

## RIGHSTS OF AUTISTIC PERSON- NEED FOR A REVOLUTIONARY IMPLEMENTATION IN INDIA

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### Abstract

This research paper delves into the implementation and impact of the Rights of Persons with Disability Act 2016 in India, a legislation aimed at promoting and protecting the rights of individuals with disabilities across various domains. The study examines the extent to which the provisions of the act have been enforced and highlights areas where improvement is necessary. It references the RTI 2018 report by the Disability Rights India Foundation (DRIF), the National Centre for Promotion of Employment for Disabled People (NCPEDP), and the National Committee on the Rights of Persons with Disabilities (NCRPD), which reveals limited progress in terms of implementation. Additionally, it discusses the findings of an RTI filed in March 2020 by Advocate Aqeel Ahmad Ushmani, which highlights the establishment of advisory boards in only a few states. This paper underscores the need for addressing the critical aspects of the act and implementing it more effectively to ensure the rights and opportunities of persons with disabilities are fully realized.

### Introduction

Over the past few years, legislation has been passed and guidance has been published to assist people with an autistic spectrum condition get the diagnosis and support they need. However, many people are still unaware of their autism rights, and they do not know when they are given misinformation.<sup>1</sup> This article gives some basic information for both children and adults with autism on their rights. For the purposes of this article the word 'autism' will encompass autistic spectrum disorders, autistic spectrum conditions, Asperger's Syndrome and PDD-NOS. Autism the disability which separates the child from society. According to UNESCO every 1 child in 100 has autism and only the USA has proper guidelines for care of autistic person. India is still fighting to protect the rights of autistic child. We have the latest law for person with ASD called Rights of Persons with Disabilities Act 2016.<sup>2</sup> The New law so far covered the prevention and promotion of policies for Autistic person. All people, including people with autism, have the right to the enjoyment of the highest attainable standard of physical and mental health.<sup>3</sup>

And yet, autistic people are often subject to stigma and discrimination, including unjust deprivation of health care, education, and opportunities to engage and participate in their communities.<sup>4</sup>

People with autism have the same health problems as the general population. However, they may, in addition, have specific health-care needs related to autism or other co-occurring conditions. They may be more vulnerable to developing chronic non-communicable conditions because of behavioural risk

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<sup>1</sup>Abhilash Balakrishnan et al., *The Rights of Persons with Disabilities Act 2016: Mental Health Implications*, 41 INDIAN J PSYCHOL MED 119 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6436405/> (last visited Apr 14, 2023).

<sup>2</sup>H. Chandrashekar et al., *Disabilities research in India*, 52 INDIAN J PSYCHIATRY S281 (2010).

<sup>3</sup>Suravi Patra & Binod Kumar Patro, *Affiliate stigma among parents of children with autism in eastern India*, 44 ASIAN J PSYCHIATR 45 (2019).

<sup>4</sup>Koyeli Sengupta, Leera Lobo & Vibha Krishnamurthy, *Physician Voices on ECHO Autism India- Evaluation of a Telementoring Model for Autism in a Low-Middle Income Country*, 43 J DEV BEHAV PEDIATR 335 (2022).

factors such as physical inactivity and poor dietary preferences, and are at greater risk of violence, injury, and abuse.<sup>5</sup>

### Need Of Protective Laws

As an autistic person is not able to live a normal life, they need some special care or help for getting better their life. The new can give social, economic, and legal justice. First time the word autism has been used in the act and special provision has been inserted for required environment and reservation in employment. As every person with ASD needs different care there is duty of society and institution to take care. ASD people are having issues with creating social interaction, so they are not able to communicate easily.<sup>6</sup>

### Autism -A Disorder

Autism spectrum disorder commonly called ASD is a neurological issue caused disorder in the form of issue of social interactions and communication problem. ASD is the third largest disorder in the world which affects the 1 to 1.5% of 1-9 years of age of children. According to statistics there are 18 million persons affected by ASD in India. Around 10% of school-aged children have been identified as having mild to severe learning difficulties.<sup>7</sup> Many times, autism been misdiagnosed with mental retardation or even schizophrenia. Autism spectrum disorders (ASD) are a diverse group of conditions. They are characterized by some degree of difficulty with social interaction and communication. Other characteristics are atypical pattern of activities and behaviours, such as difficulty with transition from one activity to another.<sup>8</sup>

