



## **POLICY SHORTCOMINGS: EFFECTIVE IMPLEMENTATION OF THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016**

Apurva Thakur<sup>1</sup>

### **ABSTRACT**

*Disability rights movements around the world have made societies recognize the need of an effective law and policy to ensure rights of Persons with Disability (PWD). To attain this, the United Nations Convention on Rights of Persons with Disabilities (UNCRPD), 2006 was accepted by countries around the world. Encouraged by international commitments, India enacted the Rights of Persons with Disabilities Act, 2016 (RPWD Act) with an intent to balance the moral-social-legal and political aspirations of PWD. The effectiveness of any legislation, however, depends on its efficacy and not merely in text.*

*The Paper suggests that implementation of the RPWD Act requires effective policy strategies from governments. The Paper also identifies inadequacies in the National Disability Policy, 2006 and identifies wrong steps taken in designing appropriate policy thereunder. The pressing need to revamp the existing disability policy will necessitate structural changes along with a shift in perceptions of disability. The focus should be to create accessible external environments rather than any inability of the disabled individual. The author suggests universalization of disability policies to address endemic shortcomings and also create an un-stigmatized and equal society for PWD.*

**KEYWORDS:** Accessible, RPWD Act 2016, Disability, policy

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<sup>1</sup> Assistant Professor of Law

## INTRODUCTION

In a popular painting titled ‘The Cripples’, four men with locomotor disability are depicted, each of them, holding some form of prosthetics and having a deformed face. All of them are looking for the best begging spot and are engaged in overcoming challenges that are thrown up due to their disability. The painting depicts uncertainty, ordinariness and persistence rather than privilege. Disability presents an opportunity for solutions along with throwing up a multitude of problems.<sup>2</sup> It forces us to look at the unusual and seek non-linear solutions. Disability is intrinsic in the fact of human life.<sup>3</sup>

Approximately 15% of the world’s population has some form of disability<sup>4</sup>. An estimated 2.1 % of the Indian population is disabled, amongst which, 12.6 million are male and 9.3 million are females.<sup>5</sup>

The understanding of disability in India is mired in a complex web of stigmatization, a belated disability rights movement and an over-reliance on westernized models of law and policy formulation. As a result, disability in India lacks a clear definition, which gives wide power to the government to add, remove and decide, what constitutes disability. The categorization of disability is overly reliant on the medical model despite an increasing trend towards inclusivity and a theoretical shift from the medical model to the sociological model.

In keeping with international obligations under the United Nation Convention on Rights of Persons with Disabilities, 2007<sup>6</sup> (UNCRPD), the Government of India passed two legislations entitled Rights of Persons with Disabilities Act, 2016<sup>7</sup> (RPWD) and Mental Health Care Act 2017, (MHCA). These legislations were intended to bring about sociological shifts in perceptions of disability. However, a gap soon yawned between the intention of the RPWD Act and the intent thereof. The Paper will examine these deficiencies and suggest measures to achieve effective implementation.

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<sup>2</sup> ALBRECHT, G. L., SEELMAN, K. D., & BURY, M. 51 (2001). Handbook of disability studies. Thousand Oaks, Calif, Sage Publications.

<sup>3</sup> Garland-Thomson, Rosemarie. Eugenic World Building and Disability: The Strange World of Kazuo Ishiguro's *Never Let Me Go*. Journal of Medical Humanities. (2015). Available at: DOI- 38. 10.1007/s10912-015-9368-y.

<sup>4</sup> World Health Organization, World Report on Disability (last accessed on April 12,2020) available at: [https://www.who.int/disabilities/world\\_report/2011/report/en/](https://www.who.int/disabilities/world_report/2011/report/en/)

<sup>5</sup>Office of the Registrar General & Census Commissioner, India Ministry of Home Affairs, Government of India available at: [https://censusindia.gov.in/Census\\_And\\_You/disabled\\_population.aspx](https://censusindia.gov.in/Census_And_You/disabled_population.aspx) (last accessed on April 12, 2020)

<sup>6</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, (last accessed on April 12,2020) available at: <https://www.refworld.org/docid/45f973632.html>

<sup>7</sup> Rights of Person With Disabilities Act(2016), Act 49 of 2016.

## PERCEPTIONS OF DISABILITY

In order to gauge the true nature of disability, it is necessary to divorce impairment from disability. Impairment means that a person has limited function of one or multiple bodily function, and is a purely medical term. On the other hand, disability is a socio-political barrier which hinders full participation of Persons with Disability (PWD) in society, primarily due to the inability of the State to formulate an effective integration policy.

Perceptions of disability are multi-faceted and stem from systemic discrimination based on cultural perceptions. This paper explores the two theories of disability viz., the medical and the sociological model.

