RIGHTS OF PERSON WITH SPECIAL ABILITIES UNDER THE DISABILITIES ACT, 1995: A CRITICAL ANALYSIS

A SUMMARY OF THE THESIS

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SUMMARY OF THE THESIS

Introduction

The problems of the disabled and their rehabilitation had occupied my mind ever since I became aware of my environment and my place in it as a toddler. While sitting in the lap of my mother, I watched the birds, the bees and the butterflies flying; cats, dogs, rabbits and squirrels frolicking; children running, skipping, and chasing each other. The ball bounced and rolled; the cars sped splashing the rain water; the trains and airplanes seem to shake the ground and the air on way to distant lands. The movement of all the things animate and inanimate fascinated me, as if motion was synonymous with life. I would wriggle out of the hands of my mother to go and be a part of this dynamic and pulsating world. But there was a difference. The birds had wings; cats had paws, the little girl skipping rope. Had the feet, I had none of these. I was disabled, born without feet. I fancied moving around the world on the strength of my lower legs, 'fibula' and 'tibia'. But in place of bones, there was only a vacuum where there existed no flesh and blood proclaimed my doctors! However, after a few amputations, they found a way out for me: my 'knees' became the answer to my physical existence. For some time, I carried my load on knees and could start my odyssey in order to explore the world around me, combining my physical and mental faculties.

The process of amputations and surgeries eventually culminated in the fitting of artificial legs. This 'acquired mobility' prompted me to make an attempt to improve my lot. The best way to do this, I thought, was to receive the best education as was possible under the circumstances my restricted movement meant time off the play ground, and more hours at the study table. Fortunately, managed to do reasonably well almost in all the examinations, I took. My academic achievements enabled me to join the as a law lecturer. Henceforth, the impulse to contribute to the society in some significant way impelled me to think further and afresh. My contact with the mundane affairs made me realize that there are many more in the world, which are beyond orthopedic limitations and are impaired visually, orally or by hearing and the spectrum continues. It was at this juncture that an idea occurred to me that it was the psyche, and not the physical disability itself, that had something to do with state of being handicapped. Here, then,
was a chance to do 'something' what at times I feel was my destiny. Yes, disability in all its manifestations! I should be studying.

One of my teachers, with whom I shared my agony and ecstasy, understood me, and my hopes and aspirations. He made me believe that I was one of the "most qualified" candidates to handle the theme on disability, because "I am living with disability". Dr. Rattan Singh graciously agreed even to formally supervise my work in this area at the doctoral level. He provided me valuable leads in this rather unusual area of disability. Consequently, the array of thoughts on disability eventually became the focus of my doctoral thesis.

It is my hope that the research findings, in the light of my own 'experienced' disability, would bring about awareness among the government, the society and the disabled themselves about the problems and issues related to disability. I am also sanguine, that the research findings, conceptualized in the background of 'spiritual humanism' would rekindle the feelings of brotherhood, sympathy and co operation, leading to humane but practical dimensions of rehabilitation of the disabled in India.

Although until relatively recently, the State concern towards the rehabilitation of the disabled was conspicuous by its absence, yet in the traditional literature, especially relating to Hinduism, Buddhism and Jainism, we find many provisions for the infirm and the handicapped. Under the sway of values and in the name of pity, the disabled were taken care of by the family, the neighbors, and the fellow-citizens.

However, the State became an involved agent in the rehabilitation of the disabled, particularly after the Second World War. The Christian missionaries also joined the rehabilitative ventures. This led to the setting up of a few institutions and organizations during the pre-independence era.

After independence, it is sad to note, the State concern for the disabled did not figure anywhere in the agenda of priorities in the first three Five-Year Plans! That such problem exists as a separate category was realized only during the formulation of the Fourth Five-Year Plan. Even at this stage the efforts made for the welfare of the disabled were at the most piece-meal and lacking momentum in the face of non-
availability of sufficient financial resources and an ambivalent attitude both at the Centre as well as State level. For example, there was a difference of opinion regarding who should be responsible for the working for the upliftment of the disabled—the Government or the voluntary organizations, or whether there should be separate schools for the disabled or they should study along with the normal children in the already existing education system. Yet another quandary which was faced was whether or not there should be separate homes/institutions for the disabled.

