

PROGRESS
WITHOUT DISCLAIMERS
ON THE RIGHT TRACK (RPWD)



Dr. Abinaya S.M

**PROGRESS WITHOUT DISCLAIMER - ON THE RIGHT
TRACK (RPwD))**

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PREFACE

Fundamental rights are one of the important feature in any democratic nation. Taking insight from the American Constitution, India incorporated the Fundamental rights in Part III of the Indian Constitution. The fundamental rights are vital because these rights nurture the personality of every individual and further preserve their privacy, dignity and quality of life.

This book presents as a comprehensive guide on fundamental rights and its applicability to Persons With Disabilities (PWDs). The first fundamental right, Right to equality and equal protection of law is extensively applicable to individuals with disabilities as well. However, the said right needs certain amendments to make it more specific to individuals with disabilities. The second one being Right to Profession states that individuals with disabilities are to be given the right to carry out and engage in any profession of their choice. No discrimination can be made on the ground of disability in profession. The third right, Right to Education elucidates that this right is basic for every child including those with disabilities. The fourth right is crucial as it talks about Dignified Life for individuals with disabilities. The next right is considered as one of the important rights for PWDs because this right prohibits forced labour, cruelty and other inhuman treatment against such persons.

As a wholesome package, this book will be helpful to individuals with disabilities and people associated with them such as their family, friends, professionals and the society at large. The content will enable them understand the fundamental rights granted by the Constitution of India and the respective provisions of the special statutes such as the Rights of Persons with Disabilities (RPwD) Act, 2016 and the Persons with Disabilities (PWD) Act, 1995 passed in the interest of

the differently-abled. Related judicial pronouncements in favour of PWDs have also been included for ready reference.

This book will also be an ideal learning material for students pursuing their education / research in the field of multiple disabilities. Additionally, this book will also serve as a reference manuscript for scholars.

CONTENT

S.No	Table of the Content	Page No.
1.	Introduction	1-2
2.	Chapter I- Right to Equality as per Art. 14 with Special Reference to RPWD Act and PWD Act	3-12
3.	Chapter II - Right of non-discrimination in public employment as per Art. 16 with special reference to RPWD Act and PWD Act	14-21
4.	Chapter III - Right to Profession as per Art. 19 with special reference to RPWD Act and PWD Act	22-31
5.	Chapter IV - Right to Education as per Art. 21 A with special reference to RPWD Act and PWD Act	32-42
6.	Chapter V - Right to Life and Personal liberty as per Art. 21 with Special Reference to RPWD Act and PWD Act	43-51
7.	Chapter VI - Prohibition of Traffic in human beings and forced labour as per Art 23 with special reference to RPWD Act and PWD Act	52-57
8.	Conclusion	57
9.	Reference	59-60

Introduction

Individuals with disabilities are part and parcel of the society but the people around them seldom fail to recognize the same. They are discriminated and exploited to a greater extent when compared to normal people. Despite fundamental rights made available to individuals with disabilities, like every other Indian citizen, these rights are never enforced in reality. Having said that, it becomes very essential at this juncture, to create awareness amongst the differently-abled. They have to acquire adequate knowledge about the fundamental rights as allowed by the Constitution of India. In addition to these basic rights, they should also be made available to the mindful of rules, regulations applicable, remedies and privileges through special laws such as the RPWD Act, 2016, PWD Act, 1995 and decrees awarded in their favour.

Fundamental rights are not optional. These rights are uniformly applicable to individuals with disabilities similar to every other citizen of India and secures to citizens with disabilities, the right of justice, liberty of thought, expression, belief, faith and worship, equality of status and opportunity and promotion of fraternity. Individuals with disabilities, irrespective of the origin, nature and seriousness of their handicaps and

disabilities, have the same fundamental rights as their fellow-citizens. The first and foremost of the rights being the right to enjoy a decent life, as normal and complete as possible.

CHAPTER-I

RIGHT TO EQUALITY AS PER ART 14 WITH SPECIAL REFERENCE TO RPWD ACT AND PWD ACT

i. Right to equality under Indian Constitution

One important constitutional provision relating to rights of the individuals living with disabilities under Indian Constitution is Article 14, equality before law or the equal protection before the law. The people with disabilities are part and parcel of the society, they should be treated equally with others. In addition, several inhumane, cruel and atrocious acts were also been carried out against the people with disabilities, thereby violating Article 14 of the Constitution. They have to be given equal protection before the law.

Article 15 of the Constitution emphasize on prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. This provision has not included 'disability' as a ground of discrimination. In a nation with 21 million people with disabilities, it is not acceptable for not including them in the Article 15 when they are facing discrimination based on their disability. In this regard, the UN Committee on the Rights of Individuals living with disabilities published its findings on India's laws on par

with United Nations Convention on Rights of Individuals living with disabilities, during its 22nd Session of the Working Group in September 2019. The key recommendation of the Committee is to amend the Article 15 of the Indian Constitution to specifically mention disability as a ground of discrimination. Another important finding of the Committee is in India there is absence of measures to combat multiple and intersecting forms of discrimination against individuals living with disabilities, which is the important area to be noticed and take action accordingly.

They are also eligible for all the access to public places as stipulated in Article 15 (2) such as shops, public restaurants, hotels and places of entertainment, use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of Government fund or dedicated to the use of the public.

Article 16 of the Indian Constitution stipulates equality of opportunity in matters of public employment. In this regard, equality of opportunity has to be granted to the individuals living with disabilities along with the normal people in matters of relating to the employment or appointment of any office under the State.

ii. Right to equality under RPWD Act, 2016

S. 3 of the RPWD Act states that deals exclusively about equality and non-discrimination. The section expands as it is the duty of the appropriate Government to make sure that the individuals living with disabilities are enjoying the right to equality, a life with dignity and respect for their integrity on par with others. In addition, the appropriate Government has to take all the necessary steps to utilise the potential and capacity of individuals living with disabilities. The appropriate Government has to provide appropriate environment to them. An individual with disability should not be discriminated on the basis of the kind of disability they are facing. The only exception to this rule is that discrimination can be made and it has to be proved that such discrimination is considered only to achieve a legitimate aim related to individuals living with disabilities. Such persons should not be deprived of their personal liberty merely on the ground of their disability. Lastly, the appropriate Government has to take all the necessary steps to ensure that reasonable accommodation is provided to individuals living with disabilities.

Section 6 of the Act further deals about protection of individuals living with disabilities from cruelty and inhuman treatment. The section says that the appropriate

Government has to monitor and protect individuals living with disabilities from being tortured, others acting cruelly towards them and other inhuman or degrading treatment to them. An individual with disability should not be a subject of any kind of research unless the following conditions are satisfied:

- Free and informed consent from such individual with disability has to be obtained through any accessible mode or means and formats of communication
- Prior permission from the Committee for Research on Disability has to be obtained.

