

UNIT - V ACTS AND POLICIES

United Nations Convention of Rights of Persons with Disabilities (UNCRPD) (2006) – RCI Act 1992 - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, PWD Act 1995, National Trust Act 1999, Rights of Persons with Disabilities (RPwD) Act, 2016; Provisions and Concessions given by State and Central Government.

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United Nations Convention of Rights of Persons with Disabilities(UNCRPD) (2006) - RCI Act 1992

The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and 1 ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day.

India signed for this convention on the first day of its opening and ratified it on 1st Oct 2007.

Article 1 Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 2 Definitions

For the purposes of the present Convention: “Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

✓ “**Language**” includes spoken and signed languages and other forms of non spoken languages;

✓ “**Discrimination on the basis of disability**” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil

or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

✓ **“Reasonable accommodation”** means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with

disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

✓ **“Universal design”** means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Article 3

General principles

The principles of the present Convention shall be:

✓ Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons

✓ Non-discrimination

✓ Full and effective participation and inclusion in society

✓ Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity

✓ Equality of opportunity

✓ Accessibility

✓ Equality between men and women

✓ Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 4

General obligations

✓ States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.

✓ To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention

✓ To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities

✓ To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes

✓ To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention

✓ To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise

✓ To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines

✓ To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost

○ To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities

✓ To promote the training of professionals and staff working with persons with disabilities in the rights recognized in the present Convention so as to better provide the assistance and services guaranteed by those rights.

✓ With regard to economic, social, and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international

cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

✓ In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

✓ Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State.

✓ There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

✓ The provisions of the present Convention shall extend to all parts of federal States

without any limitations or exceptions.

Article 5

Equality and non-discrimination

✓ States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

✓ States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

✓ In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

✓ Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Article 6

Women with Disabilities

✓ States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

✓ States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

Article 7

Children with disabilities

✓ States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

✓ In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

✓ States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

Article 8 Awareness-raising

States Parties undertake to adopt immediate, effective and appropriate measures:

1. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities

- ✓ To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life

1. To promote awareness of the capabilities and contributions of persons with disabilities.

Measures to this end include:

Initiating and maintaining effective public awareness campaigns designed:

- ✓ To nurture receptiveness to the rights of persons with disabilities
- ✓ To promote positive perceptions and greater social awareness towards persons with disabilities

2. To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market

3. Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities

- ✓ Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention
- ✓ Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Article 9 Accessibility

- ✓ To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information

and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- ✓ Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces
- ✓ Information, communications and other services, including electronic services and emergency services.

States Parties shall also take appropriate measures:

- ✓ To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public
- ✓ To ensure that private entities that offer facilities and services which are open or

provided to the public take into account all aspects of accessibility for persons with disabilities

- ✓ To provide training for stakeholders on accessibility issues facing persons with disabilities
- ✓ To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms
- ✓ To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public
- ✓ To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information
- ✓ To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet
- ✓ To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 10 Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 11

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and

PWD Act 1995

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” has come into enforcement on February 7, 1996.

This law is an important landmark and is a significant step in the direction to ensure equal opportunities for people with disabilities and their full participation in the nation-building.

The Act was made to create awareness and preventive measures for the disabled people. The act works in many field like education, rehabilitation, treatment, reservation, creating barrier free environment, employment and making every disabled person to be self dependent.

Prevention and Early Detection of Disabilities

- ✓ Surveys, investigations and research shall be conducted to ascertain the cause of occurrence of disabilities.
- ✓ Various measures shall be taken to prevent disabilities. Staff at the Primary Health Centre shall be trained to assist in this work.
- ✓ All the children shall be screened once in a year for identifying “at

-risk” cases.

✓ Awareness campaigns shall be launched and sponsored to disseminate information. ∅ Measures shall be taken for pre-natal, perinatal, and post-natal care of the mother and child.

Education of PWD's

✓ Every child with disability shall have the right to free education till the age of 18 years in integrated schools or special schools.

✓ Appropriate transportation, removal of architectural barriers and restructuring of modifications in the examination system shall be ensured for the benefit of children with disabilities.

✓ Children with disabilities shall have the right to free books, scholarships, uniform and other learning material.

✓ Special schools for children with disabilities shall be equipped with vocational training facilities.

✓ Non-formal education shall be promoted for children with disabilities.

