

Recommendation and Comments on the draft National Policy for Persons with Disabilities

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Chapter-wise recommendations:

CORRESPONDING CHAPTERS IN THE DRAFT NATIONAL DISABILITY POLICY	PAGE NUMBERS	OUR RECOMMENDATIONS
Prevention, Early Identification and Intervention	17-22	<ul style="list-style-type: none">○ The UNCRPD does not cover the prevention of disabilities. Prevention falls within the ambit of Ministry of Family Welfare and Health. Prevention should not be a part of this policy. Moreover, the term prevention has a negative connotation and stigmatises imagery of disabled as unproductive and inefficient. Even if prevention is the concern, we need to address malnutrition, one of the main causes of disability. Similarly, with the adoption of Intersectional approach, the linkage between poverty and disability can be easily established. Thus, alleviation of poverty would also amount to decrease in the number of people with disabilities.○ We need strong guidelines on collection of data based on disability, as also required by Article 32 of the UNCRPD. We have to evolve a robust data collection process, which could estimate different types of disability with much more granularity.○ Washington group questions cover difficulty seeing, hearing, walking and self-care. These can be integrated to monitor rate of disability prevalence in India. Given that the RPwD Act covers a larger set of disabilities, the Washington Group questions can be supplemented by a list of disabilities under the first schedule to the RPwD Act.○ The Policy should direct the DEPwD to obtain, in a time-bound fashion, action plans from different ministries on implementing the RPwD Act.
Disability Certification	23-25	

- The act does not give equivalent certification for programmes being run by government agencies.
- As noted by the CRPD Committee in its concluding observations on India, and as affirmed by a three-judge bench of the Supreme Court in *Vikash Kumar v. UPSC and Ors.*, [2021 SCC OnLine SC 84](#), the following issue needs to be addressed. PwDs should not have to undergo multiple rounds of certification to be able to claim their lawful entitlements. Certification processes need to be made more disabled friendly.

Education

26-33

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- Instead of focusing on disability-specific curriculum, the focus should be on individualized curriculum. Namely, modulating the curriculum to meet the needs of each child with a disability.
- Students with disabilities should not simply be lumped into mainstream schools without being given the additional support needed for them to thrive.
- The provision on monitoring the progress of each child based on learning outcomes may need a relook. This is because such an evaluation will be after the fact, i.e. it will assess how children have performed in exams. Instead, the focus should be on developing mechanisms/tools for parents to provide children the support that they need, on a real-time basis, as education is being pursued, rather than after the fact.
- Apart from recognition and registration, compliance with the provisions of RPWD Act must be made mandatory for the existing educational institutions.
- There must be a provision to carry out periodical audit of educational institutions to assess the scope of inclusion. It must necessarily include the physical spaces of educational institutions, their teaching-learning material, and pedagogical methods.
- Inclusion at the level of Early Childhood Education (ECE) must be clearly mentioned with the policy. ECE

centres/schools and Anganwadi Centres must be required to facilitate inclusion by making appropriate changes to the teaching learning material, pedagogical methods, physical space etc. Parents of CwD must also be trained and equipped to understand and cater to the learning and development needs of their children.

- Educational institutions must also provide for accessible play spaces for CwD.
- Educational institutions must be required to undertake proactive measures for ensuring that information relating to admission processes and the educational institution, especially in relation to facilities/services provided by them to ensure inclusion of CwD, is effectively disseminated among the public.
- Parents must be given access to adequate support and resources to facilitate home-based learning. Availability of trained educators must also be ensured to facilitate the same.
- Pre-service and in-service training must be provided to all teachers to implement Individualised Education Plans for CwD.
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Health

34-39

- Policy should provide specific measures for empowerment of women who are responsible for bringing children with disabilities up. What came up during the discussion was the role of family. In the policy document, disabled person is portrayed as an atomistic individual. However, in Indian context, the role of family is extremely important. This needs to be brought out. A concrete measure could be respite centres. Through such arrangements families which are providing 24 hour support to disabled person gets space / respite, and in turn the quality of

support towards disabled person could improve. In other words, we need to evolve empowerment strategies being sensitive to role of family members as caregivers. Particularly, the immense contribution of mothers of children with disability must be appropriately compensated with financial packages and tax incentives.