The committee has to be constituted by the appropriate Government and not less than half the members shall be either individuals with disability or members of the registered organisation as defined under S.2 (z) of the Act.

iii. Right to equality under PWD Act, 1995

The PWD Act, 1995 was enacted to give an effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. So the prime motto of the Act is to provide equality to individuals living with disabilities. Towards equality and non-discrimination the Act says that public building, rail compartments, buses, ships and air-crafts

will be designed to give easy access to the disabled people. In all public places and in waiting rooms, the toilets shall be wheel chair accessible. Braille and sound symbols are also to be provided in all elevators (lifts). All the places of public utility shall be made barrier- free by providing the ramps. S. 44 to 47 of the PWD Act deals about non-discrimination of individuals living with disabilities in transport, road, accessible environment and Government employment.

iv. Case laws

1. *The National Association for the Deaf v. Union of India [W.P.(C) No.6250/2010]*

The PIL was about the non-availability of sign language interpreters in public services. The petition complained about the lack of availability of adequate number of sign language interpreters in various public places and sought for directions against the Ministry and other authorities to ensure access and better training of sign language interpreters.

The Court noted the lack of availability of sign language interpreters, and held that due to non-availability of interpreters, the hearing impaired were unable to avail medical, transport and banking facilities and to also seek police help. The court also issued specific directions to the respondent authorities which included

undertaking survey to assess the availability and requirements for sign language interpreters, appointing nodal officers to seek information from concerned authorities and prepare a report to be used for creation of new course, posts, and curricula for training of interpreters.

2. *Rekha Meena v. State of Rajasthan [(2020) RLW 1212]*

The petitioner secured 50.825 marks for Nurse Grade – II in TSP area and the cut-off for her category was 49.709, but got rejected as she was physically handicapped. She submitted online grievance on 27.11.2019 and then moved a writ petition.

It was held that the respondents were not justified in subjecting the petitioner to medical examination, as she has not applied under Person with Disability category. It is also held that respondents were not justified in rejecting petitioner treating her to be from other PH category as she was having 24% disability in one arm. It is declared that a person with physical disability more or less than 40% cannot be denied appointment in case he/she does not claim reservation available to disabled. So the respondents are directed to issue appointment order to the petitioner.

3. *Akshansh Gupta v. Department of Science and Technology [(2019) 9 AD (Delhi) 3 : (2019) 259 DLT 554 : (2019) 3 SCT 444]*

The petitioner grievance is that the respondent has in its applications invited applications from candidates for its INSPIRE Faculty Award, January-2018 (Session-I) (“Innovation in Science Pursuit for Inspired Research”) programme, not provided for age relaxation for candidates suffering from benchmark disabilities, of which petitioner claims to be one.

The Court relied quoted S. 3 of the RPWD Act and directed the respondent to take a decision on the claim of the petitioner to grant of the INSPIRE Faculty Award. The authority is directed to take the decision within 10 days.

4. *Rajive Raturi v. Union of India [W.P (C) Nos. 243 Of 2005]*

The petitioner is a visually challenged person and works with a human rights organization at Delhi. He filed a PIL on behalf of the individuals living with disabilities for proper and adequate access to public places. In particular the petition was to provide all accessibility of safe access to roads and transport facilities.

The Court directed that 50% of the Govt. buildings of the national capital and all the state capitals should be made fully accessible by December 2018. Completing accessibility audit of 50% of Govt. buildings and making them fully accessible in 10 most important cities/towns of states/UTs not covered in target 1 by December 2019. Government/ Private owned public transport carriers are

to be made fully accessible by March 2018. At least 50% of central and state Govt. websites are to meet accessibility standards by March 2017. At least 50% of the public documents are to meet accessibility standards by March 2018. The target of training additional 200 sign interpreters by March 2018.

5. *Court on its own motion v. Union of India, WP. (C) No. 5666/2017*

On 7th July, 2017, a report captioned as Train door shut, disabled misses M.Phil. test at

Delhi University appeared at page 8 of the New Delhi Edition of the national daily, The Times of India. It disclosed that a visually impaired student who had a reserved ticket to travel to Delhi for appearing in the entrance examination for the M.Phil. (Sanskrit) Course for the academic year 2017, which was conducted by the University of Delhi on 5th July, 2017, was prevented from boarding the coach reserved for the disabled in the Gorakhdham Express train operated by the North-Eastern Railways at the Unnao Railway Station despite his best efforts. So Court took a suo-moto case.

With this judgement, the Court is only complying with the Constitutional mandate and ensuring equality and non-discrimination to a person with disabilities who is visually impaired and has been exposed to the most

callous treatment because the respondents did not take effective steps as mandated under the Rights of Individuals living with disabilities Act, 2016. It is directed that within 10 days from today, the University of Delhi shall conduct an entrance examination for the respondent no.4 for admission to the M.Phil. (Sanskrit) 2017-18 session forthwith and declare his result. In case, the respondent no.4 qualifies the said exam and is placed appropriately in the merit list, he shall be granted admission to the said course. The respondent no.4 shall be given such assistance, as permissible under the applicable rules, for undertaking the examination.

Reasonable restriction

1. *Neha Sankhla v. State of Rajasthan, Civil Writ Petition No. 13228 of 2019*

The petitioner, a specially-abled candidate, has 40% visual impairment. She completed her graduation and then acquired law degree in 2018. It is not in dispute that the petitioner fulfilled other eligibility stipulations and her application for participating in the selection process for filling up vacancies in the Rajasthan Judicial Services was accepted. An admit card was also issued to her. In the preliminary exams, she secured 39 marks and was declared “failed”. She contended that the marks secured by her were later recomputed pursuant to the order of the Supreme Court and was revised to 40. Several

representations were addressed to the establishment of the High Court, asking for parity of individuals living with disabilities, who were candidates, with the SC / ST candidates, for whom the minimum marks were 40%; however these representations went unheeded.

In the present context, reasonable accommodation means equating candidates with disability such as the petitioner with the SC / ST category candidates. Although, the Court felt that physically person with disabilities should be extended all the rights, privileges and benefits under the RPWD Act to ensure that they are not discriminated against and that they come within the social mainstream, the Court did not agree with the contentions made by the petitioner to claim parity with SC / ST candidates.

v. Final thoughts

Though both the Constitution and the RPWD Act states about providing accessible environment to people with disabilities in all areas, but in reality it doesn't happen yet. The Department of Empowerment of Individuals living with disabilities stated that only 3% of the buildings have become accessible to the people with disabilities in the year 2018. Not only the buildings, the transports were also not made disabled friendly yet. Only Metro rails which has accessibility feature in it, other

trains does not possess the same. All the public accessible things has to be made disabled friendly in the near future.

