

# Rights of Persons with Disabilities in India with Special Reference to Women

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**Abstract-** *India had a legislation dealing with the Persons with disabilities since 1995 called Persons with Disabilities Act, 1995 (PWD Act, 1995), however it was not containing sufficient provisions to meet the requirements of the United Nations Convention on the Rights of Person with Disabilities, 2006 (hereinafter referred as UNCRPD) which India ratified in 2007 and hence the process of enacting a fresh law in its place started in 2010 to meet the objectives and guidelines of the UNCRPD. Finally in 2016, after years of discussion, meetings and drafting process, the Rights of Persons with Disabilities Act, 2016 (RPWD Act, 2016) was passed by both the houses of the Parliament. It was signed on December 27<sup>th</sup>, 2016 and came into force by a notification on April 19<sup>th</sup>, 2017. The preamble of the law states that this legislation is enacted to abide by the principles as declared by UNCRPD, for empowerment of persons with disabilities (PWD) and respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons. This law was a major milestone in recognizing statutory rights of persons with disabilities, be it men, women or children as well as establishing a framework where persons with disabilities are entitled to certain rights and entitlements, education, skill development, employment, social security, health, rehabilitation and recreation. It also contains special provisions for persons with benchmark disabilities and for persons with disabilities with high support needs. The Act recognizes different types of offences against a person with disability and recognizes special courts; establish National funds to help the differently-abled persons.*

**Indexed Terms-** *Disability, India, Rights, Women*

## I. INTRODUCTION

This paper will make an attempt to explore the challenges disabled people face, particularly women at physical, social and psychological level in India as well as explore Constitutional and Statutory rights that people, particularly women who are disabled entitled to.

## II. WHAT IS DISABILITY?

World Health Organization defines 'Disability' as any restriction or lack of ability to perform an activity which is considered normal for a human being. It is a state that limits or controls a person's day to day functioning.

A disability is any condition of the body or mind (impairment) that makes it more difficult for the person with the condition to do certain activities (activity limitation) and interact with the world around them (participation restrictions).<sup>1</sup> Disabilities are an umbrella term, covering impairments, activity limitations, and participation restrictions.

In laymen language, *disability* is a relative term. If 98% of human beings were born with wings in addition to the correct physical anatomy, then those 2% born without wings would be considered disabled, since they would not be able to fly, an activity considered normal for a human being. Similarly, in present day world, there is a normal known physical structure of a human being combined with a sound state of mind; hence those born out of the norm i.e. born without such physical structure or such mental state that consequentially disables them to perform activities which is normal to those born with it are considered disabled. For example, born without hand/hands, leg/legs, ability to speak, hear, see, intellectually disabled, autism etc..

Since the world started taking a human rights approach after the Universal Declaration of Human Rights, 1948 while formulation of its policies, it was only inevitable to expand this approach to the concept of disability. Reportedly, In 1980, US Democratic National Committee coined the term 'Differently-abled persons' to replace 'Handicapped persons' as more acceptable and inclusive.

However, this political correctness comes out of pity for the difficulties faced by people who are not having the ability to do things a normal individual does. Humans are intuitive enough to know when a complimentary adjective is based in truth or presented with a comfortable lie, hence I consider it more disrespectful to an individual who is disabled, to call him differently-abled, because he / she is going to sense the element of pity and it would hurt them even more. There have been times, when I have gotten goose bumps after witnessing the impeccable amount of will and determination in some people either born disabled or became so later on after birth, letting them know that feeling I have is different from faking my respect for them just for the fact that they are disabled because as I said, human are intuitive.

In a way, we are all disabled in some way or the other, because disability is a relative term, women prefer tall men in general that puts short men at a disadvantage since they are not able to attract a majority of women they would want, men prefer beautiful women in general that puts ugly women at a disadvantage since they are not able to attract a majority of men they would want. Short men are disabled in relation to Tall men; Ugly women are disabled in relation to Beautiful women and so on. However, some types of disability are more explicit and disadvantages are more substantial and hence laws are put in place to protect those classes of people who are subjects of these disabilities.

### III. TYPES OF DISABILITY

Let us see some explicit type of disabilities recognized in India as per the laws. Schedule I of the main statute dealing with persons with disability 'Rights of Persons with Disabilities Act, 2016' lists these more than 21 recognized disabilities as opposed

to the earlier 8 recognized disabilities in the Act of 1995. These are as follows:

1. Physical Disability
  - a. Loco-motor Disability: Leprosy Cured Person, Cerebral Palsy, Dwarfism, Muscular Dystrophy, Acid Attack Victims.
  - b. Visual Impairment: Blindness, Low Vision.
  - c. Hearing Impairment: Deaf, Hard of Hearing.
  - d. Speech and Language Disability
2. Intellectual Disability
  - a. Specific Learning Disabilities
  - b. Autism Spectrum Disorder
3. Mental Behavior (Mental Illness)
4. Disability caused due to-
  - a. Chronic Neurological Conditions such as: Multiple Sclerosis, Parkinson's disease.
  - b. Blood Disorder: Hemophilia, Thalassemia, Sickle Cell Disease.

