

KNOW YOUR RIGHTS

RIGHTS OF PERSONS WITH DISABILITIES



National Human Rights Commission

Know Your Rights Series

**RIGHTS OF PERSONS WITH
DISABILITIES**



**National Human Rights Commission
Faridkot House, Copernicus Marg
New Delhi-110001**

Know Your Rights Series:

Rights of Persons With Disabilities

This publication is intended to assist a wide audience to achieve a better understanding of the basic human rights.

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PREFACE

This handy booklet is meant primarily for use by the primary stakeholders, i.e., persons with disabilities, their parents/care givers, human rights/social activists, and workers and professionals in the disability sector. It contains some basic information in simple language about the rights of persons with disabilities and is intended to serve as a quick reference document which provides at-a-glance picture of the rights regime in relation to persons with disabilities both at the national as well as the international levels.

This revised/modified edition on the rights of persons with disabilities is being brought out as a part of NHRC's ongoing efforts to keep the concerned stakeholders updated about the recent developments, particularly, in the substantive rights regime in relation to persons with disabilities.

STRUCTURE

This booklet comprises seven parts:

PART I gives the introduction.

PART II dwells upon the constitutional and legal regime with reference to the rights of persons with disabilities in India.

PART III deals with international human rights instruments, namely, soft law and hard law instruments on the rights of persons with disabilities.

PART IV presents some statistics on disability and also gives some related information.

PART V briefly alludes to the historical perspective of the disability rights movement in India.

PART VI presents a brief account of NHRC's interventions and future direction of work on disability.

PART I

INTRODUCTION

It goes without saying that persons with disabilities constitute a part of the larger human family. This explains why they are as much entitled to the full range of human rights and fundamental freedoms like any other section of society.

Unfortunately, persons with disabilities are routinely subjected to all forms of discrimination, denial, and deprivation of rights with the result that they are often marginalized and excluded and are made to live in a state of relative invisibility, disempowerment and disarticulation. The world is home to over 600 million people with disabilities. Over two-thirds of them live in developing countries.

Experience in relation to the skills, merit, abilities and contributions of persons with disabilities the world over leads one to subscribe to the following:

- (a) That, disability is not merely a medical or a welfare issue; much less a charity issue; rather, it is a development and human rights issue.
- (b) That, disability is both the cause and consequence of poverty.
- (c) That, ones impairment (physical, mental, intellectual or sensory) need not necessarily be one's overall inability.
- (d) That, given proper education and training, a person with disability is potentially capable of leading a life of honour and dignity on an equal basis with others as a useful, contributive, and productive class-one citizen of society.
- (e) That, a person with disability can think, speak and act for himself/herself and that it is the duty of all concerned to ensure to such persons full and effective inclusion and participation in all walks of life.

The adoption of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) has brought about a highly significant change in the manner disability has hitherto been construed. The said

convention (which has been discussed at some length elsewhere in this booklet) seeks to introduce a human rights based construct of disability unlike the existing Indian law which defines disability purely on medical terms.

The human rights based approach or construct of disability upholds the view that disability is a condition which results from interactions of impairments with various barriers in society. Such interactions prevent one's participation in society on an equal basis with others. It is therefore abundantly clear that in the ultimate analysis disability is a condition where one is unable to participate in society on an equal basis with others due to interactions between her/his impairment and various barriers. This is the reason why the said UN convention which is the latest and the only hard law instrument on disability at the international level gives an inclusive, rather than a prescriptive or restrictive definition of disability. It says that persons with disabilities include those having long-term physical, mental, intellectual and sensory impairments which in interaction with various barriers hinder their participation in society on an equal basis with others.

The barriers which a person with a disability encounters are broadly—attitudinal, environmental, institutional and informational.

As stated above, the Persons with Disabilities (Equal Opportunities, protection of Rights, and Full Participation) Act 1995 (PWD Act) adopts a medical model and defines disability as :

- (i) Blindness
- (ii) Low vision
- (iii) Leprosy-cured
- (iv) Hearing impairment
- (v) Locomotor disability
- (vi) Mental retardation
- (vii) Mental illness

PART II

CONSTITUTIONAL & LEGAL REGIME WITH REFERENCE TO THE RIGHTS OF PERSONS WITH DISABILITIES

1. Constitution of India

It is common knowledge that international human rights law is based on the principles of equality, dignity, autonomy, and liberty/security. The constitution of India has also imbibed the spirit of these values. The Preamble to the Constitution clearly states, "...secure to all its citizens; Justice, Social, Economic and Political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation...."

Equality

Article 14

Under the right to equality, the Constitution of India guarantees equality for all its citizens before law and equal protection of law.

Article 15 and Article 16

These provisions prohibit discrimination on the grounds of "religion, race, caste, sex, place of birth or any of them."

Discrimination

The formal recognition of discrimination on grounds of disability is a recent development. Laws enacted 20 years ago generally did not include disability in the list of prohibited heads of discrimination. For instance, though the Indian Constitution in its Articles 15 and 16 prohibits discrimination in the matter of employment and access to public facilities on grounds of religion, race, caste, sex and place of birth, it is silent on disability. In fact until 1995 the Service Rules prevented entry of persons with disability in higher grades of service. The rule gave the employer the authority to force premature retirement in public interest. Often employees who acquired disability during service were either forced out of job or

reduced in rank. Their opportunity for career enhancement was suspended forever.

Even in the absence of formal recognition of disability-based discrimination, the Indian judiciary has been forthcoming in setting aside discriminatory rules. For instance, the rule prescribing physical fitness criteria for entry in the government service disqualified candidates on account of their disability. In *Nandakumar Narayanarao Ghodmare v. State of Maharashtra and Ors.* (1995 6 SCC 720), the Supreme Court directed that the candidate who was rejected because of colour blindness should be appointed to any of the posts of the Agricultural Class II Service post, other than the 5 out of 35 posts which required perfect vision.

