

## DISABILITY AND INDIAN JUDICIARY: A LEGAL PART

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### INTRODUCTION

The twenty-first century witnessed its first human rights treaty that was chiefly concerned with disability in the form of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>1</sup> in the General Assembly in 2007. India was among the primary members which signed and ratified it which makes it mandatory for the Indian state to bring its domestic laws in consonance with the Disability Convention.

According to Census 2011 (India)<sup>2</sup>, total households having disabled persons have shown an increase of 20.5 lakhs, from 187.3 lakhs in 2001 to 207.8 lakhs in 2011. Of these, 6.2 lakhs are in rural and 14.3 lakhs in urban areas. The differently-abled in normal households increased by 48,19,382 institutional households by 65,895 and house-less households by 22,948 between 2001-11, the data said. It is heartening that the predicament of the disabled has been taken note of by the Indian Legislature. Several Acts have been made to protect the legal interests of the disabled who would otherwise be left to the vagaries of fate. These Acts mainly consist of the Mental Health Act, 1987<sup>3</sup> (Now The Mental Health (Amendment) Bill, 2016<sup>4</sup>), the Rehabilitation Council of India Act, 1992<sup>5</sup>, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995<sup>6</sup> and more recently the

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<sup>1</sup> The Convention on the Rights of Persons with Disabilities and its Optional Protocol (A/RES/61/106) was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. There were 82 signatories to the Convention, 44 signatories to the Optional Protocol and ratification of the Convention. This is the highest number of signatories in history to a UN Convention on its opening day. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. The Convention entered into force on May 3, 2008

<sup>2</sup> Available at: [www.mospi.gov.in/sites/default/files/...reports/Disabled\\_persons\\_in\\_India\\_2016.pdf](http://www.mospi.gov.in/sites/default/files/...reports/Disabled_persons_in_India_2016.pdf) (Accessed on 15/04/2017)

<sup>3</sup> In India, the Mental Health Act was passed on 22 May 1987.

<sup>4</sup> The Bill repeals the existing Mental Health Act, 1987, which is vastly different in letter and spirit.

<sup>5</sup> The Rehabilitation Council of India (RCI) was set up as a registered society in 1986. On September, 1992 the RCI Act was enacted by Parliament and it became a Statutory Body on 22 June 1993.

<sup>6</sup> Act is replaced by the Rights of People with Disabilities Act 2016.

National Trust for welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

There are also several constitutional guarantees and protections made available to the disabled in various other laws of the country. With the aid of these legislative tools Indian Judiciary has, from time to time, played an important role in interpreting these laws in a manner so as to make available the rights to the disabled persons in India and likewise given several guidelines to eliminate discrimination against them in the society.

## CONSTITUTIONAL POSITION

The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including persons with disabilities. The right of persons with disabilities to respect, dignity and freedom is part of this generic right to life. However, the recognition of disability as part of a larger terrain of human diversity is something that has not yet entered official discourse on disability rights. Article 21<sup>7</sup> of the Constitution of India protects the Right to Life and Personal Liberty, which are inclusive of the principles of inherent dignity and individual autonomy for all persons resident in India. This, together with Article 14<sup>8</sup>, the Right to Equality before law provide the conditioning environment for specific laws and policies that uphold fundamental rights for different classes of individuals.<sup>9</sup>

While the Indian Constitution prohibits discrimination per se, it does not explicitly prohibit discrimination on grounds of disability. However, a seven judge constitutional bench of the Supreme Court of India in *Indra Sawhney v. Union of India*<sup>10</sup> held that the “spirit of Articles 14 [right to equality] 15(1) [right against discrimination]<sup>11</sup> and 16 [right against discrimination in public employment]<sup>12</sup>” allowed for discrimination and affirmative actions

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<sup>7</sup> “No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

<sup>8</sup> The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

<sup>9</sup> Disability Rights Monitor (DRPI): Written Report Kalpana Kannabiran Asmita Resource Centre for Women, Monitoring the Human Rights of Persons with Disabilities: Laws, Policies and Programs in India

<sup>10</sup> 1992 Supp (3) SCC 217

<sup>11</sup> The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

<sup>12</sup> No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.

for persons with disabilities. As a result of this decision, the Constitution may be read as explicitly prohibiting discrimination against persons with disabilities.

