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## Judgment Sheet

### IN THE LAHORE HIGH COURT LAHORE

#### JUDICIAL DEPARTMENT

Case No: W. P. No.29131/2017

Barrister Asfandyar Khan      Versus      Govt. of the Punjab, etc.  
Tareen, etc.

#### JUDGMENT

Date of hearing:	16.01.2018
Petitioner(s) by:	Petitioner No.1 in person.
Respondent (s) by:	Mr. Nasar Ahmad, Deputy Attorney General for Pakistan. Ms. Hina Hafeezullah Ishaq, Assistant Attorney General for Pakistan. Mr. Anwaar Hussain, Additional Advocate General Punjab. Mr. Tariq Ismail, Litigation Officer, Social Welfare Department.

#### **Syed Mansoor Ali Shah, C.J:-**

*“O you who believe! Let not one people deride another; it may be that they are better than them.”*

*(Al-Quran- 49:11)<sup>1</sup>*

Through this public interest petition, the petitioners have challenged the use of words “disabled”, “physically handicapped” and “mentally retarded” mentioned in The Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 (“Ordinance”) on the ground that they are violative of fundamental rights of persons with disabilities- in particular, right to life, right to dignity and right to non-discrimination under Articles 9, 14 & 25 of the Constitution of Islamic Republic of Pakistan, 1973.

<sup>1</sup> Translation: The Study of Quran Seyyed Hossein Nasr.

ARGUMENTS

2. Arguing for the petitioners, Petitioner No.1, who is a Barrister and an advocate of this Court, submits that our Constitution does not distinguish between a *person* and a *person with disabilities*. He submits that correct word to describe all categories of persons is the word *person* and the definition of *person* under the Ordinance can describe the mental and physical impairments, if any, to explain the applicability of the Ordinance. He prays that terms and words like “*disabled*”, “*physically handicapped*” and “*mentally retarded*” be struck down as being unconstitutional. He further submits that under the doctrine of severance, the deletion of the above words does not affect the scope, operability and enforceability of the Ordinance. In support of the above contentions, he placed reliance on *Hiral P. Harsora and others v. Kusum Narottamdas Harsora and others* (2016) 10 SCC 165), *Shahid Pervaiz v. Ejaz Ahmad and others* (2017 SCMR 206) and *R.M.D. Chamarbaugwalla and another v. Union of India and another* (AIR 1957 S.C. 628). On the question that the aforesaid words violate fundamental rights, he placed reliance on *Hafiz Junaid Mahmood v. Government of Punjab and others* (PLD 2017 Lahore 1), He has also placed reliance on the UN Conventions of the Rights of Persons with Disabilities (“CRPD”).

3. Mr. Nasar Ahmad, Deputy Attorney General for Pakistan and Ms. Hina Hafeezullah Ishaq, Assistant Attorney General for Pakistan submit that they support the contentions of the petitioners and the words under challenge are violative of human dignity and are liable to be struck down. They further submit that under Article 199 (1) (c) read with Article 7 of the Constitution, direction can be issued to the Parliament to ensure that as a consequence of striking down the words in question in the Ordinance, other laws be also examined and any such words appearing in any other legislation may also be corrected.

They submit that directions may also be issued to the Executive Branch of the State not to use these words in any executive orders, notifications or directives.

4. Mr. Anwaar Hussain, learned Law Officer submits that Government is already conscious of the offensive nature of the word “mentally retarded” and has started using the word “persons with different abilities” in place of Disabled Person, or “Mentally Retarded Person”. He also supports the contentions of the petitioners and has placed reliance on the judgment Hafiz Junaid Mahmood v. Government of Punjab and others (PLD 2017 Lahore 1).

#### OPINION OF THE COURT

5. I have heard the parties and have gone through the record of the case. The question that requires determination is whether words/terms like “disabled”, “physically handicapped” and “mentally retarded” provided in the Ordinance are unconstitutional and as a consequence, are to be struck down from the statute?

#### Disability and its meaning:

6. In Hafiz Junaid’s case<sup>2</sup> I have discussed the concept of disability in the following manner: “Disability means lacking one or more physical powers, such as the ability to walk or to coordinate one's movements, as from the effects of a disease or accident, or through mental impairment. According to the UN Convention on the Rights of Persons with Disabilities (“CRPD” or “Convention”) ratified by Pakistan in 2011, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Disability is an evolving concept and that disability results

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<sup>2</sup> Hafiz Junaid Mahmood v. Government of Punjab and others. PLD 2017 Lahore 1

from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”

7. A disability is what someone has, not what someone is. A disability is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Disability is thus not just a health problem. It is a complex phenomenon, reflecting the interaction between features of a person’s body and features of the society in which he or she lives.

