

RIGHTS OF PERSON WITH DISABILITIES WITH REFERENCE TO LIBERTY AND SECURITY

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INTRODUCTION

"The worst thing about a disability is that people see it before they see you"

It is usually perceived by the society that the people with physical or mental issues are considered to be of lower nature and are considered to be an object of charity.

Stephen Hawking shines among the prime examples of person with disability who despite all struggles made it big. He taught the world about some of the laws of physics and gave a better picture of what the Big Bang Theory could be.

But due to increasing discrimination against these people, due to inferiority, inequality, human rights for their disabled persons and their enforcement have become the main topic of discussion around the world. Do they enjoy the same amount of liberty and dignity and security that we as able bodied enjoy? Do they have a convenient, rewarding and accessible environment which is essential for their respect to human dignity? This paper is briefly related to those major laws and their enforcement which has been enacted to protect the rights of disabled people while discussing some International regimes also.

How can a person be termed as a disabled person?

For a person to be legally recognised as a disabled person then he/she has to get a an ID card or a disability certificate. The disability certificate and/ or Identity card is the basic document that a person with any disability of more than 40% requires in order to avail any facilities, benefits or concessions under the available schemes. This is not required for getting admission in a school for formal education.

This 40% benchmark is given because of the section 2(r) of the RPWD Act, 2016. This section tells us about Persons with Bench Mark Disability. "Section 2 (r): person with benchmark disability means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority¹".

In the year 2016 Lok Sabha passed "The Rights of Persons with Disabilities Act, 2016". The Act replaced the existing Persons with Disabilities Act, 1995, Disability has been defined based on an evolving and dynamic concept. The types of disabilities have been increased from existing 7 to 21 and the Central Government will have the power to add more types of disabilities.

The 21 types of disabilities are: The 21 disabilities are given below:-

Blindness, Low-vision, Leprosy Cured persons, Hearing Impairment (deaf and hard of hearing), Locomotor Disability, Dwarfism, Intellectual Disability, Mental Illness, Autism Spectrum Disorder, Cerebral Palsy, Muscular Dystrophy, Chronic Neurological conditions, Specific Learning Disabilities, Multiple Sclerosis Speech and Language disability, Thalassemia, Hemophilia, Sickle Cell disease, Multiple Disabilities including deaf-blindness, Acid Attack victim, Parkinson's disease.

Liberty of Persons with disabilities

"You are not disabled by the disabilities you have, you are able by the abilities you have." - Oscar Pistorius

People suffering from the disabilities are considered to be of lower level compared to people without any disabilities. Many consider them to be inferior in the structure of society. This section of society lacks access to basic rights and hence somewhere or other they are victims of Human Rights violation.

¹ The Rights of Persons With Disabilities Act, 2016

Liberty, according to the oxford dictionary, is defined as “The state of being free within society from oppressive restrictions imposed by authority on one’s way of life, behavior, or political views” Liberty is one of the important pillars of International Human Rights Law and India has been strong advocate for Liberty and Human Rights. The importance of liberty is evident in the very preamble of the Constitution of India as it clearly proclaims: *To secure to all its citizens; Liberty of thought, expression, belief, faith and worship.* The term 'Liberty' has large connotation which makes it impossible to give it an exhaustive meaning. Attempts have been made by our judiciary to widen up the spectrum of liberty while explaining Article 21 of the Constitution.

But the reality of relationship between the liberty and disability is not harmonious one. Persons with disabilities have been denied their right to liberty since time immemorial. Some of the major deprivations of liberty are:

- a. Deprivation of Educational liberty- Educational institutions are reluctant to give admission to disable persons and those who do; they lack the facility for providing adequate resources.
- b. Deprivation of Social Liberty- People in tribal and rural areas holds this belief that disabilities are result of evil deed, of sins committed in past life and of witchcraft. Consequently, they are ignored, mistreated and reprehend. Misconceptions like mentally disabled are dangerous and prone to violence is also one of the reasons.
- c. Institutionalism: There is a preconceived notion that persons with disabilities need special care in special institution and that they are incapable of living in community. Millions are confined in institution in the name of special care, deprived of family affection and care.
- d. Deprivations of Opportunity- They are hardly provided any say in the matter of policy making regarding the rights of persons with disabilities itself. Absence of adequate employment opportunities is also a matter of concern. The Census 2011 highlighted that, nearly 1/3rd of the total disabled persons are working.

Convention and Legislation for the persons with disability

The main convention according to which the legislations in India are enacted is- Convention on the Rights of Persons with Disability, 2006. Some of the important articles in this convention regarding the liberty of a disabled person are as follows-

Article 1- The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity².

Article 3- The principles of the present Convention shall be:

(e) Equality of opportunity;

(f) Accessibility³

Article 5- Equality and non-discrimination

Article 9- Accessibility⁴- To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to 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 systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility⁵.

