

DISABILITY IN INDIA AND PROTECTION OF LAWS: A BRIEF STUDY

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ABSTRACT

India is one of the world's fastest growing economies and claims to be the largest democratic republic. It has a population of 1.241 billion¹, of which an estimated 2.13% have disabilities.² This constitutes over 21 million people who require support to ensure access and inclusion within society. During this period of Indian economic growth, policy support for human rights of persons with disabilities is essential, to ensure the equity gap is decreased and that the voices of these persons are heard. There are many instances where these Peoples have done great jobs and have proved to be motivation for others.

KEYWORDS: Constitution, disability, protection, health, safety, equality, discrimination ,etc.

INTRODUCTION

The Constitution of India applies uniformly to every legal citizen of India, whether they are healthy or disabled in any way (physically or mentally) Under the Constitution the disabled have been guaranteed the following fundamental rights:

The Constitution secures to the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity. Article 15(1) enjoins on the Government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth. Article 15 (2) States that no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, public restaurants, hotels and places of public entertainment or in the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of government funds or dedicated to the use of the general public. Women and children and those belonging to any socially and educationally backward classes or the Scheduled Castes & Tribes can be given the benefit of special laws or special provisions made by the State.

¹ World bank data 2011

² Government of India, 2001.

There shall be equality of opportunity for all citizens (including the disabled) in matters relating to employment or appointment to any office under the State. No person including the disabled irrespective of his belonging can be treated as an untouchable. It would be an offence punishable in accordance with law as provided by Article 17 of the Constitution. Every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution. There can be no traffic in human beings (including the disabled), and beggar and other forms of forced labour is prohibited and the same is made punishable in accordance with law (Article 23). Article 24 prohibits employment of children (including the disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. Even a private contractor acting for the Government cannot engage children below 14 years of age in such employment. Article 25 guarantees to every citizen (including the disabled) the right to freedom of religion. Every disabled person (like the non-disabled) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.

No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group. No Disabled person will be deprived of the right to the language, script or culture which he has or to which he belongs. Every disabled person can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32. No disabled person owning property (like the non-disabled) can be deprived of his property except by authority of law though right to property is not a fundamental right. Any unauthorized deprivation of property can be challenged by suit and for relief by way of damages. Every disabled person (like the non-disabled) on attainment of 18 years of age becomes eligible for inclusion of his name in the general electoral roll for the territorial constituency to which he belongs.

EDUCATION LAW FOR THE DISABLED

The right to education is available to all citizens including the disabled. Article 29(2) of the Constitution provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language. Article 45 of the Constitution directs the State to provide free and compulsory education for all children (including the disabled) until they attain the age of 14 years. No child can be denied admission into any education institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language.

HEALTH LAWS

Article 47 of the constitution imposes on the Government a primary duty to raise the level of nutrition and standard of living of its people and make improvements in public health - particularly to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to one's health except for medicinal purposes. The health laws of India have many provisions for the disabled. Some of the Acts which make provision for health of the citizens including the disabled may be seen in the Mental Health Act, 1987 (See later in the chapter).

FAMILY LAWS

Various laws relating to the marriage enacted by the Government for different communities apply equally to the disabled. In most of these Acts it has been provided that the following circumstances will disable a person from undertaking a marriage. These are: Where either party is an idiot or lunatic, Where one party is unable to give a valid consent due to unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for procreation of children' Where the parties are within the degree of prohibited relationship or are sapindas of each other unless permitted by custom or usage. Where either party has a living spouse

The rights and duties of the parties to a marriage whether in respect of disabled or non-disabled persons are governed by the specific provisions contained in different marriage Acts, such as the Hindu Marriage Act, 1955, the Christian Marriage Act, 1872 and the Parsi Marriage and Divorce Act, 1935. Other marriage Acts which exist include; the Special Marriage Act, 1954 (for spouses of differing religions) and the Foreign Marriage Act, 1959 (for marriage outside India). The Child Marriage Restraint Act, 1929 as amended in 1978 to prevent the solemnization of child marriages also applies to the disabled. A Disabled person cannot act as a guardian of a minor under the Guardian of Wards Act, 1890 if the disability is of such a degree that one cannot act as a guardian of the minor. A similar position is taken by the Hindu Minority and Guardianship Act, 1956, as also under the Muslim Law

