



## DIVYANG AND THE INDIAN CONSTITUTION: AN ANALYSIS OF THE BENEFICIAL PROVISIONS

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**Abstract**

*In the present paper an endeavour has been made to analyse the provisions of the Indian Constitution for the Specially Aabled persons (Divyangs). It is a modest attempt to scrutinize the beneficiary provisions for Divyangs from the point of view of social, economic and political justice. In this paper various Constitutional provisions and Acts related to the Divyangs have been outlined. The present paper also tries to bring into light the fact that the State is committed towards safeguarding and providing welfare measures for the Specially Aabled persons. Moreover, this paper also encompasses and deals with various laws, provisions and legislations that have been enacted for protecting the rights of the Divyangs. This paper is largely based on secondary data collected from various sources such as books, journals, articles, newspapers, etc.*

**Keywords:** *Divyang, Indian Constitution, Beneficial Provisions*

As per the Census 2011, it has been reported that in India there are about 2.67 crore persons with special abilities and out of these, about 1.50 crore are males while 1.18 crore are females<sup>1</sup>. They constitute almost 2.21 per cent of the total population of the country. There are persons with various kinds of disabilities such as persons with visual, hearing and speech impairment, loco-motor disability, mental illness, mental retardation and other disabilities. In the Indian Constitution an inclusive policy has been adopted for the welfare and protection of the rights of speciallyabled persons. Similarly, the parliamentary provisions have also been made in order to ensure and maintain the dignity of *Divyangs*. Several important legislative acts have been enforced for preventing speciallyabled persons from all kinds of discrimination. It is the duty of the State to formulate and implement improved policies for protecting and safeguarding the rights of the speciallyabled persons. In Indian Constitution several articles have been specified which assures that every citizen of India including the disabled persons should be ensured life which is free from exploitation, and provisions have also been made to protect their rights. It is constitutional obligation to protect the violation of their rights. Apart from the Constitutional rights, privileges also play an important role in providing an equal footing to the speciallyabled persons. There are number of issues that have been identified as problems and these problems are usually related with discrimination and violation of constitutional rights. Now, it is being considered as one of the critical concerns for the speciallyabled persons in the country. Being a challenged person does not mean that he or she is disqualified from having access to the different aspects of life. In common parlance, disability simply means lack or deficiency of physical, psychical or mental aspect in a person. On 3<sup>rd</sup> December, 2015, the Prime Minister of India Narendra Modi for the first time suggested the use of the term “*Divyang*” (divine body) for the person with disabilities (physically handicapped people) in place of “*Viklang*” (disabilities)<sup>2</sup>. Further on 27<sup>th</sup> December, 2015 during

his *Mann Ki Baat* he suggested that “We see a person’s disability within our eyes. But when we interact and converse with that person then we got to know that he or she has an extra power. It was then I thought that in our country, instead of using the word “*Viklang*” we should use the term “*Divyang*”<sup>3</sup>. These people have a limb or several limbs with divine powers which normal people usually do not have.” However, he also suggested that change in nomenclature sparked a debate among social activists, consultants and government functionaries and some of them expressed their reservations on the proposed shift in the terminology. In line with the Prime Minister’s call to call the disabled as ‘*Divyang*’ instead of ‘*Viklang*’, the Centre has renamed the Department of Empowerment of Persons with Disabilities to incorporate the word ‘*Divyang*’ in its Hindi as well as English nomenclature. The Department so far known as the ‘*Viklangjan Sashaktikaran Vibhag*’ in Hindi now be known as ‘*Divyanganjan Sashaktikaran Vibhag*’ as per a change in the Government of India (Allocation of Business) rules approved by the then President. In the English nomenclature too, the word ‘*Divyanjan*’ has been suffixed now to the original name and the Department now known as the ‘Department of Empowerment of Persons with Disabilities (*Divyanjan*)’.

