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**Article 21 Vis-À-Vis the Rights of Persons with Disabilities Act Of 2016: with
Special Emphasis on the Measures for the Capacity Improvement of Disabled
Children**

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Abstract:

The goal of education is to shape a person in a way that brings out their greatest qualities so they can contribute to society development. India's educational system has developed through time. Vedic educational system of education was distinct from the modern one. After India's independence in 1947, there has been a focus on the significance of education. The Right to Education Act, which was passed after the Indian Constitution was initially enacted, serves as an illustration of how seriously the government is taking this matter. India and the remainder of the world see education as a tool to end unemployment, improving the quality of life, and alleviate poverty. Whenever it involves the subject of society's weaker, more vulnerable members, education becomes far more important. The Indian Constitution declared everyone's right to education to be a fundamental human right. Nevertheless, notwithstanding this basic guarantee, there are still people in society who've been impeded by a disability and are refused right to schooling, making the creation of an all-encompassing education system necessary. Nevertheless, despite this basic guarantee, there are still people in society who are hampered by a disability and who are refused access to education, making the creation of an all-encompassing education system essential.

The researcher analysed the Rights of Individuals with Disabilities Act (RPWD Act) 2016 with a special focus on the sections pertaining to the capacity improvement of persons with disabilities in the current investigation. The researcher critically reflected on whole articles in the RPWD Act 2016, offered a compilation of Chapter III, Chapter IV, Section 29 of Chapter V, Section 31 and 32 of Chapter VI, and Section 42 of Chapter VIII of the act, as well as assessed the laws pertaining to the capacity improvement of disabled people.

Key Words: Rights of Persons with Disabilities Act 2016, Capacity development.

Introduction:

The Indian Constitution is the supreme law of the nation. The constitutional freedoms of the citizens of this country were safeguarded. The Right to Equality is the foremost significant and first basic right in terms of priority. The right to equality is a human right as well as a basic one. According to Article 1 of the 1948 Universal Declaration of Human Rights, “*All human beings are born free and equal in dignity and rights*”. Each individual is guaranteed “*Equality before the law and Equal protection of the law*” under Article 14 of the Indian Constitution.¹ The “*right to life and personal liberty*” is another guarantee provided by Article 21 of the Indian Constitution²; these two rights are extended to individuals who are disabled.

In *Jeeja Ghosh v. Union of India*³, the Apex Court decided that PWDs have a fundamental freedom to live in dignity, free from discrimination, and that nobody has the right to infringe on that privilege.

The RPWD Act 2016 is a by-product of the UNCRPD (UN Convention on the Rights of Persons with Disabilities). On September 13, 2006, the United Nations General Assembly approved the Convention on the Rights of Persons with Disabilities.

India adopted the UNCRPD on October 1, 2007, and is a signatory to the treaty. The UNCRPD's regulations needed to be implemented in India, therefore the RPWD Act was passed by the Indian Parliament in the country's 67th year of independence.

As per the Act, disabilities were divided in to six categories, namely, Physical disability, Intellectual disability, Mental behaviour, Disability caused due to chronic neurological conditions and blood disorders, and Multiple Disabilities (more than one disability), such as blindness and deafness.

I. AMALGAMATION OF THE PROVISIONS CONCERNING THE EDUCATION OF PERSONS WITH INFIRMITIES:

In accordance with Section 16 of Chapter III of the RPWD Act 2016,⁴ titled “Duty of Educational Institutions,” it's the responsibility of the suitable governments and regional self-governments to make sure that almost all educational establishments they finance or recognise offer curricula to children who have disabilities, accept them without bias, and give them access to learning and equality of opportunity in sports and leisure activities. In order to maximise the educational and social growth of these youngsters, the suitable governments and regional self-governments must ensure that the building, campus, and modern amenities in these establishments are available for the children who are disabled. They should also keep in mind that necessary arrangements are made in according to the specific needs of such youngsters. They must make sure that education is provided to pupils who are deaf, blind, or who have both in these organisations in the most appropriate languages, modes, and means of communication. They should also make sure that they make an early prognosis of any specific learning disabilities in children and take the necessary

¹ INDIA CONST. art. 14.