Extra-legal safeguards have now been provided in several jurisdictions.

The *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* has an exclusive chapter titled “Non-Discrimination”. Sections 45, 46 and 47 clearly enable quasi-and judicial bodies to speedily and efficiently dispose cases of discrimination. For example in *Rajbhir Singh v. DTC* (97 2002 DLT 19) the Delhi High Court directed the respondent to “take the petitioner back into service and pay salary from the date when the respondent stopped paying salary in termination of his service.” He was reinstated with full back wages and consequential benefits.

State Obligations

The Constitution of India envisages a very positive role of the State towards its disadvantaged citizens. Article 41 enjoins that “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”. However, the approach to disability in India has been motivated by charity and viewed as an individual issue. Even the Governments rely heavily on charitable NGOs to secure basic rights like education, work, shelter and health for persons with disabilities. As a consequence, the entire process of development bypassed people with disabilities.

A distinct self-advocacy movement of people with disability that started during the 1970s campaigned for protection and recognition of

their human rights. It advocated enactment of a comprehensive legislation having a rights based approach with special emphasis on social and economic rights. The government recognized the need for such a legislation in 1980. Since the legislative power regarding disability was kept on the State List, the matter could not be pursued. However, Article 253 of the Constitution of India enables the Parliament to override the federal distribution of powers and to give effect to a treaty entered with foreign power or an international body even if the matter of legislation relates to an entry in the State list. With the signing of the Proclamation of Equality and Full Participation of People with Disabilities in Asian and Pacific region, the legislation was enacted by the Parliament in 1995.

2. Judicial Interventions

In *Indra Sawhney v. Union of India* (1992 Supp (3) SCC) the Apex Court examined the legality of reservation in favor of the disabled who are not clearly covered under Article 16 of the Constitution. The Court pointed out that "... mere formal declaration of the right would not make unequals equal.

To enable all to compete with each other on an equal plain, it is necessary to take positive measures to equip the disadvantaged and the handicapped to bring them to the level of the advantaged. Article 14 and Article 16(1) no doubt would by themselves permit such positive measures in favour of the disadvantaged to make real the equality guaranteed by them."

In *Dr. Jagdish Saran & Ors. v. Union of India* (1980 2 SCC 768), Justice Krishna Iyer clarified that even apart from Articles 15 (3) and (4), equality is not degraded or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit.

3. Disability-specific legislations

(i) *Disabilities Act, 1995* – A landmark Achievement of Disability Movement

The objectives of the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* are

- Promoting and ensuring equality and full participation of persons with disabilities and
- Protecting and promoting their economic and social rights.

The Act covers seven disabilities already mentioned in the introduction. The criteria for classification are medical and not based on the social perception of disability.

The PWD Act is focused more on rights. The substantive provisions of the Act relate to prevention and early detection, education, employment, affirmative action, non-discrimination/barrier free access, research and manpower development, institutions for persons with severe disabilities.

The enforcement mechanisms envisaged in the Act include a Central Coordination Committee at the national level and a State Coordination Committee at the state level. It also includes Chief Commissioner (Persons with Disabilities) at the national level and Commissioner (Persons with Disabilities) at the state level.

The central and state level coordination committees are entrusted primarily with the task of facilitating continuous evolution of comprehensive policy on disability in the areas of their respective jurisdiction.

The Chief Commissioner and the Commissioner (Persons with Disabilities), as the case maybe, are entrusted primarily with the task of monitoring disbursement and utilization of funds on disability allocated to various government departments and also to take cognizance of cases of violation of rights of persons with disabilities.

Some Key Provisions in the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995

Sl. No.	Thematic Area	Relevant Section of the Act
A	EDUCATION	
1	Provision for free education in an appropriate environment for every child with a disability upto 18 years of age.	Section 26
2	Provision for reservation of not less than 3% seats for admission to Government and/or Government aided educational institutions.	Section 39
3	Government to prepare comprehensive education schemes with provision for transport facilities, barrier free access to schools, supply of uniforms, books, other materials, scholarship, etc., to children with disabilities.	Section 30
4	Provision for amanuensis for students with blindness or students with low vision.	Section 31
B.	EMPLOYMENT/AFFIRMATIVE ACTION/SOCIAL SECURITY	
1	Provision for reservation in vacancies to the tune of not less than 3% in Government establishments (which includes public sector undertakings) (in all grades of jobs).	Section 33

2	Provision for reservation of not less than 3% quota for persons with disabilities in all poverty alleviation schemes.	Section 40
3	Provision for providing incentives to public sector and private employers to ensure that atleast 5% of their work force is composed of persons with disabilities.	Section 41
4	Provision for schemes to provide aids and appliances to persons with disabilities	Section 42
5	Preferential allotment of land at concessional rates in favour of persons with disabilities for residential purpose; setting up business, setting up of special recreation centres; establishment of special schools, establishment of research centres; establishment of factories by entrepreneurs with disabilities	Section 43
6	Provision for unemployment allowance for such persons with disabilities who could not be gainfully employed even after two years of their registration with a special employment exchange.	Section 68
C.	NON-DISCRIMINATION AND BARRIER-FREE ACCESS	
1	Provision for special measures to adapt rail compartments, buses, vessels and aircrafts in such a way that they become accessible to persons with disabilities, including toilets.	Section 44
2	Provision to make roads and public places barrier-free including installation of auditory signals at red lights, causing curb cuts and	