CHAPTER- II

RIGHT OF NON-DISCRIMINATION IN PUBLIC EMPLOYMENT AS PER ART 16 WITH SPECIAL REFERENCE TO RPWD ACT AND PWD ACT

i. Right of non-discrimination under Indian Constitution

Article 16 of the Indian Constitution provides for equality of opportunity in all government employment. Article 16(1) stipulates that there shall be equal opportunity for the citizens in the matter of employment or appointment to any office under the State (Union Government or State Government). This provision of equality is only applicable to the employment or offices which are held by the State. The State is still free to lay down the requisite qualifications for the recruitment of employees for the Government services. This has no applicability to private employment

Article 16(2) lays down the grounds on which the citizens should not be discriminated against for the purpose of employment or appointment to any office under the State. The prohibited grounds of discrimination under Article 16(2) are religion, race, caste, sex, descent, birthplace, residence, or any of them.

However clause 3 of Article 16 states that nothing contained in Article 16 shall prevent Parliament from making any law which prescribes to the citizens who are appointed to any office under the State in regard to any requirements as to residence within that State or Union

territory prior to employment or appointment to any office under the State.

Article 16(4) of the Indian constitution provides for the reservation of services under the State in favor of the backward class of citizens. The State shall decide whether a particular class of citizens is backward or not. Therefore, the State shall lay down acceptable criteria in order to ascertain whether a particular class of citizens is a backward class or not.

ii. Right of non-discrimination under RPWD Act, 2016

Section 20 of the RPWD Act deals about non-discrimination in employment. The section explains as the appropriate Government has to abide by the following conditions in employment:

- Provision of reasonable accommodation and a barrier-free environment to employees with disabilities.
- Prohibition against denying promotions on the basis of disability.
- Prohibition against dispensation or reduction of an employee's rank on account of acquisition of a disability while in service

The Personnel Ministry issued an order on 07th September, 2010 stating that if a Government servant

seeks voluntary retirement citing medical grounds or if the VRS notice has been submitted on the ground of disability then, the provision of RPWD Act (S.20) is applicable. Such Government servant shall be advised that he/ she is having the option of continuing the service with the same pay scale and service benefits. After that if the Government servant reconsiders his decision and decides to withdraw his notice of VRS, then this case shall be dealt under S.20 of RPWD Act. Even after being advised, the Government servant is not willing to continue his service, then the notice may be processed as per the rules which may be applicable.

Further, considering individuals living with disabilities as the vulnerable community, certain reservations are granted to them which will make such persons on par with non-disabled community. Section 34 of the RPWD Act provides for reservations or quotas in Government employment. At least 4% of the vacancies in each group of posts shall be filled by PWD, 1% for each of the first three categories, and 1% for both the last two categories, namely:

- Individuals with low vision or blindness.
- Individuals who are deaf or hard of hearing.

- Individuals having locomotor disabilities, including dwarfism, leprosy cured, cerebral palsy, muscular dystrophy, and victims of acid attacks.
- Individuals with autism, learning disabilities, intellectual disabilities, and mental illness.
- Individuals with Multiple disabilities including deaf-blindness

iii. Right of non-discrimination under PWD Act, 1995

Section 47 of the PWD Act, 1995 provides that services of no employee can be terminated nor can he be reduced in rank in case the employee has acquired a disability during his service. The first proviso to the Section 47 lays down that if such an employee is not suitable for the post he was holding, he could be shifted to some other post. However, his pay and service benefits would be protected. The second proviso provides that if it is not possible to adjust such an employee against any post, he would be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Further, the Clause (2) of Section 47 provides that no promotion shall be denied to a person merely on ground of his disability.

iv. Case laws

- *Vikas v. State of Maharashtra, Writ Petition No. 9762 – 65, 67 of 2019*

These 14 Writ Petitions have been filed by 14 drivers of the Maharashtra State Road Transport Corporation (MSRTC) whose services were discontinued by MSRTC on the ground that they had been diagnosed with 'colour blindness'. The petitioners' grievance is that subsequent to their discontinuance, they have neither been provided with alternative jobs nor have they received any salaries for more than 2 years, (i.e.) since 26th April 2018.

The court held that, this case is an example of the MSRTC showing insensitivity and apathy towards an employee, who has suffered an accident while on duty, arising out of and in the course of his employment, squarely covered by the Employee's Compensation Act, 1923 and the Rights of Individuals living with disabilities Act, 2016. The provisions of RPWD Act clearly indicate that an employee, as like this petitioner, should have been immediately granted alternative employment, the date on which he had reported for duties after being discharged from the hospital and declared to be fit to undertake an alternative employment. The respondent is liable to pay an amount of Rs.2,74,534/- by way of compensation to the petitioner. They incurred disability during the course of their employment and they have to be provided with alternate employment.

- *Kunal Singh v. Union of India*, [2003] 4 SCC 524

Kunal Singh was disabled in the course of his duty. His employer declared him permanently incapacitated and terminated his services. They gave him an invalidity pension and refused to grant him alternate employment.

The court held that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act. Section 47, which falls in Chapter VIII deals with an employee, who is already in service and acquires a disability during his service. Such an employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. Merely because the appellant received an invalid pension is no ground to deny the protection mandatorily made available to the appellant under Section 47 of the Act.

- *Mohammed K v. Kerala State Road Transport Corporation (KSRTC) Represented by its Chairman and Managing Director, Thiruvananthapuram, Writ Petition (Civil) No. 27272 of 2019*

The petitioner has locomotor disability and his case was referred to the Appellate Medical Board by Extr.P7 proceedings. Thereafter, noting that the petitioner had acquired this disability while he was employed under a

foreign employer, his request for category change was declined by the proceedings.

The court held that acquisition of disability while in service or outside cannot be a reason for declining such request. What is to be considered is whether the employee can be engaged as a driver or not. If the petitioner cannot drive the vehicle as he could have done otherwise, then KSRTC should take a decision to allow category change by engaging him in any other duty other than as a driver. The RPWD Act does not discriminate an employee who acquired disability relatable to the employment or outside the employment. S.20 of the Act mandates that there shall be no discrimination in employment. The category change should be allowed to such person.

