



RIGHTS TO DISABLE FREE ENVIRONMENT AND DIFFERENTLY ABLED PERSON

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Abstract

“My advice to other disabled people would be, concentrate on things your disability doesn't prevent you doing well, and don't regret the things it interferes with. Never be disabled in spirit, also in physically.”

-Stephen Hawking

The present article deals with the various legal and government provisions across the world including India for the disabled free environment for the differently abled persons. The benefits and facilities get by the differently abled persons and the Indian constitutional provisions relating to it.

Keywords: *Differently Abled Person, Disabled Free Environment, Rights, Conventions*

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Introduction:

Oxford Dictionary defined disability as an impairment which can be Intellectual, limitations, cognitive, improvement, sensory, exercise or the mixture of all these. Incapacity affects a person's activities and may happen at birth or it could happen in adulthood.

The Preamble to the Convention on the Rights of Persons with Disabilities (CRPD) -2006 by the United Nations, describes disability as:

“Disability results from the interaction between persons with impairments, attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. Persons with disabilities includes 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.”

A study by P. Coleridge (4) shows a close relationship

between poverty and disability due to malnutrition, mothers weakened by frequent childbirth, inadequate immunisation programmes and accidents in crowded homes.

- Of the 500 million differently-abled people in the world, 140 million are children and 160 million are women
- One in five - 100 million people - of the total number are differently-abled by malnutrition
- 80 per cent of all differently-abled persons live in Asia and the Pacific, but they receive just 2 per cent of the total resources allocated to differently-abled people

As per WHO more than six hundred million people across the globe facing disabilities of various types due to chronic diseases, injuries, violence, infectious diseases, malnutrition, and other causes related to



poverty. People with disabilities are prone to multiple deprivations with limited access to basic services like education, employment, rehabilitation facilities etc. Social stigma also hinders their normal social and economic life. Disabled people often suffer from discrimination due to prejudice and ignorance and also may lack access to essential services which is a 'silent crisis', affecting not only persons with disabilities themselves and their families, but also the economic and social development of the all society, where reservoir of talented human potential often goes untapped (1)

The sustainable developments goals will not be met unless the needs and rights of people with disabilities are addressed. The discrimination, violence and abuse encountered by disabled person across national boundaries, national wealth or national poverty. Strength cannot be enhanced unless you live in an environment that stimulate its development and release. Disabled people, just like able-bodied people have talents and potential, which if exploited to the maximum can better their lives, families and communities (2). The meeting at Beijing in December 1992, The Economic and Social Commission for Asian and Pacific Region had launched the Asian and Pacific Decade of Disabled Persons in 1993-2002. It had Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific Region was adopted. India being a signatory enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Office of the Chief Commissioner for Persons with Disabilities became functional in August 1998. Enactment of the Act was an assurance to the Persons with Disabilities from the Government that they shall enjoy equal opportunities in all walks of life, live with dignity and will be empowered to become self-reliant. Prevention of disabilities, education, rehabilitation, employment are

state subjects, the Act provides for Commissioner, Disabilities in all the States/ UTs for coordination amongst different Departments to implement the provisions of the Act for the protection of rights of disabilities. (3)

The Persons with Disability Act (PWD) 1995 aims to provide mainstreaming equality and not charity based equality. To provide proper channel so that the differently-abled persons should find themselves into the mainstream of the society by affirmative action making differently-abled people have access to education and equality in employment.

The Ministry of Social Justice & Empowerment is the nodal central agency with the welfare, social Justice and empowerment of disadvantaged and marginalized section of the society like Scheduled Caste, Backward Classes, disabled persons, Senior Citizens, and Drug Abuse victims etc.

For the welfare and empowerment of the Persons with Disabilities, a separate Department of Empowerment of Persons with Disabilities (Divyangjan) under Ministry of Social Justice & Empowerment was set up in May 2012. The main functions are early detection, intervention, education, health, vocational training, rehabilitation and social integration.

Person with Disability Act (PWD) is a progressive legislation having affirmative action at grass root level and at apex level. The Rights of Person with Disability Act 2016 creates institutional infrastructure to support the needs of persons with disabilities and establishment of Special Courts in every district which will deal with the cases of infringement of rights of disabled people. State Governments will setup district-level committees, a separate State Fund for the welfare of Persons with disability and national level fund.

