



The Rights of Persons with Disabilities (RPWD) Act - 2016

KUNJLATA LAL

Assistant Professor

Department of Education

Ranchi Women's College, Ranchi University, Ranchi Jharkhand, India.

Abstract

The Right of Persons with Disabilities Act 2016 is an important legislation that aims to promote and protect the rights of persons with disabilities in India. It is a landmark legislation in India that aims to promote the rights and empowerment of persons with disabilities. The Act seeks to provide a comprehensive framework for the inclusion and mainstreaming of person with disabilities in society, ensuring their equal participation and access to opportunities. The Act recognizes the right of persons with disabilities to equality, non-discrimination and full and effective participation in society. It also provides for the identification and certification of disabilities, as well as the establishment of special courts for cases related to persons with disabilities. The Act covers a wide range of disabilities, including physical, mental, intellectual and multiple disabilities and provides for a number of specific measures to ensure that persons with disabilities have access to education, employment, health-care and social security. The Right of Persons with Disabilities Act 2016 marks a significant shift from a charity-based approach to a rights-based approach, recognizing persons with disabilities as equal citizens with inherent dignity and worth. The Act's implementation has the potential to transform the lives of millions of persons with disabilities in India, promoting their full participation and inclusion in society.

Keywords- The Right of Persons with Disabilities Act 2016, physical, mental, intellectual and multiple disabilities, transform the lives of millions of persons with disabilities.

Introduction

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory, was put into effect by enacting the Rights of Persons with Disabilities (RPWD) Act, 2016 following notification on December 28, 2016. In addition to giving people with disabilities a number of rights and entitlements, the aforementioned Act requires the central and state governments to take action in a number of areas to promote the inclusion and empowerment of persons with disabilities (PWD).

After India accepted and signed the UNCRPD in 2007, new legislation was enacted, including the Persons with Disabilities (PWD) Act, 1995. The Act went into effect in 2010 and was made compliant with the UNCRPD. Next, on December 28, 2016, both houses of Parliament wrote and approved the Rights of PWD (Persons with Disabilities) Act, 2016 (also called the Rights of Persons with Disabilities Act, 2016; RPWD ACT, 2016). This came after a number of consultation meetings. The president's assent was then received, and the law was notified. On April 19, 2017, the RPWD Act, 2016 went into effect. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, of 1995 was replaced by this one. The main objective of the Rights of Persons with Disabilities Act, 2016 (RPWD ACT, 2016) is to guarantee that every person with a disability can live their life with dignity, without

discrimination, and with equal opportunity. This act establishes particular guidelines to protect their rights. India is a signatory to the UNCRPD, which outlines the rights of PWD.

Salient features of the act RPWD ACT - 2016

1. The responsibility is on the relevant governments to put in place effective policies that ensure PWD can enjoy their rights to the fullest extent possible alongside others.
2. The idea of evolving and dynamic has been used to define disabilities.
3. The following specific disabilities are covered under the Act::

1. Physical Disabilities

1) Locomotor Disabilities.

- Leprosy Cured Person
- Acid Attack Victims
- Muscular Dystrophy
- Dwarfism
- Cerebral Palsy
- Visual

➤ Impairment

- Low Vision
- Blindness

➤ Hearing Impairment

- Hard of Hearing
- Deaf

➤ Speech and Language Disability

2) Intellectual Disability

➤ Autism Spectrum Disorder

➤ Specific Learning Disabilities

3) Mental Behaviour (Mental Illness)

4) Disabilities resulting from

➤ Chronic Neurological Conditions such as

- Multiple Sclerosis
- Parkinson's Disease

➤ Blood Disorder

- Sickle Cell Disorder
- Haemophilia
- Thalassemia

5) Multiple Disorder

4. Persons with significant support needs and those with benchmark disabilities are eligible for the additional benefits.
5. All children between the ages of six and eighteen who have a benchmark disability are entitled to free education.
6. People with benchmark disabilities are granted a 5% seat quota in government and government-aided higher education institutions.
7. Priorities have been set for ensuring accessibility in public (government and private) buildings within a given timeframe.
8. Approximately 4% of government jobs are reserved for a specific type of people with benchmark disabilities.
9. The Act allows for guardianship to be granted by a distinct court or any other body that the state government designates, with the guardian and the person with disabilities participating in joint decision-making.
10. The Central & State Advisory Boards on Disabilities were established by the board to serve as policy-making entities.
11. The Act calls for boosting the State Commissioners of Disabilities and the Office of Chief Commissioner of PWD, which will serve as grievance redressal and regulatory entities while also keeping an eye on the Act's execution. Experts in a range of disabilities will form the Advisory Committee that will support these Offices.
12. The establishment of national and state funds to give people with disabilities financial support.
13. The consequences for offenses against people with disabilities are outlined in this Act.
14. Courts are specially appointed to hear complaints involving rights violations of PWDs (Persons with Disabilities).
15. As part of the Prime Minister's Accessible India Campaign, a deadline for guaranteeing accessibility in public and private institutions has been set.