	<p>slopes to be made in pavements for the easy access of wheelchair users; engraving on surface of the zebra crossings for the blind or for persons with low vision; engraving on the edges of railway platforms for the blind or for persons with low vision; warning signals at appropriate places, etc.</p>	Section 45
3	<p>Provision for barrier-free access in public buildings, work places, and recreation centres including provision for ramps, Braille symbols and auditory signals in elevators or lifts; ramps in hospitals, primary health centres and other medical and rehabilitation institutions.</p>	Section 46
4	<p>Ban on dispensing or reducing in rank an employee who acquires a disability during his/her service</p>	Section 47 (1)
5	<p>Promotion cannot be denied to a person on the ground of his/her disability</p>	Section 47 (2)
D.	COMPLAINTS	
1	<p>Provision for lodging complaints in respect of deprivation of rights of persons with disabilities, etc., with the Chief Commissioner, Disabilities</p>	Section 59
2	<p>Provision of lodging complaint with Commissioner Disabilities (state level) in respect of deprivation of rights of persons with disabilities, etc.</p>	Section 62

The critics of the PWD Act express the view that the Act is replete with numerous flaws as it was passed by the Parliament almost without a full length debate. They say that the Act lacks teeth and provides ample escape routes to the concerned government as some of its sections which provide for something concrete and tangible for persons with disabilities is prefixed or qualified with the clause – “the appropriate government and local authorities shall, within the limits of its economic capacity and development.....”. However, thanks to the Indian judiciary that it has converted a relatively weaker Act into a stronger Act through its forward-looking pronouncements.

In the concluding years of the last century, the Ministry of Social Justice and Empowerment, Government of India had constituted a committee to suggest amendments in the existing PWD Act. Although the said committee did submit a comprehensive report, somehow, the government did not act on it.

The process of amending the current PWD Act or, for that matter, replacing it with an altogether new Act seems to have gained momentum in the wake of India ratifying the UN Convention of the Rights of Persons with Disabilities. In continuance of the said process, the Ministry of Social Justice and Empowerment, Government of India, has vide Govt. notification F.No. 16-38/2006 – DD.III dated 30th April 2010 has constituted a committee to draft a new law and submit the following to the government on or before 31 August 2010 :

- (a) The draft of the new law
- (b) Note on requirement of financial resources for the purpose of implementing the proposed new law
- (c) The process followed in evolving the new draft law.

Happily, the committee has since been further expanded to enlist participation of primary stakeholders in greater numbers.

(ii) National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act 1999

Persons with disabilities are not a homogenous group. There is a great deal of heterogeneity and diversity amongst persons with disabilities.

Certain groups among the disabled are more vulnerable than others.

Therefore the enactment of the *National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999* aims to fulfill a common demand of families seeking a reliable arrangement for their severely disabled wards. The specific objectives of the Act include:

- To enable and empower persons with disabilities to live as independently and as fully as possible within and as close to the community to which they belong.
- To promote measures for the care and protection of persons with disabilities in the event of death of their parent or guardian.
- To extend support to registered organizations to provide need-based services during the period of crisis in the family of the disabled covered under this Act.

The Act

- mandates the creation of a Local Level Committee comprising a District Magistrate along with one representative from a registered organization and one person with a disability. The Committee is vested with the authority to decide upon the applications of legal guardianship.
- provides for the manner in which legal guardians are to be appointed.

The conditions of eligibility, the order of eligible applicants, the disqualifications of applicants are contained in Regulations 11-14.

- lays down the duties of the guardian who has to furnish periodic returns to the LLC about the assets of the ward and their disposal in his hands. Similarly, the Committee too is required to maintain inventory and annual accounts of the property and assets, claims and liabilities submitted by the legal guardians to it.

The overall supervision of this Act is vested with a National Trust Board.

The Government has contributed Rs. 100 crore to the trust fund.

The interest earned is used in supporting the mandated activities.

In short, the National Trust Act provides for appointment of guardians for those persons belonging to these four named categories of disabilities who need guardianship. The provision of guardianship is essentially intended to address the mismatch between the intellectual and biological age of a person with intellectual disabilities. Besides, the National Trust created under the said Act also implements or supports the implementation for the benefit of persons belonging to the said four categories of disabilities.

Evidently, some changes may have to be made in the National Trust Act in order to harmonise the said Act with the UN Convention on the rights of persons with disabilities which India has since ratified. Such changes may have to be brought about particularly in the light of Article 12 of the said Convention which recognizes all persons with Disabilities as persons before the law on an equal basis with others and which also recognizes their legal capacity. The National Trust created under the said Act has already constituted an amendment sub-committee and has entrusted the task of developing a draft through a comprehensive process to NALSAR, Hyderabad. The draft to be so finalized by the National Trust will be sent to the government in due course for consideration.

(iii) *Mental Health Act, 1987*

The *Mental Health Act* is a civil rights legislation that focuses on regulating standards in mental health institutions. Despite the existence of this Act for the protection of the person, property and management of persons covered, until recently many mentally ill persons were consigned to jails.

Those living in mental health institutions were no better since the conditions both in prisons and in mental institutions were far below the stipulated standards. The Supreme Court noted the appalling conditions of the mentally ill persons detained in the jails of West Bengal in *Sheela Barse v. Union of India & Anr.* (1993 4 SCC 204) and observed that admittance of non-criminal mentally ill persons in jails is illegal and unconstitutional. In *Chandan Kumar Banik v. State of West Bengal* (1995 Supp. 4 SCC 505) the Supreme Court deplored the inhuman conditions of the mentally ill in a mental hospital at Mankundu in the District of Hooghli. The Court ordered for discontinuing the practice of tying up the patients with iron chains and ordered drug treatment for them.

