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# Contemporary Legislative and Judicial Developments on Rights of Persons with Disabilities - In Context of Pandemic Covid 19

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## ABSTRACT

*The issues of disability in India have long suffered oversight in the legal field. Though the civil society groups have strongly voiced and advocated for the same voicing deprivation of the rights of the disabled at different levels. The International Human Rights Instrument at United Nations has laid a progressive role in paving the way for the enactment of laudable legislation such as The rights of Persons with Disability Act 2016 in India following India's commitment to the United Nations Convention on Rights of Person with Disability under the constitutional mandate of Directive Principles of State policy. The main objective of this Act is to provide a right-based perspective welfare approach and affirmative measures for persons with disability.*

*In light of this background, the main objective of this article is to first assess the implementation and consequent effect of this Act on persons with disability, the second objective is to enumerate the impediments faced by persons with disability in the exercise of rights guaranteed under the Rights of Persons with Disability Act 2016, the third objective is to examine the particular issues faced by persons with a disability during a pandemic and its impact on them,*

*The main research issue in this article are to document comprehensibly the recent legislative and judicial decision on person with disability during pandemic and the limitations in the same. The gap between the law in the text under Rights of Persons with Disability Act 2016 and its implementation at the grass-root level.*

*The research method used in this is a qualitative research based on secondary sources. The literature review involves an analysis of contemporary judicial and legal framework in India on Persons with a disability.*

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## **I. HISTORICAL BACKGROUND OF MOVEMENT & LAW ON PERSONS WITH DISABILITIES (PWD) IN INDIA**

The disability rights in India has evolved since early 1970's. Though largely disability issue was looked down upon as untouchability and social exclusion. The disability rights gained momentum with advocacy and lobbying of civil society organizations demanding equal rights, equal participation to be part of mainstream of society in Government social -economic development process. The prominent leaders of civil society movement are Padamshree and Ramon Magsaysay awardee "Baba Murlidhar Devidas Amte". Baba Amte, a social activist, who dedicated his life to the services of leprosy patients, and he founded the Maharogi Sewa Samiti (MSS) for their rehabilitation<sup>2</sup>. This civil society movement actively mobilized public opinion and thereby resorting to legal action by filing petitions before courts.

In 1980's the disability was addressed under the social welfare aspect seeking rights from the Government. The United Nations proclaimed year 1982-1993 as "The Decade of Disabled Persons" with major focus on disability related to or arising out of medial grounds both physical and mental, rehabilitation, medical treatment for redressing disability and necessary health facilities, empowerment of Disabled<sup>3</sup>. The Government of India established "Rehabilitation Council of India" in the year 1992 to formulate policy and programs for the rehabilitation of persons with disabilities. India signed "Proclamation of Equality and Full Participation of People with Disabilities in the Asian and Pacific Region", in the year 1995. This led to enactment of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (PWD) Act, 1995 in India. This Act granted upto "3 three percent reservation including one 1 percent reservation each for locomotor disability, hearing disability and visual disability under PWD category in educational institutions and government employments<sup>4</sup>".

## **II. SIZE & MAGNITUDE OF PERSONS WITH DISABILITIES (PWD) IN INDIA**

The first formal inclusion of disabled individuals in population census was in the year 2001 census with various forms of disabilities. Around 2.21% of Indian population which is around 2.68 crore (26.8 million) are disabled as in the year 2021<sup>5</sup>.

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<sup>2</sup>Indianexpress, On his birth anniversary, remembering social reformer Baba Amte, December 26, 2019, available at <https://indianexpress.com/article/cities/mumbai/on-his-birth-anniversary-remembering-social-reformer-baba-amte-6185408/> ( last visited on 08 . 05.2022)

<sup>3</sup>UN General Assembly, The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 20 December 1993 , available at <https://www.un.org/esa/socdev/enable/dissre00.htm>( last visited on 08 . 05.2022)

<sup>4</sup> Ministry of Legislative Justice, ACT NO. 1 OF 1996 , 1st January, 1996, available at <https://legislative.gov.in/sites/default/files/A1996-1.pdf>( last visited on 08 . 05.2022)

<sup>5</sup> Government of India, Ministry of Statistics and Programme Implementation National Statistical Office Social Statistics Division, Persons with Disabilities (Divyangjan) in India - A Statistical Profile : 2021, 31 March,

