



# A Review of the Rights of Persons with Disabilities Act 2016

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### **Concept and Review**

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## 1

# Introduction

India signed and subsequently ratified the UN Convention on Rights of People with Disabilities (UNCRPD) in 2007<sup>1</sup>. The UNCRPD proclaims that disability results from the interaction of impairments with social attitudes which leads to barriers in full and active participation of PWDs in society on an equal basis<sup>2</sup>. The convention also mandates the signatories to change their national laws in compliance of the principles of the UNCRPD<sup>3</sup>. In this regard, the Indian Government began the process of enacting a new law replacing the Persons with Disabilities Act, 1995 to make it compliant with UNCRPD in 2010. After many rounds of consultation the Rights of PWD Act (RPWD Act, 2016) was passed by both the houses of the Parliament in 2016. It was notified on December 28, 2016 after receiving Presidential assent and finally came into force on 19th April 2017<sup>4</sup>. The 2016 Act reflects a paradigm shift in viewing disability from the perspective of charity to a human rights perspective. The main objective of the 2016 Act is to enable empowerment of persons with disabilities (PWD) through respect for inherent dignity and individual autonomy of PWDs. It emphasizes nondiscrimination, full and effective participation and inclusion in society, respect for difference and acceptance of disabilities as part of human diversity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities<sup>5</sup>. The Act has defined disability based on an evolving and dynamic concept. The types of disabilities has been increased from 7 to 21 and includes mental illness, autism, spectrum disorder, cerebral palsy, muscular dystrophy, chronic neurological conditions, speech and language disability, thalassemia, hemophilia, sickle cell disease and Parkinson's disease which were largely ignored in earlier act<sup>6</sup>. This Act is supposed to be a game-changer, however, 4 years since it largely remains on paper with its implementation varying across states. The purpose of this paper is to review the 2016 Act and discuss some of the key issues in its implementation.

1 <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1584572>

2 [https://www.un.org/disabilities/documents/convention/convention\\_accessible\\_pdf.pdf](https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf)

3,5,6 Ibid

4 The Rights of Persons with Disabilities Act, 2016, Gazette of India, 28 December, 2016.

## 2

## International Perspectives on Disability: The Human Rights Approach

The human rights approach to disability is part of the human rights movement that has developed over the latter half of the 20th century. This model includes disability within a paradigm of rights that has been emerging since the United Nations Universal Declaration of Human Rights of 1948. This declaration recognized that all people have certain civil, political, economic, social, cultural, and development rights, despite differences between individuals. From this perspective, disability is perceived as a variation in human characteristics inherent to the human condition. Such variations do not limit potential contributions to society, but rather diversify the range of potential contributions and the range of mechanisms to ensure individual potential is realized. Thus, a rights approach presumes that society is obliged to provide whatever mechanisms are necessary for PWDs to realize their rights. As Quinn and Degener state, “The human rights perspective means viewing people with disabilities as subjects and not as objects. It entails moving away from viewing people with disabilities as problems toward viewing them as rights holders.”<sup>7</sup>

The United Nations has been continuously concerned, since its establishment, with the rights of PWDs<sup>8</sup>. As early as in 1945-1955, the United Nations Secretariat and the Economic and Social Council have been the principal UN bodies concerned with disability issues. In 1950, at its sixth session, the Social Commission agreed on the need to establish international standards for the education, treatment, training and placement of PWDs, with particular attention to be given to the blind in underdeveloped areas. The Economic and Social Council also recommended that States consider measures to help handicapped persons<sup>9</sup>. Thereafter, in 1969, the UN General Assembly adopted the Declaration on Social Progress and Development<sup>10</sup>, which started the movement relating to the rights of PWDs. The Declaration on Social Progress and Development, while proclaiming the right to live in dignity for

<sup>7</sup> Quinn, G., & Degener, T., “Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability”, Geneva, Office of the High Commission for Human Rights, 2002.

<sup>8</sup> Lawson, Edward, “ENCYCLOPAEDIA OF HUMAN RIGHTS, 1996, p. 364.

<sup>9</sup> Chapter I, “Introduction”, THE UNITED NATIONS AND DIFFERENTLY-ABLED PERSONS: THE FIRST 50 YEARS (<http://www.un.org/esa/socdev/enable/dis50y40.html>).

<sup>10</sup> G.A. Res. 2542 (xxiv).

all people and human beings, emphasized the need to assure disadvantaged and marginal sectors of the population, equal opportunities for social and economic advancement in order to achieve an effectively integrated society<sup>11</sup>.

From the mid-1970s onwards, the rights based perspective on disability has manifested at the UN level in four ways: (1) at the level of ideas, especially as reflected in the various non-binding declarations and resolutions of the General Assembly and in United Nations sponsored studies, (2) in the way the general human rights treaties are being interpreted, (3) in the drafting of the thematic human rights treaties, and (4) in the ongoing work and programs of the various specialized agencies<sup>12</sup>. During this time the General Assembly of the United Nations adopted two Declarations: The Declaration on the rights of Mentally Retarded Persons, 1971 and the Declaration on the rights of Differently-abled Persons, 1975. Subsequently, in 1976, the UN General Assembly proclaimed the year 1981 to be the International Year of Differently-abled persons<sup>13</sup>, and in 1982 it adopted the World Programme of Action concerning differently-abled persons<sup>14</sup>. Further, it proclaimed the period 1983-1992 as the United Nations Decade of Differently-abled Persons<sup>15</sup>.

