



सत्यमेव जयते

RIGHTS OF PERSONS WITH DISABILITIES ACT – 2016



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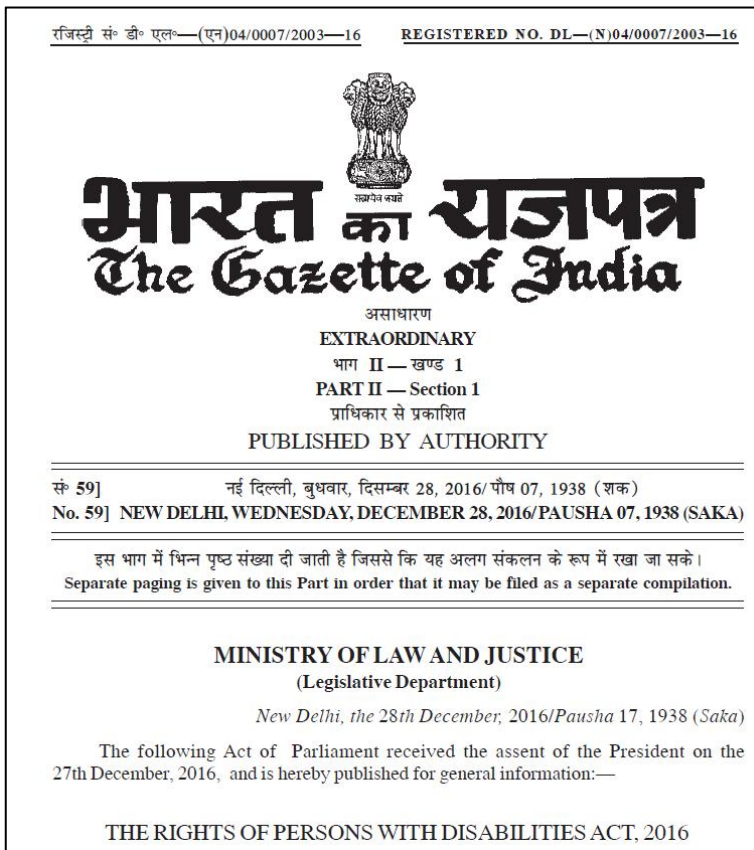
References

Disabled population by disability – Census of India data 2011

Types of Disability	Persons	Males	Females
Total	26810557	14986202	11824355
In Seeing	5032463	26385162	393947
In Hearing	5071007	2677544	2393463
In Speech	1998535	1122896	875639
In Movement	5436604	3370374	2066230
Mental Retardation	1505624	870708	634916
Mental Illness	722826	415732	307094
Other	49297011	2727828	2199183
Multiple Disability	2116487	1162604	953883

Background

- United Nations convention on the rights of persons with disabilities 2006
- India is a signatory to the said convention; and whereas India ratified the said convention on the 2007; and whereas it is considered necessary to implement the convention aforesaid.
- The enactment of this new piece of legislation, namely, the RPWD act, 2016 has happened as a part of the larger harmonization process undertaken by the government of India to full fill its solemn commitment and international obligation



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- Enacted by Parliament in the Sixty seventh Year of the Republic of India
 - The process of the RPWD act got kick-started way back in 2010 with the constitution of a committee comprising of primary stakeholders from the civil society and government representatives.
 - Committee submitted its report together with a draft legislation in 2011
 - **The Person with Disabilities (PWD) act, 1995 stands repealed with the enactment of RPWD act, 2016.**
 - **17 chapters having 102 sections/clauses**

TIMELINE

Enacted by	Rajya Sabha
Passed	14 December 2016
Enacted by	Lok Sabha
Passed	16 December 2016
Assented to	27 December 2016
Commenced	15 June 2017

FOR EMPOWERING THE PERSONS WITH DISABILITIES (Divyangjan)

Rights of Persons with Disabilities Act, 2016 has come into force from 19th April, 2017

The Central Rules under the Act have been notified on 15th June, 2017

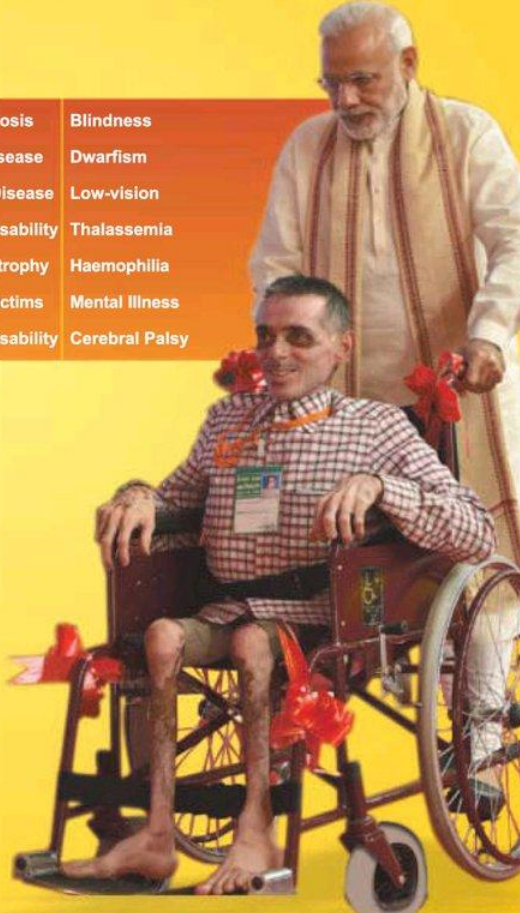
Highlights of the Act :

i. Types of disabilities increased from existing 7 to 21.

