RIGHTS OF PERSONS WITH DISABILITIES IN INDIA: AN ANALYSIS OF PAST, PRESENT AND FUTURE

** Suman Choudhary¹ & Sanju Choudhary²

Introduction

Disability has largely been a neglected issue in most of the developing areas of the world. India is also no exception to this. One major reason for the prevalence of the problem can be attributed to the relegation of primary health care services and generally poor infrastructure of rural health care system. Main cause of disability in India as in other developing nations can be identified in various communicable diseases, malnutrition followed by ignorance driven poor quality of familial as well as accidents. The rural practionars hardly any attitudinal training or motivational stake in the management of disability in the countryside.

People who are disabled in any way are subjected to so many deprivations or they are seen as a burden on society as well as on their family. They have very limited opportunities as compare to other people due to their physical or mental disability. In order to maintain their social status and right to equality as assured under Indian constitution, this Act of 1995 provides certain rights to such people, so that they can live their life with dignity.

Emergence of Disability rights movement: across the world and in India

Some scholar like Oliver regarded disability movement as the new social movements having emerged during the late Twentieth Century. Sometimes a parallel is also sought to be made between the ‘disability movement and other allied movements launched for emancipation and empowerment of minorities like women and black people in western societies. A brief and workable definition of the disability movement. It may be defined as a social and civil rights movement directed towards mainstream disabled people into the society. The disability movement has changed the discourse on disability by providing redefinition to its meaning. It has had massive effects on local authorities, health authorities and the professionals, as well as exerting considerable influence on the union government. Nevertheless, critics say that despite the fact, the public attitudes have undergone considerable positive changes.

¹ Suman Choudhary, B.Com, LLB (Hons.), 5th Year student of Gujarat National Law University, Gandhinagar, Gujarat.
² Ms. Sanju Choudhary, B.Com, LLB(Hons), 4th Year Student of Institute of Law Nirma University, Ahmadabad, Gujarat.
The most significant consequences of the disability rights movement is the powerful impact on persons with disability themselves. There is now widespread realization among the disabled persons that their problems germinates directly from social prejudice and discrimination rather than from their functional impairments.

Actually in India the Disability Rights Movement has been launched by NGOs and therefore, a large number of NGOs have mushroomed all over the country. Instead of working together to strengthen the movement, there is often seen unwarranted and unhealthy rivalry between NGOs. Similar conflicts were also noted across different sections of the disabled.

**Disability Laws in India**

The Government of India has enacted three legislations for persons with disabilities viz.


2. National Trust for Welfare of Persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disability Act, 1999 has provisions for legal guardianship and creation of an enabling environment that will allow as much independent living as is possible.

3. Rehabilitation Council of India Act, 1992 deals with the development of manpower for provision of rehabilitation services. India has also both signed and ratified the Convention on the Rights of Persons with Disabilities though st (CRPD) on 30 March 2007 and 1 October 2007 respectively. It came into force on 3 May 2008, and makes it obligatory on the part of the government to synchronise laws or legal provisions with the terms of the Convention.

**Human Rights and Disability**

The term Human Rights indicates both their nature and sources they are the rights which everybody possesses. Since being human cannot be renounced or forfeited, human rights are inalienable. In other words, there are basically the claims of individuals for the fullest realization of innate characteristics, which nature has bestowed them with as human beings. By innate rights, all those rights which are not acquired through achievements or

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qualification. On the contrary, human rights are inherent in all the human beings by the virtue of their humanity alone.

The universal declaration of human rights has given a great emphasis for the protection of rights of physically and mental health of the people and directed to all its member countries. Following its guidelines the National Human Rights Commission has conducted a series of inspections of various mental hospitals and institutions. Seminars and workshops conducted at regional and national level came out with causes for disabilities.

**Constitutional framework supporting disability rights**

In order to deal with disability rights or rights of persons with disability, we have to understand certain provisions of Indian constitution. The fundamental right to equality under Article 14 of Indian constitution which states that: “the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. It is under this constitutional mandate of equality that even before the disability statutes were passed, many persons with disabilities, their organizations and petitioners in public interest successfully approached the Supreme Court or High Court in the country under Articles 32 and 226 of Indian Constitution respectively, for their rights to equality and rights against arbitrary discrimination.

