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## THE LEGAL RIGHTS OF A DISABLED PERSON IN INDIA

~*Anshika Singh*

### ABSTRACT

The rights of persons with disabilities in India are rooted in the constitutional principles of equality, dignity, and non-discrimination. This paper examines the legal framework protecting persons with disabilities, with reference to Articles 14 and 21 of the Constitution and the Rights of Persons with Disabilities Act, 2016. It highlights the shift from a welfare-based approach to a rights-based model aligned with India's obligations under the United Nations Convention on the Rights of Persons with Disabilities. The paper also discusses key judicial developments and identifies persistent challenges in the effective implementation of disability rights. It concludes by emphasizing the need for stronger enforcement mechanisms to ensure meaningful inclusion and equal access to justice for persons with disabilities.

### INTRODUCTION

India recognizes a number of Legal Rights for People with Disabilities as a means of promoting opportunities and dignity for all persons with disabilities.<sup>1</sup> This framework helps to close the gap between the constitutional right to equality and the realities of inaccessibility in the daily lives of persons with disabilities, employment discrimination, and social isolation. This Legal Framework is also aligned with the United Nations Convention on the Rights of Persons with Disabilities (CRPD) ratified by India in 2007, and fostered the transition away from welfare-based models towards empowerment and inclusion-based models.<sup>2</sup>

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<sup>1</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, pmb., Statement of Objects and Reasons (India).

<sup>2</sup> Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008).

## **CONSTITUTIONAL FRAMEWORK**

India's laws concerning disability rights are built on equality, non-discrimination, and dignity. Under Article 14 of the Constitution, everyone is equal before the law, and entitled to the same level of protection under Indian law.<sup>3</sup> Further Article 15(1) prohibits discrimination on the basis of religion, race, caste, sex, and place of birth, which would include prohibiting discrimination against persons with disabilities.<sup>4</sup> Article 21 protects the right to life and personal liberty, and the courts have interpreted this right to incorporate the right to live with dignity, which, among other things, allows persons with disabilities to participate in society equally to others.<sup>5</sup> India's signing and ratification of the UN Convention on the Rights of Persons with Disabilities (the CRPD) resulted in the passage of the Rights of Persons with Disabilities Act 2016, which ensures that the CRPD is honoured in India and that Indian law complies with the principles of equality and non-discrimination and inclusion through the provision of a maximum level of inclusion

## **STATUTORY FRAMEWORK: RPwd ACT, 2016**

The Rights of Persons with Disabilities Act, 2016 ('RPwD Act') serves as the primary statute providing for disability rights and replaces the previous Persons with Disabilities Act (Equal Opportunity; Protection Of Rights And Full Participation), 1995, in order to bring Indian law into compliance with India's obligations under the Convention on the Rights of Persons With Disabilities (CRPD).<sup>6</sup> Among other things, the Act expands the definition of disabled from seven (7) categories to twenty-one (21) categories including the newly included categories of Autism Spectrum Disorder; Specific Learning Disability; and Acid Attack survivors; thereby increasing the number of people who can legally benefit from protective legislation.<sup>7</sup>

The Act also identifies core principles to be applied to all State actions relating to persons with disabilities in Section 3 (e.g., respect for the inherent dignity of individuals, individual autonomy, non-discrimination, full and effective participation and equality of opportunity).<sup>8</sup> In addition, the Act creates duties for the respective Governments to ensure that persons with disabilities have access to rights granted in education, employment, accessibility, social

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<sup>3</sup> INDIA CONST. art. 14.

<sup>4</sup> INDIA CONST. art. 15(1).

<sup>5</sup> INDIA CONST. art. 21.

<sup>6</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, Statement of Objects and Reasons (India).

<sup>7</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, §§ 2(s), 2(zc), sched. (India).

<sup>8</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, § 3 (India).

security and health care, thus creating a completely new framework that moves away from being based on welfare and into being based around rights of inclusive participation.

