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**CONSEQUENCES OF VIKASH KUMAR VS UNION PUBLIC
SERVICE COMMISSION AND ARNAB ROY VERSUS
CONSORTIUM OF NATIONAL LAW UNIVERSITIES & ANR.
FOR THE DISABLED COMMUNITY.**

AUTHORED BY - KANGAN CHAWLA

As per the census of 2011 the disabled population of India is 2.68 crore which is 2.2% of the population of the country, yet the country does not recognize disabled people as human beings with equal rights. Disabled people are seen as problems that need to be cured rather than building a society that allows them to live with the liberty they deserve. For centuries disabled people have been told what they can and cannot do as if they don't their own disability well enough. This research paper will be talking about a landmark judgement passed by the Supreme Court and a subsequent case that upheld the previous judgement that gives hope to the disabled community that the legislation will eventually shift from the medical model of disability to the social model. First let's have a look at some provisions of the Rights of Persons with Disabilities Act 2016 (RPWD).

Section 2(s) of the Act defines "person with disability" as a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.

Section 2(r) of the Act on the other hand defines "person with benchmark disability" as a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

The Act also imposes a duty on the government and on the educational institutions to provide reasonable accommodation according to the individual's requirements. The act also directs the government to make guidelines for providing the facility of a scribe. In relation to this the Ministry of Social Justice and Empowerment in the Department of Empowerment of Persons with Disabilities issued guidelines for conducting written examinations for persons with disabilities according to which the facility of Scribe/Reader/Lab Assistant should be allowed to

any person with benchmark disability as defined under section 2(r) of the RPwD Act, 2016.

Now what was the problem with these guidelines? People who have 40% disability are not the only ones who require a scribe. Why should a set of people who have difficulty in writing be denied the right to access a scribe just because they don't meet the criteria of 40% disability. Providing a facility but putting restrictions on it on the basis of the severity of the disability negates the advantage of the facility for a large number of people. For e.g. in cases of reservation for women are women from a well to do family not entitled to the same because she comes from a privileged family. This problem was addressed in the following cases.

Facts of the case

In *Vikash Kumar vs Union Public Service Commission*¹ a person having a disability called Writers Camp was denied the facility of a scribe during civil service examinations (CSE) because he did not meet the criteria laid down by the CSE Rules scribe would only be provided to people with locomotor disability, blindness, and cerebral palsy where there is a minimum 40% impairment. The extent of the candidate's disability was assessed at 6% after orders from the court. Even though that did not meet the criteria for the requirement for provision of scribes the court held that benchmark disability should not be held to be a prerequisite to providing scribes.

In *Arnab Roy Versus Consortium of National Law Universities & Anr.*² a writ petition was filed against the consortium of national law universities as they had imposed restrictions on provision of scribes to people without benchmark disabilities.

The question that comes to mind is why would the consortium impose such restrictions when the Supreme Court had already passed a judgement stating that scribes should not be restricted to only people with benchmark disability, hence the court while citing the case of *Vikash Kumar* held that scribe should be provided to disabled people who have difficulty in writing irrespective of their percentage of disability.

This was an essential decision as thousands of people sit for the CLAT examination and several disabled people would have been either discouraged or unable to participate and compete with

¹ *Vikash Kumar vs Union Public Service Commission* 2020 SCC OnLine SC 1119

² *Arnab Roy Versus Consortium of National Law Universities & Anr* 2023 SCC OnLine SC 484

the able bodied people because of the restrictions imposed on them by the society.

Effect of the cases on the disabled community.

These 2 cases have been landmark judgments for the disabled community. Why should 2 different disabled people be differentiated on the basis of the severity of their disability even though their requirements and difficulties are the same. The judgments give any and all disabled people that have difficulty in writing the right to get a scribe. One of the important questions that these cases create is the requirement or non-requirement of having different provisions for people with benchmark disability. All disabled people should be treated equally. The percentage of disability determines how much of a particular disability a person has; it does not measure the difficulties that the disability creates for the specific person. Even though the Vikash Kumar case was a landmark judgement for the disabled community the fact that the consortium had still imposed restrictions for the provision of scribe for people with less than 40% disability questions the effective implementation of the judgement passed by the Supreme Court. Disabled people should not have to fight for their basic rights specially after they have already been given by the highest court of the country.

Expanding the scope of the Rights of Persons with Disabilities Act

The definition in Section 2(r) applies in the case of a specified disability. These specified disabilities, provided in the schedule of the act are limited in nature and are restrictive. The guidelines of the MSJE dated 29 August 2018 recognise the entitlement to a scribe only for candidates with benchmark disabilities. Among them, candidates belonging to three categories – the blind and those with locomotor disability or cerebral palsy - are to be given the facility if so desired.