The indifference of State and private authorities caused the tragic death of 26 inmates at Erwadi as they were tied to their beds on the night a fire broke out in August 2001. Following this tragedy, the National Human Rights Commission advised all the Chief Ministers to submit a certificate stating “no persons with mental illness are kept chained in either Government or private institutions”. Under Section 12 of the *Protection of Human Rights Act 1993*, the Commission is mandated to visit the Government run mental hospitals to “study the living conditions of the inmates and make recommendations thereon”.

In 1997 **a project on Quality Assurance in Mental Health Institutions** was initiated to analyze the conditions generally prevailing in 37 Government run mental hospitals and departments. This project raised several seminal issues regarding –

- The concerns and care of the mentally ill, particularly in institutions.
- The need for a comprehensive range of services in the community for persons with mental illness.
- That mental hospital in India are still being administered on the custodial model of care with prison-like structures, high walls, watch towers, fenced wards and locked cells.
- The *Indian Lunacy Act, 1912* - Though the Mental Health Act is in force since 1987, admittances and discharges are still governed by the archaic and inhuman provisions of the *Indian Lunacy Act, 1912*.
- Percentage of involuntary admissions is high and the provisions of Section 19 permitting admittance under certain special circumstances by a relative or a friend are widely abused.

Since the release of that report in 1999, the NHRC has been actively involved in the monitoring of several psychiatric hospitals throughout the country and ensuring that the rights of the mentally ill in such institutions are protected. Besides the active involvement of the Chairpersons, Members and Staff of NHRC, the Special Rapporteurs too, have worked relentlessly, established regular dialogue with key functionaries in State Governments and constantly sought change and improvement. The Commission has also come up with a publication ***Mental Health Care and Human Rights*** in the year 2008.

The ratification of the UN Convention on the Rights of Persons with Disabilities by India also offers an opportunity for bringing about appropriate changes in the laws governing mental health, or for that matter, governing persons with psycho-social disabilities. Many activists with psycho-social disabilities feel that the current mental health Act should be scrapped and a fresh comprehensive legislation of Rights of Persons with psycho-social disabilities should be enacted. They contend that mental health is not the only issue which stares persons with psycho-social disabilities in the face. Psycho-social disability, they assert, has a range of issues around social-discrimination, forced institutionalization, and legal capacity which need to be appropriately addressed, more particularly, in the light of the UNCRPD.

It is learnt that the Ministry of Health, Government of India has entrusted the task of developing a fresh draft of the Mental Health Act although activists with psycho-social disabilities resent the fact that there issues are only around mental health.

(iv) *Rehabilitation Council of India Act, 1986*

The Rehabilitation Council of India was set up by the Government of India in 1986 to regulate and standardize training policies and programmes for rehabilitation of persons with disabilities. An Act of Parliament in 1993 enhanced the status of the Council to a statutory body with the following aims:

- To standardize training courses for professionals dealing with people with disabilities.
- To prescribe minimum standards of education and training of various categories of professionals dealing with people with disabilities.
- To regulate the standards in all training institutions uniformly throughout the country.
- To promote research in rehabilitation and special education.
- To maintain a Central Rehabilitation Register for registration of professionals.

The RCI regulates training standards of sixteen categories of rehabilitation workers. The Council promotes training and research

initiatives utilizing the experience of specialized as well as mainstream academic institutions.

The National Human Rights Commission focuses on human rights issues of persons with disabilities by integrating their concerns into all aspects of work. The Commission has outlined a broad policy approach and has prioritized 14 areas for intervention with the aim to remove structural inadequacies by encouraging disability-inclusive laws, policies and programmes at all levels.

It goes without saying that the RCI Act may also need to be modified in the light of India ratifying the UNCRPD. Disability rights activists express the view that the Rehabilitation Council of India Act should be so amended as to make it obligatory on the part of the said council to take on board the expertise of lived experience of disability among other things, by including persons with disabilities at all levels of its functioning. They also strongly feel that the RCI syllabii should have comprehensive inputs on Human Rights and Fundamental Freedoms of Persons with Disabilities.

4. National Policy on Disability, 2006

The Government of India has adopted a comprehensive national policy on disability covering critical areas like education, employment, support services, access, social security, etc. However, this policy also needs to be comprehensively modified in the light of the UNCRPD. Somehow, the said national policy is nearly silent on civil and political rights of persons with disabilities.

Unfortunately, most of the states of India do not have a state level disability policy in place yet. A few states however, are in the process of evolving such a policy. The state of Chhattisgarh now has a state level policy on disability.

PART III

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS/NORMS/ STANDARDS ON DISABILITY

Part of the human family as they are, persons with disabilities are as much entitled to human rights and fundamental freedoms as anyone else. Hence, all the human rights mentioned in the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), and International Covenant on Civil and Political Rights apply to persons with disabilities as well in equal measure. Likewise, rights envisaged in the Convention for Elimination of All forms of Discrimination against Women (CEDAW), or for that matter, Convention of the Rights for the Child (CRC), also apply to women and children with disabilities respectively.

In this part, we shall take a quick and cursory look at examples of soft law/non-binding disability-specific human rights instruments, and discuss at some length the United Nations Convention on the Rights of Persons with Disabilities(UNCRPD) which is a binding hard law instrument on the rights of persons with disabilities.

