

M A N U A L

The Rights of Persons with Disabilities Act, 2016



NATIONAL CENTRE FOR
PROMOTION OF EMPLOYMENT
FOR DISABLED PEOPLE

AIF

AMERICAN
INDIA
FOUNDATION

First published in 2018

© American India Foundation & National Centre for Promotion of Employment for Disabled People

This publication is not for sale. It may not be circulated in any other binding or cover. All rights reserved. Permission is required to reproduce any part of this publication. Permission will be freely granted to educational and/or non-profit organizations.

American India Foundation (AIF)

10th Floor, DLF City Court, MG Road, Near Sikanderpur Metro Station, Gurgaon 122 002
216 E. 45th Street, 7th Floor, New York, NY 10017
530 Lytton Avenue, Palo Alto, CA 94301

National Centre for Promotion of Employment for Disabled People (NCPEDP)

E – 150, East of Kailash New Delhi 110 065, India

CREDITS

Content Development

Rama Chari, Sakshi Broota and Priya Varadan from DEOC

Editorial Team

AIF: Manish Kumar, Renuka Bhagat, Meenu Sharma, Rajvinder Kaur and Rowena Kay Mascarenhas

DEOC: Rama Chari, Sakshi Broota and Srinivasan Krishnan

NCPEDP: Javed Abidi, Rati Misra and Aarti Thakur

Design & Layout

Changing Sky

Printing

Ell Gee Enterprises

Disclaimer

This manual is intended to be a guide to easy reading of the RPWD Act 2016. It is not intended and should not be used as legal advice or other recommendation. Anyone using these materials should not rely on them as a substitute for legal advice. If you need a legal opinion on a specific issue or factual situation, please contact a lawyer. Though every precaution has been taken to verify the accuracy of the information contained herein, the author and publisher assume no responsibility for any errors or omissions. No liability is assumed for damages that may result from the use of information contained within.

D E D I C A T I O N

For Javed Abidi, who pioneered the cross-disability movement in India and led the movement for India's new disability rights law – The Rights of Persons with Disabilities (RPWD) Act, 2016, believing that it would be a game changer for the estimated 70-100 million disabled citizens and would help move the discourse away from charity to one that is rights-based.

Table of Contents

MESSAGE - AIF	5
MESSAGE - NCPEDP	6
INTRODUCTION	7
CHAPTER 1: CLASSIFICATIONS OF DISABILITIES AND CERTIFICATION	10
CHAPTER 2: EQUALITY AND NON-DISCRIMINATION	18
CHAPTER 3: WOMEN AND CHILDREN WITH DISABILITIES	23
CHAPTER 4: COMMUNITY LIFE	26
CHAPTER 5: PROTECTION FROM CRUELTY, INHUMAN TREATMENT, ABUSE, VIOLENCE AND EXPLOITATION	29
CHAPTER 6: DISASTER MANAGEMENT	35
CHAPTER 7: HOME AND FAMILY	39
CHAPTER 8: ACCESSIBILITY IN VOTING	42
CHAPTER 9: ACCESS TO JUSTICE	44
CHAPTER 10: LEGAL CAPACITY AND GUARDIANSHIP	47
CHAPTER 11: EDUCATION	52
CHAPTER 12: NON-DISCRIMINATION IN EMPLOYMENT (GOVERNMENT AND PRIVATE SECTOR)	62
CHAPTER 13: RESERVATION IN JOBS FOR PERSONS WITH BENCHMARK DISABILITY IN GOVERNMENT/PUBLIC SECTOR UNDERTAKINGS	70
CHAPTER 14: SELF-EMPLOYMENT	72
CHAPTER 15: SKILL DEVELOPMENT	73
CHAPTER 16: SOCIAL SECURITY	75
CHAPTER 17: HEALTHCARE AND REHABILITATION	79
CHAPTER 18: CULTURE AND RECREATION	82
CHAPTER 19: SPORTING ACTIVITIES	85
CHAPTER 20: ACCESSIBILITY	88
CHAPTER 21: HUMAN RESOURCE DEVELOPMENT	95
CHAPTER 22: AWARENESS RAISING	97
CHAPTER 23: REGISTRATION OF INSTITUTIONS FOR PERSONS WITH DISABILITIES	99
CHAPTER 24: IMPLEMENTATION AND MONITORING	101
CHAPTER 25: OFFENCES AND PENALTIES	107
CHAPTER 26: MISCELLANEOUS	109



People with disabilities are an integral part of our economy and society. The opportunities and services available to them need to be assured in the same way as they are for citizens of India. The American India Foundation aims to raise awareness and understanding of disability issues by supporting the training and job readiness to youth with disabilities, thereby ensuring equal opportunity and access to employment, based on a simple belief – it is one's ability, not disability, that defines any individual.

The RPWD Act, 2016 is an important milestone in the efforts of mainstreaming persons with disabilities in India. Recognizing 21 disabilities in the ambit of the law and defining "disability" as an evolving and dynamic concept, it now provides a framework for all stakeholders to understand, assimilate and adhere to. Addressing gender issues, the Act deals with gender sensitivity in certain chapters like health, social security, and others. Provisions of inclusive education and vocational training opportunities, reservation in education/employment, inclusion of private sectors to make their organizations disability friendly, emphasis to ensure accessibility (infrastructure, transport system and communication modes) and involvement of private and public companies in employing persons with disabilities are some of the aspects covered in the Act. We do find mention of financial support to persons with disabilities, regulatory and grievance redressal bodies to monitor the implementation of the Act with the right to free legal aid, penal provisions and special courts to handle cases of persons with disabilities.

This Manual has been developed in response to a need for awareness of the RPWD Act, 2016 in collaboration with NCPEDP. It is aimed to be a key support resource and encourages the reader to be conscious of an inclusive environment. We are deeply grateful to the Tarsadia Foundation for their commitment and acknowledge their support towards inclusion of persons with disabilities. Through this manual, we hope to empower and enable persons with disabilities to seek government services and programs for their welfare and wellbeing. This manual is but one step in AIF's vision of leading the movement on social and economic participation of people with disabilities. We are excited to launch this Manual and hope you find it useful.

Nishant Pandey

CEO

American India Foundation

Mathew Joseph

Country Director

American India Foundation

Message - NCPEDP



**NATIONAL CENTRE FOR
PROMOTION OF EMPLOYMENT
FOR DISABLED PEOPLE**

I have often been told that I tend to oversimplify issues in my advocacy. I may or may not agree with this refrain. However, I bring this up because simplicity sometimes is that fundamental building block on which successful advocacy is based. And we often tend to overlook it. I strongly believe that the Rights of Persons with Disabilities Act, 2016 is a game changer. I also believe, equally strongly that any law is only as good as its implementation. The Rights of Persons with Disabilities Act, 2016 is but a piece of paper till the provisions actually enable the last person with disability in the remotest village of India. And this will not happen unless people –both right holders and right implementers understand the law and come together to implement it.

Not all of these stakeholders have the same understanding of law and the knowledge of where or who to approach for availing the rights and entitlements. This lack of awareness is compounded by the fact that the language in which laws are written is technical and complicated. Knowledge of the rights and benefits among persons with disabilities and their families is crucial on two counts. One, they are the primary stakeholders of this Act and unless they demand change, the status quo would persist perhaps a little longer than it should. This demand would only come from being aware about the new law. Second, people with disabilities themselves are often the agents driving the implementation in various capacities.

A simplified manual is also essential for rights implementers at the local government level, which is where the law needs to have the maximum impact. This will also be a resource for service providers, including educational institutions, hospitals, businesses, etc. to understand what their responsibilities are in terms of ensuring equal access to people with disabilities.

This manual is an attempt by the National Centre for Promotion of Employment for Disabled People (NCPEDP), supported by the American India Foundation, to create a ready reference that tells, in simple words, the paradigm change that the new law stands to bring about. This, by no means, will be the only resource available that will catalyse implementation of this law. But this could be one of the first steps, the first building block towards translating the law into action.

Javed Abidi

Honorary Director

National Centre for Promotion of Employment for Disabled People

Introduction



The Rights of Persons with Disabilities (RPWD) Act, 2016 was passed by both the houses of Parliament in December 2016. The Rules were notified by the Central Government in June 2017. The Act replaced the earlier Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

The RPWD Act is landmark legislation. As the name indicates, it is a rights-based legislation. It is being seen as a “game changer” and a “key driver” for inclusive development in the country.

The Act provides protection to all people with disabilities against discrimination and also promotes equal opportunity and accessibility. All establishments - government, private and Non-Government Organisations - are covered under the Act and there are specific mandates for them to comply with. Suitable penalties and punishments too have been laid down in the Act for individuals/organisations for non-compliance and violation of the law.

The very first step for implementing or for seeking implementation of the Act would be to become aware of its provisions. Hence, a Manual to explain The RPWD Act was envisaged by National Centre for Promotion of Employment for Disabled People (NCPEDP), a national level advocacy organisation promoting the rights of persons with disabilities. The development of the Manual is supported by the American India Foundation (AIF), a not-for-profit organisation with a national presence that is working closely with local communities and partnering with Non-Government Organisations in order to develop and test innovative solutions with governments that are scalable and have a sustainable impact.

The Manual has been authored by Diversity and Equal Opportunity Centre (DEOC) with inputs from Kanchan Pamnani, Solicitor and Anuroopa Giliyal, Research Officer(Legal), Centre for Child and the Law, National Law School of India.

About the Manual on The RPWD Act, 2016

The aim of the Manual is to explain the various provisions given in The RPWD Act, 2016. There are 26 Chapters in the Manual. The Chapters are based on broad themes/areas rather than following the sequence of Clauses given in the Act.

For instance, in the Act, the provisions related to education are in more than one Section. In this Manual, all the provisions related to education have been brought under a single Chapter for ease of referencing and to make it more comprehensive. It should be noted that this Manual also includes the provisions given in the Rules of The

RPWD Act which were notified in June 2017 and which are basically guidelines promulgated for enforcing the Act.

Each Chapter is composed of three sections - (1) Sections/Clauses covered, (2) At a glance -which gives a brief summary of what the law says with respect to the particular theme/area and (3) Explanations - where relevant terms/phrases have been explained in the form of questions and answers for easy readability. Certain interpretations/analysis of the Clauses and some information as to how particular Clauses/Sub-Clauses could be implemented are also added in this third section.

It is important to mention here that there are several aspects present in the law that still need to be notified. There are several provisions, mandating the government to set up appropriate schemes and programmes, which are yet to be formulated. There are also some new concepts, like limited guardianship, high support, support arrangements, etc. These have yet to be fully understood and applied. There aren't many real-life examples that one can cite. Hence, the Manual may not be as comprehensive as one would like it to be. However, it will help in understanding the various provisions and would possibly be a handy tool for those seeking a speedy implementation of the Act.

Please note that this Manual is meant to supplement, not substitute, The RPWD Act, 2016. It has been developed solely for educational purposes. The purpose of the Manual is to simplify The RPWD Act, 2016 for lay people who wish to understand the broad aspects and scope of this law.

Full text of The RPWD Act, 2016 and the Rules, 2017

The full text of the RPWD Act can be accessed at the link [RPWD Act, 2016](#)

The text of the RPWD Rules can be accessed at the link [RPWD Rules](#)

The RPWD Act - An Act to give effect to the CRPD

India had ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2007. One of the obligations for all the countries who ratified the Convention was to enact legislation for implementing the rights recognised in it. The RPWD Act was therefore enacted in order to give effect to the CRPD.

The General Principles of the CRPD form the foundation of the Convention and therefore of the Act as well. The eight General Principles are:

1. Respect for inherent dignity, individual autonomy including the freedom to make one's own choices and independence of persons
2. Non-discrimination
3. Full and effective participation and inclusion in society
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity

5. Equality of opportunity
6. Accessibility
7. Equality between men and women and
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

These eight General Principles have been explained in various parts of this Manual as these apply to all Clauses across the Act. As an example, the law mandates that every establishment should formulate an Equal Opportunity Policy for employment. Now, to formulate an effective Equal Opportunity Policy, these eight Principles (except the one related to rights of children) must be considered while formulating the Policy.

Chapter 1: Classifications of Disabilities and Certification

Sections/Clauses covered

- 2 (r), (s), (t), (zc) (l): Definitions
- 56: Guidelines for assessment of specified disabilities
- 57: Designation of certifying authorities
- 58: Procedure for certification
- 59: Appeal against a decision of certifying authority
- 38: Special provisions for persons with disabilities with high support
- Schedule: Specified Disability

At a glance

- ❖ Persons with disabilities are classified into three categories. These are:
 1. Persons with disability: Persons with long term impairment, whose participation in society is hindered by certain barriers (global definition).
 2. Persons with benchmark disability: This refers to persons with specified disability who have been certified by a certifying authority as having benchmark disability.
 3. Persons with high support needs: This refers to persons with benchmark disability who need intensive support and who are certified as persons needing high support by the Assessment Board.
- ❖ The Central Government should notify Guidelines for assessing the extent of disability in a person.
- ❖ Government should designate persons, having the required qualifications and experience, as certifying authorities for issuing the Disability Certificate.
- ❖ The Disability Certificate is valid across the country.
- ❖ Any person dissatisfied with the decisions of the certifying authority can appeal against such decisions to the appellate authority, as designated by the State Government.
- ❖ Any person with benchmark disability, who considers herself/himself to be in need of high support can apply to an authority requesting to provide high support. Note that any person or organisation, on behalf of the person with disability, can also apply.
- ❖ The Assessment Board will assess, certify the need of high support and its nature and send a report to the authority responsible for providing the needed support.
- ❖ The authority mentioned above (for providing support) should take steps to provide support based on the report of the Assessment Board.

Explanations

1.1. What is the definition of person with disability?

As per the Act, a 'person with disability' refers to a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.

This is a comprehensive definition. There are no specific categories of disability (except the very broad ones) mentioned in the Act. Therefore, wherever the term person with disability is mentioned in the Act, it covers anyone and everyone who fulfils the following two conditions i.e.

1. Having a long-term impairment which could be physical, mental, intellectual or sensory.
2. Her/his need to participate being affected by a barrier.

For example, if a person with colour blindness is denied employment in an IT company as a programmer because of her/his disability, she/he can file a case of discrimination based on this Act. However, the person would not be eligible for reservations and other benefits, which are earmarked only for people with benchmark disabilities.

1.2. What is a barrier?

As per the Act, 'barrier' means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal and structural which hampers the full and effective participation of persons with disabilities in society. Some commonly experienced examples of each type of barrier is given below:

1. Communicational Barrier: A film without captions, or a website that is not accessible using a screen reader.
2. Cultural Barrier: A person is not invited to a wedding because her/his presence is regarded as a "curse".
3. Economic Barrier: Experiencing increased cost of living due to disability i.e. additional transportation cost and so on.
4. Environmental Barrier: A place that can be accessed only with steps. No accessibility aids like lifts/ramps, suitable signage etc. are present.
5. Institutional Barrier: Policies/procedural rules which are inflexible. For example, a company could have a recruitment policy that is very rigid with respect to qualification, age, minimum marks or it could have rigid assessment procedures, etc. There is no provision made for reasonable accommodation and flexibility.
6. Political Barrier: Barriers that prevent people from participating in politics, like inaccessible polling booths, inaccessible Electronic Voting Machines (Electronic Voting Machines), etc.
7. Social Barrier: Presence of social stigma. For example, an employee with mental illness say, is left out of recreational, social or business gatherings. Another example would be people excluding a person with disability by gossiping

unnecessarily about the person's disability or by not inviting her/him for social gatherings due to the person's disability, etc.

8. Attitudinal Barrier: Stereotyping persons with disabilities i.e. short statured people are treated like children, a person with disability is not promoted as the manager feels she cannot handle a team or the pressure of a job and so on.
9. Structural Barrier: This is the same as a contextual barrier i.e. a barrier related to accessibility, policies, procedures, etc. where a clear distinction of "us" and "them" is created and/or supported.

1.3. What are specified disabilities?

The specified disabilities are the 21 disability categories mentioned in the Schedule of the Act. There is also a 'any other category', which allows the Central Government to add a disability category by issuing a notification.

The disability categories as mentioned in the Schedule are:

1. Locomotor disability
2. Muscular Dystrophy
3. Leprosy cured
4. Dwarfism
5. Cerebral Palsy
6. Acid attack victim
7. Low vision
8. Blindness
9. Deafness
10. Hard of Hearing
11. Speech and Language Disability
12. Intellectual Disability
13. Specific Learning Disability
14. Autism Spectrum Disorder
15. Mental illness
16. Chronic Neurological Conditions
17. Multiple Sclerosis
18. Parkinson's disease
19. Haemophilia
20. Thalassaemia
21. Sickle Cell disease
22. Multiple Disabilities
23. Any other category (as may be notified by the Central Government.)

The definitions of the specified disabilities are given in the Schedule of the Act.

1.4. Are there 21 or 22 specified disability categories? The list above has 22 categories (if one leaves out 'Any other category').

As per the government's definition, there are 21 categories with multiple disabilities being defined as having more than one of the 21 specified disabilities.

1.5. What is benchmark disability?

The law states that, 'Person with benchmark disability' means a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority'.

As per the definition, there are two aspects here:

1. Where specified disability has been defined in measurable terms: For example, definitions of blindness, low vision, deafness, hard of hearing, dwarfism have been defined in measurable terms in the Schedule. A person who has the level of impairment mentioned in the definition would be considered as a person with benchmark disability.
2. Where specified disability has not been defined in measurable terms: For example, the definitions of cerebral palsy, locomotor disability, acid attack victims/survivors, etc. are not given in measurable terms in the Schedule. In such a case, the level of disability should be not less than 40% in order to be considered as a person with benchmark disability.

The person should be certified as a 'person with benchmark disability' by a certifying authority. The assessment scale is yet to be notified for the new disability categories that have been added (as noted on December 2017).

1.6. What is the definition of person with high support needs?

Person with high support needs has been defined as persons with benchmark disability who need high support.

High support means intensive support. It could be physical and/or psychological or any other support, which may be required by a person with disability to carry out her/his daily activities, to make decisions and for participating in all areas of life. An Assessment Board will certify the person as having high support needs. The scale for assessment and the constitution of the Assessment Board have not yet been notified (as on December 2017).

1.7. What is a certifying authority?

A certifying authority certifies the person as having a disability and determines if she/he has a benchmark disability. A certifying authority comprises of people having the requisite qualifications, experience and skills needed to issue the certificate of

disability. As of now, the certifying authorities are Government doctors who are notified as competent to issue these certificates. Some districts have empanelled private doctors as part of the certifying board.

1.8. Can one get a disability certificate in a village or at a Primary Health Centre (PHC)?

As per the 2009 Rules, a PHC can issue a disability certificate in cases of amputation, complete permanent paralysis of limbs, dwarfism and blindness. Sometimes, camps are organised in villages where doctors come and issue disability certificates.

1.9. Have the assessment scales been finalised for the disabilities that have been recently added in the law like Specific Learning Disabilities, Thalassemia etc.?

Based on the information available on the website of the Department of Empowerment of People with Disabilities (October 2017), there is no notification issued as yet regarding the assessment scales of the disabilities that have been newly added in the law.

1.10. Can one get a disability certificate issued from anywhere in India?

As per The RPWD Rules, one can get disability certificate from:

- ❖ The district where the person with disability lives (as mentioned in the proof of residence).
- ❖ In a government hospital where she/he may be undergoing or may have undergone treatment in connection with her/his disability.

1.11. Is the disability certificate valid throughout India or valid only in the State where it is made?

A certificate of disability is valid across the country.

1.12. What are the documents required in order to get a disability certificate?

As per The RPWD Rules, the documents that are needed are:

1. Proof of residence
2. Two recent passport size photographs
3. Aadhaar number, if any

Note: No other proof of residence should be demanded from the applicant who possesses an Aadhaar Card or an Aadhaar enrolment number.

1.13. Is there any provision for persons who have difficulty travelling to hospitals to get a disability certificate at home?

There is no such provision at the moment, based on the information given in the Act and the Rules.

1.14. How long does it take to get a disability certificate?

As per the information given in The RPWD Rules, a certificate of disability should be issued within one month from the date of receipt of the application.

1.15. Is the disability certificate valid for all purposes or does one still need to get different certificates for different schemes/concessions etc.?

As per The RPWD Rules, one disability certificate is valid for all purposes.

1.16. Does a person, already possessing a disability certificate, have to reapply for it again in order to avail the benefits provided under the new law?

The RPWD Rules state that the certificate of disability issued under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is valid, after the commencement of The RPWD Act, for a specific time period. However, this specific time period has not been spelt out (as on October 2017).

