



Educational Rights of Persons with Disabilities: the Indian Scenario

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ABSTRACT

It is now widely recognized the world over that discrimination against persons with disabilities is denial of their inherent dignity and human rights. Persons with disability constitute most disadvantaged section of the society because the society generally 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 on equal terms in the mainstream of the society. In this backdrop, this paper proposes to examine the Indian scenario i.e. the legislative policy aimed at protecting the educational interests of persons with disabilities with the purpose of bringing these people in the main stream of the society and thus empowering them for their better future.

KEYWORDS

Impairment, empowerment, education, rights, laws.

INTRODUCTION

Being disabled should not mean being disqualified from having access to every aspect of life- Emma Thompson¹

It is said that education is empowerment because it enriches and enlarges an individual's mental faculties. But it is irony that some individuals are deprived of this empowerment merely because of the fact that some or one of their physical faculties is not in proper order. Isn't it the denial of basic human rights to such individuals? Persons with disability constitute most disadvantaged section of the society because the society generally 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 on equal terms in the mainstream of the society. They are routinely denied access to the same opportunities for early, primary and secondary education, or life-skills and vocational training, or both, that are available to other children. The inclusion of children with disabilities is a matter of social justice and an essential investment in the future of society. It is not based on charity or goodwill but is an integral element of the expression and realization of universal human rights.

DISABILITY-DEFINED

As defined by the *World Health Organization*, Disability "is an umbrella term, covering impairments, activity limitations, and participation restrictions. Impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Thus disability is a complex phenomenon, reflecting an interaction between features of a person's body and features of the society in which he or she lives."² Article 1 of the *Declaration on the Rights of Disabled Persons* defines the term 'Disabled Person' to include any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of a deficiency, congenital or not, in his or her physical or mental capabilities'.³

The *Convention on the Rights of Persons with Disabilities* (2006), the first legally binding disability specific human rights convention, adopted by the United Nations emphasizes that "Persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others."⁴

INDIAN SCENARIO

The Constitution of India which provides an extensive and strong set of fundamental rights does not cover 'disability' as a prohibited ground of discrimination. The only place in the Constitution, where disability is referred to and the responsibility of the State laid out is Article 41, which is a Directive Principle of State Policy. Article 41 directs the State to make effective provisions for securing the right to work, education and public assistance in cases of unemployment, old age, sickness and disablement, within the limits of its economic capacity and development.

In the legislative field, in India there are some legislations as discussed below which are specifically directed towards the protection, rehabilitation and development of people with disabilities

The Rehabilitation Council of India Act, 1992

The Rehabilitation Council of India Act, 1992, was passed to regulate the man power development programmes in the field of education of persons with special needs. The main objectives are to regulate the training policies and programmes in the field of rehabilitation of the people with disabilities, to standardize training courses for rehabilitation professionals, to recognize institutions/universities running degree/diploma/certificate courses in the field of rehabilitation of the disabled. The Act has been amended in 2000 to entrust the additional responsibility of promoting research in rehabilitation and research.⁵

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is the principal and comprehensive legislation concerning disabled persons. The Preamble of the Act specifically declares that the Act has been enacted to give effect to the *Proclamation on the Full Participation and Equality of the people with Disabilities in the Asian and Pacific Region*.⁶

Chapter V of the Act deals exclusively with the educational rights of disabled children. Section 26, in unequivocal terms provides as under⁷:

The appropriate governments and local authority shall -

Ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years:

Endeavour to promote the integration of students with disabilities in normal schools:

Promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools:

Endeavour to equip the special schools for children with disabilities with vocational training facilities.

The Act, no doubt is regarded as the principle and the most composite legislation concerning the persons with disabilities. But unfortunately it extends the entitlements and protections to just a few named categories of impairment, which in turn are medically determined. It is submitted that there is a need of enlargement of the definition of disability so as to include any disability which renders a person incapable to follow his daily routine.

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

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 provides for the establishment of an institution for the welfare of people with autism, cerebral palsy, mental retardation and multiple disabilities. The Act gives directions for the care and protection of persons with these disabilities in the event of death of their parents, procedures of appointment of guardians and trustees for persons in need of such protection and to provide need based services in times of crisis to the families of the disabled.⁸

The Right of the Children to Free and Compulsory Education Act, 2009

The Right of the Children to Free and Compulsory Education Act, 2009, popularly known as Right to Education Act (RTE) is a landmark legislation in the history of Indian education, since for the first time, India admits that the right to education is a fundamental right which ensures that each child gets education irrespective of caste, class, gender, etc.⁹ The Amendment Act of 2012 expands the definition of "child belonging to disadvantaged group"¹⁰ to include a child with disability. A new clause (ee) has been inserted in section 2 of the Act which defines a "Child with disability" in following terms:

a child with 'disability' as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

a child, being a person with disability as defined in clause (j) of section 2 of the National Trust for Welfare of Persons with

Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;

a child with 'severe disability' as defined in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

This is very laudatory provision in as much as the definition of 'the child belonging to disadvantaged group' as contained in Section 2(d) of the Act excluded from its ambit children with disabilities, even though they are disadvantaged. Children with disabilities constantly experience barriers to the enjoyment of basic rights, and to their inclusion in society. Therefore, the amendment ensures that their specific needs are given precedence in the elementary education system in the country, and enable them, over time, to participate as full and equal members of the community in which they live. But mere inclusiveness is not enough. Schools are still not ready with the right infrastructure required for the safety and convenience of the children with disabilities. For instance, most of the schools do not have ramps for children with walking disabilities and trained and expert teachers to cater to the needs of such children. There is need of sincere efforts to give them a level playing field, and not making the things more difficult for them.

CONCLUSION

It is a matter of great concern that the abilities and potentials of differently abled persons have not yet been fully explored and tackled. Practically it is a great loss of human resources which, if discovered, matured, appropriately channelized and utilized, could add a new force to the progression of the society. Empowerment of the differently abled is very necessary in today's fast competing and changing scenario of society. We only remember to celebrate "World Disabled Day". What is the purpose of such celebrations if there is no genuine concern or sympathy for the disabled. Helping the physically handicapped to become self-supporting and active members of the society should be one of the prime responsibilities of the Government. One essential ingredient without which no rehabilitation programme for the handicapped can be successful is awareness creation in the society about abilities and potentials of persons with disability. All our efforts should be made for rehabilitation of disabled persons, more particularly children, so that a new dimension can be given to their life to make it more meaningful. There is a desperate need to equip persons with disabilities with educational opportunities and ensure them employment opportunities.

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