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**Devoted to Disability, Discussing its Present Scenario and Futuristic  
Challenges for the Development of Persons with Disabilities**



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## RIGHT TO EMPLOYMENT OF PERSON WITH DISABILITIES IN JUDICIAL SERVICE OF INDIA WITH SPECIAL REFERENCE TO ASSAM

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### **Abstract**

Indian constitution not only provides universal adult franchise but also it guarantees fundamental rights including remedy for enforcement of these rights to its citizens. "Equal opportunity in the matter of public employment" under Article 16 is an important fundamental rights to its citizens irrespective of "religion, race, caste, sex, descent, place of birth, residence or any of them". This Article also empowered parliament to create special class for appointment and provides reservation so that every backward or marginalised groups. Find the equal opportunity in employment and appointment. Person with Disabilities are also backward or marginalised group. Therefore Parliament has enacted Laws in order to declare this group as a class for employment and provides reservation in the year 1995 and 2016. Section 34 of Rights of Person with Disabilities (RPWD) Act 2016 provides 4% reservation in employment for Person with Benchmark Disabilities (PWBD) in identified post of every establishment. The post of Judicial officer has been identified as suitable for Blind and Low-vision candidates. But in certain states including Assam, PWBD Candidates are omitted from this recruitment process considering them as unfit for those post wherever in some states PWBD Candidates are appointed as Judicial Officer. For this reason, Supreme court has to interfere in the matter and has declared that state can not discriminate in the recruitment process of Judicial officer on the basis of Disabilities. But discrimination to PWBD Candidates are still exist in Assam Judicial Service. Therefore, it is essential to study the status of employment

of PWBD in AJS and to provide suitable accommodation through affirmative action.

**Key Words:** Equality and Non-discrimination, affirmative action, employment opportunity for person with Disability, Indian Judicial System and Assam Judicial Service.

### 1.1. Objective

The main objectives of this paper are to study-

1. Employment opportunity of Person with Disabilities (PWD) in Judicial system,
2. Status of PWD in Indian Judicial System and
3. Opportunity and obstacles in Assam Judicial Service.

### 1.2. Methodology:

In order to study the first two objectives, mainly content analytical method is accepted and data are collected mainly from secondary sources like court materials, books, journals, audio and video materials. Third objective is studied on the basis of a case study of an Judicial aspirant of Assam.

### 1.3. Theoretical orientations-

In this research, the theory of Equality and Non-discrimination, affirmative action, John Rawls theory of Distributive Justice are accepted as the basis. These theories focus on the procedure or way to establish equality in unequal society. The concept of equality is based on non-discrimination on the basis of religion, race, sex, caste, class, place of birth, resident, descent, disability and so on. Again the concept of affirmative action refers to those policy and action through backward or marginalised or vulnerable groups get the opportunity for empowerment in in an equilibrium society. Jon Rawls emphasized on affirmative action in his theory of Distributive justice.

## 2. Employment opportunity of Person with Disabilities in Judicial Service-

The landmark achievement of Person with disabilities in various field including politics, society, literature, music, spirituality etc has started in long ancient. Since the time of discovered the reading and writing method for the blind by Lui Braille, the journey of inclusion of blind and low vision person in society become faster and with the development of science and technology, this process of learning and contributing to the society of person with blindness and low vision with their participation in every fields become easier. Through this development, person with blindness can started to study law and able to become the lawyer, advocate and judge all over the world. Yousaf Saleem of Pakistan took the aught as the first judge with blindness in that country. In India Brahmananda Sharma become the member of Rajasthan Judicial service as the first person with blindness in Indian Judicial System. besides Judge, many person with disabilities including blindness are practising as advocate or pleader in India and other countries. Anchal Bhateja and Sadhan Gupta are prominent among them. Anchal Bhateja become the Advocate of Indian Supreme Courte and she represent in the Court on 6<sup>th</sup> June 2025 in a case. Sadhan Gupta the first parliamentarian with blindness of India render his service as advocate General of West Bangle.

### 2.1. Constitutional Provision in India-

Indian constitution has promised to give equality, justice and liberty to its citizens with and without Disability. this constitution provides fundamental rights to every citizen from article 12 to article 35. Article 14, 15, 19 and 21 of Indian constitution are very significant. Article 14 has ensured Equality before law and Equal protection for every citizen. Article 15has strengthened the right to Equality restricting discrimination among the citizen on the basis of religion, race, caste, sex and place of birth. Of course, the subjection of this

article provides positive discrimination in order to establish an equilibrium society. Article 16 specially establishes equality in public employment. This article also ensures that no section of the society has to be deprived from the right to employment through the policy of Reservation. Article 19 provides six types of freedom for spending free life. Rights are specially recognised through the right to life and personal liberty of article 21. These fundamental rights become the basis of the rights of person with disabilities.

