



## THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

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Afterwards signing and ratifying the “United Nations Convention on the Rights of Persons with Disabilities”<sup>1</sup>(for brevity hereinafter UNCRPD) in 2007, Indian Parliament adopted a radically transformative piece of legislation, the “Rights of Persons with Disabilities Act, 2016”(for brevity hereinafter RPD Act)that addresses the concerns of arguably the most marginalised section of Indian society. This Act has repealed the earlier law on disability i.e. Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participations) Act, 1995 and institutionalises a much-awaited robust rights regime in line with the principles of the UNCRPD. In addition to envisaging the economic, social, and cultural rights, RPD Act unequivocally contemplates civil and political rights of Persons with Disabilities (for brevity hereinafter PwD). It incorporates comprehensive range of the legal provisions in respect of equality and non-discrimination<sup>2</sup>,community life<sup>3</sup>, women and children with disabilities<sup>4</sup>, reproductive rights<sup>5</sup>, home and family<sup>6</sup>, protection from cruelty and inhuman treatment<sup>7</sup>, protection from abuse, violence and exploitation<sup>8</sup>,access to justice<sup>9</sup>, accessibility in voting<sup>10</sup>, legal capacity<sup>11</sup>, and provision for guardianship (where and to the extent needed) etc<sup>12</sup>. It guarantees full and effective participation and the inclusion of PwD in society and asserts the disabilities as part of human diversity. The RPD Act emulates a radical change in thinking about disability from a social welfare concern to a human rights issue. Thus, it is a landmark in struggle for equal opportunities for PwD in India. In *Justice Sunanda Bhandare Foundation v. Union of India and Another*,<sup>13</sup> Justice Dipak Misra remarked that RPD Act is a sea change in the perception and exhibits a march forward look with regard to PwD and roles of state governments, local authorities, educational institutes and companies are given thereto.

The RPD Act has broadened the definition of the term “Disability” by including inclusive of 21 conditions such as : “(1) Blindness, (2) Low-vision (3) Leprosy Cured persons

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<sup>1</sup> A/RES/61/106.

<sup>2</sup>Sec. 3 of the RPD Act.

<sup>3</sup>*Id.* at s. 5.

<sup>4</sup>*Id.* at s. 4.

<sup>5</sup>*Id.* at s. 10.

<sup>6</sup>*Id.* at s.9.

<sup>7</sup>*Id.* at s.6.

<sup>8</sup>*Id.* at s. 7.

<sup>9</sup>*Id.* at s. 12.

<sup>10</sup>*Id.* at s.11.

<sup>11</sup>*Id.* at s. 13.

<sup>12</sup>*Id.* at s. 14.

<sup>13</sup>2017 (5) SCALE 288.

(4) Hearing Impairment (deaf and hard of hearing) (5) Locomotor Disability (6) Dwarfism (7) Intellectual Disability (8) Mental Illness (9) Autism Spectrum Disorder (10) Cerebral Palsy (11) Muscular Dystrophy (12) Chronic Neurological conditions (13) Specific Learning Disabilities (14) Multiple Sclerosis (15) Speech and Language disability (16) Thalassemia (17) Hemophilia (18) Sickle Cell disease (19) Multiple Disabilities including deaf blindness (20) Acid Attack victim (21) Parkinson's disease".<sup>14</sup> These 21 conditions have been listed and defined in the schedule appended to the Act. It also provides that the Central Government may notify to add any other condition as disability under the schedule.<sup>15</sup>

The RPD Act incorporates the social model of disability as followed in UNCRPD and defines PwD as "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."<sup>16</sup> PwDs have further been subdivided into two categories, namely, "persons with benchmark disabilities"<sup>17</sup>; and "persons with disabilities having high support needs"<sup>18</sup>. "Persons with benchmark disabilities" are defined as those certified to have at least 40 per cent of the disabilities specified above.<sup>19</sup> Such certificate of disability issued under the RPD Act shall be valid across the country.<sup>20</sup>