### III. GLOBAL DEVELOPMENT ON PERSONS WITH DISABILITIES (PWD) LAW

United Nations International Convention on Disability Law- The United Nations Convention on the Rights of Persons with Disability (UNCRPD)<sup>6</sup> led by UN Committee on the Rights of Persons with Disabilities adopted by United Nations General Assembly in year 2006 and effective from 2008. This enumerates a charter of rights and freedoms with emphasis on right based perspective including right to life, health , medical treatment without discrimination along with state obligation to full inclusion and participation in the community, following the ratification of this convention , the concerned nations have to give binding effect to the same in their respective territorial jurisdiction. Around 177 states have ratified this convention. India signed and ratified the United Nations Convention on Rights of Persons with Disabilities (U.N.C.R.P.D.) in 2007 year<sup>7</sup> accordingly India sought to harmonize its national legislation, policy accordance with mandate of convention to building a right based perspective , welfare approach for persons with disability.

India submitted its First Country Report on Status of Disability in India in 2015 . The UN Committee on CRPD in its 22nd Session took up India's First Country Report for highlighted various initiatives by Indian Government including enactment of the Comprehensive RPwD Act, 2016, launch of Accessible India Campaign, establishment of National Institute of Mental Health Rehabilitation (NIMHR) to address issues concerning psycho-social disability, establishment of Centre for Disability Sports, achievements in distribution of aids and assistive devices, etc.<sup>8</sup>

Incheon Strategy for Persons with Disabilities in Asia and the Pacific- The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) at Inter Governmental meeting declared "Incheon Strategy "to make the Right Real" for Persons with Disabilities in Asia and Pacific at Incheon, providing disability-inclusive disaster risk reduction and management, facilitating social protection for disabled<sup>9</sup>.

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2021, available at [http://www.nhfdc.nic.in/upload/nhfdc/Persons\\_Disabilities\\_31mar21.pdf](http://www.nhfdc.nic.in/upload/nhfdc/Persons_Disabilities_31mar21.pdf)( last visited on 08 . 05.2022)

<sup>6</sup> UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: [available at: https://www.refworld.org/docid/45f973632.html](https://www.refworld.org/docid/45f973632.html) ( last visited on 08 . 05.2022)

<sup>7</sup> Press Information Bureau, Government of India, Ministry of Social Justice & Empowerment 09 SEP 2019 Secretary, DePWD Participated In 22nd Session of UN Committee on CRPD at Geneva available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1584572>( last visited on 08 . 05.2022)

<sup>8</sup> Press Information Bureau, Government of India, Ministry of Social Justice & Empowerment, 09 SEP 2019, Secretary, DePWD Participated In 22nd Session of UN Committee on CRPD at Geneva available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1584572>( last visited on 10 . 05.2022)

<sup>9</sup> United Nations ESCAP, Incheon Strategy to make the right real for persons with disabilities in Asia and the Pacific, 23<sup>rd</sup> November 2012, available at <https://www.unescap.org/resources/incheon-strategy->

#### **IV. INDIA'S LEGAL FRAMEWORK ON DISABILITY LAW**

Indian Constitutional Provisions on Disability - Under seventh schedule, State list the subject of 'relief of the disabled and unemployable' is mentioned. Under Directive Principles of State Policy (DPSP) on Disability, Part IVth of Indian Constitution, Article 41 mandates State to make effective provision for securing right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement subject to economic capacity and development.

India's Statutory Framework on Disability, the foremost legislation on Disability in India is Protection of Rights and Full Participation) Act, 1995. The Government of India, Ministry of Social Justice and Empowerment constituted a committee in year 2009 resulting in formulation of Rights of Persons with Disabilities Bill (RPWD Bill), 2011 on lines of (UNCRPD). In year 2014, RPWD Bill was revised by expanding definition of term disability to twenty-one categories of disability.

#### **V. EXISTING LEGISLATION ON PERSONS WITH DISABILITY IN INDIA**

Presently in India, The Rights of Persons with Disabilities Act, 2016 (Disabilities Act) along with the Rights of Persons with Disabilities Rules, 2017 are given effect<sup>10</sup>. This is a progressive legislation modelled after the UN Convention on the Rights of Persons with Disabilities (UNCRPD), read with India's international treaty obligation under Directive Principles of State Policy "to foster respect for international law and treaty obligations". The Act 2016 gives effect to India's 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) The salient aspects of Disabilities Act, 2016 are as following:

- Wider Coverage of Disability - The Rights of Persons with Disabilities (RPwD) Act, 2016 provides protection to varied forms of disability as Physical Disability entailing Locomotor Disability, Visual, Hearing Impairment, Speech and Language Disability, Intellectual Disability, Mental Behaviour (Mental Illness, Neurological Conditions), Blood Disorder, Multiple Disabilities among others.

