

HANDBOOK ON RIGHTS OF PERSONS WITH DISABILITIES

AUTHORED BY: KHAITAN & CO | 1 DECEMBER 2021



Life on my terms

PARTNERS

INTRODUCTION BY



M. KARPAGAM

Advocate High Court of Madras/Disability Rights Activist

AUTHORING TEAM FROM KHAITAN & CO



VANITA BHARGAVA

Partner



ARVA MERCHANT

Partner



AASTHA KHURANA

Principal Associate



RANJINI GOGOI

Senior Associate



AKARSHITA DHAWAN

Senior Associate



**SHUVAM
BHATTACHARYA**

Associate



PRERNA SINGH

Associate



DEEKSHA MALIK

Associate



SARANYA MISHRA

Associate



**HAREEPRIYA E
NARASIMHAN**

Associate



ADITYA MUKERJEE

Associate

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FOREWORD

"A hero is an ordinary individual who finds the strength to persevere and endure in spite of overwhelming obstacles." - Christopher Reeve

There are almost 1 billion such heroes worldwide who persevere to overcome their disabilities – roughly 100 million of those heroes are in India alone. This handbook is an attempt at facilitating access to information regarding the steps taken so far to remove the obstacles faced by persons with disabilities, information regarding benefits available to them and suggestions on what more needs to be done to remove the obstacles to leading a life of dignity.

This handbook is our endeavour to bridge the gap between disability and accessibility. Over the several chapters of this handbook, we have endeavoured to highlight the many legislative and policy-level attempts to promote the empowerment of persons with disabilities – through education, employment, health and safety to name a few. Each of these chapters has been crafted to make this handbook a ready reference for practical purposes.

In spite of the many efforts taken so far to help remove barriers for persons with disabilities, the disappointing reality remains that these individuals remain significantly undervalued and underutilized in society and workplaces. Various reasons, such as a lack of infrastructural support, prejudices, etc prevent employers from accessing this diverse group of qualified potential employees, thus restricting such incredibly talented and abled people to achieve their fullest potential.

Policies alone cannot change systemic inequality – this has been proven time and again over the several thousands of years of human existence. Greater understanding and traction among society is the ultimate key to seeing persons with disabilities as valued members of society.

"Disability need not be an obstacle to success," Stephen Hawking wrote in the first-ever world disability report back in 2011. As one of the most influential scientists of modern times, the wheelchair user physicist is certainly proof of that. We know that behind every great change is a great person. And that the more inclusive an organization is, the more successful it becomes.

This experience has taught us that we are so much more than blood, bone, and brain. We believe words have power, whether in the form of a convincing essay or a short, shabby sentence. In that spirit, we bring you this handbook on the legal rights of persons with disabilities.

GLOSSARY

TERM	DEFINITION
AICTE	All India Council for Technical Education
Constitution	Constitution of India, 1950
Convention	Convention on Rights of Persons with Disabilities
ECOSOC	Economic and Social Council
ID Act	Industrial Disputes Act, 1948
INR	Indian Rupees
MH Act	Mental Healthcare Act, 2017
National Policy	National Policy for Persons with Disabilities, 2006
NCPEDP	National Centre for the Promotion of Employment of Disabled People
NSSO	National Sample Survey Organisation
NSS	National Sample Survey
PWD Act, 1995	Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
PWD Act	The Rights of Persons with Disabilities Act, 2016
PWD Rules	The Rights of Persons with Disabilities Rules, 2017
QAC	Quality Assurance Committee
RTE Act	Right to Education Act, 2013
SC	Supreme Court of India
SIPDA	Scheme for Implementation of Right of Persons with Disabilities
UGC	University Grants Commission
UN	United Nations
WPA	World Program of Action

INTRODUCTION

*(By M Karpagam, Advocate, High Court of Madras
and Disability Rights Activist)*

The history of the disability movement is generally dominated by western thoughts and philosophy, even though over 80% of persons with disabilities live in developing countries.¹ The lives and experiences of persons with disabilities in India are unique, as they are interlinked with poverty, gender, caste and other factors which contribute to the compounding of marginalisation faced by this community². Unlike the west, India's hegemony of multicultural and multi religious facets adds to India's diversity in perception about disability. Unlike Camp Jened, which eventually led to the San Francisco sit-in by persons with disabilities in America, leading to debates among the American people about the rights of persons with disabilities, India does not have a vantage point which consolidates the disability movement in the country. With its lessons from the past, however, there is much scope for governmental agencies and non-governmental organisations working for persons with disabilities to align their schemes and activities based on the contemporary understanding of disability.

India, UN and the Disability Movement

While India's disability movement moved at snail's pace, the international stage was quite different. The first initiative for persons with disabilities came in 1950 through the adoption of a resolution in by the Economic and Social Council ("ECOSOC") on "Social Rehabilitation of the Physically Handicapped"³. After 15 years, ECOSOC was able to adopt another resolution on the rehabilitation of persons with disabilities. The United Nations has made constant efforts to place persons with disabilities in the society on par with others – this was when the rehabilitation and medical model of disability transitioned to a social and human rights model of disability. Under the General Assembly resolution on the "Declaration on the Rights of Mentally Retarded Persons" (adopted in 1971),⁴ persons with mental impairments received the same rights as their fellow men and several institutions that hosted mentally challenged people were accommodated together with friends and family in the community. This was followed by the adoption of the "Declaration on the Rights of Disabled Persons" in 1975⁵. The ECOSOC separately adopted the "Declaration on the Rights of Deaf-Blind Persons" in 1979.⁶

¹Factsheet on Persons with Disabilities,

<https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html> accessed.

² Jane Buckingham ,Writing histories of disability in India: Strategies of inclusion, Disability & Society, 2011, 26:4, 419-431.

³ 'Social rehabilitation of the physically handicapped 'report of the Secretary-General, [New York]: UN, 22 Mar. 1950, <<https://digitallibrary.un.org/record/708737?ln=en>>, accessed on 27 November 2021

⁴ Declaration on the Rights of Mentally Retarded Persons proclaimed by General Assembly resolution 2856 (XXVI) of 20 December 1971.

⁵ Declaration on the Rights of Disabled Persons, proclaimed by General Assembly resolution 3447 (XXX) of 9 December 1975.

⁶ 'Declaration on the Rights of Deaf-Blind Persons: Decision adopted by the Economic and Social Council', Adopted at the 14th plenary meeting, 9 May 1979. Contains text of Declaration on the Rights of Deaf-Blind Persons adopted by the Helen Keller World Conference on Services to Deaf-Blind Youths and Adults, 16 Sep. 1977.

<In: E/1979/79. <https://digitallibrary.un.org/record/33974?ln=en> >, accessed on 27 November 2021.

The year 1981⁷ was declared to be the International Year of Disability. The impetus to the international consensus for the importance of rights of persons with disabilities came with the adoption by the General Assembly of the World Program of Action (“WPA”) concerning Disabled Persons in 1982⁸ and subsequently, the standard rules on the “Equalisation of the Opportunities for Persons with Disabilities” in 1994⁹. “Equalization of opportunities” is a central theme of the WPA and its guiding philosophy for the achievement of full participation by persons with disabilities in all aspects of social and economic life. India is a signatory to all the above-mentioned declarations adopted by the United Nations. In addition, India is a signatory to the “Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region”, and the “Biwako Millennium Framework for Action Towards an Inclusive, Barrier-free, and Right-Based Society”¹⁰.

In India, some piecemeal schemes and policies were adopted during the late 1970s to 2000s. A centrally sponsored scheme of “Integrated Education for the Disabled Children” was launched in 1974. In 1977, the government reserved jobs for persons with disabilities by identifying posts, but these were mostly lower cadre jobs.¹¹ In the late 1980s and heavily influenced by the developments happening internationally, activists in India started lobbying for a disability law in India, touching upon multiple issues of disability. These led to the enactment of several legislations such as the Mental Health Act, 1987, the Rehabilitation Council of India Act, 1992, and the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. However, the most important achievement of all was the enactment of the PWD Act, 1995. The enactment of this law was a major shift in the perspective of dealing with disability-based issues from a medical, charitable and rehabilitation model to a right based model of disability.

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

The enactment of the PWD Act, 1995 was a signal achievement of the Indian disability movement. The preamble to the PWD Act, 1995 clearly delineates its objective of promoting and ensuring equality and full participation of persons with disabilities. It aims to protect and promote the economic and social rights of persons with disabilities. However, the implementation of this law and the corresponding rules was poor. For instance, the PWD Act, 1995 provided for 3% reservation for visually impaired, deaf and orthopedically disabled people in Group A, B, C, and D posts in all Government services. However, it took nearly a decade for the government to identify such posts and revise the first list which was published in 1986¹².

The disability rights movement in India was strengthened with the establishment of the National Centre for the Promotion of Employment of Disabled People. Disability 2000, a national level campaign, was conducted with the collaboration of several disability rights organization, advocacy groups and local Governments, which lead to the formation of National Disability Network.¹³

⁷ In 1976, the General Assembly proclaimed 1981 as the International Year of Disabled Persons (IYDP), General Assembly resolution 31/123.

⁸ Adopted by the General Assembly on 3 December 1982, by its resolution 37/52 <https://www.un.org/ga/search/view_doc.asp?symbol=a/37/351/add.1> accessed on 27 November 2021.

⁹ RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY on the report of the Third Committee (A/48/627), 4 March 1994.

¹⁰ Anitha Ghai, ‘Rethinking disability in India’, p 113.

¹¹ supra note 8 p 129.

¹² G. N. Karna, Disability studies in India, Retrospect's and Prospects.

¹³ Nikhula Malhotra, ‘Disability Rights Movement, Politics and Practice, Economic and Political weekly’.

In the new millennium, the United Nations adopted the Convention on Rights of Persons with Disabilities (“**Convention**”). This marked a shift in how disability was viewed, from a medical problem to a societal problem. India signed and ratified the Convention in 2007. By then, there was a demand for an increase in reservations for persons with disabilities by various groups working on disability issues. By 2012, the Government of India came up with a disability bill. After some amendments in the original draft, it was tabled in the parliament in 2013 and after over 3 years, the Rights of Persons with Disabilities Bill, 2016, was passed by both houses of parliament¹⁴. At present, there are many Indian organisations for persons with disabilities, both governmental and non-governmental, throughout the country which support the rights and causes of persons with disabilities.