Article 14- Liberty and security of person- States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation⁶.

Article 18, 20, 21 and 24 which are related to Liberty of movement and nationality, Personal mobility, Freedom of expression and opinion, and access to information and Education respectively. Thus, these are some of the articles in CRPD that talk about the liberty of disabled people.

India is a signatory of United Nations Convention on Persons with Disabilities, 2006 but it is not due to effects of this convention that disability legislation came into being. There were laws for the security and protection of

² Convention on the Rights of Persons with Disabilities and Optional Protocol, 2006

³ Ibid

⁴ Ibid

⁵ Ibid

⁶ Ibid

disable even before UN convention. Later, owing to the international obligations various enactments has been made in this sphere.

1. Rights of Persons with Disability Act, 2016
The Act has been enacted under Article 253 of the Constitution read with item No. 13 of the Union List. It gives effect to the proclamation on the full participation and equality of the persons with disabilities in the Asian & Pacific Region and provides for their education, employment, creation of barrier free environment, social security, etc. The implementation of the Act requires a multi-sectoral collaborative approach by the appropriate governments, including various Central Ministries/Departments, States/Union Territories, local bodies.
2. National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999
The Act provides for constitution of the Board of the National Trust, Local Level Committees, Accountability and Monitoring of the Trust. It has provisions for legal guardianship of the four categories of the persons with disabilities and for creation of enabling environment for their as much independent living as possible.
3. Rehabilitation Council of India Act, 1992
The Act provides for constitution of the Rehabilitation Council of India for regulating the training of rehabilitation professionals, maintenance of a Central Rehabilitation Register, recognized rehabilitation qualifications, minimum standards of educations etc.
4. Mental Health Act, 2017
The new Mental Healthcare Act 2017 rescinds/revoked the existing Mental Healthcare Act 1987 which had been widely criticized for not recognizing the rights of a mentally ill person. The new act defines "mental illness" as a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs."
The act has overturned 309 Indian Penal Code which criminalizes attempted suicide by mentally ill person. Another highlight of this Act is to protect the rights of a person with mental illness, and thereby facilitating his/her access to treatment and by an advance directive; how he/she wants to be treated for his/her illness.
5. The Protection of Children from Sexual Offences (POCSO) Act, 2012
By the virtue of POCSO Act any act of sexual assault committed against a child having physical or mental disability such act will fall under the category of aggravated sexual assault which may attract punishments as harsh as death sentence.
Even though this is what we strive for according to the legislations in India, all of it looks good on paper but when it comes to actually implementing such things in the field or in the real life then we have a different story to tell.

Security Rights of the disabled people

Security of the person is one of the significant elements of human rights guaranteed by the Universal Declaration of Human Rights (UDHR), 1948. It is mentioned in Article 3 of UDHR. The article says- "Everyone has the right to life, liberty and security of person"⁷. It is also explicitly mentioned and protected by the European Convention on Human Rights, most of the constitutions of the countries and other laws around the world. In general, the right to the security of one's person is associated with ones liberty. Security of a person can also be seen as an expansion of rights based on prohibitions of torture and cruel and unusual punishment. When we look at the social model of disability, we find that there are 3 main barriers for the persons with disabilities:

- a. Attitudinal Barriers: This includes bullying, discrimination and instilling fear in such people
- b. Environmental Barriers: inaccessible surrounding that excludes the person with disability to participate.
- c. Institutional Barriers: includes policies, legislations or schemes that discriminates against persons with disabilities.⁸

Thus, by reading this we know that it is important to mix up with the people of disability and let them have the same opportunity like an abled body person would have. This is possible only when the laws of the land/ country that they live in support them. What does this 'support' mean? It means freedom or liberty. And this freedom or liberty can only be enjoyed when these people are secure.

Security of Rights of Persons with disabilities are mentioned in RPWD Act, 2016

It replaces the Persons With Disabilities Act, 1995. It has also introduced many new disabilities and has also some up with new laws which protect the disabled from any sort of discrimination. The salient features are as follows-

⁷ Article 3 UDHR: 'Everyone has the right to life, liberty and security of the person.'

⁸ World Report on Disability, WHO, 2011

Rights and entitlements

- Responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others.
- Additional benefits such as reservation in higher education (not less than 5%), government jobs (not less than 4 %), reservation in allocation of land, poverty alleviation schemes (5% allotment) etc. have been provided for persons with benchmark disabilities and those with high support needs.
- Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education.
- Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education to the children with disabilities.
- For strengthening the Prime Minister's Accessible India Campaign, stress has been given to ensure accessibility in public buildings (both Government and private) in a prescribed time-frame.

