

RIGHTS OF PERSONS LIVING WITH DISABILITIES UNDER THE DISCRIMINATION AGAINST PERSONS WITH DISABILITIES (PROHIBITION) ACT 2018*

Abstract:

This paper examines the rights of persons with disabilities in the Discrimination against Persons with Disabilities (Prohibition) Act 2018, which came into force on the 23rd January 2019. The major objective of the Act is to eliminate discrimination against persons with disabilities, reduce the unnecessary hardship and suffering they encounter on daily basis and to improve their standard of living. Persons with disabilities in this country suffer a lot, many could be seen begging on street, many roaming half or completely naked on the street because of mental issues, many want to pursue their higher education but no support, many were opportune to study up to tertiary education but securing employment becomes most difficult for them, while even those who succeeded in securing the employment accessing their offices and other public places in course of their work becomes impossible as a result of the discriminatory building plans used in the construction of the said public building etc. To ameliorate the situation, the government enacted the said Act to achieve the abovementioned objectives. It is now over a year since the enactment of the Act, but yet, no step so far taken by the government to start implementing the provisions of the Act. The prime objectives of this research are to find out how the Act will eliminate discrimination against persons with disabilities, assist in improving their standard of living and alleviate the sufferings being experienced by persons with disabilities. Doctrinal research methodology is adopted in this research. The research observes that it is now over one year after the enactment of the Act but neither a Commission nor its governing council provided by the Act is inaugurated by the government and it is also observed that the free medical care provided in the Act for the disable persons is limited to persons with mental disability. The research recommends that there is need for the government to sit up and start implementing the provisions of the Act by constituting governing council and inaugurating the commission itself provided by the Act. It is also recommended that provision of free medical care for persons with the mental disability be extended to all certified persons living with disabilities by enrolling them into the National Health Insurance Scheme, where they could get medication free of charge.

Keywords: Rights, Persons living with disabilities, Discrimination against with Disabilities (Prohibition) Act 2018, Nigeria

1. Introduction

In the history of mankind from ancient time, there were some civilizations, ethnics, tribes and individuals whose attitudes towards disable persons were positive, but on the other hand, going through the history, the predominant attitudes of ancient and medieval generations towards persons with disabilities were negative.¹ In Athens and Spartan cities disabled people were mercilessly dealt with because of the ruling class interest in having a society free of what they referred to as defective people who were regarded as sub-humans.² In Rome the elite kept disabled people who were referred to as ‘fools’ and ‘jesters’ for amusement of their masters and their guests. The mentally retarded persons who failed to satisfy their masters were locked in cages or sentenced to death and, some of them were left alone to roam and eventually die. In support of the above position Aristotle equated deafness to mental incapacity and Spencer advocated the theory of survival of the fittest and eliminating the unfit, such unfits were largely referred to persons with disabilities.³ The traditional and religious beliefs of some Nigerian Communities as to causes of disability, determine to a large extent, the community’s attitude and reactions towards the disable persons. Disability conditions such as deafness, blindness, mental retardation and orthopaedic impairment in some traditional, settings are attributed to punishment by vengeful gods in the present or past incarnations including murder, infidelity etc.⁴ while some other tribes think being disabled serves as a licence to the relations of the disable persons to exploit the latter for begging and solicitation for alms.⁵ Discrimination against persons with disability is called ableism which means discrimination and social prejudice against people with disabilities or those who are perceived to have disabilities.⁶

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¹Mohammed Awaisu Haruna, ‘The Problems of Living with Disability in Nigeria’, *Journal of Law, Policy and Globalization*, [2017], 65, 107.

² Ibid.

³ Ibid.

⁴O. M. Iyabo, ‘Parental Attitude towards Disability and Gender in the Nigerian context: Implications for Counseling’, *Mediterranean Journal of Social Sciences*, [2014], 4, 1, 40-56.

⁵ Ibid.