National Policy for Persons with Disabilities 2006

Looking at this situation and demands from civil society, the government came up with the National Policy on Disability in 2006 (“**National Policy**”). This was a comprehensive policy on disability, covering critical areas like education, employment, support services, access, social security, etc. However, this policy also needed to be comprehensively modified in light of the Convention. The law commission of India submitted a report in 2015 for eliminating all forms of discrimination against persons affected by leprosy. By some means, however, the National Policy is nearly silent on the civil and political rights of persons with disabilities. Unfortunately, most of the states of India do not have state-level disability policies in place yet, though a few states are in the process of evolving such policies.

Some of the major areas on which the National Policy concentrates on include prevention of disabilities, rehabilitation measures, physical rehabilitation strategies, early detection and intervention, assistive devices, wage employment in private sector, self-employment, women with disabilities, children with disabilities, barrier-free environment, issue of disability certificates etc¹⁵.

The Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment conceptualised the “Accessible India Campaign (*Sugamya Bharat Abhiyan*)” as a nation-wide flagship campaign for achieving universal accessibility that would enable persons with disabilities to gain access to equal opportunities and live independently and participate fully in all aspects of life in an inclusive society. The campaign targeted enhancing the accessibility of the built environment, transport system and information and communication eco-system¹⁶. But the accessibility India campaign did not fulfil many of its objectives and lacked accountability and social audit under the campaign¹⁷.

Disability and Date: Then and Now

The total population of persons with disabilities has risen considerably from less than 1 million in 1881 to around 26.8 million in 2011. The prevalence of disability populations has also increased from 369 to 2208 persons per 100 thousand people across all types of disabilities during the corresponding period (1881-2011). The changes in the disability estimates, changes over successive years because of the changing definition of disability. The definition of blindness and hearing impairment has undergone a drastic change over the period to include people of low vision and various hearing losses,

¹⁴<https://thediomat.com/2016/12/the-history-of-indias-disability-rights-movement/>, accessed on 27 November 2021.

¹⁵ Law Commission of India, *Eliminating Discrimination against Persons Affected by Leprosy*, (Law Com no. 256, 2015).

¹⁶< <http://accessibleindia.gov.in/content/index.php>>, accessed on 27 November 2021.

¹⁷ <https://www.dailypioneer.com/2020/columnists/a-crippled-campaign.html>, accessed on 27 November 2021.

be it from birth or caused after birth. For example, during the 1881 or 1891 census, only people who were born blind were counted as persons with disabilities, and deafness must have been from birth to be considered to be considered infirm. The colonial period considered 4 types of disabilities for census enumeration: i.e. - people of unsound mind, deaf-mute, totally blind, and then the lepers. However, over time, due to the change in the definition of disability, several types of disability have been included. In the 2022 census, 21 different disabilities have to be enumerated¹⁸. Other than the issue of the definition of disability, eliciting information from the population about their disability because disability is considered a stigma, is another problem. However, efforts are to design the questionnaire so that all the target population can be correctly identified¹⁹ and sensitized.

Apart from the Census of India, the National Sample Survey Organisation (“NSSO”) collects statistical data. The NSSO, for the first time in 1981, introduced the demographic status of the population of persons with disabilities. In the 36th round, the national sample survey (“NSS”) data covered only 3 types of disabilities, i.e., visual, communication (i.e., hearing and/or speech) and locomotors, whereas, in the 47th round of NSS, mental disability was included in addition to the above. In the 47th NSSO survey, the objective was to provide the incidence and prevalence of disability in the country²⁰.

There are ample reasons for developing a sound national disability statistic. Information on their socio-demographic profile is essential for the welfare of persons with disabilities. Information about their functional status is important to identify their needs since two individuals with the same impairment may face different difficulties in undertaking certain activities and have different requirements that need different kinds of interventions. Functional status data is essential for determining the broader social needs of persons with disabilities, such as the provision of assistive technology for use in employment or education or more comprehensive policy and laws. Population disability data is essential for monitoring the quality and outcomes of policies for persons with disabilities. In particular, these data sets help identify policy outcomes that maximize the participation of persons with disabilities in all areas of social life, from transportation and communication to participation in community life. Finally, with complete and reliable disability statistics, state agencies will have the tools for assessing the cost-effectiveness of policies for persons with disabilities, which can provide the necessary evidence to persuade governments of their ultimate benefit for all citizens. Sensitization of the population and training in the field will enhance the quality of the disability statistics²¹.

While India has defined disability based on the Convention, it continues to certify persons with disabilities following the medical model. The Indian parliament ought to amend the Constitution to make disability a ground for discrimination, amend and repeal nearly 2,000 laws that discriminate

¹⁸ supra note 5 p 46.

¹⁹ Disabled Persons in India: A statistical Profile 2016, Social Statistics Division, Ministry of statistics and Program Implementation, Government of India http://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf, accessed on 27 November 2021.

²⁰ Disabled Persons in India, NSS 58th round (July – December 2002), <http://mospi.nic.in/sites/default/files/publication_reports/485_final.pdf>, accessed on 27 November 2021

²¹ Jeffery, R., & Singal, N., ‘Measuring disability in India. Economic and Political Weekly’, [2008] 43(12-13), 22-24.

against persons with disabilities²² and endeavour to remedy the list of issues raised by the United Nations. Only then, I believe, India will be able to fulfil its obligation under the Convention.²³

²²<https://scroll.in/pulse/808136/nearly-2000-indian-laws-discriminate-against-differently-abled-persons-here-are-five>, accessed on 27 November 2021.

²³ Convention on the Rights of Persons with Disabilities, Committee on the Rights of Persons with Disabilities. List of issues in relation to the initial report of India, 16 May 2019.

LEGAL FRAMEWORK

By ratifying the Convention in 2007, India took on a set of obligations to transform the treatment of persons with disabilities to empower them with rights to protect against discrimination. The Convention mandated that its signatories change their national laws to identify and eliminate obstacles and barriers and comply with the terms of the Convention. To align its policies with the objectives of the Convention, the Government of India enacted the PWD Act to replace the erstwhile law of 1995. Although the PWD Act is a rights-based legislation, the statute's success will largely depend on proactive measures taken by the respective state governments on its implementation.

(A) RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

The PWD Act endeavours to protect the right to equality for persons with disabilities. The need for this legislation arose due to the inherent attitudinal barrier that reflects stigmatisation and discrimination in everyday life. Accordingly, the PWD Act prohibits discrimination on grounds of disability in order to facilitate acceptance of persons with disabilities and ensure their inclusion in the so called 'mainstream' society, including in the workplace.²⁴

Key terms defined under the PWD Act:

Barriers	Any factor including communication, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors, which hampers the full and effective participation of persons with disabilities in society
Discrimination	Any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation
Person with benchmark disability	A person with not less than 40% 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
Person with disability	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

²⁴ Section 20 of the PWD Act

**Person with disability
having high support
needs**

A person with benchmark disability who needs high support

Beneficiaries under the PWD Act: Who does it cover?

Pursuant to section 56 of the PWD Act, the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment has notified guidelines for the evaluation and procedure for certification of various specified disabilities. Specified disabilities detailed in the guidelines include locomotor disability, blindness / low vision, deafness, intellectual disability, mental illness, chronic neurological conditions, haemophilia and multiple disabilities. Such persons with disabilities are required to apply for a certificate of disability in accordance with the provisions of the PWD Act.

Disabilities defined under the PWD Act

Physical Disability

- Locomotor Disability
 - Leprosy Cured Person
 - Cerebral Palsy
 - Dwarfism
 - Muscular Dystrophy
 - Acid Attack Victims

- Visual Impairment
 - Blindness
 - Low vision

- Hearing Impairment
 - Deaf
 - Hard of Hearing

- Speech and language disability

Intellectual Disability

- Specific Learning Disabilities
- Autism Spectrum Disorder

Mental Behaviour

- Mental Illness

Disability caused due to Neurological /Conditions

- Multiple Sclerosis
- Parkinson's Disease

Disability caused due to Blood Disorder

- Haemophilia
- Thalassemia
- Sickle Cell Disease

Remedies under the PWD Act

The PWD Act enumerates wide-reaching protections and remedies for persons with disabilities and empowers the Executive Magistrate to pass any of the following orders to protect persons with disabilities from abuse, violence and exploitation:

- Safe custody or rehabilitation of the victim, by police or organizations working for these persons;
- Protective custody if the victim demands; and
- Maintenance for such victim.

Clause (4) of Section 56 also mandates the police officer to explain the rights available to such victim.

Entitlements under the PWD Act

- Right to receive protection and safety, at the time of need (Section 8);
- Right of children with disability to be ensured a home and a family (Section 9);
- Access to information regarding reproduction and family planning (Section 10);
- Access to polling stations and making sure that the details and information regarding the processes is understood by all (Section 11);
- Right to justice before the relevant authority with jurisdiction (Section 12);
- Recognition of legal capacity of persons with disabilities, and making such persons competent to exercise various rights enjoyed by others (Section 13); and
- Assignment of a guardian to take care of the needs of persons who are unable to make legal decisions on their own (Section 14).