² INDIA CONST. art. 21.

³ *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761

⁴ Rights of Persons with Disabilities Act, 2016, S. 16, No. 49, Acts of Parliament, 2016 (India).

didactical or other measures to address these disorders. In pursuance of this section, the relevant government agencies and local SGs should make sure that these organisations oversee the involvement of disabled kids and their advancement in accordance with their level of achievement and accomplishment of their education and that they provide transportation services to such children as well as to the assistant of the disabled kids who need extra support.

According to Chapter III's Section 17⁵, the adequate governments and LSGs should survey school-aged children every five years to identify those who have disorders, determine one's special needs, and identify the scope to which those needs are being met. According to this clause, the first study must be carried out within 2 years after the RPWD Act's commencement date. According to this section of the act, they must set up a significant amount of educator training facilities, prepare and hire teaching staff, including lecturers with disabilities who are qualified in sign language and Braille as well as teachers who have received training in instructing students with intellectual disabilities. Pursuant to this section of the act, appropriate authorities and LSGs are required to provide reading material, other educational materials, and adequate mobility aids without charge to students with standard learning difficulties until the age of eighteen years. In addition, they must offer scholarships to learners with benchmark disabilities in appropriate situations and alter the syllabus and evaluation tools appropriately to meet the requirements of learners with disabilities. According to this clause of the statute, schools is indeed their responsibility to encourage research that will aid students who are disabled learn more effectively, and they should also take any other necessary actions.

According to chapter III's section 18⁶, the national and local governments shall take the steps necessary to guarantee that disabled individuals have the same opportunities for adult education and continuing education as those without impairments. To advertise and defend the rights of all individuals with impairments to have a diverse culture and to take part in extracurricular facilities equivalently with everyone, the adequate government and local authorities must facilitate participation in scouting, dancing, art classes, outdoor camps, and adventure activities, according to Section 29 of Chapter V of the Act.⁷ They must create technologies, adaptive equipment, and tools to make it easier for people with disabilities to attend and be included in leisure activities. They must also restructure the programs in cultural and artistic disciplines to enable participation and accessibility for individuals with disabilities.

To advertise and defend the rights of all people with impairments to have a diverse culture and to take part in extracurricular facilities equivalently with others, the adequate government and local authorities must facilitate participation in scouting, dancing, art classes, outdoor camps, and adventure activities, according to Section 29 of Chapter of the Act.⁸ They must create technologies, adaptive equipment, and tools to make it easier for people with disabilities to attend and be included in leisure activities. They must also restructure the programs in cultural and artistic disciplines to enable participation and accessibility for people with disabilities.

All Govt colleges and universities as well as other educational organizations having received aid from the Government are required to set aside at least 5% of their seats for people with benchmark disorders, and those people should receive a 5-year age relaxation for enrolment to higher education institutions, as per Section 32 (Reservation in Higher Educational Institutions) of

⁵ Rights of Persons with Disabilities Act, 2016, S. 17, No. 49, Acts of Parliament, 2016 (India).

⁶ Rights of Persons with Disabilities Act, 2016, S. 18, No. 49, Acts of Parliament, 2016 (India).

⁷ Rights of Persons with Disabilities Act, 2016, S. 29, No. 49, Acts of Parliament, 2016 (India).

⁸ Supra note 7, at 2

Chapter VI.⁹

According to Section 42 of Chapter VIII (Duties and Responsibilities of Appropriate Governments)¹⁰, the suitable government is obliged to ensure that all audio, print, and electronic media are available in accessible formats so that people with disabilities may use them. Access to electronic media for individuals with disabilities should be made possible through the use of close captioning, sign language interpretation, & auditory description.

II. ANALYSIS OF THE PROVISIONS REGARDING THE EDUCATION OF PERSONS WITH DISABILITIES

The relevant governments are required to protect the rights of people with disabilities in accordance with the RPWD Act's provisions. Disability-based injustice and deprivation should not exist, and governments should provide appropriate accommodations for people with disabilities. The government ought to ensure that all children who are disabled have unrestricted access to the freedom to express themselves, as well as the help they require depending on their age and impairment.

