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LEGAL RIGHTS OF DISABLED PERSONS IN INDIA

~ **Hrithika Ranjan**

ABSTRACT

Despite the presence of an impressive normative framework, the reality of disability in India is one of exclusion. This blog analyses the legal framework that ensures protection of the rights of persons with disabilities. Tracing the constitutional foundations in Articles 14, 15, 21, and Directive Principles of State Policy, the blog proceeds to analyse how the Rights of Persons with Disabilities Act, 2016 transformed the recognition of disability types from seven to twenty-one and adopted the rights-based approach as espoused by the UN Convention on the Rights of Persons with Disabilities. The important judicial decisions relating to the issue include Jeeja Ghosh, Vikash Kumar v. UPSC, and Disabled Rights Group v. Union of India. Governmental schemes such as the Sugamya Bharat Abhiyan and UDID project are also discussed in the blog.

INTRODUCTION

Disability is more than a medical condition- a human rights issue. Around 2.68 crore people in India, accounting for around 2.21% of the total population of the country, suffer from disabilities but still remain excluded from the mainstream socio-economic activities.¹ However, the Indian law regulating the rights of persons with disabilities has experienced a paradigm shift, based on the equality and dignity guaranteed under the Constitution and strengthened by the introduction of the Rights of Persons with Disabilities (RPWD) Act, 2016.

¹ Office of the Registrar General & Census Commissioner, Census of India 2011, at 8 (2013).

CONSTITUTIONAL FRAMEWORK

Unlike the UNCRD, the Indian Constitution does not expressly confer a separate list of rights for disabled people. Nonetheless, the basic provisions of the Constitution act as the core of disability rights jurisprudence. Under the RPWD Act, 2016, 'person with disability' means any person suffering from long term physical, mental, intellectual, or sensory impairment, whereby he may experience impediments to participation on an equal basis in society.²

The first provision under the Fundamental Rights, i.e., Article 14, provides for equality before law and equal protection of the laws to all persons.³ Disability-sensitive categorization has been recognized as constitutionally permissible only when there exists a reasonable nexus between the purpose of inclusion and the means adopted in realizing the same. Article 15 explicitly prohibits discrimination on the grounds of caste, religion, sex, etc., and also bars differential treatment in access to public life based on disability.⁴ Article 21, being the most important fundamental right of all, ensures life and personal liberty to all individuals.⁵ The Directive Principles of State Policy under articles 41 and 46 also confer the State an additional obligation to ensure that its citizens enjoy the right to work, education and public assistance with focus on the weaker sections of society.⁶ Read harmoniously, these provisions create a constitutional mandate for inclusive governance.

RIGHTS UNDER THE RPWD ACT, 2016

The RPWD Act, 2016 repealed the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which was an absolute change in approach from welfare approach to the rights-based approach. This Act increased the categories of disabilities from 7 to 21. Section 3 of the Act clearly states that no discrimination should be practiced against persons with disabilities regarding employment, education, health care and other public services.⁷ Sections 16 and 17 provide for inclusive education where educational institutions

² The Rights of Persons with Disabilities Act, No. 49 of 2016, § 2(s), Acts of Parliament, 2016 (India) [hereinafter RPWD Act].

³ INDIA CONST. art. 14.

⁴ INDIA CONST. art. 15.

⁵ INDIA CONST. art. 21.

⁶ INDIA CONST. arts. 41, 46.

⁷ RPWD Act § 3.

have to modify their infrastructure and methods of examinations according to needs of students with disabilities.⁸

Section 34 reserves not less than 4% of all posts in government establishments for persons with benchmark disabilities.⁹ Section 25 provides free healthcare services for disabled individuals below the poverty line,¹⁰ whereas Chapter VIII in the Act details specific accessibility standards concerning infrastructure, transport, and information and communication technologies.¹¹ Both Sections combine to form a legislative framework designed to demolish barriers created in all aspects of public life.