1.17. Does one have to renew the disability certificate periodically?

In cases of permanent disability, the people concerned will get a permanent certificate of disability. In cases where there is any chance of variation over time in the degree of disability, the people concerned will get a certificate of disability indicating the period of validity.

1.18. Where can one get a certificate for high support needs? What is the eligibility criterion?

Any person with benchmark disability or any other person or organisation on her/his behalf, who is in need of high support can apply to the certifying authority for a certificate stating that she/he is a person with high support needs.

The certifying authority (i.e. Assessment Board) is yet to be notified(as on December 2017). A suitable assessment methodology also needs to be developed.

1.19. What supports are available for a person with high support needs?

The law states that the certifying authority should take steps to provide support in accordance with the report of the Assessment Board, as per the relevant schemes and orders of the appropriate government. These schemes and orders are yet to be formulated (as on December 2017).

The law mandates that the government put in place certain specific schemes/programmes/processes for people with high support needs. Specific provisions in the law for persons with high support need are:

- ❖ Appropriate support measures to enable them to exercise their legal rights (i.e. accessing justice).
- ❖ Appropriate support arrangements to enable them to exercise their legal capacity.
- ❖ Care-giver allowance if required.

1.20. Spinal injury has not been listed as a specified disability. Would persons with spinal injury get any benefit provided under this law?

Unfortunately, spinal injury has not been added as a disability category in the Schedule. She/he would be certified as a person with locomotor disability/multiple disability (as the case may be) and would get all the benefits provided under the law for people with locomotor/multiple disability.

1.21. Alzheimer's disease and Dementia are not listed in the Schedule? Under Chronic neurological conditions, only Parkinson's and Multiple Sclerosis are mentioned. Does the Government have to notify these as disabilities in order to get benefits under the law?

In the Schedule, one of the categories is 'Chronic neurological conditions'. As per our interpretation, Parkinson's and Multiple Sclerosis are possibly just examples since the phrase "such as" has been used. Therefore, other Chronic neurological conditions such as Alzheimer's disease and Dementia ought to be included. However, this would require a clarification from the government as it is not very clear.

1.22. In the Schedule, why is Specific Learning Disability (SLD) listed under intellectual disability?

There seems to be an error in way the disabilities have listed in the Schedule. Intellectual Disability and Specific Learning Disability are two distinct disabilities. One should ignore these classifications and just look at the specific definitions and provisions.

1.23. What are the specific provisions for people with benchmark disabilities given in the Act?

Apart from non-discrimination and access to human rights, the following are the specific provisions provided under the law for persons with benchmark disabilities:

- ❖ A five percent reservation of seats and a relaxation of the maximum age of admission by five years in higher education programmes in government and government aided institutions.

- ❖ Books and other learning materials and appropriate assistive devices to be provided free of cost to students.
- ❖ Scholarships provided to needy students.
- ❖ The right to free education in a neighbourhood school, or in a special school, of her/his choice.
- ❖ A four percent reservation in government and public-sector jobs (one percent each for (a) people with blindness and low vision; (b) people who are deaf and hard of hearing; (c) people with locomotor disability including those with cerebral palsy, people who are leprosy cured, people with dwarfism, acid attack victims and people with muscular dystrophy;(d) people with autism, intellectual disability, specific learning disability, mental illness and people with multiple disabilities, including deaf-blindness.
- ❖ Social security i.e. where pension, unemployment allowance, etc. are provided.
- ❖ A five percent reservation in allotment of agricultural land and housing in all relevant schemes and development programmes.
- ❖ A five percent reservation in all poverty alleviation and various developmental schemes with priority given to women with benchmark disabilities.
- ❖ Care-givers allowance and supports provided for the exercise of legal capacity, legal rights etc. for people with high support needs.

Note that all laws, programmes or schemes which have provisions meant for persons with disabilities will now have to adopt the wider definition of disability as given in The RPWD Act.

Chapter 2: Equality and non-discrimination

Sections/Clauses covered

- 3: Equality and non-discrimination

At a glance

- ❖ No discrimination of people with disabilities allowed on the grounds of disability.
- ❖ No person should be deprived of her or his personal liberty only on the grounds of disability.
- ❖ The government should:
 - Ensure the right to equality and a life with dignity, respect and integrity for persons with disabilities.
 - Provide an appropriate environment in order to utilise the capacities of persons with disabilities.
 - Ensure reasonable accommodation to persons with disabilities

Explanations

2.1. What is right to equality?

Right to equality means:

- ❖ Equality before the law: A citizen with disability is considered as equal as a non-disabled citizen before the law.
- ❖ Equal Protection under the law: All laws apply to all citizens equally.
- ❖ Equal Opportunities: Persons with disability are guaranteed equal opportunities and privileges.
- ❖ Non-Discrimination: Persons with disability cannot be discriminated against solely on the grounds of her/his disability.

2.2. What does the phrase 'respect for her/his integrity' mean?

In this context, right to integrity means that persons with disabilities have the freedom to take their own decisions regarding medical treatment, surgery, abortion, sterilization, parenthood etc. A person with disability cannot be forced to undergo any treatment without her/his explicit consent.

2.3. Please give examples of violations of dignity, respect and integrity concerning persons with disabilities.

It is a violation:

- ❖ When a person is asked humiliating questions to prove the existence of her or his disability (this constitutes a violation of the right to dignity/respect).

- ❖ When a person with disability is subjected to extra checks and additional security protocols at airports and malls (this constitutes a violation of right to dignity/respect).
- ❖ When a person with cerebral palsy is forced to undergo a sterilisation surgery without taking her informed consent (this is a violation of the right to integrity).
- ❖ When a person with intellectual disability is forced to undergo abortion against her wishes (this is a violation of the right to integrity).

2.4. What is personal liberty?

Liberty is personal freedom. Persons with disability should not be constrained because of their disability. Some examples of violation of right to personal liberty are given below.

- ❖ A person with disability is chained or locked inside a room.
- ❖ A person with mental illness is admitted in a mental health hospital (without consulting with the concerned person).
- ❖ A person with disability is not allowed to go out of the institution/home where she/he is living.

2.5. What is discrimination on the basis of disability?

In simple terms, discrimination occurs when a person with a disability is treated less favourably or unfairly compared to a person without the disability in the same or similar circumstances. For example, when a restaurant refuses a person entry only because the person uses a wheelchair is discrimination on the basis of disability.

Discrimination is:

- ❖ Singling out a person just because she/he has a disability.
- ❖ When an unfair condition is imposed on a person with disability solely due to her/his disability.
- ❖ Segregating people with disabilities.
- ❖ Denial of Reasonable Accommodation.

Some common examples of discrimination are given below.

- ❖ All candidates who passed a recruitment test were given a joining date except the candidate with disability whose joining date was put on hold indefinitely.
- ❖ An announcement is made in a class which states that those who have a disability need to go and meet the college counsellor while rest can stay on in the classroom (this is singling out people with disabilities and also violates the right to privacy of those who would like to keep information about their disability confidential).
- ❖ As per temple rules, wheelchairs cannot be brought inside the temple. This rule makes it difficult/impossible for wheelchair users to visit temples.

- ❖ An emergency number is such that it can be dialled only from a landline (which implies that no text can be sent). This severely restricts a person who has difficulty speaking on phone from using emergency lines.
- ❖ A bank states that people with cerebral palsy cannot open/operate bank accounts.
- ❖ As per a State election law, persons with Leprosy cannot stand for elections.
- ❖ A person with Thalassaemia was denied employment as she was “found to be medically unfit” during the medical examination (as part of recruitment process).
- ❖ A person with disability was not allowed to sit along with everyone else in the eating area in a wedding. Instead she was told to sit in a separate room where food was served to her.
- ❖ A student with learning disability (dyslexia) was allowed to take a college exam but the college authorities refused to provide a writer or allow an oral exam for him.

Discrimination can be direct or indirect.

Example of Direct discrimination: People with visual disability cannot join MBBS under archaic or outdated rules and regulations.

Example of Indirect discrimination: An online entrance examination is inaccessible for people with certain disabilities. For instance, the duration of the time for a test cannot be extended, or there are no descriptions for the images in the questions, or there is poor contrast, or the computer table that is used has a fixed height which is too high for a person using a wheelchair.

2.6. Does the non-discrimination Clause apply only to education and employment?

No. The non-discrimination Clause applies to all aspects of living, be it political, economic, social, cultural, civil or any other field of activity. It applies equally to all government, private and non-government associations and individuals.

2.7. There is a Sub-clause that indicates that discrimination can be allowed if it is for a legitimate aim. Can this Clause be used to deny basic rights to persons with disabilities?

The disability sector advocated very hard to get this Sub-clause removed but did not succeed. In the RPWD Rules, it is mentioned that the Head of an establishment should ensure that the clause is not misused to deny any right or benefit to persons with disabilities covered under the Act. In spite of this Rule, there may be instances when this Clause could be used to deny rights to people with disabilities. In such a case, the concerned people can take up the matter in court. By law, the onus is on the organisation to prove that the issue which has led to discrimination is legitimate. This would not be easy. Hence, it would be a sensible decision to provide the necessary accommodation in the first place.

2.8. What is reasonable accommodation?

As per the definition in the Act, Reasonable accommodation means necessary and appropriate modifications and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure that persons with disabilities enjoy and/or exercise basic rights equally with others.

For example, if a person requires assistive technology in order to operate a computer or needs extra time for writing exams, she/he should be provided with these adjustments/accommodations in order for her/him to participate on an equal basis with others.

As mentioned in the question above on discrimination, denying reasonable accommodation is considered as discrimination.

2.9. Is accessibility the same as reasonable accommodation?

Though accessibility and reasonable accommodation are sometimes used interchangeably, there is a difference between the two. Reasonable accommodation is strictly based on individual needs while accessibility refers to meeting the accessibility standards.

Examples to highlight the difference between Accessibility and Reasonable accommodation are given below:

- ❖ If a sign language interpreter is a permanent feature in a cultural event, whether or not there are people with hearing disability, it is accessibility. However, if a person with hearing disability requests for an interpreter who accordingly is made available, then it is reasonable accommodation.
- ❖ Accessibility is following the government's accessibility standards. However, if a person with disability needs a higher Water Closet (WC) (than what is specified in the accessibility standards), then, adding an attachment on the WC would be a reasonable accommodation.

Both accessibility and reasonable accommodation are mandated by the Act.

2.10. Please give more examples of reasonable accommodation.

- ❖ Giving the option of flexible work timings or working from home.
- ❖ Making available books in Braille for a person with visual disability in her/his school.
- ❖ Making available the services of a sign language interpreter at a cultural event based on need.
- ❖ Providing leave for a person with Thalassemia for blood transfusion.
- ❖ Allowing a person with mental illness to write an exam even if she/he has not met the attendance requirement.

- ❖ Appointing a support person for a witness with intellectual disability in court for explaining court proceedings.
- ❖ A bank providing home based verification for KYC (know your customer).
- ❖ Providing an escort for travelling.
- ❖ Providing breaks at work to rest, if required.
- ❖ Providing a particular software or hardware at a play station.
- ❖ Modifying furniture/equipment in a laboratory based on need.
- ❖ Providing readers/ writers/ audio tapes for blind students.
- ❖ Providing an assistant at a shopping mall.

2.11. How does one decide the sort of reasonable accommodation that should to be provided?

As mentioned above, reasonable accommodation is individualised. The best solution is to provide an opportunity for persons with disability to state their requests. If an invitation is being sent for an event, a line should be added stating that reasonable accommodations for persons with disability would be provided and a contact number should be given.

Chapter 3: Women and Children with Disabilities

Sections/Clauses covered

- 4: Women and children with disabilities
- 37 (a) (b): Special schemes and development programmes
- 60 (2): Constitution of Central Advisory Board on Disability
- 66 (2): State Advisory Board on disability
- 9 (1) (2): Home and family
- 16: Duty of educational institutions
- 24 (3) (b) (d): Social security
- 25 (2) (k) Healthcare

At a glance

3.1. Women with Disabilities

- ❖ The government should take measures to ensure that women with disabilities are empowered so that they can enjoy all legal rights equally with others.
- ❖ The government should provide support to women with disability for livelihood and for upbringing of their children.
- ❖ Priority should be given to women with benchmark disabilities in the reservation and allotment of agricultural land, housing, and in all poverty alleviation and various developmental schemes and programmes.
- ❖ Out of the ten Members nominated in the Central and State Advisory Boards at least five should be women.

3.2. Children with disabilities

- ❖ The government should take measures to ensure that children with disabilities are empowered so that they can enjoy their rights equally with others.
- ❖ Children with disabilities have the right to freely express their views on all matters affecting them. They should be provided appropriate support keeping in view their age and disability.
- ❖ Children with disability have the right to be with their home and family.
- ❖ Children with disability have the right to education without discrimination.
- ❖ The Government should take measures for the pre-natal, perinatal and post-natal care of mother and child.

Explanations

3.3. Why is there a specific section in the law for women and children? Don't all rights apply to them too?

Yes, all the rights mentioned in the Act apply to men and women equally. The reason there is a separate section and an explicit mention of women with disabilities in various Clauses is that their specific concerns should not be ignored. Women with disabilities

face discrimination twice over. First, because they are women and second, because of having a disability related issue. Hence, certain affirmative actions are necessary for ensuring equality. Similarly, the rights of children with disabilities had to be emphasised because, being children, their rights are sometimes ignored and further, if the child has disability, the opportunity to express her/his needs and to be part of discussions regarding her/his life is further reduced.

3.4. The law has not detailed the measures that government should take to promote equality of women and children. Please give some examples of the measures that the government can take.

Some examples of how the government, particularly the Ministry of Women and Child Development, can ensure the rights of women and children are given below.

- ❖ All women empowerment and child development schemes like *Beti Bachao Beti Padhao*, Women Helpline, Integrated Child Development Scheme (ICDS), Mother & child health schemes etc. should specifically address the needs of women and children with disabilities.
- ❖ Laws which address the concerns of women and children like the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, National Commission for Women Act, 1990, Dowry Prohibition Act, Protection of Women from Domestic Violence Act, 2005, The Right of Children to Free and Compulsory Education Act, 2009, and the Juvenile Justice (Care and Protection of Children) Act (Amendment, 2006) should have appropriate Clauses inserted in order to include the needs of women and children with disabilities.
- ❖ Awareness and sensitisation programmes should be organised on the rights of women and children with disabilities.
- ❖ Appropriate gender segregated data should be collected regarding beneficiaries with disabilities for various schemes/programmes.
- ❖ Representation of women with disabilities should be made mandatory in committees, panchayats, and other decision-making bodies at various levels.
- ❖ Make the police, women's commission, the commission for child rights protection and child welfare committees proactive and receptive to the concerns and protection of women and children with disabilities.

3.5. What is the appropriate support structure needed for children to express their views. Explain the Sub-clause, "keeping in view their age and disability"?

All children have the right to express their views freely. They should also have the appropriate means necessary to do the same. For example, a child with speech difficulty should have an alternate mode of communication, say an Augmentative Communication device, in order to express her/his views. Therefore, in order for the child to express her/his views, the pre-requisites needed are the identification of a suitable communication method, the procurement of the corresponding communication

device if necessary, suitable training given in using the device if needed and the opportunity to express her/his views.

The Sub-clause “keeping in view their age and disability” means that the support given should be such that it is customised to a given child’s need.

One of the important aspects to be kept in mind is the evolving capacity of children. As children grow up, their capability to participate and make decisions increase. Parents/teachers should adopt a child-centred approach based on mutual respect and information-sharing. They should show patience and creativity in adapting to a child’s levels of understanding and preferred ways of communicating.

3.6. Why is it important for children to express their opinion?

Adults should enable children with disabilities to develop their ability/skills to communicate and express their opinions. This will not only develop their confidence and knowledge but also improve their self-esteem (since their opinions are sought after and valued). It is also possible that children who are used to expressing themselves freely might be capable of addressing painful experiences of abuse or exploitation that they may have faced and so may help preventing their reoccurrence in the future.

Chapter 4: Community Life

Sections/Clauses covered

- 5: Community life
- 46: Time limit for accessibility by service providers

At a glance

- ❖ People with disabilities have the right to:
 - Live in the community.
 - Choose where and with whom to live
- ❖ The government should endeavour to give access to community services and disability specific support services.
- ❖ The service providers, whether government or private, should provide services in accordance with accessibility standards within a time period of two years (i.e. by June 2019).

Explanations

4.1. What is the meaning of right to live in the community?

Some people with disabilities were/are forced to live in institutions. Disability movements across the world have been insisting very strongly that people with disabilities have the right to live in the community, go to neighbourhood schools, use services present within the community, to participate in community activities and so on. This Clause guarantees the right for people with disabilities to live in the community. This means that community services should be accessible and supports that may be required for day-to-day living like personal assistance and so on should be made available within the community.

Examples of violation of the right to live in the community:

- ❖ A person with disability/family being asked to vacate from a residential apartment just because the person/family member has a disability.
- ❖ A person with mental illness being forcibly admitted into a mental health institution.
- ❖ Inaccessible emergency response systems and services.

4.2. What are community support services?

Community support services are services that enable people with disabilities to live independently. It may be important to clarify here that living independently does not mean living all by oneself. It means having control over all aspects of one's own life. It does not mean living without support. It instead implies having access to support (if and when required).

Some examples of support services are listed below:

- ❖ Assistants/caregiving services
- ❖ Housekeeping (cleaning, etc.)
- ❖ Home based health services
- ❖ Assistive devices/technology
- ❖ Food delivery services (including subsidised food programmes, etc.)
- ❖ Personal emergency response systems
- ❖ Legal services
- ❖ Training for promoting independence in the activities of daily living, mobility etc.
- ❖ Safety and Security
- ❖ Transportation
- ❖ Information/Interpreter services
- ❖ Volunteer services
- ❖ Peer support
- ❖ Financial Aid (Caregiving and support allowance)

4.3. How can Government give access to community support services?

Government can give access to community services by doing the following two things:

1. Ensuring that existing services are made accessible. Many services exist in the community, like health services, home delivery services, public distribution systems, transportation, emergency services, subsidised food, water ATMs/outlets, information systems, banking services, etc. These would have to be made accessible to people with disabilities. The law also provides a timeline of two years for making public services accessible.
2. Ensuring the availability of disability specific services. There are specific services that may be required for persons with disabilities to live independently, like personal assistants, interpretation services, volunteer services, assistive devices, etc., which are not widely available in the country today. The Government should establish and promote such services in every community.

There are specific Clauses in the Social Security Section of the Act, for providing pension, caregiving allowances, establishment of community centres, etc. There are many other aspects in the law, which empower people with disabilities so that they are able to live independently in the community, like accessibility, healthcare, protection etc. which are also relevant.

4.4. What is the definition of services?

The Act defines 'public facilities and services' as all forms of delivery of services to the public at large, including housing, educational and vocational trainings, employment and career advancement, shopping and marketing, religious, cultural, leisure and recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities, transportation and so on.

The Act mandates service providers, whether government or private, to provide services in accordance with accessibility standards within a time period of two years (by June 2019).

Chapter 5: Protection from Cruelty, Inhuman Treatment, Abuse, Violence and Exploitation

Sections/Clauses covered

- 6: Protection from cruelty and inhuman treatment
- 7: Protection from abuse, violence and exploitation
- 92 (a) to (e): Punishment for offences of atrocities
- 95: Alternative punishments

At a glance

- ❖ People with disabilities have the right to be protected from inhuman/degrading treatment, all forms of abuse, exploitation, violence, cruelty and torture.
- ❖ A person with disability should not be the subject of any research without her/his free and informed consent and prior permission from a Committee for Research on Disability.
- ❖ Referring to the above two points, the government should take measures to:
 - Prevent such incidents and
 - Rescue, protect and rehabilitate victims of such incidents.
- ❖ Any person or registered organisation can give information about the above-mentioned incidents to Police Officers/Executive Magistrates.
- ❖ The Executive Magistrate should take specific actions to rescue, rehabilitate, provide custody to and/or provide maintenance for, etc. the victim.

Explanations

5.1. Please explain the terms 'torture', 'cruel and inhuman treatment', 'psychological abuse', 'sexual abuse', 'neglect', 'violence' and 'exploitation'?

