

Harmonizing Laws with the UNCRPD

Human Rights Law Network

The Deaf Way Foundation

National Association of the Deaf

Editors:

Dr. Amita Dhanda

Rajive Raturi

REPORT

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Project organised by:

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Report prepared by the Centre for Disability Studies
NALSAR University of Law, Hyderabad

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–Rajive Raturi
Director, Disability Rights Initiative
Human Rights Law Network

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Introduction

India had ratified the UN Convention on the Rights of Persons with Disabilities (UN CRPD) in September, 2007. The CRPD came into force in May, 2008. In fulfillment of their obligations under the UN CRPD, State parties are required to bring their laws and policies in harmony with the Convention. The CRPD also requires that this process of amending the law should be undertaken in consultation with disabled people and their organizations. In order to assist the Indian Government to fulfill these obligations under the UN CRPD, a coalition of the Human Rights Law Network, National Association of the Deaf (NAD) and the Deaf Way Foundation initiated a series of consultations with disabled people and their organizations on the changes required in Indian laws to fulfill the CRPD mandate. In order to facilitate focused discussion, the Coalition commissioned concept papers on the changes required in the existing Indian laws to fulfil the requirements of the CRPD. To ensure that the particular concerns of any disabled group do not fall within the cracks, the concept papers looked at law reform from the perspective of different disabilities. Thus, the concept papers addressed the concerns of persons with visual impairment; persons with orthopedic impairments; persons with intellectual and developmental impairments; persons living with mental illness and persons with hearing impairment(copies annexed). Each of the concept papers were at first discussed at a meeting of the particular disability group and were subsequently deliberated upon at a cross disability consultation.

The concept papers and the consultations primarily examined the inadequacies of existing Indian laws, policies and programs and thereafter suggested how these need to be modified to enhance the rights protection of persons with disabilities. Whilst the papers and the consultations touched upon the requirements of the CRPD, the text of the Convention as informed by the lived experience of persons with disabilities dominated the consultations. Consequently, changes required in policy, legislation, rules and regulations, schemes and programs were simultaneously addressed. This is because very often the law contained in notifications, orders and rules more directly impacts on the lived experience of persons with disabilities, than that incorporated in judicial decisions, legislations, constitutional law and international law.

Further at the time we undertook the consultations the Ministry of Social Justice and Empowerment was still committed to amending the Persons with Disabilities Act to bring it in harmony with the UN CRPD. In fact the Ministry had posted the proposed amendments on its website. Due to this policy decision of the Ministry our consultations did engage with the limitations of the existing disability legislations; the extent to which the amendments proposed by the ministry addressed the concerns of persons with disabilities and how the existing law and the proposed

amendments need to be modified in order to address the felt difficulties of persons with disabilities as also to bring the Indian law in conformity with the international obligations of the country. More recently however the Ministry has in response to the expressed wishes of the disability community set up a committee of non governmental and governmental members to formulate a new legislation on disability rights in conformity with the CRPD. Insofar as our discussion happened in the backdrop of the CRPD, the relevance of our suggestions is not diminished by the fact that they shall be considered whilst formulating a new law instead of amending the existing one.

In order to facilitate the use of this document by the Ministry or the Committee we have segregated the suggestions made across the various consultations according to the initiative they required from the State. Thus whilst the execution of some suggestions may require a change in policy, others may call for an amendment of the constitution. Whilst some of the recommendations may need to be incorporated in legislation, others may be more suitably provided for in a rule, regulation or notification and still others may be better taken care of by a scheme or program. All these suggestions have been presented under the broad rubric of that article of the Convention to which they have maximum relevance.

The consultations were undertaken in awareness of the fact that some disabilities were impacted by more than one special disability legislation. Thus persons living with mental illness were included in the Persons with Disabilities Act but questions relating to their legal capacity and liberty and security were addressed by the Mental Health Act. Similarly persons with mental retardation were covered by both PWDA and NTA. The consultations have endorsed a forward looking approach towards legal capacity of persons with mental illness but could not reach a consensus hence suggestions for more deliberation around the Mental Health Act have been suggested.

On the NTA disabilities, deliberations revolved around two spheres. One, around legal capacity and support and the other on the changes required in law, policy and schemes to realize the remaining socio-economic rights for the disabilities included in the National Trust Act. The various amendments to the National Trust Act drafted by the Centre for Disability Studies, NALSAR University of Law took the discourse on this issue a lot further after our consultations. We had in our consultations endorsed the first draft of the Centre for Disability Studies on legal capacity but with the introduction of a caveat which finds mention in this report. We stay with that endorsement and in the wake of the fact that the CDS draft shall also be considered by the ministry we do not wish to increase the volume of this report by repeating the contents of that draft. However since both the CRPD definition of person with disability and the amendments to the definition of disability as proposed by the Ministry include the national trust disabilities we have included the suggestions that came in that consultation in relation to the various other rights for example education, health, work and employment in this report.

The law reform process inaugurated by our Consortium was not confined to Disability Specific Legislations; it also examined the impact of general legislations on Disability Rights. General Legislations either expressly excluded persons with disabilities or failed to incorporate disability inclusive principles. Thus for example exclusion was explicitly practiced: by statutory provision which denied the right to hold a driving license to persons with hearing impairment or the right to banking services to blind persons; or disqualified persons with intellectual, developmental or psychosocial disabilities from getting married; or restricted persons with orthopedic disability from retrofitting their motor vehicles. It was implicitly practiced when disability inclusive concepts such as reasonable accommodation were not incorporated in general laws. This exclusion was addressed in two ways: one, by seeking the repeal of those disability specific provisions in general legislations which discriminated against persons with disabilities by excluding them from those rights, claims and benefits which were available to the rest of the population; and two by explicitly seeking the incorporation of disability inclusive principles of accessibility, reasonable accommodation, supported decision making in general legislations.

It is our submission that even after the enactment of a CRPD consonant legislation, for socio-legal practice to alter towards persons with disabilities, it is essential that provisions excluding of persons with disabilities be weeded out of general law and disability inclusive principles be incorporated in it. In the second part of this report we have undertaken this exercise. It is not claimed that this exercise is exhaustive but it is generously illustrative if not comprehensive. We are providing textual amendments to a range of other laws, in support of our recommendation to the Ministry of Social Justice and Empowerment that along with the new law, the Ministry should introduce an Amending and Repealing Act which contains an exhaustive list of other laws which would need to be repealed or amended for the Indian legislative order to be fully CRPD consonant.

PART A

Disability Law

Article 1: Purpose

Policy change

The policy on Disability should make a shift from the medical to the social model and this shift should be appropriately incorporated in the definition of the term disability/ person with disability in the disability legislation.

Legislative change

1. The new Act should define the term **‘person with a disability’** in a generic manner as has been defined in the UNCRPD. Such a broad definition will bring within the ambit of the law all persons with disabilities for the provisions dealing with non-discrimination
2. The Act should also carry an enumerative list that is illustrative and not exhaustive of the meaning of the term disability. **In addition to** those disabilities that exist in the current legislation, and two others that were sought to be added through the amendments proposed by the Ministry, such an enumerative list should include the following:
 - Blindness of one eye;
 - Speech impairment;
 - Neuro- Muscular conditions (which would include conditions such as muscular dystrophy, paralysis, multiple sclerosis etc);
 - Persons affected with leprosy (in place of leprosy cured as in the current Act)
 - Aging related disability;
3. An open ended enumerative list is in accord with the evolving nature of disability recognized by the CRPD
4. The generic definition of the term ‘person with a disability’ would address the discrimination experienced by all persons with disabilities;
5. Such a definition does not prevent persons with disabilities entitled to affirmative action measures to be determined separately under the provisions specifying the beneficiaries of different measures;
6. Even as a difference in the definition between non discrimination and affirmative action was conceded, it was at the same time desired that the statute should prescribe for a central identification process which would yield a certificate which can be employed for all manner of benefits, so that persons with disabilities are not required to obtain multiple concession certificates from

different authorities. The statute should provide that the central identification would be accepted as proof of disability by all authorities across India.

7. Alternatively it was suggested that the Unique Identification Number process project currently being undertaken by the Government of India to include the component of identifying a person with a disability. Such identification to be made acceptable as proof of disability by all authorities across India.
8. Even as the participants were keen that the difficulties of persons with disabilities in obtaining disability certificates was minimized they were also keen to curb the issue of false certificates. Consequently it was suggested that any person who **obtains a certificate of disability fraudulently to be punishable** with up to two years imprisonment and/or fine of Rs. 10,000; and any medical practitioner who **issues a certificate of disability fraudulently shall be punishable** with a term of up to two years imprisonment and /or fine of Rs. 25,000/- and shall further have his/her license to practice be revoked;
9. Impairments included in the statute should not be defined in the legislation itself; instead the legislation should provide that the conditions included in the legislations shall be defined in the rules in accordance with the current knowledge of the condition and the social barriers to participation. Thus for example autism should be defined according to current understanding and not as defined in the National Trust Act and the social model should be reflected in the subordinate legislation defining ‘person living with mental illness’, a medical mode of measurement such as the **IDEAS scale should not be utilized;**
10. In view of the adoption of the social model the impairment based concept of ‘**severe disability**’ should be removed from the law. Also the **forty percent criterion used** in the present Act should not be employed in the new Act;

Subordinate Legislation

The process of certifying disability in India lays too much emphasis on the medical model of disability. Participants unanimously expressed their dissatisfaction with the current process of certifying disability. As this process is the first step in getting benefits, and is primarily regulated by subordinate legislation, it is necessary that the rules and procedures are made more disabled-friendly. Once the definition of person with disability is altered this process would also need to take into account the dynamic relation between impairments and barriers and could not be only guided by medical considerations alone. One way of doing so was also to certify environments as barrier free or barrier intensive. The participants also required that the **procedure for obtaining a central identification** should be specified in the accompanying rules.

Article 2 : Definitions

Language

The Act must recognize **Indian Sign Language** as the language of the deaf as a linguistic group;

The Act must therefore define Indian Sign Language as a language and a valid medium of communication;

Article 5 : Equality and Non-discrimination

Legislative changes

1. A constitutional amendment for Disability to be explicitly introduced in **Articles 15 and 16 of the Constitution** as a prohibited ground of Discrimination.
2. Specific **chapter on Non-Discrimination** to be inserted in the Act which should include inter alia provisions that stipulate that no person with a disability shall be subject to discrimination of any kind on the grounds of his or her disability and further provide for methods of removing discrimination such as affirmative action, eliminating barriers, reasonable accommodation, universal design of goods and services etc.
3. **All persons with disabilities should be entitled to reasonable accommodation** in all areas of life by both public and private entities and denial reasonable accommodation should be considered discrimination.
4. An explicit provision which prohibits discrimination on the basis of **mental illness, whether past or present**, should be included in the Act.
5. **Private entities** offering services to the public should ensure that their services are universally designed and do not discriminate against persons with disability but treat them on an equal basis with others.
6. The statute should require the use of **dignified terminology and portrayal of persons with disabilities** in media and public fora and should penalize contravention of the said provisions in line with the SC/ST Act.
7. Discrimination on the basis of disability should include discrimination on the basis of language in order that the discrimination faced by the deaf was addressed.

Article 6 : Women with disability

Legislation

1. The law to recognize that women with disabilities are entitled to family, marriage, motherhood, and kinship related rights on equal basis with others.
2. Women and girls with disabilities were not to be subjected to any form of discrimination within the family or in society, by private or public entities.
3. Appropriate government should take strategic measures to combat any form of violence against women with disabilities. Penalties in criminal laws and in the Domestic Violence Act for violence against women with disabilities should be made more severe.
4. Special provisions and safeguards should be enacted for ensuring the safety and security of women with disabilities living in residential institutions.

Schemes and Programs

1. Special service centres should be established for women with disabilities who were victims of any form of violence and such Centre should accept complaints and devise strategies to address the special communication needs of women with hearing and speech impairments as well as intellectual disabilities. The service centre can be called upon by police stations and district hospitals to facilitate communication with women with disabilities and to assist the women with disability.
2. Women with disabilities to be given priority in education, reservation in employment, health, as well as in all schemes and programs implemented by the government.

Article 8 : Awareness Raising

Policy initiative

1. **Budget allocation for awareness raising** with an annual target of programs / districts to be covered to be set out each year by the Ministry. Provisions for the same to be made.
2. **Disability studies to be included in degree programs** of architecture, civil engineering, medicine, law, sociology, economics, B.Ed, media studies etc.

Legislation

A provision like Section 70A proposed by the Ministry in its amendment needs to be incorporated whilst strengthening the obligation to undertake awareness raising amongst government officials at national state and district level.

Rules and regulations

1. **Standard practice for the media** to be developed which will be a guideline for media in reporting about / portraying stories about persons with disabilities.

Schemes and Programs

1. Provisions for **awareness programs aimed at removing prejudices and stereotypes** about persons with disability and particularly persons living with **mental illness** to be made.
2. **Greater awareness amongst disability groups** on other disabilities and mental illness in order that they raise their voice for the sector at large and **gain the strength of numbers**.
3. All television and radio channels to be encouraged to allocate a part of their **social sector advertising component** towards disability awareness and awareness about rights / entitlements of persons with disabilities.
4. **Disability Equity Training and sensitization** of society in general and in particular those engaged in public dealing including judicial and police system, police officers, prison staff and other staff whether or not run by the state.

Article 9 : Accessibility

Policy initiatives

Accessibility cannot be limited to physical access for certain specified disabilities. Conformity with the UN CRPD requires that Accessibility is understood and provided for in a comprehensive manner.

Legislative changes

1. Accessibility to be provided “**to the maximum of its available resources**” [Art 4 (2) of the UNCRPD] rather than “**within the limits of economic capacity**”.
2. The Act should require that the obligation of accessibility shall be met by both private and state entities. It should further require that **Standards on Accessibility** for infrastructure, services, communication, education, web etc shall be prescribed and any infringement from the same would invite sanctions.
3. Products, services, places, buildings, facilities etc to be designed with the principle of **Universal Design** For example television manufactures should be obligated to mandatorily provide for decoders in television sets.
4. **Access to Physical infrastructure based on Universal Design:** All new buildings that are being constructed in any part of India which will be used by the public at large whether private or public, should have an inbuilt component of universal design. It should be covered by an overriding law that applies across the states with strong monitoring mechanisms and penal provisions for every continuing day of default.
5. **Retrofitting in all existing buildings/ sites / tourist destinations/heritage sites/ public places/ common areas in 5 years:** Existing buildings open to public use should be made accessible within a scheduled time frame not exceeding 5 years. For this purpose, the appropriate government should be mandated to carry out access audits of all public buildings and community spaces, boarding areas and processes etc.
6. **Access to Transportation System:** All modes of Transport, including **road, air and rail** must be made accessible to the disabled within a specified time frame. All coaches must be based on universal design and accessible to all.
7. Sports Stadiums, Facilities, related accommodation, Fun-parks, Amusement parks, and their infrastructure must be accessible to all persons with disabilities to facilitate equal opportunity and non-discrimination.
8. **Web accessibility:** The law should provide for mandatory compliance with

the most recent accessibility standards including web content accessibility guidelines.

9. **Accessibility to published material:** The rights of persons with disability should be accorded precedence over intellectual property laws.
10. **Accessibility to currency notes:** The law should make a provision ensuring designing of currency notes in such a way that persons with disabilities are able to identify the denomination of a given note and use the currency notes efficiently.

Rules, regulations and guidelines

1. **Develop a National Access Code/ “Access Code of India”** to be developed under the Act which should be a uniform and single document specifying the mandatory physical access provisions and standards based on Universal Design in all built infrastructure, transportation, services and facilities. Cross linkages of this Access Code with Building Bye-laws/National Building Code (BIS) needs to be drawn to ensure the larger participation and monitoring of access provisions. **National Access Code** to further lay down principles of Universal Design for products, services and facilities to follow and the law ought to make it mandatory for all persons (private and public sector) to following the National Access Code.
2. Appropriate governments to **ensure that all housing plans** are to be based on the **principles of universal design** and have such components of accessibility so that need for retrofitting may be reduced to the minimum. And occupants should be permitted to easily carry out any specific adaptations required by them.

Schemes and programmes

1. Aids and appliances’ distributed by the government to disabled persons under schemes for the disabled should include **Decoders for television sets** in order to enable access to captions on television.
2. A changeover from a reactive to a proactive mode of providing services; along with provision for **live assistance** at public places should be made to deal with space disorientation and anxiety of addressing strangers experienced by persons living with mental illness. Such support would assist in the social participation of persons living with mental illness.
3. Information centre for persons with disabilities should be established at all primary health care centres and public hospitals and to be personned by persons who know Indian Sign Language and are equipped with assistive and augmentative aids and appliances to help address communication needs of persons with disabilities.

4. **Clear signage and ‘May I help you’** booths should be set up at all public places like railway stations, hospitals, airports etc. Such booths should be personned with people who are conversant with Sign language etc.
5. Sign language interpreters to be available at all Government public spaces including tourist centers to address the access needs of hearing and speech impaired persons.
6. Sign language interpreters should be available at all state sponsored business, cultural and political events, trade fairs and other similar events.

Article 12 Equal Recognition before the Law and Article 23 Right to Home and Family

Policy Initiative

There was a need to make a move from a paternalistic disqualifying mode of dealing with persons with disabilities to a rights based mode of universal legal capacity with support. This initiative would require allocation of requisite resources for the creation of support.

Legislation

1. It was accepted in all consultations that legal capacity of persons with disabilities should be recognized and disqualifying regimes which denied such legal capacity should be dismantled and support networks which support the exercise of such capacity should be recognized. Consequently legislations which deny such rights should be repealed (for examples see part II of this document)
2. There was some unease on whether in repealing disqualifying regimes the institution of guardianship should be abolished. A number of participants felt that may be required in the rarest of rare cases and after strict scrutiny but where required guardianship should be permitted. Along with this caveat the Legal capacity and Support chapter drafted for the National Trust Act by Centre for Disability Studies, NALSAR University was approved.

Schemes and Programs

1. Programs of Awareness Raising and Sensitization so that the incapacity stereotype projected on persons with disabilities and internalized by both individual persons with disabilities and society could be challenged.
2. Programs establishing support services.
3. Programs for capacity building of the disabled person.
4. Capacity Building Programs whereby governmental authorities, police and justice personnel and civil society can be trained in the new paradigm of justice and support.

Article : 13 Access to Justice

Legislation

The new law should incorporate a provision which recognizes the rights of persons with disabilities to access the justice system and requires that procedural and age appropriate accommodations may be made to facilitate the direct and indirect participation of persons with disabilities in all legal proceedings.

Schemes and Programs

1. States to promote appropriate training for those working in field of administration of justice including police and prison staff in order to ensure effective access to justice for persons with disabilities.
2. **State to create a Panel of Sign Language Interpreters** which will have trained interpreters who can be called upon by Courts, police stations, hospitals etc and for all points of public dealing with hearing and speech impaired persons.

Article 14 Liberty and Security of Person and Article 19 Living Independently and in the Community

Policy Initiative

This right was most extensively discussed in the consultation of persons living with mental illness. The question of compulsory admission was extensively debated and whilst some persons demanded a total prohibition of compulsory care and treatment others required the provision of force to be retained but required its exercise to be permitted only after due observance of fair process safeguards. **The consultation demonstrated that wide ranging consultations with significant presence of persons with mental illness is necessary to allow for informed and participative law reform** in this field of disability rights.

Since the issue of force significantly influenced the question of living independently and the ambit of that right independent of the question of force was not discussed.

Article 20 : Personal Mobility

Policy initiatives

In order to ensure sufficient availability of sign language interpreters such interpreters should be treated at par with trained graduate teachers.

Legislation

1. A separate chapter on Personal Mobility with provisions for easy availability and registration of adapted cars and scooters with extra wheels, It should include provisions for access to public transport, transport infrastructure, road and pedestrian infrastructure, easy driving licenses, waivers on custom duty on assistive aids/devices, mobility equipments, easy procedure for adaptation of vehicles and availability of adapted vehicles and their registration etc.
2. The Act should provide for designing, producing, developing and distributing mobility aids for the disabled and such mobility aids should be affordable, accessible, acceptable, available and adaptable.
3. The statute should allow for prescription of standards for quality control of aids and appliances, it should also obligate manufacturers of appliances to provide for regular maintenance and repair in accordance with prescribed procedure.
4. There should be an obligation to provide reasonable accommodation to all disabled persons at all places that are open to the public.
5. The **facility of preferred parking** for persons with mobility impairments should be included in the law so as to be uniformly applicable across the nation.

Rules and regulations

1. Quality control standards for aids and appliances
2. Procedures for providing regular maintenance and repairs by manufacturers of aids and appliances.

Schemes and Programmes

1. The schemes for aids and appliances should not be restricted to wheelchairs and crutches alone but should also include the provision of latest mobility devices either free or at a concessional rate.

2. There should be provision for mobility training of persons with disabilities as also the training of trainers who can provide such training.
3. In order to make public services such as schools, hospitals, hostels, juvenile centers, jails, shelters for women, judicial and police system, police officers, prison staff and other staff and all other institutions accessible to persons with disabilities, there should be provision for training to communicate with persons with disabilities including through sign language.
4. To create a panel of professional sign language interpreters in every district. The panel will contain trained interpreters whose duty it shall be to provide interpretation services for the hearing and speech impaired whenever called upon.

Article 24 : Education

Policy initiatives

1. The educational system should shift from an IQ driven system of eligibility to accord recognition to multiple intelligences so as to ensure that the inclusion of persons with disabilities happens with due recognition of not just the limitations but also the potential of persons with disabilities.
2. The education of children with disabilities as also persons with disabilities should be within the jurisdiction of the Ministry of Human Resource Development instead of the Ministry of Social Justice and Empowerment.
3. There should be provisions for incorporating a **component on disability in the B.Ed course** and well as B.Ed course is special education from institutes recognized and supported by the government .
4. A module on special education of children with intellectual and developmental disability as also children with learning disorders should be added in the B.Ed course.
5. A module on **sign language** should also be a **part of the B.Ed course in order** to equip teachers to teach students with hearing impairment both in special and mainstream schools.
6. All grants in aid to Special schools run by NGOs should be quantified on the basis of salaries at full scale of pay and not on honorarium basis.
7. Special Educators must be appointed in every Govt., aided and private schools with equal grade and salary as given to other teachers to realize inclusive education. Additionally, **Special educators must be given an additional pay and higher increment** as incentive to attract more trained professionals to the sector.
8. The pay scales and facilities to special educators and teachers should be equivalent to other teachers in Government.

Legislative changes

1. The focus of education for persons with disabilities should not be restricted to educations in schools alone but should extend to higher education and allow for life long learning and skill development.
2. All children and adults with disabilities should receive **free and compulsory education till the age of 21** irrespective of their physical, sensory or cognitive impairments.

3. There should be an explicit provision prohibiting schools and educational institutions from denying admission to a child or person with disability or to remove such child or person with disability on the grounds of his or her disability. The infringement of this prohibition should make the school or educational institution liable to penal sanctions.
4. In order to provide a proper system of checks and balances the law should mandate guidelines to be framed for every institution catering to the disabled such as educational, rehabilitative, employment related care facilities and the like with an inbuilt provision for derecognition and penal consequences for any abuse.
5. **5% seats are to be reserved** for persons with disabilities starting from the primary level to higher education.
6. Children / students with disabilities to be provided with **reasonable accommodation** by the school / educational institutions at all stages including the process of admission, interview, selection, teaching, examinations, etc
7. There should not be a total embargo on persons with disabilities from studying a particular subject or discipline, wherever such education is possible with reasonable accommodation and technological support, the same should be made available to persons with disabilities. On the same rationale, if even with technological support and reasonable accommodation, a person with disability is unable to pursue a particular discipline or subject, then a provision for seeking exemption should be made. Also options for alternative modes of completing school leaving education should be available for persons with disabilities with an appropriate system of evaluating and monitoring the alternative system.

Rules, regulations and guidelines

1. A separate set of Guidelines may be issued to specify the various forms of Reasonable Accommodation required to be provided by schools / educational institutions.
2. **Relaxation of upper age limit** for persons with disabilities in all professional courses including competitive examinations.
3. **Use of assistive technology** to facilitate the process of learning of persons with disabilities.
4. Rules which permit the use of **scribes** for people with disabilities who may require such support due to their sensory, physical, cognitive impairments and . Provisions for use of alternative assistive technology (eg computers) for students with disabilities to write examinations.
5. Mainstream schools to allow and promote the use of **alternative and augmentative communication** (AAC) for those students with disabilities who

are in need of such kind of support.

6. A combination of **sign language and other modes of communication to be used as the medium of instruction** in school and higher education for students with hearing impairment. Indian Sign Language will however be the preferred mode of imparting training and instruction for the hearing impaired.

Schemes and programmes

1. Provisions should be made to provide **inclusive education in mainstream schools as well as special schools** to support the requirements of those persons with disabilities having high support needs and ensure that such schools provide the environment conducive to inclusion.
2. All mainstream government/government aided and private educational institutions are to be made **structurally/physically accessible** for persons with disabilities with provisions like ramps, accessible toilets, audio signals, signage etc. All educational institutes to **follow the National Access Code** (as suggested in the chapter on Accessibility) and further be **certified as being 'Barrier-free'**.
3. **Use of assistive technology** to facilitate the process of learning of persons with disabilities.
4. Mainstream schools to allow and promote the use of **alternative and augmentative communication (AAC)** for those students with disabilities who are in need of such kind of support.
5. Provision to be made for **vocational training and skill development** for persons with disabilities both in special and mainstream school.
6. Provisions are to be made for **activity centers** for those persons with **disabilities with high support needs** after they cross school leaving age.
7. Resource centers to be created to support mainstream school teachers.
8. Provisions for children and dependants of persons with disabilities (regardless of whether the children/dependants are disabled or not) to get benefits of reduced fee at school/college.
9. Schemes to provide effective individualized support measures that maximizes the academic and social development of persons living with mental illness and which address the specific needs of persons living with mental illness in negotiating the social environment.
10. Schemes that allow the launch of individualized educational program designed to meet the unique educational needs of a single child in the least restrictive environment wherever required to realize the educational rights of persons with disabilities and may be especially needed for persons with intellectual and developmental disabilities.

11. Programs that ensure life long learning for people living with mental illness by providing facilities for general tertiary education, adult education and vocational training

Article 25: Health

Legislative changes

1. The **section on prevention of disabilities to be removed** as it is in conflict with the UNCRPD.
2. Appropriate government to provide for **affordable and accessible health care** service to persons with disabilities.
3. **No hospital or health care centre to discriminate against a person with disability by refusing to treat** him/her on the ground of his/her disability. Provision to apply to public health care centres as also to private clinics and hospitals.
4. **Insurance companies**, including those in the private sector **not to discriminate against persons with disabilities** for the purpose of providing insurance. Insurance companies **not to charge higher premium** rates for persons with disabilities.
5. Provisions to ensure that health interventions of persons with disabilities including persons living with mental illness are to be made in accordance to the norms of confidentiality and informed consent.
6. Provisions to ensure that adequate and accessible information is provided to persons with disabilities who acquire health care services. Such activities of providing information and persuasive counseling to access available services shall be necessarily provided to wandering and homeless persons with mental illness.
7. Provisions to ensure that there is total prohibition of unmodified ECT invasive surgical procedures and forced sterilisation.

Rules, regulations and guidelines

1. Health care centers for diagnoses and rehabilitation of persons with disabilities to be made accessible to all persons with disabilities without making jurisdiction of area as reason for denying such access.
2. Provisions for rehabilitation centres and hospitals to **document, at all stages, treatment protocol and therapy** administered to a person with disability which is to be regularly updated and shared with the patient. Such transparency of information in medication / therapy given to the patient is of assistance to doctors that the person may consult in the future for treatment or rehabilitation.
3. Provisions and protocol to safeguard the health and the interest of the person

with disability in the event of a **communication gap** between the medical practitioner and the person with special needs who is unable to communicate his / her condition accurately to the doctor.

Schemes and programmes

1. Appropriate government to make provisions for **early detection and intervention** to identify persons with disabilities.
2. Mobile health care facilities for persons with disabilities to be provided for diagnoses, treatment and rehabilitation as several of them are unable to travel to the health care centres.
3. Persons with disabilities to be given **priority in health care service** in government hospitals and health care centers, particularly to disabled women.
4. Appropriate government to provide for **health insurance** for persons with disabilities with the provision of low rates of premium.
5. **Exemption of payment of premium for those persons with disabilities** whose family income is below a certain level as determined by the government.
6. Appropriate government to devote special attention to the **health care facilities of women with disabilities** keeping in mind the specific health care needs of this section.
7. **Priority** for persons with disabilities in emergency services such as accessing ambulances.
8. **Special centres at all hospitals and medical colleges for training** of doctors, researchers, care-givers, support staff with specific focus on the special needs of persons with disabilities and suitable **modifications in the medical curriculum** to incorporate a component on disability issues.
9. Creation of a paramedical/medical rehabilitation/ cross disciplinary specialist cadres is the basis of delivery of health care facilities.
10. Provisions for training care givers for **providing care and live assistance** at home for persons with disabilities. Further schemes that provide for financial assistance to the families of persons with disabilities who are required to hire care givers for the disabled member of the family.
11. Appropriate provisions for **respite care** for the family members and care givers of persons with disability.

Article 27 : Work and Employment

Legislative changes

1. **5% reservation for PWDs:** Explicit provisions need to be made providing at least 5% reservations in jobs both in public as well as private sector and not only on identified jobs but total cadre strength of the organization.
2. **In implementing the entitlement of reservation the list of identified posts should be treated as a guideline** and not as an exhaustive list. This would enable persons with disabilities to apply for and be employed in posts other than identified posts in case they are suitable and qualified.
3. In the proposed amendments put forward by the Ministry, reservation in appointments has been restricted to direct recruitments only. It is necessary that **all forms of appointments/employment opportunities be included in the purview of reservation** viz. direct and indirect appointments, promotion, vacancies filled by deputation, contractual appointments, etc.
4. The reservation in all categories i.e. A, B, C & D should be based on **total existing cadre strength** and not merely on the identified posts or the number of vacancies being filled at a particular point of time.
5. **Candidates selected on their own merits should not be adjusted against the reserved vacancies**, however they will be entitled to all benefits and reasonable accommodations at all stages of recruitment & employment.
6. **Reservation should extend to public-private-organized sectors.** Attractive Incentives and Awards for both - Private and Public Sectors to promote inclusive employment. Provisions of Grants/help for infrastructure accessibility can be made to make the private workplace accessible.
7. **Post not to lapse:** In no case the post reserved for persons with disability should be allowed to lapse in favour of general category.
8. **Provide an avenue for promotion** of employees with disabilities by providing that in the event the senior post is not identified and the disabled employee is unable to rise further in seniority in the employment, a supernumerary post may be created for the promotion of the disabled employee for this purpose.
9. Specific provision debarring a post reserved for a disabled person from being restricted to any other categories.
10. Introduce a disincentive against private sector companies who do not employ persons with disabilities by levy of a cess.
11. Provision for **prohibiting discrimination against workers / employees liv-**

ing with mental illness.

12. **Filling the backlog vacancies** should also form part of Act in a limited time frame from the day the amendments/new law is brought in force. A mechanism for fixing responsibility together with penal provisions should be envisaged.
13. **Provisions for self-employment, entrepreneurship, setting up of co-operatives** and one's own business to be made in the law to support persons with disabilities in being independent.
14. A provision similar to section 47 should be inducted in the new law and be explicitly extended to the private sector.
15. **Provisions of Liaison Officers** in each department/ ministry/PSU /Corporation/employing organization/ Educational institution etc should be made mandatory who would be focal point for the redress of grievances of employees with disabilities and to ensure monitoring and implementation of the disability related provisions in the law.
16. Reasonable Accommodation at all stages of recruitment, selection, training & employment including provision of captions/ sign language interpreters for the deaf.
17. **Equal pay for equal work** for all persons with disabilities. A watchdog to ensure equal remuneration for equal work should be created.
18. **Special Employment Exchange** to be merged with the General Employment Exchange and re-created as a separate division therein. It is the experience of several persons with disabilities that the special employment exchange does not function as it was designated to and few people, if at all, have benefited and found jobs through the Special Employment Exchange.

Rules and Regulations

1. All government departments/PSU's/local and statutory authorities should compulsorily forward reserved vacancies within 10 days of their arising to the Special Employment Exchanges.

Schemes and programmes

1. There is no provision to monitor the representation of Women with Disabilities in employment which calls for launching of **Special drives to recruit women with disabilities.**
2. **Job Retention and Return to Work programs** for persons with disabilities particularly persons living with mental illness who have had to temporarily take leave of absence from their work.
3. **Provisions for self-employment, entrepreneurship, setting up of co-operatives** and one's own business to be made in the law to support persons with

disabilities in being independent.

4. Support to access integrated employment in a general community workplace by way of specific programs for integration.
5. There should be a scheme whereby employers may be obligated to provide assistive aids and devices to their employees with disabilities either free or on concessional basis.
6. Live Assistance should be provided to employees with support needs free of cost.
7. Provisions for **on the Job Training/Vocational Training**, Loans /Training in entrepreneurial skills for business development to promote self-employment to be included within the PDA.
8. There should be provisions for specific employment opportunities for persons with developmental disabilities.
9. **Job retention and return to work programs** should be initiated for persons with disabilities especially for persons with psycho-social disabilities.
10. There should be schemes for pre-recruitment, training and coaching in all firms of employment in order to obtain full occupancy of posts reserved for persons with disabilities.

Article 28: Adequate standard of living and social protection

Policy initiatives

The entitlement for disability pension should be provided on an individual and not family basis. The legislation and rules should be formulated accordingly.

An unemployment allowance should be provided to all unemployed persons with disabilities and not just to those who have been registered for more than two years with special employment exchanges and not found suitable employment.

There is need for special initiatives for disability pension for persons with multiple disabilities and for women and elderly disabled persons with disabilities.

Tax benefits, concessions and exemptions should be recommended for parents of children with disabilities.

Legislative changes

1. **The individual person with disability and not the family should be the unit of entitlement for award of disability pension.**
2. An unemployment allowance should be provided to all unemployed persons with disabilities and not just to those who have been registered for more than two years with special employment exchanges and not found suitable employment.
3. Appropriate government to make **reservations for persons with disabilities in all poverty alleviation schemes with priority to be given to women with disabilities** in all such schemes.

Schemes and programmes

1. Appropriate government to ensure that all persons with disabilities are entitled to **safe drinking water and proper sanitation.**
2. All poverty alleviation schemes should also cover **persons with disabilities and make special provision for women with disabilities.**
3. Appropriate government to provide for **preferential allotment of accessible housing at concessional rate to persons with disabilities** with preference to women with disabilities.
4. Appropriate government to address the **shelter needs of those persons with disabilities who have no families** as well as those who are orphaned by their families.

5. Appropriate government to provide for social security benefits as well as **aids and appliances at concessional rate to those persons with disabilities with high support needs** and whose family income is below a certain level as determined by the government.

Article 29: Right to Political Rights and Public Life

Legislation

1. Persons with Disabilities to be allowed **representation in the Union Parliament, state legislatures and local bodies** through a constitutional amendment.
2. Committees at National, State and District level formed under the Persons with Disabilities Act to have **adequate representation** of persons with disabilities. **Such representation to be from DPOs** i.e. Disabled Persons Organisations and not merely from those organisations working in the area of or associated with disability. DPO members to form majority of the strength of the Committee.

Article 33: National Implementation and Monitoring

Legislation

1. **In order to ensure primacy to the text and spirit of the CRPD an overriding section to the following effect should be introduced**
 - i. Notwithstanding anything contained in any law for the time being in force, any act or omission in contravention of the purpose, spirit and values of the UNCRPD shall be void in law.
 - ii. Any law for the time being in force which is inconsistent with the provisions of the UNCRPD shall to the extent of its inconsistency be *void*.
2. If the new law continues with the office of the **Chief Commissioner** and Commissioner of Persons with Disability ('CCPD' and 'CPD' respectively) then such person should be **suitably qualified and have at least five years' experience in the sector** and such person should be an independent person preferably a person with disability. No Person should be appointed as a CCPD / CPD for a term of less than **three years** and shall **not have a charge that is in conflict** with the charge of the office of the CCPD / CPD.
3. If the office of the CCPD and CPD are continued then **Order and directions of the CCPD / CPD to be binding and not just recommendatory in nature. The non-implementation of an order of the CCPD / CPD as contempt of court for the purposes of the Contempt of Courts Act, 1971.**
4. The Ministry has introduced a penalty for non-compliance in its draft amendments to the PWDA. Such a provision is required in the new law. This provision should also render punishable failure by establishments to comply with the provision for reservation. The effectiveness of this provision would be greater if a person is identified in each organization for the implementation of the disability laws and such identified person is then penalized for non implementation.
5. **Penalties for failure** on the line of the RTI Act i.e. for **per day of continued failure** after a particular order /direction is issued to the establishment to be introduced for better implementation of the Act. The CCPD / CPD to be vested with the power to impose such penalties.
6. **Every establishment shall** on or before 30th September every year, be made to **file a return with the CCPD**, on the status of compliance by the establishment with the provisions of the Persons with Disabilities Act during the year. Such return shall be filed electronically with the CCPD in a specified format

in the Rules and shall be published on the website of the CCPD. This requirement to file a return (in the same manner as companies file returns with the Registrar of Companies) will ensure that establishments are conscious of their responsibility under the Disability law and further act as a monitoring process for effective implementation of the law.

7. The **Lack of co-ordination between the various ministries / departments** hinders the pace of implementation of the law. The Act to provide for regular interaction between the Central/ State / District level Committees, the CCPD/ CPD and officials of other departments like Health, Education, Revenue, Panchayatraj, Rural and Urban Development etc in order for all ministries /departments to factor the disability element into their planning and other activities.
8. It is further necessary that one **focal point is established in each Ministry** as per the government's standard rules of business for each Ministry to make clear their stand on disability issues. The said statement should be approved and published for the information of all stake holders.
9. All **legal proceedings, petitions, applications** of persons with disability before any authority **to be expedited** and disposed of not later than two years within the time of their initiation before the concerned authority.
10. Consider the setting up of a **Disability Anti-Discrimination Tribunal** for grievance redress as suggested by the Amita Dhanda Committee to the Ministry.

