

Where does indian disability law stand in the present international scenario?

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Introduction

There are 600 million persons with disabilities in the world today. 80% of them live in developing countries. A staggering 90 million people in India are disabled. That's almost one in every ten.¹

These figures in the very beginning of this article are not mentioned to create any sympathy for persons with disabilities. The aim of mentioning these figures here is to illustrate that still 600 million persons with disabilities are being prevented from contributing to the world society (whether socially or economically) because of the barrier called disability.

However, there has been a shift in international thinking on disability from largesse-based perspective to rights-based perspective. The world for and of the disabled is changing at a rapid pace and the aspirations as well as expectations of people are also changing as fast. Advances in medical and surgical sciences, breakthroughs in technology, greater understanding of the causes of disability and improved methods of coping with it, increasing consciousness of civil rights and the emergence of people with disabilities displaying skills and knowledge to improve their own lives, are some of the factors which have contributed to the new thinking. It is now recognized that the disabled deserve a dignified status in society on the same terms as the non-disabled. Disabled people are a vast minority group, which has been subjected to direct and indirect discrimination for centuries in most countries of the world, including India.

The human rights movement has boldly and categorically shifted the attention of policy-makers from the mere provision of charitable services to vigorously protecting their basic right to dignity and self-respect. In the new scenario, the disabled are viewed as individuals with a wide range of abilities and each one of them willing and capable of utilising his/her potential and talents. Society, on the other hand, is seen as the real cause of the misery of people with disabilities since it continues to put numerous barriers as expressed in education, employment, architecture, transport, health and other activities.

The main aim of this article is to evaluate the standing of the law related to persons with disability in India in the light of shift to rights-based perspective on disability. The following section tries to give a brief overview of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

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

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 establishes responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment.

The highlight of the Act is that it gives statutory recognition to the policy of three per cent reservation in all Group 'C' and 'D' posts and has extended the reservation to Group 'A' and 'B' posts also. The Act declares that the State progressively ensure that every child with disability has access to free education until the age of 18 years. Until now the provision of free education had been restricted to children below 14 years.

The Act has several provisions to ensure equal opportunities, protection of rights and full participation of disabled people in mainstream activities of the society. The State has been entrusted with the responsibility to prevent disabilities, provision of medical care, education, training, employment and rehabilitation of persons with disabilities.

Furthermore, it provides that implementation of the intentions and provisions of the Act shall be done through constituting of coordination committees at the Central and State levels with the Welfare Minister as the chairperson and officials of ministries and departments concerned, NGOs working with and for disabled people and eminent people with disabilities as members to coordinate disability-related activities of the Government, NGOs and others. The Indian disability law treats disability as civil rights rather than a health and welfare issue. The law recognises the importance of consultation with disabled people on issues, which directly or indirectly affect them.

As judicial response is essential to enforce the provisions of any Act, the question, which arises here is, what is the trend of response of the Indian judiciary towards this Act? There has been a gradual rise in the response of the Indian judiciary to this law. The next section tries to show the trend in the judicial response by referring to some important decisions in this regard.

Judicial response

Before the enactment of this Act, one gets to see a very feeble response of the Indian judiciary regarding human rights of the persons with disabilities. But, still one can find that the judiciary was influenced by the shift to a rights-based perspective on disabilities. In this regard, one could refer to the case of *D.N. Chanchala v. State of Mysore*². Though, this case involved the issue of reservation of seats for various categories of persons and classification on university basis under Articles 14 and 15(4) of the Constitution of India, but the Honâ€™ble Supreme Court tried to extend the equitable principle of preferential treatment under Article 15(4) to persons with disability to bring them in the mainstream by giving them equal opportunity in the field of education.

In *National Federation of Blinds, U.P. Branch v. State of U.P.*³ the question to decide before the Allahabad High Court was, whether the Lucknow Development Authority while giving preference for allotment of plots and houses to blinds and other handicapped persons, should also accord in the rates of the land?

The Court referred to Section 43 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which provides for scheme for preferential allotment of land for certain purpose. The Court ordered the respondent to not only give preference in the matter of allotment of land and houses to handicapped persons, but also to provide concessional rates to handicapped persons.

In *Javed Abidi v. Union of India*⁴ the petitionerâ€™s grievance was that there was lack of facilities like providing aisle chair and ambulift by Indian Airlines. The petitioner contended that it was a social obligation of the Airlines and the Airlines must provide these minimum facilities to permit easy access to the disabled persons, particularly those who are orthopaedically impaired and suffer from locomotor disability. The major grievance of the petitioner was that Indian Airlines was not giving any concession to such disabled persons for their movement by air even though such concessions are being given to only blind persons, who are also disabled persons under the Act. The Court held that those suffering from locomotor 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 on their furnishing the necessary certificate from the Chief District Medical Officer to the effect that the person concerned is suffering from the disability to the extent of 80%.

