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## DISASTER MANAGEMENT ACT, 2005 & EPIDEMIC DISEASES ACT, 1897: LOOKING AT THE PANDEMIC THROUGH A DISABILITY INCLUSION LENS

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### ABSTRACT

*The pandemic has redefined the current world order and the functioning of society in a variety of ways. The rippling effects of the pandemic has been felt by the world at large and has impacted the global population in a myriad of ways. However, its effect on the disabled community has further marginalized an already vulnerable community. It is important to analyse the laws set in place for the pandemic on inclusion of the disabled community.*

*The Disaster Management Act came into existence in 2005 and was the first legislation to give a uniform frame for responding to disasters. While the Act in Section 12(ii) speaks about special provisions during disasters for widows and orphans, it is silent on inclusivity and special provisions for Persons with Disabilities. While the Disaster Management Act does not specify inclusivity in terms of PWDs, it can be read in tandem with The Rights of Persons with Disability Act which promises inclusivity and provides equal protection and safety in terms of disasters.*

*The Epidemic Diseases Act which came into existence in 1897 as a response to Bombay's bubonic plague in the Pre-Independence Era, however, has no clause for special provisions for PWDs.*

*Covid-19 has shown the glaring difference between legislations and their execution, especially when it comes to PWDs. When it comes to implementation, there is a lack of inclusivity in the safety and preventive measures taken. Equity and inclusivity in legislations and public policies can only be achieved if PWDs are invited to form part of the decision-making process and are not merely recipients of the policies and legislations.*

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## KEYWORDS

Covid-19 Pandemic, People with Disabilities (PWDs), Disaster Management Act, 2005, Epidemic Diseases Act, 1897, Rights of Persons with Disability Act, 2016.

## INTRODUCTION

The United Nations Convention on the Rights of Persons with Disabilities defines people with disabilities as *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*<sup>2</sup>. The Rights of Persons with Disabilities Act, 2016 gives effect to the above-mentioned Convention as India is a signatory and ratified the said convention on 1<sup>st</sup> October 2017.

According to the 2011 Census, out of the 121-crore population, 2.68 crore or 2.21% of people are disabled in India<sup>3</sup>, yet their inclusivity in both society and law have remained severely limited.

The pandemic has redefined the current world order and the functioning of society in a variety of ways. The rippling effects of the pandemic has been felt by the world at large and has impacted the global population in a myriad of ways. This article attempts to explore the pandemic and its consequences on the disabled community by analysing the laws put in place in India for mitigating the effects of the pandemic.

## DISASTER MANAGEMENT ACT, EPIDEMIC DISEASES ACT AND DISABILITY

The Disaster Management Act came into existence in 2005 and was the first legislation to give a uniform frame for responding to disasters. It also created organisations responsible

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<sup>2</sup> United Nations Convention on Rights of Persons with Disabilities. Dec, 6, 2006 U.N.G.A. A/RES/61/106.

<sup>3</sup> Ministry of Statistics & Programme Implementation, Govt of India (2016): Disabled Persons in India: A Statistical Profile (2016), [www.mospi.nic.in/sites/default/files/publication.../Disabled\\_persons\\_in\\_India\\_2016.pdf](http://www.mospi.nic.in/sites/default/files/publication.../Disabled_persons_in_India_2016.pdf)

for setting guidelines in awareness, preparedness, recovery and mitigation of disasters. It set into place procedures and responsibilities at three levels for handling disasters- the central, the state, and the district. The Disaster Management Act was invoked on 11<sup>th</sup> March 2020 to facilitate a uniform response against Covid-19. It was the first time the Act was used to combat a pandemic. While the Act in Section 12(ii) speaks about special provisions during disasters for widows and orphans, it is silent on inclusivity and special provisions for Persons with Disabilities (hereinafter referred to as PWDs)<sup>4</sup>. However, Section 8 of The Rights of Persons with Disability Act can be read as an addendum to the Disaster Management Act.

The Act states in Section 8(1) that *“The persons with disabilities shall have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.”*<sup>5</sup> Clause 2 tasks the Disaster Management Authorities at the Central as well as the State level to *“take appropriate measures to ensure inclusion of persons with disabilities in its disaster management activities”* for safety and protection of PWDs<sup>6</sup>. This Section also empowers the Disaster Management at the district level to maintain comprehensive records of PWDs residing in the district and to take suitable measures to appraise them of any situation of risk for better disaster preparedness<sup>7</sup>. Clause 4 of Section 8 of the Act puts the responsibilities on the authorities engaged in reconstruction activities to consult the State Commissioner for reconstruction *“in accordance with the accessibility requirements of persons with disabilities.”*<sup>8</sup>

While the Disaster Management Act in itself does not specify inclusivity in terms of PWDs, The Rights of Persons with Disability Act promises inclusivity and provides equal protection and safety in terms of disasters. It also provides the Central and State Disaster Management Authorities the right to take adequate measures for accessibility and inclusion of PWDs.

