

LEGAL PROTECTION OF DISABLED PERSONS

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The persons with disability have the right to live with decent standard and economic protection. Those persons are entitled for all rights which will enable them to live self-reliant. From ancient times, the society isolated the persons with disability. The disabled continue to be neglected and discrimination even now continues to be a very serious social problem. The Constitution of India and several legislations provides for protection and safeguarding of disabled persons. Despite those laws; the discrimination continues and in this regard the active role played by the Indian Judiciary to remove such discrimination has paved the way for the implementation of rights of disabled persons. This article discusses the concept of disability, legislative initiatives towards protection of rights of disabled persons and the active role played by the Judiciary in this regard.

CONCEPT OF DISABILITY

According to Section 2(i) of persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, disability is defined as Disability means –

- blindness
- low vision
- leprosy - Cured
- bearing impairment
- locomotor disability
- mental retardation
- mental illness.

Disability is usually defined as the loss or limitation of opportunities that prevents people who have impairments from taking part in normal life of the community on an equal level with others due to physical or social barriers. The World Health Organization, (WHO): has classified impairment, disability and handicap. In short, disabled person means any person who is unable to ensure for himself or herself wholly partly then necessities of a normal individual or social life.

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RIGHTS OF DISABLED PERSONS IN INTERNATIONAL ARENA

The United Nations in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights approached the disability issue from medical and social welfare point of view. The era of 1970s was a mile stone in designing a new approach to disability at international level. The Declaration on the Rights of Mentally Retarded Persons, 1971 paved the way for protection of same rights as other human beings which included right to proper medical care, education, economic security, qualified guardian and legal procedures. The Declaration on the Rights of Disabled Persons, 1975 Adopted by the General assembly recognized the rights of disabled persons to education, medical services and placement services. The General Assembly declared the year 1981 as the "International Year of Disabled Persons (IYDP)" which was celebrated with numerous programmes, research projects, policy innovations and recommendations for development of disabled persons. The World Programme of Action concerning Disabled persons was adopted by the UN General Assembly in 1982 for prevention, rehabilitation and equalization of opportunities. The United Nations Decade of Disabled persons 1983 - 1992 was proclaimed to improve the status of the disabled persons. In 1992, the UN General Assembly declared that the 3rd December of every year as International Day of Disabled Persons and appealed to all Nations to observe that day. In 1993, the General Assembly Adopted the standard Rules on the Equalization of opportunities of Persons with Disabilities. The UN General Assembly in 2001 adopted a resolution for establishment of Ad-hoc Committee to protect the rights and dignity of disabled persons. In 2008, the UN Convention of Rights of Persons with Disabilities received its twentieth ratification thereby making the first legally-binding international treaty to protect the rights of disabled persons. The steps taken by United Nations through its Conventions, Declarations and Resolutions made the Governments to adopt a progressive attitude towards the rights of the persons with disability.

INDIAN INITIATIVES TOWARDS PROTECTION OF DISABLED PERSONS :-

The Government of India took efforts to safeguard the interests of disabled persons on the lines of UN Conventions and Recommendations. The Constitution of India, 1950 guarantees full protection to the rights of disabled persons. The Preamble of the Indian Constitution guarantees social justice and equality of status and opportunity to all people. Article 14 and 16 guarantee equality of opportunity and safeguard against discrimination.

Article 38 requires the State to secure a social order for the promotion of welfare of people. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was enacted in 1995 to give effect to the Beijing Proclamation, 1992. This Act is the most composite legislation concerning the persons with disability. The Act provides for constitution of Central Coordination Committee by the Central Government and State Coordination Committee by the State Government to advise the Government on formulation of policies, programmes, legislation and projects with respect to disability. The Act further provides for prevention and early detection of disabilities, education, employment, affirmative action, non-discrimination and social security to disabled persons. The Rehabilitation Council of India Act, 1992 paved the way for establishment of Rehabilitation Council of India which is responsible for standardizing and monitoring training courses for rehabilitation professionals, granting recognition to institutions and promoting research in rehabilitation. The Mental Health Act, 1987 and the National Trust Act, 1999 provides for constitution of a national body for the welfare of the people with autism, cerebral palsy, mental retardation and multiple disabilities. Legislations such as the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, the Public Liability Insurance Act, 1991 provides for protection and promotion of rights of disabled persons during the course of employment. A new comprehensive bill called "The Rights of Persons with Disabilities Bill, 2011" is pending before the Ministry of Social Justice and Empowerment for further action.

JUDICIAL INITIATIVES TOWARDS PROTECTION OF DISABLED PERSONS

The Indian Judiciary has widely interpreted the laws regarding persons with Disabilities in a very progressive manner under the influence of international law. The Indian courts through its landmark decisions created a non-discriminating environment for disabled persons. The Judiciary has taken upon itself the duty to enforce the rights of disabled persons by progressive interpretation and positive approach. The Supreme Court of India developed new methods of dispensing justice to disabled persons. When the Executive and Legislatures failed to act, the Judiciary through its creeping jurisdiction has helped the disabled persons.

