



## LAWS FOR THE DISABLED AND ITS EFFECTIVE IMPLEMENTATION IN INDIA

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**Abstract:** The majority of the world's population is able bodied. Yet, there are individuals who are not able to do their "routine" work without assistance. This inability to lead a normal and independent life puts them under the category called the disabled. A person may be disabled from birth or due to any incident, medical or non-medical, that may occur during her/his lifetime. Since time immemorial a person with a disability has undergone not only medical violations but also human rights violations. With the onset of the human rights movements, the disability rights movement in India too developed. The United Nations Convention on the Rights of Persons with Disabilities has paved way for the Indian Disability Laws. Intellectual Disability is the worst affected and because of their inability to comprehend complex concepts they depend solely on the decisions of their parents/guardians. Efforts to implement the Disability Laws for the quality of life for the disabled in India.

**Index Terms - Disability; Indian Disability Laws; Intellectual disability; Autism; Cerebral Palsy;**

An individual is considered able bodied or normal when she/he is able to perform her/his work on their own without any kind external support. She or he is able to do their routine activities like walking, eating etc., without any difficulty. Though the majority of the people in this planet are considered to be able to do their work on their own, there is still a group of people who are dependent on others for their routine and hence are called as disabled to their own routine activities.

World Health Organisation in 1976 drew a three-fold distinction between impairment, disability and handicap. 'Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations.'(WHO: 2011) About 15% of the world's population lives with some form of disability, of whom 2-4% experience significant difficulties in functioning. (WHO: 2011)

Disability, as a concept is divided into three models- the medical model, the social model and the socio-identity model. The medical model refers to the physical and mental attributes of the disability and that it needs to be treated with medical aid. The social model, on the other hand, is based on the society's attitude towards the differently abled. Due to number of constraints, differently abled person faces restrictions in the society to be a part of the whole and this limited or no participation in the society is cause for concern. The socio-identity model refers to the coming together of the differently abled persons under a shared identity.

There are many types of disabilities like Physical disability (that can be either congenial or acquired), Sensory disability (more than one sensory organs do not function properly), Neurological disability (damage to the nervous system), Intellectual and Developmental disability (mental capacity to learn, reason and think), Developmental disability (impairment in cognition) and Psychiatric disability (mental illness) (CDCP: 2015).

Mental Illness and Intellectual Disability are two extremely different conditions which people often misunderstand. Intellectual disability refers to the cognitive ability and usually assessed by a psychologist while the Mental illness is disturbances in thought process and diagnosed by a Psychiatrist. This study focuses on intellectual and developmental disabilities where the main types are Autism, Down's syndrome, Cerebral Palsy and Mental Retardation/Intellectual Disability. All the four disorders are cognitive and congenital disabilities. A person cannot be cured from these but can be trained depending on the severity level.

Gaining global importance around 1960s, the disability rights movement seeks to secure equal opportunities and rights for the differently abled. More than 90 per cent of the differently abled prefer staying indoors since the infrastructure outside isn't inclusive. Much of the work done in the Disability Rights Movement is carried out by

those without disabilities but with a strong connection to someone who is differently abled. Parents, friends and siblings have taken up the fight for education and acceptance when their loved ones are with cognitive disabilities. Accessibility and safety are primary issues that this movement works to reform. Access to public spaces such as streets, public buildings and restrooms are some of the visible changes that have been brought about in recent times. Freedom from abuse, neglect and violation of rights form some of the key areas of the movement which include the social front. Abuse and neglect include inappropriate seclusion, restraint, use of force, threats, harassment, failure to provide adequate nutrition, clothing, medical and mental health care. In 1990, the Americans with Disabilities Act became law which provided comprehensive civil rights protection for persons with disabilities. Individuals with Disabilities Education Act (IDEA), which further elaborated on the inclusion of children with disabilities into regular classes (Switzer: 2013). The Mental Deficiency Act of 1913 was a breakthrough for the activists as it required the local authorities to maintain the institutions in United Kingdom. 1981 was declared as the International Year of Disabled People. The Disability Discrimination Act was established in 1995 to protect the rights of the differently abled (Close: 2011). In India, the disability rights activism began to find collective expression in the early 1990s. The passing of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, in 1995, as the activists argue, is more of a forced reaction due to the international pressure than the movement in India. From 1981 to 1992, the United Nations observed the Decade of Disabled Persons during which in 1987, a global meeting of experts recommended that the General Assembly should draft an international convention on the elimination of discrimination against persons with disabilities. On 13 December 2006, the United Nations adopted the Convention on the Rights of Persons with Disabilities and nearly 160 nations became signatories. Each country requires a national monitoring system to follow-up with its disability plan (UNCRPD: 2006). The Rights of Persons with Disabilities Act, 2016 is the disability legislation passed by the Indian Parliament to fulfill its obligation to the United Nations Convention on the Rights of Persons with Disabilities, which India ratified in 2007. The right to education is available to all citizens including the disabled as provided in Article 21A of the Constitution. The State can set up educational institution for the physically disabled persons such as schools for the blind, schools for the deaf & dumb and schools for the intellectually disabled. If such schools are State aided they cannot deny admission to a disabled person having that particular disability relating to the school on any of the grounds mentioned above. For admission to College, University and professional courses the disabled persons are not subjected to any kind of disability or disqualification if they are otherwise fit and eligible to pursue higher courses of education. For admission to these institutions of higher learning reservation may be provided for those who are physically handicapped or physically disabled but otherwise are competent to pursue such courses of higher education (Banerjee 2004: 5-6).

