

**QUANTIFIED DISABILITY AND THE INDIAN SUPREME COURT- A
LEGAL ROUNDUP OF THE OMKAR RAMCHANDRA GOND
VERDICT**

I) Prof. (Dr.) Abhijit Bhattacharjee

PRINCIPAL, JALPAIGURI LAW COLLEGE, UNIVERSITY OF NORTH BENGAL

II) Sakyasuddha Sarkar

Researcher, B.A. (HONS.) LL.B, LL.M, UGC NET, WEST BENGAL SET

Abstract

The issue of disability and the marginalization of the disabled population is probably a problem that started from the period of the Industrial Revolution. The primary question is about the bifurcation of the disabled and the so-called able individuals, and such bifurcation is required even to provide and protect the basic rights of the disabled population. The complication increases due to the variety of the nature of the disabled population and the presence of differences in the degree of disability. The Rights of Persons with Disabilities Act, 2016 tries to categorise the disabled population according to the needs and support that any particular segment requires. The concept of reasonable accommodation is also required in order to ensure the protection of the rights of the disabled population. But this entire discourse leads, almost inadvertently, towards the quantified model of disability, which can create unreasonable differentiation. The apex court in the Omkar Ramchandra Gond v. Union of India verdict tried to dilute the same, a most welcome step towards the proper integration of the disabled community.

Keywords:- 1) Persons with Disability; 2) Benchmark Disability; 3) Procedure as to classification of Disability; 4) Quantified Disability.

I) INTRODUCTION

In the words of Spinoza,¹ in the state of nature, the concept of collective good or bad, as the case may be, was absent, and hence the concept of sin was also inconceivable, as there was no good or bad in the ideological plane. This view can also be considered as a negative postulate, as, along with the absence of justice or injustice, in the state of nature, the entire population was preoccupied only with their own interests, which postulated the absence of any paradigm of both inclusivity and/or exclusivity in the discourse of justice.² As in the Spinoza's state of nature, no inclusion was there, so the absence of discrimination was also conspicuous.

The socio-economic target of India after it became a republic can be traced in both Part-III³ and Part-IV⁴ of the Indian Constitution.

The litmus test of Art. 14⁵ read with Art. 41⁶ of the Indian Constitution shall be applied to the disabled population of the land, and any policy which aims to ensure the protection of rights of the disabled population shall not be oblivious to these constitutional mandates.

This leads to another presumption in legal discourse, so far as the protection of the rights of persons with disability is concerned, which is a jurisprudential bias towards any anti-discrimination attitude, notwithstanding the impact of the same. This means that the entire discussion on disability is pointed towards the contact theory and attempt (sometime in a coercive manner) to integrate the impugned marginalized section of the society in the fabric of

¹ BENEDICTUS DE SPINOZA, ETHICS 145-146 (1st ed., True Sign Publishing House 2022).

² For paucity of space, it is not possible to take into cognizance the philosophical postulates of Spinoza in its entirety, but it can be safely pointed out that the concept of collective conscience about good or bad is a product of the organized state machinery, which creates discrimination also.

³ INDIA CONST. Part III.

⁴ INDIA CONST. Part IV.

⁵ INDIA CONST. art. 14.

⁶ INDIA CONST. art. 41.

the so called mainstream society,⁷ which is almost an inevitable logical corollary of the same, but admittedly with nominal or no success at all, at least in comparison with the adulation which this approach receives.

The protection of the rights of persons with disability, even in a highly competitive globalised economy, must not be discussed only through the 'Viability of Rights' as contemplated by Amartya Sen,⁸ but it must have a social gamut. Such social dimension shall not be governed by the 'Social Choice Theory'⁹ which can create confusing and sometime self contradictory outcomes, which has a potential to jeopardize the entire discussion on the issue of protection of the disabled population in general and the issue of integration and equal participation (not stricto sensu) of the disabled population, at least in the economic field, if not in the social fabric.

II) CONCEPT OF DISABILITY- A CONTEXTUAL ANALYSIS

The definition of person with disability as provided under Sec. 2(s) of the Rights of Persons with Disabilities Act, 2016,¹⁰ clearly envisages the creation of a separate strata comprising the otherwise able population, which invariably attracts the doctrine of 'Reasonable Accommodation'.

Now, as per Sec. 2(y) of the same Rights of Persons with Disabilities Act, 2016,¹¹ reasonable recommendation means a demand for adequate modifications and adjustments to include, or better to say accommodate, the disabled population of the land, within the mainstream social and economic fabric.

