

Disability and Empowerment: A Reading through the Rights of Persons with Disabilities Act, 2016

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The people of India have given to them their constitution which avows to give to each of its citizens social, economic and political rights. It also professes to empower the citizens with liberty of thought, expression, belief and worship. Above all, it promises to ensure equality of status and of opportunity. It is supposed to be a flag bearer of the idea of equality. However, when the founding fathers of the nation talked about equality, they did not mean that persons who are positioned under different circumstances be treated equally. The cardinal principle of equality would rather expect that the law must treat the equals equally. It must go for positive discrimination in favour of persons who are not at a level playing field so that an honest attempt can be said to be done by the state for bringing the disadvantaged people at par with rest of the society. For those, who are already ahead, it is not only a legal duty to give leverage to the brethren who are left behind it is also their social, ethical and moral responsibility. Disability is one such parameter which puts some of the members of the human society at a disadvantageous position not only in terms of partaking of their daily activities or carrying out social or familial responsibilities but also in terms of accessibilities like education, skill enhancement, employment etc which are essential towards realization of their fullest potential as human beings. It will be not out of context to assert that the state must endeavor to bring them to the same level with others of the same society not as a matter of state-generosity or societal grace but as a matter of their rightful entitlement as fellow human beings. The present paper is an attempt to understand the Right of People with Disabilities Act, 2016 in this overall framework.

Introduction: The United Nations Convention on the Right of Persons with Disabilities ferrets out its guiding principles as follows: honour for the innate dignity, autonomy of the individual including his or her liberty to make his or her own choices, independence of the persons, non-discrimination, full and effective partake in the society with inclusion. It also emphasizes respect

for differences among individuals and urges for acceptance of persons with disability as components of human diversity and humanity. Beside, the convention unambiguously states as its guiding principle the axioms of equality of opportunity, accessibility, equality between the genders of man and woman. Children are the most precious constituent of the society and the guiding

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principles of the Convention duly recognize their importance when they speak about respect to be shown towards the evolving capacities of children afflicted with disabilities. The Convention also adopts a guiding principle the need for respecting the right of the children with disabilities to preserve their identities.¹

India ratified the Convention on the Persons with Disabilities in 2007. The Rights of Persons with Disabilities Act, 2016 is a product of the policy deliberations made by the Government of India towards realization of the objectives of the Convention. The legislation replaced the then existing Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Act of 1995 recognized seven kinds of disabilities, namely, (a) blindness, (b) low vision (c) leprosy-cured (d) hearing impairment (e) loco-motor disabilities (f) Mental Retardation and (g) mental illness²

Type of Disabilities Covered under Rights of Persons with Disability (RPDA) Act, 2016: The RPDA Act of 2016³ specifies twenty one disabilities and puts them under 6 broad categories. Thus, in comparison to the PWD Act of 1995, the recent Act has broadened the horizons to make it more inclusive by adding more categories of disabilities in the purview of the Act. This is a praiseworthy step as very often the problems of the people suffering from disability are not visible to policy makers and researchers at a given point of time. As research in the field advances and the people concerned are more sensitized, the number of disabilities that are to be covered under an Act to protect the Rights of persons needs to be expanded.

Given below are different categories of Disabilities that are covered under the Rights of Persons with Disabilities Act, 2016.

1. Physical Disability: The first category of disability that is covered under the Act of 2016 is a group of physical disabilities. It covers the

four sub-categories: (A) Locomotor Disability (B) Visual impairment (C) Hearing Impairment (D) Speech and Language Disability.

Under the subcategory of Loco-motor Disability are covered i) the leprosy cured persons ii) those suffering from Cerebral Palsy (a spectrum of non-progressive neurological conditions impairing movements of parts of the body and muscular coordination attributed to one or more specific areas of the brain. These damages may have occurred before, during or shortly after birth), iii) dwarfness (adult height of 4 feet 10 inches or less), iv) muscular dystrophy (a cluster of hereditary genetic muscle disease that weakens the muscles moving the human body), v) Acid attack victims (This is the first time acid attack victims have been recognized as a group suffering from physical disabilities.

Under the sub-category of Visual Impairment come the sufferings of i) blindness and ii) low vision. The third subcategory of Physical disability is Hearing Impairment which includes the i) the deaf (Persons suffering from 70 DB hearing loss in speech frequencies in both ears), ii) hard of hearing (where hearing loss in both ears is 60 DB to 70DB).

The fourth sub-category of physical disabilities is that of Speech and Language disability. It implies a permanent disability arising out of laryngectomy, aphasia etc. They may affect one or more components of speech and language.

