

**INTERNATIONAL JOURNAL OF LEGAL AFFAIRS AND
EXPLORATION**

Volume 2| Issue 3

2024

A CRITICAL ANALYSIS ON THE RIGHTS OF DISABLED PERSON IN INDIA

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ABSTRACT

In India out of 121 Cr population, 2.68 Cr persons are 'disabled' which is 2.21% of the total population, according to the 2011 census¹. The percentage of the data might have seen growth in 2024 as the population of India have also increased. The term "disabled" itself sounds like some character of an individual which is working as an obstacle in carrying out his /her normal human life. As per the definition in the Declaration on the Rights of a disabled person "The term "disabled person" means any person whether from birth or acquired, is unable to independently fulfill the basic requirements of typical personal and social functioning of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities. The Person with Disabilities Act,1995² listed seven kinds of disability which are – unpaired vision, sight loss, leprosy healed, auditory disabilities, physical disability, mental retardation and mental illness. Ensuring that disabled people are able to overcome difficulties, discrimination and are not subject to human rights violations and are given reservation in society as well as workplace, many laws and policies have been enacted in their favor on national as well as international level. This paper will give a detailed explanation of disability and the laws as well as policies related.

The rights of disabled persons are an essential aspect of ensuring equality and dignity for individuals with disabilities. Disability rights are rooted in the principles of human rights and aim to promote equal opportunity, accessibility, and inclusion for individuals with disabilities. This paper will examine the historical development of disability rights, the current state of disability rights, and the challenges and opportunities that exist in promoting and protecting these rights.

¹ Office of Chief Commissioner for Persons with Disabilities, Department of Empowerment of Person with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Government of India, (August 8, 2021)

² The person with Disabilities Act, 1955

Key Words: *Disability, Disabled Persons, Legal Rights, Policies, Human Rights, Reservation and India.*

1. INTRODUCTION

According to the data secured by the World Health Organization (WHO), around 1.3 billion people live with a mental or physical disability which is 16% of the total world population³. Among this data 2.21% suffering from disability are from India, making 2.68 Cr. of the total population. People belonging to this group often suffer from discrimination and lower living standards, being denied basic human rights, basic education and job opportunities, or poorly paid jobs. On top of that social attitudes exclude them from cultural life and normal social relationships.⁴ In order to protect and promote their dignity and individuality, the UN General Assembly organized the United Nations Convention on the Rights of Persons with Disability on December 2006. India ratified the convention on 2007. In 2006 golden era of disabled people started as more countries ratified this convention and it allowed them to enact the laws mentioned in the convention in their country. The convention imposes a duty on the State, Private Individuals and Civil Society to ensure that the rights of disabled people are secured. India has already provided rights to disabled people and worked for their upliftment even before ratifying this convention. In India to secure the dignity and rights of disabled people, the Rights of Persons with Disability Act, 2016 was enacted. In this act, the definition of disabled people is widened by inculcating 21 different types of disability, which include impaired Disability, intellectual Disability, Intellectual Disability, and Disability resulting from Chronic Neurological Conditions and Blood Disorders etc. Acid attack victims has been included in the list too.⁵ Alongside the Rights of Persons with Disability Act, 2016⁶, other international conventions are also respected and followed in India which protect the rights of disabled person like, ICCPR, ICESCR, CERD and many others. The constitution of India secures the fundamental rights of people whether it is a disabled person or a normal person. Under the Constitution of India disabled persons have been provided right in implied and expressed form. Besides the general articles and international law, there are specific law enforced in India solely for the promotion and protection of disabled persons. These laws are the Rights of Person with Disability Act, 2016 which is already mentioned above, The Rehabilitation Council of India, 1992,

³ Disability, World Health Organization, (7 March, 2023)

⁴ International Law & Human Rights by Dr. H.O. Agrawal, Twenty-Third Edition, 2021

⁵ Gautam Badlani, Rights of Persons with Disability Act, 2016, iPleaders, (August 14, 2022)

⁶ The Right of Person with Disabilities Act, 2016

The Mental Health Act, 1987⁷ and The National Trust Act, 1999⁸. The sole purpose of these laws is to protect the rights of disabled people, employment, education, health, satisfying living standards of disabled people, and focus on the prevention and early detection of disability. The government has also launched several policies in favour of disabled people. In this research paper, the researcher will be discussing those laws and policies.