Reasonable Restriction

- *Municipal Corporation of Gr. Mumbai v. Mr. Shrirang Anandrao Jadhav, W. P. No. 1900 of 2009*

The respondent is a driver and when he was performing his duties, disturbances erupted in Mumbai. The protests arose out of the arrest of a political leader. During the course of the protests, an incident of stone

throwing took place in which the Respondent sustained an injury to one of his fingers on the right hand for which he had to undergo a surgical operation. He was declared unfit for work from 16th July 2000. Thereafter till 7th July 2001, the Respondent was assigned duties as a Sports Marker. On 7th July 2001, he was informed not to report for work. No order of termination was served.

The court observed that since the workman has attained the age of superannuation, he cannot be reinstated in service. The workman would be entitled to all consequential benefits including back wages and continuity of service from the date of his termination until the date on which he attained the age of superannuation. If the workman has been paid his terminal dues in the meantime, due adjustment shall be made. The Petitioner has to pay to the Respondent Rs.7,500/-.

CHAPTER - III

RIGHT TO PROFESSION AS PER ART 19 WITH SPECIAL REFERENCE TO RPWD ACT AND PWD ACT

i. Right to profession under Indian Constitution

Article 19 (g) envisages that all citizens have the right to practice any profession, or to carry on any occupation,

trade or business. The words 'all citizens' means it would include each and every Indian citizens without any discriminatory nature. This means individuals living with disabilities who are Indian citizens are also entitled to enjoy this fundamental right. But in reality, this is not happening. The reservations allotted for them are often not filled up by them.

The Constitution of India provides equal rights and opportunities to the people with disabilities with any kind of disability of 40% or more (including blindness, visual impairment, hearing impairment, locomotor disabilities, etc.) certified by medical experts just like ordinary people, who is fit and fine from all senses and organs.

ii. Right to profession under RPWD Act, 2016

Chapter IV contains provisions relating to employment and skill development, while Chapter VI contains additional provisions for those individuals who have benchmark disabilities. The provisions which deals with employment under the RPWD Act, 2016 are:

a. Programs for self-employment and vocational training [Section 19] which includes:

- Provision of loans at concessional rates.
- Inclusion of PWD in mainstream programs for skill training.
- Ensuring adequate support to PWD while availing schemes and programs.
- Providing exclusive training programs with active market links for individuals with intellectual and developmental disabilities.
- Marketing products are so made.

b. Non-discrimination in employment [Section 20]

Unless exempted from the application of this provision by a notification to that effect, Government establishments are subject to the following:

- Provision of reasonable accommodation and a barrier-free environment to employees with disabilities.
- Prohibition against denying promotions on the basis of disability.
- Prohibition against dispensation or reduction of an employee's rank on account of acquisition of a disability while in service.

c. Reservations or quotas in Government employment [S. 34]

At least 4% of the vacancies in each group of posts shall be filled by PWD, 1% for each of the first three categories, and 1% for both the last two categories, namely:

- Individuals with low vision or blindness.

- Individuals who are deaf or hard of hearing.
- Individuals having locomotor disabilities, including dwarfism, leprosy cured, cerebral palsy, muscular dystrophy, and victims of acid attacks.
- Individuals with autism, learning disabilities, intellectual disabilities, and mental illness.
- Individuals with Multiple disabilities including deaf-blindness.

iii. Other points

Physically challenged people are given up to 10 years exempt in age limit in Government jobs. In case of all services related to direct recruitment in the Central Government, 10 years of age relaxation for blind, deaf, physically handicapped or persons suffering from cerebral palsy. In addition, the Supreme Court has decided that 3% reservation will be given to the people with disabilities for promotion in all the posts under the Government of India. The Court has passed this order after the order of the Central Government to implement the reservation for the people with disabilities for Group C and Group D posts only.

iv. Reservation under PWD Act, 1995

S. 33 of the Act provides that 3% of vacancies in government employment shall be reserved for people with disabilities, 1% each for the persons suffering from:

- Blindness or Low Vision
- Hearing Impairment
- Locomotor Disabilities & Cerebral Palsy

Suitable Scheme shall be formulated for:

- The training and welfare of individuals living with disabilities
- The relaxation of upper age limit
- Regulating the employment
- Health and Safety measures and creation of a non-handicapping, environment in places where individuals living with disabilities are employed

v. Case laws

- *Syed Bashir-ud-Din Qadri v. Nazir Ahmed Shah [(2010) 3 SCC 603]*

The appellant was a B.Sc. graduate with cerebral palsy who had applied for a job as 'Rehber-e-Taleem' or 'Teaching Guide' in the State of J&K. The state government had initially objected to his appointment on

the ground of his disability. The appellant however with directions from the high court was appointed. The respondent then filed a petition challenging the order of appointment and the appellant was re-examined by the head of the department of Neurology. It was indicated in the report that as he had cerebral palsy, he had significant speech and writing difficulties which would make it difficult for him to perform his duties as a teacher. The high court quashed his appointment and directed to provide alternative employment to him. He approached Supreme Court and the Court directed to overcome the impediment of writing on the blackboard, an electronic external aid would be provided to the appellant which would eliminate the need for drawing a diagram and the same could be substituted by a picture on the screen, which could be projected with minimum effort. The high court order was thereby set aside.

- *Government of India v. Ravi Prakash Gupta [(2010) 7 SCC 626]*

The respondent was a visually challenged person who appeared for the UPSC civil services examinations and 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. An appeal was preferred before the Supreme Court. The state contended

that since the post for which the respondent was applying was not identified for individuals living with disabilities and therefore not reserved for them, the government could not make reservations in the same. The Supreme Court refused the state government's contention and asked to make provisions relating to the duty cast upon the appropriate governments to make appointments in every establishment.

- *Vikash Kumar v. UPSC and Others* [2021 SCC Online SC 84]

The appellant's application for a scribe to take the UPSC examination was denied on the ground that writer's cramp (Dysgraphia) did not amount to a Benchmark Disability of a 40% or higher degree under the RPWD Act, 2016. The SC held that conflating the rights of individuals with disabilities with the notion of Benchmark Disabilities amounts to a dis-service to the object of the enactment, therefore a Benchmark Disability is not a prerequisite to the use of a scribe. The Court referred to Section 20 of the Act that requires Government establishments to provide a conducive environment and make reasonable accommodations for employees with disabilities.

- *Rajeev Kumar Gupta v. Union of India* [Writ Petition (Civil) 521 of 2008]

In this case, Rajeev Kumar Gupta was among eight disabled engineers who served at Prasar Bharti. They raised the grievance that the senior posts in the engineering cadre were mostly filled by way of promotion. The Government was denying individuals living with disabilities of the benefit of a 3% reservation, even though these posts were suitable, effectively defeating the purpose of reservation under the Act. The Government of India relied upon the Indra Sawhney decision of 1993, and reiterated its position before the Supreme Court that reservation in promotion for disabled employees was impermissible. The Supreme Court did not find favour with this reasoning and was of the view that the object of the Act was to socially integrate individuals living with disabilities through the provision of a 3% job reservation. Recognising that the representation of individuals living with disabilities in Government employment was extremely low, the SC set aside the relevant Government instruction and held that if a job is identified to be suitable for any category of disability, reservation shall be extended whether the mode of recruitment is via direct recruitment or by promotion.