Skill Development & Employment **40-46**

- Policy should focus on gendered workspaces.
- Policy should focus on inclusion of PwDs in the informal sector.
- The Policy does not talk of reasonable accommodation in sd programmes and employment. There is a need to develop programs specific to different disabilities. These programs should not be superficial and should focus on upskilling of persons with different disabilities.
- The focus should be on adapting work processes, adjusting or modify job profiles or Combining 2 or more job profiles so as to make an employee with disability employable. For a given category of person.
- There is a need to adapt training and skill development and they should be based on emerging trends in job market.
- The policy lacks in service training of disabled employees by private and government establishments.
- Section 7.7 should be deleted from the policy as it portrays PwDs as highly unproductive and unemployable.
- Employers should provide reasonable accommodation pro-actively. There is a need for a Dialogue between the employer and employee.
- Reasonable accommodation should be seen as Changes and transformation which secures an entry point for PwDs, further facilitating creation of structures, systems, technologies and workplaces which accommodate the needs of PwDs.
- Reasonableness should be seen from the perspective of the employee and not the employer.
- There is a need to consider all factors and just not the economic factors, when assessing undue burden.

- When evaluating if a reasonable accommodation will cause an undue burden, regard should be had to whether the accommodation will benefit multiple disabled people. If so, this should support a finding in favour of the accommodation being provided.
- Besides financial cost for employer and logistics, there is a need to account for the heavy cost of excluding employees with disabilities from workplaces if they are not given reasonable accommodation.
- Burden of proof should be on employer for denying reasonable accommodation.
- The Policy should clarify the date by which the national-level dedicated employment portal for PwDss will be developed.
- There should be a thrust on submission of Equal Opportunity Policies by more organizations.
- Informal sector is completely missing from the policy.
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Sports, Culture, and Recreation **47-51**

- The policy should focus on enhancing the physical literacy of children with disabilities. Sporting activities should be modulated to meet their needs.

Accessibility **52-59**

- Section 9.9 provides that security clearances should be given only when the website meets the accessibility standards. But it does not provide concrete ways for enforcing this directive. There is a need to provide concrete mechanisms of enforcement.
- There should be a mechanism to audit government websites to evaluate how disabled friendly they are. The support of accessibility professionals must be taken for this purpose.
- Domain regulators and concerned ministries should be asked to work with service providers within their remit to make their offerings disabled friendly in a time-bound manner.

- The Policy must set a target for the DEPwD to get its own house in order, in terms of making its website, documents and social media content fully disabled friendly in a time-bound manner.
- There exists substantial confusion in relation to the applicability of accessibility standards to private service providers in India. This is despite the fact that Section 46 of the Rights of Persons with Disabilities Act, 2016 makes it clear that all service providers, whether Government or private, are required to adhere to the rules on accessibility as provided in the Rights of Persons with Disabilities Rules, 2017. Rule 15(1) of the 2017 Rules lay down the relevant accessibility requirements that need to be followed by both Government and private service providers. However, due to certain communications from within the department, there exists a misconception amongst some private service providers that Rule 15(1) of the 2017 Rules is not applicable to them.¹ Thus, such service providers continue to function without making accessibility provisions in relation to their physical environment, transport and information and communication technology. Moreover, the way in which Rule 15 is presently worded gives the impression that in the sphere of information and communication technology, only websites and not applications need to adhere to the accessibility requirements laid out therein. This is despite the fact that the revised edition of the Guidelines for Indian Government Websites contains explicit suggestions for making applications accessible. As a result of such confusion, the applications developed by

¹For instance, Nishith Desai Associates claimed that the requirements under Rule 15(1) of the 2017 Rules are applicable only to government websites as per communication from within the Department of Empowerment of Persons with Disabilities:

APPLICABILITY OF RULE 15 TO PRIVATE ONLINE WEBSITES:

From a bare reading of the aforesaid provisions, the accessibility requirements under Rule 15 would appear to apply to both Government as well as private service providers. This is because, an 'establishment' under Rule 15 has been defined to include private establishments, and Section 46 of the Act refers to both Government, as well as private service providers.

