

JAMMU AND KASHMIR PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1998

[Act No. VI of 1998]

Received the assent of the Governor on 19th May, 1998 and published in Government Gazette dated 19th May, 1998].

An Act to provide equal opportunities, care, protection, maintenance, welfare, training and rehabilitation to the persons with disabilities.

Be it enacted by the Jammu and Kashmir State Legislature in the Forty-ninth Year of the Republic of India as follows: —

CHAPTER I

Preliminary

1. Short title, extent and commencement. — (1) This Act may be called the Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998.

(2) It extends to the whole of the State of Jammu and Kashmir.

¹[(3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint and different dates may be appointed for different areas and for different provisions of the Act.]

2. Definitions. —In this Act, unless the context otherwise requires, —

- (a) “blindness” refers to a condition where a person suffers from any of the following conditions, namely: —
- (i) total absence of sight; or
 - (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or

¹ Enforced vide SRO-220 dated 16th July, 1998 w. e. f. 20th July, 1998.

- (iii) limitation of the field of vision subtending an angle of 20 degree or worse;
- (b) “Cerebral Palsy” means a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the prenatal, perinatal or infant period of development;
- (c) “Competent Authority” means the authority appointed under section 39;
- (d) “Disability” means: —
 - (i) blindness;
 - (ii) low vision;
 - (iii) leprosy cured;
 - (iv) hearing impairment;
 - (v) locomotor disability;
 - (vi) mental retardation;
 - (vii) mental illness;
- (e) “Employer” means: —
 - (i) in relation to a Government the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department; and
 - (ii) in relation to an establishment, the Chief Executive Officer of that establishment;
- (f) “Establishment” means a Corporation established by or under a Central or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government Company as defined in section 17 of the Companies Act, 1956 and includes departments of a Government;
- (g) “Hearing impairment” means loss of sixty decibels or more in the better ear in the conversational range of frequencies;
- (h) “Institution for persons with disabilities” means an institution

for the reception, care, protection, education, training, rehabilitation or any other service of persons with disabilities;

- (i) “Leprosy cured persons” means any person who has been cured of leprosy but is suffering from: —
- (i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye lid but with the manifest deformity;
 - (ii) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;
 - (iii) extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation;

and the expression “Leprosy cured” shall be construed accordingly;

- (j) “Locomotor disability” means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;
- (k) “medical authority” means any hospital or institution specified for the purpose of this Act by notification by the State Government;
- (l) “mental illness” means any mental disorder other than mental retardation;
- (m) “mental retardation” means a condition of arrested or incomplete development of mind of a person which is specially characterised by sub-normality of intelligence;
- (n) “notification” means a notification published in the Official Gazette;
- (o) “person with low vision” means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;
- (p) “person with disability” means a person suffering from not less than forty per cent of any disability as certified by a medical

authority;

- (q) “prescribed” means prescribed by rules made under this Act;
- (r) “rehabilitation” refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal sensory, intellectual, psychiatric or social or functional levels;
- (s) “special employment exchange” means any office or place established and maintained by the Government for the collection and furnishing of information either by keeping of registers or otherwise, respecting: —
 - (i) persons who seek to engage employees from amongst the persons suffering from disabilities;
 - (ii) persons with disability who seek employment;
 - (iii) vacancies to which person with disability seeking employment may be appointed;
- (t) “State Co-ordination Committee” means the State Co-ordination Committee constituted under sub-section (1) of section 3;
- (u) “State Executive Committee” means the State Executive Committee constituted under sub-section (1) of section 9;
- (v) “Enforcement Board” means a Board constituted by the competent authority for the persons with disabilities.

CHAPTER II

The Co-ordination Committee

3. Co-ordination Committee. — (1) The Government shall, by notification, constitute a body to be known as the Co-ordination Committee to exercise the powers conferred on, and to perform the function assigned to it, under this Act.