✓ Teachers Training Institutions shall be established to develop requisite manpower.

✓ All public educational institution receiving aid from govt. shall reserve not less than 3 percent of seats for PWD

Employment for PWD's

Three percent of vacancies in government employment shall be reserved for people with disabilities, one percent each for persons suffering from

✓ Blindness or Low Vision ∅ Hearing Impairment

✓ Locomotor Disabilities & Cerebral Palsy

✓ Suitable scheme shall be formulated for

✓ The relaxation of upper age limit.

✓ Regulating the employment.

✓ Health and safety measures and creation of a non handicapping.

✓ Environment in places where persons with disabilities are employed.

✓ Government Educational Institutes and other Educational Institutes receiving grant from Government shall reserve at least three percent seats for people with disabilities.

✓ No employee can be sacked or demoted if they become disabled during service, although they can be moved to another post with the same pay and condition.

✓ No promotion can be denied because of impairment.

Affirmative Action

✓ Aids and appliances shall be made available to people with disabilities. —

✓ Allotment of land shall be made at concessional rates to the people with disabilities for:

✓ House

- ✓ Business
- ✓ Special recreational centers
- ✓ Special schools
- ✓ Research schools Factories by entrepreneurs with disability

Non-discrimination

- ✓ Public building, rail compartments, buses, ships and aircrafts will be designed to give easy access to disabled people.
- ✓ In all public places and in waiting rooms, toilets shall be wheelchair accessible.
- ✓ Braille and sound symbols are also to be provided in lifts.
- ✓ All the places of public utility shall be made barrier-free by providing ramps

Research and Manpower Development of PWD's

- ✓ Research in the following areas shall be sponsored and promoted:
- ✓ Identification and treatment of Disability
- ✓ Rehabilitation of PWD's
- ✓ Development of Assistive Devices and equipments for the needy people.
- ✓ Vocational training
- ✓ Removing architectural barriers
- ✓ Financial assistance to the universities, and other research institutions, for undertaking research for special education, rehabilitation and manpower development

Grievance Redressal cell for PWD's

In case of violation of the rights as prescribed in this act, people with disabilities may move an application to the

- ✓ Chief Commissioner for Persons with Disabilities in the Centre, or
Commissioner for Persons with Disabilities in the State

National Trust Act 1999

National Trust status in brief The National Trust is a statutory body constituted by an Act of Parliament namely "The National Trust for the welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999".

The objectives of the National Trust are as follows:-

- ✓ To enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong; ii. To strengthen facilities to provide support to persons with disability to live within their own families;
- ✓ To extend support to registered organizations to provide need-based services during periods of crisis in the family of persons with disability;
- ✓ To deal with problems of persons with disability who do not have family support;
- ✓ To promote measures for the care and protection of persons with disability in the event of the death of their parent or guardian;

- ✓ To evolve procedures for the appointment of guardians and trustees for persons with disability requiring such protection;
- ✓ vii. To facilitate the realization of equal opportunities, protection of rights and full participation of persons with disability; and
- ✓ viii. To do any other act which is incidental to the aforesaid objects.
- ✓ The National Trust has been set up to discharge two basic duties-legal and welfare.
- ✓ Legal duties are discharged through Local Level Committees (LLC) and providing Legal Guardianship.
- ✓ Welfare duty is discharged through the Schemes.

The activities of the National Trust inter-alia include training, awareness and capacity building programmes and shelter, care giving and empowerment.

The National Trust is committed to facilitate equal opportunities, protection of rights and full participation of persons with disabilities (Divyangjan), covered under the Act.

1.Registration of Organizations

As per section 12(1) of the National Trust Act, any voluntary organization, the association of parents of persons with disabilities or the association of persons with disabilities, working in the field of Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities”, already registered under the Societies Registration Act, 1860(21 of 1860), or section 25 of the Companies Act, 1956(1 of 1956), or Public Charitable Trust Act and under Persons With Disability Act, 1995 or Rights of Persons with Disabilities Act, 2016 in the concerned state and on NGO Darpan Portal of Niti Aayog, can apply for registration in the National Trust by filling up online form along with Form 'E' (to be generated through the online system while filling up the online registration form), duly stamped and signed by the Head of the organization.

