

**Suggestions on Proposed Amendments to  
the Rehabilitation Council of India Act,  
1992 | Submission to the Department of  
Empowerment of Persons with Disabilities, MSJE**

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# About the Organization and Authors

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Vidhi Centre for Legal Policy (“Vidhi”) is a not for profit independent centre doing legal research to make better laws and improve governance for the public good.

Naina Seth, Tapas Bhardwaj and Nisha Vernekar are researchers at the Vidhi Centre for Legal Policy, New Delhi. For any clarifications/queries related to this submission, please email Nisha at [nisha.vernekar@vidhilegalpolicy.in](mailto:nisha.vernekar@vidhilegalpolicy.in) and Naina at [naina@vidhilegalpolicy.in](mailto:naina@vidhilegalpolicy.in).

## Acknowledgements

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# Background

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The Rehabilitation Council was set up as a registered society in 1986 to close a seeming gap in the process of meaningfully rehabilitating persons with disabilities viz. a lack of trained human resources.<sup>1</sup> It received statutory status as the Rehabilitation Council of India (RCI) in 1992. While our unpublished study affirms that the Council's aims were removed from more pressing issues of education, employment reservation, prevention of disability etc. and just focused on professionalising the "field"<sup>2</sup> of disability (rehabilitation), the Rehabilitation Council of India Act, 1992 ("Act") is importantly the first law on disability in the country.

Since India ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2007, one of its obligations is to align its legislation, policies and programmes with the Convention's provisions. The more comprehensive Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 has now been replaced by the CRPD consistent Rights of Persons with Disabilities Act, 2016 and the RCI has been attempting to harmonise its law with the 2016 Act. It set up a committee to do the same and a draft of the proposed new RCI Act was circulated for public comments in November 2017.<sup>3</sup> However, the 2017 proposal's status is unclear and in December 2020, the Department of Empowerment of Persons with Disabilities under the Ministry of Social Justice and Empowerment ("Ministry") invited comments on a second version proposing amendments to the 1992 Act.

This change of course is curious since disability activists have strongly flagged the Ministry's stance to propose just amendments to the Act when the RCI requires an overhaul in order to be in line with the CRPD, especially when its general functioning has come under criticism. While supporting disability rights groups' concerns, we prepared the following list of suggestions in response to the Department's call for comments. Many of these suggestions are a result of our study on the RCI and the educators regulated under it. We focused on the education and work experiences of special educators in two states, Bihar and Maharashtra; our objective was to study whether their experiences and how they are regulated had a bearing on the process of disabled students' inclusion in school education.

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<sup>1</sup> Rehabilitation Council of India, '19th Annual Report, 2005-2006' (2006) 1.

<sup>2</sup> *ibid.*

<sup>3</sup> A copy of the proposed new Rehabilitation Council of India Act, 2017 is still available online: <<http://www.rehabcouncil.nic.in/writereaddata/rci%20act%20amendment.pdf>> accessed 28 December 2020. As on 29 December 2020, the RCI website homepage is not hosting the link to this proposal anymore.

# Submission

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At the outset, we endorse several disability rights groups' demands to the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment to deliberate with relevant stakeholders on the Rehabilitation Council of India's relevance and role in present times and to work on transformational changes for the Council instead of piecemeal amendments,<sup>4</sup> given that India is party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the disability rights law in India itself has gone through considerable changes. At the same time, we want to bring the following suggestions to the Department's notice:

## 1. Accessing the public notification

Firstly, we found that the 'Proposal for Amendment in Rehabilitation Council of India (RCI) Act 1992' pdf shared for seeking suggestions from the public was inaccessible for screen-reader users. It is advised that the Ministry provide accessible pdf versions of any public notification shared in the future, in accordance with its obligations under Section 42 of the Rights of Persons with Disabilities Act, 2016.

## 2. Assessing the demand of rehabilitation professionals and personnel

Proposed Section 3(A)(a), read with the proposed Section 7(3)(2) of the Act clearly states now that the Council shall "assess [the] demand of professionals and personnel and develop a roadmap for meeting such demand" and the Technical Committee will be assigned this responsibility. However, the Act or any rules proposed under it should mention the time limit for the roadmap development and at least the first round of such an assessment. Defining a timeline becomes all the more important since our recent unpublished study indicates that an increasing number of special educators are exiting the field of education despite there being their shortage, especially as resource persons under the Samagra Shiksha Abhiyan.<sup>5</sup>

## 3. Inclusive educator, special educator and the general teacher

It is clear that the scope of rehabilitation professionals and personnel is proposed to be widened to include several other professions. But Schedules I (entry xxviii) and II (entry xiv) in the proposed amendments need to define "inclusive educators" and all those who could potentially register under such a grouping. The Council then may also need to specify the difference between a "special educator for imparting knowledge and skills to persons with disabilities" (entry xxvii in Schedule I and entry xiii in Schedule II) and inclusive educators.