⁶Nick Dickson,

<https://scotland.shelter.org.uk/get_advice/advice_topics/complaints_and_court_action/discrimination_and_harassment/disability_discrimination/what_is_disability_discrimination> accessed on the 25th October, 2019

Being a disabled person is generally not by choice and one can be disabled at any stage of life. The 1999 Constitution of the Federal Republic of Nigeria, as amended, enjoins government to direct its policy towards ensuring that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled persons are provided for all citizens.⁷ The Constitution further enjoins the government to ensure that all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment and there must be equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever, including disability.⁸ In order to achieve these fundamental objectives provided by the constitution and for the fulfilment of its obligation under the United Nations Convention on the Rights of persons with Disabilities (CRPD)⁹ which Nigeria is a signatory to it; President Muhammad Buhari signed into law the Discrimination against Persons with Disabilities (Prohibition) Act 2018. The Act brought many unprecedented developments towards the progress and welfare of persons with disability.

In Nigeria disabled persons experience and suffer from the discriminatory attitude of members of the public and the government in terms of its policies, decision making and implementation on issues that affect their lives.¹⁰ In Anambra State about 5000 disabled persons protested because of their bitter experience of neglect and humiliation by the government on 'World Disable Day' in 2010. But sadly, no government official was present to address them on that date. One of the disabled persons reacted by saying:

Although we are not beggars, we wanted government to touch our lives and assist us in various areas, instead of treating us like animals...Our members are angry because they kept us waiting from 10:00am to 4:30pm without a word from either the Governor or any official.¹¹

Generally, disabled persons in Nigeria suffer from social and economic exclusions, intimidation and harassment from members of the public and the government itself. A number of disabled women suffer from triple jeopardy because they are discriminated as dependant, as poor and as disabled.¹² If they happen to be disabled they suffer more than men. For example, women who become disabled as a result of permanent suffering from Vesico Viginal Fistula (VVF) largely, experience rejection from husbands and are deserted by close associates and some of their relatives.¹³ It was reported in 2013 that in Kano and Katsina 95 percent of the women interviewed disclosed that they were rejected by their husbands, 66 percent by their parents and 90 percent were shunned by members of their communities.¹⁴ While persons with the disability in Nigeria are experiencing this trauma, the Act was enacted to remedy such discriminatory attitudes; hence, such law must be welcomed by all and sundry. This research appraises the new law¹⁵ in order to find out the rights conferred on the persons living with disability in Nigeria, how the law will at least alleviate the discrimination suffered by persons with disabilities and how the law could assist in improving their standard of living. Doctrinal research methodology is adopted in this research. The research is limited to the rights provided by the new law.

2. Origin of the Discrimination against Persons with Disabilities (Prohibition) Act

The origin of the Discrimination against Persons with Disabilities (Prohibition) Act 2018 could be traced to a period before the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol

⁷ Constitution of Federal Republic of Nigeria 1999 as amended, (CFRN 1999) s 16 (2) (d).

⁸ CFRN 1999, s 17 (3) (a) (e).

⁹ The Convention on the Rights of Persons with Disabilities is an international treaty that identifies the rights of persons with disabilities as well as the obligations on States parties to the Convention to promote, protect and ensure those rights. The Convention also establishes two implementation mechanisms: The Committee on the Rights of Persons with Disabilities, established to monitor implementation, and the Conference of States Parties, established to consider matters regarding implementation. States negotiated the Convention with the participation of civil society organizations, national human rights institutions and inter-governmental organizations. The United Nations General Assembly adopted the Convention on 13 December 2006 and it was opened for signature on 30 March 2007. States that ratify the Convention are legally bound to respect the standards in the Convention. For other States, the Convention represents an international standard that they should endeavour to respect.

¹⁰ Collins Chuku, 'Disable Citizens, Stage Protest', <<http://www.theguardian.ng/disable-citizens-stage-protest.html>>, accessed on the 26th October, 2019

¹¹ Ibid.