Leprosy Cured Persons	Multiple Sclerosis	Blindness
Autism Spectrum Disorder	Sickle Cell Disease	Dwarfism
Specific Learning Disability	Parkinson's Disease	Low-vision
Speech and Language Disability	Intellectual Disability	Thalassemia
Chronic Neurological Conditions	Muscular Dystrophy	Haemophilia
Hearing Impairment (deaf and hard of hearing)	Acid Attack Victims	Mental Illness
Multiple Disabilities including Deaf-Blindness	Locomotor Disability	Cerebral Palsy

- ii. Reservation in government jobs increased from 3% to 4%.
- iii. To strengthen Prime Minister's Sugamya Bharat Abhiyan (Accessible India Campaign), provisions for Accessibility in public buildings (Government & Private), Transportation and Information and Communication Technology (ICT).
- iv. Right to free education for every child (6 to 18 years of age) with benchmark disability.
- v. 5% reservation in Government higher educational institutions and higher educational institutions receiving aid from the Government.
- vi. Penal provisions for violation of the provisions of the Act.

*To take everyone along,
to make everyone self-reliant...*



dwp 381171/30019/1718



Department of Empowerment of Persons with Disabilities (Divyangjan)
Ministry of Social Justice & Empowerment
Government of India.
www.disabilityaffairs.gov.in, www.socialjustice.nic.in
www.pmindia.gov.in, www.mygov.in



Department of Empowerment of Persons with Disabilities (Divyangjan)
Ministry of Social Justice & Empowerment



Department of Empowerment of Persons with Disabilities (Divyangjan)
Ministry of Social Justice & Empowerment



Salient Features The Rights of Persons with Disabilities Bill 2016

Types of Disabilities have been increased from existing 7 to 21

- Blindness
- Low-vision
- Leprosy Cured persons
- Locomotor Disability
- Dwarfism
- Intellectual Disability
- Mental Illness
- Cerebral Palsy
- Specific Learning Disabilities
- Speech and Language disability
- Hearing Impairment (deaf and hard of hearing)
- Muscular Dystrophy
- Acid Attack victim
- Parkinson's disease
- Multiple Sclerosis
- Thalassemia
- Hemophilia
- Sickle Cell disease
- Autism Spectrum Disorder
- Chronic Neurological conditions
- Multiple Disabilities including deaf blindness



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SALIENT FEATURES

- Unlike the PWD Act, the RPWD Act explicitly envisages(predict) civil & political rights of persons with disabilities in addition to envisaging the economic, social, and cultural rights of such persons.
- It talks about **equality and non-discrimination, protection from cruelty and inhuman treatment, accessibility in voting**
- Adopts a social and human **rights-based approach to disability**
- The **quota of reservation in Government jobs, in admission to institutions of higher education, in poverty alleviation/reliefs schemes**, etc covers more categories of persons with disabilities
- **Free education for children with disability**

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- The current RPWD Act strengthens the regulatory, monitoring, and grievance redressal mechanisms in terms of their functions and composition
 - It also stipulates **designation of special court at the district level for fast tracking cases of persons with disabilities under the Act**
 - Provides for representation of persons with disabilities including representation of women with disabilities in the various bodies to be created under this new legislation
 - The Act **also provides for creation of National and State Fund** for the benefit of persons with disabilities

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- The RPWD Act expands the categorization of persons with disabilities so as to cover 21 conditions as against 7 in the outgoing PWD Act
 - Speech and Language Disability and Specific Learning Disability have been **added for the first time** .
 - Acid Attack Victims have been included.
 - Dwarfism , muscular dystrophy have has been indicated as separate class of specified disability .
 - The New categories of disabilities also included three blood disorders, Thalassemia, Haemophilia and Sickle Cell disease In addition, the Government has been authorized to notify any other category of specified disability

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CHAPTER I

PRELIMINARY

- ❖ “**barrier**” means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society
- ❖ “**care-giver**” means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability
- ❖ “**discrimination**” in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is 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 and includes all forms of discrimination and denial of reasonable accommodation

❖ “**high support**” means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy

❖ “**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 specialised design and shall apply to assistive devices including advanced technologies for particular group of persons with disabilities



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- I. “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others
 - II. “person with benchmark disability” means a person with **not less than forty per cent of a specified disability** where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority
 - III. “person with disability having high support needs” means a person with benchmark disability certified who needs high support

SPECIFIED DISABILITY

1. Physical disability

A. Locomotor disability —

(a) “**leprosy cured person**” means a person who has been cured of leprosy but is suffering from:-

- (i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;
- (ii) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;
- (iii) 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;

(b) “**cerebral palsy**” means a Group of non-progressive neurological condition affecting body movements and muscle coordination, caused by damage to one or more specific areas of the brain, usually occurring before, during or shortly after birth

(c) “**dwarfism**” means a medical or genetic condition resulting in an adult height of 4 feet 10 inches (147 cm) or less

(d) “**muscular dystrophy**” means a group of hereditary genetic muscle disease that weakens the muscles that move the human body and persons with multiple dystrophy have incorrect and missing information in their genes, which prevents them from making the proteins they need for healthy muscles. Characterised by progressive skeletal muscle weakness, defects in muscle proteins, and the death of muscle cells and tissue

(e) “**acid attack victims**” means a person disfigured due to violent assaults by throwing of acid or similar corrosive substance

B. Visual impairment —

(a) “**blindness**” means a condition where a person has any of the following conditions, after best correction:

- (i) total absence of sight
- (ii) visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction
- (iii) limitation of the field of vision subtending an angle of less than 10 degree

(b) “**low-vision**” means a condition where a person has any of the following conditions, namely:

- (i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections
- (ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree.

