



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## A Socio-Legal Critique of disability rights in India

Yash Gautam<sup>a</sup>

<sup>a</sup>National Law University, Delhi, India

Received 18 November 2022; Accepted 30 November 2022; Published 12 December 2022

---

*We see ramps or disabled washrooms being built in Public Spaces for Disabled People, but has the law of the nation progressed and sensitized towards them? When one looks at Disability Rights through a legal lens, one can see major loopholes which have managed to hide from the public eye. Disabled people facing discrimination in job interviews or educational institutions are the execution of these legal flaws. Another important aspect is Affirmative action (commonly known as a reservation) provided under the Person with Disabilities (PWD) category hasn't proved to be much helpful as the discrimination faced by disabled people in job opportunities is still very pertinent. E.g.- Reserved seats are 16.66 % for the members of the Scheduled Castes, 7.5 % for the members of the Scheduled Tribes and 25.84 % for the members of the Other Backward Classes, and just 5% for PWD in the matter of appointment by direct recruitment to civil posts and civil services on all India basis. One of the major deficiencies in the PWD Act 2016 is that the definition therein is very narrow, medically oriented, and confined to seven categories specifically due to which certain disabilities like learning disabilities, long illness, etc. are ignored. The disabled still face too much operation and marginalization in all forms of public spheres and unless concrete steps with proper execution are taken, discrimination will prevail for centuries to come.*

**Keywords:** *disabilities, disabilities act, pwd.*

---

## INTRODUCTION

During an election campaign in the 1920s, one of the most renowned presidents of the USA, Franklin D. Roosevelt, was seen wearing a metal bracelet on his leg and was standing with the support of a few men, it was only learned after his death that he was paralyzed from waist below due to polio and that he used to keep it a secret from the public.<sup>1</sup> This small instance signifies the stigma carried forward for centuries and is still faced on a day-to-day basis by the “*specialy abled people*”. This research paper seeks to identify the lacunae in the Rights of Persons with Disabilities (RPWD) Act (2016) and present a socio-legal critique of the Act in terms of discussions on definitions for their appropriateness, omissions of certain important aspects, suggested amendments, etc. Right to life, liberty, and equality are sine qua non of any democratic country; depriving someone of them is depriving them of their basic humanitarian rights. <sup>2</sup> The Affirmative action provided under RPWD Act, 2016 still doesn't fulfill the aim that it was made for. Even after giving 4% reserved seats in almost all jobs, over 60% of people with disabilities are of working age, however, they experience an unemployment rate 80-100% higher than average non-disabled workers.<sup>3</sup> Such infinite amounts of statistical data indicate suppression and exploitation of the disabled in job placement, education, accessibility, etc.

This article aims to analyze and critique the Rights of Persons with Disabilities (RPWD) Act (2016) through primarily three lenses: firstly, the relationship with the parent Act<sup>4</sup> and the UN convention, secondly, ambiguity in the Act and Intersection of disability with gender, poverty, age, etc. and seeks to address questions such as Is the definition of disability given in the article<sup>5</sup>

---

<sup>1</sup> Tom Porter, 'How FDR kept his partial paralysis a secret from the American public - even while he was on the campaign trail' (*Business Insider India*, 10 May 2019) <<https://www.businessinsider.in/politics/how-fdr-kept-his-partial-paralysis-a-secret-from-the-american-public-even-while-he-was-on-the-campaign-trail/articleshow/69272565.cms>> accessed 14 November 2022

<sup>2</sup> Raj Gupta, 'Rights Of Persons With Disability Act (2016): A Critique' (2017) 3(1) *Journal of Disability Studies* <<http://pubs.iscience.in/journal/index.php/jds/article/view/643/421>> accessed 14 November 2022

<sup>3</sup> 'Disability Discrimination at Work' (*Work in Freedom*) <[https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_decl\\_fs\\_87\\_en.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_decl_fs_87_en.pdf)> accessed 14 November 2022

<sup>4</sup> Rights of Persons with Disabilities Act 1955

<sup>5</sup> Rights of Person with Disabilities Act 2016

too vague and narrow? Does the Act provide sufficient remedies for the disabled? Do the reservation provisions provided in the Act hold up to their objective?

