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## A STUDY ON LEGAL RIGHTS OF PERSONS WITH DISABILITIES IN INDIA

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“The greatest happiness of the greatest number is the foundation of moral and legislation.” – **Jeremy Bentham.**

### ABSTRACT

All the human beings are born free and by birth itself, every human being enjoys some inalienable, eternal, universal natural rights. Those rights are also recognized as a basic human rights and which gives assurance of equality in dignity. Right to life, right to equality, right to liberty, right to movement, right to thought and expression, right to access the necessities, right against exploitations, right to security.etc.. are the basic rights of all the human beings. From the Sophocles story of ‘Antigone’ of 441 BC to Universal Declaration of Human rights, 1948 AD, we can track the evolution of human rights in all over the world. The movement for protection of rights of disabled persons started with United Nations General Assembly Declaration on the Rights of Disabled Person on 9<sup>th</sup> December, 1975.

In this research paper, the researcher is particularly dealing with respect to the international convention, contemporary status and governmental policies in India for the purpose of legal protection and accessibilities towards one of the vulnerable class of the society i.e., disabled persons.

**Keywords:** Disabled Persons, Indian Constitution, UN Convention, Legislation.

### INTRODUCTION

Disabled persons are also human beings and have the inherent right to human dignity. Disability poses greater challenges in obtaining their lawful share in a democratic country, where, the ‘Doctrine of Rule of Law’ and so many humanitarian principles of various theories are enumerated under the Supreme Law of the land, called “The Constitution of India”. Disability means a person who is not in a position to do his/her work like abled persons. A person with disabilities faces several forms of discriminations and obstacles to access primarily their livelihood, food, health, education, employment and other socio-economic opportunities. No one is like to born

with disability, once they born with disability then they have to straggle more for their survival in the society. The disabled have been marginalized and stigmatized in almost all the section of the society, where they were also having equal opportunities to entitle.

Disabled persons are one among the Vulnerable Groups<sup>1</sup> in India. A great majority of people in the developing nations are under the line of poverty. The traditional attitude of society towards the disabled is generally of pity, sympathy and charity. In this attitude the attention is on the disabilities rather than potentialities of disabled persons. The positive approach towards a disabled demands taking of measures to enable them to become as self-reliant as possible so as to lead a dignified life like others who are not disabled. The positive approach can be of four types, they are Medical Approach, Psychological Approach, Economical and Vocational Approach and Socio Political Approach. The Medical Approach demands treatment and giving medical aid to disabled to help them to get over to some extent the physical disability. The Psychological Approach would be to make them self-reliant and not to treat them as secondary citizens. The Economical and Vocational Approach demands helping the disabled for vocational rehabilitation. The Socio Political Approach is to give them all social and political rights and privileges as are available to able bodied.<sup>2</sup>

## MEANING OF DISABLED PERSONS

There are two broad categories of disability, one is acquired which means disability acquired because of accidents and medical reasons the other is disability since the onset of birth.<sup>3</sup>

According to the Oxford Dictionary, a disability could be described as an impairment which can be Intellectual, limitations, cognitive, improvement, sensory, exercise or the mixture of all these. Incapacity impacts a person's activities and may happen at birth. Sometimes, it could happen in adulthood.

The 'disabled persons' has been described to be 'any person unable to ensure by himself or herself, wholly or partly the necessities of a normal individual and social life, a result of a deficiency, either congenital or not in his/her physical or mental capabilities'. A disability is further described in terms of lack of normal functioning of physical, mental or psychological processes. It is also defined as learning difficulties or difficulties in adjusting socially, which interferes with a person's normal growth and development.<sup>4</sup>

'Disability' means the absence of legal capacity to do certain acts or enjoy certain legal rights.<sup>5</sup> "Disability" means – (1) lack of competence, power, strength, or physical or mental ability; incapacity, (2) a permanent physical flaw, weakness, or handicap, which prevents one from living a full normal life or form performing any

<sup>1</sup> Vulnerable Groups means those groups of persons who are discriminated in all walk of their life and they were the victimized group in a civilized society. These group of persons includes Women, Scheduled Castes (SC), Scheduled Tribes (ST), Children, Aged, Disabled, Poor migrants, People living with HIV/AIDS and Sexual Minorities.

<sup>2</sup> Justice Dharmadhikari's, Human Values & Human Rights, Colloquium on "Disability and the law" P-143.