The registration of such organization shall be necessary with the Trust for availing benefits under the schemes of the Trust. 2

1.Appointment of Legal Guardians

✓ Section 14-17 of The National Trust Act, 1999 elaborates on Guardianship for persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities, to be given by the Local Level Committee. Guardianship is a need-based enabling provision.

✓ A guardian is a person, who is appointed to look after another person or his property. He or she assumes the care and protection of the person for whom he/she is appointed the guardian. The guardian takes all legal decisions on behalf of the person and the property of the ward.

✓ Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities are in a special situation as even after they have

acquired 18 years of age, they may not always be capable of managing their own lives or taking legal decisions for their own betterment.

✓ Therefore, they may require someone to represent their interests in the legal areas throughout their lives. However, in cases of cerebral palsy and multiple disabilities, there may be a need for only limited guardianship because of the availability of enabling mechanisms and/ or scientific facilitations, which enable such persons to function with varying degrees of independence.

1. Under section 14 of the National Trust Act, the Local Level Committee headed by the District Collector is empowered to receive applications in Form A under Rule 16(1) & appoint guardians in Form B under Rule 16(2) for persons with Autism, Cerebral Palsy, Mental Retardation & Multiple Disabilities. It also provides a mechanism for monitoring and protecting their interests including their properties.

2. Local Level Committee (LLC)

Under Section 13 of the National Trust Act 1999, a Local Level Committee is required to be constituted in every district of the country for a period of three years or till it is reconstituted by the Board consisting of the following members:-

✓ An officer of the Civil Service of the Union or of the State not below the rank of District Magistrate or a District Commissioner of a District;

✓ A representative of an organization registered with the National Trust; and

3. A person with disability as defined in Clause (t) of Section 2 of the Persons with Disabilities Act, 1995 (1 of 1996) The function of Local Level Committee is to screen, appoint, monitor and remove legal guardians. LLCs also promote activities such as Awareness generation, convergence and mainstreaming of persons with disabilities. 3

4. State Nodal Agency Centre (SNAC)

In order to carry out the activities of the National Trust, its effective implementation at the state level and for coordination/liaison with the concerned State Government Departments, a reputed Registered Organization of the National Trust is appointed as State Nodal Agency Centre (SNAC).

The National Trust provides funds for conducting institutional activities namely meetings of Registered Organizations / Local Level Committees (LLCs), State Level Coordination Committees (SLCCs), documentation / Reporting, honorarium for coordinator, misc. activities. At present, there are 28 SNACs in the country.

State-Level Coordination Committee (SLCC)

Every State/UT Government has been requested to set up a State Level Coordination Committee (SLCC) for effective implementation and monitoring of the schemes of the National Trust. The Secretary of the State Government looking after disability affairs is the Chairperson and the respective SNAC is the convener of the

Committee. So far, SLCCs have been constituted in 30 States / Union Territories.

The Schemes highlights are as under:

i. Disha (Early Intervention and School Readiness Scheme for 0-10 years) This is an early intervention and school readiness scheme for children in the age group of 0-10 years with the four disabilities covered under the National Trust Act and aims at setting up Disha Centres for early intervention for Persons with Disabilities (Divyangjan) through therapies, trainings and providing support to family members.

The project holders should provide day-care facilities to PwDs (Divyangjan) for at least 4 hours in a day (between 8 am and 6 pm) along with age specific activities. There should be a Special Educator or Early Intervention Therapist, Physiotherapist or Occupational Therapist and Counsellor for PwDs (Divyangjan) along with Caregiver and Ayas in the centre.

ii. VIKAAS (Day Care Scheme for 10+ years) This is a Day care scheme for Divyangjan attaining the age of 10 years and above, primarily to

expand the range of opportunities available to a person with disability for enhancing interpersonal and vocational skills as they are on a transition to higher age groups.

iii. Disha-cum Vikaas Scheme (Day Care) For the Registered Organisations, who were implementing multiple schemes, an option for implementing merged scheme was given. Based on the consent given by the project holders and the scheme guidelines, 42 project holders were allotted the merged Disha-cum-Vikaas Scheme (Day Care) w.e.f. 1.4.2018.

iv. Samarth (Respite Care Residential Scheme) The objective of Samarth scheme is to provide respite care home for orphans or abandoned, families in crisis and also for Persons with Disabilities (Divyangjan) from BPL & LIG families including destitute with at least one of the four disabilities covered under the National Trust Act.