(2) The Co-ordination Committee shall consist of: —

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| (a) | Minister Incharge of the Department of Social Welfare | Chairperson,
Ex-Officio |
| (b) | Minister of State or Deputy Minister, Incharge of the Department of Social Welfare. | Vice-Chairperson,
Ex-Officio |
| (c) | Secretaries to the Government, Incharge of the Departments of Social Welfare, Education, Finance, General Administration, Industries, Employment/Labour, Science and Technology, by whatever name called. | Members,
Ex-Officio |
| (d) | Secretary to any other Department which the Government considers necessary. | Member,
Ex-Officio |
| (e) | Chairman, Bureau of Public Enterprises (by whatever names called). | Member,
Ex-Officio |
| (f) | three persons, as far as practicable, being persons with disabilities, to represent Non-Governmental Organization or Associations which are concerned with disabilities to be nominated by the Government, one from each area of disability: | Member |

Provided that while making nominations under this clause, the Government shall nominate at least one women and one person belonging to Scheduled Castes/Scheduled Tribes.

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| ¹ (g) | three members of the State Legislature of whom two shall be nominated by the Speaker of the legislative Assembly and one by the Chairman of Legislative Council | Members,
Ex-Officio |
| (h) | three persons to be nominated by the State Government to represent Agriculture, Industry or trade or any other interest, | Members,
Ex-Officio; |

¹ Substituted by Act VI of 1999, s. 2.

which in the interest of the Government ought to be represented.

- (i) Director, Department of Social Welfare. Member-Secretary.

4. Term of office of members. — (1) Save as otherwise provided by or under this Act, a Member of State Co-ordination Committee nominated under clauses (f) and (h) of sub-section (2) of section 3 shall hold office for a term of three years from the date of his nomination:

Provided that such a member shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.

(2) The term of office of an ex-officio Member shall come to an end as soon as he ceases to hold the office by virtue of which he was so nominated.

(3) The Government may, if it thinks fit, remove any member nominated under clause (f) or clause (h) of sub-section (2) of section 3 before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(4) A member nominated under clause (f) or clause (h) of sub-section (2) of section 3 may, at any time, resign his office by writing under his hand addressed to the Government and the seat of the said member shall thereupon become vacant.

(5) A casual vacancy in the State Co-ordination Committee shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member in whose place he was so nominated.

(6) A member nominated under clause (f) and clause (h) of sub-section (2) of section 3 shall be eligible for re-nomination.

(7) A member nominated under clause (f) or clause (h) of sub-section (2) of section 3, shall receive such allowances, as may be prescribed by rules under this Act.

5. Disqualifications. — (1) No person shall be a member of

the State Co-ordination Committee, who—

- (a) is, or at any time, has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or
- (b) is of unsound mind and stands so declared by a competent court; or
- (c) is, or has been convicted of an offence which in the opinion of the Government involves moral turpitude; or
- (d) is, or at any time has been convicted of an offence under this Act; or
- (e) has so abused, in the opinion of the Government his position as a member as to render his continuance in State Co-ordination Committee detrimental to the interests of the general public.

(2) No order of removal shall be made by the Government under this section unless the member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (6) of section 4, a member who has been removed under this section shall not be eligible for re-nomination as a member.

6. Vacation of Seats. —If a member of the State Co-ordination Committee becomes subject to any of the disqualifications specified in section 5, his seat shall become vacant.

7. Meetings of the State Co-ordination Committee. — The State Co-ordination Committee shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

8. Functions of the State Co-ordination Committee. — (1) Subject to the provisions of this Act, the functions of the State Co-ordination Committee shall be to serve as the State focal point on disability matters and facilitate the continuous evolution of a

comprehensive policy towards solving the problems faced by persons with disabilities.

(2) In particular and without prejudice to the generality of the foregoing functions, the State Co-ordination Committee may perform all or any of the following functions, namely: —

- (a) review and co-ordinate the activities of all the departments of Government and other Governmental and Non-Governmental organisations which are dealing with matters relating to persons with disabilities;
- (b) develop a State Policy to address issues by persons with disabilities;
- (c) advise the Government on the formulation of policies, programmes, legislation and projects with respect to disability;
- (d) review in consultation with the donor agencies their funding policies from the perspective of their impact on persons with disabilities;
- (e) take such other steps to ensure barrier free environment in public places, work places, public utility, schools and other institutions;
- (f) monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of person with disabilities;
- (g) to perform such other functions as may be prescribed by the Government.

9. State Executive Committee. — (1) The Government shall constitute a Committee to be known as the “State Executive Committee,” to perform the functions assigned to it under this Act.