The State, however, became alive to the problems of the disabled in 1981, on the eve of the International Year for the Disabled Persons (IYDP) a declaration by the United Nations. The ideas, concepts and activities slowly started trickling down to India. The United Nations came out with its Action Plan for the Year-1981. India, too, formulated a National Plan of Action, which, in turn, inspired the State Plans of Action. One did witness some activity as a part of the celebrations of the Year. Some institutions and organizations were set up both at the central and state levels. Some more were promised to be established. The loose ends of the thread were picked up during the Decade for the Disabled (1983-1992). This did help us in creating conceptual and legal bases for the welfare of the disabled. It also helped to bring about clarity of thought in contrast to the confusion that had prevailed earlier. Interaction with international organizations enabled us to adopt new concepts, techniques and strategies.

But still there remains a lot to be done. The wide gap between the developmental activities relating to the disabled becomes evident when we compare their conditions in the advanced countries to those of in India. The disabled in the western countries, for instance, have been encouraged to participate and excel in sports as is evident from the Paralympics held in Atlanta, whereas such a happening seems to be just a dream for the disabled in India.

It is pity to note that even a systematic authentic census of the disabled in India does not exist. Consequently, different sources mention different figures. For example, the recent data about the disabled released by the government puts their number at or around sixteen million; whereas the various organizations of the disabled claim their number to be more than 80 million. Such a wide gap is a serious reflection on the quality
of policy and programmed adopted for the welfare of the disabled. Another equally important thing that seems to have been overlooked to a great extent is the proper utilization of means of mass-communication to create awareness among the public about the problems of the disabled and solutions thereof. One finds that the mass-media is not yet tuned to play its part in effecting a meaningful integration of the disabled into society.

However, it is heartening to note a sudden spurt of research and developmental activities related to the disabled in the closing years of the present century. But once again the stimulus has come from outside the international community. In the light of a commitment made by India at the Beijing Meeting for the preparations for the Asia-Pacific Decade of the Disabled (1993-2002) some headway has been made. The most important thing to happen in this direction has been the enactment of “The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act”, 1995, by the Indian Parliament. The Act came into operation with effect from January 1, 1996.

But the mere passing of the Act is not sufficient. It is to be translated into action in letter and spirit. A perusal of the provisions of the Act shows that our legislators have finally been able to perceive the problems of the disabled. They have attempted to remove some of the socio-legal impediments which had hitherto plagued all efforts of the state and the society to ameliorate the conditions of the disabled. On the whole, the Act appears to be a bold step in the direction of a comprehensive legislation for the disabled. For the planners, it constitutes a significant policy document outlining philosophy, methodology and scope of rehabilitation. To what real extent the Act results in ameliorating the conditions of the disabled in India still remains to be seen.

It has to be remembered that successful rehabilitation has to be broad in scope, practical in purpose and integrated in practice. It cannot go forward without general participation. It requires the respect and co-operation of all those concerned, and also a socio-legal milieu conducive to the success of the efforts being made and to the fulfillment of the hopes and aspirations of the disabled. The people should be made to realize that rehabilitation is the best practical demonstration of one's faith in his fellow men.
In the present study, an effort has been made to conceptualize and differentiate such key terms as impairment, disability, handicap and rehabilitation. We have then, examined the nature of the problems encountered by the disabled physical, educational, economic, vocational and Psycho social. We have also discussed the constitutional and legislative frame-work within which all the activities take place, besides reviewing the plethora of executive measures undertaken for ameliorating the conditions of the disabled.

The working of different institutions and organizations has been examined so as to remove bottlenecks and make them more efficacious. The aims, objectives and principles lay down by national and international declarations, resolutions and meetings, etc. have been studied to find out the relative position of India, and also how and to what extent she has been inspired and led by these. The ideas, concepts and activities generated in the wake of the International Year and the Decade for the Disabled Persons have been dealt with at length. An effort has been made to assess the work done by the government both at the national and the state level. Following the critical

Review, eventually we have attempted to cull a few suggestions for the policy-makers which, in author’s view, would further sharpen the focus of efforts towards the meaningful rehabilitation of the disabled by removing some of the socio-legal shortcomings.

An effort has been made to cover as much material as possible during the course of present study. However, doing full justice to as vast a subject as this is a task which is not possibly accomplished in the present work. How I wish, I had been able to visit all the places, meet all the people/officials. I wanted to search still more and more literature and spend still many more number of hours on the library shelves. But, may be, I have to be contented with what I have done within the range of my 'own disabilities'.

Significance of the Study

The impact of new legislation on old and deep seated discriminatory practices and attitudes against disabled people would take along time to be felt. Disability is essentially a social construct and reflects a flaw in the thinking processes of our
society. The person with polio does not have a problem; the problem is rather with the building which prevents his wheelchair to get inside or with the bus which stops him from riding in it or the taxi driver who ignores him on the roadside. The new law has given boost to the self-esteem of every disabled person in the country. The law is important since it liberates a disabled person. He/she should have ample opportunities to change his/her life rather than to remain dependent on others. Feelings of anger, frustration and self-disgust will gradually get replaced by competence, independence and health. Disabled people need no longer waste their energy in fighting oppression and discrimination but instead should invest them in improving the world around them.