2. Intellectual Disability: Intellectual disability refers to a condition where there is significant limitation in reasoning, learning, problem solving and in adaptive behavior in day to day life. There may be also problems in social and practical skills. They may involve specific learning disabilities and autism spectrum disorders. In the case of specific learning disabilities there may be deficiencies in processing of spoken or written language. It may be manifest in terms difficulties in comprehension and speech, limitations in reading, writing and spelling of

words and even in making mathematical calculations. There may also be conditions like perceptual disabilities, dyslexia, dysgraphia, dyspraxia and developmental aphasia.

Autism spectrum disorders, on the other hand, may be found within a period of the attaining the age of 3 years. It impairs the individual's ability to relate to social relationships, communicate with others etc.

3. Mental Behaviour: It involves problems in thinking, mood, perception and orientation. It does not involve retardation. But it affects one's ability to recognize reality or demands of a situation.

4. Disabilities Caused due to Chronic Neurological Conditions and Blood Disorders: They include chronic neurological conditions like multiple sclerosis and Parkinson diseases. The blood disorders include i) Hemophilia ii) thalesemia and sickle cell diseases. These three kinds of diseases are an addition and were not there in the People with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

5. Multiple Disabilities including Deaf and Blindness- The Act also covers the rights of persons who suffer from one or more of the disabilities discussed above.

6. Any other Disabilities as Notified by the Central Government- The Act also leaves the field open for the Central Government to notify any other category of disability

The Concept of "Persons with Benchmark Disability: This is a very important concept under the Rights of People with Disabilities Act, 2016. In the case of specified disabilities where specified disability is not defined in measurable terms, a person with not less than 40% of specified disability is called person with benchmark disability. It also includes a person with disability where a specified disability is defined in measurable terms.

Rights Available to the Disabled with the Commencement of the Act of 2016

The Act of 2016 has put the responsibilities on the appropriate governments to undertake respective measures in the in the direction of its implementation so that persons with disabilities enjoy their rights equally with others. They can be discussed under the following heads:

Equality and Non-discrimination: The Act has put the onus on the appropriate government to provide the congenial environment for optimum utilization of the potentials of persons with disabilities. There is also a bar on discriminating against somebody on the grounds of disability. If any authority has ignored the claims/capacity of a person with disability in a particular context or a particular facility or work, such omission must be proportionate and towards the achievement of a legitimate goal. The act also stipulates that no individual be deprived of his personal liberty only on the ground of his or her disability. The act has also mandated for requisite steps to be taken by the appropriate government for making sure that persons with disabilities are provided with reasonable accommodation.

It is worthwhile to mention here that for the whole of this Act, the term "appropriate government" covers the Central Government, the State Governments, local government authorities like municipal corporations, Panchayats , Cantonment Boards etc. and any establishment wholly or substantially funded by the Government.

Women and Children with Disabilities: Women and children, when afflicted with disability, suffer from double exclusion from their entitlements and rights as human beings . On one count they are in a disadvantageous position on account of one or more elements of disability. On the other hand, being a women or a child compounds their woes. In a patriarchal society like India, where women until recently

was not so welcome in the public sphere, was regarded as a being whose desirable sphere was that of the domestic sphere. Even now, irrespective of women venturing into the public sphere in a substantial number, as per the socially desirable norms, she is expected to take care of everybody else at home before she could take care of herself. She is the one who has to take care of the house hold chores even while taking equal or more responsibilities in her job or other public responsibilities. Thus being a woman and at the same time being a person with disability puts one in a situation of double jeopardy.

Similar is the case with children. Being a person with disability who is yet to explore the world completely and one who is dependent on the elders and the community for their upbringing and protection, they need special protection and support by the state for leading life with dignity and liberty to their fullest potential.

It is perhaps this spirit which has propelled the policy makers to assert that “the appropriate Government and local authorities shall take measure to ensure that the women and children with disabilities enjoy their rights equally with others” (**Section 4 of Rights of People with Disabilities Act, 2016**).

Rights of human beings are not limited to those of accessing public or community resources alone. For human beings, there are still higher orders of rights which are called freedom of thought, speech and expression Article 19 of the Indian constitution guarantees to all its citizens the right to freedom of thought, speech and expression subject to reasonable restrictions by the state in the interest of public order, law and morality.⁴

The Rights of Persons with Disabilities Act of 2016 expressly requires the government and the local authorities to make sure that all children with disabilities enjoy the unfettered right to freely express themselves on all matters related to them. It rather goes on an extra mile to

urge the government to provide them suitable support to them in this matter in commensuration with their age and disability.

The Right to Community Life: The Act asks the government to see that persons with disability are not made to live in any particular living arrangement. They have the right to live in the community itself and it is the responsibility of the government to ensure this.

