

Legislative Brief

The Rights of Persons with Disabilities Bill, 2014

The Bill was introduced in the Rajya Sabha on February 7, 2014 by the Minister of Social Justice and Empowerment, Mallikarjun Kharge.

The Bill was referred to the Standing Committee on Social Justice and Empowerment (Chairperson: Ramesh Bais) on September 16, 2014. The Committee is scheduled to submit its report during the Budget Session 2015.

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Highlights of the Bill

- ◆ The Bill replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Instead of seven disabilities specified in the Act, the Bill covers 19 conditions.
- ◆ Persons with at least 40% of a disability are entitled to certain benefits such as reservations in education and employment, preference in government schemes, etc.
- ◆ The Bill confers several rights and entitlements to disabled persons. These include disabled friendly access to all public buildings, hospitals, modes of transport, polling stations, etc.
- ◆ In case of mentally ill persons, district courts may award two types of guardianship. A limited guardian takes decisions jointly with the mentally ill person. A plenary guardian takes decisions on behalf of the mentally ill person, without consulting him.
- ◆ Violation of any provision of the Act is punishable with imprisonment up to six months, and/or fine of Rs 10,000. Subsequent violations carry a higher penalty.

Key Issues and Analysis

- ◆ The Bill is being brought in to fulfill obligations under an international treaty. The question is whether it is appropriate for Parliament to impose legal and financial obligations on states and municipalities with regard to disability, which is a State List subject.
- ◆ The Financial Memorandum does not provide any estimate of the financial resources required to meet obligations under the Bill.
- ◆ The Bill states that violation of any provision in the Act will attract imprisonment and/or fine. Given the widespread obligations (such as making all polling booths accessible to the disabled), many acts of omission or commission could be interpreted as criminal offences.
- ◆ In “extraordinary situations” district courts may appoint plenary guardians for mentally ill persons. The Bill does not lay down principles for such determination, in a consistent manner, across various courts. The Bill overrides the Mental Health Act, 1987 but the safeguards against misuse of powers by guardians are lower.
- ◆ The Bill is inconsistent with other laws in some cases. These include conditions for termination of pregnancy and the minimum penalty for outraging the modesty of a woman.

PART A: HIGHLIGHTS OF THE BILL¹

Context

According to the Census of India, 2011 disabled persons accounted for 2.21% of India's population. Of these, 20.3% have a movement-related disability, 18.9% are those with hearing disabilities and 18.8% with vision-related disabilities.²

Currently, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (PWD) Act, 1995 specifies seven conditions as disabilities and makes special provisions for disabled persons with regard to their rehabilitation, and opportunities for employment and education.³ In 2007, India became a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The UNCRPD requires signatory states to make appropriate changes in law and policy to give effect to rights of disabled persons.⁴ Apart from the PWD Act, other laws that govern various aspects of disabilities include the Mental Health Act, 1987, the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and the Rehabilitation Council of India Act, 1992.

In 2010, the Ministry of Social Justice and Empowerment constituted an expert committee under Dr. Sudha Kaul to draft a new Bill for persons with disabilities.⁵ The committee submitted a Draft Bill in 2011 that proposed to replace the PWD Act and addressed rights and entitlements for disabled persons. Subsequently on February 7, 2014 the Rights of Persons with Disabilities Bill, 2014 was introduced in Rajya Sabha and referred to the Standing Committee on Social Justice and Empowerment on September 16, 2014.

Key Features

- The Bill replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- The Bill includes the following 19 conditions under disability: autism spectrum disorder; low vision; blindness; cerebral palsy; deaf blindness; hemophilia; hearing impairment; leprosy cured person; intellectual disability; mental illness; locomotor disability; muscular dystrophy; multiple sclerosis; specific learning disabilities; speech and language disability; sickle cell disease; thalassemia; chronic neurological conditions and multiple disability. The Bill allows the central government to notify any other condition as a disability.
- Persons with “benchmark disabilities” are defined as those certified to have at least 40 per cent of the disabilities specified above.