Development and upliftment of persons with disabilities

In addition to corrective and prohibitive actions / remedies set out above, the PWD Act also provides for the upliftment and growth of persons with disabilities. The appropriate government and / or the concerned authority is required to ensure education²⁵ for persons with disabilities along with the right to be admitted in schools without being discriminated against. In addition to recognizing the importance of education, the PWD Act also seeks to harness the talents of persons with disabilities by providing loans at concessional rates and other necessary facilities in order to encourage persons with disabilities to engage in vocational training and self-employment.²⁶

²⁵ Section 16 of the PWD Act

²⁶ Section 19 of the PWD Act

Other protections

The government is also required to provide social, healthcare and other support to persons with disabilities, implement insurance schemes for persons with disabilities and ensure that there are measures undertaken for their rehabilitation in areas with proper health, education and other facilities.²⁷

Additionally, the PWD Act mandates measures to be undertaken to promote cultural and sporting activities among such persons to ensure their participation in all kinds of activities.²⁸

Children who are identified with benchmark disabilities are provided additional benefits, such as the right to free education between 6 to 14 years of age,²⁹ reservation in higher educational institutions,³⁰ and government jobs.³¹ The PWD Act also imbibes provisions pertaining to special treatment given to those with high support needs, upon identification by the government.³²

The central government also aims to ensure adequate accessibility to transport, information and communication technologies, consumer goods, etc, as a part of duties under Section 40 to Section 46 of the PWD Act.

Registration

The PWD Act prescribes for registration of institutions for persons with disabilities by following the procedure prescribed under the PWD Act, upon satisfaction of which, the competent authority will grant them a certificate, by the powers conferred to them under Section 50 of the PWD Act.

Authorities and Boards

- Government designated authority to create awareness among the persons with disabilities, regarding the exercise of their legal capacity.³³
- Grievance Redressal Officer appointed by the concerned Government to deal with grievances relating to opportunities regarding vocational training and self-employment.³⁴
- Competent authority appointed by relevant state Governments, to grant registration certificates to institutions for persons with disabilities.³⁵
- Persons designated by the Government to grant certificates of disability to persons eligible for such certificates.³⁶
- Central advisory board, state advisory boards and district level committees on disability to be constituted in the prescribed manner.³⁷

Enforcement of the PWD Act: Judicial mechanism, Penalties and Punishments

²⁷ Sections 24, 25, 26 and 27 of the PWD Act

²⁸ Sections 29 and 30 of the PWD Act

²⁹ Section 31 of the PWD Act

³⁰ Section 32 of the PWD Act

³¹ Section 34 of the PWD Act

³² Section 38 of the PWD Act

³³ Section 15 of the PWD Act

³⁴ Section 23 of the PWD Act

³⁵ Section 49 of the PWD Act

³⁶ Section 57 of the PWD Act

³⁷ Section 60, Section 66 and Section 71 of the PWD Act

The PWD Act aims at quick resolution of disputes by mandating the various state Governments to set up dedicated special courts in each district, with the concurrence of the chief justices of the relevant high courts. The state Government is required to specify any one Court of Sessions to act as such special court, which shall have the jurisdiction to try all offences under the PWD Act.

Any contravention of the provisions of the PWD Act is punishable with fines of up to INR 10,000 for first time offenders and between INR 50,000 to INR 5,00,000 for subsequent offences.³⁸

Section 11(1) of the Special Courts Act, 1979 permits an appeals against any judgment, sentence or order of a special court, except for an interlocutory order, to the SC. It is important to note that such appeal should be made within a period of 30 days from the judgment of the special court. However, if the SC is satisfied that sufficient cause exists for delay in filing the appeal, it may allow the same to be filed after the expiry of the prescribed period of 30 days.

Appeals for grievances against any order of the competent authority regarding grant of registration certificates to institutions or persons with disabilities shall lie with the appellate authority prescribed by the relevant state governments.

Judicial Stance

Indian courts have lauded the current regime under the PWD Act as treating disability not simply as a medical condition, but a social condition, which causes such people to be excluded from various places and activities and have consistently enacted judgments to uphold the spirit of the PWD Act.

In *Vikash Kumar v. Union Public Service Commission and Ors.*³⁹ the SC held that the PWD Act is aligned with and upholds the rights granted by Articles 14, 19 and 21 of the Constitution and bestows the same upon persons with disabilities. In doing so, it relied upon the earlier decision of *Jeeja Ghosh v. Union of India*,⁴⁰ wherein it was held that imposing positive obligations upon state and central governments to provide additional support to persons with disabilities furthers the principle of 'reasonable differentiation' which is a key component of the right to equality enumerated under Article 14. In its decision in *Union of India v. National Federation of the Blind*,⁴¹ the SC reiterated the importance of providing adequate employment opportunities to persons with disabilities.

(B) MENTAL HEALTHCARE ACT, 2017

The MH Act is the primary legislation dealing with rights of persons with mental illnesses. Mental illness is defined as a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment or the ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs. The MH Act aims to provide mental healthcare and services for persons with mental illness and to promote and fulfil the rights of such persons during delivery of mental healthcare and services.

The MH Act distinguishes 'mental retardation' and mental illness, as described in greater detail in Chapter 3, and does not regard 'mental retardation' as a 'mental illness'. Various Indian laws bar persons with unsound minds to enter into contracts or undertake certain acts in general, such as marrying, voting or holding public office and making wills – the MH Act, however, takes a contrary view on this issue. This is a welcome step in the right direction because, simply put, a person with

³⁸ Section 89 of the PWD Act

³⁹ *Vikash Kumar v. Union Public Service Commission and Ors* Civil Appeal No. 273 of 2021.

⁴⁰ *Jeeja Ghosh v. Union of India* (2016) 7 SCC 761.

⁴¹ *Union of India v. National Federation of the Blind* (2013) 10 SCC 772.

mental illness cannot be said to have an unsound mind unless a court declares so. There is a certain stigma to the notion of being categorised as a person with an unsound mind, thereby thwarting mental healthcare as persons with mental illness would prefer to go untreated over being tagged as a person with an unsound mind.

Authorities under the MH Act

The MH Act is patient-centric legislation, i.e., it recognises the need for healthcare for persons with mental illness as the primary object. To this extent, the MH Act has established the Central Mental Health Authority and State Mental Health Authority to oversee the implementation of the MH Act in tandem with the spirit of the law. These authorities typically regulate mental health establishments to ensure the quality of these establishments' services. A mental health establishment, clinical psychologists, mental health nurses and psychiatric social workers register with these authorities. The MH Act has also set up a Mental Health Board, which shall serve as an adjudicating authority.

Other Protections: Duties of the Government

The governments have specific duties to undertake under the MH Act. These include promotion of mental health and preventive programmes, creating awareness about mental health and illness and reducing the stigma associated with mental illness, human resource development and training, and co-ordinating amongst the various arms of the government such as ministries and departments including those dealing with health, law, home affairs, human resources, social justice, employment, education, women and child development, medical education to address issues of mental health care.

Offences under the MH Act: Penalties & Punishments

To ensure enforcement of the MH Act, the MH Act provides for penalty and punitive actions:

- In case of contravention of provisions of the MH Act by a mental health establishment, the penalty varies from the bracket of INR 5,000 to INR 50,000 for a first time contravention to INR 50,000 to INR 2,00,000 for second time contravention to INR 2,00,000 to INR 5,00,000 for subsequent contravention(s).
- For non-registration with the authority, the penalty may extend up to INR 25,000.
- In case of contravention of provisions of the PWD Act or rules or regulations made thereunder, a person would be punishable with imprisonment up to 6 months, or fine up to INR 10,000, or both, for imprisonment up to 2 years, or a fine of INR 50,000 or INR 5,00,000, or both.
- In case the offence under the MH Act is committed by a company, every person in-charge and responsible for the conduct of the business of such company, shall be proceeded against under the MH Act.

FOCUS AREAS – RIGHTS OF PERSONS WITH DISABILITIES

SECTION A | FUNDAMENTAL HUMAN RIGHTS

Question		Answer
1.	Is there any specific enactment which guarantees fundamental human rights in India?	<p>Yes.</p> <p>Section 2(d) of the Protection of Human Rights Act, 1993 defines human rights as rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the international covenants recognized by India.</p> <p>The Constitution, in Part III, also sets out fundamental rights available to all persons. It is not an exhaustive list but merely an indicative set of principles which have been interpreted broadly by the SC and various high courts in order to uphold the rights and freedoms of different classes of citizens. For instance, the SC has broadly construed the right to life guaranteed under Article 21 of the Constitution to mean and include all varieties of rights which constitute personal rights of an individual, over and above merely the freedoms set forth in Article 19 of the Constitution such as reproductive rights, right to gender equality, right against torture and cruelty, right against exploitation, right to know and right against discrimination including <i>inter alia</i> discrimination against gender / sexual minorities, as well as positive rights such as legalization of passive euthanasia by including the right to die a dignified death, within the ambit of the right to life with dignity.</p>
2.	What are the fundamental rights specified in Part III of the Constitution?	<p>Some of the fundamental rights guaranteed under Part III of the Indian Constitution are as follows:</p> <ul style="list-style-type: none"> ▪ Article 14 - Equality before law ▪ Article 15 - Prohibition of discrimination on grounds of religion, race, caste, class or philosophy ▪ Article 16 - Equality of opportunity without discrimination in matters of public employment ▪ Article 17 - Abolition of Untouchability ▪ Article 19 - Right to freedom of speech, assembly, association, movement, trade & occupation, ▪ Article 21 - Protection of life and personal liberty ▪ Article 22 - Protection against arrest and detention ▪ Article 23 - Prohibition of traffic in human beings and forced labour ▪ Article 24 - Prohibition of employment of children in factories ▪ Articles 25 and 26 - Right to freedom of religion ▪ Articles 29 and 30 - Cultural and Educational rights
3.	What are the international conventions	<p>India has ratified <i>inter alia</i> the following international conventions relevant to human rights:</p>