<sup>3</sup> Vulnerable Groups in India by Chandrima Chatterjee & Gunjan Sheoran at

<<http://www.cehat.org/humanrights/vulnerable.pdf>>, accessed on 10<sup>th</sup> December, 2018, 5.45 PM

<sup>4</sup> HUMAN RIGHTS EDUCATION for BEGINNERS at,

<[http://www.ssfindia.org/publications/project\\_reports/human\\_rights\\_education.pdf](http://www.ssfindia.org/publications/project_reports/human_rights_education.pdf)>, accessed on 11<sup>th</sup> December, 2018, 5.46 PM.

<sup>5</sup> See Legal Glossary, 7<sup>th</sup> Edn. 2015, at page 127.

specific job, (3) the state or condition of being disabled”.<sup>6</sup> ‘Persons with disabilities’ include those who have long-term physical, mental, intellectual or sensory impairments.<sup>7</sup> ‘Person with disability’ means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.<sup>8</sup>

## ESTIMATED POPULATION OF DISABLED PERSONS

The National Sample Survey Organization (NSSO) made the first attempt to collect data on the number of persons with disabilities in the 15th round during July, 1959 to June, 1960. However, those data did not contain the required details, nor was it a regular feature. In India as per 2011 Census there are 121 Cr population in that the proportion of disabled population is about 2.68 Cr. The percentage of disabled population to the total population is about 2.21 per cent.<sup>9</sup>

Among the disabled population 56% (1.5 Cr) are males and 44% (1.18 Cr) are females. Majority (69%) of the disabled population resided in rural areas (1.86 Cr disabled persons in rural areas and 0.81 Cr in urban areas). In India, 20% of the disabled persons are having disability in movement, 19% are with disability in seeing, and another 19 % are with disability in hearing. 8% has multiple disabilities.

The number of disabled persons is highest in the age group 10-19 years (46.2 lakhs). 17% of the disabled population is in the age group 10-19 years and 16% of them are in the age group 20-29 years. Elderly (60+ years) disabled constituted 21% of the total disabled at all India level. 61% of the disabled children aged 5-19 years are attending educational institution. The rate of school attendance of disabled children (5-19 years) is higher in urban areas (65%) compared to rural areas (60%). Of the total disabled population, nearly 55% (1.46 Cr.) are literates.<sup>10</sup>

An estimated 70 million disabled Indians are treated as second-class citizens confronting segregation, discrimination, barriers and stereotypes. The entire spectrum of disability issues such as causes of disability, care and rehabilitation, empowerment and mainstreaming through education, employment, health care and transportation – wait to be practically resolved.<sup>11</sup>

Compared to Indian statistics, the population of persons living with disability in India's neighbours is substantially higher.<sup>12</sup> In the most developed countries this number raises to 18 per cent (Australia), 14.2 per cent (United Kingdom) and 9 per cent (the United States).

<sup>6</sup> Random House Dictionary of the English Language, the Unabridged Edition, at page 408.

<sup>7</sup> Article 1(2), Convention on the Rights of Person with Disabilities and Optional Protocol, 2006.

<sup>8</sup> Section 2 (s), The Rights of Persons with Disabilities Act, 2016

<sup>9</sup> The National Sample Survey Organization Report.

<sup>10</sup> Ibid

<sup>11</sup> Disability Rights, at <[http://www.hrln.org/hrln/index.php?option=com\\_content&view=article&id=54&Itemid=69](http://www.hrln.org/hrln/index.php?option=com_content&view=article&id=54&Itemid=69)>, accessed on 10<sup>th</sup> December, 2011, 5.53 pm.

<sup>12</sup> 5 % in China, 5 % in Nepal and 4.9 % in Pakistan.

One WHO report states that ten per cent of the entire world's population live with disability (650 million) and that there are more people living with disability in India than in any other country. The tragedy is that the Census Commission failed to make any attempt to collect statistics on disability until 2001. The assumption is simple: **no census, no statistics, and no problem.**<sup>13</sup>

## **RIGHTS AND PROTECTION OF DISABLED PERSONS**

Disabled persons are an integral part of society. The persons with disabilities encounter several obstacles like Accessibility, Employment, Education and Others due to sensitivity and attitudinal barriers in society. It is the duty of the State to provide equal justice in social, political and economical to all its citizens without any discrimination.