C. Hearing impairment—

(a) “**deaf**” means persons having 70 DB hearing loss in speech frequencies in both ears

(b) “**hard of hearing**” means person having 60 DB to 70 DB hearing loss in speech frequencies in both ears;

D. “**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.

2. Intellectual disability, a condition characterised by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills, including—

(a) “**specific learning disabilities**” 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

(b) “**autism spectrum disorder**” means a neuro-developmental condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships and relate to others, and is frequently associated with unusual or stereotypical rituals or behaviours

3. Mental behaviour,—

“mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub normality of intelligence

4. Disability caused due to

(a) chronic neurological conditions, such as—

(i) “**multiple sclerosis**” means an inflammatory, nervous system disease in which the myelin sheaths around the axons of nerve cells of the brain and spinal cord are damaged, leading to demyelination and affecting the ability of nerve cells in the brain and spinal cord to communicate with each other

(ii) “**parkinson's disease**” means a progressive disease of the nervous system marked by tremor, muscular rigidity, and slow, imprecise movement, chiefly affecting middle-aged and elderly people associated with degeneration of the basal ganglia of the brain and a deficiency of the neurotransmitter dopamine

(b) Blood disorder—

(i) “**haemophilia**” means an inheritable disease, usually affecting only male but transmitted by women to their male children, characterised by loss or impairment of the normal clotting ability of blood so that a minor wound may result in fatal bleeding;

(ii) “**thalassemia**” means a group of inherited disorders characterised by reduced or absent amounts of haemoglobin.

(iii) “**sickle cell disease**” means a hemolytic disorder characterised by chronic anemia, painful events, and various complications due to associated tissue and organ damage; “hemolytic” refers to the destruction of the cell membrane of red blood cells resulting in the release of hemoglobin

5. Multiple Disabilities (more than one of the above specified disabilities) including deaf blindness which means a condition in which a person may have combination of hearing and visual impairments causing severe communication, developmental, and educational problems

6. Any other category as may be notified by the Central Government

CHAPTER II

RIGHTS AND ENTITLEMENTS

3. Equality and non-discrimination.—(1) The Govt. shall ensure that persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The Govt. shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The Govt. shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

4. Women and children with disabilities.—(1) The appropriate Govt. and local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

(2) They shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.

7. Protection from abuse, violence and exploitation.—(1) The Govt. shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same

(2) Any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it to the **Executive Magistrate** within the local limits of whose jurisdiction such incidents occur

(3) The Executive Magistrate on receipt of such information, shall take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as he deems fit for the protection of such person with disability

(5) If the Executive Magistrate finds that the alleged act or behaviour constitutes an offence under the Indian Penal Code, or under any other law for the time being in force, he may **forward the complaint to that effect to the Judicial or Metropolitan Magistrate**

8. Protection and safety.—(1) The persons with disabilities shall have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.

9. Home and family.—(1) No child with disability shall be separated from his or her parents on the ground of disability except on an order of competent court, if required, in the best interest of the child.

(2) Where the parents are unable to take care of a child with disability, the competent court shall place such child with his or her near relations, and failing that within the community in a family setting or in exceptional cases in shelter home run by the Govt. or non-governmental organisation, as may be required.

10. Reproductive rights.—(1) Persons with disabilities have access to appropriate information regarding reproductive and family planning.

(2) No person with disability shall be **subject to any medical procedure which leads to infertility without his or her free and informed consent.**

12. Access to justice.—(1) The appropriate Govt. shall ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability

(2) Take steps to put in place suitable support measures for persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights

13. Legal capacity—(1) Govt. shall ensure that the persons with disabilities have right, equally with others, to own or inherit property, movable or immovable, control their financial affairs

(3) When a conflict of interest arises between a person providing support and a person with disability in a particular financial, property or other economic transaction, then such **supporting person shall abstain from providing support to the person with disability in that transaction:**

Provided that there shall not be a presumption of conflict of interest just on the basis that the supporting person is related to the person with disability by blood, affinity or adoption.

(4) A person with disability may alter, modify or dismantle any support arrangement and seek the support of another:

Provided that such alteration, modification or dismantling shall be prospective in nature and shall not nullify any third party transaction entered into by the person with disability with the aforesaid support arrangement.