Succession Laws for the Disabled

Under the Hindu Succession Act, 1956 which applies to Hindus it has been specifically provided that physical disability or physical deformity would not disentitle a person from inheriting ancestral property. Similarly, in the Indian Succession Act, 1925 which applies in the case of intestate and testamentary succession, there is no provision which deprives the disabled from inheriting an ancestral property. The position with regard to Parsis and the Muslims is the same. In fact a disabled person can also dispose his property by writing a 'will' provided he understands the import and consequence of writing a will at the time when a will is written. For example, a person of unsound mind can make a Will during periods of sanity. Even blind persons or those who are deaf and dumb can make their Wills if they understand the import and consequence of doing it.

LABOUR LAWS FOR THE DISABLED

The rights of the disabled have not been spelt out so well in the labour legislations but provisions which cater to the disabled in their relationship with the employer are contained in delegated legislations such as rules, regulations and standing orders.

Judicial procedures for the disabled

Under the Designs Act, 1911 which deals with the law relating to the protection of designs any person having jurisdiction in respect of the property of a disabled person (who is incapable of making any statement or doing anything required to be done under this Act) may be appointed by the Court under Section 74, to make such statement or do such thing in the name and on behalf of the person subject to the disability. The disability may be lunacy or other disability.

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

“The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” had come into enforcement on February 7, 1996. It is a significant step which ensures equal opportunities for the people with disabilities and their full participation in the nation building. The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier- free environment, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc.

Main Provisions of the Act

- Prevention and Early Detection of Disabilities
- Education
- Employment
- Non-Discrimination
- Research and Manpower Development
- Affirmative Action
- Social Security
- Grievance Redressal

Prevention and early detection of disabilities

- Surveys, investigations and research shall be conducted to ascertain the cause of occurrence of disabilities.
- Various measures shall be taken to prevent disabilities. Staff at the Primary Health Centre shall be trained to assist in this work.
- All the Children shall be screened once in a year for identifying 'at-risk' cases.
- Awareness campaigns shall be launched and sponsored to disseminate information.
- Measures shall be taken for pre-natal, peri natal, and post-natal care of the mother and child.

EDUCATION

- Every Child with disability shall have the rights to free education till the age of 18 years in integrated schools or special schools.
- Appropriate transportation, removal of architectural barriers and restructuring of modifications in the examination system shall be ensured for the benefit of children with disabilities.
- Children with disabilities shall have the right to free books, scholarships, uniform and other learning material.
- Special Schools for children with disabilities shall be equipped with vocational training facilities.
- Non-formal education shall be promoted for children with disabilities.
- Teachers' Training Institutions shall be established to develop requisite manpower.
- Parents may move to an appropriate forum for the redressal of grievances regarding the placement of their children with disabilities.

SOCIAL SECURITY

- Financial assistance to non-government organizations for the rehabilitation of persons with disabilities.
- Insurance coverage for the benefit of the government employees with disabilities.
- Unemployment allowance to the people with disabilities who are registered with the special employment exchange for more than a year and could not find any gainful occupation
- Safety Measures for them at work places.
- Medical emergency facilities should be made available and without any cost at workplaces and educational institutions.

THE MENTAL HEALTH ACT, 1987

Under the Mental Health Act, 1987 mentally ill persons are entitled to the following rights: A right to be admitted, treated and cared in a psychiatric hospital or psychiatric nursing home or convalescent home established or maintained by the Government or any other person for the treatment and care of mentally ill persons (other than the general hospitals or nursing homes of the Government). Even mentally ill prisoners and minors have a right of treatment in psychiatric hospitals or psychiatric nursing homes of the Government. Minors under the age of 16 years, persons addicted to alcohol or other drugs which lead to behavioral changes, and those convicted of any offence are entitled to admission, treatment and care in separate psychiatric hospitals or nursing homes established or maintained by the Government. Mentally ill persons have the right to get regulated, directed and co-ordinated mental health services from the Government. The Central Authority and the State Authorities set up under the Act have the responsibility of such regulation and issue of licenses for establishing and maintaining psychiatric hospitals and nursing homes.