New law should create an accessible society through not just the buildings and footpaths and railway platforms but the hearts and minds of Indian people will become more receptive, more open, more unbiased. The law could not have been enacted if lawmakers and those who formulate policies did not really care for disabled people with the enactment of the Law more and more people will pay attention to the real problems of disabled people because the law asks something from each and every Indian, whether disabled or not. This law, and its effective enforcement, will benefit the entire society and therefore it is imperative that all of us do our best to make it work. The law talks of independence, dignity and security. Disabled people have always experienced exclusion and segregation. They have been prevented from using opportunities to make contribution to society with their fullest capacity. The law offers them equal opportunities. Now that the law has been enacted, the issues before the advocacy groups are different and the government agencies and NGOs must find new ways of serving disabled people.¹ Measures to prevent and diagnose disabilities must be re-strengthened. There are a large number of children with disabilities who are unable to attend schools or are actually barred from classes. Unemployment of people with disabilities shall remain a mighty challenge for quite some time. The responsibility for improving job outlook for these people rests with society. Economic independence is essential for people with disabilities to become active and useful members of our society.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 establishes responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment.

Objective of the Study

1. The objective of disability policy must be a society that enables people with disabilities to participate fully in the life of the community.
2. The efforts should pursue the following national objectives:
   (i) A social community based on diversity
   (ii) A society designed in a way that allows people with disabilities of all ages, full participation in the life of the community.
   (iii) Equal living conditions for girls and boys, women and men with disabilities.
3. Making it possible for young people and adults with disabilities to lead independent lives and to make decision that affect their own lives.
4. Identifying and removing obstacles to full participation in society for people with disabilities.
5. Access to the transport system should be continuously improved and should be taking into account in all planning and procurement procedures involving the infrastructure, means of transport, traffic and other services.

The highlight of the Act is that it gives statutory recognition to the policy of three per cent reservation in all Group ‘C’ and ‘D’ posts and has extended the reservation to Group ‘A’ and ‘B’ posts also. The Act declares that the State shall progressively ensure that every child with disability has access to free education.

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until the age of 18 years. Until now the provision of free education had been restricted to children below 14 years.\(^4\)

The Act has several provisions to ensure equal opportunities, protection of rights and full participation of disabled people in mainstream activities of the society. The State has been entrusted with the responsibility to prevent disabilities, provision of medical care, education, training, employment and rehabilitation of persons with disabilities.\(^5\)

Furthermore, it provides that implementation of the intentions and provisions of the Act shall be done through constituting of coordination committees at the Central and State levels with the Welfare Minister as the chairperson and officials of ministries and departments concerned,\(^6\) NGOs working with and for disabled people and eminent people with disabilities as members to coordinate disability-related activities of the Government, NGOs and others.

The Indian disability law treats disability as civil rights rather than a health and welfare issue. The law recognizes the importance of consultation with disabled people on issues, which directly or indirectly affect them.\(^7\)

As judicial response is essential to enforce the provisions of any Act, the question, which arises here is, what is the trend of response of the Indian judiciary towards this Act? There has been a gradual rise in the response of the Indian judiciary to this law. The next section tries to show the trend in the judicial response by referring to some important decisions in this regard.

Before the enactment of this Act, one got to see a very feeble response of the Indian judiciary regarding human rights of the persons with disabilities. But, still one can find that the judiciary was influenced by the shift to a rights-based


perspective on disabilities. In this regard, one could refer to the case of D.N. Chanchala v. State of Mysore.\(^8\)

Though, this case involved the issue of reservation of seats for various categories of persons and classification on university basis under Articles 14 and 15(4) of the Constitution of India,\(^9\) but the Hon’ble Supreme Court tried to extend the equitable principle of preferential treatment under Article 15(4) to persons with disability to bring them in the mainstream by giving them equal opportunity in the field of education.

In National Federation of Blind, U.P. Branch v. State of U.P.\(^10\) the question to decide before the Allahabad High Court was, whether the Lucknow Development Authority\(^11\) while giving preference for allotment of plots and houses to blinds and other handicapped persons, should also accord in the rates of the land?