*Disabled person versus person with disabilities or different abilities*

8. Disability is a situation which is faced by an individual in the absence of social, environmental, medical, economic and human services. Disability is always situational, and its etiology is therefore both environmental and individual. The first thing that comes to mind when labelling someone as 'disabled' is the action itself. People should not be labelled as anything, least of all disabled. When someone is diagnosed with a condition (like autism), they aren't autistic, they *have* autism. Who they are as a person is not impacted by a medical condition and it surely doesn't contribute to their identity. The term disabled has not been favoured in recent times with several alternatives cropping up. One of these is seeing more favour than others is 'differently abled'. This term is inclusive and offers an equal platform to those who fall under it. People with mental or physical conditions are differently abled because they possess a unique set of abilities and perspectives. Everybody has ability and everybody matters, it's all about acknowledging it. 'Differently abled' doesn't hide

the fact that your loved one has been diagnosed with a condition, but continues to empower them despite it. Oftentimes, differently abled people see what we can't, hear what we can't and think what we can't. This makes their ability different - not inferior, not superior - just different. The term differently abled recognizes talent and value in everybody and treats them equally. While mental conditions like autism can affect certain everyday functions, it need not stop them from enjoying a fulfilling, enriched and loved life. Many differently abled people are known to flourish and rejoice in life with the right opportunity, support and love.<sup>3</sup> "People-first" or "person-first" language is a way of describing disability that involves putting the word "person" or "people" before the word "disability" or the name of a disability, rather than placing the disability first and using it as an adjective. Some examples of people-first language might include saying "person with a disability," "woman with cerebral palsy," and "man with an intellectual disability." The purpose of people-first language is to promote the idea that someone's disability label is just a disability label—not the defining characteristic of the entire individual<sup>4</sup>. *Differently abled* is a phrase used because it supposedly humanizes disabled people by focusing on our abilities rather than on our impairments. On the other hand terms like “*disabled*”, “*physically handicapped*” and “*mentally retarded*” are hurtful and offensive.

### *Disability and Dignity*

9. Internationally, rights of persons with disabilities are provided in the Convention on the Rights of Persons with Disabilities and Optional Protocol (CRPD), to which Pakistan is a signatory. Relevant extracts of the Convention are as follows:

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<sup>3</sup> <http://www.apd-india.org/blog/i-am-differently-abled-not-disabled-0>

<sup>4</sup> Syracuse University Disability Cultural Center (DCC). An Introductory Guide to Disability Language and Empowerment

“CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Preamble

The States Parties to the present Convention,

(a) Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) ...

(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(f) ...

(g) Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

(h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,

(i) Recognizing further the diversity of persons with disabilities,

(j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,

(k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

(l) Recognizing the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,

(m) Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

(n) Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,

(o) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,

(p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

(q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

(r) Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

(s) Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(t) Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(u) Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(v) Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(w) Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(y) Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

#### Article 1 Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

#### Article 2 ...

#### Article 3 General principles

The principles of the present Convention shall be:

- (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 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.

Article 4 ...

Article 5 Equality and non-discrimination

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Articles 6 to 9 ...

Article 10 Right to life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 11 ...

Article 12 Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a

competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

#### Article 13 Access to justice

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

#### Article 14 Liberty and security of person

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.

#### Articles 15 & 16 ...

#### Article 17 Protecting the integrity of the person.

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.”

10. The above shows that the Charter of the United Nations recognizes the inherent dignity and worth and the equal and

inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. The Universal Declaration of Human Rights and the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind. The Convention reaffirms the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination. That disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. Discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person. The promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms results in their enhanced sense of belonging and in significant advances in the human, social and economic development of society. It is critical for persons with disabilities to have individual autonomy and independence, including the freedom to make their own choices. Children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children. Persons with disability should have access to physical, social, economic and cultural environment, to health and education and to information and communication, in enabling them to fully enjoy all human rights and fundamental freedoms.

11. The fundamental principles of the Convention provide respect for inherent dignity, individual autonomy including the freedom to make one's own choices, independence of persons, non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of persons with

disabilities, human diversity and humanity, equality of opportunity, accessibility, equality between men and women and respect for the right of children with disabilities to preserve their identities. Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

12. In *Hafiz Junaid's*<sup>5</sup> case this Court held:

“16. Our Constitution is prefaced by timeless and immutable constitutional values, which reflect the will and resolve of the people of Pakistan. These preambular constitutional values provide that principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be observed. Wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality. These constitutional values, inter alia, flow into fundamental rights, like the right to life (Article 9), the right to dignity (Article 14) and the right to equality (Article 25) making our Constitution evergreen, organic and a living document.