Reasonable restriction

- *V. Surendra Mohan v. State of Tamil Nadu, Civil Appeal No. 83 Of 2019 (Arising out of SLP (Civil) No. 17223 of 2015)*

The appellant is a practising Advocate and he submitted an online application in response to the notification No.15/2014 dated 26.08.2014. In the column “percentage of disability” the appellant had mentioned “more than 40%”. The disability certificate was also issued to the appellant on 10.10.2014 mentioning his disability as 70%. The written examination was held on 18.10.2014 and 19.10.2014. After examination was completed, TNPSC issued a letter to the appellant to submit self-attested copies of the relevant documents which also required certificate of physical disability obtained from the Medical Board specifying that his/her physical disability would not render him/her incapable of efficiently discharging his/her official duties for the post of Civil Judge.

The Court held that a judicial officer in a State has to possess reasonable limit of the faculties of hearing, sight and speech in order to hear cases and write judgments and, therefore, stipulating a limit of 50% disability in hearing impairment or visual impairment as a condition to be eligible for the post, is a legitimate restriction (i.e.) fair, logical and reasonable. The prescription of disability to the extent of 40%-50% for recruitment for the post of

Civil Judge (Junior Division) was valid and does not contravene any of the provisions of the Act.

- *Prabhu Kumar v. State of H P and Others, Civil Writ Petition No. 3634 of 2019*

The main question raised in this case is whether the respondents could prescribe 60% as the upper limit of disability for determining the eligibility of physically handicapped candidates for the post of Assistant District Attorney reserved under the provisions of the RPWD Act, 2016?

The court observed that section 33 of the RPWD Act provides for the identification of posts for reservation. In accordance with this provision, the State Government has apparently identified the post of Assistant District Attorney to be filled up by persons with physical disability of one leg or one arm. The only restrictive condition under S.33 read with S.2(r) is that a physically handicapped person to become eligible for such post must have minimum disability of 40%. There is no ceiling on the maximum extent of disability in the Act. When the Act does not provide for fixing any maximum cap on physical disability, even then it would still be permissible for the respondents to fix a ceiling limit of disability for applying for a post reserved for physically person with disabilities under the provisions of the Act. For judicialofficers,

disability to the extent of 50% which is reasonable, just and fair is acceptable.

CHAPTER - IV

RIGHT TO EDUCATION AS PER ART 21A WITH SPECIAL REFERENCE TO RPWD ACT AND PWD ACT

i. Right to education under Indian Constitution

The Right to education is now one of the fundamental right and included in part III of the Indian constitution under article 21-A. This was done in the case of *Mohini Jain v. State of Karnataka*. The division bench of Supreme Court comprising of Justice Kuldeep Singh and Justice R.M Sahai decided this case and held that, “Right

to education is the essence of the right to life and directly flow and interlinked with it, and life living with dignity can only be assured when there is a significant role of education”.

Afterwards, Tapas Majumdar Committee (1999) was set up, which encompassed insertion of Article 21A in the Constitution. To fulfil the same, the Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

ii. Right to education under RPWD Act, 2016

Section 16 of the RPWD Act provides that all the recognized educational institutions including private schools provide inclusive education to the children with

disabilities. In order to meet this objective, the institution should do the following:

- Admit them without discrimination
- Provide facilities for sports and recreation
- Make building, campus and various facilities accessible
 - Provide support services to optimize their social and academic development
 - Ensure most appropriate languages, modes, and means of communication for the blind, deaf and deaf-blind individuals
 - Early identification and intervention for children with specific learning disabilities
 - Monitor participation, progress and attainment levels of children with disabilities
 - Provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs

Section 17 of the RPWD Act, 2016 prescribes the following measures to implement Section 16 of the act:

- To conduct a survey of school going children in every five years to identify children with disabilities
- To establish an adequate number of teacher training institutions

- To train professionals and staff to support inclusive education
- To establish an adequate number of resource centres to support inclusive education
- To provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years
- To provide scholarships to students with benchmark disability
- To make suitable modifications in the curriculum and examination system.

According to Section 31 of the act, every child with benchmark disability between the ages of six to eighteen years shall have the right and access to free education in a neighbourhood school, or in a special school, of his choice in an appropriate environment.

Section 32 (1) provides five percent reservation to persons with benchmark disabilities in all the Government and Aided higher education institutions. They are also given a relaxation of five years in upper age limit for the purpose of admission in such institutions.

iii. Right to education under PWD Act, 1995

Section 26 of the PWD Act, 1995 emphasis regarding education of children with disabilities. The said

section states that “it is the duty of the appropriate Governments and local authorities to:

- Ensure that each and every child with disability is having access to free education in an appropriate environment school till such child attains eighteen years of age
- Endeavour to promote the inclusive education (integrating children with disabilities in the general school along with non-disabled children)
- Promote to set up special schools in both Government and private sector for the children who are in need of special education. These schools have to be set up in such a way that children with disabilities who are living in any part of the country should have access to that schools
- Endeavour to provide vocational training facilities for children with disabilities in special schools

iv. Case laws

- *Disabled Rights Group & Anr. v. Union of India & Ors, Writ Petition (Civil) No. 997 of 2013*

The first issue relates to the non-implementation of 3% reservation of seats in educational

institutions as provided in Section 39 of the Disabilities Act, 1995 and Section 32 of the Disabilities Act, 2016. Second one is to provide proper access to orthopaedic

person with disabilities so that they are able to freely move inside the educational institution and access the facilities. Third issue pertains to pedagogy (i.e.) making adequate provisions and facilities for teaching for person with disabilities, depending upon the nature of their disability, to enable them to undertake their studies effectively. The court observed that:

➤ Classroom for visually impaired - Braille symbols at appropriate places in classroom buildings to assist with orientation. Auditory signals in elevators and lifts leading to classrooms. For students with low vision, adequate lighting in the classroom via natural light or adequate provision of bulbs, tube lights, etc. Provision for recording of lectures. Power plug points for visually impaired students to fit in their aids and 16 appliances such as audio recorder, laptop, computer etc. Classroom acoustics to be designed so that all audio communication is clearly audible.

➤ For orthopaedic impaired - Classrooms in locations accessible to wheelchair users. Ramps in buildings and adaptations in toilets for wheelchair users and orthopaedic person with disabilities. Seating priority in classrooms with adequate space for wheelchair users to move around. Avoidance of teaching platforms that are difficult to access for orthopaedic impaired persons.

