

SOCIAL JUSTICE FOR DISABLED PERSONS

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INTRODUCTION

Disability is an ill-fated part of human life which can affect not only the natural way of living but also desolate strength and power. Persons with disability are most disadvantaged section of society; they are also neglected in their family. As per the 2011 Census, the number of disabled in India is 2.68 crore, which is 2.21 per cent of the population. This is marginally higher than 2001, when the disabled population was 2.19 crore, and the disabled made up 2.13 per cent of the population, which means a huge percentage of workforce¹.

The constitution of India envisages the principles of International human rights, the principles of equality, autonomy, dignity, liberty and security. The preamble of the constitution clearly states the primary objective of the constitution is 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. Article 39A² of the Constitution provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Under the Preamble, the first priority is given to the social justice .Disability hits at this basic concept or promise of social justice which is provided in the preamble, the soul of the constitution. Providing opportunity to the disabled section of the society to perform well will go on to secure the social justice of this section of the society. Absence of adequate infrastructure which is disabled friendly will actually supplement the concept of reservation provided to the disabled in higher education and public employment.

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¹ Census of India 2011, Data on Disability, Office of the Registrar General & Census Commissioner, New Delhi, 27/12/2013; Available at: <http://www.disabilityaffairs.gov.in/upload/uploadfiles/files/disabilityinindia2011data.pdf> (Accessed on 14/07/2017)

² The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

This paper discusses several judgments of court with the help of which the guarantee given under the constitution of India is assured and helps the disabled to attain social justice in true sense.

JUDICIAL EFFORTS

Since the time of framing of the Constitution the Supreme Court and Various High Courts in the country have put an extreme effort to bring social justice and equality to the disabled persons.

In *Ram Kumar Gijroya v. Delhi SSSB*³, the apex court opined that Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.”

In *Vikas Sankhala & Ors Etc v. Vikas Kumar Agarwal & Ors*⁴, it was held that it hardly needs to be emphasized that the State has a legitimate and substantial interest in ameliorating or eliminating where feasible, the disabling effects of identified discrimination. It is a duty cast upon the State, by the Constitution, to remedy the effects of ‘societal discrimination’.

Further, in *Lala Ram v. Union of India*⁵ it was said, “*A welfare state is one, which seeks to ensure maximum happiness of maximum number of people living within its territory. A welfare state must attempt to provide all facilities for decent living, particularly to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. Articles 38 and 39 of the Constitution of India provide that the State must strive to promote the welfare of the people of the state by protecting all their economic, social and political rights. These rights may cover means of livelihood, health and the general well-being of all sections of people in society, especially those of the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in almost every set up. The happiness of the people is the ultimate aim of a welfare state, and a welfare state would not qualify as one, unless it strives to achieve the same.*”

³ AIR 2016 SC 1098

⁴ AIR 2016 SC 5265

⁵ (2015) 5 SCC 813

In *Pradip Kumar Maity v. Chinmoy Kumar Bhunia & Others*⁶, court has dealt with the definition "person with disability". It is held that a person with disability would mean a person from suffering not less than 40% of any disability as certified by medical authority and the same would have primacy notwithstanding any State legislation or rules irreconcilable or repugnant thereto.

In *Justice Sunanda Bhandare v. U.O.I. & Anr.*⁷, apex court directed that in the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.

*Sambhavana v. Union of India & Ors.*⁸, on the issue of granting extra time to persons with disability, it was held that the word 'extra time or additional time' that is being currently used should be changed to 'compensatory time' and the same should not be less than 20 minutes per hour of examination for persons who are making use of scribe/reader/lab assistant. All the candidates with disability not availing the facility of scribe may be allowed additional time of minimum of one hour for examination of 3 hours duration which could further be increased on case to case basis.

In *Union of India v. National Federation of the Blind*⁹, on the issue of reservation to the disabled, the apex court opined that, the ceiling of 50% reservation applies only to vertical reservation under Article 16(4) of the Constitution of India, whereas reservation in favour of persons with disabilities is horizontal. Where the Statute provides for reservation, the extent of reservation cannot be denied. It was held that the computation of 3% reservation is based on total number of vacancies in cadre strength.

In *Union of India v. Shri Yaswanth G V* on 27 October, 2014, Hon'ble Apex Court has held that laudable intention of the disability Act, 1995 is to provide full participation and equality

⁶ (2013) 11 SCC 122

⁷ 2014 AIR SCW 3683

⁸ 2014 (5) ADR 763

⁹ (2013) 10 SCC 772

to persons with disabilities in the matter of protection of their rights, provision of medical care, education, training, employment and rehabilitation.

After analyzing the provisions of PWD Act, 1995 in the background of human and civil rights, it is held that identification of posts under Section 32 is for the purpose of making appointments and not for the purpose of reservation under Section 33. It is further held that persons with disability cannot be appointed unless posts are identified under Section 32 but provision for reservation under Section 32 became effective immediately when Act came into force in 1996.

On issues relating facilities to disabled at polling stations Supreme Court has given directions in *Disabled Rights Group v. Chief Election Commissioner*¹⁰, as – “It is on the Election Commission to give appropriate directions to the officials manning the polling stations, regarding the special facilities for the physically disabled electorate at all polling stations. This should be done well-in-advance and sufficient publicity should also be given in the print and electronic media about the availability of such facilities so that the persons with disabilities are aware of the facilities beforehand and are, thus, encouraged to go and exercise their franchise. Further, its observers should also satisfy that such facilities are given. The absence of such facilities should be notified to the respective Government for remedial/future action”.

Supreme Court in *State of Uttaranchal v. Balwant Singh Chaufal*¹¹, held that it is well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. The court has to innovate new methods and devise new strategies for the purpose of providing access to

¹⁰ Laws (SC)-2004-4-102

¹¹2010 (3) SCC 40

justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning.

The only way in which this can be done is by entertaining writ petitions and even letters from public-spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated.

Supreme Court in *Jeeja Ghosh & Anr v. Union of India & Ors*¹², held that, in order to promote equality and eliminate discrimination, State Parties shall take all appropriate steps to ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and system, and to other facilities and services open or provided to the public.

CONCLUSION

Thus, for the purpose of allowing social justice to the persons with disability, the Indian judiciary has made sincere efforts to realize the society and authorities that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.

Therefore, to conclude, it is significant to note that equality and steps towards equalization are not idle ‘incantation’ but actuality, not mere ideal but real, life. It is a practical observance that to most disabled persons, the society they live in is a closed door which has been locked and the key to which has been thrown away by the others. Helen Keller has described these phenomena in the following words: “*Some people see a closed door and turn away. Others see a closed door, try the knob and if it doesn’t open, they turn away. Still others see a closed door, try the knob and if it doesn’t work, they find a key and if the key doesn’t fit, they turn away. A rare few see a closed door, try the knob, if it doesn’t open and they find a key and if it doesn’t fit, they make one!*” These rare persons are needed to be found out.

¹² AIR 2016 SC 1715