

EVALUATION ON STATUS & RIGHT OF PERSONS WITH DISABILITIES ACT WITH SPECIAL REFERENCE TO THEIR BARRIERS

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Abstract:

Disability is a significant social problem in developing nations like India. Data from a decade ago indicated that viral diseases like polio would need to be eradicated with a global alert to control and combat such dangerous viruses that are to blame for destroying the lives of individuals who are not so conscious of such diseases. There are many difficulties in various nations, and various conservation or rehabilitation measures are also taken in most of the nations, depending on factors like land, poverty, education, and general public support for solving such concerns. Due to a lack of education and awareness, such illnesses and disorders have spread their tentacles throughout India. In this article, evaluation on status & right of persons with disabilities act with special reference to their barriers has been discussed.

Keywords: Right of Persons, Disabilities, Barriers.

INTRODUCTION:

Disability has been one of the major subjects of discussion in several areas in society as well as been an intrinsic area for research. Though there have been several studies in such subject, the status of differently abled persons has not been uplifted the way it is perceived in India and even in major countries. (Degener, T., 2016)

Significant public health issue is disability, particularly in emerging nations like India. The issue will worsen in the future due to the rising trend of non-communicable diseases and the alteration in the age composition brought on by an increase in life expectancy. (Chaney, P., 2020) With community involvement, rehabilitation efforts should be tailored to the requirements of the disabled because the problems are different in industrialised and developing nations. The bulk of the disabled people in India live in rural areas, where accessibility, availability, and utilisation of rehabilitation services, as well as their cost-effectiveness, are crucial factors to be taken into account. The objective of the study was to evaluation on status & right of persons with disabilities act with special reference to their barriers. (Kayama, M. et al., 2019)

METHODOLOGY:

Doctrinal research methodology have been adopted in this research work. The methodological part of the research deals with the collection of data, the rules and the collection of theories and principles which has led to matching the objective of the research. Tools like statutory materials, case reports, periodicals, government reports, national & international journals e-resources etc. were used. Secondary data and qualitative research design were used for this study.

RIGHT OF PERSONS WITH DISABILITIES ACT, 2016:

- The Act replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- **"Person with disability"** means a person with long term physical, mental, intellectual or sensory impairments which, in interaction with barriers, hinders his full and effective participation in society equally with others.
- **"Person with benchmark disability"** means a person with not less than 40% of a specified disability where specified disability has not been defined in measurable terms and includes a person with a disability where specified disability has been defined in measurable terms, as certified by the certifying authority.

Common types of disability:

The different types of disabilities are given below:

- Autism spectrum disorder;
- Blindness;
- Cerebral palsy;
- Chronic neurological conditions;
- Deaf blindness;
- Hemophilia;
- Hearing impairment;
- Intellectual disability;
- Leprosy cured;
- Locomotor disability;
- Low vision;
- Mental illness;
- Muscular dystrophy;
- Multiple sclerosis;
- Specific learning disability;
- Speech and language disability,
- Thalassemia;
- Multiple disabilities.

The definition of disability is based on a dynamic and developing idea.

Respect for the inherent dignity, individual autonomy, including the ability to make one's own decisions, and independence of individuals are among the principles that should be put into practice for the empowerment of people with disabilities (PWD). The tenet reflects a paradigm shift in how people view disability, moving it from a social welfare issue to a human rights one.

The number of disability categories has grown from 7 to 21. The act added a number of disabilities, such as deaf blindness, acid attack victims, Parkinson's disease, mental illness, autism, spectrum disorder, cerebral palsy, muscular dystrophy, chronic neurological conditions, speech and language disability, thalassemia, haemophilia, and sickle cell disease, which were

largely ignored in the previous act. Additionally, the Government is permitted to notify any other category of special disability.