Rules and Regulations

1. **Minutes of Meetings** of the said Central / State Advisory Committee, Central / State Co-ordination Committee and District level Committee to be published on the website of the Ministry. Provisions / Forum for the Committees to accept suggestions from DPOs and take up such suggested matters on the agenda for discussion at the following meeting of the Committee to be made.

Article 33: Monitoring

1. **Focal point person to be established in the Prime Minister's Office** for monitoring and reporting to the Prime Minister on status of implementation of disability laws in the country.
2. **Monitoring Agency to be separate from and independent of the Implementing agency.** It cannot be that the same agency that is responsible for the implementation of the law is also given the mandate to monitor and report on the status of implementation of the legislation.
3. **Monitoring agency to be hierarchically above the Implementing Agency** so that it can effectively monitor and pull up those responsible for implementation of the law.
4. Apart from state monitoring, **third party monitoring mechanisms** to be built into the law such as the alternative report system in the UN. There should be provision for Civil Society groups, DPOs, National Associations of Disability to perform monitoring functions and file reports with the government. These reports should be studied and acted upon by the Ministry.
5. **Funding allocation to be made for People's Tribunal or jan-sunvai** for the disabled to be held once every two years in each state. Such a forum can act as a meeting point for the administrators to understand the needs and problems of the disabled.

PART B

Other Laws

This part of the report examines the impact of general legislations on Disability Rights which expressly excluded persons with disabilities or failed to incorporate disability inclusive principles.

This exclusion was examined in 60 laws and was addressed in two ways: one, by seeking the repeal of those disability specific provisions in general legislations which discriminated against persons with disabilities; and two by explicitly seeking the incorporation of disability inclusive principles of accessibility, reasonable accommodation, supported decision making in general legislations.

it is essential that provisions excluding of persons with disabilities be weeded out of general law and disability inclusive principles be incorporated in it. The Ministry should introduce an Amending and Repealing Act which contains an exhaustive list of other laws which would need to be repealed or amended for the Indian legislative order to be fully CRPD consonant.

Article 5: Equality and Non-Discrimination

1. Companies Act 1956

Inserted Suggestion

- i. Amend the Companies Act 1956 making it mandatory for companies seeking registration to adopt non-discrimination and other measures in relation to persons with disabilities;
- ii. Make it mandatory for all registered companies to comply with all disability related norms including non-discrimination measures and furnish returns thereon annually.

2. Income Tax Act

Inserted Suggestion

- i. In view of the additional expenses borne by persons with disabilities due to their impairments to obtain the same level of wellbeing with the same amount of money as a non-disabled person, therefore, it is recommended that the IT Act should be suitably amended to substantially raise the upper taxable limit up to Rs. 5 lakhs; and, this should be subject to revision from time to time.
- ii. A complete exemption from payment of tax is not recommended because rights are accompanied with responsibilities.
- iii. All the state Governments, like the central Government, should exempt the persons with disabilities from payment of professional tax.
- iv. Persons with disabilities should not be obligated to file tax returns if their annual income does not reach the taxable limit even if it is in excess of rupees one lakh and ten thousand.
- v. Provisions for easy filing of income returns should be introduced for the persons with disabilities whose annual income exceeds the taxable limit.

3. Insurance related laws and regulations

Inserted Suggestion

- i. Amend insurance related laws and regulations which are discriminatory and which charge additional premium from persons with disabilities.
- ii. Prohibit the additional levying/charging of premium.

Article 6: Women with Disabilities

1. Equal Pay for Equal Work Act

Inserted Suggestion

- i. Amend the Act relating to Equal Pay for Equal Work Act so as to include women with disabilities.

Article 7: Children with Disabilities

1. Child Labour (Prohibition and Regulation) Act 1986

Inserted Suggestion

- I. Amend the Child Labour (prohibition and regulation) Act 1986 to ensure required preventive measure and particular care for children with disabilities employed in the unprohibited occupations and processes.

2. Juvenile Justice Act, 2000

Inserted Suggestion

- I. Amend the child related laws including the Juvenile Justice Act, 2000, particularly so as to harmonize with articles 15 and 16 of the convention in respect of freedom from torture; and freedom from exploitation, violence and abuse.

Article 8: Awareness Raising

1. *The Cinematograph Act, 1952*

Current Provision

5-B. Principles for guidance in certifying films. – (1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of [(Ins. by Act 49 of 1981 (w.e.f. 1-6-1983) the sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

Inserted Suggestion

5-B. Principles for guidance in certifying films. – (1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of [(Ins. by Act 49 of 1981 (w.e.f. 1-6-1983) the sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, ***indecent and derogatory portrayal of persons with disabilities or women*** or involves defamation or contempt of court or is likely to incite the commission of any offence.

(2) Subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

2. *The Juvenile Justice Care & Protection Act, 2000*

Current Provision

48. **Committal to approved place of juvenile or child suffering from dangerous diseases and his future disposal.**

- i. When a juvenile or the child who has been brought before a competent

authority under this Act, is found to be suffering from a disease requiring prolonged medical treatment or physical or mental complaint that will respond to treatment, the competent authority may send the juvenile or the child to any place recognised to be an approved place in accordance with the rules made under this Act for such period as it may think necessary for the required treatment.

- ii. Where a juvenile or the child is found to be suffering from leprosy, sexually transmitted disease, Hepatitis B, open cases of Tuberculosis and such other diseases or is of unsound mind, he shall be dealt with separately through various specialized referral services or under the relevant laws as such.

58. Transfer of juvenile or child of unsound mind or suffering from leprosy or addicted to drugs. - Where it appears to the competent authority that any juvenile or the child kept in a special home or a children's home or shelter home or in an institution in pursuance of this Act, is suffering from leprosy or is of unsound mind or is addicted to any narcotic drug or psychotropic substance, the competent authority may order his removal to a leper asylum or mental hospital or treatment centre for drug addicts or to a place of safety for being kept there for such period not exceeding the period for which he is required to be kept under the order of the competent authority or for such further period as may be certified by the medical officer necessary for the proper treatment of the juvenile or the child.

Suggested Deletion

Section 48 classified leprosy as a “disease that is communicable and inherently risky” which is a fallacious representation of leprosy and needs to be corrected as any segregation of children on the basis of leprosy status will further the wrong representation, social stigma and misinformation about leprosy.

Article 9: Accessibility

1. The Aircraft Act, 1934

Inserted Suggestion

This is an Act to make better provision for the control of the manufacture, possession, use, operation, sale, import and export of aircraft. Under Section 5A of this Act, DGCA has been empowered to issue directions to ensure that the rules, regulation issued under the Act are implemented.

Under the above Act, a detailed “**DGCA CAR (Civil Aviation Requirements) for the carriage by air of persons with disabilities**” has already been prepared and also amended recently to ensure that equitable & dignified flying could be provided to passengers with disabilities. This includes provisions of free aisle chairs within the aircraft for inside mobility and wheel chairs and ambulifts to persons with disabilities before emplaning and after deplaning to ensure seamless external mobility without any extra charge.

2. The Airports Authority of India Act, 1994

Inserted Suggestion

Chapter III functions of the Authority

Functions of the Authority

- i. Subject to the rules, if any, made by the Central Government in this behalf, it shall be the function of the Authority to manage the airports, the civil enclaves and the aeronautical communication stations efficiently.
- ii. It shall be the duty of the Authority to provide [inclusive & accessible] air traffic service and air transport service at any airport and civil enclaves.

Allocation of surplus funds

Allocation of surplus funds. (1) The Authority may, from time to time, set apart such amounts as it thinks fit as a reserve fund or funds for the purpose of expanding existing facilities [or for modification in existing buildings, infrastructure & services to make them barrier free and accessible to all], or creating new facilities or services at any airport, civil enclave, heliport or airstrip or for the purpose of providing against any temporary decrease of revenue or increase of expenditure from transient causes or for purposes of replacement, or for meeting expenditure arising from loss or damage from fire, cyclone, air-crash or other accident or for

meeting any liability arising out of any act or commission in the discharge of its functions under this Act: Provided that without prejudice to the right of the Authority to establish specific reserves for one or more specific purposes, the Authority shall also have the power to establish a general reserve: Provided further that the sums set apart annually in respect of each or any of the specific and general reserves and the aggregate at any time of such sums shall not exceed such limits as may, from time to time, be fixed in that behalf by the Central Government.

3. The Ancient Monuments and Archaeological Sites and Remains Act, 1958

Current Provisions

Section 2 Definition (f) “maintain”, with its grammatical variations and cognate expressions, includes the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of preserving a protected monument or of securing convenient access thereto;

Section 6(d) The facilities of access to be permitted to the public or any section thereof or to archaeological officers or to persons deputed by the owner or any archaeological officer or the Collector to inspect or maintain the monument;

Section 18 Subject to any rules made under this Act, the public shall have a right of access to any protected monument.

Section 19 (1) No person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature in such area, or utilize such area or any part thereof in any other manner without the permission of the Central Government: Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purposes of cultivation if such cultivation does not involve the digging of not more than one foot of soil from the surface. (2) The Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.

Inserted Suggestion

Insertion of a new and suitable definition of Barrier Free Access in Section 2 (definition) as below: “Barrier free Access” to a protected monument or protected area or site or remains shall mean and include making appropriate provisions and reasonable accommodations based on Universal Design, by way of ramps,

slopes, curbs, lifts/elevators, mechanized devices /instruments, accessible parking, accessible toilets, accessible routes, signage, information in alternate formats of communication so that all visitors/tourists can, without assistance, approach, enter, pass to and from, and use the place with dignity on an equal basis with others and an absence of which may be construed as Discrimination on the basis of Disability. For the purpose of this section Reasonable Accommodations, Universal Design, Communication & Discrimination on the basis of disability will have the same meaning as enshrined in UN convention on the Rights of Persons with Disability and or The Persons with Disabilities Act - 1995.

Amendments/additions

Section 2 Definition (f) “maintain”, with its grammatical variations and cognate expressions, includes the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of preserving a protected monument or of securing convenient and barrier free access;

Section 6(d) The facilities of equitable and barrier free access to be permitted to the public or any section thereof or to archaeological offices or to persons deputed by the owner;

Section 18 Subject to any rules made under this Act, the public shall have right of barrier free access to any protected monument;

Section 19 – Insertion of this proviso toward the end of section: “Provided that nothing in this subsection shall be deemed to prohibit any alteration/temporary construction carried out by an Archaeological officer, his agents, subordinates & workmen to provide barrier free access to the protected areas.”

4. Beedi & Cigar Workers (Conditions of Employment) Act, 1966

Most beedi and cigar establishments in the private sector employ persons with disability directly or through contractors and discriminate with them in the matter of payment of equal wages with non-disabled employees as well as by not providing accessible environment at workplaces. Under Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the regulation concerned about facility in working place only mentioned categories as follows:

Current Provisions

Cleanliness (8), Ventilation (9), Overcrowding (10), Drinking water (11), Latrines and urinals (12), Washing facilities (13), Crèches (14), First Aid (15), Canteens (17)

Inserted Suggestion

It is suggested that appropriate provisions should be added to address needs of accessibility in the workplace, toilets and other services open to other employees on equal basis with others.

5. *The Cantonments Act, 1924*

CHAPTER X

Current Provisions

Sanitation and the Prevention and the Treatment of Disease

Public latrines, urinals and conservancy establishments

130. All public latrines and urinals provided or maintained by a Board shall be so constructed as to provide separate compartments for each sex and not to be a nuisance, and shall be provided with all necessary conservancy establishments, and shall regularly be cleansed and kept in proper order.

Conditions of Service of sweepers

178. (1) Whoever, being a sweeper employed by a Board in the absence or a written contract authorizing him so to do and without reasonable cause, resigns his employment or absents himself from his duty without having given one month's notice to the Board, or neglects or refuses to perform his duties, or any of them, shall be punishable with imprisonment which may extend to one month.

(2) The Government may, by notification in the official Gazette, direct that on and from such date as may be specified in the notification, the provisions of this section shall apply in the case of any specified class of servants employed by a Board whose functions intimately concern the public health or safety.

(3) For the purpose of this section, "sweeper" includes any menial servant employed by a Board in the removal or disposal of filth or rubbish.

Inserted Suggestion

130. Public latrines, urinals and conservancy establishments –All public latrines and urinals provided or maintained by a Board shall be so constructed as to provide separate accessible & barrier free compartments for each sex and one unisex accessible compartment and not be a nuisance, and shall be provided with all necessary conservancy establishments, and shall regularly be cleansed and kept in proper order.

178A. Sanction for building – No person shall erect or re-erect a building on any land in a cantonment – In an area, other than the civil area, except with the previous sanction of the Board;

In a civil area, except with the previous sanction of the Executive Officer, Nor otherwise than in accordance with the provisions of this Chapter and the rules and byelaws made under this Act relating to the erection or re-erection of building.

Provided that no sanction shall be given unless the building has Universal Design features to provide accessible and barrier free access for persons with disabilities, in the case of buildings meant for public use and will include any public housing being developed.

CHAPTER XI

Control over buildings, streets, boundaries, trees etc.

Sanction for building: 178A. No person shall erect or re-erect a building on any land in a cantonment, except with the previous sanction of the Board, nor otherwise than in accordance with the provisions of this Chapter and of the rules and bye-laws made under this Act relating to the erection and re-erection of buildings.

6. Contract Labour (Abolition & Regulation) Act, 1970

Current provision

This Act seeks to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

17. Rest-rooms: (1) In every place wherein contract labour is required to halt at night in connection with the work of an establishment--

(a) to which this Act applies, and

(b) in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.

(2) The rest rooms or the alternative accommodation to be provided under subsection

(a) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

18. Other facilities: It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide

And maintain--

- (a) A sufficient supply of wholesome drinking water for the contract labour at Convenient places;
- (b) A sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and
- (c) Washing facilities.

Inserted suggestion

Insertion of a provision of a system of registration of disabled persons and payment of proper wages assisted in the case of persons with intellectual, cognitive and developmental disabilities through use of support networks.

Section 17 of the Act provides that the contractor should make proper arrangements for night halt for workers by way of rest rooms in every place where contract labour is required in connection with the work of an establishment.

Section 18 of the Act provides that every contractor employing contract labour in connection with the work of an establishment should provide and maintain sufficient supply of wholesome drinking water, sufficient number of accessible and barrier free latrines, urinals and washing facilities. Provided that the rest rooms and other facilities shall be made accessible and barrier-free for Workers with disabilities.

Therefore, it is suggested that the following proviso may be added to both sections 17 and 18 of the Act.

“Provided that the contractor shall ensure that persons with disability have convenience in accessing rest-rooms or alternative accommodation and other facilities provided for the contract labour in connection with the work of an establishment.”

7. Currency related laws

Inserted Suggestion

Amend the currency related laws so as to make it obligatory for the reserve bank of India to design, develop and circulate currency notes the denomination of which is identifiable by a blind person.

8. The Factories Act, 1948

This Act seeks to consolidate and amend the law regulating labour in factories.

Current Provisions

Chapter III contains provisions for maintaining cleanliness, disposal of wastes, ventilation etc in factories in the interests of the health of the workers in the factory.

18. Drinking water. (1) In every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked “drinking water” in a language understood by majority of the workers employed in the factory, and no such point shall be situated within 1*[six meters of any washing place, urinal, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination] unless a shorter distance is approved in writing by the Chief Inspector.

Chapter IV: Safety deals with provisions relating to the safety measures to be taken in the interests of factory workers and these provisions are quite salutary.

19. Latrines and urinals. (1) In every factory-- (a) sufficient latrine and urinal accommodation of prescribed types shall be provided conveniently situated and accessible to workers at all times while they at the factory;

32. Floors, stairs and means of access. In every factory--

(a) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained 3*[and shall be kept free from obstructions and substances likely to cause persons to slip], and where it is necessary to ensure safety, steps, stairs, passages and gangways shall be provided with substantial handrails;

(b) there shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person is at any time required to work; when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably practicable, by fencing or otherwise, to ensure the safety of the person so working.

Pits, sumps, openings in floors, etc.

Inserted suggestion

Section 18 of the Act deals with provision for drinking water for the factory workers. The clause of low height of accessible drinking water facilities should be provided on an equal basis with others on an equal basis with others.

In order to enable physically handicapped workers to have convenient access to such drinking points, it is suggested that sub-section (2) of Section 18 may be amended to include the words “and be easily accessible to workers with disabilities, if any on an equal basis with others” after the words “workers employed in the factory”.

Chapter 4 should be amended to include a special safety protocol for persons with

cognitive, developmental and intellectual disabilities which should mandatorily lay down the parameters that each establishment depending upon the nature of work and the level of support required by the disabled persons working in the said establishment will customize to their special needs and such protocol should also specify allocation and activation of support for emergency action and/or evacuation.

Section 19 deals with the provision of latrines and urinals in the factories for the use of the factory workers. For the benefit of handicapped workers, it is suggested that in clause (a) of Sub-section (1) of section 19, the words “including workers with disabilities” may be added after the words “accessible to workers”.

In section 32 of the Act, which deals with Floors, stairs and means of access, it is suggested that a new sub-clause (d) may be added:

All measures may be taken to render the work place accessible and barrier free to persons with disabilities on an equal basis with others.

9. The Government Buildings Act, 1899

Current Provisions

This is an Act to provide for the exemption from the operation of municipal building laws of certain buildings and lands, which are the property, or in the occupation, of the Government and situate within the limits of a municipality. The very basic premise on which this Act was based was to reduce municipality hassles for Govt. Buildings. However, in light of accessibility provisions of the PWD Act and UNCRPD that buildings should be accessible, the Act loses its relevance so far as the ensuring accessibility is concerned.

Inserted Suggestion

It is suggested to either scrap this law being redundant or should be appropriately amended to ensure that all the Govt. Buildings will have to be mandatorily based on universal design to be accessible to people with disabilities as per access standards in Model Building Bye-laws.

10. Mines Act, 1952

This is an Act to amend and consolidate the law relating to the regulation of labour and safety in mines.

Current Provisions

Section 20. Conservancy – (1) There shall be provided, separately for males and females in every mine, a sufficient number of latrines and urinals of prescribed

types so situated as to be convenient and accessible to persons employed in the mine at all times.

Inserted suggestion

Section 20 of the Act provides for having sufficient number of latrines and urinals separately for males and females for use by persons employed in the mine at all times.

Provided that wherever latrines and urinals are provided, suitable provisions should be provided to ensure the availability of a functional unisex toilet for the benefit of persons with disabilities & elderly.

In order to make these conservancies easily accessible to persons who may be physically handicapped, it is suggested that the words “including persons with disabilities” may be added after the words “persons “ occurring in sub-section (1) of section 20 of this Act.

11. Motor Vehicles Act, 1988

This Act seeks to consolidate and amend the law relating to motor vehicles.

The Motor Vehicles Act presumes the inability of a disabled person to be a safe driver and provides the licensing authority with the right to withhold the license from such persons “suffering from diseases or disability so as to make them a hazard to other traffic/persons on the road.” This presumption is incorrect and discriminatory. Deaf persons are permitted to drive in several countries in the world and their doing so has not constituted a hazard to other traffic or persons on the road.

Section 116 of the Act provides for power to the State government to erect traffic signs in any public place for regulating speed limits, prohibitions or restrictions and for the purpose of regulating motor vehicle traffic.

116. Power to erect traffic signs. (1) (a) The State Government or any authority authorized in this behalf by the State Government may cause or permit traffic signs to be placed or erected in any public place for the purpose of bringing to public notice any speed limits.

Inserted suggestion

(a) Provisions for Auditory signals & Markings at Zebra Crossings

In order to enable blind or deaf persons to be warned about oncoming vehicles at zebra-crossings while crossing road, it is necessary that while fixing traffic signs at public places as also at zebra crossings, the State Governments should also provide auditory signals and markings at zebra crossings for the benefit of persons with disability. Accordingly, it **is suggested** that Sub-section (1) (a) of section 116

of this Act may be amended to add a Proviso as follows:

“Provided that the State government or any local authority authorized in this behalf shall erect traffic signs, install auditory signals at red lights in the public roads, curb cuts and slopes in pavements so as to provide inclusive, un-interrupted continuous pedestrian and road infrastructure, for effective participation of persons with disabilities on an equal basis with others.”

Existing provisions related to driving licences to persons with orthopaedic disabilities and registration of their adapted motor vehicles (Section 52 of MV Act) also need to be changed Also the words ‘invalid carriage; should be changed to motorcycles with / without gear (adapted/ altered vehicle driven by persons with disability. The license should be universal rather than to the specific vehicle.

12. Plantations Labour Act, 1951

Current Provisions

This Act provides for the welfare of labour, and to regulate the conditions of work, in plantations. Chapter III deals with provisions as to protection of the health of the plantation workers.

Under **provision as to health,**

9. Conservancy -

- i. There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein.

15. Housing facilities -- It shall be the duty of every employer to provide and maintain necessary housing accommodation-

- (a) For every worker (including his family) residing in the plantation;
- (b) For every worker (including his family) residing outside the plantation, who has put in six months of continuous service in such plantation and who has expressed a desire in writing to reside in the plantation:

Provided that the requirement of continuous service of six months under this clause shall not apply to a worker who is a member of the family, of a deceased worker who, immediately before his death, was residing in the plantation.

Inserted suggestion

Section 9 provides for Conservancy envisaging provision of separate latrines and urinals for males and females in every plantation. To ensure that these are accessible and usable by employees with disabilities, suitable provisions should be added to ensure the availability of a functional unisex toilet wherever male and female toilets are provided.

Section 15 which deals with provision of housing facilities for workers residing within or without the plantations, it is suggested that a Proviso may be added to this section as follows: “Provided further that such housing facilities provided by the employer to the workers should be accessible and barrier-free and based on Universal Design for the benefit of workers with disabilities.”

13. Representation of Peoples Act - Provision of Polling Stations for Constituencies

Current Provision

Provision of Polling Stations for Constituencies - The District election officer shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for every constituency the whole or greater part of which lies within his jurisdiction, and shall publish, in such manner as the Election Commission may direct, a list showing the polling station so provided and the polling areas or groups of voters for which they have respectively been provide.

Insertion Suggested

Provided that District Election Officer shall be responsible to make and ensure that every polling station is accessible and barrier free for persons with disabilities and senior citizens so that they can cast their vote with dignity and ease.

14. The Bombay Lifts Act 1939 (As applicable to Delhi) and Delhi Lift rules 1942

Suggested amendments in Act and rules

The specification of lifts should be such that no building open to public use should be allowed to get a lift installed which does not provide dignified acces and specifications should include minimum door width of 1000mm and size of lift car to allow easy use by person in wheel chair alongwith an escort.

Specification of elevators to include minimum internal dimension of lift at 1200 mm and 1400 mm depth and preferably 1200mm by 2000mm. Door width to be 1000mm. No gap of difference of level within lift floor and floor surface. Lift lobby to be minimum 1800mm by 1800mm to allow 360 degree turning of wheel-chair. Outside call buttons to be between 900 mm to 1100 mm from surface of floor. Internal control in side elevator car should have clear floor surface of 900mm to 1200mm with buttons to be at 400 to 400mm level from opposite wall and above 900 to 1200mm from floor surface. Provision of grab bars of 30 to 40 mm diameter. Automated doors closing system.

Article 12: Equal Recognition before the Law

1. Contract Act, 1872

Inserted Suggestion

The existent provision relating to incapacity must be abrogated to bring the Contract Act in line with UNCRPD. As such competence to contract to the extent of ability through support of networks created for the purpose, which shall be escalating in nature dependent upon the need of the individual with disability.

2. The Government Savings Banks Act, 1873

Inserted Suggestion

This should be amended to include a provision that persons with disability shall be entitled to open their own bank accounts independently with support of their choice and/or need.

3. The Government Savings Certificates Act, 1959

Inserted Suggestion

Provision for payment to persons with disability directly in person with support networks being utilized to the extent they are needed.

4. Hindu Minority and Guardianship Act, 1956

Inserted Suggestion

Guardianship of adults with intellectual, cognitive and developmental disabilities has to be abrogated.

5. Hindu Succession Act, 1956

Current provision

Section 28. "Disease, disability, defect etc, not to disqualify - No person shall not be disqualified from succeeding any property on the ground of any disease, defect or deformity, or disability, or save as provided in this Act, on any other

ground whatsoever.”

Suggested amendment

28. Disease, disability etc. not to disqualify: No person shall not be disqualified from succeeding any property on the ground of any disease, or disability, on any other ground whatsoever. Save as provided in this Act.

Explanation:- The word ‘disability’ shall have the meaning as assigned to it in the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full participation) Act, 1995.

6. Transfer of Property Act

Inserted Suggestion

Amend the Transfer of Property Act.: Similar enabling provision should be incorporated in the Transfer of Property Act stipulating that a disabled person shall have the right to acquire, hold, and dispose off property on an equal basis with others.

Article 13: Access to Justice

1. The Criminal Procedure Code, 1908

Rule 15A (Rule 1-14), should be amended to include a special provisions relating to persons with intellectual, cognitive and developmental disabilities and their right of representation with the help of necessary support.

In the event, a deaf person presents himself / herself at a police station or before a Magistrate to file a complaint / lodge an FIR, it shall the duty of the concerned officer in charge of the police station / the concerned magistrate to call for a sign language interpreter from the state panel of professional sign language interpreters in order to facilitate communication with the deaf party.

In the event such deaf person is illiterate and does not know sign language, the officer in charge of the police station / the magistrate shall call for a member of the person's family in addition to a professional sign language interpreter in order to facilitate communication with the deaf party.

Section 164 of the Criminal Procedure Code deals with 'Recording of confessions and statements'. It is necessary that this section include statements made by speech and hearing impaired persons through signs. It is recommended that a proviso be inserted in section 194 to clarify the meaning of the terms 'statement' in such cases as follows.

Inserted Suggestions

In the event the person desirous of making the confession or statement is a speech and/or hearing impaired person, in such case the statement / confession may be made through means of sign language, gestures, home signs (intelligible only to close family members) and a record of the signs and the interpretation of the signs shall form the statement / confession for the purpose of this Section.

A speech and hearing impaired person may be allowed to record his/her statement through video recording by means of sign language, gestures, home signs (intelligible to close family members only).

In the event a party before the Metropolitan or Judicial Magistrate is a speech and/or hearing impaired, the Metropolitan or Judicial Magistrate shall ensure that the hearing and speech impaired person is provided with a professional interpreter in order to facilitate him/her to make a statement if he/she should so desire.

It is further clarified that in the event such hearing and speech impaired individual is illiterate, "home signs" will be permissible with facilitation from a close family member of the hearing and speech impaired person's choice, in the presence of the court appointed professional sign language interpreter so long as the concerned

family member does not have a conflict of interest with the deaf person.

The Magistrate / the Police shall not record the statement of a hearing and speech impaired person in the absence of a professional Sign language interpreter. In the event provision of an interpreter is not immediately possible, the statement so recorded will be valid but not be final and binding until a professional sign language interpreter is able to translate the contents to the hearing and speech impaired person.

No action shall be taken or proceedings shall be conducted against a deaf person without the presence of a professional sign language interpreter to explain the proceedings to the deaf party.

Section 119 of the Criminal Procedure Code deals with ‘unauthorized persons addressing the court’.

Current provision

119. Unauthorized persons not to address Court - Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

It is necessary that this section is modified in order to provide for authorizing sign language interpreters to address the court on behalf of persons with speech and hearing impaired persons. It is recommended that a facilitating provision be inserted in section 119 as follows.

Inserted Suggestions

Nothing in this provision shall prevent a sign language interpreter from addressing the Court for and on behalf of a speech / hearing impaired person. Where the person with speech/hearing-impaired individual is illiterate, a family member of such person who is familiar with the home signs of such person shall be permitted to address the court on behalf of the speech/hearing impaired person in addition to the sign language interpreter.

2. The Evidence Act, 1872

Current Provision

Chapter IX of Witnesses

118. Who may testify.-All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme

old age, disease, whether of body or mind, or any other cause of the same kind. Explanation.--A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Inserted Suggestion

In Chapter 9, Section 118 should be amended to state:

“That in the case of persons with disabilities testimony shall be given with the help of support if necessary whether by means of assistive devices or human support.”

Current Provision

119. Dumb witnesses - A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

Inserted Suggestion

Section 119 of the Indian Evidence Act provides for the method of examination in case of ‘Dumb Witnesses’. It provides that where a witness is unable to speak, the evidence is required to be recorded in another manner i.e. by writing or by signs in open court which shall be deemed to be oral evidence.

The following modifications are proposed in Section 119 of the Indian Evidence Act in order to bring them in conformity with the spirit of the UNCRPD.

119 Witness with hearing / speech impairment - (a) In the event a party before the court is a person with hearing and/or speech impairment, the court shall examine such party only through an interpreter called from the panel of professional sign language interpreters appointed by the state at state expense or at the expense of the court.

Inserted Suggestion

- (a) It shall be open to the deaf party to use the services of an interpreter hired by him/her in addition to the facilities of the professional sign language interpreter from the state panel provided by the Court.
- (b) The proceedings conducted with the assistance of the interpreter shall be recorded via video recording and maintained by the court at state expense.
- (c) In the event such party before the court does not know Indian Sign Language but uses Home signs, the Court interpreter will be assisted by a person who is able to communicate effectively with such party so long

as such person does not have a contradictory interest in the proceedings. Such proceedings shall also be recorded via video.

In Chapter 9, Section 119 should be amended to state:

“To provide independent interpreters and video recording so testimony can be reappraised at any stage to corroborate the translation.”

3. The Legal Services Authorities Act, 1987

Current Provisions

4. Functions of the Central Authority - The Central Authority shall [***] perform all or any of the following functions, namely:

(l) Take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures.

(m) Make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour.

Inserted Suggestions

Section 4 Functions of the Central Authority

(l) Take appropriate measures for spreading legal awareness amongst the people and, in particular, to educate weaker sections of the society, including the elderly and the persons with disabilities, about the rights, benefits & privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures.

(m) Make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the scheduled castes and the scheduled tribes, elderly & persons with disabilities, women and rural & urban labour and.

4. Probation of Offenders Act, 1958

Inserted Suggestion

Relaxation of norms leading to easier probation for person with intellectual, cognitive and developmental disabilities.

Article 16: Freedom from Exploitation Violence and Abuse

1. The Protection of Women from Domestic Violence Act, 2005

Current Provision

“8. Registration of service providers - (Under Section 37 (2) (g) read with Section 10 (1):

- i. The service providers to be registered under Section 10(1) of the Act shall apply for registration to the Protection Officer, as per the format in Form V in Schedule 1, and the Protection Officer in whose area the service providers want to extend their facilities shall maintain the list of such registered service providers.
 - ii. The service provider to be registered under Section 10(i) of the Act shall possess the following minimum qualifications.
 - iii. The service provider should have been rendering the kind of services it is offering under the act for at least two years before applying for registration under the act.
 - iv. In case of service providers running a medical facility, or a psychiatric counseling centre, or a vocational training institution, the registering authority shall ensure that the applicant fulfils the requirements for running such a facility or the institution prescribed as prescribed by the regulatory bodies regulating the respective professions or institutions.
- c) In case of Service Providers running shelter homes, or any other facility the registering authority shall inspect the shelter home, prepare a report and record a finding on the report, detailing that adequate space and other facility for the persons seeking shelter is available.”

Insertion suggested

Amend the Protection of Women from Domestic Violence Act so as to explicitly include disabled women. This is required in order to harmonize with the provisions mentioned in article 15 and 16 of the convention respectively. They relate to freedom from torture, inhuman, degrading or cruel treatment and punishment; and freedom from exploitation, violence and abuse.

Provided that no such Service Provider will be registered until the Medical Facility, Vocational Training Centre or any such centre or shelter home or such other

facility is accessible, barrier free and based on Universal Design as per Uniform Standards of Accessibility.

Provided that Uniform Standards of accessibility shall be as per the National Building Code as accepted and notified by the State. In the absence of Standards on Access, the Model Building Bye-laws published by Min. of Urban Development, Govt. of India or such other revised editions of standards as published by the Govt. of India shall govern the physical standards and design of such homes, training units & facilities.

2. Immoral Traffic (Prevention) Act, 1956

Inserted Suggestion

Enhanced penalty for trafficking in disabled persons.

3. Prisoners Act, 1900

Inserted Suggestion

Reasonable Accommodation should be provided to prisoners with disabilities.

Article 20: Personal Mobility

1. Customs Act, 1962

Current Provision

This is an Act to consolidate and amend the law relating to customs.

Section 25 of the Act gives power to the Central Government to grant exemption from duty in respect of goods of any specified description from the whole or any part of duty of customs leviable thereon. The Central Government also has the power in the public interest so to do, exempt by special order any goods from the payment of customs duty under circumstances of exceptional nature to be stated in such order.

Many persons with disability in India requiring assistive devices and appliances made with modern technology and of requisite specifications abroad are unable to import them due to high customs duty. Such assistive devices may not be manufactured in India yet can enable many persons with disability to cope with their disabilities. It is not always that the power given to the Central Government under section 25 is exercised liberally for the benefit of persons with disability. Much depends upon the political will when exemptions are granted.

25. Power to grant exemption from duty. (1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

Suggested Insertion to Section 25(1)

If a provision is made in the section itself providing for exemption from customs duty in respect of assistive devices for the persons with disability, it would go a long way in benefiting such persons with disability.

Following proviso may be added to sub-section (1) to section 25 of the above Act.

“ Provided that any import of aids, assistive devices, equipments and such other technology for the personal use and benefit of a person with disability in training, education or improving their functional skills, aids in independent living and enhances their equal & effective participation in the society on an equal basis with others, shall be exempted from the custom duty.”

2. Motor Vehicles Act, 1988

Current provision

Section 8 talks about procedure of granting driving license.

(b) Provisions Related to driving licenses to persons with hearing impairment.

Currently the Act doesn't permit the persons with hearing impairment to be issued with driving license hence despite being capable to drive personal vehicles; they remain legally ineligible to drive. Currently the Hon'ble High Court of Delhi is seized of the matter and is likely that provisions will undergo sea change once the court judgement is pronounced. World over the hearing-impaired people are permitted to drive and hold licenses, however this discrimination has continued since a long time in absence of any concerted effort from the affected parties as well as apathy of the state.

Section 8 - Grant of learners license:- (4) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or DISABILITY which is likely to cause the driving by him of a motor vehicle of the class which he would be authorized by the learner's license applied for to drive to be a source of danger to the public or to the passengers, the licensing authorities shall refuse to issue the learner's license. Provided that a learner's license limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage.

Current Provision

Section 9. Grant of driving license: - (1) Any person who is not for the time being disqualified for holding or obtaining a driving license may apply to the licensing authorities having jurisdiction in the area.

Provided that, where the application is for a driving license to drive a motor cycle or a light motor vehicle, the licensing authority shall exempt the applicant from the test of competence prescribed under this sub-section, if the licensing authority is satisfied-- (b) that the applicant is not suffering from any disease or DISABILITY which is likely to cause the driving by him of a motor cycle or, as the case may be, a light motor vehicle to be a source of danger to the public; and the licensing authorities may for that purpose require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (i) of section 8.

In any event Sec 9 (3) (a) (iii) of the Act allows a person holding a license from a licensing authority in a foreign country to obtain a driving license. Since several countries issue driving licenses to deaf people, this provision allows deaf persons with driving licenses from a foreign country to drive on Indian roads while deaf

citizens cannot drive. The provision is completely arbitrary and calls for a modification in the law.

9. Grant of driving license. (1) Any person who is not for the time being disqualified for holding or obtaining a driving license may apply to the licensing authority having jurisdiction in the area-- (i) in which he ordinarily resides or carries on business, or (ii) in which the school or establishment referred to in section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated, for the issue to him of a driving license.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

(3) No driving license shall be issued to any applicant unless he passes to the satisfaction of the licensing authority such test of competence to drive as may be prescribed by the Central Government: Provided that, where the application is for a driving license to drive a motor cycle or a light motor vehicle, the licensing authority shall exempt the applicant from the test of competence prescribed under this sub-section, if the licensing authority is satisfied-- (a) (i) that the applicant has previously held a driving license and that the period between the date of expiry of that license and the date of such application does not exceed five years; or (ii) that the applicant holds or has previously held a driving license issued under section 18; or (iii) that the applicant holds a driving license issued by a competent authority of any country outside India; and (b) that the applicant is not suffering from any disease or disability which is likely to cause the driving by him of a motor cycle or, as the case may be, a light motor vehicle to be a source of danger to the public; and the licensing authority may for that purpose require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8: 585 Provided further that where the application is for a driving license to drive a motor vehicle (not being a transport vehicle), the licensing authority may exempt the applicant from the test of competence to drive prescribed under this sub-section, if the applicant possesses a driving certificate issued by an automobile association recognised in this behalf by the State Government.

Inserted Suggestion

It is necessary that the following provision be inserted as Section 8A and 9A:

Persons with hearing and/or speech impairment shall not be denied a driving license / learner's license on the grounds of 'disability'.

3. Indian Railways Act, 1989

Chapter VIII (Section 49 to 60) deals with Carriage of passengers in the railway

and Section 60 specifically empowers the Government to frame rules regarding carriage of passengers and their luggage.

The whole chapter is silent about providing accessibility in train service to people with disabilities as well as seniors. In section 58, it however, mentions earmarking of exclusive compartments/berths for women.

