



# A Concern Persists On Implementation of Rights of Person with Disabilities Act 2016, India

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## ABSTRACT:

The Rights of Persons with Disabilities (RPWD) Act is enacted from 15 June 2017. The Act has many guidelines, and for persons with disabilities in India, its introduction will be a huge improvement. After three and a half years of implementation by the Government of India, this article aims to look at the functioning of the Act. There is a need to do more on the part of the government, even though the RPWD Act is fine, only if this is applied in its true sense can the same be secured. Just by passing a rule, equal opportunities for all will not be accomplished. In providing those opportunities, the entire community needs to contribute.

**Key Words:** Rights of Person with Disabilities Act 2016, Implementation, Accessibility

## INTRODUCTION:

The 2016 Bill on the Rights of Persons with Disabilities is the disability law enacted by the Indian Parliament to perform its responsibility under the United Nations Convention on the Rights of Persons with Disabilities, ratified by India in 2007. On 19 April 2017, the Act becomes effective. Under Section 100 of the Act, the Central Government Rules 2017 have been notified and have entered into force with effect from 15 June 2017. Since the changes, the number of disabilities listed rose from seven in the 1995 Act to

twenty-one, including acid attack and Parkinson's disease. In India, from the 2001 to 2011 census, the disabled population with seven forms of disabilities as per the PWD Act 1995 has risen by 22.4 % to 26.8 million. With the introduction of certain categories of disability in the RPWD Act 2016, the number of people with disabilities will have risen in many folds.

### **An epitome of the RPWD Act 2016**

The Act is deemed to be extensive and seeks to provide disabled people in India with equal opportunities.

Some of the relevant characteristics of this Act are:

Without prejudice, the RPWD Act creates an equitable framework toward others: the right to freedom, liberty, home and families, involvement in sports and cultural life, group living, democratic, environmental, legal rights, protection against harassment and violence, welfare, fairness, adequate living conditions and rights relevant to women and children.

Any individual who purposely insults or intimidates in order to humiliate a person with a disability in any public place is punishable by imprisonment under the Act. It acknowledges the need for advertising reservations and makes particular note of the privileges of women and children with disabilities.

Acid assault victims have been included on the PwD list. As different disability types, Dwarfism and Muscular Dystrophy have been included. In the list of illnesses, three blood diseases, Thalassemia, Hemophilia and Sickle Cell disease, are also included.

In India, a substantial number of children with disabilities do not get sufficient education. This Act recommends that all children with disabilities receive free education between the ages of 6-18. Reservation of no lower than 5% of seats in federal higher education institutions for students with disabilities and any other institution receiving financial assistance.

The Act also expanded the reservation from 3 to 4 percent to expand the employment opportunities of people with disabilities. It suggests that 4 percent of positions in government agencies would be reserved for people with disabilities. In addition, in all related schemes and construction projects, 5 percent of the quota is reserved to farm property and houses.

Free of cost aids and supplies of people with disabilities with such income ceiling as may be identified, medicine and diagnostic care and corrective surgery. The amount of assistance to people with disabilities under social security policies and services such as disability pensions and unemployment compensation should be at least twenty five percent higher than the level of assistance to persons with disabilities under comparable schemes available to others.

Notification can be made of a robust insurance policy for people with disabilities along with free healthcare in the vicinity, especially in rural areas.

An Equal Opportunities Policy should be framed and registered with the Commissioner's Office by all institutions, including private establishments, and keep a list of workers with disabilities. A Grievance Redressal Officer should be designated by every government institution.

Any person who breaches the provisions of the RPD Act or any law or legislation is punishable by imprisonment of up to 6 months and/or a fine of Rs. 10,000 or both. Any subsequent breach, up to 2 years' imprisonment and/or a fine of Rs. 50,000 to Rs. 5,00,000. Anyone who deliberately insults or intimidates a person with a disability or sexually abuses a woman or child with a disability shall be punished by incarceration from Six months to five years and by a fine.

The provision of special courts in each district is another very significant aspect of this Act. These special courts will deal with litigation concerning the breach of PwD's rights. District-level committees may be set up by state governments to discuss the local concerns of PwDs.

More powers were given to the Office of the Chief Commissioner and the Office of the State Commissioners of People with Disabilities. Broad-based National & State Disability Advisory Boards are to be formed to serve at the central and state level as apex policy-making bodies. The National and State Fund will be set up to provide disabled individuals with financial assistance.

The RPWD Act also sets a two-year timeline for the government to guarantee barrier-free access to all forms of physical facilities, travel, schooling and other systems for people with disabilities.

Today, three and a half years after the Government of India's implementation, the RPWD Act has been completed. At this juncture, this article aims to look at the functioning of the Act.

## The scope of actual execution of RPWD Act

Although seeking fault is easy to get carried away, I will concentrate on just certain main areas here; which have the large share of the issues.

### Notification of State Rules:

The first step in the enforcement of the act in the state is the notice of the laws. The State Governments shall, within a span of six months from the date of passage of the Act, inform the laws. The rules set out the manner in which the boards/committees were formed. But there are still a few states that have not yet drawn up the rules, including influential ones like Maharashtra. It is apparent that it is a landmark step in the care of people with disabilities.

