

ACCORDING REALITY TO DISABILITY RIGHTS: ROLE OF THE JUDICIARY

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I. Introduction

In the traditional functional division between the various organs of the legal system, the role of the judiciary comes into play once the statute is enacted. In the process of interpretation of various statutes, the judiciary promotes or impedes the objective of a law - a process which is of special significance in the context of social change. The judiciary in the realm of disability rights has the interpretational choice of either furthering the cause of disability rights or endorsing the present social perceptions on disability. Needless to add that the language of the statutes and the legislative choices made in them have a significant bearing on how the courts operate.

For long, both the social and legal perceptions on disability have been just *largesse* oriented. Disability was a condition which invited charity and philanthropy. The assertion of entitlements and rights was seen as foreign to the bearers of this condition. Even the Indian Constitution which has an elaborate Bill of Rights categorised law making on disability under the head of "relief for the disabled and the unemployable."¹

The condition of disability have been dealt with by legislations in two kinds of situations: One, which determines compensation on the occurrence of disability-be it on the road or at the work place. The Motor Vehicles Act, 1988 and the Workmen's Compensation Act, 1923 are two statutes illustrating such like disability related legislations.² The second situation

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1. Entry 9 of List II of the Seventh Schedule of the Constitution of India.

2. The context gives rise to a fair degree of conflict which courts are required to adjudicate, decisions have in the main been liberal in awarding disability pension and compensation. Some judicial decisions which illustrate this approach and wherein the courts turned down all efforts at non-grant of disability pension are: *Virendra Kumar v. Union of India* (1981) 1 SCC 485; *Anand Bihari v. Rajasthan State Road Transport Corporation* (1991) 1 SCC 731; *Gurnam Singh v. Union of India* 1992 Lab IC 1594; *Gurdas Singh v. Union of India* 1994 Lab IC 2170; *Joginder Singh v. Union of India* (1995) 30 *Administrative Tribunal* cases 637; *Rajanna v. Union of India*, JT 1995 (3) SC 632; *Shashi Kumar Mishra v. Union of India and others* 1996 Lab IC 881; *M.*

of disability law making is when persons are disqualified from undertaking particular activities due to disability. These disqualifications may be contained in the admission regulations of educational institutions or in the norms with regard to medical fitness in recruitment rules and employment regulations.³

Each of these disability related laws have a crucial bearing on the legal status of persons with disability. The choices of interpretation taken by the judiciary in the adjudication of these laws would provide useful insights on its role. The aforesaid statutes, rules, regulations have not been formulated with the rights perspective. They aim only to legally manage the condition of disability, be it by compensation, exclusion or relaxation. Howsoever, important these laws may be, they are not the concern of this article which focusses on the role of the judiciary in the realisation of disability rights in the context of the Indian Constitution, Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act 1995 (hereinafter PWDA) and other disability laws.

II. Constitutional Remedies for Disability

It was mentioned at the outset that ordinarily the role of courts comes into play subsequent to the enactment of a legislation. Article 13 of the Indian Constitution makes a state action invalid if it is in infringement of the fundamental rights—a process which has been further sharpened with the advent of public interest litigation. Actions in public interest have been filed when the ground level situation of a particular individual or

Venkata Reddy v. Union of India 1996 Lab IC 1877 and *Piar Chand v. Union of India* 1996 Lab IC 445. Court policy on compensation for disability is also in the main holding for the persons who acquire disability. Some cases which exemplify this attitude of the court are: *Harvinder Choudhary Srivastava v. Union of India* 1995 (6) SCALE 758; *R.D. Hattangadi v. M/s Pest Control (India) Pvt. Ltd.* JT1995 (1) SC 304. In *Narsayya Ashanna v. Tata Robins Frazer Ltd.* 1993 Lab IC 1397, the High Court set aside the Commissioner's order which denied the workman compensation because the application was time barred. And in *Nandakumar v. Managing Director TPTC* 1996 (2) SCALE 308, the Supreme Court set aside the order of the High Court by which even the no fault compensation was not awarded to the petitioner because it was his negligence which caused the accident.