### WHO and Autism

According to the world Health Organization and The World Bank one billion people or 15% of the population in the world are having some kind of disability. History always persisted with the discrimination of disabled people even it continues in the present world. people with disability of any kind either physical or mental are particularly vulnerable to abuse and violation of their rights. Convention on the Rights of Persons with Disabilities (CRPD) played an important role in giving pillar to enforcing rights of disabled people.<sup>9</sup> CRPD is an International Human Rights Treaty of the United Nations intended to protect the rights and dignity of persons with disabilities. It was adopted by the United Nations General Assembly on December 13, 2006. The UNCRPD mandated its signatories to change the existing laws to bring them in conformity with the principles of this Convention.<sup>10</sup> The ratification of the UNCRPD in October 2007 by India, brought in the drafting of new legislation, "the Rights of Persons with Disability Act (RPWD Act), 2016" and "the Mental Healthcare Act, 2017."<sup>11</sup> WHO plan for mental health plan that is from 2013-2030 and WHA73 world health assembly resolution gives special plan for "global action on epilepsy and other neurological disorders" invites countries for early detection, care, control, treatment, and rehabilitation for mental

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<sup>5</sup>Manas Barua, Jaya Kaushik & Sheffali Gulati, *Legal Provisions, Educational Services and Health Care Across the Lifespan for Autism Spectrum Disorders in India*, 84 THE INDIAN JOURNAL OF PEDIATRICS (2016).

<sup>6</sup>Savita Malhotra & Ruchita Shah, *India and Autism*, in ENCYCLOPEDIA OF AUTISM SPECTRUM DISORDERS 1 (Fred R. Volkmar ed., 2017), [https://doi.org/10.1007/978-1-4614-6435-8\\_102116-1](https://doi.org/10.1007/978-1-4614-6435-8_102116-1) (last visited Apr 14, 2023).

<sup>7</sup>Richa Tiwari, Kakali Purkayastha & Sheffali Gulati, *Public Health Dimensions of Autism Spectrum Disorder in India: An Overview*, 9 JOURNAL OF COMPREHENSIVE HEALTH 57 (2021), <https://www.journalofcomprehensivehealth.co.in/index.php/jch/article/view/207> (last visited Apr 14, 2023).

<sup>8</sup>Tamara C. Daley, Thomas Weisner & Nidhi Singhal, *Adults with autism in India: a mixed-method approach to make meaning of daily routines*, 116 SOC SCI MED 142 (2014).

<sup>9</sup>*Id.*

<sup>10</sup>Chandrashekar et al., *supra* note 2.

<sup>11</sup>Barua, Kaushik, and Gulati, *supra* note 5.

health specially autism. This also focuses on to implement the laws made for social, economic, and educational care and development of people required special need and their families.<sup>12</sup>

#### **WHO aims to**

1. Initiating effective implementation of policies to improve the quality of life of autistic people.
2. Expanding the areas covering under policies related to mental and physical health with disabilities to give the maximum benefit to people with autism.
4. Strict instructions for giving friendly and suitable environment for autistic people.
5. Giving special instructions to educational institutions for proving all facilities required for autistic students.<sup>13</sup>

May 2014 the Sixty Seventh World Health Assembly 60 countries adopted the resolution "Comprehensive and coordinated efforts for the management of autism spectrum disorders."<sup>14</sup>

#### **The Persons with Disabilities (PWD) Act, 1995**

The Persons with Disabilities Act 1995 was the first act who recognised the basic rights of disabled persons. It came into force in February 1996 and was a step to ensuring participation of disabled person with equality. The covered the all the aspects education, employment, awareness, care, prevention, and training for disabled person including persons with ASD.<sup>15</sup>

#### **Rights of Persons with Disability Act, 2016**

First time in the history the Autism was clearly recognised as disability in this act. The Rights of Persons with Disabilities Act 2016 replaced the old act with coming into force on 19 April 2017.<sup>16</sup>The Rights of Persons with Disabilities Act 2016 is certainly a progressive law in India. It gives a way to achieve the rights of ASD people rather than just charitable privileges. The rights guaranteed by the act are for social and economic justice. Special attention was given to the educational and carrier opportunities for disabled person, which gives rise to the economic justice. But it is also true that implementation is more important than promises. With the awareness and effective implementation of provisions of the act can achieve the aim of legislation.<sup>17</sup>

#### **Main Provisions of the Act**

- Prevention and Early Detection of Disabilities
- Education and Employment - Additional benefits such as reservation in higher education (not less than 5%), government jobs (not less than 4 %), reservation in allocation of land, poverty alleviation schemes (5% allotment) etc. have been provided for persons with benchmark disabilities and those with high support needs. Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education.
- Non-Discrimination- Responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others.<sup>18</sup>
- The Act also provides that if an employee acquires a disability while he is in service, he may not be dismissed or removed from employment. He may be transferred to another suitable post, but the pay scale cannot be reduced.