➤ For hearing impaired - Clear and prominent signs indicating locations of courses and classrooms to assist with orientation. Seating for the hearing impaired student as well as a note-taker, located such as lip movement of instructor and sign language interpreter can easily be seen.

• *Pramod Arora v. Hon'ble Lt. Governor of Delhi and Ors, W.P. (C) 1225/2014*

This Public Interest Litigation was filed by the petitioner directing the respondent regarding admission of children with special needs in schools. The petition alleged that in their anxiety to ensure free education available to the largest possible numbers, the needs of CWSN who have to face multiple disadvantages have been overlooked, thus marginalizing them completely. The petitioner relied on S. 26 of PWD Act, 1995 that the respondents are bound to provide access to free education in an appropriate environment to CWSN and also to permit the integration of CWSN. The court directed the respondent to make appropriate inspection, design an appropriate admission mechanism to optimize the filling of those seats from amongst CWSN candidates, having regard to the facilities available in each school, the needs of the candidate. If any CWSN is unable to be placed in a school catering to his or her special needs, the matter shall be forthwith intimated to the Chief Commissioner of Individuals living with

disabilities, and the Principal Secretary, Directorate of Education, in order to ensure that the mandate under Section 26 to place the child is fulfilled.

- *State of West Bengal and Others v. Tathagatha Ghosh and Others, M.A.T. No. 23 of 2019*

The petitioner appeared in NEET UG 2018 examination as OBC (Other Backward Class 'B') under physically handicapped (PH4) category having mental behavioral disability. He obtained 162 marks out of 720 marks and was ranked on all India basis at 4, 63,514. He thus obtained a percentile score of 63.29, though his rank under OBC category on all India basis was 1, 96,960 but under the physically handicapped ranked category he was placed at the position of 460. Since the cut off percentile under OBCPH category is 40, the petitioner was called for pre-counselling by the Department of Health and Family Welfare, Government of West Bengal. He got disability certificate from the institution recognized and the report stated he has more than 40% mental behavioural disability and is not eligible to pursue under graduate medical course and his seat was cancelled. Petitioner challenged this.

The Court directed the respondent authorities to admit the petitioner in medical course in NRS Medical College in the coming session. Since the petitioner lost one year and suffered for no fault on his part, the State Government

should compensate the petitioner for such loss of one year which was assessed at Rs.3,00,000/-. Such compensation should be paid within two weeks from date.

Reasonable restriction

- *Vaibhav Bajaj v. Sri Guru Gobind Singh College of Commerce, W.P. (C) No. 9740/2018*

The petitioner suffers from a Specific Learning Disability. He has disability in learning in the areas of reading, comprehension, spelling and writing skills and mathematics. This type of disability can also be termed as dyslexia. In this regard, a Certificate of Disability was issued by the Hospital. In the certificate, it was mentioned as the petitioner is suffering from Specific Learning Disability to an extent of 40%. The petitioner cleared his Class XII examination, conducted by the Central Board of Secondary Education (CBSE) with 43.7% marks. Subsequently, the petitioner applied for admission in undergraduate courses conducted by the University of Delhi, for the academic year 2018-2019, on 5th June, 2018. The writ petition was about that the institutions, SGGC and KMC did not provided 5% reservation in the seats, for admission to undergraduate courses, for persons with disability which is given under Section 32 of the RPWD Act.

The Court observed that it is the discretion of the University, or the Colleges, to fix cut-offs, for the admission of dyslexics and for persons suffering from intellectual or learning disabilities. This cut-offs have to be fixed at an appropriate level, so that persons with dyslexia are able to secure admission and pursue their studies. But in this case, the petitioner did not obtained the required cut-off marks fixed either by the SGGC or KMC for admission to the B.Com. course as a student suffering from disability, and, for this reason, has also been unable to apply to admission to either of the said colleges. That being so, this Court regrets that it is not possible for this Court to issue any mandamus to admit the petitioner in either of the said Colleges.

- *Ramesh Negi v. Government of Nct of Delhi and Ors, W.P. (C) 5949/2015 CM No.10781/2015*

The petition seeks mandamus to the respondents no.1 to 3 Directorate of Education (DoE) of the Government of National Capital Territory of Delhi and to the respondent no.8 Chief Commissioner of Individuals living with disabilities to ensure admission of his minor son born on 5th January, 2011 to the Preparatory or Nursery Class in either of the respondents no.4 to 7 Sanskriti School, Springdales School, Bal Bharati Public School Rajinder Nagar or Delhi Public School, Mathura Road, under the category of Children With Special Needs

(CWSN). The Court observed that the enforcement of the rights under Section 26 of the PWD Act against the unaided Schools is limited to 25% of the seats under the RTE Act and to no more. The challenge by the petitioner to the admissions made cannot be entertained in the absence of the parents of the children admitted; even otherwise, in accordance with the dicta of this Court in Forum for Promotion of Quality Education for All, there is no such right save under the RTE Act.

The petitioner is not entitled to any relief in law and dismissed the petition though with the hope that the respondents No.4 to 7 Schools if are able to accommodate the child would make best endeavor to do so.

CHAPTER - V
RIGHT TO LIFE AND PERSONAL LIBERTY AS PER
ART 21 WITH SPECIAL REFERENCE TO RPWD ACT
AND PWD ACT

i.Right to life and personal liberty under Indian
Constitution

Article 21 of the Constitution is considered as the heart of the Constitution. The Article reads as, “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” Iyer, J., has praised Article 21 as “the procedural magna carta protective of life and liberty.”

Article 21 applies to natural persons. The right is available to every person, citizen or alien. Thus, even an individual living with disabilities can claim this right. The term ‘Life’ in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote

mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc.

ii. Right to life and personal liberty under RPWD Act, 2016

Individuals living with disabilities are also human beings, and they are also entitled to life and personal liberty under Article 21 of the Constitution. Merely because of their disability, it does not mean they should not lead a dignified life. They have absolute enjoyment in leading a dignified life as the general society enjoys. Section 3 of the RPWD Act, 2016 puts an obligation on the Government to ensure that the individuals living with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity. It also must take steps to utilize the capacity of individuals living with disabilities by providing an appropriate environment. This section prohibits discrimination of a person on the ground of disability unless the impugned act or omission is a legitimate means of achieving a logical aim. Similarly, no person can be deprived of his or her personal liberty

on the ground of disability. For example, a person cannot be unlawfully detained for questioning on the ground of disability. It also puts an onus on the government to take all the necessary steps, make adjustments, etc. to ensure that all disabled people can exercise their rights equally like others.

iii. Right to life and personal liberty under PWD Act, 1995

The rights that are guaranteed to differently abled persons under the Act, 1995 are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution. Unfortunately, the repealed PWD Act, 1995 had no express provisions related to right to life and personal liberty of individuals living with disabilities. The cases related to the same were dealt by referring constitutional provisions related to it.

iv. Case laws

- *Kritika Purohit and Anr. v. State of Maharashtra and Ors,*

The petitioner was a visually impaired student. She applied for admission in the course of Bachelor of

Physiotherapy, but she was not permitted to apply for the said course. The contention of the petitioner is that the post of a physiotherapist was considered to be suitable for blind persons, but on the contrary, denial in courses of physiotherapy for blind persons is in violation of Section 39 of the PWD Act. Further, the respondents were also obliged to make all accommodations for the Petitioner in conformity with Article 24(2) of the CRPD.