(2) The State Executive Committee shall consist of: —

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| (a) | Secretary, Department of Social Welfare | Chairperson, Ex-Officio |
| (b) | Director, Department of Social Welfare. | Member, Ex-Officio |

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| (c) Seven persons not below the rank of an Additional Secretary to Government, to represent the Department of Health, Finance, Rural Development, Education, Labour, Employment, Science and Technology. | Members,
Ex-Officio |
| (d) Director, Department of Employment. | Member,
Ex-Officio |
| (e) three persons, as far as practicable being persons with disabilities, to represent Non-Government Organisations or Associations which are concerned with disabilities to be nominated by the Government, one from each area of disability: | Members |

Provided that while nominating persons under this clause, the Government shall nominate at least one woman and one person belonging to Scheduled Caste/Scheduled Tribes.

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| (f) Additional Secretary or Deputy Secretary, Department of Social Welfare (dealing with the disabilities). | Member-Secretary |
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(3) Members nominated under clause (e) of sub-section (2) shall receive such allowances as may be prescribed.

(4) A member nominated under clause (e) may at any time resign his office by writing under his hand addressed to the Government and the seat of the said member shall thereupon become vacant.

10. Functions of the State Executive Committee. — (1) The State Executive Committee shall be the Executive Body of the Co-ordination Committee and shall be responsible for carrying out the decisions of the Co-ordination Committee.

(2) Without prejudice to the provisions of sub-section (1) the Executive Committee shall also perform such other functions as may be delegated to it by the State Co-ordination Committee.

11. Meetings of the State Executive Committee. — The State Executive Committee shall meet at least once in three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by the

Government.

12. Temporary association of persons with Executive Committee for particular purposes. — (1) The State Executive Committee may associate with itself in such manner and for such purposes as may be prescribed any person whose assistance or advice it may be desired to obtain in performing any of its functions under this Act.

(2) A person associated with State Executive Committee under sub-section (1) for any purpose shall have the right to take part in the discussions of the Executive Committee relevant to that purpose, but shall not have a right to vote at a meeting of the said Committee and shall not be a member for any other purpose.

13. Power to give directions. —The State Co-ordination Committee shall be bound by such directions as the Government may give to it in writing.

CHAPTER III

Prevention and Early Detection of Disabilities

14. Government and local authorities to take certain steps for the prevention of occurrence of disabilities. —Within the limits of the economic capacity and development, the Government and the local authorities, with a view to prevent the occurrence of disabilities shall—

- (a) undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities;
- (b) promote various methods of preventing disabilities;
- (c) screen all the children at least once a year for the purpose of identifying “at-risk” cases;
- (d) provide facilities for training the staff at the primary health centres;
- (e) sponsor or cause to be sponsored awareness campaigns

- and disseminate or cause to be disseminated information for general hygiene, health and sanitation;
- (f) take measure for prenatal, perinatal and post-natal care of mother and child;
 - (g) educate the public through the pre-schools, schools, primary health centres, village level workers and Anganwadi workers;
 - (h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted.

CHAPTER IV

Education

15. Government and local authorities to provide children, with disabilities free education etc. —The Government and the local authorities shall: —

- (a) ensure that every child with disability has the access to free education in an appropriate environment till he attains the age of eighteen years;
- (b) endeavour to promote the integration of students with disabilities in the normal schools;
- (c) promote setting up of special schools in Government and private sector for those in need of special education in such a manner that children with disabilities living in any part of the State have access to such schools;
- (d) endeavour to equip the special schools for children with disabilities with vocational training facilities.

16. Government and local authorities to make schemes and programmes for non-formal education, etc. —The Government and the local authorities shall by notification make schemes for: —

- (a) conducting part-time classes in respect of children with disabilities who having completed education upto class

fifth and could not continue their studies on a whole time basis;

- (b) conducting special part-time classes for providing functional literacy for children in the age group of sixteen and above;
- (c) imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;
- (d) imparting education through open schools or open universities;
- (e) conducting class and discussions through interactive electronic or other media;
- (f) providing every child with disabilities free of cost special books and equipments needed for his education.

17. Research for designing and developing new assistive devices, teaching aids etc. —The Government shall initiate or cause to be initiated research by official and non-Governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

18. Government to set-up separate cells in State Institutes of Education and District Institutes of Education and training. —The Government shall set up separate cells in State Institutes of Education and District Institutes of Education and Training for training adequate number of teachers to meet the educational needs of disabled students and assist the National Institutes and other Voluntary Organisations to develop teachers training programmes specialising in disabilities so that requisite trained manpower is available for disabled children for the purpose.