Guardianship

The Act allows for the District Court to award guardianship, allowing the guardians and PWDs to collaborate on decisions.

A district court may provide limited guardianship to a PWD if it finds that the individual cannot take care of themselves or make decisions that have legal consequences. The PWD and a limited guardian will collaborate on decisions.

The district court may provide plenary guardianship, in which case the guardian makes legally enforceable decisions on behalf of the PWD, in exceptional circumstances when limited guardianship cannot be granted. The PWD's will or preferences do not need to be determined by the guardian.

Different types of disabilities

Human beings can be affected by innumerable types of disabilities. The 2016 RPWD ACT lists 21 different categories of disabilities: -

Detailed Description:

1. **Blindness:** - It is the condition in which a person cannot discriminate between bright light and darkness in either eye and is completely blind.
2. **Low-Vision:-** It is a condition in which an individual possesses any of the subsequent conditions:
 - i. With the finest corrections, visual acuity should not be more than 6/18 or less than 20/60 upon 3/60 or 10/200 in the better eye.
 - ii. Field of vision restriction extending from 10 degrees to an angle of less than 40 degrees.
3. **Leprosy:** - This is a long-lasting infectious disease that primarily impacts the mucosal surfaces of the upper respiratory tract, eyes, skin, and peripheral nerves.
4. **Hearing Impairment (Deaf and Hard of Hearing):-** It is either a whole or partial loss of hearing. The condition can be further classified as either hard of hearing or deaf.
 “Deaf” means a person who has a 70dB hearing loss in both ears at speech frequencies.
 “Hard of Hearing” means a person with a 60dB to 70dB hearing loss in both ears during speech frequencies.
5. **Locomotor Disability:-** It indicates a disability in the legs, which makes it difficult to move around. A person may have a limitation involving their bones, joints, or muscles that impairs their ability to move in certain ways, such as when walking, picking things up, or holding them in their hands.
6. **Dwarfism:** - Shorter than average body height is one of the characteristics of this growth condition. Individuals who are considered to be affected by dwarfism are those whose adult height is less than 4 feet 10 inches (147.32 cm).
7. **Intellectual Disability:** - The person's capacity to live and work in the community can be severely restricted. It includes problems with self-care, communication, social skills, safety, and self-direction.
8. **Mental Illness:** - It is the collective name for a range of mental and neurological disorders. The illness impacts a person's thoughts, feelings, and behaviors and encompasses depression, anxiety, schizophrenia, bipolar disorder, and personality disorders.
9. **Autism Spectrum Disorder:** - It encompasses typical autism, Asperger's syndrome, and autistic disorders. It has an impact on how the brain processes and stores information. Autism spectrum disorders cause challenges in social relationships, verbal and nonverbal communication, and other areas of daily life.
10. **Cerebral Palsy:** - This physically debilitating illness is caused by brain injury that impairs muscle coordination. It does not worsen with time and happens at or before birth. It is not a progressive disorder.

11. Muscular Dystrophy: - This category of genetic neuromuscular illnesses causes a broad loss and weakening of muscle. Because muscular dystrophy is a progressive disorder, it deteriorates with time.

12. Chronic Neurological condition:- Numerous disabling conditions, such as multiple sclerosis, epilepsy, dystonia, Huntington's disease, Parkinson's disease, and neuromuscular disease, affect a significant portion of the population. People who have a neurological illness that is persistent may have a wide range of symptoms that necessitate medical attention.

13. Specific Learning Disabilities (Dyslexia):- These groups of disabilities reduce a person's capacity for learning, listening, thinking, speaking, writing, spelling, and doing mathematical operations.

Examples of specific learning disabilities-

- **Dyspraxia** – Lack of ability to motor plan and respond with the right body language.
- **Dysgraphia** – Difficulties in writing, both in the technical and expressive senses. Spelling problems could also exist.
- **Dyscalculia** – Difficulty in doing calculations.
- **Attention Deficit and Hyperactivity Disorder (ADHD)** – Distractibility impulsivity, and hyperactivity.

