

(2017) 14 Supreme Court Cases 1 : (2018) 1 Supreme Court Cases (L&S) 130 : 2017 SCC OnLine SC 481

In the Supreme Court of India

(BEFORE DIPAK MISRA, A.M. KHANWILKAR AND M.M. SHANTANAGOUNDAR, JJ.)

JUSTICE SUNANDA BHANDARE FOUNDATION . .

Petitioner;

Versus

UNION OF INDIA AND ANOTHER . . Respondents.

IA No. 10 of 2015 in Writ Petition (C) No. 116 of 1998[†], decided on
April 25, 2017

Human and Civil Rights — Disabled and Differently-Abled Persons — Rights of Persons with Disabilities Act, 2016 — Preamble, Ss. 2(c), (h), (k), (m), (p), (r), (s), (v) & (zb) and Ss. 12, 16 to 18, 24, 25, 31 to 35, 84, 85, 89, 90, 92 and 93 — Effective implementation of 2016 Act — Directions issued and judicial notice taken regarding non-compliance or partial compliance with provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1995 Act now repealed)

— All States and Union Territories directed to take steps for implementation of 2016 Act and file compliance report regarding same within 12 weeks — When the law is so concerned for disabled persons and makes provision, it is obligation of law executing authorities to give effect to same in quite promptitude — State authorities should ensure that statutory provisions that are enshrined and applicable to the cooperative societies, companies, firms, associations and establishments, institutions, are scrupulously followed

— Rights of Persons with Disabilities Act, 2016 replaced the 1995 Act with effect from 19-4-2017 — 2016 Act was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto



— More rights have been conferred on the disabled persons and more categories have been added — Access to justice, free education, role of local authorities, National fund and the State fund for persons with disabilities

have been created — 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies

— Judicial notice taken of fact that in *Justice Sunanda Bhandare Foundation*, (2014) 14 SCC 383, Court had directed implementation of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — But chart filed pursuant to directions in *Sunanda Bhandare Foundation* case showed that States failed in many respects to comply with provisions of 1995 Act

— International Law — International Conventions — United Nations Convention on the Rights of Persons with Disabilities — United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto

Held :

In Justice Sunanda Bhandare Foundation case, Court directed implementation of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

The instant interlocutory application was filed to issue directions to the Central Government, the State Governments and the Union Territories to comply with the judgment rendered in *Justice Sunanda Bhandare Foundation*, (2014) 14 SCC 383. In the said case, a three-Judge Bench took note of various orders passed in the writ petition, especially the prayer for implementation of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity “the 1995 Act”) and for declaration that denial of appointment to the visually disabled persons in the faculties and colleges of various universities in the identified posts is violative of their fundamental rights guaranteed under Articles 14 and 15 read with Article 41 of the Constitution of India and opined that the 1995 Act is to be treated as an enactment for empowerment of the persons under disability and further expressed its concern with regard to the apathy shown by various State Governments and the instrumentalities of the States.

(Para 1)

Justice Sunanda Bhandare Foundation v. Union of India, (2014) 14 SCC 383 : (2015) 3 SCC (L&S) 470; *Union of India v. National Federation of the Blind*, (2013) 10 SCC 772 : (2014) 2 SCC (L&S) 257, referred to

In the said case, the Court laying emphasis on the concept of employment, expressed that employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are



denied the right to make a useful contribution to their own lives and to the lives of their families and community. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today.

(Para 3)

Chart filed pursuant to directions in Justice Sunanda Bhandare Foundation case shows that States failed in many respects to comply with provisions of 1995 Act

The tabular chart enables each State to know what the other States have done and who has failed to comply and take steps on the path of complete compliance.

(Paras 7 to 9)

Rights of Persons with Disabilities Act, 2016 replaced the 1995 Act — 2016 Act was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto — 2016 Act brought in a sea of change

Before they could do what the 1995 Act envisages, Parliament, realising the national need of the rights of the persons under disability and commitment to the Convention of the United Nations General Assembly, repealed the 1995 Act and brought in the Rights of Persons with Disabilities Act, 2016 (for short "the 2016 Act"). The said 2016 Act has been brought into existence to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

(Para 9)

The 2016 Act visualises a sea change and conceives of actualisation of the benefits engrafted under the said Act. The whole grammar of benefit has been changed for the better, and responsibilities of many have been encompassed. In such a situation, it becomes obligatory to scan the anatomy of significant provisions of the Act and see that the same are implemented. The laudable policy inherent within the framework of the legislation should be implemented and not become a distant dream. Immediacy of action is the warrant.

(Para 10)

The Act has come into force with effect from 19-4-2017. Sections 2(c), 2(h), 2(k), 2(m), 2(v) and 2(zb) define "barrier", "discrimination", "Government establishment", "inclusive education", "private establishment" and "Special Employment Exchange", respectively. Ms Manali Singhal, learned counsel appearing for the petitioner would submit that the Preamble of the 2016 Act and the dictionary clause have expanded the horizon of the rights of the persons with disabilities. In this context, Sections 2(p), 2(r) and 2(s) are worthy of reference. Section 12 deals with access to justice. Section 16 deals with the duty of educational institutions. Section 17 lays down postulates for specific measures to promote and facilitate inclusive education. Section 18 deals with the adult education

and provides that the appropriate Government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in adult education and continuing education programmes equally with others. Section 19 deals with vocational training and self-employment.