Rights of persons with disabilities

- Persons with disabilities shall not be discriminated on grounds of their disability unless it is shown that the specific act is appropriate to achieve a legitimate aim. Persons with disabilities shall have the right to equality, personal liberty and to live in a community. They will not be obliged to live in any specific arrangement and shall have access to residential services and community support.
- The Election Commission (centre and state) has to ensure that polling stations and all electoral materials are accessible to persons with disabilities. Central and state governments have to ensure that all public documents are in accessible formats.
- The Disaster Management Authority (centre and state) will take necessary steps to include disabled persons in its disaster management activities for their safety and protection.

Special provisions for persons with benchmark disabilities

- **Education:** Children between the ages of six to 18 years, with a benchmark disability, have the right to free education in a neighbourhood school or special school if required. All government and government aided institutions of higher education are required to reserve at least five per cent of seats for persons with benchmark disabilities. For admission in higher education institutions, they will be allowed relaxation in the upper age limit, by five years.
- **Employment:** Five per cent of government owned or controlled establishments shall be reserved for persons with benchmark disabilities. One per cent of this must be reserved for persons with (i) blindness and low vision; (ii) hearing and speech impairment; (iii) locomotor disability; (iv) autism, intellectual disability and mental illness; (v) multiple disabilities. The government may exempt any establishment from this provision.
- The central, state and local governments shall provide incentives to the private sector to ensure that at least five per cent of their work force is composed of persons with benchmark disability.

- Five per cent reservation to be provided for persons with benchmark disabilities in (i) allotment of agricultural land and housing in all relevant schemes and programmes; (ii) poverty alleviation schemes (with priority to women with benchmark disabilities); and (iii) allotment of land on concessional rate for purposes of business, enterprise, etc.

Guardianship of mentally ill persons

- If a district court determines that a mentally ill person is unable to take care of himself or of taking legally binding decisions, it may assign limited guardianship for such a person. A limited guardian will take joint decisions with the mentally ill person.
- In extraordinary situations, where limited guardianship cannot be awarded, the district court can award plenary guardianship where the guardian takes legally binding decisions for the mentally ill person. The guardian need not consult with, or determine the will or preference of the mentally ill person.

Authorities established under the Bill

- **National and State Commissions for persons with disabilities:** The central government shall constitute a National Commission, and state governments shall constitute a State Commission each, for disabled persons. The Commissions will be required to: (i) identify any laws, policies or programmes that are inconsistent with the Act; (ii) inquire into matters relating to deprivation of rights and safeguards available to disabled persons and recommend appropriate remedial measures; (iii) monitor implementation of the Act and utilization of funds disbursed by governments for the benefit of disabled persons, etc.
- **Central and State Advisory Boards on disability:** The central government shall constitute a Central Advisory Board, and state governments shall constitute a State Advisory Board each, for disability matters. State governments shall also constitute District-Level Committees. The functions of these advisory boards will include: (i) advising the government on policies and programmes with respect to disability; (ii) developing a national/state policy concerning persons with disabilities; (iii) recommending steps to ensure accessibility, reasonable accommodation, non-discrimination, etc.

Offences and penalties

- Any person who violates provisions of the Act, or any rule or regulation made under it, shall be punishable with imprisonment up to six months and/or a fine of Rs 10,000, or both. For any subsequent violation, imprisonment of up to two years and/or a fine of Rs 50,000 to Rs five lakh can be awarded.
- Whoever intentionally insults or intimidates a person with disability, or sexually exploits a woman or child with disability, shall be punishable with imprisonment between six months to five years and fine.
- State governments shall notify a Sessions Court to be a Special Court, in each district, to try offences under the Act. This shall be done with the concurrence of the Chief Justices of the relevant High Courts.

