

REVIEW OF NATIONAL AND INTERNATIONAL POLICIES FOR EMPOWERMENT OF PERSONS WITH DISABILITIES IN INDIA

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ABSTRACT

The Human Rights are regarded as fundamental to their existence. It is nothing but an essential pre-condition for living a dignified and fruitful life. The concept of human rights is based on the belief that every person is entitled to enjoy his/her right without any discrimination. International organisations, Non-Government Organisations (NGOs) and the Ministries of Governments all over the world are concerned about the Human Rights. The United Nations Organisation also has a separate convention 159 (UNCPRD, 2006) which deals with the Rights of the Persons with Disabilities. While the role of the International law is being increasingly recognised in this respect, the domestic legislation remains one of the most effective tools of facilitating social change and improving the status of the PwD. The National Policy for the PwD was drafted with a view to create an environment that provides such equal opportunities for the protection of their rights and full participation in the society.

Keywords: *Persons with disabilities, Human Rights, Disability, Rehabilitation, Inclusion, Health, Opportunities*

I. Introduction

Humans are perceived to be supreme of all the living species. The Human Rights are regarded as fundamental to their existence. It is nothing but an essential pre-condition for living a dignified and fruitful life. The concept of human rights is based on the belief that every person is entitled to enjoy his/her right without any discrimination. The legal thinking of the society is characterised by the belief that law serves as a tool of social change. Though legislation is not the only means of social change or progress, it is one of the most potent vehicles of change, progress and development in society. The International human rights treaties are binding on the States that have ratified these instruments. Some universal instruments like the Universal Declaration of Human Rights

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(UDHR), certain provisions like the principle of non-discrimination, etc. have become customary international law and are also binding on all the states which have not ratified the human rights treaty.

This article is divided into sub-sections, so as to step by step understand the concept of Human Rights with focus on its evolution process. It is followed by discussion on legislative framework of the human rights for the benefit of the Persons with disabilities at International and National level. Emphasis has been given on the significance of important legal instruments affecting the human rights of the Persons with disabilities at various levels in the society. International organisations, Non-Government Organisations (NGOs) and the Ministries of Governments all over the world are concerned about the Human Rights. The United Nations Organisation also has a separate convention 159 (UNCRPD, 2006) which deals with the Rights of the Persons with Disabilities. In India, the Ministry of Social Welfare and Empowerment plays an important role in the policy making for the upliftment of the People with Disabilities. The People with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995, The Rehabilitation Council of India Act, The National Trust Act (for Persons with Developmental Disabilities) and the Rights for Persons with disabilities Act, 2016 are the legislations enacted in India which deal with people with disabilities.

The endeavour of this article is to understand the policies at different levels for the persons with disabilities for rehabilitation within the legal and Institutional framework. The process of Rehabilitation and Disability Management in India is evolving and improving with awareness in the society about the value of human life. The approach towards the problem is changing with time and is being refined by the society at international level. The member nations of the international organisations are expected to abide to these guidelines which bring more meaning to life. There are societies within the society which need to cooperate to bring an overall change by reaching the grass root level. Policies and guidelines play an important role in paving a pathway for the untrained society in adopting the correct perspective to mitigate the social problems faced by the persons with disabilities. To understand the policies at different levels, it is necessary to understand the concept of Human Rights.

II. Concept of Human Rights

Disability is a Human Rights issue. The quality of life of the disabled population is low and since disability leads to loss of productivity, this is substantial considering the large population of the Persons with disabilities. Disability also entails financial and emotional stress for the caregivers of the disabled person as well as the disabled persons themselves. On account of inadequate facilities being available, the dissatisfaction level amongst the Persons with disabilities (PwD) and their caregivers is very high (Rehabilitation Council of India, 2003). Human rights are held equally by all persons simply by virtue of being a human being. They go beyond the basic rights of life and liberty to include cultural, economic, social and political rights essential for the maintenance of the human dignity.¹ Human Rights lead to liberation from traditional and cultural bonds and also from ignorance. These rights also enhance opportunities for individual choice and for the solution of future problems.² In terms of the Section 2 of the Protection of the Human Rights Act, 1994, *Human Rights* means the

rights relating to Life, Liberty, Equality and Dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by the Courts in India. The origin of International promotion and protection of Human Rights lies in the founding of the United Nations by the end of the World War II. This organisation was established mainly to save succeeding generations from the scourge of war and to promote higher standards of living, full employment and conditions of economic and social progress and development. The new approach to disability took shape in the 1970s and would rightfully be called the Human Rights Approach. It paved the way for major international declarations related to the rights of the disabled.