(Paras 12 to 16)

Section 24 occurs in Chapter V, where the heading is "social security, health, rehabilitation and recreation". Section 25 deals with health care. Section 31 deals with free education for children with benchmark disabilities. Section 32 which deals with reservation in higher educational institutions. Section 33 deals with



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identification of posts for reservation and Section 34 provides for reservation. Section 35 dealt with incentives to employers in private sector.

(Paras 17 and 18)

Under the 1995 Act, Parliament had shown its concern and provided for reservation for many categories and the Supreme Court by various judgments had directed for implementation of the Act and some States have implemented the provisions to a certain extent.

(Para 19)

Section 84 makes provision for creation of Special Court for speedy trial to try the offences under the 2016 Act. Section 85 stipulates for appointment of Special Public Prosecutor. Thus, emphasis is on the Special Court, speedy trial and Special Public Prosecutor. Under Chapter XVI, offences and penalties have been dealt with. Section 89 provides for punishment for contravention of provisions of Act or Rules or Regulations made thereunder. Section 92 deals with punishment for the offences of atrocities and Section 93 provides for punishment for failure to furnish information.

(Paras 20, 21 and 23)

Certain provisions have been referred to only to highlight that the 2016 Act has been enacted and it has many salient features. As we find, more rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund and the State fund for persons with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. The statute operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation.

(Para 24)

Regard being had to the change in core aspects, it would be apposite to direct all

the States and the Union Territories to file compliance report keeping in view the provisions of the 2016 Act within twelve weeks hence. The States and the Union Territories must realise that under the 2016 Act their responsibilities have grown and they are required to actualise the purpose of the Act, for there is an accent on many a sphere with regard to the rights of the disabled. When the law is so concerned for the disabled persons and makes provision, it is the obligation of the law executing authorities to give effect to the same in quite promptitude. The steps taken in this regard shall be concretely stated in the compliance report within the time stipulated. A duty is cast also on the States and its authorities to see that the statutory provisions that are enshrined and applicable to the cooperative societies, companies, firms, associations and establishments, institutions, are scrupulously followed. The State Governments shall take immediate steps to comply with the requirements of the 2016 Act and file the compliance report so that the Supreme Court can appreciate the progress made.

(Para 25)

The compliance report to be filed by the States shall be supplied to the petitioner, Union of India as well as to the learned counsel for the applicant/intervenor so that they can assist the Court. The Registry is directed to send a copy of the order passed today to the Chief Secretaries of the States and the Administrators of the Union Territories.

(Paras 26 and 27)

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Advocates who appeared in this case :

S.S. Shamshery, Additional Advocate General, Ms V. Mohana and A.K. Sanghi, Senior Advocates (Manali Singhal, Santosh Sachin, Ms Vinita Sasidharan, Rohit Kaul, Tejasvi Kumar, S. Sarfaraz Karim, Deepak Singh Rawat, Ambar Qamaruddin, Dr Monika Gusain, Abhijit Sengupta, Pawan Shri Aggarwal, Abhishek Chaudhary, Anil Kr. Tandale, Anil Shrivastav, Rituraj Biswas, Aniruddha P. Mayee, A. Selvin Raja, Anuvrat Sharma, Arjun Garg, Arun K. Sinha, Sapam Biswajit Meitei, Naresh Kr. Gaur, M.N. Singh, Ashok Kr. Singh, Ashok Mathur, B. Balaji, C.D. Singh, Ms Sakshi Kakkar, Shaivali Choudhary, Soumitra G. Chaudhuri, Chanchal Kr. Ganguli, C.K. Sasi, Dharmendra Kr. Sinha, D.S. Mahra, Gopal Singh, Manish Kumar, Ms Varsha Poddar, G. Prakash, Jishnu M.L., Ms Priyanka Prakash, Ms Beena Prakash, Manu Srinath, Gulshan Bajwa, Jagjit Singh Chhabra, Kamlendra Mishra, K.V. Mohan, M.A. Krishnamoorthy, Nirnimesh Dube, P.N. Gupta, P.N. Ramalingam, Prashant Kumar, Praveen Swarup, Shikhar Garg, Ganesh Bapu, P.V.