### **QUESTIONS THE AUTHOR TRIED TO RESOLVE THROUGH THIS ARTICLE**

- Whether affirmative action under the Indian Constitution adequately protects the rights of people with disabilities.
- Whether the Right of Persons with Disabilities Act, 2016 sufficiently protects the rights and remedies of Persons with Disabilities.

### **A HISTORICAL PRETEXT ON THE DISABILITY RIGHTS MOVEMENT IN INDIA**

The evolution of the Disability Rights Movement in India spans over four decades, beginning in the 1970s when just an idea sprouted in the minds of a few and it was nowhere near being called a movement, in the 80s and 90s NGOs and various groups were also seen with the consolidation of demands. After a series of petitions and protests, the government passed the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (or PWD Act), which reserved three percent of government posts for those in the PWD category.

So the year 1995 became a benchmark year for the DRM, which stands for the beginning of a new era altogether, in which people suffering from disabilities found visibility in educational institutions and government services, and finally, the Disability Bill was passed in both houses in 2016.<sup>6</sup> Although this is an extraordinary achievement, there are yet too many problems, countless exhausting litigation suits to build ramps in hospitals, discrimination and social exclusion faced by disabled people in workplaces and public spheres, modes of transportation being extremely limited for them, etc.

---

<sup>6</sup> Martand Jha, 'The History of India's Disability Rights Movement' (*The Diplomat Blog*, 21 December 2016) <<https://thediplomat.com/2016/12/the-history-of-indias-disability-rights-movement/>> accessed 14 November 2022

## RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016: LEGISLATIVE EVOLUTION

During the civil rights movement in the United States in the 1950s, the first thought that handicapped persons should have rights and be treated equally to all other citizens of the country ignited. Following India's involvement in the Asian Decade for the Promotion of Disability Rights, the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act (PWD Act) was adopted in 1995. The passage of the PWD Act is significant because it is the first time that it recognizes and protects the social and economic rights of people with disabilities. The PWD Act, on the other hand, was not enacted with a strong anti-discrimination and human rights foundation and in the act, disability was limited only to seven particular types of disabilities leaving behind every other kind of long-term illness such as intellectual disability.<sup>7</sup>

Following India's signing and ratification of the UNCRPD (Convention on the Rights of Persons with Disabilities) in 2007, the process of adopting new legislation to replace the 1995 Persons with Disabilities Act (PWD Act, 1995) began in 2010 to bring it into compliance with the UNCRPD. The Rights of PWD Act, 2016 (RPWD Act, 2016) was enacted by both chambers of Parliament after a series of consultative sessions and a drafting process. After getting presidential consent, it was notified on December 28, 2016. Respect for intrinsic dignity, individual autonomy, including the right to make one's own choices, and independence of persons with disabilities (PWD) are claimed to be implemented principles for PWD empowerment.

In the landmark judgement of *Union of India v Devendra Kumar Pant*, 2009<sup>8</sup>, it was for the first time that the minimum medical criterion required for disability was discussed and the oppressed felt a need for a new Act. After the enactment of the new RPWD Act, 2016 similar

---

<sup>7</sup> Jayna Kothari, 'The UN Convention on Rights of Persons with Disabilities: An Engine for Law Reform in India' (2010) 45(18) Economic and Political Weekly <<http://www.jstor.org/stable/25664414>> accessed 14 November 2022

<sup>8</sup> *Union of India v Devendra Kumar Pant* (2009) 14 SCC 546

kinds of petitions started filed such as *Purswani Ashutosh v Union of India*,<sup>9</sup> with similar issues if not meeting the minimum benchmark and hence not getting access to their disability rights.