PART B: KEY ISSUES AND ANALYSIS

Obligations imposed on states/municipalities on a State List subject

The Bill is being brought in to fulfil obligations under the UNCRPD that was ratified by India in 2007. Parliament's jurisdiction to enact this Bill flows from Article 253 of the Constitution which allows Parliament to enact legislation to give effect to international agreements. Parliament has the power to enact this Bill despite the fact that relief of the disabled comes under Entry no. 9 of the State List. This presents two issues:

Obligations imposed on states/municipalities to implement the Bill

Though it is clear that the Constitution allows Parliament to pass this Bill, the question is whether it is appropriate for it to impose widespread legal obligations on states and municipalities with regard to disability, which is a State List subject. Examples of some of the obligations covered by the Bill are: (i) providing free education to a person with benchmark disability till 18 years of age; (ii) barrier free access to all parts of a hospital/health care centre run or aided by government; (iii) ensuring that all existing public buildings are made accessible within five years; (iv) all public documents are in accessible format; and (v) retrofitting of vehicles and accessibility of bus stops, railway stations and airports for disabled persons.

Clauses 30,
24(1)(b),
44,
11(4)(a),
40(1)(b)

Financial Memorandum does not estimate expenses under the Bill

Financial Memorandum As explained above, the Bill mandates central and state governments to provide various facilities and services to disabled persons that could have financial implications for the state and local governments. However, the Financial Memorandum of the Bill does not provide any estimate of the financial resources required to meet obligations under the Bill. It also does not provide an estimate of the expenditure expected to be incurred by the centre or states, or the manner of sharing of funds between the centre and states. The memorandum states “since disability is a state subject under the Constitution, it is also expected that over time the states will also contribute substantially to the implementation of the provisions of the Bill.” It could be argued that without allocating adequate funds the implementation of the Bill could be hindered.

Criminal offences specified in the Bill

Penalties including imprisonment for violating general provisions

Clauses 102, 103 The Bill states that any person who violates provisions of the Act, or any rule or regulation made under it, shall be punishable with imprisonment up to six months, and/or fine of Rs 10,000. For any subsequent violation, imprisonment of up to two years and/or a fine of Rs 50,000 to Rs five lakh can be awarded. These provisions present two issues:

Clause 4 Firstly, the Bill does not identify specific acts that would constitute a criminal offence but has a general provision that states that violation of any provision of the Act would attract imprisonment and/or fine. For example, the Bill states that a person with disabilities will have the right to live in the community. This implies that violating this provision could attract imprisonment for up to six months and/or a fine of up to Rs 10,000. However, the Bill does not specify what actions would constitute violating the right of disabled persons to live in a community.

Clause 10 For practical reasons, some provisions of the Bill will need to be implemented in a phased manner. However, once the Bill comes into force, violating its provisions would be a criminal offence. For example, the Bill requires the Election Commission to ensure that polling booths are accessible to all disabled persons. Would this imply that if some polling booths do not have facilities such as ramps, all materials in Braille, etc. by the time the Bill comes into force, the Chief or State Election Commissioner could be criminally charged? Similarly, the appropriate government is required to provide all public documents in formats that are accessible to disabled persons. Would this mean that if there is a government record that is not accessible to a disabled person, the officer in charge of the government department would be criminally liable?

Clause 11(4) Secondly, under the Bill any violation of a rule or regulation is treated as a criminal offence. The rules and regulations may specify certain provisions which are not explicitly mentioned in the Bill. It could be argued that the principal Act should clearly state all actions that would constitute a criminal offence and not delegate these to rules and regulations.

Guardianship of mentally ill persons

Clause 13(1) The Bill provides two types of guardianship for mentally ill persons incapable of taking care of themselves and of taking any legally binding decisions on their own. A limited guardian will take all legally binding decisions along with the mentally ill person. A plenary guardian can be appointed to take all legally binding decisions for the mentally ill person and is under no obligation to consult him or consider his will or preference.

