

Recommendations for Amendment

to

THE PERSONS WITH DISABILITIES

**(Equal Opportunities, protection Of Rights And Full Participation) ACT,
1995**

Submitted by



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| Chapter | Section | Existing Provision | Proposed Amendment | Our Recommendations | Remarks/Statements |
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| | general | none | none | The rider " within the limit of their economic capacity & development " to be deleted from all/every part of the act which mentions it. | The use of this rider allows organizations an excuse (limited economic capacity) to refute responsibility. The rider if at all used, needs to specify the limits of economic capacity (either as a numerical range or clearly describe how the term should be perceived) in order to bring some accountability amongst the organizations using the excuse. |
| | general | none | none | Inclusion to be a criteria for all public spending. | This is a general recommendation and should be incorporated to uplift the spirit of the Act, and to ensure equality and non discrimination from the planning/conceptualization stage of any project which may seek the use of public funding. |
| | general | none | none | All implementable/actionable parts of the act to be amended with deadlines or timeframes within which the implementing agencies must work | This is one of the key areas in which the Act in its present state lacks strength; there is no mention of strict timeframes or deadlines which need to be followed for various actionable parts of the Act, thereby diluting its power. |
| | general | None | none | All implementation (actionable and non actionable) to be enforceable and monitored with strict penalty clauses for non implementation. | This has been observed as another key area where the Act, by not dictating any strict punitive measures in case of non implementation has failed to see adherence. It is highly recommended that for the Act to see successful implementation on the ground, it has to include action to be taken, responsibility, timeframes and accountability, without which the Act only remains as a guideline. |
| I.PRELIMINARY | 2(zzz) | None | None | Accessibility means: A barrier free environment which complies to the National Accessibility Standards | A definition of Accessibility to be added in the set of existing definitions. This definition should clearly state in |

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| | | | | <p>drafted/adopted/specified by the MSJE which may include (but are not limited to) accessibility standards for:</p> <ol style="list-style-type: none"> 1. Built Infrastructure 2. Transport 3. Information 4. Services <p>These standards are to be reviewed and updated (within a specified timeframe) and are applicable universally throughout India.</p> | <p>unambiguous terms what does one mean by accessibility and what standards will it refer to.</p> <p>The proposed National Accessibility Standards must be drafted/adopted by the Ministry for the benefit of standard applicability throughout the country and to remove ambiguity which has been prevalent because of the "open to interpretation" theme followed in certain parts of the Act.</p> |
| I.PRELIMINARY | 2(i) | <p>"disability" means-</p> <ol style="list-style-type: none"> (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment ; (v) locomotor disability ; (vi) mental retardation; (vii) mental illness; | <p>"disability" means a physical or mental impairment, which has a substantial and long-term adverse effect on the ability of a person to carry out normal day-to-day activities and it includes –</p> <ol style="list-style-type: none"> (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment ; (v) locomotor disability ; (vi) mental retardation; (vii) mental illness; | <p>"disability" means a physical or mental impairment, which has a substantial and long-term adverse effect on the ability of a person to carry out normal day-to-day activities and it includes (but is not restricted to) –</p> <ol style="list-style-type: none"> (i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment ; (v) locomotor disability ; (vi) mental retardation; (vii) mental illness; | <p>The existing definition defines a finite list of disabilities which completely ignores speech impairments, chronic and progressive illnesses such as HIV/AIDS and cancer which can severely affect activities of daily living, and developmental, cognitive, and intellectual disabilities that are neither mental illnesses nor mental retardation such as learning disabilities</p> <p>The proposed amendment copies language from UK's Disability Discrimination Act (DDA) and says "disability means a physical or mental impairment, which has a substantial and long-term adverse effect on the ability of a person to carry out normal day-to-day activities." But then it again goes on to mention a list of eligible disabilities, which makes the above statement pointless. If the Ministry intends to include such a list, it should say that it "includes but is not restricted to" which will then extend the protections of the Act to the above</p> |

