



Rights of persons with disabilities act 2016: A critique

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ABSTRACT

Since Rights of Persons with Disabilities (RPWD) Act (2016) was enacted for the welfare of persons with disability, it is in order to examine its various sections. Author presents a critique of the Act in terms of discussions on definitions for their appropriateness, omissions of certain important aspects, suggested amendments, misplacements of developmental aphasia and autism, contravention and finally linguistic errors.

Keywords: Intellectual disability, specific learning disability, omissions, the disabled, developmental aphasia

INTRODUCTION

The year 1981 was declared as the year of the persons with disability by U. N. enable (1976)¹, when India made a commitment in 2007 to prepare legislation for the disabled (Narayan and John, 2017)². The first Act which Parliament of India passed for protection of interests of the persons with disability was Rehabilitation Council of India Act (1992)³. This Act took care of registering the professionals for the disabled, recognizing the Institutions and courses in the area of disability, developing curricula and other similar matters.

Another Act, Persons with Disability (Equal opportunity, Protection of Rights and Full Participation) Act was passed on December 12th, 1995 (Persons with Disabilities Act, 1995)⁴. This Act was very comprehensive with fourteen significant chapters on Education, Employment, Non-discrimination, Recognition of institutions, Research and Manpower development, Social security, Prevention and Early detection of Disabilities etc. Gupta (2005)⁵ published a critique of this Act, in terms of Omissions, deficiencies in definitions, unenforceable terminology, non discrimination, inclusion of mental illness and some more problems on chapter on employment.

In December 2016, Rights of Persons with Disabilities Act has been enacted to adhere to U.N. Convention on the Rights of Persons with Disabilities (2006).⁶ Autism and learning disability, District level committees find place in this Act. Benchmark disability takes care of disabilities, not defined in measurable terms. This Act takes care of more details, with Special Court, Health, Skill development, National Fund,

Offences and penalties as added features. The author presents the following issues to ponder.

I DEFINITIONS

Chapter I, Person with Disability (page 3, point no. 's') means a person with **'long term'** physical, mental, intellectual or sensory impairment.....

- a) How long is long term? This has not been spelt out. What is minimum for that?
- b) If author assumes long term is at least one month, and If an ophthalmologist or audiologist has assessed vision or hearing respectively and has found that the assessed person is affected by visual or hearing impairment, will the person not get benefits or sanctions or required facilities for a month at least just to justify word 'long term'? Deleting the phrase 'long term' will do a better service.
- c) Is short term not included?

- 2. **The Schedule, Specific learning disability** (page 34, 'a' part of point no 2)

It has been put under 'intellectual disability' as shown below in italicized

- a) [*Intellectual Disability: a condition characterized by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behavior which covers a wide range of everyday, social and practical skills, including – "specific learning disability" means a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia*]

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Four things emerge:

(A) In international literature, in Diagnostic and Statistical Manual of Mental Disorders, version V (American Psychiatric Association, 2013)⁷, there are four criteria mentioned for the diagnosis of specific learning disorder.

These are as follows-

Criterion a): "Difficulties learning and using academic skills, as indicated by the presence of at least one of the following symptoms that have persisted for at least 6 months, despite the provision of interventions that target these difficulties" include inaccurate/ slow/ effortful word reading, difficulties understanding meaning of what is read, and difficulties with spelling, written expression, mastering number sense, number facts, calculation, and with mathematical reasoning.

Criterion b): "Skills substantially and quantifiably below those expected for the individual's chronological age, and cause significant interference with academic achievement, occupational performance or activities of daily living."

Criterion c): "Learning difficulties begin during the school age years."

Criterion d): "**The individual difficulties must not be better accounted for by intellectual disabilities**, uncorrected visual or auditory acuity, other mental or neurological disorders, psychological adversity, lack of proficiency in the language of academic instruction, or inadequate education instruction" (American Psychiatric Association, 2013)⁷.

Clearly, in Criterion D, it is mentioned that the individual difficulties must not be better accounted for by intellectual disabilities (APA, 2013)⁷. And RPWD Act (2016)⁸ mentions it under Intellectual Disabilities.