But, attention must also be paid to the lacunas in the Indian disability law, which has forced the petitioners to knock the doors of the court of justice after the enactment of this Act. The following section tries to critically evaluate this Act in the terms of the definition of â€œdisabilityâ€ and problems in implementation.

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

A. Definition of disability in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

Disabilities are conventionally defined in medical science on a three-point scale established by the World Health Organisation in 1980 ranging from impairments, disabilities and handicaps. The World Health Organisation, in its International Classification of Impairments, Disabilities and Handicaps, makes a distinction between impairment, disability and handicap.⁵ These three concepts are defined by it as follows:

(a) Impairment is â€œany loss or abnormality of psychological, physiological or anatomical structure or functionâ€. Impairments are disturbances at the level of the organs, which includes defects in or loss of a limb, organ or other body structure, as well as defects in or loss of a mental function.

(b) Disability is a â€œrestriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human beingâ€. It describes a functional limitation or activity restriction caused by impairment.

(c) A handicap is a â€œdisadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfilment of a role that is normal (depending on age, sex and social and cultural factors) for that individualâ€. The term is also a classification of â€œcircumstances in which disabled people are likely to find themselvesâ€.

However, it seems that the definition under Section 2(i) of the Act does not recognize the international classification given by the World Health Organisation. It also seems that the Act has tried to cover every kind of disability under Section 2(i), but in fact the term disability is included in a very narrow sense in the Act. The definition, in fact, has left some of the important categories, which are included in the term disability world over. According to conservative estimates, approximately 6% of Indiaâ€™s population is disabled. And if we go by what the UN officials or various other experts say, the figure could very well be in double digits. After all, Australia does admit officially that 18% of their population is affected by one form of disability or the other. The United Kingdomâ€™s disabled population is estimated at 14.2%, whereas in US it is 9%. Why are the numbers so high for such â€œdevelopedâ€ nations as Australia or UK or USA? The answer is quite simple.

Their definition of "disability" is much broader and embracing. For example, in such countries "people with internal conditions" are also considered disabled. These are individuals where the disability is not very visible. A person with one lung or one kidney or a person with a severe heart ailment would be termed "disabled". In certain countries, even diabetics are given shade under the umbrella of disability. Such countries and societies are now looking at disability as a social issue and not as a medical one, as is the case in India where disability is a stigma. To be disabled means to be a person without a leg or arm or eye or twisted or worse, crooked! People are ashamed to be labelled "disabled".

The categories, which may be considered to be included in the definition of "disability", are:

1. Difficulty in speaking. "This category of disability is not included in the Act; whereas this category is covered under the scope of disability by the World Health Organisation in international categorization.
2. Disability of the internal organs. "It is submitted that the term disability should not only include disability of the external organs, but it should also include disability of the internal organs like kidney, lungs, heart. A person belonging to this category also lacks physical ability to do many kinds of physical jobs. Further, it could be said that mental disability directly relates to the brain, which is an internal organ. Thus, disability of an internal organ like brain can be included in the term "disability"; disability related to other internal organs should also be included in the term "disability".
3. Eunuch. "It is submitted that this category should be considered both at the national and international level to be included in the category of disability. This is a section of human being, which is living a life without dignity. These people are fit physically and mentally. So as to say, they are in better condition than other persons with disabilities. This section is deprived of very many human rights and fundamental rights. They are disabled but their disability is not of the character which prevents them from performing day-to-day functions. Because of the social stigma attached to them they are deprived of their family property, right to pursue a profession, right to education and right to get a dignified funeral ceremony after death. Their existence as human being is denied just because they are not categorized as male or female. As a result, they are totally segregated from the human society and the mainstream, because of this they are forced by the circumstances to get involved in antisocial activities and crimes.
4. Persons suffering from AIDS. "A person suffering from AIDS carries with him a social stigma in the same way as that of a person who is leprosy-cured. AIDS weakens the immunity system of a person, which in turn reduces their normal capacity to work. They are prone to health hazards. So, providing special protection is necessary not only for them but also for the society at large.

B. Problems in implementation

Even after the enactment of the Indian Act, the aims and purposes with which the Act was enacted are not served. The reasons are some lacunas in the Indian Act, as well as lack of implementation. And, these are the reasons why India is lagging behind in the international arena from the country like US, which has enacted the Americans with Disabilities Act, 1990 (hereafter referred as the US Act). It is worthwhile to mention here that, the salient features of the statutes of both countries are similar and seek to provide for education, employment, affirmative action, full participation, non-discrimination, research and manpower development.