It can be submitted that this approach is prodigious in nature, in the negative sense of the term, as on one hand the statute creates a distinct strata (or a sub-strata at best) comprising the

⁷ Jasmine E. Harris, *THE AESTHETICS OF DISABILITY*, Vol. 119, No. 4 COLUMBIA LAW REVIEW (2019).

⁸ AMARTYA SEN, *THE IDEA OF JUSTICE* 358 (Penguin Books 2010).

⁹ *Id.* at 92.

¹⁰ The Rights of Persons with Disabilities Act, 2016, § 2(s), No. 49, Acts of Parliament, 2016 (India).

¹¹ The Rights of Persons with Disabilities Act, 2016, § 2(y), No. 49, Acts of Parliament, 2016 (India).

disabled population of the land and on the other hand, this statute itself tries to incorporate that particular strata (or sub-strata as the case maybe) with the prevalent fabric of society, which may produce a cumbersome impact, as this statute itself creates the bifurcation and tries to resolve the same.

These definitions, along with the definitions of 'Person with Benchmark Disability',¹² and 'Person with Disability having High Support Needs',¹³ clearly manifest a quantitative attitude towards the issue of disability, which it can be humbly submitted, goes against the modern attitude about disability, which undertakes a serious attempt to disassociate the biological element from the psychological element.¹⁴

This quantified attitude, is the direct result of domination of medical and rehabilitation discourses while 'reasonable accommodation' is being discussed in contrast to the social and political discourses/models, which invariably place an able-bodied person in a higher pedestal in comparison to the disabled individuals, which, mostly unconsciously, shift the paradigm to the individual having able-body, even at the cost of the disabled population,¹⁵ which further concentrates the issue of right-based/ resource-based approach, overlooking the cultural factors connected with this issue.¹⁶

III) THE APEX COURT AND THE QUANTIFIED DISABILITY DISCOURSE

¹² The Rights of Persons with Disabilities Act, 2016, § 2(r), No. 49, Acts of Parliament, 2016 (India).

¹³ The Rights of Persons with Disabilities Act, 2016, § 2(t), No. 49, Acts of Parliament, 2016 (India).

¹⁴ DAN GOODLEY, *Dis/entangling Critical Disability Studies, Culture – Theory – Disability, Encounters between Disability Studies and Cultural Studies* 84 (Anne Waldschmidt, Hanjo Berressem and Moritz Ingwersen et al. Transcript Verlag 2017).

¹⁵ N. Ann Davis, *Invisible Disability*, Vol. 116, No. 1 ETHICS 153, 161 (2005).

¹⁶ Nilika Mehrotra, *Disability Rights Movements in India: Politics and Practice*, Vol. 46, No. 6 ECONOMIC AND POLITICAL WEEKLY 65, 67-69 (2011).

The apex court in *Omkar Ramchandra Gond v. Union of India*¹⁷ held that quantified disability shall not be the sole test to provide reservation benefits to a disabled student.

It is pertinent to note that the apex court in this case itself, cited with approval the verdict rendered in the *Ambica Mills Ltd. case*,¹⁸ where the Supreme Court, though with disapproval, considered the issue of over-inclusive classification.

Moreover, the apex court in this judgement itself, also pointed the *Babita Puniya* verdict,¹⁹ where the court categorically pointed out that if any differentiation is being allowed, then to avoid the teeth of Art. 14, it must be proved that such differentiation is being made with some kind of rational parameters in mind.

Again in the *Avni Prakash* verdict,²⁰ the apex court pointed out the verdict of the same court in the case of *Vikash Kumar v. Union Public Service Commission*,²¹ where the court criticized the quantified attitude of the concept of ‘Benchmark Disability’²² as this concept, in effect destroy the beatitude of the Rights of Persons with Disabilities Act, 2016²³ which tries to integrate the disabled population within the prevalent socio-economic framework.

After considering in details the issue of reasonable accommodation,²⁴ the apex court in *Omkar Ramchandra Gond*²⁵ held on one hand that quantified disability shall not be the ‘*per se*’ cause of prohibiting a student from pursuing a course of his/her choice, and on the other hand, the Honourable Court also observed that if the concerned Disability Assessment Board is of the

¹⁷ 2024 INSC 775.

¹⁸ *State of Gujarat v. Shri. Ambica Mills, Ltd.*, (1974) 3 S.C.R. 760.