The Court referred to Section 43 of the PWD Act,\(^12\) which provides for scheme for preferential allotment of land for certain purpose. The Court ordered the respondent to not only give preference in the matter of allotment of land and houses to handicapped persons, but also to provide concessional rates to handicapped persons.

In Javed Abidi v. Union of India\(^13\) the petitioner’s grievance was that there was lack of facilities like providing aisle chair and ambulift by Indian Airlines.\(^14\) The petitioner contended that it was a social obligation of the Airlines and the Airlines must provide these minimum facilities to permit easy access to the disabled persons, particularly those who are orthopedically impaired and suffer from locomotor disability.

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\(^8\) (1971) 2 SCC 293


\(^10\) AIR 2000 All 258


\(^13\) (1999) 1 SCC 467

The major grievance of the petitioner was that Indian Airlines was not giving any concession to such disabled persons for their movement by air even though such concessions were given to blind persons, who were also disabled persons under the Act.

The Court held that those suffering from locomotors disability to the extent of 80% and above would be entitled to the concession from Indian Airlines for travelling by air within the country at the same rate as has been given to those suffering from blindness on their furnishing the necessary certificate from the Chief District Medical Officer to the effect that the person concerned is suffering from the disability to the extent of 80%.

But, attention must also be paid to the lacunas in the Indian disability law, which has forced the petitioners to knock the doors of the court of justice after the enactment of this Act. The following section tries to critically evaluate this Act in the terms of the definition of “disability” and problems in implementation.

Research Methodology

The present study is primarily a doctrinal study. The researcher will go through various books, journals, articles and newspapers on the subject for the purposes of collecting literature for the study. The researcher will go through various libraries of various universities and also collected data from internet.

The researcher is concentrating on doctrinal research due to the physical restraints. The lack of facilities has discouraged the researcher to go for Empirical research that is why the researcher is relying on the material available for the doctrinal research.

In the light of our review of the various provisions discussed in the preceding chapters, a few general proposals and some specific suggestions have been culled which are otherwise lying embedded in the context. These should, it is hoped, serve as an instant critique of policy formulations.

General Proposals

a. Idle manpower of the disabled is a recurring loss to the community, both in terms of its being direct burden and non-productive. Prevention of disability and the rehabilitation of the disabled, thus, require top priority.

b. Primarily, it is the Ministry of Social Welfare which is burdened with the responsibility of providing all sorts of services to the disabled. Instead, Ministries of Education, Health, Labor, Home, Industry, Science & Technology, Law & Legal Affairs and Agriculture & Rural Development, should all join in the venture, with the coordinating power vesting in the Ministry of Social Welfare.

c. There is a need to develop indigenous aids and appliances, and equipments, which would facilitate the training, employment and the rehabilitation of the disabled.

The disabled themselves should be involved in the identification of their peculiar problems which could constitute the basis of on going research in our national laboratories manned by motivated scientists, technician’s engineers, research workers and other specialists in different fields. Attempt should be made to change the societal attitude of pity towards the disabled, and the attitude of the disabled towards themselves as being burden” on society. Both these are destructive of self-reliance.

Specific Suggestions

Re Employment

a. Special Employment Exchanges

These are fewer in number (22 in all) and still much less efficacious in operation because the over-whelming private sector ignores the disabled with impunity.
If 'the chances of the disabled for realistic employment are to be improved, employers covered under the Employment Exchanges (compulsory Notification of Vacancies) Act, 1959, should be compelled to recruit the handicapped persons against all available vacancies for which they are eligible. (Such a compulsive measure can be created through suitable amendment of the rules.

b. **Vocational Rehabilitation and Rural Extension Centers**

At present there are only 16 Vocational Rehabilitation Centers and 11 Rural Rehabilitation Extension Centers to cater the needs of the disabled in India. These are too-inadequate to meet the needs of millions of disabled accordingly; increased budget allocation is needed for the creation of the requisite number of vocational centers.

c. Support to the disabled, especially the mentally ones, and persons with severe multiple disabilities, within the family should be preferred to the outside institutional arrangements. This may be thought of, say, in terms of providing employment to at least one closest eligible member of the family of such disabled.

d. Reservation of jobs for the disabled should be done at all levels, because there seems to be no rational in restricting such a provision only to jobs in class III and class IV categories.

e. The D.G.C. circular of 1976, directing the universities and colleges to consider the cases of the blinds seeking teaching positions with 'utmost sympathy’, needs extension so as to cover all categories of the disabled persons.

f. The pre-employment apprenticeship training scheme for the disabled under the Apprentices Act, 1961, needs strengthening by creating an obligation on the industries to absorb the product of such training as regular employees.

g. The absorption of certain percentage of eligible disabled in the private sector should be made a condition precedent for the entitlement of public loans.
h. The existing provision of posting the disabled employee near his place of residence should be modified to the extent that the spouse of such disabled is also posted at or near his place of work/residence.