Treatment at Government hospitals and nursing homes mentioned above can be obtained either as in patient or on an out-patients basis. Mentally ill persons can seek voluntary admission in such hospitals or nursing homes and minors can seek admission through their guardians. Admission can be sought for by the relatives of the mentally ill person on behalf of the latter. Applications can also be made to the local magistrate for grants of such (reception) orders. The police have an obligation to take into protective custody a wandering or neglected mentally ill person, and inform his relative, and also have to produce such a person before the local magistrate for issue of reception orders. Mentally ill persons have the right to be discharged when cured and entitled to 'leave' the mental health facility in accordance with the provisions in the Act.

Where mentally ill persons own properties including land which they cannot themselves manage, the district court upon application has to protect and secure the management of such properties by entrusting the same to a 'Court of Wards', by appointing guardians of such mentally ill persons or appointment of managers of such property. The costs of maintenance of mentally ill persons detained as in-patient in any government psychiatric hospital or nursing home shall be borne by the state government concerned unless such costs have been agreed to be borne by the relative or other person on behalf of the mentally ill person and no provision for such maintenance has been made by order of the District Court. Such costs can also be borne out of the estate of the mentally ill person.

THE REHABILITATION COUNCIL OF INDIA ACT, 1992

This Act provides guarantees so as to ensure the good quality of services rendered by various rehabilitation personnel. Following is the list of such guarantees: To have the right to be served by trained and qualified rehabilitation professionals whose names are borne on the Register maintained by the Council. To have the guarantee of maintenance of minimum standards of education required for recognition of rehabilitation qualification by universities or institutions in India. To have the guarantee of maintenance of standards of professional conduct and ethics by rehabilitation professionals in order to protect against the penalty of disciplinary action and removal from the Register of the Council. To have the guarantee of regulation of the profession of rehabilitation professionals by a statutory council under the control of the central government and within the bounds prescribed by the statute

THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999

The Central Government has the obligation to set up, in accordance with this Act and for the purpose of the benefit of the disabled, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability at New Delhi. The National Trust created by the Central Government has to ensure that the objects for which it has been set up as enshrined in Section 10 of this Act have to be fulfilled. It is an obligation on part of the Board of Trustees of the National Trust so as to make arrangements for an adequate standard of living of any beneficiary named in any request received by it, and to provide financial assistance to the registered organizations for carrying out any approved programme for the benefit of disabled. Disabled persons have the right to be placed under guardianship appointed by the 'Local Level Committees' in accordance with the provisions of the Act. The guardians so appointed will have the obligation to be responsible for the disabled person and their property and required to be accountable for the same. A disabled person has the right to have his guardian removed under certain conditions. These include an abuse or neglect of the disabled, or neglect or misappropriation of the property under care. Whenever the Board of Trustees are unable to perform or have persistently made default in their performance of duties, a registered organization for the disabled can complain to the central government to have the Board of Trustees superseded and/or reconstituted. The National Trust shall be bound by the provisions of this Act regarding its accountability, monitoring finance, accounts and audit.

CONCLUSION

India is a signatory to the Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region. India is also a signatory to the Biwako Millennium Framework for Action towards an inclusive, barrier free and rights based society. India was part of the negotiations on the UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was adopted to give effect to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific region. The National Policy for Persons with Disabilities, 2006 was also adopted in furtherance of these international commitments, which are a two way process aimed at realizing economic, social and cultural rights for persons with disabilities. The government is in the process of evolving a framework for the implementation of the UN Disability Convention. However, a significant step has been in the deliberations on this matter in the processes that put the 11th Five Year Plan in place. This will provide us with a policy framework for the next five years at the national level and will enable a convergence between different sectors that is so significant for the realization of disability rights.

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