(i) Soft law/non-binding disability specific human rights instruments

Following are some examples of prominent soft law instruments on the rights of persons with disabilities:

1. Declaration on the Rights of Mentally Retarded Persons, 1971
2. Declaration on the Rights of Disabled Persons, 1975
3. WPA 1981
4. Standard Rules 1993
5. Asian and Pacific Decade 1993-2002
6. Biwako Millennium Framework 2003-2012
7. ILO Discrimination (Employment & Occupation) Convention 1958

(ii) Hard law/binding human rights instrument at the international level

1. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

The general assembly of the United Nations unanimously adopted the UNCRPD and its optional protocol on the 13th of December 2006. This international treaty together with its optional protocol was opened for signature on the 30th of March 2007. The UNCRPD (and not its optional protocol) was ratified by India in October 2007. It came into force the world over with effect from 3rd May 2008.

This convention recognizes persons with disabilities as subjects having human rights and fundamental freedoms and not as objects needing mere medical care and social protection. It further spells out that disability is an evolving concept and that persons with disabilities are a part of human diversity and humanity. Disability, according to this international treaty results from interaction of impairments with barriers which prevents one's participation in society on an equal basis with others.

The UNCRPD is a legally binding instrument. The purpose of this convention is to protect, promote and ensure to persons with disabilities the full and effective enjoyment of all human rights and fundamental freedoms on an equal basis with others and also to promote respect for their inherent dignity.

Article 3 of the said convention envisages general principles which include:

- (a) Respect for dignity, autonomy, freedom to make one's own choices, and independence of persons
- (b) Non-discrimination
- (c) Full and effective inclusion and participation in society
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- (e) Equality of opportunity
- (f) Accessibility
- (g) Equality between men and women

- (h) Respect for the evolving capacity of children and their right to preserve their own identities

Article 4 of the said convention casts some significant obligations on the states parties. Under these obligations, while the states parties have been obligated to adopt all legislative and other measures to promote, protect and ensure human rights and fundamental freedoms to persons with disabilities, they will also need to repeal all laws, policies, and customs which are inconsistent with this convention. Another significant obligation is cast on private entities rendering services which are open for or provided to the public. Such private entities will have to universally and inclusively design their programs and services etc.

Article 5 of the convention provides for non-discrimination. This can be achieved, among other things, by adopting affirmative actions and by introducing the principle of reasonable accommodation and also of universal and inclusive design of environments, facilities, etc.

The convention also seeks to address the intersectional concerns of disability with gender and also of disability with age.

Article 6 and Article 7 of the convention specifically deal with women and children with disabilities respectively.

Article 12 of the convention recognizes the legal capacity of persons with disabilities on an equal basis with others and also obligates for the states parties to make support available to those persons with disabilities who may need support to exercise their legal capacity.

Unlike its predecessors the soft law instruments, this convention comprehensively deals with civil and political rights of persons with disabilities as well in addition to dealing with bare economic, social and cultural rights.

It goes without saying that the UNCRPD makes it obligatory for the states parties to actively consult with and involve persons with disabilities in the decision-making processes, especially in respect of matters which affect their lives.

The convention itself is informed and influenced by the expertise of lived experience of persons with disabilities. It comprises 50 articles.

PART IV

STATISTICS AND SOME OTHER RELATED INFORMATION

1. Unfortunately, persons with disabilities have often been excluded from the census which takes place in India every ten years. While the 1981 census did have some utterly inadequate semblance of inclusion, persons with disabilities were totally left out from the purview of the 1991 census. This is why persons with disabilities started demanding their inclusion as a group just before the 2001 census with the result that some five categories of persons with disabilities were included. However, persons belonging to many more disabilities including persons belonging to mental and intellectual disabilities were completely excluded.

Disability rights activists strongly dispute the census 2001 figures on the number of persons with disabilities on various grounds which include non-inclusion of many disabilities, improper training of enumerators in identifying persons with disabilities, etc. Interestingly, many countries including some developed countries like the USA, UK, Australia, New Zealand, and some of our own neighbouring countries have far higher percentage of disability than our figures reveal in India. Evidently, a great deal depends on how disability is defined.

Census 2001 has revealed that over 21 million people in India are suffering from one or the other kind of disability. ***This is equivalent to 2.13% of the population.*** Among the total disabled in the country, 12.6 million are men and 9.3 million are women. Although the number of disabled is more in rural and urban areas. Such proportion has been reported between 57 and 58% for men and 42-43% for women. The disability rate (number of disabled per 100,000 populations) for the country as whole works out to 2130. This is 2,369 in the case of men and 1,874 in the case of women.

Among the five types of disabilities on which data has been collected, disability In seeing at 48.5% emerges as the top category. Others in sequence are: In movement (27.9%), Mental (10.3%), In speech (7.5%), and In hearing (5.8%). The disabled by sex follow a similar pattern except for that the proportion of disabled females is higher in the category In seeing and In hearing.

Across the country, the highest number of disabled has been reported from the state of Uttar Pradesh (3.6 million). Significant numbers of disabled have also been reported from states like Bihar (1.9 million), West Bengal (1.8 million), Tamil Nadu and Maharashtra (1.6 million each). Tamil Nadu is the only state, which has a higher number of disabled females than males. Among the states, Arunachal Pradesh has the highest proportion of disabled males (66.6%) and lowest proportion of female disabled.