(5) Any person providing support to the person with disability shall not exercise undue influence and shall respect his or her autonomy

14. Provision for guardianship

(1) Notwithstanding anything contained in any other law for the time being in force, on and from the date of commencement of this Act, where a district court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further **support of a limited guardian to take legally binding decisions on his behalf in consultation with such person**, in such manner, as may be prescribed by the State Government:

Provided that the District Court or the designated authority, as the case may be, **may grant total support to the person with disability requiring such support** or where the limited guardianship is to be granted repeatedly, in which case, the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided.

CHAPTER III

EDUCATION

17. Specific measures to promote and facilitate inclusive education.—The appropriate Govt. and the local authorities shall take the following measures :-

(a) to **conduct survey 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:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act

They shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others.

CHAPTER IV

SKILL DEVELOPMENT AND EMPLOYMENT

19. Vocational training and self-employment.—(1) The Govt. shall formulate schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities

20. Non-discrimination in employment.—(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section. especially for their vocational training and self-employment

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that **if it is not possible** to adjust the employee against any post, he **may be kept on a supernumerary post** until a suitable post is available or he attains the age of superannuation, whichever is earlier.

CHAPTER V SOCIAL SECURITY, HEALTH, REHABILITATION AND RECREATION

25. Healthcare.—(1) The appropriate Government and the local authorities shall take necessary measures for the persons with disabilities to provide,—

(a) **free healthcare** in the vicinity specially in rural area subject to such family income as may be notified;

(b) barrier-free access in all parts of Government and private hospitals and other healthcare institutions and centres;

(c) priority in attendance and treatment.

26. Insurance schemes.—The appropriate Government shall, by notification, make insurance schemes for their employees with disabilities.

27. Rehabilitation (1), the appropriate Government and the local authorities may grant financial assistance to non-Governmental Organisations.

(3) The appropriate Government and the local authorities, while formulating rehabilitation policies shall consult the non-Governmental Organisations working for the cause of persons with disabilities.

29. Culture and recreation (f) redesigning courses in cultural and arts subjects to enable participation and access for persons with disabilities;

(g) developing technology, assistive devices and equipments to facilitate access and inclusion for persons with disabilities in recreational activities; and

(h) ensuring that persons with hearing impairment can have access to television programmes with **sign language interpretation or sub-titles**.

CHAPTER VI SPECIAL PROVISIONS FOR PERSONS WITH BENCHMARK DISABILITIES

31. Free education for children with benchmark disabilities.—(1) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009 (35 of 2009), every child with benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or in a special school, of his choice.

32. Reservation in higher educational institutions.—(1) All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

34. Reservation.—(1) Every appropriate Government shall appoint in every Government establishment, not less than 4% of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent. each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent. for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision (1%)

(b) deaf and hard of hearing (1%)

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy (1%)

(d) autism, intellectual disability, specific learning disability and mental illness

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disabilities

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such **vacancy shall be carried forward in the succeeding recruitment year** and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by **interchange among the five categories** and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

37. Special schemes and development programmes.—The appropriate Government and the local authorities shall, by notification, make schemes in favour of persons with benchmark disabilities, to provide,—

(a) five per cent. reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;

(b) five per cent. reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;

(c) five per cent. reservation in allotment of land on concessional rate, where such land is to be used for the purpose of promoting housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.

CHAPTER VII SPECIAL PROVISIONS FOR PERSONS WITH DISABILITIES WITH HIGH SUPPORT NEEDS

38. Special provisions for persons with disabilities with high support.—(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

(2) On receipt of an application the authority shall refer it to an Assessment Board consisting of such Members as may be prescribed by the Central Government.

(3) The Assessment Board shall assess the case referred to it and shall send a report to the authority certifying the need of high support and its nature.

(4) The authority shall then take steps to provide support in accordance with the report and subject to relevant schemes and orders of the appropriate Government in this behalf.

CHAPTER VIII — DUTIES AND RESPONSIBILITIES OF APPROPRIATE GOVERNMENTS

The appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, shall conduct, encourage, support or promote awareness campaigns and sensitisation programmes to ensure that the rights of the persons with disabilities provided under this Act are protected

CHAPTER IX — REGISTRATION OF INSTITUTIONS FOR PERSONS WITH DISABILITIES AND GRANTS TO SUCH INSTITUTIONS

49. Competent authority.—The State Government shall appoint an authority as it deems fit to be a competent authority for the purposes of this Chapter.

50. Registration.—Save as otherwise provided under this Act, no person shall establish or maintain any institution for persons with disabilities except in accordance with a certificate of registration issued in this behalf by the competent authority

CHAPTER X CERTIFICATION OF SPECIFIED DISABILITIES

57. Designation of certifying authorities.—

(1) The appropriate Government shall designate persons, having requisite qualifications and experience, as certifying authorities, who shall be competent to issue the certificate of disability.

(2) The appropriate Government shall also notify the jurisdiction within which and the terms and conditions subject to which, the certifying authority shall perform its certification functions.

58. Procedure for certification.—

(1) Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability.

(2) On receipt of an application under sub-section (1), the certifying authority shall assess the disability of the concerned person in accordance with relevant guidelines notified under section 56, and shall, after such assessment, as the case may be,—

- (a) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government;
- (b) inform him in writing that he has no specified disability.

(3) The certificate of disability issued under this section shall be valid across the country.

59. Appeal against a decision of certifying authority.—

(1) Any person aggrieved with decision of the certifying authority, may appeal against such decision, within such time and in such manner as may be prescribed by the State Government, to such appellate authority as the State Government may designate for the purpose.