Differently-abled persons in India:

According to the Census 2001, there are 2.19 crore people with disabilities in India who constitute 2.13 %



of the total population comprising persons with visual, hearing, speech, locomotor and mental disabilities. 75 % of persons with disabilities live in rural areas, 49 % of disabled population is literate and only 34.5 are employed. Census report 2011, the total number of differently-abled people is over 18.0 million in the rural areas and just 8.1 million in the urban areas. Social studies show 2.45 % Scheduled Castes (SC), 2.05 % Scheduled Tribes (ST) and 2.18 % other than SC/ST differently abled population. Percentage of

persons with disability who were living alone was 3.7%. Among persons with disability, 28.8 % had certificate of disability. Out of the total population of persons with disabilities, about 1.18 crore are female and 1.50 crore are male. The growing population of people with disabilities is a significant for India. Thus duty of the society to facilitate accessibility of all kind of information for them.

Persons with disabilities Population in India as per census -2011

Disabilities	Population in Lakh	Percentage of total population in India
Seeing	50.32	18.8
Hearing	50.71	18.9
Speech	19.98	7.5
Movement	54.36	20.3
Mental Retardation	15.05	5.6
Mental illness	7.22	2.7
Multiple Disabilities	21.16	18.4
Other	49.27	7.9
Total	268.10	100

(Source: Census of India, 2011)

International Conventions Related to disabled free environment:

United Nations Universal Declaration of Human Rights of 1948 recognized that all people have certain civil, political, economic, social, cultural, and development rights, despite differences between individuals.

In 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (ICECR) (4A), are legally binding human rights treaties, were adopted and applies to people with disabilities was addressed by the Committee on Economic Social and Cultural Rights (1994), the treaty body that monitors government compliance with the ICESCR.

As Special Rapporteur, Leandro Despouy chronicled growing human rights abuse in the area of disability in a report, Human Rights and Differently Abled Persons, published in 1992. He suggested disability as

a human rights concern and need for greater participation of the UN treaty monitoring bodies in handling disability rights violations. Bengt Lindquist, Special Rapporteur (5) from 1994 to 2002, reported that "the problem so far has been that disability-related obstacles to full enjoyment of human rights has been neglected. In an international human rights system of treaties and monitoring bodies, disability has not always been seen as a rights issue, but view instead as a pathology of exceptional human.

The Declaration on the rights of Mentally Retarded Persons (8), adopted by the UN General Assembly on 20th December 1971, which aims for the national and international strategies which will be used as a common basis and framework for the protection of the rights of differently-abled persons.

The Declaration on the rights of Differently-abled Persons (9), adopted by UN General Assembly on 9th December 1975 have provisions that all the Member



States ensure the rights of disabled persons while making their national policies, plans and programs. The Declaration has following provisions:

- ~ Differently-abled person shall enjoy all the rights contained in this declaration without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of health, birth or any other situation applying either to the differently-abled person himself/herself or to his/her family.
- ~ The differently-abled persons have inherent rights to respect for their human dignity and irrespective of the origin, nature and seriousness of their handicaps and disabilities, have the equal fundamental rights as their brother citizens of the same age group which gives the right to enjoy a decent life.
- ~ Differently-abled persons have the same civil and political rights as any other human beings.
- ~ Differently-abled persons can have the measures designed to make them self-reliant.
- ~ Differently-abled persons have the right to medical, psychological and functional treatment like prosthetic and orthopaedic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, counselling, placement services and other services which will make them to develop their capabilities and skills to the maximum and will increase the process of their social integration and reintegration.
- ~ Differently-abled persons have the right to economic and social security as per their potential to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.
- ~ Differently-abled persons' special needs taken into account at all stages of economic and social planning.

- ~ Differently-abled persons have right to live with their families or with foster parents and to engage in all social, creative or recreational activities.
- ~ Differently-abled persons shall be protected against all exploitation and treatment of a discriminatory, abusive and degrading nature.
- ~ Differently-abled person will have qualified legal aid for the protection of their persons and property. In case s of judicial cases against them, the legal procedure applied shall take into account their physical and mental condition.

The UN Standard Rules (10) for the Differently-abled Persons

The United Nations General Assembly adopted a resolution in 1993 entitled “Standard Rules on the Equalization of Opportunities for Persons with Disabilities.”

Article 23 of the Right of the Child Convention

requires that a child with a disability should enjoy a full and decent life in conditions, ensuring dignity and promote self-reliance and his/her active participation in the community (11). The right-based approach of WHO replaces the term ‘handicap’ with ‘participation’. Rather than providing the charity to the differently-abled persons, they should provide them their due by way of rights. This challenge was achieved by India by enacting the Persons with Disabilities Act, 1995.