Question	Answer
<p>recognized by India relating to human rights?</p>	<ul style="list-style-type: none"> ▪ Universal Declaration of Human Rights, 1948 ▪ International Covenant on Civil and Political Rights ▪ International Covenant on Economic, Social and Cultural Rights ▪ Convention on the Elimination of All Forms of Discrimination Against Women ▪ International Convention on the Elimination of All Forms of Racial Discrimination ▪ Convention on the Rights of a Child ▪ Convention on the Rights of Persons with Disabilities <p>In addition to the above, India is also a signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region adopted at the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific at Beijing in December 1992.</p>
<p>4. Are reproductive rights included within the concept of fundamental rights?</p>	<p>Yes.</p> <p>The SC has, in various judgments, interpreted Article 21 widely so as to encompass reproductive rights within the scope of the right to life and held that respecting reproductive autonomy is an integral part of women’s welfare. Further, such autonomy should extend to the protection of the right to make choices in relation to all aspects involving personal intimacies of marriage, motherhood, procreation and child rearing which will include but not be limited to the right to carry a baby, give birth and raise children. The SC has also emphasized that such rights would be inclusive of the right to privacy and dignity in relation to the same.</p> <p><i>In Suchita Srivastava v. Chandigarh Administration, (2009) 14 SCR 989</i>, the SC upheld the right of a mentally handicapped woman who had been admitted into a government welfare run institution to give birth, stating that the victim’s choice and reproductive rights in respect of her child, in spite of other factors such as lack of understanding of the sexual act as well as apprehension regarding her ability to carry the pregnancy to its full term, is covered under the fundamental rights under Article 21.</p>
<p>5. Are there any duties upon the government to ensure access to appropriate information, family planning, medical procedures relating to infertility?</p>	<p>Yes.</p> <p>The SC, in <i>Ramakant Rai v. Union of India, (2009) 16 SCC 565</i> issued directions to the central and state government(s) to <i>inter alia</i>:</p> <ul style="list-style-type: none"> ▪ ensure uniformity across states with regards to regulation of sterilization procedures; ▪ introduce a system of having an approved panel of doctors entitled to carry on sterilization procedures in the state, prepare and circulate a checklist containing patient details to be filled out before carrying out sterilisation procedure, and set up a Quality Assurance Committee (“QAC”) for the purpose of ensuring that the guidelines are followed

Question	Answer
	<p>in respect of preoperative measures, operational facilities and postoperative follow-ups, but also for maintaining statistics;</p> <ul style="list-style-type: none"> ▪ bring into effect an insurance policy; and ▪ to lay down uniform standards to be followed by the states with regard to the health of the proposed patients, the age, the norms for compensation, the format of the statistics, checklist and consent pro forma and insurance. <p>Subsequently, in <i>Devika Biswas v. Union of India</i>, (2016) 10 SCC 726, the SC issued supplementary directions to those already issued in <i>Ramakant (supra)</i> to strengthen the regulatory process with respect to the fertility schemes implemented by the Government of India, which inter alia required that:</p> <ul style="list-style-type: none"> ▪ the approved panel of doctors should be published on government websites, contents of the checklist prepared pursuant to the directions given in <i>Ramakant (supra)</i> should be explained to the proposed patient in a language that they understand, and the proposed patient should also be explained the impact and consequences of the sterilisation procedure. ▪ the QAC should publish an annual report containing non-statistical information in the form of a report card indicating the meetings held, decisions taken, work done and the achievements of the year, etc. With regard to the implementation of the Family Planning Indemnity Scheme (FPIS), information regarding the number of claims filed, the claims accepted and in which category (death, failure, complication, etc.), claims pending (and since when) and claims rejected and the reasons for rejection, was to be included. ▪ the central and state governments to ensure that sterilization targets are not fixed so as to prevent forced or non-consensual sterilization merely to achieve the targets.
6.	<p>Whether the right to dignity afforded under Article 21 entails any positive obligation upon the State towards ensuring human dignity?</p> <p>Yes.</p> <p>The SC has, in several cases, construed positive obligations upon the state arising out of the right to dignity afforded to all under Article 21. As held by the SC, India is a welfare state governed by a Constitution which lays special emphasis on the protection and well-being of the weaker sections of society and seeks to improve their economic and social status. In the discharge of its responsibilities, the state recognises the need for maintaining establishments for the care of weaker sections of society for whose protection and welfare, necessary provision must be made while ensuring the minimum conditions for human dignity.</p> <p>For instance, the SC, in furtherance of its recognition of the third gender has directed the central and state governments to take several steps for the advancement of the transgender community, including:</p> <ul style="list-style-type: none"> ▪ providing for legal recognition of the third gender in all documents and recognise third gender persons as a “socially and educationally

	Question	Answer
		<p>backward class of citizens”, entitled to reservations in educational institutions and public employment; and</p> <ul style="list-style-type: none"> ▪ taking steps to frame social welfare schemes for the community. <p>The SC has further held that the state is obliged to provide monetary compensation for the violation of fundamental rights under Article 21 of the Constitution.</p> <p>The Bombay High Court has, in a case involving a petitioner suffering from blindness not being permitted to participate in the process of promotion, categorically held that the state is under a constitutional obligation to encourage participation of the visually handicapped persons in activities on par with other members of the staff and consider the cases of visually handicapped for promotion fairly and equitably.</p>
7.	<p>Is there any contradiction between the right to equality provided under the Constitution vis-à-vis the powers of the state to make special provisions for women, children or any other groups based on social, economic backwardness or marginalization?</p>	<p>Article 14 mandates that no person shall be denied equality before the law or equal protection of laws by the state. Article 15(1) prohibits discrimination against any citizen by the state on grounds of religion, race, caste, sex, place of birth or any of them. Article 16(1) mandates equality of opportunity for all citizens in matters relating to employment or appointment to any state office. Article 16(2) specifies that no citizen shall be ineligible for or be discriminated against in relation to holding public office on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.</p> <p>However, Articles 15(3) and 15(4) also allow for special provisions for women, children, socio-economically backward groups. Additionally, Article 16(4) provides the state with the power to make provisions for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the state.</p> <p>The SC has held that the right against discrimination as guaranteed in the Constitution should not be interpreted as a blanket ban on distinguishing between individuals on the basis of religion, sex, caste, etc. Therefore, there is no contradiction between the equality of all citizens before the law and the special powers of the state to make special provision for women, children or any other marginalized groups.</p>
8.	<p>What are the other facets of right to life and dignity?</p>	<p>The fundamental rights to life, equality and liberty have also been construed broadly to include the following rights:</p> <ul style="list-style-type: none"> ▪ Right against discrimination: The SC has emphasized that the purport of elevating certain rights to the status of fundamental rights was to prevent discrimination as the same is violative of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution. In <i>Union of India v. Sanjay Kumar Jain, (2004) 6 SCC 708</i>, SC quashed the order of denial of permission to appear in <i>viva voce</i> test in respect of a petitioner with visual disabilities contending that the same was merely on the ground of his disability. This decision has also been followed by the Bombay and Madras High Courts.

Question	Answer
	<ul style="list-style-type: none"> ▪ Right to live in a community: In <i>Pankaj Sinha v. Union of India, AIR 2018 SC 4297</i> the SC the Court took cognizance of the fact that due to the disability that entails as a result of the disease, people affected by leprosy suffer additional discrimination in the form of denial of access to health services, education and livelihood options, and even human rights which results in violation of the fundamental right to equality and right to live with dignity. Accordingly, the court issued directions to the central government including the need for massive awareness campaigns to spread the message that a person affected with leprosy can lead a normal married life, can have children, can take part in social events and go to work or school as normal. The court further emphasized that the acceptance of leprosy patients in the society would go a long way in reducing the stigma attached to the disease. ▪ Right against exploitation: This right is already provided for in Articles 23 and 24 of the Constitution which proscribe forced labour and exploitative labour practices and have been upheld in various decisions of the SC. ▪ Right against deprivation of personal liberty: This right was recognised by the SC in various judgments where the Court has laid down detailed guidelines to be followed by all law enforcement authorities in cases of arrest and detention. The SC recognized that deprivation of personal liberty or any other forms of cruel and degrading treatment during interrogation or otherwise is violative of Article 21 of the Constitution.
9.	<p>Is there a right to access to justice?</p> <p>Yes, the right to access to justice has been recognized as both a fundamental and a human right by the SC which includes the right to a speedy trial, efficacious and inexpensive legal remedies. Further, the SC has also clearly held that that access to justice is both a fundamental and human right and that no aggrieved person can be left without a remedy.</p> <p><i>In Hussainara Khatoon & Ors v. Home Secretary, State of Bihar, 1979 SCR (3) 532</i>, the SC held that the right to free legal services is an essential ingredient of 'reasonable, fair and just, procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. The state must therefore arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities.</p> <p>In <i>Anita Kushwaha v. Pushap Sudan, (2016) 8 SCC 509</i>, the SC while relying on the above judgment listed out 4 main facets of the right to access to justice, namely:</p> <ul style="list-style-type: none"> ▪ the state must provide an effective adjudicatory mechanism for citizens to avail justice; ▪ the mechanism so provided must be reasonably accessible (in terms of distance); ▪ the process of adjudication must be speedy; ▪ the litigant's access to the adjudication process must be affordable.

	Question	Answer
10.	Whether the fundamental rights set forth under Part III of the Constitution find place in the PWD Act?	<p>Yes.</p> <p>The principles of fundamental rights of equality, non-discrimination, right to live in a community as well as protection from cruel and inhuman treatment and safety from abuse and violence have been recognized by the SC and various High Courts and have been codified into the PWD Act in the following manner:</p> <ul style="list-style-type: none"> ▪ The government is required to ensure that persons with disabilities are able to exercise their fundamental right of equality and life of dignity at par with others. The government must provide a suitable environment for persons with disabilities to utilize their potential to ensure that no person with disability is deprived of his or her personal liberty only on the ground of disability. ▪ The government is required to ensure that women and children with disabilities are able to exercise their fundamental right of equality and life of dignity at par with others and provide adequate support to all children with disabilities. ▪ In order to prevent any torture, cruel, inhuman or degrading treatment, the PWD Act states that no person with disability shall be a subject of any research without, free and informed consent obtained through accessible modes, means and formats of communication; and prior permission of a Committee for Research on Disability constituted by the appropriate government. ▪ The government is required to take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents and take steps for avoiding such incidents and prescribe the procedure for its reporting, to rescue, protect and rehabilitate victims of such incidents and to create awareness and make available information among the public. ▪ The government is required to ensure equal protection and safety of persons with disabilities in situations of risk, armed conflict, humanitarian emergencies and natural disasters and further directs the Disaster Management Authorities at the district, state and national levels to ensure safety of persons with disabilities. ▪ The PWD Act states that no child with disability shall be separated from his or her parents on the grounds of disability and further provides for a mechanism for care of a child with disability in the event the parents are unable to take care of the child. ▪ The PWD Act recognizes the reproductive rights of persons with disabilities encompassed under Article 21 and mandates the government to ensure that persons with disabilities have access to appropriate information regarding reproductive and family planning. Further, it also expressly provides that no person with disability shall be subject to any medical procedure which leads to infertility without his or her free and informed consent.