In December 1986, the Declaration on the Right to Development was adopted which stated that, “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting from there.”<sup>16</sup> Though this Declaration did not say anything specific on the rights of PWDs, it proved to be a bench mark for the coming conventions and declarations for their rights. Then, in 1992, the United Nations announced that December 3 would be observed every year as International Day of Persons with Disabilities. Subsequently, in 1993 the United Nations General Assembly adopted a landmark resolution entitled “Standard Rules on the Equalization of Opportunities for Persons with Disabilities.”<sup>17</sup> The preamble of the Standard Rules enumerated six objectives which emphasized accessibility and participative decision-making process as a necessity for attainment of equal opportunity.

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) was a big step towards changing the views on PWDs as subjects with rights. The Convention was adopted by the General Assembly in its resolution 61/106 of

11 S.K. Verma, “International legal regime on the rights of persons with disability: its relevance to national legal system” in S. K. Verma (Ed.) RIGHTS OF PERSONS WITH DISABILITIES, 2002.

12 Elston, Philips, “THEE.U. AND THE HUMAN RIGHTS, 1999, p. 293, Oxford Publication.

13 G.A. Res. 31/123.

14 G.A. Res. 37/52.

15 G.A. Res. 37/53.

16 Art. 2(3), The Declaration on the Right to Development, 1986.

17 General Assembly resolution 48/96 of 20 December 1993. See generally Lindqvist, Bengt, “Standard rules in the disability field - a United Nations instrument”, Human Rights and Differently-abled Persons, Degener and Koster-Dreese, eds., (Dordrecht, Kluwer Academic Publishers Group, 1995), p. 63.

December 13, 2006<sup>18</sup>. The purpose of the UNCRPD, was to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity<sup>19</sup>. This new convention was not intended to create any new rights or entitlements. What it did however, was to express existing rights in a manner that addressed the needs and situation of PWDs. The other benefit of this new convention was that once it came into force, a Committee would monitor its implementation. Countries that ratified the Convention would need to report regularly on their progress to the Committee. India ratified the UNCRPD in 2007. Lately, the 2030 Agenda for Sustainable Development has pledged to “leave no one behind”. It has stated that persons with disabilities must be both “beneficiaries and agents of change”<sup>20</sup>.

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18 [https://www.un.org/disabilities/documents/convention/convention\\_accessible\\_pdf.pdf](https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf)

19 Article 1 of UNCRPD, 2006.

20 <https://sdgs.un.org/2030agenda>

## 3

## The Rights of PWDs in India: A Brief History

The evolution of the disability rights movement in India spans over four decades. Voices began demanding the rights of people suffering from disabilities in the early 1970s; it was however, nowhere close to being a movement at that point. Until the 1970s, most of the people who suffered from any kind of disability were considered as outcasts from the mainstream society and were looked down upon. Even the system thought of them as a liability; these people were considered to be of little use to society and hence their concerns were severely disregarded.<sup>21</sup>

The 1980s saw a shift in the policy framework, with the welfare model being transformed into a developmental model. This was a phase where the disabled persons, who were earlier treated as recipients of charity, became participants in the developmental process<sup>22</sup>. This period witnessed the consolidation of demands from various groups and their organization under a cross-disability umbrella, representing the interests of the disabled. Many NGOs started operating in the disability sector during this decade and this subsequently provided further momentum to the movement<sup>23</sup>. By the end of the 1980s, people also started focusing on disability on medical grounds, with the objective of trying to reduce suffering via medical treatments, medical equipment, and technical help, to improve the lives of disabled people. When the United Nations announced 1982-1993 as The Decade of Disabled Persons, it marked another shift in the entire debate on the goals of rehabilitation. The Rehabilitation Council of India was set up by the Government of India in 1986 to regulate and standardize training policies and programs for the rehabilitation of persons with disabilities<sup>24</sup>.

The 1990s brought drastic changes in the disability sector of India. A self-advocacy movement of people with disabilities, which started during the

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<sup>21</sup> Miles, M (2002): "Community and Individual Responses to Disablement in South Asian Histories: Old Traditions, New Myths?", Asia Pacific Disability Rehabilitation Journal.

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ibid

1970s, began campaigning for protection and recognition of their human rights<sup>25</sup>. It advocated the enactment of a comprehensive legislation with a rights-based approach, placing special emphasis on social and economic rights. After a series of petitions and protests, the government passed the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995<sup>26</sup>. The PWD Act was focused more on rights. The substantive provisions of the Act provided for the prevention and early detection, education, employment, affirmative action, non-discrimination/barrier free access, research and manpower development, and institutions for persons with severe disabilities<sup>27</sup>. It further reserved three percent of government posts for those in the PWD category<sup>28</sup>. So, 1995 became a benchmark year for the Disability Rights Movement in India.

In the new millennium, the United Nations adopted the Convention on the Rights of Persons with Disabilities in 2006. In the same year the Union Government came up with a National Policy on Disability, 2006<sup>29</sup>. This was a comprehensive national policy on disability covering critical areas like education, employment, support services, access, social security, etc. However, the policy needed to be modified in the light of the UN Convention which was ratified by India in 2007.