19. Government to prepare a comprehensive education scheme providing for transport facilities, supply of books etc. —Without prejudice to the foregoing provisions, the Government shall by notification prepare a comprehensive

education scheme which shall make provisions for: —

- (a) transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools;
- (b) the removal of architectural barriers from schools, colleges or other institutions imparting vocational and professional training;
- (c) the supply of books, uniforms and other materials to children with disabilities attending school;
- (d) the grant of scholarship to students with disabilities;
- (e) setting-up of appropriate fora for the redressal of grievances of parents regarding the placement of their children with disabilities;
- (f) suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;
- (g) restructuring of curriculum for benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum.

20. *Educational institutions to provide amanuensis to students with visual handicap.* —All educational institutions shall provide or cause to be provided amanuensis to blind students and students with low vision.

CHAPTER V

Employment

21. *Identification of posts which can be reserved for persons with disabilities.* —The Government shall: —

- (a) identify posts, in the establishments which can be reserved for the persons with disabilities;
- (b) at periodical intervals not exceeding three years, review the

list of posts identified and up-date the list taking into consideration the development in technology.

22. Reservation of posts. —The Government shall appoint in every establishment such percentage of vacancies not has than three percent, for persons or class of persons with disabilities of which one percent, each shall be reserved for persons suffering from:—

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy, in the posts identified for each disabilities:

Provided that the Government may, having regard to the type of work carried on in any department or establishment by notification, subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

23. Special Employment Exchange. — (1) The Government, may by notification, require that from such date as may be specified, by notification, the employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for persons with disability that have occurred or are about to occur in that establishment to such Special Employment Exchange as may be prescribed and the establishment shall thereupon comply with such requisition.

(2) The form in which and the intervals of time for which information of returns shall be furnished and the particulars they shall contain shall be such as may be prescribed.

24. Power to inspect record or documents in possession of any establishment. —Any person authorised by the Special Employment Exchange in writing, shall have access to any relevant record or document in the possession of any establishment and may enter at any reasonable time any premises where he believes such record or document to be, and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any information.

25. Vacancies not filled up to be carried forward. —

Where in any recruitment year any vacancy under section 22, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in the year, the employer shall fill-up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with prior approval of the Government.

26. Employers to maintain records. — (1) Every employer shall maintain such records in relation to the person with disability employed in his establishment in such form and in such manner as may be prescribed.

(2) The records maintained under sub-section (1) shall be open to inspection at all reasonable hours by such persons as may be authorised in this behalf by general or special order by the Government.

27. Schemes for ensuring employment of persons with disabilities. —The Government and local authorities shall by notification formulate Schemes for ensuring employment of persons with disabilities and such Schemes may provide for:—

- (a) the training and welfare of persons with disabilities;
- (b) the relaxation of upper age limit;
- (c) regulating the employment;
- (d) health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;
- (e) the manner in which and the persons by whom the cost

of operating the Schemes is to be defrayed; and

- (f) constituting the authority responsible for the administration of the Scheme.

28. *Educational Institutions not to discriminate against persons with disabilities in matters of admission.*—No Government Educational Institutions or other Educational Institutions receiving aid from the Government shall discriminate against disabled persons in matters of admission.

29. *Vacancies to be reserved in poverty alleviation Schemes.*—The Government and local authorities shall reserve not less than 3% in all poverty alleviation Schemes for the benefit of persons with disabilities.

30. *Incentives to employers to encourage them so that at least 3% of the work force with them is composed of persons with disabilities.*—The Government and the local authorities shall within the limits of their economic capacity and development providing incentives to employers both in public and private sectors to encourage them so that at least 3% of their work force is composed of persons with disabilities.

CHAPTER VI

Affirmative Action

31. *Aids and appliances to persons with disabilities.*—The Government shall by notification make schemes to provide aids and appliances to persons with disabilities.

32. *Scheme for preferential allotment of land for certain purposes.*—The Government and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates for:—

- (a) houses;
- (b) setting-up of business;
- (c) setting-up of special recreation centres;
- (d) establishment of special schools;

- (e) establishment of research centres; and
- (f) establishment of factories by disabled persons:

Provided such persons are otherwise eligible or fulfill the qualifications and conditions prescribed for the purpose.

