



Right to Accessibility and Movement of Disabled Persons in Public places dignifiedly: An Analysis of legal framework with special references to Right of Persons with Disability Act 2016

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Abstract: *The problem of doing justice to people with physical and mental impairments is one of the major unresolved problems of social justice. The problems that are being faced by the differently-abled person have been really an issue to be looked upon. Numerous research and policy studies on disability indicate that all around the world there are approximately 15% of the world's population has been suffering from disability of one form or the other. But on a positive note, the view of the society towards the disabled person has changed to a larger extent in these two decades. Now the disabled people are not seen as a subject of sympathy and charity but rather they are viewed as equal fellow and representative of the society and at par with the non-disabled counterparts. Such positive acceptance of the disabled persons by the society can be traced and found in the legal expression and construct of the legislature and the governmental instruments itself encouraging the social, economic and educational advancements and the way the government and private organizations taking initiatives to render equal opportunity to be in equal footing with the non-disabled counterparts is commendable. In this paper, the authors seek to study the effectiveness of the laws mandating access to public places to the disabled persons in India. The authors shall also analyze the challenges which the person with a disability still comes across in the present conditions in India and how the Accessible India Campaign is used to encourage the people with disability.*

Keyword – Disability Laws, Accessibility in public places, Equality, Accessible India Campaign

INTRODUCTION

“Obviously, because of my disability, I need assistance. But I have always tried to overcome the limitations of my condition and lead as full a life as possible. I have traveled the world, from the Antarctic to zero gravity.” –

Stephen Hawking

In the present world, the major unresolved problem of society is granting justice to a person with a disability. The neglect of such a kind has been quite problematic and has led to the deteriorating conditions of the person who has been suffering from a disability. Various research in this area and policy studies have been conducted in order to study the problems that are associated with a person with any form of disability. The then UN Rehabilitation Chief, Kurt Janson, in 1957 has stated that in every county there is approximately 12 to 13 percent of the population is

suffering from disability of permanent nature or any form of long term disability. Even the Former World Bank Chief James D. Wolfensohn has stated that at present disability has been affecting around 10-20 percent of a country's population, and he also laid down that there are sure chances that the percentage is going to increase in the coming year as there has been poor health and nutrition that are being given to the people in the early stage of their life. Also, the major reason being violent civil conflicts and the growing elderly population.

As per the data of the World Health Survey Report, 2011(WHO / *World report on disability*, n.d.) that has stated that 785 million people i.e. 15.6% of people who belong to the age of 15 years or more have been suffering from a disability. Out of the stated percentage of the World Health Survey Report, 2011, 2.2% of the population among them i.e. 110 million people have been suffering from very "severe disability". The Global Burden of Disease(*Global Burden of Disease Study 2017 (GBD 2017) Disability Weights / GHDx*, n.d.) has also estimated that 975 million i.e. 19.4% of the person has been suffering from disability of one form or the other. The Global Burden of Disease has however stated that 3.8% i.e. 190 million are suffering from "severe disability"- the corresponding disability contingent for conditions such as "quadriplegia, severe depression, or blindness". There are many disabilities that come with age and hence the old age people are running through higher age disability risk.

When it comes to India, the statistics on Disability have seen a variation that is quite significant. As per the data of the planning commission of India, there are 5% of people who are suffering from disability of the total population. "Person with Disabilities in India: From Commitments to Outcomes"- a report that has been submitted by the World Bank has stated that 4-8% i.e. around 40-80 million people in India has been suffering from various forms of Disabilities(*People with disabilities in India: From commitments to outcomes / Eldis*, n.d.). It has been stated that in India most numbers of person is suffering from movement disability. It has been stated in the 2011 Census that around 20.3% of the Disabled person is suffering from movement disability, hearing impairment comprises around 18.96%, whereas 18.8% of people have been found suffering from visual imparity. The percentages of the population suffering from mental disability are around 5.6%(*Disabled persons in India 2016.pdf*, n.d.).