In so far as Articles 15 and 16 of the constitution take forward the substantive equality philosophy of Article 14, it is also pertinent to understand their interpretation by the Supreme Court.

It is well settled through several judgments of the Supreme Court of India, that the fundamental right guaranteed under Article 21 of the constitution is an over reaching right under which several other rights are subsumed as necessary components of life. It is crucial for the disability right activists to grasp and keep abreast of this constantly evolving jurisprudence of the expanding definition of right to life by which various new fundamental rights have been recognized by the Indian courts by reading them into the right to life.

In conclusion it can be safely affirmed that despite some oddities, for instance, in the seventh schedule of the constitution, in list II entry 9 worded as “Relief of the disabled and Unemployed” and in list III entry 16 “lunacy and Mental Deficiency” including place for the reception or treatment of lunatics or mental deficiency.
Educational Right of Persons with disability

A substantial portion of the Disability Act relates to the education of persons with disability. One complete chapter from section 31 to 39 and some provisions in other chapter like section 39 and 41 deal with various aspects of education for persons with disability. It ensures that every child with a disability has access to free education in an “appropriate environment” till he attains the age of 18 years.

Make efforts to promote the integration of students with disabilities in the mainstream schools. For those in need of special education, promote setting up of special schools in government and in private sector and ensure that students with disabilities living in any part of the country have access to such school. Further section 39 envisages a quota of minimum 3% seats of persons with disability in all government educational institutes and in other institutes receiving aid from government.

Many questions arose whether under section 39 deals with “seats in educational institutes” or “post for employment”?

In a leading case Supreme Court held that section 39 clearly indicates that it refers to reservation for admission as where the language of any statutory provision is clear and unambiguous. Thus the fact that Section 39 falls under chapter on “employment” is of no consequences. Words should be given their ordinary and popular meaning, and “seat” cannot be interpreted as “post” when the intent is clear.

In another case the petitioner was opposing the rules followed by a particular government school for blind boys. The rules in question stated that free education should be available only to residents of Delhi, till class 10 and be subject to the financial capacity of the parents.

All these rules were struck down by the High Court as being in contravention with the Act. The court said that the section 26 does not lay down a ceiling figure or area of domicile as preconditions to avail the benefits contained therein.

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4 All Kerala Parents Association of Hearing Impairment vs. State of Kerala 2003 (2) WLN 692
5 National Federation of the Blind vs. Govt of NCT of Delhi & Ors CW 6456 of 2002 Delhi High Court, 06.11.2003
Right to Employment

Employment related provisions comprised the most empowering provisions of the disability Act, as they yield the most tangible and substantial rights to persons with disabilities. Employment related rights of persons with disabilities are mainly covered under chapter VI of 1995 Act containing section 32 to 41 and pertain to various aspects through which the employment rights of disabled persons in the government sector are to be facilitated. “Disabled persons” employment in the private sector has also been provided for in section 41 of the Act while self employment opportunities for disabled persons have also been bolstered through certain affirmative action in section 43. Among another related provisions for instance, under research and manpower development, a part of section 48 deals with promotions and sponsorship of research on job identification. There are several cases on employment right of disabled. In Daya Ram Tripathi Vs. State of U.P.an Anr\(^6\) the appellant, a physically disabled person was offered a post in an executive branch instead of in the provincial civil service after passing the Uttar Pradesh Service Examination, on the ground that the state government has revoked reservation of 2% in the provincial service.

The Supreme Court held that the state was not entitled to withdraw the reservation requirement after initially reserving posts for persons with disabilities.

One important question arises that what would be the scale of payment after acquirement of disability if a person gets disability during the employment period?

In the case of Narendra Kumar Chandla Vs State of Haryana & Ors.\(^7\) the appellant, a sub-station attendant of the Haryana State Electricity Board, was operated on for Chondrosarcoma resulting in the amputation of his right arm. After this operation, he was reinstated but as a carpet attendant. In High Court his petition was dismissed. He appeal to the Supreme Court, by whose order a medical board assisted by two engineers was constituted for assessing whether the appellant could perform the duties of his original post or equivalent post. Supreme Court while rejecting the Appellants pleas to order his appointment as Upper Division Clerk, which carried the same pay scale as his earlier post, directed the respondent to appoint him as Lower Division Clerk at the pay scale of UDC employees.