### A. THE MEDICAL MODEL:

The medical model of disability describes it as something of a personal tragedy that an individual has to face and sometimes their families too. It categorizes disability based on medical science and devises strategies aimed at alleviating such disadvantages. The focus is on remedies which lean towards compensation, whether by way of concessions or relaxations, rather than remedies which should be based on inclusion. Under the medical model, PWD are based on an *inherent* inequality by way of their disability and need to be treated specially by way of reservations. The medical model is criticized because of a singular focus on impairment of the disabled for the purpose of legal redressal distracts attention from the social and structural barriers that prevent 'equal participation' of the disabled in the society.<sup>8</sup>

### B. THE SOCIOLOGICAL MODEL:

The sociological model of disability focuses on inclusion by presuming that disability is a mere difference and that persons with disability are able and equal. Some authors have regarded disability as another form of human diversity.<sup>9</sup> The only circumstance that makes such people different is the apathetic approach of the government while drafting policies for the disabled, i.e., the policy which overlooks constructing a ramp to every staircase and doesn't provide a braille copy of all texts. The sociological model attempts to break free from the constraints of mere medical incapacity toward a truly equal society.

In India, even in decisions around disability, the medical definition is primarily relied upon, since it is the most visible and available piece of evidence. If medical disability of a petitioner

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<sup>8</sup> Renu Addlakha and Saptarishi Mandal, Disability Law in India: Paradigm Shift or Evolving Discourse? 44 EPW 62-68, (2009).

<sup>9</sup> Greg Bognar, Is Disability a Mere Difference, 42 Med Ethics 46-49, (2016).

can be proved (for rights) and disproved (for liability), then the result of the case hinges on this sole factor. In *Deaf Employees Welfare Association v UOI*<sup>10</sup>, equal treatment of deaf as well as blind government employees with regard to transport allowance was sought. The court, in its wisdom, allowed the petition granting the concession, stating that the type of disability cannot be a ground of further discrimination. In passing such an order, the court unknowingly used the medical definition of disability, albeit to prevent a social discrimination. While disability is defined as a medical concept, its implications in law are socio-legal. These two concepts of disability are inter-woven and cannot be extricated. When these two fundamentally conflicting definitions of disability are applied, it is a jurisprudential nightmare, as the scope widens beyond comprehension, leading to dilution of common law and policy.

More recently, the Supreme Court in *Vikash Kumar v. Union Public Service Commission*<sup>11</sup> has emphasized the need of an inclusive disability policy in order to effectively implement the RPWD Act, 2016. It discussed the ambit of ‘reasonable accommodation’ and urged the states to have a purposive approach towards disability law and policy.

## THE INDIAN DISABILITY POLICY

The National Policy for Persons with Disability was framed in 2006<sup>12</sup> (Policy) was enacted to usher in physical as well as physiological changes in the approach to PWD. Interestingly, it states that “*every child with disability must have access to appropriate pre-school, primary and secondary level education by 2020*”.<sup>13</sup> It states that special care must be taken to increase accessibility - physically, structurally and socially. The recommendations include barrier free access to buildings, adapting methods of teaching to suit needs of disabled children, availability of braille/audiobooks/ sign language interpreters and promotion of distance learning programs etc. However, even after notification of the RPWD Act, 2016, the Policy remains the same, in spite of having been framed a decade earlier. Moreover, even the recommendations contained in the Policy are yet to be implemented since much of the suggestions are still being recycled

<sup>10</sup> Civil Petition 107 of 2011, decided on December 12, 2013

<sup>11</sup> *Vikash Kumar v. Union Public Service Commission*, SLP No. 1882 of 2021

<sup>12</sup> National Disability Policy, 2006 (last accessed on 18 June, 2020) available at: [https://www.mospi.gov.in/sites/default/files/reports\\_and\\_publication/statistical\\_publication/social\\_statistics/Chapter%208%20-National%20redressal.pdf](https://www.mospi.gov.in/sites/default/files/reports_and_publication/statistical_publication/social_statistics/Chapter%208%20-National%20redressal.pdf).

<sup>13</sup> National Policy for Persons with Disabilities, No.3-1/1993-DD.III Government of India Ministry of Social Justice and Empowerment (Last accessed on 18 June, 2020) available at: <https://disabilityaffairs.gov.in/upload/uploadfiles/files/National%20Policy.pdf>.

and shuttled between the Human Resource Development Ministry and the Ministry of Social Justice and Welfare.

## **HURDLES IN POLICY IMPLEMENTATION**

### **DIVESTMENT OF RESPONSIBILITY TO STATE AND LOCAL GOVERNMENTS**

The RPWD Act has made the Central, State and Local governments responsible for ensuring implementation of its obligations<sup>14</sup>. The formulation of the Policy has now been divested to the respective State Governments and local bodies. This divestment of power to the state governments has proven to be ineffective as most states lack the will and finances to introduce disability programs. In 2018, merely one-third of the States had notified the Disability Rules.<sup>15</sup>

National budgets will be tight for the foreseeable future, especially in light of the COVID-19 pandemic. Any policy will need to justify expenditure of every rupee in order to see the light of the day. This raises the age-old policy dilemma, of whether to cut-back benefits from a small § of society or to continue long standing welfare policies for a larger § of society, despite increasing fiscal deficits.

