



Shri Dharmasthala Manjunatheshwara Law College
Centre for Post Graduate Studies & Research in Law
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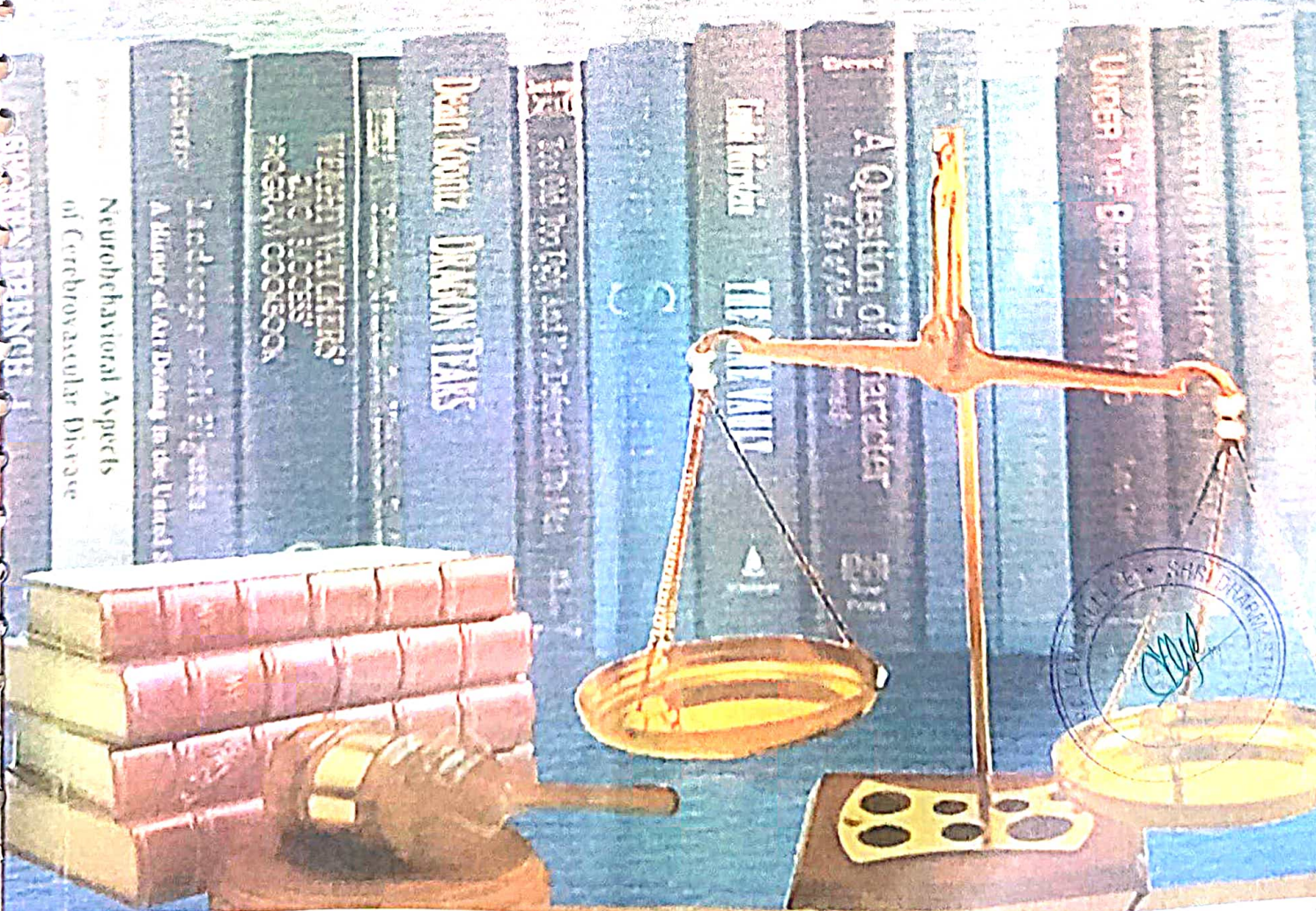
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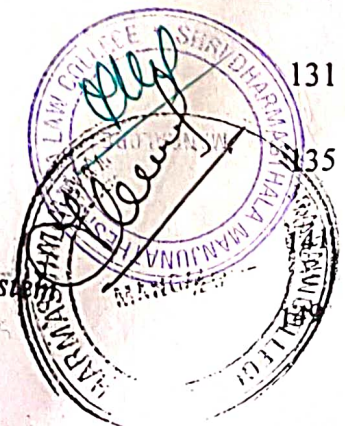