The 2011 census in India revealed that over 26.8 million people suffered from some kind of disability<sup>30</sup>. This was equivalent to 2.21 percent of the population. Among the total disabled in the country at the time, 14.9 million were males and 11.8 million were females<sup>31</sup>. Further, 18.6 million PWDs resided in rural areas while 8.2 million reside in urban areas<sup>32</sup>. Considering the high numbers and the demands from civil society, by 2012, the Union Government of India came up with a disability bill. After some amendments to the original draft the bill was tabled in the parliament the very next year. After a wait of over three years, the Rights of Persons with Disabilities Bill was finally passed by both houses of parliament in 2016<sup>33</sup>.

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25 Hosamane, Sakshi Broota (2007): "Developing the Gender Dimension in India in Disability Rights Movement".

26, 28, 31, 32 Ibid

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

29 <http://67.199.83.28/doc/IND93612.pdf>

30 [http://mospi.nic.in/sites/default/files/publication\\_reports/Disabled\\_persons\\_in\\_India\\_2016.pdf](http://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf)

33 The Rights of Persons with Disabilities Act, 2016, Gazette of India, 28 December, 2016.



## 4

# State Intervention in Protecting the Rights of PWDs

## 4.1 Constitutional Provisions

The Indian Constitution applies equally and uniformly to every legal citizen of India, whether they are healthy or disabled in any manner (physically or mentally). Under the Constitution of India, the disabled have been guaranteed the following fundamental rights:

- i) The Constitution provides for the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity<sup>34</sup>.
- ii) Article 15(1) directs the Government not to discriminate against any citizen of India (including the disabled) on the grounds of religion, race, caste, sex, or place of birth.
- iii) Article 15(2) provides that no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, hotels and places of public entertainment, public restaurants, or in the use of wells, tanks, public bore wells, bathing ghats, roads and places of public resort maintained totally or partly by the virtue of government funds or dedicated to the use of the general public. There shall be equal opportunity for all citizens (including the disabled) in matters pertaining to employment or appointment to any office under the State.
- iv) No person (including the disabled) irrespective of their belongings can be treated or seen as an untouchable. It would amount to an offence punishable in accordance with law as provided by Article 17 of the Constitution.

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<sup>34</sup> Preamble of the Indian Constitution.

- v) Each and every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution.
- vi) There can be no trafficking in human beings (including the disabled), and beggar and any form of forced labor is prohibited and the same is made punishable in accordance with law (Article 23).
- vii) Article 24 bans employment of children (including the disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. Even a private contractor working for the government cannot engage children below 14 years of age in such employment.
- viii) Article 25 ensures to every citizen (including the disabled) the right to freedom of religion. Every disabled person (similar to non-disabled ones) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.
- ix) Every disabled person has right to move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32.

## 4.2 Legislative Provisions

Some of the important legislations for PWDs in India are as follows:

- i) **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:** This Act came into effect on February 7, 1996<sup>35</sup>. It is considered a very significant step in the history of disability rights in India. The primary objective of the Act was to provide equal opportunities for people with disabilities and ensure their full participation in nation building. The Act provided for both preventive and promotional aspects of rehabilitation which included education, employment and vocational training, research and manpower development, reservation, creation of a barrier-free environment, unemployment allowance, special insurance schemes for disabled employees and the establishment of homes for persons with severe disabilities amongst others. It also provided 3% reservation for PWDs in employment and admission in government institutions.

ii) **The Rehabilitation Council of India Act, 1992:** This Act provides certain guarantees about the standard of rehabilitation professionals so as to ensure the quality of services rendered by them. Following is the list of these guarantees<sup>36</sup>:

- To have the right to be served by trained and qualified rehabilitation professionals whose names are borne on the Register maintained by the Council.
- To have the guarantee of maintenance of minimum standards of education required for recognition of rehabilitation qualification by universities or institutions in India.
- To have the guarantee of maintenance of standards of professional conduct and ethics by rehabilitation professionals in order to protect against the penalty of disciplinary action and removal from the Register of the Council.
- To have the guarantee of regulation of the profession of rehabilitation professionals by a statutory council under the control of the central government and within the bounds prescribed by the statute.

iii) **The Mental Health Act, 1987:** This Act was passed by the parliament in 1987 and came into effect in April 1987<sup>37</sup>. It replaced the Indian Lunacy Act of 1912. The main purpose of the Act was to consolidate and amend the law related to the treatment and care of mentally ill persons and to make better provisions with respect to their property and affairs. The main objectives of the Act were as follows:

- To establish central and state authorities for licensing and supervising psychiatric hospitals and to establish psychiatric hospitals and nursing homes.
- To provide for the custody of mentally ill persons who are unable to look after themselves and who are dangerous to themselves or others.
- To regulate procedure for admission and discharge of mentally ill persons.
- To safeguard the rights of detained individuals
- To provide the maintenance charges of the mentally ill persons
- To provide legal aid to poor mentally ill criminals.

iv) **The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, Act:** It was passed by Parliament in 1999. The objectives of the National Trust are<sup>38</sup>:

- To enable and empower persons with disability (persons covered by the National Trust) to live as independently and as fully as possible within and as close to the community to which they belong.
- To strengthen facilities to provide support to persons with disabilities to live within their own families and to help persons with disabilities who have no family support.
- To extend support to registered organizations that provide need-based services to family of persons with disabilities.
- To promote measures of care for persons with disabilities in the event of a death of their parent or guardian.
- To evolve procedure for the appointment of guardians and trustees for persons with disability requiring protection
- To facilitate the realization of equal opportunities, protection of right, and full participation of persons with disability.

v) **Rights of Persons with Disabilities (RPWD) Act, 2016:** This Act was enacted to operationalize the human rights enshrined in the United Nation Convention on Rights of Persons with Disabilities (UNCRPD), ratified by India in 2007. This act is more comprehensive than the Persons with Disability (PWD) Act, 1995. The number of disabilities have been increased from seven to twenty-one along with a number of new provisions and institutional arrangements<sup>39</sup>. The preamble of this act clear states that it aims to uphold the dignity of every Person with Disability (PwD) in the society and prevent any form of discrimination. The act also facilitates full acceptance of people with disability and ensures full participation and inclusion of such persons in the society.

vi) **Mental Healthcare Act, 2017:** This Act received the Presidential assent on April 7 2017. It provides persons who are suffering from mental illness with healthcare and services to ensure protection of their rights<sup>40</sup>. It came into existence in order to harmonize and align the Mental Healthcare Act 1987 with the UNCRPD and its Protocols.

38 <https://thenationaltrust.gov.in/upload/uploadfiles/files/National%20Trust%20Act%20-%20Englisih.pdf>

39 [https://legislative.gov.in/sites/default/files/A2016-49\\_1.pdf](https://legislative.gov.in/sites/default/files/A2016-49_1.pdf)

40 <http://egazette.nic.in/WriteReadData/2017/175248.pdf>

### 4.3 Judicial Position

The Indian judiciary has played a very important role in protecting the rights of PWDs in the country. In a plethora of cases the Supreme Court and the High Courts have interpreted disability legislations furthering the cause of PWDs. Some of the important cases have been highlighted below.

- i) In *Javed Abidi v. Union of India*<sup>41</sup>, while directing Indian Airlines to provide concessions for passengers suffering from locomotor disabilities, the Supreme Court keeping in view the objectives of the Persons with Disabilities Act, 1995, enabled creation of various free environments for persons with disabilities and making special provisions for their rehabilitation, medical care, education, employment, training, and protection of their rights.
- ii) In *D.N. Chanchala v. State of Mysore*<sup>42</sup>, the Supreme Court advocating the right-based approach to disability extended the equitable principle of preferential treatment under Art 15 (4) to persons with disabilities to bring them to the mainstream of society by giving them equal opportunity in the field of education.
- iii) The Allahabad High Court in the case of *National Federation of Blinds UP Branch v. State of UP*<sup>43</sup>, ordered the Lucknow Development Authority to not only give preference in the matter of allotment of land houses to handicapped persons, but also to provide concessional rates to them.
- iv) In *Chandan Kumar Banik v. State of West Bengal*<sup>44</sup> the Supreme Court emancipated mentally challenged inmates of a hospital in Hooghly District who were being kept chained by the hospital administration to control their unruly and violent behavior.
- v) Absence of reservations for persons with a physical handicap in medical colleges was found by the Calcutta High Court to be an infringement of Persons with Disabilities Act and the Constitution as well in *Dy. Secy. (Mart), Deptt. of Health and Family Welfare v. Sanchita Biswas*<sup>45</sup>.
- vi) In *Sheela Bharse v. Union of India*<sup>46</sup>, the Supreme Court held that mentally ill noncriminal persons cannot be kept in jail and opined that keeping the non-criminals in jail along with other convicts is unconstitutional. Like this in a number of cases, the Indian judiciary has shown its commitment towards the protection of the human rights of the disabled persons and played a significant role in the domain of disability rights in India.

41 1999 1 SCC 467

42 AIR 1971 SC 1762

43 AIR 2000 All 258

44 1995 Supp (4) SCC, 505

45 AIR 2000 Cal 202

46 1993 4 SCC, 204



## 5

# Statistical Profile of PWDs in India

Disability status was not canvassed in India's census from 1941 to 1971<sup>47</sup>. Thus, PWDs were excluded from the population census until the 1980s. After a long absence, the 1981 census included information on three types of disabilities<sup>48</sup>. However, again in the 1991 census it was left out. This resulted in a growing demand by PWDs for their inclusion in the population census of India. After a prolonged advocacy, a question on disability was finally included in the 2001 census questionnaire. With minimal awareness and training, the enumerators found that 2.1 percent of the total population of the country consists of PWD<sup>49</sup>. However, persons belonging to many disabilities, including persons with mental and intellectual disabilities, were completely excluded. Census 2001 only included 5 types of disabilities<sup>50</sup>.

The Census 2011 is the source for latest data on disabled persons in India. The Census 2011 used improved concepts, questions, methodology of canvassing etc for better collection of information on PWDs in India. However, even the 2011 census only considered eight types of disabilities which is also a serious underestimation. Given that the RPWD Act 2016 has enumerated 21 types disabilities it is imperative to further update the methodology in order to get a more accurate data on PWDs as soon as possible. Nevertheless, the following figures are based on the 2011 census, given that it is the latest available data source.