17. Our Constitution, as a whole, does not distinguish between a person with or without disabilities. It recognizes inherent dignity of a human being, equal and inalienable rights of all the people as the foundation of freedom, justice and peace. Every person is entitled to all the rights and freedoms set forth therein, without distinction of any kind. Our Constitution embodies universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms. It applies equally to persons with disabilities, guaranteeing them full enjoyment of their fundamental rights without discrimination. The triangular construct of the right to life, dignity and equality under the Constitution provides a robust platform for mainstreaming persons with disabilities.”

13. Dignity has its roots in the simple idea that justice consists of the refusal to turn away from suffering.<sup>6</sup> Most central of all human rights is the right to dignity. Dignity unites the other human rights into a whole. The right to dignity reflects the ‘recognition that a human being is a free agent, who develops his body and mind as he wishes, and the social framework to which he is connected and on which he depends. Human dignity is therefore the freedom of the individual to shape an individual identity. It is the autonomy of the

<sup>5</sup> *Hafiz Junaid Mahmood v. Government of Punjab and others*. PLD 2017 Lahore 1

<sup>6</sup> *Stu Woolman* – The Architecture of Dignity. The Dignity Jurisprudence of the Constitutional Court of South Africa. Vol-1, p.73

individual will. It is the freedom of choice. Human dignity is infringed if a person's life or physical or mental welfare is harmed<sup>7</sup>.

Reasonable Accommodation

14. The Convention provides that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. The State shall take all appropriate steps to ensure that *reasonable accommodation* is provided. Reasonable accommodation is defined under the Convention to mean necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. While “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation

15. In *Hafiz Junaid's case* the need for *reasonable accommodation* under CRPD was given a constitutional underpinning, a requirement that flows from the fundamental rights guaranteed under the Constitution in the following manner:-

“19. Right to life and right to dignity are the epicenters of our constitutional architecture. Right to life recognizes the importance of accessibility to physical, social, economic and cultural environment, to health and education and to information and communication. Such a right enables persons with disabilities to fully enjoy all human rights and fundamental freedoms. Every human being has the inherent right to life and to ensure its effective enjoyment, this includes persons with

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<sup>7</sup> *Aharon Barak – The Judge in a Democracy.* Pp. 85-86

disabilities, at par with the others. Right to life and right to dignity are deeply interwoven. “The purpose of the constitutional right to human dignity is to realize the constitutional value of human dignity. Thus its purpose is to realize a person’s humanity. The dignity of a human being is his free will; the freedom to shape his life and fulfill himself. It is a person’s freedom to write his life story.” Right to life and dignity of a person with disabilities can only be realized if the State and its institutions take steps to provide reasonable accommodation that will facilitate and ensure that the person with disabilities can enjoy life with honour and dignity like others in the society. (*emphasis supplied*)

20. The Constitution abhors discrimination and holds that all citizens are equal before law and are entitled to equal protection of law. Inherent in Article 25 is the recognition that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of a human being. Article 25 of the Constitution promotes inclusiveness, effective participation and recognizes human diversity in a society. Non-discrimination as a fundamental right, guarantees elimination of discrimination at all levels and, therefore, mandates that reasonable accommodation be provided by the State and other institutions, to actualize this constitutional goal and avoid exclusion of persons with disabilities from effective participation in the society. “There should be a full recognition of the fact that persons with disability are integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others.” Our Constitution promotes and protects the human rights of all persons inclusive of persons with disabilities. The constitutional values of social, economic and political justice recognize free choice and individual autonomy for all. Our Constitution is a living document and provides a bold and a passionate constitutional support for persons with disabilities.

21. This constitutional construct creates an obligation on the State and other institutions of the State to make all possible endeavours to mainstream persons with different abilities and to embrace the diversity in the society. The State and its institutions are under a constitutional obligation to go the extra mile and ensure, within the means available, that person with disabilities get reasonable accommodation in order to enjoy their fundamental rights in the same manner as enjoyed by other citizens of Pakistan. (*emphasis supplied*)

16. The use of the terms or words like “disabled”, “physically handicapped” and “mentally retarded” characterize and label a person on the basis of an impairment, which negates reasonable accommodation as they deny persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. These words also amount to discrimination on the basis of disabilities as they have the effect of impairing or

nullifying the recognition, enjoyment or exercise of persons with disabilities, on an equal basis with others, of all human rights and fundamental freedoms. These words, labels and characterization seriously offend the right to be a *person* thereby infringing constitutional guarantees like right to life, right to human dignity and right to non-discrimination of persons with disabilities, thereby violating Articles 9, 14 and 25 of the Constitution.