**Income Tax Section 80DD:** Section 80 DD provides for a deduction in respect of the expenditure incurred by an individual or Hindu Undivided Family resident in India on the medical treatment (including nursing), training, and rehabilitation etc. of handicapped dependents. To balance the increased cost of such maintenance, the limit of the deduction has been raised from Rs.12, 000 to Rs.20, 000. **Income Tax Section 80V:** A new section 80V has been introduced to ensure that the parent in whose hands income of a permanently disabled minor has been clubbed under Section 64, is allowed to claim a deduction up to Rs.20,000 in terms of Section 80 V.

The Lunacy Act, 1912, was the law which pertained to the treatment and care of mentally ill persons. With time and efforts by mental health doctors and activists, a change in attitude of the society towards these patients which has been positive, and the stigma attached has also come down, the Lunacy Act was replaced by Mental Health Act 1987. The key purposes of the Act include regulating admission to Psychiatric hospital or nursing homes, protect the rights of the mentally ill persons, provide facilities for establishing guardianship or custody to those persons who are incapable of managing their own affairs, and the government has the power to regulate establishment, licensing and control of Psychiatric hospitals and nursing homes. The Act also establishes a Central authority and State authorities for mental health services (The Mental Health Act: 1987). The problematic aspect of this Act with respect to people and mental health is that this law was meant for only those patients who were mentally ill. The Intellectually Disabled, on the other hand, were ignored and no legislation was enacted to protect and provide for them. In many cases, especially in the semi-urban cities, the persons with an intellectual disability were admitted in psychiatry hospitals since their family members were incapable of taking care of them. This group was treated with the methods meant for psychiatry patients, to the extent of using electric shocks for reducing hyperactivity. Not to be given the right treatment is violating a person's right. And this violation, led to the demand of a special act which was to be tailored for the intellectually disabled. Set up in 1986, the Rehabilitation Council of India (RCI) was a registered society under the Societies Registration Act, 1860. On September, 1992 the RCI Act was approved by the Parliament and it became a Statutory Body on 22 June 1993. The Act was passed for regulating the training of rehabilitation professionals, standardize syllabi and maintenance of a Central Rehabilitation register of all qualified professionals and personnel engaged in the field of Rehabilitation and Special Education. The Act has been further amended by the RCI (Amendment) Act, 2000



with the intention of broadening the scope (RCI: 2000). Currently, the council has reportedly registered around 12,000 such professionals across India. The Persons with Disabilities Act or the PwD Act, 1995, is the landmark legislation passed by the Indian Government for the differently abled. The Act came into force on 7 February, 1996 and has since sought to provide equal opportunities for persons with disabilities with the intention of ensuring their full participation in the society. The Act establishes that in government offices 3% of vacancies shall be reserved for the differently abled out of which 1% each is reserved for persons with – 1) Blindness or Low Vision. 2) Hearing Impairment. 3) Locomotor Disabilities and Cerebral Palsy. The Act enables NGOs for a financial assistance from the government for the rehabilitation of the persons with disabilities. Researches on prevention, rehabilitation, development of assistive technology, job identification, infrastructural modifications etc. will be provided financial aid from the government to universities, higher educational institutes, professional bodies and non-government units. The Act requires the government to make public place and public utilities accessible and barrier-free. The appointment of Chief Commissioner for Persons with Disabilities at the Centre or the Commissioner for Persons with Disabilities at the State level are responsible for addressing the grievances of the differently abled in the event of a violation of their rights (Sight savers: 2012). The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (TNTA: 1999) focuses on strengthening facilities and providing support for individuals to live within their own families. According to the standards of the National Trust a person suffering from not less than forty percent of any disability as certified by a medical authority is entitled to the benefits for the PwDs under this Act. This Act provides for the constitution of a national body for the Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. The Indian Government, under the National Trust Act, has established a number of schemes for the differently abled.

#### Disha - Early Intervention and School Readiness Scheme

This is an early intervention and school readiness scheme for children in the age group of 0-10 years with the four disabilities covered under the National Trust Act. It aims at providing training (specifically school readiness) and counseling to both children and parents. The centres, called Disha Centres, are meant to provide early intervention through therapies and trainings, and offer support and guidance to the family members.

