

Disability Laws in India: A Study

Rajib Bhattacharyya¹

Abstract

Disability is a concept which is understood and interpreted by various social thinkers, social workers and jurists keeping in mind the inherent philosophy of the term in its actual sense. Though the term “disability” carries with it the assumption of a lack or deficiency whether physical, mental or sensory in respect of some people but there are lots of examples that sometimes these people proved themselves as differently abled person by their intellectuality or positive attitudes and outlook towards life.

Hence, the Rights and Laws of disabled persons need to be understood and studied from various perspectives including human rights and various other laws in India which will ultimately fill up the differences or mitigate the gap between the abled and the differently abled persons in their attainment of persona and dignity in true sense of the terms.

In this research work the researcher is giving much emphasis on the various legal provisions and Laws available in our country and make a systematic study on how these laws have contributed towards the development of legal status of the disabled persons in India.

Keywords:

Disability Laws in India, disability, disabled persons in India, Rights and Laws of disabled persons

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¹ (B.A, LL.B; LL.M, CCL, DEM, DHR, PGDBO), Asstt. Professor, University Law College, Gauhati University.
Ph. No- 09707298285
E-mail Id: bhattacharyya.rajib@gmail.com

INTRODUCTION

The disability rights debate is not so much about the enjoyment of specific rights as it is about ensuring the equal effective enjoyment of all human rights, without discrimination, by people with disabilities. The non-discrimination principle helps to make human rights in general relevant in the specific context of disability, just as it does in the contexts of age, sex and children. Non discrimination and the equal effective enjoyment of all human rights by people with disabilities, is therefore the dominant theme of the long-overdue reform in the way disability and the disabled are viewed throughout the world.¹

The primary responsibility for ensuring respect for the rights of persons with disabilities rests with the government. Our government has taken various steps to provide equal opportunities to persons with disabilities by enacting several Acts and implementing various policies and schemes for the empowerment of persons with disabilities. Our constitution guarantees equal rights to each individual of our country. India is one of the first signatory to

United Nations Convention on the Rights of Persons with Disabilities which means we have to adopt it in its full spirit.²

Disability is a complex category as it has been and still is understood and interpreted by different people in very different ways. In almost all societies, individuals with physical or intellectual anomalies have been assumed to be, by the very nature of their condition, inferior. As the term disability carries with it the connotation of a lack or deficiency, whether mental, physical or sensory, it has been defined primarily in terms of medical deficit. However, it has to be acknowledged that the word disability is itself not a homogeneous category, subsuming under it different kinds of bodily variations, physical impairments, sensory deficits and mental or learning inadequacies, which may be either congenital or acquired. Disability has been recognised as a human rights issue in the international arena, with the United Nations Declaration on the Rights of the Disabled Persons focusing attention on the needs of disabled people globally.³

As many as 70 million disabled people spread across India continue to be

treated as second- class citizens. For them segregation, marginalisation and discrimination are norms rather than exception. Faced with barriers put by stereotyped attitudes, they are generally viewed as objects of charity and welfare as the world merrily goes about trampling their most basic human rights. Sadly, this is so despite the United Nations Declaration of Human Rights in 1948 that makes observance of human rights a precondition for ensuring justice, freedom and peace. In 1992, India became a signatory to the Proclamation on Full Participation and Equality of People with Disabilities in the Asian and Pacific Region. This was adopted at Beijing at a conference convened by the Economic and Social Commission for Asian and Pacific Region. The proclamation brought an obligation upon the country to enact a law as per its solemn affirmations. And so the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 got through Parliament. Amongst the four domestic legislations related to disability it is this Act that provides entitlements of rights to persons with disabilities and mandates the government to provide facilities for their full participation. The provisions under the Act are all very empowering but unfortunately,

even though the Act was passed almost 19 years ago, its implementation remains woefully inadequate. Those responsible for its implementation and several persons with disabilities often remain unaware of the provisions of the Act.⁴

DISABILITY LAWS IN INDIA IN BRIEF

THE CONSTITUTION OF INDIA AND THE DISABLED⁵

The Constitution of India applies uniformly to every legal citizen of India, whether they are healthy or disabled in any way (physically or mentally). Under the Constitution the disabled have been guaranteed the following fundamental rights:

1. The Constitution secures to the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.
2. Article 15(1) enjoins on the Government not to discriminate

against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.