### Identifying and Issuing Disability Certificates:

The RPwD Act and subsequent recommendations have specifically mentioned the qualification protocols, but this again means that in order to receive a certificate, patients would need to request several consultations with specialists or super-specialists.

To discourage this, the Persons with Disabilities Amendment Regulations, 2009 and corresponding recommendations were given to state governments so that the certificate of disability would be issued at the subdivisional level at the level of primary health centres (PHCs), community health centres (CHCs), and hospitals. Even, in the case of non-obvious single disabilities, certificates may be given by a single doctor, although only in case of multiple disabilities, a multi-member board will be required to issue the certificate.

As was the case in the PwD Amendment Regulations, 2009, the RPwD Act seems to have taken a step back by not decentralising the certification and evaluation procedures. This would result in individuals taking more time and money for certification to be available, which could go against the purpose of empowerment that the Act tried to achieve.

In order to obtain services offered in the Act, it is important that persons with disabilities receive their certificates.

### **Education:**

The Right to Education (RTE) Act 2009 and the Rights of Persons with Disabilities Act (RPWD) Act 2016 helped develop a robust legislative system for equal education at an empirical level. There are, still, a few questions on when and who can teach children with disabilities (CWDs) to learn. Inclusive education falls under the framework of the Ministry of Human Resource Development, although the Ministry of Social Justice and Empowerment oversees special schools with no benchmarks for the standard of education. That is why the new UNESCO Education Study 2019 explicitly notes that three-fourths of children with disabilities do not go to any educational facility at the age of five and one-fourth between 5-19.

The RPWD Act also includes appropriate programme changes in compliance with the specific conditions of children with disabilities. However, there is also a disparity between the absence of acceptable requirements and standards common to all educational establishments, the facilities given to Children with disabilities, and the absence of a coordinated authority to implement standards and norms.

In addition, while steps to prepare teachers for inclusive education are being taken by the National Council for Teacher Education (NCTE) and the Rehabilitation Council of India (RCI), there is a need for continuing commitment and agile preparation to tackle emerging challenges and shortages in qualified human resources. In order to better close this gap, teachers need to be educated about engaging with students with developmental needs in operation.

### **Accessibility:**

The backbone of the integration of people with disabilities in society is accessibility. Accessibility of facilities, travel, reading materials, information (websites, applications, etc.), goods and services, as detailed in the RPwD Act and its related regulations, must be available in open formats. Disabled people do not yet have access to employment vacancy notices. Uneven access to inadequate emergency supplies, inadequate signs, narrow doors, internal stairs, limited bathroom facilities, and inaccessible parking areas build obstacles to housing, leisure, athletics, and even simple wishes, such as visiting a relative or watching

a match. It is much more painful for the industry to build a landscape of schools without usable toilets. We see cases of disabled persons being mocked in public spaces nearly every day. In corporate India, less than one percent of workers are people with disabilities. That is partially because of accessibility, and in India it is not available.

### **Employment:**

In government and public sector jobs, the Act allows for a 4 percent quota. For those with developmental disability, mental illness, multiple disabilities, autism and unique learning difficulties, the 1 percent rise in the present Act. In addition, expert committees representing persons with benchmark disabilities should be formed by the state governments to recognise vacancies in institutions that could be filled by the respective group of persons with benchmark disabilities. In this way, the committees for identification of posts were not appointed by many of the state governments, such as Telangana and Andhra Pradesh.

Each government establishment should appoint a Grievance Redressal Officer in compliance with the RPWD Act and should notify the Chief Commissioner or the State Commissioner, as the case may be, but many of the government institutions have not named the Grievance Redressal Officer other than few in Delhi, Odisha and Meghalaya states.

### **State Commissioner and other specified posts:**

The purpose of the State Commissioner for Persons with Disabilities is to have the authority of a federal court. The Act specifically specifies that in matters pertaining to rehabilitation, the State Commissioner must have unique expertise or professional experience. There are no full-time posts in many of the Commissioner's offices, and the Secretary in charge of welfare has been granted extra responsibilities by the Disability Commissioner. In comparison, another few states have not yet designated a Commissioner. Even in the notified states of the RPwD Act, many of the commissions, committees and officers such as State Advisory Boards (SAB) and their formation, special district courts and special public prosecutors, executive magistrates, district committees and nodal officers in the District Education Office were not constituted.

In addition to the above, the state funds dedicated to persons with disabilities are exceptionally poor considering the well-known fact that the number of persons with disabilities is present in the states.

In addition to other agencies in each state and UT, the National Centre for the Promotion of Employment for Disabled People (NCPEDP) has obtained input from members of the Social Welfare Agency, State Commissioners and by RTIs. They evaluated the data collected from the different states and measured the percentage of the act's compliance by assessing a few sections of the RPWD Act, as seen in Table 1.