People who have been perceived as being different from what is considered normal, whether in the physical, mental or emotional sense, have suffered discrimination in many ways. This discrimination takes various forms. It could range from less respect and dignity to harsher forms of abuse. Disabled people have often been subjected to physical and sexual abuse or forced to live in institutions that isolated them from society. Stories of abuse were also not uncommon. Disabled people have often been restrained from getting married or from having children. Often, extreme forms of abuse have extended to them being abandoned or even murdered.<sup>14</sup>

There are number of instances around us where these group of persons straggle for their identity and survival in society. Poor disabled persons started begging in streets, railway station, buses to lead their life by showing their disability. Most of these persons hesitating themselves in participating in any social functions and programmes. They feel themselves that their born is of no use to society and they attempting suicides. These situations hurt more and force anybody to help them on humanitarian ground in a civilized society. These people need moral support and opportunities from State, NGOs, and Society and through enactments to expose their talent, achieve their goals and prove themselves that they have also compete with others in a society. They need a stage or opportunity to expose their talent and not sympathy.

Unfortunately, for a long time, society did not even view its treatment of disabled people as being wrong. Disabled people were just perceived as 'less than' or 'not quite' human. However, with the growth of human rights and the recognition of several marginalized groups, people with disabilities have also been recognized as a marginalized group. They began to be viewed not as less human, but as humans who could attain their full potential if they received the opportunities to do so.<sup>15</sup>

<sup>13</sup> <<http://www.clraindia.org/include/DPbriefno5.pdf>>, accessed on 16<sup>th</sup> December, 2011, 5.53 pm.

<sup>14</sup> See, Supra Note 4

<sup>15</sup> Ibid.

## PROVISION UNDER THE INDIAN CONSTITUTION

The Constitutional provisions would indicate that although disabled did not receive necessary attention at the time of framing of the constitution, but they were not considered in any manner inferior to able-bodies citizen. The Preamble is the part of our Constitution and which is of extreme importance, which consists of the grand and noble vision. The Preamble declares the great right and freedom which the people of India intended to secure to all its citizens. The words in the Preamble,<sup>16</sup> nowhere has it discriminated the citizen who may be physically good or healthy and physically handicaps. Justice, social, economic and political is the constitutional aim proclaimed in the Preamble of the Constitution of India which contains the requisite guidelines and provides for the infrastructure for attaining it. Preamble declares 'social democracy' to all citizen by providing liberty, equality of status and opportunities and fraternity which assuring the dignity of the individual.

The Fundamental rights are not explicitly used the word 'Disabled Persons', but used weaker section of the society. The following Fundamental Rights are guaranteed to even to disabled persons like others, under the part III from Article 12 to 35 in our Constitution.

1. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.<sup>17</sup> The word 'person' includes both physically able and disabled.
2. The State shall not prevent from making any special provision for women and children.<sup>18</sup> (Including Disabled Women & Children).
3. The State shall not prevent from making any special provision for the advancement of any socially and educationally backward classes of citizens.<sup>19</sup>
4. There shall be equality of opportunities for all citizens in matters relating to employment or appointment to any office under the state.<sup>20</sup>
5. The State shall not prevent from making any provision for the reservation of appointments or posts in favour of any backward class of citizens.<sup>21</sup> This backward class should include even the class of disabled as their backward arises from their physical disabilities.
6. There can be no traffic in human being including the disabled and beggar and other form of forced labour is prohibited and the same is made punishable in accordance with law.<sup>22</sup>

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<sup>16</sup> "We the people of India, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens:  
JUSTICE, social, economic and political;  
LIBERTY of thought, expression, belief, faith and worship;  
EQUALITY of status and of opportunity; and to promote among them all;  
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;"

<sup>17</sup> Article 14.

<sup>18</sup> Article 15 (3).

<sup>19</sup> Article 15 (4).

<sup>20</sup> Article 16 (1).

<sup>21</sup> Article 16 (4).

<sup>22</sup> Article 17.



7. The fundamental freedoms such as of speech, expression, forming association, moving throughout India, residing or settlement in any part of India are guaranteed to all citizens including disabled persons.<sup>23</sup>
8. No person shall be deprived of his life or personal liberty except according to procedure established by law.<sup>24</sup> The disabled persons, also enjoys the right to life and personal liberty with dignity.
9. The State shall provide free and compulsory education to all children of the age of six to fourteen years,<sup>25</sup> the physically handicapped children in this age group will be provided such inclusive education.

The other Fundamental rights which are also applicable to disabled persons includes right to freedom of conscience and free profession, practice and propagation of religion, protection of interests of minorities including their right to establish and administer educational institutions, protection against arrest and detention, and right to Constitutional remedies.

Under the Directive Principles of State Policy,<sup>26</sup> it the duty of the State to secure a social order for the promotion of welfare of the people,<sup>27</sup> including disabled.

