



# REVIEW OF INDIAN LEGISLATION FOR PERSONS WITH DISABILITIES

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## ABSTRACT

The Disability acts are not about the enjoyment of specific acts, as it is about ensuring the equal enjoyment of all human rights/acts without discrimination for Persons with disabilities. The Constitution of India provides equal rights to its citizens to enjoy their life respectfully and walk with dignity and Integrity.

Persons with Disabilities are an integral part of society and each government put their initiatives to include persons with disabilities in the mainstreaming society. This is the responsibility of the government to take care of persons with disabilities in respect of their education, vocational training, employment, and other aspects so that they may be integrated into an inclusive society. Therefore, the government is providing different types of concessions, reservations, and other facilities to persons/children with disabilities. The government had implemented different legislations, policies, and schemes for the inclusion of persons with disabilities into mainstream society. There is various information taken by the Government to ensure the rights of persons with disabilities including the PwD Act 1995, National Trust Act 1999, and RPwD Act 2016.

This study focuses on the awareness of acts and laws among various professionals, parents of PwDs, stakeholders, and the community regarding the various provisions and clauses for Disabled persons that are available in India. These legislations ensure that the PwD can enjoy the right to equality, life with dignity, and respect for their integrity equally with others (RPwD Act-2016). The laws of disabilities in India need to be understood from various perspectives of differently-abled persons in their attainment of persona and dignity. The need to understand and address the issue of attitudinal barriers so that the rights of Persons with disability are upheld.

**KEYWORDS:** Disability, legislation, Persons with Disability, Rights of Persons with Disabilities, Constitution of India, PMI, PwD Act, NT Act, RCI Act, Inclusive education, Education policy.

## INTRODUCTION

After the independence of India in 1947 the use of legislation and policies are not there for the abled persons as well in the process of making India a demographic country firstly constitution of India on 26 Nov 1949 came to extension for all the citizens of India's rights and acts there was need of acts and policy for the disability people the first acts have come into extinct for the persons with disability.

The Constitution of India provides equal opportunity to every legal citizen of India, whether they are physically, mentally, healthy, or disabled in any way under the constitution of India persons with disabilities guarantee the fowling of the fundamental laws legislation, and acts. Equality, dignity, autonomy, and liberty are the founding principles of international human rights law. These values have sufficiently influenced the fundamental law of democratic polity and are reflected in the Constitutions of most democratic States including India. The Preamble to the Constitution of India while giving a structure and philosophy of governance proclaims to secure all its citizens; Justice, social, economic, and political; Liberty of thought, expression, belief, faith, and worship; Equality of status and opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

A clear and comprehensive procedural medium is to be formulated for the advancement of disability rights. It is important to realize that the moral rights of the impaired cannot be fought for and secured in a vacuum. Inescapably, as mentioned the issue of disability is related to numerous other social, profitable, and political issues including those of habitual poverty, gender inequality, maladministration, and political victimization. All these must be removed to make the 'disability right' a reality. There must be the active involvement of impaired people in planning and policy timber process relating to their lives and full recognition and enforcement of mortal rights as well as colorful other rights associated with them. The discussion of mortal rights for persons with disabilities needs to be made in great detail so that they can mileage the benefit out of it. As humans in addition to access to all introductory rights; impaired persons need a safe, secure, accessible, salutary, and accessible terrain that is regardful of their mortal quality. Let us change our station, thinking, and mindset and the society as a whole since; it's the frame of mind of the society that is responsible for the oppression and misery of persons with disability. Let's contribute to applying all the laws and programs made for persons with disabilities in a proper sense for the upliftment of their lives and status. Let's learn to take care of all mortal beings as mortal beings, with due respect, irrespective of their differences, and let them share in the mainstream of society.

The following legislation and legal, acts and policies are treated as landmarks for the education in India for disabled person, inclusive education, and rehabilitation in India. Legislation is a legal document, drafted by Ministry of law justice and

company affairs, approved by the Indian parliament, and duly assented to by the president of India as well as notified by the relevant ministry (Legislative Department) for example:

1. Mental health act 1912 and revised in 1987;
2. Rehabilitation Council of India (RCI) Act September 1992, notified on 22 June 1993 was amended in the year 2000;
3. Persons With Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act 1995 enacted by the parliament on 22 Dec 1995;
4. National Trust for the Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 30th December 1999;
5. National Policy for Persons with Disabilities, 2006;
6. Right to Education, 2009;
7. The Rights of Persons with Disabilities Act, 2016 was enacted on 28.12.2016 and came into force from 19.04.2017;
8. National Education Policy, 2020.