(2) On receipt of an appeal, the appellate authority shall decide the appeal in such manner as may be prescribed by the State Government.

Certification of Mental Disability as per the Rights of Persons with Disability Act, 2016

- All PMI have a right to apply for the disability certificate
 - Based on the disability assessment on IDEAS, the disability certificate is issued
 - A temporary disability certificate can be given before receiving adequate treatment with respect to dosage and duration
 - Permanent disability certificate should be given only if the medical authority is reasonably satisfied that all approved treatments which have been administered for adequate dose and duration have failed
 - In the case of newly diagnosed patients, the disability certificate can be issued after adequate treatment. The adequate treatment as per the old Act (PWD Act, 1995) for neurological disability was 6 months. The same duration can be extrapolated in the absence of new notification. However, a temporary certificate can be issued, and reassessment dates can be clearly mentioned in the disability certificate
 - When new registrants (but under treatment from a different institution) apply for disability certificate, if there is adequate documentation of diagnosis, duration, and treatment, a temporary disability certificate can be issued, if logistically feasible, even in the first visit
 - If it is a known patient who is under regular long-term treatment and follow-up, the disability assessment and certification can be done in a single sitting
 - During the assessment of disability, please collect information from all collateral sources such as the patient, family members, medical records, past-history of treatment, mental status examination, cognitive function, educational and occupational history, social function, and activities of daily living. If in doubt, the psychiatrist has the prerogative to admit the patient for observation and gathering more details
 - Private institutions can also issue the disability certificate if the notification from the respective state government rules say so
 - “Mental illness” and “Intellectual disability” are considered separate disabilities under the RPWD Act. Hence, the formula for “Multiple Disabilities” needs to be applied
 - In all disability certificates, please mention the duration of validity of the certificate
 - Refrain from providing disability certificate without directly assessing the patient
-

Global disability scores on IDEAS and Category of Disability

Global Disability Score on IDEAS	Mental disability category (%)
1-6	Mild disability (<40)
7-13	Moderate disability (40-70)
14-19	Severe disability (71-99)
20	Profound disability (100)

IDEAS - Indian Disability Evaluation and Assessment Scale

23.1. Definition: "mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.

23.2. The examination process will consist of components as required namely, clinical assessment, IDEAS scale and/or IQ assessment.

23.3. Indian Disability Evaluation and Assessment Scale (IDEAS) administration (see **Appendix IV**) is to be used for mental illness.

23.4. In some cases where there is suspicion of intellectual deficits or additional intellectual evaluation is required for any reason, Standardised IQ test may be carried out. Categories on IQ score will be:

- (i) Mild Mental Disabilities: The range of 50 to 69 (standardised IQ test) is indicative of mild disability.
- (ii) Moderate Mental Disability: The IQ is in the range of 35 to 49
- (iii) Severe Mental Disability: The IQ is in the range of 20 to 34.
- (iv) Profound Mental Disability: The IQ in this category estimated to be under 20.

23.5. In cases where the mental behavioural condition requires only IDEAS, then only IDEAS can be administered and degree of disability certified.

23.6. In cases where the mental behavioural condition requires only IQ, then a standardised IQ test shall be used to certify degree of disability.

23.7. In some cases, only one test may not estimate disability comprehensively. Such a person may have borderline or normal score on one test with disability score on the other. In such cases both IQ and IDEAS shall be used, the score indicating more severe disability should be the degree of disability for that person.

21.2. Screening: Many of these children are on follow-up with pediatricians as developmental delay. Hence, they can be assessed by pediatricians and screened for associated co-morbidities, viz. hearing/ vision/ locomotor impairments/ epilepsy. Then these children are referred for detailed assessment. (See Figure 1)

21.3. Diagnosis: The screened children will be referred to Child/ clinical psychologists for Adaptive functioning and IQ testing. The tools that can be used for the same include:

- (i) Adaptive functioning: VSMS
- (ii) IQ testing: BKT/ MISIC

Based on the above the diagnosis of ID will be confirmed. Based on adaptive functioning assessment, severity scoring will be done and disability for ID charted.

21.4. Disability calculation: The disability calculation will be done based on VSMS score. The following will be used for disability calculation:

(i)	VSMS score 0-20: Profound	Disability-100%
(ii)	VSMS score 21-35: Severe	Disability-90%
(iii)	VSMS score 36-54: Moderate	Disability-75%
(iv)	VSMS score 55-69: Mild	Disability-50%
(v)	VSMS score 70-84: Borderline	Disability-25%

21.5. Age for certification: The minimum age for certification will be one (01) completed year. Children above one year and up to the age of 5 years shall be given a diagnosis as Global Developmental Delay (GDD). Children above the age of 5 years shall be given a diagnosis and certificate as Intellectual Disability.

21.6. Medical Authority: The Medical Superintendent or Chief Medical Officer or Civil Surgeon or any other equivalent authority as notified by the State Government shall be the head of the Medical Board. The Authority shall comprise of:

- (a) The Medical Superintendent or Chief Medical Officer or Civil Surgeon or any other equivalent authority as notified by the State Government
- (b) Pediatrician or Pediatric Neurologist (where available)/ Psychiatrist or Physician (if age >18years)
- (c) Clinical or Rehabilitation Psychologist
- (d) Psychiatrist

21.7. Validity of Certificate:

- (i) Temporary certificate for children less than 5 years: The certificate will be valid for maximum 3 years/ 5 years age (whichever is earlier).
- (ii) For children more than 5 years: The certificate will mention a renewal age. The certificate will have to be renewed at age of 5 years, 10 years and 18 years. The certificate issued at 18 years age will be valid lifelong.