Yogeswaran, Rajeev Sharma, Rajiv Mehta, Rajiv Nanda, Rameshwar Prasad Goyal, Ranbir Singh Yadav, Ranjan Mukherjee, R. Sathish, Ms Anil Katiyar, Satish Vig, Ms D. Bharathi Reddy, Sangram S. Saron, Shree Pal Singh, Shuvodeep Roy, Sunil Fernandes, Tapesh Kr. Singh, Kumar Anurag Singh, Mohd. Waquas, Aditya Pratap Singh, T.V. George, V.G. Pragasam, S. Prabu Ramasubramanian, V.N. Raghupathy, Ms A. Subhashini, Bhupesh Narula, K.V. Jagdishvaran, Ms G. Indira, Ms Hemantika Wahi, Ms K. Enatoli Sema, Edward Belho, Amit Kr. Singh, K. Luikang Michael, Ms Elix Ganmei, Z.H. Issac Haiding, Pratap Venugopal, Ms Surekha Raman, Ms Niharika, Aman Shukla, Ms Kanika Kalsyaran, M/s K.J. John & Co., Ms Niranjana Singh, Aviral Saxena, Sukrit Kapur, Ms Monika, Nitya Madhusoodhanan, Ms Rachana Srivastava, Ms Sumita Hazarika, Ms Sushma Suri, Ms Susmita Lal, Pankaj Sinha, Ms Rajkumari Banju, M. Yogesh Kanna, Ms Nithya, Ms Maha Lakshmi, Pratap Sarathi, R.K. Rathore, Ms Ritu Bhardwaj, Raj Bahadur, Guntur Prabhakar, Ms Preerna Singh, Ms Sunita Sharma, Ms Rekha Pandey, B.K. Prasad, G.M. Kwoosa, M. Shoeb Alam, Manoj R. Sinha, Mahaling Pandarge, Nishant Ramakantrao Katneshwarkar, S. Udaya Kr. Sagar, Mrityunjai Singh, Amit Sharma, Ankit Raj, Ms Aruna Mathur, Avneesh Arputham, Ms Anuradha Arputham and Amit Arora, Advocates) for the Respondents.

<i>Chronological list of cases cited</i>	<i>on page(s)</i>
1. (2014) 14 SCC 383 : (2015) 3 SCC (L&S) 470, <i>Justice Sunanda Bhandare Foundation v. Union of India</i>	5f-g, 7a-b, 7d-e, 7e-f
2. (2013) 10 SCC 772 : (2014) 2 SCC (L&S) 257, <i>Union of India v. National Federation of the Blind</i>	6a-b, 6e-f

The Judgment of the Court was delivered by

DIPAK MISRA, J.— The instant interlocutory application was filed to issue directions to the Central Government, the State Governments and the Union Territories to comply with the judgment rendered in *Justice Sunanda Bhandare Foundation v. Union of India*¹. In the said case, a three-Judge Bench took note of various orders passed in the writ petition, especially the prayer for implementation of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for brevity "the 1995 Act") and for declaration that denial of appointment to the visually disabled persons in the faculties and colleges of various universities in the identified posts is violative of their fundamental rights guaranteed under Articles

14 and 15 read with Article 41 of the Constitution of India and opined



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that the 1995 Act is to be treated as an enactment for empowerment of the persons under disability and further expressed its concern with regard to the apathy shown by various State Governments and the instrumentalities of the States.

2. Sitting in a time-machine, we may make a fruitful reference to the decision rendered in *Union of India v. National Federation of the Blind*². The Court, in the said case, after referring to Section 33 of the 1995 Act, which dealt with reservation of posts and advertizing to various aspects, directed as follows: (SCC p. 800, para 55)

“55. In our opinion, in order to ensure proper implementation of the reservation policy for the disabled and to protect their rights, it is necessary to issue the following directions:

55.1. We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29-12-2005 and the subsequent OMs consistent with this Court's order within three months from the date of passing of this judgment.

55.2. We hereby direct the “appropriate Government” to compute the number of vacancies available in all the “establishments” and further identify the posts for disabled persons within a period of three months from today and implement the same without default.

55.3. The appellant herein shall issue instructions to all the departments/public sector undertakings/government companies declaring that the non-observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.”

3. In the said case, the Court laying emphasis on the concept of employment, expressed thus: (*National Federation of the Blind case*², SCC p. 799, paras 50-51)

“50. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are

denied the right to make a useful contribution to their own lives and to the lives of their families and community.

51. The Union of India, the State Governments as well as the Union Territories have a categorical obligation under the Constitution of India and under various international treaties relating to human rights in general and treaties for disabled persons in particular, to protect the rights of disabled



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persons. Even though the Act was enacted way back in 1995, the disabled people have failed to get required benefit until today.”

4. In the case of the present petitioner, that is, *Justice Sunanda Bhandare Foundation*¹, the three-Judge Bench was concerned with the implementation of the 1995 Act. In that context, it observed as under: (SCC p. 387, para 9)

“9. Be that as it may, the beneficial provisions of the 1995 Act cannot be allowed to remain only on paper for years and thereby defeating the very purpose of such law and legislative policy. The Union, States, Union Territories and all those upon whom obligation has been cast under the 1995 Act have to effectively implement it. As a matter of fact, the role of the governments in the matter such as this has to be proactive. 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. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.”

5. Proceeding further, it expressed its agony in the following manner: (*Sunanda Bhandare case*¹, SCC p. 387, para 10)

“10. More than 18 years have passed since the 1995 Act came to be passed and yet we are confronted with the problem of implementation of the 1995 Act in its letter and spirit by the Union, States, Union Territories and other establishments to which it is made applicable.”

6. After expression of the said anguish, the Court issued the following directions: (*Sunanda Bhandare case*¹, SCC p. 387, paras 12-13)

"12. In our view, the 1995 Act has to be implemented in letter and spirit by the Central Government, State Governments and Union Territories without any delay, if not implemented so far. ...

13. The Secretary, Ministry of Welfare, Government of India, the Chief Secretaries of the States, the Administrators of the Union Territories, the Chief Commissioner of the Union of India and the Commissioners of the State Governments and the Union Territories shall ensure implementation of the 1995 Act in all respects including with regard to visually disabled persons within the above time."