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[make-right-real-persons-disabilities-asia-and-pacific](#) (last visited on 10 . 05.2022)

<sup>10</sup>Ministry of Legislative Affairs, ACT NO. 49 OF 2016, [27th December, 2016] available at [https://legislative.gov.in/sites/default/files/A2016-49\\_1.pdf](https://legislative.gov.in/sites/default/files/A2016-49_1.pdf) (last visited on 10 . 05.2022)

- 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.
- “Person with benchmark disability- means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.
- Affirmative Measures for Benchmark Disability- Persons with benchmark disabilities are those individuals with high or intensive support with physical, psychological needs to carry out daily activities, facilitating participation in education, employment, family and community life and treatment and therapy. They are granted five percent reservation upper age relaxation of five years in Government and Government aided higher educational institutions, four percent reservation in Government jobs under the Act 2016. There is five per cent reservation in allotment of agricultural land and housing, poverty alleviation , in allotment of land on concessional rate schemes for occupation, business, enterprise in all development programmes with preference to women with benchmark disabilities.
- Reservation for Other Disabilities with blindness and low vision, locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy, multiple disabilities from amongst persons upto one percent.
- Equal Rights for women, children with Disability- There is special obligation on State to ensure women and children with disabilities enjoy their rights equally with others. Every child within in the age group of 6 and 18 years with benchmark disability are entrusted with right to free and compulsory education. There is statutory obligation all educational institutions sponsored by appropriate Government and the local authorities to provide inclusive education to the children with disabilities, to detect specific learning disabilities and to provide education in appropriate languages and modes and means of communication.
- Participation in community Life – The person with disability have right to have the right to live in the community and to provide for access to a range of in-house, residential and other community support services.
- Protection from Cruelty, Violence – The State is directed to protect the Person with Disability form violence, abuse, exploitation, Cruelty, inhuman treatment by propagating awareness, providing rehabilitative care in case affected .

- Legal Capacity & Exercise of Civil Political Rights - The State is directed to ensure that the persons with disabilities have right to vote, right to own or inherit property, movable or immovable, right to access to bank loans, mortgages and other forms of financial credit.
- Employment Schemes & Capacity Building - The State is directed to initiate programs vocational training and self-employment, skill building for their employment and every establishment is directed to notify equal opportunity policy detailing measures as per the Central Government direction. There is provision for special employment exchange.
- Appointment of Limited Guardianship for Person with Disabilities – The District Court or such appropriate authority may designate an individual for decision making on behalf of persons with disabilities and protecting their interest on their behalf.
- Constitution of Administrative & Implementing Authorities- The central Government has constituted Central Advisory Board presided by Chairperson ex officio as Minister in charge of Department of Disability Affairs in the Central Government and State Advisory Boards on Disability presided by Chairperson, ex officio Minister in charge of the Department in the State Government dealing with disability. The main functions of these are to advise the Central Government and the State Governments on policies, programmes, legislation, to develop policy on disability, to take up the cause of persons with disabilities with the concerned authorities and the international organisations and to recommend steps to ensure accessibility, reasonable accommodation, non-discrimination for persons with disabilities.
- Appointment of a Grievance Redressal Officer – Every Government establishment shall appoint a Grievance Redressal Officer who will maintain a register of complaints wherein complaints of person aggrieved with the non-compliance of Act 2016 may be investigated into by such Grievance Redressal Officer who will recommend for corrective action.
- Appointment of Chief Commissioner and Commissioner for Persons with Disabilities – The Commissioner would inquire, suo motu on deprivation of rights of persons with disabilities, monitor implementation of Scheme. The Commissioner has the same powers as powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 and proceedings before the same would be judicial proceeding.
- Formulation of Social Security & Insurance Schemes – The State Government is directed to develop measures for persons including children with disabilities who have

no family or have been abandoned, or are without shelter or livelihood, to provide support during natural or man-made disasters and in areas of conflict, support to women with disability for livelihood and for upbringing of their children, insurance schemes for their employees with disabilities.

- Setting up of Special Courts - There are special Courts designated as Session Court of the rank of District Court set up by State Government in on concurrence with Chief Justice of the High Court for each district to address speedy trial in such cases. There is Special Public Prosecutor appointed by State Government with upto seven years experience to adjudicate these cases.
- Separate Funding – There is National and State Fund and Governing board to provide financial support to the persons with disabilities.
- Stringent Sanctions- There is prescribed punishment for violation of provisions under the Act with fine upto to five lakh rupees , fraudulently availing any benefit meant for persons with benchmark disabilities is punishable with imprisonment to two years or with fine to one lakh rupees or with both.