Table : Number of Disabled Population and Type of Disability

	<i>Population</i>	<i>Percentage</i> (%)
Total population	1,028,610,328	100.0
Total disabled population	21,906,769	2.1
Disability rate (per lakh population)	2,130	—
<i>Type of Disability</i>		
(a) In seeing	10,634,881	1.0
(b) In speech	1,640,868	0.2
(c) In hearing	1,261,722	0.1
(d) In movement	6,105,477	0.6
(e) Mental	2,263,821	0.2
<i>Source : Census of India 2001.</i>		

2. Important statistics in some critical areas

(i) Poverty and Malnourishment

In general, people with disabilities are estimated to make up 15 to 20% of the poor in developing countries (UN ESCAP, 2002). Poor families often do not have sufficient income to meet their basic needs. Inadequate shelter, unhygienic living conditions, lack of sanitation and clean drinking

water combined with poor access to health facilities breed disability. It is estimated that currently 515 million Asians are chronically undernourished, accounting for about two-thirds of the world's hungry people (UN ESCAP, 2002). Common micronutrient deficiencies that affect disability include:

- Vitamin A deficiency – blindness
- Vitamin B complex deficiency – beri-beri (inflammation or degeneration of the nerves, digestive system and heart), pellagra (central nervous system and gastro-intestinal disorders, skin inflammation) and anemia
- Vitamin D deficiency – rickets (soft and deformed bones)
- Iodine deficiency – slow growth, learning difficulties, intellectual disabilities, goitre
- Iron deficiency – anaemia, which impedes learning and activity, and is a cause of maternal mortality
- Calcium deficiency – osteoporosis (fragile bones) (ESCAP, 2002b)

Due to lack of food and nutrition security for the poor, about 30% of all infants born in India are born weighing less than 2,500 grams, (the WHO cut-off level to determine low birth weight) and thus have a lower chance of survival and high risk of disability (Independent Commission on Health in India, 1997).

(ii) Crime and Disabilities

Violent crimes underline shortcomings in the social, political and economic arrangements. Such crimes not only leave people with a sense of insecurity and fear but also deprive them of their life and liberty. Many children and women are abducted to be used in prostitution, slavery and beggary. The risk of emotional, mental and physical disabilities increase manifold. There are hardly any studies that have analyzed the nexus between disability and crime though at every nook and corner one cannot escape the sight of maimed, blinded and mentally ill persons begging and wandering. Unfortunately, even the law enforcement agencies themselves commit acts of torture and inhuman treatment sometimes leading to disability of the victims.

(iii) Accidents and Disability

According to the Central Bureau of Health Intelligence Report of 1997- 98, the number of deaths due to road accidents was 69,800 and railroad accident deaths were approximately 15,000. An expert in the field, Dr. Leslie G Norman of London estimates that for every road accident death there are 30-40 light injuries and 10-15 serious injuries which may lead to disability.

Improvements in vehicle design and medical facilities, as well as stronger enforcement of traffic regulations concerning the compulsory use of seat belts (car use) and helmets (motorcycle use), and restrictions on alcohol consumption and other intoxicants need to be treated more seriously than it has been. Studies estimate that by 2020, road traffic accidents will be ranked as the third leading cause of disability in the Asian and the Pacific region. Quadriplegia, paraplegia, brain damage and behavioural disorders are some disabilities common among survivors of such accidents.

(iv) Occupation Hazards and Disability

To maximize profits, production is often located wherever costs are lowest, regulations are loose and workers are least likely to organize for better working conditions and fairer wages. This often results in high rates of accidents, poisoning from toxins, loss of hearing and vision and health deterioration. Occupation-related health problems of workers employed in stone quarrying, leather industry, glasswork, weaving, diamond cutting, hand embroidery etc.; and children employed in the carpet, cracker and match industry, have not received appropriate and sustained attention, as occupation health has not been considered important enough both by the corporates and those responsible to regulate work standards.

Similarly, poor farmers and peasants are very vulnerable to disability as they work for long hours exposed to sunlight, dust and smoke.

Amputations, muscular diseases and spinal chord injuries are some common hazards associated with agricultural activities. With mechanization of agriculture these incidents are on the increase. However, there is no parallel improvement in the primary health system in the rural areas.

(v) Employment of the Disabled

Creation of opportunities for gainful employment is a task which governments all around the world perform. The development index is indicative of the employment in a given country. What makes a developed country different from a developing nation is its capacity to create and maintain unemployment as low as possible and on the other hand, sustain a level of growth which takes care of the employment needs of young adults.

(vi) Education

The first school for hearing impaired children was established in Mumbai in 1884 and for the blind at Amritsar in 1887. Between then and now we have not been able to create an educational infrastructure that can cater to the needs of children with disabilities. As a result, more than 80% of them remain uneducated lacking even basic literacy skills. Of the children dropped out in 1991, 43% is said to have acquired disability. This highlights the inadequacies of the education system. The NSSO 1991 yielded 42% rate of education covering blind, hearing, speech and locomotor impaired persons. If 3% population of mentally retarded and mentally ill persons is added to 1.9% of other four disabilities, the coverage of 42% comes down to approximately 20%, in fact, even less.

(vii) Types of Violations

Despite having a sound legal framework and a plethora of programmes, schemes, rules, regulations etc., corresponding improvements in the circumstances of persons with disabilities are not visible. The rate of illiteracy, unemployment and poverty among persons with disabilities is alarming.

Transport, buildings and information systems are designed on the same old standards though the law demands creation of barrier-free facilities. The state governments, local authorities and panchayats have taken little care in fulfilling their obligations under various laws so much so that funds committed by Central Government through a number of schemes have remained grossly underutilized. The recruitment rules and service regulations still have discriminatory provisions. Some improvements could

be achieved with court interventions. 55% percent of the complaint cases before the Chief Commissioner for persons with disabilities pertain to service matters.

Similarly, the barriers to education are deep-rooted. Many institutions, despite mandatory provision of 3% reservation of seats in educational institutions, denied admission to students on grounds of their disability. The Supreme Court of India in *Rekha Tyagi v. All India Institute of Medical Sciences and Ors.* has given a clear verdict to the academic institutions to provide 3% reservation to students with disabilities according to Section 39 of the *Disabilities Act, 1995*.

International instruments, such as declarations, resolutions, principles, guidelines and rules, are not technically legally binding. They express generally-accepted principles and represent a moral and political commitment by States. They also can be used as guidelines for States in enacting legislation and formulating policies concerning persons with disabilities.