Current provision

Section 56 is discriminatory to Leprosy Affected Persons

56. Power to refuse to carry persons suffering from infectious or contagious diseases:

- i. A person suffering from such infectious or contagious diseases, as may be prescribed, shall not enter or remain in any carriage on a railway or travel in a train without the permission of a railway servant authorized in this behalf.
- ii. The railway servant giving permission under sub-section (1) shall arrange for the separation of the person suffering from such disease from other persons in the train and such person shall be carried in the train subject to such other conditions as may be prescribed.
- iii. Any person who enters or remain in any carriage or travels in a train without permission as required under sub-section (1) or in contravention of any condition of any conditions prescribed under sub-section (2), such person and a person accompanying him shall be liable to the forfeiture of their passes or tickets and removal from railway by any railway servant.

Current Provision

Section 58. Earmarking of compartment, etc., for ladies: - Every railway administration shall, in every train carrying passengers, earmark for the exclusive use of females, one compartment or such number of berths or seats, as the railway administration may think fit.

Suggested Insertion of New Section 58A

“Section 58 A

Carriage of persons with disability/reduced mobility in railways etc. – Every railway administration shall, in every train carrying passengers, reserve such numbers of berths or seats for persons with disabilities as may be required by law and make provisions for the protection of and provision of assistance to disabled persons and persons with reduced mobility traveling by rail in order to protect them against any form of discrimination and to ensure that they receive all possible assistance with due respect and dignity. Every railway administration shall also make rail compartments and railways stations accessible based on Universal

Design so that person with disabilities and persons with reduced mobility are able to use the railways with ease, comfort & dignity independently.”

Insertion in Section 60

60. Power to make rules in respect of matters in this Chapter:

- i. The Central Government may, by notification, make rules to carry out the purposes of this Chapter.
- ii. In particular, and without prejudice to the generally of the foregoing power, such rules provide for all or any of the following matters, namely:
- iii. The convenience and accommodation (including the reservation of seats or berths in trains) to passengers.

(a-i) Procedure for Carriage of persons with disabilities and persons with reduced mobility and minimum standards of accessibility in every compartment in all classes of travel and at the railway station, boarding and alighting of passengers, on board toilet facilities and carriage of their assistive aids/devices, escorts and guide dogs including their presence in the train compartment.

- i. The amount of refund for the cancellation of a ticket.
- ii. The circumstances under which change of names of passengers, having reserved seats or berths, may be permitted.
- iii. The carriage of luggage and the conditioned subject to which luggage may be kept in the clock rooms at then stations.
- iv. Diseases which are infections or contagious.

Reason: However Government has not prescribed any rules under section 60 (2) (e) for Diseases, which are infectious or contagious. Thus it confers broad arbitrary powers to the officials to discriminate against those affected with Leprosy without laying down any guidelines. This curtails the fundamental right to equality, right to move freely through out the country and right to life guaranteed, respectively under Article 14, 19(d) and 21 of constitution. The rules need to be promulgated while specifying clearly that the Leprosy per se be not treated as contagious disease but as a disability.

Article 21: Freedom of Opinion and Expression and Access to Information

1. Copy Right Act, 1957

Inserted Suggestion

Amend the Copy Right Act, 1957, so as to stipulate that no permission from the publisher and/or copyright holder shall be required in respect of any published material which is in the public domain for converting that publishes material into standard accessible format including the daisy format for further conversion into Braille, audio, or large print for distribution to the blind and the print disabled.

2. The Right To Information Act, 2005

Current Provision

This Act seeks to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority.

Current Provision Section 7, Subsection 4

Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

Amend Section 7

Section 7: Disposal of request for information. Sub-section (4)

“Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is a person with disability (delete word -sensorily disabled), the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection or allowing a person of the choice who may be accompany such person with disability seeking access.”

3. The Official Languages Act, 1963

Inserted Suggestion

Indian Sign Language must be added in the Eighth Schedule of the Constitution of India as a Scheduled Language. A constitutional amendment will be required for this purpose and may take a considerable amount of time. In the meantime, it is proposed that the centre and all states take measures to recognize Indian Sign Language through other means as well namely by the amendment of the rules under the Official Languages Act.

The Official Languages Act, 1963 is the law enacted to provide for languages that may be used for the official purposes of the Union, for transaction of business in Parliament, for Central and State, Acts and for certain purposes in the High Courts. The Rules made under the statute deal with the language of communication between the center and state and between central departments. The Rules empower the central government to issue such directions from time to time as may be necessary to comply with the said Act and rules.

Several states have authorized the use of a language other than its official language as the associate official language of the state. Eg : Goa authorizes the use of Marathi in addition to Konkani as its official language, in Assam, Bodo is an associate official language in addition to Assamese, Khasi and Garo are recognized as the official language in addition to English in Meghalaya.

It is recommended that Indian Sign Language be notified as an official language under the Official Languages Act by the center and by all states for use for official purposes in order to fulfill the state's mandate under Article 21 of the UNCRPD. This will pave the way for further measures in order to make Indian sign language acceptable beginning with recognition of schools /colleges imparting training in Indian sign language, use of sign language in the proceedings in courts/police stations in case a deaf party is involved, use of sign language in public utility services provided by the state, etc.

Article 23: Right to Home and Family

Laws Relating to Marriage and Family (VIZ. Special Marriage Act 1954, Dissolution of Muslim Marriage Act 1939, Hindu Marriage Act-1955, Hindu Adoption and Maintenance Act-1956, Indian Divorce Act-1869.

1. The Special Marriage Act-1954

Current Provision

27. Divorce.-(1) Subject to the provisions of this Act and to the rules made there under, a petition for divorce may be presented to the District Court either by the husband or the wife on the ground that the respondent-... (e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind, and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation- In this Clause- (a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia; (b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent and whether or not it requires or is susceptible to medical treatment; or (f) has been suffering from venereal disease in a communicable form; or (g) has been suffering from leprosy, the disease not having been contracted from the petitioner; or

2. The Hindu Marriage Act, 1955

13. Divorce

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the 2 Subs. by s. 6, *ibid*, for “the grounds for a decree”. Husband or the wife, be dissolved by a decree of divorce on the ground that the other party.

(iii) Has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation. -In this clause,

(b) The expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results

in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it require or is susceptible to medical treatment; or
(iv) Has been suffering from a virulent and incurable from of leprosy.

3. The Dissolution of Muslim Marriages Act, 1939

2. Grounds for decree for dissolution of marriage.-A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on way one or more of the following grounds, namely:

(vi) That the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease.

4. Hindu Adoptions and Maintenance Act, 1956

CHAPTER III Maintenance

18. Maintenance of wife

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance -

(c) If he is suffering from a virulent from of leprosy.

5. The Indian Divorce Act, 1869

III-Dissolution of Marriage

10. Grounds for dissolution of marriage,- (1) Any marriage solemnized, whether before or after the commencement of the **Indian Divorce (Amendment) Act, 2001**, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent-

1. S.10 was subs. By Central **Act 51 of 2001**, w.e.f. 3.10.2001

(iv) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of **leprosy**; or

Suggestions

leprosy as a ground of divorce or for seeking maintenance should be totally removed from the text of above laws which is only enhances the social stigma against the disease Similarly the provisions whereby persons with intellectual disability and persons living with mental illness are denied the right to be married or are singled out for divorce by reason of disability should be repealed.

Article 24: Education

1. *The Delhi School Education Act, 1973*

Current provision

Section 2 u) “**school**” includes a pre-primary, primary, middle and higher secondary school, and also includes any other institution which imparts education or training below the degree level, but does-not include an institution which imparts technical education;

(4) Recognition of schools- (1) The appropriate authority may application made to it in the prescribed form and in the prescribed manner, recognise any private school:

Provided that no school shall be recognised unless~’

- a) It has adequate funds to ensure its financial stability and 1 payment of salary and allowances to its employees;
- b) It has a duly approved scheme of management as required by section 5
- c) It has suitable or adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it;
- d) It provides for approved courses of study and efficient instruction
- e) It has teachers with prescribed qualifications; and
- f) It has the prescribed facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities.

Insertion suggested

Section 2(u) Definition of School should include a special school or training centre for the children with disabilities.

Section 4, Recognition of Schools

(4) Recognition of schools- (1) The appropriate authority may application made to it in the prescribed form and in the prescribed manner, recognize any private school:

Provided that no school shall be recognized unless-

- a) It has adequate funds to ensure its financial stability and one payment of salary and allowances to its employees;
- b) It has a duly approved scheme of management as required by section 5
- c) It has suitable or adequate accessible and barrier free accommodation,

accessible toilets and sanitary facilities having regard, among other factors, to the number, age and sex & physical disabilities of the pupils attending it;

- d) It provides for approved courses of study and efficient instruction
- e) It has teachers with prescribed qualifications; and
- f) It has the prescribed accessible facilities for physical education, library service, laboratory work, workshop practice or co-curricular activities.

2. Right of Children to Elementary Education Act, 2009

Inserted Suggestion

Issues of persons with disabilities often get neglected or sidetracked for want of proper representation of their interests. There is need for rights of representation. Hence, it is recommended that the new Act must provide for representation of the persons with disabilities through their representative organizations in various academic and other related for a at various levels including representation in the NCERT, UGC, SCERT, management levels of both central and state universities, central and state textbook production and publication agencies, The National Advisory Council to be constituted under the Right of Children to Elementary Education Act, 2009, etc. Amend all the relevant statutes under which various state and central universities and other academic bodies have been set up in order to provide for representation of the interest of persons with disabilities by themselves.

Amend the relevant provisions of the recently passed Right of Children to Free and Compulsory Elementary Education Act, 2009 in the following manner:

Explicitly include children with disabilities in the category of “disadvantaged children” as defined in the said Act.

3. The Right to Education Act, 2009

Current Provision

Section 2

- (c) “child” means a male or female child of the age of six to fourteen years;
- (d) “Child belonging to disadvantaged group” means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

- (e) “child belonging to weaker section” means a child belonging such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification.

Inserted Suggestion

This is the latest Act that got the assent of the President of India on 26th August 2009 and intends to provide for free and compulsory education to all children of the age of six to fourteen years.

The Act brings in lot of positive initiatives for the children with disabilities too among other children. In fact, this is the first judiciable Act on Education and not merely a scheme which has been the norm for many decades. It gives the children including those experiencing disability – a fundamental right. This will move the entire school system towards comprehensive evaluation. It has positive features like reducing the teacher pupil ration to 1:35. It also provides for transportation, barrier free accessibility in school, free books etc, which seems to indicate that it provides for children with disabilities.

The Act however, subtly relegates the children with disabilities to be dealt by Persons with Disabilities Act (Read Ministry of Social Justice) and literally refuses to include them in true sense. Children are thus sandwiched between Min. of HRD and Social Justice and parents seem to have no role in deciding which school they would prefer to admit their child.

It also fails to address children with disabilities that come under the National Trust Act like Autism, CP, MR & Multiple disabilities within the school education. The Act does not include children with disabilities in “child belonging to disadvantage group” Private Schools run under the voluntary initiatives (Run by NGOs) do not seem to be covered under this Act though many such NGOs are supported by Govt. Grants also.

The Govt. continues to maintain different categories of school, which displays discrimination among the children. The amount spent per child in an MCD school, Delhi Govt. School, Kendriya Vidyalaya different a great deal. On top of it, the Govt. substantially provides huge grants to private schools like Sanskriti School while the grants given to Special Schools run by NGOs for disabled children are miniscule. The act fails to streamline multi-layered system of education and perpetuate the inherent discriminatory practices.

It is suggested that the Act should specifically include provisions of universally designed school Buildings, curriculum and practices which include all. Standards needs to be appended to the Act in form of Rules specifying minimum standards for Accessibility to and within School and to various services like, toilets, classes, libraries, play areas, laboratories, Seating in the classes, furniture, technologies that would enable the diversity to be included in the school in true sense.

Rules should address issues relating to transportation, assistive aids and devices,

live assistance and availability of computers and modern technology to enhance inclusion.

Provision of Funds for ensuring accessibility within a time bound manner in the existing schools and supervision of Access Auditors to ensure that the infrastructure that comes up is accessible.

Article 26: Habilitation and Rehabilitation

1. Rehabilitation Council of India Act, 1992

Inserted Suggestion

Appropriately amend the Rehabilitation Council of India Act so as to enhance participation of persons with disabilities in the management and programs of the Council. The reason for this suggestion is to ensure that expertise of lived experience of persons with disabilities is taken on board in line with the spirit of the convention. It is also important to incorporate explicit and mandatory provisions for including comprehensive component on Rights of Persons with Disabilities in the various RCI courses.

Article 27: Work and Employment

1. *The All-India Services Act, 1951*

Current Provision

The All India Service (Special Disability Leave) Regulations, 1957.

“Definitions In these regulations, unless the context otherwise requires-
2 (1) (a) “disability” means any injury, illness, infirmity or disease, and

Insertion Suggested

In pursuance of sub-rule (1) of rule 16 of the All India Service (Leave) Rules, 1955 the Central Government after consultation with the State Governments concerned made the All India Services (Special Disability Leave) Regulations, 1957 which defines “Disability” in Section 2(1) (a) **disability as “any injury, illness, infirmity or disease”** which in no way is even in tune with existing laws on disability.

Hence it is suggested that the rules should be amended to ensure Mandatory Reservation in jobs is clearly indicated in the relevant rules. The reservation should be based on the total cadre strength and not only in identified posts. There should be no discrimination on the basis of disability. Reasonable accommodation & accessible and enabling environment should be provided to persons with disabilities in the workplace. Special provisions relating to transportation, assistive aids and devices, live assistance and availability of computers and modern technology to enhance productivity should be included in rules.

2. *The Apprentices Act, 1961*

Current Situation

Definitions.- In this Act, unless the context otherwise requires,-- 7*[(a) “All India Council” means the All India Council of Technical Education established by the resolution of the Government of India in the former Ministry of Education No. F. 16-10/44-E.III, dated the 30th November, 1945;]

- i. This Act has been extended to Pondicherry by Reg. 7 of 1963, s. 3 and Sch. I; Goa, Daman and Diu by Reg. 11 of 1963, s. 3 and Sch. 2. The words “in trades” omitted by Act 27 of 1973, s. 2 (w.e.f. 1- 12-1974). 3. The words “except the State of Jammu and Kashmir” omitted by Act 25 of 1968, s. 2 and Sch. (w.e.f. 15-8-1968). 4. 1st March, 1962; vide Notification No. G.S.R. 246, dated 12-

2- 1962, see Gazette of India, Pt. II, Sec. 3(i) p. 218. 5. Cl. (b) omitted by Act 27 of 1973, s. 3 (w.e.f. 1-12-1974). 6. Subs. by s. 3, *ibid.*, for Cl. (c) (w.e.f. 1-12-1974). 7. Ins. by s. 4, *ibid.* (w.e.f. 1-12-1974). 368 1*[(aa)] “apprentice” means a person who is undergoing apprenticeship training 2*** in pursuance of a contract of apprenticeship; 3*[(aaa) “apprenticeship training” means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices;] (b) “Apprenticeship Adviser” means the Central Apprenticeship Adviser appointed under sub-section (1) of section 26 of the State Apprenticeship Adviser appointed under sub-section (2) of that section; (c) “Apprenticeship Council” means the Central Apprenticeship Council or the State Apprenticeship Council established under sub-section (1) of section 24; (d) “appropriate Government” means,—

In relation to—

- (a) the Central Apprenticeship Council, or 3*[(aa) the Regional Boards,
or (aaa) the practical training of graduate or technician apprentices or of technician (vocational) apprentices,
or] (b) any establishment of any railway, major port, mine or oilfield, or (c) any establishment owned, controlled or managed by—
- (i) the Central Government or a department of the Central Government,
 - (ii) a company in which not less than fifty-one per cent. of the share capital is held by the Central Government or partly by that Government and partly by one or more State Governments,
 - (iii) a corporation (including a co- operative society) established by or under a Central Act which is owned, controlled or managed by the Central Government, the Central Government;

(2) in relation to-- (a) a State Apprenticeship Council, or

- ii. Cl. (a) re-lettered by Act 27 of 1973, s. 4 (w.e.f. 1-12-1974). 2. The words “in a designated trade” omitted by s. 4, *ibid.* (w.e.f. 1-12-1974). 3. Subs. by Act 41 of 1986, s. 2 (w.e.f. 16.12.1987). 369 (b) any establishment other than an establishment specified in sub-clause (1) of this clause, the State Government; 1*[(dd) “Board or State Council of Technical Education” means the Board or State Council of Technical Education established by the State Government;] (e) “designated trade” 2*[means any trade or occupation or any subject field in engineering or technology] 3*[or any vocational course] which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act; (f) “employer” means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employ-

- ees in such establishment; (g) “establishment” includes any place where any industry is carried on; (h) “establishment in private sector” means an establishment which is not an establishment in public sector; (i) “establishment in public sector” means an establishment owned, controlled or managed by--
- iii. the Government or a department of the Government;
 - iv. a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
 - v. a corporation (including a co-operative society) established by or under a Central, Provincial or State Act, which is owned, controlled or managed by the Government;
 - vi. A local authority; 4*(j) “graduate or technician apprentice” means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any such subject field in engineering or technology as may be prescribed; 1. Ins. by Act 27 of 1973, s. 4 (w.e.f. 1-12-1974). 2. Subs. by s. 4, *ibid.*, for “means a trade” (w.e.f. 1-12-1974). 3. Ins. by Act 41 of 1986, s. 2 (w.e.f. 16-12-1987). 4. Subs. by Act 27 of 1973, s. 4, for clauses (j) and (k) (w.e.f. 1-12-1974). 370 (k) “industry” means any industry or business in which any trade, occupation or subject field in engineering or technology 1*[or any vocational course] may be specified as a designated trade;] (l) “National Council” means the National Council for Training in Vocational Trades established by the resolution of the Government of India in the Ministry of Labour (Directorate General of Resettlement and Employment) No. TR/E.P-24/56, dated the 21st August, 1956; 1*[and re-named as the National Council for Vocational Training by the resolution of the Government of India in the Ministry of Labour (Directorate-General of Employment and Training) No. DGET/12/21/80-TC, dated the 30th September, 1981] (m) “prescribed” means prescribed by rules made under this Act; 2*(mm) “Regional Board” means any Board of Apprenticeship Training registered under the Societies Registration Act, 1860 (21 of 1860) at Bombay, Calcutta, Madras or Kanpur;] (n) “State” includes a Union territory; (o) “State Council” means a State Council for Training in Vocational Trades established by the State Government; (p) “State Government” in relation to a Union territory means the Administrator thereof; 1*[(pp) “Technician (vocational) apprentice” means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognized by the All-India Council and undergoes apprenticeship training in any such subject field in any vocational course as may be prescribed;] 2*[(q) “trade apprentice” means an apprentice who undergoes apprenticeship training in any such trade or occupation as may be prescribed.]”

CHAPTER II Apprentices and their Training

Qualifications for being engaged as an apprentice. 3. Qualifications for being engaged as an apprentice.- A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-- (a) is not less than fourteen years of age, and (b) satisfies such standards of education and physical fitness as may be prescribed: Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades 2*[and for different categories of apprentices.]”

1. Ins. by Act 41 of 1986, s. 2 (w.e.f. 16-12-1987). 2. Ins. by Act 27 of 1973, s. 4 (w.e.f. 1-12-1974). 3. Added by s. 5, ibid. (w.e.f. 1-12-1974). 371 3A. Reservation of training places for the Scheduled Castes and the Scheduled Tribes in designated trades. 1*[3A. Reservation of training places for the Scheduled Castes and the Scheduled Tribes in designated trades.-(1) In every designated trade, training places shall be reserved by the employer for the Scheduled Castes and the Scheduled Tribes 2*[and where there is more than one designated trade in an establishment, such training places shall be reserved also on the basis of the total number of apprentices in all the designated trades in such establishment.]

Chapter II Apprentices and their Training

10. Related instruction of apprentices.- (1) 4*[A trade apprentice] who is undergoing practical training in an establishment shall, during the period of practical training, be given a course of related instruction (which shall be appropriate to the trade) approved by the Central Government in consultation with the Central Apprenticeship Council, with a view to giving 5*[the trade apprentice] such theoretical knowledge as he needs in order to become fully qualified as a skilled craftsman.

(2) Related instruction shall be imparted at the cost of the appropriate Government but the employer shall, when so required, afford all facilities for imparting such instruction.

Suggestion

- i. To Add: Definition Section 2(r) person with disability/(ies) – will have the same meaning as defined in PWD Act-1995
- ii. **Chapter II Apprentices and their Training**
- iii. Qualifications for being engaged as an apprentice.
- iv. Qualifications for being engaged as an apprentice.- A person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-- (a) is not less than fourteen years of age, and (b) satisfies such standards of education and physical fitness as may be prescribed: Provided that different standards may be

prescribed in relation to apprenticeship training in different designated trades 2*[and for different categories of apprentices including persons with disabilities.]

- v. 3A. (1) In every designated trade, training places shall be reserved by the employer for the Scheduled Castes and the Scheduled Tribes and persons with disabilities as may be specified by the appropriate Government and where there is more than one designated trade in an establishment, such training places shall be reserved also on the basis of the total number of apprentices in all designated trades in such establishment.

Related instruction of apprentices.

10. Related instruction of apprentices.- (1) 4*[A trade apprentice] who is undergoing practical training in an establishment shall, during the period of practical training, be given a course of related instruction (which shall be appropriate to the trade) approved by the Central Government in consultation with the Central Apprenticeship Council, in accessible formats with a view to giving 5*[the trade apprentice] such theoretical knowledge as he needs in order to become fully qualified as a skilled craftsman.

(2) Related instruction shall be imparted at the cost of the appropriate Government but the employer shall, when so required, afford all facilities for imparting such instruction **including reasonable accommodation and accessibility at workplace.**

3. Beedi & Cigar Workers (Conditions of Employment) Act, 1966

Amend the Beedi and Cigar Workers (conditions of employment) Act, 1966. This is an Act to provide for the welfare of the workers in Beedi and Cigar establishments and to regulate the conditions of their work and for matters connected therewith. Many Beedi and Cigar in the private sector may employ persons with disabilities directly or through contractors and discriminate against them in the matter of equal wages with other employees and even maltreat them. It is therefore suggested that an explanation in the relevant provision be appended so as to clarify that for the purposes of the said Act the expression “employee” shall include any person with disability.

4. Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959

Current Provision

This Act provides for the compulsory notification of vacancies to employment exchanges.

(2) in relation to any other establishment, the Government of the State in which that other establishment is situate; (d) “Employment exchange” means any office or place established and maintained by the Government for the collection and furnishing of information, either by the keeping of registers or otherwise, respecting –

- (i) Persons who seek to engage employees,
- (ii) Persons who seek employment, and
- (iii) Vacancies to which persons seeking employment may be appointed;

Special employment exchanges for persons with disability are not covered by this Act. They are covered by the provisions of the Persons with disabilities (equal opportunities, protection of rights and full participation) Act, 1995 under which persons with disability can avail of registration of their names for availing job opportunities with the Special Employment Exchanges that the State Government is obligated to set up. Since the present Act specifically deals with Employment Exchanges, it would be legitimate to bring Special Employment Exchanges within the purview of the present Act.

Insertion in Section 2(d)

Thus in the definition part the following may be inserted:

“And includes a Special Employment Exchange set up by the appropriate Government under the provisions of the Persons with disabilities (equal opportunities, protection of rights and full participation) Act, 1995 for persons with disability.”

5. Industrial Disputes Act

Inserted Suggestion

Amend the Industrial Disputes Act so as to ensure that in a dispute involving a person with disability the competent authority shall keep the disability of the person in mind while deciding on the case.

Current provision

2. Ins. by Act 36 of 1964, s. 2 (w.e.f. 19-12-1964).

2*[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) Termination of the service of a workman on the ground of continued ill health;]

Suggestion

This is often used to remove employees who become disabled or suffer leprosy. Termination of services of a workman makes him helpless and surely causes hardship to him and his dependents. ID act provides protection to the workman against arbitrary termination.

Therefore, it needs to specifically provided that a workman will not be terminated on the grounds of disability or having been affected by leprosy in present or past.

6. *Plantations Labour Act, 1951*

Hours and Limitation of Employment

19. Weekly hours. -

^{1a} Save as otherwise expressly provided in this Act, no adult worker shall be required or allowed to work on any plantation in excess of [forty-eight hours] a week and no adolescent or child for more than [twenty-seven hours] a week.

³Where an adult worker works in any plantation on any day in excess of the number of hours constituting a normal working day or for more than forty-eight hours in any week, he shall, in respect of such overtime work, be entitled to twice the rates of ordinary wages:

Provided that no worker such shall be allowed to work for more than nine hours on any day and more than fifty-four hours in any week.

(3)For any work done on any closed holiday in the plantation or on any day of rest, a worker shall be entitled to twice the rates of ordinary wages as in the case of overtime work.

Suggested Insertion:

Section 19 deals with Weekly hours for workers. The weekly hours should be made flexible for workers who are disabled or handicapped.

Proviso may be added to sub-section (2) of section 19 as follows:-

Provided that in the case of workers with disability, the weekly hours shall be made flexible by the employer suiting each case.

Section 19 – reasonable accommodations for persons with disability shall be provided by means of flexible working hours and reduction in the weekly working hours.

7. The National Rural Employment Guarantee Act, 2005

Suggestions/Recommendations

The Act and sub rules made there under should be amended to ensure that every person with disability is considered as a separate family unit like other vulnerable social groups (as being given to Single Women).

- i. Persons with Disabilities should be included as Vulnerable Groups in addition to SC/STs in Section 4
- ii. The work assigned in NREGA should be such which can be performed by a person with disabilities – which can be included as a part of Rules made under the Act (on the lines of identification of jobs done by Govt. of India. Under PWD Act-1995)
- iii. 3% allocation of total budget be earmarked for productive employment of persons with disabilities in line with the spirit of PWD Act.
- iv. Representation to Persons with disabilities & their organizations be given in the District NREGA implementation Committee.
- v. The work being undertaken under NREGA should focus on creating accessible infrastructure in villages. Approach to specific houses/dwellings inhabited by persons with disabilities should be made accessible under NREGA Work. In fact Promoting Rural Access should be the Focus of development works undertaken under the Act.

8. Workman's Compensation Act, 1923

Inserted Suggestion

Amend the Workman's Compensation Act to ensure that workman with disability is not arbitrarily discriminated against while determining compensation.

Article 28: Adequate Standards of Living and Social Protection

1. Payment of Gratuity Act, 1972

Current Provision

Section: 2 Definitions.

(h) “family”, in relation to an employee, shall be deemed to consist of -

(i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents [6] [and the dependent parents of his wife and the widow] and children of his predeceased son, if any,

(ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

Inserted Suggestion

The benefits of gratuity accrue to the family members in the case of a deceased employee. Members of the family who are adults but are persons with disability do not figure in the scope of the ‘family’ as defined in section 2(h) of this Act. It is necessary to ensure that such disabled family members who are dependant on the earning member do not stand to be deprived of the benefits under this Act. It is therefore, suggested that section 2(h) of this Act be amended so as to add the words “including adult progenies with disability” after the word “children” occurring in clause (i) in section 2(h) of this Act.

Article 29: Right to Political and Public Life

1. Representation of the Peoples' Act, 1951

Current provision

This Act provides for the conduct of elections to the Houses of parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

Current Provision Section 60

Section 60 as below provides for special procedure for voting by certain classes of persons. It provides for casting of votes by postal ballot in respect of persons having service qualifications and their wives, and those who are subjected to preventive detention. Every citizen of the country has an unassailable right to participate in elections and cast his vote. The special procedure as to casting of votes by postal ballot is to accommodate those who will be physically unable to cast their votes at a polling station in their constituencies.

Special procedure for voting by certain classes of persons. Without prejudice to the generality of the provisions contained in section 59, provision may be made by rules made under this Act for enabling-

Any of the following persons to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, namely:

- a. 1[any person to whom the provisions of sub- section (3) of section 20 of the Representation of the People Act, 1950 apply (43 of 1950).
- b. The wife of any such person as is referred to in sub clause (i) to whom the provisions of sub- section (6) of the said section 20 apply.
- c. Any person subjected to preventive detention under any law for the time being in force to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, subject to the fulfillment of such requirements as may be specified in those rules.
- d. 3[any person belonging to a class of persons notified by the Election Commission in consultation with the Government to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfillment of such requirements as may be specified in those rules”.]

Insertion in Section 60

Therefore, persons with disabilities who choose to cast their ballot by post should be given choice under this Section. Therefore, an additional clause may be added in this Section:

“60. Special procedure for voting by certain classes of persons – Without prejudice to the generality of the provisions contained in section 59, provision may be made by rules made under this Act for enabling –

- (a) Any of the following persons to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken, namely.
- (b) Any person to whom the provisions of sub-section (3) of section 20 of the Representation of the People Act, 1950 apply.
- (ii) The wife of any such person as is referred to in sub-clause (i) to whom the provisions of sub-section (6) of the said section 20 apply.
- (c) Any person subjected to preventive detention under any law for the time being in force to give his vote by postal ballot, and not in any other manner, at an election in a constituency where a poll is taken subject to the fulfillment of such requirements as may be specified in those rules.
- (d) Any person with disabilities/ senior citizen who by virtue of his impairment/ disability is unable to cast his vote by personally visiting the polling stations or so prefers to cast his vote by a postal ballot.

Current Provision Section 25

3[Provision of polling stations for constituencies. The district, election officer shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for every constituency the whole or greater part of which lies within his jurisdiction, and shall publish, in such manner as the Election Commission may direct, a list showing the polling stations so provided and the polling areas or groups of voters for which they have respectively been provided.]

Insert Proviso in Section 25

Inserted Suggestion

This must be amended to read as follows:

“Any person with disability who evinces a desire to vote shall be ensured a franchise provided that support shall include human support as well.”

Article 32: International Cooperation

1. Foreign Contribution Regulation Act 1976

Inserted Suggestion

In order to ensure international cooperation as mandated by Article 32 of UN-CRPD, the Foreign Contribution Regulation Act 1976 should be amended to stipulate that no non-profit, non-governmental international agency shall be granted registration under the said Act unless it undertakes to comply the disability related norms and submits in writing annual returns thereon unless such agency/organization has sought previous exemption for this purpose from the Chief Commissioner, Disabilities.

Profiles of Resource Persons

Prasanna Kumar Pincha

A human rights and disability rights activist, P.K. Pincha who holds a degree in Law, is currently working as an independent consultant and also as a Special Rapporteur (persons with disabilities), National Human Rights Commission, India. A former and founder Principal of the Jorhat Blind Institution, and a former Joint-Director, Social Welfare, Govt. of Assam, He also served as the Regional Manager/Senior Manager, ActionAid for the Northeastern region of India, and later, as a Senior Manager/National Theme Leader, of ActionAid India looking after ActionAid's work on the UNCRPD where one of his notable assignments was the preparation of a report on 'Harmonizing Disability Laws with the UNCRPD'.

Prasanna Pincha is also well-known for his judicial/legal advocacy. He initiated several public interest litigations (PILs) on important issues which have a bearing on the rights of persons with disabilities. His PIL in respect of accessing banking services by the blind on an equal basis with others is a case in point. The said PIL not only enabled him to access banking services on an equal basis with others, but also motivated other group of blind persons to take up the matter with the reserve bank of India (RBI) with the result that the RBI and the Indian Bank Association came up with revised and progressive guidelines on the subject paving the way for the blind to access, use, and enjoy banking services on an equal basis with others.

Prasanna Pincha also features along with two other persons with disabilities, in a textbook for class seven prescribed by the Board of Secondary education, Assam.

Prasanna Pincha's extensive work on the UN Convention on the Rights of Persons with Disabilities includes building capacities of activists with disabilities on the progressive perspective and philosophy of the said Convention.

His contributions in mainstreaming disability rights issues in the general development work, particularly, when he had a direct opportunity to do so as Regional Manager of ActionAid for the Northeast of India are also noteworthy.

Arun C Rao

Arun C Rao is **Executive Director of The Deaf Way Foundation** and being the father of a deaf child is the driving force behind the Foundation since the last 11 years. In 1990 he launched a self help project for deaf youth which has 62 deaf groups across the country with a total membership of 2500 deaf youth . Arun represented India at the World Congress of the deaf in Austria where he presented the self help group model. He was on the working group of research on Indian Sign Language and creation of comprehensive dictionary of ISL. In 2001 he pioneered research in sexual abuse of deaf persons and in the same year he also pioneered the concept of bilingual education in India with the inception of The Deaf Way Education Centre. He began working in advocacy along side the Disabled Rights Group in 2002. In 2002 and 2009 he was nominated to the Rehabilitation Council of India's expert committee on deafness. He is founding President of the **National Association of the Deaf**, was instrumental in setting up the **World Association of Sign Language interpreters** and is **President of the Association of Sign Language Interpreters (India)**.

Advocate Subhash Vashishth

Subhash Vashisht is a lawyer with varied experience in advocacy for the rights of persons with disabilities. He is also a Developmental Therapist and has extensive experience in Accessible & Inclusive Environments, Inclusive Education, Community Based Rehabilitation, and Disability Equity & Legal Rights.

He currently consults with Svayam - a delhi based organisation that dedicates itself to promoting accessibility in public infrastructure and services to be inclusive to persons with reduced mobility. He represents Svayam on the Technical Advisory Committee constituted by Ministry of Tourism on Accessible Tourism and is on the Core Committee constituted by Ministry of Urban Development on Harmonization of Standards on Barrier Free Environment in India. He has also been a member of Advocacy Committee of All India Confederation of the Blind since its creation and currently consults with the committee having been instrumental in taking matters concerning violations of rights of the visually impaired community to the courts of law.

Advocate Roma Bhagat

A Law graduate from the Campus Law College Delhi Roma Bhagat started her career as a Commercial Trainee with Escorts and then as an Advocate in Patents, trademarks and copyright with Remfry & Sons, an international intellectual property law firm. She has over 24 years experience of standing at the bar. She has been working in the disability sector for the past 10 years and also holds many responsible positions with organizations working in the field of disability. She is an Executive Committee Member of 'Muskaan', a voluntary parent organization working for the benefit of people with mental retardation. She has been a Trustee with 'Special Olympics Bharat' which is the accredited organization for sports for the mentally challenged for two terms.

Her work in the disability sector is related to policy, litigation, advocacy and trainings. As part of her work in litigation, Roma files Writ Petitions on behalf of or for the benefit of people with disability at the High Courts and Supreme Court.

Roma has conducted many trainings for disabled persons organizations, activists, lawyers and State Commissioners. She is currently on the list of resource person for the National Trust and Rehabilitation Council of India and has conducted trainings for both these organizations.

As part of a professional practice Roma has worked extensively in the area of real estate in the last few years that has translated into involvement in issues relating to land reforms. Working in the area of human rights as an extension from her work in real estate and disability much of her work has involved interpreting the constitution and its applicability in various issues relating to citizens rights and states responsibilities. She was part of the expert group at the Ministerial Conference on 'Housing and Human Settlements' held in the Capital in December wherein the constitutional mandate and the Biwako Millennium goals were the focal point for nations to formulate a policy for providing this basic amenity to the marginalized sections of Society.

Dr. Amita Dhanda

Dr. Amita Dhanda, presently Professor and Head, Centre for Disability Studies, NALSAR University of Law, Hyderabad started her career as a professional researcher at the Indian Law Institute. Spending 15 years at this institute she specially looked at the Bhopal Litigation and undertook an analytical documentation of the Litigation in India in a book entitled “Valiant Victims Lethal Litigation”. Realising the overarching significance of subordinate legislation in the normative legal regime in India by working on two Referencers on Subordinate Legislation resulted in her writing the first Annual Survey on Central Subordinate Legislation in the Annual Survey of India an exercise she continued to do till she left the Institute in 1999.

She has a substantive interest in the field of public law and human rights with special reference to disability rights. Her doctoral thesis which undertook a critical appraisal of the laws relating to the mentally ill in India was the first effort in the country evaluating the human rights conformity of mental health laws. The thesis was later brought out as a book entitled “Legal Order and Mental Disorder”. Even as she worked on her thesis she wrote extensively on the inter-relationship between Law and Disability. This special research knowledge became the basis of the Supreme Court of India asking her to investigate and report on the condition of persons living with mental illness in the jails of West Bengal; and the Ministry of Social Justice and Empowerment asked her to chair the Committee which examined the amendment of the Persons with Disabilities Act 1995.

Dr Dhanda’s interest in the field of Disability Rights acquired an international dimension when she started to actively engage in the work of the United Nations Ad Hoc Committee negotiating the Convention on the Rights of Persons with Disabilities. Her research work significantly contributed to the negotiations on legal capacity. She has since then been commissioned by the Office of the Human Rights Commissioner to draft a legal handbook on ‘Legal Capacity’. She has also been engaged by the National Trust to prepare a draft amendment to the National Trust Act to bring it in conformity with the UNCRPD. She has also been doing a study on the Convention for the Ministry of Health. In pursuance of this abiding interest Dr Dhanda at present is working on two books on the Convention. One of these books undertakes a process oriented study of the Convention and the other examines the impact of the Convention on mental health laws.

Whilst disability remains an area of her primary interest she has written extensively on gender and has co-edited two books entitled “Engendering Law” and “Redefining Family Law”. And co-authored a book on inter-country adoption entitled “On their Own”. She has also worked around legal theory and interpretation

and with Justice M N Rao updated Bindra's Interpretation of Statutes besides co-editing a collection of essays entitled "Decolonisation of Legal Knowledge".

Even as research was the primary work demand of her job at the Indian Law Institute she, since the beginning took on teaching responsibilities and delivered regular lectures in the Diploma Courses in Administrative Law besides teaching and coordinating a course in Tax Law. After joining NALSAR, teaching became a primary work responsibility and she has taught mandatory courses in Law and Poverty; Jurisprudence; Administrative Law; Interpretation of Statutes; and elective courses in Judicial Process; Comparative Disability Jurisprudence; Law and Psychology and Justice Education and Pedagogy. She also teaches a course in Comparative Jurisprudence to the Masters students.

