

## JUDICIAL INTERFERENCE IN PROTECTING THE PERSONS WITH DIFFERENT ABILITIES

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### **ABSTRACT**

*Judiciary plays a crucial role in protecting and upholding the rights of persons with disabilities. Persons with disabilities constitute a significant segment of the global population, facing unique challenges and vulnerabilities that demand legal protection and equal opportunities for their full inclusion in society. The legislative frameworks and international conventions provide a foundation for disability rights and if there is any gap which requires proper interpretation, it is only the Judiciary which acts as a savior in protection of the rights and needs of the person who are deprived of its full enjoyment. Although direct provisions are not mentioned regarding protection of rights of persons with disabilities but through judicial interpretations they are included and understood to be equal with abled bodies in relinquishment of their fundamental and other rights. In this paper the role played by judiciary in protecting the persons with disabilities from anti-discriminatory laws or discrimination in education, employment, health services, proper and accessible accommodation is discussed. The main aim of the paper is to analyze and find out the loopholes in the legislation dealing with disabilities and the role played by judiciary in protecting those rights*

**KEYWORDS:** *Indian Judiciary, Persons with Disabilities, Discrimination, Equality, Legislation*

### **INTRODUCTION**

As per UN, definition of disability includes those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>2</sup> The definition clearly depicts that when disability comes in conflict with other element present in the society, the issues and challenges faced by persons with disabilities is multiplied. The World Health Organisation has estimated that there is 1.3 billion of global population which suffers from different types of disabilities. Overall approximately 16% of the entire populations are disabled. According to the census of India 2011, out of 121 crore of population 2.68 are disabled which is approximately 2.21% of the total population.<sup>3</sup>

In 2006, the Convention on the Rights of Persons with Disabilities was adopted by the United Nations which promotes and protects the rights and dignity of individuals suffering from disabilities. Through this crucial document a paradigm shift from looking to disability as a pity or charity object to human rights subject. This concept has brought remarkable changes in life of persons with disabilities as protecting them from all sorts of discrimination and inhumane treatment.

In India, the first legislation was the Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995. However, with passage of time this Act failed to cover many aspects of disabled and in the

meantime India being a signatory of United Nations Convention on the Rights of Persons with Disabilities Act 2006 enacted the Rights of Persons with Disabilities Act 2016. This new Act has included 21 forms of disability in comparison to 1995 Act which had only seven categories. So, now intellectual, physical, mental and sensory impairments measured in medical terms are included in terms of disability. The Act aims to protect all persons with disabilities from abuse, violence and exploitation and articulate specific measure to be taken by appropriate government officials, executive magistrates and the police personnel.

Before enactment of the specific legislation for persons with disabilities, the rights were protected by the Judiciary under the writ jurisdiction. Petitions were filed under Article 32 and 226 of the Constitution of India for declaration of the rights and the judiciary has acted pro active in holding up the rights and giving protection to the persons with disabilities. After the enactment of the RPWD Act (previously 1995 Act) several cases were filed which was regarding the violation or non fulfillment of the rights provided under the Act. The Courts played and is playing a dynamic role in interpreting the provisions and providing justice in different areas. Furthermore, the judiciary plays a proactive role in shaping disability law and policy through their interpretation of statutes and international conventions. The key areas where the Judiciary has strengthened the rights are discussed in the foregoing paragraphs with the leading case laws.

## **EDUCATION AS A FUNDAMENTAL RIGHT**

Education plays a significant role in the lives of persons with disabilities in providing numerous opportunities for their empowerment and integration in the society. The concern for compulsory education for children has resulted in the 86<sup>th</sup> Amendment of the Constitution of India making right to free and compulsory education for all children between 6 to 14 years an integral part of fundamental rights under Article 21 A. The provision does not make any class or category to identify the children with special need and holds that all children shall get education as a matter of right. Rights of Persons with Disabilities Act has entrusted duty upon the educational institution<sup>4</sup> to make the environment accessible and to detect learning disabilities at an early stage so that proper measures can be taken on time. The Act provides free education for children with benchmark disabilities<sup>5</sup> and also reservation of seats for persons with disabilities in higher education<sup>6</sup>. A reservation of not less than 5% seats for persons with benchmark disabilities for admission and age relaxation of 5 years in higher education aided by the government has been provided under the Act.