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THE RIGHTS OF DISABLED PERSONS WITH SPECIAL REFERENCE TO THE RIGHTS OF PERSONS WITH DISABILITIES ACT 2016

Mr. Karthik Anand¹

Abstract

Article 14 of the constitution of India protects equal rights to every person – Apart from the Constitution disabled person shall enjoy all the rights contained in Human Rights declaration without distinction or discrimination - The disabled persons have inherent rights to respect for their human dignity and irrespective of the origin, nature and seriousness of their handicaps and disabilities, have same Fundamental Rights - Disabled persons have the same civil and political rights as other human beings - Disabled persons shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature. The new enactment passed by the Parliament in the year 2016 to protect the rights of disable persons may bring many changes in day to day life of disabled persons.

Key Words : *Disabled Persons – UDHR – Fundamental Rights – Human Rights – Discrimination – Economic, Social and Cultural rights – Equality – Education – Employment – Social Security.*

Introduction

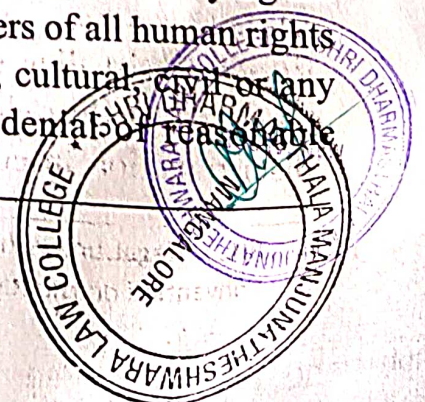
Disability means a physical or mental condition that limits a person's movements, senses, or activities. "Person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.²

"Discrimination" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation.³

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² Section 2(s) of Persons with Disabilities act 2016

³ Section 2(h) of Persons with Disabilities act 2016



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Indian Constitution to protect the rights of the disabled persons in consensus with International covenant. Under Article 55 of UDHR which provides with a view to the creation of conditions of stability and well being which are necessary for the peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of people's, the United Nations shall promote:

- a) Higher standard of living , full employment and conditions of economic and social progress and development;
- b) Solutions of international economic, social, health, and related problems and international cultural and educational cooperation
- c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.⁴

Constitutional Rights of Disabled Persons:

1. Prohibition of Discrimination : Article 15 is a manifestation of "Right to Equality" under article 14, as it enshrines a specific dimension of the principles of equality relating to discrimination by state or various grounds. Under article 15 the protection extends only to citizens , unlike article 14 which protects ' any person' . Thus in application article 15 protects from discriminatory state activities but the ambit of article 15 is narrower than that of article 14.

Article 15 of the Indian constitution deals with "prohibition of discrimination" on the grounds of religion, race, caste, sex or place of birth. It runs as follows:

Article 15(2) says, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disabilities liability restriction or condition with regard to :

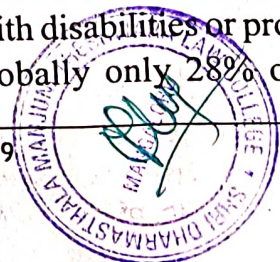
- a) Access to shops, public restaurants, hotels and places of public entertainment; or
- b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the state funds dedicated to the use of the general public.

2. Equity in Social, Economic and Cultural Rights:

Article 25 of the CRDP⁵ recognizes the "right of a person with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, state parties shall ensure an inclusive education system at all levels and lifelong learning." They considered constitution to grant education to children with disabilities if they explicitly guarantee the right to education , the right to free education, or the right to compulsory education to children with disabilities or prohibit discrimination in education on the basis if disability. Globally only 28% of the

⁴ <http://legal.un.org/reperatory/art55.shtml> last visited on 10.10.2019

⁵ Convention on the Rights of Persons with Disabilities



countries provide some type of constitutional guarantee of educational rights or the children with disabilities.

3. Right To Work:

Article 27 of the CRDP instructs states to "recognizes the right of persons with disabilities to work, on an equal basis with others; this includes the rights to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

4. Right to Liberty:

Article 14 of the CRPD instructs state parties to guarantee people with disabilities the right to liberty and security of person. We considered the right to liberty to be guaranteed to persons with disabilities if they were explicitly granted the right to freedom or liberty. Globally, only 9% of the constitution explicitly guarantee the right to liberty to persons with disabilities. However 19% of the constitution specifies that the right to liberty can be denied to persons with the mental health condition.