3. Article 15 (2) States that no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, public restaurants, hotels and places of public entertainment or in the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of government funds or dedicated to the use of the general public. Women and children and those belonging to any socially and educationally backward classes or the Scheduled Castes & Tribes can be given the benefit of special laws or special provisions made by the State. There shall be equality of opportunity for all citizens (including the disabled) in matters relating to employment or appointment to any office under the State.
4. No person including the disabled irrespective of his belonging can be treated as an untouchable. It would be an offence punishable in

accordance with law as provided by Article 17 of the Constitution.

5. Every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution.
6. There can be no traffic in human beings (including the disabled), and beggar and other forms of forced labour is prohibited and the same is made punishable in accordance with law (Article 23).
7. Article 24 prohibits employment of children (including the disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. Even a private contractor acting for the Government cannot engage children below 14 years of age in such employment.
8. Article 25 guarantees to every citizen (including the disabled) the right to freedom of religion. Every disabled person (like the non disabled) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.
9. No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group.

10. No Disabled person will be deprived of the right to the language, script or culture which he has or to which he belongs.
11. Every disabled person can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32.
12. No disabled person owning property (like the non disabled) can be deprived of his property except by authority of law though right to property is not a fundamental right. Any unauthorized deprivation of property can be challenged by suit and for relief by way of damages.
13. Every disabled person (like the non disabled) on attainment of 18 years of age becomes eligible for inclusion of his name in the general electoral roll for the territorial constituency to which he belongs.

DISABLED AND THE EDUCATION LAWS⁶

The right to education is available to all citizens including the disabled. Article 29(2) of the Constitution provides that no citizen shall be denied admission into any

educational institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language.

Article 45 of the Constitution directs the State to provide free and compulsory education for all children (including the disabled) until they attain the age of 14 years. No child can be denied admission into any education institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language.

DISABLED AND THE HEALTH LAWS⁷

Article 47 of the constitution imposes on the Government a primary duty to raise the level of nutrition and standard of living of its people and make improvements in public health - particularly to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to one's health except for medicinal purposes. The health laws of India have many provisions for the disabled. Some of the Acts which make provision for health of the citizens including the disabled may be seen in the Mental Health Act, 1987.

Various laws relating to the marriage enacted by the Government for DIFFERENT communities apply equally to the disabled. In most of these Acts it has been provided that the following circumstances will disable a person from undertaking a marriage. These are:

- (1) Where either party is an idiot or lunatic,
- (2) Where one party is unable to give a valid consent due to unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for procreation of children'.
- (3) Where the parties are within the degree of prohibited relationship or are sapindas of each other unless permitted by custom or usage.
- (4) Where either party has a living spouse.

The rights and duties of the parties to a marriage whether in respect of disabled or non-disabled persons are governed by the specific provisions contained in different marriage Acts, such as the Hindu Marriage Act, 1955, the Christian Marriage Act, 1872

and the Parsi Marriage and Divorce Act, 1935. Other marriage Acts which exist include; the Special Marriage Act, 1954 (for spouses of differing religions) and the Foreign Marriage Act, 1959 (for marriage outside India). The Child Marriage Restraint Act, 1929 as amended in 1978 to prevent the solemnization of child marriages also applies to the disabled. A Disabled person cannot act as a guardian of a minor under the Guardian and Wards Act, 1890 if the disability is of such a degree that one cannot act as a guardian of the minor. A similar position is taken by the Hindu Minority and Guardianship Act, 1956, as also under the Muslim Law.

DISABLED AND THE SUCCESSION LAWS⁹

Under the Hindu Succession Act, 1956 which applies to Hindus it has been specifically provided that physical disability or physical deformity would not disentitle a person from inheriting ancestral property. Similarly, in the Indian Succession Act, 1925 which applies in the case of intestate and testamentary succession, there is no provision which deprives the disabled from

inheriting an ancestral property. The position with regard to Parsis and the Muslims is the same. In fact a disabled person can also dispose his property by writing a 'will' provided he understands the import and consequence of writing a will at the time when a will is written. For example, a person of unsound mind can make a Will during periods of sanity. Even blind persons or those who are deaf and dumb can make their Wills if they understand the import and consequence of doing it.

DISABLED AND THE LABOUR LAWS¹⁰

The rights of the disabled have not been spelt out so well in the labour legislations but provisions which cater to the disabled in their relationship with the employer are contained in delegated legislations such as rules, regulations and standing orders.

