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Disabled Right Group v. UOI

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ABSTRACT

World Health Organisation defines 'Disability' as an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations.

With the aim of making sure that the disabled community also contribute to the progress of the nation, The persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995 was framed. his Act was a result of the Proclamation on the full participation and equality of the People with disabilities in the Asian and Pacific Region. The 1995 Act provides equal status for the disabled persons. India having signed UNCRPD in 2007 there was an emerging need for an Act in compliance with the convention. The draft bill was made ready in 2011 but it took 5 more years and finally RPWD Act, 2016 came into effect on 30-12-2016. The aim and objective of the 2016 Act, made inconsonance with the UNCRPD Convention, is to uphold the dignity of every Person with Disability in the society and prevent any form of discrimination. The Act also facilitates full acceptance of people with disability and ensures full participation and inclusion of such persons in the society.

The actual and real challenge lies in implementation. Implementation takes a big deal in most of the welfare measures initiated by the Government. It is indeed difficult to put principles from book to practice. Here not only the appropriate Government but also there is a need to partner with other agencies, voluntary organisations, NGOs and other agencies who help in actual implementation of the initiatives and schemes. Achieving the objective of 2016 Act is a long road but definitely towards success.

The Rights of Persons with Disabilities Act, 2016 is a rights-based legislation, the success of the statute will largely depend on the proactive measures taken by the respective state governments on its implementation.

Keywords: *Persons with Disability, Implementation.*

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I. INTRODUCTION

Ability is the possession of the means or skill to do something. Disability is the physical or mental condition that limits a person's activities, movement and senses.

Being disabled does not mean Un-abled, just Different Abled." - Mr. Noel Helm²

World Health Organisation³ defines 'Disability' as an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Overcoming the difficulties faced by people with disabilities requires interventions to remove environmental and social barriers

"New information and communication technologies can improve the quality of life for people with disabilities, but only if such technologies are designed from the beginning so that everyone can use them. Given the explosive growth in the use of the World Wide Web for publishing, electronic commerce, lifelong learning and the delivery of government services, it is vital that the web be accessible to everyone" - Clinton⁴

With the aim of making sure that the disabled community also contribute to the progress of the nation, The persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995 was framed. This Act was a result of the Proclamation on the full participation and equality of the People with disabilities in the Asian and Pacific Region. The 1995 Act provides equal status for the disabled persons. India having signed UNCRPD in 2007 there was an emerging need for an Act in compliance with the convention. The draft bill was made ready in 2011 but it took 5 more years and finally RPWD Act, 2016 came into effect on 30-12-2016. The aim and objective of the 2016 Act, made inconsonance with the UNCRPD Convention, is to uphold the dignity of every Person with Disability in the society and prevent any form of discrimination. The Act also facilitates full acceptance of people with disability and ensures full participation and inclusion of such persons in the society.

The Statistic Profile 2016⁵ report on disabled persons reveal that India constitutes about 2.68 crores disabled persons out of its total population of 121 crores. This figure, based on 2011

² Clinton WJ, "William J. Clinton Quotes about Disability" (*Azquotes.com*) <https://www.azquotes.com/author/2999-William_J_Clinton/tag/disability> accessed June 9, 2021

³ "Disabilities" (*Who.int*) <<https://www.afro.who.int/health-topics/disabilities>> accessed June 9, 2021

⁴ (*Quotebanner.com*) <<https://quotebanner.com/quotes/noel-helm-quote-30711/>> accessed June 9, 2021

⁵ Disabled Persons in India A statistical profile 2016 by the Ministry of Statistics and Programme Implementation, Govt of India

census, shows that 2.21% of the total population are disabled persons. It is the duty of the Government and the society to make their lives easy and smooth. The solution lies not only in framing an exclusive legislation but also about its implementation.

The base of the whole Act of 2016 lies on the Golden Triangle articles of the Constitution, i.e., Articles 14, 19 and 21. In the words of Supreme Court in *Jeeja Gosh Vs. UOI*⁶, it was observed that “40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation.”

II. FACTS AND ISSUES OF THE CASE

Disability Rights Group Vs. UOI⁷ (W.P.No.292 of 2006)

Public Interest Litigation was filed in the year 2006 when the 1995 Act was in force seeking the relief of implementation of reservation for disabled persons in law colleges, accessibility and pedagogy. However, it has been taken for consideration and hearing after 11 long years. In the meanwhile, 2016 Act came into force. The Court has given utmost consideration and three issues were taken up for consideration.