5. Right To Freedom of Expression:

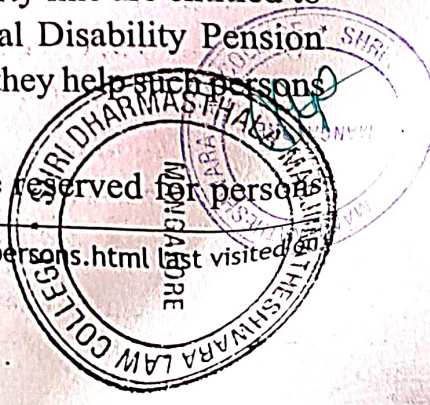
In article 21, the CRPD states that to "take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion include the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communications of their choice."⁶

Rights of Disabled Persons In India:

Persons with disabilities are one of the most neglected sections of our nation. This is due to the sheer indifference of the society which subjects such people to disapproval and antipathy. Such people have several rights under various Indian laws as well as UN conventions that are followed in India. Under section 2(i) of Persons with Disabilities Act, 1995,"disability" includes blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental illness.

- i. **Disability Certificate:** It is the most basic document that a disabled person should possess in order to avail certain benefits and concessions. The State Medical Boards established under the State governments can issue a disability certificate to any person with more than 40% disability.
- ii. **Disability Pension:** People who are above 18 years of age, suffering with more than 80% disability and are living below the poverty line are entitled to the disability pension under the Indira Gandhi National Disability Pension Scheme. Various NGOs are dedicated to this because i.e. they help such persons with disabilities to get their disability pension.
- iii. **Employment:** In government jobs, 3% of the seats are reserved for persons

⁶ <http://www.legalserviceindia.com/legal/article-98-rights-of-disabled-persons.html> last visited 11.10.2019



with disabilities. Appropriate government also formed Skill development and employment schemes and programmes including provision of loans at concessional rates to facilitate and support employment of persons with disabilities especially for their vocational training and self-employment.

iv. **Income Tax Concession:** Under sections 80DD and 80U of Income Tax Act, 1961, persons with disabilities are also entitled to certain income tax concessions.

The Persons with Disabilities Act of 1995

Before enacting 2016 Act The government of India has put in place an Act for the disabled to make sure the disabled also form an important part of nation building. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came into force on February 7, 1996. It is a significant step which ensures equal opportunities for the people with disabilities.

The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier-free environment, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc. Prevention and early detection of disabilities Surveys, investigations and research shall be conducted to ascertain the cause of occurrence of disabilities. Various measures shall be taken to prevent disabilities. Staff at the Primary Health Centre shall be trained to assist in this work All the Children shall be screened once in a year for identifying 'at-risk' cases Awareness campaigns shall be launched and sponsored to disseminate information Measures shall be taken for pre-natal, peri natal, and post-natal care of the mother and child'.

Rights of Persons with Disabilities Act, 2016

The Act replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. It fulfils the obligations to the United National Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory. The Act came into force during December 2016.

Salient features of the Act Disabilities covered :

Disability has been defined based on an evolving and dynamic concept. The types of disabilities have been increased from existing 7 to 21 & the Central Government will have the power to add more types of disabilities. The 21 disabilities are given below:-

- i. Blindness
- ii. Low-vision
- iii. Leprosy Cured persons



- iv. Hearing Impairment (deaf and hard of hearing)
- v. Locomotor Disability
- vi. Dwarfism
- vii. Intellectual Disability
- viii. Mental Illness
- ix. Autism Spectrum Disorder
- x. Cerebral Palsy
- xi. Muscular Dystrophy
- xii. Chronic Neurological conditions
- xiii. Specific Learning Disabilities
- xiv. Multiple Sclerosis
- xv. Speech and Language disability
- xvi. Thalassemia
- xvii. Hemophilia
- xviii. Sickle Cell disease
- xix. Multiple Disabilities including deafblindness
- xx. Acid Attack victim
- xxi. Parkinson's disease. Persons with "benchmark disabilities" are defined as those certified to have at least 40 per cent of the disabilities specified above.