The Bill overrides the Mental Health Act, 1987 with respect to guardianship provisions. This may result in the safeguards against misuse of guardianship, being lowered. There are three issues related to guardianship:

Safeguards for guardianship lower than Mental Health Act, 1987

The safeguards in the Bill with regard to appointment and power of guardians for mentally ill persons are lower than those in the Mental Health Act, 1987. Under the Bill, a plenary guardian has no legal obligation to determine the will and preference of the mentally ill person while taking decisions on his behalf. Such a provision could allow circumstances in which the guardian misuses his power and acts against the interest of the mentally ill person.

In contrast, the Mental Health Act, 1987 specifies the reporting requirements to be fulfilled by the guardian when taking care of the mentally ill person or managing his property. For example, Sections 59, 60 and 71 of the 1987 Act require the guardian (a) to give maintenance to the mentally ill person and his dependent family; (b) submit annual reports to the district court of the financial accounts of the mentally ill person; and (c) to obtain

permission of the district court if the guardian wants to mortgage, lease, sell, exchange immovable property of the mentally ill person. The Bill does not envisage such safeguards.

Principles for determining extraordinary situations not specified

The appointment of a plenary guardian is dependent on finding of an extraordinary situation by the district court. However, the Bill does not provide the principles to be used in determining what could qualify as an extraordinary situation. Therefore, different district courts could use different criteria to award plenary guardianship. This implies that similar cases may be awarded either limited or plenary guardianship depending on the district court.

No provision for removal or termination of guardianship

Mental illness or incapacity can prevail in a person temporarily or for short periods of time. The Bill does not provide for the removal or termination of guardianship in case the mentally ill person develops the capacity to take decisions. This is different from the provisions of the Mental Health Act, 1987. Section 69 of that Act provides for removal of guardians by the district court, if it finds sufficient cause to do so.

Definition of appropriate government

Clause
2(b)

The Bill defines appropriate government in terms of ownership of establishments. If an establishment is financed by the centre, then the central government is the appropriate government and if it is financed by the state, then the state government is the appropriate government. This definition presents no difficulty in terms of obligations related to employment and education envisaged in the Bill. However, the Bill places certain other obligations on the appropriate government which could lead to ambiguity in terms of which government would discharge these obligations.

Clauses
4(2)(a),
6(1)(a),
11(1),
23(3)(c)

For example, appropriate governments are required to ensure that persons with disabilities (i) are not obliged to live in any particular living arrangement; (ii) are protected from incidents of abuse, violence and exploitation, and provided legal remedies against the same; (iii) shall have the right to access any court, tribunal, commission having judicial or investigative powers; (iv) schemes are formulated to provide them with support during natural and man-made disasters, etc. It is unclear which government will be responsible for fulfilling such obligations.

Provisions of the Bill inconsistent with existing laws

Certain provisions of the Bill are at variance with existing laws. This may give rise to ambiguity with respect to which laws will prevail in a given situation.

Penalty for outraging the modesty of a woman: The Indian Penal Code, 1860

Clause
105(b)

The Bill punishes the offence of outraging the modesty of a woman with disability, with imprisonment of *six months* to five years and a fine. Section 354 of the Indian Penal Code, 1860 penalises the offence of outraging the modesty of any woman with imprisonment of *one year* to five years and fine. This implies that the Bill is lowering the minimum penalty for offenders against women with disability, as compared to any other woman.

Termination of pregnancy: The Medical Termination of Pregnancy Act, 1971

Clause
105(f)

The Bill penalises anybody who performs, conducts or directs any medical procedure to terminate the pregnancy of a woman with disability, without her consent. However, the Bill makes an exception in the cases of severe disability. It states that in such cases the woman's consent is not mandatory as long as the opinion of a registered medical practitioner and the consent of her guardian have been taken. Section 3(2)(b) of the Medical Termination of Pregnancy (MTP) Act, 1971 allows for the termination of pregnancy of any woman between 12 to 20 weeks of pregnancy provided that two registered medical practitioners are of such opinion.