Article 39 (a) provides that both the abled and disabled citizens, men and women equally, have the right to an adequate means of livelihood. Article 39 (f) provides that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Disable persons are entitled to get Equal Justice and Free Legal Aid,<sup>28</sup> it is the duty of the State shall provide with suitable legislation and scheme.

Article 41 enjoins that, “The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.”

Article 45 enjoins that, “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

Article 46 stipulates that, “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.” and it the duty of the State to provide a nutrition and raise the standard of living and to improve public health.<sup>29</sup>

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<sup>23</sup> Article 19.

<sup>24</sup> Article 21.

<sup>25</sup> Article 21A.

<sup>26</sup> Part IV, Articles 36-51 of the Constitution of India.

<sup>27</sup> Article 38

<sup>28</sup> Article 39A

<sup>29</sup> Article 47

Under the Fundamental Duty,<sup>30</sup> it shall be the duty of every citizens, to promote harmony and the spirit of common brotherhood amongst all the citizens...,<sup>31</sup> and it is the duty on every parents or guardian to provide opportunities for education to his child between the age group of 6 to 14 years.<sup>32</sup>

## **THE RIGHTS OF PERSON WITH DISABILITY ACT, 2016**

For the purpose of supporting disabled persons, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which came into force on February 7, 1996. The Act is an initiative to promote equal opportunities for persons with disabilities, protect their rights and grant them full participation so that they are integrated into society and their rights are realised. The eligibility for the benefits of disability schemes under this Act, is for the person having 40 percent of disability and one who holds the certificate of disability issued by the civil surgeon of the district hospital on the recommendation of the respective specialists for different disabilities - an orthopaedician for a person with locomotor disability, an ophthalmologist for a visually impaired person and so on. The Act provides so many rights and accessibilities to disabled persons according to the streamline of international treaties on disability.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was replaced with the Rights of Persons with Disabilities Act, 2016. It fulfills the obligations to the United National Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory and ratified the said Convention on the 1st day of October, 2007. The Act came into force during December 2016.

The Object of An Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto.

The aforesaid Convention lays down the following principles for empowerment of persons with disabilities,—

- a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b) non-discrimination;
- c) full and effective participation and inclusion in society;
- d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) equality of opportunity;
- f) accessibility;
- g) equality between men and women;
- h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

<sup>30</sup> Part IV A, Article 51A of the Constitution of India.

<sup>31</sup> Article 51A(e)

<sup>32</sup> Article 51A(k)

## Salient features of the Act - Disabilities covered

Persons with “benchmark disabilities”<sup>33</sup> are defined as those certified to have at least 40 per cent of the disabilities.

“Person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.<sup>34</sup>

“Rehabilitation” refers to a process aimed at enabling persons with disabilities to attain and maintain optimal, physical, sensory, intellectual, psychological environment or social function levels.<sup>35</sup>

Disability has been defined based on an evolving and dynamic concept. The types of disabilities have been increased from existing 7 to 21 and the Central Government will have the power to add more types of disabilities. Sec 2 (zc) defined the “Specified disabilities” as the disabilities specified in the Schedule. The 21 types of disabilities specified under the Schedule are given below:-

01.	Blindness	12.	Chronic Neurological conditions
02.	Low-vision	13.	Specific Learning Disabilities
03.	Leprosy Cured persons	14.	Multiple Sclerosis
04.	Hearing Impairment (deaf and hard of hearing)	15.	Speech and Language disability
05.	Locomotor Disability	16.	Thalassemia
06.	Dwarfism	17.	Haemophilia
07.	Intellectual Disability	18.	Sickle Cell disease
08.	Mental Illness	19.	Multiple Disabilities including deaf blindness
09.	Autism Spectrum Disorder	20.	Acid Attack victim
10.	Cerebral Palsy	21.	Parkinson's disease
11.	Muscular Dystrophy		

## Rights and Entitlements (Sec 3)

- Responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others.
- Additional benefits such as reservation in higher education (not less than 5%), government jobs (not less than 4 %), reservation in allocation of land, poverty alleviation schemes (5% allotment) etc. have been provided for persons with benchmark disabilities and those with high support needs.

<sup>33</sup> Section 2 (r), The Rights of Persons with Disabilities Act, 2016

<sup>34</sup> Section 2 (s), The Rights of Persons with Disabilities Act, 2016

<sup>35</sup> Section 2 (za), The Rights of Persons with Disabilities Act, 2016



- Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education.
- Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education to the children with disabilities.
- For strengthening the Prime Minister's Accessible India Campaign, stress has been given to ensure accessibility in public buildings (both Government and private) in a prescribed time-frame.