DISABLED AND THE INCOME TAX CONCESSIONS¹¹

Relief for Handicapped

Section 80 DD: Section 80 DD provides for a deduction in respect of the expenditure incurred by an individual or Hindu Undivided Family resident in India on the medical treatment (including nursing) training and rehabilitation etc. of handicapped dependants. For officiating the increased cost of such maintenance, the limit of the deduction has been raised from Rs.12000/- to Rs.20000/-.

Section 80 V: A new section 80V has been introduced to ensure that the parent in whose hands income of a permanently disabled minor has been clubbed under Section 64, is allowed to claim a deduction upto Rs.20000/- in terms of Section 80 V.

Section 88B: This section provides for an additional rebate from the net tax payable by a resident individual who has attained the age of 65 years. It has been amended to increase the rebate from 10% to 20% in the cases where the gross total income does not exceed Rs.75000/- (as against a limit of Rs.50000/- specified earlier).

THE PERSONS WITH DISABILITIES (PWD)



(EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995¹²

“The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” had come into enforcement on February 7, 1996. It is a significant step which ensures equal opportunities for the people with disabilities and their full participation in the nation building. The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier-free environment, rehabilitation of persons with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc.

Main Provisions of the Act:

Prevention and early detection of disabilities

- Surveys, investigations and research shall be conducted to ascertain the cause of occurrence of disabilities.
- Various measures shall be taken to prevent disabilities. Staff at the Primary Health Centre shall be trained to assist in this work.
- All the Children shall be screened once in a year for identifying ‘at-risk’ cases.
- Awareness campaigns shall be launched and sponsored to disseminate information.
- Measures shall be taken for pre-natal, peri natal, and post-natal care of the mother and child.

Education

- Every Child with disability shall have the rights to free education till the age of 18 years in integrated schools or special schools.
- Appropriate transportation, removal of architectural barriers and restructuring of modifications in the examination system shall be ensured for the benefit of children with disabilities.
- Children with disabilities shall have the right to free books, scholarships, uniform and other learning material.



- Special Schools for children with disabilities shall be equipped with vocational training facilities.
- Non-formal education shall be promoted for children with disabilities.
- Teachers' Training Institutions shall be established to develop requisite manpower.
- Parents may move to an appropriate forum for the redressal of grievances regarding the placement of their children with disabilities.

Employment

- 3% of vacancies in government employment shall be reserved for people with disabilities, 1% each for the persons suffering from:

- Blindness or Low Vision
 - Hearing Impairment
 - Locomotor Disabilities & Cerebral Palsy
- Suitable Scheme shall be formulated for
 - The training and welfare of persons with disabilities
 - The relaxation of upper age limit
 - Regulating the employment

- Health and Safety measures, and creation of a non-handicapping, environment in places where persons with disabilities are employed.

- Government Educational Institutes and other Educational Institutes receiving grant from Government shall reserve at least 3% seats for people with disabilities.

- No employee can be sacked or demoted if they become disabled during service, although they can be moved to another post with the same pay and condition. No promotion can be denied because of impairment.

Affirmative Action

- Aids and Appliances shall be made available to the people with disabilities.
- Allotment of land shall be made at concessional rates to the people with disabilities for:
 - House
 - Business
 - Special Recreational Centres
 - Special Schools
 - Research Schools

· Factories by Entrepreneurs with Disability,

Non-Discrimination

- Public building, rail compartments, buses, ships and air-crafts will be designed to give easy access to the disabled people.

- In all public places and in waiting rooms, the toilets shall be wheel chair accessible. Braille and sound symbols are also to be provided in all elevators (lifts).

- All the places of public utility shall be made barrier-free by providing the ramps.

Research and Manpower Development

- Research in the following areas shall be sponsored and promoted:

- Prevention of Disability
- Rehabilitation including community based rehabilitation
- Development of Assisitive Devices.

- Job Identification

- On site Modifications of Offices and Factories

- Financial assistance shall be made available to the universities, other institutions of higher learning, professional bodies and non-government research- units or institutions, for undertaking research for special education, rehabilitation and manpower development.

Social Security

- Financial assistance to non-government organizations for the rehabilitation of persons with disabilities.

- Insurance coverage for the benefit of the government employees with disabilities.

- Unemployment allowance to the people with disabilities who are registered with the special employment exchange for more than a year and could not find any gainful occupation.

