

No. EDN - U(G-II) RTE-2009/- 3490
Office of the Deputy Director of Elementary Education
Una District Una HP

Dated : Una - 174303 dt 2024

27/08/24

To

All the Heads / Incharges of GSSS / GHS/GMS/GPS
District Una.

Sub:-

Regarding admission of CWSNs students specially HBE.

Sir,

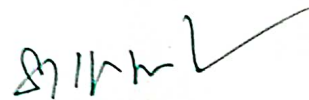
With reference to The Right of Children to Free and Compulsory Education, Act 2009 and The Rights of Persons With Disability Act, 2016 (RPWD, Act 2016) published in The Gazette of India, Part II -Section I dated 28th Dec. 2016 and letter no EDN-C-F(1)-2/2023 dated 16Feb 2024 Government of Himachal Pradesh, Department of Elementary education, Shimla.

In context, it is hereby directed to all the heads (Schools)/Incharges of District Una to enrolled CWSNs students specially Home Base Students (HBE) in Schools and should be updated/enrolled in UDISE Plus also. So, that their Permanent Education Number (PEN) may created on UDISE Plus they should not left without any benefit as per Acts implemented by the Government.

For HBE students the individual education plan will be prepared by the Special Educator by concerned block.

Encls:

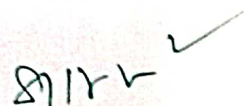
1. RTE Act 2009 (17nos. pgs)
2. RPWD Act 2016 (35nos pgs).
3. Under age Notification (01 pgs.)



Deputy Director of Elementary Education,
Una, District Una H.P.

Copy to:

1. The Director of Elementary Education, Shimla for information please.
2. The State Project Director, SSA, Shimla for information please.
3. The Principal Cum District Project Officer SSA DIET Una for information please.



Deputy Director of Elementary Education,
Una, District Una H.P.

EDN-C-F(1)-2/2023
Government of Himachal Pradesh
Department of Elementary Education

From:

Secretary (Education) to the
Government of Himachal Pradesh

To

The Director, Elementary Education,
Himachal Pradesh, Shimla-1

Dated: Shimla-171002, the

16th February, 2024

Subject: - Request for amendment of age of Admission for 1st Grade according to
NEP, 2020.

Sir,

In continuation to this department's letter of even number dated 24-11-2023 on
the subject cited above, I am directed to convey the following:-

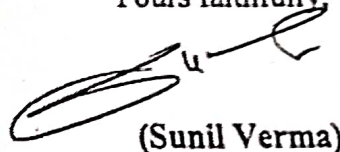
1. One time relaxation of 06 months (in age) for admission in Grade/Class 1st
is hereby granted. Thus, a child who attains the age of 06 (Six) years upto
30th September, 2024 shall be allowed admission in Grade/Class 1st for the
academic session 2024-25. This relaxation is only for the academic
session 2024-25.
2. The pre-school admissions will be regulated as per the NEP structure
of 5+3+3+4. Thus, the following age criteria be implemented:-

Grade	Nursery/ Balvatika-1	LKG(Lower Kindergarten)/ Balvatika-2	UKG(Upper Kindergarten)/ Balvatika-3
Age	3 + years	4+ years	5+ years

3. The Specially-abled (Divyaang) Children shall be admitted in
age-appropriate class.

You are, therefore, requested to take further necessary action in the matter
accordingly.

Yours faithfully,


(Sunil Verma)

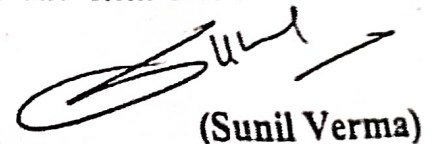
Joint Secretary (Education) to the
Government of Himachal Pradesh

16th February, 2024

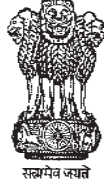
Endst. No. As above.

Dated: Shimla-2, the

Copy forwarded to the Joint Secretary(GAD-C) to the Government of Himachal
Pradesh, Shimla-2 w.r.t. Item No. 29 of CMM dated 12-01-2024 and Item No. 9 of CMM
dated 14-02-2024 for information.


(Sunil Verma)

Joint Secretary (Education) to the
Government of Himachal Pradesh



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 59]

नई दिल्ली, बुधवार, दिसम्बर 28, 2016/ पौष 07, 1938 (शक)

No. 59] NEW DELHI, WEDNESDAY, DECEMBER 28, 2016/PAUSHA 07, 1938 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 28th December, 2016/Pausha 17, 1938 (Saka)

The following Act of Parliament received the assent of the President on the 27th December, 2016, and is hereby published for general information:—

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

(No. 49 OF 2016)

[27th December, 2016]

An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

WHEREAS the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006;

AND WHEREAS the aforesaid Convention lays down the following principles for empowerment of persons with disabilities,—

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) equality of opportunity;

(f) accessibility;

(g) equality between men and women;

(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

AND WHEREAS India is a signatory to the said Convention;

AND WHEREAS India ratified the said Convention on the 1st day of October, 2007;

AND WHEREAS it is considered necessary to implement the Convention aforesaid.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Rights of Persons with Disabilities Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “appellate authority” means an authority notified under sub-section (3) of section 14 or sub-section (1) of section 53 or designated under sub-section (1) of section 59, as the case may be;

(b) “appropriate Government” means,—

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonments Act, 2006, the Central Government;

(ii) in relation to a State Government or any establishment, wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government.

(c) “barrier” means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society;

(d) “care-giver” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability;

(e) “certifying authority” means an authority designated under sub-section (1) of section 57;

(f) “communication” includes means and formats of communication, languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, video, visual displays, sign language, plain-language, human-reader, augmentative and alternative modes and accessible information and communication technology;

(g) “competent authority” means an authority appointed under section 49;

(h) “discrimination” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;

(i) “establishment” includes a Government establishment and private establishment;

(j) “Fund” means the National Fund constituted under section 86;

(k) “Government establishment” means a corporation established by or under a Central Act 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 as defined in section 2 of the Companies Act, 2013 and includes a Department of the Government;

18 of 2013.

(l) “high support” means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;

(m) “inclusive education” means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;

(n) “information and communication technology” includes all services and innovations relating to information and communication, including telecom services, web based services, electronic and print services, digital and virtual services;

(o) “institution” means an institution for the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities;

(p) “local authority” means a Municipality or a Panchayat, as defined in clause (e) and clause (f) of article 243P of the Constitution; a Cantonment Board constituted under the Cantonments Act, 2006; and any other authority established under an Act of Parliament or a State Legislature to administer the civic affairs;

41 of 2006.

(q) “notification” means a notification published in the Official Gazette and the expression “notify” or “notified” shall be construed accordingly;

(r) “person with benchmark disability” means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;

(s) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

(t) “person with disability having high support needs” means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support;

(u) “prescribed” means prescribed by rules made under this Act;

(v) “private establishment” means a company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate Government may, by notification, specify;

(w) “public building” means a Government or private building, used or accessed by the public at large, including a building used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways;

(x) “public facilities and services” includes all forms of delivery of services to the public at large, including housing, educational and vocational trainings, employment

and career advancement, shopping or marketing, religious, cultural, leisure or recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities, transportation;

(y) “reasonable accommodation” means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;

(z) “registered organisation” means an association of persons with disabilities or a disabled person organisation, association of parents of persons with disabilities, association of persons with disabilities and family members, or a voluntary or non-governmental or charitable organisation or trust, society, or non-profit company working for the welfare of the persons with disabilities, duly registered under an Act of Parliament or a State Legislature;

(za) “rehabilitation” refers to a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual, psychological environmental or social function levels;

(zb) “Special Employment Exchange” means any office or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, regarding—

(i) persons who seek to engage employees from amongst the persons with disabilities;

(ii) persons with benchmark disability who seek employment;

(iii) vacancies to which persons with benchmark disabilities seeking employment may be appointed;

(zc) “specified disability” means the disabilities as specified in the Schedule;

(zd) “transportation systems” includes road transport, rail transport, air transport, water transport, para transit systems for the last mile connectivity, road and street infrastructure, etc.;

(ze) “universal design” means the design of products, environments, programmes and services to be usable by all people to the greatest extent possible, without the need for adaptation or specialised design and shall apply to assistive devices including advanced technologies for particular group of persons with disabilities.

CHAPTER II

RIGHTS AND ENTITLEMENTS

Equality and
non-
discrimination.

3. (1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

4. (1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

Women and children with disabilities.

(2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”.

5. (1) The persons with disabilities shall have the right to live in the community.

Community life.

(2) The appropriate Government shall endeavour that the persons with disabilities are,—

(a) not obliged to live in any particular living arrangement; and

(b) given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

6. (1) The appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.

Protection from cruelty and inhuman treatment.

(2) No person with disability shall be a subject of any research without,—

(i) his or her free and informed consent obtained through accessible modes, means and formats of communication; and

(ii) prior permission of a Committee for Research on Disability constituted in the prescribed manner for the purpose by the appropriate Government in which not less than half of the Members shall themselves be either persons with disabilities or Members of the registered organisation as defined under clause (z) of section 2.

7. (1) The appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same, shall—

Protection from abuse, violence and exploitation.

(a) take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents;

(b) take steps for avoiding such incidents and prescribe the procedure for its reporting;

(c) take steps to rescue, protect and rehabilitate victims of such incidents; and

(d) create awareness and make available information among the public.

(2) Any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it to the Executive Magistrate within the local limits of whose jurisdiction such incidents occur.

(3) The Executive Magistrate on receipt of such information, shall take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as he deems fit for the protection of such person with disability including an order—

(a) to rescue the victim of such act, authorising the police or any organisation working for persons with disabilities to provide for the safe custody or rehabilitation of such person, or both, as the case may be;

(b) for providing protective custody to the person with disability, if such person so desires;

(c) to provide maintenance to such person with disability.

(4) Any police officer who receives a complaint or otherwise comes to know of abuse, violence or exploitation towards any person with disability shall inform the aggrieved person of—

(a) his or her right to apply for protection under sub-section (2) and the particulars of the Executive Magistrate having jurisdiction to provide assistance;

(b) the particulars of the nearest organisation or institution working for the rehabilitation of persons with disabilities;

(c) the right to free legal aid; and

(d) the right to file a complaint under the provisions of this Act or any other law dealing with such offence:

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

(5) If the Executive Magistrate finds that the alleged act or behaviour constitutes an offence under the Indian Penal Code, or under any other law for the time being in force, he may forward the complaint to that effect to the Judicial or Metropolitan Magistrate, as the case may be, having jurisdiction in the matter. 45 of 1860.

Protection and safety.

8. (1) The persons with disabilities shall have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.

(2) The National Disaster Management Authority and the State Disaster Management Authority shall take appropriate measures to ensure inclusion of persons with disabilities in its disaster management activities as defined under clause (e) of section 2 of the Disaster Management Act, 2005 for the safety and protection of persons with disabilities. 53 of 2005.

(3) The District Disaster Management Authority constituted under section 25 of the Disaster Management Act, 2005 shall maintain record of details of persons with disabilities in the district and take suitable measures to inform such persons of any situations of risk so as to enhance disaster preparedness. 53 of 2005.

