he is visually impaired. He argues that there are two top rung software programmers employed by Microsoft, they are able to do their work with the help of simple software that will read information from the computer screen so that the blind person can access the internet. D is very familiar with this software. He argues that his disability will not hamper his work while he can use this software. Discuss the points raised in both arguments.
- Mona uses a wheelchair. She wants to attend her local school in Bandra with friends from home. The school has no wheelchair access and so far she has not been able to get through the door. Discuss how Mona could go to school.

Education

- Kumar Zahir, in standard VI, has a hearing impairment. The students in his class all sit in alphabetical order. This means he has to sit at the back and therefore struggles to hear the teacher and keep up with the rest of the class. His teacher refuses to make an exception for him as she says she must treat all students equally.
- Varsha is in standard XI. She has a visual impairment. Varsha accesses lessons with the help of a Reader. This person has been with Varsha for a long time and understands her well. Unfortunately, her permanent

Reader has had to take extended leave and there is no-one available to read to her. Her teacher says that this is not really a problem as Varsha is bright and is very advanced compared to the rest of the class. Varsha is beginning to get bored and is talking of giving up her studies.

- Mohan has got a visual impairment and is doing his Secondary School Certificate. None of the textbooks or examinations are available in Braille. Mohan can read visually with a great deal of extra effort and with magnified print, but it is much quicker for him to use Braille. He is worried that he will not be able to read the exam paper quickly enough to answer the questions.
- Mrs. Bothra, a principal of a school. The school had a few students who were disabled. The school was built in such a way that it was quite a problem for the disabled children to access different parts of the school. They could not even access the toilets with ease. The staff toilet was easier for the disabled children to access as it was a western-style toilet, but the problem was that the students were not allowed to use that. What can Mrs. Bothra do to make the situation easier for the disabled children?
- Sumit always wanted to become a chartered accountant. He had cerebral palsy from a very young age. But that did not make him any less determined. He was very hard working and also had secured very good marks in his 12th. So everything was going his way. During the entrance exam he could not finish the entire paper; as a result he could not be selected. He was shattered. What can the government do to help people like Sumit achieve their goals and be happy in life?

