

Rights of Persons with Disability a Human Right Perspective

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I. INTRODUCTION

The disadvantaged groups are the most vulnerable sections of the society as their rights are frequently violated by other groups of the people. Among all, disable persons are the most neglected vulnerable group. For a long time they have experienced discrimination, prejudice, neglect and exclusion, in every walk of life. In pre-modern societies the disabled people were eliminated through killing programmes and sterilization and were considered as non-persons and second-class citizens¹. Systematic exclusion and discrimination of people with disability has no rational basis, but rests solely on the prejudices and indifferences of the able bodied persons. Disability causes social stigma, because the condition of disability is considered as ‘undesired different ness’ from socially defined norms of normality². Theories of natural law say individuals are entitled to certain immutable rights as basic human rights, which are available to him from the inception of his life. It is very important for every civilized society to secure the rights of citizens in all stages of his life, irrespective of his sickness, inability to do work, unemployment, widowhood or old age etc.; though these rights are ultimately deriving from the inherent dignity of a human being. So the person with disability are entitled to full range of human rights like any other sections of the society. But the society and its institutions are designed for the normal individuals and not for the persons with disabled. For which they are regarded as object of charity rather than subjects of rights. Fortunately the worldwide disability rights movement has initiated a new thinking among non-disabled persons that people with disabilities must also be provided with equal opportunities and equal treatment of society, thinking that there is no pity or tragedy in a disability and that is a myth that being disabled is difficult.³

II. MEANING AND DEFINATION:-

In general disabled is a person whenever he or she does not have ability to perform his activity in a manner considered normal for a human being. Section-21 of the Persons with Disabilities Act of 1995 of India defined the disabled persons as a person suffering from not less than 40% of any disability as certified by a medical authority. It further defines disability as blindness, low vision, leprosy cured, hearing impaired, locomotive disability, mental retardation and mental illness⁴. The United Nation Declaration on the Rights of Disabled 1995, para-1 describes disabled persons as one, who as a result of deficiency is unable to ensure himself or herself the necessities of normal life, in his or her physical or mental capabilities. The World Health Organization defines disability as “a person is limited in his activities or restricted in his contribution to life in society in long term, as a result of alteration of one or more physical sensory, psychological functions constitute disability.”

III. BARRIERS FOR THE DISABLED PERSON:-

In real practice the people feel disabled not for their physical or mental handicaps, but for the barriers, which the society chooses to put up, which make them disabled. The barriers are as follows:

- (1) **Environmental barrier**: - It includes the inaccessible public and private Buildings, shops, schools, colleges, offices, transport services, information and communication system etc. This makes them uncouncted section of the society.
- (2) **Institutional barriers**: It includes exclusion and segregation of this community from various social institutions including education, employment, health, recreation etc. and prevented them from taking full advantages of their institutions, which put them under development.
- (3) **Attitudinal barriers**: This is a most important barrier. The society looks them as object of charity, sympathy, aggressive, tragic etc.

RIGHRS OF DISABLED PERSON:-

Though the disabled persons are human beings they should entitled to enjoy all legal attributes inherent in human beings and hold some specific rights. The rights of persons with disabilities are now based on international Human Rights standard. It is directed towards promotion and protection of human rights of persons with disabilities. Some important rights of disabled persons are as follows:

- (1) **Right to life:** The right to life and human dignity is the most important among all human rights. Most of the social and economic rights set forth in the Universal Declaration and many other international instruments are based on these inalienable rights. In India, even though human dignity is not an enumerated right. But the Supreme Court has interpreted it is an essential ingredient of Right to life and personal liberty guarantee under Art. 21. Every act, which offends or impairs human dignity has been interpreted as constituting deprivation of right to life⁵. From the time immemorial the disabled people are fighting against the society for their rights and entitlements even also they struggled to bear. In India under Medical Termination of Pregnancy Act-1971 a pregnancy could be terminated by a registered medical practitioners, if there were a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. If it is allowed to be continued, it becomes a threat to their right to life itself. If the termination of pregnancy occurs without considering the nature and extent of their disabilities then it should be treated as the violation of right to life.
- (2) **Right To Education:** Education is the most social right, which everyone seeks to obtain in his life, because without it one cannot fully participate in a democratic process and live as a dignified man in society. The Convention on the Elimination of All Forms of Discrimination Against Women and various other international conventions adopted by General Assembly in the year 1966 recognized and protected the educational right of the disabled people. In spite of large measure to ensure education to those people, there are no effective measure for access to education. In the absence of such measures there is a no meaning in giving educational right to disabled people. In order to make this right more effective, as far as possible, education should be provided in the ordinary school system, without any discrimination against handicapped children or adults. The standard rules of equalization of opportunities for person of the disability also recognized the obligation of the state to provide equal primary, secondary and tertiary educational opportunities for persons with disabilities.⁶ So, there should be alternate learning strategies, assessable physical environment or other reasonable accommodation to ensure the full participation of students with disabilities.

(3) Right To Employment:

Right to employment of the disable person is divided into two categories -:

- (a) Right of the disable person to secure employment and
- (b) The rights of persons becoming disabled during Employment.