Question		Answer
		<ul style="list-style-type: none"> ▪ The Election Commission of India and the State Election Commissions are required to ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them. ▪ The government (both at the central and state levels) are required to make provisions to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally. Further, the government should ensure that (a) all public documents are in accessible formats, (b) ensure that the filing departments are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats, and (c) make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communication.
11.	Are fundamental human rights enforceable?	<p>Article 32 guarantees the right to move the SC by appropriate proceedings for the enforcement of the rights conferred in Part III, that is, the fundamental rights. The SC has the power to issue directions or order or writs, including the writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari, as appropriate, for this purpose. Further, it has been held in <i>M.C Mehta v. Union of India, (1987) 1 SCC 395</i>, that SC's power under Article 32 is not confined only to the issuance of writs but may also extend to issue any directions or orders appropriate for the enforcement of any of the fundamental rights. The court's power is not in respect of preventing the violation of a fundamental right, but it can also extend to providing relief against a breach of a fundamental right already committed.</p> <p>It has also been held in <i>People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235</i>, that where a fundamental right is also available against a private individual, such as under Articles 17, 23, and 24, the SC can also be approached for an appropriate remedy against the violation of such a right by private individuals.</p> <p>In addition to the remedy provided before the SC, a Writ Petition can also be filed before a High Court under Article 226 of the Constitution.</p>

SECTION B | LEGAL CAPACITY

Question		Answer
1.	Who can enter into contracts?	As per the Indian Contract Act 1872, a person has the capacity to enter into contracts if he / she has attained the age of majority and if he / she is of sound mind and not disqualified from contracting under any applicable law. The law further explains that a person is of sound mind if, at the time of entering into a contract, he / she is capable of understanding it and forming a rational judgment as regards the effect of the contract on his / her interests.
2.	Will a person with disability be barred from entering into contracts?	It cannot be said that every disability would prevent a person from being legally capable of entering into contracts. For instance, a person's locomotor disability will not prevent him / her from executing a contract. Even where a person is mentally ill, the MH Act provides that the same should not be automatically taken to mean that the person is of unsound mind and hence legally incapable to enter into contracts.
3.	What is the standard of proof courts take into consideration to prove unsoundness of mind?	<p>The courts, in cases such as <i>Inder Singh and Others v. Parmeshwardhari Singh, AIR 1957 Pat 491</i> have held that there is a presumption in favour of sanity, and the person who claims unsoundness of mind of an individual is required to prove it sufficiently before the court that the individual was incapable of understanding business and forming a rational judgment in this regard.</p> <p>For this purpose, as was held in <i>Sona Bala Bora v. Jyotirindra Bhattacharjee, (2005) 4 SCC 501</i> courts will look not only at medical evidence but also at evidence of the general conduct of the concerned individual to ascertain whether such conduct can or cannot be explained on a reasonable basis.</p>
4.	Are there any specific rights given to persons with disabilities who enter into contracts?	<p>Yes.</p> <p>Under the PWD Act, specific rights concerning legal capacity have been recognised in favour of persons with disabilities. For instance, responsibility is placed on the appropriate government to ensure that persons with disabilities have the "right, equally with others, to own or inherit property, movable or immovable, control their financial affairs and have access to bank loans, mortgages and other forms of financial credit". The appropriate governments must also ensure that persons with disabilities enjoy the same legal capacity and recognition before the law as is enjoyed by any other person.</p>
5.	If a person with disability cannot enter into contracts, who maintains such persons or takes the decisions for them?	<p>The PWD Act provides that if a district court or any other competent authority has determined that a person with disability is unable to take legally binding decisions, the said person may be provided with the support of a 'limited guardian' to take the prescribed decisions on his / her behalf in consultation with him / her.</p> <p>The statute explains the concept of 'limited guardianship' by stating that the same is a system that envisages a joint decision-making process wherein there is mutual understanding and trust between the guardian and the person with disability, which system will operate for a defined duration and decision and in accordance with the will of the person with disability.</p>

	Question	Answer
		<p>It may be noted that before the PWD Act was implemented, another statute was enacted by Parliament for specific kinds of disabilities, i.e., the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999. This statute envisages appointment of a guardian for a person with disability falling in the protected category (i.e., a person suffering from autism, cerebral palsy, mental retardation, or a combination of two or more of such conditions) and provides that such guardian would either have the care of such person with disability and his / her property or be responsible for the maintenance of such person with disability.</p>

SECTION C | EDUCATION

Question	Answer
1. Do persons with disabilities have any rights in relation to education under Indian law?	<p>Under Article 21-A of the Constitution, every child (including any child with disabilities) between the ages of 6 and 14 years has the right to free and compulsory education. This right is also enumerated in the Right to Education Act, 2013 (“RTE Act”).</p> <p>Under the RTE Act, a child with disability shall have the same rights to pursue free and compulsory elementary education until such child is 18 years of age, access to books and other study materials and scholarships and other facilities. Additionally, a child with multiple disabilities also has the option to be home-schooled.</p> <p>In the context of the RTE Act, disability refers to: (i) blindness;(ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness; (viii) any conditions relating to autism, cerebral palsy, mental retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability. “Severe disability” means disability with 80% or more of one or more multiple disabilities. “Multiple disability” means a combination of two or more of the disabilities set out under (i) to (vii) above.</p>
2. Do persons with disabilities have any rights in relation to education under international treaties?	<p>Yes.</p> <p>For instance, India is a signatory to, the Convention which provides for the right to “inclusive education” in Article 24 in order to ensure full development of the potential, sense of dignity and self-worth, personality, talents and creativity, as well as mental and physical abilities of persons with disabilities to their fullest potential and to enable such persons to participate effectively in a free society. To this end, states have a duty to ensure that no person with disability is excluded from the education system, provide for access to an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live, and also provide for reasonable accommodation and support to such persons wherever required.</p>
3. How has ‘inclusive education’ been defined?	<p>Inclusive education means and includes any system wherein (a) students with and without disability are able to learn together and (b) the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.</p> <p>The United Nations, in its comments on Article 24 of the Convention, has described inclusive education as a fundamental human right, which caters to the well-being of all students, respects their inherent dignity and autonomy, acknowledges individual requirements and ability to effectively be included in and contribute to society.</p>
4. What are the specific obligations of the government to promote ‘inclusive education’?	<p>The Government has a duty to establish primary schools in every neighbourhood under the RTE Act.</p> <p>Additionally, the Government has a duty to undertake specific measures to promote inclusive education which includes the following:</p>

Question	Answer
	<div data-bbox="576 266 1386 786" style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">LOGISTICS AND FINANCIAL SUPPORT</p> <ul style="list-style-type: none"> ▪ providing books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of 18 years ▪ providing scholarships to students with benchmark disabilities ▪ promoting the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language ▪ support educational institutions at all levels of school education </div> <div data-bbox="576 822 1386 1008" style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;">CAPACITY BUILDING</p> <ul style="list-style-type: none"> ▪ establishing teacher training institutions ▪ training teachers who are qualified in sign language, Braille and teaching children with intellectual disabilities </div> <div data-bbox="576 1043 1386 1229" style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;">SURVEYS AND RESEARCH</p> <ul style="list-style-type: none"> ▪ conducting surveys every 5 years to (i) identify school going children; (ii) ascertaining special needs ▪ promoting research to improve learning </div>
5.	<p>Does legislation impose duties on private employers / private educational institutions to facilitate access for persons with disabilities?</p> <p>While there are no specific duties imposed on educational institutions as such under the PWD Act, the Government is under a duty to ensure that educational institutions funded or recognised by them:</p> <ul style="list-style-type: none"> ▪ admit students with disabilities without discrimination and provide education and opportunities for sports and recreation activities equally with other students; ▪ make building, campus and various facilities accessible; ▪ provide reasonable accommodation according to the individual's requirements; ▪ provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion; ▪ ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication; ▪ detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;

	Question	Answer
		<ul style="list-style-type: none"> ▪ monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability; and ▪ provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.
6.	<p>Are there obligations on schools (kindergarten to Class XII) in respect of inclusive education?</p>	<p>Yes.</p> <p>Under the RTE Act, all schools are required to reserve 25% of seats available for admission in Class I for children belonging to disadvantaged groups, which includes children with disabilities.</p> <p>The Central Board of Secondary Education requires all schools affiliated with the board to undertake certain steps to ensure inclusive education, which can be categorised into the following:</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p style="text-align: center;">LOGISTICS</p> <ul style="list-style-type: none"> ▪ modifying existing infrastructure to meet needs of children with disabilities ▪ ensuring physical facilities in schools (including hostels) to be barrier free and accessible for all students ▪ appointing special educators to ensure quality education of all children with special needs ▪ permitting adults to sit in class with children with disabilities if requested by a parent </div> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">ACADEMIC</p> <ul style="list-style-type: none"> ▪ students with disabilities are exempted from learning a third language from classes VI to VIII ▪ students with disabilities may opt for only 1 compulsory language in Class X examinations ▪ in Class XII, students with disabilities can be given a separate question paper in lieu of practical component ▪ scribe facility is permitted during examinations ▪ candidates in school examinations are eligible for additional time ▪ full list can be accessed here. </div>
7.	<p>What schemes has the Government implemented to meet the goals of “inclusive education”</p>	<p>A few examples of schemes implemented by the Government have been set out below:</p> <ul style="list-style-type: none"> ▪ Sarva Shiksha Abhiyan, now subsumed under the Samagra Shiksha Abhiyan: The objective was to focus on the needs of children with special needs to encourage them to take admission in primary schools. Under the scheme, the Government supports, through financial and