22.2. Screening.-

- (i) The teachers of the public and private school shall carry out the screening in Class III or at eight years of age, whichever is earlier. The screening test is given in Figure 2. If in the screening shows test three or more answers are in “frequently” column, then the child should be referred for further assessment.
- (ii) Every school (public and private) shall have a screening committee headed by the principal of the school. After applying the screening test, if an anomaly is detected then, the teacher should bring it to the notice of principal and screening committee of the school. The teachers shall interview the parents to assess their involvement and motivation regarding their child’s education. If the parents are motivated and screening questionnaire suggests SLD, then child should be referred for further assessment.
- (iii) The child shall be referred to pediatrician for SLD assessment by the principal of the school with the recommendations of the screening committee endorsed.

22.3. Diagnosis: The diagnosis will require a team approach involving a pediatrician and clinical or rehabilitation psychologist. This would involve three steps:

- (i) Step 1- Assessment of paediatrician: The paediatrician will do the initial assessment. This will involve a detailed neurological examination including vision and hearing assessment. It has to be ensured that the child has normal visual acuity and hearing before proceeding to next step.
- (ii) Step 2: IQ Assessment: Child/ clinical psychologist will do the IQ assessment using MISIC or WISC-III. If the IQ is determined to be >85, then step 3 will be applied.
- (iii) Step 3- SLD Assessment: This would involve application of specific psychometric tests for diagnosing SLD and giving it a severity scale.

22.4. Diagnostic Tool - National Institute for Mental Health and Neurosciences (NIMHANS) battery shall be applied for diagnostic test for SLD.

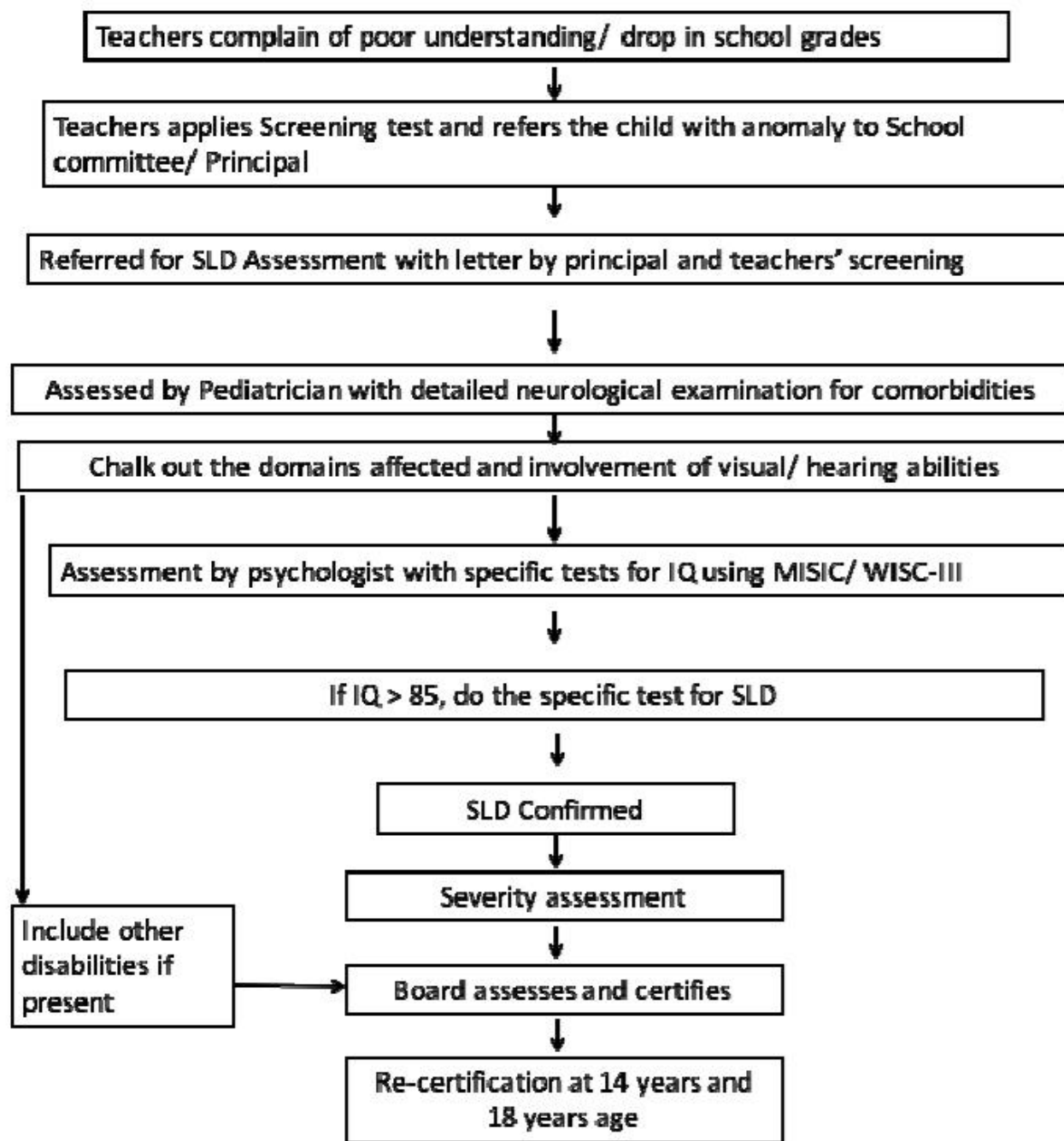


Figure 2. The suggested flow for identification and certification of Children with suspected Specific Learning Disability.