### Need for legislation for Rights of Persons with Disabilities:

The disabilities act is not about the enjoyment of specific acts as it is about ensuring the equal enjoyment of all human rights/acts without any discrimination including persons with disabilities. The Constitution of India provides equal rights to its citizens to enjoy their life respectfully and walk with dignity the person with a disability is also included in it (Constitution of India, 1950). There is various information taken by the Government to ensure the rights of persons with disabilities including the Mental Health act 1987, RCI 1992, PwD Act 1995, National Trust Act 1999, National Policy for Persons with Disabilities, 2006, Right to Education, 2009, RPwD Act 2016 (MSJE, GoI) and National Education Policy, 2020. Being an important part of society, it has been observed that these laws and act protects Rights of Persons with Disabilities. The study focuses on awareness of acts and laws among the various professionals, disabled parents organizations for disabled, stakeholders, and the community towards the various provisions and clauses in the act for Persons with Disabilities in India. PwD act 1995 and The RPwD act ensures that the PwD can enjoy the right to equality, life with dignity, and respect for his or her integrity equally with others (RPwD Act-2016). The laws of disabilities in India need to be understood from various perspectives of differently-abled persons in their attainment of persona and dignity. There is an urgent need to address this issue of attitudinal barriers so that the rights of Persons with Mental Illness are upheld.

### 1. Mental Health Act, 1987:

The Mental Health Act predates the human rights emphasis in the 90s. It can be described as civil rights legislation as it aims to regulate mental health institutions' standards and make provisions concerning their property and all other affairs. From a human rights perspective, the provision under Section 81 is of particular importance. It says, no mentally ill person shall be subjected during treat-

ment to any indignity (whether physical or mental) or cruelty. No mentally ill person under treatment shall be used for purposes of research unless such research is of direct benefit to him for purposes of diagnosis or treatment, or such person, been a voluntary patient has given his consent in writing or where such person (whether or not a voluntary patient) is incompetent because of minority or otherwise, to give valid consent, guardian or another person competent to give consent on his behalf, has given his consent in writing for such research.

Section 94 deals with respecting the privacy of communication of persons with mental illness. To prevent vexatious or defamatory circumstances or communications prejudicial to the treatment of mentally ill persons. According to it, no letter or other communications sent by or to a mentally ill person under treatment shall be intercepted, detained, or destroyed. The emphasis of this legislation is on the appointments or qualifications of authorities, admission and discharge of mentally ill from specialized institutions, removal and role of medical officers, magistrates, or police officers, liability to meet the cost of maintenance of mentally ill persons, and penalties and punishments, etc. ("As per the mental health act 1987")

## 2. Rehabilitation Council Of India Act, 1992: -

The Government of India set up the Rehabilitation Council of India in 1986 initially as a society to regulate and standardize training policies and programs in the rehabilitation of persons with disabilities. The urgent need for the minimum standard was felt as the majority of persons engaged in education: vocational training and counseling of persons with disabilities were not professionally qualified. Poor academic and training standards adversely affect the chances of the disabled succeeding in the world of work. Therefore, an Act of Parliament in 1992 enhanced the status of the council to a statutory body with the following aims:

1. To standardize training courses for professionals dealing with persons with disabilities.
2. To prescribe minimum standards of education and training for various categories of professionals dealing with the disabled people
3. To regulate these standards in all training institutions uniformly throughout the country
4. To promote research in rehabilitation and special education; and
5. To maintain central rehabilitation register for registration of professionals.

The Rehabilitation Council of India (RCI) regulates training standards for 16 categories of rehabilitation workers. The Council is proactively promoting training and research initiatives utilizing the experience of specialized as well as mainstream academic institutions. ("As per the Rehabilitation Council of India Act 1992")

## 3. Persons With Disabilities Act 1995:

The enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (referred to as Persons with Disabilities) is a signal achievement of the Indian disability movement. ("As per the Persons With Disabilities Act-1995")

The preamble to this delineates its objectives of promoting and ensuring equality and full participation in the mainstream society of persons with disabilities. The Act aims to protect and promote the economic and social rights of persons with diverse deprivations. The Act, in section 2, covers seven disabilities. The criteria for the classification of each disability are embodied in a biomedical model according to which:

- i. Blindness;
- ii. Low vision;
- iii. Hearing impairment.
- iv. Locomotor disability or cerebral palsy;
- v. Mental retardation;
- vi. Mental illness; and
- vii. Leprosy-cured person.