## LEGAL DEFINITIONS OF DISABILITY

A disability may be generally defined as a condition which may restrict a person's mental, sensory, or mobility functions to undertake or perform a task in the same way as a person who does not have a disability. There is an array of legal definitions related to disability and it becomes difficult to choose. Various meaning and definitions of disability are categorized as follows:

According to Black's Law Dictionary<sup>13</sup> - Developmental disability is an impairment of general intellectual functioning or adaptive behaviour. Physical disability is an incapacity caused by a physical defect or infirmity, or by bodily imperfection or mental weakness.

According to Oxford Law dictionary<sup>14</sup>, a 'disabled person' who has a physical or mental impairment that has a substantial and long-term effect on his abilities to carry out day-to-day activities.

The want of legal ability or capacity to exercise legal rights, either special or ordinary, or to do certain acts with proper legal effect or to enjoy certain privileges or powers of free action<sup>15</sup>. As far as statutory definitions of disability are concerned, various legislations in India defined it as follows:

*The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* incorporates a medical definition. According to section 2(t) 'person with disability' means a person suffering from not less than forty per cent of any disability as certified by a medical authority. Further, the meaning of disability is described in section 2(i) stating that disability means:

- i. blindness;
- ii. low vision;
- iii. leprosy-cured;

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<sup>13</sup> Bryan a. Garner, *Black's Law Dictionary*, Thomson Reuters, 9th Ed. 2009, p. 528

<sup>14</sup> Elizabeth a. Martin, *Oxford Law Dictionary*, Oxford University Press, 5th Ed. 2003, p. 151

<sup>15</sup> *Berkin v. Marsh*, 18 mont 152

- iv. hearing impairment;
- v. locomotor disability;
- vi. mental retardation;
- vii. mental illness

Section 2(i) which defined the word disability used the phrase means which connotes that it is an exhaustive definition and not intended to be illustrative.<sup>16</sup> Section 2 of the Act has given distinct and different definitions of ‘disability’ and ‘person with disability’. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. Definition of disability as enumerated in Section 2(i) has no application to employees who suffer disability while in service.<sup>17</sup>

‘Locomotors disability’ means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;<sup>18</sup> Section 2 of the Act has given distinct and different definitions of disability and person with disability. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition.<sup>19</sup>

The Rights of Persons with Disabilities Act, 2016 – Section 2(s) - “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.

Under the same Act, Section 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.

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<sup>16</sup> *Telangana State Road Transport v. P. Ramesh*, W.A. Nos.1120 of 2015, decided on 08-09-2016.

<sup>17</sup> *M. Venkateswarlu v. APSRTC*, W.P. Nos. 36337 of 2012, decided on 29-01-2016.

<sup>18</sup> ‘Cerebral palsy’ means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the prenatal, perinatal or infant period of development. [*The Management of Tamil Nadu v. B. Gnanasekaran*, (2007) IILLJ 959 Mad.].

<sup>19</sup> *The Management of Tamil Nadu v. B. Gnanasekaran*, (2007) IILLJ 959 Mad.