Protection from Cruelty and Inhuman treatment: As per the Act, it is the responsibility of the Government to take steps towards protection of persons with disabilities from torture, cruel, inhuman or degrading treatment. Furthermore, persons with disabilities cannot be made subject of any research without taking their consent. What is more important is that such consent must be out of free will of the person with disability after being informed of the consequences and details of the related procedures. The information also needs to be provided to the person with disability through modes, means and formats of communication which is accessible to the proposed subject for research.

Prior permission in this regard also needs to be taken from the Committee for Research on Disability constituted by the respective government. It is worthwhile to mention here that at least half of the members of that Committee ought to be persons with disabilities or members of a registered organization. And not surprisingly, such “registered organization” is an association of persons with disabilities or a disabled person organization or an association of parents/family members of such persons or a charitable organization or trust working for the welfare of persons with disability. Such registered organization can also be a non-profit company working for the welfare of persons with disability and duly registered under an act of the Indian Parliament or state legislature.

Protection from Abuse, Violence and Exploitation: The government is required un-

der this act to take steps for protecting persons with disabilities from all kinds of abuse violence and exploitation. The measures must also be in the direction of preventing the occurrence of any such abuse, violence and exploitation.

Protection and safety in Calamities and Emergency Situations: The Act also empowers the persons with disabilities with equal protection and safety in a situation of risk, armed conflict and natural disasters.

Home and Family: According to Section 9 of the Act, children with disability cannot be separated from their parents on grounds of disability. However, if required in the best interest of the child, this can be done on the order of some competent court.

Reproductive Rights: Every living being has an innate urge to spread its species by the process of reproduction. It is the same with the species *Homo sapiens* or human beings. The Act of 2016 hence requires the government to ensure that persons with disability get access to proper information on the issues of reproduction and family planning. It also lays down that without their free and informed consent persons with disability cannot be put to any medical procedure which leads to infertility. Thus the element of coercion in such matter is completely prohibited.

Many may raise the question whether it is in the interest of the person with disability to have children? Or for that matter questions may be raised as to whether the person with disability is equipped enough to take the decision on whether to go for reproduction or not. However, we would like to argue that a person with disability must have the free will and he must have the liberty to decide as to whether he should have children or not. He should be well informed on the matter so that he can decide whether under the prevailing conditions of his/her life it is in his or her interest to have children or not. He/she should be the best judge to decide whether he/

she has the wherewithal to raise the children and give them proper care. On the positive side, they may look upon the process of reproduction as a process that brings them a new generation of relatives who may provide them the requisite care in the later period of life. From this angle, the process of reproduction may be like a social insurance for them. However, it is in the fitness of things that neither the elders or guardians nor the medical practitioners take the privilege of deciding on behalf of the person with disability what is good and what is bad for them. What is however vital in this matter is that the free will exercised by the person with disability must emanate from proper consideration given by him/her to the information provided to him/her.

Access to voting and Justice: The act has made it obligatory for the Election Commission to ensure that polling stations are made accessible to persons with disabilities. Further, the poll materials must be made available to them in formats easily understandable by them.

Access to Justice: The Act also provides the people with disability the right to access any Court, judicial or quasi-judicial bodies without facing any discrimination on grounds of their disabilities. The government is required under this act particularly to provide suitable supportive measures in this regard for those persons with disability who are living outside their families and to those who are in need of high support.

Provision for Limited Guardianship: When a person with disability who is provided sufficient and appropriate support but is not able to take legally binding decisions, he may be provided the support of a limited guardian. It will involve a process of joint decision based on mutual understanding and trust between the guardian and the person with disability. The guardianship will be limited to a particular period, particular decision and situation. The system is to operate according to the will of the person with disability.

Intervention Mandated in the Entitlement of Education: Education is regarded as the gateway between the family and the larger society outside. It is at the school that the human child inherits the values, skills and the knowledge of the society in which he or she is located.⁵ The Rights of People with Disabilities Act of 2016 seems to have recognized this and dedicated a chapter towards inclusive education of children with disabilities. The Act has enjoined upon the government and local bodies to try to see that educational institutions funded or recognized by the government provide inclusive education to children. This inclusion would encompass admission, accessibility to school infrastructures and facilities and reasonable accommodation. Besides the schools have to ensure the appropriate mode and means of communication/language for blind and deaf students. Detection of specific learning disabilities and adoption of pedagogical and other suitable measures are also the responsibility of the educational institutions. Special monitoring measures are also to be taken by the educational institutions as regards the students' participation, attainment levels and completion of education.

