

Introduction

The Constitution of India is the founding legal document guaranteeing fundamental rights to all persons which includes persons with disabilities. The main legislation on disability rights is the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ("PWD Act")

Other legislations which also cover some specialized aspects of disability issues are the National Trusts Act, the Rehabilitation Council of India Act and the Mental Health Act 1987.

Disabilities can be physical in nature, cognitive, behavioural, or even emotional. These particular disabilities topic centre contains mostly reference to physical and sensory forms of disability, as other forms are adequately covered in other topic centres. All human beings are born free and equal in dignity and rights. People with disabilities all over the world experience human rights violations, stigma and discrimination. To have a disability means that one has fundamental difficulty accomplishing things that others take for granted. There are many social factors that can affect whether or not individuals with disabilities are included or excluded from participation on various activities, which in turn can affect development or esteem. Disability is thus just not a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives

Meaning and Definition of disability

According to **The Rights of Persons with Disabilities Act, 2016**.

"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.

"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.

The 21 disabilities covered are as follows.

1. Blindness
2. Low-vision
3. Leprosy Cured persons
4. Hearing Impairment
5. Locomotor Disability
6. Dwarfism
7. Intellectual Disability
8. Mental Illness
9. autism spectrum disorder
10. Cerebral Palsy
11. Muscular Dystrophy
12. Chronic Neurological conditions
13. Specific Learning Disabilities
14. Multiple Sclerosis
15. Speech and Language disability
16. Thalassemia

17. Haemophilia
18. Sickle cell disease
19. Multiple Disabilities including deaf-blindness
20. Acid Attack victims
21. Parkinson's disease

Disability is an impairment that may be cognitive, development, intellectual, activity, limitations, sensory or some combination of these. It substantially affects a person's life activities and may be present from birth or occur during a person's lifetime. Disability is a contested concept, with different meanings of different communities. It may be used to refer to physical or mental attributes that some institutions, particularly medicine, view as needing to be fixed. It may refer to limitations imposed on people by the constraints of an ablest society. People with disabilities have the same health needs as non-disabled people for immunizations, cancer screening etc. They may also experience a narrow margin of health both because of poverty and social exclusion and also because they may be vulnerable to secondary conditions such as pressure sores or urinary tract infections.

Types of disability

- 1 socially disabled person
- 2 physically or mentally disabled persons

Constitutional provisions

The constitution of India mainly deals with socially disabled person by which it guarantees rights under Chapter III as fundamental human rights to all persons. The right to equality is enshrined in Article 14 of the Constitution and recognizes that all persons are equal before the law. Persons with disabilities are entitled to this guarantee to not be discriminated against in any manner and to be treated equally, which includes the requirement for special treatment where required. Similarly, Article 15 and 16 prohibits discrimination on the grounds of "religion, race, caste, sex, place of birth or any of them and guarantees equal opportunity in matters of public employment. Article 16 (3) & (4) provides that the State can make provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services. It is on the basis of Article 16, that the guarantees to reservation and equal opportunity in public employment are made under the PWD Act.

Prohibition of Discrimination:

Article 15 is a manifestation of "Right to Equality" under article 14, as it enshrines a specific dimension of the principles of equality relating to discrimination by state or various grounds. Under article 15 the protection extends only to citizens, unlike article 14 which protects 'any person'. Thus, in application article 15 protects from discriminatory state activities but the ambit of article 15 is narrower than that of article 14. Article 15 of the Indian constitution deals with "prohibition of discrimination" on the grounds of religion, race, caste, sex or place of birth.

It runs as follows:

Article 15(2) says, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disabilities liability restriction or condition with regard to :(a) Access to shops, public restaurants, hotels and places of public entertainment; or(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the state funds dedicated to the use of the general public.

Equity In Social, Economic and Cultural Rights:

Article 25 of the CRDP recognizes the “right of a person with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, state parties shall ensure an inclusive education system at all levels and lifelong learning.” They considered constitution to grant education to children with disabilities if they explicitly guarantee the right to education, the right to free education, or the right to compulsory education to children with disabilities or prohibit discrimination in education on the basis of disability. Globally only 28% of the countries provide some type of constitutional guarantee of educational rights or the children with disabilities.