Devolution is the panacea of the day. While the Union Government has increasingly devolved its responsibilities under the RPWD Act to the states, it has not provided enough funds to the states to enable them to do so. This pattern is, in turn, repeated in local Governments. Political agencies are apparently constrained on their operational roles to private sectors and NGOs as much as they can. However, this has led to an abdication by the Government of its responsibilities under the RPWD.

### **POOR BUDGETARY ALLOCATION**

The budgetary allocation to the Department of Social Welfare and Empowerment Ministry is INR 1325.39 crores for the year 2020-2021, which is a slight improvement from the budget allocation of INR 1009.11 in 2019-2020.<sup>16</sup> The allocation of a mere 0.04 per cent of the total expenditure of the Government is grossly inadequate to address the needs of a population of

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<sup>14</sup> Supra Note 6; §2 (b)

<sup>15</sup> Only one third states have notified rules under disabilities act: NCPEDP, Business Standard, (July 22, 2018) Available at: [https://www.business-standard.com/article/pti-stories/only-one-third-states-have-notified-rules-under-disabilities-act-ncpedp-118072200333\\_1.html](https://www.business-standard.com/article/pti-stories/only-one-third-states-have-notified-rules-under-disabilities-act-ncpedp-118072200333_1.html). (last accessed on June 18, 2020).

<sup>16</sup> Ministry of Social Justice and Empowerment Demand No. 93 Department of Empowerment of Persons with Disabilities, Govt. of India, (last accessed on 20 April, 2021) available at: <https://www.indiabudget.gov.in/doc/eb/sbe93.pdf>.

nearly 2.6 crore persons.<sup>17</sup> Moreover, the allocations for the Department of Social Welfare have remained constant for the last three years.<sup>18</sup> It is discouraging that even those policy schemes which are focused on only medical rehabilitation of PWD such as Assistance to Disabled Persons for purchasing/fitting of aids/appliances (ADIP), Artificial Limbs Manufacturing Corporation of India (ALIMCO); and National Handicapped Finance and Development Corporation (NHFDC), show a declining in budgetary allocation<sup>19</sup>. The Research and Rehabilitation Institutes and the Institute of Sign Language find no allocation in this financial year (2020-2021). Scheme for Implementation of Persons with Disabilities Act (SIPDA), which concerns accessibility and district rehabilitation, finds a reduction of funds from INR 63.50 crores when compared to 2019-2020.<sup>20</sup>

The Government's dictum seems to be "devolution" down the chain of government and out into the private-profit making sectors or to the individual in the form of tax reliefs. The Disability Policy requires the state and local governments to spend on providing facilities to PWD, yet, the Financial Memorandum does not provide any estimate of the finances required to meet the Policy obligations.<sup>21</sup> There is no estimate of the expenditure expected to be incurred by the Centre or States, or the manner of sharing of funds between them. The memorandum states "since disability is a state subject under the Constitution, it is also expected that over time the states will contribute substantially to the implementation of the provisions of the Bill."<sup>22</sup> However, without adequate funds, the implementation of the Bill is at best patchy, and at worst, non-existent.

The spending by the Central Government towards PWD has remained fixed at 0.02% in the last three years.<sup>23</sup> Even though the budgetary allocation is dismal, even those funds remain

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<sup>17</sup> Disabled Persons in India: A Statistical Profile (2016) (Last accessed on 1 June, 2021) available at: [https://mospi.nic.in/sites/default/files/publication\\_reports/Disabled\\_persons\\_in\\_India\\_2016.pdf](https://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf).

CRPD Alternate Report for India (2019) (last accessed on 20 April, 2021) available at: <https://accessability.co.in/wp-content/uploads/2019/02/CRPD-Alternate-Report-for-India-1.pdf>, pp. 44

<sup>19</sup> Decoding the Priorities: An analysis of the Union Budget (last accessed on 25 April, 2021) available at: <https://www.cbgaaindia.org/wp-content/uploads/2020/02/Decoding-the-Priorities-An-Analysis-of-Union-Budget-2020-21-2.pdf?cv=1>.

<sup>20</sup> Ibid.

<sup>21</sup> CRPD Alternate Report for India (2019) (last accessed on 20 April, 2021) available at: <https://accessability.co.in/wp-content/uploads/2019/02/CRPD-Alternate-Report-for-India-1.pdf>.

<sup>22</sup> Legislative Brief: The Rights of Persons with Disability Bill, 2004, PRS India (last accessed on 20 April, 2021), available at: <https://www.prsindia.org/uploads/media/Person%20with%20Disabilities/Legislative%20Brief%20%20-%20Disabilities%202014.pdf>.