We understand from the Department of Empowerment of Persons with Disabilities, under the Ministry of Social Justice that the **standards prescribed** under Requirement 1 only apply to Government websites.

Insofar as Requirement 2 is concerned, depending upon the nature of the content on the website, it would need to be examined whether this requirement applies.

Source: 'Websites in India to be Made Accessible to the Differently Abled by June 15, 2019' (Nishith Desai Associates, 4 June 2019), available at <https://www.nishithdesai.com/SectionCategory/33/Technology-Law-Analysis/12/60/TechnologyLawAnalysis/4449/1.html>.

various private service providers remain indifferent to these accessibility requirements.

The Policy must clarify the obligation of all service providers, public and private, of websites and apps, to make their offerings disability friendly.

- The policy should advocate the adoption of an accessibility compliance index, to evaluate how accessible government and private sector apps and websites are
- The policy should outline steps for building the resource capacity to provide audio description and close captioning, in coordination with the Ministry of Information and Broadcasting, at scale. C
- CCPD and SCPDs should be asked to hold sensitization workshops on digital accessibility.
- There is no concrete action plan (with milestones and timelines) set out in the policy on implementation of applicable accessibility standards. It may be useful to reiterate the targets mentioned under the RPWDA, the Accessible India Campaign as well as relevant judgments of the Supreme Court of India.
- The policy must incorporate regular inspection or audit requirements of built spaces, transportation means and ICTs by persons with disabilities or disabled people's organisations, not just at the stage of planning, but also during construction and subsequent usage to ensure there is regular maintenance.
- Sensitisation, awareness and capacity building cannot be limited to architects and engineers (in the form of specific university curricula), but should be adopted at all levels, starting from school to ensure

that persons at every level, whether private or public, can effectively understand and implement accessibility and universal design initiatives.

- There must be consistent usage, clear understanding and contextualisation of the term "universal design" throughout the policy.
- There must be guidance and clarity on (for instance, in terms of subject matter) which mobile apps are relevant for use by the public in general.
- The policy is silent on procurement, which forms an integral component of implementation. Procurement laws and policies at various levels must include accessibility as a criteria along with preference for persons with disabilities and disabled people's organisations in procurement processes.
- The policy does not talk about accessibility for persons with psycho-social disabilities, which may be significantly different.
- The policy does not analyse in detail, access for persons with disabilities in rural areas.
- While responsibility for prescribing accessibility standards for various subject matters has been given to the corresponding ministries, the policy must set out a clear mechanism for inter-ministerial/departmental coordination, at all levels of the government.
- While the policy recognises the significance of participation of persons with disabilities in decision making for better planning and monitoring of urban spaces, it does not lay down any definitive framework for doing so in the context of accessibility.
- There must be greater emphasis on the nature of exclusion and inaccessibility faced by women and

girls with disabilities, which is exacerbated further by factors, such as, caste, class, etc.

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Disaster Management	60-65	<p>Disasters and hateful violence should be covered in this section. The policy only makes a passing reference to COVID. It should contain learnings from the management of COVID in India from a disability perspective and build on those learnings.</p>
Social Security	66-70	<ul style="list-style-type: none">○ guardianship is seen as a way to presumably help people access benefits. This act of restricting legal capacity to facilitate access to benefits is contrary to article 12 UNCRPD. There is a need to revisit this section of the policy.○ Alternatives to guardianship should be found as gateways to enable PwDs to access benefits.○ It should be remembered that guardianship can take away the autonomy and independence of PwDs to lead their own lives – which are two core principles underpinning the RPwD Act.
Strengthening of Institutional Mechanism and Capacity Development	71-79	<ul style="list-style-type: none">○ The policy pushes a lot of responsibility on Anganwadi and asha workers. But these women are already overworked and are not given the status of formal workers. They are underpaid. Therefore, pushing the whole responsibility on them is discriminatory.○ The policy should focus on the capacity building of caregivers. There is a need to create apt atmosphere and provide financial autonomy to them.

