

An Explanatory Note
on
the proposed amendments in
the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act), 1995

1. Background

- (i) A Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993-2002, convened by the Economic and Social Commission for Asia and Pacific (ESCAP), was held at Beijing in December, 1992. The Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region was adopted in this meeting, to which India is a signatory.
- (ii) The subject of "Relief to the disabled" is covered under Item 9 of the State List in the Constitution of India. However, the Central Government enacted The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act), 1995 to implement this proclamation. The Act was enacted under Article 253-("Legislation for giving effect to international agreements") of the Constitution of India, read with item No. 13 -("Participation in international conferences, associations and other bodies and implementing of decisions made thereat") of the Union List._
- (iii) The National Policy for Persons with Disabilities, which was adopted on 10.2.2006, envisages amendments to the Act in consultation with the stakeholders.
- (iv) An extensive consultation with the stakeholders was held with the State Government representatives, NGOs, disabled persons' organizations and experts in the field as follows:
 - (a) At Patna - on 11.7.06 - for the Eastern Region
 - (b) At Chennai - on 18.7.06- for the Southern Region.
 - (c) At New Delhi - on 14.8.07- for the Northern Region
 - (d) At Goa - on 19.11.07 - for the Western Region.

The last two meetings were held after the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) was signed by India on 30.03.2007, so that its provisions could be taken into consideration.

- (v) During the course of consultation, various stakeholders were requested to submit their suggestions in writing. The suggestions received were compiled in a report submitted on 27.03.2008 by the then Advisor, Rehabilitation Council of India.
- (vi) The UNCRPD was ratified by India on 01.10.2007 and has come into effect on 03.5.2008.
- (vii) Draft amendments were formulated considering the suggestions received and the need for harmonization of the Act with the provisions of the National Trust Act, 1999.
- (viii) The proposal for amendment in the Act was placed before Central Coordination Committee (CCC), constituted under **Section 3** of the Act, on 21.7.09.
- (ix) The proposal has been revised, taking into consideration the suggestions received in the CCC meeting, and the latest version of the proposed amendments is enclosed.

2. Summary of proposed amendments

(i) Changes in Definitions (in Chapter I)

- (a) "**Autism**" is a disability in the National Trust Act, but not in the PwD Act. Likewise, "**multiple disabilities**" is defined in the National Trust Act. It is proposed to add definitions of "autism" and "multiple disabilities" in the PwD Act, in line with the definitions given in the National Trust Act.

- (b) Definition of “**rehabilitation**” is proposed to be modified and definitions of , “**communication**”, “**discrimination on the basis of disability**”, “**inclusive environment**”, “**language**”, “**public building**”, “**reasonable accommodation**” and “**universal design**” are proposed to be added, in line with the provisions of UNCRPD.
- (c) Definitions of “**blindness**”, “**hearing impairment**” and “**persons with low vision**” are proposed to be revised to make them more accurate, based on the recommendation of the Expert Committee set up by this Ministry under the chairmanship of DGHS.
- (d) Definition of “**appropriate Government**” is proposed to be improved.
- (e) Other important definitions proposed to be added are- “**local authority**” and “**poverty alleviation schemes**”.

(ii) Guiding Principles

A new “**Chapter III-A-Guiding Principles for Appropriate Governments and Local Bodies**”, is proposed to be included - based on Art.3 (“**General Principles**”) of the UNCRPD. This Chapter lists the steps to be taken by appropriate Governments and local authorities, within their economic capacity, to secure various rights of persons with disabilities, as follows:

- (i) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- (ii) Non-discrimination;
- (iii) Full and effective participation and inclusion in society;
- (iv) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (v) Equality of opportunity;
- (vi) Accessibility;
- (vii) Equality between men and women;
- (viii) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

