



LEGAL RIGHTS OF PEOPLE WITH DISABILITIES IN INDIA

Ms. Janhavi S. Mohod*

ABSTRACT

In 1995, the Government of India passed the Act of Persons with Disabilities. According to this law, people with disabilities have equal rights and the government is required to enable their full participation in society. Individuals who are classified as disabled frequently face ongoing difficulties related to their bodies, minds, intellect, or senses, which, when taken into account together with other variables, prevent them from participating fully and equally in society. Disabled people were not seen as liabilities in many other nations, but in India for a very long time—before the 1980s, actually — disabled people were seen as liabilities and were also the target of prejudice and discrimination. Also, Children with disabilities must be enrolled in regular schools and get free education according to the government. According to this regulation, all public spaces such as buildings, schools, etc., must be accessible and have ramps. The main goal of this article is to provide an outline of the Persons with Disability Act, 1995, the Rights of Persons with Disabilities Act, 2016, and the Development of Disability Rights Movements. The authorized government has to make sure the Person with a Disability shall enjoy the right to life with Dignity, Right to Life, and respect for one's integrity on par with everyone else. The constitution of India guarantees some rights to the disabled; however, this is not always the case. In light of the foregoing, this essay will examine the rights of disabled people in India.

Keywords: *Disability, discrimination, government, society, prejudice.*

* Student | Symbiosis Law School, Nagpur.

Introduction

One of the nations that has a large number of people with disabilities is India. Persons with disabilities are in every city of India. A flexible society that accommodates everyone may be fostered and inclusive, sustainable growth can be accelerated with the help of people with disabilities. In addition, if they experience discrimination or rights violations, people with disabilities may file a lawsuit against specific persons or government entities under the terms of this Act. As a valuable human resource, people with disabilities are acknowledged in the National Policy for Persons with Disabilities (2006), which also highlights the need to establish an environment that protects their rights, promotes equal opportunities, and encourages their active participation in society. According to the 2011 Census, there are 121 million people in India, out of which 2.68 billion (26.8 million) people are considered to be "disabled," or 2.21% of the population. Only over 0.81 crore of India's disabled persons reside in metropolitan regions, making up roughly 69% of the country's crippled population. Focused actions for the welfare of disabled people are crucial in a time when "inclusive development" is being underlined as the best road to sustainable development. A handicap, as defined by the Oxford Dictionary, is any kind of limitation, whether it be physical, mental, cognitive, sensory, exercise-related, or any combination of these. This disorder may be established from birth or emerge later in life, and it can have an impact on a person's skills.

The Constitution and the Disabled

Without a doubt, the Indian Constitution offers protection to every Indian citizen, regardless of their state of health or mental state. The Indian Constitution forbids discrimination on the grounds of caste, religion, gender, place of birth, or any other characteristic; this protection also extends to people with disabilities under Article 15(1). It guarantees the rights of all Indian citizens, including those with disabilities, to freedom of expression, the practice of any religion, belief, justice, worship, equal opportunity, and status in society. In particular, Article 23 addresses the rights of those with disabilities by prohibiting forced labour and human trafficking. The rights of handicapped people to life and liberty are protected by Article 21. In addition, the constitution gives disabled individuals the right to seek remedies by the Supreme Court according to the provisions of Article 32 if their rights are infringed and exempts them from the requirement to pay taxes in support of any religious organization.

An Evolution and Overview of the Persons with Disability Act, 2016

On December 16, 2016, the Lok Sabha passed the “Rights of Persons with Disabilities Act” of 2016, which was approved by the Rajya Sabha on December 14. This new law, which received presidential assent on December 27, has replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995. With the remaining authority to add other categories of disabilities as and when necessary, the number of recognized disabilities has expanded from the previous number of 7 to 21. This law recognizes many disabilities, such as poor vision, leprosy, and blindness, among others. Along with those who have been cured of leprosy, it also includes people with hearing impairments (both hard and deaf), motion problems, dwarfism, intellectual disorders, mental illness, muscular dystrophy, cerebral palsy, chronic neurological conditions, particularly intellectual disabilities, diseases such as multiple sclerosis, speech and language disorders, thalassemia, haemophilia, sickle cell illness, multiple disabilities including deaf-blindness, people who have suffered an acid attack, and people who have been diagnosed with Parkinson's disease. Penalties are provided by the Act for noncompliance. The establishes guidelines for the establishment of¹ national and state funds to support people with disabilities financially. The Trust fund for the empowerment of persons with disabilities and the national fund for persons with disabilities will be combined by the National Fund. Though it is undoubtedly a momentous and much-needed event, it would be a stretch to say that the 2016 Act's passage represents a whole fresh start and has addressed every one of the many problems on our long agenda. To make it a visible reality, the execution and executive mentality must be changed. Additionally, the 2016 Act has punitive measures for non-compliance, and each infraction of an Act provision is subject to a punishment of ten Thousand rupees. and more infractions might result in fines ranging from forty thousand rupees to five lakh rupees. The 2016 statute established guidelines for the guardianship of people with mental illnesses. The district courts have two guardianship options. While a limited guardian makes decisions together with the mentally ill person, a plenary guardian makes decisions on the person's behalf without consulting the mentally ill person. 2011 saw the presentation of the draught legislation for this Act to the parliament. The measure took five years to develop into an Act.

¹ Ajay Kataria, Critical Analysis of Rights of Persons with Disabilities Act, 2016, LEXPEEPS.