(4) The authorities engaged in reconstruction activities subsequent to any situation of risk, armed conflict or natural disasters shall undertake such activities, in consultation with the concerned State Commissioner, in accordance with the accessibility requirements of persons with disabilities.

Home and family.

9. (1) No child with disability shall be separated from his or her parents on the ground of disability except on an order of competent court, if required, in the best interest of the child.

(2) Where the parents are unable to take care of a child with disability, the competent court shall place such child with his or her near relations, and failing that within the community in a family setting or in exceptional cases in shelter home run by the appropriate Government or non-governmental organisation, as may be required.

Reproductive rights.

10. (1) The appropriate Government shall ensure that persons with disabilities have access to appropriate information regarding reproductive and family planning.

(2) No person with disability shall be subject to any medical procedure which leads to infertility without his or her free and informed consent.

Accessibility in voting.

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

Access to justice.

12. (1) The appropriate Government shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

(2) The appropriate Government shall take steps to put in place suitable support measures for persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights.

39 of 1987.

(3) The National Legal Services Authority and the State Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 shall make provisions including reasonable accommodation to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally with others.

(4) The appropriate Government shall take steps to—

(a) ensure that all their public documents are in accessible formats;

(b) ensure that the filing departments, registry or any other office of records are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats; and

(c) make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication.

13. (1) The appropriate Government shall ensure that the persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit.

Legal capacity.

(2) The appropriate Government shall ensure that the persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law.

(3) When a conflict of interest arises between a person providing support and a person with disability in a particular financial, property or other economic transaction, then such supporting person shall abstain from providing support to the person with disability in that transaction:

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

(4) A person with disability may alter, modify or dismantle any support arrangement and seek the support of another:

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

(5) Any person providing support to the person with disability shall not exercise undue influence and shall respect his or her autonomy, dignity and privacy.

14. (1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government:

Provision for guardianship.

Provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.

Explanation.—For the purposes of this sub-section, “limited guardianship” means a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability.

(2) On and from the date of commencement of this Act, every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian.

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

Designation of authorities to support.

15. (1) The appropriate Government shall designate one or more authorities to mobilise the community and create social awareness to support persons with disabilities in exercise of their legal capacity.

(2) The authority designated under sub-section (1) shall take measures for setting up suitable support arrangements to exercise legal capacity by persons with disabilities living in institutions and those with high support needs and any other measures as may be required.

CHAPTER III

EDUCATION

Duty of educational institutions.

16. The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall—

(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;

(ii) make building, campus and various facilities accessible;

(iii) provide reasonable accommodation according to the individual's requirements;

(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;

(v) ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;

(vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;

(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;

(viii) provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

Specific measures to promote and facilitate inclusive education.

17. The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:—

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;

(b) to establish adequate number of teacher training institutions;

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

(d) to train professionals and staff to support inclusive education at all levels of school education;

(e) to establish adequate number of resource centres to support educational institutions at all levels of school education;

(f) to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfill the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society;

(g) to provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years;

(h) to provide scholarships in appropriate cases to students with benchmark disability;

(i) to make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;

(j) to promote research to improve learning; and

(k) any other measures, as may be required.

18. The appropriate Government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others.

Adult education.

CHAPTER IV

SKILL DEVELOPMENT AND EMPLOYMENT

19. (1) The appropriate Government shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.

Vocational training and self-employment.

(2) The schemes and programmes referred to in sub-section (1) shall provide for—

(a) inclusion of person with disability in all mainstream formal and non-formal vocational and skill training schemes and programmes;

(b) to ensure that a person with disability has adequate support and facilities to avail specific training;

(c) exclusive skill training programmes for persons with disabilities with active links with the market, for those with developmental, intellectual, multiple disabilities and autism;

(d) loans at concessional rates including that of microcredit;

(e) marketing the products made by persons with disabilities; and

(f) maintenance of disaggregated data on the progress made in the skill training and self-employment, including persons with disabilities.

20. (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Non-discrimination in employment.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

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

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.

Equal
opportunity
policy.

21. (1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government.

(2) Every establishment shall register a copy of the said policy with the Chief Commissioner or the State Commissioner, as the case may be.

Maintenance
of records.

22. (1) Every establishment shall maintain records of the persons with disabilities in relation to the matter of employment, facilities provided and other necessary information in compliance with the provisions of this Chapter in such form and manner as may be prescribed by the Central Government.

(2) Every employment exchange shall maintain records of persons with disabilities seeking employment.

(3) The records maintained under sub-section (1) shall be open to inspection at all reasonable hours by such persons as may be authorised in their behalf by the appropriate Government.

Appointment
of Grievance
Redressal
Officer.

23. (1) Every Government establishment shall appoint a Grievance Redressal Officer for the purpose of section 19 and shall inform the Chief Commissioner or the State Commissioner, as the case may be, about the appointment of such officer.

(2) Any person aggrieved with the non-compliance of the provisions of section 20, may file a complaint with the Grievance Redressal Officer, who shall investigate it and shall take up the matter with the establishment for corrective action.

(3) The Grievance Redressal Officer shall maintain a register of complaints in the manner as may be prescribed by the Central Government, and every complaint shall be inquired within two weeks of its registration.

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

CHAPTER V

SOCIAL SECURITY, HEALTH, REHABILITATION AND RECREATION

Social security.

24. (1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community:

Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others.

(2) The appropriate Government while devising these schemes and programmes shall give due consideration to the diversity of disability, gender, age, and socio-economic status.

(3) The schemes under sub-section (1) shall provide for,—

(a) community centres with good living conditions in terms of safety, sanitation, health care and counselling;

(b) facilities for persons including children with disabilities who have no family or have been abandoned, or are without shelter or livelihood;

(c) support during natural or man-made disasters and in areas of conflict;

(d) support to women with disability for livelihood and for upbringing of their children;

(e) access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas;

(f) provisions of aids and appliances, medicine and diagnostic services and corrective surgery free of cost to persons with disabilities with such income ceiling as may be notified;

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

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

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

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

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

25. (1) The appropriate Government and the local authorities shall take necessary measures for the persons with disabilities to provide,— Healthcare.

(a) free healthcare in the vicinity specially in rural area subject to such family income as may be notified;

(b) barrier-free access in all parts of Government and private hospitals and other healthcare institutions and centres;

(c) priority in attendance and treatment.

(2) The appropriate Government and the local authorities shall take measures and make schemes or programmes to promote healthcare and prevent the occurrence of disabilities and for the said purpose shall—

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

(b) promote various methods for preventing disabilities;

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

(d) provide facilities for training to the staff at the primary health centres;

(e) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene, health and sanitation;

(f) take measures for pre-natal, perinatal and post-natal care of mother and child;

(g) educate the public through the pre-schools, schools, primary health centres, village level workers and *anganwadi* workers;

(h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted;

(i) healthcare during the time of natural disasters and other situations of risk;

(j) essential medical facilities for life saving emergency treatment and procedures; and

(k) sexual and reproductive healthcare especially for women with disability.

26. The appropriate Government shall, by notification, make insurance schemes for their employees with disabilities. Insurance schemes.

27. (1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of Rehabilitation.

rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

(2) For the purposes of sub-section (1), the appropriate Government and the local authorities may grant financial assistance to non-Governmental Organisations.

(3) The appropriate Government and the local authorities, while formulating rehabilitation policies shall consult the non-Governmental Organisations working for the cause of persons with disabilities.

Research and development.

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

Culture and recreation.

29. The appropriate Government and the local authorities shall take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with others which include,—

(a) facilities, support and sponsorships to artists and writers with disability to pursue their interests and talents;

(b) establishment of a disability history museum which chronicles and interprets the historical experiences of persons with disabilities;

(c) making art accessible to persons with disabilities;

(d) promoting recreation centres, and other associational activities;

(e) facilitating participation in scouting, dancing, art classes, outdoor camps and adventure activities;

(f) redesigning courses in cultural and arts subjects to enable participation and access for persons with disabilities;

(g) developing technology, assistive devices and equipments to facilitate access and inclusion for persons with disabilities in recreational activities; and

(h) ensuring that persons with hearing impairment can have access to television programmes with sign language interpretation or sub-titles.

Sporting activities.

30. (1) The appropriate Government shall take measures to ensure effective participation in sporting activities of the persons with disabilities.

(2) The sports authorities shall accord due recognition to the right of persons with disabilities to participate in sports and shall make due provisions for the inclusion of persons with disabilities in their schemes and programmes for the promotion and development of sporting talents.

(3) Without prejudice to the provisions contained in sub-sections (1) and (2), the appropriate Government and the sports authorities shall take measures to,—

(a) restructure courses and programmes to ensure access, inclusion and participation of persons with disabilities in all sporting activities;

(b) redesign and support infrastructure facilities of all sporting activities for persons with disabilities;

(c) develop technology to enhance potential, talent, capacity and ability in sporting activities of all persons with disabilities;

(d) provide multi-sensory essentials and features in all sporting activities to ensure effective participation of all persons with disabilities;

(e) allocate funds for development of state of art sport facilities for training of persons with disabilities;

(f) promote and organise disability specific sporting events for persons with disabilities and also facilitate awards to the winners and other participants of such sporting events.

CHAPTER VI

SPECIAL PROVISIONS FOR PERSONS WITH BENCHMARK DISABILITIES

35 of 2009.

31. (1) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

Free education for children with benchmark disabilities.

(2) The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years.

32. (1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.

Reservation in higher educational institutions.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

33. The appropriate Government shall—

Identification of posts for reservation.

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

34. (1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent. of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

Reservation.

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:

Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any Government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any Government establishment from the provisions of this section.

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

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

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

Incentives to employers in private sector.

35. The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent. of their work force is composed of persons with benchmark disability.

Special employment exchange.

36. The appropriate Government may, by notification, require that from such date, the employer in every establishment shall furnish such information or return as may be prescribed by the Central Government in relation to vacancies appointed for persons with benchmark disability that have occurred or are about to occur in that establishment to such special employment exchange as may be notified by the Central Government and the establishment shall thereupon comply with such requisition.

Special schemes and development programmes.

37. The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—

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

(b) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;

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

CHAPTER VII

SPECIAL PROVISIONS FOR PERSONS WITH DISABILITIES WITH HIGH SUPPORT NEEDS

Special provisions for persons with disabilities with high support.

38. (1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

(2) On receipt of an application under sub-section (1), the authority shall refer it to an Assessment Board consisting of such Members as may be prescribed by the Central Government.

(3) The Assessment Board shall assess the case referred to it under sub-section (1) in such manner as may be prescribed by the Central Government, and shall send a report to the authority certifying the need of high support and its nature.

(4) On receipt of a report under sub-section (3), the authority shall take steps to provide support in accordance with the report and subject to relevant schemes and orders of the appropriate Government in this behalf.

CHAPTER VIII

DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENTS

Awareness campaigns.

39. (1) The appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, shall conduct, encourage, support or promote awareness campaigns and sensitisation programmes to ensure that the rights of the persons with disabilities provided under this Act are protected.