**Constitutional Beneficial Provisions for Divyangs**

The India Constitution provides Right to Equality to every citizen including the specially abled persons. The Preamble of the Indian Constitution seeks to ensure that “every citizen has the right to socio-economic and political justice; liberty of thoughts, expression, belief, faith and worship; equality of status and opportunity; and fraternity; assuring the dignity of the individual and the unity and integrity of the nation”<sup>4</sup>. Likewise, the fundamental rights are also equally given to each and every citizen of India. These fundamental rights have been specified in the Part III of the Indian Constitution. All these rights and privileges are applicable not only to normal persons but also to the persons with disabilities. However, there has been no

<sup>1</sup>www.indiatvnews.com dated 12<sup>th</sup> September 2017

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup>J. N. Pandey, *Constituted Law of India*, Central Law Agency, 44th Edition 2007, Allahabad, pp.29

specific mention of such persons either in the Preamble or Part - III of the Indian Constitution. The framers of the Indian Constitution were also conscious about the problems of the depressed and marginalised sections of the society including the disabled ones. Therefore, apart from social, economic equality and justice, it was also required that the constitutional provision should also be made for the physically and mentally challenged persons. Under the Indian Constitution there are certain rights and provisions which are also applicable to the specially abled persons namely; Article 15(1) is applicable on the ground that “the State has prohibited discrimination of any citizen on the pretext of religion, race, sex, caste or place of birth or any of them”<sup>5</sup>. Similarly, in Article 15(2) it has been declared that no citizen including the specially abled persons “shall be subjected to any kind of disability, liability, restriction or condition with regards to: (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing Ghats, roads and places public resort maintained wholly or partly out of state funds or dedicated to the use of the general public”<sup>6</sup>. Article 15(3) also stated that “nothing shall prevent the State from making any special provision for women and children including disable person”<sup>7</sup>. However, under article 15(4) it has been specified that those who are belonging to any socially and educationally backward classes or the Scheduled Castes and Tribes can be given the benefit of special provisions for the advancement which is also applicable to the disabled persons. Similarly, under article 16(4) the “State has been empowered to make special provision for the reservation of post in government sector in favour of any backward class”<sup>8</sup> which also includes the disabled persons. In the case of *Dr. Jagdish Saran & Others v. Union of India* (1980 2 SCC 768), Justice Krishna Iyer clarified that “even apart from Articles 15 (3) and (4), equality is not degraded or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit”<sup>9</sup>. Hence the fourth clause which was added made provisions for the protection of the rights and interests of the backward classes including the disabled persons. Therefore, an exception has been made to the article 15 and 29 (2) of the Indian constitution.

Similarly, under article 16(1) it has been stated “there shall be equality of opportunity for all citizens in matters relating to the employment or appointment to any post under the State”<sup>10</sup> including the disabled persons. Clause (2) asserted that “no citizen on ground of religious, race, caste, sex, descent, place of birth, residence or any of them, is ineligible for or

discriminated against in respect of, any employment or office under the state”<sup>11</sup>. In another case of *Indra Sawhney v. Union of India* (1992 Supp (3) SCC), the Supreme Court examined the legality of reservation in favour of the disabled persons who are not clearly covered under the Article 16 of the Indian Constitution. The Court also pointed out the fact that the mere formal declaration of the rights would not be going to make unequal’s equal. It is also essential to take positive measures towards equipping the disadvantaged sections of the society including the handicapped in order to bring them at equal playing field with the advantaged sections.

Under Article 21 of the Indian Constitution the right to life and personal liberty has been guaranteed to every person including the disabled. “Trafficking of human beings and beggar and any other form of forced labour is prohibited”<sup>12</sup> which is also providing protection to disabled and the same is made punishable in accordance within the law under Article 23. Article 24 of the Indian constitution is also applicable and provides protection to them. Under article 24 of the constitution “the employment of children below age of 14 years has been prohibited in any factory or mine or in any other hazardous employment”<sup>13</sup>. Under Article 25 every citizen has been guaranteed the right to freedom of religion including the disabled persons. Disabled persons like the non disabled ones have the “freedom of conscience and the right to practice and propagate their religion”<sup>14</sup>. Moreover, no disabled person can be compelled or forced to pay any taxes for the promotion and maintenance of any particular religion or religious group. Even the disabled people also have the right to be protected from deprivation of their “language, script or culture”. Article 32(1) guarantees “every citizen the right to move to the Supreme Court through appropriate proceedings for the enforcement of the fundamental rights”<sup>15</sup> conferred by Part II of the Indian Constitution and the same is also applicable to every disabled person. Although the right to property is not a fundamental right, no disabled person owing property like the non disabled can be deprived of his property except by the authority of law. Any unauthorized deprivation of property can be challenged by suit for relief. Every disabled person like the non disabled becomes eligible for inclusion of his name in the general electoral roll for the territorial constituency to which he belongs on attainment of 18 years of age. In the Constitution of India at two places the term handicapped and mentally retarded has been mentioned, firstly in the Eleventh schedule article 243G deals with the social welfare including the handicapped and mentally retarded. Secondly, in the Twelfth scheduled article 243-W deals with