In **Disabled Right Group and Another V. Union of India And Others**<sup>7</sup>, a PIL was filed raising three crucial issues which was regarding improper implementation of Section 39 of PWD Act 1995 which is Section 32 of present 2016 Act. Firstly, the reservation criteria were not provided by educational institutions, secondly, proper infrastructural accommodation was not maintained and thirdly, effective pedagogy with availability of proper and required teachers for dealing with the disabled person was not provided. Although the petition was filed for only law colleges but the Court while deciding the case have extended its decision upon all the educational institution directing to fulfill the 5 % reservation provided under the Act and to maintain an accessible accommodation so that education can be provided without any barriers. The Court has also directed the UGC for formation of Committee to access the situation and prepare a report on how to make effective the accessibility criteria for persons with disabilities seeking barrier free education.

In **Manif Alam V. IIT Delhi**,<sup>8</sup> a petition was filed by a disabled student who was expelled from IIT Delhi due to his none securing of minimum marks in first semester examination. He pleaded the court to declare the decision of institute as arbitrary and reinstate him to the institution. The Supreme Court held the decision as arbitrary as no opportunity of

hearing was given to him which was duty of the University. The direct expulsion on ground of securing less mark in first semester is arbitrary. Moreover, the Court also directed to take extra care of the petitioner considering his disablement by providing extra classes to let him cope with studies.

The Court through its decision have extended the protection of right to have barrier free education by liberally interpretation the Act and reading the provisions under the ambit of fundamental rights of the Constitution.

### **RIGHT TO AVAIL RESERVATION AND PROMOTION IN MATTER OF EMPLOYMENT**

Employment helps a person with disabilities with numerous privileges. It makes them financially independent and enhances their quality of life as they are not dependent on others for economic stability. It helps them to gain their self confidence and lead a dignified life. Right to work for all is also fundamental right. The RPwD Act provides glaring provision for employment and reservation<sup>9</sup>in government institutions of not less than 4% for person with benchmark disabilities.

In **Government of India V Ravi Prakash Gupta**,<sup>10</sup>the appellant qualified the Union Public Service Commission exam and was listed in serial no 5. He was visually impaired and categorized as visually impaired student. Despite his qualification he was not appointed and as such he approached to the Central Administrative Tribunal. But the Tribunal rejected its petition. So, he moved to the High Court. The High Court has taken note on the discrimination and gave direction to the government to appoint the candidate as he qualified the exam. The State aggrieved from the decision of High Court has filed an appeal to the Supreme Court on the ground that the candidate applied for the post which was not reserved for disabled persons. The Supreme Court rejecting the appeal hold that categorization of post as reserved cannot be a precondition for making appointment. Moreover, any such formula cannot be applied which debar or restrict to create opportunity for persons with disabilities.

In **Union of India V. National Federation of The Blind**<sup>11</sup>, the interpretation of reservation of 3% to fraction of total vacancy in the government post was referred for and the government failure to implement Section 33 of Rights of Persons with Disabilities Act was challenged as it has totally excluded visually impaired person from recruitment process. The Court held that 3% reservation was a minimum level of representation and the intention of the legislature was to ensure up to 5 % reservation in both private and public enterprises.