Right To Work:

Article 27 of the CRDP instructs states to “recognizes the right of persons with disabilities to work, on an equal basis with others; this includes the rights to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

Right To Liberty:

Article 14 of the CRPD instructs state parties to guarantee people with disabilities the right to liberty and security of person. We considered the right to liberty to be guaranteed to persons with disabilities if they were explicitly granted the right to freedom or liberty. Globally, only 9% of the constitution explicitly guarantee the right to liberty to persons with disabilities. However, 19% of the constitution specifies that the right to liberty can be denied to persons with the mental health condition.

Right To Freedom of Expression:

In article 21, the CRPD states that to “take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion include the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communications of their choice.”

Rights of Disabled Persons In India:

Persons with disabilities are one of the most neglected sections of our nation. This is due to the sheer indifference of the society which subjects such people to disapproval and antipathy. Such people have several rights under various Indian laws as well as UN conventions that are followed in India. Under section 2(i) of Persons with Disabilities Act, 1995, "disability" includes blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental illness.

Disability Certificate: It is the most basic document that a disabled person should possess in order to avail certain benefits and concessions. The State Medical Boards established under the State governments can issue a disability certificate to any person with more than 40% disability.

Disability Pension: People who are above 18 years of age, suffering with more than 80% disability and are living below the poverty line are entitled to the disability pension under the Indira Gandhi National Disability Pension Scheme. Various NGOs are dedicated to this because i.e. they help such persons with disabilities to get their disability pension. **Employment:** In government jobs, 3% of the seats are reserved for persons with disabilities.

Income Tax Concession: Under sections 80DD and 80U of Income Tax Act, 1961, persons with disabilities are also entitled to certain income tax concessions.

Chapter IV of the constitution contains the Directive Principles of State Policy, which are also aims for the State to comply with. The DPSPs provide in Article 38 that the State Policy has to be directed to

minimize inequalities, secure right to an adequate means of livelihood and also secure that the operation of legal system promotes justice. Under Article 41, the State shall make provisions for ensuring the right to work, education and public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want. The State shall endeavour to provide for free and compulsory education for all children until they complete the age of 14 years and under Article 46 the State has also the responsibility of promoting with special care the educational and economic interests of the weaker sections of the people. All these provisions are equally applicable to the persons with disabilities.

The denial or violation of any of these rights would entitle any person to approach the High Courts or the Supreme Court in their writ jurisdictions under Articles 226 and 32, respectively, if there is no other alternative or equally efficacious remedy available.

LEGAL FRAMEWORK

The PWD Act

The PWD Act came into force on 1st January 1996, and was enacted in pursuance of India's obligation under the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region, which it adopted in December 1992. The Act provides for various measures for persons with disabilities to facilitate their access to education, employment, basic infrastructure and social welfare measures.

Under the PWD Act, a 'person with disability' has been defined as any person having 40% or more of any of the following disabilities: (i) Blindness; (ii) Low vision; (iii) Leprosy cured; (iv) Hearing impairment; (v) Locomotor disability; (vi) Mental retardation; and (vii) Mental illness. This is a limited definition, as only persons who fall within this definition as having 40% or more of the above 7 disabilities would be categorized as persons with disabilities and would be entitled to get the benefits of the rights and schemes under the PWD Act.

The main rights available to persons with disabilities are in the field of education in public schools, public employment, infrastructure on the roads and in public transport and access to public buildings and a grievance redressal procedure for protection of their rights.

Education

Under the PWD Act, all children with disabilities below the age of 18 have the right to free and compulsory education that is accessible. This goes even beyond the mandate of the Right of Children to Free and Compulsory Education Act, 2009 that calls for free education to be provided to children up to the age of 14. The further obligations placed on the government by the PWD Act with respect to formal education are that efforts must be made to see that these children with disabilities are integrated into regular schools that they attend, and that the setting up of special schools with vocational training facilities should be encouraged at the local level in the Government and private sectors, so that children across the country who require special education have access to such schools in their areas. Section 39 of the PWD Act also requires that 3% of all seats in Government and Government-aided educational institutions be earmarked for children or students with disabilities. The PWD Act also requires that the government formulate and implement schemes pertaining to non-formal, functional education, in respect of the following matters:

(a) Conducting part-time classes in respect of children with disabilities who have completed the fifth grade and could not continue full-time studies thereafter;

- (b) Conducting special part-time classes to provide functional literacy for children with disabilities in the age group of sixteen and above;
- (c) Imparting non-formal education after an appropriate orientation;
- (d) Imparting education through open schools or open universities;
- (e) Conducting class and discussions through interactive electronic or other media; and
- (f) Providing every child with disability the requisite books and equipment's, at no cost.

