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THE LEGAL RIGHTS OF DISABLED PERSONS IN INDIA

-Komalpreet Kaur

Introduction

A disabled individual is typically one who has a long-term impairment – physical, sensory, cognitive, mental, or emotional – that substantially limits his or her ability to engage in significant life activities. Disability is not absolute but rather on a continuum, and there is no precise point at which the dividing line between disabled and non-disabled individuals is drawn.¹

The environmental setting also contributes importantly to shaping people's living patterns and how disability impacts them. Where environments are inaccessible, those are the obstacles that keep disabled persons from participating on an equal footing and fully within society. By eliminating such impediments and by making it easier for persons with disabilities to access their lives easily, social inclusion can be amplified.²

Around 1.3 billion people - roughly 16% of the population - have severe disabilities. Their number is rising primarily because the world's population is aging and the incidence of non-communicable diseases is rising.³ According to the 2011 Census, 2.68 crore persons have disabilities, or 2.21% of the Indian population.⁴

Constitutional Rights of Disabled Persons in India

¹ The Needs of People with Disabilities, National Disability Institute (2018), <https://www.nationaldisabilityinstitute.org/capacity-building/empowered-cities/the-needs-of-people-with-disabilities/> (last visited May 8, 2025).

² World Health Organization: WHO, Disability, World Health Organization: WHO, Jan. 27, 2020, https://www.who.int/health-topics/disability#tab=tab_1 (last visited May 8, 2025).

³ Id.

⁴ Department of Empowerment of Persons with Disabilities (DEPwD), India, <https://depwd.gov.in/> (last visited May 8, 2025).

The Indian Constitution provides equal rights to all Indians, both with and without disability, physical or mental. It provides justice, liberty, equality, and fraternity, which provide dignity and belongingness to each person in society.⁵

Article 15(1)⁶ prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth, encompassing the disabled. Article 15(2)⁷ protects equality of access to public establishments such as shops, hotels, and roads. Article 16⁸ ensures equal opportunity in public employment to all, including the disabled. Article 21⁹ gives protection for the right to life and liberty, a fundamental protection for disabled people.¹⁰

Article 45¹¹ of the Constitution of India obliges the State to make necessary provisions for the education of children, including handicapped children, up to the age of 14 years. Indian health law contains several provisions relating to handicapped people, and foremost among them is the Mental Health Act, 2017,¹² which provides for arrangements about the promotion of all citizens, including handicapped citizens, towards the improvement of their well-being and health.¹³

Rights of Persons with Disabilities Act, 2016

The Rights of Persons with Disabilities (RPwD) Act, 2016,¹⁴ came into force on 19th April 2017, replacing the previous Act of 1995. It constructs disability on a broader, dynamic, and developing model to better cover diverse and changing needs.¹⁵

The RPwD Act, 2016¹⁶ also brings some responsibilities on the concerned governments to perform certain tasks, making the individuals with disabilities deserving of being given equal rights. It makes it obligatory to provide some of the benefits like a reservation of at least 5% in

⁵ <https://education.vikaspedia.in/viewcontent/education/parents-corner/guidelines-for-parents-of-children-with-disabilities> (last visited May 8, 2025).

⁶ INDIA CONST. art. 15(1)

⁷ INDIA CONST. art. 15(2)

⁸ INDIA CONST. art. 16

⁹ INDIA CONST. art. 21

¹⁰ Supra note 5.

¹¹ INDIA CONST. art. 45

¹² Mental Health Act of 2017, Acts of Parliament, 2017 (India).

¹³ Supra note 5.

¹⁴ Rights of Persons with Disabilities (RPwD) Act of 2016, Acts of Parliament, 2016 (India).

¹⁵ <https://socialwelfare.vikaspedia.in/viewcontent/social-welfare/differently-abled-welfare/policies-and-standards/rights-of-persons-with-disabilities-act-2016> (last visited May 8, 2025).