Constitutional Provision:

- Article 41 of the Directive Principles of State Policy (DPSP) states that State shall make effective provision for securing right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, within the limits of its economic capacity and development.
- The subject of 'relief of the disabled and unemployable' is specified in state list of the Seventh Schedule of the constitution.
- In order to achieve the objectives set out in the Preamble through the mechanism of the Constitution, certain very important and relevant provision were incorporated as, For example , Articles 14, 15 and 16 guaranteeing equality before law and equality of opportunity for all citizens in matters relating to employment or appointed to any office under the State . The Constitution also guaranteed "Right to Life" to all its citizen which means that every person including disabled has a right to live with dignity. This also means that the "Disabled like other citizens or people, possess all the basic human rights particularly because they are "Human Being".
- Constitution of India does not specifically prescribe discrimination on the ground of disability, but it also does not contain non-discriminatory provisions that guarantee equality and equal opportunities for all citizens as in Article 14 and Article 16. It not only guarantees right to life and personal liberty but also directs the State through Article 41 to make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment , old age sickness and in other cases of undeserved want, in consonance with the complementary principles "non- discrimination" and "reasonable differentiation" Article 41 thus, makes effective provision for securing the right to work to person suffering from disability. Further, in view of the provisions contained in Article 36 and 37, it is apparent that Article 41 is a mandate both to the legislatures and Courts. In the landmark case of *Kesavananda Bharati v. State of Kerala*¹, the Supreme Court of India observed that primarily the mandate in Article 37 is addressed to the Legislature, but, in so far as the Courts of Justice can indulge in some judicial law making within

the interstices of the Constitution on any statute before them, the courts too are bound by the mandate. Though, Article-14 does not confer a justiciable right, The Supreme Court has, by its own interpretation, bearing in mind the goal of socio-economic policies/development, held that the courts should so interpret a statute as will the objective underlying in Article 14 of the Constitution of India's Article – 14.

➤ At the same time Article 13 of the Constitution of India makes a State action invalid if it is in contravention of the fundamental rights – a process which has been further whetted with the initiation of public interest litigations. Actions in public interests have been filed when the ground level position of a particular individual or group is in a flouting of the fundamental rights guaranteed under the constitution. These actions have been filed before the High Court or the Supreme Court under Article 226 and 32 of the Constitution of India respectively for issuance of Writ orders or direction for remedying the deficit and upholding the right. The Supreme Court and High Courts, in India, by exercising constitutional powers and rights under Article 32 and 226, respectively, have in their dynamic approach, widened the concept of providing free and competent legal aid to the suppressed and oppressed, the disabled and disadvantaged class of people. While not in large numbers, actions in public interest have been filed to assert the rights of persons with disability. Through innovative interpretations of Articles 19 and 21 in particular, and Apex Court and High Courts, have charted neo-juristic, dynamic and visionary mission and have contributed and added new dedicated multi- dimensional profile to achieve socio-economic goals as per the commandments and have provided neo- concept and philosophy of “right to life, liberty and freedom” for the weaker and disabled mass. But a closer look reveals the indication of the judiciary which can be termed as sympathetic but not radical. As a matter of fact before the enactment of the Persons with Disability (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 one gets to see a very feeble response of Indian Judiciary regarding the human rights of the person with disabilities. However, it can be seen that judiciary was influenced by the shift to a right-based perspective on disabilities.

➤ So far as the constitutional approach is concerned the judicial concern has been more with guarantee of equality and the use of reservation as a means to achieve equality amongst the unequal. The judiciary has had a number of opportunities to explore not only the legality of such a concept

but also its consistency with the right to equality. *Indira Sawhney v. Union of India*², has been witnessed to be the most important judgment, where the Court has held that:

“.....mere formal declaration of the right would not make equal-equal. To enable all to compete with each other on equal plane, it is necessary to take positive measures to equip disadvantaged and the handicapped to bring them to the level of the fortunate advantaged. Articles 14 and 16 (1) no doubt would themselves permit such positive measures in favour of the disadvantaged to make real the equality guaranteed by them”.

➤ Another important judgment is that of the case of *D.N. Chanchala v. State of Mysore*. This case involved the issue of reservation of seats for various categories of persons and classification on universal basis under Articles 14 and 15(4) of the Constitution of India. But while delivering the judgment Shelat J. observed:

“..... But an equally fair and equitable principle would also be that which secures..... admission in just proportion to those who are handicapped and who, but for the preferential treatment given to them would not stand a chance against those who are not so handicapped and are, therefore, in a superior position. The principle underlying Article 15(4) is that a preferential treatment can validly be given because the socially and educationally backward classed need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be improper if that principle were also to be applied to those who are handicapped but do not fall under Article 15(4).....”

