



RIGHTS OF DIFFERENTLY-ABLED PERSONS

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Abstract

The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicit mandates an inclusive society for all including the persons with disabilities. More than 650 million men, women and children in the world suffer from either mental or physical disability. Most of them live in the developing world. They suffer from discrimination and a lower standard of living. They are often denied basic educational opportunities and often given menial or poorly paid jobs. Social attitudes exclude them from cultural life and normal social relationships. 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. As per the provisions of the Persons with Disabilities have been identified viz blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental illness, persons falling under the above categories with a minimum of 40% disability are eligible for entitlement of all benefits provided by the Government. Disabled people need equal services and opportunities for their overall development, which is also an essential attribute for inclusive growth. Persons with Disabilities Act, 1995 does not pay any serious attention to securing some basic rights like the right to human dignity, right to equal concern and respect, right against discrimination in public employment and educational institutions, right against exploitation, right against victimization etc. The Act has completely ignored Pre-school education of disabled children, special problems of the parents of the disabled, special problems of the female disabled, games, sports and cultural activities, exploitation of disabled by their own families, higher education of the disabled. In practically Persons with Disabilities Act, 1995 not fully followed by the Central and State Governments. Separate departments were created by both Central and State Government, but not followed the rules and regulations stated in the said Act completely. Disabled People are treated as second class citizens. This paper deals with present position rights of disabled persons and gives some suggestions to improve it.

Keywords: Rights, Differently-abled, Constitution, Right to Education

Introduction

All human beings are born free and equal in dignity and rights. Everyone is entitled to all rights and freedoms without distinction of any kind. All are equal before the law and are entitled without any discrimination to equal protection of the law. Everyone has the right to a standard of living adequate for health and well-being including the right to security in the event of disability as per the Universal Declaration of Human Rights. Disabled persons shall enjoy rights without any exception whatsoever shall enjoy rights without discrimination or distinction. Disabled people have the inherent right to respect for their human dignity. They have the same fundamental rights as their fellow citizens. They have the same civil and political rights as other human beings. They are entitled to become as self-reliant as possible. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of disabled people is a violation of their rights. More than 650 million men, women and children in the world suffer from either mental or physical disability. Most of them live in the developing world. They suffer from discrimination and a lower standard of living. They are often denied basic educational opportunities and often given menial or poorly paid jobs. Social attitudes exclude them from cultural life and normal social relationships. Persons with Disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers. According to the Indian Census, 2.19 crores of people are disabled. Among them, 75% belong to the villages. Only 25% survive in towns and cities. Very few get an education. They suffer a lot beyond words to come up in the fields of education, art, culture, sports and technology. Our government through welfare schemes and concessions are helping a lot of the disabled to improve and develop in their lives.

Human Rights

The concept of human rights for differently-abled persons began to become more accepted internationally. The Declaration on the Rights of Differently abled persons adopted by the General Assembly on 9-12-1975, encouraged national and international protection of the rights of the differently abled. Recognition was given to the fact that Differently abled persons were entitled to the same political and civil rights as others, including measures necessary to enable them to become self-sufficient. The declaration reiterated the rights of disabled persons to education, medical services, and placement services. It further recognized their right to economic and social security, to employment, to

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live with their families, to participate in social and creative events, to be protected against all exploitation, abuse or degrading behaviour, and to avail them of legal aid.

Differently-abled Persons in India

In a recent survey, more than 650 million men, women and Children in the world suffer from either mental or physical disability. Most of them live in developing countries like India, and Iran etc., According to the Indian Census 2001, 2.19 crores of people are disabled. World Health Organization report states that around 10% of the population world is disabled. The Census of India (2011) shows that 6 to 7 percent of India's population is differently-abled and it is estimated that this number will increase due to poverty, malnutrition, the emergence of new diseases, drug abuse, road accidents, armed conflict, violence, poor health care and service, and other factors leading to disability. 75% of persons with disabilities live in rural areas, 49 per cent of the disabled population is literate and only 34 % are employed. The earlier emphasis on medical rehabilitation has now been replaced by an emphasis on social rehabilitation. There has been an increasing recognition of the abilities of persons with disabilities and an emphasis on

mainstreaming them in society based on their capabilities. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

Indian Constitution

The Constitution of India ensures equality, freedom, justice and dignity of all individuals and implicitly mandates an inclusive society for all including persons with disabilities. As per the provisions of the Persons with Disabilities Act, 1995 External website that opens in a new window), seven categories of disabilities have been identified viz., blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental illness. Persons falling under the above categories with a minimum of 40% disability are eligible for entitlement of all benefits provided by the Government. As per the 11th Plan persons with disabilities could be as high as 5-6% of India's total population. This substantial portion of our population needs equal services and opportunities for their over all development, which is also an essential attribute for inclusive growth. Hence while recognizing the differently-abled people as valuable human resources to our country, the government has had been taking various initiatives to bring them to par with the mainstream. The policies of the government towards the welfare of persons with disabilities have been

reflected in the enactments, schemes and institutions established for the development of manpower for the rehabilitation of persons with disabilities.