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| | | | (vii) mental illness; | | mentioned excluded disabilities which have been well recognized by international governments and world bodies. |
| V. EDUCATION | 26 (a) | | <p>Reservation in admission in Educational Institutions for Persons with Disabilities.</p> <p>All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for admission for persons with disabilities.</p> | <p>Reservation in admission in Educational Institutions for Persons with Disabilities.</p> <p>All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for admission for persons with disabilities. A disabled candidate who scores above the cut off point will be taken in the non disabled quota if the quota is full. Denial of admission of such candidates will be an offence</p> | <p>It has been observed that in many cases, candidates qualifying for general seats (for which the cut off's are generally higher) are refused admissions on the grounds that the disability quota for that year has been fulfilled, taking refuge in the ambiguity of the reservation statement made under this clause.</p> <p>By appending the recommended text, the Act will ensure that any candidate who fulfills the qualifying requirements set by the institution are not refused admission on the ground of disability quota being full, if there are seats vacant in the general category.</p> |
| V. EDUCATION | 26 (b) | Endeavor to promote the integration of students with disabilities | | Endeavor to promote the integration of students with disabilities in the normal schools, both public and private. | Integration should not be limited to government and government aided schools. This is also in-line with the Sarva Shiksha Abhiyan policy that the government is committed to. |

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| | | in the normal schools; | | | It has come to light on several occasions that private schools continue to flout their responsibilities to disabled children. Therefore the act needs to tighten this loophole and explicitly include 'private schools' in the generic statement. |
| V.EDUCATION | 30 (b) | The removal of architectural barriers from schools, colleges or other institution, imparting vocational and professional training; | | <p>The removal of architectural barriers in conformance to the (proposed) National Accessibility Standards from all schools, colleges or other institution, including those imparting vocational and professional training, both public and private.</p> <p>Where school-bus facilities are provided, the schools must make provisions for accommodating transport needs of disabled students.</p> | <p>Accessible infrastructure is the baseline to promote inclusion but, unfortunately, most schools continue to decline admission to disabled students on the pretext that they lack supporting architectural accommodations.</p> <p>Therefore, it is imperative that the Act explicitly promotes accessible infrastructure, in both private and public schools. It is also important to define what is meant by 'accessibility' as most schools seem to think that they have met their obligations by installing steep un-negotiable ramps.</p> <p>In addition, MSJE should mention clear deadlines and timeframes within which the existing schools must meet the recommended accessibility standards.</p> |
| V.EDUCATION | 31 | All educational institutions shall provide or cause to be provided amanuensis to blind students and students | | <p>The schools must ensure that students with disabilities are given adequate support to perform, specially during exams, on an equal platform with their able bodied peers. The support may include provision of:</p> <ol style="list-style-type: none"> 1. Amanuensis to the vision impaired 2. Extra exam time to those with poor hand dexterity of learning disabilities 3. Assistive writing aids such as | |

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| | | with or low vision | | <p>use of adapted writing aids or computer</p> <p>4. Separate examination room for those with attention deficit disorders</p> | |
| VI.EMPLOYMENT | 31 A | | <p>Non-discrimination in Employment.</p> <p>No persons with disability shall be discriminated against only on the ground of disability.</p> | <p>No person with disability shall be discriminated against only on grounds of disability, inaccessibility of work place or unavailability of assistive aids or any such requirement, that may be required for the person to perform the functions of the position.</p> <p>Or</p> <p>No persons with disability shall be discriminated on the grounds of disability, provided that the person can perform the essential tasks of the position with or without suitable adjustments and reasonable accommodations</p> | |
| VI. EMPLOYMENT | | not less than three per cent. for persons or class of persons with disability of which one per cent. | | <p>Employers, in both public and private sector, shall not discriminate against disabled job seekers or employees.</p> <p>Discrimination in employment terms applies denial (or less favorable treatment) of a job opportunity, promotion, training or other incentives purely on the basis of a person's disability.</p> <p>Government and public sector establishments shall reserve not less than three per cent for persons or class of persons with disability.</p> | <p>Categories of disabled people, outside the 3 categories (i.e. OH, VI, PH), have been excluded from the reservation.</p> <p>Moreover, once the 3% quota is full, employers tend to discriminate against disabled candidates even though these disabled applicants may be more meritorious than their able bodies counterparts.</p> <p>Also there is no requirement for private sector employers not to discriminate against disabled job seekers.</p> |