## **VI. RELATED LEGISLATIONS ON PERSONS WITH DISABILITIES (PWD) IN INDIA**

The Mental Health Act, 1987 provided for treatment and care of mentally ill persons, their property related matters. This 1987 Act is replaced by ‘Mental Health Care Act, 2017’ to provide for mental healthcare and services for persons with mental illness. The Rehabilitation Council of India Act, 1992 provides for constitution of Rehabilitation Council, rehabilitation professionals . The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

## **VII. ISSUES & CHALLENGES AGAINST PERSONS WITH DISABILITIES (PWD):**

a. Not mandatory Reservation in Private Sector - RPWD Act 2016 does not make reservation of PWD mandatory in private sector. Private establishments are to identify posts/vacancies in their establishment suitable for PWD by formulating an Equal Opportunity Policy for the same. Private establishments receiving incentives from appropriate Government to ensure at least 5% of their work force is comprised of persons having benchmark disabilities. But these provisions are not effectively implemented. The Rajasthan State Government Court for specially abled persons issued an order to Rajasthan State Government Labour and Employment Department to grant 5% reservation in private jobs to PWD as this is not complied even until 2020 where

as PWD Act has been passed in the year 2016<sup>11</sup>.

b. Lack of proportionate share of reservation for all categories of Persons with Disabilities (PWD)- Under PWD Act, 2016, every government establishment shall reserve one percent of total number of vacancies for persons with benchmark disabilities arising of autism, intellectual disability and mental illnesses. The RPWD Act 2016 combined intellectual disability and mental illness into one category and allotted only one percent. There is need to ensure proportionate adequate reservation suitable for each category.

c. Delay over years in setting up of Special Courts & Special Public Prosecutor under PWD Act - Though PWD Act 2016 provides for formation of Special Courts and appointment of Special Public Prosecutor within six months of enactment of law. for the purpose of implementation of the legislation. But in several states of India these Special Courts were set up only after a long pendency of years or more. Illustratively, Tamil Nadu set up special courts for differently-abled persons after three years of passing PWD Act 2016.<sup>12</sup> In Delhi, Special Courts for PWD was up in all districts of Delhi only in year 2019 though PWD Act was passed in 2016.<sup>13</sup> It is found that mostly the Special Public Prosecutors are not appointed under PWD Act 2016. The Delhi State Commissioner for Persons with Disabilities issued a suo moto order directing Government of Delhi to appoint Special Public Prosecutors in Special Courts in each district within ten days of receipt of this order<sup>14</sup>.

d. India's limited compliance with international treaty obligation- The United Nation (UN) Convention on the Rights of Persons with Disability (UNCRPD) in its 22nd Session took up India's First Country Report for consideration during 2019 at UNHRC, Geneva. The UN CRPD while appreciating Persons with Disabilities (PWD) Act, 2016 and various initiatives of Government of India , the Committee raised queries relating to implementation of the provisions of the Act, measures taken/being taken by the Government to improve data, prohibit discrimination, especially amongst ethnic/religious minority groups, rehabilitation of internal displaced groups, protection from exploitation among others. The issues on implementation

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<sup>11</sup> Times NewsNetwork, Advise private employers to give 5% quota in jobs to disabled, Aug 15, 2021 available at <https://timesofindia.indiatimes.com/city/jaipur/advise-private-employers-to-give-5-quota-in-jobs-to-disabled/articleshow/85336595.cms> ( last visited on 12.05.2022)

<sup>12</sup> The Federal, TN to get special courts for differently-abled, 3 yrs after law passed, N Vinoth Kumar, Chennai, 4:01 PM, 29 September, 2019, available at <https://thefederal.com/news/tn-to-get-special-courts-for-differently-abled-3-yrs-after-law-passed/> ( last visited on 12 . 05.2022)

<sup>13</sup> Courts for disabled persons set up in all districts of Delhi Hindustan Times, New Delhi | By Abhishek Dey PUBLISHED ON SEP 02, 2019 available at <https://www.hindustantimes.com/delhi-news/courts-for-disabled-persons-set-up-in-all-districts-of-delhi/story-XqTanZUWINDBuSqFttAt9L.html>( last visited on 12 . 05.2022)

<sup>14</sup> Newshook, Set up Special court to try offences against disabled persons within ten days, July 27, 2019, available at <https://newshook.com/story/special-courts-offences-against-disabled-people-delhi-in-ten-days-dhairiyal-rpwd-act/> ( last visited on 12 . 05.2022)

aspect of PWD Act 2016 is yet to be given effect and complied<sup>15</sup>.

