

A critical study of legal rights of people with disabilities: Indian scenario

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Received: February 08, 2019

Accepted: March 16, 2019

ABSTRACT: *Various social thinkers understood and interpreted the concept of disability. Disability is a condition in which a person is limited to conducting daily activities. It is a complex phenomenon that affects not only the characteristics of the body of a person, but also the characteristics of the society in which that person resides. Each country consists of a section of people with disabilities, many of whom are regularly discriminated against because they feel unwanted or rejected. People with disabilities have the right to enjoy human rights to life, freedom, equality, security and dignity by virtue of being human.*

But in India, disabled people remain an invisible category due to social indifference, psychological barriers, a limited definition of "disability" entitling law protection, and a lack of adequate data. More recently, the word 'differently capable' is used instead of 'handicapped' or 'disabled.'

India has a large number of disabled people facing complex problems with attached social stigma and harmful attitudes, as well as much less resource availability. Although the Indian legislature has established various laws and policies to ensure that disabled people in India have equal legal rights as other citizens with regard to employment, education, financial help, health facilities, etc.

In this research paper, the researcher is specifically dealing with respect to the contemporary status of disabled people with present laws and policies in India relating to the rights of disabled people. The paper also provides a systematic study on how these laws and policies have contributed towards the development of legal status of the disabled persons nationally. However, the researcher contends and argues that it is not the law that will solve this problem; but it is the change in the perception and mindset of the society that can meet the challenges attributed to disabled persons.

Key Words: *Disabled, disability, differently able, rights of disabled persons in India*

INTRODUCTION:

Over the centuries, the disabled have been marginalized and stigmatized in almost all societies and constitute a section of the population that is less served and neglected. Persons with disabilities are the poorest of the poor and the weakest of the weak and are educationally, socially and economically disadvantaged, so their right to self - affirmation, identity and development is usually denied. Life is made difficult not by the individual's medical condition, but primarily by a hostile social and physical environment, which excludes people with disabilities from all social spheres.

Disability is a condition in which an individual is restricted to performing daily activities or limitations as a result of impairment. A handicapped person is one who has a disadvantage resulting from a disability or impairment that poses a barrier to fulfilling a role or achieving a goal.

The rights and laws of persons with disabilities must be understood and studied from a variety of perspectives, including human rights and various other laws in India, which ultimately fill the differences or mitigate the gap between persons with disabilities and persons with different abilities to achieve personality and dignity in the proper sense of the word.

PROVISIONS UNDER THE CONSTITUTION – FUNDAMENTAL RIGHTS:

The framers of the Indian Constitution were aware of the difficulties faced by the weaker sections of society and people with disabilities. It is also necessary to make certain constitutional provisions for the physically and mentally disabled in order to ensure economic and social equality and justice. The researcher found that such provisions, which are actually made, are dispersed in different ways. A brief review of the constitutional and legislative provisions would allow us to have an idea of the concern that the constitutional makers and various governments have shown their concern to the disabled ever since the establishment of the Republic of India.

Some of these provisions are mentioned below, which could and can be used for betterment of the disabled.

- The Preamble, providing the very wide ambit, promises: We, the people of India, having solemnly resolved to secure Justice, social, economic and political, Equality of status and opportunity and fraternity assuring the dignity of the individual enact and give to ourselves this Constitution¹
- The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India.²
- Nothing in this (Article 15) shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens.³
- Nothing in this (Article 16) shall prevent the state from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under' the State.⁴
- No person shall be deprived of his life or personal liberty except according to procedure established by law.⁵

Although the fundamental rights mentioned above in some ways do not specifically mention the physically handicapped or disabled, they still concern the educationally, socially and economically and backward section of society.

It is the State's duty to demolish the wall that differentiates between a normal person and a disabled person, in order to implement the principle of equal status and opportunity. Even disabled people should have access to all rights, protections and benefits.

The dignity of an individual in a nation is the dignity of the nation itself. The Preamble to the Indian Constitution recognizes and guarantees the enforcement of the fundamental rights of every citizen essential to existence, the overall development of personality, dignified life such as equality and freedom of every Indian citizen.

Article 21 of the Indian Constitution states: No person shall be deprived of his or her life and personal freedom except in accordance with the procedure laid down by law. Everyone has the right to live with dignity according to this principle.

A dignified life refers to a life of honor and acceptance filled with society. It also includes work opportunities, educational facilities, medical benefits, accessibility, and affordability etc.

In the life of a physically disabled person, however, many of these basic concepts are not available. Few people with disabilities live with dignity, but vast majority live the omnipresent life of misery.