7. It is submitted by Ms Manali Singhal, learned counsel appearing for the petitioner that after the judgment was delivered, applications were filed by the petitioner to file the compliance report. The learned counsel for the petitioner has filed a revised convenience chart depicting compliance with the 1995 Act.



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The final observations made by the learned counsel have been produced before us in a tabular chart. We think it appropriate to reproduce the same:

"FINAL OBSERVATIONS

<i>Sl. No.</i>	<i>Respondent State</i>	<i>Remarks/observations w.r.t compliance of the Act</i>
1.	UGC	<ul style="list-style-type: none">Only an approximate 1/3rd of the seats for the teaching and non-teaching staff have been filled wherein the Act requires 3% of the seats to be filled.
2.	State of Jharkhand	<ul style="list-style-type: none">Yet to comply with the provisions of Section 29 (Teacher's Training Institution) as it has not been specified.Sections 30 (Comprehensive Education Scheme), 40 (Poverty Alleviation Schemes) and 41 (Incentives to Employers) of the Act have also not been complied with.Compliance with the provisions of Sections 44 (Non-discrimination in transport) — 46 (Non-discrimination in the built environment) has not been complied with.Section 49 (Financial incentives to Universities for Research) not complied

		<p>with and the same is still under consideration.</p> <ul style="list-style-type: none">• Non-compliance with Section 68 (Social Security — Unemployment Allowance) by the State. The affidavit is silent about the compliance with Section 68 (Unemployment Allowance).
3.	State of Rajasthan	<ul style="list-style-type: none">• Affidavit is silent on the compliances with Sections 28 (Assistive Devices, Hearing Aids), 31 (Amanuensis to Children with Visual Impairment), 39 (Reservation of Seats), 48 (Research), 49 (Financial Incentives to Universities for Research) and 67 (Social Security Programmes) of the Act.• Under the provisions of Section 48 (Research) with regard to Research and manpower development, no report or Status Report has been brought out.
4.	State of Punjab	<ul style="list-style-type: none">• No provisioning of incentives to employers to ensure 5% of the workforce be of PWDs. Non-compliance with Section 41 (Incentives to Employers).• Non-compliance with Sections 28 (Assistive devices, hearing aids), 48 (Research) and 49 (Financial Incentives to Universities for Research). Qua promotion.
5.	State of Tamil Nadu	<ul style="list-style-type: none">• The compliance with Section 49 (Financial Incentives to Universities for Research) has not been brought out by the State.



		<ul style="list-style-type: none">• The compliance with Section 56 (Institution for Persons with Severe Disabilities) not brought out by the State.• The compliance with Sections 66-68 (Social Security Programmes) has not been carried out by the State adequately
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		<p>as no clarity has been given on the rehabilitation aspect (only a limited amount has been allocated for the rescue scheme and only persons affected with leprosy and found begging are accommodated in rehabilitation homes).</p> <ul style="list-style-type: none">• Compliance with Section 43 (Preferential allotment of land) not specified.
6.	State of Karnataka	<ul style="list-style-type: none">• State has not filed the affidavit in consonance with the Order dt. 26-4-2016 as it remains silent on major issues w.r.t the compliances with Sections 28 (Assistive devices, hearing aids), 41 (Incentives to Employers), 48 (Research), 49 (Financial Incentives to Universities for Research), 66 and 67 (Social Security Programmes) of the PWD Act.
7.	State of Bihar	<ul style="list-style-type: none">• "State Coordination Committee" has not been reconstituted, thus non-compliance with Section 13.• Compliance with the provision of Section 41 (Incentives to Employers) has not been depicted.• The affidavit is silent on the compliance with Sections 67 and 68 (Social Security Programmes) of the Act.
8.	UT of Puducherry	<ul style="list-style-type: none">• Silent on Sections 25(a)-25(h) (Prevention and Early Detection), Sections 27-30 (Non-Formal Education), Sections 38 (Schemes for Employment) - 41 (Incentives to Employers) and 43 (Preferential Allotment of Land).• Further, the affidavit is silent on Sections 44-47 (Discrimination w.r.t Transport and Built Ins and Government Jobs), 48-49 (Research and Incentives to Universities), 67-68 (Social Security) and even Section 73 (Government Rules).
9.	UT of Andaman and Nicobar Islands	<ul style="list-style-type: none">• Provisions of Section 32 (Identification of Posts) are still at implementation stage as the State has requested Heads of various Departments for the compliance with provisions of the Section.• No compliance with Section 34 (Special

		<p>Employment Exchange), further no compliance/action taken of Sections 34-44 (Employment and Benefit Related Schemes).</p> <ul style="list-style-type: none">• Rules as prescribed under the provisions of Section 73 (Government Rules) are not framed.
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10.	NCT of Delhi	<ul style="list-style-type: none">• The affidavit is silent on the Special Employment Exchange under Section 34 (Special Employment Exchange) of the Act.• No compliance with Section 41 (Incentives to Employers). State is not offering incentives to private/public employers to ensure that at least 5% of the workforce is composed of persons with disabilities.
11.	State of Manipur	<ul style="list-style-type: none">• In compliance with Section 25(a) (Prevention and Early Detection) of the PWD Act it is stated that survey has not been undertaken for detecting causes of occurrence of disabilities due to constraints of experienced manpower and infrastructure.• Affidavit is silent on setting up special employment exchange for PWDs as required under Section 34 of the PWD Act.• Affidavit admits non-compliance with Section 41 (Incentives to Employers) of the PWD Act.• Affidavit admits non-compliance with Section 42 (Aids and Appliances) of the PWD Act due to non-availability of funds.• Affidavit admits non-compliance with Section 67 (Social Security) of the PWD Act due to lack of funds.
12.	UT of Chandigarh	<ul style="list-style-type: none">• Not complied with Section 41