### VIII. LANDMARK JUDGEMENTS ON PERSONS WITH DISABILITIES (PWD) LAW

Person with Disability law as Social Welfare legislation Liberal & Beneficial Legislation-

- In *Edukanti Kistamma v. S. Venkatareddy s*,<sup>16</sup> Supreme Court held “PWD Act 2016 was enacted for protection of rights of disabled in education, training, employment and to remove any discrimination against them in the sharing of development benefits vis-a-vis non-disabled persons. In the light of this legislative aim it is necessary to give purposive interpretation to relevant provisions of the Act to achieve equalization of opportunities for persons with disabilities,” “In construing a provision of a social beneficial enactment dealing with disabled persons it is intended to give them equal opportunities, protection of rights and full participation to advance objective of the Act.”
- In *GNCTD v. All India Confederation of the Blind*<sup>17</sup> Delhi High Court held that PWD Act 2016 is a welfare legislation and the basic rule of its interpretation is that “if two views were possible on the PWD Act 2016, the interpretation which was in favour of the handicapped persons, ought to be adopted”.

Persons with Disabilities (PWD) are Socially Backward entitled to SC/ST Protection -

- In *Anamol Bhandari Vs Delhi technological University*,<sup>18</sup> Supreme Court has held that people suffering from disabilities are socially backward, hence at the least entitled to the same benefits as Scheduled Caste/ Scheduled Tribe in public employment and public educational institutions,” The Court opined that intellectually/mentally challenged persons have certain limitations, which are not there in physically challenged persons. There is need to develop course by concerned subject experts which caters to specific needs of such persons in educational institutions.

Persons with Disabilities (PWD) granted reservation in recruitment and promotion in Public Employment-

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<sup>15</sup> Government of India, Ministry of Social Justice & Empowerment, Press Information Bureau, Government of India Ministry of Social Justice & Empowerment available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1584572>( last visited on 12 . 05.2022)

<sup>16</sup> (2010) 1 SCC 756

<sup>17</sup> 128 (2006) DLT 695

<sup>18</sup> WP Civil no. 4853 of 2012

- In *Rajeev Kumar Gupta and others Vs. Union of India*<sup>19</sup> (2016), *Siddaraju Vs. State of Karnataka*<sup>20</sup> (2020), Supreme Court held that reservation to PWD would be granted in recruitment and even in promotion upto three percent in Government employment. Similarly held in *Siddaraju vs. State of Karnataka*, held that persons with disabilities have a right to reservation in promotion under Article 16(4) of Indian constitution. The source of recruitment should not make any difference so far as the employee is PWD at the time for consideration of promotion. The posts are reserved from among the identified posts suitable for disabled persons.
- In *State of Kerala and others vs Leesamma Joseph*<sup>21</sup> - The Supreme Court held that persons with physical disabilities have right to reservation in promotions also.

#### Policy for Computing Sets for Reservation for Persons with Disabilities (PWD)-

- In *Union of India & Anr. v. National Federation of the Blind & Ors.*<sup>22</sup> & *National Federation of the Blind v. Sanjay Kothari, Secretary Department of Personnel and Training*<sup>23</sup> The Supreme Court addressed issues of computation of vacancies for promotion for PwDs would be on basis of vacancies against the identified posts or against the vacancies in both identified and non-identified posts. The stage of reservation to PwDs at induction from SCS/Non-SCS to IAS among others.

#### Reservation for Persons with Disabilities (PWD) in Educational Institutions-

- In *Disabled Right Group vs Union Of India*<sup>24</sup>, Supreme Court addressed issues related to “firstly, non-implementation of 3% reservation of seats in educational institutions under the earlier Disabilities Act, 1995 and Disabilities Act, 2016. Secondly, Court addressed issues related to access to orthopaedic disabled persons so that they are able to freely move in the educational institution and access the facilities. Thirdly, Court addressed pedagogy i.e. making adequate provisions and facilities of teaching for disabled persons, depending upon the nature of their disability, to enable them to undertake their studies effectively”.