¹² Lawal, Bature. 'Psychosocial Health Consequences on Vesico Vaginal Fistula patients', *Bayero Sociologist: A Journal of Sociological studies*, [2013], 1, 4, 32.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Discrimination against Persons with Disabilities (Prohibition) Act 2018.

which Nigeria is a signatory.¹⁶ There are at least 25 million persons that are living with disabilities in Nigeria.¹⁷ The Discrimination against Persons with Disabilities (Prohibition) Act 2018 lingered in the National Assembly for about 18 years. The Act was transmitted to different presidents for assent for four times since 1999.¹⁸ It was at the fourth time, after the bill was transmitted to President Muhammadu Buhari for assent in December 2018, and on the 23rd January 2019 President Muhammad Buhari signed it into law after 19 years of relentless advocacy by disability rights groups and activists.¹⁹ According to the 2011 World Disability Report of the World Health Organization about 15 percent of Nigeria's population, equivalent to about 25 Million people have a disability,²⁰ and many of them face a number of human rights violations including stigma, discrimination, subjecting to begging, confinement, violence, and lack of access to healthcare, housing, and education.²¹ Nigeria ratified the United Nations Convention on the Rights of People with Disabilities (CRPD) in 2007 and its Optional Protocol in 2010. The ratification encouraged civil society groups and people with disabilities to continue putting much pressure on government to pass into law the Disability Law, the finally succeeded in January 2019.²² The Act generally provides for equal status to the effect that persons with disabilities along with persons without disabilities should be given equal rights and opportunity. The Act also criminalises certain discriminatory conducts and provides varieties of sanctions ranges from fine, imprisonment or both as well as damages are provided against violators.²³ The Act visualises the conditions and limitations of persons with disabilities and makes provisions for their inclusion in the society and public affairs, at least as succour to lessen their emotional and psychological trauma. If the Act is fully implemented, it would alleviate the suffering of persons with disabilities to a great extent and even curb the menaces of using them as object of begging, rituals and also relief the relations of this category of Nigerians from bearing the entire burden of catering for them all alone.²⁴

The Act provides for the establishment of Commission for the people with disability as well as the office of the Executive Secretary of the Commission who shall be appointed by the President, who must be a person with disability; and be answerable to the Commission's governing council for the execution of the policies and administration of the daily affairs of the Commission.²⁵ The Commission's governing council established by the Act is composed of part time chairman and one person with disability from each geopolitical zone; a representative each from the Federal Ministry of Education, Health, Sports, Women Affairs, Housing, Transport, Environment, Labour and Productivity, Justice, Finance; and a representative each from the National Human Rights Commission and the National Planning Commission.²⁶ The Chairman and the six geopolitical zones representatives are to be appointed by the President subject to confirmation of the senate.²⁷ Chairman and all members are to occupy office for a term of four years and may be re-appointed for a further term of four years and no more.²⁸ The Commission's governing council is conferred with a power to manage and superintend over the affairs of the Commission, make rules and regulations for the effective running of the Commission, establish and promote inclusive schools, vocational and rehabilitation centres for the development of persons with disabilities; liaise with the public and private sectors and other bodies to ensure that the peculiar interests of persons with disabilities are taken into consideration in every government policy, programme and activity; in collaboration with other relevant government agencies and professional bodies in the building industry, enforce compliance of public buildings codes and impose necessary sanctions and make appropriate orders; receive complaints of persons with disabilities on the violation of their rights; support an individual's right to seek redress in court, investigation, prosecution or sanctioning, in appropriate cases, the violation of the provision of the Act; ensure research,

¹⁶ Muhammad Awaisu Haruna, (n.1).

¹⁷Hameed Oyegbade, '*Disability Act in Nigeria*', <<https://www.thenigerianvoice.com/amp/news/278150/disability-act-in-nigeria-going-forward.html>> accessed 30th October, 2019.

¹⁸ Titilope Fadare, '*18 Years Jinx Broken as Buhari Signs Disability Bill into Law*', < [://www.orderpaper.ng/18-years-jinx-broken-as-buhari-signs-disability-bill-into-law/](http://www.orderpaper.ng/18-years-jinx-broken-as-buhari-signs-disability-bill-into-law/)>, accessed 26th October, 2019.

¹⁹Esther Iroanusi, '*Ten Things to Know About Nigeria's New Disability Law*', <<https://www.premiumtimesng.com/news/headlines/307494-ten-things-to-know-about-nigerias-new-disability-law.html/amp/>>, accessed on the 25th October, 2019.

²⁰Anietie Ewang, '*Nigeria Passes Disability Rights Law*', <<https://reliefweb.int/report/nigeria/nigeria-passes-disability-rights-law>> accessed on the 25th October, 2019.

²¹ Ibid.

²² Ibid.

