

RIGHT AND EQUAL OPPORTUNITIES FOR PEOPLE WITH DISABILITIES

By

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“Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.”

Declaration on the Rights of Disabled Persons, Resolution 3447 (XXX) of the General Assembly of the United Nations, 9th December, 1975

A person may be disabled from birth or he may acquire disability any time in his life. Anyone can join at any time, as a result of a sudden automobile accident, a fall down a flight of stairs, cancer or disease.¹

Persons suffering from disability experience and encounter nonpareil form of discrimination. They are not accepted in the main stream. Their lives are handicapped by social, cultural and attitudinal barriers, which hamper their full participation and enjoyment of equal rights and opportunities. This is the worst form of discrimination which disabled feel as their grievance is that others do not understand them.²

Between 5% and 10% of Indians have some impairment or disabling condition. According to the Project Integrated Education

for the Disabled, under which a door-to-door survey was conducted in 1993 in a block each of ten selected States of India, nearly 2.5% of school-age children have disability of a given kind. The National Sample Survey Organization (1991) estimated that approximately 100 million Indians are affected with one or more disabilities. This projected nearly 10% of Indians with some disabling condition. However, according to the Census 2001, approximately 5% of people in India are affected with impairment or disability.³

The Constitution of India mandates the State to accord justice to all members of the society in all facets of human activity.⁴ The Preamble *inter alia* guarantees social justice and equality of status and opportunity to all the people of India. Articles 14 and 16 guarantees equality of opportunity to all the citizens of India. Article 38 requires the State to promote the welfare of the people by securing a social order in which justice, social, economic and political, informs all institutions of the national life and to make efforts to eliminate inequalities in status, facilities and opportunities amongst individuals. The Constitution not only guarantees right to life and personal liberty but also directs the State through Article 41 to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age,

1. *Joseph P. Shapiro*, “No Pity : People with Disabilities Forging a New Civil Rights Movement”, Universal, 1994.

2. Justice *A.K. Sikeri*, “Life, It Goes On”, Nyaya Deep, Volume VII, Issue 3, July 2005, page 144.

3. Justice *Mukul Mudgal* : “The Right Based approach to disability and development”, Nyaya Deep, Volume VII, Issue 1, January 2006, pages 54-67 at page 56.

4. *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42.

sickness and in other cases of underserved want.

The Economic and Social Commission for Asian and Pacific Region convened a meeting at Beijing in December 1992 at launch the Asian and Pacific Decade of Disabled Persons 1993-2002. In that meeting, the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region was adopted. India is a signatory to the said Proclamation. To give effect to the said Proclamation, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 (Act 1 of 1996) was enacted.

The Persons with Disabilities Act is landmark legislation and an expression of our country's commitment to social justice. The Act assures equal opportunities to the disabled and 3% reservation for them in the identified jobs in Government establishments and Public Sector Undertakings. The Act provides the legal basis of a rights based inclusive society wherein the Central and State Governments are required to play a lead role in making the rights meaningful.⁵

Important definitions in the statute :

1. "Person with disability" means a person suffering from not less than 40% of any disability as certified by a medical authority.⁶
2. "Disability" means—
Blindness
Low vision
Leprosy-cured
Hearing impairment
Loco motor disability
Mental retardation
Mental illness.⁷

3. "Blindness" refers to a condition where a person suffers from any of the following conditions, namely :

Total absence of sight

Visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses

Limitation of the field of vision subtending an angle of 20 degree or worse.⁸

4. "Person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or executor of a task with appropriate assistive device.⁹

5. "Leprosy-cured person" means any person who has been cured of leprosy but is suffering from-

Loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eyelid but with no manifest deformity;

Manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

Extreme physical deformity as well as advanced age, which prevents him from undertaking any gainful occupation.¹⁰

6. "Hearing impairment" means loss of 60 decibels or more in the better ear in the conversational range of frequencies¹¹.

5. Justice *Mukul Mudgal*, op. cit., Page 64.

6. Section 2(t)

7. Section 2(i)

8. Section 2(b)

9. Section 2(u)

10. Section 2(n)

11. Section 2(l)

7. "Locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.¹²
8. "Cerebral palsy" means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal or infant period of development.¹³
9. "Mental retardation" means a condition of arrested or incomplete development of mind of a person, which is specially characterized by sub-normality of intelligence.¹⁴
10. "Mental illness" means any mental disorder other than mental retardation.¹⁵
11. "Medical authority" means any hospital or institution specified for the purposes of the Act by notification by the appropriate Government.¹⁶

What the statute provides for ?