SC Court laid down following directions:

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<sup>19</sup> (2016) 13 SCC 153 , WRIT PETITION (CIVIL) No.521 OF 2008

<sup>20</sup> CIVIL APPEAL NO. 1567 OF 2017

<sup>21</sup> CIVIL APPEAL NO. 59 OF 2021

<sup>22</sup> (2013) 10 SCC 772

<sup>23</sup> (2015) 9 SCALE 611

<sup>24</sup> WRIT PETITION (CIVIL) NO. 292 OF 2006

- For PWD reservation of seats in the educational institutions, the relevant provisions on reservation in higher educational institutions under (Section 32 ) of Disabilities Act, 2016 shall be complied with by all concerned educational institutions.
- To the extent it pertains to Law Colleges, Notice to Bar Council of India (BCI) must be sent.
- All Educational Institutions are directed to notify the compliance with provisions of PWD Act 2016, each year, to the UGC.
- The BCI and/or UGC are directed to carry out inspections of such educational institutions to verify as to whether the provisions are complied with or not.
- All educational Institutions to submit list of number of disabled persons admitted in each course every year to the Chief Commissioner and/or the State Commissioner.
- Direction to Chief Commissioner, State Commissioner to enquire compliance with aforementioned provisions of PWD Act by educational institutions. In case of non compliance, appropriate consequential action against those educational institutions may be initiated under PWD Act 2016.
- UGC may propose to formulated Committee on “Guidelines for Accessibility for Students with Disabilities in Universities/Colleges” are concerned, the UGC shall consider to include persons from amongst Central Advisory Board, State Advisory Boards, Chief Commissioner of State Commissioners appointed under PWD Act 2016.
- UGC Committee shall undertake a detailed study for making provisions in respect of accessibility as well as pedagogy and would also suggest the modalities for implementing those suggestions, their funding and monitoring, etc.

#### Public Infrastructure to be Disabled Friendly as per Persons with Disabilities (PWD)

- In *George Fernandez vs Union of India and others*,<sup>25</sup> The Karnataka High Court sought the response of the Union government on a plea to make railways stations of Konkan Railways disabled friendly by providing better facilities for boarding and de-boarding and amenities like waiting areas for passengers and better lighting as per the relevant provision of PWD Act 2016. The Court directs the concerned authorities to ensure that railways stations are provided with suitable "slope gradient, second platforms of scientific height fitted with guards, handles for smooth - safe movement of PWD.

#### VIII. Contemporary Issues & Implications of Covid 19 of Pandemic on Persons with Disability

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<sup>25</sup> WP 15300/2021.

( PWD):

In *Seema vs State Of Haryana And Others,2020*<sup>26</sup> The Punjab-Haryana High Court refers to Government of Haryana Guidelines as Preventive measures to contain the spread of Coronavirus for protection and safety of persons with disabilities. The blind and disabled employees may be exempted from attending the offices to curb spread of Corona virus, this is issued as concession in order to provide safeguard to its employees who suffer from disabilities/blindness.

In *National Association of Blind v. Union of India & Ors,2020*<sup>27</sup>, the Bombay High Court directed the local Municipal Corporation to ensure that none of its physically disabled employees, failing to report for duty at work owing to pandemic covid 19 not to withhold monetary benefits or no pay cut which they would otherwise be entitled to. In contravention of same pay cut would be illegal.

- In *Sachdanand Dabral Versus Union of India and others,2020*<sup>28</sup>, the Uttarakhand High Court held that “ Persons with disabilities and their caregivers above the age of 18 years irrespective of the category or type of disability constitute class of population by themselves owing to their intrinsic condition and on this ground they are to be given priority and preferential vaccination for the same.
- In *Dravida Munnetara Kazhagam vs The Chief Electoral Office, 2020*<sup>29</sup>, *S. Austin Vs Chief Election Commissioner, 2021*<sup>30</sup>, the Madras High Court refers to the Central Government notification on such class of persons who may not be in condition franchise without physically coming to cast the usual ballot at the election booth and Special consideration is to be given to those as Covid-19 suspects or affected persons, whether such persons had been tested positive or were under quarantine as a result of the pandemic. This class has scope for inclusion of “person with disability” under 2019 and 2020 amendments to the Conduct of Election Rules, 1961.
- In *Meenakshi Balasubramanian v Union of India and Anr, 2021*<sup>31</sup>, the Madras High Court directs State to prioritise COVID-19 vaccination of Persons with Disabilities, ensure vaccination centres are accessible. The Court has ordered the State to take a reasoned decision with three days on the minimum age limit of persons with disabilities

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<sup>26</sup> CWP No.18706 of 2020(O&M).

<sup>27</sup> PIL-CJ-LD-VC-NO.45 OF 2020.

<sup>28</sup> Writ Petition (PIL) No.58 of 2020.

<sup>29</sup> W.P.No.20027 of 2020.

<sup>30</sup> W.P.No.20027 of 2020, W.M.P.No.6111 of 2020.