¹⁶ Supra note 14.

higher education, 4% in government employment, and 5% in allotment in land allotment and poverty alleviation schemes to individuals with benchmark disabilities.¹⁷

The Act offers free education to every child with benchmark disabilities between the ages of 6 to 18 years. The Act also mandates government and government-recognized institutions offer inclusive education. The Act also facilitates the 'Accessible India Campaign' by offering more accessibility in government and private buildings within a specified period to make the built environment inclusive.¹⁸

In the case of *Jared Abiding v. Union of India*,¹⁹ the Supreme Court adjudicated various matters brought up by Shri Javed Abidi, like requesting the provision of aisle chairs on planes, allowing ambulifts at airports, concessional fares to physically disabled individuals, etc. In this case, the Court directed Indian Airlines to offer concessional fares to air passengers with locomotor disability of up to 80% and beyond.²⁰

In *Zill Suresh Jain v The State Cet Cell and 3 Ors*,²¹ the 40% visually handicapped petitioner had wanted to become a physiotherapist but was not admitted merely on account of her visual handicap. In this regard, the court emphasized the responsibility of society and the state government to try sincerely to rehabilitate and improve the lot of the most underprivileged, denying in principle any assumption that it is impossible.²²

Other Rights of the Disabled in India:

1. **Penalties for offences:** The RPwD Act, 2016, lays down penalties for offenses against a person with disability and violations of regulations. First offense will call upon the six-month maximum jail term and/or ₹10,000 maximum penalty, while the second offense calls upon a year's jail term and ₹50,000 to ₹5 lakh penalty. Voluntary causing hurt, insult, intimidation, or sexual exploitation of an individual with disability attracts six months to

¹⁷ Id.

¹⁸ Id.

¹⁹ *Jared Abiding v. Union of India*, 1999 (1) SCC 467

²⁰ enhancing-air-travel-accessibility-for-persons-with-locomotor-disabilities: -commentary-on-javed-abidi-v.-union-of-india Case Commentaries, CaseMine, <https://www.casemine.com/commentary/in/enhancing-air-travel-accessibility-for-persons-with-locomotor-disabilities:-commentary-on-javed-abidi-v.-union-of-india> (last visited May 8, 2025).

²¹ *Zill Suresh Jain vs The State Cet Cell and 3 Ors*, Writ Petition (L) No. 33102 OF 2022

²² Important Judgements for the Persons with disabilities, India, <https://niepvd.nic.in/important-judgements-for-the-persons-with-disabilities/> (last visited May 9, 2025).

five years' imprisonment and a penalty. In addition to this, Special Courts would be established in every district to hear such cases.²³

2. **Constituting Authorities:** The Act provides for the formation of Central and State Advisory Boards for disability policy. Chief and State Commissioners for Persons with Disabilities have more empowered offices, supported by professional advisory committees. Financial assistance will be made available through a National and State Fund, where existing disability funds are consolidated under the new National Fund.²⁴
3. **Social Security:** Assistance to NGOs is given by the government for the rehabilitation of disabled individuals, insurance facilities are arranged for disabled government employees, and unemployment allowance is given to disabled individuals enrolled in special employment exchanges for more than one year without finding a job.²⁵

Conclusion

The Rights of Persons with Disabilities Act, 2016,²⁶ represents a significant advancement in Indian legislation, moving away from a charity-based approach toward one grounded in rights and dignity. The legislation is a sign of a sea change in the attitude towards disability from pity to empowerment and justice. With a majority of times, abuse of individuals with disabilities results in emotional harm that leaves permanent scars, and hence, tight legal protection is needed. In line with the social and economic justice goal enshrined in the Indian Constitution, PwDA, 2016 reiterates social justice in the form of identification of disability rights of the people and economic justice in providing inclusive education and employment. Even as the government and judiciary have both accepted the approach of rights-based, success lies in the proper implementation and continual monitoring.

²³ Supra note 15.

²⁴ Id.

²⁵ Id.

²⁶ Supra note 14.