## ANALYSIS OF THE RPWD ACT, 2016

### *The aim of the statute*

The RPWD Act was signed into law in December 2016. It wishes to promote and defends the educational, social, legal, economic, cultural, and political rights and dignity of individuals with disabilities. It applies to public, non-profit, and private organisations. It provides rules and timetables for businesses to guarantee infrastructure and service accessibility. It has implementation mechanisms such as Disability Commissioner's Offices at the federal and state levels, District Committees, Boards, and Committees for planning and monitoring the Act's implementation, and Special Courts at the district level, among others.

The preamble of this act clearly states that it aims to **uphold the dignity of every Person with a Disability (PwD)** in society and prevent any form of discrimination. But it is crystal clear that the act cannot carry through its aim, as the number of incidents reported every day of discrimination faced by disabled people is only increasing. It is structured in a way that the act leads to a lot of ambiguity and arbitrariness.<sup>10</sup>

### *Defining “disability” and analysing technical flaws in the definition given in the Act*

Long-term physical, mental, intellectual, or sensory impairment is defined as a person with a disability under the RPWD Act, 2016. The term “long term” used in the act hasn't been stated explicitly and fails to give a clear image of the bare minimum amount of period for which one has to be disabled to fall in the category of “long term” illness, If the author assumes that long term is at least one month, and an ophthalmologist or an audiologist has assessed vision or hearing and found that the assessed person is affected by visual or hearing impairment, will the

---

<sup>9</sup> *Purswani Ashutosh v Union of India* (2018) SCC OnLine SC 2335

<sup>10</sup> Suresh Bada et al., ‘The Rights of Persons with Disability Act, 2016: Challenges and opportunities’ Indian Journal of Psychiatry (2019) 61(4) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6482682/>> accessed 14 November 2022

person not be eligible for benefits, sanctions, or required facilities for at least one month? It will be better if the phrase 'long term' is removed from the statute. If a person has a "short-term" disability, it would not be "counted" and the act would be depleting them of their basic rights.<sup>11</sup>

"Speech and language disability" as stated in the Act<sup>12</sup> denotes a lifelong handicap caused by biological or neurological reasons, such as laryngectomy or aphasia that affects one or more speech and language components. Disabilities of speech and language should be considered separately because they are related but not identical and cannot be cited under the same clause due to various technical reasons, Aphasia does not cause speech difficulties, and laryngectomy does not cause language difficulties, these two impairments require their treatment. Secondly, laryngectomy is not the only cause of speech problems, speech impediment can also be caused by cleft palate or cerebral palsy and as these reasons are not mentioned in the act, a person who would have acquired speech disability due to any of the reasons stated above would be denied of his/her will not come under the ambit of the act and would deny of his disability rights.<sup>13</sup>

### *The rigid nature of the Act*

Visually impaired, hearing impaired, intellectually challenged, and orthopedically crippled people have traditionally been the focus of care. The current disability law, the Rights of Persons with Disabilities Act (RPWD Act 2016), recognises only 21 types of disabilities and doesn't leave scope for more possibilities. However, the RPWD Act of 2016 is a piece of paper. Its implementation differs from state to state. While some governments have begun to execute the law, more than 15 states, including well-known ones like Maharashtra, have failed to do so. In Job Employment, persons with disabilities account for less than 1% of corporate India's workforce. This is largely due to the lack of accessibility in India, which is essential for the participation of people with disabilities.

In Education, at an objective level, the Right to Education (RTE) Act 2009 and the Rights of Persons with Disabilities Act (RPWD) Act 2016 have helped create a comprehensive legal

---

<sup>11</sup> Raj Gupta (n 3)

<sup>12</sup> Rights of Persons with Disabilities Act 2016

<sup>13</sup> *Ibid*

framework for inclusive education. However, there are a few ambiguities about where children with disabilities (CWDs) should study and who should teach them. Inclusive education falls under the ambit of the Ministry of HRD while special schools are governed by the Ministry of Social Justice and Empowerment with no benchmarks for quality of education. That's why the recent UNESCO Report on Education 2019 clearly states three-fourths of children with disabilities at the age of five years and one-fourth between 5-19 years do not go to any educational institution.<sup>14</sup>