Rights and entitlements

Responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others. Additional benefits such as reservation in higher education (not less than 5%), government jobs (not less than 4 %), reservation in allocation of land, poverty alleviation schemes (5% allotment) etc. have been provided for persons with benchmark disabilities and those with high support needs. Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education.

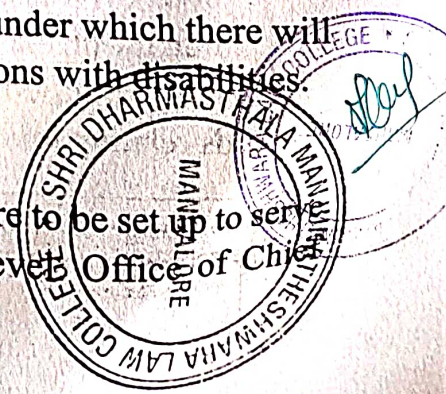
Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education to the children with disabilities. For strengthening the Prime Minister's Accessible India Campaign, stress has been given to ensure accessibility in public buildings (both Government and private) in a prescribed time-frame.

Guardianship

The Act provides for grant of guardianship by District Court under which there will be joint decision – making between the guardian and the persons with disabilities.

Establishment of Authorities

Broad based Central & State Advisory Boards on Disability are to be set up to serve as apex policy making bodies at the Central and State level.



Commissioner of Persons with Disabilities has been strengthened who will now be assisted by 2 Commissioners and an Advisory Committee comprising of not more than 11 members drawn from experts in various disabilities.

Similarly, the office of State Commissioners of Disabilities has been strengthened who will be assisted by an Advisory Committee comprising of not more than 5 members drawn from experts in various disabilities. The Chief Commissioner for Persons with Disabilities and the State Commissioners will act as regulatory bodies and Grievance Redressal agencies and also monitor implementation of the Act.

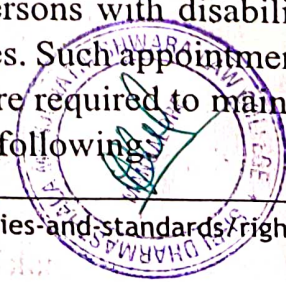
District level committees will be constituted by the State Governments to address local concerns of PwDs. Details of their constitution and the functions of such committees would be prescribed by the State Governments in the rules. Creation of National and State Fund will be created to provide financial support to the persons with disabilities. The existing National Fund for Persons with Disabilities and the Trust Fund for Empowerment of Persons with Disabilities will be subsumed with the National Fund.

Penalties for offences

The Act provides for penalties for offences committed against persons with disabilities and also violation of the provisions of the new law. Any person who violates provisions of the Act, or any rule or regulation made under it, shall be punishable with imprisonment up to six months and/ or a fine of Rs 10,000, or both. For any subsequent violation, imprisonment of up to two years and/or a fine of Rs 50,000 to Rs five lakh can be awarded.

Whoever intentionally insults or intimidates a person with disability, or sexually exploits a woman or child with disability, shall be punishable with imprisonment between six months to five years and fine. Special Courts will be designated in each district to handle cases concerning violation of rights of PwDs.⁸

The New Act requires establishments to prepare and publish an Equal Opportunity Policy (the "EOP") for persons with disabilities. A copy of the same is required to be registered with the State Commissioner or the Central Commissioner. The EOP must *inter alia* contain: (a) details regarding amenities and facilities put in place for persons with disabilities; (b) lists of posts identified for such persons; and (c) details of training, promotion, allotment of accommodation and provision of assistive devices and barrier free accessibility for such persons. Further, these establishments must appoint a liaison officer to look after the recruitment of persons with disabilities including the provisions and amenities for disabled employees. Such appointment is to be notified in the EOP. Furthermore, the establishments are required to maintain records relating to persons with disabilities enumerating the following



⁸ <http://vikaspedia.in/social-welfare/differently-abled-welfare/policies-and-standards/rights-of-persons-with-disabilities-act-2016> last visited on 11.10.201

- A. the number of disabled persons employed and the date of commencement of their employment;
- B. the name, gender and address of employee(s) with disabilities;
- C. the type of disability that such employee(s) are
- D. the nature of work being performed by such employee(s); and
- E. the type of facilities being provided to the disabled employee(s).