General policy instruments, such as the outcome documents of world summits and conferences, are applicable to persons with disabilities. These instruments include, for example, the Copenhagen Declaration and Programme of Action adopted at the World Summit for Social Development

(6-12 March 1995), and the Millennium Declaration and the Millennium Development Goals adopted at the United National Millennium Summit in September 2000.

Several disability-specific non-binding international instruments have been adopted at the international level. The instruments include:

- Declaration of the Rights of Mentally–Retarded Persons
- Declaration on the Rights of Disabled Persons
- World Programme of Action Concerning Disabled Persons
- Tallinn Guidelines for Action on Human Resources Development in the Field of Disability
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care

- Standard Rules on the Equalization of Opportunities for Persons with Disabilities
- ILO Recommendation concerning Vocational Rehabilitation of the Disabled
- ILO Recommendation concerning Vocational Rehabilitation and Employment (Disabled Persons)

PART V

DISABILITY RIGHTS MOVEMENT IN INDIA – BRIEF HISTORICAL PERSPECTIVE

In the pre-independence era, disability related work got underway in India on a charity, or at the most on a welfare mode. Some institutions and homes were setup for persons with disabilities where some sort of training, education, and/or sheltered employment was sought to be provided to such persons.

The post-independence period first witnessed the emergence of organizations for persons with disabilities. Incidentally, there is a huge ideological divide between organizations *for* and *of* persons with disabilities. These were, by and large, uni-disability organizations meaning that they were working primarily to promote the interests of persons belonging to a given category of disability.

The late '60s and early '70s of the last century saw the uprise of organizations of persons belonging to certain specific categories of disabilities.

The organizations for persons with disabilities are managed, run, controlled and led either by the non-disabled or by both the disabled and the non-disabled; whereas, the organizations of persons with disabilities are managed, run, controlled, and led by persons with disabilities.

In other words, these organizations are organizations of the disabled, for the disabled, and by the disabled.

The late '80s and early '90s saw the emergence of cross-disability organizations but they were by and large urban centric and led by the so called creamy layer amongst the disabled.

The current century has witnessed the emergence of a movement of the poor disabled coming mostly from rural or semi-urban areas. This movement is slowly gaining momentum under the banner of Vikalang Manchhas. Currently, such Vikalang Manchhas are operating in about ten or eleven states of the country and efforts are on to ensure convergence of these Manchhas under the banner of Rashtriya Vikalang Manch.

While it is both appropriate and desirable that persons with disabilities should speak for themselves as they have the expertise of lived experience of disability, it is also true that like all other marginalised and excluded groups, they need active support and solidarity from the larger civil society. It is in this sense that organizations for persons with disabilities can play a significant role. Contribution of such organizations in matters of delivering services must also be acknowledged. It is desirable that organizations for persons with disabilities should also play their part in promoting and strengthening organizations of persons with disabilities.

PART VI

GLIMPSES OF NHRC'S INTERVENTIONS AND FUTURE DIRECTION OF WORK ON DISABILITY

- The Commission has been encouraging the printing of Braille books. In the Year 2005-6, the Hon'ble Chairperson specifically recommended the Chief Ministers of all States & UT administrations that the printing of books in Braille should go *simultaneously* with the printing of regular books.
- A *Judicial Colloquium on Disability & the Law* was organized in December 2005 at Delhi. The suggestions as extracted from the deliberations of the Colloquium were as follows:
 - Such Colloquiums should also be organized at the State level so that the members of the lower courts could also be sensitized.
 - Such Colloquiums should also be organized at regular intervals so that an on going process of debate and information sharing can be established. The Registrars of High Courts have also expressed their views that such Colloquiums should also be organized for judicial officers of all High Courts.

Finally, the Judges expressed that they feel more sensitized to the issue of Dalits and the disabled through this Colloquium.

- In the meeting held on 26 May, 2006 the Commission decided to initiate a project, "Common Sign Language for Deaf Children".
- In the Core group of NGOs held on 12 September, 2007 it was suggested that:
 - i) Involvement of Panchayats and Civil Society for identification of the disabled.
 - ii) NHRC could consider holding a Conference on Disability; there was a need to focus on the disabled amongst the poorest; there was need for holding 'Disability; Adalats' on the lines of Lok Adalats to redress their grievances.
 - iii) Creation of public awareness on the Rights of Persons with Disability.

Accessibility of physically challenged to public places like banks, trains, buses was stressed and lack of toilets for the disabled in all-long distance trains was noted.

➤ **On Sign Language**

The Commission has been deeply concerned about the discrimination being faced by the persons with hearing impairment, as the deaf children generally do not receive education through the medium of sign language. The reason for this is the non-availability of child centred sign language in the country and the absence of sign language training from the teacher's education programmes for the deaf.

With a view to have a common Sign Language, the Commission organized a Consultative Meeting on 18-19 October 2004 in the Commission with Ministry of Social Justice & Empowerment, Ali Yavar Jung National Institute of Handicapped (AYJNIHH), Rehabilitation Council of India, British Council, JNU and representatives of NGOs. After extensive deliberations and a number of meetings organized by the Commission, a project entitled "Indian Sign Language for Deaf Persons" was evolved. The role of the Commission in the project is that of Facilitators.

Since then, Ali Yavar Jung National Institute of Handicapped (AYJNIHH) had organized a workshop wherein the modules prepared under the project were presented. The Commission urged the AYJNIHH to involve all stakeholders in this effort.