Nature of Human Rights

Human Rights (HR) are inherent in the mere fact of being a human. The main duties deriving from HR falls on States/ Governments and their authorities or agents and not on individuals. The characteristics of human rights are as follows³,

- (a) **Inherent.** In all humans, by virtue of their humanity, whatever be their nationality, place of residence, sex, ethnic origin, colour, religion, language or any other status.
- (b) **Inalienable.** Should not be taken away, except in situations with due process of law e.g. Right to liberty may be restricted if a person is found guilty of crime by a court of law.
- (c) **Interdependent.** Improvement of one right facilitates advancement of other rights. Likewise, deprivation of one right adversely affects the others.
- (d) **Indivisible.** It implies that no right is more important than any other.

International Community and Human Rights

The need for international standards on HR was felt during the beginning of the 19th century when there were frequent interstate disputes relating to protection of the rights of the minorities and the labour disputes in Europe. After the World War II, the allies adopted four freedoms: Freedoms of Speech and Religion, Freedoms from fear and want, as basic war aims. The United Nations Commission on Human Rights (UNCHR) adopted a Universal Declaration of Human Rights (UDHR) on 10 Dec 1948 which was declared as Human Rights Day all across the world. The 50s and 60s saw more countries joining the UNO and formally accepting the UN Charter and subscribing to the principles and ideals laid down in UDHR. It is a powerful tool in applying diplomatic and moral pressure upon the governments that violate any of its articles. There are nine core international treaties concerning Human Rights for promoting and protecting the rights of specific groups as follows,

- (a) International Convention on Elimination of all forms of Racial Discrimination (ICERD) on 21 Dec 1965.
- (b) International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), both form a part of UDHR on 16 Dec 1966.

- (c) Convention on Elimination of all forms of Discrimination against Women (CEDAW) on 18 Dec 1979.
- (d) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 10 Dec 1984.
- (e) Convention on the Rights of the Child (CRC) on 20 Nov 1989.
- (f) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) on 18 Dec 1990.
- (g) International Convention for the Protection of all Persons from Enforced Disappearance (ICCPED) on 20 Dec 2006.

Human Rights: Non-Discriminatory and Equal

Non-Discrimination is a cross-cutting principle in human rights law and is complemented by that of Equality. The doctrine of Equality among Equals only has been upheld by the International law and Indian law. The persons on different pedestals cannot be treated equally. Special laws governing certain weaker sections of the society have been enacted or special provisions have been incorporated governing such sections in the laws applicable to public at large. The PwD also form such a distinct group meriting special treatment. Disability is a condition where one is unable to participate in society on an equal basis with others due to interactions between his/her impairment and various barriers. Experience has shown that with proper education and training, a Person with disability is potentially capable of leading a life of honour and dignity on an equal basis with others as a useful, contributing and productive member of the society.

International guidelines on Human Rights of Persons with Disabilities

The significant objectives and features of various conventions, declarations, resolutions, principles, policies, enactments, programs and guidelines incorporated by international bodies within the legal framework for the rights of the PwD across the world are discussed subsequently. The policies/ programs in the past for the HR of the PwD have been mentioned to understand the evolutionary process of the present-day guidelines. The instruments which are currently in force have been discussed in detail. These instruments have paved the way for future sets of principles and policies leading to better acceptance and inclusion of PwD in the society.

"Let us work together for the full and equal participation of persons with disabilities in an inclusive and sustainable world that embraces humanity in all its diversity." Secretary-General Ban Ki-moon

Declaration on the Rights of the Mentally Retarded Persons, 1971

The UN General Assembly passed the said instrument vide resolution No. 2865 (XXVI) on 20 Dec 1971. It provided a framework for protecting the rights of the mentally retarded (MR) through national and

international action to a degree same as other human beings. As per this declaration, the MR persons should live with their families or foster parents and should participate in various aspects of community life. This was the first step towards promoting integration of the PwD in normal life⁴.

Declaration on the Rights of the Disabled Persons, 1975

The UN General Assembly passed the said instrument vide resolution No. 3447 (XXX) on 09 Dec 1975. This was the most significant commitment on the protection of HR of the PwD. It reiterated the rights of PwD to education, medical services, placement services to economic and social security, to employment, to live with their families, to participate in social and creative events, to be protected against all exploitation, abuse or degrading behaviour and to avail themselves of legal aid. Two major initiatives were the UN decade for disabled persons (1983-92) and the Asia- Pacific decade of the disabled (1993-2002).

World Program of action concerning Disabled Persons 1982

The UN General Assembly passed the said instrument vide resolution No. 37/52. This program was a global strategy to enhance Prevention of disability, Rehabilitation and Equalisation of Opportunities, which pertains to full participation of the PwD in social life and national development. It adopted the human rights perspective and the underlying principle of treating of PwD within the context of normal community services. The other issues covered under the proposal were Education, Employment, Social Inclusion, Social Security, Recreation, Culture, Religion and Sports for PwD. It also called for community action with regard to technical and economic cooperation, regional and bilateral assistance, research etc.