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| | | <p>each shall be reserved for persons suffering from-</p> <p>(i) Blindness or low vision;</p> <p>(ii) Bearing impairment;</p> <p>(iii) Loco motor disability or cerebral palsy, in the posts identified for each disability</p> | | <p>Where this reservation quota is full, establishments may not discriminate against disabled job seekers who are as meritorious as their able bodied counterparts and these disabled applicants must then be given a fair chance to compete with others in the general job quota.</p> | |
| VI.EMPLOYMENT | 33B | | | <p>Any NGO's applying for grant to the MSJE must have at least 30% of the work force comprising of people with disability.</p> <p>Any service tender advertised by the MSJE shall have a pre-requisite that the applicant must demonstrate proof of their being 'equal opportunity employers'</p> | |
| VI.EMPLOYMENT | 38B | Formulate schemes to provide for:- | | <p>The removal of architectural barriers in conformance to the (proposed) National Accessibility Standards from government, public and private</p> | <p>Accessible infrastructure is the prerequisite for supporting employment of disabled people. Unfortunately, the 12 years following the implementation of the</p> |

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| | | H&S measures & creating non-handicapping environments in places where PWD are employed | | sector work environments. | act, provision 38B has failed to achieve much. Therefore, it is the need of the hour that the MSJE mandates that all office and other work related infrastructure be accessible as per the prescribed accessibility standards. To enforce and monitor this provision, MSJE should introduce timeframes and deadlines for the existing work environments to be made accessible. The accessibility provisions should apply to government, public and private sector work environments. |
| VI.EMPLOYMENT | 41 a | | | The appropriate Governments shall by notification frame a scheme for payment of a mobility allowance to persons with disabilities for traveling to work, keeping in view the status of mobility of such individuals where it is affected to the extent whereby making public transport inaccessible. | |
| VI.EMPLOYMENT | 41 b | | | All major cities to have working people's hostels especially designed as per (proposed) National Accessibility Standards and run for persons with disabilities, where they are provided accessible accommodation, accessible transport facility, fitness gymnasium and carer facility. | |
| VI.EMPLOYMENT | | | | The employer will be responsible for providing the appropriate aids and assistive technology that are essential for fulfillment of the job responsibilities of disabled employees. | |

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| VIII.NON-DISCRIMINATION | 44 (c) | | -- | <p>Non Discrimination for this chapter will mean: that no person or group of persons will be denied access to a facility or a service only on the basis of their disability. The building owners will be responsible to ensure that the infrastructure provided is accessible in compliance with the (proposed) National Accessibility Standards, while the building managers will be responsible of ensuring that there are appropriate steps in place to make the use of the public space is as easy to a disabled person as it is for the non disabled person.</p> | <p>The Act needs to extend the spirit of non-discrimination beyond the government sector.</p> |
| VIII.NON-DISCRIMINATION | 44(d) | | | <p>Non discrimination must be clearly demonstrated in terms of: i) Infrastructure Accessibility ii) Transport Accessibility iii) Information Accessibility iv) Access to services and for the purpose of better implementation the Ministry of Social Justice and Empowerment will draft/adopt (proposed) National Accessibility Standards that need to be followed for all these four areas that will be applicable universally throughout the country. The Standards set will be reviewed and revised (within a specified timeframe) to keep up with latest developments.</p> <p><u>(i)INFRASTRUCTURAL ACCESSIBILITY</u></p> | <p>The non-discrimination policies should apply both to public and private sector establishments, facilities and services.</p> <p>Compliance to this policy should be enforceable and measurable.</p> <p>There should be clear deadlines for existing providers of goods and services to meet the (proposed) accessibility guidelines.</p> |