- Protection of rights of PwDs **80-86**
- As per article 19 of UNCRPD read with general comment 5 on the same and section 5 of RPwD Act, PwDs should be able to live in the community. They should have the liberty to take decision with regard to their life. Stigmatization as a result of acquisition of disabilities needs to be effectively addressed and for the same government measures like raising awareness about the talent and the potential of PwDs must be vigorously pronounced. The same is also mandated by Article 8 of UNCRPD.
 - PwDs should enjoy respect in the family as members and heads of the family. Besides financial autonomy, focus should also be on providing them services at par with others.
 - PwDs should have legal capacity. PwDs including persons with psycho-social disabilities should be treated with dignity and should have the agency to decide the course of their treatment. They should have property rights. They should be provided protection against wrongful restraint and forced treatment.
- Other Policy Measures **87-97**
- The policy uses derogatory language which include words like Mental retardation. The document uses charity language in many places. The language should be changed.
 - the policy should have a gender-neutral language.
 - It should address intersectionality. It should be sensitive to factors like caste, gender, sexual orientation, region, religion, background amongst others. This was extensively discussed by a two-judge bench of the Supreme Court in Patan Jamal Vali v. State of AP, 2021 SCC Online SC 343.
 - The 2016 act mentions 21 disabilities. But the policy focuses only on blindness, deafness and mobility. It does not cover intellectual disabilities. It should be more inclusive.
 - Disability is socially embedded and relational. But this policy does not acknowledge these realities.
 - Public authorities should be sensitised to the needs of PwDs.

- The policy should acknowledge the variations between various states as different states have different financial capital and social conditions. There should be mark up on the budget to be allocated by each state towards empowerment and rendering services for PwDs.
- Different departments should co-ordinate to materialize the policy. The policy document itself should provide for a mechanism for this coordination.
- Every Central ministry should have disability nodal officers who are accountable to the DEPwD.
- Districts should be the basic units for implementing the policy.
- Normatively, RPwD Act 2016 looks like a superimposed statutory mechanism on Constitution of India with the CONstitution having no mechanism whatsoever to prohibit discrimination on the ground of physical and mental disability. In light of various judicial pronouncements including some of the recent ones like *Vikash Kumar vs. UPSC, (2021) 5 SCC 370; Ravinder Kumar Dhariwal vs. Union of India 2021 SCC OnLine SC 1293; Shobha Gopalakrishnan v State of Kerala (2019), 2019 SCC OnLine Ker 739; Jeeja Ghosh v Union of India (2016), (2016) 7 SCC 761*, the policy must emphasise on dispensing with ableist leanings in the Constitution and must call for a clear provision prohibiting disability based discrimination with necessary amendments in the Constitution.
- It is vital to have in place a mechanism to provide political representation to PwDs in order to recognise them as the equal citizens of this country. For the same, the beginning may be made by providing reservations in the different layers of local self government, i.e. Panchayats, ZPs and

municipalities. In this connection the initiatives taken by the States of Rajasthan² and Chhattisgarh³ are noteworthy

- In fact, political representation of PwDs is very robustly safeguarded by Article 29 of UNCRPD.

Signatory organizations:

- A. National Law School of India University, Bangalore, Law and Society Committee
- B. Vidhi Centre for Legal Policy,
- C. Oxford Human Rights Hub.
- D. Harvard Law School Project on Disability.

²<https://timesofindia.indiatimes.com/city/jaipur/ensure-giving-4-quota-for-people-with-disabilities-in-local-body-polls/articleshow/87213965.cms>

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<https://www.thehindu.com/news/national/other-states/chhattisgarh-panchayats-to-have-disabled-quota/article30070949.ece>