3. The following cases demonstrate the kind of issues which arises before courts on this aspect. In *Jai Shankar Prasad v. State of Bihar* JT 1993(2) SC 356, the appointment of the respondent was challenged because he was blind. The challenge was thwarted by the Supreme Court because the respondent was performing tremendously well and faring better than others. However, in the *State Bank of India v. G.K. Deshak* 1993 Lab IC 1995 the Supreme Court did not approve of the High Court overruling the opinion of the medial specialist and ordering the absorption of the respondent on humanitarian grounds.

group is in an infringement of the fundamental rights guaranteed under the Constitution. These actions have been filed before the high courts or Supreme Court under Articles 226 and 32 for issuance of appropriate writ order or direction for remedying the deprivation and upholding the right. Though not in large numbers, actions in public interest have been filed to assert the rights of persons with disability. The response of the judiciary to these actions has been sympathetic but not radical.

In the *National Federation of the Blind* case⁴, the Supreme Court was activated so that the Union Public Service Commission may be directed to allow blind persons to compete in the exams for the Indian Administrative and Allied Services. The petition was allowed by the Court. A result which was in no small measure dictated by the fact that the case was argued before the court by a dynamic young blind advocate.⁵ The court also acceded to the petitioners request to write the examination in braille script or with the help of a scribe. In the execution of the order, however, whilst a scribe was permitted to the blind candidate, the facility of taking the exam in Braille script was withdrawn as it would not be possible to distinguish the script of one person from that of another.

In *Ramchandra Tandi v. State*,⁶ the State of Orissa refused to accord recognition and financial assistance to a school for the deaf and dumb in order to avoid unnecessary financial burden. Responding to this contention, Justice Pasayat of Orissa High Court, found himself "perplexed, pained that the state has taken (the) absolutely untenable stand of financial instability and financial austerity"⁷, helping the physically handicapped to become self-supporting active members of the society was primary duty of State. The Court directed the state to grant recognition and financial assistance to the school within a fortnight of its order.⁸

In yet another context, the Bombay High Court did not find anything *mala fide* in state government's decision to permit large scale hysterectomies planned for young girls in a home for girls with mental retardation even as it was willing to be convinced on legal, scientific and other aspects of the matter. The court issued notice to the state government

4. *National Federation of Blind v. Union Public Service Commission* AIR 1993 SC 1916.

5. The judgement thus specially referred to the fact that Mr. Rungta (himself visually handicapped) has argued his case with utmost clarity. Mr. Rungta was fully conversant with all the relevant annexures to the petition. He referred to the relevant pages in the bulky paper book with perfect ease. We did not feel even for a moment that the case being argued by a visually handicapped lawyer. "Mr. Rungta's performance before us amply proves the point that the visually handicapped persons can perform the jobs entrusted to them with equal efficiency." *Id.* at 1919.

6. AIR 1994 Ori 228.

7. *Id.* at 229.

8. *Id.* at 231.

but not very much more happened on the petition.⁹

In *People's Rights Organisation v. Lt. Governor Delhi*¹⁰, brought to the fore the problem of some students of the Government School for Blind, Delhi who were thrown out of the hostel and not allowed to appear for their senior secondary examinations because they complained against the living conditions of the hostel. The Delhi High Court decried the fact that the students were being punished for their activism. It asked the school to forward the names of the students to the Board to enable them to appear for the exam. It also asked that the school should continue to provide facilities like food and clothing which were supplied to them earlier.¹¹

Public interest actions have also been filed, bringing to the notice of the courts the abysmal living conditions in a number of institutions for persons with mental disability.¹² In line with other public interest petitions of this nature, courts have asked for investigation of the ground level situation. In some cases even guidelines on the living and treatment conditions, education, training and rehabilitation facilities to be present in the aforesaid institutions were issued.

The aforesaid orders were primarily fire fighting in nature. They provided relief in individual cases but did not, except in the National Federation for the Blind case, usher in structural change. This could be because even as persons with disability were asserting their fundamental rights before the courts and the judiciary in the main was not vindicating rights but doing good deeds. A situation is further complicated in the absence of a statute recognising the rights of persons with disability.