*Census 2011*<sup>20</sup>, and other official surveys, used the following definition of disability: A person with one or more of the following long-lasting conditions or difficulties:

- Blindness or severe vision impairment
- Deafness or a severe hearing impairment
- An intellectual disability
- A difficulty with learning, remembering or concentrating
- A difficulty with basic physical activities
- A psychological or emotional condition
- A difficulty with pain, breathing, or any other chronic illness or condition

## **STATUTORY PROTECTION TO RIGHTS OF DISABLED PERSONS**

Indian Parliament has made several efforts to recognize the rights of disabled in the form of following statutes:

- The Person with Disabilities Act, 1995 (Replaced with The Rights of Persons with Disabilities Bill – 2016)
- The Mental Health Act, 1987 (Replaced with Mental Healthcare Bill, 2016)
- The Rehabilitation Council of India, 1992
- The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999
- Declaration On The Rights Of Mentally Retarded Persons

## **THE PERSONS WITH DISABILITIES (PWD) (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995<sup>21</sup>**

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<sup>20</sup> Available at [www.mospi.gov.in/sites/default/files/...reports/disabled\\_persons\\_in\\_india\\_2016.pdf](http://www.mospi.gov.in/sites/default/files/...reports/disabled_persons_in_india_2016.pdf) (Accessed on 12/04/2017)

“The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” had come into enforcement on February 7, 1996. It is a significant step which ensures equal opportunities for the people with disabilities and their full participation in the nation building. The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier-free environment, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc.

### **THE RIGHTS OF PERSONS WITH DISABILITIES BILL - 2016<sup>22</sup>**

The Lok Sabha passed *The Rights of Persons with Disabilities Bill - 2016*. The Bill will replace the existing PWD Act, 1995, which was enacted 21 years back. The Rajya Sabha has already passed the Bill on 14.12.2016<sup>23</sup>.

The New Act will bring our law in line with the United National Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory. This will fulfill the obligations on the part of India in terms of UNCRD. Further, the new law will not only enhance the Rights and Entitlements of Divyangjan but also provide effective mechanism for ensuring their empowerment and true inclusion into the Society in a satisfactory manner.

#### ***Salient Features of the Bill***

1. The Act has categorized Persons with Disabilities into three categories:

- person with disability
- person with benchmark disability
- person with disability having high support needs

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<sup>21</sup> The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995(1 of 1996) PUBLISHED IN PART II, SECTION 1 OF THE EXTRAORDINARY GAZETTE OF INDIA, MINISTRY OF LAW

<sup>22</sup> The Rights of Persons with Disabilities Act, 2016 (NO. 49 OF 2016) IN PART II, SECTION 1 OF THE EXTRAORDINARY GAZETTE OF INDIA, MINISTRY OF LAW

<sup>23</sup> Available at <http://www.narendramodi.in/rights-of-persons-with-disabilities-bill-2016-passed-by-parliament-533533> (Accessed on 12/04/2017)

2. The Bill makes a larger number of people eligible for rights on the grounds of their disability. The rights include reservations in government jobs and welfare schemes among others.
3. The revision to the Disability Bill recognises acid attacks and Parkinson's disease as disabilities.
4. The amendments to the Disability Bill also make a particular mention of the requirements of women and children with disabilities. It also makes sure that the people with disabilities are provided with barrier-free access in buildings, transport systems and all kinds of public infrastructure.
5. The Rights of Persons with Disabilities Bill 2016 promises 5 per cent reservation for persons with benchmark disabilities.
6. The 2014 Bill made infringement of the any provision of the Bill punishable with a jail term of up to 6 months, and/or a fine of Rs 10,000. The anticipated Bill has proposed to do away with the jail term.

Also, the Bill is expected to eliminate any kind of discrimination against people with disabilities. It defines discrimination as "any distinction, exclusion, restriction on the basis of disability damaging the exercise on an equal basis of rights in the political, social, cultural, civil or any other field."<sup>24</sup>

### **THE MENTAL HEALTH ACT, 1987<sup>25</sup>**

Under the Mental Health Act, 1987 mentally ill persons are entitled to the following rights:

A right to be admitted, treated and cared in a psychiatric hospital or psychiatric nursing home or convalescent home established or maintained by the Government or any other person for the treatment and care of mentally ill persons (other than the general hospitals or nursing homes of the Government).

Even mentally ill prisoners and minors have a right of treatment in psychiatric hospitals or psychiatric nursing homes of the Government.

