

Protection of Disabled Person with Special Reference to Human Rights in India

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Abstract

Every year the world's disability day is celebrated on 3rd December, and Human Rights day is celebrated on 10th of December across the world. Human Right means right to life, liberty, equality and the dignity of an individual irrespective of caste, creed or sex etc. Human rights are always natural; it must be protected for peaceful enjoyment of human life. In India there has been striving to protect and promote human rights of its citizen. It is observed that, generally disabled persons are victims of human rights violations till date and most of the times these violations are ignored. Disability based discrimination covers severe forms on socio economic issues, such as, denial of education, lack of access to health care, sexual exploitation, malnutrition, denial of opportunities for employment segregation and isolation due to social barriers, mental and physical abuse. In order to protect the human rights of disabled person various national and international level judicial measures is available.

Key Words: Protection of Disabled person, Rights of Disabled person, judicial mechanisms and Judicial Activism

“Disabled people are not only the most deprived human beings in the developing world, they also the most neglected” – Amartya Sen

Introduction

Human rights are essential for the protection and preservation of human life and dignity and for the overall development of human personality. Certain sections of society are more vulnerable to human rights violations, which require a special deliberation. The disabled are one of the groups whose rights are often violated. The existing frameworks of national and international mechanisms for their protection are generally insufficient for satisfying their needs. There is remarkable gap between the expectations and rendering of social justice in India as far as the disabled are concerned. However, all

sort of supports have been given in terms of policies but they are far from achieving the real objectives of such policies. Everyone's responsibility has become on one's responsibility. Patronizing those with disability is not enough and one needs to work towards their dignity. Therefore our objectives should not only to improve the quality of life of the disabled person, but also to see that they should live with reasonable, comfortable and happiness. There are number of legislations enacted for the protection of human rights of disabled persons as well as they contain welfare approach towards disability rights.

Human Rights of Disabled Persons

Every year the world's disability day is celebrated on 3rd December, and Human Rights day is celebrated on 10th of December across the world. Human Right means right to life, liberty and the equality and the dignity of an individual irrespective of caste, creed or sex etc. Human rights are always natural; it must be protected for peaceful enjoyment of human life. In India there has been striving to protect and promote human rights of its citizen. There are certain issues of serious concern related to enjoyment of human rights of disabled persons, women and children, food security dowry etc. Human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international Covenants and enforceable by courts in India¹

It is observed that, human rights are the fundamental things in life that in every person is entitled to provide dignity, humanity, respect and freedom to all people. Human rights are inherent and inalienable attributed to every individual by the virtue of his and her birth. Though human rights are universal, it has been experienced that the vulnerable groups of the society are not empowered for their development. Generally disabled persons are victims of human rights violations till date and most of the times these violations are ignored or remain unnoticed. Disability based discrimination covers severe forms on socio economic issues, such as, denial of education, lack of access to health care, sexual exploitation, malnutrition, denial of opportunities for employment segregation and isolation due to social barriers, mental

and physical abuse, exclusion from life activities, political participation etc. On the contrary discrimination based on race and gender has always been condemned and challenged across the global. Human rights aims equal participation of disabled people in all spheres of society, and to combat all barriers that people with disabilities face on national and international scale. The main objectives are for all disabled people to enjoy full equal rights, specially grassroots activities and involvement in policy development human rights. In order to protect the human rights of disabled person number of national and international level legislations is enacted.

International Perspectives

United Nation's Resolution for Persons with Disabilities

This resolution provides certain guiding principles which protect the rights of the disabled persons as-

To promote a better quality life, full employment and conditions for economic and special progress and development of all persons with disabilities.

To support their efforts to develop national policies to reach specific objectives by insuring the full enjoyment of human rights of persons with disables

Any violation of fundamental principles of equality or any discrimination or other negative treatment of persons with disabilities inconsistent with the standard rule on the equalization of the opportunities with for persons disabilities, having particular regard for the needs of

the women, children and person with development and psychiatric in order to guarantee their human dignity, integrity.