In the case of Vikash Kumar the court even went out of their way to provide a broader aspect to the Rights of Persons with disability by giving the right to a scribe to a person with writer's cramp, even if it is not explicitly mentioned in the act that a person with that disability can get a scribe. The court said -:

“...However, many such medical conditions which may hamper writing ability have not been identified as disabilities. In these instances, the examining body has to consider the cases of such candidates and whether facilities of scribes and compensatory time is to be granted”

Laying down certain disabilities and restricting the rights only to them in a way defeats the purpose of the act itself. These case laws by going away from the specified list of disabilities shows that not only do people with these specified disabilities deserve equal opportunities but every person with a disability deserves equal opportunities.

The main effect of these cases have been removing the precondition of having 40% disability to access the right to have a scribe. No two people having even the same disability are the same. One might require assistance with writing and the other might not. There cannot be a rigid set of guidelines to be followed when providing disabled people the right to a scribe. In these cases it is best to trust the disabled people as they are the ones who know their body the best.

Shift from medical model to social model of disability

Disability is a word which has a negative connotation to it and why is that so? Language evolves and people eventually start using words for what they perceive it to mean. “Disabled” is considered to be a bad word as when people think of that they don’t think of disabled people as normal human beings but something so different from there that it scares them. Use of words like, like specially abled, special needs persons or differently able etc. clearly show the thinking of the able bodied community. Although special needs may seem nicer to say than disabled it is often condescending and suggests that disabled people are a burden. And to come to think of it who is it nicer for, to call a disabled person differently abled rather than just calling them disabled. Is it the disabled community that is uncomfortable with that word? No. It’s the able bodied people who actually feel uncomfortable calling a disabled person for who they are, disabled. Calling them disabled encroaches upon this world they have created that being disabled is bad, that having needs different from others is bad. Disabled people are often seen as a sorry case. Its either that or they are seen as an inspiration for the smallest of things (inspiration porn), things that are pretty normal for them but a big deal for the able bodied people because they never imagine a disabled person being independent or achieving success or even just living their life on their own terms. This shows the medical model of disability, which believes that there is something wrong with disabled people and they need to be “fixed”. The medical model also lends itself to considering disabilities “personal tragedy which suggest that a disability is some terrible chance event that occurs at random to unfortunate individuals”.³ On the other hand the social model of disability is

³ Angelica Guevara, The Need to Reimagine Disability Rights Law Because the Medical Model of Disability Fails Us All, 2021 Wis. L. REV. 269 (2021).

based on the understanding that society has always been designed by and for abled people which create barriers that stop disabled people from functioning to the best of their ability. In other words, our society's structures create disabilities when, really, there is nothing deficient or wrong with an individual with a disability.⁴ It's no denying that disabilities and chronic illnesses can make life hard but what makes it harder is the society. The society's inability to understand that disabled people just want to live their life, the society's ableism and even people's internal ableism can make life hard for the disabled people. There are disabled people who can be an inspiration for a large number of people, not because they are living their lives with their disabilities but because they are making something out of their lives, achieving their dreams and their goals.

These judgments help in taking a step towards the social model of disability moving away from the medical model of disability. The Vikash Kumar case even talks about the way certain words are used that are degrading to the disabled community and are rooted in the social model of disability. Even though they talk very little about the need to change the language that people use for disabled people.⁵ The case against the consortium doesn't really talk about this but enforcing the previous decision passed by the Supreme Court recognizes the existence of disabled students who are interested in law. This helps humanise disabled people, they can be seen as people with their own desires and aspirations, people at par with the able bodied people if they are given the required accommodations. The implementation of accommodations for all people who require it irrespective of them being a person with benchmark disability helps focus on the social barrier that the society creates instead of what's "wrong" with disabled people. In order to ensure equality it's important to remove these barriers, however cases like the case of Arnab Roy also show that we have a long way to go to provide disabled people an equal footing with able bodied people. The need for this particular case shouldn't have arisen itself especially after the judgement of the Vikash Kumar case, as it was settled point of law that benchmark disability is not to be considered as a prerequisite for providing a scribe. Instead of providing disabled people with opportunities that the constitution itself endows upon them providing further restrictions as was done in the case of Arnab Roy is unacceptable.