(iii) Access for persons with disabilities

- (a) The existing provisions relating to access for persons with disabilities are contained in **Sections 44, 45 and 46** relating to non-discrimination in transport, on the road and in the built environment, respectively. It is proposed that the proviso “within the limits of economic capacity and development’ be removed. Further, it is proposed to provide for specification of time-limits for making the transport sector, roads and the built environment barrier-free. The notification in this regard would have to be issued within one year of enactment of the Amendment Act and the time limit shall not be later than 31.12.2017.
- (b) A new “**Section 46B-Accessibility of Information in the public domain to persons with disabilities**” is proposed to be added. This Section is based on Art. 21 (“**Freedom of expression and opinion and access to information**”) of the UNCRPD. This Section will make it mandatory for appropriate Government and local bodies to ensure availability of all information in the public domain in accessible format suitable to the needs of persons with disabilities and notification of standards for accessibility of websites.
- (c) A new **sub Section 48(2)** is proposed to be added, relating to research and development in the area of universal design, which is also ultimately expected to improve access for persons with disabilities.

(iv) **Rehabilitation**

A new **Chapter IVA (“Rehabilitation”)**, is proposed to be included, replacing the existing provisions of **Section 42** (“Aids and appliances to persons with disabilities”) and **66** (“Appropriate Governments and local authorities to undertake rehabilitation”). A new provision is proposed regarding involving family care givers and guardians of persons with disabilities in their rehabilitation, for which adequate training shall be provided.

(v) **Education**

- (a) **Section 26 (“Education of children with disabilities at the school level”)-** The concept of inclusive education at the school level is proposed to be introduced, to bring it in line with the present policy under the Sarva Shiksha Abhiyan and Art. 24 (“Education”) of the UNCRPD.
- (b) A new **Section 26-A (“Distance Education of Persons with Disabilities above 18 years of age to be free upto the senior secondary stage”)** is proposed to be introduced, to provide free education through distance education for persons with disabilities upto senior secondary stage irrespective of age.
- (c) A new **Section 26 B (“Higher and Professional Education”)**, is proposed to be introduced to promote higher education for students with disabilities.
- (d) A new **Section 27 (“Education of children with learning disabilities”)**, is proposed to be introduced (replacing the existing Section 27) to improve the coverage of the subject of education in the Act to give attention to children with learning disabilities. The present Act has no provisions whatsoever about children with learning disabilities.
- (e) A new **Section 27A (“Education of children with cerebral palsy and children with multiple disabilities, especially deafblind children”)**, is proposed to be introduced to improve the coverage of the subject of education in the Act to give attention to children with cerebral palsy and children with multiple disabilities, especially deafblind children.
- (f) In **Section 30 (“Appropriate Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc.”)**, suitable amendments are being proposed to accommodate the special requirements of visually impaired and hearing impaired children with regard to evaluation system and curriculum.
- (g) The scope of **Section 31 (“Educational institutions to provide amanuensis to students with visual handicap”)** regarding provision of amanuensis to students with disabilities, is proposed to be expanded to include persons with disabilities in the writing upper limb, including students with cerebral palsy.
- (h) The scope of the section **Section 39 (“All educational institutions to reserve seats for persons with disabilities”)**, which covers Government and Government-aided institutions, is proposed to be extended by including all recognized institutions, which would be required to provide 3% reservation (**Section 31A** replaces **Section 39**).

(vi) **Reservation in Government Employment**

Amendments are proposed in **Section 33 (“Reservation of posts”)**, for reservation by appropriate Government, to:

- (a) bring about clarity regarding coverage of organized services for the purposes of reservation
- (b) split the 1% quota for reservation for persons with blindness and low vision, to provide for 0.5% reservation in each sub-category
- (c) enable the appropriate Government to provide quota for reservation for other types of disabilities also, and

- (d) carry forward unfilled vacancies for the next three years (instead of the present period of one year) so that the benefit of reservation is not denied to persons with disabilities- this is in line with the recommendations of the GOM in July, 2008

(vii) Incentives to employers

With regard to **Section 41 (“Incentives to employers to ensure five percent of the work force is composed of persons with disabilities”)**, the incentives are now proposed to be provided only to employers in the private sector, since the public sector is already mandated as per law to provide reservation in employment and there is no justification for giving incentives.