2. RESEARCH METHODOLOGY

This research adopts a systematic approach to gather, analyze, and interpret secondary sources to address the focused research topic. The methodology encompasses the following steps: Utilizing academic databases, scholarly journals, books, government reports, and reputable websites to identify pertinent secondary sources. Synthesizing the findings from different secondary sources to develop a comprehensive understanding of the research topic. Ensuring proper citation and acknowledgment of all secondary sources used in the research.

Adhering to ethical guidelines and academic integrity standards in the selection, analysis, and presentation of secondary sources. This research methodology ensures a rigorous and systematic approach to utilizing secondary sources for addressing the research question while maintaining ethical standards and critical rigor within the constraints of secondary data analysis.

3. GRADUAL DEVELOPMENT ON THE RIGHTS OF DIABLED PERSON

a) History and Origin

The history and origins of disabled persons in world history are complex and multifaceted, spanning thousands of years. It is not a new concept and a new evolved challenge. Here's a brief overview regarding that:

Looking back to ancient civilizations we find out that Disability has existed throughout human history, with evidence of disabled individuals found in archaeological remains from ancient civilizations such as Mesopotamia, Egypt, Greece, and Rome. These societies had varying attitudes towards disability, ranging from acceptance and integration to stigma and exclusion.

Many ancient cultures had religious or cultural beliefs about disability, attributing it to divine punishment, demonic possession, or karmic retribution. These beliefs influenced societal attitudes

⁷ The Mental Healthcare Act, 1987

⁸ The National Trust Act, 1999

and responses towards disabled individuals, sometimes leading to discrimination and marginalization.

Medieval and Renaissance Periods: During the middle Ages and the Renaissance, disability was often viewed through a religious lens, with charity and almsgiving considered as appropriate responses to the disabled. Institutions such as monasteries and alms-houses provided care for some disabled individuals, while others relied on family support or lived on the margins of society.

Colonialism and Eugenics: The colonial era saw the spread of Western attitudes towards disability, often through missionary work and colonial policies. The rise of eugenics in the late 19th and early 20th centuries further stigmatized disability, leading to forced sterilizations, institutionalization, and even euthanasia of disabled individuals in some countries. **Emergence of Disability Rights Movements:** The 20th century witnessed the emergence of disability rights movements, fueled by the civil rights and social justice movements of the time. World War I and World War II also played significant roles in shaping attitudes towards disability, leading to advances in rehabilitation, prosthetics, and vocational training for disabled veterans.

Legislative Advances: In the latter half of the 20th century, there was a growing recognition of the rights of disabled individuals, culminating in landmark legislation such as the Rehabilitation Act of 1973 in the United States and the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2006⁹. **Shift towards Social Model:** In last few decades, there has been a shift toward understanding disability through the social model, which emphasizes the role of societal barriers and discrimination in disabling individuals, rather than viewing disability solely as a medical condition. This has led to increased advocacy for accessibility, inclusivity, and disability rights across the globe.

One of the earliest milestones in the disability rights movement was the established of the National League of physically handicapped in the United States in 1920. This organization aimed to promote the welfare and civil rights of people with disabilities and to challenge the stigma and discrimination they faced. On an International level, in order to protect and promote the rights of disabled persons, the UN General Assembly on December 19, 2001 established an Ad hoc

⁹United Nations General Assembly, Sixty-first session, Convention on the Rights of Persons with Disability, (6 December, 2006) <http://www.un.org/esa/socdev/enable/rights/convtexte.htm>

committee.¹⁰ Also, there is international conventions on the rights of person with disability which we will further discuss in detail.