➤ The Hon'ble Supreme Court made an effort to extend the equitable principle of preferential treatment under Article 15(4) to the persons with disability in the mainstream by giving them equal opportunity in the field of education. Seven years following the *Daya Ram Tripathi* ruling, the Apex Court in a Public Interest Litigation filed by National Federation of the Blind. Directed the Government and the Union Public Service Commission to permit visually impaired eligible candidates to compete and write the Civil Services examination in Braille script or with the help of a scribe. The Court held “If some of the posts in the Indian Administrative Service and other allied services, as identified by the committee can be filled from amongst the visually handicapped persons then we see no reason why they should not be permitted to sit and write the Civil services examination.” However, the Court also emphasised that once recruited to

the lowest level of the service the visually impaired person shall have on right to claim promotion to the higher posts if that particular post is not suitable for the visually handicapped person.

➤ Nandakumar Narayan Rao Ghodmare v. State of Maharashtra and other, was another significant case where, the Supreme Court recognised colour blindness as a disability and directed the State of Maharashtra to appoint the appellant within two months from the date of order to the state public service. The appellant in this case was a person with colour- blindness who was not appointed to the state public service on the ground that he is disabled.

STATUS OF DISABLED PERSONS IN INDIA:

As per Census 2011:

- At all India level, disabled persons constituted 2.21% of the total population. In 15 States / UTs, the prevalence of disability (proportion of disabled persons to total population) is higher than that of the same at the all India level.
- Among the State/ UTs, Sikkim has the highest prevalence of disability. 2.98% of the total population of Sikkim has been reported as disabled. Daman & Diu (0.9%) reported the lowest prevalence of disability.
- The highest number of disabled persons is from the State of Uttar Pradesh. Nearly 50% of the disabled persons belonged to one of the five States namely Uttar Pradesh (15.5%), Maharashtra (11.05%), Bihar (8.69%), Andhra Pradesh (8.45%), and West Bengal (7.52%).
- At all India level, 7.62% of the disabled persons belonged to the age group 0-6 years. Bihar (12.48%) has the highest share of disabled children in the population of disabled persons of the State followed by Meghalaya (11.41%). In Kerala, only 3.44% of the disabled persons belonged to the age group 0-6 years, which is the lowest among the State/ UTs.
- The State of Uttar Pradesh is home for the highest number of disabled children (0-6 years). Four States namely, Uttar Pradesh (20.31%), Bihar (14.24%), Maharashtra (10.64%), and West Bengal (6.48%) together have the burden of more than 50% of the disabled children.

- At all India level, 36.34% of the total disabled population is reported as ‘workers’. Among the State / UTs, Nagaland (51.92%) has the highest share of workers in the respective population of disabled persons followed by Sikkim (49.04%) and Arunachal Pradesh (44.69%). The proportion of disabled workers to the corresponding total disabled persons is lowest in Lakshadweep (19.88%), followed by Kerala (23.59%) and NCT of Delhi (27.92%).
- Among the disabled workers, the highest number of workers are from Uttar Pradesh (14.84%), followed by Maharashtra (12.81%), which have also the highest number of disabled persons.
- At all India level, 54.52% of the disabled persons are literates. Among the State /UTs, the highest literacy rate among disabled persons is in Kerala (70.79%) followed by Goa (70.31%). The lowest literacy rate among disabled persons is in Arunachal Pradesh (38.75%) followed by Rajasthan (40.16%).
- At all India level, 8.53% of the disabled literates are having educational qualification of graduate and above. Among the State /UTs, the highest share of graduates in the disabled literate population is highest in Chandigarh (19.68%) followed by Delhi (17.43%) and the lowest share is reported from Lakshadweep (2%) followed by Meghalaya (3%).
- Under the various categories of disability like disability in seeing, in hearing, in movement, mental retardation, mental illness, any other and multiple disability, Uttar Pradesh, has the highest number while Bihar has the highest number of persons with disability in speech.
- The highest percentage of disabled children (5-19 years) presently attending educational institution has been reported from Goa & Kerala (73%) followed by Maharashtra and Lakshadweep (70%). The percentage of disabled children never attended educational institution is highest in Nagaland (39%) followed by Assam (35%).
- The percentage of never married among the total disabled persons of the State / UT is highest in Meghalaya (56%) and lowest in Rajasthan (31%) whereas the percentage of currently married among the total disabled persons of the State / UT is highest in Maharashtra (51%) and lowest in Mizoram (31%)

The Census 2011 revealed that,

- ✓ Among State/ UTs, the proportion of disabled persons to the total population is highest in Sikkim (2.98%), followed by Odisha (2.96%), Jammu & Kashmir (2.88%), Andhra Pradesh (2.68%), and Maharashtra (2.64%).
- ✓ Among State/ UTs, the proportion of disabled persons to the total population is lowest in Daman & Diu (0.9%), Dadra & Nagar Haveli (0.96%), Mizoram (1.38%), Delhi (1.4%) and Chandigarh (1.4%).

