



RIGHTS OF PERSONS WITH DISABILITY AND THE LAW

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Voice of Research

Volume 4, Issue 4

March 2016

ISSN 2277-7733

Abstract

The light at the end of the tunnel for India's 100 million people with disabilities appears to be getting closer as the Ministry of Social Justice and Empowerment made public the latest version of the Rights of Persons with Disabilities Bill. This Bill which seeks to replace the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, attempts to bring India in line with the 21st century understanding of the rights of persons with disabilities as captured in the UN Convention on the Rights of Persons with Disabilities (UNCRPD) ratified by India. This version of the Bill is the last in a series of versions that were made public by the Ministry over the last two years. There are some major differences between this version and earlier versions and the changes proposed are a mixed bag - some progressive and some regressive ones. An attempt is made in this paper to examine the existing Law on disability vis a vis the proposed bill and the Constitution.

Keywords: right, law, disability, law for disabled, right of person

Disability refers to the disadvantage or restriction of activity caused by the way society is organized which takes little or no account of people who have physical, sensory or mental impairments. As a result such people are excluded and prevented from participating fully on equal terms in mainstream society. Disability is an unfortunate part of human life which can affect not only the natural way of living but also despair component strength and power. Persons with disability are most disadvantaged section of society, they are also neglected in their family. As per an estimate of World Health Organization, ten percent of the world's population suffers from one or other disabilities and almost one fifth of the disabled person of the world lives in India. According to Census 2001, nearly 5% of people in India are affected with impairment or disability. In general connotation disability is of two kinds, Legal Disability and Physical Disability.

Legal disability can be defined as the absence of legal capacity to do certain acts or enjoy certain legal rights. It is divided into two classes- Absolute, it wholly disables the person, like outlawry, excommunication, attaide and acts by statutory bodies or corporation in excess of their statutory powers; Partial, such as infancy, lunacy, drunkenness, etc.

The Right of Persons with Disabilities Bill, 2014

Highlights of the bill:

The Bill replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Instead of seven disabilities specified in the Act, the Bill covers 19 conditions.

Persons with at least 40% of a disability are entitled to certain benefits such as reservations in education and employment, preference in government schemes, etc.

The Bill confers several rights and entitlements to disabled persons. These include disabled friendly access to all public buildings, hospitals, modes of transport, polling stations, etc.

In case of mentally ill persons, district courts may award two types of guardianship. A limited guardian takes

decisions jointly with the mentally ill person. A plenary guardian takes decisions on behalf of the mentally ill person, without consulting him.

Violation of any provision of the Act is punishable with imprisonment up to six months, and/or fine of Rs 10,000. Subsequent violations carry a higher penalty.

Key issues and Analysis

The Bill is being brought in to fulfil obligations under an international treaty. The question is whether it is appropriate for Parliament to impose legal and financial obligations on states and municipalities with regard to disability, which is a State List subject.

The Financial Memorandum does not provide any estimate of the financial resources required to meet obligations under the Bill. The Bill states that violation of any provision in the Act will attract imprisonment and/or fine. Given the widespread obligations (such as making all polling booths accessible to the disabled), many acts of omission or commission could be interpreted as criminal offences. In "extraordinary situations" district courts may appoint plenary guardians for mentally ill persons. The Bill does not lay down principles for such determination, in a consistent manner, across various courts. The Bill overrides the Mental Health Act, 1987 but the safeguards against misuse of powers by guardians are lower. The Bill is inconsistent with other laws in some cases. These include conditions for termination of pregnancy and the minimum penalty for outraging the modesty of a woman.

The status of the above mentioned bill is pending. The status of the bill is discussed as below in the following table.

STAGE	DATE
Introduction	Feb 7, 2014
Com. Ref	Sep 16, 2014
Com. Representation	May 07, 2015
Rajya Sabha	Introduced
Lok Sabha	---



Present Disability Laws in force in India

The Mental Health Act, 1987

The Mental Health Act, 1987, repealed the Indian Lunacy Act, 1912 with a clear aim and object to consolidating the law relating to mentally ill persons, better management of the property of a mentally ill person and for dealing with matters connected with the affairs of the property of mentally ill, with the overall object that a mentally ill person be given all protection. It is social welfare legislation.