### **RIGHT TO ACCESSIBLE ENVIRONMENT AND REASONABLE ACCOMMODATION**

Persons with disabilities have the right to access and use public spaces, transportation, information facilities and different services available for all. Improper and inaccessible accommodation will automatically be an active barrier in their having proper access to the services. These accommodations include provisions of ramps, lifts, elevators, accessible toilets, parking spaces etc. It also includes accessibility of technology and websites for person visually impair or suffering from any other sort of disabilities. The Convention on Right of Persons with Disabilities 2006 has addressed the importance of assessable environment in connection with realizing other rights. In India, inspite of several appeal from persons with disabilities to remove the existing physical barrier, very less or no work is reported in vast areas which can be ascertain from numerous cases filed in the Court. The Judiciary opined that the idea of reasonable accommodation for persons with disabilities is not only confined to give special treatment but making it a fundamental requirement without which the search of dignity and equality for disabled persons would be illusory.<sup>12</sup>

In **National Federation of Blind V. Union Public Service Commission**,<sup>13</sup> the petitioner filed a writ of mandamus under Article 32 of the Constitution for giving direction to the Union of India and Union Public Service Commission to permit the visually impaired individuals for appearing in the Indian Administrative Service and Allied Services by providing facility of writing either in Braille script or with the assistance of Scribe. The petitioner argued that the prerequisite of visual acuteness without providing proper accommodations for visually impaired person places him to a disadvantageous position violating his right to equality under Article 14 of the Constitution. The inaccessibility of question papers for blind or low vision candidate itself amounts to discrimination. The respondents argued that for certain administrative posts visual perception was considered crucial and altering the eligibility criteria would impede with the integrity of examination procedures. The Court held that non compliance with reasonable accommodation by UPSC is in itself violation of fundamental rights of persons with disabilities and recognized that proper and reasonable accommodation is necessary for visually impaired persons to appear in examinations. It further directed to allow Braille material or Scribe for appearing such examination. This judgment cemented way for inclusive society by upholding the ideology of equality and justice.

In **The National Association for The Deaf V. Union of India**,<sup>14</sup> a PIL was filed in the Delhi High Court regarding the non availability of sign language interpreters in several public places which hinders the accessibility issues for persons with disabilities. The complaint was reported against the service providers who failed to provide the adequate requirements of interpreters and trained persons. It appealed for directing the Ministry of Social Justice and Empowerment and other authorities to provide the trained interpreters for removing the barriers faced by them. The court agreed with the petitioner regarding the inconvenience which a person with hearing impairment faces as he is unable to seek medical, transport, banking or even reporting a police complaint. The Court directed the authorities to conduct a survey and prepare a report on the number of such interpreter required. It also directed for creation and appointment of interpreters.\

In **Rajive Raturi V. Union of India**,<sup>15</sup> public interest litigation was filed on behalf of disabled persons seeking to provide accessible environment for visually impaired persons. The requirements of safety in accessing road and other transport facility were sought in the petition. After monitoring the measures taken by the government, a report of the existing status was filed in the Court regarding the facility available at that time. On reply of that report the appellant filed an affidavit pointing out that among all, 10 nos. of actions mentioned in the report is not yet implemented by the government. The Court issued 11 directions which almost covered the entire accessibility of railways to visiting government websites. Not only that, the Supreme Court has also set a time frame for accomplishment of the directions in making accessible environment. Emphasizing on the constitutional mandate provided in Article 21 the Court observed that:

*“Right to dignity which is ensured in our Constitution set up for every citizen applies with much more vigour in case of persons suffering from disability and, therefore it becomes imperative to provide such facilities so that these persons also are ensured level playing field and not only they are able to enjoy life meaningfully, they contribute to the progress of the nation as well.”<sup>16</sup>*

## **RIGHT TO MAKE REPRODUCTIVE CHOICES**

Every person has the right to take decisions relating to reproduction and disability cannot be a ground for denial of the right. Like the abled bodies, they have the right to make decisions about their own bodies. It is very crucial for persons with disabilities to have proper access to information, support and other required resources to take decisions about their

reproduction. It includes reproductive health, use of contraception, family planning, abortion etc. Unfortunately in India, female are deprived to take such decisions in compare to male and if they suffer from disabilities then hardly they have a say. Their right to make reproductive choices is often taken by family members, partners or care takers denoting a clear denial of giving them opportunity to give consent. The Convention of Rights of Persons with Disabilities respects the personal autonomy of mentally retarded persons in having their reproductive choices. The Rights of Persons with Disabilities Act provides reproductive rights<sup>17</sup> by making adequate provision of circulating information regarding reproductive and family planning. It also provides that without *consent* no person with disabilities can undergo any medical procedure leading to infertility.