As per the data of the 2011 census, there have been 2.68 crores of the disabled people in India, which is equal to 2.21% of the total Indian population(*Disabled persons in India 2016.pdf*, n.d.). The number of disabled people has been increased marginally when compared to the 2001 census, at that period the population of the disabled person was 2.19 crores which comprise of 2.13% of the total population, which means a huge percentage of the workforce. Although these numbers are huge in number it has been claimed by most of the activists and NGOs that the number has not been reported properly comprise and there is more disabled people in India. Relying upon the record as released by United Nations (*Disability Inclusion Overview*, n.d.), it is stated that the total number of disabled persons in India comprises 5-6% of the total world population which means that the population stands for almost three times the government estimate. It stated that there has been an error in the system while recording the estimate. Although there have been 70 years of past independence, India has not been able to curtail the number of disabled persons in

the country. One of the main reasons that are being ascertained is that the lack of inadequate constitutional provisions and an improper and inadequate amount of civic amenities.

The Constitution of India has provided the supreme authority to the Government in order to provide a legislative framework for the proper and smooth functioning of India. The constitution has been claimed to be a working constitution for a vibrant and proper democracy. With the changing time, the constitution has been proving itself a self-sufficient one and is well acquainted with the changing time. It has proved itself at various footings and has stood the test of time. Yet the constitution has been devoid of a commission for a disabled.

UNITED NATION CONVENTION ON RIGHTS OF PERSONS WITH DISABILITY (UNCRPD)

It took almost 5 years after the formation of the drafting committee which comprises of nearly all nations around the world; the United Nations General Assembly unanimously adopted the Convention on the RIGHTS OF PERSONS WITH DISABILITY (“Disability Convention”) on December 13, 2006, at UN headquarters in New York. The Convention has been Ratified by 181 Countries and there were 163 Signatories(*Convention on the Rights of Persons with Disabilities (CRPD) | United Nations Enable, n.d.*). This is the most historic convention and also a path breaking one at several levels. It was proved so both in terms of protecting the rights of 650 million persons with disability who are given the right to draw these provisions as a matter of their rights and concern as being an internationally protected rights and also in relation to the unprecedented level of civil society inputs and engagements in the negotiation process. There has been a sustained and constructive enhancement that has given rise to the dynamic dialogue process, cooperation and mutual help as well as trust. These all will help in the implementation of the work and the proper and systematic monitoring at both national as well as international levels in the same way for the long term(*The Convention, in Brief, | United Nations Enable, n.d.*).

This convention acts as a Human Rights Instrument with a more explicit and social development dimension. It includes within itself a broad categorization of the person suffering from a disability. And ensures that all the person all over the world who are suffering from disability must be provided with all human rights and fundamental rights as well as a fundamental freedom.

The Convention of the United Nation on Disability has made a “Paradigm Shift” in the attitude as well as the approaches towards the person with a disability. This convention has taken a new height by viewing the disabled person as ‘objects’ of charity, medical treatment and also social protection towards looking at the person with a disability as ‘subjects’ with rights. The disabled person is also capable of claiming all those rights and also making a decision with regard to lives that are based on “free and informed” consent and also as a member of society in which they live.

Guiding Principles of the Convention

There have been 8 guiding principles that have been stated in the Convention:

1. The respect with regard to the dignity which has been inherent in them, their individual autonomy which includes within itself the freedom with regard to making one's own choice, as well as their independence.
2. Non-discrimination
3. Effective as well as full participation and their inclusion in the society
4. Equality with regard to the opportunity
5. Easy and all-round accessibility
6. Men and women equality
7. Respect with regards to difference and acceptance of a person with a disability as a part of human diversity and humanity
8. The evolving capacity of children with a disability must be respected and also to respect the rights of children with disability in order to preserve their identities.

Definition of 'Disability'

The UNCRPD has not included the definition of disability under the definition clause of Article 2 of the convention (*Chapter Two: The Convention in detail—The Convention at a glance | United Nations Enable, n.d.*). It has adopted the disability model that has been socially accepted and hence has not given any specific definition of the term Disability. The preamble of the convention has recognized disability as- *"...that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others"*.

