



REHABILITATION TO THE DIFFERENTLY ABLED AND THE LAW IN INDIA - A STUDY

Law

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KEYWORDS

Since times immemorial man has been struggling against the ravages brought by disease, accident or feud. The problem of the physically handicapped is as old as human life itself. But it is only after the world wars that the special attention of all the belligerent nations of the world was drawn towards it. The problem of physically handicapped is multi dimensional - physical, psychological, social, cultural, educational and vocational. Each category of the disability poses a different set of problems. As there are different categories of disabled like blind, deformity by accident, congenital deformity, they pose different set of problems. The problems relating to the handicapped people are in a cyclic order in relation to physical, educational, economic, social and psychological aspects. The existence of one problem will become the root cause of the other. For example social problems are relative to their economic status which further has dependence on education and the psyche of the disabled. As a child a handicapped faces hardships at home and in the society that breeds a complex psychological phenomenon. As one grows educational process demands special characteristics and once into adulthood, economic problems cast their shadows largely resulting into psychosocial problems.

There are hundreds of activities which a person performs from the moment he wakes up in the morning till he goes to sleep at night. The activities comprise everything entailed in human life and relationships. Loss of mobility is the greatest of all the real losses. The problems of physical adjustment in so far as education and employment of the handicap are concerned, the remedies are administrative and they have to be addressed through legal means.

Education moulds and builds a new and better society, the society that can face the challenges of life with courage and conscience. Education is a link between medical and vocational Rehabilitation which plays a vital role in the social rehabilitation of the disabled. It is a valuable tool with which a handicap can conquer their disability. In India education to the disabled is accepted as a legitimate component of general education and is continued to be treated as a welfare activity for a long time.

Concepts:

The Terms 'Physically Handicapped' and 'Disabled' as synonymous terms and they are used interchangeably. According to Webster's dictionary 'Disability is defined as 'a state of being disabled, absence of competent physical, intellectual or normal power, fitness. In its popular sense, disabled person is one who has lost a limb or who is physically deformed in some obvious way. Disability suggests a state of helplessness, something short of normal standards of physical fitness. Justice V.R. Krishna Iyer views disability as 'any restriction or lack of ability to perform an activity in any manner or within the range considered normal for a human being.'¹

Causes of Disability:

A child with disability would be considered as a disturbance for the course of progress of the society and the state which is under an obligation to make effective provision for the rehabilitation of the disabled.

The major factors of disability are:

- Inadequate Nutrition of mothers and children including vitamin deficiencies.
- Prenatal, Natal, and Post natal damage.
- Misuse of drugs by expectant mothers.
- Accidents
- Genetic factor
- Other factors

But today a new model of thinking grounds where disability is seen as an integral part of society. There is also recognition that persons with disabilities encounter several obstacles due to sensitivity and attitudinal barriers. Policies that are based ideologically on the human rights model start by identifying barriers in society that restrict disabled persons participation.

Consequently states are bound by a multilayer of obligations to guarantee both de jure and de facto equality. At the primary level it entails respecting right holders freedom to act according to their unique status and circumstances. At the secondary level the state has a duty to protect all the right holders against political, economic and social interference. This implies introduction of legislation and provision for effective preventive and penal remedies. At the tertiary level the states are obliged to ensure that the conditions for equal enjoyment of Rights are created with the introduction of positive and special measures and by enhancing the capacity of the basic system of society and its functionaries. The state has to provide the facilities and opportunities for inclusive growth of the disabled

Concept of Rehabilitation:

This term has its origin in the civil or canon law of a feudal society of the middle ages. At that time, its meaning was the restoration to a Knight of a former right, rank or privilege which has been lost or forfeited because of lord's whim or restoring the reputation of someone by clearing of unjust or unfounded charges.²

It was only after the first world-war and more especially after the second world-war, concern towards rehabilitation of the disabled gained momentum. Rehabilitation means a goal oriented and time limited process aimed at enabling an impaired person to reach an optimum mental, physical or social functional level thus providing him or her with the tools to change his or her own life. It can involve measures intended to compensate for the loss of function or functional limitation and other measures to facilitate social adjustment or readjustment.

The process of the rehabilitation of the disabled is essentially one of the optimizing the effectiveness of personal health services, medical care, counsel and material and other assistance and it must provide solutions to a number of Individuals. The recognition of a physical and mental condition as disabling by a society is also a tacit acceptance by it of its responsibility towards persons considered as disabled as society.