III. Onset of the Disability Code

The no legislation position stands altered today. At this juncture there are three major legislations on the statute book which have a significant bearing on the rights of persons with disability. The Rehabilitation Council of India Act, 1992, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 and the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. The Rehabilitation Council of India Act was the first to be inducted on the statute book. The statute aimed to usher in professionalisation in the field of rehabilitation services and was to that extent controversial from a disability rights

9. As reported in *Times of India* p.6, 29 June, 1994 (Delhi).

10. Civil Writ Petition No. 4690 of 94.

11. The order dated 9.12.1994.

12. See herein *B.R. Kapoor v. Union of India* AIR 1990 SC 662; *Rakesh Chandra Narayan v. State of Bihar* 1986 (Supp) SCC 576 and AIR 1989 SC 348.

perspective. Whether this controversy could have been a basis of a constitutional challenge is an issue, which should be discussed later in this article. At first, the kind of cases which have been filed under the Persons with Disabilities Act will be discussed and then to ponder on some key formulations in the statute whose potency would be greatly determined by judicial interpretation. A similar exercise would be undertaken in relation to the National Trust Act.

A. Persons With Disabilities Act - A Case Update

Only four years have passed since Persons with Disabilities Act has come into force. The statute has installed the Chief Commissioner and the Commissioners as its authorities of enforcement at the centre and in the state respectively. Consequently, a majority of petitions for enforcement have been filed before these authorities. A few cases, however, have reached the higher courts and the first level indicators are disability favourable.

Section 3 sub section 2(l) requires the government to nominate to the central co-ordination committee five persons, as far as practicable, being persons with disabilities to represent non-governmental organisations or associations which are concerned with disabilities. Section 57 of the Act empowers the central government to appoint a Chief Commissioner for persons with disabilities. A person is qualified for such appointment if he has special knowledge or practical experience in respect of matters relating to rehabilitation. The central government whilst making nominations under these two statutory provisions chose persons who did not fulfil the statutory requirements. These appointments were challenged in the Supreme Court in *Javed Abidi v. Union of India*.¹³ Upon this challenge the central government withdrew the nominations it had made and agreed to appoint persons in strict fulfilment of the statutory requirements. The crucial omission in this appointment was that the persons chosen as non-governmental representatives as well as the individual appointed as Chief Commissioner did not have experience in the field of disability.

The *Abidi* case¹⁴ also questioned the absence of ambulifts at airports and aisle chairs in aeroplanes. These lapses, the petitioner contended, caused him to be physically lifted up first to the aeroplane and then to his particular seat - an exercise which was an affront to his dignity and an infringement of the right granted to him under section 44 of the Persons with Disabilities Act.

Section 44 requires establishments in the transport sector to adapt rail compartments, buses, vessels and air crafts in such a way as to permit

13. The challenge was filed in *Javed Abidi v. Union of India*, writ petition © No. 326 of 1997.

14. *Ibid*.

easy access to persons with disability. This obligation, however, has to be fulfilled by the authorities within the limits of their economic capacity and development. The Supreme Court made its ruling in this case in continuous awareness of this limitation. Consequently, it was not willing to enunciate the right to access in absolute terms. At the same time it did not agree to the government using financial constraints as a shield against all disability related duties. In a kind of compromise between the state and the petitioner, ambulifts were acquired for all major airports. It also agreed to provide aisle chairs in the aeroplanes.¹⁵

The petition also asked for extending the facility of concessional air tickets already granted to blind persons, to persons with locomotor disability. This issue in the petition raised dangers of breaching disability solidarity. This is because the Attorney General in reply argued that since the State could not grant this concession to all persons with disability in fulfilment of the equality mandate, it could withdraw it from persons with blindness. This consequence was, however, averted and the court settled the matter by asking the government to provide the concession to persons with 80 percent locomotor disability.¹⁶

The Persons with Disability Act also provided the basis for letting a father to have a posting which would keep him at the place from where his son could access education and training facilities. The disability of the son also became the basis for the Delhi High Court to direct the government to make a house allotment to the father on the ground instead of the third floor of governmental quarters.

Key Formulations of the Act

The cases described above again demonstrate that courts have not as yet started to evolve a jurisprudence of disability rights. The issues raised are being decided on a case to case basis and sympathy rather than entitlement is determining the decision of the courts. Yet, if courts are to perform an activist role in the realisation of disability rights, the need for a jurisprudence of these rights cannot be gainsaid. On a close examination of the statute, the judicial interpretation of the following provisions and formulations in the Persons with Disability Act to be of crucial importance in the realisation of disability rights.