## 4. National Trust For Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation, And Multiple Disabilities Act, 1999:

As certain groups amongst the disabled are more vulnerable than others, a special enactment for protecting such persons, their property, and their well-being was felt necessary. Referred to as National Trust Act, 1999 aims to fulfill a common demand of families seeking reliable arrangements for their severely disabled wards

The following disabilities are defined by this Act which is:

"Autism" means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behavior;

"Cerebral palsy" means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal, or infant period of development;

"Mental retardation" means a condition of arrested or incomplete development

of the mind of a person which is especially characterized by sub-normality of intelligence:

"Multiple disabilities" means a combination of two or more disabilities as defined in the clause of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. These are blindness, low vision, leprosy cured, hearing impairment, and locomotor disability, mental retardation and mental illness.

## The specific objectives of the Act are:

1. To Enable and empower persons with disabilities to live as independently and as fully as possible within and as close to the community to which they belong.
2. To promote measures for the care and protection of persons with disabilities in the event of the death of their parents or guardian, and
3. To extend support to registered organizations to provide need-based services during the period of crisis in the family of the disabled covered under this Act.
4. The National Trust Act mandates the creation of a Local Level Committee (LLC) comprising a District Magistrate along with one representative from a registered organization and one person with a disability. The LLC is vested with the authority to decide upon applications for legal guardianship. The Act provides for how legal guardians are to be appointed. The conditions of eligibility, the order of eligible applicants, and the disqualification of applicants are contained in Regulations 11 to 14. The Act also lays down the duties of the legal guardian who has to furnish periodic returns to the LLC about the assets of the wards and their disposal in his hands. Similarly, the Committee to is required to maintain inventory and annual accounts of the property and assets, claims, and liabilities submitted by the legal guardians to it. ("As per the National Trust For Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation, And Multiple Disabilities Act-1999")

## 6. National Policy for Persons with Disabilities, 2006:

The National Policy aims to create an environment that offers people with disabilities equitable opportunities, the protection of their rights, and full involvement in society. It acknowledges that people with disabilities are important human resources for the nation. It is consistent with the fundamental ideals of equivalence, liberty, justice, and human self-respect that are protected in India. As per Constitution tacitly calls for a society that is inclusive of all people, including those with disabilities. The National policy acknowledges that most people with disabilities can live better lives if they have access to effective rehabilitation techniques and equal chances. The following are the key elements of the national policy:

- Physical rehabilitation which entails early detection, intervention, counseling, medical interventions, and the supply of aids and devices. It also covers the training of specialists in rehabilitation.
- Economic Rehabilitation, for a respectable existence in society. Educational Rehabilitation includes vocational training.

## 7. Right of Children to Free and Compulsory Education Act 2009:

A child with a "disability" as defined in clause (1) of section 2 of the persons with disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (1 of 1996) is referred to as a "Child with a disability"; a child who meets the requirements for a person with a disability under clause (j) of section 2 of the National Trust for the welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act 1999 44 of 1999) a child who meets the requirements for a person with a "severe disability" under clause (o) of section 2 of the National Trust welfare of persons with Autism, Cerebral palsy, Mental "Elementary education" refers grades to the 1st through 8th grades of instruction.

A child with a disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995: Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education. ("As per right Of Children to Free and Compulsory Education Act-2009")

## 8. Rights Of Persons with Disabilities Act (RPwD) 2016:

The RPwD acts to ensure that persons with disabilities enjoy life with the right to equality, dignity, and concerning integrating with others.

### Physical Disability. —

**A. Locomotor disability** (a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of

musculoskeletal or nervous system or both), including— leprosy cured persons, cerebral palsy, dwarfism, muscular dystrophy, and acid attack victims.