Grievance Redressal

- In case of violation of the rights as prescribed in this act, people with disabilities may move an application to the:
- Chief Commissioner for Persons with Disabilities in the Centre, or
- Commissioner for Persons with Disabilities in the State.

THE MENTAL HEALTH ACT, 1987:¹³

Under the Mental Health Act, 1987 mentally ill persons are entitled to the following rights:

1. A right to be admitted, treated and cared in a psychiatric hospital or psychiatric nursing home or convalescent home established or maintained by the Government or any other person for the treatment and care of mentally ill persons (other than the general hospitals or nursing homes of the Government).

2. Even mentally ill prisoners and minors have a right of treatment in psychiatric hospitals or psychiatric nursing homes of the Government.
3. Minors under the age of 16 years, persons addicted to alcohol or other drugs which lead to behavioral changes, and those convicted of any offence are entitled to admission, treatment and care in separate psychiatric hospitals or nursing homes established or maintained by the Government.
3. Mentally ill persons have the right to get regulated, directed and co-ordinated mental health services from the Government. The Central Authority and the State Authorities set up under the Act have the responsibility of such regulation and issue of licenses for establishing and maintaining psychiatric hospitals and nursing homes.
4. Treatment at Government hospitals and nursing homes mentioned above can be obtained either as in patient or on an out-patients basis.
5. Mentally ill persons can seek voluntary admission in such hospitals or nursing homes and minors can seek admission through

their guardians. Admission can be sought for by the relatives of the mentally ill person on behalf of the latter. Applications can also be made to the local magistrate for grants of such (reception) orders.

6. The police have an obligation to take into protective custody a wandering or neglected mentally ill person, and inform his relative, and also have to produce such a person before the local magistrate for issue of reception orders.
7. Mentally ill persons have the right to be discharged when cured and entitled to 'leave' the mental health facility in accordance with the provisions in the Act.
8. Where mentally ill persons own properties including land which they cannot themselves manage, the district court upon application has to protect and secure the management of such properties by entrusting the same to a 'Court of Wards', by appointing guardians of such mentally ill persons or appointment of managers of such property.
9. The costs of maintenance of mentally ill persons detained as in-patient in any government

psychiatric hospital or nursing home shall be borne by the state government concerned unless such costs have been agreed to be borne by the relative or other person on behalf of the mentally ill person and no provision for such maintenance has been made by order of the District Court. Such costs can also be borne out of the estate of the mentally ill person.

10. Mentally ill persons undergoing treatment shall not be subjected to any indignity (whether physical or mental) or cruelty. Mentally ill persons cannot be used without their own valid consent for purposes of research, though they could receive their diagnosis and treatment.
11. Mentally ill persons who are entitled to any pay, pension, gratuity or any other form of allowance from the government (such as government servants who become mentally ill during their tenure) cannot be denied of such payments. The person who is in-charge of such mentally person or his dependants will receive such payments after the magistrate has certified the same.

12. A mentally ill person shall be entitled to the services of a legal practitioner by order of the magistrate or district court if he has no means to engage a legal practitioner or his circumstances so warrant in respect of proceedings under the Act.

THE REHABILITATION COUNCIL OF INDIA ACT, 1992.¹⁴

This Act provides guarantees so as to ensure the good quality of services rendered by various rehabilitation personnel. Following is the list of such guarantees:

1. To have the right to be served by trained and qualified rehabilitation professionals whose names are borne on the Register maintained by the Council.
2. To have the guarantee of maintenance of minimum standards of education required for recognition of rehabilitation qualification by universities or institutions in India.
3. To have the guarantee of maintenance of standards of

professional conduct and ethics by rehabilitation professionals in order to protect against the penalty of disciplinary action and removal from the Register of the Council.

4. To have the guarantee of regulation of the profession of rehabilitation professionals by a statutory council under the control of the central government and within the bounds prescribed by the statute.

THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999.¹⁵

1. The Central Government has the obligation to set up, in accordance with this Act and for the purpose of the benefit of the disabled, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability at New Delhi.
2. The National Trust created by the Central Government has to ensure that the objects for which it has been

set up as enshrined in Section 10 of this Act have to be fulfilled.

