
**DOES THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 EXECUTE THE
NEEDS OF PERSON WITH AUTISM SPECTRUM DISORDER
AND EDUCATIONIST ?**

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Introduction

The Constitution of India has assured the full protection to Rights of Disabled Person. The concept of social justices and equality of status and opportunity to all the people of India are enshrined in the preamble of Indian constitution. Constitution of India Part III, article 14 and article 16 ensure the equality of opportunity to all person of Union of India. Part IV Directive Principles of State Policy of constitution of India, article 38 within requires the State to promote the welfare of the people by securing a social order in which social, economic and political justice can inform to all individuals.

The disable person have same rights as other people to a descent standard of living, right to work, education, employment and also right to access and communication. In constitution of India there is a long list of legislation and regulations which protect and govern the rights and interests of disable persons. However, central recently made a change by replacing Person with Disabilities (equal Opportunities, Protection of Rights and full Participation) Act, 1995 with Rights of the Person with Disability Act. 2016.

People living with Autism Spectrum Disorders (ASD) in India, like any developing country, face a unique set of challenges in addition to those impairments/disabilities which are considered inherent to their condition. It was not till 1999 that ASD was officially and legally recognized in India. Under the Persons with Disabilities Act passed in 1995, Autism Spectrum Disorders (ASD) was broadly classified as mental retardation, which has pervaded the way the country has continued to conceptualize Autism Spectrum Disorders (ASD). This is not only inaccurate, but unfavorable. Such misclassifications increase stigma and mean that, there are few resources adapted to the specific needs of individuals and families affected by Autism Spectrum Disorders (ASD). Thanks essentially to the efforts and advocacy of groups like Action for Autism, The National Trust for Autism (Autism Spectrum Disorders, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999 was the first legislation to recognize Autism Spectrum Disorders (ASD) specifically. Some state policies are also attempting to improve the situation that individuals and families living Autism Spectrum Disorders (ASD) face. Bangalore, for instance, recently passed a policy that would increase Autism Spectrum Disorders (ASD) funding and extend disability benefits to people

with Autism Spectrum Disorders. (Kurup, 2012) Yet such progressive measures generally occur at a state-level, rather than nationally.

After India signed and approved the UNCRPD in 2007, the process of enacting a new legislation in place of the Persons with Disabilities Act, 1995 began in 2010 to make it compliant with the UNCRPD. After series of consultation meetings and drafting process, the Rights of PWD Act, 2016 (RPWD Act, 2016) was passed by both the houses of the Parliament. It was notified on December 28, 2016 after receiving the presidential assent. Principles stated to be implemented for empowerment of persons with disabilities (PWD) are respect for inherent dignity, individual autonomy including the freedom to make own choices, and independence of persons. The Act places stress on non-discrimination, full and effective participation and inclusion in society, respect and acceptance of disabilities as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities and respect for the right of children with disabilities to preserve their identities.

Further than the lack of government support, a number of social, economic, and cultural factors also make the experiences of individuals with ASDs in India, and the experiences of their families, exceedingly difficult. There are very few resources available, much less accessible, to individuals with ASDs. Certain socio-cultural factors also make it very difficult for individuals with ASDs and their families to access appropriate treatment. ASDs only really entered the public attention before ten or twenty years ago, and have yet to gain wide recognition. There are few resources available, and the majority of India remains unaware of what ASDs is. Although this situation is improving, it is improving too slowly for individuals and families living with ASDs in a system that has failed to meet their needs.

