

## Legislation As A Tool for the Progress of Visually Challenged In India

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### Abstract

When one analyses the growth of the differently abled or visually challenged community from a historical point of view, one gets the conclusion that it is in the post world war age where the right based approach was possible that they get the most inclusive acceptance in the society. As a result of international year for disabled and the decade for the disabled and different conferences that were organized in this period that the activists and the governments raised the issues of creating a valid legislations for the disabled specifically in compliance with the international direction covenants and conventions India also have adopted and implemented a few very important legislations for the wellbeing of the disabled across the country. The visually challenged are one of the recognized disabled groups who have played a significant role in creating such legislations. This article is an attempt to estimate and assess how effective where the legislations in curbing or solving the various challenges and barriers to the differently abled community in India. The paper examines the different laws and the significance objectives and aims that they have towards the disabled welfare.

**KEYWORDS:** Nothing about us without us, Copy right Act, Mental ill health Act, Lunacy Act, RCI Act, PWD Act, Economic and social commission for Asia and Pacific, National Trust Act, Right to Education Act, Rights of the Persons with Disabilities Act.

### Introduction

The world began addressing the problems of the visually challenged with a serious perspective only after the Second World War. The large number of disabled persons produced by the two world wars forced the world to examine the disabled and their problems from a more serious and dynamic perspective. The nonprofit charitable organizations from among the disabled who tried to invalidate and interrogate the charity based exclusivist paradigms of the public and advocated an more inclusive and politically correct perspective where their main slogan was "Nothing about us without us" also contributed significantly in the development of an alternative and advanced perspective (INTRODUCTION CHAPTER1 n.d.). They established the reality that disabled rights is a human right issue and a more inclusive approach is to be followed with reference to the empowerment of the disabled.

The issues of disabled had to be discussed through a new framework and international remedies were searched for. This new enthusiasm for the empowerment of the disabled was initiated in the west and later it was imparted and more or less imitated and implemented by the east. It is how the so called legislation's for the empowerment of the

visually challenged has been enacted and implemented.

The legislation as a tool for the progress of visually challenged in India. The attempt to empower the disabled and visually challenged has chiefly been done in 3 areas. They are; Education, Employment and Social Security Missions (All India Council for Technical Education 2017). However, centralities to these aspects have been provided by a strong legal framework created by the Parliament timely. Among the Legislation's, the copy right amendment act is the only act which has specifically addressed a particular issue related to the Visually Challenged. All the other laws aimed at a general welfare and empowerment of the disabled in general. However, the visually challenged also got their obvious fruits.

Salient features of the important Legislations passed by the Parliament for the empowerment of the visually challenged the key Legislation's which have been passed for the empowerment of the differently Abled in India are, Mental health Act 1987, RCI Act 1992, PWD Act 1995, National Trust Act 1999, R T E Act 2011, copy Right Act 2012 and rights of persons with disabilities act 2016. Here, a brief discussion of all these acts and a discussion of the Copy Right Act are attempted. The Mental Health Act 1987 and subsequent modifications in 2017/18 (vikaspedia n.d.).

Even though, the western countries had made serious attention to the issues of the disabled, India thought of these issues seriously only after the U.N. resolution passed for the disabled in the year, 1970. The discussion of these provisions by the Parliament did not result in the formation of any particular Act for the welfare of the differently Abled. Certain measures however were adopted for their betterment. The first step in the form of Act in India, which was passed for the empowerment of the differently abled was Mental Health Act 1987. The Act, which was passed on 22 May 1987, addressed the promotion and protection of the mentally challenged persons. The main objectives of the Act were,

1. To ensure that, the mentally ill persons are treated like any other sick persons and the environment around them is made as normal as possible.  
2. The experience of the working of Indian Lunacy Act, 1912 (4 of 1912) (swavalamban 1987) has revealed that it has become out-moded. With the rapid advance of medical science and the understanding of the nature of malady, it has become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach.