International perspective of Rehabilitation:

Assuring the rights of the disabled and facilitating their integration into society has been central aim of United Nations policies and programmes in its efforts on behalf of disabled persons. The over arching purpose of these aims to enable the physically and mentally handicapped to contribute effectively to the development process and to derive appropriate benefits for their efforts. International Labour Organisation (ILO) a specialized agency of United Nations has started paying attention to the problems of the disabled during the League of Nations period. The first initiative has been taken by ILO in 1921 when it published a report on the compulsory employment of disabled ex-servicemen followed by a meeting of experts to study the methods of finding opportunities of earning of livelihood independently of any pension received by their own productive work to the fullest extent of their capacity and that the state was predominantly responsible for legislating and during means for the employment of disabled servicemen.³ This was followed by International Labour Conference 1925. The Conference recommended for the vocational re-education of the inquired workmen. The second world-war multiplied the number of disabled.

United Nations Declaration

The post world war period began with a new approach to various problems of mankind. The charter of U.N 1945 was signed in the name of people of U.N. Though there is no direction of no disabled persons in the charter, but it covered stating that 'problems of economic, social.....or humanitarian charter'.

UN Declaration of Human Rights 1948

In 1948 the General Assembly of the UN adopted and proclaimed the declaration of Human Rights. It asserted for everyone freedom from want and ensured equality in all its manifestation. Some of the rights which are covered under the declaration are:

- a. All human beings are born free and equal in dignity and rights
- b. No one shall be held in servitude
- c. All are equal before law
- d. Everyone has the right of equal access to public service
- e. Everyone has the right to social security and is entitled to the realization of the economic, social and cultural rights indispensable for his dignity and free development of personality
- f. Everyone has the right to share in scientific advancement and its benefits

The Declaration, declaring the rights of the human beings didn't make a specific mention of disabled persons. However all its contents are applicable to all human beings alike.

International Labour Organisation's Recommendations concerning Vocational Rehabilitation of Disabled persons, 1955

The UN charter and UN Declaration were universal people's charter a standard of achievement common for all people and all nations. The declaration declared a number of rights and freedoms to which all human beings without any distinction of race, sex, language or religion were entitled equally. Some of the recommendations are noteworthy:

- The process of vocational guidance should include as far as practicable in the national circumstances and are approximate in each individual cases ascertaining aptitude and the development abilities.
- The principles, measures and methods of vocational training generally applied in the training of non disabled persons should apply to disabled persons in so as educational and medical conditions permit.
- There should be courses to increase the skills of disabled persons
- Research should be fostered and encouraged to evaluate and improve vocational Rehabilitation services for the disabled.
- There should be strict monitoring mechanism and should be the closest cooperation and coordination between bodies responsible for medical treatment and those responsible for vocational rehabilitation.

Many other Rehabilitation steps were considered especially relating to vocational courses for the progressive development of the physically challenged so as to make them overcome their disability and the state should enhance the training and employment activities so as to bring inclusive growth. In the year 1965 the UN made out a document ON REHABILITATION OF THE DISABLED.

This document on Rehabilitation spelt out a new approach to the problems of physically challenged and a new approach for their welfare and wellbeing. In the year 1975⁴ the United Nations has asserted certain rights granting to all disabled persons without any exception, without any discrimination or distinction on the basis of Race, colour, sex, language, Religion, Political or other opinion, national or social origin, state of wealth, birth or any other situation applying to the disabled person himself or herself or her family.⁵ This document gains importance as it is the first document which entrusted the rights in favour of a disabled person. Some of the rights which the disabled person enjoy as set forth in the Declaration are Inherent Right to respect for human dignity, have civil and political rights, Right to obtain measures designed for them so as to enable them to become self relevant as possible, Right to get services to enable their skills and the services include prosthetic, orthotic appliances, medical care, social Rehabilitation, and counseling, placement services. They have the right to economic and social security and to decent level of living.

They are entitled to have their special needs taken into consideration at all stages of economic and social planning. Disabled persons have the right to live with their families or with foster pavements and to participate in all social, creative and Recreational activities. These

persons shall be protected against all exploitation, abusive and degrading nature. The organisations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons. In the year 1976 desiring to achieve effective implementation of the rights and principles laid down by the declaration on the rights of the disabled the General Assembly recommended that all the member states should take into account the rights and principle laid down in the declaration on establishing their policies plans and programmes. The year 1981 is declared as the International year for the disabled. The important objective of the year was to increase public understanding of what disability was and awareness to the problems which might bring and promote recognition of the distinction between impairment, disability and handicaps. The plan of action emphasized that disability has a relationship between an individual and his/her environment. The plan also emphasized that the society had an obligation to make their general physical environment as well as the full range of social, economic and cultural activities accessible to disabled persons. The plan of action called for the year to have a pragmatic Prevention and Rehabilitation. In the United Nations General Assembly at its 37th regular session on 3rd Dec 1982 by its Resolution 37/52 world programme of Action concerning disabled persons was adopted by UN. This constitutes an international long term plan based on extensive consultation with Governments, organs and bodies within the United Nations system, intergovernmental and non-governmental organizations including organizations of and for disabled persons.