Following graph shows the share of disabled persons in States of India and Union Territories:

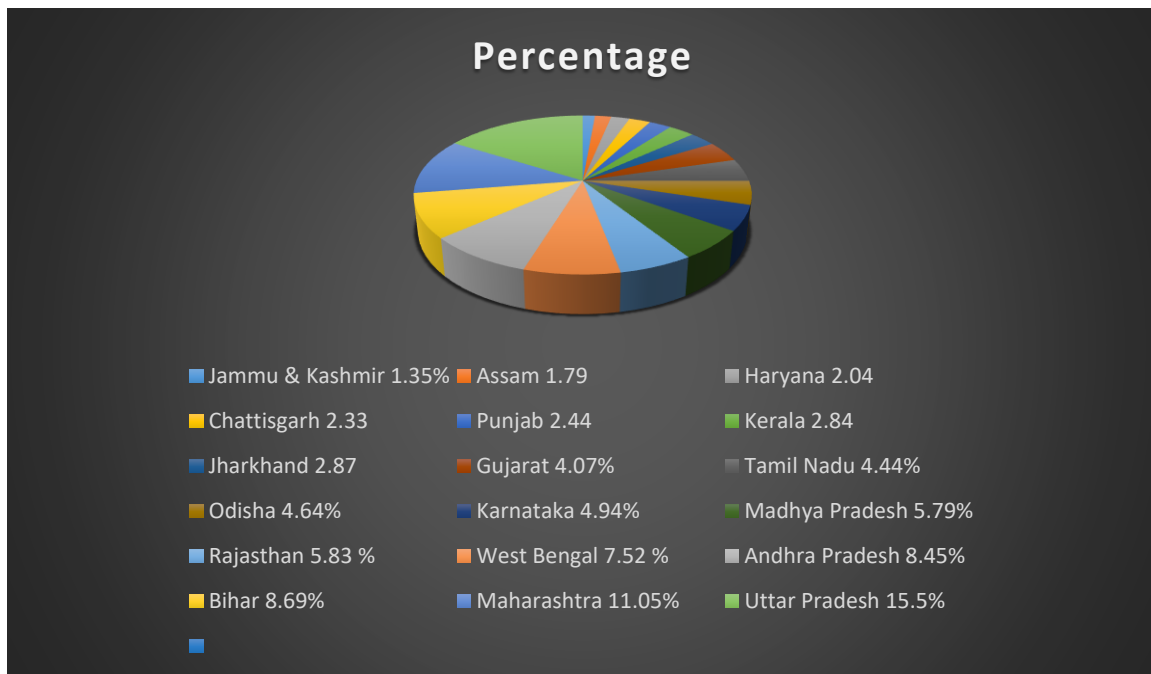


Figure 1. Disabled persons in States of India and Union Territories (Source: The Disabled Population and Their Educational Status in India, Department of empowerment of persons with Disabilities (Divyangjan) report.)

COMMON BARRIERS TO PARTICIPATION EXPERIENCED BY PEOPLE WITH DISABILITIES:

A) Communication Barriers:

People who use different methods of communication than those who do not have these problems and who have hearing, speaking, reading, writing, or comprehension disabilities encounter communication challenges. Communication difficulties include, for instance:

Written health promotion messages with barriers that make the message inaccessible to those who have vision impairments. These include the use of small type or the absence of materials in large print, the absence of Braille, or versions for screen reader users (Raha, S., Sengupta, S., 2018).

People with hearing impairments may not be able to obtain auditory health messages, such as those in videos without closed captioning and spoken communications without a manual interpretation.

B) Barriers Relating to Attitude:

The most fundamental barriers are those that affect attitudes and cause other barriers. For instance, some people might not be aware that obstacles to entering or leaving a location can prevent someone with a handicap from taking part in daily life and routine activities. Attitudinal impediments include, for example:

Stereotyping: Some people have preconceived notions about people with disabilities, believing that they have a low quality of life or are unwell as a result of their impairments.