Salient features of the right of person with disabilities act, 2016

- i. Number of type of disabilities have been increased from 7 to 21 the central Government will have power to add more types of disabilities in list. It now also includes.
 1. Blindness
 2. Low-vision
 3. Leprosy cured persons
 4. Hearing Impaired (deaf and hard of hearing)
 5. Locomotor Disability
 6. Dwarfism
 7. Intellectual Disability
 8. Mental illness
 9. Autism Spectrum Disorder
 10. Cerebral Palsy
 11. Muscular Dystrophy

12. Chronic neurological conditions
13. Specific Learning disability
14. Multiple sclerosis
15. Speech and language disability
16. Thalassemia
17. Hemophilia
18. Sickle Cell disease
19. Multiple disabilities including deaf-blindness
20. Acid attack victim
21. Parkinson's disease

The nomenclature Mental retardation is replaced by intellectual disability which is defined as 'a condition characterized by significant limitation both intellectual functioning (reasoning, learning, problem solving and in adaptive behavior, which cover a range of every day social and practical skills including Specific Learning Disability and Autism Spectrum Disorder. The act provide an elaborate definition of Autism Spectrum Disorder means a neurodevelopmental condition typically appearing in the first three years of life that significantly affect a person's ability to communicate, understand relationships and relate to others and it is frequently associated with unusual or stereotype rituals or behaviours.

- ii. According to RPwD Act 2016 (section 92) any person who **intentionally insults or intimidates with intent to humiliate a person with a disability in any place within public view** is punishable with imprisonment.
- iii. To increase the job opportunities of the persons with disabilities, this act has increase the **reservation quota from 3% to 4%**. It means that now 4% reservation quota of all vacancies in government organizations will be reserved for disabled people.
- iv. Another very important feature of this act is the provision of **Special Courts in each District**. These special courts will be handle cases pertaining to the violation of the Rights of Persons with Disabilities.
- v. Office of the Chief Commissioner and office of State Commissioner of Person with Disabilities have been given more powers.
- vi. National and State Fund will be created to provide financial support to person with Disabilities.
- vii. Emphasis has been given to ensure accessibility in public buildings both government and private within a prescribed time-frame.
- viii. Government of India and State government provide a **Unique Disability Identity Card (UDID)**. This certificate is usually issued by medical boards constituted in certain government hospitals. In this certificate mentions the extent of disability percentage, permanence of disability and validity period. With the disability certificate, government has

attached a number of benefits and facilities. These benefits vary from state to state and also according to the type and extend of disability.

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 AND PERSONS WITH AUTISM SPECTRUM DISORDER

On read-through of the act, it is observed that thought of autism spectrum disorder has been included as a condition of disability, special need of persons with autism spectrum disorder

On read-through of the Act, it is observed that though autism spectrum disorder has been included as a condition of disability, special needs of persons with autism spectrum disorder and their families have not been properly addressed. PWD with autism spectrum disorder require special and different types of attention and are due to the nature of their disability. Frequently, persons with autism spectrum disorder are not in a position to be aware of their disability because of the lack of insight. In these circumstances, their families are great asset in providing them care and support. However, the provisions of the section 7(2) of the Act may result in a situation, in which the family members and other teachers may be less willing to be proactive and rather be scared to provide the required help. Anyone who steps in and tries to do something for such a PWD having autism spectrum disorder can be reported against by any person walking on the street as violating this law and can be held to be doing as such by the law enforcing authorities. Thus, the Act proscribes the service provider and the family for providing treatment of persons with autism spectrum disorder even though the person may be at a clear risk to himself or to others. The section 7(2) has been inserted for a good cause of protecting PWD from acts of abuse, violence and exploitation. But its application to those with special needs proper modification to address this problem. The Government run mental health services are not available in most of the districts and in about one-third of the districts in the country, there are no mental health services at all. Vast number of autism spectrum disorder with high support needs have no support available to them except that of their family members. Strong family and social bond that exist in our country are of great help for autism spectrum disorder. If the importance of family for this purpose is discouraged, persons living with autism spectrum disorder and intellectual impairments may get abandoned and may be left to roam on the streets.

Thus, the Act puts the onus to seek support upon the PWD, relies excessively on the NGOs, and fails to see the importance of the family. Moreover, it denies the possibility that a person living with autism spectrum disorder or with intellectual disability may not be able to seek support at all or may not be able to take a decision even when all the supports are made available. While ignoring the role and importance of family in the care of autism spectrum disorder, the Act is silent on how the vast support system would be built for such a country with large number of persons suffering from autism spectrum disorder. Even if any support system is actually built in urban and semiurban

areas, how can be it imagined that the autism spectrum disorder living in remote villages would get access to them where even the most basic health facility is not available?