## i. Total

In India in 2011, out of the 121 Cr population, 2.68 Cr persons were disabled which was 2.21% of the total population. Among the disabled population 56% (1.5 Cr) were males and 44% (1.18 Cr) were females as shown in table 1.

**Table 1: Total Population of PWDs in India in 2011**

	Persons	Males	Females
Total Population	121.08 Cr	62.32 Cr	58.76 Cr
Population of PWDs	2.68 Cr	1.5 Cr	1.18 Cr

Source: Disabled Persons in India: A Statistical Profile, 2016 Report, MoSPI, Gol

## ii. Social Group

The percentage of disabled population among males and females was 2.41% and 2.01% respectively. At the all India level as well as disaggregated by various social groups, the proportion of disabled in the corresponding population was higher for males than for females as shown in table 2.

**Table 2: Percentage of PWDs in India in 2011 by Social Group**

Social Group	Persons (%)	Males (%)	Females (%)
Total	2.21	2.41	2.01
SC	2.45	2.68	2.2
ST	2.05	2.18	1.92
Other than SC/ST	2.18	2.37	1.98

Source: Disabled Persons in India: A Statistical Profile, 2016 Report, MoSPI, Gol

## iii. Rural Urban Divide

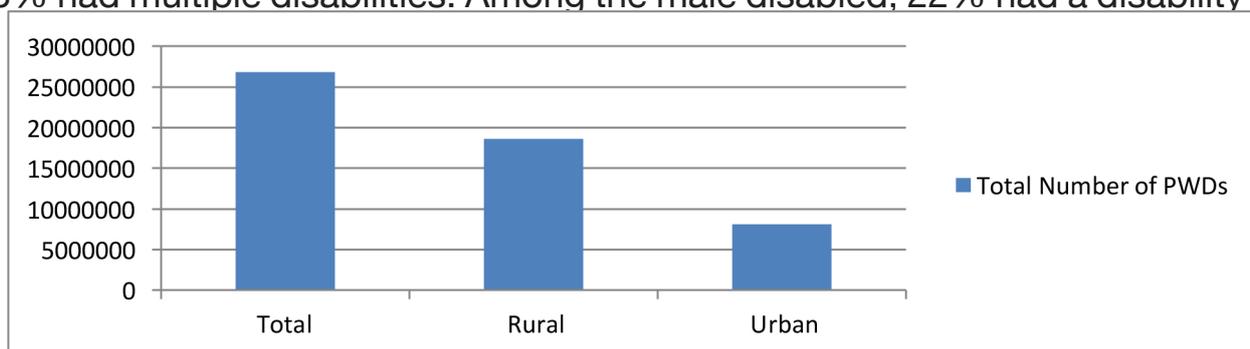
Majority (69%) of the disabled population resided in rural areas, which came to 1.86 Cr disabled persons in rural areas and 0.81 Cr in urban areas (figure 1).

**Figure 1: Number of PWDs Residing in Rural and Urban Areas in 2011**

Source: Disabled Persons in India: A Statistical Profile, 2016 Report, MoSPI, Gol

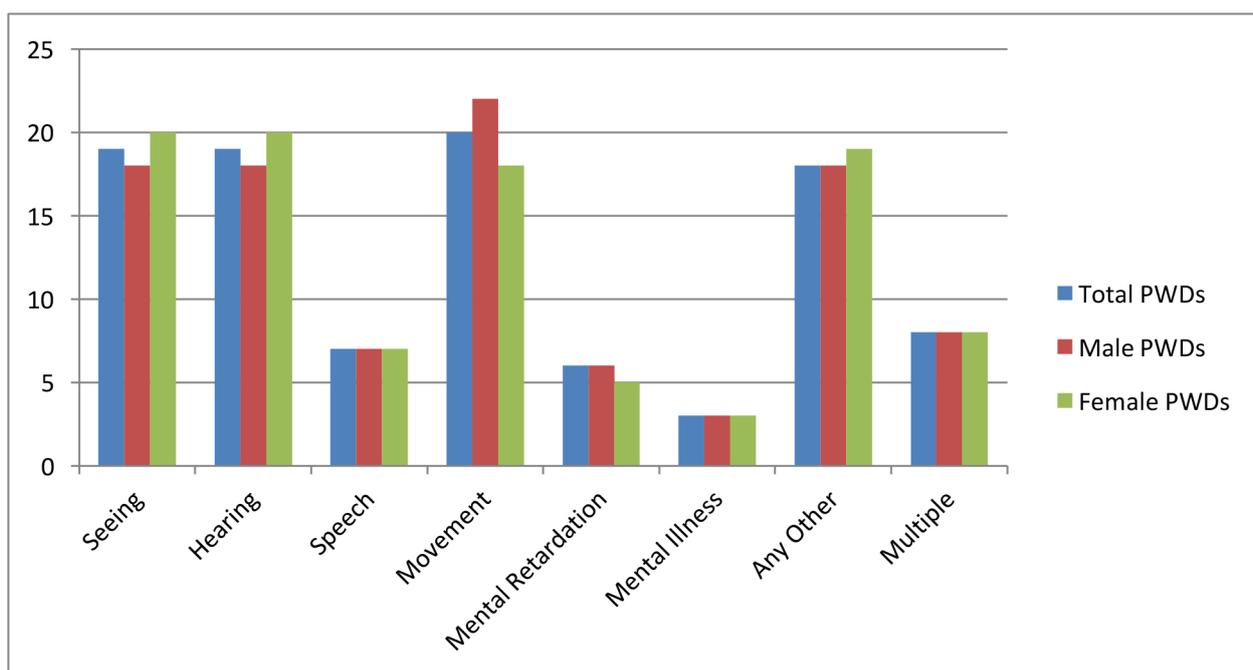
## iv. Types of Disabilities

In 2011, 20% of the disabled persons had a disability in movement, 19% had a disability in seeing, and another 19% had a disability in hearing. A further 8% had multiple disabilities. Among the male disabled, 22% had a disability in