Right to Education

Section 26 of the Act enjoins appropriate governments and the local authorities to ensure that every child with disability has access to free

15. *Javed Abidi v. Union of India and others* AIR 1999 SC 512.

16. *Ibid.*

education in an appropriate environment till he attains the age of 18 years. It is also to endeavour to promote the integration of students with disability in the normal schools. Along side this statutory emphasis is the social fact of normal schools denying admission to persons with disability on the reasoning that they lack the infrastructure and personnel to teach such children. These facilities would not be created in ordinary schools unless they have students with disability. Acceptance of the above reasoning is thus a negation of the statutory mandate and it is here that courts have a crucial role to play. The courts possess the power to authoritatively direct schools and governments to fulfil the mandate of the Act and ensure that inclusive education happens both in form and substance.

In *K.P. Unnikrishnan v Union of India*,¹⁷ the Supreme Court has laid down that the right to education is embedded within the right to life and personal liberty. A number of vulnerable groups are denied this right on facetious reasons. It is only if such like reasons are not accepted as defences by the judiciary when persons with disability assert their rights, can the promise made under section 26 become a reality.

Two decisions of the Gauhati¹⁸ and Calcutta High Court¹⁹ have a significant bearing. In both high courts, persons with disability filed petitions seeking the activation of section 39 of the Persons with Disabilities Act. Section 39 of the Act enjoins that there be 3% reservations of seats in government and government aided educational institutions. The Gauhati High Court turned down the petition on the ground that no mention of reservation of seats is made in the education chapter of the statute. Section 39 has been included in the employment chapter. This necessarily implies that if any reservation was being contemplated it was being done in relation to the non-teaching posts in such institutions. Further, the 3% reservation has been extended to all persons with disability. This would mean, said the court, that even persons with mental retardation can demand admission in medical college. As such a consequence was evidently undesirable, the court held that the appropriate governments had not committed any illegality, unconstitutionality or arbitrariness in not providing the reservation for person with disability.²⁰

The Calcutta High Court²¹, on the other hand, took a different view of the matter. The High Court was required to pronounce on the reservation policy of the West Bengal government. The absence of reservations for persons with physical handicap in medical colleges, the court found, to be

17. (1993) 1 SCC 645.

18. *Binita Senapati v. State of Assam* AIR 2000 Gau 1.

19. *Deputy Secretary, Department of Health & Family Welfare v. Sachita Biswas* AIR 2000 Cal 202.

20. *Supra* note 18.

21. *Supra* note 19.

an infringement of both the Persons with Disability Act and the Constitution. This ruling of the court, first delivered by a single judge was later upheld by a division bench. The court also provided the modalities to be adopted in selecting candidates from the handicapped category. These two decisions dramatically bring to the fore the role that the judiciary can play in the realm of disability rights.

Mandatory Notification of Schemes

The strategy adopted in the Disabilities Act for the realisation of positive rights is to mandate the government to prepare schemes through which it can be done. Thus, under section 30 of the Act, appropriate governments have been directed to prepare a comprehensive education scheme which may provide, *inter alia*, for transport facilities, supply of books, uniforms, grant for scholarships etc. Under section 38, duty has been cast on appropriate government and local authorities to formulate schemes for ensuring employment and by section 42 schemes have to be made to provide aids and appliances to persons with disabilities. Insofar as the realisation of these vital rights can only occur if the proposed schemes are formulated, the absence of a scheme would need to be seen by courts as a ground for intervention. If courts leave the choice of making schemes to the discretion of appropriate government and local authorities then one of the most potent rights guaranteed by the statute would be rendered negatory.

The impact that judicial interpretation can have on this formulation has come to the fore in the decision of the Allahabad High Court in *National Federation of Blind, U.P. v. State of U.P.*²² The petitioner in this case applied for allotment of land and deposited the requisite form alongwith the registration charges. The petitioner was asked to deposit a shortfall in the registration charges before he could obtain possession of the land. The petitioner approached the state with a request to grant him concessional tariffs as required by section 43 of the Persons with Disabilities Act. The U.P. government turned down his request on the ground that section 43 required a scheme to be framed for concessional allotment of lands but no such scheme had as yet been formulated by the state. Upon this refusal, the petitioner activated the High Court. The High Court accepted the plea of the petitioner and ruled: "It was the obligation of the state government and all local bodies including the development authority to frame the scheme and notify the same. If they have not done so, they cannot take advantage of their own wrong."²³ The High Court

22. AIR 2000 All 258.

23. *Id.* at 265.

quashed the order of the Lucknow Development Authority demanding higher tariffs from the petitioner. It further directed the state government and the authority to frame a scheme within three months which both gave preference in allotment and concessional land rates to persons with disability.