After going through all these provisions, it seems that a universal legal capacity in all PWD has been presumed including in those with autism spectrum disorder and the existence of intellectual disability in autism spectrum disorder is denied. However, the Act itself, in some of its sections, presumes lack of legal capacity in respect of the autism spectrum disorder. Sections 62(1) and 68(1) disqualify “a person of unsound mind and stand so declared by a competent court” from becoming the member of the Central and State Advisory Boards respectively. Unreasonably, lower number of jobs reserved for persons living with autism, persons with intellectual impairment, mental illness, specific learning disability and multiple disability (1% for all five taken together) also suggest an assumption of incapacity of the person with autism spectrum disorder. Chapters of education, vocational, and self-employment are silent on the specific measures that need to be taken to ensure the realization of the rights for persons with autism spectrum disorder. An assumption of incapacity to some extent or other in persons with autism spectrum disorder seems to work here too. Moreover, considering the attitudinal and environmental barriers faced by persons with autism spectrum disorder, there should have been special emphasis and social welfare measures to bring them into mainstream.

The subsection 3 of the Act as above has an exception clause of “a proportionate means of achieving a legitimate aim.” Recognition of impairment of mental state and understanding in the process of treatment and care would be a legitimate aim and some special provision in this respect may be in fact highly beneficial for proper care for the persons with autism spectrum disorder and ultimately, the society at large would be benefitted.

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 AND EDUCATIONIST

The RPwD Act 2016 contains 17 chapters with 102 sections. All these chapters are important to educationist while chapters 1, 5, 10 and 11 hold special importance as the provisions in these chapters are closely associated with the ethics of physical and mental health professionals. The definitions of specified disabilities given at the end of the Gazette Notification as a ‘Schedule’ are an extension of definitions given in chapter 1, section 2(zc). Mental health disabilities like intellectual disabilities, specific learning disabilities and autism spectrum disorders are clubbed together creating confusion for the certifying doctors and implementing Government departments. By this definition it looks like that these three items are one and the same. It has to be rectified immediately before framing rules for implementation of the Act. This Act contains a new disability known as ‘Chronic Neurological Disorder’. The term ‘Person with Disability’ denotes long term impairment. Still the word chronic is added for more clarity during certification. It would have been nice to prefix the term ‘chronic’ before persons with autism spectrum disorder as a disability. Chapter 5 deals with health care, research, and rehabilitation etc. for persons with disability while Chapter 10 deals with

certification procedure. While framing rules under this Act, the professional ethics and freedom of look of educationist should be protected. Chapter 11 deals with constitution of Advisory Boards and nomination of members.

CONCLUSION

It would have been better if the specific aspects concerning the persons living with autism spectrum disorder, such as the matter of their protection from abuse, violence and exploitation, and responsibilities were covered by suitable and comprehensive provisions in RPwD, 2016 leaving only general provisions to be covered by this Act. However, due to reasons unknown, it was not done. Intellectual Disability (Mental Retardation), Autism and Multiple Disabilities which were well covered earlier by National Trust Act of 1999 will face similar situation like people with autism spectrum disorder by this Act. It is pertinent to note that Indian Psychiatric Society, the largest professional association of psychiatrists in India with more than 90% of qualified psychiatrists in its fold, was not involved as a stakeholder during the process of drafting of the RPwD Act, 2016 though it made its representation on its own initiative at various stages. It must be recognized that the psychiatric professionals hold expertise in the field of treatment and care of the persons living with autism and intellectual disability. Therefore, their advice must be given due importance while drafting any legislation in this field. Practical difficulties anticipated occurring in the treatment and care of the persons with autism spectrum disorder and in the delivery of mental health services have been discussed here. These facts should be taken into consideration and necessary measures should be undertaken while framing rules by the central and the state Governments for implementation of this Act.

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