22.6. Validity of Certificate: The certification will be done for children aged eight years and above only. The child will have to undergo repeat certification at the age of 14 years and at the age of 18 years. The certificate issued at 18 years will be valid life-long.

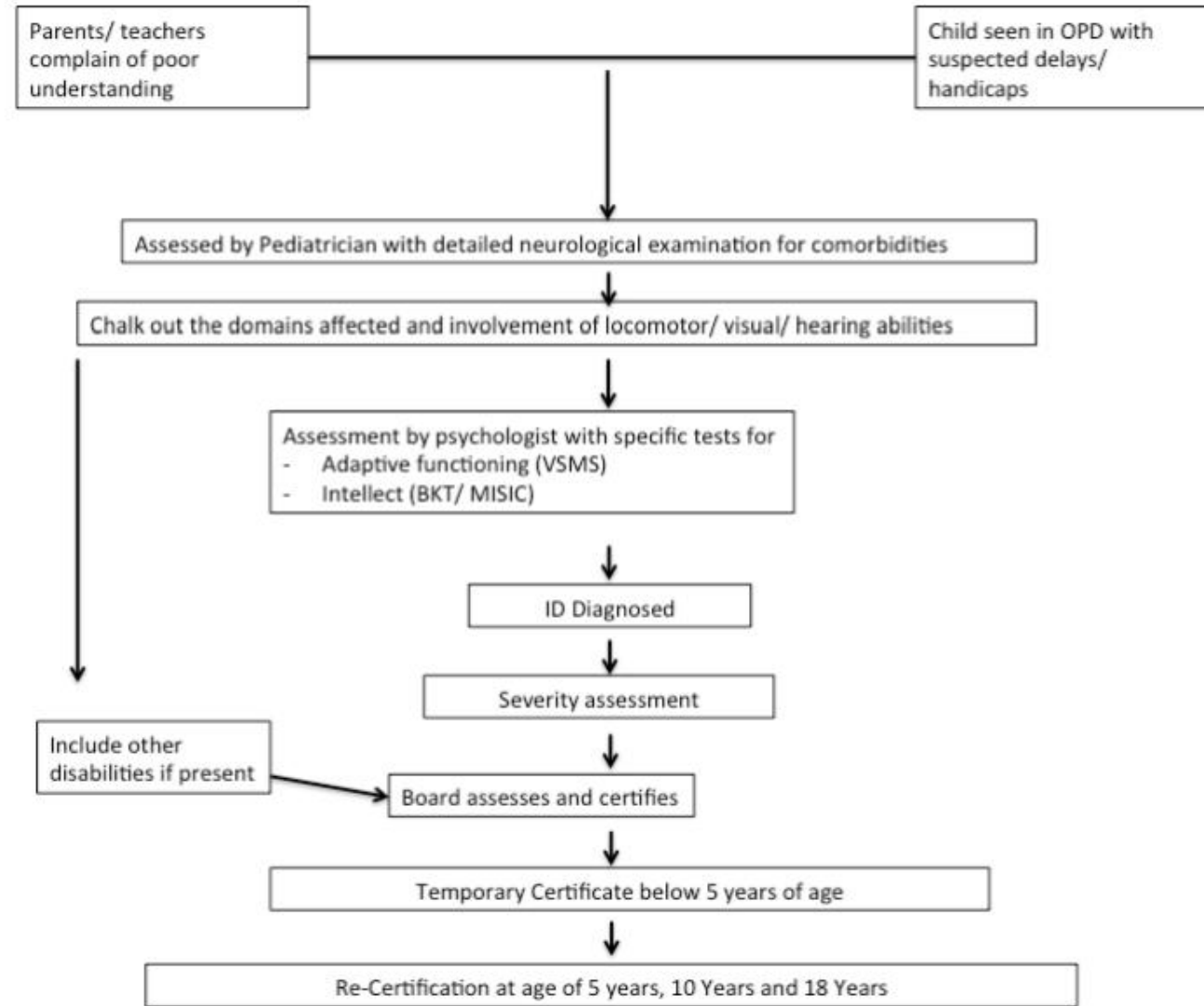


Figure 1. The suggested flow for identification and certification of Children with suspected Intellectual Disability

Calculation of Multiple Disabilities^{2,5}

The disability with highest score (major) is taken into consideration. The lower score (minor) is telescopically added to the highest score based on the following formula to get the final disability score.