Principles for the Protection of Persons with Mental Illness and Improvement of Mental Care, 1991

The General Assembly adopted the set of 25 Principles on 17 Dec 1991 to be applied to the mentally ill persons without discrimination of any kind such as on grounds of disability, race, colour, sex, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth. The principles broadly cover the fundamental freedoms and basic rights relating to best of the available mental health care, which shall form the part of the health and social care system. They also provide for the procedural safe guards, access to information, complaint and remedial measures to promote compliance with the Principles.

Proclamation on Full Participation and Equality of PwD in Asia-Pacific Region, 1993

The Economic and Social Commission for Asia-Pacific adopted this instrument at Beijing in Dec1992 to launch the Asia-Pacific decade of Disabled Persons, (1993-2002) with an agenda for action consisting of following 12 major categories.

- (a) National Coordination (b) Legislation

- | | |
|-------------------------------------|---------------------------|
| (c) Information | (d) Public Awareness |
| (d) Accessibility and Communication | (e) Education |
| (f) Training and Employment | (g) Rehabilitation |
| (h) Prevention of Disability | (j) Assistive Devices |
| (k) Self-help Organisation | (l) Regional Cooperation. |

Each of these categories contains the list of target areas of direct relevance to the development of policies in support of full participation and equality of PwD in Asia-Pacific region. Women with disabilities are among the most isolated, marginalised and poorest of the people as all actions to improve the status of the disabled persons do not always benefit the women and girls with disabilities.

UN Standard Rules on the Equalisation of Opportunities for PwD, 1993

The rules were adopted by the UN General Assembly vide Resolution 48/96 on 20 Dec 1993 to ensure Equalisation of Opportunities for PwD. The rules were developed as the consequence of experience gained during the UN Decade of PwD (1983-1992). These rules serve as a guiding philosophy for action in the years ahead of World Program of Action. The states have the responsibility to take appropriate action to remove obstacles preventing PwD from exercising their rights and freedoms and making it difficult for them to participate fully in the activities of the societies. Basic concepts of Disability, Handicap, Rehabilitation, Prevention and Equalisation of Opportunities have been elaborated in the rules addressing both individual needs of the PwD and the shortcomings of the society. These rules, though adopted by the UN General Assembly, are not legally binding instruments but these represent moral and political commitments of the respective governments to take action in order to attain Equalisation of Opportunities for the PwD. The rules serve as an instrument for policy making and as a basis of technical and economic cooperation. The 22 rules concerning the PwD are covered under four heads,

- (a) Pre-conditions for Equal Participation.
- (b) Target areas for Equal Participation.
- (c) Implementation measures.
- (d) Monitoring Mechanisms.

Beijing Declaration on the Rights of the PwD, 2000

This declaration was adopted on 12 Mar 2000 at the World NGOs Summit on Disability. The declaration stated, “We believe that the inception of the new century is an opportune time for PwD and their organisations, and other civic organisations, local and national governments, members of the UNO and other international bodies, as well as private sector, to collaborate closely in an inclusive and wide consultative process aimed at the development and adoption of an international convention to promote and protect the rights of PwD, and enhance equal opportunities for participation in mainstream society”.

Biwako Millennium Framework for Action towards an Inclusive, Barrier free And Rights Based Society for the PwD in Asia-Pacific, 2003

The Economic and Social Commission for the Asia-pacific adopted the Resolution 58/4 on 22 May 2002. It proclaimed the extension of Asia-Pacific decade of PwD (1993-2002), by another decade (2003-2012). It anticipated that the Biwako Millennium framework (BMF) for action will contribute to attaining the millennium development goals and targets since issues relating to the PwD are vital concerns in realising the goals and targets. The following priority areas for action are required to achieve targets⁵,

- (a) Self-help organisations of PwD and related family and parent associations.
- (b) Women with Disabilities.
- (c) Early detection, early intervention and education.
- (d) Training and employment, including self-employment.
- (e) Access to build environments and public transport.
- (f) Access to information and communications, including information, communications and assistive technologies.
- (g) Poverty alleviation through capacity building, social security and sustainable livelihood programs.

The BMF outlined the following strategy for the governments to achieve the targets,

- (a) National plan of action (5 Years) on disability.
- (b) Promotion of a rights-based approach to disabilities for planning.
- (c) Disability statistics/ common definition of disabilities for planning.
- (d) Strengthened Community-based approaches to the prevention of causes of disability, rehabilitation and empowerment of PwD.