(2) The programmes and campaigns specified under sub-section (1) shall also,—

(a) promote values of inclusion, tolerance, empathy and respect for diversity;

(b) advance recognition of the skills, merits and abilities of persons with disabilities and of their contributions to the workforce, labour market and professional fee;

(c) foster respect for the decisions made by persons with disabilities on all matters related to family life, relationships, bearing and raising children;

(d) provide orientation and sensitisation at the school, college, University and professional training level on the human condition of disability and the rights of persons with disabilities;

(e) provide orientation and sensitisation on disabling conditions and rights of persons with disabilities to employers, administrators and co-workers;

(f) ensure that the rights of persons with disabilities are included in the curriculum in Universities, colleges and schools.

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

Accessibility.

41. (1) The appropriate Government shall take suitable measures to provide,—

Access to transport.

(a) facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines;

(b) access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design;

(c) accessible roads to address mobility necessary for persons with disabilities.

(2) The appropriate Government shall develop schemes programmes to promote the personal mobility of persons with disabilities at affordable cost to provide for,—

(a) incentives and concessions;

(b) retrofitting of vehicles; and

(c) personal mobility assistance.

42. The appropriate Government shall take measures to ensure that,—

(i) all contents available in audio, print and electronic media are in accessible format;

(ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;

(iii) electronic goods and equipment which are meant for every day use are available in universal design.

Access to information and communication technology.

43. The appropriate Government shall take measures to promote development, production and distribution of universally designed consumer products and accessories for general use for persons with disabilities.

Consumer goods.

44. (1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40.

(2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government.

Mandatory observance of accessibility norms.

45. (1) All existing public buildings shall be made accessible in accordance with the rules formulated by the Central Government within a period not exceeding five years from the date of notification of such rules:

Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters.

Time limit for making existing infrastructure and premises accessible and action for that purpose.

(2) The appropriate Government and the local authorities shall formulate and publish an action plan based on prioritisation, for providing accessibility in all their buildings and spaces providing essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops.

Time limit for accessibility by service providers.

46. The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules:

Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules.

Human resource development.

47. (1) Without prejudice to any function and power of Rehabilitation Council of India constituted under the Rehabilitation Council of India Act, 1992, the appropriate Government shall endeavour to develop human resource for the purposes of this Act and to that end shall,—

34 of 1992.

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

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

(c) initiate capacity building programmes including training in independent living and community relationships for families, members of community and other stakeholders and care providers on care giving and support;

(d) ensure independence training for persons with disabilities to build community relationships on mutual contribution and respect;

(e) conduct training programmes for sports teachers with focus on sports, games, adventure activities;

(f) any other capacity development measures as may be required.

(2) All Universities shall promote teaching and research in disability studies including establishment of study centres for such studies.

(3) In order to fulfil the obligation stated in sub-section (1), the appropriate Government shall in every five years undertake a need based analysis and formulate plans for the recruitment, induction, sensitisation, orientation and training of suitable personnel to undertake the various responsibilities under this Act.

Social audit.

48. The appropriate Government shall undertake social audit of all general schemes and programmes involving the persons with disabilities to ensure that the scheme and programmes do not have an adverse impact upon the persons with disabilities and need the requirements and concerns of persons with disabilities.

CHAPTER IX

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

Competent authority.

49. The State Government shall appoint an authority as it deems fit to be a competent authority for the purposes of this Chapter.

Registration.

50. Save as otherwise provided under this Act, no person shall establish or maintain any institution for persons with disabilities except in accordance with a certificate of registration issued in this behalf by the competent authority:

Provided that an institution for care of mentally ill persons, which holds a valid licence under section 8 of the Mental Health Act, 1987 or any other Act for the time being in force, shall not be required to be registered under this Act.

14 of 1987.

51. (1) Every application for a certificate of registration shall be made to the competent authority in such form and in such manner as may be prescribed by the State Government.

Application and grant of certificate of registration.

(2) On receipt of an application under sub-section (1), the competent authority shall make such enquiries as it may deem fit and on being satisfied that the applicant has complied with the requirements of this Act and the rules made thereunder, it shall grant a certificate of registration to the applicant within a period of ninety days of receipt of application and if not satisfied, the competent authority shall, by order, refuse to grant the certificate applied for:

Provided that before making any order refusing to grant a certificate, the competent authority shall give the applicant a reasonable opportunity of being heard and every order of refusal to grant a certificate shall be communicated to the applicant in writing.

(3) No certificate of registration shall be granted under sub-section (2) unless the institution with respect to which an application has been made is in a position to provide such facilities and meet such standards as may be prescribed by the State Government.

(4) The certificate of registration granted under sub-section (2) ,—

(a) shall, unless revoked under section 52 remain in force for such period as may be prescribed by the State Government;

(b) may be renewed from time to time for a like period; and

(c) shall be in such form and shall be subject to such conditions as may be prescribed by the State Government.

(5) An application for renewal of a certificate of registration shall be made not less than sixty days before the expiry of the period of validity.

(6) A copy of the certificate of registration shall be displayed by the institution in a conspicuous place.

(7) Every application made under sub-section (1) or sub-section (5) shall be disposed of by the competent authority within such period as may be prescribed by the State Government.

52. (1) The competent authority may, if it has reason to believe that the holder of a certificate of registration granted under sub-section (2) of section 51 has,—

Revocation of registration.

(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; or

(b) committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted,

it may, after making such inquiry, as it deems fit, by order, revoke the certificate:

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

(2) Where a certificate of registration in respect of an institution has been revoked under sub-section (1), such institution shall cease to function from the date of such revocation:

Provided that where an appeal lies under section 53 against the order of revocation, such institution shall cease to function,—

(a) where no appeal has been preferred immediately on the expiry of the period prescribed for the filing of such appeal; or

(b) where such appeal has been preferred, but the order of revocation has been upheld, from the date of the order of appeal.

(3) On the revocation of a certificate of registration in respect of an institution, the competent authority may direct that any person with disability who is an inmate of such institution on the date of such revocation, shall be—

(a) restored to the custody of his or her parent, spouse or lawful guardian, as the case may be; or

(b) transferred to any other institution specified by the competent authority.

(4) Every institution which holds a certificate of registration which is revoked under this section shall, immediately after such revocation, surrender such certificate to the competent authority.

Appeal.

53. (1) Any person aggrieved by the order of the competent authority refusing to grant a certificate of registration or revoking a certificate of registration may, within such period as may be prescribed by the State Government, prefer an appeal to such appellate authority, as may be notified by the State Government against such refusal or revocation.

(2) The order of the appellate authority on such appeal shall be final.

Act not to apply to institutions established or maintained by Central or State Government.

54. Nothing contained in this Chapter shall apply to an institution for persons with disabilities established or maintained by the Central Government or a State Government.

Assistance to registered institutions.

55. The appropriate Government may within the limits of their economic capacity and development, grant financial assistance to registered institutions to provide services and to implement the schemes and programmes in pursuance of the provisions of this Act.

CHAPTER X

CERTIFICATION OF SPECIFIED DISABILITIES

Guidelines for assessment of specified disabilities.

56. The Central Government shall notify guidelines for the purpose of assessing the extent of specified disability in a person.

Designation of certifying authorities.

57. (1) The appropriate Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability.

(2) The appropriate Government shall also notify the jurisdiction within which and the terms and conditions subject to which, the certifying authority shall perform its certification functions.

Procedure for certification.

58. (1) Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability.

(2) On receipt of an application under sub-section (1), the certifying authority shall assess the disability of the concerned person in accordance with relevant guidelines notified under section 56, and shall, after such assessment, as the case may be,—

(a) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government;

(b) inform him in writing that he has no specified disability.

(3) The certificate of disability issued under this section shall be valid across the country.

Appeal against a decision of certifying authority.

59. (1) Any person aggrieved with decision of the certifying authority, may appeal against such decision, within such time and in such manner as may be prescribed by the State Government, to such appellate authority as the State Government may designate for the purpose.

(2) On receipt of an appeal, the appellate authority shall decide the appeal in such manner as may be prescribed by the State Government.

CHAPTER XI

CENTRAL AND STATE ADVISORY BOARDS ON DISABILITY AND DISTRICT LEVEL COMMITTEE

60. (1) The Central Government shall, by notification, constitute a body to be known as the Central Advisory Board on Disability to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

Constitution of Central Advisory Board on Disability.

(2) The Central Advisory Board shall consist of,—

(a) the Minister in charge of Department of Disability Affairs in the Central Government, Chairperson, *ex officio*;

(b) the Minister of State in charge dealing with Department of Disability Affairs in the Ministry in the Central Government, Vice Chairperson, *ex officio*;

(c) three Members of Parliament, of whom two shall be elected by Lok Sabha and one by the Rajya Sabha, Members, *ex officio*;

(d) the Ministers in charge of Disability Affairs of all States and Administrators or Lieutenant Governors of the Union territories, Members, *ex officio*;

(e) Secretaries to the Government of India in charge of the Ministries or Departments of Disability Affairs, Social Justice and Empowerment, School Education and Literacy, and Higher Education, Women and Child Development, Expenditure, Personnel and Training, Administrative Reforms and Public Grievances, Health and Family Welfare, Rural Development, Panchayati Raj, Industrial Policy and Promotion, Urban Development, Housing and Urban Poverty Alleviation, Science and Technology, Communications and Information Technology, Legal Affairs, Public Enterprises, Youth Affairs and Sports, Road Transport and Highways and Civil Aviation, Members, *ex officio*;

(f) Secretary, National Institute of Transforming India (NITI) Aayog, Member, *ex officio*;

(g) Chairperson, Rehabilitation Council of India, Member, *ex officio*;

(h) Chairperson, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, Member, *ex officio*;

(i) Chairman-cum-Managing Director, National Handicapped Finance Development Corporation, Member, *ex officio*;

(j) Chairman-cum-Managing Director, Artificial Limbs Manufacturing Corporation, Member, *ex officio*;

(k) Chairman, Railway Board, Member, *ex officio*;

(l) Director-General, Employment and Training, Ministry of Labour and Employment, Member, *ex officio*;

(m) Director, National Council for Educational Research and Training, Member, *ex officio*;

(n) Chairperson, National Council of Teacher Education, Member, *ex officio*;

(o) Chairperson, University Grants Commission, Member, *ex officio*;

(p) Chairperson, Medical Council of India, Member, *ex officio*;

(q) Directors of the following Institutes:—

(i) National Institute for the Visually Handicapped, Dehradun;

(ii) National Institute for the Mentally Handicapped, Secundrabad;

(iii) Pandit Deen Dayal Upadhyay Institute for the Physically Handicapped, New Delhi;

(iv) Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai;

- (v) National Institute for the Orthopaedically Handicapped, Kolkata;
- (vi) National Institute of Rehabilitation Training and Research, Cuttack;
- (vii) National Institute for Empowerment of Persons with Multiple Disabilities, Chennai;
- (viii) National Institute for Mental Health and Sciences, Bangalore;
- (ix) Indian Sign Language Research and Training Centre, New Delhi, Members, *ex officio*;

(r) Members to be nominated by the Central Government,—

- (i) five Members who are experts in the field of disability and rehabilitation;
- (ii) ten Members, as far as practicable, being persons with disabilities, to represent non-Governmental Organisations concerned with disabilities or disabled persons organisations:

Provided that out of the ten Members nominated, at least, five Members shall be women and at least one person each shall be from the Scheduled Castes and the Scheduled Tribes;

- (iii) up to three representatives of national level chambers of commerce and industry;

(s) Joint Secretary to the Government of India dealing with the subject of disability policy, Member-Secretary, *ex officio*.