<sup>5</sup> Ibid at 123

<sup>6</sup> Ibid at 124

<sup>7</sup> Ibid at 125

<sup>8</sup> Ibid at 145

<sup>9</sup> National Human Rights Commission, Rights of persons with Disabilities, 2010, published by National Human Rights Commission Faridkot House, New Delhi at 6

<sup>10</sup> supra Note 8 at 135

<sup>11</sup> supra Note 10 at 136

<sup>12</sup> supra Note 11 at 299

<sup>13</sup> supra Note 13 at 300

<sup>14</sup> supra Note 14 at 307

<sup>15</sup> supra Note 16 at 350

safeguarding the interests of weaker sections of society including the handicapped and mentally retarded.

**Beneficial Provisions for Divyangs under Various Laws in India**

In India various laws related to marriage have been enacted by the Parliamentary Legislative for different communities. All these laws are also equally applicable to the speciallyabled persons. Most of these acts have been passed by the Parliament, and it has been provided to the disable person under the following circumstances at the time of undertaking a marriage. According to the Acts, either party is an idiot or lunatic which is unable to give a valid consent due to unsoundness of mind or suffering from a mental disorder to such an extent that the party is unfit for marriage to procreation of children. In the Indian Family Laws, there are certain rights and duties of the parties in marriage in respect to the disabled or non-disabled persons. In India the Family laws are governed by the specific provisions mentioned in different Marriage Acts such as the Hindu Marriage Act 1955, the Christian Marriage Act 1872, the Parsi Marriage and Divorce Act 1935. Whereas, there are other marriage acts which also exist in India such as the Special Marriage Act 1954 and the Foreign Marriage Act 1959. Here it is pertinent to note that the special Marriage Act also exist for spouses of different religions and Foreign Marriage Act, for marriage outside India. The Child Marriage Restraint Act 1929 also applies to the disabled person. This Act was amended by the Parliament in 1978 in order to prevent the solemnization of child marriages in India<sup>16</sup>. Similarly, it also specified that the disabled person cannot act as a guardian of a minor under the Guardian and Wards Act 1890. The same position was taken by the Hindu Minority and Guardianship Act, 1956 which has also covered under the Muslim Law<sup>17</sup>. In the connection under the Hindu Succession Act 1956 which applies only to Hindus, it has been also specifically provided that physical disability or physical deformity would not disentitle a person from inheriting ancestral property. Hence, the Indian Succession Act 1925 applies in the case of intestate and testamentary succession. There is no provision which deprives the disabled persons from inheriting their ancestral property<sup>18</sup>.

There are several provisions which have been specified in the income Tax law especially for disabled person. Under section 80 DD<sup>19</sup> a provision of deduction is provided in respect of the expenditure incurred by an individual or Hindu Undivided Family resident in India on the medical treatment (including nursing), training and rehabilitation etc. of handicapped dependents. For officiating the increased cost of such maintenance, the limit of the deduction has been raised from 75,000 to 1,25,000. The tax benefits given only to individual

ssuffering from disability<sup>20</sup>as well as any dependent family member of the individual is suffering from a disability<sup>21</sup>. Similarly, a new section 80V<sup>22</sup> [40] has been introduced to ensure that the parent in whose hands income of a permanently disabled minor has been clubbed under Section 64, is allowed to claim a deduction up to 20,000 in terms of Section 80 V. It also provides for an additional rebate from the net tax payable by a resident individual who has attained the age of 65 years which was specified under Section 88B<sup>22</sup> of income tax. It has been amended to increase the rebate from 10 per cent to 20 per cent in the cases where the gross total income does not exceed 75,000 (as against a limit of 50,000 specified earlier).