The main objectives of the act are:

To establish central and state authorities for licensing and supervising the psychiatric hospitals; To establish such psychiatric hospitals and nursing homes; To provide a check on working of these hospitals; To provide for the custody of mentally ill persons who are unable to look after themselves are dangerous for themselves or others; To protect the society from dangerous manifestations of mentally ill; To regulate procedure of admission and discharge of mentally ill persons to the psychiatric hospitals or nursing homes either on voluntary basis or on request; To safeguard the rights of these detained individuals; To protect citizens from being detained unnecessarily; To provide for the maintenance charges of mentally ill persons undergoing treatment in such hospitals; To provide legal aid to poor mentally ill criminals at state expenses; To change offensive terminologies of Indian Lunacy act to new soother ones.

The Rehabilitation Council of India Act, 1992

This act came into being to regulate the training of rehabilitation professionals and to maintain a Central Rehabilitation Register to certify rehabilitation professionals. Thus by this act, the Rehabilitation Council of India has become the apex body to further professional development of those in the field of disability rehabilitation.

According to this act, the term “rehabilitation professionals” refers to:

Audiologists and speech therapists; Clinical psychologists; Hearing aid and ear mould technicians; Special educators; Vocational counsellors, employment officers and placement officers working with persons with disability; Multi-purpose rehabilitation therapists, technicians or; Other categories of professionals that the Central government may include in consultation with the Council

The main aims of the Rehabilitation Council of India are: To regulate training policies and programs in the field of disability rehabilitation; To standardize training courses for professionals working with people with disabilities; To

prescribe minimum standards of education and training of various categories of professionals working with people with disabilities. To recognize institutions/universities running degree/diploma/certificate courses in the field of disability rehabilitation; To recognize foreign degree/diploma/certificates awarded by universities/institutions on a reciprocal basis; To maintain a Central Rehabilitation Register of Institutions possessing the recognized rehabilitation qualification.

The Persons with Disabilities (Equal opportunities, protection of Rights and Full Participation) Act, 1995

The purpose of this Act which was made law in 1996 is to fix responsibilities on the Central and State Government to the extent of their resources permit, to provide services, create facilities and give support to people with disabilities in order to enable them to have equal opportunities in participating as productive and contributing citizens of this country to the fullest extent their abilities.

It fixes its responsibilities on the Governments (Centre and State) to ensure that disabilities do not prevent individual citizens of this country from living a full life and making full contribution each in accordance with his/her ability.

This Act provides a frame within which specific demands can be made by the disabled people in order to ensure that the promises made in this Act are honoured by the Government.

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, & Multiple Disabilities Act, 1999

This Act provides for the constitution of a national body for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. Such a national body will be a trust whose objects shall be as under:

To strengthen facilities to provide support to persons with disability to live within their own families; To extend support to registered organisation to provide need based services during the period of crisis in the family of persons with disability; To deal with problems of persons with disability who do not have family support; To promote measures for the care and protection of persons with disability in the event of death of their parent or guardian; To evolve procedure for the appointment of guardians and trustees for persons with disability requiring such protection; To facilitate the realization of equal opportunities, protection of rights and full participation of persons with disability; and To do any other act which is incidental to the aforesaid objects.



General legal provisions relating to the disabled in Constitution of India

The Constitution of India applies uniformly to every legal citizen of India, whether they are healthy or disabled in any way (physically or mentally)

Under the Constitution the disabled have been guaranteed the following fundamental rights:

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; 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; 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, bathing ghats, 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; 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; 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; Every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution; 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); 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; 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; No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group; No Disabled person will be deprived of the right to the language, script or culture which

he has or to which he belongs; 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; 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; 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.

Provisions in Education

The right to education is available to all citizens including the disabled. Article 29(2) of the Constitution provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language; Article 45 of the Constitution directs the State to provide free and compulsory education for all children (including the disabled) until they attain the age of 14 years. No child can be denied admission into any education institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language.

Health Laws

Article 47 of the constitution imposes on the Government a primary duty to raise the level of nutrition and standard of living of its people and make improvements in public health - particularly to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to one's health except for medicinal purposes; The health laws of India have many provisions for the disabled. Some of the Acts which make provision for health of the citizens including the disabled may be seen in the Mental Health Act, 1987.