CHAPTER VII

Non-Discrimination

33. *Non-discrimination in transport.* —Establishment in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to: —

- (a) adapt rail compartments, buses and vessels in such a way as to permit easy access of such persons;
- (b) adapt toilets in rail compartments, vessels, and waiting rooms in such a way as to permit the wheel chair users to use them conveniently.

34. *Non-discrimination on the road.* —The Government and the local authorities shall within the limits of their economic capacity and development provide for: —

- (a) installation of auditory signals and red lights on the public roads for the benefit of persons with visually handicap;
- (b) causing curb cuts and slopes to be made in pavements for the easy access of wheel-chair users and blind persons or persons of low vision;
- (c) engraving on the surface of the Zebra crossing for the blind or for persons with low vision;
- (d) engraving on the edges of railway platform for the blind or for persons with low vision;
- (e) devising appropriate symbols of disability;
- (f) warning signals at appropriate places.

35. *Non-discrimination in Government/environment.* — The Government and the local authorities shall, within the limits of their economic capacity and development provide for:—

- (a) ramps in public buildings;
- (b) adaptation of toilets for wheel-chair users;
- (c) braille symbols and auditory signals in elevators or lifts;
- (d) ramps in hospitals, primary health centres and other medical care and rehabilitation institutions.

36. *Non-discrimination in Government employment.* —

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the Government may having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

CHAPTER VIII

Research and Manpower Development

37. *Research.* —The Government and local authorities shall promote and sponsor research, *inter-alia*, in the following areas:—

- (a) prevention of disability;
- (b) rehabilitation including community based rehabilitation;
- (c) development of assistive devices including their psychosocial aspects;
- (d) job identification;

(e) on site modifications in offices and factories.

38. Financial incentives to Universities to enable them to undertake research. —The Government shall provide financial assistance to Universities, other institutions of higher learning, professional bodies and non-governmental research units or institutions, for undertaking research for special education, rehabilitation and manpower development.

CHAPTER IX

Recognition of Institutions for Persons with Disabilities

39. Competent authority. —The Government shall appoint any authority as it deems fit to be Competent Authority for the purpose of this Act.

40. No person to establish or maintain an institution for persons with disabilities except in accordance with a certificate of registration. —Save as otherwise provided under this Act, no person shall establish or maintain any institution for persons with disabilities except under and in accordance with a certificate of registration issued in this behalf by the Competent Authority:

Provided that a person maintaining an institution for persons with disabilities immediately before the commencement of this Act may continue to maintain such institution for a period of six months from such commencement and if he has made an application for such certificate under this section within the said period of six months, till the disposal of such application.

41. Certificate of registration. — (1) Every application for a certificate of registration shall be made to the Competent Authority in such form and in such manner as may be prescribed.

(2) On receipt of an application under sub-section (1) the Competent Authority shall make such enquiries as it may deem fit and where it is satisfied that the applicant has complied with the requirements of this Act and the rules made thereunder it shall grant a certificate of registration to the applicant and where it is not so satisfied the Competent Authority shall by order, refuse to

grant the certificate applied for:

Provided that before making any order refusing to grant a certificate the Competent Authority shall give to the applicant a reasonable opportunity of being heard and every order of refusal to grant a certificate shall be communicated to the applicant in such manner as may be prescribed by the Government.

(3) No certificate of registration shall be granted under sub-section (2) unless the institution with respect to which an application has been made is in a position to provide such facilities and maintain such standards as may be prescribed by the Government.

(4) A certificate of registration granted under this section,—

- (a) shall, unless revoked under section 42, remain in force for such a period as may be prescribed by the Government;
- (b) may be renewed from time to time for a like period; and
- (c) shall be in such form and subject to such conditions as may be prescribed.

(5) An application for renewal of a certificate of registration shall be made not less than sixty days before the period of validity.

(6) The certificate of registration shall be displayed by the institution in a conspicuous place.

42. Revocation of certificate. — (1) The Competent Authority may, if it has reasonable cause to believe that the holder of the certificate of registration granted under sub-section (2) of section 41 has,—

- (a) made a statement in relation to any application for the issue or renewal of the certificate which is incorrect or false in material particulars; or
- (b) committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted;

it may, after making such inquiry, as it deems fit, by order revoke the certificate:

Provided that no such order shall be made until an

opportunity is given to the holder of the certificate to show cause as to why the certificate should not be revoked.