<sup>23</sup> CRPD Alternate Report for India (2019) (last accessed on 20 April, 2021) available at: <https://accessability.co.in/wp-content/uploads/2019/02/CRPD-Alternate-Report-for-India-1.pdf>.

underutilized.<sup>24</sup> The end result is a complex administrative web of under-funding and mis-management.

## **FAULTY STATISTICS AND POOR MONITORING**

India lacks a comprehensive statistical research study on disabled population, this is so, in part, due to poor interest and therefore poor fund allocation to promote policy-research through better disability census. Moreover, even the veracity of the census data gathered is questionable as being outdated and under-reported. Governments often, also inflate the level of effort and success in implementation of welfare schemes. There is no independent and reliable research organization that may gather unbiased data. As a result, what remains is the official government, non-contested data.

For instance, the 2011 census states that the disabled population in India is 2.21%<sup>25</sup>, which is lower than global average. The World Bank however, estimates that there is a prevalence of 4-8% disability in India.<sup>26</sup> This shows a variance of 2-6% in disability estimates. When put in percentages, it may look like insignificant, but when put in absolute numbers, that translates to one in every forty-four persons that are disabled. This sort of statistical representation depicts the disabled population as a small minority which then may justify the meagre involvement of the Policy makers toward PWD, allowing governments to focus on larger agendas, like poverty eradication or mal-nutrition. This approach denies the fact that disability should be a major part of the healthcare policy- “*we are all temporarily abled*”<sup>27</sup>. If India’s largely young, population realizes that a disability policy is likely to benefit it in the future, they are more likely to push for government reforms.

Deficient and derisory data and monitoring sets the government up for failure across all levels of governance, which makes it difficult to calculate and estimate population data and in turn leads to inadequate design, implementation and monitoring targeted programs. Though RPWD

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<sup>24</sup> Ibid, pp. 4.

<sup>25</sup>Office of the Registrar General & Census Commissioner, India, GOI (last accessed on 10 May, 2021) available at: [https://censusindia.gov.in/census\\_and\\_you/disabled\\_population.aspx](https://censusindia.gov.in/census_and_you/disabled_population.aspx).

<sup>26</sup>The World Bank, People with Disabilities in India: From Commitments to Outcomes (last accessed on 20 June, 2020) available at: <https://documents.worldbank.org/curated/en/577801468259486686/pdf/502090WP0Peopl1Box0342042B01PUBLIC1.pdf>

<sup>27</sup> Parth Shastri, TOI, We all are temporarily abled, says Pranav Desai (Dec 5, 2016) available at: <https://timesofindia.indiatimes.com/city/ahmedabad/We-all-are-temporarily-abled-says-Pranav-Desai/articleshow/55798052.cms> (last accessed on June 20, 2020)

Act, 2016 talks about ‘social audit’<sup>28</sup> of all schemes and programs concerned with PWD, this is not reflected in policy design.

## **LACK OF CROSS - SECTORAL APPROACH**

Disability inclusion falls under by the Ministry of Social Justice and Empowerment (MSJE)<sup>29</sup>. However, unlike the intent of the RPWD Act, 2016 which speaks of looking at policies in a cross-sectoral manner, only 8 out of 100 Ministries and Departments include PWD in their programs and schemes.<sup>30</sup> In addition, many government websites lack inclusivity and accessibility, intensifying the need for a Cross-Sectoral approach to inclusion strategies.

There is also a gap in the study of inter- § alism in disability, leading to blind spots in policy formulation. For instance, women with disabilities are more likely to face violence at home<sup>31</sup>. A 2018 World Bank Study disclosed that women with disabilities are more likely to be victims of violence or rape than non-disabled women<sup>32</sup>. A 2004 survey in Odisha, India found that virtually all the women and girls with disabilities were beaten at home, 25% of women with intellectual disabilities had been raped and 6% of women with disabilities had been forcibly sterilized.<sup>33</sup> The skewed disability perspective that views disability only through the lens of men, has overlooked the discrimination of women that stems especially from disability, particularly those of childbearing and employment<sup>34</sup>

A cross Sectoral outlook would imply bringing together various discrimination markers of disability. Research on how aspects like caste, gender or income support or unsettle the disability experience is crucial and involves difficult analysis across socio-cultural categories, which Indian policymaking, at present, lacks.

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<sup>28</sup> § 48, RPWD Act, 2016.

<sup>29</sup> Department of Disability Affairs, <https://disabilityaffairs.gov.in/content/>.

<sup>30</sup> National CRPD Coalition-India, towards Parallel report, (2019) (last accessed on June 21, 2020) available at: <https://accessability.co.in/wp-content/uploads/2019/02/CRPD-Alternate-Report-for-India-1.pdf>.

<sup>31</sup> United Nations Organization, Department of Economic and Social Affairs, Women and girls with disabilities (last accessed on, May 11, 2021) available at: <https://www.un.org/development/desa/disabilities/issues/women-and-girls-with-disabilities.html>.