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\(^6\) Daya Ram Tripathi Vs. State of U.P.an Anr 1986(supp) SCC 497

\(^7\) Narendra Kumar Chandla Vs State of Haryana & Ors 1994 SCR (1) 657
With regard to retrospective affect of the Act in case of reservation in employment Delhi High Court in Delhi Transport Corporation vs. Sh. Harpal Singh and Ors\textsuperscript{8}. held that since the act was a social welfare measure enacted with a view to benefit disabled people as any statutory enactment incorporating a welfare measure, particularly for a weaker section of the society has to be given full effect. The court also held that since the reference was made after the act came into force, the benefit of the Act is available to Harpal Singh in any case and giving him the benefit under the Act could not in any event be termed as retrospective operation of the Act.

**Right to Access**

Accessibility is integral to and the foundation of all other rights. Though the conventional definition of access only address architectural barriers and physical approaches, with the emergence of the demand for equal opportunities and full participation, this approach has seen a paradigm shift. Resulting from the disability decade, the disability act does not have an exclusive chapter on Access that is a shortcoming of the Act. Now a more comprehensive concept, it encompasses accessibility to quality education, media, information, communication, entertainment and technology. In content Section 44 to 46 interpret access, as it is commonly understood. While access to public transport, roads, public buildings, and adapted toilets have been provided. Access is the most fundamental and basic need of persons with disabilities. Reservations in educational institutions serve no purpose without accessibility to facilitate that enable persons with disabilities to use them. The first Indian case of right to access was Javed Abidi vs Union of India\textsuperscript{9} in this case Supreme court observed that persons with Locomotors disability faced similar hardships, as the visually impaired, hence there was no reason to deny the former the concessions provided to the latter, even if it cause financial hardship to the Airline. Supreme Court directed that persons with locomotors disability to the extent to 80% and above would be entitling to the same concession from Indian Airlines as it given to those with blindness.

**Housing and Social Security of persons with disability**

Suitable and adequate housing is indispensible to equal and full participation of all citizens in the productive development of the community they live in. This fact cannot be emphasized enough for persons with disabilities, since it is the primary platform from where

\textsuperscript{8} Delhi Transport Corporation vs. Sh. Harpal Singh and Ors 2003 IVAD Delhi 429, 105 (2003) DLT 113

\textsuperscript{9} Javed Abidi vs Union of India (1999) I SCC 467
their integration into the social mainstream begins. The law, therefore, acknowledges, the right to housing for disabled persons, whether independent or familial, and the need to provide for it. The statement of objects and reasons of the disabilities Act 1995 aims to make special provisions for the integration of persons with disabilities into the social mainstream. The national trust was created, with the corpus of Rs 100 Crores, for supporting programmes that promote independence and address the concern of those who do not have family support. Both these enactments address the need and rights of persons with disabilities to housing.

Under Section 43 of the Disabilities Act “the appropriate government and local authorities shall by notification, schemes in favour of persons with disabilities for the preferential allotment of land at concessional rates” for the purpose of housing setting up business, and special recreation centres; factories by entrepreneur with disabilities.

Housing for disables are necessary at the same time social security is also essential for the persons with disability. The primary purpose of social security measures is to give individuals and family the confidence that their standard of living and quality of life will not be eroded by social and economic eventualities and to provide medical care and income securities against defined contingencies. The disability act casts a duty on the state to provide social security, both directly and indirectly, to persons with disabilities. By its very nature the statute is both a right oriented statute and social welfare legislation.