Position Papers

Status of the rights of the blind in India with reference to harmonisation of the Indian legal regime with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

By:

Prasanna Kumar Pincha
Senior Independent Consultant-
Development, Human Rights and
Disability, New Delhi

Clarifications

1. This paper which has been written purely from the perspective of the blind is without prejudice to the author's cross disability approach and activism emanating from the conviction that impairment-based discrimination and exclusion is a commonality which justifies collective action by persons belonging to all categories of disabilities through a common platform. The author also recognizes the specificities of different categories of disabilities and is of the opinion that both uni-disability and cross-disability organizations can and should co-exist and compliment each other in furtherance of the larger cause of persons with disabilities.
2. The list of issues and recommendations mentioned in this paper is only illustrative and not exhaustive.
3. Some of the recommended amendments which find mention in this paper can be brought about either by inserting overriding provisions in the Persons with Disability Act (PWD Act) itself which is, of course, a quick fix solution, or by amending the relevant laws. The author feels favourably disposed towards both so that we first have a legal tool through quick fix solution without having to lose much time and then keep lobbying with the government so that changes in the other laws may happen progressively.
4. While making recommendations/suggestions the author has not necessarily given the legal formulation for the simple reason that once a consensus on the content of what is sought for is reached, putting it into legal format by experts is not difficult.
5. From the perspective of the blind, comprehensive changes have to be made in the PWD Act. The author has generally not touched those of the existing provisions, or for that matter, those of the amendments proposed by the government (enclosed as annexure I) with which he agrees or which he thinks should remain as they are. He has talked about either modifications in the existing provisions or about provisions which are absent both from the existing Act as well as from the amendments proposed by the government and which therefore need to be incorporated or, provisions which may be done away with.
6. The author's perspective is that any talk of changes in the law should not be restricted only to acts of parliament or state legislatures but should also extend to rules, regulations, bye-laws and government circulars. This also makes a strong case for the inclusion of two over-riding clauses in the PWD Act as suggested under the caption 'Miscellaneous'.
7. The author presented this paper at a two-day consultative meeting with a group of blind persons belonging to diverse walks of life from various parts of the country. The said consultative meeting was held on 9th and 10th of Nov. 2009.

while the contents of the paper were highly appreciated and hence endorsed by the said group, some useful suggestions were put forth. The author has, in this paper, included some of those suggestions while some other suggestions according to the author, need not necessarily form part of the statute book. Thus the paper has been reworked accordingly. The author hereby tenders unqualified apology for omissions and commissions, if any, in the matter of incorporating in this paper, the feedback received from the said consultative process.

8. The author recognizes the fact that many suggestions made in this paper may also be as much relevant to persons belonging to other categories of disabilities as well, like suggestions in respect of representation to various academic and employment related fora , etc.
9. The use of the word “amendments” in relation to the PWD Act occurring in this paper should not be misconstrued to mean that the author is not in favour of an altogether new PWD Act. On the contrary, he is in favour of such a new PWD Act for reasons spelt out by him at an appropriate place in this paper.

Structure

This paper has been divided into 5 parts.

Part One mentions the objectives of the paper and sets the context.

Part Two deals with preamble, title and definitional issues in respect of the PWD Act and makes recommendations for amendment (also with reference to those proposed by the government) in the light of the UNCRPD.

Part Three first discusses issues and recommendations in respect of various thematic areas in relation to the PWD Act; and then, also seeks to make recommendations for amendments in some other key laws.

Part Four examines enforcement mechanisms related issues in relation to the PWD Act and makes recommendations for amendments.

Part Five puts forth some additional suggestions under the caption “miscellaneous”.

Part One: Objective and Context

Objective of the Paper

This paper seeks to facilitate critical consultative processes on the amendments to be brought about in the Persons with Disabilities (equal opportunities, protection of rights and full participation) Act 1995, hereinafter called the PWD Act or simply the Act, or the new Act in relation to the proposed PWD Act for reasons of brevity, and also in other relevant Indian laws so that they are harmonized with the United Nations Convention on the Rights of Persons with Disabilities, hereinafter called the UNCRPD or simply the Convention.

Context

It has been over two years since India has ratified the UN Convention on the Rights of persons with Disabilities. By this act of ratification, India, under the relevant international norms, has given a solemn commitment to the community of nations to implement the convention which is an international treaty, among other things, by harmonizing all its domestic laws and policies with the Convention. The letter and spirit of the Convention enjoins it upon the states parties to consult with and actively involve persons with disabilities in the decision making processes in respect of matters that affect their lives through their representative organizations.

Work for the blind in modern India took off from the late 1880s with the setting up of a blind school at Amritsar in Punjab and subsequently at Behala in Kolkata. Since then there was no looking back. It is indeed a matter of pride that the blind in India where perhaps the first amongst the disabled to have started collective self advocacy movement from the late 60s and early 70s of the last century. The cross-disability self advocacy movement in India, however started gaining momentum from late 80s and the early 90s of the century.

It is indeed a happy augury that India figures prominently on the list of countries which signed and ratified the UNCRPD pretty fast. As a necessary implication therefore, India is now under a pious obligation to harmonize all its domestic laws and policies with this convention.

It would be in the fitness of things on our part not to lose sight of the fact that the perspective of the Indian law on disability, hitherto, has been based on what a person with disability cannot do rather than on the basis of what she/he can do. Secondly, the Indian law incorporates the medical model of disability and is inclusive only selectively. Thirdly, Indian law, for all practical purposes, is welfare packaged as rights in relation to disability.

On the contrary, the UN Convention on the rights of persons with disabilities marks a significant paradigm shift in approaches and attitudes from viewing persons with disabilities as mere objects needing medical treatment and social protection to viewing them as subjects with human rights and fundamental freedoms and capable of asserting and securing them. The convention adopts a human rights model of disability which included but is not restricted to the medical component and goes way beyond and far deeper.

Another striking feature is that it is premised on the potential, skills, merit, abilities and contributions of persons with disabilities and is all encompassing in nature. It views persons with disabilities as part of humanity and human diversity and upholds the opinion that disability results from interaction of impairment with various barriers which hinder participation in society on an equal basis with others- hence the need for identifying and eliminating barriers and ensuring non discrimination and equality of opportunity, inter alia, by, apart from identifying and eliminating of barriers and obstacles, introducing affirmative action, reasonable accommodation, and universal and inclusive design of environments, goods, services and facilities etc.

In the light of the foregoing, the changes to be brought about in the Indian laws will have to be of fundamental and foundational nature and these changes must happen with the active involvement of persons with disabilities including the blind.

Part two: Preamble, title and definitional issues in respect of the PWD Act and recommendations for amendment (also with reference to those proposed by the government) in the light of the UNCRPD

Preamble

The preamble of the new Act should explicitly state, among other things that it is an Act to give effect to the provisions of the UN Convention on the Rights of Persons with Disabilities. Thus it may open with the words, “to give effect to the provisions of the UN Convention on the Rights of Persons with Disabilities to which India is a party: ...”

The preamble of the new act should further acknowledge that provisions based on the learnings that have accrued in relation to implementation of the existing act are also necessary.

Title

The PWD Act is based on medical model of disability while the UNCRPD seeks to adopt, introduce and incorporate the human rights-based model of disability which includes but is not restricted to the medical component and hence goes far beyond and way deeper. Therefore, the changes to be made in the extant PWD Act will have to be of foundational, fundamental and substantial nature. This underscores the need for a new Act which will replace the existing Act.

It is therefore, recommended that the current Act be replaced by an altogether new Act for example, in the manner the Juvenile Justice Act, 1986 was replaced by another Juvenile Justice Act, 2000.

Definitional issues and recommendations

It is felt in some quarters that persons who happen to be blind of one eye often get left out from the definition of either “blindness”, or “low vision”.

Hence, it is suggested that such persons be included in the definition of persons with low vision.

The matter came up for serious deliberation in the consultative meeting. The consensus seemed to be emerging around the view that persons who happen to be

blind of one eye are not so abled that they do not encounter any discrimination on the ground of disability nor are they so disabled as to deserve the benefit of certain provisions like those relating to reservations in jobs. Therefore, it was suggested that persons who happen to be blind of one eye be considered persons with disabilities for the purposes of safeguard against discrimination but not for the purposes of some other benefits like reservations in jobs, etc.

Reason for the above suggestion is that the convention puts forth a human rights based and inclusive definition of persons with disabilities.

While adoption of a human rights based definition of persons with disabilities is non-negotiable, it is also highly critical to guard against any possible dilution of this definition.

Hence, it is suggested that a mix of inclusive and yet enumerative definition of persons with disabilities is adopted in the new Act. We can import substantive elements of the definition given in the Convention and adapt it to address our concerns into the new Act. Likewise, the definition of disability should also be inclusive so as to stipulate that “disability” includes the following long-term physical, mental, intellectual and sensory impairments: [then mention the impairments like blindness, low-vision, etc.]

Besides, expressions which are defined in the Convention but not defined in the current PWD Act need to be defined in the new Act. For example, the amendments proposed by the govt. rightly include definitions of expressions like “discrimination on the basis of disability”, “communication”, “language”, “reasonable accommodation” and “universal and inclusive design”.

The reasons are obvious and hence, not elaborated here.

Another suggestion/recommendation is that it should be clarified in the new Act for the removal of any possible doubt that the forty percent criteria does not apply to blind persons and to persons with low vision since they are separately defined.

Some points to remember: Amendments proposed by Govt. do not conceive of replacing the current Act with a new Act; nor does the Govt. propose to amend the existing preamble referring to the UNCRPD. Besides, no change is proposed by govt. in the definition of persons with disabilities on the lines of the UNCRPD perspective.

Recapitulation of some key recommendations for amendments in the PWD Act

- Replace the current Act with a new Act;
- Incorporate an inclusive, yet enumerative definition of persons with disabilities and also of “disability” in consonance with the human rights based model of the UNCRPD;
- Count persons who happen to be blind of one eye as persons with disabilities

for the purposes of safeguards against discrimination;

- Clarify that percentage of disability related criterion does not apply to the blind and to persons with low vision.

Part three: Thematic areas: issues and recommendations

The discussion below is on issues around various thematic areas like:

- Prevention /right to health
- Education
- Work and employment
- Legal capacity and property rights
- Affirmative actions
- Accessibility
- Research and manpower development
- Recognition of institutions for persons with disabilities
- Social security
- Civil and political rights.

In other words, it covers social, economic, and cultural rights, and civil and political rights, and matters connected with and incidental thereto.

Prevention/Right to Health

Interestingly, the UNCRPD does not contain any provision in respect of prevention. It was argued during negotiations of this international treaty that a rights instrument need not contain any provision on prevention since such an instrument is in relation to the rights of a specific group which exist and will exist. It was further argued that incorporating a provision on prevention in a rights instrument like the convention would reinforce the stigma attached to disability and would perhaps send out a message as though existence of such persons was undesirable. Besides, primary prevention is against the spirit of the UNCRPD as it interferes with right to life enshrined in Article 10.

Hence, it is suggested that the section on prevention may be deleted. However, provisions for secondary prevention together with provisions for early detection and intervention must form part of the larger framework of right to health under an explicit provision in the new Act which, among other things, must provide for affordable, appropriate and gender sensitive healthcare services to the blind/disabled on an equal basis with others so as to harmonise the existing law with Article 25 of the UNCRPD. This also justifies the replacement of the expression 'Health Care' services which occurs in the amendments proposed by the government in the PWD Act with the expression 'Right to Health'

A new chapter (in the form of chapter 3A) on guiding principles proposed by the government is a good move; but it should not be subject to the limits of economic capacity and development as has been proposed by the government. Likewise, inclusion of a new chapter on rehabilitation proposed by the government is an attempt to harmonise the existing law with Article 26 of the UNCRPD on habilitation and rehabilitation.

Points to remember: Prevention does not figure in the convention since the convention is a rights instrument. A new chapter on guiding principles is sought to be introduced by government.

Recapitulation of some key recommendations for amendments in the PWD Act

Delete the chapter on prevention replacing it with ‘Right to Health’ which, *inter-alia*, should incorporate measure for secondary prevention, and also for affordable and gender sensitive quality health care services.

Do not qualify the chapter on guiding principles with the expression “within the limits of its economic capacity and development...”

Recommendation for amendments in other laws

Take onboard concerns of the blind/disabled in the proposed Right to Health Act and also in the proposed Right to Food Act.

Appropriately amend the Rehabilitation Council of India Act so as to enhance participation of the disabled including the blind in the management and programs of the Council. The reason for this suggestion is to ensure that expertise of lived experience of persons with disabilities is taken on board in line with the spirit of the convention. It is also important to incorporate explicit and mandatory provisions for including comprehensive component on Rights with Persons with Disabilities in the various RCI courses.

Education

Chapter five of the PWD Act deals with education. This chapter, like all the other chapters of the said Act read more like a set of programmatic activities; and, less like a legislation influenced and informed by the notion of absolute non-negotiable rights. Thus, the Act lacks the much desired rights flavour unlike the Convention which views education as a right, and not a concession. It enunciates the principle that among other things, education is a lifelong learning process.

Thus, the schematic or programmatic tone and tenor of the current PWDs Act has to give way to a strong and vibrant rights legislation.

Issues and suggestions

Experience tells us that in many cases, formal education of a blind child begins rather late in life compared to sighted children.

Hence, it is suggested that free and compulsory education must be ensured to a blind child which expression includes child with low vision for the purpose of this paper unless the context otherwise requires from 18 years to 21 years.

The above suggestion came up for serious discussion as some group members felt that education should be made available to the blind/disabled free of cost throughout their lives without any age limit. However, the suggestion of enhancement of age limit is made only in respect of formal education in addition to the suggestion for facilitating life-long learning for the blind/disabled in consonance with Article 24 of the Convention.

While all-out efforts must continuously be made to promote inclusive education, we can not lose sight of the fact that institutions and schools for the blind are here to stay for so many years to come on account of a variety of reasons. Therefore, there is a definite and distinct need to improve and strengthen such institutions and schools concurrently while promoting inclusion.

In view of this, it is suggested that a clear stipulation to the effect that institutions and schools for the blind will also be supported, strengthened and improved be made in the new Act. The amendments proposed by Govt. talk only of supporting institutions for persons with severe disabilities.

The relevant provision in the Convention which justifies the aforesaid suggestion stipulates that where required, education to persons with disabilities will be provided in specific environments, i.e., in environments that maximizes their academic and social skills.

Inclusive education, in order to be effective, must ensure inclusion at all levels.

Hence, the new Act must explicitly stipulate that inclusion shall be ensured at all levels, namely, infrastructure and necessary support systems, school management, teaching-learning level, evaluation, curriculum development etc.

Advancement in information communication technologies and systems has created a huge digital divide as far as the blind are concerned. Therefore, the blind are having a difficult time keeping pace with the sighted in the race of acquiring knowledge and information.

Hence, the new Act must stipulate, among other things, that the following will be ensured to the blind:

- A. proper training in assistive technology including in information communication technologies and systems;
- B. computers and screen reading softwares at affordable and subsidized rates;

- C. development of screen reading softwares in regional/local languages.
- D. availability of latest and the most advanced technologies and assistive devices.

The Convention does talk about providing equal opportunities to persons with disabilities and also about making available to them access to information communication technologies and systems and other assistive technology.

The amendments proposed by the Govt. do talk about making available books to students with disabilities; but it is crucial to make available books in formats that are accessible.

Hence the new Act should stipulate as suggested above.

Issues of the blind often get neglected or sidetracked for want of proper representation of their interests. This underscores the need for representation of the blind by the blind in various academic and other related fora.

Hence, it is recommended that the new Act must provide for representation of the blind through their representative organizations in various academic and other related for a at various levels including representation in the NCERT, UGC, SCERT, management levels of both central and state universities, central and state textbook production and publication agencies, The National Advisory Council to be constituted under the Right of Children to Elementary Education Act, 2009, etc.

The above recommendation is in line with the principle of full and effective inclusion and participation envisaged in the Convention.

Another important issue is in respect of teaching subjects like mathematics and science, etc. Such subjects must be taught to the blind.

It is therefore, suggested that the new Act must enjoin it upon the appropriate Govt. and the local authorities to also facilitate teaching of subjects like mathematics, among other things, by making available necessary aids, appliances, and equipment for the purpose. It may be further stipulated in the new Act that alternative questions may be set for blind candidates in the examination in place of questions requiring drawal of diagrams, maps, etc.

The above suggestion is in keeping with the principle of equality of opportunity and also of reasonable accommodation envisaged in the Convention. It is also in consonance with mandate of capability development enshrined in Article 24 of the Convention on education.

The provision for reservation of seats in Govt. and Govt. aided educational institutions should be shifted from the chapter on employment to the chapter on education.

The amendments proposed by the Govt. are silent about the education of the girl child with blindness/disability which deserves particular mention.

Hence, the new Act must stipulate that the appropriate Govt. and the local au-

thorities shall take particular care to ensure education of the girl child. This is in consonance with the principle of equality between men and women enunciated by the Convention.

Moreover, there is nothing in the proposed amendments in respect of incorporation of comprehensive inputs on rights of the blind in the syllabi of the teachers training programmes.

Hence, it is proposed that the new Act should explicitly provide for mandatory inclusion of comprehensive rights inputs on disability in the syllabi of the various teachers' training programmes like the BEd and MEd courses.

The above recommendations are in addition to those contained in the amendments proposed by the Govt. The author has also tried to point out wherever he disagrees with the said proposed amendments.

The author feels that the amendments proposed by the govt. in respect of higher and professional education, vocational education, training of teachers, non-formal education, should be retained without prejudice to the suggestions made in this paper, and, such retention should be to the extent that they are not in conflict with the said suggestions/recommendations. Besides, emphatic provisions to foster lifelong learning and capability development by the blind/disabled should also be incorporated in the new act.

Some points to remember: The proposed amendments do not speak the language of rights legislation. Quite like the existing Act, they also are more in a programmatic or schematic mode. The danger is that when some benefits are to be made available under certain schemes to be formulated by the appropriate Govt. disparities are bound to crop up since each state Govt. will form its own schemes. Hence, there will be no uniformity.

Recapitulation of some key recommendations for amendments in the PWD Act

- Incorporate rights language;
- Enhance upper age limit for free, formal and compulsory education for the blind;
- Promote inclusive education but not at the cost of the blind schools;
- Ensure representation of the blind on various academic and related fora;
- Promote and facilitate teaching of subjects like mathematics and science, etc for the blind;
- Address the digital divide, among other things, by capacity building of the blind;
- Ensure availability of latest and most advanced assistive technology as well at affordable cost;

- Provide books in accessible formats including in Braille, large print, audio;
- Ensure education of the blind girl child;
- Include component on the rights of the blind in the teachers' training programmes, professional degree courses, etc;
- Education to be made available as a matter of right and not as a matter of concession.

Recommendations for Amendments in other Laws

- Amend the relevant provisions of the recently passed Right of Children to Free and Compulsory Elementary Education Act, 2009 in the following manner:
 1. Explicitly include children with blindness in the category of “disadvantaged children” as defined in the said Act.
 2. Include schools for the Blind in the definition of “School”.
 3. Provide for representation of the interests of the blind by the blind on the National Advisory Council to be constituted under the said Act.
- Amend all the relevant statutes under which various state and central universities and other academic bodies have been set up in order to provide for representation of the interest of the blind by the blind themselves. Alternatively, insert overriding clause in the PWD Act itself for this purpose as indicated above

Work and Employment

Chapter six of the existing PWD Act is on employment. A comparative reading of this chapter with the UNCRPD reveals that the Convention adopts a highly rights oriented and broader approach as it talks about both work and employment. Evidently, this has far reaching implications.

Issues and Suggestions

Provisions relating to identification of jobs provided for in the existing Act as well as in the proposed amendments restrict the scope for the blind as it is mandatory. Hence, it is suggested that the relevant provision should either be abolished altogether or may be retained with explicit stipulation that such identification is intended only to serve as a guiding document.

This, if done, will be in conformity with the principles of non-discrimination, and equality of opportunity envisaged in the Convention. Another rationale in favour of this suggestion is that nobody under the sun, whether blind or sighted can do or perform every task. So, why mandatorily identify posts only for the disabled/blind? If one is able to prove to the satisfaction of a given selection panel for an

interview that one can perform a task, what more is required?

Some participants, in the course of the group specific deliberations argued that sometimes, identification of jobs has helped some blind people in securing jobs. However, there appeared to be a general agreement that the list of identified jobs, to be updated from time to time, should only serve as a guiding document.

Another very crucial issue is in respect of reservation in Govt. jobs/vacancies. The proposed amendments seeks to explicitly bifurcate the one percent quota for the blind by proposing that half a percent of this one percent should be reserved for persons with low vision.

It is therefore, recommended that the quota for the blind in the existing Act should not be touched; and, an additional half a percent quota for persons with low vision be stipulated in the new Act. It would be in the fitness of things for us to note here that amongst all categories of persons with disabilities in India, the population of the blind is the largest. It is further suggested that reservation should not be restricted only in respect of the identified posts as it now is; rather, reservation against all posts should be stipulated.

It is further recommended that explicit stipulation be made to the effect that the benefit of reservation shall be available in respect of all categories of jobs/vacancies including in the Indian administrative and other services.

Our experience corroborates the oft heard complaint that for all practical purposes, blind persons do not get the benefit of even the existing one percent quota against vacancies of both the central Govt. as well as the state Govts. And some other categories of disabilities get more than what is due to them under the existing provisions. This underscores the need for reviewing the recruitment status from the perspective of different categories of disabilities in order to address inter-disability imbalances in the recruitment ratio.

Again, within the category of the blind itself, representation of blind women is marginal. This justifies the need for provision of launching special drives, from time to time, for recruitment of blind women.

It is also suggested that benefit of reservation in promotion should also be provided for in the new Act exactly in the manner in which such benefit is made available to the SC and ST communities.

It is further recommended that Section 47 of the existing Act should be inserted in the form of a new section in the chapter on employment with a modified version. Sub-section [2] of Section 47 should stipulate similar benefits to a person as is given by Subsection[1] of that Section so that a supernumerary post is created for such person if it is felt that he/she is likely to be hindered by reasons of his/her disability/blindness in the performance of his/her duties. It should further be stipulated that such a supernumerary post will remain till a suitable substantive post is found for him/her. The new Act should also lay down a fair mechanism to determine whether and how a person can not discharge the duties of a higher post

by reason of his/her disability/blindness. Such a mechanism must stipulate provision for reasonable opportunity to such a person of being heard. Besides, the word “merely” occurring in sub-section 2 of section 47 should be deleted.

The above suggestions are all in harmony with various principles of the Convention including principles of non discrimination, and equality of opportunity, and also those relating to accessing justice. They are also in harmony with the relevant article on right to work and employment enshrined in the Convention.

The existing Act does talk about non-handicapping work environment, but not with the kind of emphasis with which the Convention talks about just and favourable conditions of work.

In view of this, the following provisions have to be added to ensure just and favourable conditions of work:

- A. Distinct stipulation that no person shall be discriminated against on the ground of disability in matters relating to all forms of employment.
- B. Friendly, accessible and inclusive environment where a blind person can function to the best of her/his potential; and,
- C. Just, favourable, and non-discriminatory conditions of service including equal pay for equal work, etc. and
- D. provision for reasonable accommodation by the employer.

The new Act must also recognize the right of blind workers to join or form trade unions.

The above suggestions are in harmony with the Convention.

The world is moving at a faster pace. Market economy has assumed a dominant role especially, following the emergence of neo-liberal trends. This offers both opportunities and challenges to the blind. There is a definite and distinct need to continuously enhance the employability of the blind.

Hence, the new Act should provide for regular and updated programmes aimed at enhancing employability of the blind both with the Govt. as well as in the open market. The need for sensitization of employers regarding the skills, merit, capability and potential of the blind should also be addressed by the new Act. Provisions for incentives for encouraging self-employment should also be incorporated with greater emphasis.

The new Act must also address the issue of huge backlog of vacancies to be filled by persons with disabilities including by the blind. A mechanism for fixing responsibility together with penal provisions should be envisaged.

A very important input in respect of private sector employment came from the group specific consultative process. It was felt that the private sector companies should also employ persons the blind/disabled. After due deliberations, there was a consensus around the suggestion that suitable amendment should be brought about in the Companies Act 1956. The said proposed amendment should explic-

itly stipulate that no application for registration of a company under the said Act shall be entertained unless it spells out in writing the non-discrimination and other positive measures the company seeking registration has, and will adopt for ensuring employment to persons with disabilities on an equal basis with others. It should also be made incumbent for all companies to file annual returns on compliance with disability related norms.

Amendments which are proposed by the Govt. in respect of employment and about which the author of this paper has not said anything may generally be retained in the form in which they are proposed.

Some points to remember: Unlike the existing PWD Act, the UNCRPD takes a wider view of the matter as it talks about work and employment and also deals with the substantive issue/theme more comprehensively, and in greater depth. It covers all the relevant dimensions of the matter.

Recapitulation of some key recommendations for amendments in the PWD Act

- Impart rights flavour to the formulations of the relevant provisions;
- Do not make identification mandatory for recruitment and for reservation;
- Explicitly allow reservations in all categories of jobs;
- Provide reservation in promotion as well, as is given to the SC and ST communities;
- Adopt a modified version of section 47 of the existing Act in the chapter on employment in the new Act;
- Ensure just and favourable conditions of work including non-discriminatory conditions of service;
- Bring in measure for enhancing employability of the blind in all sectors of the economy;
- New Act to address issues around huge backlog of vacancies;
- Address inter-disability imbalances in the recruitment ratio;
- Ensure that blind women get their share in the employment;
- Recognize right of the blind workers to form or join trade unions;
- Bring in self employment measures; etc.

Recommendations for amendments in other laws

- Amend the All India Services Act. This Act seeks to regulate the recruitment and the conditions of service of persons appointed to the all India services common to the Union and the States.
- It is suggested that there should be provision made in this Act for 3 % reserva-

tion in all services covered by this Act for persons with disabilities including the blind.

- Amend the Act relating to Equal Pay for Equal Work Act so as to include women with blindness.
- Amend the Beedi and Cigar Workers (conditions of employment) Act, 1996. This is an Act to provide for the welfare of the workers in Beedi and Cigar establishments and to regulate the conditions of their work and for matters connected therewith.
- Many Beedi and Cigar in the private sector may employ blind persons directly or through contractors and discriminate against them in the matter of equal wages with other employees and even maltreat them. It is therefore suggested that an explanation in the relevant provision be appended so as to clarify that for the purposes of the said Act the expression “employee” shall include any person with disability/ blindness.
- Amend the Industrial Disputes Act so as to ensure that in a dispute involving a blind workman, the competent authority shall keep the blindness of the person in mind while deciding on the case.
- Amend the Factories Act so as to make it obligatory for the factory owner to comply with accessibility standards and to ensure blind friendly environment for the benefit of blind worker so that they are able to work to the optimal level of their potential.
- Amend the Workman’s Compensation Act to ensure that workman with blindness/ disability is not arbitrarily discriminated against while determining compensation.
- Amend the Child Labour (prohibition and regulation) Act 1986 to ensure required preventive measure and particular care for blind children employed in the unprohibited occupations and processes.
- Amend the Companies Act 1956 making it mandatory for companies seeking registration to adopt non-discrimination and other measures in relation to the blind/disabled; also, making it mandatory for all registered companies to comply with all disability related norms including non-discrimination measures and furnish returns thereon annually.

Legal capacity and property rights

Article 12 of the UNCRPD is a case in point. Neither the existing Act nor the amendments proposed by Govt. include any provision which will harmonise with the said Article of the Convention.

Speaking from a purely legal perspective, the Indian constitutional and legal regime does not impute or attribute incapacity to blind persons. However, experientially, many blind persons feel that in actual practice, incapacity is attributed to

them when, for example, the banks refuse to open a blind person's account on an equal basis with others; or when such banks refuse loan to blind persons owing to their blindness; or when they do not allow banking facilities like the cheque facility, ATM facility, net banking facility, or locker facility on an equal basis with others. Such attribution of incapacity in practice is also evident when a blind person is not allowed to stand a surety for others, for example, for obtaining bail, etc. or, when a magistrate refuses to accept a document duly attested by a blind gazetted officer who is competent to attest such documents. This explains why the author is proposing a new chapter in the new Act on legal capacity and property rights. For one thing, instances of blind persons having to suffer deprivation of property rights are also reported.

Hence, the new Act should explicitly recognize the blind as persons before the law, and should further recognize that such persons have the legal capacity to act on an equal basis with others. The new Act should also stipulate that blind persons have the right to own and inherit property, manage and control their own financial affairs, and can acquire, hold, or dispose of their property through sale mortgage, gift, etc. on an equal basis with others. It should also be explicitly provided that no bank shall refuse loan to a blind person on the ground of his blindness. These provisions should be inserted in the new Act in the form of a new chapter as stated above.

Some points to remember: The amendments proposed by the Govt. do not seek to harmonise the existing Act with Article 12 of the Convention albeit such harmonisation is exceedingly crucial to the blind.

Recapitulation of key recommendations for amendments in the PWD Act

- Recognize the blind as persons before the law having full legal capacity to act;
- Recognize their right to own and inherit property, etc.

Recommendations for amendments in other laws

- Amend the Indian Contract Act: Although the Indian Contract Act does not render blind persons incompetent to contract, inclusion of enabling provision in the relevant section of the Act is called for in view of the fact that sometimes, doubts are expressed in some quarters in respect of competence of the blind to enter into a contract and the blind have to suffer in the bargain. Therefore, an enabling provision in the form of an explanation clarifying that a person shall not be deemed incompetent to enter into a contract by reason of her/his blindness should be included.
- Amend the Transfer of Property Act: Similar enabling provision should be incorporated in the Transfer of Property Act stipulating that a blind person shall have the right to acquire, hold, and dispose off property on an equal basis with others.

- Amend the Indian Succession Act: Concerns are expressed that blind persons are sometimes deprived of their legitimate rights relating to inheritance and this is done through bequests/ wills. This happens from the ill-placed belief that blind persons cannot own or manage property. Hence there is definite and distinct need for amending the laws relating to testamentary succession so as to make it more blind friendly and blind-just. Therefore it is suggested that an embargo should be imposed on bequests/wills which will deprive a blind person of his right to succession of the property which she/he would have otherwise inherited but for a given bequest/ will. However, there should be no bar to giving more to the blind/disabled through will/bequest. This safeguard is intended on the lines of safeguard enjoyed by women. The amended version should stipulate that no person shall make a will depriving a blind person of her/his right to inherit a certain property which she/he would have otherwise inherited but for the will.

Affirmative Actions/Right to Shelter and Housing

The Convention refers to affirmative action as one of the various ways to eliminate discrimination. The PWD Act also has a chapter on the subject which contains various measures many of which are yet to be implemented effectively in many places.

While generally agreeing with the amendments proposed by the Govt. the author suggests insertion of a Section or a subsection at the relevant place stipulating that, except as otherwise provided in this Act, all the concessions available to the ST and SC communities shall also be available to persons with disabilities insofar as they are relevant to them and this shall be without prejudice to the current entitlements and benefits which they are getting under any law or any regulation for the time being in force provided that the entitlements and benefits which such persons are getting shall not be less than what they may get as a result of this provision.

It should be made obligatory for the Deputy-commissioner/deputy-collector of every district to submit a half-yearly report to the state Commissioner, disabilities, and also to the Chief Commissioner disabilities in prescribed form containing the progress in implementation of affirmative action measures in her/his district giving details, among other things, of preferential allotment of land to the blind including the blind women at concessional rates as provided for in the Act so that, among other things, concerns in respect of right to shelter/housing are appropriately addressed. This explains why section 43 of the existing PWD Act should be amended so as to ensure preferential allotment of land as well as preferential allotment of house/apartment/shop at concessional rates.

Another provision stipulating exemption from court fee stamp including in respect of purchase/sale of immovable property by blind persons, instituting legal proceedings in the court by the blind/disabled, etc should be included in the relevant law.

Another suggestion of some significance was put forth during the group specific consultations. It was suggested that comprehensive disability rights inputs should be mandatorily included in the syllabi of the various professional courses, such as, engineering, law, management, medical, mass communications, etc. this, if done, would be a significant step towards fulfilling the UNCRPD mandate of mainstreaming disability. It is important, for example, for a civil engineer to understand the importance of universal and inclusive design of buildings, or, for that matter, for a lawyer, to internalize disability rights.

Some points to remember: affirmative action is one of the tools for eliminating discrimination.

Recapitulation of key recommendations for amendments in the PWD Act

- Treat the blind at par with Scheduled Caste and Scheduled Tribes communities in matters of affirmative action ensuring that no disadvantage accrues to them and also ensuring continuance of current advantageous provisions and ensuring further that this provision shall not debar the appropriate Govt. from giving more to the blind.
- Provide for exemption from payment of court fee stamp for purchase/ sale of immovable property by blind persons.
- Extend the benefit under section 43 of the existing Act so as to ensure preferential allotment of land, house/apartment, and shop at concessional rates.
- Mandatorily include comprehensive disability rights inputs in the syllabi of the various professional courses, such as, engineering, law, management, medical, mass communications, etc.

Recommendations for Amendments in other Laws

It is not difficult to understand that since a blind person has to incur additional expenses arising out of her/his blindness, she/he can not ensure for herself/himself the same level of well-being with the same amount of money as a non-disabled sighted person can. Therefore, it is recommended that the Income Tax Act should be suitably amended to substantially raise the upper taxable limit upto rupees five lakhs; and, this should be subject to revision from time to time. The author is not recommending complete exemption from payment of tax as is the case with some tribal communities who are not required to pay income tax for the income accruing to them from work in their own geographical territory. The author feels that since the blind assert the rights of a class one citizen, they should also assume the responsibilities of a class one citizen. However, some relief can be provided for reasons stated above. Likewise, all the state Govts., like the central Government, should exempt the blind from payment of professional tax. Another amendment in the Income Tax Act should be brought about whereby making it optional for the

blind/disabled to file income tax returns if their annual income does not reach the taxable limit. This provision is suggested in the light of the existing provision that any person whose income exceeds rupees one lakh and ten thousand is obliged to file income tax returns. Further, provisions easy filing of income returns should also be introduced for the blind/disabled whose annual income exceeds the taxable limit.

Further, appreciating that the blind experience any number of limitations and barriers in accessing reading material and information and communication, it would be expedient to appropriately amend the relevant cyber/internet related laws and regulations to ensure that they are able to avail internet services at subsidized rates. Likewise, there should be provision for concessional facilities in respect of telecommunication services including the mobile phone service. Therefore, relevant laws and regulations should be amended accordingly.

In order to ensure international cooperation as mandated by Article 32 of UNCRPD, the Foreign Contribution Regulation Act 1976 should be amended to stipulate that no non-profit, non-governmental international agency shall be granted registration under the said Act unless it undertakes to comply the disability related norms and submits in writing annual returns thereon unless such agency/organization has sought previous exemption for this purpose from the Chief Commissioner, Disabilities.

[Note: The above suggestions/recommendations may demonstrate a tilt towards a concessionist approach. However, the author humbly submits that persons with disabilities come in the category of several groups like the SCs and the STs who have a history of marginalization and exclusion. This explains why some relaxation, for the present, are deemed necessary in order to enable these groups to come at par with others. Besides, persons with disabilities require greater amount of resources compared to the non-disabled for ensuring to themselves the same amount of comfort and well-being. The author wishes to express the hope that a time will come when these relaxations will get rendered redundant].

Accessibility/Personal Mobility/Non-discrimination

Article 9 of the Convention makes comprehensive provisions for accessibility specifying in no uncertain terms the objective sought to be achieved by such accessibility measures. On the contrary, the PWD Act takes a very narrow view of accessibility limiting it only to road, built environment, transportation and Govt. service.

The author would propose the following new additions to what the Govt. has proposed:

Replace the caption of chapter 8 of the current Act on non-discrimination with “accessibility and personal mobility”. This will harmonise with Article 9 of the Convention and will also enable us to suggest a new chapter/section on non discrimination.

The new Act should stipulate that the purpose of accessibility is to enable persons with disabilities including the blind to access, use and enjoy all human rights and fundamental freedoms on an equal basis with others. It should further stipulate that accessibility shall be ensured to the blind in all walks of life including in the following areas: [mention the areas].

From the perspective of the blind, in addition to what is being proposed by Govt. four areas emerge as outstanding.

Web accessibility: provide for mandatory compliance with accessibility standards including web content accessibility guidelines 2.0 or other more advanced and improved guidelines which may be developed from time to time. This will help bridging the digital divide.

Accessibility to published material: The new Act should stipulate that notwithstanding anything contained in the Copy Rights Act, 1957, no permission from the publisher or from any other authority shall be required for converting published material which is in the public domain into standard accessible format including in the Daisy format for further conversion into Braille, audio, etc. for distribution amongst the blind and the print disabled. This will help maintain balance in the knowledge ecology.

Accessibility to currency notes: The new Act should make a provision ensuring designing of currency notes in such a way that the blind are able to identify the denomination of a given note and use the currency notes efficiently.

Mobility: Mobility promotes access and, among other things, enhances employment opportunities for the blind. Therefore, the new Act should provide for designing, producing, developing and distributing mobility aids for the blind; and such mobility aids should be affordable, accessible, acceptable, available and adaptable. and It should also make provisions for mobility training of the blind and also for training of trainers.

Some points to remember: The existing Act, unlike the convention takes a very narrow view of accessibility and does not touch matters which are crucial to the blind.

Recapitulation of some key recommendations for amendments in the PWD Act

- From the perspective of the blind, provide for addressing the digital divide,
- Maintain knowledge ecology,
- Ensure accessibility to currency notes,
- Ensure effective mobility related provisions,
- Replace the chapter on non-discrimination with a chapter on accessibility and personal mobility.

Recommendations for amendments in other laws

- Amend the relevant Cyber Laws and/or laws relating to information technology so as to ensure compliance with Web Content Accessibility Guidelines 2.0 or other more advanced guidelines which may be developed from time to time in relation to all government websites and also provide for incentivizing private sector to follow the same.
- Amend the Copy Right Act, 1957, so as to stipulate that no permission from the publisher and/or copyright holder shall be required in respect of any published material which is in the public domain for converting that publishes material into standard accessible format including the daisy format for further conversion into Braille, audio, or large print for distribution to the blind and the print disabled.
- Amend relevant traffic related laws and regulations so as to provide for sensitization of vehicle drivers and pedestrians on different aspects of mobility of blind persons.
- Amend the currency related laws so as to make it obligatory for the reserve bank of India to design, develop and circulate currency notes the denomination of which is identifiable by a blind person.

