



International Journal of Law, Policy and Social Review

www.lawjournals.net

Online ISSN: 2664-6838; Print ISSN: 2664-682X; Impact Factor: RJIF 5.42

Received: 16-10-2020; Accepted: 02-11-2020; Published: 19-11-2020

Volume 2; Issue 2; 2020; Page No. 26-29

Legal rights of persons with disabilities in ‘domestic & international perspective’: A study

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Abstract

All human beings are born free and equal in dignity and rights. Disabilities can be physical in nature, cognitive, behavioral, or even emotional. Disability is thus just not a health problem. It is a complex phenomenon, reflecting the interaction between features of a personal body and features of the society in which he or she lives. The Constitution of India applies uniformly to every legal citizen of India, whether they are healthy or disabled in any way and also guaranteed in fundamental rights. The 1995 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 etc., New Disability Act 2016 protect disabled persons from various forms of discrimination, Increases their effective participation and inclusion in the society and ensures equality of opportunity and adequate accessibility. UN Charter says, respect for the principle of equal rights and self-determination of people's. The Convention on the Rights of Persons with Disabilities is an international human rights treaty of the United Nations intended to protect the rights and dignity of persons with disabilities.

Keywords: legal rights, education, employment, self-determination

Introduction

The rights that an ordinary citizen receive from his birth, likewise a disabled person also receives same rights, since he also comes in the category of citizen of a country, not a secondary person. Therefore, The Constitution of India is equally applicable to every legal citizen of India, even if they are in any way (physically or mentally) healthy or disabled. Yes, it is of course that the disabled person needs some privileged rights rather than a normal person which should be given them. The reason is that they are special (Special child, special person). The second reason is, we ignored disabled persons, they are kept away from their rights, understood as problems, and seen as burden and abhorrence. Due to the physical, mental, sensory deficiency, someone comes in the category of disability. But in order to overcome that one weakness, they have some special talents and divine qualities.

For example, in one case, a child who was neglected by the family due to low intelligence but he was a genius in sketching and painting that made him special. He needed only support, to bring his skills or talent to the society. He was admitted to the special school; teachers recognized his skills and helped him. In another case, mentally retarded person (age 35 year) who was often neglected by his family but also had this virtue, he used to do all the work at home very well. It meant that there was a sense in him. But unawareness and due to small thinking, he was lost in the darkness of oblivion. It is clear from these examples that the disabled person has the divine qualities and talent. The United Nations is struggling to get the platform for the achievement of their skills, to bring them in front of the society, to give them recognition and rights.

Disabled Rights under the Indian Constitution

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, 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.
4. 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.
5. 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.
6. Every person including the disabled has his life and liberty

Guaranteed under Article 21 of the Constitution.

7. 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).
8. 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.
9. 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.
10. No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group.
11. No Disabled person will be deprived of the right to the language, script or culture which he has or to which he belongs.
12. 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.
13. 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.
14. 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.

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

“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. Under section 2(i) of this Act, "disability" includes blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental illness. The Main Provisions of the Act are Prevention and Early Detection of Disabilities Education, Employment, Non-Discrimination, Research and Manpower Development, Affirmative Action, Social Security, Grievance Redressal.

The Current Decade and the New Disability Act

In order to ensure all the rights of persons with disabilities, the United Nation convened a Conference on the Rights of Persons with Disabilities in 2006, during which UNCRPD included 50 articles of different aspects of disability related issues, which was

reaffirmed by the 160 member states including India in the year 2007.

UNCRPD is based on eight principals are

1. Non-discriminatory treatment of persons with disabilities
2. Full participation and involvement of persons with disabilities in society
3. Freedom of persons with disabilities and disabled persons towards their inherent dignity and personal autonomy
4. Respect for the difference and acceptance of persons with disabilities as part of humanity and diversity
5. Equality of opportunity
6. Accessibility
7. Equality between man and woman
8. Respect for the rights of special children for the development and identification of children with disabilities.

Keeping in view the principles of the United Nations Conference 2006, a new Act was passed while making necessary amendments in the provisions of the Act 1995. The right of the person with disability, Act of 2016 received the pronouncement of the President on December 27, 2016 and was published in the Official Gazette on 28 December 2016, which came into effect from 15 June 2017. Section 102 of this Act speaks of cancellation of comprehensive law in that it means that the Act of 1995, the persons with disability (equal opportunity, protection of rights and full participation) The proposal of this Act clearly states that its purpose is to maintain the dignity of every person in the society and prevent any kind of discrimination. It speaks about the acceptance of people with any type of disability and ensures their full participation in such persons and society. Since India is the signatory of the Conference on the rights of people with disabilities of the United Nations General Assembly, such a domestic law for India was in fact mandatory.

Key Features of Disability Act, 2016

1. Classification of persons with disabilities- persons with disability, persons with benchmark disability, persons with disability having high support needs
2. Contrary to the definition of the person with disability provided by the Act 1995, under this Act, a complete definition has been provided including 21 types of specific disability.
3. The government is entitled to facilitate the rights of disabled people. Therefore, it is the duty of the government to make necessary laws, rules and plans and strictly enforce them for the convenience of the disabled people; the onus has been placed on the government. The government is required to secure the rights of the disabled person towards equality, dignity and respect as normal people get; Do not discriminate against the right of personal liberty; The right to live in a community; Right to safety and security in situations of risk, armed conflict, human emergency, natural disasters etc.; Access to materials related to polling stations and electoral processes; The right to access judicial or semi-judicial or investigative powers without any court, tribunal, authority, commission or body; Ownership or successor of property (movable or immovable); The right to access one's own financial matters and other forms of bank loans, mortgages and financial credits; The right to obstruct free access to

health care institutions and centres; The right to attain cultural life and participate in recreational activities and sports activities etc.

