



GSJ: Volume 6, Issue 7, July 2018, Online: ISSN 2320-9186

www.globalscientificjournal.com

Educational Rights in Rights of Persons with Disabilities Act, 2016

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Abstract

India signed and ratified to the United Nations Convention on the Rights of Person with Disabilities (UNCRPD). In complying UNCRPD, process of enacting a new legislation in place of the Persons with Disabilities Act, 1995(PWD Act, 1995) began which eventually led to the Rights of PWD Act, 2016 (RPWD Act, 2016) and was notified on December 28, 2016 after receiving the presidential assent. The principles stated to be implemented for empowering persons with disabilities (PWD) are respect for inherent dignity, autonomy of individuals including the freedom to make one's own choices, and independence of persons. The Act emphasizes on providing inclusive education to the children with disabilities. The main focus of the education chapter of the Rights of PWD Act, 2016 (RPWD Act, 2016) is duties of the educational institutions, the specific measures to promote and facilitate inclusive education and Adult Education. The PWD Act, 2016 had a paradigm shift in its focus from social welfare to human rights issues.

Keywords: Educational Rights, Rights of Person with Disabilities (RPwD) Act, 2016

Introduction:

India became a state party to the United Nations Convention on the Rights of Persons with Disabilities [UNCRPD] by signing and ratifying it in March and October 2007 respectively. Thus, the enactment of this new piece of legislation, namely, the RPD Act, 2016 has happened as a part of the larger harmonization process undertaken by the Government of India in fulfillment of its solemn commitment and international obligation arising out of India becoming a state party to the UNCRPD. In order to comply with the UNCRPD, India has repealed PWD ACT, 1995. (Equal opportunities, protection of rights and full participation) and enacted Rights of Persons with Disabilities (RPwD) Act, 2016.

Features of The Rights of Persons With Disabilities Act, 2016

The list in the RPWD Act, 2016, has been expanded from 7 to 21 conditions including cerebral palsy, dwarfism, muscular dystrophy, acid attack victims, hard of hearing, speech and language disability, specific learning disabilities, autism spectrum disorders, chronic neurological disorders such as multiple sclerosis and Parkinson's disease, blood disorders such as haemophilia, thalassemia, and sickle cell anaemia, and multiple disabilities. The term mental retardation has been replaced by intellectual disability which is defined as “a condition characterized by significant limitation both in intellectual functioning (reasoning, learning, problem-solving) and in adaptive behavior which covers a range of every day social and practical skills including specific learning disabilities and autism spectrum disorders.” Persons with benchmark disabilities are defined as those with at least 40% of any of the above disability. PWD having high support needs are those who are certified as such under section 58(2) of the Act.

The RPWD Act, 2016 provides that “the appropriate Government shall ensure that the PWD enjoy the right to equality, life with dignity, and respect for his or her own integrity equally with others.” It is also required in the section 3 that no PWD shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim and no person shall be deprived of his personal liberty only on the ground of disability. Living in the community for PWD is to be granted and steps need to be taken by the Government to ensure reasonable accommodation for them. Special measures are to be taken to ensure women and children with disabilities enjoy rights equally with others.

Measures are to be taken to protect the PWD from being subjected to cruelty, inhuman, and degrading treatments and from all forms of abuse, violence, and exploitation. For conducting any research, free and informed consent from the PWD as well as a prior permission from a Committee for Research on Disability to be constituted in the prescribed manner. Police officers, who receive a complaint or otherwise come to know of violence, abuse, or exploitation, shall inform the aggrieved PWD of his right to approach the Executive Magistrate. The police officer shall also inform about particulars of nearest organization working for the rehabilitation of the PWD, right to free legal aid, and right to file complaint under the provisions of this Act or any other law dealing with such offence.

Equal protection and safety in situations of risk, armed conflict, humanitarian emergencies, and natural disasters are to be provided to PWD. Children with disability are not to be separated from parents except on the order of a competent court and information about reproductive rights and family planning to the PWD is to be ensured.