²³Ibim O. Dokubo, '*Highlights of Discrimination Against Persons With Disabilities (Prohibition) Act*', <<http://www.alliancelf.com/highlights-of-discrimination-against-persons-with-disabilities-prohibition-act-2019/>>, accessed 25th October, 2019.

²⁴ Hameed Oyegbade, (n.17).

²⁵ Section 40.

²⁶ Section 32.

²⁷ Section 32 (3).

²⁸ Section 34.

development and education on disability issues and disabled persons; collaborate with the media to make information available in accessible format for persons with disabilities; and procure assistive devices for all disability types.²⁹ It is important at this gesture to state that up to date the federal government does not constitute nor inaugurate either the governing council or the commission as provided by the Act and it is over one year now after the enacting the law.³⁰ The Act is broadly divided into eight parts, having 58 sections spread across the said eight parts. The parts consist of prohibition of discrimination and awareness programmes, accessibility of physical structure, road transportation, seaports and airlines, right to education and health, right of first consideration in queues, accommodation and in emergencies, opportunities in employment and politics as well as public life and finally establishment of National commission for persons with disability its duties, membership powers and functions etc. The enactment of the Act is only a first step in the fulfilment of Nigeria's obligations under the CRPD.

3. Rights of Persons Living with Disabilities under the Discrimination against Persons with Disabilities (Prohibition) Act 2018.

The Act brought a number of enforceable rights meant to improve the well being of persons living with disability in Nigeria. Some of such rights include free education up to secondary schools, free healthcare for persons with psychiatric problems, consideration in queue and accommodation, provision of 5% job opportunity etc. Hereunder are the rights discussed as follows:

Rights of Free Education Up to Secondary Schools

The Act guarantees the right of persons with disabilities for free education up to secondary school level and an unfettered right to education without discrimination or segregation in any form. And mandated the Commission if constituted to provide educational assistive devices³¹ for the disable persons across the country at no cost.³² The Act mandated the government to ensure that the education of persons with disabilities, particularly children, who are blind, deaf or with multiple disabilities, is delivered in the most appropriate language, mode and means of communication for the individual, and in environments which maximise academic and social development.³³ This provision is very much important considering the high cost of educational assistive devices prices at market, coupled with the fact that many of persons with disabilities are indigent who are battling with the three square meals every day.³⁴ It is worthy of mention here that persons with disability only get additional three years free for senior secondary school education under the Act, this is because section 3 of Compulsory, Free Universal Basic Education Act 2004 has mandated the government to provide free education at primary and junior secondary school for all Nigerians.³⁵

Rights of Consideration in Queues and Accommodation

Another important right guaranteed by the Act is the right of persons with disability to be given first consideration in queues, as much as possible, be attended to outside the queue. And the law criminalise failure to give such consideration to disable persons, hence, it provides for sanction upon whoever contravenes this provision.³⁶ The law further, mandated schools, employers, service providers and any other organisation to give first consideration to persons with disability when they are happened to give accommodation, the Act provides as follows:

If accommodation is being provided by schools for their students, employers for their employees, service providers for their customers, organisations for their members, government for the people and in any other circumstance whatsoever, persons with disabilities shall be given first consideration.³⁷

²⁹ Section 37

³⁰ Ebuka Onyeji, Nigeria: FG Moves to Establish Commission for Disabled Persons, <<https://allafrica.com/stories/202006120151.html>>, accessed on 14th July, 2020.

³¹ Section 57 of the Act interprets 'assistive device' means any device that assists, increases or improves the functional capabilities of persons with disabilities.

³² Section 17.

³³ Section 20.

³⁴ M. Akinwale Oladejo and S. Abimbola Oladejo, 'Educating Students with Disabilities in Nigeria: Some Challenges and Policy Implications', *European Journal of Humanities and Social Sciences*, [2011] 3, 1, 130.