The above said interpretation of the Allahabad High Court guarantees as rights all those entitlements on which schemes have to be formulated by the appropriate governments. The High Court has taken the line that the right is already there and the scheme is only a means for realising it. This interpretation evidently strengthens in a big way, the struggle for positive rights by persons with disability.

Within the Limits of their Economic Capacity and Development

The constraints of finance and development is a crucial concession allowed to governments in relation to a number of rights guaranteed to persons with disability. All these entitlements may not hold equal significance for persons with disability. Thus, section 25 makes the states' task of preventing the occurrence of disability subject to the limits of economic capacity and development. The limitation again comes to the fore when obligations are placed on the transport sector and the state for making transport and public roads and built environment disability accessible.²⁴ Section 68 of the Act requires the government to frame a scheme for payment of an unemployment allowance to persons with disability registered with special employment exchanges for more than 2 years without obtaining gainful occupation. This right again has been made subject to the limits of economic capacity and development.

In the *Javed Abidi* ruling²⁵, the Supreme Court did not interpret the import of this phrase but did seem to accept the defence at least partially. Hypothesising on this partial acceptance, it can be said that the governments shall not be allowed to use financial constraint as a complete justification. All that can be conceded is a staggered fulfilment of these positive rights. Whether the phrase would be similarly interpreted in all the contexts of the statute or some system of prioritisation shall be judicially interpolated remains to be seen.

The Commissionerate

As already mentioned the chief commissioner and commissioners have been created as the internal enforcement authorities by the Persons with Disabilities Act. Amongst others, section 58 of the Act requires the

24. Sections 43-45 of the Persons with Disabilities Act, 1995.

25. *Supra* note 15.

chief commissioner to take steps to safeguard the rights and facilities made available to persons with disability. Section 59 empowers the chief commissioner to *suo moto* or on an application look into complaints relating to deprivation of rights of persons with disabilities. Along with these monitoring duties, the statute also requires the chief commissioner to submit a report to the central government on the implementation of the Act. In the execution of the statutory mandate the chief commissioner and commissioners could well come into conflict with their appointing authorities. In such a scenario, the efficacy of these enforcement authorities will depend upon the extent to which courts uphold the statutory status and autonomy of the commissionerate.

For example, section 63 lays down that the Chief Commissioner and the Commissioners shall for the purposes of discharging the functions under this Act have the same powers as are vested in a court under the Code of Civil Procedure 1908. Clause (a) of section 63 confers on the Commissioners the power to issue summons and enforce the attendance of witnesses. Section 32 of the Code of Civil Procedure lays down the consequences which ensue when the summons issued by the court are not obeyed. Amongst consequences are the imposition of fine, the confiscation of property and even imprisonment. The crucial issue is: do the Chief Commissioner and the Commissioner have the power to issue enforceable orders of the above kind when their summons are not obeyed or do they have to go to an ordinary civil court and seek such a relief. Needless to say if the Commissionerate are seen to possess power of the first kind, their effectiveness as enforcement authorities is a lot greater than if they have to seek enforcement through ordinary civil courts.²⁶ Once again the answer lies with the courts.

B. National Trust Act

In contrast with Persons with Disabilities Act, the National Trust Act, 1999 has just about started to become operational. The Board to manage the Trust was only appointed in October, 2000 and the regulations for the Trust are still to be drafted. In this scenario, to speak of judicial interpretation and role of courts seems some what premature.

All the same, on an academic examination of the statute there are some questions on which intervention of the courts can be anticipated. The connotation of multiple disability and registered organisation could be disputed. Interpretational intervention will also be needed to find out the extent to which the embargo under sub section 5 of section 4 will subsist. The section lays down that no member of the Board shall be a

26. On the possible positions on this issue, see Jain and Jain *Administrative Law* 346 (1997).

beneficiary of the Trust during the period such member holds office. Will this embargo extend to benefits which were obtained when the person was not a member but continue during the membership period? What will be the position of programmes approved during a membership period though the benefits of the same ensued to a member subsequently? Another area of controversy could be the provisos to section 11(1)(b). The section allows bequests to be made to the Trust for the benefit of a particular person with disability. At the same time the provisos lay down that no donor can insist on the exclusive utilisation of the bequest for the beneficiary named by him.