United Nations Convention on the Rights of PwD (UNCRPD), 2006

With the adoption of UNCRPD by the UN General Assembly on 13 Dec 2006, it has imparted empowerment to the PwD across the globe to demand their rights and make State, Private and Civil society agencies accountable for enjoying their rights. The Convention has placed power in the hands of the PwD to negotiate effectively with the state and other stake holders to secure, enjoy and exercise all HR on an equal basis with the others. It not only strengthens the legal regime of the PwD but also significantly contributes to the general HR discourse. India has also ratified the Convention in Oct 2007.⁶

The implications of signing the UNCRPD are two-fold, first the state will not do anything which runs counter to the purpose and spirit of the treaty; second the state party intends to ratify the concerned

treaty at a future date. By ratifying an International HR treaty, the state makes a solemn commitment to the Community of Nations that it shall take legislative, administrative, adjudicative, schematic and programmatic measures to implement the provisions enshrined in the Convention for ensuring promotion and protection of HR and fundamental freedoms of the persons in their country.

The UNCRPD is important because it reflects a change in mind set and thinking about disability. It enjoins upon the governments to respect, promote, protect and fulfil the rights of the PwD so as to ensure that they can participate fully in all areas of life. The disability has hitherto been regarded as a health, charity or social welfare concern. The focus was on what was 'wrong' with the body or behaviour of the disabled person. The convention recognises that disability is part of human diversity and PwD. The Human Rights have been broadly classified into two categories,

(a) Civil and Political rights which can be immediately realised/secured since they do not have resource implications for the state parties.

(b) Economic, Social and Cultural rights which have to be progressively realised/secured since they have resource implications and all the countries are not equally resource rich.

Reasonable accommodation under UNCRPD, 2006

The PwD may require specific support to enjoy their HR and fundamental freedoms with dignity even after accessible environment, inclusive and universal design are incorporated into services, goods and products. The service provider is expected to provide the specific support required without causing disproportionate burden depending upon the resources. The investment on accessibility, inclusive and universal design should not be considered as part of reasonable accommodation which is mandatory for all service providers regardless of their organisational status.

Right Enablers under UNCRPD

These are pre-requisites which the PwD may require for effective and full enjoyment of their Human Rights on an equal basis with others. These inter-alia include: Services such as assistive devices and technology, Rehabilitation services, specific training and eye-care services etc. without which full and effective enjoyment of the rights of the PwD, is hindered.

Optional Protocol (OP) of UNCRPD

OP of the UNCRPD is a separate document which explains how PwD and their organisations can make complaints to the UNO once all the judicial and other grievance redressal processes are exhausted at the country's level; if that concerned country has signed and ratified the OP. India has not signed the OP.

Harmonisation of Domestic Laws with the UNCRPD

The process of harmonisation of the relevant Indian Laws with the UNCRPD is in progress. This involves harmonisation between disability specific legislations and mainstream laws which have a bearing on the rights guaranteed by the UNCRPD. A new piece of legislation- Right of PwD Act (RPWD, 2016) has replaced the existing PwD Act, 1995. The Mental Healthcare Act, 2017 has been enacted to provide for mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare services. Similarly, the National Trust Act and the Rehabilitation Council of India Act are also expected to be revised. The Copyright Act and the Right to Education Act have been harmonised.

Incheon Strategy to “Make the Right Real” for the PwD in Asia-Pacific Region

The governments of the ESCAP region gathered in Incheon, Rep of Korea, from 29 Oct to 02 Nov 2012 to chart out course of the new Asia-Pacific Decade of PwD for the period (2013-2022). They adopted the Ministerial Declaration on the Asia-Pacific Decade of PwD (2013-2022) and the Incheon Strategy to “Make the Right Real” for the PwD in Asia-Pacific.

The Incheon Strategy provides the Asian and Pacific region and the world, with the first set of regionally agreed disability- inclusive development goals. It comprises of 10 Goals, 27 Targets and 62 Indicators. The strategy is built on the UNCRPD and the Biwako Millennium framework for action towards an inclusive, Barrier- free and Rights-based society for the PwD in the Asia- Pacific region. The goals describe the desired end results. The targets are aimed to be achieved within a given time-frame. The indicators measure progress towards the targets and verify that the targets have been achieved. There are two types of indicators: Core Indicators and Supplementary Indicators. All the indicators should be disaggregated by sex wherever possible. The goals are as follows,

- (a) Reduce Poverty and Enhance Work and Employment Prospects.
- (b) Promote Participation in Political Process and in Decision-making.
- (c) Enhance Access to the Physical Environment, Public Transportation, Knowledge, Information and Communication.
- (d) Strengthen Social Protection.
- (e) Expand Early Intervention and Education of Children with Disabilities.
- (f) Ensure Gender Equality and Women’s Empowerment.
- (g) Ensure Disability-inclusive Disaster Risk Reduction and Management.
- (h) Improve the Reliability and Comparability of Disability Data.
- (j) Accelerate the Ratification and Implementation of the Convention on the Rights of the PwD and the Harmonisation of National Legislation with the Convention.