Section 17 of the Act requires the respective governments to conduct survey of school going children for detecting children with disabilities and assessing their special needs. The first survey needed to be surveyed within a period of two years from the onset of the Act. The state is also required to establish appropriate number of teacher training institutions and also to train professionals and staff for supporting inclusive education at all levels of schooling. The government has also been assigned the responsibility of training and employing teachers who are equipped with sign language and Braille. Teachers must also be trained by the government for teaching children with intellectual disability. What is most significant however is the responsibility to the government to make changes both in the

curriculum and the examination system for meeting the needs of the students with disabilities. The interventions that needs to be taken include additional time for completion of examination paper, facility for scribe and relaxation from the second and third language Courses. These are very quintessential steps in the direction of educational inclusion of children with disabilities.

Students with Benchmark disabilities: Section 17 also enjoins upon the state to provide study materials and requisite assistive devices free of cost to students with benchmark disabilities until they attain the age of 18 years. Provision is also made in the Act for giving scholarship in suitable cases to students with benchmark disability. Again, child with benchmark disability who is in the age group of six to eighteen years is mandated to be provided free education in a neighborhood school or in a school of one's choice. Government higher education institutions and those higher education institutions have to reserve at least 5% of seats for persons with benchmark disabilities. They are also to be given age relaxation of 5 years for admission in higher education.

Employment Opportunities for Persons with Benchmark disabilities: The Act requires the government to identify posts suitable for persons with different benchmark disabilities. Once identifies, there must also be a review of such identified posts at intervals not exceeding three years. In every establishment not less than 4% of the total vacancies in the cadre strength in each group of posts needs to be filled with persons with benchmark disabilities.

Penalties and Punishments: Any violator who acts in contravention of the provisions of the Act or any rule made in fulfillment of this act will attract a fine up to rupees ten thousand for the first instance. Subsequent violations will lead to a fine not less than rupees fifty thousand extendable up to rupees five lakhs. In cases where the offence is committed by a company, both

the officials in charge of the company and the company shall be liable to be proceeded against and punished accordingly. However, if the official is able to prove that the offence was committed without his knowledge or that due diligence was made by him for prevention of such type of offence, he/she may be spared from the punishment provided in this act.

Other Provisions of the Act: The Act also provides for Central and State Advisory Boards on Disability. It has also tried to strengthen the Office of the Chief Commissioner of Disability who will be assisted by Commissioners and an Advisory Committee of not more than 11 members drawn from among experts on different kinds of disabilities. The State Commissioner shall be supported by an advisory Committee of not less than 5 members chosen from among experts in different types of disabilities. District level Committees are also to be constituted for addressing the concerns of persons with disabilities. However, their exact functions are to be prescribed by the respective state governments. It also provides for creation of National and State Fund for giving financial support to persons with disabilities. It also stipulates punishment for offences of atrocities on persons with disabilities. The punishment in such cases may be not less than six months but extendable up to five years ad with fine.

Conclusion: While the Act of 2016 has gone a long way in official recognition and official restatement of the Indian state's commitment to protection and promotion of rights and entitlements of people with disabilities, the real test of its efficacy lies in the implementation and monitoring process. The Act has brought in different provisions to be in sync with the guiding principles of the United Nations Conventions on the Rights of People with Disabilities. At the same time it is deeply influenced by the ingredients of

the Indian Constitution which heavily emphasizes on the concepts of equality, equal discrimination of law, freedom of speech and expression, freedom of settlement and occupation. The act has made every effort to ensure that no person with disability is discriminated against only because of the reason of his/her disability. However, there is also a need to ensure that the rights and entitlements mentioned in the Act do not end of as mere paper-assurances due to hoodwinking by different authorities /players to bypass the provisions of the act taking advantage of the difficulties in monitoring. As regards, the rights and entitlements in education, it should be made mandatory that at least 5% of the students of all schools, whether, private, government or aided by government, must be from amongst persons with disabilities. This will ensure that the schools will have no option but to create inclusive environment in the school. They must be made to submit annual returns regarding number of students at the schools and the total number of students at the schools to the District Level Committes and Commissioner of Disabilities at the state at the end of every academic year. The certificates of benchmark disabilities of the concerned students with disabilities should also be submitted to these offices. The same may also be submitted to the office of the District Education Officer and be displayed at dedicated websites of the District Education Officer, District Level Committes and the Commissioner of Disabilities of the state. In the case of schools where it is found that the number of disabled learners admitted is below five per cent, the reason for the same must be mentioned by the school principal and it must be counter signed by the Block Education Officer and the District Education Officer. Such a binding rule will help in plugging the loopholes in implementation.

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