3. It is considered necessary

- (i) To regulate admission to psychiatric hospitals or psychiatric nursing homes of mentally ill-persons who do not have sufficient understanding to seek treatment on a voluntary basis, and to protect the rights of such persons while being detained;
- (ii) To protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others;
- (iii) To protect citizens from being detained in psychiatric hospitals or psychiatric nursing homes without sufficient cause;
- (iv) To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;
- (v) To provide facilities for establishing guardianship or custody of mentally ill persons who are incapable of managing their own affairs;

- (vi) To provide for the establishment of Central Authority and State Authorities for Mental Health Services;
- (vii) To regulate the powers of the Government for establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons;
- (viii) To provide for legal aid to mentally ill persons at State expense in certain cases.

The modifications and new additions to the act introduced in to the Mental Health Act over the last 5 years try to incorporate a contemporary perspective on this issue by bringing in more modern outlooks into the field. These developments also try to discuss and incorporate the broader understanding of the modern science about mental health and its related issues and the new understanding about the question of disability. More stringent and valid measures are introduced with reference to the protection of the mentally challenged people and various issues related to them such as their guardianship and custody of property’.

### **R C I Act 1992**

The Rehabilitation Council of India Act 1992, “the second major step for the empowerment of the differently abled enhanced providing training and assistance for the rehabilitation of the differently abled. A Rehabilitation Council was formed for this motive with special reference to its functions, office bearers and financial provisions. This has in turn helped the strengthening of the process of rehabilitation of the differently abled in India (Wikipedia n.d.)”.

### **PWD Act 1995**

“PWD Act which is often known as the Magna Carta of the differently abled has been a milestone in the history of the life of the differently abled in India. THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT (Ltd. n.d.) became a law on First January 1996. The Parliament through this act accepted the main recommendations given for the empowerment of the Differently abled by the Economic and Social Commission for Asia and Pacific held at Beijing on first to 5th December, 1992. This Act, for the first time defined different disabilities and gave a clear picture of their rights. It ensured 3 percent reservation of employment for the differently abled in Central and state government institutions. This has greatly strengthened the professional participation of the differently abled in India. Protections of the disabled and their special privileges have also been addressed by this Act. So, the PWD Act can be viewed as a systematic attempt to empower the differently abled in India”.

### **National Trust Act 1999**

‘The national trust for welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities act (PACERCENTER 2019), which became a law on 30 December had the following objectives:

1. To provides for the constitution of a national body for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.
2. To enable and empower persons with disability to live as independently and as fully as

possible within and as close to the community to which they belong.

3. To strengthen facilities to provide support to persons with disability to live within their own families.
4. To extend support to registered organization to provide need based services during the period of crisis in the family of persons with disability.
5. To deal with problems of persons with disability who do not have family support.
6. To promote measures for the care and protection of persons with disability in the event of death of their parent or guardian.
7. To evolve procedure for the appointment of guardians and trustees for persons with disability requiring such protection.
8. To facilitate the realization of equal opportunities, protection of rights and full participation of persons with disability. This Act has also been incidental in enriching the social participation of the differently abled and ensuring their welfare and protection in a very practical and reasonable way'.

### **The right to Education Act<sup>1</sup>**

'This Act has also given special emphasis for the education of the differently abled children. Some of the key provisions envisaged for the differently abled in the Act are; To give special training for the differently abled children so as to make them compete with the normal students, to provide additional facilities for the education of the differently abled, to provide transporting facilities for the differently abled children to make their learning smooth and so on'.

### **The Copy Right Amendment Act 2012**

The Copy Right Amendment Act<sup>2</sup> is perhaps the only Act," which has been specially designed for the welfare of the visually challenged in India. The Act was an amendment of the Copy right Act passed by the Parliament of India during 1957. The main task of the Act has been to increase the accessibility of textual and auditory resources for the visually challenged. Some of the main provisions of the Act are, "Commercial rental" does not include the rental, lease or lending of a lawfully acquired copy of a computer programme, sound recording, visual recording or cinematograph film for non-profit purposes by a non-profit library or non-profit educational institution. "communication to the public" means making any work or performance available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing physical copies of it, whether simultaneously or at places and times chosen individually, regardless of whether any member of the public actually sees, hears or otherwise enjoys the work or performance so made available. This Act ensured that, the visually challenged persons are provided with the E Copy of any textual material which is published, for the sake of learning and understanding. It ensured the availability of resources for the visually challenged".