Research and Personpower Development

Thankfully, the relevant chapter in the PWD Act gives only an illustrative (and not exhaustive) list of areas where research would be promoted.

The author would only suggest that the expression “manpower” should be deleted and replaced by the expression “person power” so as to make this provision gender neutral.

Points to remember

Fortunately, the existing act only mentions illustrative list of areas where research and development is to be promoted.

Recapitulation of some key recommendations for amendments in the PWD Act

- Replace the word manpower with the word person power in order to make the relevant provision gender neutral.

Recognition of Institutions for persons with disabilities

This chapter may be deleted to allow less bureaucratization and more voluntary involvement. We already have the Rehabilitation Council of India to take care of developing cadres of trained person power.

Social security

The author generally agrees with what has been proposed by the Govt. Interestingly, the word “rehabilitation” has been defined; but the word “habilitation” has not been defined.

To harmonise with the principle of non discrimination and equality, it should be clearly stipulated that no discrimination including charging of additional/extra premium shall be made against the blind in matters of insurance of all kinds by insurance corporations and companies. Uniformity of payment of unemployment allowance across the country should be stipulated.

The amendments proposed by the government include provision for creation of a national fund for the benefit of persons with disabilities. While this is a good move, it is critical to ensure active participation of persons with disabilities including the blind in the management and administration of this fund. This, if done would be in consonance with the principle of full and effective inclusion and participation enshrined in the UNCRPD.

Points to remember

Proposal for creation of a National Fund is a good move.

Recapitulation of some key recommendations for amendments in the PWD Act

- Ensure adequate participation of the blind/ disabled in the management and administration of the proposed national fund.
- No extra premium from blind/ disabled persons should be realized.
- Ensure uniformity of the amount of payment of unemployment allowance across the country.

Recommendations for amendments in other laws

- Amend insurance related laws and regulations which are discriminatory and which charge additional premium from the blind/ disabled policy holders. Debar such additional levying/charging of premium. In short, make the insurance related laws non-discriminatory.

Civil and political rights

The current Act as also the amendments proposed by Govt. are all almost silent on the civil and political rights of the disabled including those of the blind. Nearly nothing is proposed by Govt. in respect of Articles beginning from Article 10 upto Article 23 of the Convention.

One happy aspect of the matter however, is that in the author’s judgment, the

blind, by and large are able to secure many of the civil and political rights with some exceptions like the right to seek, receive, and impart information, right of secrecy of ballot while exercising their franchise, etc. Nevertheless, the following suggestions are worthy of consideration.

Stipulation to the effect that all the polling booths for elections would be made accessible and that all the EVMs must bear Braille markings, a blind voter must be furnished with a list of candidates in Braille and must get manifestos of major political parties in accessible formats etc. should find a mention in the new Act. This will harmonise with the right to participation in public and political life enshrined in the Convention.

The new Act must contain provisions for accessing justice by the blind. Such provisions should include: Availability of case related material in accessible formats; availability of live assistance where required; availability of free legal aid; other age appropriate provisions.

A specific chapter on non discrimination should be inserted in the new Act. This should clearly stipulate that no person should be subjected to discrimination of any kind on the ground of her/his blindness/disability. It should further stipulate that non discrimination can be achieved, among other things, through affirmative action, by identifying and eliminating barriers, and by introducing the principle of reasonable accommodation and universal and inclusive design of environment, goods, services, and facilities, and programmes. Persons who happen to be blind of one eye should be considered as persons with disabilities for the purposes of safeguards against discriminations.

The inclusion of a chapter under the caption “Rights to life and liberty” incorporating all these rights can be considered. It would also be necessary to incorporate provisions of protection during situations of risk and humanitarian emergencies in keeping with article 11 of the convention. No doubt, all this is going to be a challenging task, particularly, from the perspective of other categories of disabilities.

It is also critical to incorporate in the new Act a stipulation making it incumbent for private entities rendering services which are open for or provided to the public to universally and inclusively design such services. This is necessary to harmonise with articles 4, 9, 20, and 21 of the Convention on general obligations, accessibility, personal mobility, and freedom of expression and opinion and right to seek, receive, and impart information respectively.

Some points to remember: Civil and political rights do not find much mention either in the existing Act or in the amendments proposed by the Govt. The Convention, on the other hand, dwells on these rights comprehensively.

***Recapitulation of some key recommendations
for amendments in the PWD Act***

- Make EVMs accessible;
- Furnish list of candidates in accessible formats;
- Ensure full and effective access to election manifestos of major political parties;
- Facilitate accessing of justice;
- Incorporate a separate chapter on non discrimination;
- Consider adding a new chapter in the new Act on rights to life and liberty; ■ Ensure that private entities rendering services to the public universally and inclusively design such services;
- Count persons who happen to be blind of one eye as persons with disabilities for the purpose of ensuring to them safeguards against discrimination on ground of disability.

Recommendations for amendments in other laws

- Amend the Protection of Women from Domestic Violence Act so as to explicitly include blind/ disabled women. This is required in order to harmonise with the provisions mentioned in article 15 and 16 of the convention respectively. They relate to freedom from torture, inhuman, degrading or cruel treatment and punishment; and freedom from exploitation, violence and abuse.
- Amend the child related laws including the Juvenile Justice Act, 2000, particularly so as to harmonise with article 15 and 16 of the convention in respect of freedom from torture; and freedom from exploitation, violence and abuse.
- Amend the relief codes of various states for accommodating concerns of the blind/disabled. Also amend the national disaster management act and similar state level acts to afford adequate representation to the blind/disabled on the national and state level disaster management authorities.
- Besides, enabling explicit provisions should be stipulated in the Indian Evidence Act through an amendment so that the blind/disabled can give witness, etc.
- Appropriate law should be amended to ensure flexibility in terms of territorial jurisdiction in legal proceedings involving the blind/disabled.
- Appropriate amendment should also be brought about in the relevant law to ensure that cases of the blind/disabled are listed in the category of ‘fast track’ cases as is done in case of senior citizens to ensure expeditious disposal.
- Legal Services Authorities Act should be amended to ensure exemption of court fees stamps, etc.

- The relevant law requiring various electronic media channels to allot some space for social sector issues should be so amended as to make it obligatory on the electronic media to generate awareness on disability rights issues.

Part four: Enforcement Mechanisms in relation to PWD Act

Article 33 of the Convention provides for national monitoring and implementation mechanisms. The amendments proposed by the Govt. suggest creation of coordination bodies at the national, state, and the district bodies though with a new nomenclature as these bodies with the exception of the district level body did exist earlier. The national and the state level bodies also have executive bodies. District level committees are now being proposed by Govt. These bodies, as per the Govt. proposal will now be known as the national policy advisory board and at the state level as the state policy advisory board. Besides, there is a chief Commissioner, Disabilities at the national level, and a Commissioner, disabilities, at the state level.

While generally and presently agreeing with the amendments proposed by Govt., The author puts forth the following suggestions:

These policy boards both at the national and the state levels, and the district committees and also the executive committees at the national and the state levels should be so composed that half of the total strength of such committees comprises representatives with disabilities, and within that, the blind should be represented in proper and fair proportion. Those who represent on such committees should not be persons who are associated with organizations concerning disability; rather, they should be representatives of organizations of persons with disabilities including those of the blind. The amendments suggested by Govt. leave room for the apprehension that the spaces meant for the genuine representatives of persons with disabilities may be hijacked by non genuine persons. The idea should be to afford representation to organizations of the disabled. If no such organization is available, a suitable person with disability should be chosen for the purpose.

While the proposed amendments rightly seek to enhance the quasi judicial powers of the Chief Commissioner and the Commissioners, it would also be very much desirable to stipulate in the new Act that orders passed by chief commissioner, or for that matter, by the commissioner are binding on all the parties concerned. The chief commissioner or the commissioner as the case may be should be a suitably qualified person with disability

The recommendation of the Amita Dhanda committee constituted way before the adoption of the UN Convention in respect of setting up of a disability anti-discrimination tribunal still holds good.

Points to remember

The Convention very strongly talks about active involvement of persons with disabilities in the monitoring and implementation processes.

***Recapitulation of some key recommendations
for amendments in the PWD Act***

- Stipulate adequate representation of persons with disabilities including fair representation of the blind on the national, state and district level bodies in such a way that half of the membership is of persons with disabilities.
- Orders passed by the chief commissioner or the commissioner as the case maybe should be binding on all concerned.
- Chief Commissioner/ commissioners should be persons with disabilities.

Part five: Miscellaneous

Recommendations for Amendments in the PWD Act

It is further suggested that two specific sections, one in respect of women with disabilities, and the other in respect of children with disabilities including blind women and children should be added in the new Act on the lines of Articles 6 and 7 respectively of the Convention.

Besides, it is also suggested that representatives of women with disabilities including those of blind women be made a part of the National Women's commission and the state level Women's commissions. This can be done either by incorporating overriding clause in the PWD Act; or alternatively, by amending the relevant statutes. This will be in consonance with the all-encompassingly inclusive nature of the Convention.

The harmonisation task leaves us with two choices. One choice is that we harmonise all the relevant laws, a process which is time consuming but if carried out, will register our presence everywhere. The importance of this lies in the fact that normally, officials do not read the PWD Act. The other choice, however, is that we include overriding clauses in the PWD Act itself. The advantage of this choice is that it will happen at a faster pace and will also afford to our rights the much needed legitimacy. The author feels that we should include overriding clauses and keep lobbying for explicit inclusion in all the laws which have a bearing on the rights guaranteed by the Convention.

For the time being, the author would restrict himself by suggesting the inclusion of the following overriding clauses in the new Act in order to harmonise the existing Act with Article 4 of the Convention on general obligations; and, this is both in addition to and without prejudice to the other suggestions made by him elsewhere in this paper:

1. Notwithstanding anything contained in any law for the time being in force, any act or omission done or committed in contravention of the purpose, spirit and values of the UN convention on the rights of Persons with Disabilities to which India is a party shall be void in law.
2. Any law for the time being in force which is inconsistent with the UN Convention on the Rights of Persons with disabilities to which India is a party shall, to the extent of such inconsistency be void.

Amendments in the Constitution of India: The Constitution of Indian is the fountain from where all the laws of the land flow. In other words, the laws of the land acquire legitimacy if they are compatible with the Constitution. Following amendments are suggested in the Constitution of India for strengthening non dis-

crimination and for promoting equality of opportunity for persons with disabilities including the blind:

- Explicitly include “disability” as one amongst the various prohibited grounds of discrimination in article 15 and article 16 of the Constitution
- Since article 41 of the constitution which is a part of the directive principle of state policy juxtaposes “disablement” with old age, sickness, etc., many blind people resent this juxtaposition on the plea that it gives the impression as though blindness is synonymous with illness or old age. Therefore, it is suggested that separate provisions for persons with disabilities be made in the Constitution through an amendment in respect of work and public assistance etc. and such provision should also introduce the principle of reasonable accommodation and universal and inclusive design.
- The Constitution of India should explicitly recognize Braille as a script on the lines of Devnagiri, and sign language as a language on the lines of other languages.
- Disability, through an amendment in the Constitution should be brought under the concurrent list. At the moment it is on the state list in entry no. 9 of schedule 7 of the Constitution of India.
- It is further suggested that the blind/disabled should, through a constitutional amendment be allowed representation in the union parliament, in the state legislatures, and in the local level bodies of local self-governance.

**Position paper on the Harmonization of
the Laws in India with the United Nations
Convention on the Rights of Persons with
Disabilities in connection with the Rights
of the Hearing Impaired**

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Structure

- Part I of this paper deals with the persons with disabilities act and the amendments required to bring the provisions therein in line with the provisions of the united nations convention on the rights of persons with disabilities ('the UNCRPD');
- Part II of the paper deals with amendments required in other laws in order to bring them in conformity with the UNCRPD;
- Part I of the paper follows the format of drawing from the relevant provision in the uncrpd in order to suggest a corresponding change in the legislation in india along with remarks on the subject;
- Part II of the paper follows the format of discussing the need for the change in the relevant law and suggesting a proposed amendment in order to bring the law in conformity with the provisions of the uncrpd.

Introduction

The legal status of the disabled persons in India has historically been rather in question. The existence of a fairly large disabled population has always been known though most people have always been uncomfortable with acknowledging this. The progress towards full participation and active citizenship of the disabled population of the country has been hampered by a number of factors over the years, not the least of which is the patent paternalistic culture and society in which we live where the rights of any one are routinely infringed by power structures and hierarchies that have been in place since India exists. In a situation then where rights of the individual and independent living constitutes a break with the broader cultural and social realities, the struggle of disabled people to have their own “rights” accepted into daily life has been an uphill one. When I say this I mean, that even well meaning members of society were, and for the most part still are, locked into the ‘charity’ paradigm of development.

Society at large has after all its own conscience and at the end of the day the most “needy” looking disabled persons have always been the ones to get the most sympathy and the most attention from the public. The Disabled community of India, though it is not necessarily a physical community with the hallmarks and essentials of any other community is nevertheless a community of sorts and as such has a certain cohesion as is expected of any other community. People who are privileged through education, wealth, rank, and other social qualifiers have been the ones, who on the cutting edge of the community, as in any community, lead the way for change and reform. Despite their efforts the issues of the community have not changed much and will likely for the immediate future remain the same as they have been in the past, particularly for the vast majority of the rural disabled populations.

Till the early nineties when the Govt and disabled people combined to come up with a PWD ACT the idea of disabled people and rights had not caught on at all. It is interesting to note that though the Act has been in force for 14 years the actual paradigm shift and the approach towards a rights based model has still not permeated the country, indeed many organisations are still stuck in a charity mode due to various reasons. The PWD Act reflects the sympathy towards all the “needy looking’ disabled people and so much was said by the ones who were not properly addressed in this Act that a new Act of Parliament called the National Trust Act was passed. The function of this Act was to suitably address the issues of these specific disabilities and it was an extremely good move.

It is tragic however that the very nature of deafness and the invisibility of the deaf individual is the reason for the neglect of the deaf in society. A deaf person who has had to survive in a ‘hearing world’ has had to hone his skills of observation

and perception to a fine pitch in order to carry on the most basic of conversations in a mixture of badly articulated half words and gestures and pantomime. This in itself is so amazing, intriguing and obviously wonderful that the deaf get a false reputation of being totally clued in and intelligible. Thus the guilt feeling of the general populace of being able to talk while deaf people languish in silence is extinguished and one hears continually of the wonderful communication skills of the deaf. The laws framed for the disabled population in India and the ones that have been framed for the general public completely neglect the issues that face deaf people. The Persons With Disabilities Act as it is generally known has 4 mentions of hearing impaired persons. The first in the list of disabilities covered, second in the definition of hearing impairment, the third in the name of the national institute, and the fourth in the section dealing with reduced syllabus for disabled people and issuing a concession of a single language for the hearing impaired student.

Throughout the Act there is no mention at any time under any section of fundamental provisions for the deaf such as interpreters the use of sign language, captioning and subtitling on TV, Lip speakers and communication facilitators and so on which are fundamental to a disability whose first and last problem is communication with the society at large. A completely insensitive administration and a myopic national institute have contributed to this lacuna, which has as yet not been perceived to be a lacuna but rather, pursuing of Govt policy of suppression of sign language and promotion of an oral model of education for the deaf. This has extended to the National Policy on Disability where no mention has been made about interpreters and access for deaf people to govt services.

The myopia which prevailed then, has been, thankfully, now shown up as such by the revelations in the UN Convention on the Rights of People with Disability, where the issue of language and communication has been dealt with in the definitions of language where sign language has been mentioned to do away with the discussion on 'whether' it is a language and a valid means of communication with the deaf. Other central issues of access, linguistic freedom, deaf culture and more have also received attention and been thus validated.

This position paper with recommendations for new legislation and a series of amendments to existing Acts of Parliament is an effort to bring the philosophy of the UNCRPD into the legal system in India. In effect, a harmonizing not only of the language of laws or sections of laws but rather the perspective of a nobler and empowering justice system with the support of enabling legislation.

Part-I

1	<p>Meaning of the term ‘deaf’</p>	<p><i>Recommended provision</i></p> <p>A hearing and speech impaired person having hearing loss of over 60Db in the better ear shall be termed as a “deaf” person or a hearing and speech impaired person.</p> <p><i>Remarks</i></p> <p>The basic premise is that a deaf person by definition has impaired speech. This is true of the vast majority of deaf persons who are pre-lingually deaf. A post-lingually deaf person may have better or even perfect speech as the case may be and such a person would also show it as such from medical records.</p> <p><i>Position post consultation</i></p> <p>(1) The term used in the law must be ‘hearing and speech impaired’;</p> <p>(2) The definition of the term hearing and speech impaired must be a person with 60 db hearing loss;</p> <p>(3) There should be no additional criterion of 40% disability as far as hearing and speech impaired persons are concerned as this creates confusion. The provision should clearly set out that a person with 60 db loss is a person with hearing and speech impairment;</p> <p>(4) There is no consensus on whether there should be two categories of partially / moderately deaf and fully / profoundly deaf although several persons felt there should be two categories since the absence of that was resulting in only marginally / moderately deaf persons getting jobs.</p>
2	<p>Article 2 <i>Definitions:</i> “Language”</p>	<p><i>Remarks</i></p> <p>Any legislation that is pertaining to the</p>

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includes spoken and signed languages and other forms of non spoken languages;

rights of disabled people in India shall recognize Indian Sign Language as a language and a valid medium of communication.

Recommended provision

The scanning/testing and certification of the deaf individual shall be done at the same time as the vaccination of babies. All babies shall undergo BERA Test at the age of 2 months to establish their hearing status. A deaf person shall every 5 years since the first identification of deafness provide himself with a BERA certificate establishing his hearing status. Any person who obtains a certificate of disability fraudulently shall be punishable with upto two years imprisonment and /or fine of Rs. 10,000.

A medical practitioner who issues a certificate of disability fraudulently shall be punishable with a term of upto two years imprisonment and / or fine of Rs. 25,000.

Remarks

This will effectively nullify fraudulent claims. The cases of hearing persons posing as “hearing impaired” and claiming perfect speech has brought the issue of fraud and graft into sharp focus. Courts have upheld the appointment of these individuals stating that it was incumbent on the interview board to establish bonafides of the candidate.

Certain participants were concerned that increasing the medical tests for the deaf would cause inconvenience and harassment to the genuinely deaf. It was felt that more punitive measures should be introduced so that people are dissuaded from obtaining / issuing false deafness certificates. Hence the addition.

<p>4</p>	<p>Accessibility : 2. (c) Provide training for stakeholders on accessibility issues facing persons with disabilities;</p>	<p>Recommended provision It shall be the duty of care givers for deaf persons in schools, hospitals, hostels, juvenile centers, jails, shelters for women, and all other institutions, whether or not run by the state, to make provision for training of their staff in sign language so that they are capable of communicating with and providing for the needs of beneficiaries with speech and hearing impairment.</p>
<p>5</p>	<p>Accessibility : 2. (e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;</p>	<p>Recommended provisions The appropriate government shall create a panel of professional sign language interpreters in every district. The panel will contain trained interpreters whose duty it shall be to provide interpretation services for the hearing and speech impaired whenever called upon. The post of “Sign Language Interpreter” shall be created by the appropriate government and be treated at the same scale as “Trained Graduate Teacher”. It shall be the duty of the Appropriate Government to provide sign language interpreters at all points of public dealing to provide full participation and access to public and Govt. services for hearing and speech impaired persons. The Appropriate Government shall provide reasonable accommodation to all disabled persons at all places that are open to the public.</p>
<p>6</p>	<p>Accessibility : 2. (g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;</p>	<p>Remarks The Telecom Act and the TV circuitry Act of the US are appended as being relevant to this provision and maybe incorporated into the appropriate Acts in India. See Section II of the paper Further Recommendation Decoders for television sets to be included</p>

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Article 12 Equal recognition before the law:

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

within the ambit of ‘aids and appliances’ distributed by the government to disabled persons under schemes for the disabled in order to provide them access to captions on television.

Recommended provision

A person with a disability shall enjoy full legal capacity under the law to do all things and enjoy all rights in equal terms with others.

Persons with disabilities shall be considered equal under law including inter alia to own and inherit property, have independent financial affairs, have equal access to bank loans, mortgages and other forms of financial credit.

Private sector entities offering services in the area of health, tele-communication, finance, insurance, entertainment, web-services etc shall not discriminate against persons with disability and shall treat them at par and on equal terms with their other customers.

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Article 12 Equal recognition before the law:

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not

Recommended provision

Where a person with a disability is before a court of law, he/she shall, wherever required, be granted the assistance of an officer of the court in order to ensure that he/she fully understands the proceedings and to facilitate any further assistance that may be required by such person.

All legal proceedings including judicial and police proceedings involving a litigant with a disability shall be expedited and disposed of not later than two years from the date of its inception.

arbitrarily deprived of their property.

9 Access to justice

Article 13

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

Recommended provision

Hearing and speech impaired persons shall have access to professional sign language interpreters at all stages of judicial/quasi-judicial proceedings including all police and court proceedings.

The Appropriate Government shall provide professional sign language interpreters from the panel of interpreters to a party with hearing and speech impairment before the court / the police to assist the deaf party at state expense.

Any police / court proceedings involving a party with hearing and speech impairment conducted in the absence of such a sign language interpreter and without the deaf party comprehending the proceedings shall be deemed to be invalid and void.

10 Access to justice Article 13

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Recommended provision

The Appropriate Government shall take effective steps to ensure the training and sensitization of persons working in the judicial and police system including police officers, prison staff and other staff in sign language and in matters related to persons with disability.

11 Article 21

Freedom of expression and opinion, and access to information: (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with

Recommended provision

Sign Language shall be recognized as the native language of the deaf.

The Appropriate Government shall provide access through captions / in sign language for deaf persons in all official meetings and public gatherings. This will include speeches made by heads of state, ministers of Central Govt, State Govt, District officials and shall be ap-

disabilities in official interactions;
(e) Recognizing and promoting the use of sign languages.

12 Article 24

Education: 1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning:

(c) Reasonable accommodation of the individual's requirements is provided.

13 Article 24 Education: 3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind,

pllicable to all public Govt gatherings. The Appropriate Government shall set up a National Captioning Commission for regulating matters concerned with captioning for the speech and hearing impaired.

Recommended provision

Sign language shall be used as a medium of instruction for the education of persons with hearing and speech impairment.

A school with students with hearing and speech impairment shall ensure that the medium of instruction for children with hearing and speech impairment is Indian sign language.

The Appropriate Government shall support the child's right to acquire a language by natural means and shall ensure a non-discriminatory and inclusive approach by officials, planners, policy makers and teachers towards the use of sign language in classrooms with children with hearing and speech impairment.

Recommended provision

The Appropriate Government shall ensure the training of teachers for the hearing and speech impaired includes proficiency in sign language to provide accessible education for the hearing and speech impaired.

The Appropriate Government shall ensure that the BEd, DEd and all other teacher training courses contain a compulsory module on sign language. No school /college/ educational institution shall refuse admission to a child on the grounds of his /her disability or on the grounds of the disability of the child's parents / siblings.

is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

14 Article 27: Work and employment (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace.

The Appropriate Government shall ensure that where a child with hearing and speech impairment is enrolled in the school / college/ educational institution, appropriate instruction in sign language is provided to such student.

Interviews / group discussions and any other form of communication at the pre-admission stage and viva-voce and other communication in the evaluation stage in higher education shall be through the medium of a sign language interpreter in the case of candidates with with hearing and speech impairment. In the event a sign language interpreter is not available, the said candidate shall be allowed to communicate through writing on screen / paper.

The Educational Institute shall conduct a Bera Test on the deaf candidate prior to the interview.

Recommended provision

One percent reservation for persons with hearing and speech impairment in employment shall be further sub-divided in the following manner –

0.5 % for the severe and profoundly deaf;

0.5 % for the mild and moderately deaf;

For the purpose of this section, the term ‘mild and moderately deaf’ shall mean persons with hearing impairment and the term ‘severe and profoundly deaf’ shall mean person with hearing and speech impairment..

Private sector entities with a turn-over of above Rs. 100 crore per annum or companies having more than 500 employees shall provide for reservation for the disabled in the same manner as public sector

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Article 30: Participation in cultural life, recreation, leisure and sport

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:
 - (a) Enjoy access to cultural

organizations.

Interviews, group discussions and any other form of communication pre-appointment shall be conducted through the medium of a sign language interpreter in the case of candidates with hearing and speech impairment. In the event a sign language interpreter is not available, the said candidate shall be allowed to communicate through writing on screen / paper.

The training given at the stage of induction to fresh recruits to jobs shall be through the medium of a sign language interpreter in the case of deaf candidates.

All undertakings that are required to implement the provisions on reservation of seats for persons with disabilities, shall file an annual return with the Commissioner for Persons with Disability on or before 10th September of each year setting out the status of implementation by them of the said provisions, the number of persons with disability employed by the organisation and the details regarding the 100 point roster maintained by them in accordance with the provisions of law. A copy of such return shall be published by the Chief Commissioner of Persons with Disabilities on the website and shall be available for inspection at the office of the Chief Commissioner.

Recommended provision

The Appropriate Government shall ensure that all television programs are made accessible for persons with hearing and speech impairment through appropriate legislation.

Remarks

A national captioning center shall be established to provide the captioning and subtitling of all programming on the govt channels of TV. The necessary statutory

materials in accessible formats;
 (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

16 Preamble: (p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

17 Commissioner of Persons with Disability

provisions of other regulatory bodies shall be further amended to include captioning and subtitling regulations for the private sector channels to adhere to. Covered in Part II of the paper.

Recommended provision – The Appropriate Government shall ensure that sign language interpreters are provided at all Govt tourist centers to provide the access needs of hearing and speech impaired persons.

The Appropriate Government shall ensure that sign language interpreters are provided at all state sponsored business, cultural and political events, trade fairs and other similar events.

Remarks

Discrimination on the basis of language is unacceptable and hence any Act of Parliament shall also forswear this form of discrimination.

A person shall not be appointed as the Chief Commissioner for Persons with Disability / Commissioner for Persons with Disability for a term of less than three years.

The person appointed as Chief Commissioner / Commissioner for Persons with Disabilities shall not have a charge that is in conflict with his office as Chief Commissioner / Commissioner of Persons with Disability.

The order of the Chief Commissioner / Commissioner for Persons with disabilities shall be binding upon the parties.

Part-II

■ **Apart from the Persons with Disabilities Act, the other laws that require amendment in order to bring them in conformity with the provisions of the UNCRPD are enlisted and discussed in this chapter.**

■ **The laws are broadly divided into the following categories**

- Laws dealing with language
- Laws dealing with access to justice
- Laws dealing with access
- Laws dealing with employment
- Laws dealing with children

1. Laws Dealing with Language

Sign Language is the natural language of the deaf. It has been given the status of a recognized language in 8 other countries and it is necessary that India do so, particularly in light of its obligation under Article 21 of the UNCRPD which enjoins upon the state the responsibility to:

- (a) accept and facilitate the use of sign language in official interactions and
- (b) recognize and promote the use of sign language.

In order to fulfill the above mandate of the UNCRPD and in order to recognize Indian Sign Language as an official language in India, the following statutes will be required to be amended.

(1.1) Eighth Schedule of the Constitution of India;

Indian Sign Language must be added in the Eighth Schedule of the Constitution of India as a Scheduled Language. A constitutional amendment will be required for this purpose and may take a considerable amount of time. In the meantime, it is proposed that the center and all states take measures to recognize Indian Sign Language through other means as well namely by the amendment of the rules under the Official Languages Act.

(1.2) The Official Languages Rules, 1966 Under The Official Languages Act, 1963;

The Official Languages Act, 1963 is the law enacted to provide for languages that may be used for the official purposes of the Union, for transaction of business in Parliament, for Central and State, Acts and for certain purposes in the High

Courts. The Rules made under the statute deal with the language of communication between the center and state and between central departments. The Rules empower the central government to issue such directions from time to time as may be necessary to comply with the said Act and rules.

Several states have authorized the use of a language other than its official language as the associate official language of the state. Eg : Goa authorizes the use of Marathi in addition to Konkani as its official language, in Assam, Bodo is an associate official language in addition to Assamese, Khasi and Garo are recognized as the official language in addition to English in Meghalaya.

It is recommended that Indian Sign Language be notified as an official language under the Official Languages Act by the center and by all states for use for official purposes in order to fulfill the state's mandate under Article 21 of the UNCRPD. This will pave the way for further measures in order to make Indian sign language acceptable beginning with recognition of schools /colleges imparting training in Indian sign language, use of sign language in the proceedings in courts/police stations in case a deaf party is involved, use of sign language in public utility services provided by the state etc.

2. Laws Dealing With Access To Justice

Article 13 of the UNCRPD concerns Access to Justice and provides for state parties to take measures to:

- (c) ensure effective access to justice for persons with disabilities on an equal basis with others including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages;
- (d) promote appropriate training for those working in the field of administration of justice, including police and prison staff in order to ensure effective access to justice for persons with disabilities.

2.1 The Persons With Disabilities Act

Every state shall be required to set up a state panel of Interpreters in order that their services may be availed of by courts / police stations / administrative authorities etc in cases where communication with deaf persons is required to be done. The provision that is sought to be inserted in the Persons with Disabilities Act for this purpose has already been discussed and dealt with in Part A of this paper.

2.2 The Indian Evidence Act

Section 119 of the Indian Evidence Act provides for the method of examination in case of 'Dumb Witnesses'. It provides that where a witness is unable to speak, the evidence is required to be recorded in another manner i.e. by writing or by signs in open court which shall be deemed to be oral evidence.

Current provision

119. Dumb witnesses.-A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

The following modifications are proposed in Section 119 of the Indian Evidence Act in order to bring them in conformity with the spirit of the UNCRPD :-

119 Witness with hearing / speech impairment - (a) In the event a party before the court is a person with hearing and/or speech impairment, the court shall examine such party only through an interpreter called from the panel of professional sign language interpreters appointed by the state at state expense or at the expense of the court;

Proviso : It shall be open to the deaf party to use the services of an interpreter hired by him/her in addition to the facilities of the professional sign language interpreter from the state panel provided by the Court.

(b) The proceedings conducted with the assistance of the interpreter shall be recorded via video recording and maintained by the court at state expense;

(c) In the event such party before the court does not know Indian Sign Language but uses Home signs, the Court interpreter will be assisted by a person who is able to communicate effectively with such party so long as such person does not have a contradictory interest in the proceedings. Such proceedings shall also be recorded via video.

2.3 The Criminal Procedure Code

2.3.1 Lodging of FIRs

In the event, a deaf person presents himself / herself at a police station or before a Magistrate to file a complaint / lodge an FIR, it shall be the duty of the concerned officer in charge of the police station / the concerned magistrate to call for a sign language interpreter from the state panel of professional sign language interpreters in order to facilitate communication with the deaf party.

In the event such deaf person is illiterate and does not know sign language, the officer in charge of the police station / the magistrate shall call for a member of the person's family in addition to a professional sign language interpreter in order to facilitate communication with the deaf party.

2.3.2. Recording Of Statements

Section 164 of the Criminal Procedure Code deals with 'Recording of confessions and statements'. It is necessary that this section include statements made by speech and hearing impaired persons through signs. It is recommended that a proviso be inserted in section 194 to clarify the meaning of the terms 'statement'

in such cases as follows:

Proviso - In the event the person desirous of making the confession or statement is a speech and/or hearing impaired person, in such case the statement / confession may be made through means of sign language, gestures, home signs (intelligible only to close family members) and a record of the signs and the interpretation of the signs shall form the statement / confession for the purpose of this Section.

A speech and hearing impaired person may be allowed to record his/her statement through video recording by means of sign language, gestures, home signs (intelligible to close family members only).

In the event a party before the Metropolitan or Judicial Magistrate is a speech and/or hearing impaired, the Metropolitan or Judicial Magistrate shall ensure that the hearing and speech impaired person is provided with a professional interpreter in order to facilitate him/her to make a statement if he/she should so desire.

It is further clarified that in the event such hearing and speech impaired individual is illiterate, “home signs” will be permissible with facilitation from a close family member of the hearing and speech impaired person’s choice, in the presence of the court appointed professional sign language interpreter so long as the concerned family member does not have a conflict of interest with the deaf person.

The Magistrate / the Police shall not record the statement of a hearing and speech impaired person in the absence of a professional Sign language interpreter. In the event provision of an interpreter is not immediately possible, the statement so recorded will be valid but not be final and binding until a professional sign language interpreter is able to translate the contents to the hearing and speech impaired person.

2.3.3. Arrest And Detention

No action shall be taken or proceedings shall be conducted against a deaf person without the presence of a professional sign language interpreter to explain the proceedings to the deaf party.

2.3.2 Addressing The Court

Section 119 of the Criminal Procedure Code deals with ‘unauthorised persons addressing the court’.

Current provision

119. Unauthorized persons not to address Court - Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its

charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

It is necessary that this section is modified in order to provide for authorizing sign language interpreters to address the court on behalf of persons with speech and hearing impaired persons. It is recommended that a facilitating provision be inserted in section 119 as follows:

Proviso - Nothing in this provision shall prevent a sign language interpreter from addressing the Court for and on behalf of a speech / hearing impaired person. Where the person with speech/hearing impaired individual is illiterate, a family member of such person who is familiar with the home signs of such person shall be permitted to address the court on behalf of the speech/hearing impaired person in addition to the sign language interpreter.

3. Law Dealing With Access

3.1 The Motor Vehicles Act And Rules

The Motor Vehicles Act presumes the inability of a disabled person to be a safe driver and provides the licensing authority with the right to withhold the license from such persons “suffering from diseases or disability so as to make them a hazard to other traffic/persons on the road.” This presumption is incorrect and discriminatory. Deaf persons are permitted to drive in several countries in the world and their doing so has not constituted a hazard to other traffic or persons on the road.

In any event Sec 9 (3) (a) (iii) of the Act allows a person holding a license from a licensing authority in a foreign country to obtain a driving license. Since several countries issue driving licenses to deaf people, this provision allows deaf persons with driving licences from a foreign country to drive on Indian roads while deaf citizens cannot drive. The provision is completely arbitrary and calls for a modification in the law.

Current provision

Section 8 - Grant of learners licence.- (4) If, from the application or from the medical certificate referred to in sub-section (3), it appears that the applicant is suffering from any disease or DISABILITY which is likely to cause the driving by him of a motor vehicle of the class which he would be authorised by the learner’s licence applied for to drive to be a source of danger to the public or to the passengers, the licensing authorities shall refuse to issue the learner’s licence.

Provided that a learner’s licence limited to driving an invalid carriage may be issued to the applicant, if the licensing authority is satisfied that he is fit to drive such a carriage.

Current provision

Section 9. Grant of driving licence.- (1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authorities having jurisdiction in the area.

Provided that, where the application is for a driving licence to drive a motor cycle or a light motor vehicle, the licensing authority shall exempt the applicant from the test of competence prescribed under this sub-section, if the licensing authority is satisfied--

(b) that the applicant is not suffering from any disease or DISABILITY which is likely to cause the driving by him of a motor cycle or, as the case may be, a light motor vehicle to be a source of danger to the public; and the licensing authorities may for that purpose require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (i) of section 8;

It is necessary that the following provision be inserted as Section 8A and 9A:

Persons with hearing and/or speech impairment shall not be denied a driving licence / learner's licence on the grounds of 'disability'.

3.2 Access To Information And Entertainment

Article 21 of the UNCRPD provides inter alia that state parties shall:

- (e) provide information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (f) accept and facilitate the use of sign language...
- (g) urge private entities that provide services to the general public including through the internet to provide information and services in accessible and usable format;
- (h) encourage the mass media, including providers of information through the internet to make their services accessible to persons with disabilities.
- (i) Recognize and promote the use of sign languages.

In order to fulfill this mandate of the state, it is necessary that changes are made in the information and broadcasting laws and also the telecommunication law in order to provide for access to information and communication for the deaf. The following changes are proposed in this category:

3.2.1 Introduction Of A New Legislation In Line With The TV Decoder Circuitry Act, 1990 in the USA

Information and programs broadcast on television are completely inaccessible for the deaf. It is necessary that certain laws are amended with a view to ensuring that the deaf are able to enjoy television with the benefit of closed captioning that would enable captioning of all audio content on a program. Closed captioning

allows the user the option to put of the captions for those not interested in the captions. Captions will benefit the deaf and the aged who are unable to hear clearly as also improve literacy amongst the deaf and the hearing children.

The TV Decoder Circuitry Act of 1990 in the USA is a legislation that requires all manufacturers of television sets to provide for a decoder built into the television set. The said legislation is annexed hereto as **Annexure A**. It is recommended that a similar legislation be brought into effect in India to enable the availability of accessible television sets for the deaf in India.

3.2.2. Amendment To The Cable Tv Act And The Broadcasting Regulations

The Broadcasting regulations are required to be amended in order to provide for all channels that air their televised programs on television to provide closed captioning for the audio content of the program. Closed captioning to be made mandatory for all channels using the spectrum of air waves for televising their programs.

It is proposed that the following provisions are inserted in the regulations:

In case of live television relay, the re-run of the program shall contain captions of the audio content.

Audio content shall be defined to mean and include speech, background sound and relevant auxiliary noises.

4. Laws Dealing With Employment

All laws dealing with labour and employment must provide for a mechanism for the provision of a sign language interpreters to deaf employees in the case of communication, dispute resolution etc.