		(Incentives to Employers) and further non-compliance has been carried in furtherance of Sections 67-68 (Social Security) of the PWD Act.
13.	State of UP	<ul style="list-style-type: none"> Provisions of Section 30 (Comprehensive Education Scheme) qua restructure of curriculum are still under consideration. Compliance with Section 41 (Incentives to Employers) of the Act is still under consideration.
14.	State of Tripura	<ul style="list-style-type: none"> Compliance with the provisions of Sections 28 (Assistive devices, hearing aids), 48 and 49 (Research and Incentives to Universities) w.r.t promotion of research and manpower development have not been brought out either in any way as per the mandate of the Act.
15.	State of Gujarat	<ul style="list-style-type: none"> Compliance with the provisions of Section 28 (Assistive devices, hearing aids) has not been brought out in the affidavit. No steps have been taken w.r.t the compliance with Section 40 (Poverty Alleviation Schemes) of the Act. Compliance with the provisions of Section 41 (Incentives to Employers) has not been brought out.
16.	State of Assam	<ul style="list-style-type: none"> Provisions of Section 28 (Assistive devices, hearing aids) have not been complied with.



		<ul style="list-style-type: none"> Compliance with the provisions of Section 67 (Social Security) has not been brought out in the State affidavit as it is yet to be framed.
17.	State of Arunachal Pradesh	<ul style="list-style-type: none"> Affidavit is silent on the implementation of other provisions of the Act.

		<ul style="list-style-type: none"> Affidavit only speaks of compliance with Sections 33 (Reservation of Posts), 68 (Social Security) and 42 (Aids and Appliances) of the Act.
18.	State of Goa	<ul style="list-style-type: none"> In compliance with the provisions of Section 28 (Assistive devices, hearing aids) of the Act. State Government is still in the process of formulating schemes for education of children with special needs through Directorate of Education. Further there has been no compliance being carried out for the provisions under Section 41 (Incentives to Employers), Sections 43 (Preferential Allotment of Land) - 45 (Non-Discrimination in Road) of the Act. The affidavit is silent w.r.t the implementation under Sections 48, 49 (Research and Incentives to Universities), 56 (Institution for Persons with Severe Disabilities) and 57 (Chief Commissioner of PWDs).
19.	State of Meghalaya	<ul style="list-style-type: none"> The affidavit is silent on the compliances to be carried out with the various provisions of the PWD Act except Section 39 (reservation of seats).
20.	State of Sikkim	<ul style="list-style-type: none"> No projects in the State have been taken under the provisions of Section 48 (Research).
21.	State of Chhattisgarh	<ul style="list-style-type: none"> Affidavit is silent on the provision regarding restructuring of curriculum for the benefit of children with disabilities, and provisioning of amanuensis as mandated under Sections 30-31 of the PWD Act. Affidavit is silent on compliance with Section 44 qua non-discrimination in transport. <p>Regarding provisioning of insurance schemes for PWDs the affidavit states that there is no separate insurance scheme for PWDs. Employees with disabilities are covered under the Group Insurance Schemes of the State.</p>

22.	State of Nagaland	Affidavit is not in compliance with the order dt. 26-4-2016, however the earlier affidavit shows the following: <ul style="list-style-type: none">• Affidavit is silent on formation of State Coordination Committee and State Executive Committee as mandated respectively under Sections 13 and 19 of the PWD Act, 1995.• Affidavit is silent on the implementation of preventive and early detection measures as provided in Sections 25(a)-25(h).
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		<ul style="list-style-type: none">• Affidavit is silent on the implementation of non-formal education schemes or programmes, research for designing and developing new assistive devices, teaching aids, etc., setting up of teacher training institutions, transport facilities, provisioning of amanuensis, etc. as mandated under Sections 27-31.• Affidavit is silent on implementation of provisions of Sections 34-37 on furnishing information to employment exchange and Sections 40-41 on maintenance of records by the employers and vacancies to be reserved in poverty alleviation schemes.• Affidavit is silent in implementation of most of the provisions mandated under Sections 44, 47 for ensuring non-discrimination in transport, and government employment to PWDs.• Affidavit is silent on implementation of Sections 48-49 qua research and manpower development initiatives.• Affidavit is silent on implementation of Sections 50-51 qua appointment of competent authority.
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		<ul style="list-style-type: none">• Affidavit is silent on implementation of Section 56 qua establishment and maintenance of institutions for persons with severe disabilities.
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		<ul style="list-style-type: none">• Affidavit is silent on implementation of social security schemes as mandated under Sections 67-68.• Affidavit is silent on formation of rules under Section 73 by the appropriate Government for carrying out the provisions of the PWD Act.
23.	UT of Lakshadweep	<p>Affidavit is not in compliance with the order dt. 26-4-2016, however the earlier affidavit shows the following:</p> <ul style="list-style-type: none">• Affidavit is silent on setting up of special schools as mandated under Sections 26(b) -(d) of the PWD Act, 1995.• Affidavit is silent on implementation of Section 28 qua research for designing and developing new assistive devices, teaching aids, etc.• Affidavit is silent on implementation of Section 31 on provision of amanuensis to the students with visual impairment.• Affidavit is silent on implementation of provisions of Section 41 qua incentives to the employers to ensure 5% of the workforce composed of persons with disabilities.• Affidavit is silent on implementation of Section 56 qua establishment and maintenance of institutions for persons with severe disabilities.• Affidavit is silent on implementation of social security insurance schemes for employees as mandated under Section 67.• Affidavit is silent on formation of rules