- (k) Advance Sub-regional, Regional and Inter-regional Cooperation.

Outcome Document to promote Disability-Inclusive Development

The General Assembly of the UNO at a high-level meeting in Sep 2013 has adopted a landmark Outcome document aimed at promoting disability-inclusive development. The document is slated to guide efforts towards the creation of a fully inclusive society through 2015 and beyond. The document realises that it would be impossible to meet development targets including the 8th Millennium Development Goals without incorporating the rights, wellbeing, and perspective of PwD. The document also underlines the resolve of the Governments to work together for disability inclusive development and their commitment to advancing the rights of all PwD which was deeply rooted in the goals of the UNO and the UDHR. All over the world Dec 03rd is recognised as “United Nations International Day of the Persons with Disability”.

III. NATIONAL POLICIES FOR EMPOWERMENT OF PwD IN INDIA

The past has witnessed some progress in terms of legislations being enacted and implemented at the national level for ensuring the HR of the PwD. The majority of the legislations are based on the assumption that such persons are simply not in a position to exercise the same set of HRs as the non-disabled persons. As a result of this thinking, the issues concerning the PwD are often addressed in terms of rehabilitation and social services. There is a necessity of enacting a comprehensive legislation to ensure the rights of the PwD in all aspects – political, civil, economic, social and cultural-on an equal footing with the normal society. Appropriate measures are required for addressing the existing discrimination and thereby promoting opportunities for the PwD to participate in social life and development along with the society on the basis of equality. There are certain cultural and social barriers that have hindered full participation of the PwD in social life and developmental process. The changes in the perception and concepts of disability will involve both changes in values and increased understanding at all levels of society and a focus on those social and cultural norms, that can perpetuate erroneous and inappropriate myths about disability. The enactment of appropriate legislation at the National level is crucial in promoting/protecting the rights of the PwD. While the role of the International law is being increasingly recognised in this respect, the domestic legislation remains one of the most effective tools of facilitating social change and improving the status of the PwD.

Constitutional Provisions for PwD

The constitution of India provides for a set of six Fundamental Rights to all its citizens, which include Right to Equality; Right to Freedom; Right against Exploitation; Right to freedom of Religion; Cultural and Educational Rights and Right to Constitutional Remedies. All these Rights are also available to the PwD. The right as enshrined in the Article 14 of the Constitution stipulates that the State shall not deny to any person equality before the Law or the equal protection of the laws within the territory of India. The right has been conferred upon both citizens and foreigners. Upholding the doctrine of equality can prevail among equals only, the Indian judiciary has justifiably held that where equals and unequal are treated differently, the principle of equality is not

violated. Thus, while the Article 14 forbids class legislation, it permits reasonable classification of persons, objects and transactions by the law. However, the classification cannot be arbitrary, artificial or evasive. Rather, it should be based upon an intelligible differential and substantial distinction. Articles 15 and 16 prohibit discrimination on the grounds of religion, race, caste, sex, place of birth etc. however, they do not mention disability. The formal recognition of discrimination on the grounds of disability is of recent origin. While there is no formal recognition of disability-based discrimination, the Indian judiciary has been forthcoming in setting aside rules/ practices which are loaded against the PwD. The Hon'ble Supreme Court in a recent directive had mandated that the 3% reservations in the Govt. jobs as mandated by the PwD Act, 1995 should be across the categories for PwD based on total vacancies and not the posts identified to be filled up through such persons. The Directive Principles of the State policy vide Article 41 stipulates that "The States shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement". Besides, 11th Schedule to Article 243-G and 12th Schedule to Article 243-W, which pertains to the powers and responsibilities of the Panchayats and Municipalities respectively with respect to implementation of the schemes for economic development and social justice, include welfare and safeguarding the interests of the PwD among other weaker sections of the society.

SPECIFIC ACTS FOR THE PWD

The Constitution of India, through the Preamble, resolves to secure to all its citizens, Justice: Social, Economic and Political. Accordingly, in order to protect the interest of the certain weaker sections of the society including the PwD, the Government of India has enacted several legislations providing for enjoyment of the granted rights by the members of these disadvantaged sections of the society. The specific overview of the legislations enacted are discussed in the subsequent paragraphs.

The Mental Health Act, 1987

The Indian Lunacy Act, 1912 became irrelevant in the modern times owing to rapid growth of the medical science and dawn of the fact that mental illness is now curable with proper and timely diagnosis, was replaced by the Mental Health Act, 1987 to ensure the HR of the Mentally-ill persons. The act relates to treatment and care of the mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto into six chapters provides for the following: -

- (a) Establishment of Central and State authorities for mental health services.
- (b) Establishment or maintenance of Psychiatric Hospitals and Nursing Homes.
- (c) Admission and detention in Psychiatric Hospitals and Nursing Homes.
- (d) Inspection, Discharge, Leave of absence and Removal of Mentally-ill.
- (e) Judicial Inquisition regarding alleged Mentally-ill persons possessing Property, Custody of his person and Management of his Property.

