

ENABLING THE DISABLED

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At present, there are four pieces of legislation for India's disabled. The earliest, the 1987 Mental Health Act, predates the discourse on assenting action¹ for the disabled in India and to that extent, the status of mental illness as a disability remains uncertain. There is a separate law that deals with the creation of qualified and trained personnel for the provision of rehabilitation and education services for this segment of the population. The third, the PWD Act of 1995, is reinforced by a prominence on anti-discrimination and guarantees of equal opportunities. Even though the latter was visualized as a comprehensive law, it did not take into account fully the conditions of persons with other equally severe disabling conditions. Hence the 1999² Act for people with autism, cerebral palsy, mental retardation and multiple disabilities. An incapacitated person is someone with a physical or noetic impairment which has a substantial and long-term effect on his ability to carry out mundane day-to-day activities.

Though there is **no clear definition of disability in India's Disability Act of 1995**, it gives out **types of disabilities** in section 2 (b) (i), being:

- i. *Blindness*
- ii. *Low Vision*
- iii. *Leprosy Cured*
- iv. *Hearing Impairment*
- v. *Locomotors Disability*
- vi. *Mental Retardation*
- vii. *Mental illness*

India has seen many disability rights activists like Javed Abidi, S. Ramakrishnan and Shyama Chona amongst others. **Such efforts have led to the introduction of The Rights of Persons with Disabilities Bill, 2014** which replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995³; its features are as

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¹ Available at: <http://www.thehindu.com/opinion/editorial/a-law-that-enables/article3540036.ece>

² Available at: <http://www.thehindu.com/opinion/editorial/a-law-that-enables/article3540036.ece>

³ Available at: <https://sadm.maharashtra.gov.in/sadm/GRs/PWD%20Act.pdf>

follows:

- In lieu of seven disabilities designated in the Act, the Bill covers 19 conditions.
- Persons with at least forty percent of an incapacitation are entitled to certain benefits such as reservations in inculcation and employment, predilection in regime schemes, etc.
- The Bill confers several rights and entitlements to incapacitated persons. These include incapacitated amicable access to all public buildings, hospitals, modes of convey, polling stations, etc.
- In case of mentally ill persons, district courts may award two types of guardianship. A constrained guardian takes decisions jointly with the mentally ill person. A plenary guardian takes decisions on behalf of the mentally ill person, without consulting him.⁴

Contravention of any provision of the Act penalizes confinement up to six months, and/or fine of Rs. 10,000. Subsequent breaches carry a higher penalty.

BODY

There is no denying the fact that India's Disability Act of 1995 provides sundry facilities for both children and adults with disabilities in India. Under this act, children with disabilities have the right to liberate inculcation until they reach the age of eighteen in schools that are integrated, or in 'special schools'. Children with disabilities have the right to congruous conveyance, abstraction of architectural barriers, as well as the restructuring of curriculum and modifications in the examination system. Scholarships, uniforms, books, and edifying materials are all provided to children with disabilities for free in India.⁵

A school cannot reluctant admission to a child with an incapacitation, or if a ramp or other betokens of access is destitute, parents have the option of taking the matter up with the Disabilities Commissioner for redressal. They are required to obtain a 'disability certificate,' in order to access the facilities mentioned above; this can be obtained from their most

⁴ Available at:

<http://www.prsindia.org/uploads/media/Person%20with%20Disabilities/Legislative%20Brief%20%20-%20Disabilities%202014.pdf>

⁵ Available at: <http://www.mapsofindia.com/my-india/society/the-differently-abled-people-they-too-have-equal-rights-of-space>

proximate regime hospital, where an Identity Card from the, 'Office of the Commissioner for Disabilities,' will issue it. People in rural areas can obtain this Identity Card from their Block Development Officer's Office (BDO).

Three percent of all government jobs in India are reserved for people with disabilities and India's Disability Act includes affirmative action for people with disabilities.

People with disabilities in the nation of India who are seeking information in regards to the facilities available to them have to visit the Office of the Commissioner for Disabilities.⁶

However, the problem lies in the implication of the features laid down by the various acts enacted in order to protect the rights of the disabled. Also, what has to be taken into consideration is the fact that the current laws for the especially abled people are outdated. For example, considering the technological advancement, there should be special provisions for the visually impaired to access banks through ATM. Another example is of India's Railway Act which states that a person with leprosy may not board trains; however it is a well-known fact that leprosy is not contagious and a person suffering from it becomes non-infective within twenty-four hours of beginning the treatment.

India has taken a step towards promoting the rights of the disabled by signing the UN Convention on the Rights of Persons with Disabilities in 2007; however, the nation hasn't done much to protect the rights in accordance with the convention. National Director of the Disability Rights Initiative of the Human Rights Law Network, Rajive Raturi, states that present legislation does not include as many as twenty provisions of the Convention on the Rights of Persons with Disabilities⁷; particularly those that pertain to political and civil rights such as liberation from cruel and inhuman treatment, access to information, liberation of expression, the right to espouse and have a family, or liberation to participate in public and political life. According to current provisions of the law in India, people with noetic health disabilities cannot enter into contracts; they additionally have no property rights even though the Convention states the contrary.

To improve the condition of the especially abled in India, as mentioned above, The Rights of Persons with Disabilities Bill, 2014 has been introduced in the Parliament. It aims at fulfilling the obligations under an international treaty, punishing any person who violates the provisions with imprisonment and/or fine and in "extraordinary situations" district courts

⁶ Available at: <http://www.disabled-world.com/news/asia/india/>

⁷ Available at: <http://www.disabled-world.com/news/asia/india/>

may appoint plenary guardians for mentally ill persons.

CONCLUSION

An estimated 70 million disabled Indians are treated as second-class citizens and are forced to confront segregation, discrimination, barriers and stereotypes. To overcome this, various laws have been passed in the sub-continent. Supreme Court has also dealt with some famous cases including *Deaf Employees Welfare Association v. Union of India*⁸ wherein it held that the dignity of persons with hearing impairments must be protected by the state and equality by law and equal protection of law should be applicable to all persons.

In *Suchita Srivastava v. Chandigarh Administration*⁹, where at a government welfare institutions in Chandigarh, a disabled woman run became pregnant due to a rape by an in-house staff who wanted to keep the baby. Questions regarding this were raised, the Supreme Court granted the right to espouse and have a family under the UN Convention on the Rights of Persons with Disabilities.

In *Javed Abidi v. Union of India*¹⁰ the Court held that those suffering from locomotion disability to the extent of 80% and above would be entitled to the concession from Indian Airlines for travelling by air within the country at the same rate as has been given to those suffering from blindness

The nation of India very clearly has quite a ways to go afore it reaches a sense of equipollence in relation to people with disabilities. The fact that India has signed the Convention on the Rights of Persons with Disabilities is promising. One can hope that India will pursue the Convention, and find itself with parity in society for their denizens with disabilities.

⁸ Deaf Employees Welfare Association V. Union of India- Writ Petition (CIVIL) NO. 107 OF 2011

⁹ Suchita Srivastava v. Chandigarh Administration-(2009) 9 SCC 1

¹⁰ (CIVIL) NO. 326 OF 1997