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<sup>4</sup> Disaster Management Act, 2005, § 12(2), No.53, Acts of Parliament, 2005 (India)

<sup>5</sup> Rights of Persons with Disabilities, 2016, § 8, No.49, Acts of Parliament, 2016, (India)

<sup>6</sup> *Id.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

The Epidemic Diseases Act came into existence in 1897 and has been criticized by many as being archaic and limited in today's modern era<sup>9</sup>. The Act came into being as a response to Bombay's bubonic plague in the Pre-Independence Era<sup>10</sup>. It focuses mostly on dealing with epidemics and gives the Central Government rights to issue guidelines and measures on dealing with epidemics if the ordinary laws are insufficient in curbing the spread of contagious diseases<sup>11</sup>. Owing to its short legislation and antiquity, the Act has no clause for special provisions for PWDs<sup>12</sup>.

### COVID-19 AND DISABILITY

With respect to the Covid-19 pandemic, inclusion of PWDs by both the Centre and the states has fallen severely short. Under the Disaster Management Act, states had issued guidelines mandating masks in public including private cars. Compulsory masking has created a wider rift between the deaf community and the rest of society. In a country like India, majority of the hearing population do not know Indian Sign Language and the deaf community rely mostly on lip reading for communicating with the hearing population. Masks hinder this process by covering the lower part of the face and makes it impossible for a deaf person to 'listen' and comprehend through lip reading. There is still no alternative provided against masks and this effectively excludes the deaf community from communicating with the rest of society. Section 8(iii) of the Rights of Persons with Disabilities Act talks about taking suitable measures to inform PWDs of any situations of risks and preparedness, however, there was still a lack of inclusivity of Covid-19 related information in formats such as braille and audio for the blind community, closed captioning for the deaf community, etc. People with disabilities are more likely to have underlying health issues than others and often have to rely on a support system for

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<sup>9</sup> Aman Saraf, *A Critical Analysis of India's Epidemic Diseases Act, 1897*, JURIST – Student Commentary, November 23rd, 2020, <https://www.jurist.org/commentary/2020/11/aman-saraf-india-epidemic/>.

<sup>10</sup> *Id.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Epidemic Diseases Act, 1897, No.3, Acts of Parliament, 1897, (India)

carrying out their daily activities which increase their risk for transmission of coronavirus. In order to protect their staff, hospitals limited patients from bringing people with them. This created extra problems for the disabled community who require physical assistance or translators in the case of blind, deaf, and non-verbal people<sup>13</sup>. People with locomotor and/or mental disabilities often require specialised care and caregivers to assist them with their daily tasks. While the lockdowns and strict curfews, implemented under the Disaster Management Act and the Epidemic Diseases Act, helped in curbing the spread of coronavirus, it has created another hurdle for PWDs in getting access to caregivers and appropriate healthcare. It was only later, on 26<sup>th</sup> March, when The Union Social Justice and Empowerment Ministry asked all States to ensure that caregivers, NGO workers and access to essential items for PWDs be flagged under essential personnel<sup>14</sup>.

The above examples are among the various problems faced by PWDs during the pandemic and the implementation of the Acts to mitigate the pandemic. Research suggests that people with disabilities are four times more likely to be at risk when an unforeseeable disaster strikes. The socio-economic divide also plays a role in increasing such risks. The divide widens with poorly planned and non-inclusive public spaces, measures and policies<sup>15</sup>. The challenges faced by PWDs have two major aspects: their physical and/or mental impairment and the social barriers they face<sup>16</sup>. The Rights of Persons with Disabilities Act defines barriers as “*any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal, or structural factors*

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<sup>13</sup> Boyle, Coleen A et al., *The public health response to the COVID-19 pandemic for people with disabilities*. vol. 13,3, Disability and health journal, 1, (2020)

<sup>14</sup> *Coronavirus lockdown/Centre again asks States to reach out to persons with disabilities*, The Hindu (March 31st, 2020, 23:18),

<https://www.thehindu.com/news/national/coronavirus-lockdown-centre-again-asks-states-to-reach-out-to-persons-with-disabilities/article31221937.ece>

<sup>15</sup> Arman Ali, *India urgently needs a nationwide Disability Inclusive Disaster Management System*, ET HealthWorld (May 18, 2021, 04:51 AM),

<https://health.economictimes.indiatimes.com/news/policy/india-urgently-needs-a-nationwide-disability-inclusive-disaster-management-system-didms-arman-ali/82716356>

<sup>16</sup> Dr. Chandrani Bandyopadhyay, *Disability-Inclusive Disaster Management: Need for Affirmative Action*, NIDM newsletter tidings, Vol. 26, No. 12, (Dec 2018)

which hampers the full and effective participation of persons with disabilities in society”<sup>17</sup>. The two Acts are silent on the inclusivity of PWDs and their needs.