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<sup>24</sup> Chanchal Chauhan, India, December 16, 2016.

<sup>25</sup> The Mental Health Act, 1987 (14 of 1987), PUBLISHED IN PART II, SECTION 1 OF THE EXTRAORDINARY GAZETTE OF INDIA, MINISTRY OF LAW

Minors under the age of 16 years, persons addicted to alcohol or other drugs which lead to behavioural changes, and those convicted of any offence are entitled to admission, treatment and care in separate psychiatric hospitals or nursing homes established or maintained by the Government.

Mentally ill persons have the right to get regulated, directed and co-ordinated mental health services from the Government. The Central Authority and the State Authorities set up under the Act have the responsibility of such regulation and issue of licenses for establishing and maintaining psychiatric hospitals and nursing homes. Treatment at Government hospitals and nursing homes mentioned above can be obtained either as in patient or on an out-patients basis. Mentally ill persons can seek voluntary admission in such hospitals or nursing homes and minors can seek admission through their guardians. Admission can be sought for by the relatives of the mentally ill person on behalf of the latter. Applications can also be made to the local magistrate for grants of such (reception) orders. The police have an obligation to take into protective custody a wandering or neglected mentally ill person, and inform his relative, and also have to produce such a person before the local magistrate for issue of reception orders. Mentally ill persons have the right to be discharged when cured and entitled to 'leave' the mental health facility in accordance with the provisions in the Act. Where mentally ill persons own properties including land which they cannot themselves manage, the district court upon application has to protect and secure the management of such properties by entrusting the same to a 'Court of Wards', by appointing guardians of such mentally ill persons or appointment of managers of such property.

The costs of maintenance of mentally ill persons detained as in-patient in any government psychiatric hospital or nursing home shall be borne by the state government concerned unless such costs have been agreed to be borne by the relative or other person on behalf of the mentally ill person and no provision for such maintenance has been made by order of the District Court. Such costs can also be borne out of the estate of the mentally ill person. Mentally ill persons undergoing treatment shall not be subjected to any indignity (whether physical or mental) or cruelty. Mentally ill persons cannot be used without their own valid consent for purposes of research, though they could receive their diagnosis and treatment. Mentally ill persons who are entitled to any pay, pension, gratuity or any other form of allowance from the government (such as government servants who become mentally ill during their tenure) cannot be denied of such payments. The person who is in-charge of such



mentally person or his dependents will receive such payments after the magistrate has certified the same. A mentally ill person shall be entitled to the services of a legal practitioner by order of the magistrate or district court if he has no means to engage a legal practitioner or his circumstances so warrant in respect of proceedings under the Act.

### **MENTAL HEALTHCARE BILL, 2016<sup>26</sup>**

This new bill passed by parliament on March 27, 2017 replaced earlier Mental Health Act, 1987. With the Lok Sabha's assent to the legislation, the Mental Healthcare Bill 2016<sup>27</sup> secured parliamentary approval as it was earlier passed by the Rajya Sabha in August 2016.

An important factor in the Bill is that it separates attempt to suicide from the Indian Penal Code. In effect, IPC provisions cannot be invoked in case of an attempt to suicide.

#### ***Salient Features of the Mental Healthcare Bill, 2016***

- Decriminalising attempt to commit suicide
- Bans use of electric shock therapy for treating children with mental illness
- Permits conditional use of shock therapy on adults, after being given anaesthesia, muscle relaxants
- Emphasises on ensuring no intrusion of rights and dignity of people with mental illness

Also, the Bill gives an opportunity to a person to provide advance directions on the kind of treatment they would want in case diagnosed with a mental illness in future. *"The earlier Act of 1987 focused on regulations but this new Bill is patient-centric and after wide consultations, we have ensured that the patient's interest is safeguarded"*.<sup>28</sup>

### **THE REHABILITATION COUNCIL OF INDIA ACT, 1992<sup>29</sup>**

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<sup>26</sup> Available at <https://scroll.in/latest/832987/lok-sabha-passes-mental-healthcare-bill-2016-which-decriminalises-suicide> (Accessed on: 12/04/2017 )

<sup>27</sup> The Mental Healthcare Act, 2017 No. 10 Of 2017, Published In Part II, Section 1 of The Extraordinary Gazette Of India, Ministry of Law

<sup>28</sup> Jagat Prakash Nadda, Union Minister of Health and Family Welfare, Government of India.