In *Sheela Barse v. Union of India*¹ the Supreme Court held that physically and mentally retarded children and abandoned or destitute children shall be lodged in protective homes and if such children are accused of any offence, the trial against them be expedited by setting up

1. (1986) 3 SCC 632.

juvenile courts in each District. In *Daya Ram Tripathi v. State of Uttar Pradesh*², the Supreme Court observed that the Government having reserved posts for physically handicapped persons could not later create needless hurdles. In *Chandan Kumar Bainik v. State of West Bengal*³, the Supreme Court held that the behaviour of hospital administration in chaining the mentally challenged inmates is the main cause of augmenting mental problems of asylum inmates. In *Javed Abidi v. Union of India*⁴, the Supreme Court held that while economic capacity was a germane consideration, could not be used to thwart the spirit and object of the welfare legislations. In *All Kerala Parents Association v. State of Kerala*⁵, court directed the State to comply with the provisions of persons with Disability Act, 1995 with regard to reservation of seats for persons with disabilities in educational institutions. In *Ramachandra Tandi v. State*⁶, the Court condemned the refusal of the Government of Orissa to recognize and grant financial assistance to physically handicapped School and held that the State should not take plea of unsound financial condition to deny meager amounts needed for a few deaf and dumb Children. In *Consumer Education and Research Centre v. Union of India*⁷, the Supreme Court held that, “Social Justice is not a simple or single idea of a society but is an essential part of complex of social change to relieve the poor from handicaps, penury to ward off distress, and to make their life livable, for greater good of the society at large”. In *Godawari Bai v. DDA*⁸, the Supreme Court issued appropriate directions for out of turn allotment of flats made by the DDA to the handicapped persons which included a blind lad. In *National Federation of Blind v. Union Public Service Commission*⁹, the Supreme Court directed the Government of India and Union Public Service Commission to permit blind and partially blind eligible candidates to compete and write Civil Services examination in Braille – Script or with the help of scribe.

In *Dhawal S.Chotai v. Union of India and others*¹⁰, the Bombay High Court observed that right to life includes the right to education and other facilities. It issued directions to permit extra time of three hours to students suffering from cerebral palsy in chartered

2. (1986) Supp. SCC 497.

3. 2004 (4) SCC 505.

4. AIR 1999 SC 512.

5. 2003 (2) WLN 692.

6. AIR 1994 Orissa 228.

7. AIR 1995 SC 922.

8. (1990) Supp. SCC 124.

9. (1993) 2 SCC 411.

10. AIR 2003 Bom 316.

Accountants Examination. In *Pal Singh v. Union of India and Another*¹¹, the Court observed that visually handicapped should be encouraged to lead normal activity and join the main stream. It held that the visually handicapped persons namely persons with in paired visions should be allowed to appear in the examination by providing the question paper in bold print. In *Kunal Singh v. Union of India*¹², the Supreme Court held that Section 47 of PWD Act, 1995 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires disability during service. In *re v. Union of India*¹³, in the matter of death of 25 Chained inmates in asylum Fire in Tamilnadu, the Supreme Court took Suo motto action and directed the cabinet Secretary to frame a national policy to redress the problems of persons with disability. In *LIC v. Chief Commissioner for Disabilities*¹⁴ the Delhi High Court directed the LIC to employ a person with 45% disabilities. In *Govt. of NCT of Delhi v. Bharat Lal Meena*¹⁵, the Delhi High Court held that the disabled persons can be appointed as Physical Education Teachers provided they have passed the qualifying examination and undergone the requisite training. The Supreme Court in *Disabled Rights Group v. Chief Election Commissioner and Another*¹⁶ directed the Chief Secretaries of respective states to ensure in coordination with the Chief Election Officer of those states that as far as possible wooden ramps are made available for elections to be held in April 2004 for persons with disability for voting.

In *Union of India and another v. National Federation of the Blind and others*¹⁷ the Supreme Court issued directions to appropriate Government to issue new office memorandum for computation of reservation for persons with disabilities to be in identical manner and computation of 3% reservation on total number of vacancies in cadre strength.

The High Court of *Rajasthan in Union of India and another v. Nahari Thakkar and another*¹⁸, held that “The Disabilities Act, 1995 is Welfare legislation and any relief under the Act cannot be declined merely with reference to delay in approaching. In the case of present nature, involving a person with visual impairment and who had not received just and due

11 . (2004) I PDD (CC) 636

12. (2003) 4 SCC 542

13. (2002) 3 SCC 31

14 . (2002) 101 DLT 434

15 . (2002) 100 DLT 157

16. CWP No.182/2004 (Supreme Court of India)

17. 2014 (2) LLN 19 (SC)

18. 2014 (1) LLN 534 (DB) (Raj)

treatment from the Department, it would rather be a travesty of justice if his claim be declined only with reference to the so-called delay.