(viii) Care and Protection, Health-care, and Social Security

- (a) A new **Chapter VA (“Healthcare”)** is proposed to be added based on Art. 25 (“Health”) of the UNCRPD, to provide for appropriate Governments and local authorities to provide healthcare to persons with disabilities within a reasonable distance from their location, especially in rural areas. The healthcare is to be provided free of cost for persons with disabilities whose family income is below limits as notified by the appropriate Governments. Barrier-free access is to be provided in Government run or aided hospitals/institutions/centres and priority in attendance is to be given. **The Act, at present, has no provisions regarding healthcare.**
- (b) **Section 56 (“Persons with Disabilities in need of Care and Protection”)** - The appropriate Governments would be required to promote care and protection of persons with disabilities in the family and the community and establish and maintain homes where there is no family/community support. Special attention is to be given to persons with severe disabilities and women and children with disabilities.
- (c) A new **Section 66 (“Maintenance Allowance and Disability Pension”)** is proposed to be added, replacing the existing section, to provide social security for persons with disabilities, especially to those with severe and multiple disabilities, especially women, by appropriate Governments, within the limits of their economic capacity and development.
- (d) **Section 67 (“Insurance”)-** The existing Section, which only covers insurance of employed persons with disabilities, is proposed to be replaced with a Section on a comprehensive insurance scheme for persons with disabilities in general.

(ix) Delivery of public services

A new **Section 46A (“Delivery of public services”)** is proposed to be added to provide equal access to persons with disabilities in all Government programmes and services, in the light of Art. 9 (“Accessibility”) of the UNCRPD.

(x) Removal of the phrase “within the limits of economic capacity and development” from certain existing sections

The phrase “within the limits of economic capacity and development” is proposed to be omitted from the following existing Sections:

- i. **Section 25:** Prevention of disabilities
- ii. **Section 41:** Incentives for employing persons with disabilities
- iii. **Sections 44-46:** Non-discrimination/access
- iv. **Section 66:** (being replaced by new Section 25A): Rehabilitation
- v. **Section 68:** Unemployment allowance

(xi) Creation of Awareness

A new **Section 70A (“Creation of Awareness on Disability Issues”)** is proposed to be added, as per Art. 8 (“Awareness-raising”) of the UNCRPD, mandating that appropriate Governments

and local authorities shall take measures for awareness-raising, combating prejudice and promoting positive perceptions about persons with disabilities.

(xii) Recreation

A new **Section 70B (“Recreation”)** is proposed to be added, based on Art. 30 (“Participation in cultural life, recreation, leisure and sport”) of the UNCRPD, relating to development and utilization of creative, artistic and intellectual abilities of persons with disabilities and measures for their participation in mainstream sports, recreation and tourism, by the appropriate Governments and local authorities, within the limits of their economic capacity and development.

(xii) Central and State-level Coordinating and Monitoring Mechanism

- (a) The **Central Coordination Committee (CCC)**, as provided in **Section 3**, is proposed to be re-named as the “**Central Advisory Board**” and the **Central Executive Committee(CEC)**, as provided for in **Section 9**, as the “**Central Coordination and Monitoring Committee**”, since the existing nomenclature does not adequately convey the functions of these bodies. Similar changes are proposed to be made in the nomenclature of the State Coordination Committees (**Section 13**) and the State Executive Committees (**Section 19**).
- (b) **New Sections- 9A and 19A-** are proposed to be added to incorporate provisions relating to tenures of nominated members of the Central and State Coordination and Monitoring Committees respectively.
- (c) Certain changes are proposed in the composition of the Central Advisory Board under **Section 3** and the Central Coordination and Monitoring Committee under **Section 9** vis-à-vis those for the existing CCC and CEC, respectively, so as to account for changes in nomenclature in some of the Ministries and inclusion of some more ex-officio members whose presence in these bodies seems necessary.
- (d) Similar changes (as in **Sections 3 and 9**) are proposed in **Sections 13 and 19** with regard to composition of the State Advisory Board and State Coordination and Monitoring Committee. The Chief Secretary is now proposed as the Chairperson of the State Committee, instead of the Secretary, Department of Social Welfare of the State, as per the present provision.