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<sup>12</sup>Malhotra and Shah, *supra* note 6.

<sup>13</sup>Suresh Bada Math et al., *The Rights of Persons with Disability Act, 2016: Challenges and opportunities*, 61 INDIAN J PSYCHIATRY S809 (2019).

<sup>14</sup>Balakrishnan et al., *supra* note 1.

<sup>15</sup>Jaisooriya Ts et al., *Toddlers at risk for Autism Spectrum Disorders from Kerala, India - A community based screening*, 31 ASIAN J PSYCHIATR 10 (2018).

<sup>16</sup>Math et al., *supra* note 13.

<sup>17</sup>*Id.*

<sup>18</sup>Chandrashekar et al., *supra* note 2.

- Social, moral, and legal security- The preamble of the act described the aim of act protecting the autistic person from all kinds of discrimination. The act guarantees the protection from any discrimination in participation of person with ASD in social, political, and economic areas.
- Responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others.
- Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education to the children with disabilities.
- For strengthening the Prime Minister's Accessible India Campaign, stress has been given to ensure accessibility in public buildings (both Government and private) in a prescribed time-frame.

### Constitutional provisions for persons with ASD

Constitution of India gives all rights to ASD people, the rights available for normal citizen. The Constitution of India has given the Fundamental Rights to the people with autism. It secures them a right of justice and they can enjoy equality of status in the community. The constitution secures the rights and gives special safeguard for their needs also.

- Art. 14- Every citizen is equal in the eye of law and has the right to be treated equally. Same every autistic has equal rights as normal citizen has, he cannot be prevented on the ground of disability.
- Art 15- No autistic person can be discriminated on the ground of race, caste, religion, or place of birth etc.
- Art 21- One of the most important rights which has been specifically explained in the act that people with ASD has right to life and liberty. Means he can access to any school, college, education centre, place of entertainment, any public place where he can enjoy the same things as a normal person can.
- Art 23- Prohibition of forced labour.
- Article 29(2) provides that no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on the ground of race, religion, caste, etc.
- Article 45 directs the state to provide free and compulsory education to all children until 14 years of age.
- Article 32- A person with autism or any disability can seek constitutional remedy and can move to the Supreme Court by filing Writ Petition.
- Article 300A- No person shall be deprived of the right to property.

Under Sections 80DD and 80U of the Income Tax Act 1961 states that people with disability have the right to enjoy earnings of tax concession. The Mental Health Act also provides various rights to people with disabilities.

### Challenges

Mere preparation is not enough but the activation of plan will achieve the aim of act. There are some remarkable challenges which could face in implementation of the provisions of the act-

- The RPWD Act (Rights of Persons with Disabilities Act) sec 34 specifies 1% of reservation will be given to disabled person in the vacancies. Only 1% which would be given to any one person having a disability. As WHO said 15% of the world population is disabled and 2.21% that is 2.68 crore disabled in India. It would not be practicable to get benefitted the disabled person in all categories.<sup>19</sup>
- Temporary or Permanent Disability- It is difficult to certify in the case of autism because of the fluctuation of symptoms and every autistic has his own symptoms. Also, the percentage of disability required by the law that is 40% minimum will only be benefitted was questioned in a recent case. *Vikash Kumar vs The Union Public Service Commission*- The court held that a person suffering from dysgraphia, or which is commonly known as the writer's cramp is entitled to a scribe in the civil services examination. The court argued that the minimum required percentage of disability should be broken as it is against the true aim of the act.

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<sup>19</sup>Math et al., *supra* note 13.

- sec 32 of the acts says 5% seats will be reserved in higher education institution for benchmark disability. Still there is no classification of disability or separate reservation for separate disability.
- There is a need to specify the certain job for people with ASD.
- There is need of awareness programmes for public to know the rights of autistic person.
- The authority must put some instructions regarding helping autistic person in public places.

## **Conclusion**

Although RPWD Act, 2016 is a rights-based legislation, the success of the statute will largely depend on the proactive measures taken by the respective state governments on its implementation. It is a long-term goal which can be attained by the effective implementation. There is need of therapy and awareness centre for early detection and improvement in person with ASD.

1. Societal Awareness about disability and people with disability through awareness campaigns and sharing of stories of people with disability who are successful in life so that people with disability are better integrated into society.
2. The educational institution must have special section for autistic students. They should appoint special educator.
3. The private institutions or bodies should also reserve some posts for autistic people to support the socially and economically.
4. There should proper scrutiny and tracking of allocated funds and in the coming years, the government should think about increasing the allocation of funds for the welfare of the disabled.
5. there should be proper guidelines given to educational or other institutions regarding fulfilment of rights and assistance of person with ASD.