### IV. HOW MANY DISABLED PEOPLE ARE THERE IN INDIA

As per Census of India, 2011, roughly 26.8 million (2.21 % of Indian Population, 121 Cr. at that time) people in India are disabled, out of which 11.7 million (44% of all disabled people) are women and roughly 15 million (56% of all disabled people) are men.

Total Population (100%)	Disabled Population (2.21%)
1,212,669,683 (1.21 Billion)	Total: 26,800,000 (26.8 million)
	Men: 15,008,000 (15 million)
	Women: 11,700,000 (11.7 million)

Census 2011

### V. CHALLENGES FACED BY PEOPLE WITH DISABILITY

Hardships are part of life; our body and mind are tools to get us through those hardships. However, for people with disabilities this task is much tougher than a person without these disabilities; and in that subset disabled women being the weaker gender physically are prone to having it tougher.

These are referred to as ‘barriers’, Sec 2(c) of the Rights of Persons with Disabilities Act, 2016 defines ‘barrier’ as ‘any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society.’

World Health Organization defines ‘barriers’ as ‘Factors in a person’s environment that, through their absence or presence, limit functioning and create disability’<sup>3</sup>. Seven most common barriers known to community are as follows<sup>3</sup>;

Attitudinal: People not inclining to extend hand of friendship to people with disability.

Communication: People, who are not able to see, speak, hear have difficulties in understanding others, and communicate their thoughts like an ordinary person. It effects reading, writing, speaking, hearing which have evolved different methods of communication such as sign language, braille etc to communicate.

Physical: People with Loco-motor disability experience difficulties in moving from one place to another, or accessing buildings through stairs, running, etc. Lack of specialized washrooms and other needed care is inconvenient for people with disability.

Policy: Being a minority of the population, they don’t have enough representatives to raise their interests to formulate policies. Machines, buildings, tools are often made to meet the needs of the norm which increases their hardships.

Programmatic: These barriers limit the access and delivery of a public health program for people with disabilities.

Financial: Due to their disabilities, they are less likely to be hired by an employer since they will bring in less money than their non-disabled counterpart. This makes them have less negotiating power while applying for a private job resulting in less salary as a consequence sometimes compared to their non-disabled counterparts.

Transportation: Access to public transportation can be inconvenient due to distances or location. Specialized care is not available everywhere they go. Those in power have the option to either exploit or do well with it. Unfortunately, it is a sad reality that world is a cutthroat place and those stronger than us are more likely to try to exploit and victimize us and disabled people are no exception to such victimization. In fact, if anything, they are more exposed to such exploitation because of their disability; and for women, combine that with being physically inferior naturally than men disabled or not, it becomes utmost important therefore to protect these classes of people and that is why legislations like *Right of Persons with Disabilities Act, 2016* play a vital role in protecting the fundamental rights guaranteed by the Constitution and upholding the principles and ideals of UDHR, 1948 to defend their human rights.

## VI. RIGHTS OF PERSONS WITH DISABILITIES IN INDIA

Although the power to make laws and provide relief to disabled people vests in the States since the matter is listed in Schedule 7, List II, Entry 9 as ‘*Relief of the disabled and unemployable*’. Yet, Rights of Persons with Disabilities Act, 2016 has been enacted in furtherance of power vested in Parliament under article 253 which says, ‘253. *Legislation for giving effect to international agreements.—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body*’ for the purpose of giving effect to United Nations Convention on the Rights of Persons with disabilities, 2006.

The express mention of the subject matter ‘*disability*’ finds two places in the Constitution of India, 1950. *Firstly*, under the above mentioned Schedule 7, List II, Entry 9, and *Secondly*, under Article 41 of the Part IV as one of the Directive Principles of State Policies (DPSPs) which directs the state to formulate policies based on certain principles and objectives where it says, ‘*Right to work, to education and to public*

*assistance in certain cases.—The State 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, and in other cases of undeserved want.’*

To further this objective in combination of the objectives of UNCRPD, the Parliament enacted Rights of Persons with Disabilities Act, 2016 that came into force on 19.04.2017 with the objectives of guaranteeing the people with disabilities certain rights and entitlements, education, skill development, employment, social security, health, rehabilitation and recreation. It also contains special provisions for persons with benchmark disabilities and for persons with disabilities with high support needs.

The Act recognizes certain offences against a person with disabilities and recognizes special courts to deal with such offences whether committed by a natural person or a company.

It establishes National and State funds to help the person with disabilities.

It establishes Central and State advisory boards along with a District level committee to help the policy makers in policy formulation taking into consideration the special needs of the persons with disabilities. They are responsible for facilitating the continuous evolution of a comprehensive policy for the empowerment of persons with disabilities and the full enjoyment of their rights.