Total disability in percentage = $a + [b (90 - a) / 90]$

a = major disability; b = minor disability

*[E.g.: If a person has 80% disability of vision (a), and
20% disability of loco motor (b)*

Then, the total disability is $80 + [20 (90 - 80) / 90] = 82\%$

CHAPTER XI CENTRAL AND STATE ADVISORY BOARDS ON DISABILITY AND DISTRICT LEVEL COMMITTEE

(p) Chairperson, Medical Council of India

(q) Directors of the following Institutes:

- (i) National Institute for the Visually Handicapped, Dehradun
- (ii) National Institute for the Mentally Handicapped, Secunderabad
- (iii) Pandit Deen Dayal Upadhyay Institute for the Physically Handicapped, New Delhi
- (iv) Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai
- (v) National Institute for the Orthopaedically Handicapped, Kolkata
- (vi) National Institute of Rehabilitation Training and Research, Cuttack
- (vii) National Institute for Empowerment of Persons with Multiple Disabilities, Chennai
- (viii) National Institute for Mental Health and Sciences, Bangalore
- (ix) Indian Sign Language Research and Training Centre, New Delhi

61. Terms and conditions of Service of members.—(1) Save as otherwise provided under this Act, a Member of the Central Advisory Board nominated under clause (r) of sub-section (2) of section 60 shall hold office for a term of three years from the date of his nomination:

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

66. State Advisory Board on disability – List of ex officio state members

CHAPTER XII — CHIEF COMMISSIONER AND STATE COMMISSIONER FOR PERSONS WITH DISABILITIES - The Central Government may, by notification, appoint a **Chief Commissioner for Persons with Disabilities** (has special knowledge or practical experience in respect of matters relating to rehabilitation), mentions functions, powers and reporting done by said commissioner.

The State Government may also, by notification, appoint a State Commissioner for Persons with Disabilities

CHAPTER XIII — SPECIAL COURT - Special Court.—For the purpose of providing speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district, a Court of Session to be a Special Court to try the offences under this Act.

85. Special Public Prosecutor.—(1) For every Special Court, the State Government may, by notification, specify a Public Prosecutor or appoint an advocate, who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor

CHAPTER XIV – NATIONAL FUND FOR PERSONS WITH DISABILITIES

CHAPTER XV – STATE FUND FOR PERSONS WITH DISABILITIES

CHAPTER XVI – OFFENCES AND PENALTIES

89. Punishment for contravention of provisions of Act or rules or regulations made thereunder.—Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with **fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees**

91. Punishment for fraudulently availing any benefit meant for persons with benchmark disabilities.—Whoever, fraudulently avails or attempts to avail any benefit meant for persons with benchmark disabilities, shall be punishable **with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.**

92. Punishment for offences of atrocities

(f) performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent **except in cases where medical procedure for termination of pregnancy is done in severe cases of disability** and with the opinion of a registered medical practitioner and also with the consent of the guardian of the 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**

CHAPTER XVII MISCELLANEOUS

102. Repeal and savings.—(1) The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (1 of 1996) is hereby repealed.

Critique

➤ **Chapter-I** : Person with Disability means a person with **'long term'** 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?

➤ **Intellectual Disability:** condition characterized by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and adaptive behavior which covers a wide range of everyday, social and practical skills, including “specific learning disability”

In international literature, **in DSM-V there are four criteria mentioned for the diagnosis of specific learning disorder**

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)

-
- **Not all subjects with autism are intellectually impaired.** Hence, Can it even be justifiably put under intellectual disability ?
 - The National Trust Act for autism, cerebral palsy, mental retardation, and multiple disabilities discusses the procedure of applying for guardianship under the act. However, on notification of the RPWD Act, 2016, the dilemma is where one should approach for guardianship certificate ? whether under the RPWD Act, 2016 or the National Trust Act, 1999?
 - As per the gazette notification, **disability certificates can be issued for all mental illness irrespective of the diagnosis.** Mental health professionals need to know that disability certificate is not based on the diagnosis, but the amount of disability experienced by the individual. What about substance use as a disability ?

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Home / India News / Supreme Court helps girl with thalassaemia join medical course

Supreme Court helps girl with thalassaemia join medical course

A bench perused a report that said thalassaemia is a benchmark disability under law, and also agreed to consider the petitioner's plea to quash a Medical Council of India rule that does not list it as a disability.

INDIA Updated: Aug 21, 2017, 00:05 IST



EDUCATION

Student With Thalassaemia Wins Legal Battle Over Medical College Seat in Delhi

The Delhi high court has ordered the state-run Guru Gobind Singh Indraprastha University to grant Digant Jain, who cleared two rounds of counselling, admission in a medical college.

Sruchi Rathore vs Union Of India on 18 August, 2017

Medical Council Of India vs Digant Jain And Ors. on 13 November, 2017

SUMMARY

- ✓ The New Act will bring our law in line with the United National Convention on the Rights of Persons with Disabilities (UNCRPD)
- ✓ The Person with Disabilities (PWD) act, 1995 stands repealed with the enactment of RPD act, 2016
- ✓ Expands the categorization of persons with disabilities so as to cover 21 conditions as against 7 in the outgoing PWD Act
- ✓ Multiple Provisions for Divyangjan (5% reservation in Higher education institutions, 4% reservation in select employment positions, Free education, Special courts)
- ✓ Rights-based legislation but difficult challenge to implement throughout the nation

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THANK YOU