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<sup>4</sup> See a news report concerned with the matter here: <<https://newzhook.com/story/rehabilitation-council-of-india-depwd-disabled-disability-special-education-replace-rci-act-with-new-legislation-not-rush-through-with-amendments-demand-experts/>>accessed 21 December 2020.

<sup>5</sup> Special educators cited a lack of special teaching job vacancies in the government sector and unfavourable terms of employment for those who are presently working in both the government and private sectors as primary reasons for leaving the education field.

For the study, we telephonically interviewed 82 RCI registered special educators from Bihar (based across 19 districts) and Maharashtra (based across 21 districts) in October 2020.

#### 4. Minimum years of experience

The proposed Section 3A(3)(a) states that a Chairperson is to be appointed by the Central Government “from amongst persons having experience in administration of matters relating to persons with disabilities or having work or academic experience in habilitation and rehabilitation of persons with disabilities”. The proposed amendment should also specify the minimum years of experience that such a person should hold in the said areas so that the Council could aim towards quality administration. The minimum years of experience should similarly be stated in the proposed Section 3A(3)(p) which provisions for the nomination of “six members from amongst the professionals included in the [Central Rehabilitation] Register or persons having experience in disability matters”.

#### 5. Experts with disabilities

Since nearly three-fourths of the professionals and personnel regulated under the RCI are special educators,<sup>6</sup> it is a positive sign that the RCI is seeking to converge their work with councils under the Ministry of Education more actively, by proposing to appoint the Chairperson of the National Council for Teachers’ Education or his nominee and Director of the National Council of Education, Research and Training or his nominee as members to the Council.<sup>7</sup> Additionally, Member Secretary of the National Disaster Management Authority or their nominee too is proposed to be appointed as a member to the Council. But the RCI has again overlooked explicit representation of experts with disabilities themselves within the Council.

The current proposal, similar to Sections 3(3)(f) and 3(3)(i) in the current Act, includes the nomination of “three members from amongst social workers working in habilitation and rehabilitation of persons with disabilities”<sup>8</sup> and “six members from amongst the professionals included in the [Central Rehabilitation] Register or persons having experience in disability matters”.<sup>9</sup> It is suggested that the Council reserve some positions among these social workers and professionals and personnel (including special educators) who are *also* persons with disabilities. This is especially pertinent in the case of the RCI’s functioning when we are aware that the power relations between medical and rehabilitation professionals and disabled persons and their family members have been skewed towards the former. Apart from the obligation to ensure the participation of disabled persons and their organisations in law-making, policymaking, planning and implementation (Article 4(3) of the CRPD), the UN Office of the High Commissioner for Human Rights also points out the following, emphasizing the importance of consulting disabled persons in a manner inclusive of the marginalised sections of our society at large:

Persons with disabilities can provide crucial first-hand information about their rehabilitation requirements, the barriers that they face, their experience of rehabilitation services and the effectiveness of proposed solutions and suggest alternatives that work for them in their environment. Moreover, participation raises awareness about future and existing laws and policies within the disability community, enabling more people to benefit from them...Steps should be taken to reach out to and meaningfully engage with those persons with disabilities who are usually excluded...<sup>10</sup>

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<sup>6</sup> This finding is based on a category wise updated list of registered professionals and personnel as on 29 September 2020 that was made available by the RCI vide RTI request 5-172/RCI/RTI-3447.

<sup>7</sup> Section 3A(3)(k) and 3A(3)(l), respectively, in proposed amendments to the RCI Act.

<sup>8</sup> Section 3A(3)(o) in proposed amendments to the RCI Act.

<sup>9</sup> Section 3A(3)(p) in proposed amendments to the RCI Act.

<sup>10</sup> UN Office of the High Commissioner for Human Rights, ‘Habilitation and Rehabilitation under Article 26 of the Convention on the Rights of Persons with Disabilities: Report of the Office of the United Nations High Commissioner for

## 6. 'Unsoundness of mind'

Amendment to Section 5 of the Act still mentions that “[n]o person shall be the Chairperson or Member of the Council, if he...is of *unsound mind* and stands so declared by a competent Court” (emphasis added). Despite Article 12<sup>11</sup> of the CRPD<sup>12</sup> asking States Parties to ensure that persons with disabilities get equal recognition before the law, the Rights of Persons with Disabilities Act, 2016<sup>13</sup> as well as the present amendments to the RCI Act<sup>14</sup> continue to disqualify persons found to be of “unsound mind” to become members of the Central and State Advisory Boards and the Council respectively. This disqualification disadvantages persons with mental illness and psychosocial disabilities. Although the Mental Healthcare Act, 2017, through Section 3(5), clarifies that “determination of a person’s mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court”, the said provision is only applicable to making mental healthcare and treatment decisions. Also, it has been found that many laws, including those specifying the unsoundness of mind condition, continue to discriminate against not just persons with mental illness but disabled persons more broadly.<sup>15</sup> Therefore, the RCI is encouraged to clarify what it implies by the unsoundness of mind, in case such a provision is deemed necessary, especially when there is a possibility of excluding persons with certain specified disabilities from working as members in the Council.