		under Section 73 by the appropriate Government for carrying out the provisions of the PWD Act.
24.	State of Uttarakhand	<p>Affidavit is not in compliance with the order dt. 26-4-2016, however the earlier affidavit shows the following:</p> <ul style="list-style-type: none">Though the affidavit speaks of compliance with provisions of Sections 26-31 but lot more requires to be done like, schemes for non-formal education, vocational training centres, research for designing and developing new assistive devices, curriculum restructuring, forum for redressal of grievances of parents of children with disabilities, provision of amanuensis, etc.Though the affidavit speaks of compliance with provisions of Sections 32-41 but lot more requires to be done like provisioning of 3% reservation of seats in all educational institutions, incentives to employers, schemes for preferential allotment of land, etc.Affidavit itself states that the provisions of Sections 48-49 and 56 are yet to be complied with.
25.	State of Andhra Pradesh	<ul style="list-style-type: none">In compliance with provisions of Section 56 establishment of a spinal injury centre at Visakhapatnam is under consideration and establishment of four homes for destitute, aged and crippled is also under consideration.
26.	State of Madhya Pradesh	<ul style="list-style-type: none">Establishment of special schools for visually, hearing and mentally impaired children is being proposed in 41 districts of the State. Section 26 (Free education to CWDs) has not been complied with in its entirety)No measures in compliance with Section 29 (Teachers Training Institution) have been complied with.With regard to Section 30 (Comprehensive Education Scheme) the affidavit is silent on the aspect of

		<p>restructuring of the curriculum.</p> <ul style="list-style-type: none">• The affidavit is silent on Section 46 (Non-discrimination in the built environment).• The affidavit is silent on the compliance with the Implementation of provisions of Section 47 (Discrimination in government jobs).• The affidavit is silent on the implementation aspect of Section 49 (Financial Incentives to Universities for Research).
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27.	State of J&K	<ul style="list-style-type: none">• No affidavit has been filed in compliance with order dt. 26-4-2016. However, the State earlier had filed an affidavit wherein it was stated that the PWD Act, 1995 is not applicable to the State of J&K.
28.	State of West Bengal	<ul style="list-style-type: none">• Though the affidavit speaks on the compliance with Sections 26-31 of the PWD Act, 1995 however lot more requires to be done like vocational training facilities, conducting special part-time classes, initiation of research for designing and developing new assistive devices and teaching aids, setting up of teacher's training institution, etc.• Affidavit is silent on compliance with provisions of Section 34 of the PWD Act, 1995 for provisioning of special employment exchange.• Affidavit is silent on promotion of research and manpower development, and appointment of competent authority as mandated under Sections 48-50 of the PWD Act, 1995. Affidavit is silent on implementation of Section 56 of the PWD Act, 1995 regarding establishment of institutions for persons with severe

		disabilities.
29.	UT of Dadra and Nagar Haveli	<ul style="list-style-type: none"> The affidavit is silent on the compliances w.r.t Sections 31-32 (Amanuensis to Children with Visual Impairment) (Identification of Posts), 34-41 (Employment and Benefit Related Schemes), 48-49 (Research) and (Financial Incentives to Universities for Research), 56 (Institution for Persons with Severe Disabilities) and 66-68 (Social Security Programmes).
30.	State of Haryana	<ul style="list-style-type: none"> Affidavit is silent on provisioning of teacher's training institution for person to teach children with disabilities as mandated under Section 29 (Teacher's training Institution) of the PWD Act. Affidavit is silent on initiation of research for designing and developing new assistive devices and teaching aids, setting up of teacher's training institution, etc. as mandated under Sections 30-31 (Comprehensive Education Scheme) and (Amanuensis to Children with Visual Impairment) of the PWD Act. In compliance with Section 73 (Government Rules) of the PWD Act, Rules have yet not been finalised.
31.	State of Maharashtra	<ul style="list-style-type: none"> Compliances have been carried out by the State Government.
32.	Union Territory of Daman And Diu	<ul style="list-style-type: none"> No compliances or reports have been presented with regard to the provisions of Sections 26-32 (Education and assistive devices for Children PWDs), 34-55 and 57-68. The affidavit is silent w.r.t the aforementioned sections.