<sup>1</sup> Educational Rights of Children with Disabilities 6<sup>th</sup> December 2010

<sup>2</sup> <http://copyright.gov.in>

## Rights of the persons with disabilities Act 2016

"The Rights of Persons with Disabilities Act, 2016<sup>3</sup> is the disability legislation passed by the Indian Parliament to fulfill its obligation to the United Nations Convention on the Rights of Persons with Disabilities, which India ratified in 2007. The Act replaces the existing Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995.

RPD act 2016 is at present the most conspicuous and comprehensive law with respect to the rights of persons with disabilities in India today. The act which is formed in compliance with the inclusive perspective advocated in international legislations and conventions such as united nation convention on the rights of the persons with disabilities as elucidated in the preamble of the act itself. The act further tries to give a broad platform of inclusiveness and acceptance to the rights of the disabled. In the beginning itself the act makes clear its policy and its approach towards the disabled and the question of disabilities by altering the usually stereotype definition of disability that disability is a limitation by arguing that disabilities is only a kind of human diversity. This is, indeed a paradigm shift in the understanding of disability from a theoretical point of view.

The act along with enforcing the existing parameters and conditions for empowering disabled suggests many alternatives which can ensure a barrier free society to the disabled. Primarily it enhances the category of the disabled from 7 to 21 by giving a broader and more inclusive outlook to the question of disability. It underscores the dignity and autonomy of the disabled people and suggests alternative possibilities to ensure equality and equity to the disabled in all walks of their life. Whereas social engagements for the disabled was earlier treated as a charitable contribution from the general society. The act very clearly recognizes engagements and involvements for the disabled as essential pre requisites for any modern society and recognizes the precautionary element in facilitating such structural adjustments in the society to meet the challenges of the disabled. Were as it was only referring to certain measures when the rights of disabled were challenged in the earlier PWD act. The current act specifically envisages offence and punishment with respect to the violation of the rights of the disabled. It also clearly indicates conditions for establishing a national and state fund for implementing different scheme for the welfare of the disabled. It also increases the participation of the disabled in different social security schemes and enhances the reservation offered in difference schemes by incorporating possibility to the newly included disabled people as well.

The act insists on the condition that there should be at least a minimum of 25 percent increase for the disabled in all public social security schemes and programmes. It also provides adequate clauses to give autonomy and inclusion to the disabled children and women who are most often neglected by the mainstream laws.

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3. The Rights of Persons with Disabilities Act, 2016: Does it address the needs of the persons with mental illness and their families

So the RPD act in comparison with the earlier PWD act appears to be more inclusive more autonomous more wider and more effective with respect to an understanding of the question of disability and rights of the disabled. It in a sense recognizes the larger constitutional obligation that the country offers to the citizens in general from which the disabled were largely out casted due to many technical social political and cultural reasons.

### **Conclusion**

Legislation's have done a commanding role in the empowerment of the visually challenged. This has been obviously visible in the high ratio of enrolment in Higher Education, Gaining of more areas of employment in academic, professional and Business streams and in the initiation of new research paradigms in these areas and new researches by Visually challenged<sup>4</sup>. Thus, this Legislation's have greatly enhanced the social mobility of the visually challenged in India. However, it has not made drastic changes in the attitude of the main stream society towards the visually challenged. The Social barriers of the visually challenged such as Othering, Hasty generalization, Specialization and so on still continue with the same danger.

One particular example sighted can be the indifference of the main stream society towards marrying the visually challenged. Thus, the Legislation's passed for the welfare of the visually challenged in India have been windows to their Academic, professional, career and welfare aspirations. But, their Social spectrum and status have not been considerably modified by these Legislation's. Finally, India itself has not initiated any special Legislation's for the visually challenged. We have more often echoed the Global sentiments and mostly copied the Laws and statutes created by the Western Countries. Thus, we have to conclude that, India has not yet seriously thought of addressing the problems of the disabled and visually challenged from our own national and regional framework. These laws have not addressed the issue of creating social awareness among the mainstream society regarding the potentials and limitations of the visually challenged. The future Legislation's have also to address the issues related to the attitude of the mainstream society towards the visually challenged.

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