14. Multiple Sclerosis: - It is a disabling illness affecting the central nervous system (CNS). This disease causes irreversible nerve damage by obstructing the information flow in the brain and other body parts.

Symptoms of Multiple Sclerosis –

Pain, stiffness, muscle spasms, weakness, weariness, tingling and numbness, difficulty walking or balancing, vertigo and dizziness, memory, and cognitive problems, changes in vision and hearing, vision problems, learning and cognitive problems, depression and anxiety, sexual problems, bladder problems, bowel problems, and cognitive and memory problems. Speech and swallowing difficulties are only a few of the symptoms.

15. Speech and Language disability: - This term refers to a persistent disability resulting from diseases like aphasia or laryngectomy that impair one or more aspects of speech and language as a result of neurological or biological causes.

16. Thalassemia: - It is a blood condition that is inherited genetically and is defined by reduced or abnormal hemoglobin synthesis. Anaemia is the result when a significant proportion of red blood cells are destroyed. A person with Thalassemia has pale skin, fatigue, and dark urine due to anemia.

17. Haemophilia: - The absence of blood clotting proteins is an indicator of this blood disorder. The duration of bleeding is prolonged compared to usual when these proteins are missing. Males are nearly invariably affected by hemophilia. Rarely do females get hemophilia.

18. Sickle Cell Disease: - Red blood cells (RBCs) in this set of blood disorders break down, take on a sickle form, and become distorted. It is an illness caused by genetic transmission.

19. Multiple Disabilities including deaf-blindness: - It is the emergence of two or more distinct physical disabilities at the same time, two distinct mental disabilities, or a mix of both physical and mental disabilities. Examples of multiple disabilities include:

- **Intellectual disabilities and Blindness.**
- **Mental Retardation and Orthopaedic impairment.**
- **Locomotor disability and Speech impairment.**

20. Acid Attack Victim:- The people who survived acid attacks are primarily women who were the victims of acid-throwing crimes. The victim of these accidents frequently has facial and other bodily parts deformed.

21. Parkinson's disease: - It is a neurological condition that interferes with movement. Tremors and stiffness are characteristic features of this illness. It is a progressive illness that becomes worse over time.

RPWD Act 2016

"The appropriate Government shall ensure that the PWD enjoys the right to equality, life with dignity, and respect for his or her own integrity equally with others," according to the RPWD Act of 2016.

The RPWD Act of 2016 has 102 sections divided into 17 chapters. While all of these chapters are significant to psychiatrists, chapters 1, 5, 10, and 11 are especially significant because they are intimately related to the ethics of professionals in both physical and mental health.

Chapter 1, Section 2(zc) definitions are extended in the definition of specific disabilities provided at the end of the Gazette Notification as a "Schedule."

The Government has taken action and declared under Section 3 that no Person with Disabilities will face discrimination due to their disability. No one can have their personal freedom taken away from them only because of a disability unless it can be shown that the action in question was a reasonable means of achieving a legitimate goal.

Women and children with disabilities have received special accommodations in order for them to have the same rights as everyone else. Additionally, precautions are taken to protect PWDs from all sorts of abuse, violence, and exploitation as well as from cruel, inhumane, and humiliating treatment.

According to Section 7(2) of the Act, anyone who has cause to suspect that a PWD has been the victim of abuse, violence, or exploitation may report the matter to the local Executive Magistrate, who will then take prompt action to stop the abuse or exploitation and issue the necessary orders to protect the PWD. Its inclusion is justified by the need to protect PWDs from assault, abuse, and exploitation. It creates an environment in which family members and other caregivers may be less likely to step up and provide the support that is required.

Ensuring PWDs have equal access to voting and justice without prejudice is imperative. Public documents must be made available in formats that are easily accessed.

Under **Section 13** - To ensure that every PWD has the same legal capability as everyone else in all areas of life is recognized by the law everywhere they go, and has the same rights as everyone else to own and inherit both immovable and movable property as well as to manage their finances.

Under **Section 13 (4 & 5)** – In the event of a conflict of interest, the supporting individual would step down from giving assistance, and the PWD would be able to alter, modify, or do away with the support system.

Under **Section 14** – A limited guardian, appointed by the State Government, may provide additional support to a person with a disability if it is determined that they have received appropriate and sufficient support but are unable to make legally binding decisions for themselves. The State Government will consult with the designated guardian before designating someone to act on the person's behalf. If a disabled person needs full support or if limited guardianship needs to be granted frequently, the District Court or the appointed authority may provide it. In certain situations, the Court or the appropriate authorities will review

the decision on the support to be given in order to decide what kind and how much assistance should be given.