- ❖ Torture: The act of beating/kicking/hitting mercilessly, inflicting pain, subjecting to severe punishments by public officials (affiliated to schools, government institutions, police stations etc.), family members and others.
- ❖ Cruel and inhuman treatment: The act of tying the victim up i.e. either legs or hands or to a bed or other objects or forcibly confining to a place i.e. locking up in a room and so on.
- ❖ Psychological Abuse: Using insulting language i.e. abusive words, humiliating, speaking slanderously and demeaning a person because of her/his disability or isolating i.e. allowing no social interaction with community or family.
- ❖ Sexual Abuse: Touching inappropriately/making sexual comments which make her/him uncomfortable, subjecting to rape, sexual harassment, molestation etc.
- ❖ Neglect (which is a form of abuse): The act of denying medical treatment, food, water, clothes, education and a clean environment.
- ❖ Violence: Using physical force, giving threats of violence or abandonment, exposing her/him to hazardous conditions and subjecting her/him to hate crimes.

- ❖ Exploitation: The act of meting out unequal treatment and less pay at work, using people with disability as a source of entertainment, forcing her/him into prostitution/marriage/ participation in any research, etc.

5.2. What is free and informed consent?

The phrase 'free and informed consent' has been used with regard to a person with disability agreeing to participate as the subject in a research programme. Informed consent means that the person understands the aim of the research programme, the procedures, the consequences and then agrees to participate in the research programme.

5.3. Give some examples of accessible modes, means and formats of communication.

Accessible modes, means and formats of communication include:

- ❖ Information in Braille or audio and/or documents being made available in accessible formats (larger font, accessible Word/PDFs etc.) for a person with difficulty seeing or with print disability.
- ❖ Make available communication in written format/sign language/oral interpretation or using augmentative communication devices/ assistive technology, etc. for a person with difficulty communicating.
- ❖ Creating easy to read documents, enlisting a support person to explain details in simple language, having multiple number of meetings, etc. for people with difficulty understanding and comprehending.

5.4. What steps should researchers take if they would like persons with disability to participate as subjects for their study?

If a researcher is keen to take a person with disability as a subject of her/his research, she/he should:

1. Get an informed consent from the person, i.e.
 - a. Ask the person with disability her/his preferred mode of communication.
 - b. Provide information in the requested medium/format.
 - c. If the person needs support in decision making, provide the required support.
2. Obtain prior permission from the Central Committee for Research on Disability.

5.5. What is the Central Committee for Research on Disability? What is its composition?

The functions of the Central Committee for Research on Disability have not been detailed in the law. This Committee is responsible for granting/refusing permission to researchers who would like to take people with disabilities as subjects for their study. The Central Committee for Research on Disability would consist of the following persons:

1. An eminent person, having vast experience in the field of science or medicine, to be nominated by the Central Government and appointed as the ex officio-Chairperson of the Central Committee.
2. A nominee of the Director General of Health Services not below the rank of Deputy Director General.
3. Four persons, drawn from National Institutes representing physical, visual, hearing and intellectual disabilities, to be nominated by the Central Government.
4. Five persons, representatives of registered organisations (from each of the five groups of specified disabilities in the Schedule to the Act), to be nominated by the Central Government. At least one representative of the registered organisations must be a woman.
5. Director, Department of Empowerment of Persons with Disabilities, New Delhi as the Member Secretary.

The Chairperson may invite any expert as a special invitee.

5.6. If a researcher is planning to collect data from people with disabilities in order to understand the issues concerning, say, access to health, does the researcher need to get prior permission from the Central Committee?

As per The RPWD Rules, it is mentioned that "No person with disability shall be a subject of research except when the research involves physical impact on his body." The sentence is not very clear. What the Rule makers are probably saying is that if the research does not have any impact on the physical body, then there is no need to get prior permission from the Committee.

5.7. Regarding complaints concerning abuse, violence and exploitation, is it necessary that only the victims with disabilities who have to file a complaint or can others also do it on their behalf? Further, whom should one complain to?

Complaints can be given by:

- ❖ A person with disability who is a victim
- ❖ Any other person
- ❖ Any registered organisation

The complaint should be given to police officers or Executive Magistrates.

5.8. What is the role of police officers (in case she/he receives a complaint)?

As per the Act, any police officer who receives a complaint or comes to know of abusive, violent or exploitative behaviour towards any person with disability, she/he should inform the victim regarding:

1. Her/his right to apply for protection.

2. Particulars of the Executive Magistrate who can provide the necessary assistance.
3. Particulars of the nearest organisation working for the rehabilitation of persons with disabilities.
4. The right to free legal aid.
5. The right to file a complaint.

The police officer should also take necessary action for any offence committed. The officer should do their regular duty, i.e. register the complaint received in person or by post, e-mail or other means; supply a copy of the First Information Report(FIR) to the complainant; facilitate a medical examination, if required, with the consent of the person and give any support that may be required for gathering facts, consent, etc.

5.9. What is the role of the Executive Magistrate?

Any person or registered organisation can give information about any abuse/violence on persons with disability to the Executive Magistrate.

When the Executive Magistrate receives such information she/he should take immediate steps to stop/prevent its occurrence and pass an Order for the protection of the person with disability. The Order could be to:

1. Rescue the victim and provide protective custody.
2. Authorise the police or any organisation working for persons with disabilities to provide safe custody and/or rehabilitate the person.
3. Provide maintenance to the victim.

If the Executive Magistrate finds that the act or behaviour is an offence under this law or any other law, she/he may forward the complaint to the Judicial or Metropolitan Magistrate.

5.10. How does one contact Executive Magistrates? Are there any contact details available?

Executive Magistrates have yet to be appointed for the purpose of implementing these Clauses in the law (as on October 2017). Generally, Deputy Collectors, *Tahsildars* and Deputy *Tahsildars* are appointed as Executive Magistrates.

5.11. Does the law say anything regarding preventing incidents of abuse, exploitation, etc.?

The law requires the government to take steps for preventing such incidents. It mentions that awareness should be created among the public. However, the law does not mention the specific steps to be taken. Some suggestions that could be considered by the Home Ministry (Police Department), Executive Magistrates and Disability Department are:

- ❖ Enhancing interactions between police and people with disabilities, their families and any Non-Government Organisations/Associations present in the area.
- ❖ Collecting data of people with disabilities living in the community and making regular visits to their houses and interacting with people with disabilities. Police officers can give their contact details to people with disabilities.
- ❖ Sensitising police, civil society organisations, community service providers and others on the rights, particularly related to issues related to abuse/violence/exploitation of people with disabilities.
- ❖ Creating a support system for people with disabilities and their families by helping form self-help groups, holding meetings with social workers, creating a personal ombudsperson, etc. where people can freely voice their concerns. They could also assist in filing an FIR, seeking a lawyer and police protection.
- ❖ Training persons with disabilities on how to protect themselves from abuse, exploitation, etc. and on how to use the legal remedies available. They can be encouraged to speak up and report such incidents in appropriate forums and media platforms.
- ❖ Creating awareness on the issue through all mediums like TV, radio, internet, community gatherings etc.
- ❖ All organisations working for issues concerning gender, children, etc. should include persons with disabilities in the work that they do.
- ❖ Various Courts (Judges) or Disability/Women/Children Commissioner's Offices or National Human Rights Commission (NHRC) can take action on their own (suo motu), if required, on such incidents.
- ❖ Ensuring Police help-lines and other help-lines for women and children are accessible to people with disabilities. People manning the help-lines should also be trained to interact with people with disabilities.
- ❖ Sensitising and providing appropriate skills to all personnel manning institutions such as hospitals, police stations, courts and so on so that they are able to handle cases concerning people with disabilities in a sensitive manner.

5.12. Is there any punishment given in the Act for those who abuse, exploit, torture persons with disabilities?

Yes. They will be punished with imprisonment for a term not be less than six months and which may extend to five years along with a fine. Punishment will be given to whoever,

1. intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view.
2. assaults or uses force to any person with disability with intent to dishonour her/him or outrage the modesty of a woman with disability.
3. having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to her or him.
4. being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually.

5. voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability.

The Act also states that where an offence is punishable under this Act and also under any other Central or State Act, then, the person will be punished under the Act which provides greater degree of punishment.

Chapter 6: Disaster Management

Sections/Clauses covered

- 8: Protection and safety
- 24 (3) (c) Social security
- 25 (2) (i) Healthcare

At a glance

- ❖ Persons with disabilities have the right to equal protection in situations of risk, armed conflict, humanitarian emergencies and natural disasters.
- ❖ The National Disaster Management Authority (NDMA) and the State Disaster Management Authority (SDMA) should ensure that disaster management activities are made inclusive.
- ❖ The District Disaster Management Authority (DDMA) should maintain records of persons with disabilities in the district. They should also inform people with disability regarding any situations of risk.
- ❖ Social security schemes should be formulated for supporting persons with disability during disasters.
- ❖ Healthcare should be provided during disasters.

Explanations

6.1. What constitutes situations of risk?

Risk means the probability that a hazard/disaster could cause harm. Harm could be in terms of loss of life, injury and/or destruction and damage of assets, like house, furniture etc. For example, if a person is living near a river/sea, flood could harm her/him. This is a situation of risk. If the person has a disability, the risk is higher. If she/he happens to be poor or is old or does not have a supportive family, then the risk further increases in terms of the impact the disaster would have on her/him.

6.2. What are humanitarian emergencies (disasters)?

A humanitarian emergency (disaster) is an event or series of events that poses a critical threat to a large group of people. It can be caused by various factors, both natural and manmade. These are detailed below:

- ❖ Natural Disasters: Droughts, floods, cyclones, heat waves, cold waves and fog, thunderstorm, hailstorm and dust storm, earthquakes, landslides, tsunami, fires due to lightning strikes, etc.
- ❖ Manmade Disasters: Industrial and chemical disasters, stampedes, nuclear emergencies, road accidents, rail accidents, air accidents, mining related disasters, epidemics, fires, riots, terrorist attacks, etc.

6.3. What is armed conflict?

In simple terms, it is a conflict where arms (weapons, etc.) are used. There are two types of armed conflict:

1. International armed conflicts, i.e. 'war' between two or more countries.
2. Domestic conflicts (civil war within a country).

6.4. What does equal protection mean? Why do people with disabilities not get equal protection?

People with disabilities are generally left out in crisis or emergency situations due to several reasons as given below:

1. Lack of access to alerts/information
 - a) TV/Radio or any other voice based announcements may not reach a person who has difficulty hearing.
 - b) Warning messages on TV (like news ticker, which is text based display etc.) would be difficult for a person with difficulty seeing/reading.
 - c) Reading warning boards or emergency numbers or maps or documents relating to emergency preparedness could be challenging for a person with difficulty seeing, reading or understanding.
2. Difficulty communicating with people manning/providing emergency services and support
 - a) People with speech/hearing/language difficulty may not be able to reach out for help using helplines etc. or be able to effectively communicate their needs to the personnel providing emergency services.
3. Difficulty in evacuating the place
 - a) People with difficulty walking or seeing or those who have difficulty orientating themselves, may need assistance to evacuate and/or navigate to reach a safe place.
4. Losing support systems
 - a) There is a possibility of being separated from family members and caregivers. Such a situation can be very difficult for those who need support for their day to day living.
 - b) Some people may not be able to bring along their assistive devices (for example, wheelchairs, crutches, mobile phones, medicines, diapers, urine bags, etc.) or they could be damaged or batteries powering their electrical devices may require charging and there may be no electricity.
5. Inaccessibility
 - a) Temporary shelters and camps (including toilets) may be inaccessible to persons with disabilities.
 - b) There may be barriers in accessing food, water, preventive and other medicines which are distributed in camps (i.e. not being aware of these centres, difficulty reaching there, standing in long queues, lack of support, etc.).

- c) Lack of accessible transportation in order to reach the nearest relief centre can also be a major problem.
- 6. Lack of access to rehabilitation (post disaster)
 - a) Rehabilitation efforts, like counselling, livelihood, compensations and so on may not reach people with disabilities.
 - b) People providing those services may not know how to make their services inclusive for people with disabilities.
- 7. Lack of awareness among emergency personnel
 - a) The concerned personnel may not know how to help people with disabilities. They may prioritise evacuating people without disabilities.

Therefore, there is a need to take proactive steps to ensure that people with disabilities have equal access (including reasonable accommodation and support) and protection during emergency situations.

6.5. What is disaster management?

In simple words, disaster management is preparedness, response and recovery in order to lessen the impact of disasters.

6.6. What are disaster management activities? How can they be made inclusive?

Disaster management activities, as per Disaster Management Act, 2005 are:

“i) prevention of danger or threat of any disaster; (ii) mitigation or reduction of risk of any disaster or its severity or consequences; (iii) capacity-building; (iv) preparedness to deal with any disaster; (v) prompt response to any threatening disaster situation or disaster; (vi) assessing the severity or magnitude of effects of any disaster; (vii) evacuation, rescue and relief; (viii) rehabilitation and reconstruction. ”Some examples of how these activities can be made inclusive are given below.

- ❖ Prevention:
 - Any educational programme related to prevention, like information about climate changes, safety, etc. should be made available in accessible formats (sign language, video with captions and audio description, easy to read, multiple languages etc.).
 - Implement and strengthen building codes/standards to ensure that the safety and evacuation of people with disabilities are included (evacuation lifts, emergency signages in accessible formats, railings, tactile indicators, fluorescent strips, sounders, etc.).
- ❖ Mitigation and Preparedness:
 - Create a database of people with disabilities in the community, including information about the support that they need during an emergency.
 - Survey the community to better understand the barriers, safe assembly areas and supports that could be made available during an emergency.

- Develop individualised evacuation plans in consultation with persons with disabilities by holding mock/trial drills
 - Ensure that warning/alerting messages regarding a disaster reaches persons with disabilities in the format that is accessible to them (SMS, MMS, audio messages, etc.).
 - Have the option of sending text messages to help-lines (not just calls).
 - Involve persons with disabilities in developing disaster preparedness plans. They should be a part of Disaster Management Committees, etc.
 - Train persons with disabilities to help themselves during emergencies.
 - Sensitise and train family members, community volunteers, government officials, emergency response teams and civil society organisations working on disaster management on how to support people with disabilities in emergencies and on how to make emergency services inclusive.
 - Ensure that all trainings related to emergency preparedness have relevant content related to ensuring equal protection to people with disabilities during emergencies.
 - Schools/community centres, etc. that are used as shelters during floods or other disasters should be made accessible proactively.
- ❖ Response, Rescue, Relief and Rehabilitation:
- Prioritise people with disabilities during emergency evacuation.
 - Make accessible temporary shelters/camps, food delivery centres and procedures, medicine dispensing centres and health care. Make available specific items like catheters, diapers etc.
 - Ensure focussed social and economic rehabilitation to people with disabilities (counselling, livelihood, compensation, maintenance, etc. including disability costs), etc.
 - Accessibility should be ensured in all reconstruction works.

Chapter 7: Home and Family

Sections/Clauses covered

- 9: Home and family
- 10: Reproductive rights
- 24 (d): Social security
- 39 (2) (c): Awareness campaigns
- 92 (e) (f): Punishment for offences of atrocities

At a glance

- ❖ No child with disability should be separated (i.e. given/taken away, surrendered, abandoned) from her or his parents on the ground of disability (There is an exception given to the above. The child can be separated by the Order of a competent court in the best interest of the child.).
- ❖ When the parents are unable to take care of a child with disability, the competent court will place the child:
 - With her/his near relations.
 - Within the community in a family setting, if the above is not possible.
 - In a shelter home run by the government or Non Government Organisation, in exceptional cases.
- ❖ The government should formulate schemes to support women with disabilities to bring up their children.
- ❖ The government should ensure that persons with disabilities have access to information regarding reproductive and family planning.
- ❖ No person with disability should be subject to any medical procedure which leads to infertility without his or her free and informed consent.
- ❖ The government should promote awareness to foster respect for the decisions made by persons with disabilities on all matters related to family life, relationships, bearing and raising children.

Explanations

7.1. In what circumstances can a child be separated from her/his parents?

The law is quite categorical in saying that no child with disability should be separated from her/his parents on the ground of disability. However, there is one exception given in the law. It says that the child can be separated in the best interest of the child. The circumstances under which this can be done have not yet been detailed.

Some of the circumstances where courts have made the decision to separate the child from parents are:

- ❖ When parents have abused/tortured the child.

- ❖ When there is neglect or parents are voluntarily depriving a child of her/his essential needs (for example, food, clothing, shelter, and medical care).
- ❖ When the parents are suffering from a serious ailment.

The decision to separate the child will be taken by the court based on the best interests/welfare of the child.

7.2. What is a competent court?

The Act has not specified the competent court. The District Court would possibly be considered as the competent court. One should check with the District authorities as to which District Court has been given the authority to hear the petition related to this Clause.

7.3. What are the best interests for the child?

The term 'best interests' encompasses all that the well-being of a child would depend on i.e. the fulfilment of all basic rights and needs which includes the right to food/nourishment and everything that promotes her/his physical, emotional and intellectual development.

7.4. Is there a punishment for parents who abandon their child with disability?

Yes. They will be punished with imprisonment for a term not be less than six months and which may extend to five years along with a fine.

7.5. Are there any provisions in the Act that states that women with disability have the right to found a family (i.e. retain their fertility and to give birth to children)?

Yes. Women with disability have the right to retain their fertility and to give birth to children. The law also provides for access to relevant information and other support that may be needed to enable women with disability to exercise their rights. The Act has the following relevant provisions:

1. No person with disability should be subject to any medical procedure which leads to infertility without her free and informed consent.
2. No person should be discriminated on the ground of disability. (This would apply to all matters such as family, parenthood, etc.).
3. Ensure women with disabilities enjoy their rights equally with others.
4. Ensure respect for her integrity equally with others.
5. The government should promote sexual and reproductive healthcare especially for women with disability.
6. The government should formulate schemes to support women with disability for upbringing their children.
7. Whoever performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of

pregnancy without her express consent will be punished (There is an exception that has been added where the law allows for the decision to terminate pregnancy without consent of the individual in the case of severe disability. This decision can be taken by the registered medical practitioner with the consent of the guardian of the woman with disability.).

Chapter 8: Accessibility in Voting

Sections/Clauses covered

- 11: Accessibility in voting

At a glance

- ❖ The Election Commission of India and the State Election Commissions should ensure that:
 - All polling stations are made accessible.
 - All materials related to the electoral process are made easily understandable and accessible to persons with disabilities.

Explanations

8.1. How can polling stations be made accessible?

Access to polling stations would include:

- ❖ To reach the polling stations (which includes providing accessible approach roads, signages, reserved parking space, accessible drop off area, tactile indicators, accessible transport, easy and accessible information, etc.).
- ❖ An accessible entrance (provide ramps with appropriate gradient and width, railings, accessible doors, signages and other aspects)
- ❖ An accessible enquiry counter (i.e. provide 'May I help you' counters with information in accessible formats and manned by sensitised staff and volunteers).
- ❖ Priority for entering polling stations without having to wait in the queue.
- ❖ An accessible polling room (provide wide doors, well lit room, space for easy manoeuvrability, Electronic Voting Machines within reach, etc.).
- ❖ Accessibility of ballot papers/Electronic Voting Machines (which have been tested for accessibility, ballot papers provided in Braille, provide option of a postal ballot, etc. Accessibility of Electronic Voting Machines should be upgraded with improvement in technology from time to time in consultation with disability groups.).
- ❖ Availability of assistive devices (provide wheelchairs, magnifiers, etc.).
- ❖ Creation of awareness about the facilities that are available in polling stations.

8.2. What are the materials related to the electoral process and how can they be made accessible?

Materials related to electoral processes would include (but not limited to):

- ❖ All election related websites.
- ❖ All relevant documents (circulars, laws, handbooks etc.).
- ❖ Information and forms for enrolling as a voter or updating information.

- ❖ Information regarding political parties and candidates.
- ❖ All awareness materials.

Some pointers are given below for making the materials accessible:

- ❖ All websites should meet the Web Content Accessibility Guidelines (Guidelines for Indian Government Websites - GIGW).
- ❖ All documents/ circulars should meet the accessibility standards (i.e. providing them in accessible PDF and ePub formats.).
- ❖ Information regarding facilities for voters with disabilities should be prominently placed on appropriate websites and it should be easy to understand (providing them in pictorial, audio visual, sign language and easy to read formats).
- ❖ Awareness materials (ensure films have captions and audio descriptions, provide easy to understand posters, sign language descriptions, etc.).

Election Commission and State Election Commissions can also promote accessibility by:

- ❖ Directing all political parties to make their manifestoes in accessible formats and to have sign language interpreters at public rallies.
- ❖ Directing the media to ensure election related information is accessible.