1. No guidelines as well as deadlines in the Indian Act for the authorities concerned to comply with the provisions of the Act.

Section 44 of the Indian Act provides for the special measures to be taken by the establishments in the transport sector, within the limits of their economic capacity and development for the benefit of persons with disabilities.

In India authorities concerned are yet to take measures to ensure the implementation of the provision for "accessibility". The authorities are taking undue advantage of the term "within the limits of their economic capacity". They have been using this term as a defence to negate the right granted by the statute. To ensure strict implementation of the provision it is necessary that a deadline must be fixed for the authorities to comply with the provisions of the Indian Act.

Whereas the US Act provides specific guidelines for implementation with effective dates, deadlines, alternate arrangements, temporary reliefs etc. For example, the US Act provides for the requirements for accessibility under the different provisions and even the manner of compliance. The failure to comply is termed discrimination. When effective dates for implementation are far into the future or cause undue financial burden, the statute has prescribed temporary arrangements.

2. "US Act Watch" is an effective watchdog system to monitor the implementation of the statute. The watchdog system under the Indian Act is not effective.

"US Act Watch" has been operational since 1992. It reviews and evaluates on an ongoing basis, the effectiveness of all policies, programmes and activities concerning individuals with disabilities.

Under the Indian Act the Chief Commissioner and Commissioners for Persons with Disabilities are envisaged to be the watchdog bodies with the powers of a civil court. However, very few facilities have been provided to these offices and they thus remain ineffective.

3. ADA requires compliance with affirmative action programmes by all agencies that receive federal assistance. PDA must initiate and sustain affirmative action programmes.

Under ADA, government contracts include a clause saying that the contractor agrees to take affirmative action. The contractor must prepare and maintain affirmative action programmes. If the authorities determine that the above provision has been violated, they may impose a variety of sanctions including cancelling, terminating or suspending the contract or debarring the contractor from future contracts.

Under Section 39 of PDA, all government educational institutions and institutions receiving aid from the Government shall reserve not less than 3% seats for persons with disabilities. Under Section 42, aids and appliances are to be provided to the disabled. Under Section 43, there should be preferential allotment of land to the disabled. However, there is no pressure for compliance with any of these affirmative action programmes and much needs to be done.

4. ADA constantly ensures that the disabled are a group "who know what to do when discriminated against".

By 1992, within 2 years of ADA in USA, approximately 2 million pamphlets or information pieces on the rights of the disabled were mailed out.

Information on the rights of the disabled should be disseminated through assistance manuals, question-answer booklets, media campaigns etc. Every disabled person and his family should be armed with a manual (preferably approved by the government authority concerned) listing their rights. They should know their rights as they encounter day-to-day situations at the railway stations, post offices, cinema theatres, and libraries and as they seek admission to educational institutions or seek employment. Each time they encounter discrimination, there should be agencies assisting them and taking up the issue for them.

5. ADA has a strong research agenda. Research under PDA is inadequate.

ADA requires studies to be done on an ongoing basis by the Office of Technology Assessment and National Council on Disability. The access needs, all forms of boarding options, cost-effective methods are all being constantly studied. Thousands of projects are continuously taken up aimed at improving the conditions of the disabled.

Chapter IX of PDA deals with research and manpower development. The Chief Commissioner and Commissioners are required to submit reports to the Central Government and the respective State Governments. However, research is hardly done and reports are never submitted. A strong research agenda is required to study the ways and means of better realizing the rights of the disabled. The reports bring in more accountability.

Conclusion

In conclusion, it could be said that some lacunas and problems in its implementation makes Indian disability law lag behind in the international scenario. Here, the case of Javed Abidi v. Union of India⁴ can be referred again, where the petitioner brought the ignorance of the authorities under the Indian Act, to the notice of the Supreme Court. It is ironical to note that every time it takes a court notice for the authorities to start the implementation of the provisions of any legislation. And, it is only to the extent of initiating the process of constituting different committees. As far as the actual working of these committees goes, probably it would require another notice of the court of law. The Hon^{ble} Supreme Court in this case, has expressed its hope and trust that the respective committees will discharge their obligations under the Act so as to achieve the objectives for which the Act has been enacted.

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- This figure is based on the survey conducted by the National Sample Survey Organisation (NSSO). Figures found during Census 2001, in which the disabled were specially included might be even more revealing. The findings of the 1991 census are presented in the piece titled "Disability of India". Return to Text

- (1971) 2 SCC 293. Return to Text

- AIR 2000 All 258 Return to Text

- (1999) 1 SCC 467 Return to Text

- World Health Organisation, International Classification of Impairments, Disabilities and Handicaps (ICIDH), which can be found at <http://www.who.int/whosis/icidh.htm>. Return to Text