### **PANDEMIC'S IMPACT ON DISABILITY**

The pandemic acted as a double disadvantage on the already abused and hegemonized group of individuals. It made them more vulnerable to suffrage, and due to social distancing and quarantines, and most importantly the lockdown, they were left with no one to help them with their basic day-to-day needs. One such event which partially conveys the atrocities faced by the disabled during the pandemic is, Advocate Sanchita Ain filing a PIL to defend and enforce students with disabilities' basic rights to equality and life about the conduct of online lessons and tests by educational institutions during the Covid-19 epidemic. "The universities and colleges are conducting online classes during the pandemic without considering the various challenges faced by students with disabilities, meeting their access needs, and providing reasonable accommodations to them.

Students with disabilities are in a deplorable state with no access to lectures, study materials, or assistance for those students who need individualized support." said the plea. "While persons with disabilities have been struggling in every field during this pandemic and the issues of lack of digital accessibility and exclusion of persons with disabilities have never stared us in our face as during these times, the question of introducing inclusive technologies for a post COVID world in the field of education is the most crucial owing to the impact it would have on generations to come," the plea stated. "Denial of reasonable accommodation constitutes

---

<sup>14</sup> Arman Ali, 'Three years on, the implementation of the RPWD Act remains an issue' (*Linkedin*, 20 April 2020) <<https://www.linkedin.com/pulse/three-years-implementation-rpwd-act-remains-issue-arman-ali>> accessed 14 November 2022

discrimination under Section 2(h) of the Rights of Persons with Disabilities Act, 2016 (hereinafter, "RPWD C Act") and is thus a violation of persons with disabilities under Article 14 of the Constitution," it claimed.<sup>15</sup> This plea just showcases a very small aspect of the hardships by them on a daily routine basis and these hardships have been continuing for centuries and will continue until the act is amended and enforced with proper execution

Similarly, a United Kingdom government website stated that Disabled people were more likely than non-disabled people to say that the coronavirus hurt their well-being, specifically mentioning that it was worsening their mental health (46% for disabled people and 29% for non-disabled people), making them feel burdensome to others (25% and 10%), feeling stressed and anxious (67% and 54%), or feeling lonely (49% and 37%).<sup>16</sup> Furthermore, this article doesn't take disability as defined in the terms of the RPWD Act, 2016 but rather as "self-reported long-standing illness, condition or impairment that reduces their ability to carry out day-to-day activities." Hence, giving a very broad and open ambit to disability.

Also, the same article mentions that those with disabilities tend to be less hopeful than persons without disabilities about life returning to normal shortly; just around a fifth (20%) of handicapped people and over a quarter (27%) of non-disabled people believed this to be the case. Through the aforementioned data, we can infer that the continuous oppression faced by specially-abled people has made them look towards life from a negative point of view. It has also made them less optimistic for future growth as the law doesn't have enough prerequisites to fulfill their essential needs.

---

<sup>15</sup> 'Supreme Court directs registry to list PIL on rights of students with disabilities to an appropriate bench' (*Indian Legal Live*, 29 June 2021) <<https://www.indialegallive.com/constitutional-law-news/supreme-court-news/supreme-court-directs-registry-to-list-pil-on-rights-of-students-with-disabilities-to-an-appropriate-bench/>> accessed 14 November 2022

<sup>16</sup> 'Coronavirus and social impact on disabled people in Great Britain: February 2021' (*Office for National Statistics*, 09 April 2021) <<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/disability/articles/coronavirusandthesocialimpactsondisabledpeopleingreatbritain/february2021>> accessed 14 November 2022



## ANALYSIS OF JUDICIAL PRECEDENTS

There are various cases that directly or indirectly deal with the contention.