The establishments are further required to produce the aforesaid records for inspection as and when called upon to do so by the relevant authorities.⁹

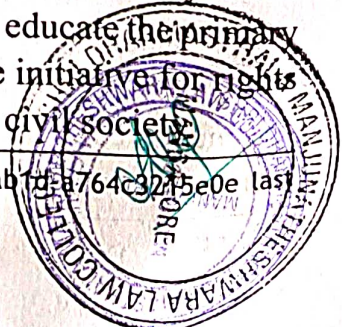
Area of concern

1. It is largely believed that this act is insufficient till “reservation” for disability
2. Loose language used in discrimination and guardianship provision.
3. Regardless of the number of disabilities covered under this Act, it has turned 21 to the previous Act of 1995, yet many disabilities are not covered under this Act.
4. Under the Disability Act 2016, there is no transit framework or timeline provided to ensure its compliance, its implementation.
5. Disability law does not provide any kind of incentives for private establishments to provide training to disabled people, to ensure accessibility criteria, to provide accessory equipment, etc. so that they may be able to determine the cost.
6. Although disability law prevents discrimination against disabled person, the law does not provide an effective and strong grievance redress mechanism.
7. The Act 2016, ignoring the role and importance of the family in the care of PMI, is silent on how to create a huge support system for the people with high support, which has millions of people suffering from severe mental illness.
8. The success of this law will largely depend on the measures taken by the government, because it is the responsibility of the government to ensure the safety of the disabled under disability law and to implement the schemes.

Challenges in implementation

- The biggest challenge is to change the mindset of people towards a large level of disability, change their mentality. Make people aware about disability law and its benefits.
- A large part of the disabled population lives in rural India. Their literacy levels are very low. Therefore, the most important challenge is to educate the primary stakeholders about the disability law so that they can take initiative for rights of disabled person both with the State as well as with the civil society.

⁹ <https://www.lexology.com/library/detail.aspx?g=c606f652-6bf9-42d7-ab1d-3a764c32f5e0e> last visited on 11.10.2019



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- India is a country full of various complexities. This is a multi-lingual, multi-cultural and multi-ethnic state, due to which the right motive of the related act does not reach the concerned person in the right way. This is both a challenge and a barrier to work; this obstacle is due to factors like resource crunch, poverty, illiteracy, etc.
 - Orientation to various stakeholders is important for the implementation of this Act, such as media persons, bureaucracy etc., is also a challenging challenge in view of the country's diversity.

Suggestions and Recommendations

People must be aware of disability and disability laws. They must change their mentality. They have to explain that disability is not a burden; PWD is also human like us. They also have sensations and if proper attention is given to them, their skills can be brought before the society. By working hard with them, they can also be put on their feet, they can be made independent.

Families with disabilities should be encouraged by the government, so that the family can come forward to support the disabled. Not only this, members of such family should be specially trained, necessary/helpful equipment should be provided to them. Whether it is normal or disabled, family is its first school. The family is the first stair from where he learns to climb. Family support is the biggest support for any individual, so it is important that their families should support the children with disabilities in every way.

In today's fast-paced world where multi-national companies are looking for multi talented professionals, why would the companies come forward for the employment of disabled people, where they have to spend extra for them? It is therefore necessary that the companies should be invited with the help of beneficial schemes and incentives by the government.

Where the benefits of reservation for disabled persons in educational institutions have been made, syllabus should be made in accordance with them. In addition, emphasis should be on easy education methods and language of education.

To spread awareness to village to village and city to city, it is necessary that school/college students make street shows in this regard. In this connection, electronic media, print media, coaching centres should actively participate.

Just as ADA (American disabilities act) has clear and specific guidelines for implementation of effective dates, time limits, alternate arrangements, temporary relief etc., in the same way these facilities have to be provided by PDA.

ADA Watch "is an effective surveillance system for monitoring the implementation of the law. Under PDA the surveillance system should be made highly effective. All agencies receiving ADA are required to comply with positive action programs. PDA should start and maintain positive action program."¹⁰

¹⁰ <https://blog.ipleaders.in/disability-laws-in-india/> last visited on 11.10.2019

Apex Court and Rights of Disabilities

Deaf Employees Welfare Association v Union of India¹¹

Parity with blind and orthopaedically handicapped government employees - Grant of transport allowance - Ministry of Finance, Government of India taking view that visually impaired person cannot be equated with hearing impaired person since deaf and dumb persons are not physically dependent on others for commuting, and hence, not entitled to double rate of transport allowance - Sustainability - Held, differential sought to be canvassed by Ministry of Finance has no rational relation to object sought to be achieved by Disabilities Act which envisages equal opportunities, protection and right to persons with disabilities and hence the same is violative of Arts. 14 and 21 of the Constitution --Further held, in matter of affirmative action, there cannot be further discrimination between person with disability of blindness and person with disability of hearing impairment - Recommendation made by Ministry of Health and Family Welfare for extending benefit of double rate of transport allowance to the government employees suffering from hearing impairment on a par with blind and orthopaedically handicapped government employees is perfectly legal and is in consonance with Arts. 14 and 21.