movement, 18% had a disability each in seeing and hearing, while 8% of them suffered from multiple disabilities. In the case females, 20% had a disability each in seeing / in hearing, 18% had a disability in movement and 8% of them had multiple disabilities (figure 2).

**Figure 2: Percentage of Different Disabilities within the PWD population**

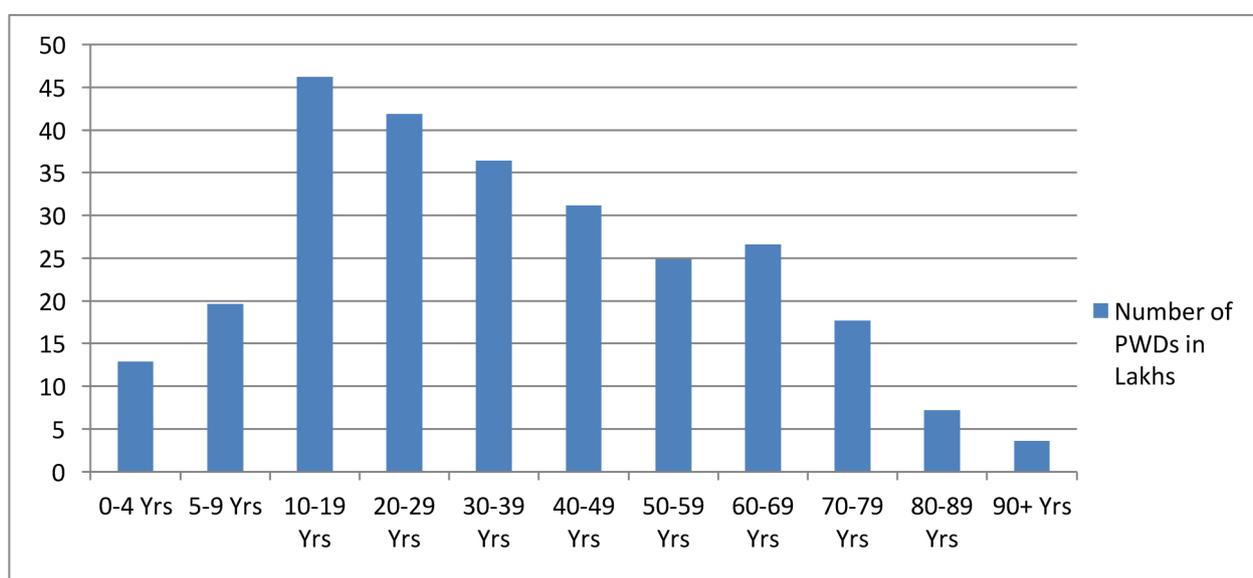


Source: Disabled Persons in India: A Statistical Profile, 2016 Report, MoSPI, Gol

## v. Age Distribution

In 2011, the number of disabled persons was highest in the age group 10-19 years (46.2 lakhs). 17% of the disabled population was in the age group 10-19 years and 16% of them were in the age group 20-29 years. Elderly (60+ years) disabled constituted 21% of the total disabled. The disability among children is a matter of serious concern as it has wider implications. The Census 2011 showed that, in India 32.5 lakhs children aged 0-9 years are disabled (figure 3).

**Figure 3: Number of PWDs in Various Age Groups (Lakhs)**



Source: Disabled Persons in India: A Statistical Profile, 2016 Report, MoSPI, Gol

## 6

# RPWD Act 2016

The Rights of Persons with Disabilities Act 2016 was enacted to codify India's obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The Ministry of Social Justice and Empowerment set up a committee in 2009 to draft this bill, which in accordance of the UNCRPD, included people with different types of disabilities. After a series of consultations the committee came up with a bill in 2012 which was tabled in the parliament in 2013. The bill was finally passed in 2016 and received the assent of the President on December 27, 2016. This Act for the first time truly represented a rights based disability legislation in India. Its focus was on transforming the meaning of disability by expanding its definition from the existing medical framework to a social one.

The preamble of this act states that it aims to uphold the dignity of every Person with a Disability (PwD) in society and prevent any form of discrimination. It also facilitates full acceptance of people with disability and ensures full participation and inclusion of such persons in society. The Act defines a PwD as any person with long-term physical, mental, intellectual, or sensory impairments which on interacting with barriers hinder effective and equal growth in the society. Further, it also defines a "Person with Benchmark Disability" as a person with not <40% of the specified disability, thereby viewing disability in terms of a dynamic concept. The act contains 17 chapters with 102 sections.