Constitution of India and Rehabilitation:

The Constitution of India premised on the principle of social justice and human rights. The preamble, the directive principles of policy and the fundamental rights enriched in the Constitution stand testimony to the commitment of the state to its people. These provisions envisage a very positive role for the state in upliftment of the status of advantaged groups for example, Art 41 enjoins that, 'The state shall within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of employment, old age, sickness and disablement. Art 46 stipulates that ' The state shall promote with special care the educational and economic interests of the weaker sections of the people, in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation. Under Part IV of the Constitution of India, D.P.S.⁶ enshrined under Part IV of Constitution of India have been catalogued need to be realized over a period of time on the other hand under part III the rights have been arranged which are fundamental in nature and crucial to democracy and are to be enforced immediately.⁷ Thus the fundamental rights⁸ are enforceable and are justifiable⁹ rights but Directive principles are theoretical and non-justiciable. However in Art 37 the Constitution clarifies that the directive principles are fundamental in the governance of the country and of shall be the duty of the state to apply these principles in making laws.

In view of these obligations, the subject matter of disability has become an integral part of policy planning. The ten five year plans that the country has embarked upon do make a reference to disability thought in margins for example formulation of scheme of integrated education for disabled children in 1976 and introduction of the policy for reservation of Jobs for persons with disabilities sin 1977.

Though fundamental rights are enforceable but for attaining social order and justice the directive principles should be placed higher to fundamental rights.¹⁰ In addition Art 249 of the Constitution empowers the parliament to legislate any subject falling in any list in order to fulfill the International obligations. The United Nations declared 1983-92 as the Decade of Disabled persons. During this period a great deal of awareness of the issues of people with disabilities was created. At a meeting of the economic and social commission of Asia and the Pacific convened in Beijing in December 1992 a proclamation on the full participation and equality of people with Disabilities in the Asian and Pacific Region was adopted. India was one of the country that signed proclamation. As India signed the proclamation it is obliged to create legislations, policies and practices which are in keeping with the instruments. This led to the enactment of most comprehensive Law relating to people with Disabilities in India. It is named as, 'The persons with Disabilities (equal opportunities, protection of Rights and full participation Act 1995 which has been notified on Jan 1, 1996) The Act was a landmark in that, for the first time, it stated that people with disabilities had the right to equal opportunities and full participation and that these rights would be protected by law. The Act elaborates at

some length, duties of the government at various levels and the other establishments under their control. It also provides useful guidance regarding the type and nature of measure that would equalize opportunities for the enjoyment of basic rights and freedoms.

The Act is arranged in three distinct parts:

Part I comprises chapter 1-4 dealing with administrative arrangement for implementation

Part II comprises chapter 5-11 dealing with the substantive rights and correlated obligations

Part III provides a mechanism for the monitoring of the Act in the centre and states. Chapter 12 establishes the office of chief commissioner and state commissioners for persons with disabilities.¹¹

Analysis of the Provisions of the Act

The Act covers areas like Constitution of central and state coordination committees, appointment of commissioners for persons with disabilities, prevention, early detection, intervention, habituation and Rehabilitation education, employment, vocational training, non discrimination, licensing of institutions for the disabled and social security.

It also aims at promoting Research in the following areas like prevention of disability, promoted aspects of Rehabilitation, Retroactive aspects of Rehabilitation, curative, educational aspects, vocational, social, psychological, professional rehabilitation. Development assertive devices, Job identification and other aspects of rehabilitation that improve the quality of life of persons with disabilities is also aimed at in the Research programmes.

The Act proposes to assign the central, state and local bodies to promote facilities for prevention of occurrence of physical and mental handicaps. A special emphasis has also been given to the education of disabled. The concept of integrated education programme is a proactive step for the protection of disabled to enforce their Right to education. The legislators deserve all appreciation that they incorporated a provision for utilizing the man power in rural areas and giving them appropriate orientation. Another significant step provided under the Act for the rehabilitation of the disabled is their employment which has obtained significant recognition. The need, nay, the right of the disabled persons to have adequate means of livelihood through education is considered as most crucial under the Act. The social security scheme promised under the Act when applied genuinely will make the real kind of Rehabilitation possible. A proper emphasis has been laid on Research, an area which has always been neglected. There is a provision for the much desired man power development.