<sup>29</sup> The Rehabilitation Council of India Act, 1992 (Act No. 34 Of 1992), Published In Part II, Section 1 of The Extraordinary Gazette of India, Ministry of Law

This Act provides guarantees so as to ensure the good quality of services rendered by various rehabilitation personnel. Following is the list of such guarantees:

- To have the right to be served by trained and qualified rehabilitation professionals whose names are borne on the Register maintained by the Council
- To have the guarantee of maintenance of minimum standards of education required for recognition of rehabilitation qualification by universities or institutions in India.
- To have the guarantee of maintenance of standards of professional conduct and ethics by rehabilitation professionals in order to protect against the penalty of disciplinary action and removal from the Register of the Council
- To have the guarantee of regulation of the profession of rehabilitation professionals by a statutory council under the control of the central government and within the bounds prescribed by the statute

**THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999<sup>30</sup>**

The Central Government has the obligation to set up, in accordance with this Act and for the purpose of the benefit of the disabled, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability at New Delhi. The National Trust created by the Central Government has to ensure that the objects for which it has been set up as enshrined in Section 10 of this Act have to be fulfilled. It is an obligation on part of the Board of Trustees of the National Trust so as to make arrangements for an adequate standard of living of any beneficiary named in any request received by it, and to provide financial assistance to the registered organizations for carrying out any approved programme for the benefit of disabled.

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<sup>30</sup> The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (Act No. 44 of 1999) dated 30th December, 1999 was being Act of Parliament, enacted with the object to deal with welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities by constituting a National Level Body. The assent by President was given on 30th December, 1999. It contains seven chapters with 36 sections providing for several matters including constitution of aforesaid National Level Body.

Disabled persons have the right to be placed under guardianship appointed by the 'Local Level Committees' in accordance with the provisions of the Act. The guardians so appointed will have the obligation to be responsible for the disabled person and their property and required to be accountable for the same. A disabled person has the right to have his guardian removed under certain conditions. These include an abuse or neglect of the disabled, or neglect or misappropriation of the property under care.

Whenever the Board of Trustees are unable to perform or have persistently made default in their performance of duties, a registered organization for the disabled can complain to the central government to have the Board of Trustees superseded and/or reconstituted. The National Trust shall be bound by the provisions of this Act regarding its accountability, monitoring finance, accounts and audit.

## **JUDICIAL PROTECTION**

Supreme Court and High Courts of the country, from time to time, through various judgments has resolved the issues relating to violation of rights of disabled person. The issues of following nature were brought by the victims through writs: -

### ***Issues of Concern***

- Disability as a reason for discrimination
- Lack of education opportunities both at the primary and higher levels
- Lack of employment and livelihood opportunities
- Lack of physical Access in the built infrastructure
- Lack of access to information in accessible formats
- Denial of rights to promotion and emoluments to those who do find employment
- Denial of reasonable accommodation in employment, education and so on
- Denial of access to most Civil and Political rights
- Marginalisation and discrimination faced by women with disabilities

In recent times, various directions to bring changes in the present statutory protection have been highlighted in the following manner:

**A. *Jeeja Ghosh v. Union of India & Others***<sup>31</sup>

Ms. Jeeja Ghosh, a disabled woman was asked to de-board the flight just because of the reason of her disability by the Pilot. The Supreme Court held that the Pilot as well as the Crew members of the airlines is supposed to ensure the safety of all the passengers and a decision can be taken to de-board a particular passenger in the larger interest and safety of other co-passengers.