The court held that the stand of the respondent authorities is completely discriminatory in nature. It abruptly affects the Right to Life and equal opportunities of the petitioner who is disabled when compared with general students. Although, the petitioner is visually impaired, she passed her first year examination with 62% of marks. She is successfully studying in 2nd year. Further, many visually impaired persons are working as professional physiotherapists in India and in abroad also. Taking consideration of this, the Court is of the view that the petitioner should not be discriminated or disqualified on the ground of her disability. Therefore, the court stayed the decision of the state government. Also, the Court directed the respondents to consider candidates with visual disability for admission in the course of physiotherapy

- *A. Veeriyar Perumal vs The Secretary To Government, (2006) 4 MLJ 335*

The appellant joined as an employee in the Medical Department on 04.08.1966. On 28.05.1999, he was issued with a Charge Memo which contained six charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. All the six charges against the appellant were proved in the enquiry. Hence on 05.10.2004 by the Government order in G.O. (D) No. 1074, Health and Family Welfare (I-1) Department, the employment of the appellant was ceased. One of the reason for doing it was the disability acquired by the appellant during the course of his employment.

The court observed that the right of the appellant to continue in employment has to be considered with reference to his right to livelihood as envisaged in Article 21 of the Indian Constitution. Article 21 protects "the right to livelihood and proclaims it as an integral part of right to life". Such right to life includes the right to live with human dignity. To achieve this kind of human dignity, there should be protection to the employment with reasonable and unbiased disciplinary proceedings.

- *Shri Dilbagh Singh vs Delhi Transport Corporation, 123 (2005) DLT 318, 2005 (84) DRJ 208, (2006) ILLJ 480 Del*

The petitioner was working as a driver with Delhi Transport Corporation. The above writ petition was filed under Article 226 of the Constitution of India. This writ petition was filed to direct the Respondent No. 1 and 2 to set aside an order of premature retirement which was passed against the petitioner. The reason for passing such an order was due to an injury obtained by the petitioner while on duty. The main issue in this writ petition questioned the decision passed by the third respondent which declined the reliefs to the petitioner under provisions of the Individuals living with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

The court observed that the right to life which has been envisaged under Article 21, stipulates on full extent of human personality along with reinforcing adequate health. Because health is considered as a wealth to the workman to earn his livelihood and to maintain the dignity of person. This in addition, helps a workman to live a life with effective dignity and equality. In this case, the petitioner is entitled to relief. The order of the respondent which provides for premature retirement of the petitioner from the services has been quashed.

- *Akshay Kumar Rai vs State Of U.P. And 2 Others, Writ Appeal No. 41622 of 2014*

The petitioner suffers from permanent orthopaedically disability. The Disability Certificate described the disability of the petitioner under the head of locomotor disability. The Disability Certificate showed that the right forearm of the petitioner is affected and has an impaired reach. Physical disability of the petitioner is rated at 60% in the disability certificate. The petitioner in this case prayed to seek relief of grant of appointment, under the reservation made for individuals living with disabilities for the post of Arth Evam Sankhya Nirikshak, pursuant to selections conducted by UPSC.

The Court observed that human dignity is the central argument for the existence of human rights. It is the rationale for all other human rights. It is the justification for the existence of rights. The State Government has failed to discharge its obligation in accordance with Article 21 and 38 of the Constitution of India. The obligation is to secure social order and to protect the individuals living with disabilities along with their participation in every walk of life. The action of the respondents is in violation of the rights of the petitioner under PWD Act, 1995 and his fundamental rights which were guaranteed under Article 14, 16 and 21 of the Constitution of India. Therefore, the petitioner has to be appointed under the physical handicapped quota on the post of Arth Evam Sankhya Nirikshak. This can be done if

the petitioner satisfies all other requirements for appointment to the said post.

Reasonable Restriction

- *Pranay Kumar Podder v. State of Tripura; Ors., Civil Appeal No.4393 of 2017 arising out of S.L.P. (C) No.27388 of 2015*

The petitioners have qualified in the written examination to be admitted into the MBBS course. They have been denied admission solely on the ground that they suffer from colour blindness and hence they cannot be admitted in the course.

The Court observed that the presence of good colour vision is also an essential to pursue post-graduation in various disciplines of Medicine and Surgery. Moreover, as the normal colour vision is essential all the services mentioned under the category Technical; which included Indian Police Service, Indian Forest Service, Railway Engineering Service, Indian Railway Traffic Service, Posts on Marine establishment, Telegraph Engineering Services etc. Further, it is imperative that the doctor who conducts

the medical exam of these individuals should also have normal colour vision.

- *U.P. Vishesh Shikshak Association v. State of U.P.*

The PIL was filed with the contention of the pupil-teacher ratio. As far as specialised teachers and children with disabilities was concerned, it was not adequate and claimed that the Government circular on Integrated Education for Disabled Children Scheme mandated a pupil teacher ratio of 8:1. It also claimed that the Rehabilitation Council of India Act, 1992 imposed a statutory duty on the State to make arrangements for adequate number of teachers for individuals living with disabilities.

The Court stated that the right to education and right to livelihood being the fundamental rights enshrined under Articles 21 and 21-A of the Constitution, the State Government has to make all efforts to provide necessary assistance to all person with disabilities. Taking into consideration the meagre strength of 1291 teachers, we cannot presume that State Government may be able to impart education to disabled students.