Evolution of Disability Rights Movements

To advance the best interests of the disabled, a number of groups' demands were consolidated and grouped under a cross-disability umbrella in 1980. Over four decades, the DRM "Disability Rights Movement" in a country like India has developed. Early in the 1970s, voices started calling for the rights of differently able people, but it was still a long way from being a movement. Groups and individuals made a wide range of requests, which were incredibly dispersed. During this decade, a number of NGOs began active in the disability area, which gave the DRM additional momentum. The Convention on the "Rights of Persons with Disabilities" was adopted by the UN (United Nations) in the new millennium in 2006. A disability law was developed by the Indian Union Government in 2012, and after minor revisions to the initial draught, it was introduced in the parliament the following year. The Rights of Persons with Disabilities Bill, 2016, was approved by both houses of parliament after a wait of more than three years. Overall, what began as sporadic requests for rights for individuals with disabilities has grown into a topic that has been the focus of numerous academic articles. The successes so far are deserving of recognition and they deserve to be acknowledged, despite the fact that there are still numerous barriers in the way of the DRM. Governments everywhere have a responsibility to acknowledge the significant number of individuals with disabilities who encounter obstacles while trying to obtain healthcare, rehabilitation, support, education, and jobs, which prevents them from living fulfilling lives.²

Landmark Judgments on Rights of Persons with Disability Act, 2016

1. **Vikash Kumar v. Union Public Service (2021)**³: First denied a scribe for the civil services test, the petitioner in the historic case of "Vikash Kumar v. Union Public Service". (2021) was a writer with writer's cramp. In addition, the Delhi-based Ram Manohar Lohia Hospital turned down the petitioner's application for a certificate of impairment. The petitioner then appealed to the Central Administration Tribunal, but it was denied. After that, the petitioner brought the case to the Apex Court, which mandated that AIMS form a board and offer a medical condition evaluation. The study did not classify the petitioner's condition as a recognised benchmark impairment, although acknowledged it. Court observation The Court emphasized that, in accordance with government regulations, only individuals with qualifying disabilities are authorized to use a scribe during an examination. The Ministry

² Ajay Kataria, Critical Analysis of Rights of Persons with Disabilities Act, 2016, LEXPEEPS.

³ Vikash Kumar v. Union Public Service [2021] 11 S.C.R. 281 (India).

of “Social Justice” and “Empowerment” acknowledged that a candidate may have additional medical issues that might impair their writing abilities. The Ministry is in charge of putting the Act's requirements into practice. As a result, the testing agency retained the last say over whether to provide a scribe or other forms of assistance. The Court came to the conclusion that granting the appellant a scribe would be contrary to the Act's intent because the appellant had a condition that made it difficult for him to write.

2. **State of Kerala V. Leesamma Joseph (2021)⁴:** This case dealt with the question of whether or not people with disabilities were entitled to a promotion reservation. The Court examined and construed the terms of the 2015 Act as well as the 1995 Act in order to reach its decision. The Court ruled that under the 1995 Act's promotion policy, disabled people are entitled to reservations. The Court further stated that while it is simpler to establish legislation, it is challenging to change people's societal thinking in a way that truly carries out the legislation's noble aims. The court found that those with disabilities are entitled to consideration for promotions.
3. **Avni Prakash V. National Testing Agency (2021)⁵:** In this case, the petitioner's main argument was that because she had been diagnosed with dysgraphia and a 40% permanent handicap, she qualified for a reasonable accommodation under the benchmark disability standard. Nevertheless, throughout her National Eligibility and Entrance Test (NEET) experience, she was not granted the accommodations for which she was legally qualified, as stated in the Guidelines on Written Examinations supplied by the Ministry of Social Justice and Empowerment. The National Testing Agency (NTA) was required by the Court to abide by the Written Examination Guidelines. The designated examination centre was not aware of the Act's stipulations; hence the appellant was not given the requisite amenities. The NTA was in charge of making sure that all the designated centres were aware of the accommodations made for people with disabilities. The Court further stated that it was unlawful to deny people with disabilities their right to equality and reasonable accommodations by treating the presence of a benchmark disability as a necessary condition. When a statute grants disabled individuals rights, their rights cannot be diminished. The Court came to the conclusion that the Act's provisions for reasonable

⁴ State Of Kerala v. Leesamma 2021 SC 181 (India).

⁵ Avni Prakash v. National Testing Agency 2021 SCC OnLine SC 1112 (India).

accommodations are essential and serve as the foundation for equality and anti-discrimination. The NEET bulletin shall publish the provisions pertaining to disabled individuals. The statutory rights of disabled people cannot be denied by setting a higher bar for disability.

Conclusion

People still view people with disabilities as objects of pity and sympathy, as third-class citizens, and as liabilities in our society, which leaves them open to discrimination like harassment, bullying, mental abuse, and social isolation, among other forms of prejudice. This particular piece of law is nothing less than a blessing for people with disabilities. This Act extensively addresses concerns connected to the rights of people who are differently able. Additionally, it requires the government to carry out its responsibilities with the utmost diligence and to develop plans and initiatives for the community's welfare. Only time will tell how much such legislation would change the way that the Indian people perceive people with disabilities in terms of acceptance and belonging. This Act is undoubtedly a step in the right direction. This new law takes a human rights-based and socially conscious approach to disability, acknowledging that people with disabilities are equally capable of practising their fundamental freedoms and human rights. The Sustainable Development Goals (SDGs) must be achieved by a "team" that includes governments, businesses, academic institutions, and organisations that represent people with disabilities. Therefore, this Act may mark a turning point for people who are differently able and alter how society views those with disabilities.