Terms and conditions of Service of members.

61. (1) Save as otherwise provided under this Act, a Member of the Central Advisory Board nominated under clause (r) of sub-section (2) of section 60 shall hold office for a term of three years from the date of his nomination:

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The Central Government may, if it thinks fit, remove any Member nominated under clause (r) of sub-section (2) of section 60, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(3) A Member nominated under clause (r) of sub-section (2) of section 60 may at any time resign his office by writing under his hand addressed to the Central Government and the seat of the said Member shall thereupon become vacant.

(4) A casual vacancy in the Central Advisory Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(5) A Member nominated under sub-clause (i) or sub-clause (iii) of clause (r) of sub-section (2) of section 60 shall be eligible for renomination.

(6) The Members nominated under sub-clause (i) and sub-clause (ii) of clause (r) of sub-section (2) of section 60 shall receive such allowances as may be prescribed by the Central Government.

Disqualifications.

62. (1) No person shall be a Member of the Central Advisory Board, who —

(a) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent court, or

(c) is, or has been, convicted of an offence which, in the opinion of the Central Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has so abused his position in the opinion of the Central Government as a Member so as to render his continuance in the office prejudicial to the interests of the general public.

(2) No order of removal shall be made by the Central Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (5) of section 61, a Member who has been removed under this section shall not be eligible for renomination as a Member.

63. If a Member of the Central Advisory Board becomes subject to any of the disqualifications specified in section 62, his seat shall become vacant.

64. The Central Advisory Board shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

65. (1) Subject to the provisions of this Act, the Central Advisory Board on disability shall be the national-level consultative and advisory body on disability matters, and shall facilitate the continuous evolution of a comprehensive policy for the empowerment of persons with disabilities and the full enjoyment of rights.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Central Advisory Board on disability shall perform the following functions, namely:—

(a) advise the Central Government and the State Governments on policies, programmes, legislation and projects with respect to disability;

(b) develop a national policy to address issues concerning persons with disabilities;

(c) review and coordinate the activities of all Departments of the Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities;

(d) take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the persons with disabilities in the national plans;

(e) recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for persons with disabilities *vis-à-vis* information, services and the built environment and their participation in social life;

(f) monitor and evaluate the impact of laws, policies and programmes to achieve full participation of persons with disabilities; and

(g) such other functions as may be assigned from time to time by the Central Government.

66. (1) Every State Government shall, by notification, constitute a body to be known as the State Advisory Board on disability to exercise the powers conferred on, and to perform the function assigned to it, under this Act.

(2) The State Advisory Board shall consist of—

(a) the Minister in charge of the Department in the State Government dealing with disability matters, Chairperson, *ex officio*;

(b) the Minister of State or the Deputy Minister in charge of the Department in the State Government dealing with disability matters, if any, Vice-Chairperson, *ex officio*;

(c) secretaries to the State Government in charge of the Departments of Disability Affairs, School Education, Literacy and Higher Education, Women and Child Development, Finance, Personnel and Training, Health and Family Welfare, Rural Development, Panchayati Raj, Industrial Policy and Promotion, Labour and Employment, Urban Development, Housing and Urban Poverty Alleviation, Science and Technology, Information Technology, Public Enterprises, Youth Affairs and Sports, Road Transport and any other Department, which the State Government considers necessary, Members, *ex officio*;

(d) three Members of the State Legislature of whom two shall be elected by the Legislative Assembly and one by the Legislative Council, if any, and where there is no Legislative Council, three Members shall be elected by the Legislative Assembly, Members, *ex officio*;

Vacation of seats by Members.

Meetings of the Central Advisory Board on disability.

Functions of Central Advisory Board on disability.

State Advisory Board on disability.

(e) Members to be nominated by the State Government:—

(i) five Members who are experts in the field of disability and rehabilitation;

(ii) five Members to be nominated by the State Government by rotation to represent the districts in such manner as may be prescribed:

Provided that no nomination under this sub-clause shall be made except on the recommendation of the district administration concerned;

(iii) ten persons as far as practicable, being persons with disabilities, to represent non-Governmental Organisations or associations which are concerned with disabilities:

Provided that out of the ten persons nominated under this clause, at least, five shall be women and at least one person each shall be from the Scheduled Castes and the Scheduled Tribes;

(iv) not more than three representatives of the State Chamber of Commerce and Industry;

(f) officer not below the rank of Joint Secretary in the Department dealing with disability matters in the State Government, Member-Secretary, *ex officio*.

Terms and conditions of service of Members.

67. (1) Save as otherwise provided under this Act, a Member of the State Advisory Board nominated under clause (e) of sub-section (2) of section 66, shall hold office for a term of three years from the date of his nomination:

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The State Government may, if it thinks fit, remove any Member nominated under clause (e) of sub-section (2) of section 66, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(3) A Member nominated under clause (e) of sub-section (2) of section 66 may at any time resign his office by writing under his hand addressed to the State Government and the seat of the said Member shall thereupon become vacant.

(4) A casual vacancy in the State Advisory Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(5) A Member nominated under sub-clause (i) or sub-clause (iii) of clause (e) of sub-section (2) of section 66 shall be eligible for renomination.

(6) the Members nominated under sub-clause (i) and sub-clause (ii) of clause (e) of sub-section (2) of section 66 shall receive such allowances as may be prescribed by the State Government.

Disqualification.

68. (1) No person shall be a Member of the State Advisory Board, who—

(a) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent court, or

(c) is, or has been, convicted of an offence which, in the opinion of the State Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has so abused in the opinion of the State Government his position as a Member as to render his continuance in the State Advisory Board detrimental to the interests of the general public.

(2) No order of removal shall be made by the State Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (5) of section 67, a Member who has been removed under this section shall not be eligible for renomination as a Member.

69. If a Member of the State Advisory Board becomes subject to any of the disqualifications specified in section 68 his seat shall become vacant.

Vacation of seats.

70. The State Advisory Board shall meet at least once in every six months and shall observe such rules or procedure in regard to the transaction of business at its meetings as may be prescribed by the State Government.

Meetings of State Advisory Board on disability.

71. (1) Subject to the provisions of this Act, the State Advisory Board shall be the State-level consultative and advisory body on disability matters, and shall facilitate the continuous evolution of a comprehensive policy for the empowerment of persons with disabilities and the full enjoyment of rights.

Functions of State Advisory Board on disability.

(2) In particular and without prejudice to the generality of the foregoing provisions, the State Advisory Board on disability shall perform the following functions, namely:—

(a) advise the State Government on policies, programmes, legislation and projects with respect to disability;

(b) develop a State policy to address issues concerning persons with disabilities;

(c) review and coordinate the activities of all Departments of the State Government and other Governmental and non-Governmental Organisations in the State which are dealing with matters relating to persons with disabilities;

(d) take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the persons with disabilities in the State plans;

(e) recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for persons with disabilities, services and the built environment and their participation in social life on an equal basis with others;

(f) monitor and evaluate the impact of laws, policies and programmes designed to achieve full participation of persons with disabilities; and

(g) such other functions as may be assigned from time to time by the State Government.

72. The State Government shall constitute District-level Committee on disability to perform such functions as may be prescribed by it.

District-level Committee on disability.

73. No act or proceeding of the Central Advisory Board on disability, a State Advisory Board on disability, or a District-level Committee on disability shall be called in question on the ground merely of the existence of any vacancy in or any defect in the constitution of such Board or Committee, as the case may be.

Vacancies not to invalidate proceedings.

CHAPTER XII

CHIEF COMMISSIONER AND STATE COMMISSIONER FOR PERSONS WITH DISABILITIES

74. (1) The Central Government may, by notification, appoint a Chief Commissioner for Persons with Disabilities (hereinafter referred to as the "Chief Commissioner") for the purposes of this Act.

Appointment of Chief Commissioner and Commissioners.

(2) The Central Government may, by notification appoint two Commissioners to assist the Chief Commissioner, of which one Commissioner shall be a persons with disability.

(3) A person shall not be qualified for appointment as the Chief Commissioner or Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(4) The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chief Commissioner and Commissioners shall be such as may be prescribed by the Central Government.

(5) The Central Government shall determine the nature and categories of officers and other employees required to assist the Chief Commissioner in the discharge of his functions and provide the Chief Commissioner with such officers and other employees as it thinks fit.

(6) The officers and employees provided to the Chief Commissioner shall discharge their functions under the general superintendence and control of the Chief Commissioner.

(7) The salaries and allowances and other conditions of service of officers and employees shall be such as may be prescribed by the Central Government.

(8) The Chief Commissioner shall be assisted by an advisory committee comprising of not more than eleven members drawn from the experts from different disabilities in such manner as may be prescribed by the Central Government.

Functions of
Chief
Commissioner.

75. (1) The Chief Commissioner shall—

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

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

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

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

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

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

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

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

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

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

(2) The Chief Commissioner shall consult the Commissioners on any matter while discharging its functions under this Act.

Action of
appropriate
authorities on
recommendation
of Chief
Commissioner.

76. Whenever the Chief Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 75, 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:

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

- 5 of 1908. **77. (1)** The Chief Commissioner shall, for the purpose of discharging his functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—
- Powers of
Chief
Commissioner.
- (a) summoning and enforcing the attendance of witnesses;
 - (b) requiring the discovery and production of any documents;
 - (c) requisitioning any public record or copy thereof from any court or office;
 - (d) receiving evidence on affidavits; and
 - (e) issuing commissions for the examination of witnesses or documents.
- 45 of 1860. **(2)** Every proceeding before the Chief Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Chief Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.
- 2 of 1974. **78. (1)** The Chief Commissioner shall submit an annual report to the Central Government and may at any time submit special reports on any matter, which, in his opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.
- Annual and
special
reports by
Chief
Commissioner.
- (2)** The Central Government shall cause the annual and the special reports of the Chief Commissioner to be laid before each House of Parliament, along with a memorandum of action taken or proposed to be taken on his recommendations and the reasons for non-acceptance the recommendations, if any.
- (3)** The annual and special reports shall be prepared in such form, manner and contain such details as may be prescribed by the Central Government.
- 79. (1)** The State Government may, by notification, appoint a State Commissioner for Persons with Disabilities (hereinafter referred to as the "State Commissioner") for the purposes of this Act.
- Appointment
of State
Commissioner
in States.
- (2)** A person shall not be qualified for appointment as the State Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.
- (3)** The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the State Commissioner shall be such as may be prescribed by the State Government.
- (4)** The State Government shall determine the nature and categories of officers and other employees required to assist the State Commissioner in the discharge of his functions and provide the State Commissioner with such officers and other employees as it thinks fit.
- (5)** The officers and employees provided to the State Commissioner shall discharge his functions under the general superintendence and control of the State Commissioner.
- (6)** The salaries and allowances and other conditions of service of officers and employees shall be such as may be prescribed by the State Government.
- (7)** The State Commissioner shall be assisted by an advisory committee comprising of not more than five members drawn from the experts in the disability sector in such manner as may be prescribed by the State Government.
- 80.** The State Commissioner shall—
- Functions of
State
Commissioner.
- (a) identify, *suo motu* or otherwise, provision of any law or policy, programme and procedures, which are in consistent with this Act, and recommend necessary corrective steps;
 - (b) inquire, *suo motu* or otherwise deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

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

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

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

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

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

(h) monitor utilisation of funds disbursed by the State Government for the benefits of persons with disabilities; and

(i) perform such other functions as the State Government may assign.