Universal Declaration of Human Rights 1948

As per declaration everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of live hood in circumstances beyond his control²

ICCPR the International Covenant on Civil and Political Rights 1966

There is no any specific reference to disability and the rights of disabled person; however disability can be included under other status in the following articles.

Article 2(1) provides that, each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant Without distinction of any kind such as race, sex, colour, language, religion, political or other opinion, national of social origin, property, birth or other status. This Covenant also provides that, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all person equal and effective protection

against discrimination on any ground such as race, colour, sex, language etc.³

Declaration on the Rights of Deaf-Blind Persons 1979

This declaration provides that, every deaf-blind persons is entitled to enjoy the universal right that are guaranteed to all people by the universal declaration of Human Rights and the rights provided for all disabled persons by the declaration of the rights of disabled persons⁴

Convention on the Rights of the Child, 1989

This convention provides that State shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind irrespective of the child's or his or her parents of legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status⁵. Article 23 (1) also provides that, state parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

The Persons with Disabilities Equal Opportunities Protection of Rights and Full Participation Act, 1995

The purpose of this Act is to give effect to the proclamation on the Full Participation

and Equal of the People with Disabilities in the Asian and Pacific Region. Another Purpose of this Act is to define the responsibilities of the Government at National as well as state level with regard to the services for disabled persons. This Act ensures full life to disabled individual so as to make full contribution in accordance with disability conditions.

In order to protect the interest of the disabled persons number of rules and regulations also enacted on international level, which contain welfare approached towards disability rights such as ICCECR United Nation Educational, Scientific and Cultural Organization, Convention on the Rights of Persons with Disabilities, 2007, Beijing Declaration on the Rights of People with Disabilities, 2000, General Recommendation 18 of the Committee on the Elimination of Discrimination against Women 1991, Declaration on the Rights of Disabled Persons, 1975, Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care 1991, Declaration on the Rights of Mental Retarded Persons 1971 etc.

National perspectives

In India there are large number of disabled persons are fighting for the survival. They are victims of neglect, prejudice and social exclusion. Fortunately there are number of legislations enacted by the parliament for the benefit and protection of disabled persons.

Constitution of India assures dignity and equality of the individual and provide for the social, economic and political justice,

freedom etc. to citizen of India. In Preamble it mentions that, securing all citizen justice, social, economic and political, liberty of thought, expression, belief, faith and worship and equality of status and opportunity. Constitution provides that the State shall not deny to any person from equality before the law or equal protection of citizen⁶. It does not discrimination into able and bodily disabled persons. Constitution provides free and compulsory education to all children of the age of 6 to 14 years, a provision could have been added that the physically handicapped children in this age group will be provided such education as can make them self-reliant to enjoy their life better. Article 39 A provides that, the state shall secure that the operation of legal system promote justice on the basis of equal opportunity and shall particular provide free legal aid by suitable legislation or scheme or any other way that opportunity for securing justice are not denied to any citizens. Constitution also provides that, the State within the limits of its economic capacity and development make effective provisions for securing the right to work, right to education, old age sickness, and disablement⁷. Constitution provides number of other Articles 38, 42, 43, 46, 47, 48, 249 and 253 which helps in promoting rights of persons.

In order to protect the interest of the disabled persons number of legislations also enacted by the parliament. They contain welfare approached towards disability rights. The Mental Health Act, 1987, The Rehabilitation Council of India Act, 1992, The National Trust for Welfares

of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 Workmen's Compensation Act, 1923, The Employees State Insurance Act, 1948 and The Public Liability Insurance Act, 1991, The Persons with Disabilities (equal opportunities Protection of Rights and Full Participation) Act, 1995, etc.

Judicial Pronouncement

A brief survey of judgments of various courts on the claims and rights of disabled does show that gradually the court is adopting a very positive approach in extending all Constitutional and legal rights to the disabled to bring them at par with able-bodied citizen.