3. It is an obligation on part of the Board of Trustees of the National Trust so as to make arrangements for an adequate standard of living of any beneficiary named in any request received by it, and to provide financial assistance to the registered organizations for carrying out any approved programme for the benefit of disabled.
4. Disabled persons have the right to be placed under guardianship appointed by the 'Local Level Committees' in accordance with the provisions of the Act. The guardians so appointed will have the obligation to be responsible for the disabled person and their property and required to be accountable for the same.
5. A disabled person has the right to have his guardian removed under certain conditions. These include an abuse or neglect of the disabled, or neglect or misappropriation of the property under care.
6. Whenever the Board of Trustees are unable to perform or have persistently made default in their performance of duties, a registered

organization for the disabled can complain to the central government to have the Board of Trustees superseded and/or reconstituted.

7. The National Trust shall be bound by the provisions of this Act regarding its accountability, monitoring finance, accounts and audit.

JUDICIARY AND THE DISABLED

The Indian Judiciary has played a very significant role in developing the human rights of the disabled persons. In a number of cases the Supreme Court and the High Courts interpreted the disability legislations furthering the objectives contained therein. The extraordinary powers vested in the Supreme Court under Articles 32 and 142, and the High Courts under Article 226 of the Constitution of India, have ensured that the rights of the citizens, and more specifically, that of the disabled citizens, are not trampled upon.

In *Javed Abidi v. Union of India*¹⁶, while directing Indian Airlines to provide concessions for passengers suffering from locomotors disability, the Supreme Court

keeping in view the object of the persons with disabilities Act, 1995, directed creation of various free environment for person with disabilities and making special provisions for their rehabilitation, medical care, education, employment, training and protection of their rights.

In *D.N. Chanchala v. State*¹⁷, the Supreme Court advocating the right based approach to disability extended the equitable principle of preferential treatment under Art 15 (4) to persons with disabilities to bring them to the mainstream of the society by giving them equal opportunity in the field of education. The Allahabad High Court in *National Federation of Blinds UP Branch v. State of UP*¹⁸ ordered the Lucknow Development Authority not only to give preference in the matter of allotment of land houses to handicapped persons, but also to provide concessional rates to them.

In *Chandan Kumar Banik v. State of West Bengal*¹⁹ the Supreme Court rescued mentally challenged inmates of a hospital in Hooghly District who were being kept chained by the hospital administration to control their unruly and violent behaviour. Absence of reservations for persons with a physical handicap in medical colleges was

found by the Calcutta High Court to be an infringement of Persons with Disabilities Act and the Constitution as well in *Dy. Secy. (Mart), Deptt. of Health and Family Welfare v. Sanchita Biswas*²⁰. This view of the Calcutta High Court finds support in a fluty of judgments [*Raman Khanna (Dr.) v. University of Delhi*, (2003) 106 DLT 97; *Vijay Kr. Agarwal v. State of Rajasthan*, CWP No. 1239 of 2000; *A.P. Federation of the Blind v. Registrar, Andra University*, WP No.10234 of 1999; *Benny v. State of Kerala*, WA No. 3660, decided on 30.01.2003 etc.] pronounced by deferent High Courts of the country. In *Sheela Barse v. Union of India*,²¹ the Supreme Court held that mentally ill non-criminal persons cannot be kept in jail and opined that keeping the non-criminals in jail along with other convicts is unconstitutional. Like this in a plethora of cases, the Indian judiciary has shown its concern towards the protection of the human rights of the disabled persons and played a vital role in the realm of disability rights in India.

CONCLUSION

A clear and comprehensive procedural mechanism is to be formulated for the advancement of disability rights. It is important to realize that human rights of the disabled cannot be fought for and secured in a vacuum. Inevitably, as mentioned the issue of disability is related to many other social, economic and political issues including those of chronic poverty, gender inequality, mal-administration and political victimization. All these must be removed to make the 'disability right' a reality. There must be active involvement of disabled people in planning and policy making process relating to their lives and full recognition and enforcement of human rights as well as various other rights associated with them.

The discussion of human rights for the persons with disabilities need to be made in a great detail, so that they can avail the benefit out of it. As humans in addition to access to all basic rights; disabled persons need a safe, secure, convenient, beneficial and accessible environment which is respectful of their human dignity. Let us change our own attitude, thinking and mindset and the society as a whole since; it is the frame of mind of the society which is responsible for the oppression and misery of the persons with disability. Let's contribute to implement all the laws and policies made for the persons with disabilities in proper sense for the upliftment of their lives and status. Lets learn to take care for all human beings as human beings, with due respect, irrespective of their differences and let them participate in the mainstream of the society.

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