Action by appropriate authorities on recommendation of State Commissioner.

81. Whenever the State Commissioner makes a recommendation to an authority in pursuance of clause (b) of section 80, that authority shall take necessary action on it, and inform the State Commissioner of the action taken within three months from the date of receipt of the recommendation:

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

Powers of State Commissioner.

82. (1) The State Commissioner shall, for the purpose of discharging their functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(a) summoning and enforcing the attendance of witnesses;

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

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

(d) receiving evidence on affidavits; and

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

(2) Every proceeding before the State Commissioner shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the State Commissioners shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

45 of 1860.

2 of 1974.

Annual and special reports by State Commissioner.

83. (1) The State Commissioner shall submit an annual report to the State Government and may at any time submit special reports on any matter, which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report.

(2) The State Government shall cause the annual and the special reports of the State Commissioner for persons with disabilities to be laid before each House of State Legislature where it consists of two Houses or where such Legislature consist of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendation of the State Commissioner and the reasons for non-acceptance the recommendations, if any.

(3) The annual and special reports shall be prepared in such form, manner and contain such details as may be prescribed by the State Government.

CHAPTER XIII

SPECIAL COURT

84. For the purpose of providing speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district, a Court of Session to be a Special Court to try the offences under this Act.

Special Court.

85. (1) For every Special Court, the State Government may, by notification, specify a Public Prosecutor or appoint an advocate, who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Special Public Prosecutor.

(2) The Special Public Prosecutor appointed under sub-section (1) shall be entitled to receive such fees or remuneration as may be prescribed by the State Government.

CHAPTER XIV

NATIONAL FUND FOR PERSONS WITH DISABILITIES

86. (1) There shall be constituted a Fund to be called the National Fund for persons with disabilities and there shall be credited thereto—

National Fund for persons with disabilities.

(a) all sums available under the Fund for people with disabilities, constituted *vide* notification No. S.O. 573 (E), dated the 11th August, 1983 and the Trust Fund for Empowerment of Persons with Disabilities, constituted *vide* notification No. 30-03/2004-DDII, dated the 21st November, 2006, under the Charitable Endowment Act, 1890.

(b) all sums payable by banks, corporations, financial institutions in pursuance of judgment dated the 16th April, 2004 of the Hon'ble Supreme Court in Civil Appeal Nos. 4655 and 5218 of 2000;

(c) all sums received by way of grant, gifts, donations, benefactions, bequests or transfers;

(d) all sums received from the Central Government including grants-in-aid;

(e) all sums from such other sources as may be decided by the Central Government.

(2) The Fund for persons with disabilities shall be utilised and managed in such manner as may be prescribed.

87. (1) The Central Government shall maintain proper accounts and other relevant records and prepare an annual statement of accounts of the Fund including the income and expenditure accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Accounts and audit.

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred by him in connection with such audit shall be payable from the Fund to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Fund shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts, and in particular, shall have the right to demand production of books of account, connected vouchers and other documents and papers and to inspect any of the offices of the Fund.

(4) The accounts of the Fund as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be laid before each House of Parliament by the Central Government.

CHAPTER XV

STATE FUND FOR PERSONS WITH DISABILITIES

State Fund for persons with disabilities.

88. (1) There shall be constituted a Fund to be called the State Fund for persons with disabilities by a State Government in such manner as may be prescribed by the State Government.

(2) The State Fund for persons with disabilities shall be utilised and managed in such manner as may be prescribed by the State Government.

(3) Every State Government shall maintain proper accounts and other relevant records of the State Fund for persons with disabilities including the income and expenditure accounts in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India.

(4) The accounts of the State Fund for persons with disabilities shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred by him in connection with such audit shall be payable from the State Fund to the Comptroller and Auditor-General of India.

(5) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the State Fund for persons with disabilities shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has in connection with the audit of the Government accounts, and in particular, shall have right to demand production of books of accounts, connected vouchers and other documents and papers and to inspect any of the offices of the State Fund.

(6) The accounts of the State Fund for persons with disabilities as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be laid before each House of the State Legislature where it consists of two Houses or where such Legislature consists of one House before that House.

CHAPTER XVI

OFFENCES AND PENALTIES

Punishment for contravention of provisions of Act or rules or regulations made thereunder.

89. Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Offences by companies.

90. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

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

Punishment for fraudulently availing any benefit meant for persons with benchmark disabilities.

92. Whoever,—

(a) intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view;

(b) assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability;

(c) having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her;

(d) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually;

(e) voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability;

(f) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability,

Punishment for offences of atrocities.

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

93. Whoever, fails to produce any book, account or other documents or to furnish any statement, information or particulars which, under this Act or any order, or direction made or given thereunder, is duty bound to produce or furnish or to answer any question put in pursuance of the provisions of this Act or of any order, or direction made or given thereunder, shall be punishable with fine which may extend to twenty-five thousand rupees in respect of each offence, and in case of continued failure or refusal, with further fine which may extend to one thousand rupees for each day, of continued failure or refusal after the date of original order imposing punishment of fine.

Punishment for failure to furnish information.

94. No Court shall take cognizance of an offence alleged to have been committed by an employee of the appropriate Government under this Chapter, except with the previous sanction of the appropriate Government or a complaint is filed by an officer authorised by it in this behalf.

Previous sanction of appropriate Government.

95. Where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any other law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

Alternative punishments.

CHAPTER XVII

MISCELLANEOUS

Application of other laws not barred.

96. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Protection of action taken in good faith.

97. No suit, prosecution or other legal proceeding shall lie against the appropriate Government or any officer of the appropriate Government or any officer or employee of the Chief Commissioner or the State Commissioner for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Power to remove difficulties.

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

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

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

Power to amend Schedule.

99. (1) On the recommendations made by the appropriate Government or otherwise, if the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend the Schedule and any such notification being issued, the Schedule shall be deemed to have been amended accordingly.

(2) Every such notification shall, as soon as possible after it is issued, shall be laid before each House of Parliament.

Power of Central Government to make rules.

100. (1) The Central Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of constituting the Committee for Research on Disability under sub-section (2) of section 6;

(b) the manner of notifying the equal opportunity policy under sub-section (1) of section 21;

(c) the form and manner of maintaining records by every establishment under sub-section (1) of section 22;

(d) the manner of maintenance of register of complaints by grievance redressal officer under sub-section (3) of section 23;

(e) the manner of furnishing information and return by establishment to the Special Employment Exchange under section 36;

(f) the composition of the Assessment Board under sub-section (2) and manner of assessment to be made by the Assessment Board under sub-section (3) of section 38;

(g) rules for person with disabilities laying down the standards of accessibility under section 40;

(h) the manner of application for issuance of certificate of disability under sub-section (1) and form of certificate of disability under sub-section (2) of section 58;

(i) the allowances to be paid to nominated Members of the Central Advisory Board under sub-section (6) of section 61;

(j) the rules of procedure for transaction of business in the meetings of the Central Advisory Board under section 64;

(k) the salaries and allowances and other conditions of services of Chief Commissioner and Commissioners under sub-section (4) of section 74;

(l) the salaries and allowances and conditions of services of officers and staff of the Chief Commissioner under sub-section (7) of section 74;

(m) the composition and manner of appointment of experts in the advisory committee under sub-section (8) of section 74;

(n) the form, manner and content of annual report to be prepared and submitted by the Chief Commissioner under sub-section (3) of section 78;

(o) the procedure, manner of utilisation and management of the Fund under sub-section (2) of section 86; and

(p) the form for preparation of accounts of Fund under sub-section (1) of section 87.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

101. (1) The State Government may, subject to the condition of previous publication, by notification, make rules for carrying out the provisions of this Act, not later than six months from the date of commencement of this Act.

Power of State Government to make rules.

(2) In particular, and without prejudice to the generality of foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner of constituting the Committee for Research on Disability under sub-section (2) of section 5;

(b) the manner of providing support of a limited guardian under sub-section (1) of section 14;

(c) the form and manner of making an application for certificate of registration under sub-section (1) of section 51;

(d) the facilities to be provided and standards to be met by institutions for grant of certificate of registration under sub-section (3) of section 51;

(e) the validity of certificate of registration, the form of, and conditions attached to, certificate of registration under sub-section (4) of section 51;

(f) the period of disposal of application for certificate of registration under sub-section (7) of section 51;

(g) the period within which an appeal to be made under sub-section (1) of section 53;

(h) the time and manner of appealing against the order of certifying authority under sub-section (1) and manner of disposal of such appeal under sub-section (2) of section 59;

(i) the allowances to be paid to nominated Members of the State Advisory Board under sub-section (6) of section 67;

(j) the rules of procedure for transaction of business in the meetings of the State Advisory Board under section 70;

(k) the composition and functions of District Level Committee under section 72;

(l) salaries, allowances and other conditions of services of the State Commissioner under sub-section (3) of section 79;

(m) the salaries, allowances and conditions of services of officers and staff of the State Commissioner under sub-section (3) of section 79;

(n) the composition and manner of appointment of experts in the advisory committee under sub-section (7) of section 79;

(o) the form, manner and content of annual and special reports to be prepared and submitted by the State Commissioner under sub-section (3) of section 83;

(p) the fee or remuneration to be paid to the Special Public Prosecutor under sub-section (2) of section 85;

(q) the manner of constitution of State Fund for persons with disabilities under sub-section (1), and the manner of utilisation and management of State Fund under sub-section (2) of section 88;

(r) the form for preparation of accounts of the State Fund for persons with disabilities under sub-section (3) of section 88.

(3) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such State Legislature consists of one House, before that House.

Repeal and savings.

102. (1) The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 is hereby repealed. 1 of 1996.

(2) Notwithstanding the repeal of the said Act, anything done or any action taken under the said Act, shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE SCHEDULE

[See clause (zc) of section 2]

SPECIFIED DISABILITY

1. Physical disability.—

A. Locomotor disability (a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both), including—

(a) "leprosy cured person" means a 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/her from undertaking any gainful occupation, and the expression "leprosy cured" shall construed accordingly;

(b) "cerebral palsy" means a Group of non-progressive neurological condition affecting body movements and muscle coordination, caused by damage to one or more specific areas of the brain, usually occurring before, during or shortly after birth;

(c) "dwarfism" means a medical or genetic condition resulting in an adult height of 4 feet 10 inches (147 centimeters) or less;

(d) "muscular dystrophy" means a group of hereditary genetic muscle disease that weakens the muscles that move the human body and persons with multiple dystrophy have incorrect and missing information in their genes, which prevents them from making the proteins they need for healthy muscles. It is characterised by progressive skeletal muscle weakness, defects in muscle proteins, and the death of muscle cells and tissue;

(e) "acid attack victims" means a person disfigured due to violent assaults by throwing of acid or similar corrosive substance.