#### B. Visual Impairment:-

**Blindness**— means a condition where a person has any of the following conditions, after the best correction

- Total absence of sight; or
- Visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with the best possible correction; or
- Limitation of the field of vision subtending an angle of less than 10 degree

**"Low vision"** means a condition where a person has any of the following conditions, namely:—

- Visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or up to 10/200 (Snellen) in the better eye with the best possible corrections; or limitation of the field of vision subtending an angle of fewer than 40 degrees up to 10 degrees.

#### C. Hearing impairment—

(a) **"Deaf"** means persons having 70 DB hearing loss in speech frequencies in both ears;

(b) **"Hard Of Hearing"** means a person having 60 DB to 70 DB hearing loss in speech frequencies in both ears

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**D. "Speech and Language Disability"** means a permanent disability arising out of conditions such as laryngectomy or aphasia affecting one or more components of speech and language due to organic or neurological causes.

**2. "Intellectual disability"**, a condition characterized by significant limitations both in intellectual functioning (reasoning, learning, problem-solving) and adaptive behavior which covers a range of everyday, social, and practical skills, including—

(a) **"Specific Learning Disabilities"** means a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia, and developmental aphasia;

(b) **"Autism Spectrum Disorder"** means a neuro-developmental condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships, and relate to others, and is frequently associated with unusual or stereotypical rituals or behaviors.

**3. Mental behavior, — "Mental Illness"** means a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of the mind of a person, especially characterized by the sub-normality of intelligence.

#### Disability caused due to—

(a) chronic neurological conditions, such as—

(i) **"Multiple Sclerosis"** means an inflammatory, nervous system disease in which the myelin sheaths around the axons of nerve cells of the brain and spinal cord is damaged, leading to demyelination and affecting the ability of nerve cells in the brain and spinal cord to communicate with each other;

(ii) **"Parkinson's disease"** means a progressive disease of the nervous system marked by tremor, muscular rigidity, and slow, imprecise movement, chiefly affecting middle-aged and elderly people associated with degeneration of the basal ganglia of the brain and a deficiency of the neurotransmitter dopamine.

(b) Blood disorder—

(i) **"Hemophilia"** means an inheritable disease, usually affecting only male but transmitted by women to their male children, characterized by loss or impairment of the normal clotting ability of blood so that a minor would result in fatal bleeding;

(ii) **"Thalassemia"** means a group of inherited disorders characterized by reduced or absent amounts of hemoglobin.

(iii) **"Sickle cell disease"** means a hemolytic disorder characterized by chronic anemia, painful events, and various complications due to associated tissue and organ damage; "haemolytic" refers to the destruction of the cell membrane of red blood cells resulting in the release of hemoglobin.

**5. Multiple Disabilities** (more than one of the above-specified disabilities) including deaf-blindness which means a condition in which a person may have a combination of hearing and visual impairments causing severe communication, developmental, and educational problems.

6. Any other category as may be notified by the Central Government. ("As per the Rights Of Persons with Disabilities Act-2016")

#### 9. National Education Policy 2020:

As per NEP 2020 need for Special educators. There is an urgent need for additional special educators for certain areas of school education. Some examples of such specialist requirements include subject teaching for children with disabilities/Divyangjan children at the Middle and Secondary school level, including teaching for specific learning disabilities. Such teachers would require not only subject-teaching knowledge and understanding of subject-related aims of education but also the relevant skills for the understanding of special requirements of children. Therefore, such areas could be developed as secondary specializations for subject teachers or generalist teachers, during or after pre-service teacher preparation. They will be offered as certificate courses, in the pre-service as well as in-service mode, either full-time or as part-time/blended courses - again, necessarily, at multidisciplinary colleges or universities. Greater synergy will be enabled between the course curriculum of NCTE and RCI to ensure adequate availability of qualified special educators who can handle subject teaching as well.

The Policy also recognizes the importance of creating enabling mechanisms for providing Children with Special Needs (CWSN) or Divyang, have the same opportunities of obtaining quality education as any other child. ("As per the National Education Policy-2020").

#### Review of Literature:

The Indian judiciary has played a variably significant part in developing the moral rights of impaired persons. In several cases, the supreme court and high court interpret the disabilities legislation incubating the objects there in extraordinary power vested the supreme court under articles 32 and 142 and the high court under article 226 of the constitution of India have assured that the rights of a citizen including persons with disabilities and stated that the impaired citizens aren't stamped upon.