33.	State of Kerala	<ul style="list-style-type: none"> The State has assured various measures and various schemes but no status has
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		been presented on the progress/implementation of the projects made so far.
34.	State of Odisha	<ul style="list-style-type: none"> Non-compliance with Section 45 as the funds received have not been utilised. Non-compliance with Section 49 as no action has been carried out.
35.	State of Himachal Pradesh	<ul style="list-style-type: none"> In reference to compliance with Section 68 (Social Security Schemes) of the PWD Act, State Government submits that such scheme is being implemented. Only Disability Relief Allowance is being provided to 41, 961 persons with disabilities.
36.	State of Mizoram	<ul style="list-style-type: none"> Section 41 (Incentives to Employers) not complied with due to financial constraints.
37.	State of Telangana	<ul style="list-style-type: none"> State submits that it is in the process of forming various committees and departments as they have been divided due to its bifurcation with Andhra Pradesh.
38.	Department of Women and Child Empowerment	<ul style="list-style-type: none"> Compliances with regard to Sections 49 (Financial Incentives to Universities for Research) and 66 (Social Security Programmes) are still at the implementation stage."

8. The learned counsel for the petitioner submits that there has been no complete compliance with the judgments passed by this Court. She has submitted that the reasons for non-compliance are perceptible though all the States and Union Territories should have complied with the various provisions of the 1995 Act.

9. It is necessary to mention here that we have reproduced the tabular chart so that each State can know what the other States have done and who has failed to comply and take steps on the path of complete compliance. Before they could do what the 1995 Act envisages, Parliament, realising the national need of the rights of the persons with disability and commitment to the Convention of the United Nations General Assembly, repealed the 1995 Act and brought in the Rights of Persons with Disabilities Act, 2016 (for short "the 2016 Act"). The said 2016 Act has been brought into existence to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. We think it appropriate to reproduce the Preamble of the Act:

"An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

Whereas the United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006;

And whereas the aforesaid Convention lays down the following principles for empowerment of persons with disabilities,



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(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;

(b) non-discrimination;

(c) full and effective participation and inclusion in society;

(d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

(e) equality of opportunity;

(f) accessibility;

(g) equality between men and women;

(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

And whereas India is a signatory to the said Convention;

And whereas India ratified the said Convention on the 1st day of October, 2007;

And whereas it is considered necessary to implement the Convention aforesaid.

Be it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:"

10. The 2016 Act visualises a sea change and conceives of actualisation of the benefits engrafted under the said Act. The whole grammar of benefit has been changed for the better, and responsibilities of many have been encompassed. In such a situation, it becomes obligatory to scan the anatomy of significant provisions of the Act and see that the same are implemented. The laudable policy inherent within the framework of the legislation should be implemented and not become a distant dream. Immediacy of action is the warrant.

11. We may note with profit that sub-section (2) of Section 1 of the

2016 Act stipulates that the said Act shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

12. Ms V. Mohana, learned Senior Counsel appearing for the Union of India has filed the Gazette Notification issued by the Ministry of Social Justice and Empowerment dated 19-4-2017, which provides as follows:

"In exercise of the powers conferred by sub-section (2) of Section 1 of the Rights of Persons with Disabilities Act, 2016 (49 of 2016), the Central Government hereby appoints 19th day of April, 2017, as the date on which the said Act shall come into force."

Thus, the Act has come into force with effect from 19-4-2017.

13. Sections 2(c), 2(h), 2(k), 2(m), 2(v) and 2(zb) define "barrier", "discrimination", "Government establishment", "inclusive education", "private establishment" and "Special Employment Exchange", respectively. Ms Manali Singhal, learned counsel appearing for the petitioner would submit that the Preamble of the 2016 Act and the dictionary clause have expanded the horizon of the rights of the persons with disabilities.



14. In this context, Sections 2(p), 2(r) and 2(s) are worthy of reference. They read as under:

2. (p) "local authority" means a Municipality or a Panchayat, as defined in clause (e) and clause (f) of Article 243-P of the Constitution; a Cantonment Board constituted under the Cantonments Act, 2006; and any other authority established under an Act of Parliament or a State Legislature to administer the civic affairs;

* * *

(r) "person with benchmark disability" means 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;

(s) "persons with disability" means 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."

15. Section 12 deals with access to justice. It reads as follows:

"12. Access to justice.—(1) The appropriate Government shall

ensure that persons with disabilities are able to exercise the right to access any court, tribunal, authority, commission or any other body having judicial or quasi-judicial or investigative powers without discrimination on the basis of disability.

(2) The appropriate Government shall take steps to put in place suitable support measures for persons with disabilities specially those living outside family and those disabled requiring high support for exercising legal rights.

(3) The National Legal Services Authority and the State Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 (39 of 1987) shall make provisions including reasonable accommodation to ensure that persons with disabilities have access to any scheme, programme, facility or service offered by them equally with others.”

(4) The appropriate Government shall take steps to—

(a) ensure that all their public documents are in accessible formats;

(b) ensure that the filing departments, registry or any other office of records are supplied with necessary equipment to enable filing, storing and referring to the documents and evidence in accessible formats; and

(c) make available all necessary facilities and equipment to facilitate recording of testimonies, arguments or opinion given by persons with disabilities in their preferred language and means of communications.”