**Re Economic Benefits**

a. Every financial assistance given to the disabled in the form of scholarships, stipends, loans, allowances, and other monetary concessions should be linked up with the rice index, and, reviewed periodically.

b. The procedures to enable the disabled to avail themselves of various economic benefits are rather tedious and therefore, need rationalization in all such respects as the issuance of identity cards, medical certificates, and the like.

c. The obligation of the employer towards the worker, who is disabled during the course of employment should include not merely to provide one-time lump sum compensation under the Workmen's Compensation Act, 1923 but also to provide placement depending upon his or her residua potentials.

**Re Policy-Making**

a. There is a need to maintain a national register; requiring compulsory registration of all the disabled, along with the nature and magnitude of their disability for a systematic planning towards their betterment.

b. There is a need for a periodical review of the policy programmes by the Legislature in the light of the input data reflecting the current state of the disabled.

c. The involvement of the disabled themselves in the policy formulations, both directly and indirectly, is consistent with the democratic approach. This idea should find a concrete manifestation by providing organizational representation of the disabled at various levels of policy making forums.
Re Awareness

a. Re-orientation of the society including the disabled themselves through wide publicity is necessary in the light of the social philosophy underlying the new approach to the problem of the disabled and their welfare.

b. Publications, meetings and conferences, seminars and symposium on the theme of disability, should be encouraged so that disabled and those involved in the rehabilitation process could have a meaningful exchange of experiences.

c. A publicity campaign should be started to educate the disabled about the existing facilities and procedures contributing towards their meaningful existence.

Re Education

a. Free-education, which is specially made available to the disabled, should not be restricted either to a particular level of education or up to a particular age. They should be allowed to continue to explore potentials to the fullest possible extent.

b. A disability related theme, in its varying manifestations, should be incorporated in the educational curriculum at least up to high-school level.

c. Inter-disciplinary research projects dealing especially with the prevention and rehabilitation of, the disabled should be encouraged at higher levels of research through the allocation of separate grants.

Need for Legislation

The world for and of the disabled is changing at a rapid pace and the aspirations as well as expectations of people are also changing as fast. Advances in medical and surgical sciences, breakthroughs in technology, greater understanding of the causes of disability and improved methods of coping with it, increasing consciousness of civil rights and the emergence of people with disabilities displaying skills and knowledge to improve their own lives, are some of the factors which have contributed to the new thinking that the disabled deserve a dignified status in society on the same terms as the
non-disabled. Disabled people are a vast minority group which has been subjected to direct and indirect discrimination for centuries in most countries of the world, including India.\(^{18}\)

**Charity to Rights**

The human rights movement has boldly and categorically shifted the attention of policy makers from the mere provision of charitable services to vigorously protecting their basic right to dignity and self-respect. In the new scenario, the disabled are viewed as individuals with a wide range of abilities and each one of them willing and capable to utilize his/her potential and talents. Society, on the other hand, is seen as the real cause of the misery of people with disabilities since it continues to put numerous barriers as expressed in education, employment, architecture, transport, health and dozens of other activities.\(^{19}\)

In a country like India the numbers of the disabled are so large, their problems so complex, available resources so scarce and social attitudes so damaging, it is only legislation which can eventually bring about a substantial change in a uniform manner.\(^{20}\) Although legislation cannot alone radically change the fabric of a society in a short span of time, it can nevertheless, increase accessibility of the disabled to education and employment, to public buildings and shopping centers, to means of transport and communication. The impact of well-directed legislation in the long run would be profound and liberating.\(^{21}\)

**Anti-Discriminatory Law**

Disabled people in India, as elsewhere, deserved comprehensive legislation to cover all aspects of their lives. They need legal power to directly tackle the blatant, and more importantly, the discreet discrimination against them.


The new Act, Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 represents the culmination of years of hard work behind the scenes, countless hours of consultation between officials of Ministry of Welfare and of other Ministries and experts/organizations working with and for disabled people, campaigning by disability activists for a better deal for disabled people. The more we discussed the problems of disability and the barriers society puts up to highlight them with knowledgeable people in India and abroad, the more convinced we became that our best endeavors would not make much progress without a legislative framework which outlaws discrimination. The greatest achievement was to convince people, ordinary men and women as well as politicians from all parties, convinced that disability is a civil rights issue and that discrimination against disabled must be recognised and stopped. Civil rights for disabled were seen as too important to be allowed to become the subject of political disagreements. Rights for disabled people moved up the political and social agenda of the nation. It became news, often on the front pages of the national press. There were several TV programmes, seminars and workshops. Until a coalition was formed, leading NGOs were competing with each other for leadership.