It is also provided that a PWD with benchmark disability who consider himself to be in need of high support, he/she or any other person or organization in his behalf may apply to the authority appointed by the Government for the same and the authority shall take steps to provide support accordingly (Sec 38). However, the PWD would have the right to alter, modify, or dismantle the support system and in case of conflict of interest, the supporting person would withdraw from providing the support [sec 13(4&5)]. It has been provided in the section 14 of the Act that a District Court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government. It is also provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly. In these cases the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature and manner of support to be provided. Limited guardianship has been explained to mean a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall

operate in accordance to the will of the person with disability. It is also provided that on and from commencement of the Act, every guardian appointed under any other law for time being in force shall be deemed to function as a limited guardian.

The Bill provides for the access to inclusive education, vocational training, and self-employment of disabled persons without discrimination and buildings, campuses, and various facilities are to be made accessible to the PWD and their special needs are to be addressed. Necessary schemes and programs to safeguard and promote the PWD for living in the community are to be launched by the Government. Appropriate healthcare measures, insurance schemes, and rehabilitation programs for the PWD are also to be undertaken by the Government. Cultural life, recreation, and sporting activities are also to be taken care of. All Government institutions of higher education and those getting aid from the Government are required to reserve at least 5% of seats for persons with benchmark disabilities. Four percent reservation for persons with benchmark disabilities is to be provided in posts of all Government establishments with differential quotas for different forms of disabilities. Incentives to employer in private sector are to be given who provide 5% reservation for persons with benchmark disability. Special employment exchanges for the PWD are to be set up. Awareness and sensitization programs are to be conducted and promoted regarding the PWD. Standards of accessibility in physical environment, different modes of transports, public building and areas are to be laid down which are to be observed mandatorily and a 5-year time limit is provided to make existing public building accessible. Access to information and communication technology is to be ensured. The Central and State Advisory Boards on disability are to be constituted to perform various functions assigned under the Act. District level Committees are also to be constituted by the State Government. Chief Commissioner and two Commissioners for PWD are to be appointed by the Central Government at the central level for the purposes of the Act. Similarly, State Commissioners for PWD are to be appointed by the State Governments. National Funds for PWD and State Funds for PWD are to be constituted at the central and state levels respectively by the appropriate Governments. Contraventions of the provisions of the Act have been made punishable by a fine of an amount up to ten thousand for first contravention and fifty thousand extendable up to five lakhs for subsequent contraventions. Atrocities on PWD have been made punishable with imprisonment of 6 months extendable to 5 years and with fine. Fraudulently availing of the benefits meant for PWD has also been made punishable.

Educational Rights of the Persons with Disabilities

There are three main areas on which focus has been emphasized regarding educational rights. The areas are duties of the educational institutions, specific measures to promote and facilitate inclusive education and adult education. It is the duty of the Institutes to provide education and opportunities for sports and recreation to children with disabilities without any discrimination. The infrastructure should be such that it facilitates their development. The accommodation and the transportation services should be provided to the person with disabilities so that it does not hamper their education. The Institutes should detect specific learning disabilities in the children so that they can be provided with the apropos measures to overcome such difficulties. The Government with the collaboration of local authorities should conduct survey of school going children in every five years so that the children who have some sort of disabilities can be screened and further assistance can be provided in this regard. The adequate number of teacher training Institutes needs to be established and proper training should be provided to staff and professionals so that goal of inclusive education are met. The teachers employed should also be from disabled groups qualified in sign language and Braille so that they can effectively communicate with the person of disabilities. The use of appropriate augmentative and alternative modes should be included as means of communication which supplements speech to fulfill daily communication needs. Provision of books, learning materials, assistive devices to students with benchmark disabilities free of cost up to the age of eighteen years. Providing scholarships in appropriate cases to student with benchmark disabilities. The people with disabilities should be provided with extra time for completion of exam papers. The appropriate Government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others.

Conclusion:

The RPwD Act, 2016 is a great step towards the welfare of the person with disabilities and lays more emphasis on human rights issues. It will be very beneficial if implemented with the cooperation of authorities and people in general. It will help the disabled person to utilize their full potential. These initiatives can help them join mainstream and resolve the difficulties of the caregivers as their increased acceptance in society can reduce the distress. Thus the mental health of people in general can improve.

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