

**Bill No. XLVI of 2017**

THE CONSTITUTION (AMENDMENT) BILL, 2017

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BILL

*further to amend the Constitution of India.*

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

1. (i) This Act may be called the Constitution (Amendment) Act, 2017.

Short title and commencement.

(ii) It shall come into force with immediate effect.

5 2. In article 15 of the Constitution,—

Amendment of article 15.

“(i) in clause (1), after the words “place of birth”, the word “disability” shall be inserted.

(ii) in clause (2), after the words “place of birth”, the word “disability” shall be inserted.

10 (iii) in clause (4), after the words “the Scheduled Tribes”, the words “or the persons with disabilities” shall be inserted.

(iv) in clause (5), after the words “the Scheduled Tribes”, the words “or for persons with disabilities” shall be inserted.

Amendment  
of article 16.

**3.** In article 16 of the Constitution,—

(i) in clause (2) after the words “place of birth, residence”, the word “disability” shall be inserted. 5

(ii) in clause (4) after the words “under the State”, the words “or in favour of the persons with disabilities” shall be inserted.

Amendment  
of article 39.

**4.** In article 39 of the Constitution,—

(i) in sub-clause (a) for the words “and women”, the words “, women and persons with disabilities” shall be substituted. 10

(ii) in sub-clause (d) for the words “and women”, the words “, women and persons with disabilities” shall be substituted.

(iii) in sub-clause (e) for the words “and women”, the words “, women and persons with disabilities” shall be substituted.

Insertion of  
new article  
46A.

**5.** After article 46 of the Constitution, the following be inserted, namely:— 15

Promotion of  
educational  
and economic  
interests of  
persons with  
disabilities.

"46A. The State shall promote with special care the educational and economic interests of persons with disabilities and shall protect them from social injustice and from all forms of exploitation.

## STATEMENT OF OBJECTS AND REASONS

Persons with disabilities remain one of the most marginalised communities in the country. Occurrences of stigma and discrimination are common in the lives of these persons. This is despite India's engagement with international conventions for persons with disabilities. India had adopted the Proclamation on the Full Participation and Equality of Persons with Disabilities in the Asian and the Pacific Region in December, 1992. Nine years after India ratified the United Nations Convention on the Rights of Persons with disabilities (UNCRPD) in 2007, the Rights of Persons with Disabilities Act, 2016 came into force. The Act aimed to empower persons with disabilities by providing legal redress against discrimination, access to education and employment.

Despite the 22 year long existence of Persons With Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995; its revamp through Rights of Persons with Disabilities Act, 2016 and India's ratification of UNCRPD, progress has been slow. 70 million disabled Indians continue to face discrimination and don't get access to public services, formal employment and education. Reportedly only seven states have a separate department for dealing with matters concerning persons with disability. According to the World Disability Report 2011, 87% of persons with disabilities work in the informal sector in India. The same report also pointed that the share of disabled children not enrolled in schools in the more prosperous states in India is more than five times the national rate. The Ministry of Social Justice and Empowerment is responsible for special schools for children with disabilities while the Department of Education is responsible for children in mainstream schools. This segregation has developed a cultural perception that more than equality of opportunity, children with disabilities are in need of welfare. These perceptions lead to stereotyping children with disabilities and breed negative attitudes.

The Hon'ble Supreme Court in the case of *Jeeja Ghosh versus Union of India* observed that, equality not only implies preventing discrimination, but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation. The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights.

Although Section 3 of the Rights of persons with Disabilities Act, 2016 ensures equality and non-discrimination the same has not been matched with amendments in the Constitution.

Therefore, it has been proposed that Article 15, Article 16 and Directive Principles of the Constitution be amended so that all policies, laws and regulations are designed keeping in view the interests of persons with disabilities. It will empower persons with disabilities as they can seek redressal for violation of their fundamental right against discrimination. By amending its Constitution, India will join the league of developed nations like Canada, Germany, UK that guarantee equal Rights to persons with disabilities in their Constitution.

Hence this Bill.

HUSAIN DALWAI

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

	*	*	*	*	*
Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.	<p><b>15.</b> (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.</p> <p>(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—</p> <p style="padding-left: 20px;">(a) access to shops, public restaurants, hotels and places of public entertainment;</p> <p style="padding-left: 20px;">or</p> <p style="padding-left: 20px;">(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.</p> <p>(3) ***</p> <p>(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.</p> <p>(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.</p>	<p style="text-align: center;">***</p>	<p style="text-align: center;">***</p>		
Equality of opportunity in matters of public employment.	<p><b>16.</b> (1)*</p> <p>(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.</p> <p>(3) *</p> <p>(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.</p> <p>(4A) *</p> <p>(4B) *</p> <p>(5) *</p>	<p style="text-align: center;">*</p>	<p style="text-align: center;">*</p>	<p style="text-align: center;">*</p>	
Certain principles of policy to be followed by the State.	<p><b>39.</b> The State shall, in particular, direct its policy towards securing—</p> <p style="padding-left: 20px;">(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;</p> <p style="padding-left: 20px;">(b)*</p> <p style="padding-left: 20px;">(c)*</p> <p style="padding-left: 20px;">(d) that there is equal pay for equal work for both men and women;</p> <p style="padding-left: 20px;">(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;</p> <p style="padding-left: 20px;">(f)*</p>	<p style="text-align: center;">*</p>	<p style="text-align: center;">*</p>	<p style="text-align: center;">*</p>	
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RAJYA SABHA

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*(Shri Husain Dalwai, M.P.)*