DSM's definitions are followed by a wide spectrum of nations, India may choose not to, but we can't be in opposite court. It can create conceptual confusion among consumers. Many of the earlier definitions also mentioned that intellectual disability can't explain SLD.

(B) Subjects with specific learning disability do not have adaptive behavior problems. Author has taught this subject since two decades, never ever author came upon literature supporting presence of adaptive behavior problems in the subjects with learning disability (NASSET LD report, 2017; American Psychiatric Association, 2013; Berdine & Blackhurst, 1988)^{9,7,10}

(C) The definition includes the term Dyscalculia. Well. The explanation given for mathematical difficulty (dyscalculia) is deficit in processing language. This makes one infer that mathematical difficulties arising out of language deficits alone are included in dyscalculia. This is a condition of primary language disorder giving rise to a secondary problem in mathematics implying that mathematical problems as a primary disorder have no place in dyscalculia. In fact, disorders in Mathematics arising out of primary language disorders should be precluded from dyscalculia since the intervention required is in language not in mathematics.

(D) If the word 'difficulty' bears a precursor 'serious', it would make a better meaning. Otherwise there are too many children having difficulty, all will claim to be 'Learning disabled'. And then it entitles them to seek exemptions, facilities and benefits.

3. The Schedule, Page 34, Point D, relates to "speech and language disability". It reads as (italicized)

"speech and language disability" means a permanent disability arising out of conditions such as laryngectomy or aphasia affecting one or more components of speech and language due to organic or neurological causes.

Speech and language disabilities should have been taken separately; they are related but not the same. Following points come to mind

a) Aphasia does not give rise to speech problems nor does laryngectomy give rise to language problems. These two disabilities merit separate dealing.

b) Are speech problems only due to laryngectomy? Cleft palate, cerebral palsy also are reasons for speech impairment (Berdine & Blackhurst, 1985, p163.)¹⁰

II OMISSIONS

Chapter III, Page 8, Point no. 17, part (a) reads as (italicized) 'To conduct surveys of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met'

A survey for out of school children for identifying children with disabilities to ascertain whether they can be brought to school, their special needs and to prepare schools for their education' is a dire need of present times. This will play a great role in bringing children with disability to school.

Chapter III, Page 8, Point no. 17, and part (c) reads as (italicized)

'To train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability'

Why teachers trained in teaching children with Learning disability, autism, deaf blindness, cerebral palsy are not included here?

Chapter V, Page 11, Point no. 25, Sub point no. 2, deals with promotion of healthcare and prevention of disability

Part 'c' -- '*Screen all the children at least once in a year for the purpose of identifying "at risk" cases*'

Adding **follow up and maintaining records** will complete the process.

Part 'h' -- **early detection of disabilities** is missing from the sequence.

Part 'k'-- provision of **genetic counseling** for prevention of disability is required.

These three things will strengthen preventive aspect of the program.

The Schedule, Page 35, 5th point, deals with multiple disabilities.

Cerebral palsy (CP) merits inclusion since persons with CP are very often having multiple disabilities. Berdine and Blackhurst (1985, p 287)¹⁰ mention that CP affects gross motor and fine motor coordination, is associated with convulsions, speech disorders, hearing defects, vision problems, deficits in measured intelligence or a combination of these. Singh (2005)¹¹ say CPs have problems of gait, drooling, motor coordination, language and cognitive skills, disturbance in perception, limited speech, social and emotional behavior.

III SUGGESTED AMENDMENTS

Chapter III, Page 9, Point no. 'i' reads as (italicized)

'to make suitable modification in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses'

Exemption of mathematics or substitution of mathematics with subjects like drawing or music will help lot of children with severe dyscalculia

Chapter IV, In skill development and employment: two aspects need to be mentioned: a) identification of jobs which can absorb subjects with disability judiciously, b) ensuring equivalence of wages at par with the non disabled in all sectors need attention and reinforcement of Article 14, related to Right to Equality.

Chapter VI, Page 13, point 34 (1), Part 'd'

Specifying level of intellectual disability will make things easier for employer, caretakers and incumbents all, and that applies to persons with autism or cerebral palsy having intellectual disability also. Presence of such a specification will prevent occupation of posts by persons who are intellectually more disabled than the job can accommodate. This will later prevent resistance of the non disabled and reverse discrimination.