## 6.1 Salient Features of the Act

### i. Rights and Entitlements of Persons with Disabilities<sup>51</sup>

- 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.

## ii. Special provisions for persons with benchmark disabilities<sup>52</sup>

- **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.

### iii. Guardianship of PWDs<sup>53</sup>

- If a district court determines that a PWD 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 PWD.
- 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 PWD. The guardian need not consult with, or determine the will or preference of the PWD.

### iv. Authorities established under the Bill<sup>54</sup>

- **Chief and State Commissioners for Persons with Disabilities:** The central government shall appoint a Chief Commissioner, and state governments shall appoint State Commissioners for PWDs. 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.

### v. Offences and penalties<sup>55</sup>

- Any person who violates provisions of the Act, or any rule or regulation made under it, shall be punishable with imprisonment

<sup>53</sup> RPWD Act 2016, Article 14.

<sup>54</sup> RPWD Act 2016, Chapter XI, Chapter XII.

<sup>55</sup> RPWD Act 2016, Chapter XVI.

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.





## 7

## Key Issues

i) **Slow Progress in Implementation:** A study<sup>56</sup> was conducted by Disability Rights India Foundation (DRIF) in 2018, across 24 States, to evaluate the progress of implementation of RPWD Act. The study highlighted poor compliance even after 2 years of enactment. Some key findings (as of December 2018):

- More than half the states (14 out of 24) had not notified the State Rules, in spite of the Act mandating notification within six months of the enactment.
- 12 states had not constituted State Advisory Boards (SAB) and 20 had not constituted District Committees.
- 9 States had not appointed the required Commissioners for Persons with Disabilities and only 3 States had constituted Advisory Committees to assist the State Commissioners.
- 19 States had not constituted the mandated State Fund for implementing the Act.
- Only 4 States had appointed a Nodal Officer in the District Education Office to deal with admission of children with disabilities.
- 14 States had not notified the mandated Special Courts for the purpose of trying offences under the Act and 20 had not appointed Special Public Prosecutors
- As per the Act, every establishment (private and government) is required to formulate an Equal Opportunity (EO) Policy and register it with the Commissioner. However, 22 States had not received any EO policy from the Government.

- 13 states had not issued the notifications for increasing reservation in employment from 3% to 4%
- Only one State had taken action with regard to providing increased assistance in social security schemes for people with disabilities
- Only 12 States had started issuing disability certificates pertaining to the new disabilities that had been included in the Act.

ii) **Under Estimation of Numbers:** As per 2011 census, people with disability form 2.21% of the population. However, according to experts this is an underestimation<sup>57</sup>. The WHO estimates that worldwide the number of people with disabilities is 10 to 15 per cent of the total world population<sup>58</sup>. Compared to other countries, especially the developed ones, the percentage of disabled persons in India is much lower<sup>59</sup>. This does not mean India has succeeded in tackling disability by medical advancement. The problem lies in faulty data collection and insistence on requirement of higher degree of disability<sup>60</sup>.

iii) **Lack of Coordination between Departments:** Since creating an inclusive ecosystem for people with disability is a cross policy issue it requires coordination between various departments and ministries. However, in practice there is little coordination between the Department of empowerment for People with Disabilities DePwD and other ministries<sup>61</sup>. This has excluded the concerns of persons with disabilities from policies especially in the context of disaster management, motor vehicles, right to information, etc.

iv) **No Penalty for Violation of Access to Public Services:** The Act mandates that all public services shall be accessible; however, no penalty has ensued for its violation<sup>62</sup>. Consequently, there is little progress in ensuring a more inclusive ecosystem to avail services. The dismal state of roads, public transport and infrastructure make it inaccessible for persons with disabilities. There is little compliance between the National Building Code and the harmonised guidelines. Guidelines for accessible websites are also not made explicitly applicable to private websites.

v) **Problems with Issue of UDID Cards:** The Unique Disability ID (UDID) has been implemented with a view to create a National Database for

57 <https://www.newindianexpress.com/states/kerala/2019/dec/03/india-more-disabled-friendly-but-yet-to-be-fully-inclusive-2070469.html>

58 <https://www.hindustantimes.com/india-news/disabled-persons-data-of-2011-may-be-underestimated-actual-number-more-higher-official/story-oByDrUwC5YsbktJRpD6nxL.html>

59 <https://www.newindianexpress.com/states/kerala/2019/dec/03/india-more-disabled-friendly-but-yet-to-be-fully-inclusive-2070469.html>

60 *ibid*

61 <https://thepolicytimes.com/cross-disability-rights-organizations-demand-stringent-implementation-of-rpwd-act-2016/>

62 *ibid*

PwDs However, the progress is extremely slow<sup>63</sup>. Many differently able people have not applied due to lack of awareness. Several people who have applied have complained about long waits. And even those that have received the cards have noticed many errors. The application for corrections is also a long and cumbersome process. Additionally, since UDID cards are only given to persons with benchmark disabilities, it is suggested that the data will be under representative. For instance members of the Multiple Sclerosis Society of India have stated that since Remitting Relapse Multiple Sclerosis does not fit the 40% benchmark, such individuals are neither provided disability certificate nor are they recorded in official data<sup>64</sup>.