Guardianship

- The Act provides for grant of guardianship by District Court under which there will be joint decision – making between the guardian and the persons with disabilities.

Establishment of Authorities

- Broad based Central & State Advisory Boards on Disability are to be set up to serve as apex policy making bodies at the Central and State level.
- Office of Chief Commissioner of Persons with Disabilities has been strengthened who will now be assisted by 2 Commissioners and an Advisory Committee comprising of not more than 11 members drawn from experts in various disabilities.
- Similarly, the office of State Commissioners of Disabilities has been strengthened who will be assisted by an Advisory Committee comprising of not more than 5 members drawn from experts in various disabilities.
- The Chief Commissioner for Persons with Disabilities and the State Commissioners will act as regulatory bodies and Grievance Redressal agencies and also monitor implementation of the Act.
- District level committees will be constituted by the State Governments to address local concerns of PwDs. Details of their constitution and the functions of such committees would be prescribed by the State Governments in the rules.
- Creation of National and State Fund will be created to provide financial support to the persons with disabilities. The existing National Fund for Persons with Disabilities and the Trust Fund for Empowerment of Persons with Disabilities will be subsumed with the National Fund.

Penalties for offences

- The Act provides for penalties for offences committed against persons with disabilities and also violation of the provisions of the new law.
- Any person who violates provisions of the Act, or any rule or regulation made under it, shall be punishable with imprisonment up to six months and/ or a fine of Rs 10,000, or both. For any subsequent violation, imprisonment of up to two years and/or a fine of Rs 50,000 to Rs five lakh can be awarded.
- Whoever intentionally insults or intimidates a person with disability, or sexually exploits a woman or child with disability, shall be punishable with imprisonment between six months to five years and fine.
- Special Courts will be designated in each district to handle cases concerning violation of rights of PwDs.

Challenges in implementing the laws

1. The biggest challenge is to change the mindset of people towards a large level of disability, change their mentality. Make people aware about disability law and its benefits.
2. A large part of the disabled population lives in rural India. Their literacy levels are very low. Therefore, the most important challenge is to educate the primary stakeholders about the disability law so that they can take initiative for rights of disabled person both with the State as well as with the civil society.
3. India is a country full of various complexities. This is a multi-lingual, multi-cultural and multi-ethnic state, due to which the right motive of the related act does not reach the concerned person in the right way. This is both a challenge and a barrier to work; this obstacle is due to factors like resource crunch, poverty, illiteracy, etc.
4. Orientation to various stakeholders is important for the implementation of this Act, such as media persons, bureaucracy etc., is also a challenging challenge in view of the country's diversity.

SUGGESTIONS AND CONCLUSION

1. Share more knowledge about disability- Public must know what is disability and laws related to it. Society must change their perspective regarding the same. They have to understand that disability is not a burden or a

liability rather it is a sensitive situation that one has to handle; they are also human like every one of us. They also have sensations and if proper attention is given to them, their skills can be brought before the society. By working hard with them, they can also be put on their feet, they can be made independent.

2. Mutual Respect should be maintained- Do not indulge in discrimination

3. Families with disabilities should be encouraged by the government, so that the family can come forward to support the disabled. Not only this, members of such family should be specially trained, necessary/helpful equipment should be provided to them. Whether it is normal or disabled, family is its first school. The family is the first stair from where he learns to climb. Family support is the biggest support for any individual, so it is important that their families should support the children with disabilities in every way.

4. In today's fast-paced world where multi-national companies are looking for multi talented professionals, why would the companies come forward for the employment of disabled people, where they have to spend extra for them? It is therefore necessary that the companies should be invited with the help of beneficial schemes and incentives by the government.

5. There should be an atmosphere of inclusive education - Where the benefits of reservation for disabled persons in educational institutions have been made, syllabus should be made in accordance with them. In addition, emphasis should be on easy education methods and language of education.

6. Create an inclusive environment through awareness programmes- To spread awareness to village to village and city to city, it is necessary that school/college students make street shows in this regard. In this connection, electronic media, print media, coaching centres should actively participate.

7. Just as ADA (American disabilities act) has clear and specific guidelines for implementation of effective dates, time limits, alternate arrangements, temporary relief etc., in the same way these facilities have to be provided by PDA.

8. ADA Watch "is an effective surveillance system for monitoring the implementation of the law. Under PDA the surveillance system should be made highly effective. All agencies receiving ADA are required to comply with positive action programs. PDA should start and maintain positive action program.

9. Realise rights- tell the people and make them realise that they have rights which ensures their liberty and security in our country.

10. Secure social protection- it is necessary for a person with disability to have an ID card, spread awareness about it.

11. Enable and empower people- Helping a person can bring out the best in them.

12. As per CRPD, 2006 we should have an "Universal design". This means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where it is needed.

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.