The purpose of the convention that has been laid down in Article 1 which further states that:

"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".

It has also been stated that the use of the term "include" should not be interpreted as to include those individuals who have short term or conditions that fluctuate with time.

Accessibility

The main stress that has been given by this convention is that the disabled person must be allowed to live independently as well as they must be given the opportunity to participate fully in all the aspects of life. In order to end all this, the state must take active participation and must ensure that persons who are suffering from any sort of disability must have easy access to transportation, physical environment, information and technology and all such other facilities that are required by each and every individual. But they must be provided with additional facilities and

additional security, the responsibility of which lies in the State. Accessibility has been grouped under the three main categories(*Chapter Six: From provisions to practice: Implementing the Convention—Accessibility | United Nations Enable*, n.d.). They are-

- i. Physical Accessibility
- ii. Service Accessibility
- iii. Communication and Information to accessibility.

Definition of ‘Disability’ under Indian Laws

The Person with Disability (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, has defined ‘**Disability**’ under Section 2(I) - it states “Disability means”-

1. Blindness - Visually impaired
2. Low vision
3. Leprosy Cured
4. Hearing impairment
5. Locomotors Disability
6. Mental Retardation
7. Mental Illness

Since India was also one of the signatories to the United Nation it has to modify the laws in order to be in conformity with the provisions of the UNCRPD. So in 2016, India has brought into effect new Act named “**Right of Persons with Disability Act, 2016**” it has included within the definition of disability as many as 21 disabilities, they are-

1. Blindness
2. Low-vision
3. Leprosy Cured persons
4. Hearing Impairment (deaf and hard of hearing)
5. Locomotor Disability
6. Dwarfism
7. Intellectual Disability
8. Mental Illness
9. Autism Spectrum Disorder
10. Cerebral Palsy
11. Muscular Dystrophy

12. Chronic Neurological conditions
13. Specific Learning Disabilities
14. Multiple Sclerosis
15. Speech and Language disability
16. Thalassemia
17. Hemophilia
18. Sickle Cell disease
19. Multiple Disabilities including deafblindness
20. Acid Attack victim
21. Parkinson's disease

So by the Act of 2016 disability has been given a vast definition which includes within it more or less all forms of disability prevalent.

Article 9 of the **United Nation Convention on Rights of Persons with Disability** has laid down the liability upon the various member states to create environment which is accessible. Keeping that in mind Accessible India Campaign” which is also known as “Sugamya Bharat Abhiyan” is an initiative taken up by the Indian Government under the leadership of Prime Minister Narendra Modi. The program has been initiated so that differently abled person can be served properly in the Country. 3rd December is celebrated as International Day of Person with Disability. On the same day i.e. on 3rd December 2015 this campaign was launched by the central government. This campaign aims mainly at the restructure of the total environment of the differently-abled person in such a manner that the environment becomes friendly for them and they can be an active member. The measure was also to “design of disabled- friendly buildings and Human resource policies”.

The “**Sugamya Bharat Abhiyan**” is an initiative taken up by the government to provide proper support to the Person with Disability in the society. The main aim and objective behind this campaign was to make all public places admissible for the person with disability without any difficulty. The areas that this campaign has to cover are to provide accessibility to the disabled person in the areas like equal opportunity of education, employment, health care, transport, recreation, sports, and various other areas. While addressing about this campaign PM Narendra Modi has stated that the person with disability must not be addressed as “VIKLANG” (meaning handicapped) instead they must be termed as “DIVYANG” (meaning person with amazing capabilities).

The Sugamya Bharat Abhiyan is basically framed under the Principles of “**Social Model of Disability**”. The principles stated that, main reason of disability is the disorganized society rather than the person who bound by limitations or impairments. The barriers that has been created socially, physically, structural as well as attitudinal for the person with disability has acted as a hindrance from participating them equally in the social- cultural and economic activities. The environment, which is barrier-free and facilitates equal participation of the person with

disability in all the spheres of life by promoting independence and providing dignity¹. This campaign has the vision of making a society which is comprehensive one and the Person with Disabilities are provided with equal and ample amount of opportunities that will help them in their development to the fullest extent.