Chapter 9: Access to Justice

Sections/Clauses covered

- 12: Access to justice

At a glance

- ❖ Persons with disabilities have the right to access justice.
- ❖ The government should ensure that:
 - All courts, tribunals, authorities and commissions are accessible to people with disabilities.
 - Support services are made available to access justice, especially for those people with disabilities living outside their family environment and those with high support needs.
 - All public documents are available in accessible formats.
 - The filing departments, registry and other offices should have the necessary equipment for providing accessibility in documentation.
 - All necessary facilities are available for people with disabilities in order to record testimonies, arguments etc. in their preferred means of communication.
- ❖ The National Legal Services Authority (NALSA) and the State Legal Services Authorities (SALSA) should make their facilities and services inclusive and provide reasonable accommodations to people with disabilities.

Explanations

9.1. What is access to justice?

Access to justice means that people with disabilities should be able to reach the courts and avail the services of the courts on an equal basis with others. People with disabilities may have to go to police or courts for various reasons as given below.

- ❖ To file a case
- ❖ To work in a court as a lawyer, judge or a staff member.
- ❖ To appear as a witness, accused, observer, companion and so on.

Hence, access to justice is important.

9.2. How can justice be made accessible?

Access to justice would include:

1. Physical access
2. Information, communication and digital access
3. Availability of individualised accommodations and support
4. Awareness among all the people involved in the justice system

The above points are explained in detail below.

1. Physical Access: The buildings i.e. courts, police stations, legal aid offices, hospitals (for providing forensic evidence i.e. blood tests, DNA tests, etc. used in courts) should be accessible as per standards which includes:
 - a) Accessible entrance, reception (step free/ramps, lifts, signage, tactile indicators, etc.)
 - b) Accessible courtrooms with an accessible judge's bench, witness box, gallery, lawyers' and clerk's tables/seats, other furniture and fixtures in the room.
 - c) Accessible other areas i.e. accessible waiting areas, enquiry counters, washrooms, canteens, etc.
2. Information, Communication and Digital Access:
 - a) Accessible websites of courts, police stations and other legal aid/services organisations, as per accessibility standards.
 - b) Accessible information systems i.e. files/records/documents (in accessible PDF or ePub formats, but not as scanned jpeg images)
 - c) Accessible help-lines (which can be accessed through call/SMS/email).
 - d) Information in accessible formats (such as Braille/large font/accessible soft copy and easy to read information wherever possible.
3. System for providing Individualised Accommodations: The law states that the National Legal Services Authority (NALSA) and the State Legal Services Authorities (SALSA) should make provisions for reasonable accommodations. Under their programme for Legal Aid, they could set up Disability Support for Legal Services. Some the accommodations/support that may be required are as follows:
 - a) Assistive technologies
 - b) Sign Language / Oral Interpreters
 - c) Real time transcription
 - d) Appropriate lighting in courtrooms to enable lip reading
 - e) Seating arrangements
 - f) Support Person to explain the proceedings
 - g) Assistance in paperwork
 - h) Readers/writers
 - i) Multiple breaks
 - j) Simple Questions
 - k) Re-hearings
 - l) Independent third person present during questioning by police
 - m) Any other flexibility that may be required
4. Awareness/Training of all people in the justice system: Training to be provided to all people involved in the justice system which includes police officers, personnel in various commissions/authorities, lawyers, judges, administrative staff, etc. so as to ensure that there is no discrimination and that people with disabilities are provided correct and timely support.

9.3. What is free legal aid? Are people with disabilities eligible for free legal aid?

People with disabilities are eligible for free legal aid like everyone else. As per the information available on [NALSA](#) website, the annual income should not exceed Rs. 1,25,000/- for someone to be eligible for free legal aid. Free legal service includes:

1. Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings.
2. Providing a lawyer in a legal proceeding.
3. Obtaining and supplying of certified copies of orders and other documents in legal proceedings.
4. Preparation of appeals, paper work including printing and translation of documents for legal proceedings.

As per this law (The RPWD Act), NALSA and SALSA should provide reasonable accommodations. They should include this information on their website and in any other relevant communication so that people with disabilities are able to access legal aid.

Chapter 10: Legal Capacity and Guardianship

Sections/Clauses covered

- 13: Legal capacity
- 14: Provision for guardianship
- 15: Designation of authorities to support

At a glance

- ❖ All people with disabilities have legal capacity in all aspects of life.
- ❖ Government should ensure that:
 - Persons with disabilities have right to own or inherit property, control their financial affairs.
 - Authorities are designated to facilitate support for people with disabilities to exercise their legal capacity.
- ❖ People with disabilities have control on the sort of support arrangements they need.
- ❖ Provision of Limited Guardianship (for a specific period and for specific decisions and situations) to those who are unable to take decisions even with support.

Explanations

10.1. What is legal capacity?

Legal capacity means a person with disability has the right to take all decisions, ranging from simple day to day matters such as what to wear/eat to serious decisions such as refusing/agreeing to specific medical treatments, selling/ buying a property, etc.

Legal capacity means that people with disabilities are 'persons' in front of the law'. This means that they can go to court/sign contracts, etc. Without legal capacity, only a guardian can represent them in the courts and their signatures would not be valid in contracts/agreements/cheques/will, etc.

Legal capacity is fundamental to exercising many of the rights mentioned in the Act, like access to justice, the right to inherit/own property, take employment decisions, the right to refuse treatment/medical procedures, etc.

The law specifically states that all people with disabilities, irrespective of the type of disability or severity of disability, have the right (equally with others) to:

1. Own and inherit property (movable and immovable).
2. Control one's own financial affairs (i.e. operate a bank account, do various transactions, take loans and credits, mortgage (using one's property as guarantee for getting a loan, etc.).
3. Enjoy legal capacity in all aspects of life.

4. Have equal recognition everywhere as any other person before the law.

Some people with disability may need support to exercise their legal capacity, which should be provided.

10.2. What are some examples of movable and immovable properties?

- ❖ Movable properties: Computers, paintings, jewellery, vehicles, etc.
- ❖ Immovable properties: House, factory, shop, land, etc.

10.3. How can government ensure that people with disabilities have control over their financial matters etc.?

In order for people with disabilities to enjoy the right to control over financial matters, accessibility should be ensured by the concerned authorities in the following aspects:

1. Physical access (provide accessible banks, registrar's office, panchayat, etc.).
2. Information, Communication and Digital Access for all related software/technologies (which includes websites/apps/documents of banks, development authorities, related government offices etc.).
3. Availability of support and accommodations (set up 'May I help you' counters in banks, the registrar's office, etc. that can provide individualised support).
4. Awareness of all the staff regarding the rights of people with disabilities.
5. Amendment of laws /policies /procedures which explicitly or implicitly prevent people with disabilities from exercising the right to have control over their own financial matters.

Examples of discrimination based on disability are given below:

1. A bank refuses to open an account/give loans for a person with disability because she/he is blind or has autism or mental illness or cerebral palsy or any other disability.
2. A daughter/son with disability is denied equal share in the family property because of her/his disability.
3. A person with disability is unable to access an ATM or a bank's website because they are not accessible.
4. A deaf person wants to apply for a loan but the concerned banker refuses to answer questions in writing and insists that she/he brings an interpreter.

10.4. What is meant by 'support' for exercising legal capacity?

Some people with disabilities may need support to take decisions in certain matters/situations. Prior to this Act, people with certain kinds of disabilities were assumed to have no capacity to make decisions. Their decisions were made by their guardians. Now, with this law, such assumptions should not be made. All people have legal capacity. However, if a person with disability wants support to make a decision, it should be provided to her/him. This is called Supported Decision Making (SDM). Under

SDM, the individual with disability appoints people to be part of a support network to assist her/him in decision making. She/he can ask them questions, discuss options and take their own decisions. Supporters can be family members, colleagues, peers, friends, social workers, support networks, personal assistant, etc.

Let's take a common example of a decision to be made regarding where to live and see what is supported decision making and what is not.

- ❖ If the person with disability makes her/his choice without consulting any friends, family, or other resources, that's not supported decision making.
- ❖ If someone else takes the decision regarding where the person with disability lives without talking to her/him, that is again not supported decision making (this is substituted decision making).
- ❖ Discussing the advantages and disadvantages of different houses, meeting roommates or neighbours, discussing the help that may be needed would be supported decision making.

10.5. If a person with high support needs wants support in decision making, where should she/he go?

The Act states that the government should appoint one or more authorities to provide support to people with high support needs. As of now (December 2017), the government is yet to appoint the authorities for providing support.

10.6. What is the role of authorities in providing support?

The authorities are yet to be designated. Their role is yet to be detailed (as on December 2017). The broad role of authorities as mentioned in the Act is to:

- ❖ Mobilise the community and create awareness to support persons with disabilities in exercising their legal capacity.
- ❖ Take measures for setting up suitable support arrangements for persons with disabilities living in institutions and those with high support needs to enable them to exercise legal capacity.

These authorities should provide alternatives to guardianship, access to support services and legal help for enabling supported decision making.

10.7. What safeguards are provided to prevent misuse/abuse of support?

The following safeguards have been provided in the Act with regard to support in exercising legal capacity:

- ❖ When there is a conflict of interest between a person providing support and a person with disability in a financial transaction, then such a supporting person should not provide support to the person with disability in that transaction.

(There should also not be a presumption of conflict of interest just on the basis that the supporting person is related to the person with disability.)

- ❖ A person with disability may change/remove any support arrangement and seek the support of another. (Such alteration, modification or dismantling is for future transactions only and not for previous transactions done by person with disability with the previous support arrangement.)
- ❖ Any person providing support to the person with disability should not exercise undue influence (i.e. forcing decisions) and should respect the disabled person's choice, dignity and privacy.

10.8. What is conflict of interest?

Let's take an example: A brother/sister is the support person designated to assist a person with disability in making decisions. Now, if a property, which is in the name of the person with disability, is being sold to the sibling, this would be regarded as a 'conflict of interest' as the sibling stands to gain from this transaction. In such a case, the sibling should not play the role of a 'support' person. The person with disability should choose another person whom she/he can trust to help her/him arrive at the right decision regarding selling the property.

10.9. Please explain the terms 'undue influence', 'respect her/his autonomy' and 'privacy' in the context of legal capacity.

- ❖ Undue influence: A person with disability should not be forced to take a decision.
- ❖ Respect her/his autonomy: The person providing the support should respect and honour the person's preferences and choices.
- ❖ Privacy: The support person should also ensure privacy and should not share information about their conversations with others.

Given below is an example of the violation of legal capacity and the sort of solution that can be applied as per the law:

Example: Raheena, a person with Cerebral Palsy (30 years of age), is pregnant. She wants to keep the child. The support person (mother) feels that Raheena is not capable of taking care of her child. The mother talks to the doctor and decides for the abortion.

Possible Solution: Under this law, Raheena can seek the support of a social worker/lawyer, the designated authority for support or Executive Magistrate. They would talk to Raheena, understand her concerns, help her make a decision, provide protective custody or authorise an organisation to provide safe custody (if required), help her access maintenance and provide legal help etc.

10.10. What is limited guardianship and how it is different from a full (plenary) guardianship?

When a person has all of her/his rights removed and the guardian decides all matters for the person, it is called a full or plenary guardianship. Limited guardianship means a

system of joint decision that operates on mutual understanding and trust between the guardian and the person with disability. It is limited to a specific period and for specific decision and situation. It should operate in accordance to the will of the person with disability.

10.11. What does the law say about limited guardianship?

The law states that:

- ❖ If a District Court or any designated authority finds that a person with disability, who had been provided adequate and appropriate support, is still unable to take decisions, she/he may be provided the support of a limited guardian.
- ❖ Some safeguards are provided for limited guardianship:
 - A system of joint decision (guardian and the protected person should discuss and take the decision).
 - Guardianship is not for all decisions. It is limited to a specific period and for specific decisions and situations only (based on the willingness of the protected person).
 - Any person with disability who is unhappy with the decision of the authority regarding appointing a limited guardian can appeal in court.
- ❖ The law also states that every guardian appointed under any other law for a person with disability would now function as a limited guardian.

Example of a Limited Guardianship: Parents of a person with intellectual disability with high support needs have willed vast property to their only son, Henry (who is 22 years of age). His uncle applies for limited guardianship stating that Henry is unable to take decisions due to his disability despite all the support given to him as per the law. The local district court conducts an independent assessment regarding Henry's capacity and the supports that have been provided so far and also talks to Henry. Considering the best interest of Henry, the Court decides that a guardian should be appointed with the limited purpose of executing the registered Will. Post the appointment, the guardian explains the Will and discusses the options available with Henry and takes a decision regarding the property. The court periodically reviews the arrangement of limited guardianship in the best interest of Henry. However, the guardian cannot give consent to medical treatment or decide where she/he lives or regarding any other personal and social aspects of her/his life.

Chapter 11: Education

Sections/Clauses covered

- 16: Duty of educational institutions
- 17: Specific measures to promote and facilitate inclusive education
- 18: Adult education
- 31: Free education for children with benchmark disabilities
- 32: Reservation in higher educational institutions
- 39 (2) (d) (f): Awareness raising
- 46: Time limit for accessibility by service providers
- 47 (1) (b) (e) and (2): Human resource development

At a glance

- ❖ Every child with benchmark disability between the age of six to eighteen years has the right to free education in a neighbourhood school or in a special school, of her/his choice.
- ❖ All recognised educational institutions should admit students with disabilities. They should take specific measures to ensure non-discrimination of students with disabilities.
- ❖ There should be a nodal officer in the District Education Office to deal with all matters relating to admission of children with disabilities and the facilities to be provided in the school.
- ❖ The government should enable the right to education for people with disabilities by setting up resource centres, provide training to teachers, make curriculum modifications, grant scholarships, ensure the rights of people with disabilities is included in the curriculum, provide sensitisation trainings at educational institutions etc.
- ❖ All government and government aided institutions of higher education should reserve not less than five percent seats for persons with benchmark disabilities. An upper age relaxation of five years for admission should also be given.
- ❖ Disability as a component should be included in all education courses.
- ❖ All Universities should promote teaching and research in disability studies including the establishment of study centres for such studies.
- ❖ Government should take measures to ensure participation of persons with disabilities in adult education and continuing education programmes.

Explanations

11.1. What is inclusive education?

It is a system, wherein:

- ❖ Students with and without disability learn together.
- ❖ Teaching and learning is suitably adapted to meet the needs of different types of students with disabilities.

11.2. Is the law promoting inclusive education or special education?

The law is promoting inclusive education. However, the law lays greater emphasis on the choice of the person with disability (or her/his parents) regarding the education that she/he (their child) wants.

11.3. Are all educational institutions required to admit children with disability without any discrimination?

Yes. The 'unrecognised' ones, however, do not need to. All educational institutions - government, government aided and private institutions that are 'recognised' - should provide inclusive education and should not deny any person admission only because she/he has disability.

11.4. What is meant by 'recognised educational institutions'?

Recognition is the license given by the government to run schools and institutes of higher learning. For schools, this license is provided by Municipal Corporations/Department of Education (DoE). For institutes of higher education, the license is provided by apex organisations such as University Grants Commission (UGC), All India Council for Technical Education (AICTE), etc.

11.5. Are there any specific measures that recognised educational institutions should take as per the law?

The law states that the recognised educational institutions should take the following steps:

1. Admit people with disability without discrimination.
2. Make buildings, campus and various facilities accessible.
3. Provide reasonable accommodation.
4. Provide individualised support in inclusive environments or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion.
5. Provide opportunities for sports and recreational activities equally with others.
6. Education to persons who are blind or deaf or both should be imparted in the most appropriate languages and modes and means of communication.

7. Detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures.
8. Monitor participation, progress in terms of attainment levels and completion of education for every student with disability.
9. Provide transportation facilities to children with disabilities and also the attendants of children with disabilities who have high support needs.

The government and government aided institutions of higher education would also need to reserve not less than five percent of seats for persons with benchmark disabilities. They should also provide an upper age relaxation of five years for admission for persons with benchmark disabilities.

11.6. Is the five percent reservation available to all 21 categories of disabilities mentioned in Act?

Yes. It holds for all 21 categories of disabilities who are certified as persons with benchmark disabilities.

11.7. Are there any timelines for making facilities accessible?

Yes. The law states that all existing buildings should adhere to accessibility standards within five years (by June 2022) and all services within two years (i.e. by June 2019).

11.8. Does the non-discrimination Clause apply to all levels of education?

Yes, it applies to all levels of education i.e. primary, secondary and higher education (including professional and vocational courses). It also covers adult education and continuing education programmes.

11.9. What would constitute discrimination with respect to admission in educational institution?

Discrimination is:

- ❖ When an institution refuses admission to a student just because she/he has a disability.
- ❖ When an institution refuses to provide any reasonable adjustment/ accommodation that she/he may need in order to participate in the entrance process or during the course of studying or in taking assessment, etc.

11.10. What is 'reasonable accommodation' in the context of education?

'Reasonable accommodation' means making changes or modifications (to the infrastructure, activities, learning materials, teaching methods, assistive technologies, curriculum/assessments) and providing specialised services, such as speech therapy etc. to ensure that students with disabilities are able to participate and gain education equally with others.

Types of accommodations (including but not limited to):

- ❖ Assistive Technology (such as screen readers, magnifiers, speech to text programmes, braille display, writing aids, adapted chair/desk, note taking devices, tape recorders, etc.)
- ❖ Sign language/Oral interpreters, note takers, readers, scribe etc.
- ❖ Flexibility (increased time for assessments, frequent breaks, relaxation in attendance requirements, flexible timings, flexible assessment procedures and curriculum, seating arrangement, etc.).
- ❖ Providing specific meal/nutrition requirements.
- ❖ Appointing para-professionals to provide appropriate services to students (occupational therapy, counselling, speech therapy, training in assistive technology, etc.).
- ❖ Peer support in the classroom.
- ❖ Extra tuitions for specific subjects.
- ❖ Individualised educational planning (remedial education, functional literacy, etc.).
- ❖ Training in Braille, Sign Language, augmentative communication, training in assistive technology.
- ❖ Collaboration with experts to assist with health needs, behavioural challenges and other requirements.
- ❖ Transportation facilities to children with disabilities with high support needs and to their attendants

11.11. Are there any standards for making schools - campus/ buildings/ facilities accessible?

Yes. Following are the standards:

[Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly Persons](#) as issued by the Government of India, Ministry of Urban Development in February, 2016.

The National Building Code, 2016 provides detailed standards for accessibility of built infrastructure. Please refer to the [website of Bureau of Indian Standards \(BIS\)](#) for procuring the publication.

There is another publication of UNICEF, titled, '[Making Schools accessible to Children with Disabilities \(2016\)](#)'. It includes a 'School Accessibility Checklist' (Section 3.4: Pages 11 to 17). The various sections given in the Checklist are given below.

- ❖ Entry/Exit
- ❖ Ramp
- ❖ Stairs
- ❖ Corridors
- ❖ Signage
- ❖ Doors

- ❖ Green Boards
- ❖ Windows
- ❖ Flooring
- ❖ Drinking water units
- ❖ Toilets
- ❖ Playgrounds
- ❖ Emergency Preparedness

Apart from the above areas mentioned in the checklist, accessibility of laboratories, libraries, furniture (all interiors of classrooms), auditoriums, computers rooms, lighting, acoustics (hearing enhancement systems), canteens, hostels, information systems, etc. should also be ensured.

11.12. Are students with disabilities eligible to get free books, learning materials and appropriate assistive devices which would be required for pursuing education?

Yes. The law states that the government should provide students with disabilities with books, learning materials, appropriate assistive devices free of cost.

There is an upper age limit given in the law for availing free books, assistive devices, etc., which is 18 years. The law also provides for scholarships to students with benchmark disability.

11.13. How can educational institutions provide opportunities for sports and recreation equally with others?

Some of the suggestions that could be considered are:

- ❖ Ensuring that playgrounds and spaces for indoor games, including swimming pools, if available, are accessible.
- ❖ Ensuring that recreation spaces (rooms for art, pottery, dance, music, theatre, auditorium, etc.) are accessible.
- ❖ Procuring / modifying specific equipment/instruments for sports and recreation (like wheelchairs for sports, accessible chess boards, etc.).
- ❖ Appointing coaches to train people with disabilities in specific sports.
- ❖ Ensuring that disability related sports categories are included during sports day and other competitions. Also ensure inclusive games and programmes where everyone can participate.
- ❖ Supporting students with disabilities who are keen to learn specific sports and encourage participation in district/ state/ national level championships in exclusive competitions for people with disabilities.
- ❖ Organising inter school/college competitions for disability sports.
- ❖ Ensuring all facilities/concessions/awards that are given to sports persons without disability are extended to sports persons with disabilities.

11.14. What are the most appropriate languages and modes and means of communication for teaching students who are blind or deaf or both?