In the most recent case of *Rajneesh Kumar Pandey vs Union of India*<sup>17</sup> on 28 October 2021, Supreme Court held that specially-abled children have to be imparted education under special schools and special teachers. It is impossible for the “children who are disabled or suffer from any kind of disability or who are mentally challenged to be included in the mainstream schools”. Most importantly the court did not use the definition of “disability” as given in RPWD Act, 2016 as they considered the definition to be too narrow. They also affirmed that “The Rights of Persons with Disabilities Act, 2016 includes certain physical disabilities which may not be a warrant for getting admission in special schools” as disabilities such as blindness, deafness, and autism are not covered under the definition, hence to uphold the fundamental rights of these children, the court did not use the flawed definition of disability in the RPWD Act, 2016 and took cognizance of its loopholes.

In the cases of *Dalco Engineering Private Ltd v Shree Satish Prabhakar Padhye & Ors*<sup>18</sup> and *Fancy Rehabilitation Trust & Anr v Union of India & Ors*, the Supreme Court of India held that the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act 1995 did not apply to private companies on March 31, 2010. Both cases were presented before the Supreme Court at the same time, and they both attempted to overturn the same legal principle. An employee who had worked as a telephone operator for Dalco for over twenty years was fired after suffering a hearing impairment in *Dalco Engineering Private Ltd v Shree Satish Prabhakar Padhye & Ors*. In an earlier judgement, the High Court found that Dalco, while being a private corporation, was an "establishment" under section 2(k) of the 1995 Act and, as a result, had fired S. S. P. Padhye illegally. Even though the private companies didn't come under the act

---

<sup>17</sup> *Rajneesh Kumar Pandey v Union of India* (2021) SCC OnLine SC 1143

<sup>18</sup> *Dalco Engg. (P) Ltd. v Satish Prabhakar Padhye* (2010) 4 SCC 378

but this was wrongful termination under labour laws. As a result, the High Court ordered Dalco to rehire the employee in a different role with the same benefits.<sup>19</sup>

In the landmark judgement of *Disabled Rights Group v Union of India*, (2018),<sup>20</sup> DLI (Disability Law Initiative) filed this petition in the Supreme Court of India on behalf of Ms. Pooja Sharma, a wheelchair-bound student who was unable to continue her studies at a nationally recognised deemed university's law institute due to a lack of adequate facilities and reasonable accommodations for her special needs. The university, in particular, refused to adopt the student's dormitory toilet to accommodate a wheelchair, as well as provide a separate room for her or make assistance available when needed. The Supreme Court has requested the Indian Bar Council to give its thoughts. As a result of this lawsuit, India's Bar Council enacted a resolution in September 2011 ordering all Centers of Legal Education (law institutions) to make their courses accessible to those with impairments. "... the Bar Council mandates as a condition of affiliation, that a minimum of 3% reservation for the differently abled be implemented in law colleges in India," according to the resolution, and "The Council further feels that it is not sufficient to only provide for the reservation of seats for the differently abled." The goal of reservation would be defeated if the law school lacked the necessary resources to meet the diverse demands of differently abled students. It is not enough to just supply the same facilities as other students, since this may leave the differently abled student unable to complete his or her education, rendering the 3 percent reserve illusory and ineffective". As a result, the Bar Council decided to include the following clause in its guidelines defining the minimum infrastructure requirements for law schools<sup>21</sup>. This judgement further showcases how **reservation in itself doesn't suffice but needs structural support and practical implication to fulfill its purpose.**

---

<sup>19</sup> 'Indian Supreme Court Limits Application of Disability Discrimination Law' (*Equal Rights Trust Blog*) <<https://www.equalrightstrust.org/news/indian-supreme-court-limits-application-disability-discrimination-law>> accessed 14 November 2022

<sup>20</sup> *Disabled Rights Group v Union of India* (2018) 2 SCC 397

<sup>21</sup> 'Disability Law > Landmark Cases in Access' (*Disability Law Blog*, 12 November 2021)

<<http://disabilitylaw.org.in/disability-law/access/landmark-cases-in-access/>> accessed 14 November 2022