(f) Liability to meet Cost of Maintenance of Mentally-ill Persons detained in Psychiatric Hospital or Nursing Homes.

The Act stipulates that such a person shall not be subjected, during treatment, to any indignity (whether physical or mental) or cruelty. Also, it provides that such a person under treatment shall not be used for purposes of research except in the defined circumstances. The Mental Health Care Act, 2017 has been enacted for harmonisation with the UNCRPD, 2006.

The Rehabilitation Council of India (RCI) Act, 1992

The RCI Act, 1992 was enacted for the purpose of constituting the RCI, for regulating the Training of Rehabilitation Professional and for maintenance of a Central Rehabilitation Register. It was amended by the RCI (Amendment) Act, 2000 to provide for monitoring the Training of Rehabilitation Professionals and personnel, promoting Research in Rehabilitation and Special Education as additional objectives of the Council. The Rights of the PwD that emerge from the RCI Act, 1992 are: -

- (a) To have the right to be served by the trained and qualified rehabilitation professional whose names are borne on the Register maintained by the RCI.
- (b) To have the guarantee of maintenance of minimum standards of education required for recognition of rehabilitation qualification by Universities and other institutions in India.
- (c) To have the guarantee of maintenance of standards of professional conduct and etiquette by rehabilitation professionals through the provision of penalty or disciplinary action and removal from the Register of the RCI.
- (d) 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 state.

The Pwd (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995

The Act establishes the responsibility on the appropriate governments and society to provide equal opportunities and prohibits discrimination of the PwD. The main provisions of the Act are summarised as follows: -

<u>RIGHT</u>	<u>SECTION</u>
<u>Education</u>	
(a) Provision of free education in an appropriate environment for every child with a disability upto 18 years.	26
	30

(b) Comprehensive education scheme, barrier free access to schools, supply of books, uniform etc. for children with disabilities. 39

(c) Provision of reservation of not less than 3% for admission to Govt./ Govt. aided institutions.

Employment/ Social Security

(a) Provision of Reservation of not less than 3% of vacancies for PwD in Govt. Establishments in all grades. 33

(b) Provision of Reservation of not less than 3% for PwD in Poverty alleviation schemes. 40

(c) Provision of schemes to provide aids and appliances to PwD. 42

(d) Provision of Unemployment Allowance for PwD. 68

Non-discrimination and Barrier free Access

(a) Provision of special measures to adapt public transport accessible to the PwD. 44

(b) Provision to make roads and public places barrier free. 45

(c) Ban on dispensing with or reducing in rank an employee who acquires disability during service. 47 (1)

(d) Non-discrimination in promotion on the grounds of disability. 47 (2)

Complaints

(a) Provision of lodging complaints regarding deprivation of rights of PwD with Chief Commissioner. 59

(b) Provision of lodging complaints regarding deprivation of rights of PwD with Commissioner Disabilities (State Level). 62

The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

It is a welfare legislation which deals with the care and protection of four specific categories of PwD stated in the Act. The Act contains provisions for appointment of legal guardians through Local Level Committees in the districts for the persons belonging to the specified categories of disabilities who may need

guardianship. The guardians appointed under this Act are responsible for maintenance of PwD and their properties. The National Trust set up under the Act implements various schemes for advancement and empowerment of persons belonging to the specified categories of disabilities and has following objectives: -

- (a) To enable and empower the persons with specified categories of disabilities to live independently and as fully as possible within and as close to their community.
- (b) To extend support to registered organisations (NGOs) to provide need based services.
- (c) To evolve procedures for appointment of guardians/trustees and to facilitate realisation of equal opportunities, protection of rights and full participation of persons with specific categories of disabilities.

The National Policy for the PwD, 2006

Recognising that the PwD constitute a valuable human resource for the country and that a majority of such persons can lead a better quality of life if they have equal opportunities and effective access to rehabilitation measures. The National Policy for the PwD was drafted with a view to create an environment that provides such equal opportunities for the protection of their rights and full participation in the society. With focus on Prevention of Disabilities and Rehabilitation Measures, the policy provides for the following Scheduled actions: -

- (I) Prevention of Disabilities.
- (II) Rehabilitation Measures.
 - (II A) Physical Rehabilitation Strategies
 - (a) Early detection and Intervention.
 - (b) Counselling and Medical rehabilitation.
 - (c) Assistive Devices.
 - (d) Development of Rehabilitation Professionals.
 - (II B) Education of PwD.
 - (II C) Economic Rehabilitation of the PwD.
 - (a) Employment in Govt. Establishments.
 - (b) Wage Employment in Private Sector.
 - (c) Self-Employment.
- (III) Provisions for Women with Disabilities.
- (IV) Provisions for Children with Disabilities.
- (V) Barrier free Environment.
- (VI) Issue of Disability Certificates.
- (VII) Social security.