The most appropriate language and modes and mean of communication is based on an individual's preference. A person with hearing disability may be able to lip read or may prefer real time transcriptions or a sign language interpreter or any other suitable means to fully participate in the classroom. Similarly, a person with vision disability or a deaf blind person may need learning materials in increased font size or enhanced contrast or in Braille or in appropriate accessible soft copies.

Appropriate modes and means, of communication as per the definition given in Act, includes display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, video, visual displays, sign language, plain-language, human-reader, augmentative and alternative modes and accessible information and communication technology.

11.15. What are 'specific learning disabilities'? How can teachers detect it in children?

Some children may have difficulty reading, writing, spelling, reasoning, recalling and/or organizing information. They may not have a problem in all areas but only in some aspects of learning. For example, one child may struggle with reading and spelling, but may be good with orally explaining concepts. Another child may have difficulty understanding what the others are saying or communicating (speaking) but can comprehend written information well, and so on. The problems could be very different, but they all are categorised as learning disabilities. Some professionals explain learning disability as resulting from a difference in the way a person's brain is "wired". A learning disability usually can't be cured or fixed and it may be a lifelong issue. However, with the right support and intervention, children with learning disabilities can succeed in school and can have successful careers.

Some of the indications of learning disability that teachers/parents can be alert to are:

1. Difficulty with reading and/or writing
2. Problems with math skills
3. Difficulty remembering
4. Problems paying attention
5. Trouble following directions
6. Poor coordination
7. Difficulty with concepts related to time
8. Problems staying organised
9. Difficulty finding the right way
10. Inconsistent school performance
11. Trouble finding the right word

There are assessments that could indicate if the child has a specific learning disability. However, the intent of the assessment should not be to diagnose or label a child but

should be to understand the child's strengths and educational needs, including the learning style of the child and the modifications that should be done in the teaching methodology.

11.16. What suitable pedagogical and other measures can be taken for supporting children with learning disabilities in the classroom?

As children learn in a number of different ways, there is no single method for helping all children with learning disabilities. As mentioned previously, make accommodations as natural as possible so that the individual is not singled out in front of her or his peers. Following are some useful tips to follow which would help all children and particularly children with learning difficulties:

- ❖ Understand the student's learning style (visual/aural/kinaesthetic, etc.) and how she/he best expresses what she/he knows. For example, visual learners benefit most from seeing what they are learning, as they have strong visual processing skills. Graphs, pictorial representations, diagrams, mind mapping and charts are all handy learning tools, since they are able to visually recall them in order to sort, process and recall the information they need.
- ❖ If writing is a challenge, offer alternatives such as working with another person, recording what she/he wants to share, letting the person verbalize ideas and responses, using computers, using assistive technologies like speech to text, etc.
- ❖ Support from caring teachers helps to build motivation, get better insights into one's strengths, talents and needs and therefore contributes to a student having an improved self-image.
- ❖ Provide practice in asking for help when children are "stuck". Everyone should be encouraged to view mistakes as a normal part of learning that provide opportunities to self-correct and improve.
- ❖ Recognizing progress through graphs, by setting goals and tracking progress, discussing useful and unproductive strategies and celebrating success.
- ❖ Discourage comparisons with others and reinforce the truth that everyone has personal strengths and weaknesses.
- ❖ Focus on passions, strengths and talents as a way to highlight different types of talent and intelligence. Provide individual choices and give skill-appropriate responsibilities.

11.17. What mandates are given for teachers training in the Act?

The law requires the appropriate government agency (in this case it is the Ministry of Human Resource Development) to take the following measures:

1. Establish an adequate number of teacher training institutions.
2. Train and employ teachers (including those with disabilities) who are proficient in sign language, Braille and in being able to teach children with intellectual disabilities.

3. Train professionals (professionals such as occupational therapists, speech therapists, psychologists, counsellors, etc.) and staff so that they are able to support inclusive education at all levels of school education.
4. Conduct training programmes for sports teachers on how to conduct sports, games, adventure activities etc for children with disabilities.
5. Disability as a component should be included in all education courses for university teachers, *asha* workers, *anganwadi* workers, etc.

11.18. Are there any provisions for creating awareness among students regarding disability?

Following are some of the provisions in the Act with regard to creating awareness among students with disabilities:

1. Orientation and sensitisation should be done at the school, college, university and professional training level on the rights of persons with disabilities.
2. The rights of persons with disabilities are included in the curriculum in Universities, colleges and schools.

11.19. Specialised services may be required for teaching children with certain disabilities? How is that being addressed in the law?

The law requires the government to establish an adequate number of resource centres to support educational institutions at all levels of school education. Such a resource centre should have the expertise and knowledge to facilitate interventions, accommodations and supports that may be required for a student with disability. Some of the features of a resource centre are:

- ❖ It caters to people with all disabilities.
- ❖ It has trained professionals who can do needs based assessments and who facilitate the development of individualised education plans. They should also be able to provide necessary training/support to teachers and parents. They could also have visiting professionals, like speech therapists etc. on their rolls for offering more specialised services if the need arises.
- ❖ It provides early intervention and prepares children for inclusive education.
- ❖ It has appropriate equipment, tools and technologies (including low cost options), educational materials that will help and guide teachers and other school staff in fulfilling the goals of inclusive education.
- ❖ The professionals and staff attached to the centre should understand the rights of children with disabilities and ensure that they provide services accordingly. They should also empower children so that they are able to fully articulate their needs.

11.20. What is Augmentative and Alternative Communication (AAC)?

AAC systems are diverse. They could be unaided or aided communication.

- ❖ Unaided AAC uses no equipment and includes using sign language and body language, while aided approaches use external tools.
- ❖ Aided communication methods can range from paper and pencil to communication books or boards to devices that can produce voice output and/or written output, etc.

The symbols used in AAC include gestures, photographs, pictures, line drawings, letters and words, which can be used alone or in appropriate combinations. Body parts, pointers, adapted mice, or eye tracking can be used to select target symbols directly. Switch access scanning is often used for indirect selection. There are also technologies like 'word prediction', etc. which increases the speed of communication. The law says that the government should promote the use of "appropriate augmentative and alternative modes including means and formats of communication". In order to promote AAC, the government could:

- ❖ Employ professionals with knowledge of AAC or train them if need be.
- ❖ Equip resource centres with various technologies for people to try and learn.
- ❖ Provide grants for people to buy the technologies.
- ❖ Promote research to develop technologies to suit various needs and encourage being in touch with updates to existing technologies and new technologies.

11.21. Does the law talk about modifications to the curriculum and examination system?

Yes, the law requires the government to make modifications in the curriculum and examination system. Some examples have also been cited in law which includes the following (note that these are just a small set of possible solutions, hence more can be added):

- ❖ Provide extra time in writing exams to students with disabilities who need it.
- ❖ Provide a writer and/or reader to blind students and other students with disabilities who may need it.
- ❖ Exempt students with disability from studying second and third languages.

11.22. The law requires the government to promote, protect and ensure participation in Continuous Education Programme (CEP). What does it mean?

It means the government should:

1. Ensure non-discrimination and inclusion in all adult education programmes and CEPs run by government, private and civil society organisations.
2. Initiate certain exclusive programmes for people with disabilities based on need (for example, programmes promoting functional literacy can be promoted, etc.).

3. Provide grants to organisations who promote adult education for people with disabilities.

Chapter 12: Non-Discrimination in Employment (Government and Private Sector)

Sections/Clauses covered

- 3 (3) Equality and non-discrimination
- 20: Non-discrimination in employment
- 21: Equal opportunity policy
- 22: Maintenance of records
- 23: Appointment of Grievance Redressal Officer
- 35: Incentives to employers in private sector
- 39 (2) (e): Awareness campaigns

At a glance

- ❖ Persons with disability should not be discriminated against on the grounds of disability.
- ❖ Reasonable accommodation and an appropriate barrier free and conducive environment should be provided to employees with disability.
- ❖ No government establishment should dispense with or reduce in rank, an employee who acquires a disability during her or his service.
- ❖ Every establishment should frame an equal opportunity policy and register a copy of that policy with the Chief/State Commissioner.
- ❖ Every establishment should maintain records of persons with disabilities.
- ❖ No promotion should be denied to a person merely on the grounds of disability.
- ❖ The Government should frame policies for posting and transferring of employees with disabilities.
- ❖ Every Government establishment should appoint a Grievance Redressal Officer.
- ❖ All employment exchanges should maintain records of persons with disabilities seeking employment.
- ❖ Incentives should be given to employers in the private sector to ensure that at least five percent of their workforce is comprised of persons with benchmark disability.
- ❖ All establishments should ensure that:
 - All existing buildings are accessible as per standards by 2022.
 - New buildings are planned and constructed as per accessibility standards.
 - Services are made accessible in accordance with standards by 2019.
- ❖ The government should provide sensitisation on disabling conditions and the rights of persons with disabilities to employers, administrators and co-workers.

Explanations

12.1. Does the term 'establishment' include private establishments?

Yes. As per the law, the term 'establishment' refers to government and private establishments. As per the Act, the term 'Private establishment refers to the following:

- ❖ Company, firm
- ❖ Cooperative or other society
- ❖ Associations, trust
- ❖ Agency
- ❖ Institution
- ❖ Organisation
- ❖ Union
- ❖ Factory
- ❖ Other establishment as the appropriate Government may, by notification, specify

12.2. What is discrimination on the ground of disability in employment?

Discrimination is the act of treating a person/particular group differently (in a way that undermines her/his/their dignity) or unfairly because of her/his/their disability. Discrimination could be direct or indirect. Denying reasonable accommodation is also considered an act of discrimination. This is explained further in the examples provided below.

- ❖ Direct discrimination in employment: Direct discrimination occurs when a person/group receives less favourable treatment. Example is:
 - A qualified person with disability is denied a job because she/he has a disability.
- ❖ Indirect discrimination in employment: This happens when a condition or requirement is imposed which unfairly excludes or disadvantages people with disabilities. Examples are:
 - A qualified person with visual disability is keen to apply for a position in a company. The application process is such that one needs to take an online test as a prerequisite for applying for a job. However, it is seen that the online test is inaccessible using a screen reader. Therefore, there is no other way that she/he can apply for a job at that company.
 - A company has a face-to-face interview as the only selection method for recruitment. There is no flexibility in the process to test person's suitability for the job. This may be a disadvantage for persons with autism who may have difficulty giving the interview.
- ❖ Denying reasonable accommodation is discrimination. An employer is required to make reasonable accommodations/adjustments. If an employer refuses to agree to an employee with disability's request to change the shift timings in order for her/him to attend the therapy sessions in the morning, even though it would not affect the work or impact productivity, it would be considered as discrimination.

12.3. What is reasonable accommodation?

As per the definition in the Act, reasonable accommodation means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden on an employer in a particular case, to ensure persons with disabilities the enjoyment and/or exercise of basic rights equally with others.

Infrastructure and employment arrangements in an organisation could cause a disadvantage to a person with disability compared with non-disabled people. An employer therefore has to take measures to prevent that disadvantage. In other words, an employer has to make 'reasonable accommodations'. Examples of Reasonable Accommodations are given below:

- ❖ Making existing facilities usable by employees with disabilities. For example, the height of a person's workstation or type of chair used can be modified etc.
- ❖ Restructuring jobs. If the job involves customer queries to be answered by mail/chat and call by all members of the team, work can be restructured in such a way that the team member with hearing disability could be assigned to answer just those queries that come in chat/mail. Other team members can take up more calls and less of mail based queries.
- ❖ Assigning the person to a different place of work.
- ❖ Granting additional leave for medical treatment.
- ❖ Providing readers or interpreters to assist an employee.
- ❖ Providing job coaches to assist in training.
- ❖ Transferring an employee to the same job in another location so that she/he can have access to better medical care.
- ❖ Providing assistive technologies.
- ❖ Providing learning materials in accessible formats and modifying assessments.
- ❖ Providing flexible schedules with time off for medical appointments, etc.

The RPWD Rules also state that no establishment should compel a person with disability to partly or fully pay the costs incurred for reasonable accommodation.

12.4. What does 'without imposing a disproportionate or undue burden' mean?

It means that the adjustment/accommodation should not be extremely expensive or impractical for an establishment. Please note that the terms 'reasonable' and 'undue burden' are relative terms. What is reasonable for a big organisation may be unreasonable for a small organisation. Establishments should create a process to handle accommodations requests from employees with disabilities. They should allocate a budget to meet the costs of accommodation. When a request for accommodation comes, the effort should be to provide the needed accommodation. Only when it is really a burden, in terms of huge financial costs or practicality of the request, should it be denied.

Having said that, it is usually seen that there are many possibilities and work-arounds. For example, the employer could involve a disability expert in the decision-making process. The requests should be dealt with on a case-to-case basis and should involve the persons with disability who have made the requests. If a company denies an accommodation request stating that the adjustment is unreasonable and if the person with disability challenges it in court, the onus/responsibility is with the employer to prove that the request was unreasonable.

12.5. What should the Equal Opportunity (EO) Policy contain?

As per the RPWD Rules, for an establishment having twenty or more employees, the Equal Opportunity Policy (EO policy) should include:

1. the facilities and amenities to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment.
2. the list of posts which have been identified as suitable for persons with disabilities in the establishment.
3. the manner of selection with respect to persons with disabilities for various posts, post-recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation if any, and other facilities.
4. the provisions for assistive devices, barrier-free accessibility and other provisions for persons with disabilities.
5. the appointment of a liaison officer by the establishment.

Note that the Equal Opportunity Policy of a private establishment having less than twenty employees should contain facilities and amenities, to be provided to the persons with disabilities, which will enable them to effectively discharge their duties in the establishment.

12.6. The RPWD Rules mention that establishments should include a list of posts identified for persons with disabilities in their EO Policy. Does it mean that people with disabilities can only apply for those jobs?

As per the non-discrimination Clause, no one should be discriminated against on the ground of disability. If a skilled person with disability applies for a job, she/he should be taken in without any discrimination. So, all jobs should be open for people with any disability to apply. They should be provided the necessary accommodation (if needed). If an establishment decides to reserve certain posts for people with disability, they can do so. However, they should not deny people with disabilities from applying for other posts. It is also useful to undertake the effort to describe each job in the establishment (called job analyses) and state the essential functions of the job which a person should be able to do with or without reasonable accommodations.

12.7. What particulars should an establishment maintain of their employees with disabilities?

As per The RPWD Rules, every establishment should maintain records containing the following particulars, namely:

1. the number of persons with disabilities who are employed and the date from when they are employed.
2. the name, gender and address of persons with disabilities.
3. the nature of disability of such persons.
4. the nature of work being rendered by such employed persons with disability.

5. the kind of facilities being provided to such persons with disabilities.

Though not mentioned in the Rules, but as per the privacy policy, confidentiality of personal data should be strictly maintained. Employees with disability can choose not to disclose their disability. It should be a voluntary disclosure.

12.8. The government may want information from establishments regarding the number of people with disabilities employed, and other relevant information. Should the data be shared with the officials?

The establishments can share aggregated information. For example, they could share the total number of employees with disabilities, the number of people under different disability categories in different levels in the organisations and so on. However, the establishment should not share information specific to individuals. An exception to this can arise if a case has been filed and consequently there is a demand for inspection from an authority looking into the matter under The RPWD Act. In this case, information regarding that particular individual can be shared.

12.9. How should a complaint regarding an act of discrimination due to disability be handled by an establishment?

As per The RPWD Act,

1. Every government establishment should appoint a Grievance Redressal Officer and should inform the Chief Commissioner or the State Commissioner about the appointment of such an Officer.
2. Any person facing discrimination can file a complaint with the Grievance Redressal Officer. The officer should investigate it and take up the matter with the establishment for corrective action.
3. The Grievance Redressal Officer should maintain a register of complaints.
4. Every complaint should be inquired into within two weeks of its registration.
5. If the aggrieved person is not satisfied with the action taken on her/his complaint, she/he may approach the District-Level Committee on disability.

12.10. Should every establishment appoint a Grievance Redressal Officer?

The RPWD Rules state that every establishment, private or government (particularly those employing twenty or more persons), should have a grievance redress mechanism. The law states that every government establishment should appoint a Grievance Redressal Officer. It does not mention it for private establishments. However, the Rules mention that the Head of the establishment should act on the complaints received. Hence, it would be useful for the Head of the establishment in the private sector to appoint a Grievance Redressal Officer to assist her/him with this work.

12.11. Are there any qualifications needed for the post of a Grievance Redressal Officer?

The RPWD Rules state that the Grievance Redressal Officer should not be below the rank of a Gazetted Officer. Where this is not possible, the government establishment may appoint the senior most officer as a Grievance Redressal Officer.

12.12. What is the procedure that should be followed for addressing any complaint regarding discrimination?

The RPWD Rules state that if the Head of an establishment receives a complaint from a person regarding discrimination on the ground of disability, she/he should (a) initiate action and resolve the matter or (b) inform the person in writing as to how the discrimination/omission was legitimate/legal.

For example, if the Head of the establishment receives a complaint from a qualified person with disability stating that she/he has been rejected in a job interview/promotion opportunity solely because of her/his disability, the Head must look into the matter and resolve the issue. If the issue is not resolved in favour of the person who has complained, the Head should provide specific reasons for the same. The reason should not be related to her/his disability or in case it is related to disability, it should be explained how the accommodation that is required is unreasonable.

If the person is not satisfied with the reason that has been given, she/he may file a complaint with the Chief Commissioner or State Commissioner for Persons with Disabilities or Special Courts in Districts or the District Level Committee. The law states that the complaint received by the Commissioner's Office should be disposed of within a period of sixty days and in certain exceptional cases, it may be disposed of within thirty days.

12.13. Is there any format for maintaining a record for all the complaints received?

The Rules have provided a format for maintaining a register of complaints by government establishments. However, the private sector should also maintain a register as it would be very useful to monitor and if any dispute arises, there is a clear record available. The Grievance Redressal Officer should maintain a register of complaints from persons with disabilities with the following particulars, namely:

1. date of complaint
2. name of complainant
3. name of the person given the task of resolving the complaint
4. place of incident
5. the name of establishment or person against whom the complaint is made
6. gist of the complaint
7. documentary evidence, if any

8. date of disposal by the Grievance Redressal Officer
9. details of disposal of the appeal by the district level committee
10. any other relevant information

12.14. Who is responsible for the implementation of the Equal Opportunity Policy in an establishment?

In an establishment, apart from the Head of the organisation who is responsible, two people who have specific roles to play for the implementation of the mandates in the Act are the Liaison Officer and the Grievance Redressal Officer.

12.15. Are there any incentives provided for the private sector to encourage employment of people with disabilities?

Yes. The mandate to provide incentives to employers in the private sector to encourage employment of people with disabilities was there in the previous Act of 1995 as well. The Scheme for providing incentives was launched in the year 2008-09 and was revised in 2016. Under this Scheme, the employer's contribution towards the Employees Provident Fund Organization (EPFO) and the Employees State Insurance Corporation (ESIC) for a period of ten years (including administrative charges applicable on the contribution) and one-third of the gratuity amount due and admissible for employees with disabilities will be paid by the Department of Empowerment of Persons with Disabilities, Government of India. This Scheme is applicable to all persons with disabilities employed in the private sector irrespective of any salary or wage ceiling.

12.16. Are the incentives given only to those employers who have at least 5% of their workforce comprising of people with disabilities?

As mentioned in the above question, the incentive Clause was in the previous Act also. The wording of the Clause in this Act is quite similar to that in the 1995 Act. The incentive is given to employers employing any number of people with disability. The aim of the private sector should be to have at least five percent of their workforce comprising of people with disabilities (which is the conservative estimate of people with disability in the total population).

12.17. Do private establishments have to furnish information to special employment exchanges regarding appointments and vacancies?

The Act states that the employer in every establishment should furnish information (i.e. submit returns on vacancies) regarding the vacancies that have occurred or are about to occur to special employment exchanges (Section 36). The Act says 'every establishment'. Therefore, it applies to private establishments as well.

However, in The RPWD Rules, in the section regarding 'Submission of Returns on Vacancies' it has mentioned only government establishments. They have to furnish

information regarding vacancies every six months and every two years in a specified format.

Chapter 13: Reservation in Jobs for Persons with Benchmark Disability in Government/Public Sector Undertakings

Sections/Clauses covered

- 33: Identification of posts for reservation
- 34: Reservation
- 36: Special employment exchange

At a glance:

- ❖ The government should Identify posts in establishments for persons with benchmark disabilities.
- ❖ Every government establishment should appoint persons with benchmark disabilities in not less than four percent of the total number of vacancies.
- ❖ Out of the four percent, one percent each shall be reserved for persons with benchmark disabilities as follows:
 - blindness and low vision.
 - deaf and hard of hearing.
 - locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy.
 - autism, intellectual disability, specific learning disability. mental illness and multiple disabilities including deaf-blindness.
- ❖ Every government establishment should submit returns regarding vacancies for special employment exchanges.
- ❖ Reservation in promotion shall be in accordance with the instructions issued by the appropriate Government from time to time.