Under **Section 38** – If a PWD with a benchmark disability believes they require high support, they may apply on their own behalf to the government-appointed authority, and the authority will take the necessary action to give support.

As to the Act, even though mental illness is recognized as a disability, PWD with mental illness have unique requirements that necessitate distinct forms of care and attention because of the nature of their illness. Their relatives are a huge help in these situations by giving them support and attention. In our country, where mental health care staffing is severely lacking, families play a vital role in managing mental disorders. Family support provides the mentally ill individual with moral, emotional, and physical support, which is why it should be encouraged. Family members should be involved in their loved one's mental health to the fullest extent possible.

The Rajya Sabha was presented with the RPWD Bill, which included provisions enabling the District Court to provide limited and plenary guardianship for "a mentally ill person" under suitable circumstances.

Under **Section 62(1) & 68(1)** – It is not permitted for "a person of unsound mind and stand so declared by a competent court" to be a member of the Central and State Advisory Boards. It also calls into question the presumption that persons with mental illness are incapable of doing certain tasks because there are disproportionately limited opportunities designated for those with mental illness, autism, intellectual impairments, special learning difficulties, and multiple disabilities.

Social welfare initiatives and special attention to integrating people with disabilities into mainstream society should have been implemented in light of the environmental and attitude obstacles that they encounter.

The phrase "a proportionate means of achieving a legitimate aim" appears in the Act's Subsection 3 exception clause. In order to provide appropriate care for individuals with mental illnesses and to benefit society overall, it would be reasonable to admit that mental state and comprehension can deteriorate while receiving care and treatment. In this regard, special provisions are highly advantageous.

The RPWD (Amendment) Bill, 2017

Establishment not to discriminate on the grounds of disability –

1. The establishment's head must make sure that the provisions of Section 3 of the Act's subsection (3) are not misused in order to deny any benefit or right to a person with a disability who is eligible under the Act.
2. If the head of a government agency or a private business employing twenty or more people receives a complaint from an aggrieved person accusing them of discriminating against PWD, they must take the following steps:
 - a. Take action in compliance with the Act's provisions; or
 - b. Provide written notice to the aggrieved person explaining how the impugned act or omission is a reasonable way of accomplishing a legal goal.

If the complaint is submitted to the appropriate State Commissioner for PWD or Chief Commissioner, it must be resolved within sixty days; however, in exceptional circumstances, the complaint may be resolved in thirty days by the Chief Commissioner or State Commissioner.

3. A person with a disability cannot be made to pay all or part of the price of a reasonable accommodation by an establishment.

The RPWD (Amendment) Bill, 2019

1. (1) This Act may be called the Right of Persons with Disabilities (Amendment) Act, 2019.
(2) It will take effect on the date when the Central Government notifies the public in the Official Gazette.
2. The phrase "long term" is to be omitted under Section 2 of the Right of Persons with Disabilities Bill, 2016 (henceforth referred to as the Principal Act).
3. In **Section 17** of the principal Act –
 - (i) Under clause (a), the words "to conduct surveys of school-age children every five years" should be changed to "to conduct separate surveys for school-age and out-of-school children every five years."
 - (ii) Under clause (c) for the words, "intellectual disability", the words "intellectual disability, learning disability, autism, deaf-blindness and cerebral palsy" shall be inserted and
 - (iii) Under clause (i), after the words, "exemption from second and third language courses", the words, "substitution of mathematics with subjects like music or drawing" shall be inserted.
4. In accordance with Section 19 of the Principal Act, the following clause will be added to sub-section (2) after clause (f):
“(fa) identification of jobs which may absorb subjects with disability judiciously; and
“(fb) ensuring equivalence of wages at par with the non-disabled in all sectors need attention and reinforcement of article 14 related to the right to equality.”
5. Under **Section 60**, of the principal Act, in **sub-section (2)**, in clause (r),-
 - (a) For **sub-clause (ii)** the following subclause will be replaced, specifically:
“(ii) six representatives from non-governmental organizations that deal with disabilities or organizations that support disabled people:
Provided that out of the six members nominated at least three Members shall be women and at least one person each shall be from the Scheduled Castes and the Scheduled Tribes;” and
 - (b) Under **sub-clause (iii)** the following subclause will be added, specifically:
“(iiia) at least four members who are persons with disabilities:
Provided that out of the four Members nominated, at least two members shall be women and at least one person each shall be from Scheduled Castes and the Scheduled Tribes.”