Additionally, to facilitate equal opportunities in education for children with disabilities, the government is obligated to promote research on assistive devices, teaching aids and special teaching materials, and establish and assist special teachers' training institutions. Educational institutions are required to ensure that children with visual disabilities are provided with scribes when required. To further facilitate the mainstreaming of children with disabilities, the government is required to prepare a comprehensive scheme providing for facilities or financial support for transport to and from school, making school supplies available, scholarships, grievance redressal fora, modification of examinations and restructuring of the curriculum.

Employment

Chapter VI of the PWD Act, containing Sections 32 to 40, addresses the affirmative action measures with respect to the employment of persons with disabilities. It requires that at least 3% of all posts in all jobs under the government are required to be reserved for persons with disabilities, with 1% each being reserved for persons with blindness / low vision, persons with hearing disabilities and persons with locomotor disabilities / cerebral palsy.

To ensure that reservations have meaning, the government is required to identify posts in all public establishments that shall be reserved for persons with disability, based on the suitability of such posts to each category of disability. The list of identified posts so prepared is required to be revised in light of technological developments, at regular intervals of a maximum of 3 years.

Under Section 34, vacancies are required to be advertised, with the details of the reservations for the persons with disabilities, in the Special Employment Exchange and, if not filled, shall be carried forward to the next recruitment year.

There are also many requirements of reasonable accommodations to be provided by the Government under Article 38 of the PWD Act and to formulate schemes for the following:

- (a) relaxations of age limit,
- (b) training,
- (c) creation of an enabling environment and providing incentives to employers.
- (d) The government is also required to frame an insurance scheme for its employees with disabilities, and is expressly prohibited from discriminating against employees who acquire disabilities over the course of their employment as well as employees with disabilities in the matter of promotions.
- (e) Finally, for those persons with disabilities who are registered with the Special Employment Exchange and have not been able to find gainful employment for over 2 years, the government is required to frame a reasonable scheme for unemployment allowance.

Accessibility

Accessing public spaces and infrastructure are addressed in Sections 44 to 47 of the PWD Act. Such measures include adapting public transport facilities for easy access to persons with disabilities, installing auditory and tactile indicators on public roads and pavements to aid those with auditory and

visual disabilities, and installing ramps, Braille symbols and auditory signals in facilities in public buildings and medical institutions.

Statutory Authorities and Grievance Redressal

The PWD Act provides for the appointment of a Chief Commissioner for Persons with Disabilities at the central level under section 57 and Commissioners for Persons with Disabilities at the state level under Section 60 of the PWD Act. The Commissioners have the powers to

- (i) Co-ordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;
- (ii) Monitor the utilization of funds disbursed by the State Government;
- (iii) Take steps to safeguard the rights and facilities made available to persons with disabilities;
- (iv) Submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

In addition to these powers, the Chief Commissioner and Commissioners may of their own motion or on the application of any aggrieved person or otherwise look into complaints relating to deprivation of rights of persons with disabilities or the non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights of persons with disabilities, and take up the matter with the appropriate authorities. In order to enquire and adjudicate into these complaints, the Chief Commissioner and the State Commissioners have certain powers of civil court such as summoning of documents, etc.

Thus any matter of discrimination or denial by public authorities in matters of recruitment, promotion, benefits that persons with disabilities are entitled to may be brought before the Commissioners for adjudication and under Section 62 of the PWD Act,, and they can recommend appropriate action to be taken by the offending body.

The central government and many State governments have enacted rules under the PWD Act which include rules on the procedure for filing complaints before the Commissioners. The complainants do not require legal representation during the proceedings, and generally, they may institute a complaint by submitting complete details of their complaint and facts to the relevant Commissioner. In accordance with the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996, complaints are ideally to be disposed of within 3 months from the date of notifying the opposite party.

In the event that any party is not satisfied with the decision of the Chief Commissioner or the State Commissioner, the said decision can be challenged in a writ petition in the respective state High Court by the aggrieved party.