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In **Suchita Srivastava V. Chandigarh Administration**,<sup>18</sup> an in house staff committed rape on a woman with mental retardation at an institution run by the government in Chandigarh. She got pregnant and expressed her desire to keep the baby. On ground of her medical condition the administration filed a petition to the High Court for the medical termination of her pregnancy under Medical Termination of Pregnancy Act, 1971, as she was not capable to handle and take care and support needed for a child. An appeal was filed in the Supreme Court regarding ability of a woman with mental issue to take decision on her pregnancy. The MTP Act was interpreted which states that if the pregnancy out of rape can be terminated with the mandatory consent of the pregnant women with one exception is there, that, if she is mentally ill than consent of her guardian is necessary. MTP Act has referred the incapacity to decide on ground of mental retardation and not on mental illness which the Learned Court had held it different. As such consent of the pregnant women is mandatory for abortion. In this case she has not given consent and expressed her desire to carry the baby as such court refused the termination of her pregnancy. This case has upheld the reproductive rights of women with disabilities.

## **RIGHT TO ACCESS TO INFORMATION**

Access to information enables a person with disabilities to actively participate in social, cultural, economic, political life. Their active participation will slowly remove the stigma attached to disabilities. The challenge remains in having proper access to information is non availability of assistive technologies and resources that can enhance their quality of life. The information relating to education, employment, healthcare services, government schemes and policies all plays a very important role in helping the person to lead a dignified life. The government is entrusted with the responsibility to make information in all accessible formats which includes Braille, large print, audio etc.

In **Aseer Jamal V. Union of India and Others**<sup>19</sup>, a writ petition was filed highlighting Section 6 of Right to Information Act 2005 as making unreasonable classifications between visually impaired and visually abled persons and also contended that certain provisions of the said Act are not accessible to persons below poverty line, visually impaired persons, orthopedically impaired persons and also those who are unable to have access to internet. The petitioner sought for effective mechanism for having proper access to information for all and enforcement of fundamental rights under Article 14 of the Constitution of India. The Court granted liberty to the petitioner to submit representation to the competent authority to switch to any other mode available for disbursing information. Moreover, the object of RTI is to make one empowered so, the authority shall opt for such mode of releasing information which is convenient and accessible to

persons with disabilities. The Court further suggested the authorities to discover some advanced technologies that have developed for making available the information sought in convenient mode for persons with disabilities.

## CONCLUSION

The Judiciary in India through its verdict has extended protection and support to bring change in life of persons with disabilities. The numerous legislations enacted, lack in effective implementation. The duty casted upon the executive to properly discharge the directions given under the Right of Persons with Disabilities Act 2016 is not followed strictly; as a result people have to approach court. The major challenges again come when a person with disability due to social, economic or physical barrier faces inconvenience in seeking justice. There is lack of awareness among people regarding the provision of legal aid as such they fail to seek its help and avail legal services free of cost. In many cases people are even unaware of the schemes, policies, plans and other initiatives taken by respective government. As such it is the duty of the government to create awareness especially in rural areas and publish it in more and more accessible format. By employing principles of equality, non-discrimination, and reasonable accommodation, courts progresses towards establishing disability rights by providing legal clarity, developing legal doctrines, and fostering social change. Their decisions prompts legislative reforms and influence public opinion, leading to a more inclusive and rights-based approach towards disability. Recently Justice Chandrachud highlighting on the importance of accessibility criteria for persons with disabilities said that the Supreme Court is planning to make available the National Judicial Data Grid (NJDG) which is a judgment searching portal in accessible format. The same effort and implementation of the legislations is also sought from the executive. The joint effort of all will only bring change and uplift their condition and make an inclusive society for disabled persons.

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