5. Laws Dealing With Children With Speech / Hearing Impairments

The UNCRPD has a special chapter on Children with Disabilities. India has the Children's Act of 1960 which provides for the setting up of the Child Welfare Board and provisions to deal with neglected and delinquent children. It is necessary that suitable changes are made in the Children's Act in order to provide for the security of deaf children. The following modifications are proposed:

Procedure, etc., in relation to Boards and children's courts

..(4)The procedure set out in the Criminal Procedure Code and the Indian Evidence Act in so far as recording of statements /examination of deaf persons is concerned shall be followed in case of children with hearing/speech impairment. However, in the event a child is unable to communicate despite the assistance of a sign language interpreter, supplementary communication assistance will be provided in the form of charts / pictures /props in order to enable the deaf child to communicate effectively.

Section 9 - Children's homes

(3) Every children's home to which a neglected child is sent under this Act shall not only provide the child with accommodation, maintenance and facilities for education, but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral dangers or exploitation and shall also perform such other functions as may be prescribed to ensure all round growth and development of his personality.

(3A) Every children's home shall also undertake to ensure that the caregivers are trained in procedures to handle hearing and speech impaired persons be they victims/perpetrators/accused or any other.

Conclusion

While the paper we have thus created does not purport to be the last word on the subject of amending and harmonising laws in India to the UN Convention on the Rights of People with disability, we are convinced that the beginning of this exercise has been timely and well conceived. The work to follow will be not the least in our deliberations over these very provisions and possible further changes, but rather developing a deeper understanding of the scope of rights based approaches and then continuing to enlarge our own vision. The impact that this will have on the future of disability rights in India will be seen as we advocate for the various amendments and changes we have envisaged. This will, we hope, in its own time have the desired effect on Indian jurisprudence, making for a favourable legal environment.

**A Position Paper On the Status of Laws
Protecting the Rights of Persons with
Orthopedic Disabilities in India and
Changes Recommended in Indian Laws
to Harmonize them with UNCRPD**

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About the Position Paper/ Research Study

The aim of the Study was to understand the current status of persons with orthopaedic disabilities vis-à-vis 'Protections available to them under the existing Indian Laws and facilitate crucial consultative processes on the changes that might be needed in Domestic Indian Laws in light of India having signed UN Convention on Rights of Persons with Disabilities.

Specific Objectives of the Study

- To study the existing Laws of the Government of India providing protections / affecting the rights to persons with orthopedic disabilities.
- To study the protections available under UNCRPD.
- To discuss the issues with the stakeholders through consultative processes.
- To list out emerging concerns & suggestions on changes/amendments required to be brought in the existing laws so as to harmonize them with UNCRPD.

Methodology

In order to understand the current status and prepare the present status report, the following methodology was followed:

- Listing of all laws and then narrowing it down to a few most relevant laws affecting the rights of Persons with Orthopedic disabilities.
- Extracting the relevant portions from the relevant laws, Persons with Disabilities Act, 1995 and the UN Convention on the Rights of Persons with Disabilities.
- Putting together a draft status paper for a consultative process, suggesting various changes that will better align the laws with UNCRPD.
- Discussing the suggestions with the persons with disabilities and NGOs from across India through a consultative process.
- Compiling the final recommendations for the final status paper on Orthopaedic disability.

Scope and limitations of the Study

1. The Status Report only dwells on the issue concerning persons with Orthopedic

Disabilities (PWOD). Thus, few most relevant laws that directly or indirectly affect the rights of PWOD have been taken into consideration.

2. The Scope of Report did not include issues concerning disabilities other than orthopedic disabilities; however the study has made some selective references to issues that might affect and protect rights of persons with other disabilities.
3. The study dwells on the Central Acts only thus various laws passed by state legislature have not been touched which should be taken up in all the Indian States based on issues found common in this status paper and the respective states.
4. The study report doesn't cover detailed scrutiny of rules, regulations, bye-laws, orders & circulars etc. which often contain operative part of the provisions available in the Acts. Needless to say that all such rules & Regulations etc also need to be amended based on spirit of UNCRPD.
5. Recommendations /suggestions made hereunder are illustrative and not exhaustive.
6. Many disabled people face discrimination, exploitation or abuse due to negative attitudes, charitable perspectives, socio-cultural barriers and multiple discriminatory factors like gender, caste, religion or class & issues like non-implementation of existing laws. This Report has not covered these barriers as this study was purely directed to look at the laws as existing in their present form to the extent of protections available for protecting the rights of PWOD and additions/alterations that may be needed to bring these laws in conformity with the rights as envisaged by UNCRPD. However, it recommends legal provisions to remove and mitigate any such discrimination and monitoring mechanism to check non-implementation of laws.

The Author/Researcher

This study has been carried out by Mr. SC Vashishth, an Advocate and a Developmental Therapist with varied experience in rehabilitation, disability law and rights advocacy. The present status paper has been finalized after discussion of the draft status paper in a national consultation organized during 21-22 November 2009 at New Delhi in which a large number of stakeholders drawn from various parts of India participated and mulled on the draft status paper & issues. A list of attendees who participated in the Consultations is attached as **Annexure- A**.

Acknowledgements

The researcher would like to thank Mr. Rajiv Raturi, Director DRI, HRLN and the Coalition Partners Deaf Way and NAD for providing the impetus and opportunity for this much needed and relevant Study. Thanks are due to the persons with orthopedic disabilities and their organisation from across India, who actively participated in the consultative process to make this document a credible & reliable

status paper representing their needs and demands. The researcher is sure that this Status Report will provide a base study and act as an Advocacy Document and set tone for hastening up the process of harmonization of various Indian domestic laws vis-à-vis UN Convention on the Rights of Persons with Disabilities.

Introduction & Context

People with disabilities constitute 4-8% of the total population as per a recent World Bank Study, yet they are unseen, unheard and almost invisible in the public arena until past decade which saw a spurt in the awareness and advocacy for the rights of Persons with Disabilities in India. As per 2001 census, some 2.13% of the then Indian Population had some or the other disability and the number of orthopedic disabilities was only next to visual disabilities in India.

Indian society is undergoing a significant and valuable shift in its understanding of disabilities. This has resulted in a fundamental change from welfare model to a social model based on equality of rights. It is recognized that people with disabilities continue to face multiple discrimination despite the fact that every person with disability, irrespective of her/his severity, is an equal citizen of this great country with fundamental rights of justice, liberty & equality.

India has a unique situation where we have best of the laws however, the implementation is abysmally low. The Indian Constitution is said to be the longest in the world and represents a cake with best of all provisions picked up from several major constitutions of the world. Similarly, India has a long list of laws enacted and in force but there is seldom an equivalent mechanism to ensure their implementations. Thus while the statute book continues to grow, the implementation, delayed processes of judiciary and watch dogs often fail the aspirations of the citizens.

Specific Laws for protecting the rights of persons with disabilities in India are of recent origin. Before the Persons with Disabilities (Equal Opportunity, Protection of Rights & Full Participation) Act 1995 was passed by the Indian Parliament, there was no specific law to protect their precarious condition. It doesn't mean, however, that persons with disabilities enjoyed no rights or protection for the Constitution of India held the forte till then and the supportive judiciary has ensured that the right to equality was ensured to this diversity of India, however only for those who knocked the doors of courts.

After the Persons with Disabilities Act 1995, the scenario gradually began to change in favour of the disabled people; however, the approach that continued was of charity and reinforcing the medical model. Also the implementation of this Act and other laws have lagged behind partially because of State's apathy and partly because of low levels of awareness both in society and among the stakeholders and their weak bargaining power.

The recent UN Convention on the Rights of Persons with Disabilities has set tone

with eight general principles which are guiding force for interpretation and translation of the rights that it provides to person with disabilities. These are:

- (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.

Today, we are looking at amending all our domestic laws, so that they are in harmony with the convention. The present research project is a step in that direction.

Organisation of Study - cum - Consultation Report

The report is divided in two parts:

Part A – Deals with the Disability Laws.

Part B – Deals with other laws which have a direct or indirect bearing on the rights that Indian disability law and UNCRPD provides to them. The report highlights the objective of each law followed by status of existing provisions and amendments/changes that are suggested to bring the law in line with UNCRPD.

Part - A

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

After the detailed deliberations on the draft status paper in the Group Consultations held on 21-22 Nov 2009 at New Delhi from the perspective of Orthopaedic disabilities, the following consensus emerged with regard to changes required in disability laws in light of UNCRPD.

- (1) The existing PWD Act is based on basic premise of charity and welfare and looks at a person with disability from medical perspective. This premise needs to be shifted to a rights based approach and Social Model of Disability which believes that disability is a form of human diversity and it results from interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.
- (2) The Act views persons with disabilities as a special vulnerable group for which special protective measures need to be adopted which is contravention to the spirit of UNCRPD which advocate all human rights to persons with disabilities so that they can live in community on an equal basis with non-disabled members of community. Thus the overall orientation /spirit of this Act need an overhaul.
- (3) On the draft amendments proposed by Min. of Social Justice, the researcher and the participants felt that though the amendments bring in large part of the relevant rights to some extent that UNCRPD ensures but the amendments look more like a retrofitting exercise which actually seem to spoil the freshness, colour, and shine of the Act at some places, hence, the law may be written afresh. Therefore, the changes suggested in this report should not be read as contradictory to the larger consensus but be read as the reflections of users with disabilities with regards to status of domestic laws in light of a paradigm shift that UNCRPD promises to them.
- (4) To ensure that PD Act will further the mandate of UNCRPD, it is recommended to have the **introductory part** of the Act as:

An Act to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity and to give effect to the rights guaranteed by UNCRPD to people with disabilities, to which India is a

proud and committed signatory.

- (5) **Insertion of Preamble** - The preamble of UNCRPD should be adopted as it is in the Indian Disability Act.
- (6) Though the guiding principles have been included in the amended draft put up by MSJE, as Section 24A, however the words “**within the economic capacity & development**” have been retained which are strongly objected to. Such prefixes still pose as barriers in the empowerment of persons with disabilities and to enforce their inalienable rights therefore, should be removed forthwith.

Definitional Issues

- (7) **Definitions:** The Act should broaden the **definition of Disability** on the basis of categories and support/assistance required and also listing out the various known left out disabling conditions. Thus the definition should be indicative and not exhaustive. A separate category of disabilities as “**Persons with Neuro - muscular Conditions**” should be considered to include conditions like muscular dystrophy, multiple sclerosis, cerebral palsy, paralysis due to stroke etc.
- (8) **Concept of severe disability** is very subjective and should be removed as the degree of disability can increase and decrease depending upon the enabling or disabling environment and support in various areas of physical, cognitive and communication skills. It may be worthwhile to include categories of disabilities depending on the high support needs and not on medical conditions. This would also include all National Trust Disabilities as well as leaving scope for such new disabilities which might come to the knowledge of mankind for the medical science is ever evolving.
- (9) **Disabilities due to aging** are one of the very important but neglected areas which require serious and thoughtful consideration for inclusion in the Act and also.
- (10) **Women with disabilities:** Women with disabilities have not been given any special attention in the current PDA. Equality between men and women is necessary mandate of the convention. Thus special overall cutting mention must be made in the Act to ensure their inclusion in every area right in education, employment to inclusion in various bodies and monitoring system.
- (11) **Leprosy cured** is one orthopedic disability which hasn't got any benefit of the present Act and persons with leprosy continue to face discrimination and social stigma in absence of any active scheme for their social upliftment and integration. Several state laws continue to discriminate against them despite the fact that it is completely treatable with MDT. It has also been proved that Leprosy is least infectious disease and 90% of population is immune to it. Casual contacts do not attract this disease. Infectious patients on treatment become non-infectious within short span of time. Thus whether cured or not, leprosy poses no danger to society. It is the stigma attached to leprosy which

is the major disability.

Amend Section 2(iii) of PDA: Therefore, it is suggested that the definition of disability in PDA should change the word “leprosy-cured” with “*Leprosy whether cured or not*” in Section 2(iii). The justification is that the Objectives of the PDA are to protect the interests of persons with disabilities and to help them to overcome the disadvantages, which they face on account of their disability etc. thus if leprosy cured person is treated as disabled there is no reason why a person living with leprosy in uncured form should not be considered as a person with disability. On the contrary the person living with leprosy needs more protection and help.

Amend Section 2 (n) of PDA

The new section should read as “*A Leprosy affected person means any person affected by leprosy, whether cured or not and is experiencing:*

- i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid; or
- ii) manifest deformity and paresis; or
- iii) Deformity coupled with advanced age which prevents him from undertaking any gainful occupation,

And the expression leprosy affected person shall be construed accordingly.”

Justification: As persons who are living with leprosy are in greater need of protection and assistance there is no reason to exclude them from the benefits & protections under the PDA. Physical deformity or paresis caused by leprosy attaches stigma to the person concerned and subjects him to all kinds of discriminations and he loses many opportunities they may be available to him to be mainstreamed in the community life as are available to other persons with other curable form of infectious diseases.

Amendment to add a proviso to Section 2(t) of PDA:

Current provision- “Person with disability means a person suffering from not less than forty percent of any disability as certified by a medical authority.”

Add a proviso- “*Provided that in case of Persons Affected by Leprosy, the degree of 40% will not be applicable and a person affected by leprosy shall be deemed to be a person with disability in accordance with Section 2 (n) above.*”

Justification: Deep rooted prejudices against leprosy in the society remain even when he is cured of leprosy. It has been the experience of the uses that opportunities of getting education or employment are denied to them on account of leprosy. There is no question of what degree of disability he suffers on account of leprosy. He may be having slight or even no medical disability but social prejudices make him disable. Therefore, 40% criteria hold no meaning for them. This is also in conformity with the instructions issued by Directorate General of Health Services (Central Leprosy Division) asking the authorized medical boards to provide disability certificates to leprosy affected persons with disabilities irrespective of

- degree/grade of disability in order to get concession/benefits available for them.
- (12)**Amend Section 2(c) of Rehabilitation Council of India Act** to include Persons affected with leprosy in the definition of person with disability accordingly which currently defines “Handicapped” as a person who is VH, HH, suffering from Locomotor disability or suffering from mental retardation”.
- (13)**Definitions under Art 2 of UNCRPD** The Act should include the definitions of Communication, Language, and Discrimination on the basis of disability, Reasonable Accommodation & Universal Design.
- (14)**Include New Rights that emanate from UNCRPD:** UNCRPD provides following new rights which do not exist in the present PDA. There is a need to expressly provide these rights within the framework of the Act:
- a. Right to Life (Art 10),
 - b. Situation of Risk and Humanitarian Emergencies (Art. 11)
 - c. Equal recognition before the law (Art. 12)
 - d. Access to Justice (art. 13) (though it finds mention in a separate Act called The Legal Services Authority Act 1998, its not exhaustive).
 - e. Liberty & Security of persons (Art 14)
 - f. Freedom from Torture or cruel, inhuman or degrading treatment or punishment (Art. 15)
 - g. Freedom from exploitation (Art. 16)
 - h. Protecting the integrity of the person (Art. 17)
 - i. Independent Living (Art 19)
 - j. Freedom of expression (Art. 21)
 - k. Respect for privacy (Art 22)
 - l. Respect for home & family (Art. 23)
 - m. Right to Health (Art 25)
 - n. Habilitation and Rehabilitation (Art 26)
 - o. Statistics and Data Collection
- (15)**Nothing about us without us:** Mandatory inclusion of persons with disabilities on the Central & State Advisory Boards and District/Talluk level machinery to ensure their participation and say in the matters and issues concerning them.

Awareness Raising

- (16)Lack of Awareness not only among general public, employers, thinkers, politicians, family members, teachers, doctors and other professionals but also among the Persons with Disabilities themselves about their capabilities, limi-

tations and potentials. This often leads to stereotypes, prejudices and harmful practices about them and results in exclusion in every sphere be it education, employment, wrong portrayal in media, films, stories etc. PWDs do not know about their rights and availability of services hence remains aloof from the pace of development. We welcome addition of Chapter XIV A Misc. Section 70A on Creation of Awareness on Disability Related Issues.

- (17)**Portrayal of Persons with Disability in Media/Public Forums:** The PDA should include provisions related to use of dignified terminology in media, public forums with penal provisions on the lines of SC/ST Act [Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989] to prevent use of derogatory language against them.

Right to Health

- (18)**Right to Health versus Prevention of Disabilities:** The provisions related to prevention of disabilities have been retained in Chapter IV, Section 25 of amended draft of PDA. These should be removed from the PD Act as this Act is for the rights of persons with disabilities and prevention is not appropriate for obvious reasons which should be a concern of the rest of the society. However, issues related to health should be provided in a separate chapter on Right to Health in the PDA itself.

- (19)**A new Section 31B on Healthcare proposed by MSJE draft puts unreasonable condition of economic criteria as below:**

“Section 31 B : Healthcare

Appropriate Governments and local authorities shall take necessary measures to provide to persons with disabilities:

(i) health care within a reasonable distance from their location, specially in rural areas; which shall be free in case of persons with disability, whose family income is below such limit as the appropriate government may notify;”

Reasoning: Often the families despite not being from low income families do not think it useful to invest money on health care of a disabled member. Also a disabled member in the family is often considered a economic burden unless employed. Thus income of the family will work counter productive to the health care guarantee. Therefore, it is suggested that the economic criteria should be dropped and health care should be provided free of cost.

- (20)**Health Insurance, Life Insurance & Travel Insurance etc.:** Discrimination against PWD continues in this area and this needs to stop. All schemes of insurance should include persons with disabilities mandatorily and at equal or less premiums. Persons with disabilities from poor segments should be insured at the State’s cost. Currently, the Government employees with disability have to pay extra premium and the insurance amount is also not equal to their non-disabled colleagues which is an open discrimination in the Post Life In-

urance Scheme.

- (21)**Disability Certification:** The entitlements /benefits to Persons with disabilities are given to those who possess a valid Disability Certificate. The PD Act is totally silent on the right to possess an appropriate certificate of disability. The existing certification process is highly ambiguous and it has been relegated to medical professionals alone and often the functional assessment doesn't take place. The process of certification needs to be streamlined with larger participation of the rehabilitation experts with medical specialists with active participation of the person with disability. Even today a major segment of persons with disability do not have a certification and no benefit is reaching them as certification is the first criteria to be eligible to any govt. benefit. The response of States is full of apathy and neglect and they don't seem very keen to issue disability certificates. All PWDs should be issued with DC within a time bound manner by forming special medical boards before 2011. We hope these issues are addressed with introduction of a new section **72-A. Power of Central Government to notify guidelines for assessment of disabilities.**
- (22)**Provision for providing assistive aids & equipments.** New sturdy calipers, braces and other Light-weight assistive devices based on new technology, electric wheelchairs should be included in the ADIP Scheme of the Govt. There should be exemption from VAT and import duties in local supply/sale and import of equipment meant for personal use by the disabled. Similarly accessibility equipment like wheelchairs, lifts, ramps and other devices for communication, mobility, rehabilitation should be exempted from duties.
- (23)**Individualized and adapted equipments:** The distribution of aids and equipment is often done by a large number of NGOs/charity organizations and in collaboration of Govt. The Government distribution is also many times doesn't look into the exact size and measurement of the equipment needed by the user. Thus they get oversized or small equipments which are either never used appropriately or come back to the scrap market as there is no follow up.
- (24)**Provisions for Workshops for repair** of the assistive devices, aids and appliances should be made in every district/Talluk level as the devices reach the scrap market in absence of such facilities.

Provisions Related to Education

- (25)Inclusive education and life-long learning for full development of human potential and sense of dignity and self worth and to develop their personality, talent, creativity is what UNCRPD provides as a right, however, PWD Act endeavours to do its best for PWDs which is surely not a rights-based approach. However, the education of the children with disabilities has remained far from being any where close to even satisfactory in absence of proper infrastructure, mechanism & implementation. This is also largely responsible for non-filling of reserved posts as education has a direct bearing to productivity and

gainful employment.

- (26)**Free Education from zero – 21 years:** Free and compulsory education must be ensured to persons with Disabilities from Zero to 21 years (i.e. KG to PG) which will go in line with UNCRPD mandate of life long education. In the amended draft of PDA by MSJE, the concept of free education has been diluted by defining it as “**Explanation: ‘Free education’ for the purposes of this section shall, in the case of children with disabilities from economically weaker sections, include cost of corrective surgeries, assistive devices, special books and equipments as appropriate.**” **Earlier the books and assistive devices were free for all children with disabilities without any economic criteria which is strongly opposed. It is recommended to drop the economic criteria at least with regard to children with disabilities and all facilities should be absolutely free.**
- (27)**Children above 18 years have been forced to take up distance education in section 26A of the amended draft.** Though it is free up to senior secondary stage but this facility should be provided in regular schools to persons with disabilities up to age of 21 years and up to PG.
- (28)**HRD to be nodal ministry for Education:** Education of all children including the Disabled should be under Ministry of HRD and not under MSJE which will go with the inclusion philosophy of UNCRPD.
- (29)**Special Schools and Inclusive Education have to co-exist together** as the need and preference of certain segments differ and need to be respected. Besides ensuring inclusion of children with disability, the UNCRPD in Article 24 (3) (c) also mandates ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
- (30)**Grants to Special Schools:** The education being a fundamental right of all children, it becomes the responsibility of the state to fully fund the education of the children with disabilities whether studying in special schools or mainstream schools. Therefore, all the grants/aid to the Special schools run by NGOs should be based on full scale of pay and not honorarium.
- (31)**Public Private Partnership:** The concept of Public Private Partnership in education is welcome to the extent that it doesn’t become an instrument of state surrendering its duty of educating the children to the Corporate or NGOs sector and assume duties of supervision. The fundamental rights can not be privatized.
- (32)**Special Educators in every mainstream school:** Special Educators must be appointed in every Govt., aided and private schools with equal grade and salary as given to other teachers to realize inclusive education. Additionally, Special educators must be given **an additional pay and higher increment**

as incentive to attract more trained professionals to the sector. This is must to align with Article 24 (a) of UNCRPD that provides that Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability.

- (33) To ensure gradual shift to Inclusive School **bridge schools provisions** need to be included to prepare a child with disability for mainstream education. Dumping a child with disability in the mainstream school without preparation on both ends will do more harm than good and will be a set back to inclusive education.
- (34) **Central Pay Scale to Special Educators:** To ensure quality education, Special schools wherever existing/considered appropriate should also give equivalent pay – scales and facilities to special educators /teachers to the Central Govt. Pay Scale for Teachers.
- (35) **Provide Technological support rather than exemption from subjects:** The restructuring of curriculum and modifying papers so to remove mathematical questions and such other exemptions which reduce the scope of future employment of children with disabilities doesn't seem to promote and develop their capabilities rather it restricts them. On the contrary the effort of the Govt. should be to provide the latest technology and equipments which could facilitate tackling such bottle necks and develop their capabilities.
- (36) **Life long free education for PWD at all levels:** Age bar of up to 18 years must be removed for free education of the disabled and it should be provided for life long education including higher, professional and technical education.
- (37) **One Residential school in every district:** There must be at least one school each for OH (requiring support), VI, HI, (residential) in every district which can work as resource school/centre for different needs. In residential schools and all other forms of schooling, civil society participation and compulsory participation of parents and stakeholders need to be included to check the issues of abuse and mismanagement.
- (38) **Schools to be Barrier Free:** To see inclusive education happen, every building of an educational institution – be it school, college, vocational training centre or university – should be made accessible/barrier free and remodeled on the basis of universal design. Existing building should be made barrier free within a time bound manner in maximum of 2 years. This provision should be added in the Act itself and appropriate guidelines be appended as Annexure or Rules. Any new school buildings should be sanctioned only if they adhere to access standards.

Habilitation & Rehabilitation

- (39) Chapter IV A, Section 25 A in the amended draft of PDA have been newly added to cover rehabilitation. However, the effectiveness of the chapter is throttled by provisions in 25-A (3) as “For purposes of sub-section (1), read with sub-section (2), the appropriate Governments and local authorities shall, *subject to fulfillment of financial and other norms, and availability of budgetary allocation, grant financial assistance to non-governmental organizations.*” **The suggested provisions seem to indicate that the work will entirely be left to NGOs subject to allocation and grants. Thus no government commitment seems to be coming forth and participation of NGOs is also subjected to availability of budgetary allocation.**
- (40) **Unemployment/Social Security Allowance:** There are no provisions to ensure adequate standard of living to persons with disabilities who are not gainfully employed. The unemployment allowance provided under PWD Act which is given only to those who have remained registered in Employment Exchange for two years and not found gainful employment. Similarly disability pension given to persons with multiple disabilities is very less and there is no scheme for women and elderly disabled. Such a loose system leaves much to be desired.
- (41) **Check on Employment Exchanges:** Employment Exchanges under the Min. of Labour & Employment have remained unchecked for their usefulness and productivity and have become defunct offices that continue to draw money from disability account whereas have failed to bring any succor to the needy persons with disabilities.
- (42) **On the Job Training/Vocational Training for Jobs:** Providing Work, just and favourable work conditions and reasonable accommodation at workplace and extending these enabling provisions to private and organized sector of employers will greatly boost their effective participation in the economy of the country. Besides this, provisions should be made within the PDA for On the Job Training, Vocational Training, Loans; Training in entrepreneurial skills for business development.
- (43) **Provisions related to Preferential Housing:** Though provisions exist in PWD Act but preferential housing for the PWD has remained a non-starter and similar is the condition for allotment of land for business and housing at low cost and needs to be mandatorily provided for under all government schemes.
- (44) **All Housing to be based on Universal Design Principles:** To promote true inclusion, it would not be sufficient to earmark certain percentage of housing to be made accessible. Accepting that disability is a diversity of human society and also reflects in various stages of an individual’s life cycle, all the planned housing either by Government or by private builders or cooperatives or by Cantonment Boards must be based on principles of Universal Design

and have components of accessibility features so that need of retrofitting is reduced to minimum and any need specific adaptation could be easily done later by occupants.

- (45)**Independent Living/Right to Shelter:** Specific provisions and schemes should be introduced to promote and facilitate independent living under the PDA and preferential allotment of accessible housing for that purpose. Also the PDA needs to address the shelter needs by State for those who have no family or are living on roads in inhuman conditions due to neglect by families and state.

Work & Employment

- (46)**Inclusive Employment:** PWD Act revolves around employment in Govt Sector and reservations in job and identification of jobs in various categories based on set criteria. However UNCRPD ensures Work also along with Employment.
- (47)In the proposed amendments by Ministry, the reservation in appointments has been restricted to direct recruitments only thereby nullifying the avenues available in deputation and indirect recruitments etc. Though the current Act indicates that reservation should be given in all appointments however, the present reservation provision is very restrictive and hence not acceptable. **All forms of appointments should be included in the purview of reservation viz. direct and indirect appointments, promotion, vacancies filled by deputation, contractual appointments etc.**
- (48)**The reservation in all categories i.e. A, B, C & D should be based on total existing cadre strength and not merely on the number of vacancies being filled at a particular point of time.** Nothing less than this could bring forth proper representation of PWDs in the Govt. Services.
- (49)**Increase the reservation from present 3 to 5%.**
- (50)Reservation should **extend to public- private – organized sectors.**
- (51)**Incentives and Awards for both** - Private and Public Sectors.
- (52)**Incentives to be attractive** enough for private & public sector to promote inclusive employment.
- (53)**Provisions of Grants/help for infrastructure accessibility** to make the **private workplace/private schools** accessible.
- (54)**Onus of filling up posts on Employer/Govt.:** Often posts are kept vacant in the garb of not finding a suitable candidate. Employer seems to have no responsibility to fill up the post and no duty is cast on him to fill up the post in the Act. The employer's role to fill up the post should be widened by arranging **Pre-recruitment training/coaching** in all forms of employment and then fill up the posts positively.

- (55)**Post not to lapse:** In no case the post reserved for persons with disability should be allowed to lapse in favour of general category.
- (56)**Misuse by restricting the post to SC/ST/OBC+PH:** The reservation for PWD has been said to be horizontal, but the employers misuse the provisions by indicating the post as reserved for PWD + SC or ST+PWD. If already there are less PWD to fill the post how the post further restricted to SC/ST can be filled up? The posts for PWD should be for PWD and not further restricted to SC/ST/OBC etc. as it defeats the very purpose of the Act.
- (57)**Clarify Section 47 as a Social Security Provision:** Recent judgment of Supreme Court on Section 47 further discourages and invites subjectivity of employers to refuse promotion on fictitious grounds of inefficiency. It would be evident that when an employee acquires disability while in service, it's not by choice but due to reasons beyond the control of the employee. Also each disability will bring in some kind of limitation to the abilities of the person and the person may be in a situation where he can not function at all in the job that he used to do earlier. However, if such person is removed on the grounds of inefficiency, the basic objective of the Section 47 i.e. social security- will be lost. On the other hand, all efforts must be made by the employer for proper support, assistive aids and devices and reasonable accommodation to facilitate the employee to contribute to his work. Thus the Act should leave no scope of such misinterpretation by the Court of Laws.
- (58)**5% reservation for PWDs:** Explicit provisions need to be made providing at least 5% reservations in jobs both in public as well as private sector and not only on identified jobs but total cadre strength of the organisation.
- (59)**Filling the backlog vacancies** should also form part of Act in a limited time frame from the day the amendments/new law is brought in force.
- (60)**Provisions of Liaison Officers** in each department/ ministry/PSU /Corporation/employing organisation/ Educational institution etc should be made mandatory who would be focal point for redressal of grievances of employees with disabilities and to ensure implementation of the Disability related provisions.
- (61)**The employment is often useless without assistive aids and devices:** Unless appropriate devices depending on disability specific needs is developed & provided, it can't ensure inclusion. The mandatory supply of relevant assistive aids and devices should be provided free of cost. If need to be imported, facility for custom duty waiver be included. Often live assistance is needed to those who have severe physical impairment. Thus option of live assistance and its grant should be provided by Govt./employer.

Accessibility & Personal Mobility

- (62)Instead of bundling Accessibility in to non-discrimination, there is an urgent need to spell out Accessibility (art. 9) and Personal Mobility (art. 20) with

detailed guidelines.

- (63)**Standards on Accessibility** of infrastructure, services, communication, education, web, etc., should become an essential part of the Act which would be applicable to both private and state entities.
- (64)**Universal Design and Reasonable accommodation** are the two pillars to realize the rights recognized under UNCRPD and should become part and parcel of all the rights mechanism.
- (65)**Need of a National Access Code:** A “National Access Code” / “Access Code of India” should be developed under the Act which should be a uniform and single document specifying the mandatory physical access provisions and standards based on Universal Design in all built infrastructure, transportation, services and facilities. Cross linkages of this Access Code with Building Bye-laws/National Building Code (BIS) needs to be drawn to ensure the larger participation and monitoring of access provisions. It is difficult to monitor access from the office of Chief Commissioner -disabilities and by handful of advocacy organizations only for India is huge.
- (66)**Access to Physical infrastructure based on Universal Design:** All new buildings that are being constructed in any part of India to be used by public at large should have an inbuilt component of universal design, whether they are private or public sector. It should be covered by an overriding law that applies across the states with strong monitoring mechanisms and penal provisions for every continuing day the structure remains inaccessible.
- (67)**Retrofitting in existing buildings/ sites / tourist destinations/heritage sites/ public places/ common areas in 5 years:** Existing buildings open to public use are to be made accessible within a scheduled time frame not exceeding 5 years. For this purpose, the appropriate govt. should be mandated to carry out access audits of all public buildings and community spaces, boarding areas and processes etc.
- (68)**Access to Transportation System:** All modes of Transport, including **road, air and rail** must be made accessible to the disabled mandatorily within a time frame and not selectively. Attaching one coach at one end of Train is not acceptable to the sector nor is adjusting the reservation to the disabled in to one special boggy the answer. All coaches must be based on universal design and accessible to all. Similarly seamless access must be provided by including access to boarding areas and related infrastructure & services. For this relevant changes would be needed in the relevant rules/laws related to air transport, rail transport and road transport and hence the regulating bodies, organisation/corporations and authorities must be mandated to frame their rules in consonance with the PDA.
- (69)**Personal Mobility:** A separate chapter on Personal Mobility should be added. It should have provisions for easy availability and registration of adapted

cars and scooters with extra wheels, It should include provisions for access to public transport, transport infrastructure, road and pedestrian infrastructure, easy driving licenses, waivers on custom duty on assistive aids/devices, mobility equipments, easy procedure for adaptation of vehicles and availability of adapted vehicles and their registration, etc.

- (70) Schemes should be provided to include latest mobility devices free of cost/state's concession rather than wheelchairs and crutches alone.
- (71) **Facility of Preferred Parking** should be included in law so as to be uniformly applicable across the nation. So far it has been done selectively in few metros and the information has not percolated down to users.
- (72) **Recreation, Leisure, Sports and fun:** Sports authorities to recognize the talent in the disabled and include them in sports. Integrated efforts to include sports events of various disabilities in the mainstream sports events. Sports Stadiums, Facilities, related accommodation, Fun-parks, Amusement parks, and their infrastructure should be mandatorily accessible to all to facilitate equal opportunity and non-discrimination. We welcome addition of Section 70 B in the draft PDA of MSJE to include this concern.

Civil & Political Rights

- (73) **Civil Political Rights:** Disabilities Act is also silent on civil political Rights. In the past Supreme Court came out with a judgment which has been circulated by the Chief Election Commissioner to all Election Commissioners etc to make the election process accessible to the citizen with disability. Also Braille enabled EVMs are being provided to address VH citizens. Such rights should be included in the PD Act.
- (74) Additionally vote by postal ballots should be allowed to persons with disability, senior citizens and where it is not feasible to visit the polling station or the persons prefer to vote by postal ballot. Polling stations should be made accessible. **Ref: Article 29 UNCRPD Participation in political and public life**
- (75) **Right to Property and inheritance:** Often people with disability are not allowed their inheritance rights as they are not considered legally capable. The family members discriminate against them by not giving them an independent share, not marrying them and keeping them dependent. This needs to be addressed in the PDA also indicating their inherent full legal capacity on an equal basis with others.
- (76) **Access to Justice:** People with disabilities after have no effective access to justice when their rights are infringed. The Court of Chief Commissioner only deals with matters covered under existing PDA. However for other matters they have to face the mainstream justice system where they get no support in the alien system. Though disabled are included in the Legal Services Authority Act however the system is not geared to meet their needs due to inherent

inaccessibility in infrastructure and processes.

Focal Points for Monitoring

- (77) UNCRPD talks about one or more focal points while currently there is only one office called Chief Commissioner Disability who hears to the cases filed and delivers orders to implement the provisions of the PWD Act. There is one Central Coordination Committee which is more or less a body of government nominees and doesn't meet often. There is no independent system of monitoring except advocacy movements of the disability sector.
- (78) **Civil Society Monitoring:** There is an urgent of more focal points in form of civil society monitoring and also joint forums of state and persons with disabilities/Professionals/NGOs with sufficient powers to impose penalties. The Govt. should involve the stakeholders in monitoring of rights of the PwDs.
- (79) **Penalties for failures on the lines of RTI Act:** To ensure that any infringement of rights guaranteed by the Act becomes rare, stricter financial penalties on the lines of RTI Act should be provided. We applaud the new addition of Section 53 A suggested in the draft PDA by MSJE as below, however this should also be extended to reservation in employment chapters also:
- “53A. Punishment for contravention of Sections 44, 46, 51 and 53 - Any establishment, which contravenes the provisions of Sections 44, 45, 46, 51 and sub-section (4) of section 53, shall be punishable with fine which may extend to Rs.20,000/- and with additional sum of upto Rs. 1,000/- per day for each day of continued contravention after the date of the original order imposing punishment of fine.”**
- (80) **Lack of coordination between the State Commissioners and chief commissioner:** In many states the State commissioner are not working satisfactorily and are often the bureaucrats with additional responsibility. In absence of any supervisory /reporting mechanism with the central Commissioner, there is no check on the work being done by the state Commissioners. Therefore, eminent Persons from among the disabled/professionals from the disability Sector should be given the responsibility of State Commissioner as it is not feasible for a bureaucrat to pass orders against the establishment. Therefore, a neutral and independent person should be appointed on the line of Central Information Commissioner.
- (81) Each State should have an independent commissioner preferably a person from NGO/Legal Sector who has knowledge of disability & Human rights laws exclusively to implement the provisions /rights of the PWDS. Regular interaction with. He must have regular interaction with other departments in States/Centre like medical and Health, Education, Welfare, Revenue, Panchayatiraj, Rural and urban development etc.
- (82) **Harmonize the two machineries created under NT Act & PWD Act:** It

is suggested to harmonize the two systems created under the National Trust Act and the PWD act. In fact, the NT Act has been fast and effective enough for have established their district and talluk level committees. The authorities created under the two central Acts should actually be merged so that the rights guaranteed under UNCRPD can be realized.

- (83)**Gender Neutral in language:** Provisions to be gender neutral in the new law/ amendments being enacted /considered.
- (84)**Grant benefits available to SC/ST across board:** All beneficial provisions for SC/ST should be extended to PWDs.