The Rights of Persons With Disabilities Act, 2016

In implementation of its obligations under the Convention, India enacted the Rights of Persons with Disabilities Act, 2016 (the "New Act") and the rules there under (the "Rules") in 2017. The New Act replaced the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995 (the 'previous Act'), which covered only seven disabilities. The New Act covers more than 15 disabilities including dwarfism, acid attack victims, intellectual disability and specific learning disability. It defines a 'person with disability' as someone with long term physical, mental, intellectual

or sensory impairment which, in interaction with barriers, hinders his / her full and effective participation in society equally with others. This definition under the New Act has been formulated using the text included in Article 1 of the Convention.

Under the New Act, persons with at least 40% of a disability (referred to as “persons with benchmark disability”) are entitled to certain benefits. One such benefit is that at least 4% of the total number of vacancies in Indian Government establishments in specified categories (and 1% in certain others) are required to be reserved for their employment.

Obligations on private establishments in India

While Indian private establishments are exempt from reserving jobs for persons with disabilities, the New Act requires them to adhere to a slew of obligations. The term ‘private establishment’ has been very widely defined to include a company, firm, factory or such other establishment. This would include the Indian presence of any foreign company, be it a liaison office, branch, subsidiary or a joint venture. The New Act makes it unlawful for an establishment to discriminate against a person on the ground of his or her disability unless it can be proved that the discriminating act in question is a proportionate means to a legitimate objective. The Rules make the “head” of the establishment responsible for ensuring that this provision of the New Act is not misused to the detriment of disabled persons.

The New Act requires establishments to prepare and publish an Equal Opportunity Policy (the “EOP”) for persons with disabilities. A copy of the same is required to be registered with the State Commissioner or the Central Commissioner. The EOP must inter alia contain: (a) details regarding amenities and facilities put in place for persons with disabilities; (b) lists of posts identified for such persons; and (c) details of training, promotion, allotment of accommodation and provision of assistive devices and barrier free accessibility for such persons. Further, these establishments must appoint a liaison officer to look after the recruitment of persons with disabilities including the provisions and amenities for disabled employees. Such appointment is to be notified in the EOP. Furthermore,

the establishments are required to maintain records relating to persons with disabilities enumerating the following:

the number of disabled persons employed and the date of commencement of their employment;

the name, gender and address of employee(s) with disabilities;

the type of disability that such employee(s) are

the nature of work being performed by such employee(s); and

the type of facilities being provided to the disabled employee(s).

The establishments are further required to produce the aforesaid records for inspection as and when called upon to do so by the relevant authorities.

The Rules prescribe adherence to standards concerning physical environment, transport and information and communication technology applicable to disabled employees.

Complaints and penalties

The Rules also lay down the procedure for dealing with complaints relating to discrimination. Complaints about exploitation of persons with a disability can be made to the Executive Magistrate

and the local police. Violation of any provision of the New Act invites fines and penalties and in certain cases makes directors and senior officers of an establishment personally liable.

The New Act stipulates a monetary fine of Rs. 10,000/- for the first violation and fines between Rs. 50,000/- and Rs. 500,000/- for subsequent violations. If the violation is committed by a company, both the entity as well as the person(s) responsible for the conduct of the business of the company would be liable. Directors, officers and managers of a company would be individually liable if it is established that the violation was committed with their consent, or is attributable to their negligence.

Failure by an establishment to provide required information, documents or records (as required under the Act) is an offence under the New Act. The monetary fine provided for each such offence by an organisation is Rs. 25,000/-. An additional fine of Rs.1,000/- would be applicable for each continuing day of such failure or refusal, as the case may be.

The Act also imposes criminal liability on anyone who within public view insults or intimidates a disabled person with the intention of humiliating such person. This would also apply to such actions within a workplace. The punishment provided for such an offence is imprisonment for a term between 6 months to 5 years and fine.

Prosecutions for offences under the New Act are triable by a Sessions Court which is required to be notified by State Governments for each district as a 'Special Court'.

JUDICIARY ON DISABILITY AND EMPLOYMENT

National Federation of Blind vs. Union Public Service Commission and Others

(Supreme Court order and judgment dated 23.03.1993, case citation (1993) 2 SCC 411)

The issue before the Supreme Court was whether visually impaired persons could sit for the Civil Services Examination. The Court held that there were several jobs in the Civil Services such as post of Administrative Officer that could be performed by visually impaired persons. Such jobs/posts had been identified and notified by the Government of India in 1986. Since these jobs had to be filled by the Civil Services Examination, the Court said that the UPSC must permit visually impaired (including totally blind) persons to take the examination with the help of a scribe (i.e., reader/writer) or be permitted to take the examination in Braille.