On a generalised basis, the role the courts would play in relation to the statute will greatly depend upon the process of activation. The National Trust Act accords a major role to non-governmental organisations and parents groups, alongwith securing the interest of the most vulnerable amongst the disability groups. Courts could be activated to resolve conflicts between non-governmental organisations or between the NGO's and the Board. Intervention of the courts may also be required to ensure that the money set aside in the trust for persons with mental retardation, autism, cerebral palsy and multiple disability are in fact used for them in such a manner that the rights to life and personal liberty are fully developed. Both these conflicts do not require a similar kind of attitude from the courts. Whilst activism would be needed to ensure that the benefits of persons with disability are not tinkered with, rectitude would have to be practiced when the court is dragged into NGO politics.

C. Rehabilitation Council of India Act

As has already been mentioned, the Rehabilitation Council of India Act, 1992 was brought in to usher in a degree of quality control in the work of rehabilitation professionals. The statute adopted the same model of professionalisation as was existing for the medical and the legal profession. This means that only those rehabilitation professionals who possess degrees from universities and institutions recognised by the Council would be entitled to registration with the Council.²⁷ Persons not registered with the Council were expressly barred from functioning as rehabilitation professionals.²⁸ The statute, in fact, provided penal sanctions against all those who infringed this requirement of the law.²⁹ And herein lay the crunch.

Services in the rehabilitation sector developed due to individual enterprise. These pioneers in the field of disability taught themselves and

27. Section 13(1) of the Rehabilitation Council of India Act, 1992.

28. *Id.* at Section 13(2).

29. *Id.* at Section 13(3).

others in order to create those absent services which were needed for the education, training, habilitation and rehabilitation of persons with disability. The statute in no way recognised this learning acquired through experience; instead it solely privileged the learning imparted in educational institutions leading to a degree. In this non-recognition, the RCI Act went way ahead of both the Medical Council of India Act and the Advocates Act. The above said legislations recognised the personnel already working in the field till a certain period of time and the exclusive hold of the educated professional was ushered in gradually. Over a period of time, after a lot of hue and cry by the practicing rehabilitation professionals, the Rehabilitation Council has, through bridge courses³⁰ and other such mechanisms, registered with itself professionals who possess experience but do not have a degree.

All the same though courts were in no way activated through the entire controversy a moot question survives. What happens if the Rehabilitation Council of India were to move for the prosecution of a practicing rehabilitation professional who have extensive experience but does not have the requisite qualifications and is not registered with the Council? Will this action of the RCI survive if the prosecuted professional challenges the constitutionality of the Act? The constitutional challenge would necessarily raise questions on the education and training needs of persons with disability, and the absence of adequate number of rehabilitation professionals to provide such training. The adoption of a law will further eats into the educational rights of persons with disability and of course the livelihood rights of rehabilitation professionals who had been providing services in a difficult field well before the entry of state institutions and professionally trained rehabilitation professionals. The role the courts may play in the matter and the manner in which they were to adjudicate upon this controversy if it were ever to reach them could significantly influence the growth and development of rehabilitation services in the country.

IV. Conclusion

Ordinarily, an article on the role of courts in a particular field describes and analyses the judgement of courts in the chosen sector. Here, this route has not been taken because, *firstly*, the number of judicial decisions in the field of disability are too few to make a satisfactory evaluation and *secondly*, the manner in which legislations on disability have been drafted.

30. The Bridge course, according to the scheme, floated by the Council was aimed to give a one time opportunity to all those who had been serving people with disabilities to acquire the eligibility to register themselves with the Council by taking up a bridge course of one month duration.

The legislations have been aspirationally constructed but they do not lay down what would happen if these promises are not fulfilled. The judiciary is automatically relied upon to make the promises a reality. The extent to which the courts fulfil this expectation greatly depends on the kind of choices that individual judges make. In this article, an effort has been made to delineate those choices with a hope expressed that these choices are so made that they strengthen persons with disability in their crusade for equal opportunity, protection of rights and full participation.