Throughout history, the experiences of disabled individuals have been shaped by cultural, social, economic, and political factors, reflecting broader patterns of inequality and discrimination. The ongoing struggle for disability rights continues to be a vital aspect of global human rights movements.

b) *Legal frameworks*

- *International framework*: International Covenant on Civil and Political Rights (ICCPR, 1966), the International Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966) and the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT,1987), International Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1969), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), and the Convention on the Rights of the Child (CRC, 1989). The Declaration on the Rights of Mentally Retarded Persons (1971), followed by a second disability-specific instrument, the Declaration on the Rights of Disabled Persons (1975) were also adopted. The UN declared 1981 as the ‘International Year of the Disabled’, and the period from 1982–1991 as the ‘International as international decade of Disabled.’¹¹
- *Legal framework in India –*
 - i. *The Constitution of India*: Chapter III of Indian constitution guarantees fundamental rights to all persons without any discrimination. The right to equality is enshrined in Article 14 of the Constitution and recognizes that all persons are equal before the law and also provides equal protection of laws. Such a provision mentioned in our constitution clearly shows the intention of legiatuon to to avoid all types of discrimination and equal treatment to all. Although, reasonable classification is permitted for the betterment and upliftment of marginalized groups of people who have not reached the mainstream of society for this purpose article 15 and 16 are enacted. Persons with disabilities are entitled to this guarantee to not be discriminated against in any manner and to be treated equally, which includes the requirement for special

¹⁰ General Assembly Resolution 56/168 of December 19, 2001

¹¹United Nations, Department of Economics and Social Affairs, Disability, The InternatioNAL Year of Disabled Persons 1981

treatment where required. Similarly, Articles 15 and 16 prohibit discrimination on the grounds of “religion, race, caste, sex, place of birth or any of them and guarantee equal opportunity in matters of public employment. Article 16 (3) & (4) provides that the State can make provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services. It is based on Article 16, that the guarantees to reservation and equal opportunity in public employment are made under the PWD Act. Article 17 of the constitution stresses on untouchability, according to this article, no person including a disabled person should be subjected to untouchability, if do so person committing will be punished. Article 21 enshrines ‘right to life and liberty’ which also includes disabled people. Every person including disabled people can approach Supreme Court if there right is violated. Fundamental right enshrined in Part III of the Constitution of India protects right of not only normal people but also disabled person, law does not discriminate

- ii. *The Person with Disabilities Act (PWD Act), 1955*¹²: The Person with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1955 was enforced on February 7, 1996. This law is a landmark step ensuring that disabled people are getting equal opportunities in life in respect to job, education, and social life. This law has helped to include disabled people in the growth of the country and have boosted the growth of disabled persons too.

Main objectives of this Act are the following:

- Prevention and early detection of disabilities
- Education
- Employment
- Non-discrimination
- Research and Manpower Development
- Affirmative action
- Social security
- Grievance Redressal

¹² The Person with Disabilities Act (PWD Act), 1955.

- iii. *The Mental Health Act, 1987*¹³ and *The Mental Health Act, 2017*¹⁴: The Mental Health Act, 1987 came into force in 1993, it replaced the Indian Lunacy Act, 1912. It is divided into 10 chapters and 98 sections. This law deals with *rights* related to mentally ill persons¹⁵. Mentally disabled persons are often subject to miss behaviour and discrimination even in mental hospitals, this law protects their rights and prevents discrimination in society. According to this law mentally ill people have right to be admitted, treated, and cared in a psychiatric hospital or psychiatric nursing home or convalescent home established or maintained by the government or any other person for the treatment and care of mentally ill person. Mentally ill prisoner have right to be treated in government hospitals or other psychiatric nursing homes. Minors under the age of 16, alcohol or drug addicts and those convicted for any offense are entitled to get treatment, care and admission in separate psychiatric hospitals and nursing home maintained by the government. Police have burden to take into protective custody of the wandering or neglected mentally ill person. Mentally ill persons have right to get regulated, directed and coordinated mental health services from the government. These are the same rights given to mentally ill persons in The Mental Health Act, 1987. The previous legislation, the Mental Health Act, 1987, focused on the admission and treatment of persons with severe mental illness, whereas Mental Health Act, 2017 tries to regulate almost all mental health issues. In this act, suicide by mentally ill persons has been decriminalized as well as the definition of mental health has been elaborated.¹⁶
- iv. The Rehabilitation Council of India Act, 1992¹⁷: The Rehabilitation Council of India Act, 1992 was registered as a society in 1986. It was enacted on September 1992 by the Parliament and became a Statutory Body on 22 June 1993. The Act was amended once in 2000 by the Parliament to make it more broad. The major issue in the past when this act was not enacted was that there were hardly any planned efforts made in the field for developing trained manpower for rehabilitation program, thus leading to enactment of the Rehabilitation Council of India Act, 1992. The mandate given to RCI is to regulate and monitor services given to persons with disability, to standardize syllabi and to