*Anand Bihari v. Rajasthan State Transport Corporation*⁸ in this case Supreme Court shows very positive approach in respect to claims of disabled in the employment. The employment suffered eye defect due to eye-sight injury, due to that reason dismissed from the services of the Corporation. The Supreme Court held that such employees who suffer from physical disability should not be given retrial benefits but in addition should be granted compensation for the physically disability incurred during the course of employment. *Lance Dafadar Joginder Singh v. Union of India*⁹ in this case it was held that, an army employee on causal leave would be deemed to be on duty and is entitled to disability pension for the disability caused while he was on causal leave. *National Federation of Blind v. Union of Public Service Commission*¹⁰ in this case Supreme Court held that, identification of posts

suitable for disabled, the employment opportunities can be made available. In promotional posts if it is found that the post is not suitable for a visually blind, no claim can be accepted by blind for the post.

Social Jurist v. Union of India and others in this case Court held that, a disabled child has the fundamental right to have access to free education in appropriate environment till he attains the age of 18 years as guaranteed to his right under Article 21 and 45 of the Indian Constitution and also held that it is legal duty of the government to provide free education facilities till the age of 18 years. *All Kerala Parents Association v. State of Kerala* in this case court held that, Sec. 39 of the PWD Act, deals with the reservation of seats for person with disabilities in Government education institutions as well as educational institutions receiving aid from the Government and necessarily thereafter the provision thereof must be complied with. Mendel Commission Case in *Indra Sawhney v. Union of India*¹¹ is to some extent relevant to the claims of the blind. The Supreme Court took notice of the claims of disabled for reservation in public appointment and held that, Backward Class will be covered persons with disability and affirmative action in their favor is constitutionally permissible. *Pushkar Singh v. University of Delhi* the court held that, the three percent of reservation for disabled under the Act can be made available to them only if they are considered as a class included in reserved posts and the recruitment is to be

conducted in the light of the relaxed standard as prescribed.

In depth above decisions of the Court shows increased sensitivity towards the claims and rights of the disabled person and zeal of the court to extend to the disabled all Constitutional and legal rights of the disabled persons.

In order to protect and preserve the rights of disabled persons, Government also shows becomes sensitivity towards the disabled persons and implements various schemes time to time whenever it requires. The financial assistance of a self-employed disabled the loan was sanctioned by *Mahatma Phule Finance Corporation* and that too due to intervention of the Commission.

Conclusion

Disability is a serious problem in the developing and under developing country. They are suffering from the violations of their natural and legal rights. State provides certain fundamental guarantees to their citizens; it includes social, political and economic rights. Government must ensure that their citizens enjoy their human rights through a proper legislation. The main object of human rights is equal participation of disabled people in all spheres of society, and to combat all barriers that people with disabilities face on national and international scale. The all disabled people to should enjoy full equal rights, specially grassroots activities and involvement in policy development. In order to protect the human rights of disabled person number of national and international level judicial measures is enacted; they should live with comfortable happy life.

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1. ¹ Justice A D Mane's, Lectures on Human Rights, Hind Law House, 2007 Edit. P. 141
 2. ² Article 25 (10) of Universal Declaration of Human Rights 1948
 3. ³ Article 26 of the ICCPR the International Covenant on Civil and Political Rights 1966
 4. ⁴ Article 1 of The Declaration on the Rights of Deaf-Blind Persons 1979
 5. ⁵ Article 2 (1) of the Convention on the Rights of the Child, 1989
 6. ⁶ Article 14 of the Constitution of India
 7. ⁷ Article 41 of the Constitution of India
 8. ⁸ (1991) 1 SCC 731
 9. ⁹ (1995) Supp (3) SCC 322
 10. ¹⁰ (1993) 2 SCC 411
 11. ¹¹ 1992 Supp (3) SCC 217
 12. Baquer. Ali , Disabled, Disablement, Disablism VHAI, Edit 1994, New Delhi.
 13. Pandey. R. S. Advani, Perspectives in Disability and Rehabilitation, Vikas Publication Edit, 1995, New Delhi
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