Among other things, the Persons with Disabilities Act, 1995 intends to provide for the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities; to create a barrier free environment for persons with disabilities; to remove any discrimination against persons with disabilities in the sharing of development benefits, *vis-a-vis*, non-disabled persons and it also establishes a simple,

inexpensive and speedy mechanism for the redress of grievances.¹⁷

1. Prevention and early detection of disabilities :

The Governments and the local authorities have to—

- * Undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities
- * Promote various methods of preventing disabilities.
- * Screen all the children once in a year for the purpose of identifying "at-risk" cases
- * Provide facilities for training to the staff at the Primary Health Centers
- * Sponsor or cause to be sponsored awareness campaigns disseminate or cause to be disseminated information for general hygiene, health or sanitation.
- * Take measures for pre-natal and post-natal care of mother and child
- * Educate the public through the pre-schools, schools, Primary Health Centers, Village Level Workers and anganwadi workers
- * Create the awareness among the masses through the media on the causes of disabilities and the preventive measures to be adopted.¹⁸

2. Education :

The Governments and the local authorities have to—

12. Section 2(o)
13. Section 2(c)
14. Section 2(r)
15. Section 2(q)
16. Section 2(p)

17. Justice S.B. Sinha, "Disability Law *vis-a-vis* Human Rights", Nyaya Deep, Volume VI, Issue 2, April 2005, pages 38-67 at page 46.

18. Section 25

- * Ensure that every child with a disability has access to free education till he attains the age of 18 years
- * Endeavour to promote the integration of students with disabilities in schools
- * Promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools.¹⁹

They have to make schemes and programmes for non-formal education.²⁰

They have to prepare a comprehensive education scheme providing for—

- * Transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools
- * The removal of architectural barriers from schools, colleges or other institutions imparting vocational and professional training
- * The supply of books, uniforms and other materials to children with disabilities attending schools
- * The grant of scholarship to students with disabilities
- * Setting up of appropriate forums for the redressal of grievances of the parents regarding the placement of their children with disabilities
- * Suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision.

19. Section 26

20. Section 27

- * Restructuring of curriculum for the benefit of the children with disabilities
- * Restructuring the curriculum for the benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum.²¹

The educational institutions have to provide amanuensis to students with visual handicap.²²

The educational institutions have to reserve not less than 3% seats for persons with disabilities.²³

The Governments have to set up teachers' training institutions to develop trained manpower for schools for children with disabilities.²⁴

The Governments have to initiate or cause to be initiated research for designing and developing new assistive devices, teaching aids and special teaching materials which are necessary to give a child with disability equal opportunities in education.²⁵

3. *Employment :*

The Governments have to identify posts in the establishments, which can be reserved for persons with disability.²⁶

The Governments have to reserve not less than 3% in the posts for persons or class of persons with disability of which 1% each has to be reserved for persons suffering from—

- * Blindness or low vision
- * Hearing impairment

21. Section 30

22. Section 31

23. Section 39

24. Section 29

25. Section 28

26. Section 32

- * Locomotor disability or cerebral palsy²⁷
- * Vacancies not filled up have to be carried forward.²⁸

The Governments and the local authorities have to formulate schemes to provide for—

- * Training and welfare of persons with disabilities
- * 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.²⁹

The Governments and the local authorities have to reserve not less than 3% in all poverty alleviation schemes for the benefit of persons with disabilities.³⁰

The Governments and the local authorities have to provide incentives to employers to ensure that at least 5% of their work force is composed of persons with disabilities.³¹

4. Affirmative action :

The Governments have to make schemes to provide aids and appliances to persons with disabilities.³²

The Governments and the local authorities have to frame schemes in favour of persons with disabilities for the preferential allotment of land at concessional rate for—

- * House
- * Setting up business
- * Setting up of special recreation centers

- * Establishment of special schools
- * Establishment of research center
- * Establishment of factories by entrepreneurs with disabilities³³

5. Non-discrimination :

In transport :