Family Laws

Various laws relating to the marriage enacted by the Government for different communities apply equally to the disabled. In most of these Acts it has been provided that the following circumstances will disable a person from undertaking a marriage. These are: Where either party is an idiot or lunatic, Where one party is unable to give a valid consent due to unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for procreation of children', Where the parties are within the degree of prohibited relationship or are sapindas of each other unless permitted by custom or usage, Where either party has a living spouse



The rights and duties of the parties to a marriage whether in respect of disabled or non-disabled persons are governed by the specific provisions contained in different marriage Acts, such as the Hindu Marriage Act, 1955, the Christian Marriage Act, 1872 and the Parsi Marriage and Divorce Act, 1935. Other marriage Acts which exist include; the Special Marriage Act, 1954 (for spouses of differing religions) and the Foreign Marriage Act, 1959 (for marriage outside India). The Child Marriage Restraint Act, 1929 as amended in 1978 to prevent the solemnization of child marriages also applies to the disabled. A Disabled person cannot act as a guardian of a minor under the Guardian and Wards Act, 1890 if the disability is of such a degree that one cannot act as a guardian of the minor. A similar position is taken by the Hindu Minority and Guardianship Act, 1956, as also under the Muslim Law.

Succession Laws for the Disabled

Under the Hindu Succession Act, 1956 which applies to Hindus it has been specifically provided that physical disability or physical deformity would not disentitle a person from inheriting ancestral property. Similarly, in the Indian Succession Act, 1925 which applies in the case of intestate and testamentary succession, there is no provision which deprives the disabled from inheriting an ancestral property. The position with regard to Parsis and the Muslims is the same. In fact a disabled person can also dispose his property by writing a 'will' provided he understands the import and consequence of writing a will at the time when a will is written. For example, a person of unsound mind can make a Will during periods of sanity. Even blind persons or those who are deaf and dumb can make their Wills if they understand the import and consequence of doing it.

Labour Laws for the Disabled

The rights of the disabled have not been spelt out so well in the labour legislations but provisions which cater to the disabled in their relationship with the employer are contained in delegated legislations such as rules, regulations and standing orders.

Case law on Disability Rights

Supreme Court Cases

Deaf Employees Welfare Association v Union of India¹: This petition was filed seeking a Writ of Mandamus directing the Central and state governments to grant equal transport allowance to its government employees suffering from hearing impairment as what was being given to blind and other disabled government employees. The allowance given to the hearing impaired employees was significantly lower than the allowance granted to other employees with disabilities.

¹Civil Petition 107 of 2011, decided on December 12, 2013

² (2013)2 SCC 772.

³ 2009 (9) SCC 1.

⁴Misc Bench No. 5622/ 2010, order dated 17 June 2010 (Allahabad High Court).

⁵ W.P. 35969/2010, judgment dated 29-09-2011 (Karnataka High Court).

Union of India v National Federation of the Blind²: This was an appeal from the decision of the Delhi High Court wherein a public interest petition had been filed which sought the implementation of Section 33 of the Act alleging that the appellants herein have failed to provide reservation to the blind and low vision persons and they are virtually excluded from the process of recruitment to the Government posts as stipulated under the said Act.

Suchita Srivastava v. Chandigarh Administration³: This case was with regard to the reproductive rights of a woman with mental retardation residing at a government run welfare institution in Chandigarh who became pregnant due to a rape by an in-house staff and who wanted to keep the baby and carry on the pregnancy to full term. The Chandigarh Administration filed a petition in the high court seeking permission to terminate her pregnancy under the Medical Termination of Pregnancy Act, 1971 ("MTP Act") on the ground that she was not capable of carrying on with the pregnancy and would not be able to look after a child. Although the expert body found that the woman had expressed her wish to bear her child, the high court directed the termination of the pregnancy. The woman, through an amicus, appealed to the Supreme Court and one of the main issues before the Supreme Court was regarding the legal capacity of a woman with mental retardation to decide on her pregnancy.

High Court Cases

U.P. Vishesh Shikshak Association v. State of U.P.⁴: The Petitioner Association had filed a public interest petition before the Allahabad High Court contending that the pupil-teacher ratio so far as specialised teachers and children with disabilities was concerned was not adequate and claimed that the government circular on Integrated Education for Disabled Children Scheme mandated a pupil teacher ratio of 8:1. It also claimed that the Rehabilitation Council of India Act, 1992 imposed a statutory duty on the State to make arrangements for adequate number of teachers for persons with disabilities.

Manjunatha v. Government of Karnataka and Others⁵: In this case, the petitioner, who was completely blind sought to apply for the B. Ed. Course under the government quota of seats in Karnataka. However, he was denied admission by reason of the condition that persons with disability greater than 75 per cent would not be eligible for admission. The announcement issued by the respondent permitted applications from persons with disability but restricted it to such applicants who had a disability exceeding 40 per cent but below 75 per cent.