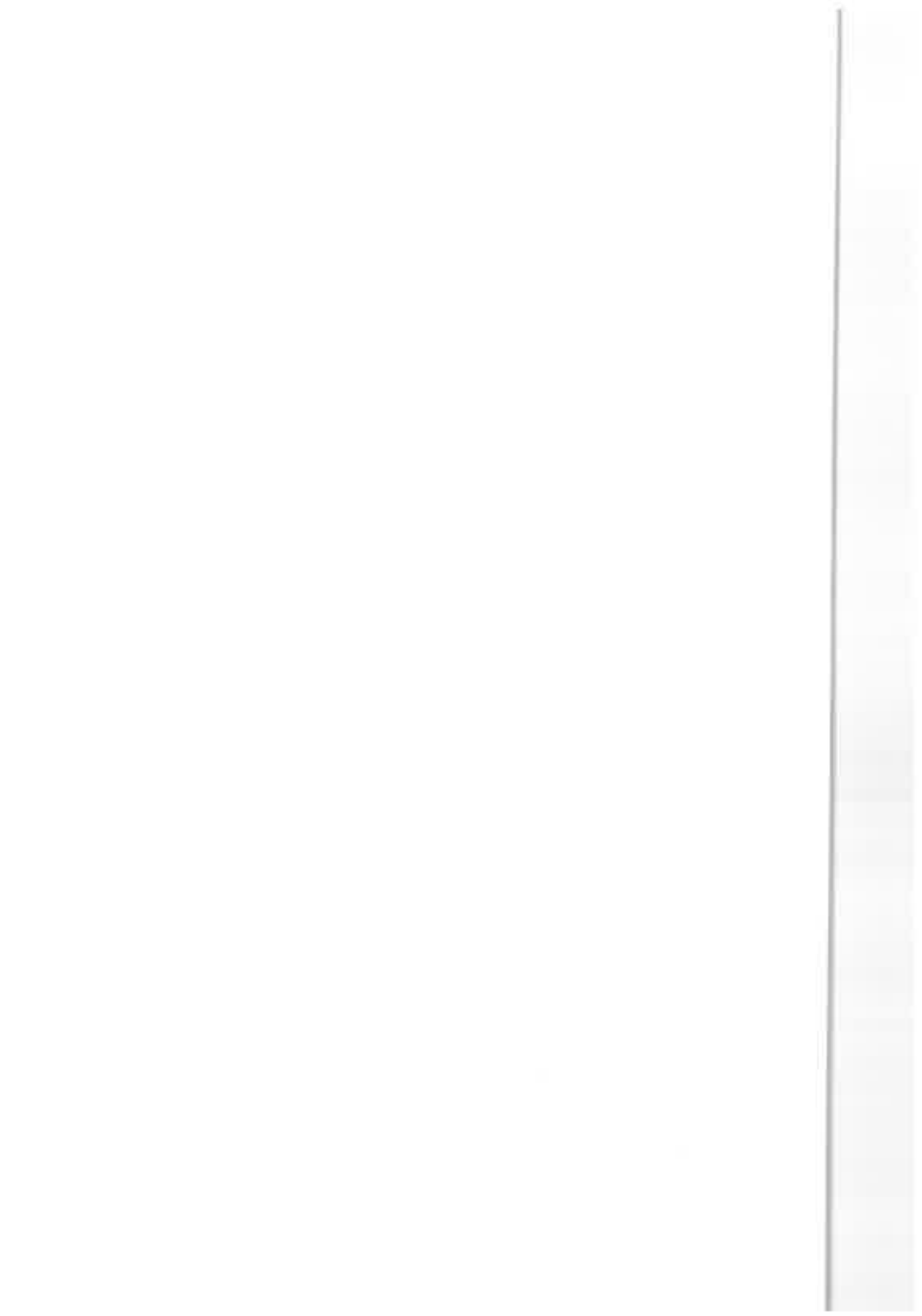
- Seema was always a very enthusiastic student. She was very keen on participating in all the activities in her school. Seema especially liked dance, although she could not dance because she was impaired. But enthusiasm was in no way diminished by her disability. Seema could not attend any programme? What could the school do to overcome this situation?
- Sanjay is 13 year old boy in an inclusive school who suffers from hearing impairment. He understands everything in the class, and can follow better than most of the other "normal" students in the class. But the problem arises when it comes to writing. Sanjay faces problems when it comes to writing. How does the school help out students like Sanjay who are as capable as his own classmates if not better?
- Nitesh's dream was to become an engineer. He was very keen on learning different aspects of science. His teachers were very hopeful and had faith in him that he will clear the engineering entrance exam, in spite of his impairment due to polio. This impairment did not slow down Nitesh in a way. Like ever other student he was also very nervous, but he wrote a very good exam and was now very sure that his dreams were almost turning into reality. But everything came crashing down when he did not find his name in the merit list. He fell short by two places. Relate to Nitesh's story and suggest reformations.

Persons with Disability Act

1. T suffers from diabetes. She wants to take admission into a governmental college in the reserved category. She asks the college to admit her on the basis of the 3% reservation for disabled persons under section 39 of the Act stating that her condition hampers her daily activities. Discuss the types of disabilities that come under the Disabilities Act, should diabetes come under the ambit of disability under the Act?

Employment

- The National Rural Employment Guarantee scheme provides that one able bodied person from each household will be given employment for a certain number of days each month. W (a disabled person) files a petition before the Supreme Court of India under Article 14 and 21, contending that the said scheme is discriminatory towards persons with disabilities and that the government is curtailing his right to life by denying him his right to livelihood under the Act. Argue for the Government of India.
- A and R are both candidates for the same post in a government service. They are both candidates for a clerical post that does not require and physical or technical work. A's qualifications for the post are slightly better than R's but he is physically disabled. At age 6 he lost his left leg to polio. In spite of A having better qualifications than R, R is chosen for the post. What recourse does A have under the aforementioned declaration?



FOR MORE INFORMATION CONTACT: HUMAN RIGHTS LAW NETWORK (www.hrln.org):

Andaman & Nicobar Islands:

AB -31, Aberdeen Bazaar, Babu Lane,
Port Blair 01. Tel 0319-230756

Andhra Pradesh :

H.No 1-9-312/5/2, Opp. Sree Play School, Achyutreddy
Marg, Vidyanagar.