**Partnership in Caring**

The Government, through its comprehensive and just legislation, has taken a lead to support the large community of people with disabilities in India and has provided a framework for the implementation of legal, progressive and economic activities. In addition to the statutory provisions and the services rendered by NGOs, a tremendous amount of informal support is given by the families and friends of the disabled. There are still many voluntary agencies and private enterprises with immense potential to contribute to the creation of a just and caring society in India, without the disabled people’s rights clearly entrenched the law and the over-reaching legislation,

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there could not have been satisfactory progress in changing the age-old attitudes of our society and of improving the quality of life for people with disabilities and non-disabled alike. The disabled should not be dependent any more. They should become an integral part of the society in every way. It is their right and the new law with emphasis on full participation declares, in no uncertain language, that they shall have it.

Mechanisms for Implementation of the Law

Sufficient attention has been paid to matters relating to the implementation of the intentions and provisions of the Act. This shall be done through constituting of coordination committees at the Central and State levels with the Welfare Minister as the chairperson and officials of ministries and concerned departments, NGOs working with and for disabled people and eminent people with disabilities as members to coordinate disability-related activities of the government,27 NGOs and others. Since most of the disabled complain against the discrimination they face throughout their lives on account of their disability, the new Act is designed to eliminate discrimination and create an equal society. It encourages greater involvement of disabled people in the world around them so that they may themselves contribute to improving the quality of their lives. In order to realize the intentions of the Law, disabled people willing to take part in consultative exercises with the planners and providers of services and goods, must be identified, supplied with information on the range of services available and helped to work through existing or new action groups to deal with disability issues.28

Disability Issues Kept Out of Politics

With this long-delayed and much-awaited piece of social legislation, India has succeeded in outlawing discrimination against disabled people. During the Winter Session (1995) of the Parliament when the political parties had locked horns over political and ideological concerns and the business of the Parliament had been

suspended for several days,^{29} disability issues did not lend themselves to become the cause for political division. The support for 90 million disabled people in India^{30} remained the primary concern for all Members of Parliament and no one involved disability in any political controversy and debate. All the lawmakers were determined to give their full support to the Disability Bill. They seemed to have a clear idea on how a civilized society should behave towards those countrymen who are disabled.

In the passing of the law the Parliament has stopped pretending that although disabled people do exist, they can not be included in the priority list of entitlements claimed by non-disabled Indian citizens. The new law demonstrates the undeniable philosophical shift from charity and welfare to civil rights.^{31} Talking down to disabled people in patronizing and paternalistic terms has given way to a language ensuring equality and dignity. Instead of segregation of disabled people there is now emphasis on their full participation and total integration.

**Critical Analysis of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**

**A. Definition of disability in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**

Disabilities are conventionally defined in medical science on a three-point scale established by the World Health Organization in 1980 ranging from impairments, disabilities and handicaps. The World Health Organization,^{32} in its International Classification of Impairments, Disabilities and Handicaps, makes a distinction between impairment, disability and handicap. These three concepts are defined by it as follows:

a. Impairment is “any loss or abnormality of psychological, physiological or anatomical structure or function”. Impairments are disturbances at the level of

the organs, which includes defects in or loss of a limb, organ or other body structure, as well as defects in or loss of a mental function.

b. Disability is a “restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being”. It describes a functional limitation or activity restriction caused by impairment.

c. A handicap is a “disadvantage for a given individual, resulting from an impairment or disability that limits or prevents the fulfillment of a role that is normal (depending on age, sex and social and cultural factors) for that individual”. The term is also a classification of “circumstances in which disabled people are likely to find themselves”.

However, it seems that the definition under Section 2(i) of the Act does not recognize the international classification given by the World Health Organization.\textsuperscript{33} It also seems that the Act has tried to cover every kind of disability under Section 2(i), but in fact the term disability is included in a very narrow sense in the Act.

The definition, in fact, has left some of the important categories, which are included in the term disability world over. According to conservative estimates, approximately 6\% of India’s population is disabled.\textsuperscript{34} And if we go by what the UN officials or various other experts say, the figure could very well be in double digits. After all, Australia does admit officially that 18\% of their population is affected by one form of disability or the other.