¹⁹ *Secretary, Ministry of Defence v. Babita Puniya and Others*, (2020) 7 SCC 469.

²⁰ *Avni Prakash v. National Testing Agency (NTA)*, [2021] 11 S.C.R. 891.

²¹ (2021) 5 SCC 370.

²² The Rights of Persons with Disabilities Act, 2016, § 2(r), No. 49, Acts of Parliament, 2016 (India).

²³ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016 (India).

²⁴ See *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761.

²⁵ *Omkar Ramchandra Gond v. Union of India*, 2024 INSC 775.

opinion that notwithstanding such disability, such disabled student is fit to carry the impugned course, such student shall be allowed to study that subject.

IV) CONCLUSION

After a closer scrutiny of the activities of Lieutenant Claus, Graf Schenk von Stauffenberg, in the attempt to assassinate Hitler, it can safely be deciphered that ultimately, it is the disability (though acquired one) of the person in question that helps him to circumvent the stringent security measures that were in place around the dictator of Germany in order to execute the July Plot, which, tough by stroke luck, did not yield the intended result.²⁶

It will not be out of context to consider the concept of 'Rational Reconstruction' as propounded by J. M. Balkin,²⁷ as the interpretation of the Rights of Persons with Disabilities Act, 2016,²⁸ must be made in such a manner so as to apply the legal policy enshrined in the statute in question, in a concrete case.

In this context the Rights of Persons with Disabilities (Amendment) Rules, 2024, which came into force on 18/10/2024, states that the concerned medical authority is entitled to provide 'Certificate of Disability', if it is satisfied that the impugned applicant is suffering from disability, unlike the previous unamended rule, where the medical board was bound to access the disability on the basis of the relevant guidelines, after verifying the informations. Hence, the prime motive of this amendment is to streamline the process of providing a 'certificate of disability'.²⁹

²⁶ BRITANNICA, <https://www.britannica.com/event/July-Plot> (last visited June. 28, 2025).

²⁷ DENNIS LLOYD, LLOYD'S INTRODUCTION TO JURISPRUDENCE 1224 (9th ed., M. D. A. FREEMAN ed., South Asian edition, SWEET AND MAXWELL, Reprinted in India by THOMSON REUTERS 2021).

²⁸ The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016 (India).

²⁹ PRACTICAL LAWYER, # 299 67 (Dec, 2024).

This amended rule came into force on 18/10/2024, but it was notified on 16/10/2024, whereas the Omkar Ramchandra Gond verdict³⁰ came on 15/10/2024. It clearly suggests that the amendment was made without taking into consideration the verdict of the apex court, as it is impossible to inculcate the opinions of the apex court in the amendment overnight.

At the same time, the apex court also did not consider this amended rule while handing over the verdict in Omkar Ramchandra Gond³¹, so this amended rule is not being reviewed judicially in the above-mentioned verdict.

Moreover, this rule also quantified disability by providing colour-coated cards while issuing the 'Certificate of Disability'.³² It can be humbly submitted that the use of the word 'per se' in the Omkar Ramchandra Gond verdict,³³ while dissuading (to an extent) the quantified standard/model of disability, does not, in effect, dilute the entire quantified approach of law regarding measurement of disability.

Lastly, the Motilal Nehru report suggests equal civic rights to every Indian, as and when India gets independence,³⁴ and in a modern complex socio-legal fabric, the schism among several fragments of Indian society must be syncopated, among which, it can be submitted that the disabled and able bifurcation is also an important element.

³⁰ Omkar Ramchandra Gond v. Union of India, 2024 INSC 775.

³¹ Omkar Ramchandra Gond v. Union of India, 2024 INSC 775.

³² PRACTICAL LAWYER, *supra* note 29, at 68.

³³ Omkar Ramchandra Gond v. Union of India, 2024 INSC 775.

³⁴ ROHINTON NARIMAN, THE BASIC STRUCTURE DOCTRINE: PROTECTOR OF CONSTITUTIONAL INTEGRITY 7 (1st ed., LexisNexis 2025).

Hence, the rejection or at least dilution of the quantified model in the disability discourse³⁵ (the concept of benchmark disability is a necessary corollary of it) needs time and effort to dilute, and the step of the apex court in the Omkar Ramchandra Gond verdict³⁶ is an important step in this sojourn.

³⁵ See In Re: Recruitment of Visually Impaired in Judicial Services, [2025] 4 S.C.R. 222.

³⁶ Omkar Ramchandra Gond v. Union of India, 2024 INSC 775.