<sup>32</sup> The World Bank Study, Disability Inclusion (2018), (last accessed on, July 1, 2020) available at: <https://www.worldbank.org/en/topic/disability>.

<sup>33</sup> Department of Economic and Social Disability, Factsheet on Persons with Disability, (last accessed on July 1, 2020) available at: <https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html>.

<sup>34</sup> Thomas J. Gerschick, 25 Toward a Theory of Disability and Gender Signs, 1283-1268, *Feminisms at a Millennium*, The University of Chicago Press (2000).



## OVERLOOKED INCLUSIVE EDUCATION

Inclusive education has gathered momentum amid rising awareness of Disability Rights'. India, too, has given inclusive education a fair thought, establishing safeguards through the RPWD Act. The Act is ideal, balancing the medical and sociological schools of thought into a modern, updated outlook towards PWD. However, the effect of the RPWD Act, like its predecessor, has remained ensconced in legal jargon with little or patchy implementation.

The RPWD Act uses the term 'accessibility' with its many facets and has wisely, included various facets of accessibility including access to education, housing, and justice among others. It seems to have disregarded, however, inclusive education and a workable strategy to include children with disability into the mainstream of education practices.

Right to Education is a fundamental guarantee of equal rights for children with disabilities and their social inclusion. In 2002, the provision of universal primary education was recognized as a fundamental right under Article 21A<sup>35</sup> of the Indian Constitution, thereby guaranteeing all children between the ages of 6-14, a justiciable right to free and compulsory primary education. This was subsequently mandated through legislation such as the Right of Children to Free and Compulsory Education Act, 2009<sup>36</sup> (RTE Act). The RTE Act buttresses its intention to include disability within its ambit by clarifying that the right to education includes those who belong to a broadly termed 'disadvantaged groups.'

The RPWD Act defines inclusive education as *“a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities.”*<sup>37</sup> It also imposes an obligation on the government to take steps to ensure inclusive education.

In the face of evolving legal standards, there are many irregularities between the RTE Act and the RPWD Act which have resulted in an inconsistent legislative and regulatory framework for inclusive education. Since the RTE Act was enacted prior to the modification of the disability law framework, it appears to have carried forward the approach of “integration” as opposed to “inclusion”. As Sharma and Deppler explain, integrated education emphasises the “student to

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<sup>35</sup>Eighty sixth Constitutional Amendment Act, 2002 (December 12, 2002).

<sup>36</sup> Act No. 35 of 2009.

<sup>37</sup> Rights of Persons with Disability Act, 2016, Act 49 of 2016, §2(m).

fit in the system rather than the system to adapt”, while inclusive education emphasises changes in system-level practices and policies to meet student needs.”<sup>38</sup>

Disability and lack of education share an uncomfortable bond. According to the 76<sup>th</sup> National Sample Survey<sup>39</sup>, 2018, about 48% of disabled people are illiterate and only 62.9% of disabled people between the ages of 3 and 35 had ever attended regular schools. Meanwhile, only 4.1 % of those not enrolled in regular schools had ever been enrolled in special schools. Disabled children rarely progress beyond primary school, and only 9% have completed higher secondary education.<sup>4</sup> The 2011 Census estimates that there are 2.13 million children with a disability, of which 28% are not in school. Overall, children with disabilities are less likely to be in school and more likely to drop out of school.<sup>40</sup> In light of these realities, it is imperative that the RTE Act and the RPWD Act be brought on the same page, with regard to the ideation and implementation of inclusive education.

## LACK OF DESIGN INNOVATION

India lags behind on its inclusivity and accessible design innovations. A study shows that a mere 3% of buildings in India are accessible.<sup>41</sup> There is no aggregated data of public transport and institutions, however, state studies show that these figures are dismal. One of the most common problems when designing for accessibility knows what needs you should design for.<sup>42</sup> Moreover, all the accessibility data has been collected is only with respect to physical disability.

Traditional measurements of accessibility may be flawed, as they often ignore organizational barriers and individual mobility limitations which may affect travel time, effort, and even successful completion.<sup>43</sup> Several studies done by the Dr. Bhanuben Nanavati College of

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<sup>38</sup> Umesh Sharma and Deppeler Joanne, 1 Integrated Education in India: Challenges and Prospect Disability Studies, Quarterly 25 (2005).

<sup>39</sup> The World Bank, ‘People with Disabilities in India: From Commitment to Outcomes’ (2007) (last accessed on June 5, 2020) available at: <https://documents1.worldbank.org/curated/en/358151468268839622/pdf/415850IN0Disab1ort0NOV200701PUBLIC1.pdf>.