## **2.2. Legal provision for Person with Disabilities in India-**

In order to implement the fundamental rights of PWD, both union and state Governments have enacted rules and law. The “The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” enacted by Indian parliament is a landmark step in this regard. This act has replaced by Right of Person with Disabilities act 2016. This act contains 102 sections in 17 chapter and one schedule. This act has come into force from 27<sup>th</sup> April 2017. Like article 14 and 15 of the constitution, section 3 of RPWD Act ensures the equality and non-discriminations. The act mentioned as” 1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.” “(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.” Like Article 16 of the constitution, section 20 of RPWD Act ensures non-discrimination in employment and promotion on the basis of disability. this section directs the authority to provide “reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.” this Act also makes provision of positive discrimination to give Person with Disability equal status with person with Disability. section 34 ensures at least 4% reservation in appointment of identified post of every government

establishment . These 4% reservation. is also divided among the category by the Act making flexibility of inter change in certain conditions. According to this classification, blind and low vision candidate are entitled to receive at least 1% reservation identified post. Section 33 authorised appropriate government to “constitute an expert committee with representation of persons with benchmark disabilities for identification of such post;”

### 2.3. implementation of the provisions of RPWD Act in Judicial service of India-

Enactment of PwD Act open the way of appointment of person with disability in government posts. For this, every government has to identify the post suitable for various groups of PWBD. For this purpose, Indian government published list of identified post of various grade. Among grade I and II post, post of judicial magistrate and civil judge are identified as suitable for blind and low vision. Therefore in some judicial service are specially reserved. As example we can mentioned about Delhi Judicial service where 10 posts of Judicial magistrate mentioned as reserved post for Person with Benchmark Disabilities (PWBD) including 4 post for blind and low vision candidates in the recruitment process of 2022. But some states has not makes separate reservation for PWBD candidates. Again some states, reservation has made only certain class of PWBD candidates restricting other classes. Therefore PWBD Candidates have to approach the honourable Supreme Court.

In Madhya Pradesh judicial service, reservation for PWBD candidates made 6%, but certain classes including blind and low vision are excluded in the recruitment process. For this Policy, many qualified PWBD candidates have to deprived in MP Judicial Service. so mother of one deprive candidate wrote the Chief Justice of Honourable

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Supreme Court of India. Taking cognizance on this letter, Supreme Court filed suo motu writ petition and gave its final verdict on 3<sup>rd</sup> March 2025 and declared that “(i) Visually impaired candidates cannot be said to be ‘not suitable’ for judicial

service and they are eligible to participate in selection for posts in judicial service.” but even after SC Verdict, some state refused to include the person with Blindness in recruitment process of judicial service. therefore Supreme Court had to again Uttarakhand Government to allow them to appear in the preliminary examination held on 31<sup>st</sup> August 2025. The deprivation is still continued in other states. In this respect, the situation can be mentioned.

#### **2.4. Status of PWBD in Assam Judicial Service-**

In Assam Judicial Service, till 2019, there was no mentioned in the advertisement of the recruitment process about the reservation of post for PWBD and no restriction was imposed for them in the recruitment. In the advertisement of 2020 and 2021, it was clearly mentioned that “Reservation for PWD candidates will be made as per rules.” There was no restriction to any class of PWBD candidates. In the advertisement of 2023, mentioned that “reservation for PWBD category candidates shall be as per applicable rule/law”, but restriction was imposed on relaxation to all classes of PWBD candidates except Locomotor Disabilities. Here after, by publishing an addendum, this restriction was removed and relaxation was made for all classes of PWBD Candidates. On 20/02/2024, a governor notification was published from the department of Social Justice and Empowerment excluding all classes of PWBD candidates except Locomotor Disability in the recruitment of all posts of Assam Judicial service. as a result, 32 candidates of Assam Judicial Service grade III 2025 was deprived from appearing the exam. Among these 32 deprived candidates, one candidate with blindness appeared in the recruitment exam since 2017

regularly with adequate support and assistance of Recruitment cell of Gauhati High Court including scribe and additional time. He also appeared three times in main written exam securing more than cut of marks of unreserved candidates in preliminary exam. So the case study of this candidate is required to be studied.

### **2.5. case study of a candidate with blindness of Assam Judicial service-**

The candidate completed his HSLC Exam from Guwahati Blind School with 1<sup>st</sup> division securing letter marks in General Mathematics. After completing Master degree in political Science in 2005 from Gauhati University, he has been rendering service as an assistant professor and HOD of Political Science Department of a reputed college under Assam Government since 15<sup>th</sup> September 2006 till date. He also completed LLB in 2008 and PhD. In 2019 from Gauhati University. Since 2017, he has been appearing in AJS Grade III Preliminary examination and qualified 3 times for appearing in main examination till 2022. In the advertisement of recruitment of these post of 2023, opportunity was given only locomotor disability for doing application. For this reason, this candidate approach the register of Gauhati high Court praying for allowing to apply all types of disability. granting the prayer an addendum was published. On the basis of this addendum, this candidate applied and as candidate with blindness and secured 65 marks which was 5 marks more than qualifying marks and he was only candidate of that exam. But he was not selected considering him as unreserved candidate. the cut off marks of unreserved candidates was 72. So he approach the honourable high court through a writ petition. Honourable High Court allowed him to appear in the exam as an interim order, but in final Judgement, refused to allow him to appear in interview owing to securing less marks required for unreserve candidates. Court did not observed the marks of reserved category. The

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Constitution of India

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