v. Gharaunda (Group Home for Adults)

The objective of Gharaunda scheme is to provide an assured home and minimum quality of care services throughout the life of the persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.

vi. Samarth-cum-Gharaunda Scheme (Residential)

For the Registered Organisations, who were implementing multiple schemes, an option for implementing merged scheme was given. Based on the consent given by the ROs and the scheme guidelines, 12 ROs were allotted the merged Samarth-cum-Gharaunda Scheme (Residential) w.e.f. 1.4.2018.

vii. Badhte Kadam (Awareness, Community Interaction & Innovative Project Scheme)

This scheme shall support Registered Organisations (ROs) of the National Trust to carry out activities that focus on increasing the awareness of The National Trust disabilities.

viii. 'Niramaya' Health Insurance Scheme

The National Trust is implementing Niramaya Health Insurance Scheme for persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities and there is no age bar. Under the Scheme, there is an insurance cover of Rs.1 lakh, which covers OPD, Diagnostic Test, Therapies, Corrective Surgeries, Alternative Medicine and Transportation. The treatment can be taken from any authorized medical practitioner/health care center. It is on reimbursement basis.

4. Sampark- 'In the Hour of Need scheme'

The National Trust had launched Sampark – 'In the hour of need'scheme on 1-11-2019. The objective of the scheme is to providenecessary support to Divyangjan covered under the National Trust Act incase of natural calamity like – Cyclone, Earthquake, Flood etc. for aperiod of 100 days, to commence from the first day of each programme. The 100 days period of the scheme ended on 8-11-2021. However, due to the unique nature of scheme, which requires lot of publicity and coordination among Registered Organizations, parents and professionals working in the field, the scheme is extended till 16-2-2022.

Rights of Persons with Disabilities (RPwD) Act, 2016

The RPwD Act, 2016 was enacted on 28.12.2016 which came into force from 19.04.2017. The salient features of the Act are:-

- i. Responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others.
- ii. Disability has been defined based on an evolving and dynamic concept.
- iii. The Act covers the following specified disabilities:-
 1. Physical Disability
 - a. Locomotor Disability
 - i. Leprosy Cured Person
 - ii. Cerebral Palsy
 - iii. Dwarfism
 - iv. Muscular Dystrophy
 - v. Acid Attack Victims
 - b. Visual Impairment
 - i. Blindness
 - ii. Low Vission
 - c. Hearing Impairment
 - i. Deaf
 - ii. Hard of Hearing
 - d. Speech and Language Disability
 2. Intellectual Disability

- a. Specific Learning Disabilities
 - b. Autism Spectrum Disorder
- 3. Mental Behaviour (Mental Illness)
- 4. Disability caused due to-
 - a. Chronic Neurological Conditions such as-
 - i. Multiple Sclerosis
 - ii. Parkinson's Disease
 - b. Blood Disorder-
 - i. Haemophilia
 - ii. Thalassemia
 - iii. Sickle Cell Disease
- 5. Multiple Disabilities
 - i. Additional benefits have been provided for persons with benchmark disabilities and those with high support needs.
 - ii. Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education.
 - iii. 5% reservation in seats in Government and Government aided higher educational institutions for persons with benchmark disabilities.
 - iv. Stress has been given to ensure accessibility in public buildings (both Government and private) in a prescribed time-frame.
 - v. 4% reservation in Government jobs for certain persons or class of persons with benchmark disability.
 - vi. The Act provides for grant of guardianship by District Court or any authority designated by the State Government under which there will be joint decision – making between the guardian and the persons with disabilities.
 - vii. Broad based Central & State Advisory Boards on Disability to be set up as policy making bodies.
 - viii. The Act provides for strengthening of the Office of Chief Commissioner of Persons with Disabilities and State Commissioners of Disabilities which will act as regulatory bodies and Grievance Redressal agencies and also monitor implementation of the Act. These Offices will be assisted by an Advisory Committee comprising of experts in various disabilities.
 - ix. Creation of National and State Fund to provide financial support to the persons with disabilities.
 - x. The Act provides for penalties for offences committed against persons with disabilities.
 - xi. Designated special Courts to handle cases concerning violation of rights of PwDs.