<sup>40</sup> Parul Bakhshi, Ganesh M Babulal and Jean Francois Trani, 1 ‘Education of Children with Disabilities in New PLoS ONE 12 Delhi: When Does Exclusion Occur?’ (2017)

<sup>41</sup> Disabled Accessibility, Hindustan Times, (2018), available at: <https://www.hindustantimes.com/editorials/with-just-3-of-india-s-buildings-accessible-our-disabled-are-at-a-huge-disadvantage/story-Rh2rd4QzNzw9kHpmaTPV1H.html> (last accessed on June 5, 2020)

<sup>42</sup> Steven Lambert, Designing for accessibility and inclusion, Smash Magazine (9 May 2018) available at: <https://www.smashingmagazine.com/2018/04/designing-accessibility-inclusion/> (Last accessed on July 6, 2020)

<sup>43</sup> CHURCH, RICHARD & MARSTON, JAMES. Measuring Accessibility for People with a Disability. Geographical Analysis. (2003). 10.1111/j.1538-4632.2003.tb01102.x.

Architecture for Women<sup>44</sup> in Pune have shown that though accessibility measures have been undertaken by the local government, they are done without a proper understanding of the exercise and without conducting feasibility studies. Basic design errors such as awkwardly placed tactile tiles and unevenly placed footpaths, too steep slopes, ultimately result in redundancy of the exercise. Accessibility training of architects will ensure the aim of such inclusivity measures is effectively translated and reproduced.

## **INADEQUATE PARTICIPATORY PROCESS**

Stakeholders' engagement is the key to a participatory and democratic process. It is imperative that policy decisions involve those who are directly affected by them and have a keen insight into the impediments in implementation strategies. Stakeholders may support or oppose decisions and may be influential in the organization or within the community in which they operate. Inputs from stakeholders will help identify areas of agreement and disagreement by providing a platform for dialogue and will hence present an opportunity to address key stakeholder questions. It will also help policy makers identify underlying community beliefs and align policy with them. Welfare policies often involve a high volume of complex, statistical information that may cause policy-drafters to overlook the finer, indispensable aspects of disability policy-design and hence, it is essential to take the help of on-ground workers and PWD themselves to design a holistic and workable stratagem. Moreover, by building mutual understanding, credibility, and trust, policies are more likely to be implemented as they were intended.<sup>45</sup>

Trends show India lags behind in encouraging participatory process, despite being the largest democracy<sup>46</sup>. The UNCRPD requires all state parties that have ratified the treaty to submit reports on their progress to a committee established by the United Nations.<sup>47</sup> The 2019 parallel report filed on the municipal implementation of UNCRPD in India shows that very little progress has been made with respect to the parameters set out by the UNCRPD. PWD have not been included in the policymaking and planning by the respective ministries. This is crucial to designing good policy is to make the relevant stakeholders' part of the process.

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<sup>44</sup> Universal Design, <https://www.bnca.ac.in/bnca-cells/universal-design/> (Last accessed on July 6,2020)

<sup>45</sup> Lemke, Amy A, and Julie N Harris-Wai. "Stakeholder engagement in policy development: challenges and opportunities for human genomics." *17 Genetics in medicine : official journal of the American College of Medical Genetics* 949-57 (2015): doi:10.1038/gim.2015.8

<sup>46</sup> G. Palanithurai, 68, Participatory Democracy in Indian Political System, 9-20, *IJPS* available at: <https://www.jstor.org/stable/41858816> (2007) (Last accessed on August 1,2020)

<sup>47</sup> United Nations Convention on Rights of Persons with Disabilities, §33

## **LACK OF TRAINING PROGRAMS**

Many developing countries lack inclination to conduct training programs for rehabilitation professionals. According to the 2005 global survey of 114 countries, 37 had not taken action to train rehabilitation personnel and 56 had outdated medical knowledge on disability.<sup>48</sup> Feasibility of training programs is dependent on several factors such as political stability, availability of trained educators, adequate financial support, domestic educational standards, cost and time for training and the overall desire of local governments to facilitate such training programs.<sup>49</sup> Training for rehabilitation personnel must be designed keeping in mind relevant national and international legislation, particularly the UNCRPD. This will help promote a client-centred approach and encourage sharing of ideas between people with disabilities and professionals<sup>50</sup>

India trails behind in its training initiatives which are limited to scattered sensitization programs, workshops and seminars. In order to achieve a well- rounded implementation of disability initiatives, it is imperative to introduce training at the institutional levels, and make it a mandatory process. Every person must be trained in disability empathy and approaches, and only then will it be possible to achieve a truly inclusive society.

## **PREOCCUPATION WITH WESTERNIZED MODELS OF DISABILITY LAW AND POLICY**

Despite the engagement with disability studies in the western countries, countries at the periphery of the English-speaking world, such as India, South Africa and the Asia- Pacific rim countries, require analyses of disability that reflect their own specific colonial-settler histories.<sup>51</sup> In India, disability theory is varied and inconsistent; occasionally, derived from folklore and myth. It is a belief that one is born disabled to pay for the sins of past karma.<sup>52</sup> While it is spiritually impossible to refute this notion, science, has yet prove the same.