JUDICIAL APPROACH TOWARDS DISABILITY RIGHTS

There have been several instances where Indian courts have made efforts towards enforcing the rights that are provided for through statutes. In *Jeeja Ghosh v. Union of India*,¹² the Supreme Court observed that the act of forcibly offloading the disabled from the plane amounted to violation of the dignity guaranteed under Article 21. It also amounted to discrimination against a disabled person that was prohibited by law.

In *Vikash Kumar v. UPSC*,¹³ the court instructed the UPSC to provide scribes to the candidates having benchmark disabilities stating that formal equality would be inadequate where there is substantive inequality. Also, in *Disabled Rights Group v. Union of India*,¹⁴ the Supreme Court stated that the principle of accessibility is justiciable in nature and hence should not be treated as an optional exercise but must be enforced in all cases.

GOVERNMENT INITIATIVES

(UDID) Scheme aims to establish a centralized database to facilitate the delivery of rights and entitlements to disabled persons. Further, the Assistance to Disabled Persons for Purchase/Fitting of Aids and Appliances (ADIP) Scheme seeks to provide aids and appliances to persons from low- income households. Despite being commendable schemes, such efforts

⁸ RPWD Act §§ 16–17.

⁹ RPWD Act § 34.

¹⁰ RPWD Act §§ 25–26.

¹¹ RPWD Act §§ 40–46.

¹² *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761 (India).

¹³ *Vikash Kumar v. UPSC*, (2021) 5 SCC 370 (India).

¹⁴ *Disabled Rights Group v. Union of India*, (2018) 2 SCC 397 (India).

are hampered due to insufficient financial support, lack of inter-ministerial cooperation, and monitoring frameworks.

EXISTING CHALLENGES AND COMPARATIVE PERSPECTIVE

Despite an advanced normative framework, implementation challenges continue to arise in the area. Norms of accessibility are violated, employment reservations for disabled persons are not utilised, and the grievance redressal mechanisms under the RPWD Act are barely availed of. The attitudinal biases, social stigmatization, and paternalistic practices continue to limit the agency and autonomy of persons with disabilities. The rural-urban gap adds to this list of deficits since the persons with disabilities in rural communities are without the necessary infrastructure or awareness about their entitlements.

The problem is seen much more vividly when it is compared with America's ADA 1990 or UK's Equality Act 2010.¹⁵ These have the robust mechanism for anti-discrimination and enforcement. ADA through the pro-active mechanism for integration of disabled person into areas like employment, transportation, and public accommodation by making sure of compliance. The enforcement mechanism for disabled persons in India under Chief Commissioner for Persons with Disabilities lacks the judicial backing, autonomy, financial independence and the institutional set up. In case of disabled persons India is unique from South Africa and Canada which has in their constitutions right to disability.

SUGGESTIONS AND REFORMS

Timely reforms are crucial and unavoidable. Disability ought to be explicitly included as a prohibited ground of discrimination under Article 15. The Chief Commissioner and State Commissioners should be vested with greater adjudicatory authority, financial independence, and institutional capacity. The UDID system must be integrated with disability registration process to streamline access to entitlements. Inclusive education needs to be improved with respect to faculty capacity building, availability of learning aids and infrastructural development. Lastly, disability rights need to be integrated into judicial education and other law awareness campaigns at the grassroots level.

¹⁵ Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (U.S.A.); Equality Act 2010, c. 15 (U.K.).

CONCLUSION

The development of India's legal framework in terms of disability law is far more developed compared to the initial concept of welfare legislation to the contemporary model of disability law based on RPWD Act 2016, Indian Constitution, and UNCRRPD. It can be concluded that the combination of constitutional rights, judiciary decisions favouring progress in disability legislation, and government schemes provide a normative framework ensuring equality, respect, and full inclusion for everyone having a disability. However, the gap between normative aspirations and the current state of affairs is considerable. Inclusion implies not only amendments to the current disability legislation but also changes in institutional culture and social perception of people with disabilities.