<sup>31</sup> W.P.No.2951 of 2021.

who would be eligible for vaccination, after consulting the Centre, if necessary. The Madras High Court on Monday directed the Tamil Nadu government to take steps for prioritising COVID-19 vaccination of persons with disabilities, irrespective of whether or not they have attained the age of 45 years.

- In *Andra Pradesh Civil Liberties vs The State Of Andra Pradesh*, 2021<sup>32</sup>, Andhra Pradesh High Court expounded on direction to hospitals for ensuring right to availability necessary for COVID care, life saving Oxygen and Ventilators to all ICMR Guidelines and Fire Safety norms in all the COVID Care hospitals. The court directed for facilitating vaccination against covid 19 by constructively utilizing the Ward Volunteer system.
- In *Mohd Faizal Nawaz vs Government of NCT Delhi (GNCTD) & ANR.2021*<sup>33</sup>, Delhi High Court issued notice to Central Government on prioritizing COVID-19 vaccination for PwD on priority and preferential treatment for the same. The petition herein states that the persons with disabilities as Developmental Disabilities as persons with Down syndrome are disproportionately affected by COVID-19 as they have higher mortality rate and varied symptoms. For the same, *Wearing masks may not be feasible for issues with cerebral palsy, autism or any developmental disability further drooling renders masks unfit for use. PwD are exposed to close contact with their care givers hence more at risk. Thus the need to formulate a separate policy with these consideration in interest of PwD.*
- In *Dhruti Kapadia And Anr vs The Union Of India, 2021*<sup>34</sup>, Bombay High Court directs the States to undertake a door to door vaccination programme for elderly and disabled citizens. This refers to earlier order of Uttarakhand High court in Writ Petition (PIL) No.58 of 2020. This refers to the initiative of State Government of Maharashtra, Health Department to allow home inoculation for those who are bedridden and cant travel to the vaccination centres at their residence. The State Government of Maharashtra is constituting State Task Force on vaccination as per the Government Guidelines.
- In *All India Central Council Of Trade vs Union Of India, 2021*<sup>35</sup>, Karnataka High Court refers to the scheme 'Har Ghar Dastak' wherein mobile van facility are placed near the

<sup>32</sup> WP (PIL). No. 226 of 2020 & WP (PIL) Nos. 85, 86, 87, 88, 89, 91, 92 and 77 of 2021 WP (PIL). 226 of 2020.

<sup>33</sup> W.P.(C) 5163/2021, CM APPL. 15830/2021.

<sup>34</sup> PUBLIC INTEREST LITIGATION (L) NO.9228 OF 2021.

<sup>35</sup> CWP No.18706 of 2020(O&M).

populated areas move from home to home for facilitating vaccination of disabled persons and requisite facility for vaccination under the same.

In *Evava Foundation vs Union Of India, 2022*<sup>36</sup>, Supreme Court directed Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disability devise an effective legal framework for vaccination of disabled by consultation with all stake holders and domain experts on disability issues to be submitted to Ministry of Health and Family Welfare. The petitioner reiterates relevant provisions of PwD Act 2016 mandate of appropriate government to ensure reasonable accommodation of PwD persons accordingly, PwDs and their caregivers to be vaccinated against COVID-19 at their residence with preference in scheduling vaccination slot,

In this case, Central Government in its affidavit as response to the Supreme Court has stated that for PwD there is no forcible vaccination without obtaining the consent of an individual, also the PwD are exempted from producing vaccination certificates for any purpose<sup>37</sup>.

Central Government & Ministry Guidelines on Persons with Disability during Covid 19:

The Central Government, Ministry of Social Justice and Empowerment directed the Health and Family Welfare Ministry to ensure PwD are given priority in vaccination as Rights of Persons with Disabilities Act, 2016 mandates that PwD are given priority when it comes to medical attention and treatment and to ensure special provisions for testing, vaccination and treatment centres for PwD during pandemic.<sup>38</sup>

Comprehensive Disability Inclusive Guidelines to States and Union territories for protection and safety of Persons with Disabilities (Divyangjan) in light of Pandemic Covid-19<sup>39</sup>–

- The Department of Empowerment of Persons with Disabilities (DEPwD) under Ministry of Social Justice and Empowerment has issued "Comprehensive Disability Inclusive Guidelines" to States and Union territories for protection and safety of Persons with Disabilities (Divyangjan) in light of Pandemic Covid-19 (Corona Virus)
- All Information about COVID 19, services should be available in simple and local language in accessible formats in Braille and audible tapes for persons with visual

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<sup>36</sup> Writ Petition(s)(Civil) No(s).580/2021.