Amita vs. Union of India (2005) 13 SCC 721

An advertisement was released by the Banking services recruitment board Chennai for the appointment of a probationary officer. Seeing the advertisement, Amita, a visually challenged girl applied for the post. The criteria for the post were as follows.

The candidate must be a graduate from any recognized university.

The candidate should not be less than 21 years of age and not more than 30 years of age. These criteria also included any other qualifications mentioned by the government of India. The petitioner sent her application along with a demand draft. She mentioned in her application that she is visually impaired so that the board can make the necessary arrangements regarding providing of scribe for the examination. After a few days her application was returned to her and it was mentioned there that 'As we don't hire visually challenged candidates for the post of probationary officer, your application is rejected.' Aggrieved by the decision of the board, Amita filed a writ petition in the supreme court of India under Article 32 of the constitution of India. The petitioner was also allowed to amend her petition in which she prayed for the following reliefs.

An order of mandamus should be passed in order to allow her to sit for the entrance examination.

The board in the instant case has not given her an equal opportunity which is a violation of articles 14, 16, 19, and 21.

An order of mandamus should be passed whereby a proper action should be taken keeping in view the rights of persons with a disability, equal opportunities Act 1995.

Judgment

It was held that the order of the Board cannot be sustained as the writ petitioner has fulfilled all the criteria mentioned in the advertisement, hence she cannot be rejected only on the grounds of her visual impairment. It was also found that the petitioner also applied for the same post in Bangalore and she was given the admit card for the entrance test even after mentioning that she is visually impaired. This clearly proves that visual impairment cannot be a reason for the rejection of the application.

Mahesh Gupta and Others vs. Yashwant Kumar Ahirwar and Others

(Supreme Court order and judgment dated 30.08.2007 in Case No. Civil Appeal 3984/2007)

In this precedent setting case, the Supreme Court held that vacancies reserved for persons with disabilities could not be further restricted to SC/ST/OBC categories but rather must be open to all categories of persons with disabilities. The Court said: "A disabled is a disabled. The question of making any further reservation on the basis of caste, creed or religion ordinarily may not arise. They constitute a special class."

Ravi Prakash Gupta vs. UPSC and Others

(Delhi High Court judgment and order dated 25.02.2009 in Writ Petition No. 5429/2008)

The question before the Court was whether the UPSC and Government of India were mandated to implement the backlog (i.e., shortfall) in the reservation for persons with disabilities since 1996, when the Persons with Disabilities Act came into force. The Court held in the affirmative. Finding that a total of 785 vacancies had been filled in the Indian Administrative Services from 1996 to 2006, the Court said that one percent i.e., 8 vacancies ought to have been reserved for and filled by visually impaired persons, but this was not done and only one visually impaired had been appointed in 2005, leaving 7 vacancies unfilled. Therefore, the UPSC and Government of India were bound to fill these vacancies from the available candidates for the 2006 Civil Services Examination. On this basis, the Court directed the Government of India to appoint the petitioner Ravi Prakash Gupta, a totally blind person, to the Indian Administrative Service. This decision of the Delhi High Court was affirmed by the Supreme Court of India on appeal by the judgment dated 7.7.2010.

Bhavya Nain vs. Delhi High Court Administration, the petitioner, a person with bipolar affective disorder, challenged the denial of his appointment to the post of judge in the Delhi Judicial Services. Bipolar affective disorder is classified as a mental illness and persons so affected are eligible for reservation in public employment under the 2016 Disabilities Act. He had appeared for and was successful in the Delhi Judicial Services Examination, held periodically for the recruitment of civil judges and magistrates into the judiciary in Delhi. However, the administration denied him appointment, on the stated ground that his disability certificate, while assessing his disability at 45%, also noted that his condition was likely to improve. According to the administration, this meant that his disability was not permanent, and therefore he could not be appointed to the post of judge against a reserved vacancy.

CONCLUSION

Disability refers to the disadvantage or restrictions of activity caused by the way society is organised which takes little or no account of people who have physical, sensory or mental impairments. Disability is an unfortunate part of human life which can affect not only the natural way of a living but also despair component strength and power. The Government needs to launch more social security schemes for disabled sections and generate more employment opportunities for them. Several schemes and benefits conferred on the disabled persons have come up as relief and have successfully served to provide equal opportunities to the disabled section.