- (VIII) Promotion of NGOs.
- (IX) Collection of regular information on PwD.
- (X) Research.
- (XI) Sports, Recreation and Cultural life.
- (XII) Amendments to existing Acts dealing with the PwD.

The principle areas of intervention under the national policy are summarised as follows: -

- (a) Prevention, Early-detection and intervention.
- (b) Programs of Rehabilitation.
- (c) Human Resource Development.
- (d) Education of PwD.
- (e) Employment.
- (f) Barrier free Environment.
- (g) Social Protection.
- (h) Research.
- (j) Sports, Recreation and Cultural Activities.

The following mechanism is in place for the implementation of the National Policy: -

- (a) Department of Disability Affairs, Ministry of Social Justice & Empowerment is the nodal department to coordinate all matters relating to implementation of the policy.
- (b) The Central Coordination Committee, with stakeholder representation, coordinates matter relating to implementation of the National Policy. There is a similar Committee at the State level.
- (c) The Ministries of Home Affairs; Health & Family Welfare; Rural Development; Urban Development; Youth Affairs & Sports; Railways; Science & Technology; Statistics & Program Implementation; Labour; Panchayat Raj and Women & Child Development; Department of Elementary Education & Literacy; Secondary & Higher Education; Road Transport & Highways; Public Enterprises; Revenue; Information Technology and Personnel & Training are also identified for implementation of the policy.
- (d) Panchayat Raj and Urban Local Bodies are associated in the functioning of the District Disability Rehabilitation Centres. They are required to play a crucial role in the implementation of the National Policy to address local level issues.
- (e) The Chief Commissioner for the PwD at the Central level and the State Commissioners at the State level, play key role in implementation of the National Policy, apart from their respective statutory responsibilities.

The Copyright (Amendment) Act, 2012

The new Section 52 (1) (zb) facilitates access to copyrighted works by PwD provided that the reproduction of accessible formats is on a no-profit basis but to recover only the cost of production, and the organisation ensures that the accessible copies are used only by the PwD and takes reasonable steps to prevent the entry of the accessible copies into ordinary channels of business.

Compulsory Licence. In cases where the exception to copyright infringement does not apply, any person working for the PwD on a commercial basis may apply to the Copyright Board for a compulsory licence to publish a work in an accessible format for the benefit of PwD. For the said purpose, organisations registered under section 12A of the Income Tax Act, 1961 and working for the PwD or recognised under Chapter X of the PwD Act, 1995 or receiving grants from the Govt. for facilitating access to the PwD or an educational institution or library or archives recognised by the Govt. can apply for the compulsory licence.⁷

The Right of Children to Free and Compulsory Education Act, 2009

The Act provides for free and compulsory education to all children of the age of six and fourteen years. As per section 3(2) of the RTE Act provides that child suffering disability, as defined in section 2(i) of the PwD Act, 1995, shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act. With the coming into force of the Right of Children to Free and Compulsory Education (Amendment) Act, 2012, a child with disability is covered under the definition of 'Child belonging to the disadvantaged group'. This entitles a child with disability to a share in the 25% seats to be reserved for the children belonging to the disadvantaged group in private schools. The amending Act also entitles a child with 'Multiple Disabilities' or 'Severe Disability' to his/her right to opt for Home-based education.

The Rights of Persons with Disabilities Act, 2016

The Act establishes the responsibility on the appropriate governments and society to give effect to the United Nations Convention on the Rights of Persons with Disabilities (RPWD) and for matters connected therewith. The Convention lays down the following principles for empowerment of PwD⁸: -

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of PwD as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;

- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

The main provisions of the RPWD Act are summarised as: -

<u>RIGHT</u>	<u>SECTION</u>
<p><u>Equality and Non-Discrimination of PwD</u></p> <p>Women and children with disabilities; Community life; Protection from cruelty and inhuman treatment; Protection from abuse, violence and exploitation; Protection and safety; Home and family; Reproductive rights; Accessibility in voting; Access to justice; Legal capacity; Provision for guardianship; Designation of authorities to support.</p>	3 to 15
<p><u>Education</u></p> <p>Educational institutions funded or recognised by the Govt. are to provide inclusive education to the children with disabilities and take measures for implementation.</p>	16 to 18
<p><u>Skill Development and Employment</u></p> <p>Schemes for Vocational training and self-employment; Non-discrimination in employment; Equal opportunity policy; Maintenance of records; Appointment of Grievance Redressal Officer.</p>	19 to 23
<p><u>Social Security, Health, Rehabilitation and Recreation</u></p> <p>Social security measures for adequate standard of living; 25% higher allotment than the similar schemes applicable to others; disability pension, comprehensive insurance, unemployment allowance, aids and appliances, medical facility, care-giver allowance; Measures for quality Health care; formulation of rehabilitation policy in consultation with NGOs, Research and Development measures for rehabilitation; Facilities for Culture and Recreation; Measures for participation in sporting activities;</p>	24 to 30
<p><u>Special Provisions for PwD with Benchmark Disabilities</u></p> <p>Free education for children with benchmark disabilities between 6 to 18 years of age; Reservation not less than 5% in higher educational institutions;</p>	31 to 37