(2) Where a certificate in respect of an institution has been revoked under sub-section (1), such institution shall cease to function from the date of such revocation:

Provided that where an appeal lies under section 43 against the order of revocation such institution shall cease to function: —

- (a) where the appeal has been preferred after the expiry of the period prescribed for the filing of such appeal; or
- (b) where such appeal has been preferred, but the order of revocation has been upheld from the date of the order of appeal.

(3) On the revocation of a certificate in respect of an institution, the Competent Authority may direct that any person with disability who is an inmate of such institution on the date of such revocation shall be,—

- (a) restored to the custody of her or his parent, spouse or lawful guardian, as the case may be; or
- (b) transferred to any other institution specified by the Competent Authority.

(4) Every institution which holds a certificate of registration which is revoked under this section shall, immediately after such revocation, surrender such certificate to the Competent Authority.

43. Appeal. — (1) Any person aggrieved by the order of the Competent Authority refusing to grant a certificate or revoking a certificate may, within such period as may be prescribed, prefer an appeal to the Government against such refusal or revocation.

(2) The order of the Government on such appeal shall be final.

44. Act not to apply to institutions established or maintained by State Government. —Nothing contained in this Chapter shall apply to an institution for persons with disabilities established or maintained by Government.

CHAPTER X

Institution for Persons with severe disabilities

45. Institution for persons with severe disabilities. — (1) The Government may establish and maintain institution for persons with severe disabilities at such places as it thinks fit.

(2) Where, the Government is of opinion that any institution other than an institution, established under sub-section (1) is fit for the rehabilitation of the person with severe disabilities the Government may recognise such institution as an institution for persons with severe disabilities for the purpose of this Act:

Provided that no institution shall be recognised under this section unless such institution has complied with requirements of this Act and the rules made thereunder.

(3) Every institution established under sub-section (1) shall be maintained in such manner and satisfy such conditions as may be prescribed.

(4) For the purposes of this section “person with severe disability” means a person with eighty percent or more of one or more disabilities.

CHAPTER XI

The ¹[Commissioner] for persons with disabilities

²[46. *Appointment of Commissioner for persons with disabilities.* — (1) The Government may, by notification in the Government Gazette, designate as officer in the Administrative Department, not below the rank of Secretary to Government, as the “Commissioner for Persons with Disabilities” for the purposes of the Act.

(2) The Government shall determine the nature and categories of officers and other employees required to assist the Commissioner in the discharge of his functions and provide the

¹ Substituted for “Director” by Act XIII of 2005, s. 2, w. e. f. 30.12.2004.

² Section 46 substituted *ibid*, s. 3.

Commissioner with such officers and other employees as it thinks fit.

(3) The Government may, by notification in the Government Gazette, designate the Director, Social Welfare, Jammu and Director, Social Welfare, Kashmir as Additional Commissioners and Additional Deputy Commissioners in the Districts as Joint Commissioners for the purposes of the Act.

(4) The Additional Commissioners and Joint Commissioners designated under sub-section (3) shall discharge their functions under the general superintendence of Commissioner.]

47. ¹[Functions of the Commissioner]. —The ¹[Commissioner] shall function as Competent Authority dealing with disabled persons and shall:—

- (a) co-ordinate with the Departments of the Government for the programmes and schemes for the benefit of persons with disabilities;
- (b) monitor the utilization of funds disbursed by the Government;
- (c) take steps to safeguard the rights and facilities made available to persons with disabilities;
- (d) submit reports to the Government on implementation of the Act at such intervals as the Government may prescribe.

48. ²[Commissioner] to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities. —Without prejudice to the provisions of section 47, the ¹[Commissioner] may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to:—

- (a) deprivation of rights of person with disabilities;
- (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or

¹ Substituted *ibid* for the words “Powers of the Director”, s. 4.

² Substituted for “Director” by Act XIII of 2005, s, 2, w. e. f. 30.12.2004.

issued by the Government and the local authorities for the welfare and protection of rights of persons with disabilities and take up the matter with the appropriate authorities.

¹[**48A. Authorities and officers to have certain powers of civil court.** — (1) The Commissioner shall, for the purpose of discharging his functions under the Act, have the same powers as are vested in a court under the Code of Civil Procedure, Samvat 1977 while trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing attendance of the witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requiring any public record or copy thereof from any office;
- (d) receiving evidence in the form of affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Commissioner, Additional Commissioners and Joint Commissioners shall be a judicial proceeding within the meaning of sections 193 and 228 of the State Ranbir Penal Code, Samvat 1989 and the Commissioner, Additional Commissioners and Joint Commissioners shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, Samvat 1977.]