Disabled persons are no longer discriminated against due to their physical problems but are treated equally under the eyes of the law. Articles 14, 15, 16 and 21 of our Indian Constitution depict providing equal liberty, Integrity, and dignity to all the citizens. The growth of any country is based upon the education level of its citizens. In the era of Globalization where the world is becoming very small and the competition level is going high it that time to provide equal opportunity and full participation to differently-abled. The Persons with Disabilities Act, 1995 was enacted by the Government of India and came into force from 1996.

Right to Education

An estimated 70 million disabled Indians are treated as second-class citizens and are forced to confront segregation, discrimination, barriers and stereotypes. An entire range of disability issues such as the causes of disability, care, rehabilitation, empowerment, and mainstreaming through education, employment, health and transportation to be practically resolved. The current enrolment ratio per 1000 disabled persons aged 5-18 years in ordinary schools was higher in the rural than in urban 475 and 444 respectively for the two sectors. About 11% of disabled persons aged 5-18 years were enrolled in special schools in the urban as compared to even less than 1% in the rural. Still a large number of private and even government institutions of higher education have not recognized the needs of differently-able population and have neither done much for it. The study by the National Centre for Promotion of Employment of Disabled People (NCPEDP, 2004) shows that only 0.1 percent of disabled students were in mainstream educational institutions at the university level and 0.51 percent at the primary and secondary level, a negligible figure compared to the 3 percent reservation enacted by the Persons with Disability (PWD) Act (1995). India's higher educational system is not accessible to 98.8% of its disabled youth. Therefore, there is an urgent need to look forward towards this situation. The enrolment of girls at both primary and secondary level is much less than the of boys with disability- only 40 percent of girls with disabilities are enrolled in schools against the enrolment of 50 percent of boys with disabilities. only 1.2% of the 3.6 lakh disabled youth in the country had access to higher education. 95 (80%) of 119 Universities responded that they were following the 3% reservation policy for disabled students, although 18 of them did not have a single student with a disability. Even today, the majority of Universities, Colleges and other higher

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educational institutes, are poorly designed and very few are equipped to meet the unique needs of students with disability. It was observed in the case of ***Social Jurist vs. Union of India and others*** that a disabled child has the fundamental right to have access to free education in an appropriate environment till he attains the age of 18 years as guaranteed to him under Articles 21 and 45 of the Constitution of India. And it was also been held that “it is the legal duty of the government to provide free educational facilities till the age of 18 years.”

In **All Kerala Parents Association Vs. state of Kerala(1)** case it was held that “Sec.39 of PWD Act, deals with the reservation of seats for persons with disabilities in Government educational institutions as well as educational institutions receiving aid from the Government, and necessarily therefore the provisions thereof must be complied with.”

In **Dr. Raman Khanna vs. University of Delhi(2)** as: “the law does not state that the 3% reservation has 1% allocated to each of the 3 sub-groups of disabilities. Since the law mandates a 3% reservation, the MCI cannot lower the quantum of reservation. Thus, it has to offer this 3% reservation to the category it allows, namely, physical or locomotor handicaps”.

In **Mr. D. Pugazhenti vs. Secretary to Government, Higher Education Department**, a physically disabled person with 48% disability, applied for admission to the M.B.B.S Course for the academic year 2004-05 against the seats reserved for the physically handicapped candidates. His claim was rejected on the ground that only 50% to 70% of disability alone was entitled to consideration under the reserved quota as per MCI guidelines. Then a Writ Petition was filed challenging the same. The petition was dismissed and filed an appeal and disagreed with lower court order and the petitioner is entitled to the benefits of reservation as per the Persons with Disabilities Act, 1995. In conclusion, it can be said that the Persons with Disabilities Act, 1995 has proved to be a successful instrument with regard to provision of reservations in higher education. The deviation in drafting of section 39 has been ignored by the Court by way of decided cases, and hence the same may now be overlooked. However, the legislature must take due care while drafting important legislations and avoiding such anomalies which result in some loss to persons already disadvantaged.

In the Constitution of India, provisions are having a bearing on education for Schedule Castes, Schedule Tribes, Other Backward Classes, Weaker Section of the society, socially, economically and educationally backward classes and minorities under Art.30,46 but the disabled have no such articles in Constitution like the above both. Moreover, they are

not part of weaker section or minority so they cannot get the power as mentioned in both the articles.

Freedom of Movement

Section 45 of The Persons with Disabilities Act, 1995 gives details of the provisions on public **roads** to make them accessible. The right to liberty and freedom of movement is part of the fundamental rights available to all citizens under Article 21 and Article 19 of the Indian Constitution. Article 14 of the Constitution provides equality before the law and equal protection of the laws to all persons. With respect to persons with disabilities however, the right to movement and liberty must be examined in conjunction with the provision of special measures that enable persons with disabilities to exercise the right to the freedom of movement.