One of the most remarkable judgements on the RPWD Act, 2016 is of *Vikash Kumar v Union Public Service Commission & Ors*<sup>22</sup>, in which Dygraphia, often known as Writer's Cramp, is a handicap that the appellant suffers with. The appellant proclaimed himself to be a person with a baseline disability of 40% or more for the Civil Services Test (CSE) 2018 and demanded that the UPSC provide him with a scribe for the examination. The UPSC denied the plea because, according to the CSE Notification 2018, scribes may only be supplied to blind candidates and candidates with a locomotor handicap or cerebral palsy with a 40% impairment, and the appellant did not fulfill this condition. His result of the examination was withheld and his exam was cancelled. After the exhaustive petitions in the High Court, and letters to UPSC Tribunal, he finally moved to the Supreme Court to challenge the decision of the High Court. It was only after 2 years, the bench realized the flaw in the RPWD Act, and how the rigidity of the benchmark definition of disability could deprive a person of his/her basic fundamental rights.

Every government establishment is expected to offer "reasonable accommodation" and a conducive atmosphere to employees with disabilities under Section 20 of the RPWD 2016 Act, which was denied to the appellant in this case. Section 20(2) defines "reasonable accommodation" as "necessary and suitable adaptations and changes to ensure that individuals with disabilities have equal access to their rights as others."<sup>23</sup>

Another recent case of, *Ravinder Kumar Dhariwal vs The Union Of India*<sup>24</sup> on 17 December 2021, wherein the court ponders the question of mental illness as a disability. The court notes that due to discrimination and stigma faced in public spheres, people are not able to accept their disability and hence are not able to claim their disability rights. Also, part C of the judgement talks about the complex nature of mental health disorders and how an individual with some

---

<sup>22</sup> *Vikash Kumar v UPSC & Ors* (2021) 2 SCC 273

<sup>23</sup> Arparajita Verma, 'Review: Courts make important decisions about the Rights of Persons with Disability, dereliction of duty by government officials, invocation of sedition law, and the rights of LGBT community' (FAQTLY, 18 February 2021) <<https://factly.in/review-courts-make-important-decisions-about-the-rights-of-persons-with-disability-dereliction-of-duty-by-government-officials-invocation-of-sedition-law-and-the-rights-of-lgbt-community/>> accessed 14 November 2022

<sup>24</sup> *Ravinder Kumar Dhariwal v Union of India* (2021) SCC OnLine SC 1293

mental disability is more probable to misconduct by others. Hence, any sort of inquiry on an employee suffering permanent disability, due to his misconduct can be discriminatory.

### **PROBLEM WITH AFFIRMATIVE ACTION PROVIDED UNDER THE PWD CATEGORY?**

Though the act provides reservation in higher educational institutions, employment in both private and public sectors, special employment exchange, and special schemes/development programmes there arises common problems in all these, such as, the reservation provided does not exceed 4%(which is way too less compared to any other socially backward category), only jobs recognised by the ministry of social justice of the respective department for appointment reasons will be covered by the reservation policy, etc.<sup>25</sup>

“Free education for children with benchmark disabilities. – (1) Notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009 (35 of 2009), every child with a benchmark disability between the age of six to eighteen years shall have the right to free education in a neighbourhood school, or a special school, of his choice”<sup>26</sup>, as given under the Act has a structural defect in the premise of the argument. The word “benchmark disability” has too many intricacies involved in it and the word alone may be responsible for the disarmament of basic fundamental rights of a few individuals who may not fall under “benchmark disability” just because the disease that they are suffering from is not recognized or they are just not “sick enough”. In disability rights there exist an interconnection in the field of medical sciences and the law, where one who might be well accomplished in the latter, might not even know the basics of the other. The nuances involved in this interconnection of the two fields are too high and hence leaving a large grey area because of this grey area, handicapped individuals endure injustice and marginalization as a result of the statute laid down by the houses. Most judges, lawyers, and jurists in our country are completely unaware of disability rights and still are deciding upon the lives of these disabled humans whether they lie in the golden benchmark area or not. Almost every sector, e.g.- jobs, education, etc. in which

---

<sup>25</sup> ‘10 Facts about PwD Reservation Quota in Government Jobs’ (*Jagaran Josh*, 26 September 2016) <<https://www.jagranjosh.com/articles/10-facts-about-pwd-reservation-quota-in-government-jobs-1474893425-1>> accessed 14 November 2022

<sup>26</sup> Rights of Persons with Disabilities Act 2016

reservation is provided, faces similar issues and resulting in numerous PILs lining up in the old dusty files and exhausting litigation suits going for years and years.