Part - B

Status of Domestic Laws affecting the rights of persons with orthopedic disabilities in India and the changes/amendments needed to bring them in consonance with UNCRPD

(These laws have been reproduced in Part - B of the main report and are not being reproduced here to avoid duplication)

Position paper on the rights of persons with intellectual and developmental disabilities in India, the existing law and its harmonization with the United Nations Convention on the Rights of persons with Disabilities

By:
Advocate Roma Bhagat

Reservations and disclaimers

1. The mandate for the present paper is limited to the title and as such the paper has been written in the context of only one constituency, i.e., the intellectually disabled, behavioral disorders and neurologically impaired as clubbed in the National Trust Act. Wherever possible an attempt has been made to state the rights of the above stated constituency as the rights of all disabled persons but due to the limited nature of the mandate this has not always been possible. The author wishes to state at the outset that this exclusionist stance is not reflective of the author's personal views as the author has always stood for a cross disability approach.
2. The present recommendations are merely points for debate on the substantive provisions necessary in the opinion of the author for the realization of rights guaranteed by the UNCRPD and not draft law. They in no way reflect the ultimate shape and form of the legal enactment sought to be achieved by the present debate.
3. The author has raised at the outset the issue of the extension of the benefits under the National Trust Act to other categories of disabilities. There has been a listing of these further disabilities in the section dealing with the preamble but this list is merely inclusive not exhaustive. The author states that as far as possible the subsequent discussion addresses the needs of all these constituencies as well. If any specific exceptions or inclusions have to be made in the provisions that would be done at the time of the consultation after consensus emerges as to which categories have to be included in the legislation.
4. The author has not restricted the present discussion to the National Trust Act alone but has approached the issue in the context of the rights needs and requirements of service deliveries of persons with the 4 disabilities stated above. For ease of reference and debate the areas of concern have been listed and then categorized into topical issues. The format of the paper has been kept to the subheading stated initially which have been further subdivided on the basis of their inclusion in any law in force or their lack of inclusion. The choice of the format emanates from the recognition that the purpose of the represent paper is to facilitate a consultative process leading to the building of consensus on the eventual amendments in the law as well as the shape and form of that law. A separate section has been introduced at the end of the discussions on substantive amendments outlining different approaches to the shape of the eventual amendments.
5. The rights sought to be accessed by the present suggestions for amendment fall into two clear categorizations, viz those that will be accessed on a common platform with all other disabilities such as non -discrimination , to name one; and those that will require special provisions in the enactments keeping

in mind the specific capacities and requirements of the categories of disability addressed in the present paper.

Structures

Part One

Preamble Short Title and Extent

Part Two

Context and sub divisioning on topical basis

Part Three

Miscellaneous

Legal formats and Amendments

Preamble

The author does not wish to arrogate to herself the right to make any decision as to the final shape and form of the new law that will be decided upon by the majority of stakeholders including first rights holders. Due to the fact that at present the rights of persons with intellectual disability are addressed in a multiplicity of laws the preamble cannot be pre decided and would follow from the decisions on format. However the new law should have a specific reference to the objective of furtherance of the UNCRPD and the emanation of all rights from that base document.

For the purposes of the Preamble, however, it is important to decide on the constituents of the persons to whom benefits presently extended to the 4 categories of disabilities under the National Trust Act would be available. One way of defining the constituency would be to extend the application to all persons needing supported lifestyles. This would automatically extend the act to persons with psychosocial disorders. If such a broad definition was to be accepted then the medical ramifications would either have to be addressed in the present law or in a separate enactment. Presently persons with psychosocial disabilities are being addressed by the Mental Health Act. Since a separate position paper is being written on that issue the author simply wishes to table the issue for purposes of discussion and should such a broader definition inclusive of persons with psychosocial disorders be acceptable to the majority then the recommendations and outcomes of the two papers could be combined to form a single entity.

Apart from persons with psychosocial disorders there has been a lot of discussion on the categories of disabilities that have not been addressed by any disability legislation so far but would need to be addressed in any future enactment/s. These

include Muscular dystrophy, thalassaemia, haemophilia and learning disorders such as dyslexia or dyscalculia and the like.

During the disability specific consultation the consensus that emerged was that psychosocial disabilities were not part of the disability sector. The understanding was that mental illness as it was constantly referred to was not a disability but an illness and as such could not find a place in the National Trust Act or any other legislation dealing specifically with intellectual, cognitive or developmental disabilities.

Context of the Recommendations

The rights of persons with intellectual and developmental disabilities have to be viewed in the context of the special needs of the constituency from the perspective of:

- Diagnosis
- Treatment
- Education
- Family support
- Training and capacity building of all stake holders, i.e. , the family the disabled person and other human support resources
- Health
- Employment
- Independent living/ Supported care
- Marriage and family
- Access to justice; and
- Prevention from abuse and torture.

For the constituency only some of these concerns have been addressed so far in legislation. For ease of reference and convenience the content of the concerns listed above have been bifurcated under 3 headings, those addressed in the National Trust Act, those addressed in any other act and those which have not been addressed at all.

PWD Act

- Prevention
- Education
- Accessibility
- Recognition of institutions for persons with disabilities
- Social security
- Manpower and Human Resource Development

- National Trust Act
- Legal capacity
- Independent living/ rehabilitation
- Issues not addressed
- Work and employment
- Access to justice
- Civil and political rights
- Right to health
- Property rights

Prevention

The existing law on pre-natal testing and in conjunction with the Medical Termination of Pregnancy Act is directly in conflict with the Right to Life enshrined in Article 10 of the UNCRPD. However, there is an extremely strong argument put forth by women's groups that the right to choose whether or not to continue with the pregnancy belongs solely to the woman. The Right to Life, even of a disabled fetus must be protected. On the other hand strong arguments are put forth for not bringing a vulnerable child into an atmosphere of rejection that could bring with it abuse.

Recommendation

- Prenatal testing to identify disability should be banned in the same manner as testing for gender.
- Issues of child safety in the case of unwanted children should be discussed.

Education

The present education caters to the intellectually and developmentally disabled by default rather than design. Critical elements of a functional education system are therefore missing in the application of the present system to the intellectually disabled and methodologies of testing developmentally disabled are not in place. People with intellectual and developmental disabilities have unique needs with regard to information processing. The disability in question may refer to learning, memory, problem solving, planning and other cognitive tasks. At complete variance with the present education system is the need for recognition that individuals with intellectual and developmental disabilities vary widely in their abilities thus requiring personalized educational interventions. An individualized educational program designed to meet the unique educational needs of a single child in the least restrictive environment appropriate to the needs of that single child would

therefore have to be part of any quality educational program for persons with intellectual and developmental disability. The program for quality education would also predicate the shift from IQ assessment as the basis of determining progress to an assessment of multiple intelligences and the overall development of the intellectually and developmentally disabled person on the correlative development of all intelligences. For the deaf blind it is mandatory as the deaf blind child would almost entirely be dependent on a one- on- one interaction. The child with learning disorders also require specialized curriculum and learning processes as well as help to manage their disability and work with the limitations of it.

For the purposes of this section the twin aspects of the staff and facilities and the course content and certification have been dealt with separately. The aspect of facilities and infrastructure has been dealt with in the section under education but the human resources have been taken up in the subheading manpower resources.

Course content and certification

1. Measurement in the IQ scale with the clear realization that this scale is inappropriate for the mentally retarded.
2. Lack of certified study material that is appropriate for the disabled child
3. Lack of assessment tools that are part of the certified education system
4. Lack of functionality assessment and appropriate learning curriculums
5. Lack of appropriate employment related certification
6. Augmentative and assistive devices to be provided as part of the education system

The UNCRPD clearly sets the tone for mainstreaming and inclusion. This would necessarily include mainstreaming of disabled children into the education system for the non disabled by making suitable accommodations. One of the fears often expressed by a large community of parents, special educators and teachers is that the quality education that can be imparted in good special school can never be given in the inclusive education system particularly for the severely disabled. In the light of these concerns it would be advisable to retain already existing special schools.

Recommendations

- Retention of special schools for persons requiring one on one contact to be made out on a case to case basis.
- Legal responsibility of the state to ensure development and introduction of assessment tools, course curriculum and certifications into mainstream schools for provision of meaningful quality education.
- Recognition and introduction of multiple intelligences as an alternate assessment tool.

- Provision of appropriate mandatory sex education.
- Based on the discussion at the National Consultation the recommendations are now revised to add the following:

Alternative course curriculums in the nature of subject divisions applicable after class 10 must be introduced at every level in regular schools so that when persons with intellectual, cognitive or developmental disability are unable to continue with the course curriculum of a particular grade they can go into a bifurcated stream adapted to their level and capability.

Note: These amendments may either be introduced in the Right to Education Act as a separate chapter, introduced as a separate education code for the disabled or introduced in any other enactment with overriding effect.

Recognition of Institutes for Persons with disability

Persons with intellectual and developmental disability have traditionally not been part of the socio-cultural and civil and political arena. This has resulted in a lack of emphasis on provisioning for their needs as full citizens of civil society. As already detailed elsewhere in this paper, systems need to be set in place to provide quality services. Full value must be given to the vulnerability and marginalization leading to risk of abuse of this constituency. In order to provide a proper system of checks and balances the law should mandate guidelines to be framed for every institution catering to the disabled such as educational, rehabilitative, employment related care facilities and the like with an inbuilt provision for derecognition and penal consequences for any abuse.

Recommendations

- System of certification be registration or any other method;
- Derecognition in case of violations;
- Penal action for any act of commission any specified acts of omission such as neglect.

Manpower and Human Resource Development

Manpower and human resource development for the intellectually disabled could perhaps be termed the most significant area for the intellectually disabled. The need for a supported lifestyle coupled with the absence of a formalized system of using trained manpower at all the various levels and in all the different areas in which it is needed.

Identification of the different manpower needs of the sector would be as follows: Each of these areas has been dealt with separately for purposes of discussion with the author's own recommendations listed out at the end.

1. Care- giving
2. Education
3. herapists

Care Giving

At present there is no professional certified course in care giving and as such quality standards of the carers available as well as their reliability and liability factors are very poor.

These resources need to be organized, made accountable by certification and treated on par with other organized skilled labour with proper service conditions training and remuneration.

Education

The present concerns are that the present system has no proper system of recognition for the special educator and no pay scale such as the Central Government pay scale. Most special educators are being paid an honorarium and not a salary and the honorarium is not even equal to the minimum wages specified under the Minimum Wages Act

As far as teaching faculty is concerned the system needs to be modified in the following ways.

1. Basic training in intellectual disabilities to be part of the B.Ed course so that every teacher is equipped with the rudimentary skills needed for handling children with intellectual disabilities and learning disorders and behavioral disorders in the classroom;
2. Specialized training post B.Ed in any branch of intellectual disability leaning or behavioral disorders to be equivalent to a MEd;
3. Scale of pay and promotion equivalent to if not more than non disabled teaching faculty;
4. Quality analysis and assessment tools for any educational programme implemented for the disabled such as home tuition such as number of contact hours and an assessment system for the progress of the child.

Therapists

Disabled children of the four categories of the National Trust may require one or more of the following therapies:

1. Behaviour
2. Speech
3. Physio

Certifications, course curriculums, career paths all need to be evolved and are part of the infrastructure required for a disabled person to live a life with realization of their highest potential.

Recommendations

- An illustrative list of the different carders of manpower and human resources to be enumerated in the act.
- Indication of training and certification processes whether explicitly in the general act or by implication in another act.
- Based on the discussion at the National Consultation the recommendations are now revised to add the following:
- Creation of proper career paths Positive approach towards inclusion should be imbibed within the staff members starting from the head of institute to the ancillary.
- B.Ed. Training course should include components of special education.
- Refresher course to revise previously done concepts and introduce innovations in teaching techniques should be conducted yearly.
- Instead of amending the National Council of Teacher Education Act it is considered advisable to insert a provision akin to Section 47 in order to provide integration of the requirements of teacher training for inclusive education, including but not limited to Braille, Sign Language, integrated curriculums and some aspects of dealing with behavioral, cognitive and intellectual disabilities.

Legal Capacity

Even though legal capacity is an element of civil and political rights it has been dealt with in a separate section in this position paper because it is perceived as the single most important aspect of the rights of persons with intellectual disabilities and the fundamental core of any paradigm shift in the legal system. Article 12 of the UNCRPD predicates that full legal capacity shall be the basis for determination of all rights of persons ordinarily perceived to be in need of support. This is at complete variance with the present legal framework which is based on legal incapacity and supplanted decision making. Therefore, the National Trust Act has an elaborate system of guardianship and in fact is perceived as being almost synonymous with a mandate to provide legal guardianship for all the four categories of disabilities. In the light of UNCRPD the entire chapter on guardianship must be removed as it is completely contradictory to the assertion of full legal capacity. In recognition of the need for support in decision making the National Trust would have to set up alternate systems of support networks so that the person with disability can access the requisite amount of support. There is argument and opinion in the Indian context support systems and safeguards do not exist. Reservations have been expressed and a large number of the sector feel that full legal capacity is not something which is immediately possible as a legal right and in the Indian context should follow in the natural course of things. These are points which are put forth for the purpose of debate in the position paper. However, the author is of

the clear view that full legal capacity has to be introduced immediately and along with it the concomitant support systems and networks.

In this context the amendments proposed to the National Trust Act by the Disability Study Centre at NALSAR are accepted and the same are reproduced here for ease of convenience and debate:

Addition of new chapter

Chapter V A

Legal Capacity and Support

Section 12 A

- (1) Notwithstanding any provision in any other law to the contrary, all persons with disabilities shall enjoy legal capacity on an equal basis with others in all aspects of life.
- (2) The National Trust shall take appropriate measures and make suitable schemes to provide access by persons with disabilities to the support they may require to exercise their legal capacity.
- (3) In no case shall the legal capacity of persons with disabilities be questioned or denied because such person with disability accesses support to exercise such legal capacity.
- (4) Every person with disability shall have the right to access support in accordance with his or her will and preference.
- (5) Only persons who have no conflict of interest with a person with disability shall provide support to such person with disability. If at any time during the subsistence of the support arrangement, a conflict of interest arises, the support arrangement shall cease to have effect.
- (6) No person providing support either individually or as a part of a network shall exercise undue influence on a person with disability.
- (7) A person with disability shall have the right to alter, modify or dismantle any support arrangement and substitute it with another. Provided that such alteration modification or dismantling shall be prospective in nature and shall not nullify any third party transactions entered into by the person with disability along with the support arrangement.
- (8) In fulfillment of its obligation to facilitate the provision of support for persons with disabilities, the National Trust shall draw up guidelines to facilitate:
 - i. Registration of Advance Directives
 - ii. Recognition of Support Circles
 - iii. Registration of enduring Powers of Attorney
 - iv. Appointment of Personal Assistant

- v. Any other suitable support.

Section 12 B

- (1) The National Trust shall take immediate steps to put in place suitable support measures for the exercise of legal capacity by persons with disabilities and especially for persons with disabilities living in institutions and persons with disabilities who have high support needs.
- (2) The Trust shall also devise appropriate policies and schemes which provide suitable support to persons with disabilities and especially persons with disabilities who have high support needs to enable them to realize the social, political, economic and cultural rights guaranteed under the U.N. Convention on the rights of persons with disabilities.
- (3) Subsequent to the enforcement of the National Trust Amendment Act of 2009, all local level committees shall take suitable steps including where appropriate mediation proceedings in order to assist persons with disabilities to exit from plenary guardianship and to help set up where so desired by persons with disabilities suitable support arrangements to aid persons with disabilities in the exercise of their legal capacity. These review activities of the local level committees are facilitative in nature and no person with disability can be denied legal capacity due to the delay or non occurrence of the review activity.

Section 12 C

- (1) The National Trust shall undertake the task of conceiving new kinds of support, and formulating guidelines on the already included support, in active consultation with persons with disabilities; disabled peoples organizations; parents associations and other concerned members of civil society.
- (2) The Trust shall devise suitable mechanisms to obtain feedback from the recipients of support on the suitability and usefulness of the support provided and if and whether they desire any modification or addition to it.
- (3) In order to ensure that support is provided whilst respecting the legal capacity of persons with disabilities the Trust shall regularly conduct awareness raising and sensitization programmes on the role, necessity and manner of providing support.

The only point of difference that the author has with the disability study centre is that the author is of the belief that a caveat must be introduced in proposed Section 12 A 3), wherein a provision in extremely rare cases must be introduced for the purpose of supplanted decision making if after exhausting all possibilities it is felt necessary to do so.

Recommendations

- Introduction of legal capacity for all persons with disability
- Creation of support networks
- System for supported decision making

Independent Living

Independent living for persons with intellectual disabilities has been postulated as the *raison d'être* of the National Trust Act. However, very little emphasis and less thought seems to have gone into creating an overarching national independent living strategy focusing on a rational economic plan coupled with resource allocation, national workforce development plan for creation of skilled workers for effective personalized support and associated support services and national support networks for development of services. The strategy, which should be a legal responsibility of the state should include disabled persons, parents, carers NGO's, DPO's and service providers as well government for the framing of such strategy. Access to independent living presumes the Right to Information Advise and Assistance as well as a self driven assessment of requirements and these must be made available by law to disabled persons at all levels in order to ensure enjoyment of the right of independent living. The right to independent living includes the right to requisite assistance whether for developing or maintaining social relationships or participation in job searches, self employment, training, provision of suitable residential accommodation and implies the right to marriage and family life with adequate support for child care.

Preparation for independent living includes communication strategies and skills necessitated by the need for social contact and community integration.

Recommendations

- A separate enactment for independent living detailing all its aspects.
- As an alternate to a new enactment a new chapter on independent living detailing all support structures and systems, rights and duties of state parties and other stake holders in relation to each other.
- Time bound commitment for implementation of phased independent living program.

Work and Employment

Presently as the system is premised on the lack of legal capacity no law addresses the issue of employment even though the National Trust Act is geared towards independent living and sustainable livelihoods are an integral part of the process of independent living. The National Institute of Mental Health has identified jobs for the intellectually and developmentally challenged. Apart from this provision

of specific employment opportunities either in sheltered workshops or segregated business activities such as mailing services, cleaning and packaging, gardening and landscaping carpentry, metal fabrication, sewing, farming activities such as horticulture and herbiculture and the like must be made.

The state must create employment opportunities for persons with disability in the form of sheltered workshops which are accessible and therefore community based. Worker with intellectual and developmental disabilities have historically been paid less than the general workforce for their services and products.

Recommendations

- Reservation be provided for the intellectually and developmentally challenged in the arena of mainstream employment and this reservation shall have overriding effect on any Act providing reservation to any category of persons whereby disability shall automatically read to be included.
- Obligation to create community based sheltered workshops, entrepreneurial skill development and management resource services to enable self-employment.
- Creation of a watchdog to ensure equal remuneration for equal work.
- Support to access integrated employment in a general community workplace by way of specific programs for integration.
- Special employment exchanges should have the same rules and powers as the exchanges created under Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959.
- All government departments/PSU's/local and statutory authorities should compulsorily forward reserved vacancies within 10 days of their arising.

Access to Justice

At the core of access to justice for intellectually and developmentally disabled persons would be the change from incapacity to capacity. Support structures and reasonable accommodations would have to be created in order for persons with intellectual and developmental disability to sue or be sued in their own capacity rather than through the medium of a next friend. Adequate safeguards would also have to be provided for any decisions found to have been taken by any person in a relationship of support where due process (to be established by statute has not been followed). Rules of evidence and establishment of interpretive identities based on description of agreement or disagreement and verified by an independent panel would need to be evolved as a statutory responsibility.

The reach of persons with disability to the justice system has traditionally been extremely poor. The Indian Judicial system is cumbersome, involves lengthy

processes and is completely inadequate to meet the needs of persons with disabilities. Persons with intellectual and developmental disabilities find the access to the justice system exponentially harder. In order to facilitate and ensure that such access is provided the territorial jurisdiction of courts must give way to the ease of access of the disabled person. The disabled person must also be able to seek court intervention in a non- formalized manner. A system of establishing fast track justice for the disabled also needs to be incorporated into the existing processes. For availing services of legal services authorities, income must not be the sole criterion for disabled persons or their family members and caregivers. The criteria of income should be supplemented by a composite criterion of income and expenditure as in certain cases the cost of accessing special services necessary for a person with disability may be prohibited rendering a person monetarily shaky if not unsound.

Recommendations

- Disabled persons must be able to choose their jurisdiction based upon ease of access.
- Free legal services must be made available to disabled persons and their families upon producing certificates of income and expenditure testifying to their inability to access paid legal services.
- Relaxation of the laws of Limitation.

Civil and Political Rights

The UNCRPD is based on the respect of human rights and fundamental freedoms of persons with intellectual disabilities and as such requires full community participation and inclusion. Persons with intellectual and developmental disabilities are at a greater risk of victimization and violence including family violence. Family violence refers to deliberate harm, intimidation or coercion in the context of close personal relationships. Gross neglect of a dependent person can also be described as a form of family violence. Neglect is different from other forms of violence in that it is an act of omission but it is perhaps the most common and prevalent form of abuse of persons who need supported lifestyles. It includes failure to provide medical care, protection or necessities of life and extends to emotional and/or educational neglect.

The UNCRPD made a departure from all previous conventions in its recognition of the importance of the learning from experience of the first rights holder. In consonance with the UNCRPD and in recognition of the right of the first rights holder to participate in and contribute to decision making all schemes to be formulated under the act must be notified in full and a period of not less than 90 days be given for public inputs with a corresponding obligation to make public all such inputs and the reasons for their non incorporation in any proposed scheme.

Recommendations

- Creation of treatment programs, shelters, victim service units and other resources for persons requiring supported lifestyle.
- Establishment of an independent and competent authority guided by due process for determining that even with adequate and appropriate supports all less restrictive alternatives to the appointment of a substituted decision maker have been played out.

Right to Health

The right to health as a concretized obligation of the state with specific ramifications for the disabled community has not found a place in any legislation so far except in parenthesis as prevention and early detection in the Prevention and Early Detection Section in the PWD Act. However, with persons with intellectual and developmental disability the right to access health services attains a whole new dimension. The reason for this is that the entire systems of diagnosis changes when it comes to persons with intellectual and developmental disability and medical practitioners have to be trained in order to render quality health services with proper diagnosis and correct treatment. Creation of a paramedical/medical rehabilitation/ cross disciplinary specialist carders is the basis of delivery of health care facilities to persons with mental retardation, multiple disabilities, autism and cerebral palsy. Article 25 of the UNCRPD refers to parity in all forms of insurance for disabled persons an introduction of health insurance is a significant move to accessing healthcare.

Recommendations

- Creation of disciplines to train and certify various levels of health care workers, removal of territorial jurisdictional barriers for the access to healthcare so that a person with disability is able to choose the point of contact based on ease of access. Instead of the nebulous “within the limits of their economic capacity the law should be framed as a commitment to achieving a certain goal within a stipulated time frame after which it becomes an actionable claim. Health insurance for disabled persons commensurate to their lifestyle and ability to pay premiums.

Property Rights

It has been consistently observed that persons with disability and more specially persons in need of supported lifestyles are denied access to property rights more as a matter of perception than as a matter of law. Even though legally entitled to receive property it has been seem that parents/ guardians are reluctant to vest property in disabled persons in much the same manner as was applicable to women. It is felt that some legal measures should be introduced to prevent the disabled

persons from being denied rights of inheritance by a perception of incapacity. A law similar to the one safeguarding inheritance rights of a wife should be introduced.

Recommendation

- Either by means of an introduction in disability law or by an amendment in the various acts governing laws of succession provision must be made that ensures that no disabled child can be given less than the share of property that would have devolved upon them by succession in testamentary disposition.
- During the course of the discussion a very large scale concern emerged regarding abuse of persons with disabilities within the home environment as well as issues relating to the capability of the person to support themselves, post the death of the parents. These two provisions have been added specifically with relation to persons with intellectual, cognitive and developmental disabilities, who may need supported lifestyles requiring a larger influx of funds.
- Introduction of a provision for the CCPD to allot a share of property towards the maintenance of a disabled person which may be larger than his/her share in the property even through interstate succession such as a right to lifetime residence in parental property. Introduction of a clause relating to partition of family resources and their allocation for the maintenance of a disabled person within a support network outside the family if a case of physical or mental abuse is established even during the lifetime of the parents.

Miscellaneous

The Central and State Governments shall, as expeditiously as possible but in no event later than one year from the coming into force of this enactment, frame appropriate schemes, rules and regulations for the achievement of the objectives of this Act and such schemes shall be reviewed from time to time but not later than three years from the coming into force of such scheme.

Legal Formats and Formalization of Amendments

The substantive provisions emerging as the consensus at the end of the consultative process may be actualized in a variety of ways. As a sector it would become important to articulate the vehicle thought appropriate to achieve the recommendations agreed upon. Different approaches are possible in order to achieve the required legal formulations.

The present structure, i.e., the multiple Act methodology could be followed. This would necessitate the discussion continuing further to isolate and segregate what

would fall in the ambit of general disability specific laws and the laws targeted at the special needs of specific subgroups within disability.

The legal formulations could also be viewed in the context of introducing disability specific accommodations in the various general laws prevailing at present and the formulation of one or more disability specific legislations.

Accessibility

The issue of accessibility had not previously been dealt with in the position paper as the author had clearly stated that only disability specific issues relative to the constituency being addressed in the paper. It is the opinion of the author that issues of accessibility are cross-cutting across all disabilities and have been addressed adequately in the position papers dealing with the 3 categories of physical disabilities. The only addition that the author feels should be addressed here in the present position paper which is disability specific is augmentative and assistive devices which must be installed in all government offices and public places so that persons with motor-neuron disorders may be able to communicate adequately. The DGCA Carrier Airline Regulations (CAR's) as framed in 2007 along with the input of the disability sector should be implemented with immediate effect.

Monitoring Mechanisms

This is another issue which is cross-cutting across all disabilities. However, monitoring by civil society particularly disabled persons themselves should be introduced so that the experiential reality of the first rights holder is taken into account. Monitoring by civil society and disabled persons themselves would also ensure that cases of abuse in institutions are prevented or stopped because such cases would come to light much quicker and also more clearly.

Recommendation

- Mandatory monitoring at specified intervals stated in the act along with a penalty clause for non-compliance on the government department specifically enumerated as being responsible for this task.

Recreation

This issue was also not dealt with for the same reason as the previous 2 issues. However in the light of the observations emanating during discussions the following recommendations are made.

Recommendations

- Persons with disability should be given membership of any recreational facility to which they have easy access from their residence or their place of employment/ educational institutional institution. Membership fees

may be reduced to an affordable level or dispensed with depending on the economic status of the disabled person.

Right to Marriage and/or Family

The law relating to divorce on the ground of disability must be abrogated.

Penalties

Any penalty imposed by any law for abuse of any kind including use of child labor, abuse under the Children Act, 1960, Domestic Violence Act, to illustrate a few examples shall carry harsher penalties which shall escalate in direct proportion to the escalation in the disability of the person abused and to any increase in disability caused by such actions.

Other Laws

CPC, 1908 – Rule 15A (Rule 1-14), should be amended to include a special provisions relating to persons with intellectual, cognitive and developmental disabilities and their right of representation with the help of necessary support.

Contract Act, 1872 – The existent provision relating to incapacity must be abrogated to bring the Contract Act in line with UNCRPD. As such competence to contract to the extent of ability through support of networks created for the purpose which shall be escalating in nature dependent upon the need of the individual with disability.

Contract Labour (Abolition and Regulation) Act, 1970 – Insertion of a provision of a system of registration of disabled persons and payment of proper wages assisted in the case of persons with intellectual, cognitive and developmental disabilities through use of support networks.

Code of Criminal Procedure, 1973 – Section 125 should be amended to include sub- para (c)as follows:

- (c) The expression “unable to maintain himself or herself or itself” shall also be deemed to include inability arising out of any disability within the meaning of Persons with disabilities (equal opportunities, protection of rights and full participation) Act,1995 and the National Trust for welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities Act,1999.

The Evidence Act, 1872 – In Chapter 9, Section 118 should be amended to state:

“That in the case of persons with disabilities testimony shall be given with the help of support if necessary whether by means of assistive devices or human support.”

In Chapter 9, Section 119 should be amended to state:

“To provide independent interpreters and video recording so testimony can be reappraised at any stage to corroborate the translation.”

The Factories Act, 1948 – Chapter 4 should be amended to include a special safety protocol for persons with cognitive, developmental and intellectual disabilities which should mandatorily lay down the parameters that each establishment depending upon the nature of work and the level of support required by the disabled persons working in the said establishment will customize to their special needs and such protocol should also specify allocation and activation of support for emergency action and/or evacuation.

Mines Act, 1952 – A similar provision as given above under Factories Act to be incorporated.

The Government Savings Banks Act, 1873 – This should be amended to include a provision that persons with disability shall be entitled to open their own bank accounts independently with support of their choice and/or need.

The Government Savings Certificates Act, 1959 – Provision for payment to persons with disability directly in person with support networks being utilized to the extent they are needed.

Hindu Minority and Guardianship Act, 1956 – Guardianship of adults with intellectual, cognitive and developmental disabilities has to be abrogated.

Immoral Traffic (Prevention) Act, 1956 - Enhanced penalty for trafficking in disabled persons.

The Limitation Act, 1963 – Should not apply to persons with intellectual, cognitive and developmental disabilities.

The Oaths Act, 1969 – Provided further that, where the witness is a person with disability, and the Court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he

does not understand the nature of an oath or affirmation, the foregoing provisions of this section and section 5 shall not apply to such witness, but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

Partnership Act, 1932 – Persons with intellectual, cognitive and developmental disabilities entitled to join partnerships.

In case of family partnerships persons with intellectual, cognitive and developmental disabilities shall get partnership rewards equivalent to the other partners but contribute to the partnership according to their capacity.

Payment of Gratuity Act, 1972 – The benefits of gratuity accrue to the family members in the case of a deceased employee. Members of the family who are adults but are persons with disability do not figure in the scope of the ‘family’ as defined in section 2(h) of this Act. It is necessary to ensure that such disabled family members who are dependant on the earning member do not stand to be deprived of the benefits under this Act. It is therefore, suggested that section 2(h) of this Act be amended so as to add the words “including adult progenies with disability” after the word “children” occurring in clause (i) in section 2(h) of this Act.

Indian Penal Code, 1860 – Section 84 in the case of persons with intellectual, cognitive and developmental disabilities, no act shall be punishable if committed without understanding of the consequences.

Amendment to ensure that in case of any sentencing the aggravated impact of a prison sentence shall be taken into account and reasonable accommodation made on the basis of the extent of hardship.

Plantations Labour Act, 1951 – Section 19 – reasonable accommodations for persons with disability shall be provided by means of flexible working hours and reduction in the weekly working hours.

Prisoners Act, 1900 – Special facilities, for the safety of prisoners with intellectual, cognitive and developmental disabilities.

Probation of Offenders Act, 1958 – Relaxation of norms leading to easier probation for person with intellectual, cognitive and developmental disabilities.

Representation of the Peoples’ Act, 1951 – This must be amended to read

as follows:

“Any person with disability who evinces a desire to vote shall be ensured a franchise provided that support shall include human support as well.”

Indian Succession Act, 1925 – Chapter II shall include a section relating to advance directives which may be given in consultation with support networks. Persons with intellectual, cognitive and developmental disabilities should make wills with support which shall be independent always provided that the greater the requirement of support the greater the checks and balances.

Status Paper on Rights of Persons living with Mental Illness in the light of the UNCRPD

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I. Introduction

- 1.1 This status paper on the rights of persons living with mental illness is part of a series of status papers on the rights of different disability groups. In this era of cross disability advocacy, any effort which focuses attention on a particular disability groups may seem anomalous. The merit of the exercise is that it allows focused attention on the concerns of a particular disability group, which ensures that none of these concerns get lost in the large picture of cross disability advocacy. This process also helps in setting the non-negotiables of each disability group, this bottom line has to be laid down, in order to enable cross disability dialogue and collaboration. To this end, engagement with the concerns of a particular disability group assists rather than impedes cross disability advocacy. It may be also pertinent to inform that the International Disability Caucus which is a primary contemporary example of cross disability advocacy was able to perform its public advocacial role in the United Nations in an effective manner because there was rigorous and intense non public dialoguing between various disability groups. Thus, without compromising on the need for convergence, I am focusing exclusive attention on the rights of persons living with mental illness in the light of the UN Convention on the Rights of Persons with Disabilities (hereinafter CRPD).
- 1.2 In outlining the concerns of persons living with mental illness, it needs to be appreciated that unlike a number of other disability groups, most notably the blind and hearing impaired, persons living with mental illness do not have a national associational body. In order to address this absence, NAJMI a national level alliance was set up which held a series of meetings around the country to formulate a bill of rights for persons living with mental illness. These consultations as also the lived experience of the various organizations which are a part of the network raised questions on the legal status of the rights of persons living with mental illness. These questions can be broadly formulated as follows:
- a. How should the Mental Health Act, 1987 (MHA) be reformulated to be in consonance with the CRPD?
 - b. What is the relationship between the MHA and the Persons with Disabilities Act (PWDA) and how should the concerns of persons living with mental illness be inducted in the PWDA?
 - c. Persons living with mental illness are denied social, economic and political participation by several legislative provisions; how should these provisions be recast so as to protect the rights of persons living with mental illness?

- d. How should be the dismantling of the disqualifying regime be reflected in the special legislations addressing either persons with disabilities generally or persons living with mental illness specifically?
- e. What are the various advocacial tasks that would need to be undertaken in order to realize the just dues of persons living with mental illness?

This Status paper is an effort to answer the above stated questions.

II. Reformulating The Mental Health Act: Care And Treatment

- 2.1 The Mental Health Act mainly provides for two matters. One, it regulates the care and treatment of persons living with mental illness in psychiatric institutions; and two, the appointment of a guardian of person and a manager of property for those persons living with mental illness who are adjudged incapable of managing themselves or their property. Except for a lone provision by which a person living with mental illness can voluntarily seek treatment in a psychiatric institution, the care and treatment segment of the statute primarily incorporates procedures by which persons living with mental illness can be compulsorily hospitalized in psychiatric institutions. Even the person voluntarily seeking admission in a psychiatric institution cannot obtain discharge if a medical officer in charge of a Psychiatric Hospital or Nursing Home considers such discharge not to be in the interest of the person living with mental illness.

- 2.2 The Mental Health Act is a statute which provides a procedure by which persons living with mental illness can be denied their liberty. Article 21 of the Indian Constitution provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. Since 1978 the Indian Supreme Court has also laid down that just a legislatively prescribed procedure will not be sufficient fulfillment of the constitutional requirement; it was further necessary that this procedure should be just fair and reasonable. Whether the procedure prescribed in the Mental Health Act satisfies the reasonableness standard prescribed by the Supreme Court of India is a disputed question, insofar as arguments have been mounted both for and against the constitutionality of the legislation. The Sarthak petition is a case in point. It is undeniable however that the existence of the Statute is a prima facie fulfilment of the constitutional requirement that denial of life and liberty shall only happen through legislative procedure and not by governmental order.

- 2.3 There are several grounds on which the constitutionality of the MHA can be questioned. Some of these grounds could be that the statute allows for a person living with mental illness to be institutionalized for a lifetime. There is no

procedure for review and no obligation to look for a less restrictive alternative. It is true that this unlimited institutionalization has to be ordered by a judicial authority, however it is technically possible to obtain entry without judicial intervention and then keep renewing the original order if the family or friends of the person living with mental illness are of the opinion that such institutionalization is in the best interest of the person living with mental illness. Thus, the MHA permits the person living with mental illness to lose his liberty provided named others such as the family, the doctors and the courts consider such institutional care to be necessary. With this procedure of compulsory treatment persons living with mental illness are dealt with differently from persons with other illnesses as well as persons with other disabilities. It could be argued that this mode of dealing with persons living with mental illness was arbitrary and in infringement of the right to equality before the law and equal protection of the laws guaranteed by the Indian Constitution.

2.4 In the wake of this suspect constitutional status of the MHA, there is need to look at how the question of life, liberty, integrity and no force has been addressed by the CRPD. The CRPD reaffirms that every human being has the inherent right to life and requires state parties to take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others. In the wake of the NHRC studies on the state of psychiatric institutions in India as also the various public interest actions filed against the care and treatment conditions subsisting in mental hospitals, it can be credibly argued that persons living in institutions are deprived of their right to life as guaranteed by the CRPD. The procedure of compulsory institutionalization provided in the MHA grants to persons living with mental illness an isolated lonely existence in a far away institution, which neither possesses a conducive living environment nor respectful treatment conditions. Such an existence cannot be presented as effective enjoyment of the right to life.

2.5 Article 14 of CRPD requires state parties to ensure that persons with disabilities enjoy the right to liberty and security of person on an equal basis with others. The Article prohibits any arbitrary or unlawful deprivation of liberty, requires that any deprivation of liberty should be in conformity with the law and the existence of a disability in no case can justify a deprivation of liberty. Insofar as compulsory institutionalization in the MHA is restricted to persons living with mental illness, the deprivation of liberty in the statute is based on disability and thus not in consonance with Article 14 of CRPD.

2.6 Article 17 of CRPD provides that every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with

others. And Article 19 of CRPD recognizes the equal right of all persons with disabilities to live in the community with choices equal to others. And Article 25 requires health professionals to provide care of the same quality to persons with disabilities as to others. Such care has to be provided on the basis of free and informed consent. These articles place further question marks on the compulsory institutionalization procedure provided in the MHA. A study of the preparatory papers shows that there were multiple efforts by states to obtain approval for compulsory mental health care during the negotiations of the CRPD but without success. Disabled Peoples Organizations were also unable to obtain an express prohibition against forced interventions and compulsory care. Consequently, there is no explicit prohibition of forced interventions in the CPRD; but neither does the Convention permit compulsory mental health care. The above narration shows that the CRPD leans towards no force, whereas the only reason why the MHA is on the statute book is to justify force on persons living with mental illness. The care and treatment provisions of the MHA are not in conformity with the CRPD. It therefore becomes essential to consider how this segment of the MHA should be recast to obtain harmony with the CRPD.

2.7 The one place of overlap between the MHA and PWDA is the provision relating to registration of institutions. The MHA requires a license to be obtained before establishing a private psychiatric hospital or nursing home. The PWDA prohibits any person to establish or maintain any institution for persons with disabilities except under and in accordance with a certificate of registration issued in this behalf by the competent authority. The PWDA does not define an institution for persons with disabilities. The MHA defines a psychiatric hospital or psychiatric nursing home to mean “a hospital or as the case may be a nursing home established or maintained by the government for the treatment and care of mentally ill persons and includes a convalescent home established or maintained by the government or any other person for such mentally ill persons; but does not include any general hospital or general nursing home established or maintained by the government and which provides also for psychiatric services”. Insofar as mental illness is included in the definition of disability, a psychiatric nursing home and hospital would also be covered within the definition of an institution for persons with disabilities. If such a meaning is adopted then a psychiatric hospital or nursing home would need to obtain two permissions, one from the licensing authority under the MHA and the other from the competent authority under the PWDA. Such an interpretation would make the law cumbersome and inefficient and hence unsustainable. The question then is that if only one registration is required, which is the relevant statute for obtaining such recognition?