1. Non-implementation of reservation of seats to disabled persons in educational institutions.
2. Accessibility to orthopaedic disabled persons to facilities
3. Pedagogy

III. DETAILS OF JUDGMENT

On a careful and analysis of both the Act, the Apex Court has passed the following order:

Regarding the first issue relating to reservation, the Court laid emphasis on S.39 of the 1995

⁶ (2016) 7 SCC 761

⁷ [indiankanoon.org https://indiankanoon.org/doc/152494913/](https://indiankanoon.org/doc/152494913/)

Act which provided for 3% reservation for admission in educational institutions to the disabled persons. On the other hand the S.32 of the 2016 Act provides for 5% and S.31 upholds the objective of the Right to Education Act, 2009 by conferring free and compulsory education to children with benchmark disabilities between the age group of 6 and 18. Though there are provisions available in this regard, the concern of the petitioner is that the same is not been implemented by the institutions. To ensure compliance, Court further directed that the institutions shall submit a list of those admitted under this category to the Chief/State Commissioner. A duty was also cast upon such officers to ensure that this requirement was met with.

As regards the second issue and placing reliance on the judgment given in *Rajive Ratouri Vs. UOI*⁸, gave suitable directions quoting S.16 which provides for a barrier friendly infrastructure, the Court viewed that the disabled persons cannot avail and utilize the opportunities in full if the facility to free access is not provided for.

Third issue pertains to pedagogy which provides the necessary aids and appliances which are necessary for disabled persons. The Court taking into the guidelines suggested by the petitioners, direction was given to UGC to work out the modalities of execution and feasibility of the same, Court left the task of fulfilling the objective of its judgment and implementing the same to UGC.

IV. ANALYSIS

The actual and real challenge lies in implementation. Implementation takes a big deal in most of the welfare measures initiated by the Government. It is indeed difficult to put principles from book to practice. Here not only the appropriate Government but also there is a need to partner with other agencies, voluntary organisations, NGOs and other agencies who help in actual implementation of the initiatives and schemes. Achieving the objective of 2016 Act is a long road but definitely towards success.

Supreme Court has in its direction clothed supervisory powers on the UGC who in turn had to constitute an expert committee to monitor the activities, analyse feasibilities, work out modalities of implementation, funding and submit the report. However, it is despairing to note that implementation has not been made to achieve the object of the Act in full spirit.

Going through the Annual Report of UGC 2018-2019⁹, though UGC has issued the instruction to all Universities to formulate internal Committee for the Students of Disabilities in

⁸ W.P. (Civil) No.243/2005 pending before the Hon'ble Supreme Court

⁹ (*Ugc.ac.in*) <https://www.ugc.ac.in/pdfnews/eUGC_HE%20AIS%20Profile%20.pdf> accessed June 9, 2021.

Universities/Colleges (vide letter No.F.6-1/2018 dated 11.1.2019), to the best of my search, no action taken report has been recorded.

Though the Supreme Court deserves accolades for pronouncing active judgments to protect the rights of the disabled community, it is its bounden duty to see that it is effectively implemented. The petitioner, is also duty bound to bring to Apex Court's notice about its direction. Failure to implement in truth and spirit shows the callousness of the implementing agencies. Thus, the failure to monitor the implantation of its own order has rendered both the Act and the judgment be kept in cold storage. "Justice must not only be done but seen it to be done" is just only an ornamental phrase in so far as the persons who are entitled to the benefits under the Act.

V. CONCLUSION

A report¹⁰ filed in 2018 by NCPEDP and NCPRD regarding the status and implementation of the Act throughout India identified many difficulties such as appointment of Commissioners as enumerated under Chapter VIII of the Act, constitution of advisory committees, allocation of State Funds, Notification of Special Courts to name a few.

It reveals that India is marching forward to achieve Sustainable Development Goals by 2030. The SDGs which aims for 'leaving no one behind' concept includes disabled community as partners to achieve the goals. In the light of the above statement, The Rights of Persons with Disabilities Act, 2016 is a rights-based legislation, the success of the statute will largely depend on the proactive measures taken by the respective state governments on its implementation.

¹⁰ (*Ncpedp.org*) <https://www.ncpedp.org/sites/all/themes/marinelli/documents/Report_of_Status_of_RPWD_Act_Final.pdf> accessed June 9, 2021