Without discrimination in admittance, encompassing education must be provided by academic institutions that are supported or recognised by the appropriate local or federal authorities. Additionally, educational institutions should make their campuses, buildings, as well as other infrastructure approachable to children who are disabled. It is important to make accommodations for each student's unique requirements. They should offer resources for the early detection of certain learning difficulties and take appropriate action to address these disabilities. It is important to monitor these pupils' participation and progress, and to offer mobility options. Additionally, it is the responsibility of the relevant municipal and federal governments to take the necessary steps to guarantee that people with disabilities can participate in adult education and continuing education programmes on an equal basis with those without impairments. It is important to adapt the curricula and assessment process to meet the requirements of students with impairments. The institutions should actively link disabled people with markets, particularly for those who have intellectual, cognitive, and behavioural impairments as well as autism. Disabled people must be involved in all forms of training skills programmes and projects.

A cultural life and the opportunity to engage in leisure pursuits like others ought to be made available to disabled individuals by the competent authorities through programmes like dance, scouting, as well as other activities. It is important to adapt the culture and artistic programs so that everyone may engage and enjoy them.

Every child with a benchmark disability until the age of 18 is entitled to free education in conditions that are appropriate in local public schools or special schools, according to the legislation. For enrolment to institutions of higher learning, individuals with benchmark disabilities shall have a 5-year age waiver and at least 5 % of the seats at all government higher education institutions and colleges and universities getting government financing. Accessibility for people with impairments must be ensured by making material available in auditory, print, and digital media.

III. JUDICIAL APPROACH

The Supreme Court is regarded as the protector of the Constitution and the rights guaranteed by it. In *Mohini Jain v. Union of India*¹¹, the Supreme Court of India upheld the constitutional protection of the right to education as a fundamental freedom. It was also determined that a right to life is

⁹ Rights of Persons with Disabilities Act, 2016, S. 32, No. 49, Acts of Parliament, 2016 (India).

¹⁰ Rights of Persons with Disabilities Act, 2016, S. 42, No. 49, Acts of Parliament, 2016 (India).

¹¹ *Mohini Jain v. Union of India*, AIR 1992 SC 1858.

incompatible with a right to education.

Later on the Supreme Court also restated the basic right to education under Article 21 the subsequent year in the lauded decision of *Unni Krishnan v. State of Andhra Pradesh*¹². In response to this ruling, the 86th Constitutional Amendment Act of 2002 was passed, inserting Articles 21A and 51A(1) (k)¹³.

The Supreme Court recognised the need of providing education to children from educationally disadvantaged sectors, including the poor, depressed classes, Dalits, tribals, and minorities, in *Bandhua Mukti Morcha v. Union of India*¹⁴. It further stated that giving these kids a free education was vital for the "stability of the democracy, social cohesion, and the eradication of social conflicts." As a result, even before the passage of Article 21A, the need of social equality in education was established.

The Uttarakhand High Court recommended a framework in the case of *Kamal Gupta v. State of Uttarakhand*¹⁵, allowing admission for kids with disabilities in accordance with data on aided and unaided schools that have the resources to care for them. Nevertheless, it is evident that following the RPWD Act's implementation, all schools are compelled to adhere to the demands for fair accommodations. Courts have kept using the provisions of the prior Act to define the extent of education for disabled children even though the Act came into force.

"19 A statutory duty has been cast upon the respondents to ensure that all educational institutions, funded and recognised by them, provide inclusive education to children with special needs and raise the requisite infrastructure to serve that purpose. The respondents have, in fact, been directed to ensure that this process of inclusivity of disabled children begins by ensuring that they are admitted in educational institutions without discrimination, and are granted equal opportunities to partake in activities with other children. The respondents are also obligated to put in place and promote adequate measures in furtherance of the objective to attain inclusive education for children with special needs by inter alia facilitating research to improve the methodology adopted to teach them and monitoring their overall progress within the existing educational system."