### **Guardianship**

The Act provides for grant of guardianship by District Court under which there will be joint decision – making between the guardian and the persons with disabilities.

### **Establishment of Authorities**

- Broad based Central & State Advisory Boards on Disability are to be set up to serve as apex policy making bodies at the Central and State level.
- Office of Chief Commissioner of Persons with Disabilities has been strengthened who will now be assisted by 2 Commissioners and an Advisory Committee comprising of not more than 11 members drawn from experts in various disabilities.
- Similarly, the office of State Commissioners of Disabilities has been strengthened who will be assisted by an Advisory Committee comprising of not more than 5 members drawn from experts in various disabilities.
- The Chief Commissioner for Persons with Disabilities and the State Commissioners will act as regulatory bodies and Grievance Redressal agencies and also monitor implementation of the Act.
- District level committees will be constituted by the State Governments to address local concerns of PwDs. Details of their constitution and the functions of such committees would be prescribed by the State Governments in the rules.
- Creation of National and State Fund will be created to provide financial support to the persons with disabilities. The existing National Fund for Persons with Disabilities and the Trust Fund for Empowerment of Persons with Disabilities will be subsumed with the National Fund.

## Penalties for offences

- The Act provides for penalties for offences committed against persons with disabilities and also violation of the provisions of the new law.
- Any person who violates provisions of the Act, or any rule or regulation made under it, shall be punishable with imprisonment up to six months and/ or a fine of Rs 10,000, or both. For any subsequent violation, imprisonment of up to two years and/or a fine of Rs 50,000 to Rs five lakh can be awarded.
- Whoever intentionally insults or intimidates a person with disability, or sexually exploits a woman or child with disability, shall be punishable with imprisonment between six months to five years and fine.
- Special Courts will be designated in each district to handle cases concerning violation of rights of PwDs.

Compare to earlier Act, of 1995, the Rights of Persons with Disabilities Act, 2016 provides more rights and protection to more number of categories of disabled person in India. This Act mandates to all the public and private departments, educational institution, entertainment public places, public park, public transportation, railways, airlines, and others places where disabled are found, then that shall be accessible to them without any discrimination.

## Other Laws Dealing with Disability Rights in India are as follows:

- The Income Tax Act, 1961
- The Mental Health Act, 1987
- The Rehabilitation Council of India Act, 1992
- The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999
- The Juvenile Justice Act, 2000

## JUDICIARY AND DISABLED PERSONS

Judiciary contributes a lot towards the disabled person's upliftment in so many cases. In a landmark case, *Kesavananda Bharati v. State of Kerala*,<sup>36</sup> the Supreme Court of India observed that primarily the mandate in Article 37 is addressed to the legislature, but, in so far as the Courts of Justice can indulge in some judicial law making within the interstices of the Constitution on any statute before them, the Courts too are bound by this mandate. Both international and domestic courts have significantly contributed to disability jurisprudence. It is in this context that litigation can play an important role.

In the case of *National Federation of Blind v. Union Public Service Commission*,<sup>37</sup> the Supreme Court held that identification of post suitable for disabled and providing reservation is the matter for the Government to decide.

<sup>36</sup> AIR 1973 SC 1461

<sup>37</sup> (1993) 2 SCC 411

It was held that it was only on such identification of suitable posts for disabled, the employment opportunities can be made available.

In the case of *Lance Dafadar Jogunder Singh v. Union of India*,<sup>38</sup> it was held that an army employee on casual leave would be deemed to be on duty and is entitled to disability pension for the disability caused while he was on casual leave.

In the case of *Indra Sawhney v. Union of India*,<sup>39</sup> the Supreme Court took notice of disabled for reservation in public appointment and held that in “Backward Class” will be covered person with disabilities and affirmative action in their favour is constitutionally permissible.

## CONCLUSION

The Constitution of India is for all in all respect, and there are so many legislations are in favor of disabled persons but there are so many problems in its proper implementation and in creating awareness about the disabled law. As we know, there are so many types of disabilities are in the society. The Government with the establishment of separate Authorities for each category of disability provides justice to them.

The disabled persons are also the part of the civil society and of course they were get their rights and benefits under the enacted legislations. But more than that is, they need love and affection in their family and from friends group and in this society. They really need encouragement and moral support to lead their life and to achieve their dreams. If they were neglected in the society then there may be a possibility of committing suicide and suffer a lot mentally.

If we love and treat disabled as equals and protect them with the enacted laws which are really helpful for disabled persons. Than only we can proudly says that, We the people of India followed and maintaining common brotherhood in this country and uphold the humanitarian values and principles.

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