Physical Accessibility

The department has submitted the report of its work. The accessibility audit of 1653 buildings has been done that were identified by the State Government through the panel of Access Auditors. The Audit Committee has submitted the Access report for 1469 to the State Nodal Officers so that they can submit the financial requirements for retrofitting of all these buildings. Out of all these buildings proposal of 575 buildings have been received by the Scheme. 45.42 Crores of funds have been allotted to the states for around 242 buildings. In addition, 148 lakhs have been released so that audit can be done by the conducting access-audit².

Service Accessibility

One of the component of Accessible India Campaign, the Transport Accessible Component has aimed to make all the International Airports completely accessible immediately of the campaign is launched and all the domestic airports by March 2018. Out of total 32 international airports 25 airports have already been provided with the features like Accessible toilets, ramps, lifts with Braille symbols and auditory signals.

In Indian the most popular mode of transport is the Indian Railways. So as most of the person avail railway services hence the one of the world's biggest rail network must be made totally accessible. The stations under the category of A1, A & B have to be made fully accessible.

The target that has been set by the Accessible India Campaign is to make 10% of the public transport that are government owned to get fully accessible by March 2018. In order to fulfill the achieved target the Ministry has taken the Undertaking to ensure that 10% of the above stated vehicles become fully accessible by March 2018³.

Communication and Information Accessibility

Till the mid-2017, already 917 State Government websites have been made accessible. Apart from this 100 Government websites of 56 Departments/Ministries have been made accessible by the Ministry of Electronics & Information technology⁴.

On 19th January 2018, on the occasion of "National Conference on Improving Accessibility" the Union Minister for Social Justice and Empowerment Shri Thaawarchand Gehlot has undertaken a remarkable initiative. In order to empower Person with Disabilities, 100 accessible websites were launched under the Accessible India Campaign. These websites deals with the working of various State Government and Union Territories⁵.

There is also a website created by the department in the name of www.accessibleindia.gov.in. The department has dedicated this website for this purpose. Apart from website a mobile application has also been launched by the department by which the recent happenings and updates can be brought into notice of the general people⁶.

An E-Library has also been launched by the Union Government by the name “Sugamya Pustakalaya” for the Divyang people under the Prime minister’s Sugamya Bharat Abhiyan.

Some of the most remarkable achievements of ‘Accessible India Campaign’

- Till 2017 1662 building’s Access Audit has been done of around 50 cities⁷.
- All the 34 international airports as well as 48 domestic airports have been made accessible to the differently abled person. These airports now possess accessibility features like accessible toilets, Ramps, lifts with Braille Symbols as well as auditory signals⁸.
- Out of 709 A1, A and B category Railway Stations 644 stations have been made accessible as per the criterion⁹.
- Out of 1, 41,572 buses 12,894 buses have been provided with accessibility features.
- Through the ERNET India 917 websites of the State Governments/ UTs are under process of being accessible to the person who are differently abled¹⁰.
- When it comes to the metro stations Delhi Metro has taken up pioneering projects which has adhered itself to the needs of the person with disability. It has not only provided ramps at all the metro stations but also low level control panels in the lifts, the button are there in Braille, letterings and prominent color contrasts, etc¹¹.
- Tithal beach in Gujrat has been the First beach to be Disabled- friendly. It has been equipped with the entire Disabled- friendly infrastructure and is first of its kind in India¹².
- Even in Kerela Shanghumukham Beach has been made disabled- friendly recently. It has been provided with ramps, food counters at low heights, railings etc¹³.
- Recently initiative has been taken in order to make kerela tourist places totally accessible to the differently abled person. Especially the Beaches, the government has taken effort to make all the tourist places in kerela accessible for the differently abled person so that they can also enjoy the beauty of the nature¹⁴.
- When it comes to tourism, India has some of the world famous destinations. But it is fact that still Indian tourist places are far from being accessible for the differently abled person. Efforts are being made to make the tourist places accessible to the entire person who is differently abled. However there are places that are putting extra efforts to become disabled friendly tourist places in India. Some of these places are Kerela, Agra and Delhi. Apart from these cities there are certain locations or tourist spots that have been made totally Disabled friendly they are Tipu Sultan Summer Palace, Karnataka, Sanchi Stupa, Bhopal, and Lakshmana Temple Chhattisgarh¹⁵. The government has further aimed at making more tourist places disabled friendly by the end of the year 2018.