³⁵ Compulsory, Free Universal Basic Education Act 2004, S. 3 (1), provides that "the services provided in public primary and junior secondary schools shall be free of charge"

³⁶ Section 26

³⁷ Section 27

For the sanction the Act provides that in queues, persons with disabilities shall be given first consideration and, as much as possible, be attended to outside the queue. Any person who fails to give such first consideration in queue to persons with disabilities commits an offence and is liable on conviction to a fine of ₦50,000.00 or a term of six months imprisonment or both.³⁸

Right of Free Healthcare for Persons with Mental Disabilities and Issuance of Certificate

The Act mandates the government to guarantee the right of persons with disabilities to have unfettered access to adequate health care without discrimination on the basis of disability. And most importantly, a person with mental disability shall be entitled to free medical and health services in all public institutions.³⁹ Moreover, the Act mandates any person with mental disability to obtain a certificate of disability from the Commission, the Act provides as follows:

A person with mental disability shall obtain a Permanent Certificate of Disability from the Commission. If a doctor suspects disability in the course of treatment of a person who before was not a person with disability, the doctor may with the approval of the Commission, issue a Temporary Certificate of Disability which shall last for not longer than 180 days. If the state of disability persists beyond 180 days, the Commission on the recommendation of a doctor shall issue the person a Permanent Certificate of Disability which shall last for as long as the state of the disability persists. A person issued with a Permanent Certificate of Disability is entitled to all rights and privileges under this Act.⁴⁰

This provision inter-alia attempts to give an exclusive power to the Commission to issue certificate of disability to persons with mental disability and in order to have a unified certificate of disability nationally. And by the above provision a medical doctor can only issue temporary certificate of disability to mentally disable persons upon approval of the Commission. The provision free medical care is limited to persons with mental disabilities. The Act further provides for an exclusive power on the Commission to issue a Certificate of Disability to persons with disability,⁴¹ hence, the Act provides that whoever unlawfully issues or obtains a Certificate of Disability, commits an offence and is liable on conviction to a fine of ₦200,000 or imprisonment for a term of one year or both.⁴²

Right of Job Opportunities

The Act provides that all employers of labour in public organisations shall, as much as possible, have persons with disabilities constituting at least 5% of their employment workforce.⁴³ The Act enjoins both public and private officials to encourage people with disabilities to fully participate in politics and public life. And government shall actively promote an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs without discrimination, non-governmental organisations and associations concerned with the public and political life of the country; and activities and administration of political parties.⁴⁴

Right of Reserve Parking Space

The Act provides that at any public parking space there shall be suitable spaces properly marked and reserved for persons with disabilities to park their vehicles. Any person, organisation or corporate body in control of public parking spaces who fails to provide for the reserved spaces for persons with disability commits an offence and is liable on conviction to a fine of N1, 000 for each day of default. And on the other hand, any person without disability who parks a vehicle in the reserved space in subsection commits an offence and is liable on conviction to a fine of N5,000. While a person who intentionally obstructs the reserved space in subsection (1) commits an offence and is liable on conviction to a fine of N5,000.⁴⁵

³⁸ Section 26 (2)

³⁹ Section 21 of the Act

⁴⁰ Section 22

⁴¹ Section 22

⁴² Section 23

⁴³ Section 29.

⁴⁴ Section 30.

⁴⁵ Section 12 (3)(4)(5)

Right to have Public Buildings and Structures Accessible by Persons with Disability

The Act provides for five years transitory period within which all public buildings⁴⁶ and structures, whether immovable, movable or automobile, which were inaccessible to persons with disabilities shall be modified to be accessible and be usable by persons with disabilities including those on wheelchairs. And before erecting any new public building or structure, its plan shall be scrutinised by relevant authority to ensure that the plan conforms to the building code. And the Act mandated government or government agency, body or individual responsible for the approval of building plans shall not approve any building plan of a public building if the plan does not make provision for its accessibility by persons with disability whether with wheelchair or any other walking assistive device.⁴⁷

Right against Discrimination

The Act prohibits discrimination against persons with disability, by guaranteeing their rights against discrimination. The Act provides that any person or institution that discriminates⁴⁸ person with disability on the ground of his disability in any manner or circumstance, that person or institution commits an offence and if convicted shall be punished with; if the person is a body corporate, a fine of ₦1,000,000 (One Million Naira); and an individual, a fine of ₦100,000 (One Hundred Thousand) or six months imprisonment or both.⁴⁹ The Act gives a victim of discrimination right to maintain a civil action against a person or institution that made discrimination against him, irrespective of whether the criminal case succeeds or fails. The Act provides:

Notwithstanding the prosecution, conviction or otherwise of any person for any offence under this Act, the person against whom the crime or wrong is committed may maintain a civil action against the person committing the offence or causing the injury, without prejudice to any conviction or acquittal.⁵⁰

The Act provides that where the discrimination against persons with disability happens to be in the process of employment or in course of work as a staff, a person who commits such discrimination against persons with disability commits an offence and is liable on conviction to nominal damages of a minimum of ₦ 250,000 payable to the affected person with disability.⁵¹ But where the convict is a company it shall be liable to nominal damages of a minimum of N500,000 payable to the affected person with disability; and any principal officer of the company involved in the violation is liable to N50,000 damages payable to the affected person with disability.⁵² It is pertinent to state that for a person with disability to be entitled to the said damages it is sufficient for a Plaintiff i.e. person with disability to prove the violation of the relevant section of the Act without specific proof of damages. A court is also at liberty to access and award general and special damages in addition to the normal damages provided for in the Act.⁵³

Right not be Used for Soliciting for Alms

A novel provision in the Act has prohibited using disabled persons for solicitation of alms; moreover, the Act has criminalised using them for begging. The Act prohibits any person from employing, using or involving a person with disability in begging or soliciting for alms or using the condition of disability as a guise for the purpose of begging in public. The Act prescribes the punishment of N100, 000 as fine or a term of six months imprisonment or both if convicted.⁵⁴

4. Conclusion

Nigeria has become an important place in the pursuit of establishing a classless and egalitarian society due to the enactment of the Act. It is not in dispute that, persons with disabilities have been denied a fair chance to compete effectively with others. When it comes to job opportunities, accessibility to public places, education, healthcare, etc, their rights have been frequently crushed. With the coming into force the Discrimination against Persons with Disabilities (Prohibition) Act, 2018, it is firmly believed that the Act will help to provide extra strength for the

⁴⁶Section 57 of the Act interprets 'public building' means a building owned or used by government or government agency or a building available for the use of members of the public;

⁴⁷ Sections 6 and 7.

⁴⁸ Section 57 of the Act defines 'discrimination' to mean differential treatment and its verbs and infinite form, discriminate, to discriminate have the corresponding signification.

⁴⁹ Section 1 (2)(a)(b)

⁵⁰ Section 1 (3)

⁵¹ Section 28 (2)

⁵² Section 28 (3)

⁵³ Section 55

⁵⁴ Section 16 (2)

enforcement of rights of persons with disabilities in Nigeria. It is observed that the Act fairly confers some rights that if fully enforced, they are capable of alleviating many difficulties and hardship being experienced by the persons living with disability in Nigeria. It is observed that with the establishment of National Commission for Persons with Disabilities coupled with the powers conferred on it and that of its governing council a number of discriminatory attitudes against persons with disabilities would be reduced, however, it is now over one year after the enactment but neither the Commission nor its governing council is set up by the government. It is also observed that from the beginning there was lack of political will to use law and end discrimination against persons with disability, which was why the bill spent about 18 years roaming between National Assembly and the Presidency before it became law. It is also observed that disabled children's right to free education is restricted to senior secondary school, with only additional three years free education is considering the provisions under Compulsory, Free Universal Basic Education Act 2004 that provides for nine years free and compulsory education for all Nigerian children. It is further observed that provision of free medical care for the disable persons is limited to persons with mental disability.

In light of the above observation the research recommends that the government should as quick as possible constitute and inaugurate the governing council and the Commission established by the Act in order to start implementing the provisions of the Act. Authorities should put effective measures in place for full implementation of the provisions of the Act by ensuring equal treatment and participation of people with disabilities in governance and politics across the nation and ensure that public buildings are made accessible to disabled persons within the transitory period of five years. Moreover, the Act might be amended to provide for financial assistance and allowances for persons with disability who are indigents and pursuing their studies at high educational level. While in respect of the healthcare delivery, it is recommended that provision be made where all persons certified by the Commission to be living with disabilities be enrolled into National Health Insurance Scheme (NHIS), where they could get medication free of charge, therefore, it is recommended that free medical-care should be extended to other disabled persons and not be limited to persons with mental disability only.