Hyderabad-500 044 Tel 040 - 2766 1883

Arunachal Pradesh :

Quarter No-7, Type IV, Raj Niwas Area, Itanagar.

Arunachal Pradesh

Tel 9436040383, 9436050907

Chennai :

No. 319, Linghi chetty street, II floor,

George Town, Chennai - 1

Tel: 044 - 25243246, 25243247

New Delhi :

576 Masjid Road, Jangpura,

Delhi 110 014

Tel 011-24374501, 24376922

Email slcdelhi@vsnl.net, hrlndel@vsnl.net

Gujrat :

B/5, Sushinagar Society, Nr Octroi Naka, Opp

Mahatma Gandhi Labour Institute.

Ahmadabad 380 052 Tel 079 27475815

Himachal Pradesh :

C/O Chinmaya Organisation for Rural Development,

Kamlesh General Store,

1st Floor, VPO Sidhban Teh, Dharamsala Dist, Kangra

Himachal Pradesh :

Uttam Bhawan, Vikas Nagar, Shimla, Himachal

Pradesh Tel 0177-2621108

Jharkhand :

Choudhary Nives, Near Superb Scholar School, Vidhu

Bhushan Sarkar Road, Williams Town,

Dev Ghar, Jharkhand

Karnataka :

No. 51, II Floor, Infantry Road, Behind Medinova

Shivaji Nagar, Bangalore 560 001, Karnataka Tel 080

5762 4757

Kashmir :

Bee Dee House, Near Hurriyat office,

Kursoo Rajbagh, Sgr, Kashmir

Tel 9419018022

Kerala :

41/3661, Amples Building, Amulya Street,

Off Providence Road, Cochin 682 018, Kerala Tel 0484

- 2390680 | T.C. 25 /2952, Old GPO Building,

Ambujavilasom Road, Thiruvananthapuram 695001,

Kerala Tel 0471 2460852

Punjab :

2439 Sector, 37-C Chandigarh,

Punjab Tel 0172 3094478

Madhya Pradesh :

10-P Aman Complex, Govind Garden,

Govindpura Bhopal 462023,

Tel 0755 5202514

Manipur :

KVIC Building, 2 nd Floor, Opposite Videocun House,

Paona Bazar, Imphal 795001 Manipur

Tel 0385-2442165

Maharashtra, INDIA CENTRE FOR HUMAN RIGHTS

AND LAW, CVOD Jan High School,

4 th Floor, 84 Samuel Street (Pala Galia) Dongri,

Mumbai 400 009 Tel 022 23439851, 23438692

Fax 022 2343 3698 Email hunright@vsnl.com | Orissa

Flat 403 B' Block, Rashmi Vihar Apartments,

Budheswar Colony, Bhubaneswar 751 006, Orissa Tel

0674 2314280

Rajasthan :

HRLN & Academy for Socio-Legal Studies 49,

Vivek Nagar, Station Road, Jaipur-302006, Rajasthan

Tel 0141 - 2206139,2207446

Sikkim :

2nd floor Above Maheeh Saloon, Satey Bazaar, Upper

Sichey Area, Gangtok - 737101, Sikkim

Tel 03592-203557

Tamilnadu :

319/155, 2nd Floor, Linghi Chetty Street, Georgetown

Parry's, Chennai-600 001 Tamil Nadu Tel 044 - 4216

5131, 4216 5121

Tuticorin

No. 19, Gin Factory Road, Tuticorin - 628 002

Uttar Pradesh :

105, Ashok Nagar, Aliganj-211 001

Uttar Pradesh Tel 0532-2623893 | R/o J-19/66, Bari

Bazar, PS Jaibura

Varanasi - 221002, Uttar Pradesh

Tel: 0542-586676, 586688

Uttaranchal Chaudhary Khola, Jakhandevi, Almora

263601, Uttaranchal Tel 05962 33814

West Bengal Sohni Apartment, Flat 1A, 3, Parbat

Chakrabarty Lane, Kalighat

Kolkata 700026, West Bengal

Tel 033-30987154, 2454 6828, 2454 6812

HRLN

Human Rights Law Network

576, Masjid Road, Jangpura, New Delhi - 110014
Tel: 24374501/ 24379855 Email: dr1.delhi@hrln.org