B. Visual impairment—

(a) "blindness" means a condition where a person has any of the following conditions, after best correction—

(i) total absence of sight; or

(ii) visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or

(iii) limitation of the field of vision subtending an angle of less than 10 degree.

(b) "low-vision" means a condition where a person has any of the following conditons, namely:—

(i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or

(ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree.

C. Hearing impairment—

(a) "deaf" means persons having 70 DB hearing loss in speech frequencies in both ears;

(b) "hard of hearing" means person having 60 DB to 70 DB hearing loss in speech frequencies in both ears;

D. "speech and language disability" means a permanent disability arising out of conditions such as laryngectomy or aphasia affecting one or more components of speech and language due to organic or neurological causes.

2. Intellectual disability, a condition characterised by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills, including—

(a) "specific learning disabilities" means a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia;

(b) "autism spectrum disorder" means a neuro-developmental condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships and relate to others, and is frequently associated with unusual or stereotypical rituals or behaviours.

3. Mental behaviour,—

"mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.

4. Disability caused due to—

(a) chronic neurological conditions, such as—

(i) "multiple sclerosis" means an inflammatory, nervous system disease in which the myelin sheaths around the axons of nerve cells of the brain and spinal cord are damaged, leading to demyelination and affecting the ability of nerve cells in the brain and spinal cord to communicate with each other;

(ii) "parkinson's disease" means a progressive disease of the nervous system marked by tremor, muscular rigidity, and slow, imprecise movement, chiefly affecting middle-aged and elderly people associated with degeneration of the basal ganglia of the brain and a deficiency of the neurotransmitter dopamine.

(b) Blood disorder—

(i) "haemophilia" means an inheritable disease, usually affecting only male but transmitted by women to their male children, characterised by loss or impairment of the normal clotting ability of blood so that a minor wound may result in fatal bleeding;

(ii) "thalassemia" means a group of inherited disorders characterised by reduced or absent amounts of haemoglobin.

(iii) "sickle cell disease" means a hemolytic disorder characterised by chronic anemia, painful events, and various complications due to associated

tissue and organ damage; "hemolytic" refers to the destruction of the cell membrane of red blood cells resulting in the release of hemoglobin.

5. Multiple Disabilities (more than one of the above specified disabilities) including deaf blindness which means a condition in which a person may have combination of hearing and visual impairments causing severe communication, developmental, and educational problems.

6. Any other category as may be notified by the Central Government.

DR. G NARAYANARAJU,
Secretary to the Govt. of India.

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

Clarification on Provisions

Chapter 1: Preliminary

Section 2 defines words and expressions used in the Act.

Chapter 2: Right to Free and Compulsory Education

Section 3 provides to every child of the age of six to fourteen years the right to free and compulsory education in a neighbourhood school till the completion of elementary education. The idea of neighbourhood schools can be traced to the National System of Education as elaborated in the Kothari Commission report, whereby the neighbourhood school is meant to be a common space, where all children cutting across caste, class, gender lines learn together in the best inclusive manner. It is therefore meant to be a site for inclusion, so that the school becomes a common space for education. This concept has been incorporated in the RTE Act.

In providing for the right of every child to free and compulsory education in a *neighbourhood* school, the RTE Act does not restrict the choice of the child to seek admission in a school which may not be in the *neighbourhood* of the child's residence. In other words, there is no compulsion on the child to seek admission only in the school in his or her *neighbourhood*.

The term 'free education' is explained to mean that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. The term 'free education' must be read in consonance with the provisions of section 12(1)(a)-(c) which specify the extent of the school's responsibility for free and compulsory education.

It further provides that the provisions of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996 will apply in the case of children suffering from disability as defined under that Act.

Section 4 provides children above six years, who have either not been admitted to any school or, having been admitted have not completed elementary education and have dropped out, the right to be admitted to a school in a class appropriate to his or her age for completing elementary education.

A majority of out-of-school children belong to disadvantaged communities: scheduled castes, scheduled tribes, Muslim minorities, migrants, children with special needs, urban deprived children, working children, children in difficult circumstances, for example, those living in difficult terrain, children from displaced families, and areas affected by civil strife, etc. This provision in the RTE Act enables these out-of-school children to be admitted to an age-appropriate class and complete elementary education. The overall objective of age appropriate admission for these children is to save them from the humiliation and embarrassment of sitting with younger children. When older children are forced to sit in a class younger than their age, they tend to be teased, taunted, suffer lower self esteem, and consequently drop out. The Act facilitates a child admitted to an age appropriate class to be given Special Training to enable him or her to be at par with other children. Given the varied life experiences of these children, it is recognised in the field of education that their mental capabilities are higher than that of entry level 6-year old children, and that they are indeed capable of accelerated learning. At the end of the Special Training, the child will be assessed and his/her suitability for being placed in a particular class will be reviewed. For example, if a 10-year old child was admitted to class IV, and received two years of Special Training till age 12, an assessment may be made as to whether the child could cope better in class V or VI in the formal school, and the child appropriately placed. If such child is found suitable for class V, she/he will be placed in class V, rather than mechanically being placed in class VI – because if she/he is mechanically placed in class VI, she/he might again drop out, and that would defeat the whole purpose of this provision. That is the rationale for the provision that allows the child to be provided free and compulsory education even beyond age 14. Even after a child is appropriately placed in the formal school she may continue to receive special attention by the teacher to enable her to successfully integrate with the rest of the class, academically and emotionally.

The SSA Framework of Implementation has been revised to provide support for Special Training as envisaged under the RTE Act to ensure that out-of-school children are integrated into the school system. Such support will be in the form of residential or non-residential courses, as needed and such children will continue even beyond 14 years of age to complete elementary education. The country is committed to creating an educated citizenry and environment, and therefore it would not be appropriate to impose an age ceiling for these children to complete elementary education.

The obligation under section 4 is on the schools established by the State Government and local authority. Private aided and unaided institutions have no obligations under section 4.

Section 5 provides children the right to seek transfer from a Government or Government aided school to another such school in order to complete elementary

education and for immediate issue of Transfer Certificate to a child seeking admission to another school. It provides that delay in producing Transfer Certificate shall not be a reason for denying or delaying admission in another school. This provision should lead to States instituting reform to remove procedural barriers to obtaining Transfer Certificates.

Chapter-III: Duties of Appropriate Government, Local Authority and Parents.

Section 6: The rationale of this provision is to provide all children access to elementary education. Universal access requires schooling facilities within reasonable reach of all children. If schools are not located in or near the habitations where children reside, children may not complete schooling, even if they are formally enrolled in schools, on account of distance factors. The RTE Act therefore mandates the appropriate governments and local authorities to provide for children's access to elementary schools within the defined area or limits of *neighbourhood*.

The RTE Act deliberately does not define the limits or area of *neighbourhood* as a centralised norm, but requires the appropriate Government to notify such limits or area in the RTE Rules. This is on account of the very diverse geographical, climatic terrain and the varied development requirements of the different States, and the conscious decision that States would be better placed to define the '*neighbourhood*', keeping the best interests of different children in mind.

However, the Central Government has attempted to exemplify this in the Model RTE Rules circulated to States, which provide for distance norms of one kilometre for children in classes I-V, and three kilometres for children in classes VI-VIII, as also provision for relaxation of norms in places with difficult terrain where there may be risk of landslides, floods, lack of roads and in general, danger for young children in the approach from their homes to the school. The Model Rules also provide that access of children to school should not be hindered on account of social and cultural factors. Such norms should be laid down keeping in view local contexts and requirements, rather than centrally prescribed through a law. These have also been incorporated in the Central RTE Rules applicable to all UTs without Legislature.

States /UTs need to arrive at a clear picture of current availability of schools within defined area or limits of neighbourhoods. In order to do this, State/UTs need to (i) define the neighbourhood norms keeping in view that all primary and upper primary schools and composite schools (with primary and upper primary sections), established by the State Government and local bodies would be *neighbourhood* schools for the purpose of section 3(1), and (ii) map the neighbourhoods or habitations and link them to specific schools. It is possible that a neighbourhood may be linked to more than one school.

Similarly, a school may be linked to more than one neighbourhood. The mapping exercise will help identify gaps and areas where new schools need to be opened to ensure universal access.

Section 7(1) – (5) provides for financial and other responsibilities of the Central Government and the State Governments for carrying out the provisions of the proposed Act. The Central Government has estimated a total requirement of Rs 2.31 lakh crore over a five year period from 2010-11 to 2014-15 to implement the RTE Act. Separately, the 13th Finance Commission has also provided a grant of Rs 24,068 crore specifically for elementary education. The grant of the 13th Finance Commission is released directly on an annual basis to the State Governments from the Finance Ministry. This amount is deducted from the overall estimate of Rs 2.31 lakh crore, and the balance amount of Rs 2.07 lakh crore will be shared between the Central and State Governments in the 65:35 ratio for the implementation of RTE through the SSA programme. In the case of States in the North East Region, the fund sharing pattern will be in the 90:10 ratio.

Section 7(6) provides for the formulation of a National Curriculum Framework. The Central Government has notified the NCERT as the designated authority for this purpose. The National Curriculum Framework, 2005, formulated by the NCERT has been hailed nationally and internationally as trendsetting in defining learning processes, assessment, quality and integration of various aspects of education geared towards producing a creative citizen of the country, and has been accepted as the Curriculum Framework under the RTE Act.

Section 8 assigns duties to the appropriate Government to ensure that it provides free and compulsory elementary education to every child, in a neighbourhood school. The term 'compulsory education' is explained to mean obligation of the appropriate Government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education. It further provides that where a child is not admitted to a school which is established, owned, controlled or substantially funded by the appropriate Government or local authority, such child or his or her parents will not be entitled to claim reimbursement of the cost of elementary education. It lays down the duties of the appropriate Government to ensure *inter alia* that children belonging to weaker sections and disadvantaged groups are not discriminated against and prevented from pursuing and completing elementary education, that admission, attendance and completion of elementary education by every child is monitored, that school building, teaching staff and learning equipment are provided, good quality elementary education conforming to norms and standards is provided, curriculum and courses of study are prescribed in a timely manner, and teachers are trained.

Section 9 assigns duties to the local authority to ensure that it provides free and compulsory elementary education to every child, in a neighbourhood school. It lays down the duties of the local authority to ensure *inter alia* that children belonging to weaker sections and disadvantaged groups are not discriminated against and prevented from pursuing and completing elementary education, maintain records of children residing within its jurisdiction, ensure and monitor admission, attendance and completion of elementary education by every child, including migrant children, ensure that school building, teaching staff and learning equipment and good quality elementary education conforming to norms and standards is provided, decide on the academic calendar.

Section 10: This provision casts a moral responsibility on every parent/guardian to admit their children/wards to school, and ensure that children are not deprived of their right to elementary education. This includes, for example, child labour, children in ecologically deprived areas where they are required to fetch fuel, water, fodder and do other household chores, children in very poor slum communities and uprooted urban habitations, children of families of scavengers and other such stigmatised professions, children of itinerant or seasonal labour who have mobile and transient lifestyle like construction workers, road workers and workers on large construction sites, children of landless agriculture labour who are required to augment family incomes. This provision should be read together with the responsibility of the appropriate Government and local authority to provide free and compulsory elementary education in a *neighbourhood* school. It is not the intention of this provision to compel parents/guardians and children/wards, who do not wish to avail of free and compulsory education, to necessarily admit their children/wards in *neighbourhood* school.