Explanations

13.1. What is meant by identification of posts?

It means that the government will undertake an exercise to look at each job offered in all establishments to see its suitability for each category of disability. The Rules state that an expert committee would be constituted for the identification of such posts. It also mentions that a periodic review of the identified posts, at an interval not exceeding three years, would be undertaken.

13.2. Isn't job identification restrictive? For example, many jobs in the present list of identified jobs are not identified for a person with both hands affected. So, a person who has disability in both hands cannot then apply for many jobs even though she/he is capable of performing those jobs.

That seems to be a clear-cut case of an act of discrimination. Recruitment should be based on skills needed and the ability to perform a given job with or without

accommodation. If a job has not been identified, the non-discrimination Clause can be used to demand the inclusion of that particular job on the list.

13.3. Has the list of identified jobs been revised after the passage of the Act?

As per the information available on the website of the Department of Empowerment of Persons with Disabilities and Chief Commissioner, the old lists have not been revised and so, the new reservation policy is yet to be implemented (as on October 2017).

13.4. Is there any format for establishments to share information with the special employment exchange?

Yes. There is a form for sharing information with employment exchanges. Please refer to The RPWD Rules (Form 1 and II). Government establishments should fill and submit Form 1 every six months and Form II once every two years.

13.5. Are there reservations for persons with Thalassaemia as it is recognised as benchmark disability?

Reservation is meant only for those people falling under the following categories of benchmark disability:

- ❖ blindness and low vision
- ❖ deaf and hard of hearing
- ❖ locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy
- ❖ autism, intellectual disability, specific learning disability and mental illness
- ❖ multiple disabilities including deaf-blindness in the posts identified for each disability.

However, please note that the Clause on non-discrimination applies to all people with disabilities. Hence, an employer should not deny a job to a qualified person with Thalassaemia just because of her/his medical condition. The employer should not also deny any reasonable accommodation that person may need. This is a very useful provision in the law because in the past, many people with Thalassaemia were not given employment after medical tests or they were forced to drop out of work as they were not given leave for any medical interventions they had to undergo.

If a person with Thalassaemia has another disability, say locomotor disability, she/he should get both the disabilities mentioned in the disability certificate. Then she/he can apply under the quota for the multiple disability category.

Note: The above answer is applicable to all other categories of benchmark disabilities which have not been provided reservation, such as haemophilia, sickle cell disease, multiple sclerosis, Parkinson's disease, and so on.

Chapter 14: Self-employment

Sections/Clauses covered

- Clause 19 (1), 2 (d) (e) (f)

At a glance

- ❖ The government should formulate schemes and programmes for:
 - Extending loans at concessional rates including that of microcredit for persons with disabilities.
 - Marketing products made by persons with disabilities.
 - Maintaining data of persons with disabilities in self-employment.

Explanations

14.1. What do you mean by loans at concessional rates?

It means that if loans are available at a certain rate, then for persons with disability, it will be available at a lower rate. If 10 percent is the interest on loans for specific purposes like self-employment, education etc., then for persons with disabilities, it will be less than 10 percent. For example, it could be 8 percent or 5 percent or even zero percent.

14.2. What is microcredit?

Microcredit is giving very small loans to borrowers who may not be able to provide security (because they have no assets) against the loan.

14.3. Where can a person with disability get loans at concessional rates?

The [National Handicapped Finance and Development Corporation \(NHFD\)](#) provides loans for people with disabilities at concessional rates. Please refer to their website to know more about their schemes and programmes.

14.4. Is there any centralised agency that supports marketing of products made by people with disabilities?

There is no such agency at present. There was one agency, under The National Trust called ARUNIM, which is now not functional. Fairs are sometimes organised by the government to provide opportunities for entrepreneurs with disability to sell their products. However, that is not sufficient and its reach is limited. The law mandates the government to formulate schemes for marketing products made by people with disability.

Chapter 15: Skill Development

Sections/Clauses covered

- 19 (1), (2) (a), (b), (c)

At a glance

- ❖ The government should formulate schemes and programmes to provide for:
 - Inclusion of persons with disabilities in all mainstream formal and non-formal vocational and skill training schemes and programmes.
 - Adequate support and facilities to persons with disabilities to avail the training.
 - Exclusive skill training programmes for persons with disabilities with developmental, intellectual, multiple disabilities and autism with active links with the market.
 - Loans at concessional rates for vocational training.
- ❖ At least five percent reservation of seats and upper age relaxation of five years for admission in government and government-aided institutions of higher education for persons with benchmark disabilities.

Explanations

15.1. What are mainstream formal and non-formal vocational and skill training schemes/programmes?

Formal programmes would be diploma/professional certification courses and informal programmes would be short term courses where certificates may not be issued.

15.2. What are some examples of vocational/skill training programmes?

Examples of vocational/ skill training: Courses for fashion designing, plumbing, auto-repairing, early child care education, hair styling, beautician, travel agent, tax preparation, candle making, housekeeping, etc.

15.3. How can inclusion be done in these schemes/programmes?

The law mandates inclusion of people with disabilities in all courses. This means that all skill training programmes should be open to persons with disabilities. The training organisation cannot refuse a person with disability just on the ground of disability. They should also provide the necessary accommodations. For making trainings inclusive, the following can be provided:

1. Inclusive communication (information regarding the course to be provided in accessible formats and by adding a line in advertisements stating that people with disabilities are encouraged to apply, etc.).

2. Inclusive admission policies and processes (have a flexible selection policy and provide reasonable accommodation, etc).
3. Accessible training venues.
4. Provision of reasonable accommodations in the classroom (adequate and appropriate lighting and seating arrangements and interpreters, note takers etc.)
5. Sensitisation of trainers.
6. Accessible learning materials/tools, assistive technologies.
7. Modifications in teaching methodology (for example, provide more visual training for a person with hearing disability such as reading out information from PPTs, etc.).
8. Modification in curriculum/ assessment (based on need).

15.4. Is the five per cent reservation applicable for skill training as well?

Yes. Higher education includes vocational and skill training. Therefore, five percent reservation is applicable to skill/vocational training courses. Therefore, any training institute run by the government or receiving aid from the government should reserve five percent of the total seats for persons with benchmark disabilities.

Chapter 16: Social Security

Sections/Clauses covered

- 24: Social security
- 37: Special schemes and development programmes

At a glance

- ❖ People with disabilities have the right to an adequate standard of living.
- ❖ The government should provide for:
 - Access to safe drinking water and suitable toilet facilities.
 - Community centres with good living conditions.
 - Pension and unemployment allowance to persons with disabilities.
 - Care-giver allowance to persons with high support needs.
 - Comprehensive insurance scheme for persons with disability.
 - Facilities for disabled persons, including children with disabilities, who have no family or have been abandoned, or are without shelter or livelihood.
 - Support to women with disability for livelihood and for the upbringing of their children.
 - Any other social security scheme that government may think appropriate.
- ❖ Five percent reservation in all poverty alleviation and development programmes (with priority to women with benchmark disabilities).
- ❖ The quantum of assistance to the persons with disabilities should be at least twenty-five percent higher than similar schemes applicable to others.

Explanations

16.1. What does social security mean?

Social security is aimed at ensuring an adequate standard of living for persons with disabilities. The main aspects for social security are:

1. **Income security:** Income security implies maintaining a certain level of income for all people, particularly for vulnerable people/groups, such as elderly people, scheduled castes/tribes, people with disabilities, people living with HIV/AIDS, etc. Hence an allowance/pension is given by the government so that they are able to maintain a certain standard of living.
2. **Access to basic services:** Access to basic services implies access to adequate food, clothing, accessible housing, health, access to poverty alleviation programmes and so on. In the context of people with disabilities, the basic services should also include support services, such as personal assistance and assistive devices, in order to live with dignity.

For example, let us consider the mid-day meals scheme implemented in schools. Children with disabilities may miss out on the meal if they are not able to reach the hall

where the food is being served or if they need any assistance or require any specific aids like adapted plates and spoons in order for them to eat the meal. These aspects will have to be included in the mid-day meal programme.

Consider another example, where food is being distributed in a camp set up for the affected persons during a disaster. Some people with disabilities may not be able to stand in the long queue or even reach the camp. Therefore, the disaster management plan should take these aspects into account and implement appropriate solutions. Some possible solutions could be that the food packets be delivered at home and people with disabilities can be served first (so that they need not be in the queue).

16.2. Shouldn't the allowances be higher for persons with disabilities?

Yes. People with disabilities incur extra costs for carrying out the activities of daily living, medical care, transportation, assistive devices, etc. Therefore, income security for people with disabilities should take into account these extra costs. It is stated in the Act that the amount of assistance to persons with disabilities under social security schemes and programmes should be at least twenty-five per cent higher than similar schemes applicable to others.

16.3. Please explain the Sub-clause regarding quantum of assistance for people with disabilities, as mentioned in the Act.

The Act mandates that the quantum of assistance to persons with disabilities should be at least twenty-five percent higher than similar schemes applicable to others. For example, if Rs. 50,000/- is being given for construction of a house under a housing scheme, persons with disabilities should be given at least Rs. 12,500/- more, i.e. Rs. 62,500/- or more. When framing housing schemes, the amount should be calculated based on the cost of constructing an accessible house. Similarly, the pension amount for people with disabilities would have to be twenty-five percent more compared to other pension schemes, such as old age pension etc.

There is also a Sub-clause which states that due consideration should be given to the diversity of disability, gender, age, and socio-economic status. If we take the example of the housing scheme, as in the previous point, the amount should be significantly more than Rs. 62,500/- for a person with high support needs. The house may need more features, like a bigger bathroom equipped with a western toilet, shower seat and hand shower, accessible fixtures in the kitchen, etc. Even the pension amount should be higher for say, people who have higher support needs.

16.4. On one hand the law states the right to “adequate standard of living” while on the other, there is a Sub-clause which clearly states that the government should frame schemes “within the limit of its economic capacity and development”. Noting this, it is seen that many States are giving only Rs. 300/- or so as a pension, stating that this is the amount that the State Government can afford to give. Isn't there an obvious contradiction in the same clause that nullifies the very intention of the clause?

There definitely seems to be a contradiction in the law. However, the disability sector could argue that India is committed to eradicating poverty and providing adequate standard of living for all its people. As per the Sustainable Development Goals (SDGs) which India has adopted, people living on less than \$1.25 a day (about Rs. 80 /- a day or 2500/- a month) are considered as living in poverty. If we add the disability related cost (at least 25% more) to the above amount, it would be about Rs. 3125/- per month. This is the amount that each person with disability should have in order to be above the poverty line (though it may still not meet the criteria for an adequate standard of living). The government/NITI Aayog should come up with a pension plan, keeping these aspects in mind.

16.5. What does access to safe drinking water and appropriate and accessible sanitation facilities mean?

People with disabilities should be able to access drinking water outlets and toilet facilities as independently as they can with dignity. For implementing the above mentioned right, the government should ensure that:

- Wherever there are public toilets, there should be at least one unisex accessible toilet available.
- Every toilet block for men and women should have at least one cubicle for persons with ambulatory disability (these are people who have difficulty walking but do not use a wheelchair. They can walk with/without support).
- Every drinking water outlet should be designed in such a way that a person with any disability can access it easily.

16.6. What are Community Centres as referred to in the Act?

The term 'Community Centre' has not been defined in the law. The law says that the government should provide for community centres with “good living conditions in terms of safety, sanitation, health care and counselling”. The government has to create a programme for setting up these centres. These Community Centres could provide basic information, support, rehabilitation, including referral services.

16.7. What is a comprehensive insurance scheme?

The term 'comprehensive' has not been defined in the law. It could imply that both life and health insurance are covered. Comprehensive health insurance should cover medical and rehabilitation costs, pre-existing conditions, pre and post-operative costs, care giver's cost, home based services, OPD, and so on.

16.8. Who would be given unemployment allowance? Are there any eligibility criteria?

The law states that unemployment allowances would be given to persons with disabilities registered with the Special Employment Exchange for more than two years and who could not be placed in any gainful occupation.

16.9. Is there any reservation for people with disabilities in poverty alleviation schemes?

Yes. The Act provides for:

1. Five percent reservation in allotment of agricultural land and housing in all relevant schemes.
2. Five percent reservation in all poverty alleviation and various developmental schemes.
3. Five percent reservation in allotment of land at a concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of an occupation, a business, an enterprise, recreation centres and production centres.

The Act also states that priority should be given to women with benchmark disabilities.

16.10. What facilities should be provided for people/children with disabilities who are abandoned and without shelter or livelihood?

The facilities and services that are available for children and homeless people without disability should be accessible to people with disabilities. These facilities should provide rehabilitation services, such as occupational therapies, individualized educational programmes, speech therapy, etc. based on individual needs, apart from food and shelter.

Chapter 17: Healthcare and Rehabilitation

Sections/Clauses covered

- Clause 24 (3) (a) (f) (j): Social security
- Clause 25: Healthcare
- Clause 26: Insurance scheme
- Clause 27: Rehabilitation
- Clause 28: Research and development
- Clause 47 (1) (b) (c) (d), (2): Human resource development

At a glance

- ❖ The government should take measures to undertake/provide:
 - Free healthcare in a place nearby for people with disabilities.
 - Barrier-free access and priority in attendance in government, private and other healthcare centres for people with disabilities.
 - Screening of all children to identify at-risk children and providing post-natal care (from birth to six weeks period).
 - Training of staff at the primary health centres, anganwadi workers, village level workers, etc. in disability issues and rights. Disability as a component should be added in all education courses for doctors, nurses, para-medical personnel, asha workers, anganwadi workers and community workers.
 - Sexual and reproductive healthcare especially for women with disability.
 - Healthcare during the time of natural disasters and other situations of risk for people with disabilities.
 - Measures to prevent occurrence of disabilities.
 - Rehabilitation services, particularly in the areas of health, education and employment for all persons with disabilities.
 - Training in independent living for persons with disabilities and to build community relationships.
 - Aids and appliances, medicine and diagnostic services and corrective surgery free of cost for people with disabilities
 - Comprehensive insurance scheme for persons with disability.
 - Community centres for healthcare and counselling for people with disabilities.
 - Research and development on habilitation and rehabilitation and on such other issues for the empowerment of persons with disabilities.

Explanations

17.1. How does one create barrier-free access in government, private hospitals and other healthcare institutions/centres?

Barrier-free access in hospitals and health care centres would include:

- ❖ Formulating appropriate policies and processes to ensure non-discrimination in providing healthcare to people with disabilities.
- ❖ Ensuring accessibility of the built environment as per standards (which would include parking, pathways, entrance to all places in the hospital, OPD, wards, ICU, waiting areas, all common areas, emergency preparedness, etc.).
- ❖ Ensuring accessibility of information systems (including portals/information systems for taking appointments, all forms, checking medical reports, etc.).
- ❖ Ensuring accessibility of communication (for interaction with doctors and staff, etc.).
- ❖ Ensuring accessibility of furniture and equipment.
- ❖ Creating awareness among doctors, staff and management regarding disability issues and rights.

17.2. What do you mean by free healthcare? Would it include home based support or nursing services that one might need?

The law provides for free healthcare in a place nearby (subject to such family income as may be notified). However, what all will be included in free healthcare has not been mentioned in the Act. Health care for persons with disabilities should not only include OPD consultation, tests, treatment, medicines etc. but also disability and medical rehabilitation aspects, like nursing/attendant care, items for activities for daily living (diapers, catheter, urine bags, etc.), therapy, home based services, and other items. which are generally not included in free healthcare but should do so.

In the rehabilitation section of the Act it is stated that aids and appliances, medicine and diagnostic services and corrective surgery would be given free of cost for people with disabilities. This should be linked with healthcare and more aspects should be added as mentioned in the above paragraph.

In the social security section, the law mandates a comprehensive insurance be extended for persons with disabilities. The package should cover all above-mentioned aspects/features for health and rehabilitation. To implement the mandate of free healthcare for people with disabilities, the government could do the following:

- ❖ Modify and/or create healthcare schemes to include aspects/features as mentioned above.
- ❖ The income ceiling should be higher (compared to similar schemes for other vulnerable groups) or removed for persons with disabilities for availing free healthcare.

17.3. Has the health insurance scheme been formulated for persons with disabilities?

There is already a scheme called Swavalamban Health Insurance Scheme which was launched in 2010. As per the information available on the website of Department of Empowerment of Persons with Disabilities, it is a cashless health scheme for persons with disabilities and their families. The scheme provides health insurance to persons

with low vision, blindness, locomotor disability, mental retardation and illness, and hearing impairment. It can be availed by persons with disabilities between the ages of 18 years and 65 years whose annual income is less than Rs. 3 lakh/annum. The scheme offers family floater health insurance coverage up to Rs 2 lakhs.

As on October 2017, the scheme has not yet been expanded to cover all the disabilities specified in The RPWD Act. This, however, should be done.

17.4. What is sexual and reproductive healthcare?

Some of the important aspects of sexual and reproductive health care are sex education, providing information about sexual abuse and consensual sexuality, contraception, screening for cervical cancer and sexually transmitted infections (STI), and pregnancy and parenting. Doctors and health professionals should ensure that people with disabilities are provided information and services without any discrimination in accessible formats and in a sensitive manner.

17.5. What are the community centres for healthcare and counselling?

The provision regarding community centres has been given under the 'Social security' Section of the Act. It is mentioned that schemes should provide for "community centres with good living conditions in terms of safety, sanitation, health care and counselling". The Clause is not very clear. The government is yet to create a scheme for setting up these centres. These community centres could provide basic information, support, rehabilitation, including referral services and so on.

17.6. What provisions are there for rehabilitation of people with disabilities?

The law requires the government to:

1. Undertake services and programmes of rehabilitation, particularly in the areas of health, education and employment, for all persons with disabilities.
2. Grant financial assistance to Non-Governmental Organisations (Non-Government Organisations).
3. Consult Non-Government Organisations working for the cause of persons with disabilities while formulating rehabilitation policies.
4. Undertake research and development on habilitation and rehabilitation for the empowerment of persons with disabilities.
5. Initiate training in independent living for persons with disabilities and to build community relationships.
6. Provide aids and appliances, medicine and diagnostic services and corrective surgery free of cost for people with disabilities.
7. Screen all children at least once in a year for the purpose of identifying "at-risk" cases and providing post-natal care.
8. Induct disability as a component for all education courses of doctors, nurses, para-medical personnel, *asha* workers, *anganwadi* workers and other professionals.

Chapter 18: Culture and recreation

Sections/Clauses covered

- 29: Culture and recreation

At a glance

- ❖ All persons with disabilities have the right to a vibrant cultural life and to participate in recreational activities.
- ❖ The government should take measures to:
 - Provide facilities, support and sponsorships to artists and writers with disability.
 - Make art accessible to persons with disabilities.
 - Promote recreation centres.
 - Enable participation of people with disabilities in various arts, cultural and recreational activities, including redesigning courses, developing technology, etc.
 - Ensure access to television programmes for people with hearing disabilities.
 - Establish a disability history museum.

Explanations

18.1. What is meant by the right to have a cultural life and to participate in recreational activities?

Culture is a way of life which encompasses language, music, religion, customs, traditions, sports, games, food, clothing, arts and so on. It may be important to highlight here that there is a culture called "Deaf Culture" where deaf people view themselves as a minority group with their own language, social norms, and culture. Recreational activities include all forms of dance, music, painting, sculpture, writing, acting, drama, adventure activities, play/games, clubs, discotheques and all other art/cultural forms. The right to be part of cultural life and recreation means:

- ❖ Access to cultural and recreational materials, tools and information.
- ❖ Freedom to learn, teach, enjoy, create, display, to take up an activity as a profession and so on.

18.2. There are many private initiatives in this area, like auditoriums, museums, etc. Does the law mandate that these have to be accessible?

Yes. Refer to the definition of 'public facilities and services' given in the Act. It includes "all forms of delivery of services to the public at large, including religious, cultural, leisure or recreational". If the place/service is open to the public at large, even if they are owned privately, they have to comply with the law. So, they have to make the place and the service accessible as per standards.