2.8 There are two competing maxims of statutory interpretation which come into play to answer this question. One maxim is that in the case of conflict a later statute prevails over the earlier one. The other maxim accords priority to a special statute over a general one. The PWDA was enacted later than the MHA. On that reasoning, it could be contended that the registration procedures of the PWDA override the licensing provisions of the MHA. The PWDA is a general statute for all persons with disabilities including persons living with mental illness. The MHA is a special statute only for persons living with mental illness. The following interpretation could be put forth on a harmonious reading of both statutes in the light of these maxims. The PWDA provisions on registration of institutions would apply to all institutions for persons with disabilities except psychiatric hospitals and nursing homes including convalescent homes for persons living with mental illness. This is to accord priority to the special legislation that is MHA over the general law of PWDA. Any institution for persons living with mental illness other than a psychiatric hospital or nursing home would be an institution for persons with disabilities and would need to obtain registration under the PWDA from the competent authority. Here the later statute that is PWDA is filling the gaps left by the MHA.

2.9 The unraveling of the provisions of the two statutes demonstrates the complicated nature of the legal requirement. The rationale behind the licensing provisions in the MHA is to prevent the mushrooming of substandard institutions providing custodial care to persons living with mental illness. The social stigma surrounding mental illness causes families to dump their relatives with mental illness in far away institutions. To prevent such like use of institutional care licensing provisions were introduced in the MHA. Licensing however is also a major dampener for the establishment of services. There is a great paucity of services for persons living with mental illness, be they services for care and treatment, leisure and recreation, habilitation and rehabilitation, the rigorous registration requirements further discourage people from setting up services. The question of abuse comes into play only if services are in existence. A legal procedure which discourages people from entering the mental health arena and thereby further disadvantages persons living with mental illness requires reconsideration. It also needs to be noted that licensing without constant and continuous monitoring is hardly sufficient for preventing abuse. The closed nature of psychiatric institutions coupled with the stigma of the condition prevents citizen oversight of these bodies.

Suggestions for consideration

Care and treatment

2.10 The above analysis shows that the MHA is not in conformity with the CRPD.

This section spells out the changes that would need to be incorporated in the law if it has to be in harmony with the CRPD. There is no explicit prohibition of forced interventions in the CRPD. The Convention however recognizes the right to life, liberty and integrity of all persons with disabilities. It also recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. It requires health interventions to be provided with informed consent. It further recognizes the equal right of all persons with disabilities to live in the community and enjoins that persons with disabilities should have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.

2.11 The cumulative consequence of all these provisions of the CRPD robs legitimacy from the forced intervention provisions of the MHA. This necessitates a restructuring of the provision for care and treatment of persons living with mental illness. Such care should be actuated by the need to respect the dignity of persons living with mental illness and be provided in accordance with the norms of confidentiality and informed consent. These objectives could be achieved through the following initiatives:

- Closed psychiatric institutions could be remodeled as open houses which provide shelter, care and treatment. The entry and exit to these homes should be with the volition of the person living with mental illness. The choice of institutional care need not be presented as “suffocating in institutions” or “dying on the streets”. By the above remodeling, the state takes on the obligation of providing the service but leaves the choice of accessing the service to the beneficiaries.
- Since consent flows from information, persons in need of the service should be informed of the same and persuaded to access the service. Such activity of providing information and persuasive counseling to access the available services shall be necessarily provided to the wandering or homeless persons living with mental illness.
- The statute shall also lay down standards for upholding the quality of mental health services. These standards could have both positive and negative aspects. The positive aspect shall specify what the mental health service should do as well as how it should do it. The negative standard on the other hand should lay down what the mental health service cannot do. Whilst a certain degree of negotiability may be permitted in the positive standards, the implementation of the negative standards should be necessarily non-negotiable. Illustratively, a total prohibition should be placed on unmodified ECT; invasive surgical procedures; forced sterilizations.

- The emphasis of the law should shift from specifying procedures of entry and exit, to creation of a range of services. These services should be created in such manner that they respect the right of full inclusion and participation in the community for persons living with mental illness.
- The CRPD recognizes the right of persons with disabilities to live independently and in the community. Both the MHA and the PWDA do not address this matter but try to oversee the conditions of institutions housing persons living with mental illness and persons with disabilities respectively. This regulatory effort only generates legal confusion which would greatly hamper the creation of services for persons living with mental illness. It is therefore suggested that whilst some mechanism of registration may be retained to keep track of the nature of services developing in the disability sector the licensing provisions incorporated in the MHA be repealed. Instead incentives may be offered for setting up services required by persons living with mental illness, and the nature of such required services should be settled after consulting with persons living with mental illness. This process along with the recognition of the full legal capacity of persons living with mental illness could assist in their real inclusion in the community.

III. Reformulating The Mental Health Act: Incompetence And Substituted Management

3.1 The MHA also contains a procedure by which a guardian for the person and a manager for the property can be appointed for those persons living with mental illness who cannot manage themselves or their property. Depending upon the extent of incompetence, the statute allows for both the appointment of a guardian and a manager or if the person living with mental illness can take care of self then only for the appointment of a manager. The MHA incorporates a plenary system of guardianship which means that during the subsistence of the guardianship, the person living with mental illness is not recognized by the law. It is the guardian who speaks and decides for the individual. Whilst the guardian is meant to perform his or her duties in the best interest of the person living with mental illness, there is no obligation to consult with the declared incompetent. Further any action taken or decision made by the person living with mental illness has no validity in law and such like system continues till the person living with mental illness is declared fit and the guardian removed from office. Insofar as a person in plenary guardianship loses all authority to manage his or her life and to make the simplest of decisions, guardianship in a manner of speaking becomes equal to civil death.

3.2 Article 12 of the CRPD reaffirms that persons with disabilities have the right

to recognition every where as persons before the law. This reaffirmation arises because the ICCPR recognizes that all persons have the right to recognition as persons before the law. The significance of this provision primarily arises from the fact that in different stages of human history, some human beings due to gender, race, caste, colour or ethnicity were not recognized by the law. Whilst rules were made on them, and for them, they had no claims on the law. Whenever these discriminatory regimes were dismantled an important first step for conferring legal capacity to the excluded people was to recognize them as persons before the law. Since persons with disabilities have also in different stages of human history experienced such like exclusion, Article 12 (1) reaffirms that they have the right to recognition everywhere as persons before the law.

3.3 Article 12 (2) requires state parties to recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. This article grants to persons with disabilities the freedom to act in all matters concerning their lives. The significance of this provision primarily arises from the fact that there is an overarching presumption of incompetence which socially subsists against all persons with disabilities and legally exists against persons living with mental illness and persons with intellectual disability. Due to the social stereotype of disability, the stigma of incapacity attaches to all persons with disabilities but is especially strong against those persons with disabilities who are also considered incompetent by the law. Persons living with mental illness are in that category. The guardianship provisions in the MHA, for adults with mental illness arise due to this legal presumption. Therefore, the CRPD makes a major shift in thought from the incompetence model to the model of universal capacity when it recognizes that all persons with disabilities enjoy legal capacity in all aspects of life.

3.4 The CRPD has challenged the inextricable connection between impairment and incompetence. It has been asserted in the Convention that the impression of incompetence has been generated not due to any internal inadequacy of the person with disability but due to the social barriers surrounding the person with impairments. It is by reason of this understanding that Article 12 (3) requires states to take appropriate measures to provide access to the support they may require to exercise their legal capacity. In making this play for support, the CRPD has shifted from the earlier paradigm which declared persons with disabilities to be incompetent; appointed persons who acted in substitution; and thereby de-centered persons with disabilities from their own lives. The new paradigm recognizes that persons with disabilities have the capacity to act and also acknowledges that they may require support to exercise this capacity. However, the fact that they need to access support to exercise this ca-

capacity cannot be a basis for declaring them incompetent and appointing some one else in substitution. The obligation is to provide the support and keep the person with disabilities in control of his or her life.

3.5 As already mentioned, one of the reasons for a legislation such as the MHA is to provide a legislatively sanctioned procedure for both deprivation of liberty and appointment of guardians. It is significant that the judiciary at different levels has been accorded a role in the matter. Whilst judicial magistrates are the original authorities overseeing compulsory institutional care with a right of appeal to the District Court; guardianship decisions have to be made by the District Courts with a right of appeal to the High Court. The question however is whether the provision of judicial oversight suffices to meet the safeguards requirement of Article 12 (4) of the CRPD. This article requires “that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law”. The safeguards are meant to ensure “that measures relating to the exercise of legal capacity respect the rights, will and preference of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards are to be proportional to the degree to which such measures affect the person’s rights and interests”.

3.6 The question of safeguards would assume significance if the legal regime is constructed in recognition of the legal capacity of persons living with mental illness. Insofar as the MHA regime of substituted management is based on a finding of incompetence, the presence of safeguards such as judicial review, prohibition on appointments of legal heirs, judicial oversight of the estate’s accounts, necessity of obtaining judicial permission for all major property transactions are of little significance. All these safeguards protect the property of the person living with mental illness; there is no concern with the autonomy choice or preference of the person living with mental illness. Once a person living with mental illness is declared incompetent, all these dimensions of personhood are rendered irrelevant by the law.

Suggestions for consideration

Legal capacity and support

3.7 The CRPD puts in place the paradigm of universal legal capacity with support. Consequently, all persons with disabilities including persons living with mental illness are recognized to possess legal capacity as well as are entitled to obtain support for the exercise of this capacity. As a result of this changeo-

ver, the chapter of the MHA which makes provision for plenary guardianship cannot be retained as it is contrary to the mandate of the CRPD. The plenary guardianship provisions of the MHA would need to be repealed.

- 3.8 The obligation of the state under the CRPD is not just fulfilled by repealing the provision for plenary guardianship; the mandate of universal legal capacity would also require the initiation of programmes to create support and recognition of supported decision making. Creation of support could be done through a range of formal and informal models.
- 3.9 The formal models may need to be registered under the law and may require legal procedures to set them up through the intervention of a Court or other independent authority. These models may be more suitable for those persons living with mental illness who have high support needs. Since such persons would seek support at the maximum of the scale, it is necessary that such support is subjected to greater safeguards. Such a system would be in accord with the principle of proportionality incorporated in Article 12 (4).
- 3.10 For persons living with mental illness in the community, the legal recognition of their capacity would remove a major barrier to the creation of relationships of trust. In order to ensure that social stereotypes and prejudices on persons living with mental illness do not jeopardize the new paradigm of legal capacity, awareness building, sensitization activities and capacity building of various decision makers in the legislature, executive and judiciary would be required.
- 3.11 For persons with mental illness living in institutions special state sponsored initiatives of support would be needed in order to ensure their movement from the paradigm of incapacity to the paradigm of capacity with support.
- 3.12 In order to ensure that the will of the person living with mental illness retains primacy, it is important to incorporate procedures for the registration of decision making instruments such as advance directives; living wills; continued powers of attorney; special powers of attorney and proxy representations. These are special legal instruments which have been devised to both respect the will and preference of the person with disabilities as well as provide him or her with requisite support to deal with technical financial transactions. The incorporation of such like legal provisions would be in accord with Article 12 (5) of the CRPD which requires state parties to take all appropriate and effective measures to ensure the equal right of persons with disabilities to control

their own financial affairs. The instrument of advance directives is being commonly used to ensure that care and treatment including psychiatric care and treatment is provided in accordance with the will and preference of the person living with mental illness.

IV. The Impact Of The PWD Act For Persons Living With Mental Illness

4.1 Except for the (already discussed) provision dealing with recognition of institutions for persons with disabilities there is no subject overlap between MHA and the Persons with Disabilities Act (hereinafter PWDA). The issues addressed by the MHA do not figure in the in-PWDA and the concerns of PWDA are not addressed in MHA. The critical connection between the two statutes is that any person subject to the MHA regime almost automatically gets ousted from the PWDA. Thus, the social economic rights of education, employment, access, rehabilitation are rendered legally unavailable for persons living with mental illness who are in institutions or are subject to the plenary guardianship provided for in the MHA. Moreover, till the regime of plenary guardianship and forced institutionalization remains persons living with mental illness can be at any point denied the entitlements provided for in the PWDA.

Definition of Disability

4.2 The PWDA is primarily concerned with the equal opportunity, full participation and non-discrimination of persons with disabilities. The definition of disability in PWDA includes mental illness and a mentally ill person is defined as a person in need of care and treatment by reason of any mental disorder other than mental retardation. Thus the MHA definition of mentally ill person has been adopted in the PWDA. This expansive definition has been subsequently curtailed by the IDEAS scale notified by the Ministry of Social Justice and Empowerment whereby the definition of disability stands restricted to persons living with chronic mental illness. Such restriction of the definition has been undertaken by the Ministry because the PWDA adopts the medical model of disability whereby the deficits, inadequacies or aberrations in the individual person is the basis of defining disability.

4.3 The CRPD on the other hand has adopted the social model of disability and contains a definition on persons with disabilities. This definition included in the purpose article of CRPD states that persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The CRPD unlike the

PWDA defines a person with disabilities in inclusive terms. Thus the use of the word “long term” in the CRPD definition has at the most prioritization consequences it does not exclude other persons living with mental illness. The IDEAS scale on the other hand, excludes from the benefits of the PWDA, all those persons living with mental illness who do not meet the parameters of the scale. Insofar as a large proportion of the disability in mental illness emanates from the attitudes of people, this exclusionary model of PWDA is highly disadvantageous for persons living with mental illness. It is ironic that the expansive definition of mentally ill person is retained for MHA which primarily deals with compulsory institutional care and plenary guardianship; and a restrictive definition of mentally ill person has been adopted for PWDA which addresses the equal opportunity and full participation of persons living with mental illness.

- 4.4 In order to fulfil the CRPD mandate it would be necessary to adopt a social model definition of persons living with mental illness in the PWDA. Once the social model definition of persons living with mental illness stands adopted, then the concerns of this constituency can be woven into each of the rights addressed by the PWDA.
- 4.5 Even as the title of the PWDA promises to address the questions of discrimination, the statute is primarily concerned with making affirmative action arrangements for persons with disabilities. There is no explicit provision outlawing the discrimination experienced by persons with disabilities. Whilst affirmative action programmes are about substantive equality and aim to close the gap between the disabled and non-disabled world; non discrimination is about ensuring that opportunity is not denied to persons with disabilities by reason of their disability. The non-discrimination provision holds special significance for persons living with mental illness as a large part of their exclusion is an exclusion of the mind. In order to address this social stigma it is imperative that an **explicit provision barring discrimination on the ground of mental illness (whether past or present) should be incorporated in the PWDA.**
- 4.6 The CRPD acknowledges that disability is an integral manifestation of human difference. The difference is not just between persons with disabilities and the non-disabled; the difference is also between persons with disabilities. Consequently, even with universal design, reasonable accommodation is required for the social participation of all persons with disabilities. Reasonable accommodation means “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular

case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”. Such accommodation thus addresses the distinct needs of the individual person with disabilities. In the context of persons living with mental illness reasonable accommodation may need to be used to induct flexibility in the normative sphere. Thus like persons with physical and sensory impairments may require modification in the built environment persons living with mental illness may need alteration in the rules regime.

Socio –Economic Rights Addressed by the PWDA

4.7 The PWDA is not a comprehensive legislation on the rights of persons with disabilities. The civil political rights of persons with disabilities have not been addressed and the social economic rights are also selectively covered. In what follows, I shall firstly examine how the socio-economic rights included in the PWDA should be recast to fulfil the CRPD mandate for persons living with mental illness.

Prevention

4.8 The substantive provisions in the PWDA begin with a chapter on prevention and early detection of disabilities. The CRPD is totally silent on primary prevention of disabilities on the reasoning that primary prevention is not a disability rights issue and hence should not find place in a Convention on the Rights of Persons with Disabilities. The inclusion of a primary prevention provision in a disability rights charter is stigmatizing of persons with disabilities as it is virtually saying that persons with disabilities do not have the right to live. Whilst secondary prevention finds mention in the article on the right to health, a studied silence has been maintained on primary prevention in the CRPD. Insofar as social stigma is the most major barrier that persons living with mental illness have to encounter, any procedure by which this stigma stands enhanced needs to be eliminated. **Thus persons living with mental illness would endorse the CRPD position and seek deletion of the chapter on prevention and early detection of disabilities.**

Education

4.9 The existing PWDA chapter on education requires appropriate governments and local authorities to ensure that every child with a disability has access to free education in an appropriate environment till he or she attain the age of 18 years. The statute promises to try integrating children with disabilities in mainstream schools without giving up on the establishment of special schools equipped with vocational training facilities. The statute allows for a range of

schemes to be floated providing for the non-formal education of children with disabilities. There is a promise to initiate research by governmental and non governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education. The statute also expresses concern on the need to develop requisite trained human resource for integrated and special schools. And lastly, there is a promise for preparing a comprehensive education scheme which shall make provision for: transport facilities; removal of architectural barriers; grant of scholarships; supply of books, uniforms; and suitable modification in the curriculum and examination system.

4.10 The above narration has been made to highlight that the PWDA vision of education is primarily restricted to the school. Further, the statute is primarily approaching the question of education from the perspective of resources, so the chapter only outlines where children with disabilities shall be educated; till when; by whom and with what structural modifications in the existing system. The issue of modification has primarily been addressed from a group perspective. The examination system should be modified to eliminate purely mathematical questions for blind students and the curriculum may be restructured to enable children with hearing impairment to take only one language. Insofar as children and adolescents living with mental illness require individualized attention hence the PWDA method of blanket accommodations is of little utility to them, especially as these accommodations have not been generically provided but specifically extended to particular disabilities.

4.11 In contrast to the school based educational system of the PWDA, the CRPD requires state parties to ensure an inclusive education system at all levels and life long learning directed to:

- (a) “The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) Enabling persons with disabilities to participate effectively in a free society”.

In realizing this right state parties are mandated to ensure that reasonable accommodation of the individual’s requirement is provided and effective in-

dividualized support measures are provided in environments that maximize academic and social development. This emphasis on the needs of the particular individual is of special significance to persons living with mental illness, because whilst all persons living with mental illness may require accommodation, the nature of the accommodation would vary from individual to individual. Since persons living with mental illness have a psychosocial disability, they need special assistance to navigate social spheres. **It is therefore of importance to them that the CRPD requirement that persons with disabilities be enabled to learn life and social development skills is incorporated in the PWDA.**

- 4.12 The period of adolescence is especially turbulent for a number of persons living with mental illness. This turbulence often disrupts their educational careers and the need for reintegration schemes is oft expressed. Thus it is of importance to them that the CRPD mandate of ensuring to persons with disabilities access to general tertiary education, vocational training, adult education and life long learning without discrimination and on an equal basis with others stands incorporated in the PWDA.
- 4.13 The right to education as spelled out in the CRPD articulates the objective of education and lays stress on finding space for the individual needs of each person with disabilities. Since persons living with mental illness are often seeking this individual space to grow and develop, this manner of visualizing the right to education accords with their capability development. In order to ensure that persons and especially children living with mental illness realize their right to education, it is important that **the obligation of reasonable accommodation and individualized treatment is explicitly incorporated in the PWDA. It is also imperative that the education chapter moves beyond school based education.**

Employment

- 4.14 The employment chapter in the PWDA primarily revolves around reservations in public employment. Mental illness is not included in the list of disabilities entitled to reservation. The statute requires appropriate governments and local authorities to formulate schemes for ensuring employment of persons with disabilities and suggest that such schemes may provide for: the training and welfare; relaxation of upper age limit; health and safety measures for creating and non-handicapping environment. Whilst the generic mandate of creating a conducive working environment is of some assistance to persons living with mental illness, this requirement only finds mention in a suggested list of possible schemes. It has not been included as a right of persons with

disabilities; hence no right of the person living with mental illness is infringed, if this duty is not fulfilled. Persons living with mental illness also experience discrimination in the work place by reason of their disability and there is no prohibition against such discrimination in the PWDA.

- 4.15 The CRPD recognizes the right of persons with disabilities to work, on an equal basis with others. It requires state parties to take appropriate steps, including through legislation to *inter alia*: prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment; ensure that reasonable accommodation is provided to persons with disabilities in the work place; promote vocational and professional rehabilitation, job retention and return to work programmes and promote opportunities for self employment, entrepreneurship, development of cooperatives and starting one's own business. The incorporation of these provisions of the CRPD in the PWDA would address some of the pressing employment related concerns of persons living with mental illness.
- 4.16 For persons living with mental illness, it is essential that the CRPD paradigm of universal capacity with support stands inducted in the law as without legal capacity, the affirmative action program outlined in Section 43 of the PWDA hold no meaning for persons living with mental illness.

Accessibility

- 4.17 The non discrimination chapter of PWDA only provides for accessibility in transport and the built environment. For persons living with mental illness accessibility means provision of assistance to navigate the physical environment and to access services. Article 9 of the CRPD visualizes these barriers of the mind and mandates states to take appropriate measures to ensure to persons with disabilities access on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public both in urban and rural areas. The provision of live assistance to deal with space disorientation, anxiety of addressing strangers and a changeover from a reactive to a proactive mode of providing services would be some of the supports required for the social participation of persons living with mental illness.

Rehabilitation

- 4.18 Section 66 of PWDA enjoins appropriate governments and local authorities to undertake rehabilitation of all persons with disabilities within the limits of

their economic capacity. Before formulating rehabilitation policies, the appropriate authorities are obligated to consult with non governmental organizations working for the cause of persons with disabilities. The section provides no indication of the manner of activities, the appropriate governments are required to undertake for the rehabilitation of persons with disabilities. The only indicator is provided by Section 66 (2) which states that financial assistance shall be granted to non governmental organizations for rehabilitation programmes. In contrast, Article 26 of the CRPD mandates state parties to take effective and appropriate measures including through peer support to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspects of life. Insofar as persons living with mental illness need to interact with other members of the user survivor community to have a sense of identity and to offset the cultural imperialism practiced by the non disabled world, a CRPD consonant rehabilitation regime is especially needed for persons living with mental illness. As already discussed in the MHA segment of this paper, the legal capacity of persons living with mental illness is constantly subject to challenge and the law provides procedures by which the management of the life of a person living with mental illness can be taken over by nominated others. The PWDA again does not require consultation with persons with disabilities whilst formulating rehabilitation policies. This provision is disadvantageous for all persons with disabilities but is especially exclusionary of persons living with mental illness due to their disenfranchised status.

The Silences of PWD Act

Civil-political rights

4.19 The previous segment was using the CRPD to induct the perspective of persons living with mental illness in those socio-economic rights which have already been addressed by the PWDA. In this segment references made to the silences of PWDA and how those silences have special implications for persons living with mental illness. The PWDA is totally silent on civil political rights. Thus there is no right to life, liberty and integrity; there is no mention of equality and non-discrimination; there is no recognition of freedom of speech and expression and no freedom of movement. The statute is silent on the right of persons with disabilities to vote, stand for election and hold public office. The right to marry, procreate or adopt children is not mentioned. This silence of the PWDA assumes special significance for persons living with mental illness because whilst the statute does not address these issues, there are provisions in a number of legislations, which disqualify persons living with mental illness from exercising these rights.

4.20 The silence of the PWDA assumes great significance in the wake of the fact that the CRPD has recognized all these rights. If Indian Disability Law is to be in harmony with international law then it is necessary to undertake two kinds of activities. One whereby the disqualifying provisions in the various laws be replaced by a provision which recognizes the capacity of persons living with mental illness to act in the exercise of such legal capacity be it to: enter into a contract; to manage movable or immovable property; to marry, adopt or procreate; to testify or litigate; to vote, stand for election or hold public office. This provision should also entitled persons living with mental illness to seek whatever support they may require to exercise the relevant right and the use of support should in no way effect the legal capacity of the person living with mental illness. The other is to introduce provisions in the PWDA which explicitly recognize those rights which have been recognized in the CRPD but do not find mention in the PWDA.

4.21 Whilst discussing the MHA and the chapter on plenary guardianship, it was demonstrated how this chapter was in infringement of Article 12 of the CRPD. It was therefore suggested that the institution of plenary guardianship be abolished and instead a chapter recognizing the legal capacity of persons living with mental illness along with a regime of support be incorporated. Such a chapter could be introduced in the MHA to replace the existing guardianship chapter. However, the MHA only applies to persons living with mental illness whereas the questions of capacity and support are relevant in different ways for all persons with disabilities. **In the circumstances, it seems appropriate that the guardianship chapter in the MHA be repealed and the capacity and support chapter be incorporated in the PWDA.**

Access to Justice

4.22 Section 91 of the MHA makes provision for legal representation and legal aid to persons living with mental illness. Section 12 of the Legal Services Authorities Act includes persons with disabilities amongst the vulnerable groups who are entitled as of right to legal aid. Neither the MHA nor the Legal Services Authorities Act takes into account, the peculiar requirements of persons with disabilities. These provisions subsist along with provisions in the code of criminal procedure whereby the testimony of persons living with mental illness need not be relied upon.

4.23 Article 13 of the CRPD mandates state parties to “ensure effective access to justice for persons with disabilities on an equal basis with others including through the provision of procedural and age appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, includ-

ing as witnesses, in all legal proceedings, including at investigative and other preliminary stages". To fulfil this obligation, state parties are also required to provide appropriate training for those working in the field of administration of justice including police and prison staff.

4.24 In order to fulfil the CRPD mandate on access to justice and especially the requirement of reasonable accommodation, it is essential to incorporate a provision to this effect in the PWDA.

Non discrimination

4.25 One of the overarching objectives of the CRPD is to ensure the equality and non-discrimination of persons with disabilities. The PWDA is however totally silent on this count. Insofar as prejudice and social stereotypes significantly contribute to the marginalization of persons with disabilities generally and persons living with mental illness more particularly, it is imperative that a provision prohibiting discrimination on the ground of disability should be inducted in the PWDA. And for this provision of the PWDA, the generic definition of persons with disability incorporated in the CRPD should be used. The force of this non-discrimination objective could be enhanced by including disability as a prohibited ground in Article 15 of the Indian Constitution.

V. Advocacial Tasks

In this segment, the advocacial tasks that would need to be undertaken to realize the rights of persons living with mental illness are spelled out.

Awareness building

5.1 Article 8 of the CRPD makes awareness raising an overarching obligation of the state. State parties are required to undertake immediate effective and appropriate measures to combat stereotypes prejudices and harmful practices relating to persons with disabilities and to promote awareness of the capabilities and contributions of persons with disabilities. The social stigma faced by persons living with mental illness has been recounted several times in this paper. Therefore the social participation of persons living with mental illness cannot happen without addressing these barriers of the mind. These barriers would need to be stormed in several stages. Before the task of awareness-raising is undertaken for the society at large, NAJMI and other compatriot organizations would need to take the lead in sensitizing the larger disability community and state officials. The sensitization of the larger disability community is required

so that “illness is not disability” kind of reasoning is not put forth by disabled people and their organizations and persons living with mental illness obtain the support of the larger disability community.

- 5.2 The sensitization of government officials is required so that state officials see persons living with mental illness as persons with disabilities and a key stakeholder in the CRPD. The CRPD speaks to state parties and the above analysis has shown that the ground level concerns of persons with disabilities would be substantially addressed. It is therefore essential that state officials must see persons living with mental illness as a key constituency of the CRPD. Insofar as mental illness is included in the definition of disability in the PWDA, lobbying for primary inclusion shall not be required. Advocacy shall be needed to dismantle IDEAS scale and to adopt the social model perspective towards persons living with mental illness. This task of sensitization should be undertaken by civil society in assertion of its rights of participation.
- 5.3 Once the disability community and the state officials are on board, awareness-raising and sensitization would need to be an integral component of all activities surrounding persons living with mental illness. The social stereotype of mental illness would need to be continually challenged for a rights based approach to be adopted for persons living with mental illness.

Law reform

- 5.4 The above analysis of the MHA, PWDA and other legislations regulating the legal status of persons living with mental illness shows that for persons living with mental illness law reform is not a choice but a compulsion. This is because unlike other disabilities the stereotype of mental illness has been reinforced by the law. Since the force of the law backs the legal stereotype, social inclusion of persons living with mental illness cannot happen without dismantling the disqualifying regime of the law.

Two kinds of Law reforms would be required for persons living with mental illness. One- whereby those legal provisions which exclude and disqualify persons living with mental illness would need to be repealed and two- provisions which recognize the entitlements of persons living with mental illness shall be incorporated. The changes suggested in the MHA and the other laws disqualifying persons living with mental illness exemplify law reform tasks of the first kind and the changes suggested in the PWDA illustrate the second kind of law reform activities. Both these reform activities would need to happen hand in hand but goal oriented milestones could be created.

Planning and programme especially to establish support regimes

5.6 The above analysis demonstrated how the construction of legal capacity discriminated against persons living with mental illness. The analysis also demonstrated that whilst some persons living with mental illness may need no more than recognition of their legal capacity; for others this recognition needs to be accompanied with support. A large number of persons living with mental illness needing high support are inmates of institutions. In that situation, it is not possible for them to forge their own relationships of trust and hence they need, at least in the initial stages, state sponsored support. The setting up of support regimes is a programme that needs to be simultaneously launched along with the recognition of legal capacity in order to ensure that this legal capacity can be exercised by all persons living with mental illness. Programmes shall also be required to extend reasonable accommodation to persons living with mental illness whilst accessing justice.

Capability development

5.7 The attribution of incapacity to persons with mental illness by the law is especially problematic because such labeling thwarts their capability development. The recognition of legal capacity however would not in itself develop capabilities. It is therefore essential that special initiatives for the capability development of persons living with mental illness and especially those who have for long been inmates of institutions must be launched.

5.8 All these tasks would need to be undertaken simultaneously. Specific programmes would need to be launched to undertake the tasks of ‘awareness building, capability development and establishment of support regimes’. In order to ensure continuity and stability in these programmes, it is desirable that the obligation to undertake these activities is also incorporated in the law.

Participants' Lists

**List Of Participants For National Consultation
On
Harmonizing Laws With UNCRPD For The
Visually Impaired
Organized At New Delhi On The
9th And 10th November, 2009**

Sl. No.	Participant	Disability	Organisation/State
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2	Dr. Sangeeta Agrawal	VI	SHUBAM, Bihar
3	Dr. Rakesh Jain	VI	Rehabilitation Society for Visually Impaired, Lucknow, UP
4	Mr. Sanayasi Behera	VI	Orissa Association of the Blind Bhubaneswar, Orissa
5	Mr. G. P. Bansal	VI	AICB Chandigarh, Punjab
6	Adv. Kanchan Pamnani	VI	NAB Mumbai, Maharashtra
7	Mr. Baldev Gulati	VI	Nav Prerna, Gaziabad, UP
8	Mr. Murli	VI	Christophel Blinden Mission Karnataka
9	Mr. S.P. Murthy	VI	Karnataka Welfare Association for the Blind Bangalore, Karnataka
10	Prof. Bhaskar Y. Mehta Ex. Commissioner Disabilities Gujarat	VI	National Association for the Blind Gujarat
11	Mr. D. Venket Reddy	VI	NPDO, Andhra Pradesh
12	Mr. Chandrashekhara	VI	Faith India, Kerala
13	Mr. M.V. Shirdhonkar	VI	M.P. Welfare Association for the Blind Indore, Madhya Pradesh
14	Dr. Anil Aneja	VI	AICB, Delhi
15	Mr. George Abraham	Low Vision	SCORE, New Delhi

16	Ms. Sachu Ramalingam	Low Vision	AICB Women Cell, New Delhi
17	Mr. A.K. Mittal	VI	AICB, New Delhi
18	Mr. Nikhil Jain	VI	Sambhavana, New Delhi
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21	Mr. C.D.Tamboli	VI	NAB
22	Mr. Deependra Manocha	VI	Saksham Trust, New Delhi
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29	Mr. Rajive Raturi	VI	HRLNNew, Delhi

List of Participants
On
“Harmonization of Laws with UNCRPD’
For persons with Orthopaedic impairments
Organized at New Delhi on
21st and 22nd November, 2009

Sl. No.	Participant	Disability	Organization Name/ Address
1	Mr. V. Babu Rao	Disability of Upper Limbs	NPDO Hyderabad Andhra Pradesh
2	Mr. Laxmikant Vijayvargiya	Locomotor Disability	Bhel Nishakt Jan Vikas Samiti Bhopal, Madhya Pradesh
3	Mr. Paul Ramanathan	Locomotor Disability	SAMA Foundation Bangalore (Karnataka)
4	Mr. Govind Raj	Locomotor Disability	KARO Bangalore (Karnataka)
5	Mr. K. Anand	Locomotor Disability (WC User)	Ganjam Orthopaedically Handicapped Welfare Association, Bhubneshwar (Orissa)
6	Mr. Arun Kumar Singh	Locomotor Disability	Jharkhand Viklang Manch Jharkhand
7	Mr. Sita Ram Aggrawal	Locomotor Disability	Akhil Bhartiya Viklang Sandesh, Chhattisgarh
8	Mr. Uma shankar Pandey	Locomotor Disability	Bhartiya Viklang Kalyan Association Banda (UP)
9	Dr. P. K. Gopal	Leprosy Cured	IDEA INDIA Tamil Nadu
10	Mr. Uday Thakkar	Nil	Hinda Kustha Nivaran Sangh Mumbai (Maharashtra)
11	Mr. Ishwar Prasad	Locomotor Disability	Chhattisgarh Viklang Manch Chhattisgarh
12	Ms. Mridu Goyal Managing Trustee	Locomotor Disability (WC User)	HANDICARE Lucknow (U P)
13	Mr. Dinesh Choudhary	Locomotor Disability	Dashkul Viklang Siksha Avem Kalyan Sangathan Mandsor Madhya Pradesh

14	Mr. Asharam Dangi	Locomotor Disability	Dashkul Viklang Siksha Avem Kalyan Sangathan Mandor Madhya Pradesh
15	Mr. Avinash Sharma	Locomotor (WC User)	Punjab Physically Handicapped Association Mandsa (Chandigarh)
16	Mr. Sarabjeet Singh	Locomotor Disability (WC User)	Ex Board Member Central Administrative Tribunal, New Delhi
17	Mr. Inderjeet Lal	Locomotor Disability (WC User)	Advisor Leprosy Mission Special Olympic New Delhi
18	Prof. Ramanujam	Locomotor Disability	(WC User) IGNOU New Delhi
19	Mr. Samuel Mani	Cerebral Palsy (WC User)	Nutron Computers New Delhi
20	Mr. Virendra Kalra	Muscular Dystrophy (WC user) (WC User)	IAMD Solan (Himachal Pradesh)
21	Mr. Ravi Shankar Bhushan	Disability of upper Limb	Delhi Viklang Manch New Delhi
22	Mr. Alok Sikka	Cerebral Palsy	Action for Ability Development New Delhi
23	Mr. Ankur	Muscular Dystrophy (WC User)	IAMD Solan (Himachal Pradesh)
24	Mr. Prasanna Pincha	VI	Senior independent Consultant – Development, Human Rights and Disability Life member NFB New Delhi
25	Prof. Amita Dhanda	-	Prof. of Law NALSAR University Hyderabad (AP)
26	Adv. Roma Bhagat	Low Vision	Sr Advocate Delhi High Court New Delhi
27	Mr. Rajive Raturi	VI	HRLN, New Delhi
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**List Of Participants For National Consultation
On
Harmonizing Laws With UNCRPD For
The National Trust
Organized At New Delhi On The
5th And 6th December, 2009**

Sl. No.	Participant Name	Disability	Organization
1	Mr. Philip Simon	-	State Council for Exceptional Children Federation of Parents Associations Kerala
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33	Adv. Roma Bhagat	Low Vision	Sr. Advocate High Court New Delhi
34	Adv. Subhash Chandra Vashishth	-	Swayam, New Delhi
35	Prof. Amita Dhanda	-	Prof. of Law NALSAR University Hyderabad (Andhra Pradesh)
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**List Of Participants For National Consultation
On
Harmonizing Laws With UNCRPD For The
Mental Health
Organized At New Delhi On The
27th And 28th December, 2009**

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5	Ms. Suzette Titus	-	Mumbai, Maharashtra
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16	Ms. G. Syamala	-	ADDI, New Delhi

17	Ms. Radhika Alkazi	-	Aastha, New Delhi
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**List Of Participants For National Consultation
On
Harmonizing Laws With UNCRPD For The Hearing
Impaired
Organized At New Delhi On The
9th And 10th January, 2010**

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4	Shri. K. Sheshagiri Rao	HI	Deaf Art and Cultural Society Secunderabad, AP
5	Shri. Sandeep TKM	HI	The Deaf Way Foundation Hyderabad, AP
6	Shri. Ravi Shekhar	HI	Patna Deaf Friendship Club Patna, Bihar
7	Shri. Kamlesh Dongre	HI	Bhopal, MP
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11	Mr. Niranjan Joshi	HI	Orissa Association of the Deaf Bhubaneswar, Orissa
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14	Mr. Umesh Grover	HI	Deaf Welfare Association Dehradun, Uttarakhand
15	Mr. Sanjib Bose	HI	West Bengal Forum of The Deaf Kolkata, West Bengal
16	Mr. G. V. Reddy	HI	Haryana Sports Council of the Deaf, Gurgaon, Haryana

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26	Mr. Arun Rao	-	The Deaf Way, New Delhi
27	Mr. Zorin Singha	HI	National Association of the Deaf Delhi
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“Harmonizing Laws with the UNCRPD”
Cross Disability National Consultation
At India Islamic Cultural Centre
On 6th and 7th February, 2010

Registration For Participants

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12	Dr. Sunil Kumar Singh	OI/WC user	Adarsh Viklang Seva Sansthan, Samastipur, Bihar
13	Mr. Chandra Bhushan	-	Adarsh Viklang Seva Sansthan, Samastipur (Bihar)
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55	Mr. Praveen Kumar	VI	VSO, New Delhi
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List of Participants
On
“Harmonization of Laws with UNCRPD’ Convergence
Organized at New Delhi, On
27th February, 2010

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