Covid-19 has shown the glaring difference between legislations and their execution, especially when it comes to PWDs. When it comes to implementation, there is a lack of inclusivity in the safety and preventive measures taken. Action plans and guidelines have been more of an afterthought when it comes to PWDs<sup>18</sup>. *“When quality of life, quality-adjusted life years, or disability-adjusted life years are considered in medical rationing decisions, PWDs are unfairly disadvantaged, not because they have lower quality of life, but because they are wrongly assumed to have lower quality of life.”*<sup>19</sup> This forms a part of the social barriers faced by PWDs and their exclusion from society. The above examples are only a few of the instances where both the legislation and the governments have failed to provide quick and inclusive relief and aid during the pandemic.

## NEED FOR EQUITY IN DISABILITY LAWS

While there are legislations which in theory protect and safeguard the rights of PWDs, the fact remains that their inclusion in society and during disaster risks are not an immediate priority. This results from a lack of inclusivity and equity at both the legislative as well as the executive level. Section 8 of the Rights of Persons with Disability Act states that PWDs shall have equal protection during disasters<sup>20</sup> however, considering the vast types of mental and physical disabilities, it is not enough to provide PWDs with the same safety measures one might provide an able-bodied person. *“How does the disabled body deal with the novel coronavirus? No amount of sanitizing one’s hands can ignore the fact*

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<sup>17</sup> Rights of Persons with Disabilities, 2016, § 2(c), No.49, Acts of Parliament, 2016, (India)

<sup>18</sup> Fred Smith, Emma Jolley & Elena Schmidt, *Disabilities and Disasters: The importance of an inclusive approach to vulnerability and social capital*, Global Thematic Consultation. 6. (2012)

<sup>19</sup> Albrecht G.L & Devlieger P.J. *The disability paradox: high quality of life against all odds*. Soc Sci Med.,48(8):977–988 (1999)

<sup>20</sup> Rights of Persons with Disabilities, 2016, § 8(i), No.49, Acts of Parliament, 2016, (India)

*that those hands are lived on – they touch wheels, they feel the world’s physical structures and, yes, they pick up things as they wheel along.*<sup>21</sup>”

The Disaster Management Act read with The Rights of Persons with Disability Act provides equality in terms of safety and protection in the case of disasters and risks to PWDs, but it is equity that is the need of the hour. PWDs suffer disproportionately during any unprecedented risk or disaster thus it becomes even more important that laws be drafted which focuses more on equity and inclusion rather than equality.

## CONCLUSION

Covid 19 has brought forth two important points- the necessity of an important disaster management system and the flaws in those systems in reaching people with disabilities<sup>22</sup>. The needs of PWDs during disasters has attained a voice in the global forum. The Sendai Framework for Disaster Reduction (2015-30) emphasizes on the inclusion of specific needs of PWDs in disaster risk reduction<sup>23</sup>. Sustainable Development Goals advocates disability inclusion with the theme “Leave No One Behind.”<sup>24</sup> But there is a distinct lack of implementation of PWD inclusion at the local level. While national and international discourse on PWD inclusion has dominated the global platform for a while now, these plans and guidelines have to be implemented and synergised at the local level to ensure that the guidelines actually reach PWDs at the ground level to allow them to customise the guidelines according to their specific needs<sup>25</sup>.

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<sup>21</sup> Rijul Kochhar, *Disability and Dismantling: Four Reflections in a Time of COVID-19*, *Anthropology Now*, 12:1, 73-75, (2020)

<sup>22</sup> Arman Ali, *India urgently needs a nationwide Disability Inclusive Disaster Management System*, ET HealthWorld (May 18, 2021, 04:51 AM), <https://health.economictimes.indiatimes.com/news/policy/india-urgently-needs-a-nationwide-disability-inclusive-disaster-management-system-didms-arman-ali/82716356>

<sup>23</sup> Laura M Stough & Donghyun Kang, *The Sendai Framework for Disaster Risk reduction and Persons with Disabilities*, *Int. Journal of Disaster Risk Science*, Vol. 6(2) 140-149, (2015)

<sup>24</sup> *Leaving No One Behind: Equality and Non-Discrimination at the Heart of Sustainable Development*, United Nations System Shared Framework for Action, (2017)

<sup>25</sup> Dr. Chandrani Bandyopadhyay, *Disability-Inclusive Disaster Management: Need for Affirmative Action*, NIDM newsletter tidings, Vol. 26, No. 12, (Dec 2018)



Disability inclusive Disaster Risk Reduction is essential for an inclusive and resilient society. Equity and inclusivity in legislations and public policies can only be achieved if PWDs are invited to form part of the decision-making process and are not merely recipients of the policies and legislations<sup>26</sup>.

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<sup>26</sup> *Ibid.*