	Question	Answer
		<p>other means, activities such as identification and assessment of children with special needs, provision of aids, appliances, corrective surgeries, Braille books, large print books and uniforms, therapeutic services, etc. The scheme also provides financial assistance towards the salaries of teachers working with children with special needs and provides stipends of INR 3,500 per student per annum.</p> <ul style="list-style-type: none"> ▪ Inclusive Education for Disabled at Secondary Stage (IEDSS): This scheme has been set up to encourage children with special needs who have completed their primary schooling to take up secondary schooling. Under the scheme, assistance of INR 3,000 per child per annum for specified items such as identification and assessment of children with disabilities, provision of aid kits, ensuring access to learning material etc. is provided to states / union territories. ▪ Higher Education for Persons with Special Needs (HEPSN): The HEPSN scheme aims to promote higher education learning experiences for persons with disabilities. To this end, the University Grants Commission (“UGC”) provides financial assistance of up to INR 10,00,000 per annum to universities and up to INR 5,00,000 per annum to colleges for improving accessibility, purchase of equipment to enrich learning, etc.
8.	What scholarships are available for persons with disabilities?	<p>The government has set up various scholarship schemes such as the umbrella scholarship scheme for persons with disabilities and the national overseas scholarship for students with disabilities.</p> <p>Further, the UGC has also framed national fellowships of up to INR 28,000 per month for persons with disabilities which are available for students with disabilities who are covered under the PWD Act, 1995.</p> <p>The All India Council for Technical Education (“AICTE”) has also implemented various scholarships for students with disabilities which can be accessed on its website (https://scholarships.gov.in/)</p>
9.	Is there a requirement for reservation for persons with disabilities in higher education?	<p>Yes, all government institutions of higher education and other higher education institutions receiving aid from the government are required to reserve at least 5% seats for persons with benchmark disabilities and such persons should also be given an upper age relaxation of 5 years for admission in such institutions. In the case of <i>Purswani Ashutosh v. Union of India and Ors, AIR 2018 SC 3999</i>, the SC clarified that the scope of “higher education institutions” also includes technical institutions (such as medical institutions, engineering colleges etc) which are governed by specialist regulatory bodies.</p>
10.	What accessibility measures have been provided for students with disabilities to write competitive examinations?	<p>The central government has laid down guidelines for conducting written examinations for persons with benchmark disabilities which states the following:</p> <ul style="list-style-type: none"> ▪ a scribe / reader / lab assistant should be allowed for a person with disability who has a limitation in handwriting speed, or who has locomotor disability or suffers from cerebral palsy or blindness, if so

	Question	Answer
		<p>desired by the person. In case of other persons with disabilities not mentioned above, a scribe / reader / lab assistant can be allowed upon submission of a certificate which can be accessed here. A person with disability should also have the right to bring their own scribe / reader / lab assistant.</p> <ul style="list-style-type: none"> ▪ persons with disabilities should have the flexibility to choose the mode of writing the examination (Braille, through a computer, having large prints, recording answers etc.) and should have the right to inspect any computer systems where the answers are to be written. ▪ the disability certificate issued by a competent medical authority should be accepted across the country. ▪ if requested, extra time of minimum 20 minutes per hour for candidates availing scribe facility, or 1 hour for a 3-hour examination (proportionately reduced if less than 3 hours) for persons not availing scribe facility should be granted. ▪ use of assistive devices should be permitted, alternative options for visually impaired persons and proper seating arrangements (such as ground floor seating if required) should be provided.
11.	<p>What provisions have been made for promoting education for adults with disabilities?</p>	<p>The UGC and the AICTE have implemented various schemes to promote the education of persons with disabilities in higher education institutions and technical institutions across India. These include the HEPSN, providing financial assistance to universities for teacher training in B.Ed and M.Ed degree programmes and assisting universities in setting up special units for persons with disabilities in universities / colleges.</p> <p>Additionally, various scholarships are available for persons with disabilities in higher education. For further details please refer to Question 8.</p>

SECTION D | LIVELIHOOD AND EMPLOYMENT

Question	Answer
1. What are the main legislations that crystallize the rights of persons with disabilities in respect of employment?	<p>The legislations and schemes that aim at providing equal opportunities to the PWDs in terms of employment and social security are the National Policy and the PWD Act.</p> <p>Specifically, the National Policy lays down schemes for employment of persons with disabilities in government institutions, private sectors and for self-employment and also lays down steps to be taken for employment of persons with disabilities.</p> <p>The PWD Act, apart from retaining job reservations both in the public and private sectors, also provides for the following:</p> <ul style="list-style-type: none"> ▪ the central and state government authorities are required to provide schemes to ensure that at least 5% of the total workforce of all private establishments comprises persons with disabilities. A private establishment includes any company, firm, cooperative or other society, associations, trust, agency, institution, organisation, union, factory or such other establishment as the appropriate government may, by notification, specify; ▪ discrimination in employment by the government is prohibited; ▪ all establishments (including private establishments) are required to frame an Equal Opportunity Policy (“EOP”) and appoint a Grievance Redressal Officer to address issues in this area; ▪ termination or reduction of rank of an employee who has acquired a disability is not permissible; ▪ there is a horizontal reservation of 4% in government jobs and incentive-based reservation of jobs in the private sector; and ▪ to bolster employment of persons with disabilities in rural areas, 5% of the budget in the poverty reduction schemes should be earmarked for this purpose, with priority given to women with benchmark disabilities.
2. Do Indian labour laws provide for specific welfare provisions for persons with disabilities?	<p>Yes. A brief summary is given below:</p> <ul style="list-style-type: none"> ▪ Employees’ State Insurance Act, 1948: Periodical payment is required to be made to an insured person with a disability as a result of an employment injury sustained as an employee. Further, payment of insurance is required to be made to an insured employee in the event of his or her temporary or permanent disablement due to injury caused in the course of employment. ▪ Payment of Gratuity Act, 1972: Gratuity shall be payable to an employee on the termination of his employment, on his death or disablement due to accident or disease, if he has rendered continuous service of 5 years. ▪ Industrial Disputes Act, 1948: An employer cannot alter conditions of service during any proceeding for settlement of an industrial dispute.

	Question	Answer
		<p>This protection applies to a workman with a disability, even where the disability is acquired during the course of employment and an industrial dispute is raised with regard to termination or retrenchment.</p> <ul style="list-style-type: none"> ▪ All-India Services (Special Disability Leave) Regulations, 1957: Special disability leave may be granted to a member of the service who suffers (a disability) as a result of risk of office or special risk of office. ▪ The Central Civil Services (Pension) Rules, 1972 and the Central Civil Services (Extraordinary Pension) Rules, 1939, Railway Services (Extraordinary Pension) Rules, 1993: These provide for disability pension on account of disablement of a government servant.
3.	Does legislation impose duties on private employers / private educational institutions to facilitate access for persons with disabilities?	<p>While there are no obligations on private establishments to reserve any jobs for persons with disabilities, certain other obligations have been imposed on such establishments.</p> <p>The PWD Act makes it illegal for any establishment to discriminate against a person on the grounds of disability unless it can be proved that the discriminating act in question is a proportionate means to a legitimate objective. For any such act of discrimination, the “head” of the establishment would be made responsible, and it is the duty of such “head” to ensure that the provisions are not misused to the detriment of persons with disabilities. Private establishments should also appoint a liaison officer to look after recruitment of persons with disabilities including the provisions and amenities for employees with disabilities and are also required to frame an EOP.</p>
4.	What should an EOP include?	<p>An EOP must <i>inter alia</i> contain:</p> <ul style="list-style-type: none"> ▪ details regarding amenities and facilities put in place for persons with disabilities; ▪ lists of posts identified for such persons; ▪ details of training, promotion, allotment of accommodation and provision of assistive devices and barrier free accessibility for such persons; and ▪ details of the liaison officer / grievance redressal officer.
5.	What schemes have been implemented by the government for promoting employment opportunities for the persons with disabilities in public and private sector enterprises?	<p>The government has implemented various schemes to promote employment of persons with disabilities. These include:</p> <ul style="list-style-type: none"> ▪ Scheme for Implementation of Right of Persons with Disabilities (“SIPDA”): This been implemented for providing financial assistance for undertaking various activities outlined in the PWD Act. The various components of this scheme include creation of barrier free environment, the national action plan for skill training, the accessible India campaign, etc. ▪ Employee Provident Fund and Employee State Insurance Schemes: These were launched to encourage employment of persons with disabilities in the private sector.