**Critical analysis of Disability Bill of 2012**

This Bill who seeks to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, attempts to bring India in line with the 21 century understanding of the rights of persons with disabilities as captured in the UN Convention on the Rights of Persons with Disabilities (UNCRPD) ratified by India. This new clause seeking to ‘reward’ the employment of persons with disabilities states that any employer with 20 or more employees of whom more than 5 per cent are disabled, shall be eligible to deduct from his taxable income, an amount equal to the salary of the disabled employees above the 5 per cent. For example, if an employer has 100 employees of whom 6 are disabled, he will be able to deduct from his taxable income an amount equal to the salary paid to the 6 person with disability. On the other hand if less than 5 per cent of the total employee strength comprises persons with disabilities, the employer shall be required to add to his taxable income an amount equivalent to the salary of employees to the extent of the shortfall in the 5 per cent. This is a good addition and should lead to much higher integration
in the workplace. While the earlier version of the Bill lays almost equal emphasis on special schools (catering only to children with disabilities) and inclusive schools (catering to all children in a common environment), the new version appears to strongly support the integration of children with disabilities into an inclusive education framework. As per the new version all educational institutions funded or recognized by the government have a duty to provide inclusive education. While in theory this is the correct move and is mandated by the UNCRPD, this approach is risky since there is no transition plan to move a set up with adequate numbers of trained teachers and proper infrastructure. Without such a plan, it is likely that an entire generation of persons with some types of disabilities such as children who are deaf-blind (requiring specialized training) and children in wheelchairs (requiring accessible infrastructure) who join the ill-equipped mainstream school system immediately after enactment will be lost in the cracks and get no education whatsoever.10

A demand for new law

Several groups of disabled people, with whom the government has been holding consultations, have demanded instead a totally new law that is aligned with the UN Convention on the Rights of People with Disabilities (UNCRPD), which India ratified in 2007.

Currently in India there are four different laws pertaining to the disabled. These are: The Mental Health Act, 1987, the Rehabilitation Council of India Act, (meant to provide minimum standards in training and qualification for rehabilitation professionals) the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and lastly the Persons with Disabilities Act.

Persons who are demanding for new law have strong points to support their demand, they say that right to access given under the Act, is not just confined to building roads or constructing buildings that have ramps for wheel-chairs, but it means ensuring that the disabled can access public transportation systems, pedestrian signs (Braille and audio), public facilities like schools, sports auditoriums, clinics, hospitals, malls and so on. Even, perhaps, adding special fitting rooms in department stores for those on wheel-chairs.

Whilst the PWD Act has in place a set of concessions and policies for the disabled it does not include the notion of non negotiable rights. The disabled cannot claim accessibility features as a matter of right. A new law is necessary, because India has ratified the UNCRPD, whereupon it is mandatory for the government to adopt the human rights approach which would necessitate bringing about changes in all other laws like the recent right to education, employment and so on. The changes required would be so numerous and of such substantial, fundamental nature that it is better to draft a new law. Current legislation is not in tune with human rights obligations or with the advances in medicine and technology. For example, with technical advances available today, it should be possible for the visually impaired to access banks through ATMs and so on, but there is no enabling legislation to ensure the adoption of these technologies to serve the disabled. Present legislation does not include as many as 20 provisions of the UNCRPD especially those pertaining to civil and political rights, such as freedom from cruel and inhuman treatment, freedom of expression and access to information, right to marry and have a family and freedom to participate in political and public life.\(^\text{11}\)

**Suggestions**

- Take the initiative to sign the optional protocol of CRPD.
- Execute the Convention philosophy in the domestic operations of the policy making bodies.
- Generate alertness about the Convention and the rights of persons with disabilities within constituencies and among fellow parliamentarians.
- Expand requirements based programmes that narrate particularly to reinforcement the rights of persons living with disabilities.
- Conventional the rights of persons with disabilities into common development connected programmes.
- In view of the resource crunch in the disability development sector, educate family caregivers in the meaning and implementation of rights based policies and programmes. The Preamble of the Convention lays substantial emphasis on the role of the family.

Conclusion

From the above discussion it is very clear that in India persons with disability are still struggling for their basic rights, though disability right movement has been started with a view to help disabled people but still it is not able to mark its presence in all parts of country. It has, however, certainly touched the vulnerable lives of persons with disability and tried to create short a more disabled friendly atmosphere in the country.

The insight of this Act would, however, depend much upon the degree 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.

Although the execution of the Act has been slow, it does not signify that the Act has not helped the disabled at all. It has provided a stage to come together and mobilize disabled individuals from corner to corner in the country. It is also noteworthy to observe the contribution of the disabled in decision-making processes through their representation in various policy making and shaping bodies under the Act.