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<sup>48</sup> World Health Organization, Expanding education and training, WHO Library Cataloguing-in-Publication Data, 134 available at: [https://www.who.int/disabilities/world\\_report/2011/report.pdf](https://www.who.int/disabilities/world_report/2011/report.pdf) (2011) (Last accessed on August 1, 2020)

<sup>49</sup> Ibid.

<sup>50</sup> HEINICKE-MOTSCH K, SYGALL S, eds. Building an inclusive development community: a manual on including people with disabilities in international development programs. Bloomfield, Kumarian Press (2004).

<sup>51</sup> MEEKOSHA H, Contextualizing disability: developing southern/ global theory (2004)

<sup>52</sup> Disabilities and Bad Deeds in Past Life (Last accessed on August 12, 2020) available at: <https://www.lonelyphilosopher.com/do-people-with-disabilities-have-done-bad-deeds-in-their-past-lives/>.

Shaun Grech seeks to challenge the shortcomings implicit in the assumptions of disability studies that originate from the more developed nations. Such assumptions conceptualize the less developed (Global North) and developing nations (Global South)<sup>53</sup>. Empathy is key to change the context of understanding disability and must, especially in anti-discrimination research, be understood, not only in the context of the researcher's frame of mind, but also in terms of the existing history of the area where the study is being carried out. In India, it takes on myriad tints when viewed through various lenses - religion, folklore, cultural underpinnings and prevailing jurisprudence, leading to discrimination that is both sociological and physiological. It is therefore vital, that when carrying out research in disability, historical, political and theosophical moralities are examined.

India's disability is mired with realities of poverty, colonization and caste-class divisions.<sup>54</sup>

It is important to remember that in de-colonized nations, concerns associated with educational inclusion, human rights and the development of positive disability cultures might be of less importance to people who are living a hand to mouth existence.<sup>55</sup> It is therefore, essential that policy initiatives should take into account social realities rather than toe the line of westernized models of disability law and policy.

Such an approach is not the solution to addressing disability rights in India. With its cultural underpinnings, disability in India needs a unique approach- contextualizing superstitions, local belief systems and religious ideology.

## **TOWARDS UNIVERSALIZATION OF A DISABILITY POLICY: FUTURE COURSE OF ACTION**

The objective of public policy for disability seems to focus largely on solo efforts for an individual and isolated set-up. Policy must be aimed not only at generating employment for PWD, but also at eliminating barriers-both physical and physiological, at present and future work-places.<sup>56</sup> Placing disability in a context which is universal, and realizing that we are all disabled in some sense will help expand the scope of disability interventions- gradually

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<sup>53</sup> Grech, Shaun. Disability, Poverty and Development: Critical Reflections on the Majority World Debate. 771-784 Disability & Society 24.6 (2009).

<sup>54</sup> ANITA GHAI, Disability in the Indian Context: Post-colonial perspectives, Disability/Postmodernity: Embodying Disability Theory, (2002).

<sup>55</sup> Dan Goodley, 28:5 Dis/entangling critical disability studies, Disability & Society, 631-644 (2013) available at: DOI: 10.1080/09687599.2012.717884

<sup>56</sup> Zola, Irving Kenneth. "Toward the Necessary Universalizing of a Disability Policy." The Milbank Quarterly (2005). Available at: doi:10.1111/j.1468-0009.2005.00436.x.

allowing for a shift from internal incapability to external environments and social realities. Ultimately, to rethink disability policy will necessitate re-examination of our elementary values.<sup>57</sup> A disability policy that only focusses on PWD will invariably be a short-sighted approach. A universal policy, which imagines entire populations as disabled and in doing so, designs would help achieve an inclusive and effective result.<sup>58</sup>

The lack of such an approach has led to a circular path of segregation and exclusion. Who is considered disabled, is consistently determined by the medical model of disability as codified in the RPWD Act as it classifies anyone who has a dis-use of 40 % of a limb/ sensory organ as a disabled person.<sup>59</sup>

Any disability policy must be a community policy, applicable to all persons, irrespective of their 'able-ness'. The problems of disability are therefore not purely statistical and not confined to a fixed number of people. It is not essential that issues faced by someone with a disability is merely medical, it could be the result of a number of inter § al disabilities arising from social, architectural, attitudinal and political environments.

A universal design strategy as envisaged by architect Ronal Mace may be the answer to problems of both accessibility as well as stigma. He famously stated, "*Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design*"<sup>60</sup>

There is a dire need to acknowledge that design practices- whether physical, educational, or physiological are biased. An able-bodied measure is flawed since everyone is at some point, disabled. For instance, the standard temperature for air-conditioners in office buildings is found uncomfortable by the employees as being too warm or too cool. The reason for this is because the standard-measure is based on a 'normative' male body that weighs about 70 Kgs. <sup>61</sup>. This is an example of a design bias- where a homogenous measure is presumed to be suitable for

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<sup>57</sup>Lawton, M. P., & Moss, M. (1987). The social relationships of older people. In E. F. Borgatta & R. J. V. Montgomery (Eds.), Sage focus editions, Vol. 86. Critical issues in aging policy: Linking research and values 92–126, Sage Publications, Inc.(1987)