IV MISPLACEMENTS

The Schedule, Page 34, Point 2, (a) Part, last line

1. Inclusion of developmental aphasia in Specific learning disability: Developmental aphasia affects speaking, writing, reading and listening skills. Most of these are already part of specific learning disability. Why include it separately?

Secondly, it is not exactly a type of learning disability. It only overlaps with it. It also overlaps with hearing impairment. In schedule, p 34, there is a separate category of speech and language disability (D part of physical disability), why include in specific learning disability? Moreover origins of developmental aphasia are neurological. In case of specific learning disability, CNS origin or Neurological origins have not been mentioned. How, then, developmental aphasia is being projected as part of specific learning disability.

Thirdly, it can't be explained by intellectual impairment. As per ASHA (2017)¹², Aphasia may cause difficulties in speaking, listening, reading, and writing, but does not affect intelligence. Reynold and Mann (1987)¹³ point out that aphasia is a generic term referring to communication disorders of neurologic origin that are not explained by primary sensory deficits (e.g. deafness) or persuasive cognitive impairment (e.g. mental retardation). And **RPWD Act puts it under Intellectual disability.**

Fourthly, many sources mention, that disturbance of written language (reading, written expression) may be present, developmental aphasia is more a matter of inability to speak (Eisenson, 1986; Myklebust, 1971)^{14, 15}. In light of this, **the placement of aphasia in physical disability (in Part D, page 34, 8th line) only is more justified.**

2. The Schedule, Page 34, Point 2. (b) part , Autism Spectrum Disorder has been put under intellectual disability. Not all subjects with autism are intellectually impaired. Reports indicate variations in frequency of children with Autism having intellectual disability (19% Torrico, 2015; 27% Sarris, 2015; 50% Bertrand et al. 2001, Chakrabarti and Fombonne, 2005, Frith, 2008; 71% Charman et al, 2011)^{16, 17, 18, 19, 20, 21}. Thambirajah and Ramanujan (2016)²² point out that autism spectrum disorder is not same as Intellectual disability. Hence, it can't be justifiably put under intellectual disability.

3. The Schedule, Page 34, point 3, Mental Behavior: This is a heading given to a paragraph which explains mental illness. Behavior may be positive or negative. Illness will definitely fall on negative side. The heading should read Mental Illness for correct meaning and better readability.

V CONTRAVENTION

CHAPTER XVI on OFFENCES AND PENALTIES, Page 29, point no 92, part (b) it reads as (italicized)

Whoever-

(b) assaults or uses force to any person with disability with intent to dishonor him or outrage the modesty of a woman with disability;

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Indian Penal Code - section 354 mentions a punishment at a minimum of one year for such a misdeed. This contravenes the provisions under Indian Penal Code. In fact, the minimum penalty should be more for such a person who outrages the modesty of a woman with disability, because for them it is difficult to fight back. Only then the deterrent effect will come.

VI LINGUISTIC ERRORS

- Chapter XI, Page 23----last line** 11th word----- it should read 'person' not 'persons'
- The Schedule, Page 33 --Physical disability**

iii) part of (a) of A of 1 i.e. physical disability, reads as follows: extreme physical deformity as well as advanced age which prevents him/her from undertaking any gainful occupation, and the expression “leprosy cured” shall construed accordingly. Last part should read as: “leprosy cured shall be construed accordingly”. **‘be’ is missing.**

b) reads as : “*cerebral palsy*” means a group of non-progressive neurological condition affecting body movements and muscle coordination..... It should read as----- “cerebral palsy” means a group of non-progressive conditions..... ‘s’ is missing from conditions.

c) “muscular dystrophy” ----second line---first word should read as ‘diseases’ not ‘disease’

Page 34: 12th line, 3rd word: it should read as ‘reasoning’ not ‘rasing’

Page 34: 7th line from below: first word ---it should read ‘males’ not ‘male’

Page 34: 6th line from below: 13th word should read ‘wound’ not ‘would’

The Rights of The Persons with Disabilities Act does not completely adhere to UNCRPWD⁶, since latter recommends recognizing the diversity of persons with disabilities and RPWD 2016 puts so many different disabilities under intellectual disabilities.

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