Further, the court said that 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.

**B. *Rajeev Kumar Gupta v. Union of India***<sup>32</sup>

The petitioners are employed with Prasar Bharati Corporation of India (hereinafter, “Prasar Bharati”), a statutory corporation brought into existence by the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (hereinafter “the 1990 Act”). The petitioners are ‘persons with disability’ (hereinafter, “PWD”) as defined under Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter “the 1995 Act”). They filed this writ petition aggrieved by office memoranda issued by the Department of Personnel and Training, Government of India. The petitioners’ grievance is that the impugned memoranda deprive them of the statutory benefit of reservation under the 1995 Act w.r.t. Group A and Group B posts in Prasar Bharati. It was held that PWD are not and cannot be equated with backward classes contemplated under Article 16(4). Supreme Court directed the Government to extend three percent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts.

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<sup>31</sup> Writ Petition (C) No. 98 Of 2012

<sup>32</sup> Writ Petition (Civil) No.521 of 2008. Civil Appeal No. 5389 OF 2016 (Arising out of SLP (Civil) No.244 of 2016)

**C. *Pranay Kumar Podder v. State of Tripura & Others***<sup>33</sup>

Two students were declared to be ineligible to take admission to MBBS course at the stage of counselling held on 23rd June, 2015 on the score that they suffered partial colour blindness. Total exclusion for admission to medical courses without any stipulation in which they really can practice and render assistance would tantamount to regressive thinking. When we conceive of global phenomenon and universal brotherhood, efforts are to be made to be within the said parameters.

**D. *Union of India & Others v. Dileep Kumar Singh***<sup>34</sup>

It was held that if at the appointment stage, persons with disabilities need to have vacancies in posts reserved for them, and equally after suffering a disability during service, a person may for the self-same reason not to be able to perform what is required of him in the defence of the nation, thereby justifying his discharge from service.

**E. *Ashok Kumar Giri v. Government of India and others***<sup>35</sup>

3% reservation for differently abled persons will have to be computed on the basis of total vacancies of the cadre and not on the basis of the vacancies available in the identified posts, namely, at the time of notification calling for applications to fill up the available vacant vacancies. Likewise, there are several issues on which numerous judgments are pronounced for the protection of the rights of disabled.

**CONCLUSION & SUGGESTIONS**

India has come out with various legislations and schemes for the upliftment of differently abled persons, but gap between the laws and reality still remains. Even though human rights activists have made their best efforts to create awareness that people with disabilities have also right to enjoy their life and spend the same not only with the sense of fulfilment but also to make them contribute in the growth of the society, yet mind set of large section of the people who claim themselves to be 'able' persons still needs to be changed towards differently abled persons. It is this mind set of the other class which is still preventing, in a

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<sup>33</sup> Civil Appeal No.4393 of 2017 (Arising out of S.L.P.(C) No.27388 of 2015).

<sup>34</sup> 2015 AIR SCW 1565

<sup>35</sup> AIR 2016 SC (Civil) 1963

great measure, differently abled persons from enjoying their human rights which are otherwise recognised in their favour.

It is well known that we are still far behind in terms of physical infrastructure as compared to the advanced economies. In this context, the physical accessibility to India's judiciary is not adequate for disabled citizens. To address this serious accessibility concern for the disabled and providing them their basic right of access to justice, instead of scrapping the existing office of Chief Commissioner, as proposed in the draft bill, it will be in the interest of both the Indian state and its disabled citizens to continue with this institution. It could be dedicated solely for the purpose of grievance redressal by sorting out the issues of inadequate infrastructure and limited staff which have hitherto plagued the normal functioning of this watchdog body.

If India really wants to ensure justice and empower its citizens with disabilities, then it must have a strong and effective institutional framework which can truly provide unhindered democratic and civil rights to its millions of disabled persons.