18.3. What does 'facilities meant for artists and writers' mean?

Though it is not detailed in the Act, facilities for artists and writers would mean accessibility and accommodations provided in studios, art galleries, community centres, auditoriums, institutions teaching various arts, clubs, etc. The law also mandates the provision of support and sponsorships. This could include scholarships, grants, training, mentorship, etc.

18.4. How does one make art accessible to persons with disabilities?

Making art accessible to persons with disabilities would mean ensuring that people with disabilities too can participate, experience and enjoy all art forms. Therefore:

- ❖ Museums, galleries, cinemas, auditoriums, art colleges, etc. should be made accessible as per standards.
- ❖ Art related information on websites, display boards, etc. should be made accessible to people with different disabilities.
- ❖ People with sensory disabilities should be able to perceive art works (ensure that they are able to touch/see/hear).
- ❖ Audio information, sign language interpretation, guide/assistants should be available to provide the required assistance.
- ❖ information about visual art such as dance, paintings, sculptures, cinema, etc. be made available in accessible formats.
- ❖ Art courses should be made accessible to people with disabilities.

18.5. What are recreation centres?

Recreation is an activity of leisure, done for enjoyment, amusement, or pleasure and which is considered to be "fun".

A recreation centre is a place where people in the community can participate in various activities in their leisure time. Some recreation centres have facilities like swimming pools, fitness equipment, tennis courts, badminton and other indoor and outdoor activities. The government can promote recreation centres for people with disabilities by making them accessible and inclusive. Certain exclusive centres could also be set up, if required.

18.6. How can government promote associational activities?

An association is an organised body of people who have an interest, activity, or purpose in common. The government can create schemes for promoting self-help groups and associations formed by people with disabilities. They could be given priority when it comes to allocating funds, etc.

18.7. What assistive technologies are used for recreational purposes?

Assistive devices like adapted instruments and tools used for art/dance/music etc. may be required for people with disabilities. For example, there are specific wheelchairs used for dance, adapted tools used for pottery and painting and adapted musical instruments for persons with different disabilities. The government should facilitate access to these devices through appropriate programmes and schemes.

Chapter 19: Sporting Activities

Sections/Clauses covered

- 30: Sporting activities
- 47 (1) (e): Human resource development

At a glance

- ❖ People with disabilities have the right to participate in sporting activities.
- ❖ Sports authorities should provide due recognition to the right of persons with disabilities to participate in sports. They should ensure that their schemes and programmes are inclusive.
- ❖ The government should take various measures to ensure effective participation of people with disabilities in sports by:
 - redesigning infrastructure facilities.
 - ensuring accessibility of sporting activities.
 - restructuring courses in sports.
 - organising disability sporting events.
 - developing technologies to ensure effective participation in sports.
 - allocating funds for the development of world class sport facilities for training of persons with disabilities.
 - conducting disability training programmes for sports teachers.

Explanations

19.1. What does effective participation in sporting activities mean?

Persons with disabilities could be interested in playing a sport and/or in viewing sports and/or be interested in sports management and/or in sports medicine and/or in sports journalism and/or any other profession related to sports. In all these aspects, their effective participation should be ensured. For example, a deaf person can see the game, but may not be able to participate fully in it if the commentary is not sign interpreted or transcribed in real time. Similarly, a person with visual disability would not be able to see the updates of a match on the website if it is not accessible and so would hinder her/his effective participation.

Consider another example where a sports person with disability, who is participating in an international event, needs training, nourishment and adequate funds to perform well in the competition. If she/he is struggling for resources, then her/his effective participation would be seriously affected.

19.2. How can effective participation in sports be ensured?

The law provides the following for effective participation of people with disabilities in sporting activities:

- ❖ Restructuring courses and programmes.
- ❖ Redesigning and supporting infrastructure facilities.
- ❖ Developing technology to enhance potential, talent, capacity and ability.
- ❖ Providing multi-sensory essentials and features in all sporting activities.
- ❖ Allocating funds for development of state-of-art sport facilities for training of persons with disabilities.
- ❖ Promoting and organising disability specific sporting events.
- ❖ Facilitating awards to winners and other participants of sporting events.

19.3. Who are the sports authorities in India? How can they accord due recognition to the rights of persons with disabilities for participation in sports?

The Sports Ministry and apex bodies promoting sports are the sports authorities of the country.

The Sports Authority of India (SAI), which has several regional centres and institutes, is a sports authority. They have courses, schemes and programmes for identifying talent and promoting excellence in sports. The law states that they should give due recognition to the rights of persons with disabilities to participate in sports by including disability in their schemes and programmes.

For example, the scheme that provides scholarships/grants for athletes should be modified to include athletes with disabilities. They should be given the same amount of funding and other resources as given to athletes without disabilities for participating in international events.

The scheme that provides for benefits (money, job, etc.) to medal winners in international events should not only include winners in Paralympic, Special Olympics, Deaflympic, etc. but also ensure that there is no discrimination in terms of benefits being given.

19.4. Explain restructuring and modifying courses in sporting activities.

Some aspects to consider for modifying/restructuring courses and programmes are given below.

1. Accessibility: The courses in sports/physical education should be made accessible, including training venues, materials, curriculum, assessment, etc.
2. Inclusion of 'disability' in the courses: For example, the training courses in physical education (such as Bachelors/Masters in Physical Education) should

include disability as part of the curriculum. There could also be courses for training sports coaches in disability sports.

3. Participation: Ensuring non-discrimination during selection of candidates for the courses and providing accommodations for equal participation for the duration of any course.

19.5. What is sports infrastructure?

Sports infrastructure means both physical and digital infrastructure as indicated below.

- ❖ Physical infrastructure includes buildings and equipment (for example, stadiums, cricket grounds, football fields, tennis/badminton courts, training facilities, gyms, sports clubs, spaces for indoor games, sports equipment, etc.).
- ❖ Digital infrastructure includes sports websites and other ICTs used in sports.

19.6. What are multi-sensory essentials and features in sporting activities?

Multi-sensory essentials refer to the presentation of information through three modes, namely, visual, hearing and tactile. The Act requires that all important aspects should be presented in multiple formats (sign language interpretation, audio description, information in Braille, etc.).

For example, providing multi-sensory essentials for a tennis championship means ensuring audio descriptions of the event for those with difficulty seeing (just like a radio commentary), providing sign language commentaries and any information that is being handed to participants should be made available in accessible formats.

Chapter 20: Accessibility

Sections/Clauses covered

- 40: Accessibility
- 41: Access to transport
- 42: Access to information and communication technology
- 43: Consumer goods.
- 44: Mandatory observance of accessibility norms.
- 45: Time limit for making existing infrastructure and premises accessible and action for that purpose.
- 46: Time limit for accessibility by service providers.

At a glance

- ❖ The government should:
 - Lay down Standards for accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.
 - Take measures to provide:
 - access to all modes and means of transportation.
 - accessible roads.
 - personal mobility (aids and assistive devices) at affordable cost.
 - access to all content in different forms of media, electronic goods and equipment.
 - Encourage development, production and distribution of universally designed consumer products and accessories.
- ❖ No establishment will be given permission to build or be issued a certificate of completion if the building does not adhere to Standards.
- ❖ All existing public buildings should be made accessible as per standards within a period of five years. (by June 2022).
- ❖ Government and private service providers should provide services in accordance with the accessibility standards in time period of two years (i.e. by June 2019).
- ❖ Government should formulate and publish an action plan for providing accessibility in buildings/spaces providing essential services.

Explanations

20.1. What areas are covered under Accessibility in the law?

Areas covered (urban and rural areas) under accessibility are:

- ❖ Public Buildings: Government or private buildings, used or accessed by the public at large (buildings used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational

activities, medical health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways.)

- ❖ Transportation: Road transport, rail transport, air transport, water transport, para transit systems for last mile connectivity, road and street infrastructure, etc.
- ❖ Public facilities and services: All forms of delivery of services to the public at large i.e. housing, educational and vocational trainings, employment and career advancement, shopping or marketing, religious, cultural, leisure or recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities and transportation.
- ❖ Information (or data) in paper or electronic formats.
- ❖ Communication (this concerns the way information is conveyed): In person, electronically and telecommunications and broadcasting.
- ❖ Information Communication Technology (IT): This includes software, hardware and electronics.
- ❖ Electronic goods and equipment which are meant for everyday use. Some examples are television, microwave, washing machines, computers, printers, phones, etc.
- ❖ Consumer products and accessories (products that are bought by end users for consumption and which could be durable/non-durable). Examples are furniture, stove, cars, aircraft, food, medicines, clothing, etc.

20.2. What are the accessibility standards mentioned in the law?

The law requires the government to lay down standards of accessibility for the physical environment, transportation, information and communication environment including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

In The RPWD Rules (June 2017), the following standards have been mentioned:

1. Standards for public buildings: [Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly Persons](#) as issued by the Government of India, Ministry of Urban Development, February, 2016.
2. Standards for Bus Body: Code for transportation system as specified in the notification of the Government of India in the Ministry of Road Transport and Highways, vide number G.S.R. 895(E), dated 20th September, 2016
3. Standards for Websites: [Guidelines for Indian Government Websites \(GIGW\)](#)
4. Standards for Documents (placed on websites): Formats: Electronic Publication (ePub) or Optical Character Reader (OCR) based PDF.

The other standards, for media, rail transport, etc. have not yet been formulated (as on December 2017). The Rules also state that Central Government should review the accessibility standards from time to time.

20.3. What does the law say about access to transportation?

The law mandates access to all modes of transportation. This implies that:

1. Accessible facilities for persons with disabilities at bus stops, railway stations and airports must be provided as per standards.
2. Accessible roads must be provided.
3. All new vehicles (bus bodies, aircrafts, railway coaches, vessels, ships/boats, spacecrafts and cable cars) should conform to the accessibility standards.
4. Old modes of transport should be modified, wherever feasible and with safety features included, to allow access to persons with disabilities.
5. Transport Services should be made accessible with emphasis on information dissemination, ticketing facilities, the availability of attendant services like personal mobility assistance, the availability of wheelchairs, the availability of accessible battery-operated vehicles, etc.

Example of an accessible Railways would include the following:

1. Booking
 - a) Accessible Railways website /apps.
 - b) Availability of accessible online booking.
 - c) Accessible booking counters with emphasis on no queues, appropriate seating arrangements, accessible information, availability of forms, assistance and other facilities, etc.
 - d) Accessible help-lines/customer support services etc.
 - e) Pre-booking availability for wheelchairs, porters, assistants (free of cost).
2. Railway Stations
 - a) Accessible road leading to railway station from the bus stop (with accessible direction signages, a clear space for movement, with kerb ramps, appropriate lighting and tactile indicators, etc.).
 - b) Reserved parking and accessible drop off area.
 - c) Accessible pathways.
 - d) Accessible entry into the railway station.
 - e) Accessible enquiry counters (including counter induction loop, interpreter services).
 - f) Availability of assistance to people with disabilities.
 - g) Accessible railway platforms.
 - h) Accessible vending machines/kiosks.
 - i) Accessible announcements /information.
3. Trains
 - a) Levelled entrances, bigger aisle spaces.
 - b) Accessible washrooms.

- c) Audio and text announcements, accessible signages/information.
 - d) Accessible emergency pull alarms, etc.
4. Sensitised/trained railway staff on disability etiquette

20.4. Are private transport operators covered under the law?

Yes. If private transport operators are providing services to the public, then they are covered under the Act. Hence private buses, taxis, etc. should make their services accessible.

Example: A company providing taxi service should ensure that:

- ❖ Booking apps comply with accessibility standards.
- ❖ Taxis are accessible.
- ❖ Assistance should be available to those who need it.
- ❖ Option to call/SMS the driver.
- ❖ Accessible customer support.
- ❖ Drivers are trained on disability etiquette

20.5. What is personal mobility?

Personal mobility is linked with the right of an individual to move around. It focuses on aids and appliances. The law states that aids for personal mobility for persons with disabilities should be available at affordable cost. It provides for:

1. Incentives and concessions (examples are tax exemptions or subsidies for manufacturers/ importers of mobility devices, assistive technologies aiding personal mobility).
2. Retrofitting of vehicles (an example would be giving of grants for procuring wheelchair accessible cars).
3. Personal mobility assistance (an example is having programmes that provide an assistant to help persons with disability at airports/railway stations/ bus stands etc.).

20.6. What is an accessible Information Communication Technology (ICT)?

An accessible ICT product or service is one that can be used by all users irrespective of their physical/sensory/mental/intellectual disabilities. There are several barriers that make ICT inaccessible. Some common examples are as follows:

- ❖ A person with visual disability may not be able to read a visual CAPTCHA.
- ❖ A deaf person may not be able to follow a film without captions.
- ❖ A wheelchair user may not be able to operate a vending machine whose controls may be set too high.
- ❖ A person with intellectual disability may not be able to buy a pizza online because the website is very confusing in terms of the layout /design.

An ICT product/service which is designed based on universal design principles and standards would be able to cater to a wide range of users including people with different disabilities. The law requires that all ICT products and services be accessible as per standards.

20.7. What does the law say about access to information and communication technology?

The law states that:

1. All content available in audio, print and electronic media should be in accessible formats.
2. Persons with disabilities should have access to electronic media by being provided audio descriptions, sign language interpretation and closed captioning.

The RPWD Rules 2017 further mandates the following:

- ❖ All websites should meet the Standard, '[Guidelines for Indian Government Websites \(GIGW\)](#)'.
- ❖ All documents (placed on websites) should be in Electronic Publication (ePub) or Optical Character Reader (OCR) based PDF.

20.8. What is audio description and closed captioning?

An Audio Description involves the narration of visual elements such as scenes, settings, actions and costumes in theatre, television, movies, and other art forms for people who are blind or have low vision.

Closed captioning involves captions which are on-screen text that captures not only an exact narrative of the dialogue but also includes descriptions of other relevant sounds (such as a ringing doorbell, etc.). Captions are either open or closed. Open captions are always in view and cannot be switched off, whereas closed captions can be switched on and off by the viewer.

20.9. Does the mandate for ensuring accessible websites/apps apply to the private sector as well?

Yes. If the website/app is used by the public at large, it should be made accessible. All shopping, banking services, ticketing/booking sites/apps etc. would have to comply with the law. They should follow the Guidelines for Indian Government Websites (GIGW).

20.10. What are universally designed electronic goods/consumer products?

A universally designed electronic item/consumer product would be usable by all to the greatest extent possible without any need for adaptive measures or specialised design to cater to specific needs. (Note that this applies to not just products, but also to services, spaces, policies, curriculum, etc. which can be universally designed).

For example, a washing machine that is universally designed would have labels indicated in Braille apart from the standard language, pop out buttons (differentiated by size, texture, colour, etc.), talking feature, vibration / light indicators, accessible reach and controls, flexibility of left/right side opening, easy to open, like automatic door, safety features that, for example, ensures that the machine door does not open when it is running, etc.

20.11. What are the provisions in the law that provide for accessibility of built environments?

Following are the provisions in the law that provide for accessibility of built environments:

1. For proposed and newly constructed buildings: The law says, "no establishment would be granted permission to build any structure or issued a certificate of completion or allowed to be occupied if the building does not adhere to standards"
2. For Existing Buildings: The law says that "all existing public buildings should be made accessible as per the standards within a period not exceeding five years." (i.e. within June 2022).
3. Action Plan for Government Buildings: The law says that the government and the local authorities should formulate and publish an action plan for providing accessibility in all those buildings and spaces which provide essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops.

The standards to be followed are the [Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly Persons](#)

20.12. Does the accessibility mandate apply to private buildings as well?

Yes. If the building is used by the public at large, it should be made accessible. As per the Act, the definition of 'public building' implies a government or a private building, used or accessed by the public at large, including buildings used for educational or vocational purposes, workplace, commercial activities, public utilities, religious, cultural, leisure or recreational activities, medical or health services, law enforcement agencies, reformatories or judicial foras, railway stations or platforms, roadways bus stands or terminus, airports or waterways.

The law says that no establishment would be granted permission to build or issued a certificate of completion if they do not adhere to accessibility standards. The term 'establishment' includes private establishments as well. A private establishment, as per the law, can be a company, firm, cooperative or other society, an association, trust, agency, institution, organisation, union, factory, etc.

20.13. What is accessibility of facilities in built environments?

Facility is a wider term which encompasses the functioning of the built environment and includes the integration of process, technology and people. An example would be the presence of an accessible entrance without a security guard to issue the guest pass or an accessible washroom which is locked and so on. Therefore, accessible facilities would include management aspects as well.

20.14. What provisions are there for accessibility of services? Do they apply to private services as well?

Yes. The law states that service providers, whether government or private, should provide accessible services in accordance with the rules within a period of two years (i.e. by June 2019). The definition of services, as per the law, is all forms of delivery of services to the public at large, including housing, educational and vocational trainings, employment and career advancement, shopping or marketing, religious, cultural, leisure or recreational, medical, health and rehabilitation, banking, finance and insurance, communication, postal and information, access to justice, public utilities and transportation.

Example of an inclusive shopping service would be:

- ❖ Accessible stores (as per standards).
- ❖ Accessible websites/apps (as per standards).
- ❖ Trained and sensitised staff on disability etiquette.
- ❖ Shopping assistance at the stores.
- ❖ Accessible information about products/prices/offers, customer support, etc.
- ❖ Availability of accessible and comfortable seats.
- ❖ Accessible Bills (option of sensing bill by mail/Braille printout).

Chapter 21: Human Resource Development

Sections/Clauses covered

- 47: Human resource development

At a glance

- ❖ The government should endeavour to develop adequate human resources for implementing the Act by:
 - Including disability in relevant courses.
 - Training the various stakeholders on disability rights.
 - Initiating capacity building programmes for independent living for persons with disabilities and service providers.
 - Undertaking a Need Analysis every five years to estimate the human resources requirement for implementing the Act and formulating appropriate plans for the recruitment of personnel.
- ❖ All Universities should promote teaching and research in disability studies including the establishment of study centres for the same.

Explanations

21.1. A lot of human resources would be required to implement the various provisions given in the law. How should the government go about developing the required human resource?

The law says that a 'Need Analysis' should be done every five years for estimating the human resources required and to accordingly formulate plans for training and hiring personnel.

21.2. What courses should include disability and who all should be trained on disability?

The RPWD Act states that:

1. The training courses for Panchayati Raj Members, legislators, administrators, police officials, judges and lawyers should include disability rights.
2. Disability as a topic should be added in the curriculum in all schools, colleges and universities and in institutions/training centres for teachers, doctors, nurses, para-medical personnel, social welfare officers, rural development officers, *asha* workers, *anganwadi* workers, engineers, architects, other professionals and community workers.
3. Training programmes on disability should be conducted for sports teachers with a focus on sports, games and adventure activities.

21.3. How can disability be included in courses? Does it refer to sensitisation of students on disability issues?

Sensitisation is important but this chapter focuses more on human resource development. For example,

- ❖ Topics on Universal Design and Accessibility should be added in the curriculum of courses meant for engineers and architects.
- ❖ Topics related to teaching children with different disabilities, which cover suitable accommodations in classrooms, exams, assistive technologies, developing individualised education planning, universal design in curriculum and teaching methods, should be added in the curriculum of teachers training programmes.

21.4. What is Disability Studies?

Disability Studies is an academic discipline which examines disability as a social, cultural, and political phenomenon. Even though disability related disciplines such as rehabilitation, therapy, special education, medical intervention etc. are extremely important they are yet not considered as part of 'Disability Studies'.

Disability Studies focuses on how disability is defined and represented in society. It rejects the perception of disability as a functional impairment that limits a person's activities. Disability Studies can be part of diverse subjects such as history, sociology, literature, political science, law, policy studies, economics, cultural studies, anthropology, geography, philosophy, theology, gender studies, communications and media studies, architecture, and the arts.

21.5. How should universities promote disability studies?

As per the law, all Universities should establish study centres for Disability Studies. For example,

- ❖ In a Science college, a Disability Studies Centre should promote the study /research about Universal Design aspects, anthropometrics (measurements related to human body and its movement) of a person on wheelchair, etc.
- ❖ A college focussing on Gender Studies should promote the study of issues concerning women with disabilities and so on.

Chapter 22: Awareness Raising

Sections/Clauses covered

- 39: Awareness campaigns

At a glance:

- ❖ The government should conduct and promote awareness programmes to protect the rights of persons with disabilities.
- ❖ These awareness programmes should focus on inclusion, respect and empathy for people with disabilities.
- ❖ Awareness should be raised among various stakeholder groups which include employers, co-workers, administrators, personnel in educational institutions, students, etc.