17. The use of outdated language and words to describe people with disabilities helps to continue old stereotypes. Being aware of the words we choose when we communicate is the first step toward correcting injustice. These portrayals led to unwanted sympathy, or worse, pity toward individuals with disabilities. Respect and acceptance is what people with disabilities would rather have. By carefully choosing our words, we can make a tremendous difference in the lives of other youth with disabilities. Using respectful language can dramatically change our communities for the better.<sup>8</sup> The words under challenge have been rebuffed and looked down upon by the civilized world. It is more humane to use the term: *persons with disabilities or persons with different abilities*. This is the practice outside Pakistan.

#### *United States of America*

- Rehabilitation Act, 1973
  - Section 504 of the Rehabilitation Act, 1973 was designed to ensure that any program or activity receiving federal financial assistance does not discriminate on the basis of disability.
    - A "*person with a disability*" is defined as any person who
      - (1) has a physical or mental impairment that substantially limits one or more major life activities,
      - (2) has record of such an impairment, or

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<sup>8</sup> <http://www.fvkasa.org/resources/files/history-nyln-language.pdf>

(3) is regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks.

- Americans with Disabilities Act, 1990
  - *"no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a public entity."*

#### UK

- Disability Discrimination Act, 1995
  - Defines disability as *"a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities"*

#### Australia

- Disability Discrimination Act, 1992
  - Purpose of enactment, *inter alia*, *"to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community"*

#### India

- Rights of Persons with Disabilities Act, 2016
  - Enacted to give effect to international obligations under the CRPD.

18. Keeping words like *"disabled," "physically handicapped" and "mentally retarded"* in the statute would recurrently impair and offend human dignity of persons with different abilities. Learned DAG and Law Officer representing the Federal and Provincial Government both support the contention of the petitioners and submit that these words ought to be struck down from the Ordinance.

19. The words *disabled persons* appear 34 times in the Ordinance, other than in the title of the Ordinance, while *"physically handicapped"* and *"mentally retarded"* appear once in the definition of disabled person in section 2(c) of the Ordinance. Removal of these offensive words from the Ordinance does not affect the scope, extent, operability or enforceability of the Ordinance. Therefore, applying



the Doctrine of Severance, the words “*disabled*,” “*physically handicapped*” and “*mentally retarded*” are declared to be violative of articles 9, 14 and 25 of the Constitution and hence unconstitutional and illegal. The constitutionally compliant definition of the *disabled person* will be read as follows:

*“disabled person” means a person who, on account of injury, disease or congenital deformity, is handicapped for undertaking any gainful profession or employment in order to earn his livelihood, and includes a person who is blind, deaf, physically handicapped or mentally retarded;*

While the title of the Ordinance will be read as:

*Disabled Persons (Employment and Rehabilitation) Ordinance, 1981.*

Reliance is placed on *Hiral P. Harsora and others v. Kusum Narottamdas Harsora and others (2016) 10 SCC 165*, *Shahid Pervaiz v. Ejaz Ahmad and others (2017 SCMR 206) R.M.D. Chamarbaugwalla and another v. Union of India and another (AIR 1957 S.C. 628)*, *The Corporation of Calcutta v. Calcutta Tramways Co. Ltd. (AIR 1964 SC 1279)*, *Satyawati Sharma v. Union of India and another (2008) 5 SCC 287*.

20. In addition to the above the Federal Government, as well as, the Government of the Punjab is directed to discontinue the use of these words in official correspondence, directives, notifications and circulars and shift to *persons with disabilities or persons with different abilities*.

21. Office will dispatch a copy of this judgment to the Ministry of Parliamentary Affairs, Islamabad to ensure the reprint of the Ordinance in compliance with this judgment under article 199(1)(c) of

the Constitution, in order to uphold the right to life and human dignity of persons with different abilities in our country.

22. This writ petition is **allowed** in the above terms with no orders as to costs.

*Iqbal\**

(Syed Mansoor Ali Shah)  
Chief Justice

**APPROVED FOR REPORTING**