¹³ The Mental Healthcare Act, 1987

¹⁴ The Mental Healthcare Act, 2017

¹⁵ Suresh Bada Math, Pratima Murthy and Channapatna R. Chandrashekar, Mental Health Act (1987): Need for a paradigm shift from custodial to community care, Indian Journal of Medical Research, (2011 Mar; 133(3): 246-249)

¹⁶ Suresh Bada Math, Vinay Basavaraju and others, Mental Healthcare Act 2017- Aspiration to action, Indian Journal of Psychiatry, (2019 Apr; 61(Suppl 4): S660-S666)

¹⁷ The Rehabilitation Council of India Act, 1992

maintain a central Rehabilitation register of all qualified professionals and personnel working in the field of Rehabilitation and Special Education. This Act also prescribes actions to be taken against unqualified person delivering services to person with disabilities.¹⁸

- v. *The National Trust Act 1999*¹⁹: The National Trust is a statutory body of the ministry of Social Justice and Empowerment, government of India, set up under the “National Trust for the Welfare of Person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities” Act, 1999. This Act focuses on providing inclusivity in society which values diversity and empowers disabled person to fully participate, to live with dignity, equal rights and opportunity.²⁰

The objective of this act are following:

- To enable and empower person with disability to live independently or as close to the community they belong with.
- To strengthen facilities to provide support to person with disability to live within their own families.
- To extend support to registered organization to support disabled person in need.
- To promote measures for the care and protection of person with disability in the event of death of their parents or guardian.
- To deal with the problem of person with disability who do not have family support.
- To evolve procedures for the appointments of guardians and trustees for person with disabilities.

- vi. *The Right of Person with Disability Act, 2016*²¹: The UN General assembly adopted this convention in December 2006, India ratified this convention in 2007. As per the convention, the signatory country of the convention have to enact law or amend law according to the convention. India being a signatory, enacted The Right of Person with Disability Act, 2016. This act widened the definition of disability by incorporating 21 types of disability compared to the 7 disability in the previous one. The primary objective of this Act is that the disabled person enjoy their right to life and are able to live a dignified and respectful life. This Act protects disabled people from all sort of discrimination and ensures their full participation in terms of social, political and

¹⁸Rehabilitation Council of India, Government of India (last Updated on: 03-05-2024) <https://rehabcouncil.nic.in/>

¹⁹ The National Trust Act, 1999

²⁰ The National Trust, (Last Updated on: 28-03-2023)

<https://thenationaltrust.gov.in/content/innerpage/introduction.php>

²¹ The Right of Person with Disabilities Act, 2016

economic aspect of life. This Act promotes education and safeguards employment of disabled person.²²

4. POLICIES AND SCHEMES RELATED TO DISABLED PERSON IN INDIA

a) Deendayal Disabled Rehabilitation Scheme.²³

The Deendayal Disabled Rehabilitation Scheme (DDRS) is a scheme implemented by the Government of India to empower persons with disabilities by providing them with various rehabilitation services and assistance. Here's an overview of the scheme:

i) Objective:

- The primary objective of the DDRS is to enhance the quality of life and ensure the empowerment of persons with disabilities.
- It aims to promote their social, economic, and educational inclusion by providing comprehensive rehabilitation services.