### **KEY LEGAL RIGHTS UNDER THE RPwD ACT**

The RPwD Act establishes distinct rights for persons with disabilities concerning educational opportunities, job options, availability of accessibility, and provision of social security.<sup>9</sup> Children who have benchmark disability qualifications will receive free education either at home or in a regional Special School until they turn 18 years old.<sup>10</sup> Additionally, colleges and universities must set aside designated spaces for students with benchmark disabilities.<sup>11</sup> In relation to employment within state-owned businesses, the Act requires that a minimum of 4% of vacant positions be reserved for persons with benchmark disabilities and prohibits discrimination when it comes to hiring, promoting, or accommodating persons with benchmark disabilities.<sup>12</sup> Accessibility is also a critical component of the Act; the appropriate governmental bodies should take all necessary steps to ensure that all public buildings, transport facilities, and information and communication services are accessible to persons with disabilities and provide the necessary modifications to ensure equal access for persons with disabilities.<sup>13</sup> Finally, the Act establishes programmes to provide the following types of financial support and services to individuals with disabilities and their families: social security, healthcare, rehabilitation, insurance. It also recognises the importance of providing financial and community-based support to individuals with disabilities to realise their legal rights and assist them with issues related to living independently within their own communities.<sup>14</sup>

### **JUDICIAL DEVELOPMENTS**

Increasingly, the acceptance of equal treatment and dignity for people with disabilities is becoming an integral part of Indian court's application of constitutional protections regarding equality.<sup>15</sup> In the case of *Deaf Employees Welfare Association vs. Union of India*, the Supreme Court ordered that there be effective implementation of the reservation for persons with disabilities in public sector employment.<sup>16</sup> The case of *Justice Sunanda Bhandare Foundation*

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<sup>9</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, §§ 2(y), 40–46 (India).

<sup>10</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, §§ 16–17 (India).

<sup>11</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, § 32 (India).

<sup>12</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, §§ 20, 34 (India).

<sup>13</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, §§ 40–46 (India).

<sup>14</sup> Rights of Persons with Disabilities Act, No. 49 of 2016, §§ 24–30 (India).

<sup>15</sup> INDIA CONST. arts. 14, 15, 21.

<sup>16</sup> *Deaf Emps. Welfare Ass'n v. Union of India*, (2013) 12 S.C.C. 246 (India).

vs. Union of India required the Indian Supreme Court of Justice to monitor the implementation of accessibility standards and disability legislation.<sup>17</sup> As such recent cases continue to talk about the prohibition of discrimination and the guarantee of equal opportunity for individuals with disabilities.

## **CONTEMPORARY CHALLENGES**

Even though there are good legal protections for people with disabilities, there are still gaps in how these laws are put into practice. People with disabilities cannot access buildings due to a lack of proper physical modifications, and many do not know that they have the right to an equal amount of support under the Rights of Persons with Disabilities Act (RPwD Act). People who are qualified for jobs cannot get them because their employers do not enforce the 4% job reservation allowance established by this same law. While attitudinal and bureaucratic obstacles continue to impede the path to equality for people with disabilities, the need for stronger monitoring and enforcement exist as well.

## **CONCLUSION**

The Indian Government's legal responsibilities towards commandment of legal right status of Persons with Disabilities include the provisions in Articles 14, 21, 41 and 46 of the Constitution and ultimately operationalized through the Rights of Persons with Disabilities Act, 2016. This is to ensure that Equality transforms from an abstract concept into entitlements for Education, Employment, Accessibility, and Dignity. Both judicial decisions such as Deaf Employees Welfare Ass'n V. Union of India and Justice Sunanda Bhandare Foundation V. Union of India support the view that discrimination occurs when someone is excluded from participating in the workplace, and therefore requires the Government to make reasonable accommodations and create a processes of inclusion into society. However, realising these Constitutional promises to the disabled citizens of India still significantly depends upon enforcement of the laws passed by Government.

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<sup>17</sup> Justice Sunanda Bhandare Found. v. Union of India, (2014) 14 S.C.C. 383 (India).