The RPD Act envisages the duty of educational institutions to promote and facilitate inclusive education and adult education.<sup>21</sup> It guarantees free education to children between the ages of six to 18 years, with a "benchmark disability" in a neighbourhood school or special school if required.<sup>22</sup> For persons with "benchmark disability", all government and government aided institutions of higher education are required to reserve at least five per cent of seats for persons with "benchmark disabilities".<sup>23</sup> Furthermore, PwDs are also entitled for relaxation in the upper age limit, by five years for admission in higher educational institutions.<sup>24</sup>

However, PwDs want to be productive members of society but employers are often reluctant to employ or retain the PwDs. Employment is a critical element of independent living but it is a major concern for PwDs as most of the PwDs are either unemployed or under employed.<sup>25</sup> In view of such negative attitude of the employers, RPD Act has extended protection by mandating all government owned or controlled establishments to reserve at least four per cent of posts for persons with "benchmark disabilities".<sup>26</sup> One per cent of this must be reserved for persons with "(i) blindness and low vision; (ii) hearing and speech impairment; (iii) locomotor disability; (iv) autism, intellectual disability and mental illness; (v) multiple disabilities." The government may exempt any establishment from this

<sup>14</sup>*Supra* note 2 at Schedule to s. 2 (zc).

<sup>15</sup>*Ibid.*

<sup>16</sup>*Id.* at s. 2 (s).

<sup>17</sup>*Id.* at s. 2(r): "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.

<sup>18</sup>*Id.* at s. 2(t).

<sup>19</sup>*Supra* note 17.

<sup>20</sup>*Supra* note 1 at s. 58(3).

<sup>21</sup>*Id.* at ss. 16 and 17.

<sup>22</sup>*Id.* at s. 31.

<sup>23</sup>*Id.* at s. 32(1).

<sup>24</sup>*Id.* at s. 32(2).

<sup>25</sup> Rumi Ahmed, "Employment Security for Persons with Disability in India – A Critical Legal Understanding", 63 *Social Action* 315 (July-September, 2003).

<sup>26</sup>*Supra* note 2 at s. 34(1).

provision.<sup>27</sup> The central, state and local governments shall provide incentives to the private sector to ensure that at least five per cent of their work force is composed of persons with benchmark disability.<sup>28</sup> It also requires to give five per cent reservation for provided for persons with benchmark disabilities in “(i) allotment of agricultural land and housing in all relevant schemes and programmes; (ii) poverty alleviation schemes (with priority to women with benchmark disabilities); and (iii) allotment of land on concessional rate for purposes of business, enterprise, etc.”<sup>29</sup>

The RPD Act address inter-sectional concerns of gender and age with disability. It adopts a twin-track approach in respect of the matter and provides dedicated and specific provisions for women and children with disabilities.<sup>30</sup> It also provides for representation of PwDs including representation of women with disabilities in the various bodies to be established under this new legislation, for example, in Central and State Advisory Board on Disability at least five members must be women.<sup>31</sup> The RPD Act addresses guardianship of PwDs in term of limited and plenary guardianship.<sup>32</sup> It guarantees accessibility for the physical environment, transportation, information and communications, including appropriate technologies and other facilities and services provided to the public in urban and rural areas.<sup>33</sup> It also makes mandatory to make existing infrastructure, premises and services accessible “within a period not exceeding five years from the date of notification of rules” under this Act.<sup>34</sup> It requires appropriate Government to conduct, encourage, support, and promote awareness campaigns and sensitization programmes to ensure that the rights of PwDs provided under this Act are protected.<sup>35</sup>

The new Act widens the ambit of social security provisions for community centres with good standard of living, support to women for livelihood, free healthcare in the neighborhood areas, rehabilitation, cultural and recreation, and sporting activities etc.<sup>36</sup> Provisions for PwDs in the event of situations of risk, natural disaster and humanitarian emergencies have also been made in the new legislation.<sup>37</sup> It also requires appropriate government to enable PwDs to access to any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.<sup>38</sup> It also provides provision for free legal aid for PwDs.<sup>39</sup>

The PwDs encounter discrimination in almost every sphere of their life and it has been rightly asserted by Patrisha Wright that “all disabled share one common experience – discrimination.”<sup>40</sup> Such agony of the PwDs has been acknowledged under the RPD Act and it prohibits discrimination against any person with disabilities on the ground of disability unless

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<sup>27</sup>*Ibid.*

<sup>28</sup>*Id.* at s.35.