(xiii) Introduction of a monitoring mechanism at the District-level

At present, the PwD Act provides for consultative/monitoring at the Central and State levels only. It is now proposed, through a **new Section 22A** to provide for constitution of a **District-Level Committee on Disability** also, as a district-level mechanism for monitoring implementation of the decisions taken by the State Advisory Board and the State Coordination and Monitoring Committee.

(xiv) Appointment, functions and powers of the Chief Commissioner and State Commissioners for Persons with Disabilities

- (a) New provisions relating to details of terms of appointment, conditions of service, resignation and removal are proposed to be introduced in **Section 57** (for Chief Commissioner) and **Section 60** (for State Commissioners). Appointment of the Chief Commissioner and State Commissioners on a full-time basis is proposed to be made mandatory. Besides, the proposed provisions specify that serving Government employees cannot be appointed on the post of Chief Commissioner or State Commissioner, except in States with < 5 million population as per last census.
- (b) Further to the existing powers of summoning and enforcing attendance of witnesses, the Chief Commissioner and State Commissioners are proposed to be provided one more power of a Civil Court, under **Section 63**, viz. the power to “examine on oath” which is essential to enable it to enquire/investigate complaints properly, and is enjoyed by other similarly placed bodies/ Commissions.

- (c) In addition, a new provision has been made under **Section 59** to ensure that whenever the Chief Commissioner, while looking into the complaint regarding deprivation of rights / non-implementation of laws, rules, etc. for welfare and protection of rights for persons with disabilities, 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 recommendation. In case, that authority does not accept a recommendation, he shall convey reasons for non-acceptance to the Chief Commissioner within three months and shall also similarly inform the aggrieved person.

(xv) Recognition of Institutions for Persons with Disabilities

New provisions are proposed to be added as indicated below:

- (a) New proviso has been added in **Section 51("Registration of institution")** that recognition of institutions shall meet the minimum standards and norms for recognition as may be prescribed.
- (b) **New Sub-Section 52(7)-** A time-limit is proposed to prescribe for disposal of applications for registration of new institutions.
- (c) **New Sub-Section 52(7)-** An institution for care of mentally ill persons, which is licensed under the Mental Health Act, 1987, shall not be required to be registered under this Act.

(xvii) Penal Provisions

A new **Section 53A ("Punishment for contravention of Sections 44, 45, 46, 51 and 53")** is proposed to introduce a fine for contravention of Sections relating to barrier-free access in transport, on the road and in the built environment, and for violation of the provisions of the Act by registered institutions.

(xviii) National Fund for Persons with Disabilities

A new **Chapter XIII A ("National Fund for Persons with Disabilities")** is proposed to be added in pursuance of the Supreme Court judgment dated 16.04.2004 in Civil Appeal Nos. 4655 and 5218 Of 2000 (Indian Banks' Association & Ors. Vs Devkala Consultancy Service & Ors.). This judgment, *inter alia*, contained directions for immediate creation of a Trust Fund to be managed by the CAG of India and subsequent creation of a statutory Trust Fund through amendment of the PwD Act. In pursuance of the judgment, the Trust Fund for Empowerment with Persons with Disabilities (chaired by CAG of India) was registered on 21.11.2006. Another Fund, the National Fund for People with Disabilities has been in existence since 1983. Now these Funds are sought to be merged and a statutory National Fund for Persons with Disabilities is proposed to be created the new proposed Chapter.