- vi) **Underutilization of National Fund:** Section 86 of the RPWD Act provides for a National Fund for persons with disabilities and the previous fund under the 1995 Act has been merged with it. The fund is used for various activities including scholarship support for students with disabilities. In between 2009-15 Rs 3.51 crore was disbursed to support more than 50 lakh students every year<sup>65</sup>. However, since then the fund had been frozen for four years, and as of July 2019 more than 260 crore of the fund remained unutilized. Also, the DGCAE through an RTI reply has stated that it has not conducted any audit of the fund<sup>66</sup>.
- vii) **Challenges for Inclusive Education:** Current data indicates that an estimated 7.8 million children below 19 live with disabilities. Amongst them, 75% of the population below 5 does not go to any educational institution, and for CWDs between 5 and 19 the figure is at 25%<sup>67</sup>. Further, the proportion of CWDs who are out of school is much higher than the overall proportion of out-of-school children. Thus, in spite of schemes aimed at bringing CWDs into schools, many gaps remain<sup>68</sup>. There continues to be a lack of accessible physical infrastructure, assistive technologies and information and communication technology. Governance-related challenges such as lack of effective coordination between different stakeholders, inadequate allocations, delays and underutilization of funds remain. While all three types (neighbourhood school, special school and home-based school) of schooling are legally endorsed for CWDs, there is absence of a legal framework specifying standards that is applicable across all

63 <https://www.thestatesman.com/cities/bhubaneswar/differently-abled-unaware-udid-cards-1502781401.html>

64 <https://thepolicytimes.com/cross-disability-rights-organizations-demand-stringent-implementation-of-rpwd-act-2016/>

65 <https://indianexpress.com/article/india/rs-260-62-crore-national-disability-fund-lying-unused-reveals-rti-5860598/>

66 *ibid*

67 <https://counterview.org/2019/07/08/children-with-disabilities-indias-partial-progress-in-harmonizing-national-laws-with-un-requirements/>

68 *ibid*

three categories. There is also absence of a coordinating authority that can enforce norms and standards across multiple educational settings. The New Education Policy unveiled in 2019 also does little for the interest of CWDs<sup>69</sup>. It lacks provisions for intervention in early childhood care and education (ECCE). It does not have any provision for special educators and teachers training. It also proposes creation of school complexes which would further hinder access.

- viii) **Lack of Awareness:** In Indian society there are still preconceived notions of disability and its association with religious faith<sup>70</sup>. People still consider disability as a direct result of misdeeds of previous life. Additionally, the society is steeped in referring to PWDs by their disability. As a result they continue to suffer social stigma and discrimination. Thus, awareness about PWDs is one of the most important issues that need to be addressed.

## 8

## Recommendations

- i) Administrative Mechanisms and plans should be put in place by the Nodal Ministry and other relevant Ministries at the earliest. There are very specific mandates and timelines given in the Act. It is necessary to ensure accountability of stakeholders to prevent any further delay in implementation.
- ii) Awareness should be raised, and capacities should be built among various personnel who have a role to play in implementing the Act. The Rehabilitation Council of India (RCI) and relevant training bodies should devise a plan for ensuring that disability issues are included in the curriculum.
- iii) Social Audits should be undertaken periodically as mandated by the Act to help in monitoring progress and improving various schemes.
- iv) There is a need to ensure accurate and reliable data on PWDs through Census 2021.
- v) Need convergence and streamlining of all relevant departments on the issue of RPWDs to enable policies for an inclusive ecosystem.
- vi) Need to implement penalties for any violation of access to public services to disincentivize non compliance.
- vii) UDID cards need to be issued at the earliest and the process of applying for any corrections needs to be simplified. There is also a need for further consultations with representatives of various disability organizations to ensure benchmarking does not lead to any under estimation.
- viii) Adequate resources should be allocated and disability budgeting should be introduced in relevant departments. Proper utilization of funds needs to be ensured.
- ix) Need to provide a legal framework of standards which is aimed at meeting needs of CWDs and which is applicable across all three categories of

schooling. Also need to provide a coordinating authority to enforce the standards.

- x) Need a dedicated fund to ensure inclusive physical infrastructure and assistive technologies are made available as soon as possible. All effort needs to be made to make educational institutions more accessible.
- xi) The new education policy needs to be revised after consultations with groups representing CWDs to ensure their interests are incorporated.
- xii) Need comprehensive awareness campaigns amongst PWDs as well as the larger society to sensitize population about rights of PWDs especially in rural areas.



## 9

## Conclusion

The disability rights movement in India has undoubtedly touched the lives of masses of PWDs and pushed for a more disabled friendly environment in the country. Additionally, the State has also played a very important role in taking the lead in formulating acts and policies, initiating disability prevention and rehabilitation programmes, and promoting organisations affecting the lives of millions of PWDs in the country. With the passing of the RPWD Act 2016 and with India ratifying the UN convention on the rights of the disabled, the ground has been laid to ensure rights to citizenship, respect and opportunities for persons with disabilities. However, as highlighted in this paper, many barriers still remain. The challenges before the Disability Rights Movement in India are enormous. Building a strong movement would require a better grasp of the complexity of socio-political contexts which the PWDs inhabit. Lessons from the past and learning from other movements would go a long way in strengthening the movement and thereby furthering the cause of rights of PWDs in India. Implementation of the RPWD Act 2016 is only the beginning.

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