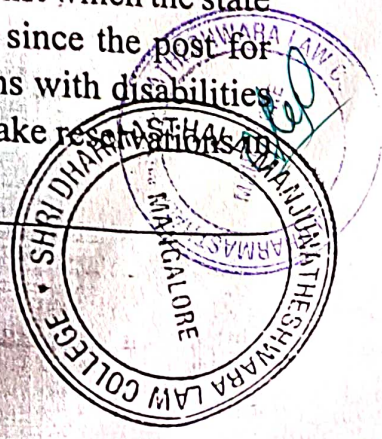
Union of India v National Federation of the Blind¹²

The court looked into the calculation of the 3% reservation --whether it refers to cadre strength, or number of vacancies. It was held that 3% refers to a part of the total vacancies in cadre strength. The court also observed, "It is clear that while section 33 provides for a minimum level of representation of 3 per cent in the establishments of appropriate government, the legislature intended to ensure 5 per cent of representation in the entire workforce both in public as well as private sector".

Government of India v Ravi Prakash Gupta¹³

In this case, the respondent was a visually challenged person who appeared for the civil services examination conducted by the Union Public Service Commission and was declared successful. However, he was not given an appointment even though he was at Sl. No. 5 in the merit list of visually impaired candidates. The respondent approached the Central Administrative Tribunal which refused his application and thereafter the respondent approached the high court. The high court directed the government to accommodate the Respondent in the merit list, against which the state filed an appeal in the Supreme Court. The state contended that since the post for which the respondent was applying was not identified for persons with disabilities and therefore not reserved for them, the government could not make reservations for the same.

¹¹ (2014) 3 SCC 173-A
¹² (2013) 10 SCC 772.
¹³ (2010) 7 SCC 626.



The Supreme Court refused the state government's contention that identification of jobs was a pre-requisite for reservation and appointment under section 33 of the Act.¹⁴ The court held, "It is only logical that, as provided in section 32 of the aforesaid Act, posts have to be identified for reservation for the purposes of Section 33, but such identification was meant to be simultaneously undertaken with the coming into operation of the Act, to give effect to the provisions of Section 33. The legislature never intended the provisions of section 32 of the Act to be used as a tool to deny the benefits of Section 33 to these categories of disabled persons indicated therein. Such a submission strikes at the foundation of the provisions relating to the duty cast upon the appropriate government to make appointments in every establishment."¹⁵

Conclusion

The values (dignity, equality, autonomy and liberty) supported by human rights law form the basis of the basic freedom of the individual, which provides protection against misuse of power and creates a place for the development of human emotion. It would not be wrong to say that human rights are the power that gives a person the power to stand up with respect to society. Human rights are not just rights but self-respect for any person. Therefore, a person with disabilities is a special person who needs special attention, so he should be given special human rights.

Before the enactment of the PWD Act, 2016, the rights relating to persons with disabilities, various acts, the Constitution of India, persons with disabilities (Equal Opportunities for Equality and Full Participation) Act, 1995, Mental Health Act, 1987, Rehabilitation Council of India Act and National Trust (for the Welfare of Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999 were scattered in. Although the purpose of these laws are to protect the rights of people with disabilities, but these laws did not provide equality of opportunity, especially regarding employment. PWD Act 2016 has tried to reconcile these laws and the equality of opportunity has been provided. For people with disabilities, a piece of law is a boon and not less. This act is widely related to the rights of persons with disabilities. It also orders the government to perform its duties in the most diligent manner and to make plans and programs in the direction of community welfare. This act is definitely a good step in that direction.

* * * * *



¹⁴ The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, section 33, available at <http://www.socialjustice.nic.in/pwdact1995.php?format=print>
¹⁵ <https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights#fn4> last visited on 11.10.2019

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