- Hyderabad has been ranked as the most disabled friendly state followed by Aurangabad, Patna, Agra and Meerut. However, cities like Malappuram have been ranked the lowest while other cities are Thrissur, Kozhikode, Kochi, and Kollam. These cities have been named as most unfriendly state for the person with disability¹⁶.

The World Bank has provided financial and knowledge assistance for India's Sarva Shiksha Abhiyan (Education for All) program, which has placed 2.7 million children with disabilities in mainstream schools (*World Bank Group Announces New Commitments on Disability Inclusion*, n.d.).

Lacuna's in the Enforcement

Union Government presented its yearly budget for the year 2020 on 1st Feb, has only allotted 9500 Cr for Person with Disability which also includes senior citizens. It has also been found that the tax exemption has also not been adequate. One of the major drawback is the budget allotted 250 Crore for the upliftment of the disabled person included under the Disability Act of 1995, which has only laid down seven types of disability rather than 2016 Act which has stated 21 types of disability.

Millions of disabled people live in underdeveloped infrastructure. Aside from metro, none of our open transport frameworks are disabled friendly. There are a lot of public infrastructures where it gets very hard for the disabled people to get access to and having access to the disabled people is still a neglected issue. An attempt to get out of the house and travel places, for the disabled people, is still a far cry. **Like any other person, barrier free environment for a disabled person is his legal right too under the constitution of India.** Policy makers should consider it very important to build a disabled friendly based Indian infrastructure.

According to a survey, **only 11% of the architects are aware of the designs and information that is used for accessibility design for the disabled.** Indian law for Indian infrastructure is not that well developed and not a lot of things are mandated which should be given importance.

To ensure uniform and appropriate accessibility, there should be standard rules of set provided to the disabled. India might not be ready right now to create disabled-friendly infrastructure but, there are major steps which are taking place to update the latest design requirements as per the international standards.

According to **NBC (National building code)**, it is mandatory for all the airports and railway stations to provide accessibility to the disabled but, there is no mandation related to accessibility regarding the other public places which are used by the disabled people. Hence, this leads to a lot of problem to be faced by the disabled.

Conclusion and Suggestions

The Accessible India Campaign has been launched by the PM Narendra Modi in December 2015 in order to make all the government building totally accessible for the Person with Disability. The Campaign has focused on the implementing the 2016 Act along with the UN Convention on Rights of Person with Disability 2006. Till now the campaign has done a remarkable job and though a bit slow as per the ascertained target but still it can be stated as quite progressive as compared to the earlier progress. The Campaign has covered important cities and important government buildings that are to be made accessible within a stipulated time limit. Still much work is to be done in order to reach the assigned goal of making whole India accessible for the person with disabilities. This chapter has been included in the research paper as to bring forth the present steps that have been taken up by the government and also how the policies and frameworks that are being drafted for the benefit of the Person with Disability are working. Apart from that this campaign has played a very important role for making the accessibility an important area of discussion and innovative steps and technological up keeps will make this event a total success in the coming future. So we can say that though the Disability rights and the issues related to the person with Disability are still there but every small step counts and will play an important role in bringing the change.

After the Shortcomings that were noticed in the Act of 1995 and also to comply with the UN Convention the Rights of Persons with Disabilities Act, 2016 was brought into force. The new Act in the name of RIGHTS OF PERSONS WITH DISABILITY Act, 2016 has been enacted in order to improve and enhance the living conditions of the person with disability. The Act has comprehensively included 22 forms of Disabilities and has been introduced various forms of disabilities within the ambit of the Act. However still there are various shortcomings with the Act.

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