The RPWD (Amendment) Bill, 2020

1. In **Section 2** of the Right of Persons with Disabilities Act, 2016 (hereinafter 49 of 2016 also known as the Principal Act)-
 - (a) After **clause (p)**, the following clause shall be added, specifically:
“(pa) ‘National Commission’ means the National Commission for persons with disabilities constituted under **Section 74**” and
 - (b) The current clauses (zd) and (ze) will be renumbered as (ze) and (zf), and the following clause will be put before the clause (ze) as so renumbered:
“(zd) ‘State Commission’ means the State Commission for persons with Disabilities constituted under **Section 79**;”

The RPWD (Amendment) Bill, 2022

In the seventy-third year of the Republic of India, Parliament passed the RPWD Act, 2016, which was amended as follows:

The RPWD (Amendment) Act, 2022 is one possible name for this Act.

Under **Section 59A.(1)**, The National Commission for PWD, also known as the National Commission in this Chapter, will be established by the Central Government as soon as possible after notice in the Gazette, with the purpose of enabling it to carry out the duties and exercise the authority granted to it by this Act.

Under **Section 59A.(2)**, The following members will make up the Commission:-

- a. A Chairperson who shall be a person with a disability, having special knowledge in matters relating to the disability issues and knowledge in law;
- b. A member who may be a person with a disability or not having special knowledge in matters relating to the disability issues and knowledge in law;
- c. A woman who may be a person with disability or not have special knowledge in matters relating to disability issues and knowledge in law and has proved working excellence in such matters is to be appointed in accordance with any guidelines set forth by the Central Government.

Under **Section 59C.(1)**, Officers and other staff members that the National Commission may need in order to operate effectively will be provided by the Central Government.

(2) The terms and conditions of service and salary that apply to officers and other personnel designated for the National Commission's purposes will be determined by prescribed measures.

Under **Section 59D**, The Central Government shall pay the salary and benefits due to the Chairperson and Members as well as the administrative costs, which include the salary, benefits, and pension due to the officers and other personnel mentioned in Section 59(C) sub-section (1).

The RPWD (Amendment) Bill, 2023

1. Under **Section 2** of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the principal Act), for **Clause (za)**, the following clause shall be submitted, namely:-
“(za)” The term "rehabilitation" describes a process that aims to empower and enable people with disabilities to achieve and maintain an optimal level of physical, sensory, intellectual, psychological, environmental, and social function levels in accordance with World Health Organization guidelines and the Indian Constitution's guarantee of their right to a reasonable standard of living.

Conclusion

"The appropriate Government shall ensure that the person with a disability enjoys the right to equality, life with dignity and respect for his or her own integrity equally with others," according to the RPWD Act, 2016." This means that the government has to take action to create an environment that allows people with disabilities to make use of their abilities.

The guiding principles for empowering people with disabilities include respect for their innate dignity, their right to individual autonomy, including the capacity to make their own decisions, and their independence. The Act prioritizes the principles of non-discrimination, active involvement and integration in society, equal opportunities, accessibility, gender equality, recognition of the evolving abilities of children with disabilities, and preservation of their identities. It also highlights the significance of embracing diversity and considering disabilities as an integral part of human variation and humanity. This concept signifies a fundamental shift in the perception of disabilities, transitioning from matters of social welfare to matters of human rights and practical considerations.

Children with disabilities should not be taken from their parents until a competent court mandates so. People with disabilities are entitled to equal protection and safety in risky circumstances, armed conflicts, humanitarian catastrophes, and natural disasters.

The phrase "person with a disability" refers to a long-term impairment. It would have been preferable if this Act had only addressed general provisions, leaving the specific aspects of living with mental illness—such as guardianship, abuse, violence, and protection from exploitation—to be covered by appropriate and comprehensive provisions in the Mental Health Capacity Building (MHCP, 2016), which aims to promote positive mental health in children, youth, and families in their communities.

Undoubtedly, the disability rights movement in India has had a significant impact on the lives of millions of people with disabilities and has pushed for the creation of a more accessible environment for them. The State has also taken the lead in developing laws and policies, starting programs for the prevention and rehabilitation of disabilities, and supporting organizations that have a direct impact on the lives of millions of people with disabilities in the nation. The foundation for ensuring people with disabilities have rights to citizenship, respect, and opportunities has been established with the enactment of the RPWD Act 2016 and India's ratification of the UN convention on the rights of the disabled.

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