	Question	Answer
		<ul style="list-style-type: none"> ▪ National Action Plan: This provides for skill development of persons with disabilities under the SIPDA of the Department of Empowerment of Persons with Disabilities. Vocational training courses are offered by the government under this scheme to provide skill development training for persons with benchmark disabilities. 30% of total intake is to be reserved for women. Skill training programs under this scheme are provided by a network of training partners empanelled by the government and may include NGOs, private institutes and public / government sector organisations. The scheme also provides for financial assistance to the trainees with disabilities at the start of the program and also towards the cost for personal assistive devices for or during the training program and after the conclusion of the training program. ▪ National Centre for the Promotion of Employment of Disabled People (“NCPEDP”): The NCPEDP promotes equality for persons with disabilities, through education, communication, appropriate training and a barrier-free environment for gainful employment. The objective of this organization is the promotion of employment in organized and unorganized sectors. ▪ The Ability Foundation: This foundation offers a range of services to employers and jobseekers and works with qualified persons with disabilities to enhance their employment opportunities in accordance with the current market needs. It also offers employment oriented soft skills through the National Centre for Information & Communication Technology which imparts computer education and offers holistic and comprehensive job-oriented training to graduates with disabilities in spoken English, mathematics and aptitude tests, personality development, techniques of communication and facing interviews. ▪ Enable India: This works towards making persons with disabilities a part of every corporate hiring plan thereby building awareness for the creation of a supportive environment.
6.	Are there any schemes in operation that encourage self-employment for persons with disabilities?	<p>There are several schemes that have been floated by the Government of India to support and encourage building an ecosystem that nurtures self-employed person with disabilities:</p> <ul style="list-style-type: none"> ▪ National Handicapped Finance and Development Corporation: This has been set up by the Ministry of Social Justice & Empowerment to promote self-employment opportunities for the persons with disabilities. It provides loans at low rates (at simple interest) to persons with disabilities for pursuing general / professional / technical education for training at graduate and higher levels as well as assistance in upgrading the skills of such persons. ▪ Divyangjan Swavalamban Yojana: This scheme is aimed at providing concessional credit for the benefit of persons with disabilities in order to facilitate education, vocational or skill development training or any economic activity started for the purpose of generating income. Any Indian above the age of 18, or 14 in case of mental retardation having

Question	Answer
	<p>40 % or more disability can take advantage of the benefits of this scheme.</p> <ul style="list-style-type: none"> <li data-bbox="587 327 1401 465">▪ Vishesh Microfinance Yojana: The objective of this is to provide prompt and need based finance at reasonable rate of interest to pursue small/micro business and developmental activities such as the projects not exceeding unit cost of Rs. 60,000. <li data-bbox="587 495 1401 707">▪ Association of Rehabilitation under National Trust initiative of Marketing: This is a marketing federation set up by the National Trust to market products made by persons with disabilities. Its mission is to facilitate enterprises that can offer products and services to cater to the domestic and overseas markets while ensuring self-sustenance and equality especially for persons with developmental disabilities.

SECTION E | SOCIAL SECURITY AND HEALTHCARE

Question		Answer
1.	Does the government have any obligations in relation to ensuring social security for persons with disabilities?	<p>Yes.</p> <p>The government is obligated to formulate schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community. The quantum of assistance which persons with disabilities are entitled to under such schemes is 25% higher than what should be available to other persons under such schemes.</p>
2.	What are the obligations of the government in relation to healthcare facilities for persons with disabilities?	<p>The obligations of the government in relation to providing healthcare facilities to persons with disabilities can be classified as follows:</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="background-color: #FFD700; padding: 5px; display: inline-block;">ENSURING ACCESS TO HEALTHCARE</p> <ul style="list-style-type: none"> ▪ providing free healthcare, especially in rural areas ▪ ensuring barrier-free access in all parts of government and private hospitals and other healthcare institutions and centres ▪ ensuring priority in treatment ▪ providing essential medical facilities ▪ ensuring sexual and reproductive healthcare for women with disabilities </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="background-color: #90EE90; padding: 5px; display: inline-block;">AWARENESS CAMPAIGNS</p> <ul style="list-style-type: none"> ▪ educating the public through the pre-schools, schools, primary health centres, village level workers etc. ▪ creating awareness through television and media campaigns </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="background-color: #FFA07A; padding: 5px; display: inline-block;">RESEARCH AND PREVENTION</p> <ul style="list-style-type: none"> ▪ undertaking surveys, investigations and research concerning the cause of occurrence of disabilities ▪ promoting methods for prevention of disabilities ▪ screening children for identifying 'at-risk' cases ▪ taking measures for pre-natal, perinatal and post-natal care of mother and child </div> <div style="border: 1px solid black; padding: 5px;"> <p style="background-color: #ADD8E6; padding: 5px; display: inline-block;">REHABILITATION</p> <ul style="list-style-type: none"> ▪ undertaking or causing to be undertaken, services and programmes of rehabilitation </div>
3.	What schemes has the government	<p>Examples of schemes implemented by the government to this end are as follows:</p>

Question	Answer
<p>established to this end?</p>	<ul style="list-style-type: none"> <li data-bbox="576 237 1391 342">▪ Niramaya Health Insurance: This scheme aims at providing affordable healthcare insurance to persons with disabilities. The maximum health insurance cover provided is INR 1 lakh. <li data-bbox="576 365 1391 622">▪ Deendayal Disabled Rehabilitation Scheme: The objective of this scheme is to create an enabling environment to ensure equal opportunities, equity, social justice and empowerment of persons with disabilities. Under this scheme, financial assistance is provided to voluntary organisations which provide rehabilitation of persons with disabilities, including early intervention, development of daily living skills, education and training. <li data-bbox="576 645 1391 750">▪ District Rehabilitation Centres: The government has also established 325 district rehabilitation centres for persons with disabilities across the country.

SECTION F | TRANSPORT AND MOVEMENT

Question		Answer
1.	Does the domestic legislation of India impose duties on the government to ensure access of persons with disabilities to transportation?	<p>Yes.</p> <p>The PWD Act mandates that the appropriate government must take suitable measures to provide facilities for persons with disabilities to provide greater access to transport.</p> <p>Such facilities should be present in all bus stops, railway stations and airports. Additionally, standards for accessibility must be met in all parking spaces, toilets, ticketing counters and ticketing machines.</p>
2.	Would movement on roads be made more accessible for persons with disabilities?	<p>Yes.</p> <p>The PWD Act mandates that the appropriate government must make roads accessible to improve mobility of persons with disabilities.</p>
3.	Would the government develop schemes and programs to promote transport and mobility of persons with disabilities?	<p>Yes.</p> <p>The PWD Act mandates that the appropriate government must develop schemes to promote the personal mobility of persons with disabilities at an affordable cost to provide for incentives and concessions, retrofitting of vehicles and personal mobility assistance.</p>
4.	Are there any special incentives for children with disabilities?	<p>Yes.</p> <p>The PWD Act mandates that the appropriate government and local authorities must endeavour that all educational institutions funded or recognized by them must provide transportation facilities to both children with disabilities and the attendants of children of disabilities in case the child has high support needs.</p>
5.	Does any international instrument speak regarding facilitating personal mobility and transport?	<p>Yes.</p> <p>Article 20 of the Convention expressly mandates that signatory states must take effective measures to ensure personal liberty with the greatest possible independence for persons with disabilities.</p>
6.	Has the government framed any scheme as mandated by the PWD Act to ensure access of persons with disabilities to transportation?	<p>Under the PWD Rules, the bus body code for transportation system must be complied with.</p> <p>Further, the Ministry of Urban Development has published the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disability and Elderly Persons, 2016. Under the said guidelines, detailed guidance is provided regarding building premises (doors, windows, handrail, toilets, signage, parking etc), level changes (ramps, stairs, lifts etc), alighting and boarding areas (car parks, bus stops, railway stations etc), transport and road planning etc.</p>

	Question	Answer
7.	Has the Indian judiciary pronounced any judgement in regard to transport and movement of persons with disabilities?	The SC in <i>Javed Abidi vs. Union of India and Others</i> heard the plea seeking 'ambulifts' to take orthopedic disable persons to take them from the ground level onto the aircraft. While providing the sought relief, the SC emphatically stated as follows: <i>"to create a barrier free environment for persons with disabilities and to make special provision for the integration of persons with disabilities into the social mainstream apart from the protection of rights, provisions of medical care, education, training, employment and rehabilitation are some of the prime objectives of the Act."</i>

SECTION G | CULTURE AND RECREATION

	Question	Answer
1.	Does the domestic legislation of India impose duties on the government to ensure facilitation of recreational activities, and preserving culture for persons with disabilities?	<p>The PWD Act mandates that the appropriate government and the local authorities must take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with others.</p> <p>In this regard, the measures to be taken include the following:</p> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">LOGISTICS</p> <ul style="list-style-type: none"> ▪ making art accessible to persons with disabilities ▪ facilitating, supporting and sponsoring artists and writers with disability to pursue their interests and talents ▪ redesigning courses in cultural and arts subjects to enable participation and access for persons with disabilities ▪ developing technology, assistive devices and equipments to facilitate access and inclusion for persons with disabilities in recreational activities ▪ facilitating participation in scouting, dancing, art classes, outdoor camps and adventure activities ▪ ensuring that persons with hearing impairment can have access to television programmes with sign language interpretation or sub-titles </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="text-align: center;">AWARENESS</p> <ul style="list-style-type: none"> ▪ establishing a disability history museum which chronicles and interprets the historical experience of persons with disabilities </div>
2.	Does the domestic legislation of India impose duties on the government to ensure promotion of sports for persons with disabilities?	<p>The PWD Act mandates that the appropriate government and the local authorities must take measures to ensure effective participation in sporting activities of the persons with disabilities.</p> <p>Further, sports authorities must accord due recognition to the right of persons with disabilities. Sports authorities must create schemes and programmes for promotion and development of sporting talents.</p>
3.	What measures does the PWD Act mandate the government to undertake for promoting sporting activities for the	<p>The PWD Act mandates that both the appropriate government and the local authorities must undertake measures to the following measures</p> <div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">LOGISTICS</p> <ul style="list-style-type: none"> ▪ redesign and support infrastructure facilities ▪ develop technology to enhance potential, talent, capacity and ability in sporting activities of all persons with disabilities </div>

Question	Answer
<p>persons with disabilities?</p>	<div data-bbox="571 230 834 360" style="background-color: #FFD700; width: 165px; height: 58px;"></div> <ul style="list-style-type: none"> ▪ provide multi-sensory essentials and features in all sporting activities to ensure effective participation <div data-bbox="571 421 834 593" style="background-color: #90EE90; width: 165px; height: 77px; display: flex; align-items: center; justify-content: center;"> <p>ACADEMIC DEVELOPMENT</p> </div> <ul style="list-style-type: none"> ▪ Restructure courses and programmes to ensure access, inclusion and participation of persons with disabilities in all sporting activities <div data-bbox="571 654 834 784" style="background-color: #FFA07A; width: 165px; height: 58px; display: flex; align-items: center; justify-content: center;"> <p>FINANCIAL SUPPORT</p> </div> <ul style="list-style-type: none"> ▪ Allocate funds for development of state of art sport facilities for training of persons with disabilities