Legislative Enactment : India has passed various laws in order to protect the rights and interests of the Disable person in order to fulfill the constitutional provisions related to them. These include: 1). Indian Lunacy Act, 1912, 2). Mental Health Act 1987, 3). Rehabilitation Council of India Act1992, 4). The Persons with Disability Act 1995, 5). National Trust Act 1999, 6). Right to Education Act 2010

Divyangs in Uttar Pradesh: As per Census 2011 Uttar Pradesh has 4,157,514 persons with disabilities. Disability is one of the most important issues in the contemporary society. The Stigmatization of the people with disabilities contributed towards the formation of biases and prejudice which has put them into the disadvantageous position in comparison to other sections of the society. The major concern is to eliminate the biases and prejudices against the *divyangs* for providing them better quality of life.

**Table 1 - Population of Divyangs in Uttar Pradesh as per 2011 Census**

S.No.	Types of Disabilities in Uttar Pradesh	Total No. of
1.	Visually Impaired	763,988
2.	Hearing Impaired	1,027,835
3.	Speech Impaired	266,586
4.	Movement Disability	677,713
5.	Mental Retardation	181,342
6.	Mental Illness	76,603
7.	Any Other	946436
8.	Multiple Disability	217,011
9.	Total	4,157,514

**Conclusion**

It is the duty of the states to oblige the constitutional norms in order to provide the equal opportunities to *divyangs* and protecting their rights, because majority of speciallyabled persons can lead a better quality of life in the society. However, the Constitution of India also ensures the equality, freedom, justice and dignity to every individual including persons with disabilities. It also essential that special attention should be given to *divyang*women in order to provide them protection against exploitation and abuse in the society. Keeping this in view, there is need to develop special programmes for women with disabilities in the arena of education, employment and other rehabilitation services. Moreover, the state should also take an

<sup>16</sup>[www.vikaspedia.in/education/parents...for...disabilities/legal-rights-of-the-disabled-in-india](http://www.vikaspedia.in/education/parents...for...disabilities/legal-rights-of-the-disabled-in-india), dated 12 October 2017.

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup>ncome tax Axt,1961, <https://www.hrblock.in/.../section-80dd-taxededuction-on-medical-expenses-of-disabl...dated 21/10/201>

<sup>20</sup>Section 80U Under Income Tax Act 1961

<sup>21</sup>section 80DDB under Income Tax Act 1961

<sup>22</sup>Income tax Act, 1961, <https://www.hrblock.in/.../section-80dd-taxededuction-on-medical-expenses-of-disabl...dated 21/10/2017>.

initiative for prevention of disabilities and it should organize the various programmes for prevention of diseases. Another important thing that needs special attention is that the children with disabilities is the most vulnerable group. The states should strive to ensure right to development as well as recognition of special need, care, protection and security for such children. It should be ensured that such children should be provided with the right to development with dignity and equality and an enabling environment should be created for them. Special health vocational training programmes should be organized along with specialized rehabilitation services for specially abled children. Every state must ensure that the persons with disabilities should obtain the disability certificates without any difficulty in the shortest period of time and the procedure for obtaining the special ability certificates must be simple. Additional expenditure should be provided for facilitating activities such as daily care, medical care, transportation, assistive devices, etc to *divyangs*. Sometime families and care givers of *divyangs* cannot afford to give better treatment to them. Therefore, the Central Government as well as the state governments should develop a comprehensive social security policy for persons with special abilities. Apart from this, NGOs can play a very important role in providing affordable services and complementing the endeavours of the Government as well as the provisions of services for persons with disabilities. The states also have a very pertinent role in policy formulation, planning, implementation,

monitoring and also seeking advice on various issues related with *divyangs*. The government should strive to improve the quality of life of *divyangs*. The government should take steps to establish the research centres for *divyangs* for improving their socio-economic status and quality of life. Further, the state should take necessary steps to provide them opportunities for participation in various sports, recreational and cultural activities. In the few decades, the Central Government has passed very important acts for the Persons with Special Abilities. It is necessary to formulate various developments programmes for *divyangs* and makes certain amendments to the disabilities Act which has become the need of the hour.

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