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| | | | | <p>a) All future infrastructure, services and transport will need to comply with these (proposed) National Accessibility Standards with immediate effect from the date of implementation of the amended PWD Act. The MSJE will also lay down specific deadlines for existing infrastructure, services and transport vessels to comply with the (proposed) National Accessibility Standards within a set time frame.</p> <p>b) The Infrastructure Accessibility Standards will be applicable to:</p> <ul style="list-style-type: none"> i. the public sector ii. Private sector that offer facilities and services to the public iii. All such public or private infrastructure that utilize State funds either as a grant or loan iv. All NGO's that utilize State funds either as a grant or loan. v. All privately built infrastructural development meant for sale or to lease. vi. All infrastructure development projects undertaken by the Ministry of Urban Development and the Ministry of Rural Development along with all autonomous bodies under its purview and control. vii. All infrastructures built, maintained and renovated by the State Municipal Corporations. viii. Any Public or Private | |
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| | | | <p>establishment which benefits or is provided incentives as referred to in chapter VII (41)</p> <p>ix. All autonomous bodies under the purview/control of the Ministry of Urban Development and the Ministry of Rural Development involved with infrastructure development, refurbishment and maintenance throughout the country.</p> <p>c) All new policies and legislations announced by the Ministry of Urban Development, the Ministry of Rural Development and all autonomous bodies under the purview/control of the said ministries must be inclusive and shall consider beside others, infrastructural accessibility needs of persons with disabilities.</p> <p><u>(ii) TRANSPORT ACCESSIBILITY</u></p> <p>a) The transport Accessibility standards will be applicable to:</p> <p>i. All companies whether public or private who are involved with the designing and manufacture of public transport vehicles/vessels</p> <p>b) The Ministry of Surface Transport, Ministry of Railways and Ministry of Civil Aviations will required to submit to the MSJE, a 5 yearly action plan on how they will provide, improve, refurbish or maintaining public transport (in all</p> | |
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| | | | <p>classes and categories of travel) that is accessible to PWD. The action plan will include detailed strategy of how they plan to refurbish/ replace the existing rolling stock of busses, trains, etc within the deadlines set by MSJE. Additionally the three ministries will ensure that all their policies are inclusive in nature.</p> <p><u>(iii) INFORMATION ACCESSIBILITY</u></p> <p>a) Information Accessibility Standards will be applicable to:</p> <p>i. All policies and legislations under the Ministry of Information and Broadcasting and all autonomous bodies under its purview/control.</p> <p>ii. All policies and legislations under the Ministry of Information Technology and all autonomous bodies under its purview/control.</p> <p>iii. All service providing public or private agencies</p> <p>iv. All information providing public or private agencies including private television channels and all Indian websites.</p> <p>b) All State Governments in the absence of accessible transport system complying to the (proposed) National Accessibility Standards, to ensure a monthly mobility allowance to persons with disability to travel to :</p> <ul style="list-style-type: none"> • work (both private and public | |
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| | | | | <p>sector)</p> <ul style="list-style-type: none"> • education (both private and public educational institutes) • health (both private and public health institutes) <p>c) The MSJE will provide incentives to companies who undertake projects which aim at providing viable personal transport (as services or by introducing such products that offer such solutions) for/to persons with disability.</p> <p>(iv) <u>ACCESS TO GOODS and SERVICES</u> All providers of goods and services to the public, in the public and private sector, to ensure non-discrimination in provision of these to persons with disabilities. This must be achieved by making adequate accommodations in terms of:</p> <ul style="list-style-type: none"> a) infrastructural accessibility b) requisite policies, procedures and practices <p>While this will apply with immediate effect to the providers of future goods and services, but existing providers will have to meet these requirements within the timeframes and deadlines proposed by the MSJE.</p> | |
| VIII.NON-DISCRIMINATION | 44(e) | | | <p>Monitoring</p> <p>a. The MSJE will under it have</p> | |

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| | | | | <p>three separate technical committees comprising of experienced persons with extensive domain knowledge from all the three areas namely: Infrastructural accessibility, Transport accessibility and information accessibility.</p> <p>b. The function of the committees will be to assist in the implementation of the act by providing technical support in the areas of their domain. The committees may also assist the ministry by undertaking programmes for increasing awareness and knowledge amongst the stakeholders.</p> <p>c. The membership of the committee will comprise of nominated members who elect a chairperson from within themselves. Chairpersonship will be valid for a year after which the chairperson needs to be re-elected. Members too will be on the committee for a maximum of five years after which new members will be appointed.</p> <p>d. Apart from the committee all State Governments will be required to appoint a designated Access Inspector in each district to ensure</p> | |
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| | | | | <p>that all new construction is accessible as per the (proposed) National Accessibility Standards and ensure that all infrastructures constructed before the amendments to the act are retrospectively made accessible within a stipulated timeframe. The Access Inspector will work closely with the municipal corporations and local disability groups.</p> <p>e. All new building (except individual private dwelling) will be required to get a certificate of compliance to the (proposed) National Accessibility Standards, from the respective municipal corporation/body and strict punitive action to be taken for non-compliance.</p> | |
| IX.RESEARCH AND MANPOWER DEVELOPMENT | 48 | | | <p>g. Assistive equipment required to aid and increase accessibility.</p> | |

**APPENDED TO ACT EITHER WHOLLY OR PARTLY
TO BE DELETED FROM THE ACT**