The United Kingdom’s disabled population is estimated at 14.2\%, whereas in US it is 9\%. Why are the numbers as high for such “developed” nations as Australia or UK or USA? The answer is quite simple.\textsuperscript{35} Their definition of “disability” is much broader and embracing. For example, in such countries “people with internal conditions” are also considered disabled. These are individuals where the disability is not very visible.

A person with one lung or one kidney or a person with a severe heart ailment would be termed “disabled”. In certain countries, even diabetics are given shade under the umbrella of disability.\(^{36}\)

Such countries and societies are now looking at disability as a social issue and not as a medical one, as is the case in India where disability is a stigma. To be disabled means to be a person without a leg or arm or eye or twisted or worse, crooked! People are ashamed to be labeled “disabled”.

The categories, which may be considered to be included in the definition of “disability”, are:

1. **Difficulty in speaking** - this category of disability is not included in the Act; whereas this category is covered under the scope of disability by the World Health Organization in international categorization.\(^{37}\)

2. **Disability of the internal organs** - It is submitted that the term disability should not only include disability of the external organs, but it should also include disability of the internal organs like kidney, lungs, heart. A person belonging to this category also lacks physical ability to do many kinds of physical jobs.

   Further, it could be said that mental disability directly relates to the brain, which is an internal organ. Thus, disability of an internal organ like brain can be included in the term “disability”; disability related to other internal organs should also be included in the term “disability”.\(^{38}\)

3. **Eunuch** - It is submitted that this category should be considered both at the national and international level to be included in the category of disability. This is a section of human being, which is living a life without dignity. These people are fit physically and mentally.

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So as to say, they are in better condition than other persons with disabilities. This section is deprived of very many human rights and fundamental rights. They are disabled but their disability is not of the character, which prevents them from performing day-to-day functions.

Because of the social stigma attached to them they are deprived of their family property, right to pursue a profession, right to education and right to get a dignified funeral ceremony after death. Their existence as human being is denied just because they are not categorized as male or female.

As a result, they are totally segregated from the human society and the mainstream, because of this they are forced by the circumstances to get involved in antisocial activities and crimes.

4. **Persons suffering from AIDS** - A person suffering from AIDS carry with him a social stigma in the same way as that of a person who is leprosy-cured. AIDS weakens the immunity system of a person, which in turn reduces their normal capacity to work. They are prone to health hazards.\(^{39}\) So, providing special protection is necessary not only for them but also for the society at large.

**B. Problems in Implementation**

Even after the enactment of the Indian Act, the aims and purposes with which the Act was enacted are not served. The reasons are some lacunas in the Indian Act, as well as lack of implementation.

And, these are the reasons why India is lagging behind in the international arena from the country like US, which has enacted the Americans with Disabilities Act, 1990 (hereafter referred as the US Act).\(^{40}\)

It is worthwhile to mention here that, the salient features of the statutes of both countries are similar and seek to provide for education, employment, affirmative action, full participation, non-discrimination, and research and manpower development.

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\(^{39}\) Christoffle Blindenmission (1979): Without Holding Hands, Christoffle Blindenmission, Bensheim.

1. No guidelines as well as deadlines in the Indian Act for the authorities concerned to comply with the provisions of the Act. Section 44 of the Indian Act provides for the special measures to be taken by the establishments in the transport sector, within the limits of their economic capacity and development for the benefit of persons with disabilities.\(^{41}\)

In India authorities concerned are yet to take measures to ensure the implementation of the provision for “accessibility”. The authorities are taking undue advantage of the term “within the limits of their economic capacity”. They have been using this term as a defense to negate the right granted by the statute.

To ensure strict implementation of the provision it is necessary that a deadline must be fixed for the authorities to comply with the provisions of the Indian Act. Whereas, the US Act provides specific guidelines for implementation with effective dates, deadlines, alternate arrangements, temporary relief etc.\(^{42}\)

For example, the US Act provides for the requirements for accessibility under the different provisions and even the manner of compliance. The failure to comply is termed discrimination. When effective dates for implementation are far into the future or cause undue financial burden, the statute has prescribed temporary arrangements.

2. “US Act Watch” is an effective watchdog system to monitor the implementation of the statute. The watchdog system under the Indian Act is not effective. “US Act Watch” has been operational since 1992.\(^{43}\) It reviews and evaluates on an ongoing basis, the effectiveness of all policies, programmes and activities concerning individuals with disabilities.

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Under the Indian Act the Chief Commissioner and Commissioners for Persons with Disabilities are envisaged to be the watchdog bodies with the powers of a civil court. However, very few facilities have been provided to these offices and they thus remain ineffective.