Table 1: The comprehensive score of the states

S. No.	State/UT	Score (out of 19)	Percentage
1	Madhya Pradesh	12	63.2
2	Odisha	12	63.2
3	Meghalaya	11	57.9
4	Himachal Pradesh	9	47.4
5	Tamil Nadu	8	42.1
6	Telangana	6	31.6
7	Assam	6	31.6
8	Puducherry	6	31.6
9	Punjab	6	31.6
10	Uttarakhand	6	31.6
11	Chandigarh	6	31.6
12	Delhi	5	26.3
13	Manipur	5	26.3
14	Tripura	4	21.1
15	Uttar Pradesh	4	21.1
16	Goa	4	21.1
17	West Bengal	3	15.8
18	Kerala	3	15.8
19	Bihar	2	10.5
20	Haryana	2	10.5
21	Nagaland	1	5.3
22	Andhra Pradesh	1	5.3
23	Andaman and Nicobar	0	0
24	Jammu & Kashmir	0	0

Source: NCPEDP - <https://www.ncpedp.org/>

It clearly depicts from the Table 1 that there is a need to do more on government's side. 2016's Introduction of the Rights of Persons with Disabilities Act is a positive start, but PwD's rights can only be secured if this Act is applied in its true spirit.

## **SUGGESTIONS:**

The compliance status of the RPWD Act, 2016, is still predominantly on paper, even after three and a half years after its enactment. Its implementation ranges across states. Although there are several states that have begun enforcing the legislation, there are still several states that have not yet enacted the laws, including influential ones like Maharashtra.

Some recommendations for State Governments and Civil Society Bodies to promote the rapid and successful enforcement of the Act are as follows:

### **Recommendations to the State Governments:**

- The administration processes and strategies of the Nodal Ministry and other related ministries should be set in place.
- The State Rules should be notified by the Nodal Ministry and Disability Commissions, the various Boards and Committees should be constituted, the Special Courts should be stated, the Commissioners and related personnel should be designated, the Act should be translated into official languages, the State Fund should be constituted and the required notices should be provided, etc., in compliance with the provisions of the Act.
- Other relevant Ministries/Departments: The Act lists 16 ministries/departments, the secretaries of which are members of the State Advisory Committee. In order to enforce the related provisions in the Act, they must put the appropriate structures/mechanisms in place.
- Nodal officers in districts should be designated by the Department of Education; appropriate circulars should be given to all approved schools and higher education institutions describing the required standards, etc.
- The Ministry of Urban Development should review, in compliance with the legislation, the bylaws and processes for issuing permits and NOCs for buildings and create a system of periodic audits.

- A mechanism to gather and preserve records of details of persons with disabilities should be established by the District Disaster Management Authority.
- A framework to provide appropriate accommodation for people with disabilities to seek justice should be established by the State Legal Services Authority under the Law Ministry.
- In order to ensure accessibility, the Ministry of Rural Development should revise its schemes in order to increase the volume of guarantee in the different social security schemes as mandated by law.
- Adequate funding should be distributed not only by creating the State Fund in compliance with the Act, but also by requiring the different ministries/departments concerned to distribute the funds needed to execute the provisions of the Act. In the different related ministries/departments, Disability Budgeting can be implemented.
- Knowledge should be raised and capacity should be developed in a coordinated manner among multiple stakeholders regarding the provisions of the Act. A strategy should be formulated by the Rehabilitation Council of India (RCI) along with the Office of the State Commissioner and the related training bodies to ensure that disability is included in the curriculum of the relevant professional fields and that skill is developed for workers who have a part to play in enforcing the Act.
- Stakeholder responsibility should be maintained. The Act gives some precise mandates and deadlines. The State Regulations should, for instance, be informed within six months; programmes should be made available within two years; In five years, established buildings should be made accessible; each institution should register its Equal Opportunity Policy with the Commissioner, etc. Disability Commissioners should ensure that the appropriate participants have responsibility. To assess success in different areas in accordance with the Sustainable Development Goals, appropriate quantitative and qualitative data should be collected regularly. As required by the Act, welfare audits should be carried out on a frequent basis, helping to track development and strengthen the different schemes and programmes.

It would be important to sensitise the entire government system and community at large to the provisions and equality of PwDs. Just by passing a rule, equal opportunities will not be accomplished. In providing those opportunities, the entire community needs to contribute.

## CONCLUSION:

Globally, the definition of disability and the acceptance of the interests of persons with disabilities within human diversity have shifted dramatically. In order to safeguard the protection of persons with disabilities, India enacts the Rights of Persons with Disabilities Act, 2016. However, considering numerous legal provisions and legislative mechanisms, the social experience of people with disabilities in India suggests that they appear to face several disadvantages. Today, we find that people with disabilities have been excluded once again as the nation grapples with the effects of the pandemic. They are useless pieces of paper, amid the strongest guidelines and laws, unless applied with intensity and honesty. Together, lawmakers and community should step forward and ensure that the Act needs to resolve the problems at systemic, institutional, statistical and programmatic levels in order to have a strong information base for building successful initiatives within the wider PwD rights system and to enforce it in its true spirit so that future generations of PwDs do not suffer any more harm.

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