#### Vikaas – Day Care Centres

This is a Day care scheme, primarily to expand the range of opportunities available to a PwD for enhancing interpersonal and vocational skills as they are on a transition to higher age groups. In addition to providing assistance to the differently abled, it also helps in supporting family members of the person covered under the National Trust Act to get some time during the day to fulfill other responsibilities.

#### Niramaya – Health Insurance Scheme

The objective of Niramaya scheme is to provide affordable Health Insurance to persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.

#### Trust

##### Gharaunda – Group Home for Adults

The objective of Gharaunda scheme is to provide an assured home and minimum quality of care services throughout the life of the person.

##### Sahyogi – Caregiver Training Scheme

To provide caregiver training and create a skilled workforce to support high needs PwDs and their families and institutions (hospitals, schools, NGOs etc.). This scheme aims at setting up Caregiver Cells (CGCs) to provide training and create a skilled workforce of caregivers to provide adequate and nurturing care for the differently abled.

##### Prerna – Marketing Scheme

Prerna is the marketing scheme of the National Trust with an objective to create viable and widespread channels for sale of products and services produced by PwDs covered under the National Trust Act.

##### Badhte Kadam – Awareness and Community Interaction

Badhte Kadam aims at community awareness, sensitization, social integration and mainstreaming of Persons with Disabilities.

##### Sambhav – Aids and Assistive Devices

This is a scheme to setup additional resource centers, one in each city of the country (apart from Delhi where there is currently a Sambhav center) with population greater than 5 million, to collate and collect the Aids, software and other form of assistive devices developed with a provision of display and demonstration of the devices.

##### Gyan Prabha – Education Support

Gyan Prabha scheme aims to encourage the differently abled in pursuing educational courses like graduation courses, professional courses and vocational training leading to employment or self-employment.

##### Samarth – Respite Care

The objective of Samarth scheme is to provide respite home for the abandoned, orphans, families in crisis and also for PwDs from Below Poverty Line (BPL) and Low Income Group (LIG) families including destitute with at least one of the four disabilities covered under the National Trust Act.

Hence, the Indian Government has provided a number of legislations and policies for the differently abled, yet the implementation process has not been effective enough to reach the target group. Apart from lack of proper implementation, the critics have claimed that the laws and policies do not adhere to the foreign standards, especially the UNCRPD. The Lok Sabha on 16 December 2016 passed the "The Rights of Persons with Disabilities Bill - 2016" which replaced the existing PwD Act, 1995, which was enacted 21 years back and the number of disabilities were increased from 7 to 21.

#### Conclusion

Except for the activists and legal authorities the awareness level, regarding the legal rights for the differently abled, of the caregivers and the parents is extremely low. For the persons with ID, it is imperative that the caregivers know the government provisions because they themselves are not in the capacity to do so. With forced isolation, ill-treatment, negligible healthcare facilities and, most importantly, lack of medical and social awareness, the differently abled have a long list of human rights violations against them. Though the times have changed now and legislations have evolved over the years, this group is yet to find complete emancipation. With forced isolation, ill-treatment, negligible healthcare facilities and, most importantly, lack of medical and social awareness, the differently abled have a long list of human rights violations against them. Though the times have changed now and legislations have evolved over the years, this group is yet to find complete emancipation. The Rights of Persons with Disabilities Act – 2016 will definitely enhance the quality of life of the disabled. The increase in the percentage of reservation is being viewed as marginally significant since the intellectually disabled still have a lesser chance getting employment. "The problem with the reservation system is that the agencies find that the physically disabled are easily trainable hence first preference is given to them when it comes to hiring PwDs. Persons with mild Autism and Down's Syndrome who are educable and trainable are preferred, but are kept as last resort because of the fact that it takes a longer time to train them as well as the expenditure for the same is higher. There is a need to regulate the process of recruitment to ensure fairness. Unless the government comes up with a way to monitor the process, the Intellectually Disabled will remain the marginalized group. On the other hand, in the private sector a new trend has started because of the tax scheme and many firms have started recruiting PwDs for routine clerical jobs. For example, The Lemon Tree Hotels have successfully inducted the differently abled into its workforce. It was awarded the National Centre for Promotion of Employment for Disabled People – Shell Helen Keller Award in 2010 for providing effective and empowering employment opportunities for the differently abled both in front-end and back-end services. There is still not much of awareness with regard to the National Trust. Till now, the procedure has been to get a valid disability and approach the government offices for the registration process or to wait for the registration camps to take place in their nearest neighbourhood. A simpler process of registration would be to allow the NGOs to be mediators in the registration process. Once the disability certificate has been issued, a parent must only need to go to the nearest NGO registered with the National Trust to start the registration process at their own convenience. The 2001 Census shows that over 21 million people are affected by a disability and over 2 million had some form of ID (MHA: 2016). Specialized courses on disability treatment, management, nursing and care can be started in educational intuitions so that the concerns of the target population can be met. Apart from specialized medical care, specific psychology courses can also be introduced for the PwDs as well as their families.

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