CHAPTER - VI

PROHIBITION OF TRAFFIC IN HUMAN BEINGS AND FORCED LABOUR AS PER ART 23 WITH SPECIAL REFERENCE TO RPWD ACT AND PWD ACT

i. Prohibition of traffic and forced labour under Indian Constitution

Article 23 of the Indian Constitution explicitly prohibits and criminalises human trafficking, forced labour and other similar activities. The Constitution of India does not define the term forced labour, but the Supreme Court of India has read this provision expansively, and provided specific guidance on the definition. In the case of *People's Union for Democratic Rights vs. Union of India and Others*, 1982, the Supreme Court of India determined that forced labour should be defined as any labour for which the worker receives less than the government-stipulated minimum wage. The

activities which are prohibited as per Article 23 of the Indian Constitution are:

- Beggar
- Bonded labour or debt bondage
- Human trafficking
- Other forms of forced labour

ii. Prohibition of traffic and forced labour under RPWD Act, 2016

Section 6 of the RPWD Act, 2016 provides for protection of individuals living with disabilities from cruelty and any forms of inhuman treatment. The said section articulates that the appropriate Government has to monitor and protect individuals living with disabilities from being tortured, others acting cruelly towards them and other inhuman or degrading treatment to them. An individual with disability should not be a subject of any kind of research unless the following conditions are satisfied:

d. Free and informed consent from such individual with disability has to be obtained through any accessible mode or means and formats of communication

e. Prior permission from the Committee for Research on Disability has to be obtained.

The committee has to be constituted by the appropriate Government and not less than half the members shall be either individuals with disability or members of the registered organisation as defined under S.2 (z) of the Act.

Section 7 of the RPWD Act deals with protection of individuals living with disabilities from abuse, violence and exploitation. In this regard, the appropriate Government has to take all the steps to protect the individuals living with disabilities from any forms of abuse, violence and exploitation against them. The appropriate Government has to take all possible measures to prevent such acts and has to take cognizance of incidents of abuse, violence and exploitation against them and has to provide appropriate legal remedies in such cases to them. It also has to take steps to avoid such incidents and has to provide the procedure for reporting such incidents. Also the appropriate Government has to take steps to rescue, protect and rehabilitate victims of such incidents. Lastly, the appropriate Government has to create awareness regarding the same and has to ensure that the information has been made accessible to general public.

iii. Prohibition of traffic and forced labour under PWD Act, 1995

PWD Act, 1995 was enacted with a main objective to provide equal opportunities, protection of rights and their full participation. This Act was primarily for empowerment of individuals living with disabilities. The Act does not have any provisions for prohibition of human trafficking of individuals living with disabilities. Further, the Act is silent on forced labour of individuals living with disabilities.

iv. Case laws

- *Chandan Kumar Banik v. The State of West Bengal, Writ Petition (Crl.) No.365 of 1988*

The above mentioned case is a Public Interest Litigation (PIL). This PIL was filed based on a press publication along with a photograph which shows a mentally ill patient being chained in the hospital.

The court held that certain deficiencies in the services rendered by the hospital came to the notice of the Court. Those deficiencies are related to providing toilets and bathrooms for the lady patients in which they are forced to ease themselves and bathe in the open. Additionally, there are deficiencies in the food provided in the hospitals which also requires immediate action. Further, the Court stated that the Judiciary places its trust on the State Government that they will take a humane view on every aspect and respond to the needs of the patients who are

detained in the Mental hospital at present. Such patients have to receive appropriate attention in all aspects and in particular to those that were of prime importance. The State Government must help in solving the problem with a prompt responsibility based on humanitarian aspect.

- *In Re: Death of 25 Chained Inmates ... v. Union of India and Ors, AIR 2002 SC 979*

This case was taken by the Hon'ble Court on suo moto motion. The main reason for taking up this case is based on the submission note of the Registrar (Judicial) to a news item published in all leading national dailies. The news was about a gruesome tragedy in which more than 25 mentally challenged patients housed in a mental asylum at Ervadi in Ramanathapuram district. They were charred to death and they could not escape from the tragedy as they had been chained to poles or beds.

The Court in this case directed the Authorities concerned to undertake a district-wise survey of all registered/unregistered bodies which are engaged in providing psychiatric mental health care. After such survey, all such bodies should be granted or refused license depending upon whether minimum prescribed standards are fulfilled or not.

The Court further pronounced that both the Central and State Governments shall undertake a comprehensive awareness campaign with a special focus to:

- Educate people on the provisions of law relating to mental health
- Rights of mentally challenged persons
- The fact that chaining of mentally challenged persons is illegal
- The fact that mental patients should be sent to doctors and not to religious places such as Temples or Dargahs.

Conclusion

All individuals with disabilities should have a clear understanding of the fundamental rights. Further, they have to be equipped with the existing legal remedies and the judicial authorities they can approach during instances of violation of fundamental rights. Easy accessibility to various forums will definitely create the requisite confidence and strength in the differently -abled and people associated with such persons to stand up and speak up for their rights. This will also reduce atrocious acts and violence against PWDs.

The fact that several schemes and benefits have been implemented for the welfare of people with special needs, conferences for the empowerment of individuals with disabilities have been organized across the country, awareness programmes are being held regularly and

accessible forums have been established at all levels, comes as a great relief at this point in time. And the purpose of Indian Constitution is also being served successfully by providing equal opportunities to PWDs.

It would be a giant leap if the Appropriate Governments launch many more social security schemes for individuals with disabilities which will in turn generate more employment opportunities to such people. The end result will be multifold cascading through various parameters with respect to the differently-abled and the people around them. While PWDs will live with dignity, they will also give back to the society in their own humble ways. We can envision a great improvement in the quality of their lives and the universe will be a much better place to live in.

Reference

A new law for India to protect the rights of persons with disabilities, Retrieved from <https://www.lexology.com/>

All you need to know about the fundamental rights of the disabled, Retrieved from <https://yourstory-com>.

Legal rights of the disabled in India, Retrieved from <https://vikaspedia.in/>

Reservations for persons with disabilities & Article 16 (1), Retrieved from <https://triumphias.com/>

Right to Equality: Article 16, 17 & 18 under the Indian Constitution, Retrieved from <https://blog-ipleaders-in/>

Rights of the people with Disability – Important laws for the differently-abled Should Know, Retrieved from <https://www.indialegallive.com/>

RPWD Act – Article 15 of Indian Constitution needs amendment: UN Committee Experts, Retrieved from <https://enabled.in/>

The Legal Framework for Enforcement of Rights of Persons with Disabilities, Retrieved from <https://cis-india.org/>

The Right to Reasonable Accommodations of Persons with Disabilities, Retrieved from <https://www.canefoundation.org/>

The Rights of Persons with Disabilities Act, 2016: Does it address the needs of the persons with mental illness and their families, Retrieved from <https://www.ncbi.nlm.nih.gov/>

Indian Kanoon, Retrieved from <https://indiankanoon.org>

Casemine, Retrieved from <https://casemine.com>

Legitquest, Retrieved from <https://www.legitquest.com>



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