Accordingly, the right to housing, livelihood, education and work should be actively made available by the State to the people in general and to the disabled in particular. UNCRPD (United Nations Convention on the Rights of Persons with Disabilities) also has the fundamental motto of advancing parity.

Equal employment opportunities, whether through vocational rehabilitation provisions, quotas, equal employment laws or anti - discrimination provisions, are central not only to the economic rights of disabled people, but also to their broader social and political rights, which are closely and strategically linked to economic employment.

DIRECTIVE PRINCIPLES

Disability and Education Policy in India – The term disability can only be found in Article 41 of the Indian Constitution. It is a situation where, due to accident or injury, a person becomes unable to use any part of the body etc. In other cases, the expression of undeserved desire also relates to persons with disabilities and also takes into account their sweeping disabilities as the medical world is constantly acknowledging.

Even though Article 41 does not confer a justifiable right, the Supreme Court, in its interpretation, having regard to the economic and social objective, held the courts should interpret the statute in such a way as to advance the objective of Article 41.

According to Article 41⁶ of the Indian Constitution, the State is directed to assure people in cases of unemployment, old age, sickness and disability and in other cases of undeserved want within the limits of their economic capacity and development in terms of employment, education and public assistance.

¹ M.P. Jain , Constitutional Law of India, (2009) Universal publications, New Delhi, at p. 89.

² Article 14 of The Constitution of India

³ Article 15 (4) of The Constitution of India

⁴ Article 16 (4) of The Constitution of India

⁵ Article 21 of The Constitution of India

It has been argued that Article 41 has no bearing on the interpretation of Article 16, although it is evident that the term "public assistance" in Article 41 refers to economic assistance or relief for unemployed people or old, sick or disabled, or in other similar cases of wanting undeserved.

In 1964 - 66, the first Education Commission in India, known as the Kothari Education Commission, mentioned integrated education for disabled children in a chapter entitled towards equality of opportunities. It is observed that very less improvement has been done so far in this field and any major improvement in the situation does not seem to be possible in the near future. There is so much in the field that would be learned from the educationally advanced countries.

The 1968 National Education Policy followed the recommendations of the Commission and suggested the expansion of educational facilities for children with physical and mental challenges, including the development of integrated programs to enable children with disabilities to study in regular schools.

Eight years later, the then Ministry of Welfare launched the IECD (Integrated Education for Disabled Children) Scheme for Integrated Children of Disabled Children. The Sarva Shiksha Abhijaan (SSA), which was launched in 2000, claimed that it aimed to universalize elementary education by 2010.

Disability and Health laws- According to Article- 47 of the Directive Principles of State Policy:

The State shall consider raising the nutritional level and living conditions of its people and maintaining public health as one of its primary tasks and, in particular, the State shall endeavor to introduce a ban on consumption except for the medicinal purpose of intoxicating drinks and drugs that are harmful to health.

Disability and the family laws- Various marriage laws for different groups enacted by the government apply equally to the disabled. The following circumstances have been provided in most of these acts to disable a person from entering into a marriage. These are the following:

- Where either of the parties is lunatic or an idiot
- Where one party is unable to give a valid consent due to mental insanity or suffers from a mental disorder of such a nature and extent as to be unfit for ' marriage for children's procreation. '
- Where the parties are within the degree of forbidden relationship or are each other's sapindas unless custom or use permitted.
- Where there is a living spouse in either party.

INCOME TAX CONCESSIONS

- Section 80 DD: Section 80 DD provides for a deduction for expenses incurred by an individual or Hindu Undivided Family resident in India for medical treatment (including nursing) training and rehabilitation of disabled dependents, etc. To officiate the increased cost of such maintenance, the deduction limit has been raised from Rs.12000/-to Rs.20000/-.
- Section 80 V: A new section 80V has been introduced to ensure that the parent in whose hands a permanently disabled minor's income has been clubbed under Section 64 can claim a deduction up to Rs.20000/- under Section 80 V.
- Section 88B: This section provides for an additional net tax rebate payable by a resident who is 65 years of age. It has been amended to increase the rebate from 10% to 20% in cases where the gross total income does not exceed Rs.75000/-(as against a previously specified limit of Rs.50000/-).