3. ADA requires compliance with affirmative action programmes by all agencies that receive federal assistance. PDA must initiate and sustain affirmative action programmes. Under ADA, government contracts include a clause saying that the contractor agrees to take affirmative action. The contractor must prepare and maintain affirmative action programmes.

If the authorities determine that the above provision has been violated they may impose a variety of sanctions including cancelling, terminating or suspending the contract or debarring the contractor from future contracts.

Under Section 39 of PDA, all government educational institutions and institutions receiving aid from the Government shall reserve not less than 3% seats for persons with disabilities.

Under Section 42, aids and appliances are to be provided to the disabled. Under Section 43, there should be preferential allotment of land to the disabled. However, there is no pressure for compliance with any of these affirmative action programmes and much need to be done.

4. ADA constantly ensures that the disabled are a group “who know what to do when discriminated against”. By 1992, within 2 years of ADA in USA,

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46 Murty, S.P. Gopalan (2005): Workbook on Community Based Rehabilitation Services, Karnataka Welfare Association For the Blind, Actionaid: Disability Division, Bangalore.
47 Narayan, Jayanthi. Organization of Special in a Regular School, National Institute for the Mentally Handicapped, Secunderabad.
approximately 2 million pamphlets or information pieces on the rights of the disabled were mailed out.\textsuperscript{48}

Information on the rights of the disabled should be disseminated through assistance manuals, question-answer booklets, media campaigns etc. Every disabled person and his family should be armed with a manual (preferably approved by the government authority concerned) listing their rights.\textsuperscript{49}

They should know their rights as they encounter day-to-day situations at the railway stations, post offices, cinema theatres, and libraries and as they seek admission to educational institutions or seek employment. Each time they encounter discrimination, there should be agencies assisting them and taking up the issue for them.

5. ADA has a strong research agenda. Research under PDA is inadequate. ADA requires studies to be done on an ongoing basis by the Office of Technology Assessment and National Council on Disability.\textsuperscript{50} The access needs, all forms of boarding options, cost-effective methods are all being constantly studied.

Thousands of projects are continuously taken up aimed at improving the conditions of the disabled. Chapter IX of PDA deals with research and manpower development.\textsuperscript{51} The Chief Commissioner and Commissioners are required to submit reports to the Central Government and the respective State Governments.

However, research is hardly done and reports are never submitted. A strong research agenda is required to study the ways and means of better realizing the rights of the disabled. The reports bring in more accountability.

\textsuperscript{48} National Association for Retarded Citizens, Residential Programming For Mentally Retarded Persons, National Association For Retarded Citizens, Texas.

\textsuperscript{49} Chattopadhyay, Anjana (1986): All India Directory of Educational And Vocational Training Institutes for the Handicapped. Patriot Publishers, New Delhi.

\textsuperscript{50} Mohan, Dinesh (1998): Aids For the Disabled: A Research Bibliography Centre For Biomedical Engineering, New Delhi.

Conclusion

One out of every ten people in India suffers from one form of disability or the other that is they possess physical or mental impairment substantially limits one or more of major life activities. In other words, 90 million of our countrymen live with, and learn to overcome in their own individual ways, problems which non-disabled can seldom understand. The law should enable not only one in ten people but nine out of every ten people to lead their lives to their fullest potential. The law declares that disability need not be an insurmountable handicap as long as it can be properly understood and catered for. The law attempts to eradicate factors which produce low self-esteem in disabled people and empowers them to confront the insensitivity and ignorance of others. The real danger now is that those who had been vigorously demanding its enactment might become complacent and think that the job has been done. The Act must be implemented in schools and colleges, in factories and workplaces, in transport and shopping centers. People with disabilities, and those who care for them, must ensure that discrimination is outlawed and barriers are removed as much from the physical environment as from the attitudes of ordinary people. The real battle for the right to full citizenship and active participation of disabled people is ahead. The Act is comprehensive but must be enforced with sincerity and determination. In conclusion, it could be said that some lacunas and problems in its implementation makes Indian disability law lag behind in the international scenario. Here, the case of Javed Abidi v. Union of India can be referred again, where the petitioner brought the ignorance of the authorities under the Indian Act, to the notice of the Supreme Court. It is ironical to note that every time it takes a court notice for the authorities to start the implementation of the provisions of any legislation. And, it is only to the extent of initiating the process of constituting different committees. As far as the actual working of these committees goes, probably it would require another notice of the court of law. The Hon’ble Supreme Court in this case, has expressed its hope and trust that the respective committees will discharge their obligations under the Act so as to achieve the objectives for which the Act has been enacted.