Suggestions were made to incorporate penal provisions against parents/ guardians who do not send their children to school, but the fact remains that the maximum number of children who do not attend school are children from weaker sections and disadvantaged groups. Penalising their parents would be tantamount to penalizing poverty and deprivation. Further, there are many first generation learners, who are deprived of a learning environment at home, and drop out on account of difficulties in coping with the curriculum. Inflicting penalties on parents because their children have dropped out or have been pushed out of the education system would be discriminatory. Therefore, it is a conscious decision to abstain from imposing penal provisions against parents and guardian.

Instead the RTE Act casts a duty or compulsion on the appropriate government to ensure admission, attendance and completion of elementary education. This would lead to significant systemic reform in universalising elementary education. In many instances however, the Government would have to collaborate with the civil society in persuading

parents who experience genuine problems in sending their wards to school for them to fulfil their duty to ensure that their children do attend schools regularly, particularly in the case of older girls.

Section 11 provides that the appropriate government may make necessary arrangements for pre-school education.

Chapter –IV: Responsibilities of Schools and Teachers.

Section 12 explains the responsibility of schools for providing free and compulsory education to children, namely:

(a) All Government schools shall provide free and compulsory education to all children

(b) Government aided institutions shall provide free and compulsory education to such percentage of students in elementary classes which equals the percentage of recurring aid received by it from the Government to the annual recurring expenditure incurred by the school, subject to a minimum of 25%

(c) Private unaided institutions and special category schools shall provide free and compulsory education to at least 25% children belonging to disadvantaged groups and weaker sections admitted to class I or pre-primary classes. Such schools would be entitled to reimbursement at the per-child cost incurred by the Government. It has also since been clarified that residential private unaided schools, which do not start at class I, would not be required to admit 25% children from disadvantaged groups and weaker sections in their schools.

There have been misgivings among certain groups about the admission of children from disadvantaged groups and weaker sections in class I in private unaided schools. In this context it is important to refer to the Statement of Objects and Reasons (SOR) attached to the Right of Children to Free and Compulsory Education Bill, 2008, which states:

The Right of Children to Free and Compulsory Education Bill, 2008, is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

The idea that schooling should act as a means of social cohesion and inclusion is not new; it has been oft repeated. Inequitable and disparate schooling reinforces existing social and economic hierarchies, and promotes in the educated sections of society an indifference towards the plight of the poor.

The currently used term 'inclusive' education implies, as did earlier terms like 'common' and 'neighbourhood' schools, that children from different backgrounds and with varying interests and ability will achieve their highest potential if they study in a shared classroom environment. The idea of inclusive schooling is also consistent with Constitutional values and ideals, especially with the ideals of fraternity, social justice and equality of opportunity.

For children of socio-economically weaker backgrounds to feel at home in private schools, it is necessary that they form a substantial proportion or critical mass in the class they join. The relevant universe in which the proportion needs to be considered is the class/section. It is for this reason that the RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in class I only. This implies that these children cannot be pooled together in a separate section or afternoon shift. Any arrangement which segregates, or treats these children in a differentiated manner vis-à-vis the fee-paying children will be counter-productive.

The rationale for 25% lies in the fact that the composition of caste/class indicated in the Census is fairly representative of the composition of children who are seeking admission under this provision. As per Census 2001, SCs constitute 16.2%, and STs constitute 8.2% (total 24.4%) of the population. Further, the Tendulkar Committee, set up by the Planning Commission to measure poverty, has estimated the below poverty line (BPL) population to be 37.2%. It is a fact that much of the population that suffers economic deprivation also suffers from social disadvantage. Thus, taken together, the figure of 25% for admission of children from disadvantaged groups and weaker sections is considered reasonable. Any lower proportion would jeopardize the long-term goal of the policy which is to strengthen social cohesion and bring out the best human resource potential inherent in our society as a whole. A smaller proportion would serve only a token purpose, and it will run the serious risk of creating the feeling of alienation among the children belonging to disadvantaged groups and weaker sections. Their participation in classroom interaction will be neither strong nor sufficiently manifest to enrich the overall experiential learning taking place in any given subject area. Only a critical mass can play such a role.

The RTE Act provides for admission of 25% children from disadvantaged groups and weaker sections in Class I, not across the whole school. As children admitted to class I

move to class II, new children will be admitted to class I, and so on till completion of 8 years of elementary education. The rationale for admission in class I only must be appreciated in human terms. Teachers who are used to a selective, homogeneous classroom environment cannot be expected to develop the required positive attitude and professional skills to deal with a diversified class overnight. The same applies to children. Children who have grown up to an age of nine or ten in a homogeneous or segregated environment have been socialized into a structure of norms and behaviour. They cannot be transformed on demand. Also, the overall school ethos cannot be expected to respond to a new policy in a positive manner all of a sudden. Education is indeed an act of faith and social engineering – but not quick-fix social engineering. In view of the fact that children take time to socialize and teachers take time to develop new attitudes and pedagogic skills, the RTE Act provides for admission of disadvantaged and poor children at the entry level, covering pre-school and Class I. With these children moving up, and a new cohort of children entering pre-school and Class I in each successive year, the school will gradually have a more diverse population spread across all classes. Progression at this pace will allow children the opportunity to grow up together and create bonds: bonds that can survive social walls. Progression at this pace can allow the school to develop the professional capacity to respond to the intellectual and emotional needs of children from diverse backgrounds. Children who are younger than eight years of age are yet to develop a stable social identity. Their values are still forming, and their motivation to derive meaning from experience, both concrete and social is very strong. Therefore, it is a valid argument that the policy of mixing children from different socio-economic strata has the best chance of succeeding if it starts from the formative years of nursery/kindergarten and Class I. Diversity enhances learning and development, while segregation impoverishes the classroom environment of all schools, private or government.

Admission of 25% children from disadvantaged groups and weaker sections in the neighbourhood is not merely to provide avenues of quality education to poor and disadvantaged children. The larger objective is to provide a common place where children sit, eat and live together for at least eight years of their lives across caste, class and gender divides in order that it narrows down such divisions in our society. The other objective is that the 75% children who have been lucky to come from better endowed families, learn through their interaction with the children from families who haven't had similar opportunities, but are rich in knowledge systems allied to trade, craft, farming and other services, and that the pedagogic enrichment of the 75% children is provided by such intermingling. This will of course require classroom practices, teacher training, etc. to constantly bring out these pedagogic practices, rather than merely make children from these two sections sit together. The often voiced concern about how the 25% children from disadvantaged groups and weaker sections can cope in an environment where rich children exist can be resolved when the teaching learning process and

teachers use these children as sources of knowledge so that their esteem and recognition goes up and they begin to be treated as equals.

Section 13 provides that no school or person shall collect capitation fee or subject a child to any screening procedure, and prescribes a penalty for contravention of these provisions. On the issue of screening procedure for admission, Government had consultation with several private school Principals, and has since issued guidelines under section 35(1). The Guidelines explain that the objective of the provisions of section 13(1) read with section 2(o) is to ensure that schools adopt an admission procedure that is non-discriminatory, rational and transparent, and that schools do not subject children and their parents to admission tests and interviews in order to decide whether they will admit a child or not.

Extensive educational research the world over recognises that children are born with equal potential to learn and become creative adults. The colonial beliefs that men have better brains than women, or whites have better brains than blacks, implying thereby that there were intrinsic differences in the potential to learn and in intelligence, have long been discarded and debunked. The most obvious proof of that is the acquisition of language, without which no learning can take place. All children acquire language without the agency of a school at around the same age of two years. This is held as an intrinsic stage of child brain development, which has nothing to do with caste, class, gender, high/low IQ and such other differentiation. What is well recognized, however, is that from infancy, it is the processes of nurturing at home and later during pre-school and school, that determines the depth and extent of learning. Therefore, tests and other screening procedures can only reveal differences in nurturing, rather than any intrinsic differences of the potential to learn. In such a situation it would be particularly necessary, and indeed the obligation of the State and society to provide for better nurturing through good schools to children from poor and disadvantaged sections of society.

The Guidelines issued under section 35(1), therefore, explicitly state that tests and interviews are generally a tool for profiling and eliminating children, and therefore screening to assess a child's 'intelligence should be prohibited. Availability of equal opportunities for children belonging to different social and economic backgrounds will reinforce the idea of equality enshrined in our Constitution, and ensure that children are not discriminated on the basis of their social and economic background. The Guidelines also refer to the importance of moving towards composite classrooms with children from diverse backgrounds, rather than homogenous and exclusivist schools: heterogeneity and diversity in classrooms lead to greater inter-learning, respect for differences, tolerance and creativity.

Thus in respect of 25% children representing disadvantaged groups and weaker sections for admission in class I, the Guidelines provide for random selection out of applications received. For admission to the remaining 75%, the Guidelines give schools the freedom to formulate their own admissions policy. Such policy should include the criteria for categorisation of applicants in terms of the objectives of the school on a rationale, reasonable and just basis. There should be no profiling of the child based on parental educational qualifications. This policy should be in the public domain, explicitly stated in the school prospectus and given wide publicity. There shall be no testing or interviews for any child/parent, and selection should be on random basis.

Section 14 seeks to provide for proof of age certificate of a child and that admission cannot be denied in its absence. The rationale for this provision is that birth certificates under the Births, Deaths and Marriages Certification Act, 1886 are often not available, and in their absence, children and their parent often have to run from pillar to post to obtain age proof. Thus, other documents can be deemed to be proof of age of the child for the purposes of admission in schools. Examples of other documents are (i) ANM register record, (ii) Anganwadi record, (iii) declaration of age of the child by the parent or the guardian. State Governments will identify documents, which may be in the form of affidavits or certificates that can be used for determining the age of the child for admission and suitably provide for them in the delegated legislation. Clause 14 (2) however, makes it explicit that since the child has a *right* to education, that *right* cannot be denied for lack of age proof. Therefore, admission would be given even in the absence of age proof, while an appropriate document of age proof would simultaneously be acquired.

Section 15 prohibits schools from denial of admission to a child, irrespective of the time in the academic year in which admission is sought. Admission of a child in school is a fundamental right and it cannot be denied at any point of time. Ideally, all children should be enrolled in school at the beginning of the academic session. However, in the case of children in difficult circumstances, including children affected by migration, displacement or ill health, etc schools may need to be flexible to allow admission at any time during the session. The Central RTE Rules provide that children admitted after six months of the beginning of the academic session may be provided Special Training as determined by the Head Teacher of the school to enable him/her to complete studies. Private unaided schools need not be concerned about this provision, especially with respect to the 75% admission, because if they have filled all seats at the beginning of the academic year the question of any-time admission would not arise.