So far as the rights of first kind are concerned, section-33 of the person with disability Act provides for 3 % reservation of vacancies for person with disability. As per section-36, where any recruitment year, any vacancy under section-33 cannot be filled up by any other person due to non-availability of suitable candidates with disability and the vacancy is to be carried forward to the succeeding recruitment year.

If these provisions will effect strongly then the general misconception among non-disabled, upon the person with disability will fade slowly.

In the context Delhi High Court In LIC of India Vs. chief Commisioner⁷ dismissed the appeal of LIC and said person with 45% disability will be perform his duty as a peon and directed to LIC to employ the disable person. So far as the rights of second kind is concerned section-47 deals that no establishment shall dispense with or reduce in rank of an employee, who acquires a disability during his service if he is not suitable for the post he was holding then he is to be sifted to some post with same pay scale and service benefit. Recently the Supreme Court in Kunal Singh vs. Union of India⁸ held that section 47 must be interpreted liberally so that the object and purpose of the Act Via equal opportunities to the disabled persons, protection of their rights and full participation is advanced. The court noted that an employee who is disabled during employment, if not protected, would not only suffer himself, but possibly all those who depended on him would also suffer.

(4) Right To Healthcare:

A person suffering from HIV/ AIDS also suffer from a disability not included in the definition under the Act. Fortunately right to health care of the disabled. In India can be provided under article-21 of the fundamental right to life of the constitution. In M.C. Mehta Vs Union of India. The Supreme Court observed that the right to life under Article 21 also encompassed the right to good health. The courts the reform have a ready percent to provide the disabled recourse in case. They are prevented in any manner from accessing health and medical care services owing to their disability.

(5)Right To Equality:

So far as the disable people are concerned the principle of equality that all human beings are equal in their self worth, dignity and autonomy would be false. That means the vision of formal equality will do nothing for people with disabilities. They demand the concept of equality in which the society should undertake special efforts in order to equalize opportunities for them.

The constitution of India also guarantees right to equality for all its citizens. It provides that there shall be equality before law. Any kind of discrimination affecting equality is prohibited under Article 15 and of the constitution. The apex court has affirmed this point in *Indira Sawhney Vs Union of India*. Here the Supreme Court has examined the legality of reservation in favour of disables that are not clearly covered under Article-16 of the constitution.

PROTECTION OF RIGHTS OF DISABLED PERSON INTERNATIONAL APPROACH:-

International awareness for the protection of rights of person with disability started in 1969 with the adoption of the declaration on social progress and development by the UN General Assembly. After that in 1975 The General Assembly adopted the declaration the rights of person disabilities, which proclaimed the civil and political rights of disable person. Then in 1976 the General Assembly declared that year 1981 will be the international year of the disabled person and called for a plan for action at all levels and out come of this was the formulation of the world programme of action concerning disabled, adopted by the General Assembly in 1982. For implementing the activities recommended in the world programme of action the General Assembly proclaimed 1983 to 1992 as the United Nations Decade of Disabled persons.

On the basis of experience gained during the Decade of Disabled person (1983-1992), The General Assembly adopted the Standard Rules on the equalization of opportunities for person with disabilities in its 85th plenary meeting on 20th December 1993.

PROTECTION OF RIGHTS OF DISABLED PERSON INDIAN APPROACH;-

India is a signatory to the proclamation on the Full participation and Equality of people with disabilities in the Asian and the pacific Region, which was adopted at the meeting to launch the Asian and Pacific Decade of disabled (1993-20002) convened by the Economic and Social Commission for Asia and Pacific at Beijing on 1st December, 1992. To implement the proclamation of Rights and Full Participation) Act, 1995 (the Act) was enacted with effect from 1st January 1996.

The Constitution of India does not specifically proscribed discrimination on the ground of “disability” but it does 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 person 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 of “non-discrimination” and “reasonable differentiation” Further, the judiciary has played a commendable role over the years in transcribing the principles articulated in the Constitution and other laws into reality.

IV. CONCLUSION

All the nation and international initiatives for the protection of rights of disabled people can be identified as a welcome step towards elimination of discrimination can be identified as a welcome step towards elimination of discrimination on the ground of disability. This is intended to eliminate the social, economic and cultural isolation of the disabled people. Apart from this all nations should include in their general development plane, the immediate measures for the prevention of disability, for the rehabilitation of disabled persons and also provide equal opportunity for them. Because the disability itself is human rights issues and it must be released that disabled are also an integral part of the society and every effort must be made to involve them in the development of the society.

Legal predications, judicial pronouncements and constitutional preferences only elucidate the imperative. The law alone cannot guarantee integration. To constitute integration firm policy decisions, action plane is needed to implement the provisions of the enactment.

Besides, there is also a need to recognize that problems do not reside in a person with a disability, but are a result of structural practices and attitudes that prevent an individual from exercising his or her capabilities.

The time is now ripe for ‘social innovation’, that is, the normalization, integration, equalization and inclusion of the disable person. Restorative, rehabilitative, and participative support with dignity is needed to bring the disabled person back into the mainstream.

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