CRITICAL ANALYSIS OF THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

On February 7, 1996, the Persons with Disabilities (Equal Opportunities, Rights Protection and Full Participation) Act, 1995 " was enforced. It is an important step that ensures equal opportunities for disabled people and their full participation in nation-building. The Act sets out both preventive and promotional aspects of rehabilitation, such as education, employment and vocational training, reservation, research and development of the workforce, creation of a barrier - free environment, rehabilitation of people with disabilities, unemployment benefits for people with disabilities, special insurance schemes for people with disabilities and housing for people with severe disabilities, etc.

Main Provisions of the Act

1. Prevention and Early Detection of Disabilities
2. Education
3. Employment

⁶ The State shall make effective provision, within the limits of its economic capacity and development, to secure the right to work, education and public assistance in cases of unemployment, old age, sickness and disability, and in other cases of undeserved desire. Given under Article 41, Constitution of India.

4. Research and Manpower Development
5. Non-Discrimination
6. Social Security
7. Affirmative Action
8. Grievance Redressal

In its International Classification of Impairment, Handicaps and Disabilities, the World Health Organization draws a distinction between disability, handicap and impairment.

It defines these three concepts as follows:

(a) Impairment is “any loss or abnormality of psychological, physiological or anatomical structure or function”. Impairments are organ level disturbances that include defects in or loss of a limb, organ, or other body structure, as well as defects in or loss of mental function.

(b) Disability is a “Restriction or lack (resulting from impairment) of the ability to carry out an activity in the manner or within the range considered normal for a human being”. It describes a restriction of function or activity caused by impairment.

(c) A handicap is a “Disadvantage for a given individual resulting from an impairment or disability that limits or prevents the fulfillment of a primary role (depending on age, sex and social and cultural factors) for that individual.”. The term is also a classification of “circumstances in which people with disabilities are likely to find themselves.”

It seems, however, that the definition of Section 2(i) of the Act does not recognize the international classification given by the World Health Organization. It also appears that the Act has attempted to cover all kinds of disability under Section 2(i), but in fact the term disability is included in the Act in a very narrow sense.

In comparison to India, the numbers so high for such “developed” nations as Australia or UK or USA. It is because; their definition of “disability” is much broader and more inclusive. For example, “people with internal conditions” are also considered disabled in such countries. These are individuals whose disability is not very visible.

A person with one lung or one kidney or a person with a severe heart condition would be called “disabled.” Even diabetics are given shade under the umbrella of disability in some countries. These countries and societies are now looking at disability as a social issue and not as a medical issue, as is the case in India where disability is a stigma.

Being disabled means being a person with no leg or arm or eye, or twisted or worse, crooked! People are ashamed to be labeled “disabled.”

Even after the Indian Act was enacted, the aims and purposes with which the Act was enacted are not served. The reasons are some of the lacunas in the Indian Act, as well as lack of implementation. And, these are the reasons why India is lagging behind the country like the US, which enacted the 1990 American Disability Act (hereafter referred to as the U.S. Act), in the international arena.

It is worth mentioning here that the prominent features of both countries’ statutes are similar and seek to provide education, employment, affirmative action, full participation, non - discrimination, research and development of manpower.

1. No guidelines and deadlines in the Indian Act for the authorities concerned to comply with the provisions of the Act.

Section 44 of the Indian Act provides for the special measures to be taken by the transport sector establishments to benefit persons with disabilities within the limits of their economic capacity and development.

In India, the authorities concerned still need to take action to ensure that the “accessibility” provision is implemented. The authorities exploit the term “within the limits of their economic capacity” unduly.

They used this term as a defense to deny the statute’s right. It is necessary to set a deadline for the authorities to comply with the provisions of the Indian Act in order to ensure strict implementation of the provision.

While the U.S. Act provides specific implementation guidelines with effective dates, deadlines, alternative arrangements, temporary relief, etc. For example, the U.S. Act provides for accessibility requirements under the various provisions and even compliance methods. The non-compliance is called discrimination. If effective implementation dates are long into the future or cause undue financial burden, temporary arrangements have been prescribed by the statute.

2. "US Act Watch" is an effective monitoring system for statute enforcement. The Indian Act watchdog system is not effective.

1992, "US Act Watch" has been in operation. It continually reviews and evaluates the effectiveness of all disability - related policies, programs and activities.

Under the Indian Act, it is envisaged that the Chief Commissioner and Disability Commissioners will be the watchdog bodies with the powers of a civil court. These offices were provided with very few facilities, however, and thus they remain ineffective.

3. ADA requires all agencies receiving federal assistance to comply with affirmative action programs. PDA must initiate and maintain programs of affirmative action.

