

Persons with Disabilities Act 1995 & National Trust Act 1999

FAQ's on Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995

Q1. What is meant by disability in the Act?

A. According to the PWD Act 1995 (Section 2) disability means: (A) Blindness (B) Low Vision (C) Leprosy Cured (D) Hearing impairment (E) Locomotor disability (F) Mental Retardation and (G) Mental Illness.

Q2. Where the medical certificate on disability is available?

A. A person with disability may get the medical certificate from the concerned Medical College Hospital/Dist. Hospital/Sub-Divisional Hospital/Special Medical Camps attended by a board from any of the above named hospitals.

Q3. What facilities are available for the visually disabled examinees regarding service?

A. As per Section 31 of the PWD Act 1995 each Govt. or Govt. Sponsored educational institution has to allow scribe to the visually disabled examinees. The PSC, West Bengal also allows scribes to visually disabled examinees.

Q4. What facilities are available to the PWDs in the matter of employment?

A. As per Section 33 of the PWD Act 1995 all Govt. Offices or Govt. undertakings will keep 3% of the vacancies reserved for persons with disabilities (PWD):

- 1% for Blindness or Low Vision
- 1% for Hearing impairment
- 1% for Locomotor Disability or Cerebral Palsy

As per sec 32 of the Act each deptt./ undertaking is to identify the posts for which P.W.Ds (Category-wise) are to be appointed .

Q5. What is provided in the Act for reservation for students with disabilities?

A. As per Section 39 of the Act all Govt. institutions or institution receiving Govt. assistance must keep 3% seats reserved for students with disabilities.

Q6. What is provided in the Act regarding the employers of P.W.Ds?

A. As per Section 41 employers entrepreneurs in the Govt. or private sector employing P.W.Ds to the extent of 5% or above of the total work force would be given assistance within the means of the appropriate authority.

Q7. Can any person falling disabled in harness be removed from or reduced in rank in service?

A. As per section 47 of the Act if any person prior to retirement becomes disabled he/she cannot be removed from service nor can be reduced in rank. He/She is to be placed in similar other post. No. reduction of wages/salary is permissible.

Q8. Can any person/organisation run activities without permission from concerned authority ? If no, from whom such permission is to be obtained?

A. As per Section 51 of the Act no person can establish or maintain any institution for PWDs without a certificate of registration from the competent authority.

In West Bengal, the Commissioner for persons with disabilities issues the certificate of registration, and renews the same after three years on receipt of report of satisfactory functions.

Q9. Does the PWD Act, protect any PWD against/ deprivation or denial of any rights/preivilages facilities guaranteed by the Act?

A. Section 61 and 62 empower the commissioner for PWDs to intervene in the case of any deprivation/denial/refusal of facilities or opportunities to a PWD on the ground of disability.

Common Questions and Answers on the National Trust Act, 1999

Q1. Why was the National Trust Act enacted?

A The National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 was enacted for welfare of persons affected by the four disabilities mentioned in the name of the Act.

Q2. What are the main functions done through the N.T. Act?

A. a) To make persons with disabilities self dependent and recognised in the society.

b) To enable a P.W.D. to become a free member of the family like others, participate fully and enjoy equal opportunities.

c) the ensure care and security for the four categories of persons with disabilities even after the death of parents.

d) To appoint legal guardians for person and property of the four categories of persons, and encourage the organisations registered with the N.T. in participation.

Q3. What are the media through which the provisions of the N.T. Act realised?

A a) The NGOs registered with the N.T.

b) Government departments and Local bodies.

c) The Local Level Committees.

Q4. How the Local Level Committees (LLCs) formed?

A. As per section 13(i) of the N.T. Act each district will have a LLC. The members and the Chair-Person are as follows:-

Chairperson – District Magistrate or any officer of the Civil Service of the same seniority.

Members – (i) An NGO regd. with the N.T.

(ii) A Person with disability (one of the seven categories described in the PWD Act, 1995)

Tenure – LLC will function for 3 years.

Convenor – Dist. Magistrate or the Chairperson may nominate one of the above named members any other officer, (generally the Dist. Social Welfare Officer) as convenor. The LLC may co-opt any officer or any person as member of the LLC, but the co-opted members can not function like the statutory members described above. All orders and notes will be issued under signature of the three statutory members.

Q5. What are the functions of the LLC?