Stigma, prejudice, and discrimination are societal attitudes that may be a result of how people perceive disabilities. For example, people may view disabilities as a personal tragedy, as a

condition that needs to be treated or prevented, as a penalty for wrongdoing, or as a sign that a person lacks the social skills necessary to function in society (Pal, H.R. et al., 2000).

As we come to understand "disability" as what happens when a person's functional demands are not met in his or her physical and social environment, society's definition of disability is evolving today. It is simpler to identify and address issues that all people—including those with disabilities—experience by not viewing disability as a personal shortcoming or deficit and instead viewing it as a social responsibility that can support all people in leading independent and fulfilling lives. (Mudduraju, N., 2018).

C) Physical Barriers:

Physical barriers are built-in obstructions that limit or restrict access or mobility in surroundings, whether they are created by nature or by humans (Naraharisetti, R., Castro, M.C., 2016). Physical impediments include, for instance:

Mammography equipment that forces a woman with mobility impairment to stand; Steps and curbs that prevent a person with mobility impairment from entering a building or utilising a walkway; and

Lack of a wheelchair-accessible weight scale or one that can be used by people who have trouble stepping up.

D) Programmatic Barriers:

Programmatic barriers prevent people with various limitations from receiving public health or health care services effectively. (Daley, A. et al., 2018) Programmatic obstacles include, for instance:

A schedule that is inconvenient; a lack of equipment that is accessible (such as mammography screening equipment); a lack of time allotted for medical examinations and operations.

A lack of communication with participants or patients; and the attitudes, information, and comprehension of the Provider towards those with impairments.

E) Social Barriers:

Social barriers, also known as social determinants of health, are factors that affect how people are born, grow, learn, work, and age and can affect how well persons with disabilities function in society. Examples of societal barriers are as follows:

Disability significantly lowers the likelihood of employment. Aged 18 to 64, 35.5% of persons with disabilities were working in 2017, compared to 76.5% of non-disabled people—roughly twice as many as those with impairments. Compared to their contemporaries without disabilities, those age 18 and older with disabilities are less likely to have completed high school (22.3% vs. 10.1%).

F) Transportation Barriers:

A person's ability to be independent and to contribute to society is hampered by transportation barriers, which are caused by a lack of suitable transportation. Transportation obstacles include, for instance:

Lack of accessible or practical transportation options for those who are unable to drive due to cognitive or vision impairments, and public transportation may not be available or located at appropriate locations. (D'Mello, L. et al., 2017)

CONCLUSION:

WHO qualifies as disabled is a key issue that comes up in the discussion. Each person with a disability is unique. Every disabled person can be categorised according to the factors that make them disabled because, in order to be eligible for government grants and subsidies, a person must submit a disability certificate from a doctor, who will certify after assessing the patient's level of disability across all body parts and how he became disabled. (Lawson, A., 2020).

REFERENCES:

Chaney, P. (2020). An institutionally Ableist State? Exploring civil society perspectives on the implementation of the convention on the rights of persons with disabilities in India. *Journal of Civil Society*, 16(4), 372–392.

D’Mello, L., Monterio, M., B. M., Govindaraju. (2017). Psycho-Social Problems faced by Persons with Disability. *International Journal of Management, Technology, and Social Sciences*, 2(2), 1-7.

Daley A, Phipps S, Branscombe N.R. (2018). The social complexities of disability: Discrimination, belonging and life satisfaction among Canadian youth. *SSM Popul Health.*, 24(5), 55-63.

Degener, T. (2016). Disability in a Human Rights Context. *Laws*, 5(3), 35.

Kayama, M. et al. (2019). Adjusting the “self” in social interaction: Disability and stigmatization in India. *Children and Youth Services Review*, 96, 463-474.

Lawson, A. (2020). Disability Law as an Academic Discipline: Towards Cohesion and Mainstreaming? *Journal of Law and Society*, 47(4), 558-587.

Mudduraju, N. (2018). Legal Framework for Persons with Disability: Need A Fresh Look. *International Journal of Creative Research Thoughts*, 6(1), 17-23.

Naraharisetti, R., Castro, M.C. (2016). Factors associated with persons with disability employment in India: a cross-sectional study. *BMC Public Health*, 16, 1063, 1-8.

Pal, H.R. et al. (2000). Issues related to disability in India: A focus group study. *The National Medical Journal of India*, 13(5), 237-241.

Raha, S., Sengupta, S. (2018). Rights of Women with Disabilities under Indian legislations. *Socio-Legal Review*, 14(2), 190-211.

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