Government contracts under ADA include a clause that says the contractor agrees to take affirmative action. The contractor must prepare and maintain programs of affirmative action. If the authorities determine that the above provision has been breached, they may impose a variety of sanctions, including canceling, terminating or suspending the contract or debarring the contractor from future contracts.

Under Section 39 of the PDA, all government educational institutions and institutions receiving government assistance shall reserve not less than 3 percent of seats for persons with disabilities.

Under Section 42, the disabled are to be provided with aids and appliances. Under Section 43, land should be allocated preferentially to the disabled. However, there is no pressure to comply with any of these affirmative action programs and much needs to be done.

4. ADA constantly ensures that the disabled are a group "who knows what to do when discriminated against."

Information on disabled rights should be disseminated through assistance manuals, question - answer booklets, media campaigns, etc. Every disabled person and his family should be armed with a manual (preferably approved by the relevant government authority) listing their rights.

They should know their rights as they encounter day-to-day situations at railway stations, post offices, cinema theaters, and libraries and as they seek admission to educational institutions or seek employment. Every time they encounter discrimination, they should be assisted by agencies and take up the issue for them.

It could be said that some lacunas and problems in their implementation lag behind Indian disability law in the international scenario. Here, the case of *Javed Abidi v. Union of India*⁷ can be referred, where the petitioner brought the ignorance of the authorities under the Indian Act to the Supreme Court's notice. It is ironic to note that every time a court notice is required for the authorities to start implementing any legislation's provisions. And it is only to the extent of initiating the process of setting up different committees. As far as the actual work of these committees is concerned, it would probably require another court notice. In this case, the Hon'ble Supreme Court expressed its hope and confidence that the respective committees will fulfill their obligations under the Act in order to achieve the objectives for which the Act was enacted.

POLITICS AND RIGHTS OF DISABLED

While political parties appeal to other marginalized groups, it has largely left out the disability sector. The community still faces violations of routine rights. While the movement for disability rights has brought some change over the past two decades, it has been painfully slow.

According to the UNCRPD (UN Convention on the Rights of Persons with Disabilities), which India ratified, the State must guarantee equal political rights for individuals with disabilities, including both the right to vote and to be elected. UNCRPD is now the basis for the Indian RPD (Rights of Persons with Disabilities) Act, 2016.

BJP National Secretary H Raja acknowledges that perhaps the party hasn't been proactive in inducing disabled people. Their numbers are actually low in politics, as political leadership requires hard work and constant travel.

In 2015, a Law Commission report recommended to the government that restrictions on leprosy - affected people should be removed in contesting elections. According to the report, approximately 1.25 lakh of new leprosy cases are recorded annually and approximately 850 segregated 'leprosy colonies' exist in India.

⁷ (1999) 1 SCC 467

CONCLUSION

Indeed, the Indian cross - disability rights movement that began in the early 1990s was inspired by its US counterpart. This movement led to the 1995 Act on Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation), which guaranteed that disabled people in India had the same right to education, employment and accessibility as any other citizen of the country.

We now have people with disabilities in schools, colleges and civil services because of this Act. We may still be very far from having our own Somoza⁸, but elections in India have now begun taking into account the needs of people with disabilities—a movement that began in 2004.

Why do we feel so uncomfortable with the concept of disability? India has not been able to accept people with disabilities as part of human diversity for all of our unity in claims to diversity. The answer to why this may persist is that people with disabilities have remained at the public discourse periphery. We mistakenly believe that disability is a homogeneous experience that affects only a few people. That's far from the truth. Disability is an experience that cuts across generations and affects at least 10-15% of the population. As our population grows older, this number will only go up.

Yet we don't see people with disabilities in our public life. Less than 50% of our government buildings are handicapped-friendly, as discovered by the Accessible India Campaign. Despite India's right to education law, out of India's 2.9 million disabled children, 990,000 children aged six fourteen are out of school, a report from UNESCO and UNICEF revealed. Acceptance of differences is imbibed at a very young age and children without disabilities are growing up with limited to no disability experience.

The recent controversy over the use of the term *divyang* is also a reflection of India's struggle for self-determination for people with disabilities.

Yes, it is true that there may not be a rights-based equivalent for the term 'persons with disabilities' in Hindi. But the choice to identify with any terminology is the people's prerogative and should not be defined by social constructs that patronize them. Unfortunately, in our mainstream public discourse, these issues hardly ever find space.

⁸ Anastasia Somoza, a young girl in a wheelchair, gave a rousing speech at the Democratic National Convention in Philadelphia, she epitomized the fact that children with disabilities have the right to go to school, that people with disabilities have a right to employment and that they have an equal say in the politics of their country