Right to Housing

The Persons with Disabilities Act, of 1995 does not specifically provide rights to basic services – adequate food, clothing, access to clean water and continuous improvement of living conditions. Provisions under Section 42 of the Persons with Disabilities Act, 1995 call for schemes to provide aids and appliances to persons with disabilities. Section 43 of the Act provides schemes for preferential allotment of land in favour of persons with disabilities at concessional rates for

Housing. The Persons with Disabilities Act has failed to ensure social protection and an adequate standard of living for persons with disabilities.

Political and Cultural Rights

Though the appropriate policies are in place to ensure that persons with physical disabilities can participate in political life, the situation on the ground demonstrates that the difficulty lies in the enforcement of these policies. Special reservations for differently abled person in politics must be introduced and applied strictly in order to remove the hindrances faced by them.

Right to Proper Treatment

Children with disabilities are entitled to special treatment, but in practice, most of these children are entirely deprived of even proper medical treatment. Their chance of recovering or in the least of living with less suffering are thus reduced to zero. It is the primary duty of the Government to give medical aid to the Differentlyabled people.

Right to Participation

This is one of the fundamental needs of a disabled child, but unfortunately the one which is most often ignored. Right to participation equally extends to all aspects of social life, on which subject the child, disabled or not, should be given the opportunity of expressing his opinion, of getting connected, of keeping himself informed and of taking part.

Right to Work

The right to work is not only guaranteed in Article 41 of the Constitution of India but has also been declared by the Supreme Court to be included in the "right to life" provided by Article 21. The Madurai Bench of the Madras High Court has ruled that the benefits conferred on a Government employee, who is disabled during his/her service period, under Section 47 of the Persons with Disabilities (Equal Opportunities, protection of rights and full participation) Act, 1995 cannot be confined only to seven types of medical conditions defined as 'disability' in the Act. Indian courts have consistently insisted on enforcement of the provisions included in the Persons with Disabilities Act. 3% reservation for differentlyabled people in employment opportunity stated in Persons with Disability Act. But it has not been properly followed by central and State Governments. Recently Supreme Court give directions to the central and state Governments to fill up differentlyabled posts within 6 months without delay. 3% reservation made for physically challenged persons as provided under Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short "Disabilities Act"). **In TN Association for Rights of Differently abled vs. Principal Secretary, TNEB case** Justice **D. Hariparanthaman** in his order dated 9-1-2013, 3% reservation must be followed and select him for the post of Assistant Engineer in TNEB. Recently the High Court of Andrapradesh, Punjab & Haryana, Madhyapradesh, gave 3% reservation for Differentlyabled employees in Promotion. This is very valuable judgement and must be followed by all the state Governments in India.

Suggestions

1. To recognize the talented differentlyabled people.
2. To provide barrier free environment.
3. To take initiative to create provision, financial, legislative and administrative for the education of differentlyabled people.
4. To appoint minister for differentlyabled department both at the Centre and State Government.

5. To appoint minister for differentlyabled must be a differentlyabled person, because he knows the difficulties faced by differentlyabled people and solve the problems or hindrances.
6. Reservation in education and employment should be increased from 3% to 10%.
7. Reservation in politics should be introduced and followed.
8. Separate Court established for offences against Differentlyabled persons.
9. Government must follow and implement the Rights of Persons with Disabilities Act, 2011.
10. In order to Right to Education of women and girls with disabilities ensures that all girls with disabilities have access to necessary, adequate and appropriate support for the completion of primary, secondary and higher education, and all school building are accessible to girls with disabilities.
- II.** Barrier free environment in an academic institution helps in enhancing the performance and also helps in making a person independent. Differently abled person's requirements or a barrier-free environment in terms of infrastructure will be exclusive in terms of making them comfortable, safe and independent.

Conclusion

We hope that everybody learns to treat the disabled with love and affection and treat them with equal dignity as shown to a normal person. To effectuate the statement in Universal Declaration of Human Rights, 1948 that all human beings are born equal and they are equal in dignity and rights, our attitude to the disabled should change. This has to come from everybody's heart., Authorities all over the world should take necessary steps to introduce a juridical and institutional structure which would assure the protection of disabled children, allowing them to come out of their dark dwellings and which would most necessarily let them enjoy the proper living conditions they are worthy of and opportunities that they very well deserve.

The essence of the Rights of the Persons with Disabilities Act, 2011 should be honoured in letter and spirit. Let every different people feel that the concept of human rights is not a myth for him, but a reality. However, the success of this Act would depend much upon the extent to which the political leaders and bureaucratic executive internalizes the values, sensibilities and goals enshrined in the Act. If persons with disability are to be regarded as full citizens of India, their right to equal concern and respect must find its expression in the supreme law of the land.

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