A. Expected functions

(i) Statutory:-

For confirmation of legal guardianships it will

- a) Receive applications,
- b) Examine applications, enquire and collect documents and proofs,
- c) To monitor action of the appointed legal guardians, and
- d) Remove legal guardian for unsatisfactory/undesirable activities, if any, and appoint another Legal guardian, and

(ii) Others:-

- a) To generate awareness about the objectives of the N.T. Act 1999, to protect the rights and privilege of the PWDs, to identify their needs and problems, and also get feed-back on the sensitization.
- b) Implementation of the Scheme/Plan/Projects of the N.T.
- c) Establish contact/ liaison with the local leaders, PRI, Govt. Officers, and NGOs, and the families of the four categories of PWDs.
- d) Form Parents Associations and get them registered with N.T.
- e) To forestall any problem likely to arise and affect the PWDs by prior actions and plannings.
- f) Utilise benefits of various Govt. schemes in favour of the four categories. Function of LLC includes to ensure bringing the PWDs under the benefits of all existing Govt. Schemes that are enjoyed by common people.

Q6. Why guardian?

A. The four categories of PWDs cannot function independently. It may be also noted that every

Indian is adult and self-dependent after attaining the age of 18 years as per the constitution of India. But these four categories of persons even on attaining age of 18 years are dependent on others and cannot enjoy rights of a free citizen of the country, nor utilize the opportunities and facilities enjoyed by other citizens. Therefore, legal guardians are appointed to ensure that the four categories of persons can enjoy rights and privileges like others fellow citizens and lead a complete life. The legal guardian can do every thing for the ward.

Q7. Who can be a legal guardian?

- A. a) Father/Mother, parents.
- b) Relatives.
- c) Any Organisation registered with the N.T.

Q8. Are parents to obtain legal guardianship?

A. Yes, when the son/daughter attains 18 years of age parents can be jointly appointed legal guardians.

Q9. When can a relative be appointed Legal Guardian?

A. In absence of parents. However, the parents can themselves nominate any relative.

Q10. What is meant by a relative?

A. In relation to the PWD, Sibling, Grand father/Grand mother, uncle/aunt/ maternal uncle/maternal aunt.

Q11. When can an NGO be appointed Legal Guardian?

A. When there is none among persons. The Concerned LLC can also appoint an NGO as legal guardian.

Q12. Can Legal Guardian be appointed for property only?

A. Legal guardianship can be given not only for person of a PWD but also for maintenance of property. Again, one LG. for person and another for property is allowed.

Q13. What can a Legal Guardian do for the PWD?

- A. For the PWD the Legal Guardian can
- (i) Open a bank account and save money.
 - (ii) Can participate in any investment on behalf of the word.
 - (iii) Can obtain loans form any financial institution.
 - (iv) Can receive financial assistance from any body for self employment in favour of the P.W.D.

Q14. What is to be done by L.G. for the P.W.D.?

A. (i) To submit to the LLC within 6 months Form duly filled in.

(ii) To submit to the LLC by July every year that the form D duly filled in.

(iii) The L.G. must not take for himself/herself/itself any income and property or sent thereof for his/her/its own use.

But with prior permission of the LLC the L.G. can take any remuneration or can income expenditure for benefit of the P.W.D.

(iv) The L.G. is to do all works relating to health, medical treatment, proper education/training, entertainment, protection of human right and property, barrier free life and non-discrimination of the P.W.D.

Q15. What the L.G. will not do?

A. (i) Will not show any neglect to the P.W.D.

(ii) Will not misappropriate any amount of money belonging to the P.W.D. and keep an account.

(iii) Will take care of the property of the P.W.D. in the manner as if it were owned by this L.G.

(iv) Will never confine or fasten the P.W.D.

(v) No physical assault is permissible.

(vi) Will not sexually harass or deprive the P.W.D. of food.

(vii) Will not deprive the P.W.D. of medical treatment and diet.

Q16. When a L.G. can be removed and why?

A. On receipt of information of any lapse on the part of the L.G. in respect of any or all of the point mentioned in (15) and (14) above the concerned LLC may remove the L.G. and appoint a fresh one.

Q17. Is there any provision of L.G. for mentally disabled persons in any other Act ? If so, how?

A. Section 53 of the Mental Health Act-1987 provides for appointment of L.G. for persons belonging to category of mental illness. The Collector or concerned court by order appoints any person as guardian of the mentally ill person.

Q18. Will the property belonging to the P.W.D. be vested to the National Trust or Govt. if the P.W.D. dies while a L.G. has been appointed?

A. No. The ownership of property will be decided as per the concerned law of the land and property.

Notes :If there arises any dispute regarding property then the decision of a court of law will always be abided by. The National Trust Act 1999 was enacted in the parliament of India. The law is so in consonance with the resolutions of the UNO highlighting the principles of human rights that persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities can live lives like other common people. The LLCs will only keep watch on this aim. That is why the LLCs are in other words ears and eyes of the N.T.

P.W.D. = Persons with Disability.

L.G. = Legal guardian.

N.T. = National Trust.