The High Court of *Delhi in Babita Pathak and others v. High Court of Delhi and others*¹⁹ held that, “The intent and purport behind the provisions of the Disabilities Act, 1995 is to bring the persons with disabilities into main stream activities and to enable them to contribute to society in general. The persons with disabilities are not to be discarded from the Society at large. They are useful and productive members of society despite their disabilities and the purpose behind the Act is to give them an equal opportunity to contribute to society so as that they are fully able to participate in national life”

In *Deaf Employees’ Welfare Association v. Union of India*²⁰, the Supreme Court held that, “deaf and dumb persons have inherent dignity right to have their dignity respected and protected is obligation of the State. Human dignity of deaf and dumb person is harmed, when he is ignored or devalued on the ground that disability suffered by him is less than visually impaired person, which is clearly violative of Article 21 of the Constitution. Comparison of disabilities among person of disabilities without any rational basis is clearly violative of Article 14 of the constitution”. It directed the Government to grant transport allowance to deaf and dumb persons also on par with blind and orthopedically handicapped employees.

In *K. Vijayakumar v. Tamil Nadu State Transport Corporation (Villupuram Division) Limited*²¹ the Madras High Court held that, “Disabilities Act is a beneficial legislation and while interpreting the provisions of the Act, court has to prefer construction which helps to carry out benevolent purpose of the Act. Interpretation which unduly extends scope of exception must be avoided. Courts cannot shut its eyes if person knocks its door claiming relief bonafide. Hyper-technicalities must not come in way to render justice. In a Welfare State like India benefits of benevolent legislation cannot be denied on the ground of mere hyper-technicalities and when the law maker conferred certain privileges on a class of persons, like a disabled person, duty is cast upon the judiciary to oversee that the Authorities or the persons to whom such power is conferred, enforce the same in letter and spirit for which such an enactment has been made”.

19. 2014 (1) LLN 386 (DB) (Del)

20. 2014 (2) LLN 582

21 . 2014 (2) LLN 753 (DB) (Mad.)

In *Divisional Manager, Syndicate Bank v. Assistant Secretary and others*²², the Kerala High Court held that, “persons acquiring total disability, not excluded from benefits under the Disabilities Act, 1995. The Disabilities Act is a Welfare legislation and termination of services of workman who attained 100% disability without creating any supernumerary post for him is unjustified and not in consonance with the provisions of the Disabilities Act.”

The above mentioned judicial decisions will go to show the intervention of the Indian Judiciary in creating a right based society for disabled persons. The Indian courts have been construing the Persons with Disability Act, 1995 in a beneficial manner and several landmark judgments on the issue of disability have been rendered.

CONCLUSIONS AND SUGGESTIONS:

The initiatives on the part of Indian Legislatures and Judiciary have gone a long way in the recognition of civil rights of the persons with disability. The Government through its legislations and policies has taken a lead step to support the persons with disabilities. The Indian Judiciary has opened new doors of avenue by its landmark judgments in protecting the rights of persons with disability. Despite all these good efforts, the persons with disability in India still have a long way to achieve social justice and dignity. In this regard, the following are the suggestions aimed for the betterment of disabled persons. They are

- (1) The Disability legislation in India is progressive but it is not practical. It should be given practical and meaning full effect. The implementation provisions in the Persons with Disability Act, 1995 needs proper amendment.
- (2) The disabled persons should not be treated as burden, they should be given due dignity and they should be treated as equals by ensuring that opportunities are provided to them by giving them facilities to overcome the disadvantages suffered by them.
- (3) The Media should portray persons with disability in a proper manner. They should end stereotypical portray of persons with disability.
- (4) The citizens of India should be sensitized about the rights and aspirations of the disabled.
- (5) Persons with disabilities must be provided with facilities to make public places accessible to them. The building bye-laws particularly in respect of public places must be suitably amended so that they provide proper facilities and access to disabled person.
- (6) Emphasis should be given on for full and proper participation of disabled persons in all mainstream activities of the society. Their consultation on issued concerning them is absolutely necessary.

22 . 2014 (1) LLN 468 (DB) (Ker.)

- (7) Disabled persons are no longer charitable objects, they have their own role to play in social development.
- (8) Programmes for the amelioration of the plight of the disabled will reinforce their isolation and will help them for their development.
- (9) Disabled person should be encouraged by all means in such a way that they should become an integral part of the society in every way.

In short, a comprehensive law which provides the legal basis of a rights based inclusive society and an expression of India's commitment to social justice is the need of the hour.

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- (7) Various volumes of All India Reporter, Supreme court cases, Judgement's Today, Scale and Delhi Law Times.