Explanations

22.1. Who should conduct the awareness campaigns?

The RPWD Act says that the appropriate Government departments should conduct/support awareness programmes. Each Ministry/Department/authority which is responsible for implementing the Act should plan awareness programmes. The law also says that they should consult with the Chief Commissioner or State Commissioners for Disability in conducting/developing the programmes. For example,

- ❖ The Ministry of Human Resource and Development (HRD) should plan awareness programmes in schools, colleges etc. They should include disability sensitisation in the curriculum of schools, universities and colleges.
- ❖ The Election Commission, which is responsible for access to voting, should plan awareness programmes for informing people about accessible facilities.
- ❖ The Department of Empowerment of People with Disabilities should have campaigns to educate people on various provisions in the law.
- ❖ The Ministry of Health should conduct sensitisation programmes for all their medical and non-medical staff.

22.2. Who should the awareness programmes target?

The law says that awareness should be created in order to protect the rights provided in the Act. It means awareness should be created among all stakeholder groups, like schools, colleges, employers, co-workers, administrators and many others.

For example,

- ❖ To ensure access to justice, the personnel providing legal aid, lawyers, the judiciary, and so on have to be made aware.

- ❖ For ensuring equal protection during disasters, the Disaster Management authorities and officials at various levels have to be made aware.
- ❖ For ensuring protection from abuse and violence, the police, civil society organisations, medical staff, and so on should be made aware.
- ❖ For protecting the rights of women with disabilities, the women's commission and other relevant bodies should be made aware of issues concerning women with disabilities.

22.3. What should the awareness programmes focus on?

The law is very clear that awareness programmes should focus on values of inclusion, tolerance, empathy, respect for diversity, disabling conditions, recognition of skills, etc. The message should project a positive image of people with disabilities.

The awareness programmes should also disseminate information on the various provisions in the Act, regarding schemes and programmes, meant for them.

22.4. How should awareness be created?

The law does not specify how awareness should be created. However, it is clearly mentioned in the law that the rights of persons with disabilities should be included in the curriculum in universities, colleges and schools.

Ministries can choose various methods for creating awareness based on the target audience which includes children-adults; rural-urban, literate-illiterate, professionals, laymen, etc.

Chapter 23: Registration of Institutions for Persons with Disabilities

Sections/Clauses covered

- 49: Competent authority
- 50: Registration
- 51: Application and grant of certificate of registration
- 52: Revocation of registration
- 53: Appeal
- 54: Act not to apply to institutions established or maintained by Central or State Government
- 55: Assistance to registered institutions

At a glance

- ❖ State Governments should appoint an authority for issuing/revoking the certificate of registration to disability institutions.
- ❖ All institutions for persons with disabilities should be registered under the Act (i.e. have a certificate of registration), except those which have a licence under the Mental Health Act, 1987 or any other Act.
- ❖ The competent authority should grant a certificate of registration to the applicant within a period of 90 days from the date of application. If the authority is not satisfied, it should refuse to grant the certificate.
- ❖ For renewal of the certificate of registration, the institution should apply not less than 60 days before the expiry of the period of validity.
- ❖ The competent authority can revoke/cancel the Certificate if there are any incorrect/false statements in the application/renewal form or if there has been any breach of rules.
- ❖ Any person dissatisfied with the refusal / cancellation of certification can appeal to an authority (as notified by the State Government). The Order of the authority on such an appeal would be final.
- ❖ The above Clauses regarding registration do not apply to an institution for persons with disabilities established or maintained by the Central or a State Government.
- ❖ The Government may grant financial assistance to registered institutions to provide services and to implement the various schemes and programmes.

Explanations

23.1. What is an institution?

As per the definition given in the Act, 'institution' means an institution for the reception, care, protection, education, training, rehabilitation and promotion of any other relevant activities for persons with disabilities.

23.2. How can one register under the Act?

One should contact the respective Disability Department/Division under the State Governments for the application form and other requirements.

23.3. What is the eligibility criteria for registering under the Act?

Eligibility criteria varies from State to State. Some of the broad eligibility criteria are that institutes should be registered under the Societies Act, they should have been functioning for a period of time, etc. They may need to satisfy other criteria too such as the type of facilities that should be there, the number of beneficiaries, the area of the place, barrier-free access, the number of toilets, cleanliness, furniture and equipment and other facilities, frequency of parents meetings, etc.

23.4. If an organisation is already registered under the Persons with Disabilities Act, 1995. Should it register again under this Act?

No. The previous registration would remain valid.

23.5. If an organisation is a private one, should they register under The RPWD Act?

As per the Act, no person should establish or maintain any institution for persons with disabilities except in accordance with a certificate of registration. As per the Act, institution means an institution for the reception, care, protection, education, training, rehabilitation and any other activities for persons with disabilities. If the private organisation is providing any of the services/engaging in any of the activities mentioned in the definition, it should register under The RPWD Act (except those which are already registered under the Mental Health Act or any other Act).

Chapter 24: Implementation and Monitoring

Sections/Clauses covered

- 48. Social Audit
- 60. Constitution of Central Advisory Board on disability
- 61. Terms and conditions of service of Members
- 62. Disqualification
- 63. Vacation of seats by Members
- 64. Meetings of the Central Advisory Board on disability
- 65. Functions of Central Advisory Board on disability
- 66. State Advisory Board on disability
- 67. Terms and conditions of service of Members
- 68. Disqualification
- 69. Vacation of seats
- 70. Meetings of State Advisory Board on disability
- 71. Functions of State Advisory Board on disability
- 72. District-level Committee on disability
- 73. Vacancies not to invalidate proceedings
- 74. Appointment of Chief Commissioner and Commissioners
- 75. Functions of Chief Commissioner
- 76. Action of appropriate authorities on recommendation of Chief Commissioner
- 77. Powers of Chief Commissioner
- 78. Annual and special reports by Chief Commissioner
- 79. Appointment of State Commissioner in States
- 80. Functions of State Commissioner
- 81. Action by appropriate authorities on recommendation of State Commissioner
- 82. Powers of State Commissioner
- 83. Annual and special reports by State Commissioner
- 84. Special Court
- 85. Special Public Prosecutor
- 86. National Fund for persons with disabilities
- 87. Accounts and audit
- 88. State Fund for persons with disabilities

At a glance

- ❖ For the purpose of implementing and monitoring the Act, the government should:
 - Undertake social audits of all general schemes and programmes involving the persons with disabilities.
 - Constitute a Central Advisory Board at the Centre and State Advisory Boards on Disability in every State in order to plan, advice and monitor the implementation of the Act.

- Set up a District Level Committee in every District to plan, advice and monitor the implementation of the Act.
- Constitute a National Fund and a State Fund for implementing the Act.
- Appoint a Chief Commissioner and State Commissioners who have the powers of a Civil Court.
- Designate Special Courts at the District level.
- The Chief and State Commissioners should submit annual reports to the government. They may be also asked to submit special reports on any matter at any time.
- The Central and State Government should prepare an annual statement of accounts of the National and State Funds. It should be audited and laid before both Houses of Parliament and the State Legislature respectively.

Explanations

24.1. What is a social audit?

Social Audit refers to the evaluation of the implementation of schemes/programmes in order to understand, measure and verify the impact of these schemes/programmes. That is, the aim is to compare official records with ground realities. The objective of the audit is to improve the effectiveness/implementation of the scheme. For example, the Mahatma Gandhi Rural Employment Guarantee Scheme (MNREGS) should be audited to study its impact on people with disabilities, the gaps in implementation including financial and human resource needs, etc.

24.2. What are Central and State Advisory Boards? What are their functions/powers?

As the name suggests, the Central Advisory Board and State Advisory Board on disability are advisory or consultative bodies. Their functions are the following:

1. Advising the Central and the State Governments on policies, programmes, legislation and projects with respect to disability.
2. Developing a national/state policy on disability.
3. Reviewing and coordinating the activities of all Departments of the Government and other Governmental and Non-Governmental Organisations which deal with matters relating to persons with disabilities.
4. Taking up the cause of persons with disabilities with the concerned authorities and international organisations with a view to provide for schemes and projects for persons with disabilities in the national/state plans.
5. Recommending steps to ensure accessibility, reasonable accommodation, non-discrimination for persons with disabilities vis-à-vis information, services, built environment and their participation in social life.
6. Monitoring and evaluating the impact of laws, policies and programmes which aim to achieve full participation of persons with disabilities.

7. Implementing other functions as may be assigned from time to time by the Central/State Government.

24.3. Who are the members of The Central Advisory Board?

The Minister, Department of Disability Affairs (Central) is the Chairperson of the Board. The Minister of State, dealing with Department of Disability Affairs will be the Vice Chairperson of the Board. The other Members include three Members of Parliament, the Ministers of Disability Affairs of all the States, the administrators or Lieutenant Governors of all the Union Territories, select senior officials from Social Justice and Empowerment and other Concerned Ministries/ Departments/ Commissions/ apex bodies, Chairpersons/Directors of the various National Institutes of Disability, five Members who are experts in the field of disability and rehabilitation, ten nominated Members who, as far as practicable, should be persons with disabilities (from Non-Government Organisations and Disabled People's Organisations) and finally, upto three representatives from the national level chambers of commerce and industry.

It is also mentioned that out of the ten nominated Members, at least, five Members shall be women and at least one person each shall be from the Scheduled Castes and the Scheduled Tribes.

24.4. What is the constitution of the State Advisory Board?

The Minister of the Department dealing with disability matters is the Chairperson of the Board. The Minister of State or the Deputy Minister in charge of the Department in the State Government dealing with disability matters is the Vice-Chairperson. The Members include the Secretaries to the State Government of the various concerned Departments, three Members of the State Legislature, five Members who are experts in the field of disability and rehabilitation, five members who represent the districts, ten nominated persons who, as far as practicable, should be persons with disabilities and who represent Non-Government Organisations/Disabled People's Organisations (it has been added that out of the ten nominated persons, at least, five should be women and at least one person each should be from the Scheduled Castes and the Scheduled Tribes), not more than three representatives from the State Chamber of Commerce and Industry and finally one officer, not below the rank of Joint Secretary, from the Department dealing with disability matters in the State Government.

24.5. Under the Section titled, 'Disqualification', it is mentioned that a person with unsound mind cannot be a member of the Central and State Advisory Boards. Isn't that discriminating?

The disability sector wanted that Sub-clause to be removed. However, that has not happened. Unfortunately, the terms 'unsound mind' and 'mental illness' are treated as synonyms, which is not true. This law protects people with mental illness from any form of discrimination. Hence, if a person with mental illness is disqualified from being a member of the Boards because of her/his disability, it would be a violation of the law (The RPWD Act).

24.6. What is the term of office for the members of the Central and State Advisory Boards?

The term for a member is three years from the date of the Member's nomination. She/he will continue to hold office (even after the term expires) until her/his successor is appointed. A Member is automatically considered eligible for re-nomination.

24.7. How often should the Boards meet?

The Central Advisory Board and the State Advisory Board should meet at least once in every six months.

24.8. Is there any such advisory body at the District or village levels?

Yes. The law states that a District-level Committee on disability should be set up in every District by the State Government.

24.9. Are there specialised Courts to try cases related to disability?

Yes. As per the law, cases can be tried:

1. In Special Courts (to be specified at every District), for speedy trial.
2. By the Chief Commissioner for Persons with Disabilities at the National/Central level and by the State Commissioner for Persons with Disabilities at every State. They have the powers of a civil court.

24.10. What are the functions and powers of the Chief Commissioner and the State Commissioner for Persons with Disabilities?

The functions of the Commissioners are:

- ❖ Review the laws/programmes that are not in line with the Act and recommend changes.
- ❖ Take up matters/cases concerning the violation of rights of people with disabilities with the appropriate authorities for corrective action.
- ❖ Take proactive measures to ensure implementation of the Act.
- ❖ Undertake and promote research and awareness on the rights of persons with disabilities.
- ❖ Monitor the implementation of the Act, schemes and programmes meant for persons with disabilities and monitor the utilisation of funds for the benefit of persons with disabilities.

The Chief and State Commissioners have the same powers of a Civil Court while trying a suit, which include:

1. Summoning and enforcing the attendance of witnesses.
2. Requiring the discovery and production of any documents.
3. Requisitioning any public record or copy thereof from any court or office.

4. Receiving evidence on affidavits.
5. Issuing commissions for the examination of witnesses or documents.

24.11. Is there any Clause that mandates that recommendations made by the Commissioners should be accepted/implemented?

The law states that whenever the Chief/State Commissioner makes a recommendation to an authority, it should take necessary action on it, and inform the Chief/State Commissioner of the action taken within three months from the date of receipt of the recommendation. If the authority does not accept a recommendation, it should convey reasons for non-acceptance to the Chief/State Commissioner within a period of three months who in turn should inform the aggrieved person (affected person or the one who has made the complaint).

24.12. Is there any qualification necessary for the post of Chief Commissioner and State Commissioners?

As per the law, the Chief Commissioner, State Commissioners or Commissioners should have special knowledge or practical experience in matters relating to rehabilitation of persons with disability. In the Rules following eligibility criteria have been added.

For the Chief Commissioner:

1. She/ he should be a Graduate from a recognised University (preference would be given to persons having recognised degree or diploma in social work or law or management or human rights or rehabilitation or education of persons with disabilities.)
2. She/he should have experience of at least twenty-five years in a Group "A" level post in the Central Government or a State Government or a public sector undertaking or a semi Government or an autonomous body dealing with disability related matters or social sector or as a senior level functionary in registered national and international voluntary organisations in the field of disability or social development. Out of the total of twenty-five years of experience, she/he should have at least three years of experience in the field of rehabilitation or empowerment of persons with disabilities.
3. She/he has not attained the age of sixty years as on 1st January of the year of recruitment.

For Commissioners:

1. She/he should be a Graduate from a recognized University (preference would be given to persons having a recognised degree or diploma in social work or law or management or human rights or rehabilitation or education of persons with disabilities.)
2. She/he should have at least twenty years of experience in a Group "A" level post in the Central Government or a State Government or a public sector undertaking or a semi Government or an autonomous body dealing with disability related

matters or the social sector or as a senior level functionary in registered national and international voluntary organisations in the field of disability or social development.

3. She/he has not attained the age of fifty-six years as on 1st January of the year of recruitment.

24.13. Is there any qualification for the Special Disability Public Prosecutor in Special Courts?

As per the Act, the Special Public Prosecutor should have been in practice as an advocate for not less than seven years.

24.14. Is there a mandate that Commissioners should be persons with disability?

The law says that, of the two Commissioners who would be appointed to assist the Chief Commissioner, at least one should be a person with disability.

24.15. Is there any involvement of stakeholders in the offices of the Chief and State Commissioners?

Yes. The law states that an advisory committee should be formed comprising of not more than eleven members drawn from experts from different disabilities to assist the Chief Commissioner. At the State level, the advisory committee should comprise of not more than five disability experts for assisting the State Commissioner.

24.16. Is there any mention in the law regarding the financial resources for implementing the Act?

As per the law, at the Centre, the 'National Fund for persons with disabilities' should be set up. The funds will comprise of the Trust Fund for Empowerment of Persons with Disabilities, other funds available for people with disabilities, grants, donations and sums from other sources.

Similarly, for the State, it is mandated by law that every State Government should constitute a State Fund for persons with disabilities.

Chapter 25: Offences and Penalties

Sections/Clauses covered

- 89. Punishment for contravention of provisions of Act or rules or regulations made thereunder
- 90. Offences by companies
- 91. Punishment for fraudulently availing any benefit meant for persons with benchmark disabilities
- 92. Punishment for offences of atrocities
- 93. Punishment for failure to furnish information
- 94. Previous sanction of appropriate Government
- 95. Alternative punishments

At a glance

- ❖ Any person/company that violates any of the provisions of the Act or Rule:
 - For the first violation, she/he will be punished with a fine of upto Rs. 10,000/-
 - For any subsequent violation, the fine would be from Rs. 50,000/- upto a maximum of Rs. 5 lakhs.
 - For failing to produce any information as required by the Act or by any formal request/order, a fine of upto Rs. 25,000/-. In case of continued failure or refusal, the fine may extend upto Rs. 1000/- for each day of non-compliance.
 - Imprisonment for a term not be less than six months and upto five years and an additional fine to be imposed on those who insult/humiliate in public, deny food, exploit sexually, etc.
 - If a person without disability fraudulently takes/ attempts to take any benefit meant for persons with disabilities, they would be punished with imprisonment for a maximum of two years or with a fine of upto Rs. 1 lakh or with both.
- ❖ Where an action or omission hereof is punishable under this Act and under any other Act, then the guilty will be punished under that Act which provides greater punishment.

Explanations

25.1. What is punishable under the law?

Any act of discrimination, not following the mandates for accessibility, refusing reasonable accommodation, indulging in abusive and exploitative behaviour or not complying with any other provision given in the Act will be considered as a violation. The punishment will range from fine to imprisonment or both if found guilty.

The law also says that the following offences will be punishable with imprisonment for a term which would be not less than six months and may extend to five years and with fine. Whoever,

- ❖ intentionally insults or intimidates (threatens) to humiliate a person with disability in any place within public view.
- ❖ assaults any person with disability.
- ❖ has complete control over a person with disability.
- ❖ knowingly denies food or fluids to her/him.
- ❖ is in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually.
- ❖ voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability.
- ❖ performs, conducts or directs any medical procedure which leads to or is likely to lead to termination of pregnancy without the person's consent. (There is an exception that has been added that termination of pregnancy for a person with severe disability is allowed based on the opinion of a registered medical practitioner and also with the consent of her guardian).

25.2. There have been instances where people without disability have taken the benefits meant for people with disabilities? Is there any provision to punish such people?

Yes. Such people would be punished with imprisonment for a maximum of two years and/or with a fine up to Rs.1 lakh.

25.3. Are there any penalties imposed if an establishment does not submit information that is mandated in the law or asked by the Disability Commissioner?

Yes. The law states that whoever fails to produce necessary information (such as books, accounts, statements or other documents), as per the Act or in response to any issued Order (under the Act) will be punished with a fine of up to Rs. 25,000/-. In case of continued failure or refusal, the fine may extend to Rs. 1000/- for each day from the date of original Order imposing fine.

25.4. What is meant by 'complete control over the person with disability'?

A parent/family member/caregiver being in complete control means that all decisions for the person with disability are being taken by her/him without taking into account the person's choices or preferences.

An example of a person having full control: A husband of a woman who is a wheelchair user has taken full control over her gas agency and bank account stating that she will not be able to handle it. He refuses to answer any questions. He becomes violent when asked any questions. He demands that she puts her signatures on cheques and forms without asking any questions.

Chapter 26: Miscellaneous

Sections/Clauses covered

- 96: Application of other laws not barred
- 97: Protection of action taken in good faith
- 98: Power to remove difficulties
- 99: Power to amend Schedule
- 100: Power of Central Government to make rules
- 101: Power of State Government to make rules
- 102: Repeal and savings

At a glance

- ❖ The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 is repealed (cancelled).
- ❖ No other law is partially or fully repealed.
- ❖ No suit, prosecution or other legal proceedings should be filed against a Government officer or employee of the Chief Commissioner or the State Commissioner for doing anything in good faith.
- ❖ If any difficulty arises in implementing the provisions of this Act, the Central Government can make provisions or give directions to remove the difficulty. Such provisions should not be inconsistent with the provisions of this Act. This should be done within two years of commencement of the Act.
- ❖ The Central Government can amend the Schedule based on the recommendation of the relevant Government department.
- ❖ The Central Government should make rules for carrying out the provisions of this Act.
- ❖ State Governments should make rules not later than six months from the date of commencement of this Act (by October 2017).

Explanations

26.1. The law states that no other law has been amended, except The Disability Act, 1995. If there is a contradiction between any of the existing laws and this Act (The RPWD Act), which provision ought to be followed? For example, the National Trust provides for 'plenary guardianship'. The RPWD Act, however, says all guardians from henceforth will only be 'limited guardians'. Which law will apply?

The RPWD Act is quite clear that people with disabilities have the right to exercise their legal capacity and support should be provided for those who require it. It also says only limited guardianship would be provided from hereon.

26.2. What is the Schedule being referred to here?

The Schedule refers to the list of specified disabilities given at the end of the Act. It has a list of 21 disability categories as of now. (Please refer to Question 1.3 in Chapter 1, 'Classifications of Disabilities and Certification' for the list of disabilities given in the Schedule.) This provision allows the Government to add/delete disability categories to the list or change the definition/terminology, etc.

26.3. Have the Rules been notified by the Centre and all States?

The Rules have been notified by the Centre. It can be accessed at [RPWD Rules](#). Regarding the States, one would have to find out from the respective Department in charge of disability in each State to know the status of the notification of the State Rules.