The establishments in the transport sector have to take special measures to—

- * Adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to persons with disabilities
- * Adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently.³⁴

On road :

The Governments and the local authorities have to provide for—

- * Installation of auditory signals at red lights in the public roads for the benefit of persons with visually handicap
- * Causing curb cuts and slopes to be made in pavements for the easy access of wheel chair users
- * Engraving on the surface of the zebra crossing for the blind or for persons with low vision
- * Engraving on the edge of railway platforms for the blind or for persons with low vision
- * Devising appropriate symbols of disability
- * Warning signals at appropriate places.³⁵

27. Section 33

28. Section 36

29. Section 38

30. Section 40

31. Section 40

32. Section 42

33. Section 43

34. Section 44

35. Section 45

In the built environment :

The Governments and local authorities have to provide for—

- * Ramps in public buildings
- * Adaptation of toilets for wheel chair users
- * Braille symbols and auditory signs in elevators or lifts
- * Ramps in hospitals, Primary Health Centers and other medical care and rehabilitation institutions.³⁶

In Government employment :

No establishment shall dispense with, or reduce in rank, an employer who acquires a disability during his service. But if the employee is not suitable for the post he was holding he could be shifted to some other post with the same pay scale and service benefits. If it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.³⁷

No promotion shall be denied to a person merely on the ground of his disability.³⁸

6. Research and manpower development:

The Governments and the local authorities have to promote and sponsor research in the following areas :

- * Prevention of disability
- * Rehabilitation including community-based rehabilitation
- * Development of assistive devices including their psycho-social aspects
- * Job identification

36. Section 46

37. Section 47(1)

38. Section 47(2)

- * On site modification in offices and factories³⁹

They have to provide financial assistance to Universities, other institutions of higher learning, professional bodies and non-Governmental research units or institutions for undertaking research for special education, rehabilitation and manpower development.⁴⁰

7. Social security :

The Governments and the local authorities have to undertake rehabilitation of all persons with disabilities. They have to grant financial assistance to non-governmental organizations (NGOs). They have to consult NGOs working for the cause of persons with disabilities while formulating rehabilitation policies.⁴¹

The Government have to frame an insurance scheme for the benefit of their employees with disabilities.⁴²

The Governments have to frame a scheme for payment of an unemployment allowance to persons with disabilities registered with the Special Employment Exchange for more than 2 years and who could not be placed in any gainful occupation.⁴³

Who will look into complaints with respect to deprivation of rights of persons with disabilities ?

The Chief Commissioner or the Commissioner may on his own motion or on the application of any aggrieved person look into complaints with respects to matters relating to—

Deprivation of rights of persons with disabilities

39. Section 48

40. Section 49

41. Section 66

42. Section 67

43. Section 68

Non-implementation of laws, rules, bye-laws, etc. and take up the matters with the appropriate authorities.⁴⁴

Fee legal services to disabled persons :

Persons with disabilities are entitled to the following free legal services under the Legal Services Authorities Act, 1987.

- * Legal advice by a legal practitioner
- * Representation by a legal practitioner in legal proceedings
- * Payment of Court fee, process fee, typing charges and other expenses in legal proceedings

Judicial pronouncements :

In *Javed Ali v. Union of India*,⁴⁵ the Supreme Court held that the Court couldn't ignore the true spirit and object of the Act to create a barrier free environment for persons with disabilities and to make special provisions for the integration of persons with disabilities into the social main stream. In that case, Indian Airlines was directed to provide concessions for passengers suffering from locomotor disability.

In *Chandan Kumar Banik v. State of West Bengal*,⁴⁶ the Supreme Court intervened in order to provide respite to mentally challenged inmates of a hospital in Hooghli District who were kept in chains by the hospital authorities to control their unruly or violent behaviour.

In *In re v. Union of India*,⁴⁷ the Supreme Court, on being informed of the death of 25 chained inmates in asylum fire in Tamil Nadu, took *suo motu* action by directing the Cabinet Secretary to frame a national

policy to address issues faced by the persons with disabilities under Section 8(2)(b) of the Act.