⁴ Tom Shakspeare, *DISABILITY RIGHTS AND WRONGS REVISITED* 106 (2d ed. 2014) ("What divides disabled from non-disabled people, in [the social model] formulation, is the imposition of social oppression and social exclusion.").

⁵ Some of the phrases that the Supreme Court condemns the use of are "suffering" when referring to someone's disability and "normal life" when referring to an able bodied person's life.

Interpretation of the term “Reasonable Accommodation”

“The Union Government should keep in mind that the need to make a reasonable accommodation is one that must be met on an individual basis. In other words, the appropriate authority tasked with the duty of making reasonable accommodations must take a case-by-case approach.”⁶

Every disabled person is different, has different needs and different requirements. Even two people with the same disability can present with very different symptoms hence creating the need for personalised requirements. If reasonable accommodation is seen as a rigid structure the act will be providing accommodation only on paper and would not meet the unique needs of different people. The cases discussed uphold the vastness of reasonable accommodation and allow changes in the accommodation provided according to the needs of the person. But this creates the question as to what extent will accommodation provided be considered as “reasonable” accommodation. Will courts uphold the provision of reasonable accommodation only till it does not affect the able bodied people? These cases are even though a right step towards seeing disabled people as equal citizens of the country they are still seen as people inferior to able bodied people. Even the most basic accommodations like accessibility to areas like restaurants, schools and colleges is provided in name by installing ramps. These questions will only be answered once these cases come up before the courts but there has been a positive result too regarding the principle of reasonable accommodation because of these judgements.

In the Vikash Kumar case the Supreme Court held that “the principle of reasonable accommodation postulates that the conditions which exclude the disabled from full and effective participation as equal members of society have to give way to an accommodative society which accepts difference, respects their needs and facilitates the creation of an environment in which the societal barriers to disability are progressively answered.”⁷

What this means is that the interpretation of the term “reasonable accommodation” is going to be different and based on the circumstances and the needs of the disabled people. Able bodied people cannot understand what it is to be disabled and since they are the ones making laws for the disabled people the least they can do is provide disabled people with accommodations according to their personal needs.

⁶ 3.1 JCLJ (2022) 1327 Principle of Reasonable Accommodation: A Solution for Communal Disharmony

⁷ Vikash Kumar vs Union Public Service Commission 2020 SCC OnLine SC 1119

Even previously in Justice Sunanda Bhandare Foundation v. Union of India⁸ it was said that:

In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic..."

With a more liberal interpretation of this term the disabled people are going to get the rights that they deserve and need to overcome the social barriers.

Recent Developments

A recent case had been filed in the Karnataka High Court, Karnataka State Law University Vs. Krishna⁹ respondent was unable to write by hand as such for the semester exam petitioner utilized the facility of scribe. He was however informed by the college that unless permission was granted by the University, it cannot permit the respondent to take the help of the scribe for examination in future. Accordingly, respondent made a representation to the appellant-University requesting for providing objective questions instead of descriptive questions and to utilize the help of scribe in view of his disability. However no action was taken by the university which made the appellant file the writ petition. With respect to this an appeal was filed by the university and the division bench said,

"The overall object of the guidelines needs to be appreciated which is providing opportunity for all to participate in the mainstream education system. There cannot be any strict and stringent distinction on the basis of the nature of ailment. The purpose is to facilitate the specially abled persons to participate in the examination within the limits provided under the guidelines subject to required compliance in the nature of obtaining certificates from the competent authorities"

Conclusion

No matter how much these cases are affirmative towards the disabled community they will be of no use until they are implemented. Scribes are an essential need for people who have difficulty in writing. Further with the liberal interpretation of the term reasonable accommodation what is needed is accessibility for disabled people whether it be by installing disabled washrooms in every building or ramps for access to any institution. The disabled community is disadvantaged

⁸ Justice Sunanda Bhandare Foundation v. Union of India (2018) 2 SCC 397

⁹ Karnataka State Law University Vs. Krishna Writ Appeal No. 722 OF 2023

not because of their disability but because of the societal barriers hence instead of feeling sorry for them what is needed is removing the barriers and helping them live the fulfilling life they deserve. These judgements have been an important and much needed step towards accessibility however there are still a lot of ordeals that disabled people have to go through to get access to a scribe. One of the main challenges faced is the lack of awareness. People or even universities are unaware of their responsibility to provide reasonable accommodation to disabled people and disabled people often have to advocate for their rights. Furthermore the process of getting evaluated for a scribe itself is a long and cumbersome procedure which unless its modified to become simpler and easily accessible accessibility in its real sense will not be provided to disabled people.