Section 16 prohibits holding back and expulsion of a child from school till the attainment of elementary education. There have been some misgivings on the provisions relating to 'no detention' and 'no expulsion'. The 'no detention' provision is made because

examinations are often used for eliminating children who obtain poor marks. Once declared 'fail', children either repeat grade or leave the school altogether. Compelling a child to repeat a class is demotivating and discouraging. Repeating a class does not give the child any special resources to deal with the **same** syllabus requirements for yet another year. Parents and friends of such children also tend to view them as being 'fit for failure', thereby reinforcing the perception which the school has already used for declaring a child 'fail'. The 'no detention' provision in the RTE Act does not imply abandoning procedures that assess children's learning. The RTE Act provides for putting in place a continuous and comprehensive evaluation procedure – a procedure that will be non-threatening, releases the child from fear and trauma of failure and enables the teacher to pay individual attention to the child's learning and performance. Such a system has the best potential to improve quality, rather than punishment, fear of failure and detention. Consistent with the arguments provided under section 13 that each child has the same potential for learning, a 'slow', 'weak' learner or a 'failed' child is not because of any inherent drawback in the child, but most often the inadequacy of the learning environment and the delivery system to help the child, realise his/her potential, meaning thereby that the failure is of the system, rather than of the child. This requires addressing the improvement of the quality of the system rather than punishing the child through detention. There is no study of research that suggests that the quality of the learning of the child improves if the child is failed. In fact, more often than not the child abandons school/ learning altogether.

As regards expulsion, there are many who give examples of deviant and aberrant behaviour of some children, adversely influencing other children, and that such deviant children should be 'expelled' in order that the others may be protected. But the implications of expulsion are that the education system has *refused* to serve the child. The notion of 'expulsion' is not compatible with the concept of 'right'. No civilized country in the world expels children from elementary school for any reasons: there are no valid grounds for doing so. If the child – and remember we are talking about 6-14 year olds, not older children – does not respond to the existing system and resorts to 'deviant' activities, then the education system must address the child differently – through counselling or by providing different curricular and co-curricular activities, which enable the child to develop self awareness, address deep rooted fears and problems and consequently change patterns of behaviour.

Section 17 prohibits any child being subjected to physical punishment or mental harassment.

There is a mistaken notion that 'discipline' of children comes from punishment and fear. Educationists the world-over are clear that what matters for creating a mature citizen is the provision of a 'learning environment' in the formative years, which is what the school must become, and not a 'correctional' centre, which has the connotations of a jail.

Physical punishment and mental trauma are counter-productive, and may cause a child to become even more defiant and rebellious than before.

The concept of childhood implies a period of impressionability and vulnerability. Both these attributes of childhood enjoin upon the adult society to treat childhood as a part of life, which requires protection and nurturance. Children's bodies are tender and vulnerable. A minor punishment can result in injury: even a slap may result in a child going deaf. There are many examples of grievous injury to children on account of physical punishment. Physical punishment is invariably accompanied by mental trauma. All physical punishment and mental trauma is potentially unsafe and injurious to health.

Article 39 (f) of the Constitution of India states:

Art 39 (f): 'The state shall ensure that children are given opportunities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment'. There is explicit use of the word 'dignity' in Article 39(f). It is not conceivable for dignity and punishment to co-exist.

Further, the National Policy on Education (NPE) 1986/1992 also prohibits corporal punishment. It states: *Corporal punishment will be firmly excluded from the education system.*

India is a signatory to the United Nations -Convention on Child Rights (UNCRC). Article 19 of the UNCRC states: State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child. Thus the provisions in the RTE Act banning corporal punishment and mental harassment are in consonance with the spirit of Article 39 ((f) of the Constitution, the National Policy on Education, and the UNCRC.

Section 18 stipulates that no private school should be established or can function without obtaining a Certificate of Recognition, and that such Certificate of Recognition would be issued to schools that fulfil the prescribed norms and standards. The Act does not have a provision for recognition of Government schools, since that would amount to Government giving recognition to its own schools, however section 19 clearly states that Government schools must meet the requirements of the schedule.

Section 19 lays down the norms and standards for schools. Any school, whether Government or private that does not fulfil the prescribed norms and standards shall do so within a period of three years from the date of commencement of the proposed Act. There appears to be a misconception that Government schools do not require to meet the norms and standards prescribed under the Act on account of a wrong insertion of a comma in the RTE Bill when it was introduced in Parliament. This has since been corrected and the provision for meeting norms and standards is applicable to all schools, ensuring that these schools also meet the norms prescribed will be monitored by the NCPCR.

Section 20 provides power to Central Government to amend the schedule on norms and standards.

Section 21 provides for constitution and functions of a School Management Committee in certain categories of schools. The setting up of such Committees has been a recommendation of nearly all previous education commissions and policies. The reason is that if the community has to be involved in the vast school system of the country, and if the parents are to be recognized as primary stakeholders in the education of their children, they must be involved in a meaningful manner in the monitoring and management of schools. The RTE Act therefore envisages that parents would form a majority in the School Management Committees, which would also include elected members of the Panchayat and school teachers. There is reason to believe that like the mother's committees that have functioned exceptionally well in some parts of the country, the parent-dominated SMC's will lead to overall improvement of the schooling system.

Private unaided institutions are exempted from the constitution of School Management Committees. Government has also introduced an Amendment Bill in the Parliament, which provides that the School Management Committee in respect of private unaided and minority institutions will only have an advisory role.

Section 22 provides for preparation of a School Development Plan (SDP) by the School Management Committee. The SDP is visualised as a comprehensive plan focusing on all aspects of school e.g. protection of children's rights, infrastructure, teacher availability, classroom transaction and child assessments, inclusiveness, etc. Private unaided institutions are not expected to prepare SDPs envisaged under the RTE Act. Further, the Amendment Bill referred to in previous paragraph provides that private unaided and minority institutions will also not be required to prepare SDPs.

Section 23 provides for qualifications and terms and conditions of service of school teachers. The Central Government has notified NCTE as the academic authority for

prescribing teacher qualifications. NCTE has laid down the requisite teacher qualifications as per its notification dated 23rd August 2010.

Section 24 provides for duties of teachers. This includes *inter alia* -that teachers attend school regularly and transact the syllabus in a timely manner, that they provide supplementary support to children who need such support, that they make an assessment of children's learning, and interact with parents.

Section 25 seeks to provide for maintenance of pupil teacher ratio, by the appropriate government and local authority. An apparent contradiction between this provision, which requires that the pupil teacher ratio shall be maintained within a period of six months, vis-à-vis the provision under section 19 mandating that the norms and standards prescribed in the Schedule should be met within three years, is proposed to be corrected through the Amendment Bill introduced in the Parliament.

The proviso to this section also provides that teachers shall not be deployed for non-academic work, barring those specified in section 27, viz., (i) decennial population census, (ii) disaster relief and (iii) elections to Parliament, State Legislatures and Local Bodies.

Section 26 provides that vacancies in schools should not exceed 10% of the teacher strength for that school. This provision will ensure that States take steps to fill up existing teacher vacancies as also rationalise deployment of teachers in schools to remove urban-rural imbalances in teacher deployment.

Section 27 prohibits deployment of teachers for non-educational purposes, other than decennial population census, disaster relief duties or duties relating to elections to local authority, state legislatures and parliament. This provision will ensure that more time is available to teachers for school/ classroom transaction, and that teachers are not deployed for work that takes them away from their classroom responsibilities.

Section 28 prohibits private tuition by teachers. Private tuition is one of the ills affecting Indian education, which needs to be addressed. This provision will ensure that teachers do not use their position for commercial gain through private tuition, which is a source of harassment to children and parents.

Chapter-V: Curriculum and Completion of Elementary Education.

Section 29 provides for curriculum and evaluation procedure in elementary schools. State Governments are required to prescribe the academic authority to lay down the

curriculum and evaluation procedure. In doing so the academic authority must ensure adherence to eight factors stated in the RTE Act These eight factors are:

- 1.Conformity with Constitutional values;
- 2.All round development of the child;
- 3.Building the child’s knowledge, potentiality and talent;
- 4.Development of physical and mental abilities to the fullest extent;
- 5.Learning through activities, discovery and exploration in a child friendly and child-centred manner;
- 6.The child’s mother tongue serving ‘as far as practicable’ as the medium of instruction;
7. Making the child free of fear, trauma and anxiety and helping the child to express views freely and
8. Comprehensive and continuous evaluation of the child’s understanding and knowledge and the ability to apply it.

These factors, which have become part of educational legislation, provide comprehensive coverage of the indicators of child-centred curricular policy for the elementary stage of education spelt out in the National Policy on Education (NPE), 1986/92 and elaborated in the NCF – 2005.

Section 30 provides that no child shall be required to pass Board examinations till completion of elementary education. Board examinations induce tremendous stress and anxiety among children – especially young children. The National Curriculum Framework, 2005, while emphasising the need for flexibility in assessment, states: *“Under no circumstances should board- or state level examinations be conducted at other stages of schools, such as class V, VIII or XI.”* Indeed, Boards should consider, as a long- term measure, making the Class X examination optional, thus permitting students continuing in the same school (and who do not need a board certificate) to take an internal school exam instead”.

Chapter-VI: Protection of Right of Children

Section 31 provides an institutional mechanism for protection of rights of the child through the National/ State Commissions for Protection of Child Rights. For children in-school, monitoring will involve the following issues:

- (i) Provision of neighbourhood school
 1. Requisite number of classrooms and infrastructure facilities
 2. Appropriate PTR
 3. School hours
- (ii) Access to school: physical and social
- (iii) Admission process
 1. Denial of admission
 2. Capitation Fee
 3. Screening procedure
 4. Demand for Affidavits
 5. Any time Admission
- (iv) Entitlements
 1. Textbooks
 2. Uniforms
 3. Library with books, newspapers, magazines
 4. Sports equipment
 5. Play material
 6. Mid-day Meal
 7. Special Training for age-appropriate education
 8. Transfer Certificates
 9. Completion Certificates
 10. Other expenses
- (v) Classroom Transaction
 1. No discrimination
 2. No corporal punishment
 3. Appropriate Teaching methods
 4. Appropriate Evaluation Systems
- (vi) School Management Committee
 1. Appointments as per rules
 2. Regular meetings
 3. Teacher Accountability
 - Preparation of School Development Plan
 - ~~4.~~ Other Responsibilities

For Children in Private Aided and Unaided Schools

1. Admission of children from Weaker Sections and Disadvantaged Groups

In addition NCPCR/SCPCR would monitor out-of-school children to facilitate their access and participation in the schooling system. This would include children who have never enrolled or have dropped out, children who are temporarily absent, children who are permanent migrants, who migrate seasonally with their parents.

Section 32 provides a mechanism for redressal of grievance relating to rights of the child under the proposed Act.

Section 33 provides for constitution of a National Advisory Council to give expert advice to the Central Government on implementation of provisions of the proposed Act. This Council has since been constituted and has commenced its work.

Section 34 provides for the constitution of State Advisory Councils to advise the State Governments on the implementation of the Act.

Chapter-VII: Miscellaneous

Section 35 provides for the Central Government to issue guidelines and directions to the appropriate government or local authority for effective implementation of the proposed Act. It also provides for the appropriate Government to issue guidelines and directions to Local Authorities, and for Local Authorities to give guidelines to School Management Committees.

Section 36 provides for previous sanction of an authorised officer for prosecution of offences.

Section 37 provides protection, against any legal suit or proceedings, to appropriate government, local authority, etc for any action taken in good faith.

Section 38 provides powers to the appropriate Government to make rules, and for laying of Rules and notifications made, before each House of Parliament.