SECTION H | ACCESS TO TECHNOLOGY AND COMMUNICATIVE TECHNOLOGY

	Question	Answer
1.	Does the domestic legislation of India impose duties on the government to ensure access to technology and communicative technology for persons with disabilities?	<p>The PWD Act mandates that the appropriate government must take measures to ensure that</p> <ul style="list-style-type: none"> ▪ all content available in audio, print and electronic media are in accessible format; ▪ access to electronic media is enabled through provision of audio description, sign interpretation and close captioning; and ▪ electronic goods and equipment meant for everyday use are available in universal design. <p>Further, the Copyright Act, 1957 enables compulsory licensing for the benefit of the persons with disabilities and also provides fair dealing exemptions for adaption, reproduction, issue of copies or communication to the public of works in accessible formats by any person or any organization working for the benefit of any person with disability.</p>
2.	Has the government framed any scheme as mandated by any law to ensure access to technology and communicative technology for persons with disabilities?	<p>Under the PWD Rules, website standards must comply with the guidelines for Indian government websites as adopted by Department of Administrative Reforms and Public Grievances.</p> <p>Further, documents present on the website must implement Electronic Publication (ePUB) or Optical Character Reader (OCR) based PDF format.</p>
3.	Does any international instrument speak regarding access to technology and communicative technology for persons with disabilities?	<p>The Convention expressly mandates that signatory states must take effective measures to ensure access to technology and communicative technology, assistive technology for mobility for persons with disabilities.</p>

SECTION I | MENTAL HEALTH

Question	Answer
1. What are the rights of persons with mental illness under the MH Act?	<p>The MH Act has statutorily recognised following rights for persons with mental illness:</p> <ul style="list-style-type: none"> ▪ Right to access mental health care; ▪ Right to community living; ▪ Right to protection from cruel, inhuman and degrading treatment; ▪ Right to equality and non- discrimination; ▪ Right to information; ▪ Right to confidentiality; ▪ Restriction on release of information in respect of mental illness; ▪ Right to access medical records; ▪ Right to personal contacts and communication; ▪ Right to legal aid; ▪ Right to make complaints about deficiencies in provision of services ▪ Right to make an advance directive; ▪ Right not to be treated under prohibited treatment.
2. What does right to access to healthcare entail?	<p>Right to access healthcare means ability of a person with mental illness to be able to access and avail mental health services affordable cost, of good quality, available in sufficient quantity, accessible geographically, without discrimination on the basis of gender, sex, sexual orientation, religion, culture, caste, social or political beliefs, class, disability or any other basis and provided in a manner that is acceptable to persons with mental illness and their families and care-givers.</p> <p>Persons with mental illness living below the poverty line or persons with mental illness who are homeless or destitute shall have the right to avail the mental health care services and facilities free of cost and no financial cost, whatsoever, in government-run or government funded establishments.</p>
3. What are prohibited procedures?	<p>The following are prohibited procedures:</p> <ul style="list-style-type: none"> ▪ electroconvulsive therapy is prohibited for children, and even otherwise performance of electroconvulsive therapy is prohibited without administration of precautions such as using muscle relaxants and anesthesia; ▪ sterilisation of men or women, when such sterilisation is intended as a treatment for mental illness; ▪ chained in any manner or form whatever.
4. Is mental illness the same as mental retardation?	No.

	Question	Answer
		<p>The MH Act draws a distinction between mental illness and mental retardation and does not regard mental retardation as mental illness.</p> <p>Mental illness is defined as a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment or the ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs.</p> <p>Mental retardation, on the other hand, is defined to be a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence.</p> <p>The MH Act categorically states that determination of a person’s mental illness shall not imply or be taken to mean that such person is of unsound mind, unless a competent court has declared such person to be of unsound mind. It also recognises their right to make mental healthcare and treatment decisions. The key element enabling persons with mental illness to make such decisions is ‘mental capacity’. As per the MH Act, this key element is present in persons with mental illness which allows them to take decisions and they are considered as not being incapacitated in any form and manner. Mental capacity is defined as a person’s ability to understand, retain, and weigh up information relevant to a decision to arrive at a choice, and then to communicate that choice.</p>
5.	What are the key elements of the MH Act?	<p>The ability to pass advanced directive and nominate representatives is one of the most noble provisions under the MH Act, which recognises the autonomy of the persons with mental illness.</p> <ul style="list-style-type: none"> ▪ Advanced directive empowers a person with mental illnesses to make a written statement on the kind of treatment for the mental illness. It may be both a positive directive stating the way the person wishes to be cared for and treated for a mental illness, as well as negative directive stating the way the person wishes not to be cared for and treated for a mental illness. Such directive shall be vetted by a medical practitioner. ▪ Under the MH Act, every person with mental illness can nominate a representative who is tasked with the primary duty of taking decisions which are in the best interests of such person. Such representative has the right to assert rights of the person with mental illness and among others seek information on diagnosis and treatment to provide adequate support to the person with mental illness, give or withhold consent on behalf of the person with mental illness, etc.
6.	What are the provisions relating to attempt to suicide by persons with mental illness under the MH Act?	<p>The MH Act has decriminalised the attempt to suicide by person with mental illness, which is a criminal act under the IPC. Further, a duty is imposed on the government to rehabilitate such persons with mental illness who has attempted suicide to ensure that there is no recurrence of attempt to suicide. The MH Act also outlines the procedure and process for admission, treatment, and subsequent discharge of mentally ill persons.</p>

FINAL THOUGHTS – A VISION FOR ALL

The succinct and elaborate discussion in this handbook shows us the enormous progress we have made, as a society, as a community, as a legally conscious group, as a country and as an individual. We saw how, from the Constitution, sprouted a flurry of human rights which transformed into our constitutional and fundamental rights. Advancement of time and changing needs demanded a further revision of the law, which in turn, spectacularly culminated into a special legislation – PWD Act, 1995 and eventually, the PWD Act. With the conjoined efforts of all concerned and conscious, we have traversed a long path.

The journey, however, will continue where we keep learning from the past and drawing motivation from the present and inspiration from a future, which we envisage as a world where there is equality and equitable grant of rights and resources. A close and critical study of the laws affecting persons with disabilities reveals spaces requiring further refinement and gap bridging. Some of the inconsistencies / suggestions are set out below:

Legal capacity: We need a further amendment to the PWD Act providing for – express rights concerning the legal capacity of persons with disabilities and clarifying the level of decision-making capacity required to enjoy such rights; clarity regarding the interplay of the PWD Act and other important laws regarding guardianship of persons with disabilities (such as the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999).

MH Act: While it provides for persons with mental illness to pass advanced directive to direct future care, the MH Act does not provide for the manner or guidance on procedure for the person with mental illness to prepare it. The MH Act ought to provide specifics for composition, tenure and duties of an expert committee, for the committee to fulfil its part as provided in the PWD Act.

Education: The RTE Act should be amended and brought in line with the current framework for persons with disabilities. For instance, the definition of children with disabilities under the RTE Act still refers to the PWD Act, 1995 which has now been replaced by the PWD Act. This fundamental inconsistency has the potential to, and in fact does in practice, disrupt the entire purpose for which the PWD Act and the RTE Act, as far as it affects the right to education of a person with disabilities is concerned, were brought into force. Notably, the PWD Act has expanded the scope of disability to also include mental illness and a wider range of physical disabilities. It is, therefore, unclear whether ‘children with disability’ under the RTE Act will also include the additional disabilities now recognised under the PWD Act. Moreover, there was no concept of ‘inclusive education’ in the PWD Act, 1995 and consequently, in the RTE Act.

Private Establishment Space: The PWD Act itself requires some finer improvisations – better framework of responsibilities of a head of an establishment to ensure non-discrimination in cases of acts not attributable to her / him or over which such head has no control; clarity on whether the requirement of ensuring a percentage of the workforce consists of persons with disabilities in the private sector, is mandatory or merely directory; lack of any notification from the government with respect to the incentives towards the private establishment to ensure such engagement.

Self-Employment: Promotion of self-employment needs more concentrated efforts, which can be achieved through providing vocational education and management training; relaxing norms for funding; tax incentives and exemptions; specific provisions for women with disabilities.

Fundamental Human Rights: Admittedly, one of the most essential of rights requires focussed efforts towards enforcement by the legislature, executive and judiciary; enhanced sensitisation in public and private sector; and augmented awareness of existing laws and rights protected under these laws.

Survey and Census: More focussed survey and census of population with disabilities will help us understand the proportion better which will lead to better allocation of resources for it. Removing various anomalies on our data can lead to better policies and take us closer to our target of more equitable distribution of our resources. This is the single most urgent deduction of our research and this handbook.

We hope that the journey that began with our first ever recognition of our basic rights as humans in 1950 and finally brought us to the PWD Act, continues unabated and uninterrupted with added vigour, compassion and empathic approach and path breaking judgements and laws.

www.ywtc.org
contact.ywtc@gmail.com

KHAITAN & CO

Bangalore

Simal II Floor,
7/1 Ulsoor Road
Bangalore 560 042, India
T: +91 80 2559 7466
F: +91 80 2559 7452
E: bangalore@khaitanco.com
Ref: VMB / 2021

Kolkata (Calcutta)

Emerald House
1B Old Post Office Street
Kolkata 700 001, India
T: +91 33 2248 7000
F: +91 33 2248 7452
E: kolkata@khaitanco.com
Ref: VMB / 2021

Mumbai (Bombay)

One Indiabulls Centre
13th Floor, Tower 1
Mumbai 400 013, India
T: +91 22 6636 5000
F: +91 22 6636 5050
E: mumbai@khaitanco.com
Ref: VMB / 2021

Noida

Max Towers
7th & 8th Floor, Sector 16B
Noida 201301, India
T: +91 120 479 1000
F: +91 120 474 2000
E: delhi@khaitanco.com
Ref: VMB / 2021

Chennai

119/65, First Floor
Dr Radhakrishnan Salai
Mylapore
Chennai 600 004, India
T: +91 44 6188 0100
F: +91 44 6188 0123
E: chennai@khaitanco.com
Ref: VMB / 2021

Singapore

Ocean Financial
Centre
#37-02 10 Collyer
37th Floor Quay
Raffles Place
049315,
Singapore