The Delhi High Court then assessed the extent of the RPWD's liabilities in *Syed Mehedi v. Government of Delhi*¹⁶, where the Court partially carried out the analysis outlined in Part II of this article & acknowledged the legal force of the requirements imposed by section 16¹⁷ & section 17¹⁸. The RPWD Act's responsibilities under Section 16 must be read into the RTE Act's customs and guidelines in order to guarantee that every single one school is substantively complying with the Act of 2016 statutory interpretation, even if the Court interpreted the requirements of the RTE Act & RPWD Act jointly.

IV. CONCLUSION AND SUGGESTIONS

By enacting Article 21A, which acknowledges the right to education as a basic right, the Nation recognised the constitutional responsibility to ensure each child's right to a primary education. There is no cause to exclude adolescents who have disabilities. Children who are disabled are denied access to their society as well as the opportunity to integrate into society due to restricted schooling. To guarantee that education accessibility is meaningful, the State must guarantee both access to a wider educational environment and acceptable adaptation of the common environment.

¹² *Unni Krishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178.

¹³ INDIA CONST. art. 51A(k).

¹⁴ *Bandhua Mukti Morcha v. Union of India*, 1997(10) SCC 549.

¹⁵ *Kamal Gupta v. State of Uttarakhand*, 2018 SCC OnLine UTT 677.

¹⁶ *Syed Mehedi v. Government of Delhi*, 2019 SCC OnLine Del 9015.

¹⁷ *Supra* note 4, at 2.

¹⁸ *Supra* note 5, at 2.

It is necessary to upgrade the housing options so that the kid or their parents have the option of choosing an institution that provides specialised education.

The RPWD Act is vital for guaranteeing that the capabilities of children who are disabled are improved. The researcher used the RPWD Act of 2016 in this analysis. Numerous measures are included in this program for the educational growth of pupils with impairments. According to the RPWD Act 2016's requirements, persons shall not be treated unfairly or deprived based on their talents or impairments. According to their age and impairment, persons with disabilities should get the appropriate level of support. The academic institutions supported or acknowledged by the competent governments should offer proper accommodations taking into account the specific requirements of the pupils. Specialized skill-training initiatives must be made available to individuals with disabilities who have links to the market, especially to those who have autism, developmental disorders, cognitive impairments, and multiple disabilities.

For adolescents with impairments, the majority of the capacity improvement initiatives in this policy are standard. There are just several regulations that deal with certain infirmities. Children with impaired eyesight and blindness are taken into account by a few of the requirements. A child with a particular condition will have respective requirements than other children with impairments in terms of schooling and career. The current demand is to adapt academic requirements while taking into account the type of difficulties experienced by children who are disabled. A kid may have a significant, severe, moderate, or slight impairment. Making specific arrangements in the school system based on the severity of impairments will benefit special educators, students with disabilities, and their caregivers. The inclusion of all these measures in this Act would greatly enhance special and inclusive education. However, the policies should be revised to better meet the unique requirements of kids with different impairments.

In India, every child has a fundamental right to a quality education. It is a fundamental right that needs to be granted to everyone in order for the country to prosper. Such regulations provide students, particularly those with impairments, access to the vast body of information. Several developments in Indian education are notable ones. In order to better understand how to increase the ability of students with special needs, the researcher examined various Chapters of Act of 2016, with special emphasis on Chapter III, IV, V (Section 29), VI (Sections 31 & 32), & Section 42. There are generic provisions for all disabled children in these rules instead of special provisions for the pupils based on their unique needs and disability specifications.

Gandhiji asserted that education "draws out the best in child and man throughout, in body, mind and soul." It's critical to understand that PWD integration can only be possible if society accepts them & treats individuals equally. Prominent non-disabled individuals who hardly interact with disabled individuals in public spaces sustain the social prejudice against them. Thus, effective participation is crucial for enabling people with impairments. Instead of focusing on impairment, we should emphasise ability.