In a hypothetical situation, a person X “diagnosed” with 39% visionary impairment, would lose his/her right for affirmative action solely by ostensibly not meeting the disability criteria of 40% which in lived experience would not be no different from his present position. The above situation clearly fails to create a level playing field for him/her and is a clear violation of article 14 and hence depicts the various issues in the affirmative action provided under the RPWD Act, 2016.

### **PRESENT CASE SCENARIO OF DISABILITY RIGHTS IN INDIA**

One of the highest populations of disabled individuals is found in India. They experience the most extreme manifestations of social marginalisation as well as the most extreme levels of poverty. The Sustainable Development Goals (SDG) Preamble, which notes that more than 80% of disabled persons in India live in poverty, reflects these facts. Disability discourse started to transition from an "object" to a "subject" perspective after the 2007 ratification of the UN treaty on Disability. With the adoption of a rights-based strategy, disability was no longer seen as a welfare or charity issue but rather as a right one. The Department of Empowerment of Persons with Disabilities under the Ministry of Social Justice & Empowerment started the Accessible India Campaign to provide a barrier-free environment for the autonomous, safe, and dignified life of Persons with Disabilities.

Data, statistics, and monitoring procedures nearly invariably lack a significant amount when it comes to disability. People with disabilities have unwittingly been left out of development initiatives as a result of their lack of visibility in the dominant development narrative. Due to the lack of evidence, policymakers and practitioners frequently ignore people with impairments. It has always been challenging to accurately estimate the population of people with disabilities, and things might soon grow considerably more challenging. The Census presents a chance to gather fair and reliable data that can support providing services to persons who require them, regardless of their impairments. However, this ambition is compromised by the Census of 2021's

digitization. People with impairments in India are now at a disadvantage due to the shift to a computerised form of the census.

Discrimination against people with impairments persists despite all legal safeguards being in place. This is a result of the above schemes and policies' inconsistent execution. Disability stereotypes and ingrained societal prejudices are reflected in the lack of understanding of handicapped people's rights. The key obstacles preventing people from interacting in the social sphere—lack of access to education, health, livelihood, and possibilities for participation—remain, and as a result, they are forced to be excluded from the dominant development paradigm. Every handicapped person has different demands because of the different levels, natures, and types of disability and the law is not able to fulfill those demands.<sup>27</sup>

## CONCLUSION

After the UN convention on disability rights and its ratification on 01/10/2007, finally, the RPWD Act came into existence with broader aims and a better understanding of the topic but the aims were never achieved due to lack of implementation, structural defaults in definition, technical difficulties, ambiguity and most importantly lack of understanding about the topic in the judiciary. For centuries the conventional people who limp or who used a wheelchair, basically the ones whose illness was physically visible, were known as disabled, and after 2016 when the act came into existence, the actor tried to give a broader meaning to disability but its attempt was not successful due to the various reasons stated above

The biggest steps the judiciary could take for the development of disability rights is removing the specific limit on the kinds of disability and leaving the scope open to all kinds of “long term or short term illnesses” that may arise in the future and recognise all the possible disabilities that are/ are not recognised by medical science. Another necessary step that needs to be taken is decreasing the benchmark on reservations from 40% to 20%-15%. Thus, this needs to be

---

<sup>27</sup> Arman Ali, '75 years of Independence: Disability should no longer be an afterthought' (*The Time of India*, 13 August 2022) <<https://timesofindia.indiatimes.com/blogs/voices/75-years-of-independence-disability-should-no-longer-be-an-afterthought/>> accessed 14 November 2022

examined afresh in the light of the constitution which is premised on the basic tenets of equality and freedom (Article 14 and Article 21).