It could be argued that the safeguards against termination of pregnancy existing in the MTP Act, 1971 (requirement of opinion of two medical practitioners) are being lowered by the Bill (requirement of one medical practitioner only).

Government establishments exempt from certificate of registration

Clause
53

The Bill requires every institution for persons with disabilities to register with a competent authority appointed by the state government. It also specifies the process for applying, receiving a certificate of registration, grounds for the revocation of registration and an appeals procedure. However, the Bill exempts institutions established or

maintained by the central or state government from registration requirements. It is unclear why government institutions do not need to adhere to registration norms applicable to others.

Comparison of the Bill with PWD Act, 1995 and Draft Bill, 2011

The proposed Bill replaces the PWD Act. In 2010 the government appointed a committee chaired by Dr. Sudha Kaul, which submitted a Draft Bill in 2011. Subsequently, the Rights of Persons with Disabilities Bill, 2014 was introduced in Rajya Sabha in February 2014. The table below provides a comparison of some of the key features of the PWD Act, Draft Bill and the Rights of Persons with Disabilities Bill:

Table 1: Comparison between 1995 Act, 2011 Draft Bill and Rights of Persons with Disabilities Bill, 2014

Provision/clause	PWD Act, 1995	Draft Bill, 2011 (prepared by Sudha Kaul Committee)	Rights of Persons with Disabilities Bill, 2014
Number of disabilities covered	7	20 (includes dwarfism which is not covered in the 2014 Bill).	19
Extent of disability to be covered under the law	At least 40% of a disability specified in the Act.	Rights and benefits to apply to all persons with disabilities irrespective of extent of disability.	Rights apply to all persons with disabilities irrespective of extent of disability. Benchmark disability: Person with 40% of a specified disability can avail of benefits such as reservation in education, employment, other schemes, etc.
High support needs	No provision.	Intensive physical or psychological support, which may be required by a person with disability for participating in daily activities of life, etc. Care-giver allowance to persons with disabilities having high support needs.	Same as Draft Bill (only persons with benchmark disabilities may have high support needs).
Reservations in education and employment in govt. institutions	Employment: 3% in government organisations (within that 1% for specific disabilities). Education: 3%	Employment: 7% in government organisations (bands created amongst all disabilities and each entitled to 1% within this). Education: 6% in each course in higher education.	Employment: 5% in government organisations (within that 1% for specific disabilities). Education: 5% in higher education institutions (and upper age relaxation of five years) and free elementary education for those between six to 18 years of age (six to 14 years under Right to Education Act, 2009).
Guardianship	No provision in PWD Act. Guardianship covered under the National Trust Act, 1999 and the Mental Health Act, 1987.	All existing plenary guardians to be converted to limited guardians for all persons with disability.	Addresses guardianship of mentally ill persons in terms of limited and plenary guardianship. For other categories of disability, existing laws will apply.
Legal provisions	Chief Commissioner, and Commissioners for persons with disabilities, redress complaints by aggrieved parties and act as Civil Courts.	Disability Rights Tribunals to be set up at centre, and each state and district.	National Commission to have powers of a Civil Court. Session Courts to be notified as Special Courts by state governments.

Sources: PWD Act, 1995; Draft Bill, 2011; RPD Bill, 2014; PRS.

1. This Brief has been written on the basis of the Rights of Persons with Disabilities Bill, 2014, introduced in Rajya Sabha on February 7, 2014.
2. Census of India 2011, Ministry of Home Affairs, Government of India.
3. "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995".
4. "Convention on the Rights of Persons with Disabilities", United Nations, December 13, 2006, <http://www.un.org/disabilities/default.asp?navid=15&pid=150>.
5. "The Rights of Persons with Disabilities Bill, 2011", Committee appointed by the Ministry of Social Justice and Empowerment, Chairperson: Dr Sudha Kaul. <http://socialjustice.nic.in/pdf/draftbill-pwd.pdf>.

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