16. Section 16 deals with the duty of educational institutions. Section 17 lays down postulates for specific measures to promote and facilitate inclusive education. Section 18 deals with the adult education and provides that the appropriate Government and the local authorities shall take measures to promote, protect and ensure participation of persons with disabilities in



adult education and continuing education programmes equally with others. Section 19 deals with vocational training and self-employment.

17. Section 24 occurs in Chapter V, where the heading is “social security, health, rehabilitation and recreation”. Section 25 deals with healthcare. Section 31 deals with free education for children with benchmark disabilities. Section 32 which deals with reservation in higher educational institutions, reads as follows:

“32. Reservation in higher educational institutions.—(1) All

Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent seats for persons with benchmark disabilities.

(2) The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education."

18. Section 33 deals with identification of posts for reservation and Section 34 provides for reservation. Section 35 dealt with incentives to employers in private sector. These provisions, being of significance, are reproduced below:

"33. Identification of posts for reservation.—The appropriate Government shall—

(i) identify posts in the establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved in accordance with the provisions of Section 34;

(ii) constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and

(iii) undertake periodic review of the identified posts at an interval not exceeding three years.

34. Reservation.—(1) Every appropriate Government shall appoint in every Government establishment, not less than four per cent of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely:—

(a) blindness and low vision;

(b) deaf and hard of hearing;

(c) locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;

(d) autism, intellectual disability, specific learning disability and mental illness;

(e) multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disability:

Provided that the reservation in promotion shall be in accordance with such instructions as are issued by the appropriate Government from time to time:



Provided further that the appropriate Government, in consultation with the Chief Commissioner or the State Commissioner, as the case may be, may, having regard to the type of work carried out in any government establishment, by notification and subject to such conditions, if any, as may be specified in such notifications exempt any government establishment from the provisions of this section.

(2) Where in any recruitment year any vacancy cannot be filled up due to non-availability of a suitable person with benchmark disability or for any other sufficient reasons, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with benchmark disability is not available, it may first be filled by interchange among the five categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability:

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the five categories with the prior approval of the appropriate Government.

(3) The appropriate Government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

35. Incentives to employers in private sector.—The appropriate Government and the local authorities shall, within the limit of their economic capacity and development, provide incentives to employer in private sector to ensure that at least five per cent of their work force is composed of persons with benchmark disability."

19. As is noticeable, under the 1995 Act, Parliament had shown its concern and provided for reservation for many categories and this Court by various judgments had directed for implementation of the Act and some States have implemented the provisions to a certain extent.

20. We will be failing in our duty if we do not take note of Section 84 that makes provision for creation of Special Court for speedy trial to try the offences under the 2016 Act. Section 85 stipulates for appointment of Special Public Prosecutor. Thus, emphasis is on the Special Court, speedy trial and Special Public Prosecutor.

21. Under Chapter XVI, offences and penalties have been dealt with. Section 89 provides for punishment for contravention of provisions of

Act or Rules or Regulations made thereunder. The said section reads as follows:

“89. Punishment for contravention of provisions of Act or rules or regulations made thereunder.—Any person who contravenes any of the provisions of this Act, or of any rule made thereunder shall for first contravention be punishable with fine which may extend to ten thousand rupees and for any subsequent contravention with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.”



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22. Section 90 deals with offences by companies. It is extracted hereunder:

“90. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section—

(a) “**company**” means any body corporate and includes a firm or other association of individuals; and

(b) “**Director**”, in relation to a firm, means a partner in the firm.”

23. Section 92 deals with punishment for the offences of atrocities

and Section 93 provides for punishment for failure to furnish information.

24. We have referred to certain provisions only to highlight that the 2016 Act has been enacted and it has many salient features. As we find, more rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund and the State fund for persons with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. The statute operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation.

25. Regard being had to the change in core aspects, we think it apposite to direct all the States and the Union Territories to file compliance report keeping in view the provisions of the 2016 Act within twelve weeks hence. The States and the Union Territories must realise that under the 2016 Act their responsibilities have grown and they are required to actualise the purpose of the Act, for there is an accent on many a sphere with regard to the rights of those with disabilities. When the law is so concerned for the disabled persons and makes provision, it is the obligation of the law executing authorities to give effect to the same in quite promptitude. The steps taken in this regard shall be



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concretely stated in the compliance report within the time stipulated. When we are directing the States, a duty is cast also on the States and its authorities to see that the statutory provisions that are enshrined and applicable to the cooperative societies, companies, firms, associations and establishments, institutions, are scrupulously followed. The State Governments shall take immediate steps to comply with the requirements of the 2016 Act and file the compliance report so that this Court can appreciate the progress made.

26. The compliance report to be filed by the States shall be supplied to the learned counsel for the petitioner, the learned counsel for the Union of India as well as to the learned counsel for the applicant/intervenor so that they can assist the Court.

27. The Registry is directed to send a copy of the order passed today to the Chief Secretaries of the States and the Administrators of the Union Territories.

28. Let the matter be listed on 16-8-2017.

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[†] Under Article 32 of the Constitution of India

¹ *Justice Sunanda Bhandare Foundation v. Union of India*, (2014) 14 SCC 383 : (2015) 3 SCC (L&S) 470

² *Union of India v. National Federation of the Blind*, (2013) 10 SCC 772 : (2014) 2 SCC (L&S) 257

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