upper age relaxation of five years; Identification of posts for reservation; Reservation not less than 4% in employment, age relaxation; Incentives to employers in private sector; establish Special employment exchange; Special schemes and development programmes like 5% reservation in allotment of agricultural land, housing and poverty alleviation schemes.	
<u>Special provisions for PwD with high support needs.</u> Steps to provide high support from government.	38
<u>Duties and Responsibilities of appropriate Governments</u> Awareness campaigns for PwD; standards for Accessibility; Measures for Access to Transport; Access to information and communication technology; Distribution of Consumer goods; Mandatory observance of accessibility norms; Time limit for making existing infrastructure and premises accessible and action for that purpose; lay down Time limit for accessibility by service providers set as two years; Human resource development; Social audit to assess the schemes;	39 to 48
<u>Registration of Institutions for PwD and grants to such Institutions</u>	49 to 55
<u>Certification of specified disabilities</u> Guidelines for assessment of specified disabilities; Designation of certifying authorities; Designation of certifying authorities; Procedure for certification; Appeal against a decision of certifying authority;	56 to 59
<u>Central and State Advisory Boards on disability and District Level Committee</u> Guidelines on Constitution of Central Advisory Board on Disability; Terms and conditions of Service of members; Disqualifications; State Advisory Board on disability;	60 to 73
<u>Chief Commissioner and State Commissioner for PwD</u> Appointment of Chief Commissioner and Commissioners; Action of appropriate authorities on recommendation of Chief Commissioner; Powers of Chief Commissioner; Appointment of State Commissioner in States	74 to 79
<u>Offences and Penalties</u>	89 to 97

Punishment for contravention of provisions of Act or rules or regulations made thereunder; Offences by companies; Punishment for fraudulently availing any benefit meant for persons with benchmark disabilities; Punishment for offences of atrocities; Punishment for failure to furnish information; Application of other laws not barred; Protection of action taken in good faith.	
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Specified Disabilities in RPWD Act, 2016

The various benchmark disabilities specified by the RPWD Act are classified into Physical and Intellectual disabilities as summarised below⁹:

Physical disabilities

(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*** which includes ***Blindness*** and ***Low vision***

(c) ***Hearing Impairment*** which includes ***Deaf*** and ***Hard of Hearing.***

(d) ***Speech and Language Disability.***

Intellectual Disability

A condition characterised by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills, including ***Specific Learning Disabilities*** and ***Autism Spectrum Disorder.*** Disability caused due to-

(a) ***Chronic Neurological Conditions,*** such as ***Multiple Sclerosis*** and ***Parkinson's Disease.***

(b) ***Blood Disorders*** like ***Haemophilia, Thalassaemia*** and ***Sickle Cell Disease.***

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

IV. Conclusion

The various guidelines from international organisations and the enactments at national level exist in India for bringing a better environment for the persons with disabilities. The society in India is transforming into a more civilised form with utilisation of modern technology for implementing the social

security measures for empowerment of persons with disabilities. The nation promises better future for the 'Divyangjan' in the coming days; however, they need to empower themselves by actively participating in the nation building exercise.

References:

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- ² Besting J. *Pattern of Exclusion: Imaginaries of Class, Nation, Ethnicity and Gender in Europe*. Parikh, B (Ed)
- ³ Office of the Chief Commissioner for PwD, *Compendium on International and National Human Rights Regime for the PwD*, Ministry of Social Justice and Empowerment, New Delhi.
- ⁴ www.ohchr.org assessed on 28 Sep 16.
- ⁵ www.scm.oas.org assessed on 28 Sep 16.
- ⁶ Office of the Chief Commissioner for PwD, *Compendium on International and National Human Rights Regime for the PwD*, Ministry of Social Justice and Empowerment, New Delhi.
- ⁷ Ministry of Law and Justice, *The Gazette of India*, The Copyright (Amendment) Act, 2012
- ⁸ Ministry of Law and Justice, *The Gazette of India*, The Rights of Persons with Disabilities Act, 2016
- ⁹ Ibid.