ii) Implementing Authority:

- The scheme is administered by the Department of Empowerment of Persons with Disabilities (Divyangjan) under the Ministry of Social Justice and Empowerment, Government of India.

b) Assistance to disabled person for purchase of fitting of Aid Appliances (ADIP Scheme)²⁴

The Assistance to Disabled Persons for Purchase/Fitting of Aids and Appliances (ADIP) Scheme is a flagship initiative of the Government of India aimed at enhancing the independence and mobility of persons with disabilities by providing them with assistive devices and equipment. Here's an introduction to the ADIP Scheme:

i) Objective:

The primary objective of the ADIP Scheme is to promote the social, economic, and educational inclusion of persons with disabilities by addressing their specific needs for assistive devices and appliances. These aids and appliances are designed to improve their functional capabilities, mobility, communication, and overall quality of life.

ii) Accessibility

The scheme aims to ensure the availability and accessibility of high-quality assistive devices and appliances to persons with disabilities across all regions of the country. It prioritizes

²² Gautam Badlani, Rights of Persons with Disability Act, 2016, iPleaders, (August 14, 2022)

²³Department of Social Security and Women & Child Development, Government of Punjab, India (Last Visited on 1 April 2024) <https://sswcd.punjab.gov.in/en/deendayal-disabled-rehabilitation-scheme>

²⁴Department of Social Security and Women & Child Development, Government of Punjab, India (Last Visited on 1 April, 2024) <https://sswcd.punjab.gov.in/en/assistance-to-disable-persons-for-purchase-of-fitting-of-aid-appliances-adip-scheme>

reaching out to marginalized and underserved communities, including those in rural and remote areas.

Overall, the ADIP Scheme plays a vital role in empowering persons with disabilities by enhancing their functional abilities, promoting their independence, and facilitating their active participation in various aspects of life. It exemplifies the government's commitment to promoting the rights and well-being of persons with disabilities in India.

c) District Disability and Rehabilitation Centre²⁵

A District Disability Rehabilitation Centre (DDRC) is a government-established facility at the district level in India, dedicated to providing comprehensive rehabilitation services to persons with disabilities. Here's an overview of its purpose and functions:

i) Objective:

The primary purpose of a District Disability Rehabilitation Centre is to ensure the inclusion, empowerment, and holistic development of persons with disabilities within the district. It serves as a focal point for delivering various rehabilitation services and support programs tailored to the specific needs of individuals with disabilities.

ii) Functions:

- Assessment and Evaluation
- Rehabilitation Services
- Provision of Assistive Devices
- Training and Skill Development
- Awareness and Advocacy
- Coordination and Referral

d) SEHYOG (Half Way Home)²⁶

SEHYOG, also known as Half Way Home, is a community-based rehabilitation program in India designed to provide support and assistance to persons with mental illness who are transitioning from institutional care to community living. Here's an overview of the SEHYOG program.

²⁵Department of Social Security and Women & Child Development, Government of Punjab, India (Last Visited on 1 April, 2024) <https://sswcd.punjab.gov.in/en/district-disability-and-rehabilitation-centre>

²⁶Department of Social Security and Women & Child Development, Government of Punjab, India (Last Visited on 1 April, 2024) <https://sswcd.punjab.gov.in/en/sehyog-half-way-home-a-home-for-persons-suffering-from-mental-illness>

i) Objective

The primary purpose of SEHYOG, which translates to "support" in Hindi, is to facilitate the reintegration of individuals with mental illness into mainstream society by offering them a supportive and nurturing environment in the community. The program aims to promote their independence, autonomy, and social inclusion while ensuring access to essential services and resources.

ii) Features:

- Transitional Support
- Psychosocial Rehabilitation
- Life Skills Training
- Community Integration
- Family and Community Support
- Follow-up and Aftercare

e) Vocational Rehabilitation Centres²⁷

Vocational Rehabilitation Centres (VRCs) are facilities that provide a range of services aimed at helping individuals with disabilities prepare for, find, and maintain employment. These centres offer vocational assessment, training, counselling, job placement assistance, and other support services to help individuals with disabilities achieve their employment goals and successfully integrate into the workforce. Key components of Vocational Rehabilitation Centres include:

- Assessment and Evaluation
- Vocational Counselling
- Skill Development and Training
- Job Placement Assistance
- Job Retention and Support Service
- Coordination with Employers and Community Partners

²⁷Department of Social Security and Women & Child Development, Government of Punjab, India (Last Visited on 1 April, 2024) <https://sswcd.punjab.gov.in/en/vocational-rehabilitation-centers>

f) Disability Certificate and identity card

Disability Certificate and identity card helps to classify them and provide better facilities for their upliftment these cards and certificate also provide them reservation in different educational, economic and government jobs.

g) Education programmes for children with special needs

Education program for children with special needs scheme aims to provide tailored education programs for children with special needs, ensuring they receive appropriate support and resources to facilitate their learning and development.

h) Children's Education Allowance and Scholarships

Children's education allowance and education need to financially assist families in covering the educational expenses of their children, encouraging access to quality education and reducing financial barriers that may hinder educational opportunities.

The government of India have provided policies besides the above mentioned which work for the empowerment of disabled people. These policies are Custom concessions, Employment of the handicapped, National awards for people with disabilities, Concession for blinds, Concessions for deaf, Concession for mentally retarded, Economic assistance Reservation for jobs and other facilities for disabled person.

5. CURRENT STATUS

The findings of the 2023 Global Survey on Persons with Disabilities and Disasters conducted by the UN Office for Disaster Risk Reduction indicate a lack of substantial progress in disability inclusion over the past decade, with consistent trends observed across different regions.

Regarding the Indian context, data obtained from the Indian government's survey during the NSS 76th round (July – December 2018) reveals pertinent insights. This survey, spanning 8,992 FSUs (5,378 in rural areas and 3,614 in urban areas), encompassed 1,18,152 households (81,004 rural and 37,148 urban) and enumerated 5,76,569 individuals (4,02,589 rural and 1,73,980 urban). Within this survey, a total of 1,06,894 persons with disabilities were identified (74,946 rural and 31,948 urban).

Key findings from the survey are as follows:

- The prevalence of disability in India was recorded at 2.2%, with rural areas showing a slightly higher prevalence of 2.3% compared to 2.0% in urban areas.
- Disability prevalence was higher among males at 2.4% compared to 1.9% among females.
- Among persons with disabilities aged 7 years and above, 52.2% were literate, while only 19.3% attained education levels of secondary and above.
- Preschool intervention programs were attended by 10.1% of persons with disabilities aged 3 to 35 years.
- Regarding living arrangements, 3.7% of persons with disabilities were found to be living alone, while 62.1% had caregivers, with 37.7% not requiring caregiver assistance.
- Government aid/help was received by 21.8% of persons with disabilities, while 1.8% received aid/help from non-governmental organizations, leaving 76.4% without any assistance.
- A certificate of disability was possessed by 28.8% of persons with disabilities.

6. CONCLUSION

Disability is a disadvantage to a person which enables them to lead a normal life. They are often subject to discrimination at social as well as economical step of life. Therefore government of India have implemented many Laws, Acts and Policies for the protection of rights of disabled person and to provide them with equal opportunity. If current condition of disabled person is compared to the past status of disabled person, there can be seen a huge difference, which is only possible because of the legislation, advancement in technology and social awareness. In the past the existence of easy accessibility of equipment and infrastructure is was limited or non-existent whereas in present scenario it is easily accessible. In the past disability was treated as taboo and people were of the mind-set that education is not a priority for a disabled person but in the present with the help of government policies and schemes education facilities is easily available for disabled person. The same goes for education, healthcare and social inclusivity. There is still a need to work on the implementation of the laws and policies along with spreading awareness about it. The government should make a committee that will focus on availing this facility to disabled people in rural as well as urban areas. Government and society should work together to make more disabled people part of the mainstream.