In *Indian Bank's Association, Bombay v. M/s. Devkala Consultancy Service*,⁴⁸ the Supreme Court while ruling that the banks were at fault for excessively charging Rs.723.79 crores annually from borrowers by way of resorting to rounding up the rate of interest, directed the amount to be transferred to a trust under the Chairmanship of the Comptroller and Auditor General of India so that the moneys could be utilized for various programmes for the welfare of the persons with disabilities that were otherwise being impeded due to financial constraints.

In *Deputy Secretary Dept. of Health and Family Welfare v. Sanchita Biswas*,⁴⁹ a Division Bench of Calcutta High Court upheld the finding of a Single Judge that the absence of reservation for persons with a physical handicap in medical colleges was infringement of both the Act and the Constitution.

In *Life Insurance Corporation of India v. Chief Commissioner of Disabilities*,⁵⁰ the Delhi High Court directed the LIC to employ the person with 45% disability as peon. In another decision in *Government of NCT of Delhi v. Bharat Lal Meena*,⁵¹ the Delhi High Court held that persons with disabilities could be appointed as physical education teachers once they had passed the qualifying examination and undergone the requisite training.

In *Kunal Singh v. Union of India*,⁵² the Supreme Court implemented the provision of Section 47 and observed that an employee who is a person with disability during employment, if not protected, would not

44. Sections 59 and 62

45. AIR 1999 SC 512

46. (1995) Supp. (4) SCC 505

47. (2002) 3 SCC 31.

48. 2004 (5) ALD 68 (SC) = JT 2004 (4) SC 587

49. AIR 2000 Cal. 202

50. 101 (2002) DLT 434

51. (2002) 100 DLT 157

52. (2003) 4 SCC 524

only suffer himself, but possibly all those who depend on him would also suffer.

In *National Federation of Blind, U.P. v. State of U.P.*,⁵³ the petitioner's request for concessional tariffs in allotment of land under Section 43 of the Act was rejected on the ground that there was no scheme for such allotment under the provision. To correct the folly of the respondent, the Allahabad High Court directed the framing of a scheme in three months and also observed that it was the obligation of the State Government and all local bodies to frame the scheme and notify the same and if they have not done so, they cannot take advantage of their own wrong.

As can be seen, the Courts have been construing the provisions of the Persons with Disabilities Act, 1995 in a beneficial manner.

Conclusion :

There is a desperate need to (1) equip persons with disabilities with educational opportunities; (2) ensure employment opportunities to them; (3) provide easy and convenient access to facilities; (4) increase public awareness on the rights and requirements of persons with disabilities; (5) recognize the fundamental causes that perpetuate disability in the country and the world in general; and (6) implement the visions of the World Programme of Action concerning Disabled Persons of 1982 regarding "equalization of opportunities".⁵⁴

Persons with disabilities should not be treated as objects of pity. They cannot be neglected or marginalized. The rights assured to them have to be translated into reality. Their rights have to be protected. They must be assured their human dignity. They must be provided all facilities and opportunities to overcome their disabilities.

A barrier free environment has to be created for them so that they can enjoy their lives in a meaningful way. The realization of their vital rights can only occur if the proposed schemes are formulated.

The time is now ripe for "social innovation", that is, the normalization, integration, equalization and inclusion of the persons with disabilities. Restorative, rehabilitative and participative support with dignity is needed to bring the persons with disabilities back into the mainstream. These objectives would require removal of physical, psychological, and social barriers and obsolete ethos that surround the persons with disabilities. A veritable change in society itself is therefore imperative.⁵⁵

Fundamental rights represent the basic values cherished by the people since Vedic times and they are intended to protect the dignity of an individual and create conditions to which every human being can develop his personality to the fullest extent.⁵⁶ Disabled persons have the same fundamental rights as the non-disabled persons do have. The State is under an obligation to ensure equal opportunity to all persons including the disabled persons. It can no longer plead excuse from protecting the rights of the disabled persons on grounds of financial difficulties or constraints. There is need to apply affirmative action to ensure that the disabled persons are equal to non-disabled persons. They must be provided with equal opportunities and equal treatment. Given proper opportunities, the disabled persons will also become useful citizens of the country.

In the long run, integration will cost society less. A good education allows a disabled student, one day to become a worker and a taxpayer, rather than a costly tax burden.

Shapiro

53. AIR 2000 All. 258

54. Justice S.B. Sinha, op. cit., page 67

55. Justice S.B. Sinha, op. cit., page 65

56. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 at 277