4. All establishments (including the private sector) need to frame and publish the same opportunity policy.
5. Additional benefits such as rights for free education (between the ages of 6 to 18 years), reservation in education, government jobs, land allocation, poverty alleviation schemes etc. have been made available to people with benchmark disability.
6. Reservations in Government vacancies Establishments have been increased from 3% to 4% for the persons with disability.
7. In order to ensure speedy trial, provision of special courts has been made in each district to handle matters related to violation of rights of persons with disabilities.

New disability law affects the principles of the United Nations Conference on the basis of persons with disabilities. Disability Law 2016 protect disabled persons from various forms of discrimination, Increases their effective participation and inclusion in the society and ensures equality of opportunity and adequate accessibility.

Educational Contributions in Tamilnadu (Especially BDU)

National Institute for empowerment of Persons with Multiple Disabilities (Divyangjan) established in the year 2005, on East Coast Road, Muttukadu, Chennai, Tamil Nadu, Under Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice & Empowerment, Govt. of India, to serve as a national resource center for empowerment of persons with Multiple Disabilities such as those with two or more disabilities in a person.

Bharathidasan University is a pioneer in promoting innovation and inclusion of students with disabilities in Higher Education. With the motto of "We will create a brave new World" for all, it has established a "Centre for Differently Abled Persons" in the city campus in the year 2011 for empowering students with Disabilities in Higher Education. The Centre caters to the educational needs of students with all types of disabilities, starting from school education to research. As per the Government of Tamil Nadu order, Bharathidasan University has given exemption in Tuition fee and Special fee for the students with disabilities.

The Centre encompasses an Enabling unit, Barrier free Centre, Adapted material Production units, Adapted Library, Training Programs, Sensitization Programs, and Academic Programs meant for Differently Abled. Various Schemes of UGC and Government of Tamilnadu are being undertaken and effectively implemented by the University for the Welfare of the differently abled. Along with other training and extension activities, custom-made skill development programmes are offered for the students with disabilities - BCA (for Students with Speech and Hearing Impairment), Diploma in Vocational Training and Development, Diploma in Office Automation & Assistive Technology, Diploma in Computer Fundamentals and Office Automation, Certificate in Basics of Adapted Yoga, Diploma in Photo edition and 2D Animation, Ph.D in Education (related to disability).

Charter of the United Nations

The Charter of the United Nations came into existence on 24th Oct 1945. UN charter is the foundational treaty of the United Nations, an intergovernmental organization. Article 55 of UN Charter says that "With a view to the creation of conditions of stability and well-being which are necessary for the peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people's, the United Nations shall promote:

- a. Higher standard of living, full employment and conditions of economic and social progress and development;
- b. Solutions of international economic, social, health, and related problems and international cultural and educational cooperation
- c. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

Declaration on the Rights of Disabled Persons

The Declaration of the Rights of Disabled persons was a declaration of the General Assembly of the United Nations made on 9 Dec 1975. It is the 3447th resolution made by the Assembly. The disabled person shall enjoy all rights contained in this declaration without distinction or discrimination. The disabled persons have inherent rights to respect for their human dignity and irrespective of the origin, nature and seriousness of their handicaps and disabilities, have same Fundamental Rights. Disabled persons have the same civil and political rights as other human beings. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible. Disabled persons have the right to economic and social security, including the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. Disabled persons shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature.

Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities is an international human rights treaty of the United Nations intended to protect the rights and dignity of persons with disabilities. Parties to the Convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. The Convention has served as the major catalyst in the global movement from viewing persons with disabilities as objects of charity, medical treatment and social protection towards viewing them as full and equal members of society, with human rights. It is also the only UN human rights instrument with an explicit sustainable development dimension. The Convention was the first human rights treaty of the twenty-first century. The text was adopted by the United Nations General Assembly on 13 December 2006, and opened for signature on 30 March 2007. Following ratification by the 20th party, it came into force on 3 May 2008.

In the charter of the United Nations it is proclaimed that the inherent dignity and worth and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Similarly, the United Nations, in the universal declaration of human rights and in the International covenants on Economic, Social and cultural rights. It is supposed that the convention would make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, and social and cultural spheres with equal opportunities, in both developing and developed countries. The convention on the Rights of Persons with disabilities deals with matters such as, general principles on the basis of which the rights of the disabled persons are to be promoted and protected, the obligations that have been undertaken by the State parties to adopt measures. The protocol has been added to the present convention authorizing the Committee on the Peron with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals, who claim to be victims of a violation by a State party of the provisions of the present convention.

Conclusion

The values (dignity, equality, autonomy and liberty) supported by human rights law form the basis of the basic freedom of the individual, which provides protection against misuse of power and creates a place for the development of human emotion. It would not be wrong to say that human rights are the power that gives a person the power to stand up with respect to society. Human rights are not just rights but self-respect for any person. Therefore, a person with disabilities is a special person who needs special attention, so he should be given special human rights.

Before the enactment of the PWD Act, 2016, the rights relating to persons with disabilities, various acts, the Constitution of India, persons with disabilities (Equal Opportunities for Equality and Full Participation) Act, 1995, Mental Health Act, 1987, Rehabilitation Council of India Act and National Trust (for the Welfare of Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999 were scattered in. Although the purpose of these laws are to protect the rights of people with disabilities, but these laws did not provide equality of opportunity, especially regarding employment. PWD Act 2016 has tried to reconcile these laws and the equality of opportunity has been provided.

For people with disabilities, a piece of law is a boon and not less. This act is widely related to the rights of persons with disabilities. It also orders the government to perform its duties in the most diligent manner and to make plans and programs in the direction of community welfare. This act is definitely a good step in that direction.

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