<sup>37</sup> Ibid. Central Government Affidavit, 16 Jan, 2022.

<sup>38</sup> The Hindu, Covid-19, Prioritise persons with disabilities, says Social Justice Ministry, APRIL 29, 2021, available at <https://www.thehindu.com/news/national/covid-19-prioritise-persons-with-disabilities-says-social-justice-ministry/article34441426.ece> (last visited on 16.05.2022).

<sup>39</sup> Press Information Bureau, Ministry of Social Justice & Empowerment, DEPwD issues comprehensive disability inclusive guidelines to States/UTs for protection and safety of persons with Disabilities (Divyangjan) in light of COVID-19, 27 MAR 2020, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1608495> (last visited on 16.05.2022)

impairment, video-graphic material with sub-titles and sign language interpretation for persons with hearing impairment and through accessible web sites”<sup>40</sup>.

- Persons with disabilities should be given access to essential food, water, medicine, and, to the extent possible, such items should be delivered at their residence or place where they have been quarantined.
- During quarantine, essential support services, personal assistance, and physical and communication accessibility should be ensured to blind persons, persons with intellectual/ mental disability (psycho-social) are dependent on care giver support.
- Persons with disabilities may seek assistance for rectification of fault in their wheelchair and other assistive devices.

Government of India Initiatives – contemporary Schemes , initiatives for Disabled in India-

- Accessible India Campaign : Creation of Accessible Environment for PwDs:
  - A nation-wide flagship campaign for achieving universal accessibility that will enable persons with disabilities to gain access for equal opportunity and live independently and participate fully in all aspects of life in an inclusive society.
  - The campaign targets at enhancing the accessibility of built environment, transport system and Information & communication ecosystem.
- DeenDayal Disabled Rehabilitation Scheme: Under the scheme financial assistance is provided to NGOs for providing various services to Persons with Disabilities, like special schools, vocational training centres, community based rehabilitation, pre-school and early intervention etc
- Assistance to Disabled Persons for Purchase / fitting of Aids and Appliances (ADIP): The Scheme aims at helping the disabled persons by bringing suitable, durable, scientifically-manufactured, modern, standard aids and appliances within their reach.
- National Fellowship for Students with Disabilities (RGMF)
  - The scheme aims to increase opportunities to students with disabilities for pursuing higher education.
  - Under the Scheme, 200 Fellowships per year are granted to students with disability.

- Schemes of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.

## **IX. CONCLUDING REMARKS**

In view of the aforementioned issues, it is evident that the PWD Act 2016 is a welcome legislative development after much struggle and advocacy from civil society organizations. The PWD Act has provided for a wider scope for inclusion of varied categories of disability and this Act provided for bench mark disability. The PWD Act has multifaceted rights for PWD with emphasis on capacity building, education, employment, civil -political, economic , reproductive rights. One of the most salient aspect of the Act is the affirmative measures including reservation in educational and employment opportunities. This provision of the PWD Act is further liberally interpreted by the Judiciary to extend maximum protection the PWD. Accordingly Supreme Court extended reservation on similar lines as Socially backward, Scheduled Caste, reservation in recruitment, promotion, concession in admission criteria. But despite the Act given effect , in several states the functional aspect of PWD Act including the Special Courts are not constituted and Special Public Prosecutor are not appointed which renders the PWD Act 2016 ineffective. However, there is need for greater political will to implement PWD Act .

During the covid 19 pandemic persons with disability were adversely affected owing to their special condition and their dependence on care givers. Though neither any legislation nor any regulation has foreseen such pandemic. The Ministry of Social Justice, Ministry of Health & Family Welfare issued Advisory to protect persons with disability and their care giver so as to suit the particular needs and conditions.

The Indian judiciary including the Supreme court and respective High Courts have directed for beneficial measures as relaxation from stringent compliance with Covid 19 Guidelines as relaxation given to certain categories of person with disability in terms of exemption from wearing masks , permitting assistance from care givers, the courts through its judicial directives has strongly recommended policy of preferential and door to door vaccination for the person with disability. The courts safeguarded the economic rights of person with disability by putting a check on wage cut during covid pandemic.

Thus, the legislative and judicial developments are leading on the right direction. But the implementation and realization of right based perspective for person with disability needs to go a long way with cooperation from civil society, law makers besides strong political will to give effect to the PWD Act 2016 in full entirety. The person with disability and their rights

ought to be safeguarded and their welfare should be given utmost priority in our society.

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