Gupta, B., and Rimpi, 2020 have conducted an evaluation study on the Human rights and Entitlements of Persons with Disabilities in India. In this study, they have found that there is a study reviewed for the rights and entitlements of persons with disabilities in India and found that in today's world, there is a paradigm shift in the conceptual understanding towards disability and persons with disabilities from a charity-based approach to a rights-based approach across the globe. This new approach includes human rights principles such as equality, participation, non-discrimination, and accountability. India being a signatory to the UNCRPD has enacted disability laws and policies in line with international conventions to ensure equalization of opportunities and full participation of persons with disabilities in the development. However, despite laws and policies, the overall vision of greater inclusion for persons with disabilities in society is still a distant dream. The study is based on secondary data attempts to provide an overview of the new legislation, 'the Rights of Persons with Disabilities Act 2016 (RPWD Act, 2016)' and analyze the rights and entitlements enshrined in the Act. The study highlights the partial implementation of laws and policies at the ground level. Low participation in decision-making and poor outreach of information among the targeted group are the challenges to effective implementation.

Retief, M. & Letšosa, R., (2018), Both researchers have fined in their study of 'Models of disability: A brief overview, about Critical reflection on the importance of shaping disability-friendly – or disability-inclusive congregations has enjoyed increasing attention in the field of practical theology in recent years. Moreover, the development of disability theology is a testament to the fact that practical theologians and the wider church community have taken serious notice of the realities and experiences of people with disabilities in our time. Nevertheless, even before the task of engaging in theological reflection from a disability perspective commences, theologians must acquaint themselves with the various models of disability that shape people's perceptions and ideas about people with disabilities. Guided by the principles of the interpretive task of practical theological investigation and cognizant of the importance of models of disability in shaping perceptions regarding people with disabilities, this article seeks to provide a brief overview of nine of the most dominant models of disability that are prevalent in our time. We shall utilize the typological approach to theoretical analysis to outline the basic characteristics of the various models.

Bhattacharyya, R., (2014) in this research work the researcher gives much emphasis on the various legal provisions and laws available in our country and makes a systematic study on how these laws have contributed towards the development of the legal status of disabled persons in India.

Ganvir, S., Gundecha A. A., (2020); Disability, Laws, and Models: An Overview, in their study they talked about various growing definitions and perceptions of disability. It leads to various complications leading to interdependency for all other activities of daily living, making occupational limitations and economi-



cally dependent. So, there is an need to make them aware of various schemes available in India, for supporting them for various economic, pension and educational scholarship schemes. The rights and laws of persons with disabilities must therefore be understood and studied from a variety of perspectives, including human rights and various other laws in India, which will fill the gap or close the gap between persons with dis-abilities and persons with disabilities in their personal attainment in the true sense of the term. Throughout this research report, the writer puts a great deal of focus on the different legislative frameworks and regulations existing throughout our country and allows a comprehensive analysis on how such laws have led to the advancement of the legal status of people with disabilities in India.

#### Objectives:

- The objectives of this study are to:
- To check the awareness of Indian Legislation for Persons with Disabilities.
- To check the impact of the Indian legislation in the programming and policy-making for Persons with Disabilities.
- To find the effect of Indian legislation on Employment, Education, and Vocational training for Persons with Disabilities.

#### Conclusion

To conclude, by ratifying the UNCRPD in 2007, India took on a set of obligations to transform the treatment of PwD from being objects of charity to subjects with rights who can claim those rights. However, there are several shortcomings in the RPWD Act, 2016, which need to be addressed at the earliest. Although RPWD Act, 2016 is a rights-based legislation, the success of the statute will largely depend on the proactive measures taken by the respective state governments on its implementation. A clear and comprehensive procedural medium is to be formulated for the advancement of disability rights. It's important to realize that the moral rights of the impaired cannot be fought for and secured in a vacuum. Inescapably, as mentioned the issue of disability is related to numerous other social, profitable, and political issues including those of habitual poverty, gender inequality, maladministration, and political victimization. All these must be removed to make the 'disability right' a reality. There must be the active involvement of impaired people in planning and policy timber process relating to their lives and full recognition and enforcement of mortal rights as well as colorful other rights associated with them. The discussion of mortal rights for persons with disabilities needs to be made in great detail so that they can mileage the benefit out of it. As humans in addition to access to all introductory rights; impaired persons need a safe, secure, accessible, salutary, and accessible terrain that is regardful of their mortal quality.

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