## 7. Registration and re-registration

One of the roles of the proposed Technical Committee under Section 7(2)(e) is regarding continuing education. The sub-section states that the said Committee will work on “all matters relating to updation of knowledge and skills of registered professionals and personnel and ascertaining such updation every five years through an examination”. Although introducing an examination rather than the Continuing Rehabilitation Education (CRE) points-based re-registration process may eliminate the monetary costs attached with attending and gathering CRE points,<sup>16</sup> the re-registration process is proposed to continue. It is also not clear whether the existing CRE points-based re-registration process will be completely discontinued. One of the recommendations from our study asks the RCI to re-examine the mandated registration renewal process and its linkage to continuing education. Not only had some of our special educator respondents reported that institutions were engaging in malpractices for issuing CRE programme certificates, the registration renewal process and delays in

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Human Rights’ (2019) <[https://www.ohchr.org/Documents/Issues/Disability/2019\\_03\\_07\\_AccessiblePDF\\_EN.pdf](https://www.ohchr.org/Documents/Issues/Disability/2019_03_07_AccessiblePDF_EN.pdf)> accessed 15 August 2020, para 50.

<sup>11</sup> Relevant parts of Article 12 of the CRPD are reproduced below:

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

<sup>12</sup> Also see Article 27 of the CRPD, on work and employment. Article 27(1)(a) prohibits discrimination on the basis of disability in case of “all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions”.

<sup>13</sup> Section 68(b), Rights of Persons with Disabilities Act, 2016.

<sup>14</sup> Section 5(c) in proposed amendments to the RCI Act.

<sup>15</sup> Bhargavi V. Davar, ‘Legal Frameworks for and against People with Psychosocial Disabilities’ (2012) XLVII Economic and Political Weekly, 125-126.

<sup>16</sup> Our special educator respondents, in two separate studies, have pointed out that the monetary cost of applying for and attending CRE programmes as well as re-registering act as barriers to continuing education in their area of study.

the same could act as additional hurdles in being meaningfully employed.

Also, read with the proposed Section 3A(1)(i) which is “to make the Council financially self-sustaining within a period of four years”, the above sub-section suggests that the Council will continue to mandate professionals and personnel to register and re-register with the Council for a fee. A process of taking seemingly fee-based examinations every five years for re-registration may be particularly discouraging for special educators whose general teacher counterparts do not have to register/re-register under the NCTE in order to find employment.<sup>17</sup>

#### **8. Zonal Coordination Committees**

The Act is currently silent on the role of the Zonal Coordination Committees (ZCCs) which were first set up in 2002 and then expanded further for functioning as RCI’s outreach nodes. While the Council’s website specifies that the ZCCs’ functions are strictly “advisory in nature”,<sup>18</sup> the Act should provide some clarity on the ZCCs’ functioning and monitoring in order to ensure greater transparency.

#### **9. Condition of jurisdiction**

Finally, “having jurisdiction” should be deleted from the proviso that “the Council or any other person files a civil suit before an appropriate Court of Law or registers a first information report in the police station, having jurisdiction” under Section 13(3). That the police station’s jurisdiction should not be restricted is in conjunction with the 2013 Justice Verma Committee recommendations, and is restated in *Kirti Vashisht v. State & Ors.*<sup>19</sup>

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<sup>17</sup> See Section 3.1.3 especially in Prianka Rao, Shreya Shrivastava and Tanushree Sarkar in ‘Towards an Inclusive Education Framework for India: An Analysis of the Rights of Children with Disabilities and the RTE Act’ (2020) <[https://vidhilegalpolicy.in/wp-content/uploads/2020/05/InclusiveEducationReport\\_final\\_28April\\_0527PM-1.pdf](https://vidhilegalpolicy.in/wp-content/uploads/2020/05/InclusiveEducationReport_final_28April_0527PM-1.pdf)> accessed 21 December 2020.

<sup>18</sup> See the following web-link for more details on ZCCs: <<http://www.rehabcouncil.nic.in/forms/Sublink1.aspx?lid=801>> accessed 21 December 2020.

<sup>19</sup> CRL.M.C. 5933/2019 & Crl.M.A.40833/2019, Decision dated 29 November 2019 [17], as cited in ‘Zero FIR’ (2020) <<https://lexlife.in/2020/06/06/explained-zero-fir/>> accessed 23 December 2020.

[www.vidhilegalpolicy.in](http://www.vidhilegalpolicy.in)  
Vidhi Centre for Legal Policy  
A-232, Defence Colony  
New Delhi – 110024  
011-43102767/43831699  
vclp@vidhilegalpolicy.in