<sup>29</sup>*Id.* at s.37.

<sup>30</sup>*Id.* at s.4.

<sup>31</sup>*Id.* at ss.60 and 66.

<sup>32</sup>*Id.* at s.14.

<sup>33</sup>*Id.* at s.40.

<sup>34</sup>*Id.* at s.45.

<sup>35</sup>*Id.* at s.39.

<sup>36</sup>*Id.* at s.24.

<sup>37</sup>*Id.* at s.8.

<sup>38</sup>*Id.* at s.12.

<sup>39</sup>*Id.* at s.7(4)(c).

<sup>40</sup>As quoted by Howard Sklar, “Empathy’s Neglected Cousin: How Narratives Shape Our Sympathy” in Donald R. Wehrs, Thomas Blake (eds.), *The Palgrave Handbook of Affect Studies and Textual Criticism* 458 (Palgrave Macmillan, Cham, 2017).

it is shown that such impugned act or omission is appropriate to achieve a legitimate aim.<sup>41</sup> The term discrimination in relation to disability has been defined to include any distinction, exclusion, restriction on the basis of disability which impairs or nullifies the exercise on an equal basis of rights in the “political, social, cultural, civil or any other field”.<sup>42</sup> Furthermore, under RPD Act any kind of discrimination, insult, intimidation, assault, humiliation and sexual exploitation of the PwDs is punishable with imprisonment between six months to five years and fine.<sup>43</sup> Along with that, RPD Act provides that violation of any provisions of the Act, or any rule or regulation made under it, shall be punishable with imprisonment up to six months and/or a fine of Rs 10,000, or both. For any subsequent violation, imprisonment of up to two years and/or a fine of Rs 50,000 to Rs. five lakh can be awarded.<sup>44</sup>

The RPD Act provides provisions for establishment of national and state funds for empowerment of PwDs. The Central Government shall constitute a Central Advisory Board<sup>45</sup>, and state governments shall constitute a State Advisory Board each,<sup>46</sup> for disability matters. State governments shall also constitute District-Level Committees.<sup>47</sup> The functions of these advisory boards will include: “(i) advising the government on policies and programmes with respect to disability; (ii) developing a national/state policy concerning PwDs; (iii) recommending steps to ensure accessibility, reasonable accommodation, non-discrimination, etc.”<sup>48</sup>

The current RPD Act reinforces the regulatory, monitoring, and grievance redressal mechanisms in terms of their functions and composition. The Office of Chief Commissioner and State Commissioners of PwDs have been given more powers.<sup>49</sup> It also stipulates designation of special court at the district level for fast tracking cases of PwDs under the RPD Act.<sup>50</sup>

With above stated provisions, it is clear that the RPD Act has been enacted very efficiently and with a vision to empower the PwDs. However, law is one of the various tools of social change and not an end in itself. The test currently lies in the successful implementation of the RPD Act, failing that the guarantees and protections it offers are going to be nothing however hollow guarantees on paper. While emphasising on the duty of the Union and State Government to implement the RPD Act the Supreme Court has rightly pointed out that:

“...The States and the Union Territories must realize that under the 2016 Act their responsibilities have grown and they are required to actualize the purpose of the Act, for there is an accent on many a sphere with regard to the rights of the disabilities. When the law is so concerned for the disabled persons and makes provision, it is the

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<sup>41</sup>*Supra* note 2 at s.3(3).

<sup>42</sup>*Id.* at s.2(h).

<sup>43</sup>*Id.* at s.92(a).

<sup>44</sup>*Id.* at s.89.

<sup>45</sup>*Id.* at s.60.

<sup>46</sup>*Id.* at s.66.

<sup>47</sup>*Id.* at s.72.

<sup>48</sup>*Id.* at ss.65 and 71.

<sup>49</sup>*Id.* at ss.77 and 82.

<sup>50</sup>*Id.* at s.84.

obligation of the law executing authorities to give effect to the same in quite promptitude...”<sup>51</sup>

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<sup>51</sup>*Supra* note 13 at para 24.