Thus the Law makers have perceived the problems of the disabled to a very large extent becomes evident from the way they have considered the problems of disabled minutely and sought to provide appropriate solutions.

Judicial Approach:

In India, the Constitution which is considered as the law of the land enunciates the theory of separation of powers. Judiciary the third organ is entrusted with the function of Interpretation and it plays a significant role in the interpretation of general guarantees of rights into specific circumstances. This process is popularly known as Judicial Law Making, the Court Law or Judgment Law. In a landmark case i.e Kesavananda Bharati vs State of Kerala the Supreme Court of India observed that primarily the mandate in Art 37 is addressed to the legislature but the Indian courts can indulge in Judicial Law making within the boundaries of the Constitution or any statute before them. Normally the legal actions relating to disability rights violations are directed against schools and school administration that violate the rights of children with disability, against employers who deny people with disability fair treatment at the workplace, to firms, housing societies and business which do not provide appropriate access to people with disabilities and against the government for failing to protect the rights of people with disabilities. There are few cases filed against central and state governments dealing with welfare schemes like housing, education, employment and access which pushed the boundaries of rights of people in India.

• **National federation of Blinds, UP branch Vs State of UP, 2000¹²**
The petition was filed by involving the only question i.e. whether

Lucknow Development Authority while giving preference for allotment of plots and houses to blinds and other handicapped persons, should also accord concession in the rates of land. The judgment was passed and a writ in the nature of certiorari quashing the order passed by the Lucknow Development Authority and the court directed the opposite parties not only to give preference in the matters of allotment of land and houses to handicapped persons but also to provide concessional rates to handicapped persons.

• **Dr Vijay K Agarwal Vs State of Rajasthan, 2001¹³**

The judgment was declared with reference to the provisions of the Constitution (Article 254(2) of the Constitution) and the PWD Act of 1996, that what was implicit under ordinances 278-E and 278-G of University ordinances, prior to 20-11-2000, was made explicit by amending it with effect from 20-11-2000.

• **Javed Abidi Vs Union Of India¹⁴**

The petitioner Mr. Abidi filed PIL to bring before the court the problems of access in public buildings and transport facilities in Delhi. The PIL sought directions to the centre as well as NCT government to make all public places disabled friendly.

• **Pushkar Singh & others Vs University of Delhi & others¹⁵**

The Judgment held that Executive Council of the University of Delhi taken vide its Resolution No. 193/(SIC) on 16th July, 1994 with a vision to help the visually and orthopedically handicapped persons to get 3% reservations in Delhi University and the college's affiliated to the University. It is also provided that at least one disabled person must be appointed in each college during academic year 1994-95.

• **Anka Topo Vs AIIMS¹⁶**

Mr. Anka Topo had earlier be denied permission to appear in final examination of the MBBS by AIIMS after he lost his sight. Mr. Anka approached the National Human Rights stating that he had been denied permission and upon the intervention of NHRC followed by a dozen sittings. AIIMS has agreed to make arrangements for a visually challenged medical student to appear for MBBS final examination.

CONCLUSION:

The impact of the law relating to disabled people on an old and deep seated discriminatory practices and attitudes would take a long time to be felt. Disability is essentially a social construct and reflects a flaw in the thinking process of the Indian society. For example the person with polio does not have a problem, the problem is rather with the building which prevents wheel chair to get inside or with the bus which stops him to board on a taxi driver who ignores him on the roadside. The Act has given boost to the self esteem of every disabled person in the country. This law is important since it liberates a disabled person's feelings of anger, frustration and self disgust will gradually get replaced by competence, independence and health. The law talks of independence, dignity and security as so far the disabled experienced exclusion and segregation. They have been prevented from using opportunities to contribute to the society with their fullest capacity. The law offers them equal opportunities. The persons with disabilities (equal opportunities, protection of Rights and full participation) Act 1995 establishes responsibility on the society to make adjustment for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. 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 responsibility to prevent disabilities, provision of medical care, education, training, employment and rehabilitation of persons with disabilities. It provides that the implementation of the intentions and provisions of the Act shall be done through constituting of coordination committees at state and central level. The Indian disability law treats disability as civil rights rather than a health and welfare issue.¹⁷ The law recognizes the importance of consultation with disabled people on issues which directly or indirectly affect them.

A proactive Judicial Response is essential to enforce the provisions of any act. When Indian judiciary concerned its approach before enacting the law was humanistic one but after the enactment there was a shift to a rights based perspective on disabilities.

“To deny people their Human Rights is to challenge their very humanity”

-Nelson Mandela

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