49. Annual reports to be prepared by the ²[Commissioner]. —The ²[Commissioner] shall prepare in such form and at such time for each financial year as may be prescribed an annual report giving a full account of his activities during the previous financial year and forward a copy thereof to the Government.

The Government shall cause the annual report to be laid before

¹ Section 48-A inserted *ibid*, s. 5.

² Substituted for “Director” by Act XIII of 2005, s. 2, w. e. f 30.12.2004.

the State Legislature alongwith the recommendations explaining the action taken or proposed to be taken on the recommendations made therein in so far as they relate to the Government and the reasons for non-acceptance, if any, of any such recommendation or part.

CHAPTER XII

Social Security

50. Insurance Scheme for employees with disabilities.—

(1) The Government shall by notification frame an Insurance scheme for the benefit of its employees with disabilities.

(2) Notwithstanding anything contained in this section, the Government may instead of framing an insurance scheme, frame an alternative security scheme for its employees with disabilities.

CHAPTER XIII

Miscellaneous

51. Punishment for fraudulently availing any benefit meant for persons with disabilities. —Whoever, fraudulently avails or attempts to avail any benefit meant for persons with disabilities shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twenty thousand rupees or with both.

52. Protection of action taken in good faith. —No suit, prosecution or other legal proceeding shall lie against the Government or the local authorities or any officer of the Government in respect of anything which is done in good faith or intended to be done in pursuance of this Act and any rules or orders made thereunder.

53. Act to be in addition to and not in derogation of any other Law. —The provision of this Act, or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of

persons with disabilities.

54. Power of State Government to make rules. — (1) The Government may by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of foregoing powers, such rules may provide for all or any of the following matters, namely:—

- (a) allowances which members shall receive under section 4, sub-section (7);
- (b) rules of procedure which State Co-ordination Committee shall observe in regard to transaction of business in its meetings under section 7;
- (c) such other functions which a State Co-ordination Committee may perform under clause (g) of sub-section (2) of section 8;
- (d) the allowances which members shall receive under sub-section (3) of section 9;
- (e) rules of procedure which a State Executive Committee shall observe in regard to transaction of business as its meetings under section 11;
- (f) the manner and purposes for which a person may be associated under sub-section (1) of section 12;
- (g) fees and allowances for a person associated under sub-section (1) of section 12;
- (h) information or return which the employer in every establishment should furnish and the Special Employment Exchange to which such information or return shall be furnished under sub-section (1) of section 23;
- (i) the form and the manner in which record shall be maintained by any employer under sub-section (1) of section 26;
- (j) the form and manner in which an application shall be made under sub-section (1) of section 41;
- (k) the manner in which an order of refusal shall be

communicated under sub-section (2) of section 41;

- (l) facilities of standards required to be provided or maintained under sub-section (3) of section 41;
- (m) the period for which a certificate of registration shall valid under clause (a) of sub-section (4) of section 41;
- (n) the form in which and conditions subject to which a certificate of registration shall be granted under clause (c) of sub-section (4) of section 41;
- (o) period within which an appeal shall lie under sub-section (1) of section 43;
- (p) the manner in which an institution for persons with severe disabilities shall be maintained and conditions which are to be satisfied under sub-section (3) of section 45;
- (q) the salary, allowances and other conditions of services of the ¹[Commissioner] under sub-section (3) of section 46;
- (r) the salary, allowances and other conditions of service of officers and employees under sub-section (6) of section 46;
- (s) intervals within which the ¹[Commissioner] shall report to the Government under clause (d) of section 47;
- (t) the form and time in which annual report shall be prepared under sub-section (1) of section 49;
- (u) any other matter which is required to be or may be prescribed.

(3) Every notification made by the Government under proviso to section 22 and proviso to sub-section (3) of section 36, every Scheme made by it under section 16, section 19, sub-section (1) of section 27, section 51 and every rule made by it under sub-section (1) shall be laid, as soon as may be after it is made, before each House of State Legislature.

¹ Substituted for “Director” by Act XIII of 2005, 5. 2, w. e. f. 30.12.2004.