Persons with disabilities have all the fundamental rights guaranteed by the Constitution of India, 1950 similar to a person without any disabilities such as Right to Equality, Right to Freedom, Right against Exploitation, Right to Religion, Cultural and Educational Rights and Right to Constitutional Remedies; however some additional key statutory rights provided by the Rights of Persons with Disabilities Act, 2016 Act to the persons with disabilities, particularly to women to make an attempt to even the odds are as follows:

Gender Equality b/w Men and Women: Special obligation on the appropriate govt. to take measures

that women and children with disabilities enjoy their rights equally with others.<sup>4</sup>

Social Security: Special obligation on the appropriate govt. to formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community. Such assistance must be at least 25% higher than the similar schemes applicable to others. Due consideration must be given to the diversity of disability, gender, age, and socio-economic status. These schemes must provide for support to women with disability for livelihood and for upbringing of their children.<sup>5</sup>

Healthcare: Special obligation on the appropriate govt. to provide free healthcare which should be barrier free and prioritize persons with disabilities in attendance and treatment to others. Additionally, there must be provided sexual and reproductive healthcare especially for women with disability.<sup>6</sup>

Special schemes and development programmes: Special obligation on the appropriate govt. to make schemes in favor of persons with benchmark disabilities to provide 5% reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities & 5% reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities.<sup>7</sup>

Community Life: The persons with disabilities shall have the right to live in the community. Efforts must be made by the appropriate government so that the persons with disabilities are not obliged to live in any particular living arrangement and are given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.<sup>8</sup>

Protection from Cruel and Inhuman treatment: Special obligation on the appropriate govt. to take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment. No one shall make a person

with disability a subject of their research without his or her free and informed consent obtained through accessible modes, means and formats of communication; and prior permission of a Committee for Research on Disability.<sup>9</sup>

**Home and Family:** No child with disability shall be separated from his or her parents on the ground of disability except on an order of competent court, if required, in the best interest of the child. Where the parents are unable to take care of a child with disability, the competent court shall place such child with his or her near relations, and failing that within the community in a family setting or in exceptional cases in shelter home run by the appropriate Government or non-governmental organization, as may be required.<sup>10</sup>

**Reproductive Rights:** Special obligation on the appropriate govt. to ensure that persons with disabilities have access to appropriate information regarding reproductive and family planning. No person with disability shall be subject to any medical procedure which leads to infertility without his or her free and informed consent.<sup>11</sup>

**Accessibility in voting:** The Election Commission of India and the State Election Commissions shall ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them.

**Provision for Limited Guardianship for persons with disabilities:** Where a district court or any designated authority, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person. Limited guardian cannot take a decision without informed consent of the person with disability.<sup>12</sup>

**Educational Institution:** Government aided educational institutions must not discriminate and make education accessible to all persons with disabilities. This accessibility must address their loco-motor disabilities as well as ability to see, hear

or speak in order to impart education to them at the same rate as to others.<sup>13</sup>

**Free education for children with benchmark disabilities:** Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighborhood school, or in a special school, of his choice. The appropriate Government and local authorities shall ensure that every child with benchmark disability has access to free education in an appropriate environment till he attains the age of eighteen years. A child without disability is only entitled to free education from the age of six to fourteen years only.<sup>14</sup>

**Reservation in higher educational institutions:** All government aided higher education institutions are obligated to provide at least 5% reservation in admission to persons with disabilities. The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.<sup>15</sup>

Earlier, this was 3% in the Act of 1995.

**Reservation in Public offices:** The appropriate govt. is obliged to identify posts in public offices that can be held by the persons with disabilities. And after such identification, provide at least 4% reservations in such posts for persons with benchmark disabilities. 1% each should be for persons suffering from (a) blindness and low vision; (b) deaf and hard of hearing; and (c) loco-motor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy. In the remaining 1% out of 4% reservation should be for persons suffering from (d) autism, intellectual disability, specific learning disability and mental illness, and; (e) multiple disabilities.<sup>16</sup>

Earlier, this was 3% in the Act of 1995.

**Employment opportunities in Private Sector:** The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent. of

their work force is composed of persons with benchmark disability.<sup>17</sup>

### CONCLUSION

These rights are afforded to persons with disabilities in addition to the other Human, Fundamental, Constitutional, and Statutory rights enjoyed by all other individuals who are not suffering from any of these recognized disabilities. The PWDs form approximate 2.21% of the population of India out of which a lesser share is in the age of higher education and employment since old age and children are also forming part of this population. They are provided an over proportionate reservation for admission in Higher Education Institutions (5%) and government cadre jobs (4%) unlike any other class of people if you compare the ratio of their population to the amount of reservation they get. For example, women form approximate 50% of the population however, they are only getting 20% reservation in government cadre jobs, Men form about 50% of the population however, and they are getting 0% reservation.

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