- The Commission played a major role in the ***drafting of the UN Convention on Rights of Persons with Disabilities*** and advocated for inserting Art. 33 relating to national implementation and monitoring mechanisms. Thereafter, it advocated with the Government of India for its early ratification, which has since been done in October 2007.
- As a follow-up action, the Commission appointed **Special Rapporteur on Disability** related issues and also constituted a **Core Group on Disability**.

The Core Group on Disability has the following **terms of reference**:

1. To advice the NHRC on matters connected with and incidental to the promotion, protection, and monitoring of rights mentioned in

the Indian Constitution and laws for persons with disabilities and also as envisaged in Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities

2. To support the NHRC in building capacity of primary stakeholders, and other stakeholders who are strategically important on the rights of persons with disabilities and to monitor recommendations made by NHRC.
 3. To study the functioning of focal points/coordination mechanisms set up by Centre and States and to suggest improvements to the Commission for greater effectiveness.
 4. To bring to notice of NHRC cases of violation of rights of persons with disabilities.
 5. To advice the commission on the changes to be brought about in the Indian laws and policies in the wake of India signing and ratifying the UN Convention on Rights of Persons with Disabilities for onward recommendation to Government.
- In light of its role as envisaged in the Article 33 of CRPD, the Commission held **five regional workshops during 2008-09** in different parts of the country to monitor the rights of persons with disabilities with particular reference to education, employment, access and services.

The objectives of the regional workshops are -

1. To assess whether existing programmes and policies for persons with disabilities are having the desired impact and to identify gaps in implementation, if any, and to suggest appropriate strategies to deal with them.
2. The Commission proposes to sensitize all stakeholders regarding provisions of UN Convention on Rights of Persons with Disabilities.
3. The Commission proposes to take up four areas, viz. Education, Employment, Access and Services to ascertain and monitor State-wise progress (both physical and financial) and new initiatives taken in these areas.
4. Evolve strategies, in partnership with SHRCs, and NGOs with a view to monitor Education, Employment, Access and Services to PWDs.

The Commission has also evolved a format to collect detailed information with regard to right to education, employment, access and services being provided for persons with disabilities.

The Details of the Regional Workshop held in 2008-09 are as follows :

Sl. No.	Region	Place of Workshop	Collaborating Institution
1.	Northern Region (Jammu and Kashmir, Punjab, Haryana, Himachal Pradesh, Delhi, Uttar Pradesh, Uttarakhand, Chandigarh)	Dehradun	National Institute of Visually Handicapped, Dehradun
2.	Western Region (Rajasthan, Gujarat, Maharashtra, Madhya Pradesh, Goa, Daman & Diu, Dadra & Nagar Haveli)	Nasik/Nagpur	ILS Law College, Pune
3.	Southern Region (Karnataka, Andhra Pradesh, Tamil Nadu, Kerala, Pondicherry, Andaman & Nicobar)	Belgaum/ Hassan	National Law School of India University, Bangalore
4.	Eastern Region (Bihar, Jharkhand, West Bengal, Orissa, Chattisgarh)	Ranchi/ Siliguri	West Bengal National University of Judicial Sciences, Kolkata.
5.	Northeastern Region (Assam, Meghalaya, Tripura, Manipur Nagaland, Arunachal Pradesh, Mizoram, Sikkim)	Imphal	Manipur State Human Rights Commission

The more recent interventions of NHRC in respect of disability related matters include the following:

1. The NHRC has made some broad recommendations to the Government of India in respect of a new law which is to replace the existing law on persons with disabilities. These recommendations have been made essentially in the light of the UNCRPD which India has since ratified.
2. The Commission has also made appropriate recommendations to the Government of India in relation to amendments to the Copy Right Act 1957, to address issues of visually disabled and the print disabled.
3. The publication of the updated version of the current booklet on the rights of persons with disabilities is also an important activity aimed at educating concerned stakeholders on the subject.
4. The Commission is actively considering recommending to the Government of India to the effect that the optional protocol to the UNCRPD may also be ratified.
5. The Commission has written to the Ministry of Social Justice and Empowerment, Government of India seeking information as to whether persons with disabilities are being closely consulted with and actively involved in the preparation of the first country report on the progress of implementation of the UNCRPD.
6. The NHRC proposes to identify gaps in the implementation of the existing PWD Act in some states.
7. The Commission is considering a proposal to hold a national meet on rights of persons with disabilities to review progress on the implementation of the UNCRPD. Officials of the Union Government and the state governments will be invited to make presentations in the said meeting.
8. The interns who come every year to do internship with the NHRC are also sensitized on issues of rights of persons with disabilities. This is done in order to ensure that the future generations of lawyers, social activists, etc are oriented to rights of persons with disabilities.

FUTURE DIRECTION

The future thrust of NHRC's work on disability will continue to be on monitoring protection and promotion of human rights and fundamental freedoms of persons with disabilities which figure in the disability specific legislations of India and also in the UNCRPD to which India is a party. Its work will also include the following:

- (a) Making recommendations for amendments in the existing relevant laws and policies
- (b) Building capacities of primary stakeholders and also of stakeholders of strategic importance on human rights with persons with disabilities
- (c) Raising awareness about rights of persons with disabilities among the general public
- (d) Taking cognizance of cases/complaints of violations of human rights of persons with disabilities.

National Human Rights Commission

Faridkot House,
Copernicus Marg
New Delhi-110001

Facilitation Centre (Madad): 011-23385368
Mobile No. : 9810298900 (For Complaints)

Fax: (011): 23386521 (Complaints) 23384863 (Administration)/
23382734 (Investigation)

Email: covdnhrc@nic.in (General) / jrlaw@nic.in(Complaints)
Web-Site: www.nhrc.nic.in

KNOW YOUR RIGHTS



rights of persons with disabilities

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