<sup>58</sup> Supra, 42, at 8

<sup>59</sup> No.3603 5/1 /2012-Estt.(Res) Government of India Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training (Last accessed on August 13, 2020) available at: [https://documents.doptirculars.nic.in/D2/D02adm/36035\\_1\\_2012-Estt.Res.-29112013.pdf](https://documents.doptirculars.nic.in/D2/D02adm/36035_1_2012-Estt.Res.-29112013.pdf)

<sup>60</sup> Universal Design vs. Accommodation, Disabilities, Opportunities, Internetworking, and Technology (DO.IT), (Last accessed on August 8, 2020), available at: <https://www.washington.edu/doit/universal-design-vs-accommodation>.

<sup>61</sup> Pam Belluck, Chilly at work? Office formula was devised for men. NY Times, (2015), available at: <https://www.nytimes.com/2015/08/04/science/chilly-at-work-a-decades-old-formula-may-be-to-blame.html>, (Last accessed on August 9, 2020).

all.<sup>62</sup> To be more inclusive, it is essential to design for a varied, heterogeneous group of people. When design is formulated in such a way, disability, no longer remains an inability.<sup>63</sup>

The stigma of disability is ever present—it can be used to indicate inferiority, withdraw privilege, and evoke sympathy. This makes it crucial to break the barrier of able-ism by adopting universal design practices, not just in architecture but also in education, arts and technology.

We must remember Anita Ghai's wise words, "*we are all temporarily-abled*"<sup>64</sup>.

## CONCLUDING REMARKS

Reform efforts focused on establishing basic legal rights for PWD and defending equality have culminated in the enactment of the RPWD Act, 2016. The Act attempts to pave the way towards an inclusive society, by designing comprehensive disability policies. Policy development, however, cannot be done only through the medium of statute-law. A successful policy requires coming together of governments, civil society, stake holders and law. One of the biggest barriers in a policy implementation for PWD remains the 'morality' angle of such a policy. How much spending is justified to benefit a numerically small population?

Research and technology provide solutions to help people overcome or compensate for disabilities, and offer the promise of eventual cures for many conditions. Evolving knowledge of the human genome offers nearly unlimited opportunities to prevent disability. The revolution in communications technology promises benefits to help people overcome disabilities such as deafness or speech problems, and to allow people who have mobility impairments to "commute" to the office or "visit" a museum from their own home. However, questions remain as to the availability of such measures to all. The questions about funding, and discrimination are always looming large in any policy designed for PWD. Dilemma over bio-ethics and the pursuit of a normatively defined "perfect" baby are also worrisome developments. Will the "information superhighway" lead to an isolation of individuals and a re-segregation of people with disabilities.<sup>65</sup>

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<sup>62</sup> Ronald Mace, A perspective on Universal Design (August 1998) available at: [https://projects.ncsu.edu/ncsu/design/cud/about\\_us/usronmacespeech.htm](https://projects.ncsu.edu/ncsu/design/cud/about_us/usronmacespeech.htm) (Last accessed on August 9,2020)

<sup>63</sup> DOLMAGE, JAY TIMOTHY. Universal Design. In Academic Ableism: Disability and Higher Education, 115-52. Ann Arbor: University of Michigan Press, (2017). Available at: [www.jstor.org/stable/j.ctvr33d50.7](http://www.jstor.org/stable/j.ctvr33d50.7). (Last Accessed on 15<sup>th</sup> Oct 2020).

<sup>64</sup> *Supra* note, 42.

<sup>65</sup> Scallet, Leslie J. "Disability Policy and Legislation: A Retrospective and Prospective Overview" 5 Mental and Physical Disability Law Reporter 622-26 (1996) available at: [www.jstor.org/stable/20784738](http://www.jstor.org/stable/20784738). (Last accessed on August 11,2020)

Attempting to balance justice and efficiency is an ‘Achilles Heel’ for all social policymakers. Any form disability policy will have some efficiency cost, and hurdles in implementation. However, for reasons of equality, society must offer some stipulated level of Disability benefits even if it results in some efficiency losses. Perhaps, the shift to a wider net for Disability Policy, will add to unnecessary costs, however, that is a cost Governments must be willing to pay in order to truly achieve an accessible society.<sup>66</sup> If all citizens were fully accommodated, there would be little need for concessions and reservations specifically related to disabilities. It is therefore, essential to build consensus around disability as a reality, and to incorporate a policy for disability as a part of a universal healthcare and national policy rather than an isolated disability policy.

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<sup>66</sup> Richard V. Burkhauser; Mary C. Daly, 16 Policy Watch: U.S. Disability Policy in a Changing Environment, *The Journal of Economic Perspectives*, 213-224, (2002) <http://www.jstor.com/stable/2696583>. (Last accessed on August 11, 2020).