

Human Rights Council resolution 22/3 – “The work and employment of persons with disabilities”

Section 16 of the Constitution provides that no law shall make any provision that is discriminatory either of itself or in its effect. The term “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description. Section 17 of the Constitution provides that a citizen who alleges that his right under, inter alia, section 16 of the Constitution is being or is likely to be contravened may apply to the Supreme Court for redress.

Section 17 (1) of the Equal Opportunities Act provides that-

(1) Subject to subsections (2) and (3), no educational institution shall discriminate –

(a) Against a person-

- (i) in deciding who should be admitted as a student;*
- (ii) by refusing or failing to accept that person’s application for admission as a student;*
- (iii) in the way that the person’s application is processed; or*
- (iv) in the terms and conditions on which it is prepared to admit that person as a student; or*

(b) Against a student by-

- (i) denying him access, or limiting his access, to any benefit, facility or service provided by the educational institutions;*
- (ii) expelling him; or*
- (iii) placing him at a disadvantage in any other manner.*

However, Section 17(3) of the Equal Opportunities Act provides that -

An educational institution may discriminate against a person on the basis of impairment where-

(a) in order to participate or continue to participate in, or to derive or continue to derive substantial benefit from the educational programme of the institution-

- (i) the person requires or would require special services or facilities; and*
- (ii) it is not reasonable in the circumstances for those special services or facilities to be provided; or*

(b) the person could not participate or continue to participate in, or derive or continue to derive substantial benefit from, the educational programme even after the provision of special services or facilities.

Such discrimination operates in special circumstances as underlined above. On the other hand, the Education Act has been amended in 2003 to provide for free and compulsory education of all children 16 years of age and below. Same applies to children with disabilities as well.