Report of the Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities on its Fifth Session (12), July 23, 2002

The Committee reiterated the need for additional efforts to ensure accessibility to the United Nations, with reasonable accommodation regarding facilities and documentation, for all persons with disabilities.



United Nations Convention on the Rights of Persons with Disabilities (13), 2006

The 650 million people in the world living with disabilities—about 10 per cent of the world's population—lack the opportunities of the mainstream population. It was adopted by the General Assembly in its resolution 61/106 of December 13, 2006 to promote, protect and ensure the full and equal enjoyment of all human rights and freedoms by all disabled persons, and to build respect for their dignity.

Articles of the UN Convention on the Rights of Persons with Disabilities, 2016:(13)

Article 9 – Accessibility

1. To ensure persons with disabilities to live independently and participate fully in all aspects of life, States to ensure to persons with disabilities access, on an equal basis with others and to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. The identification, elimination of obstacles and barriers to accessibility which includes: Buildings, roads, transportation and other indoor and outdoor facilities, like schools, housing, medical facilities And Information, communications, electronic services and emergency services.

2. States shall also take necessary measures:

- a) Development, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- b) Training of stakeholders on accessibility issues facing persons with disabilities;
- c) Providing buildings facilities open to the public signage in Braille in easy to read and understand forms;

- d) Providing live assistance and intermediaries, like guides, readers and professional sign language interpreters, to facilitate accessibility to buildings.
- e) Promotion of access for persons with disabilities to new information and communications technologies and systems like Internet;
- f) Promotion of design, development, production, distribution of accessible information, communications technologies and systems at an initial stage to access these technologies and systems at low cost.

Article 20 – Personal mobility

States to ensure personal mobility without any dependence for persons with disabilities by:

- a) Facilitation of the personal mobility of persons with disabilities at the time of their choice and at affordable cost;
- b) Facilitation of access by persons with disabilities to quality mobility aids, devices, assistive technologies available at affordable cost;
- c) Training in mobility to both persons with disabilities and also to specialist staff working with persons with disabilities;
- d) Motivating organizations that produce mobility aids, devices and assistive technologies looking all aspects of mobility for persons with disabilities.

Article 21 – Freedom of expression, opinion, and access to information:

States to make sure that persons with disabilities can exercise the right to freedom of expression and opinion, like the freedom to seek, receive, impart information, ideas on an equal basis with others by:

- a) Giving information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- b) To recognize, promote and ensure the use of sign languages, Braille, augmentative and alternative



communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

- c) Motivating private organizations, mass media to provide information and services by the use of internet in accessible and usable formats for persons with disabilities;

Article 30 – Equal participation in cultural life, recreation, leisure and sports:

1. States to recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and take all ways to ensure that persons with disabilities enjoy access:
 - a) to cultural materials in accessible formats;
 - b) to films, theatre, television programs and other cultural activities, in accessible formats;
 - c) to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, if possible, enjoy access to national monuments and sites.
2. States to ensure persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential for own benefit and betterment of society.
3. States to ensure that laws protecting intellectual property rights do not constitute a discriminatory barrier to access by persons with disabilities to cultural materials.
4. Persons with disabilities must get on an equal basis to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.
5. States to ensure persons with disabilities to participate on an equal basis with others in leisure, recreational and sporting activities.

The European Council on Rights of Disabled

Principle 15, which applies to all contracting parties, provides:

Differently-abled persons have the right to vocational training, rehabilitation and resettlement, whatever the nature and origin of their disabilities, right to independence, social integration and participation into the life of community.

United States of America on Rights of Disabled

In America, the approach towards persons with different abilities is Right Based.

The Americans with Disabilities Act (ADA), 1990

The ADA prohibits discrimination on the basis of disability in employment, housing, education, State and local government, public accommodations, commercial facilities, transportation, and telecommunications.

Title I of the Americans with Disabilities Act (ADA) (14) requires employers to provide “reasonable” accommodations to “qualified” workers with disabilities.

Professor Samuel Bagenstos said of the Supreme Court's ADA verdict is the desire to keep disabled person in the workplace instead on welfare. (15)

Title IV gives telephone and television access for people with hearing and speech disabilities. It requires common carriers (telephone companies) to form interstate and intra-state telecommunications relay services (TRS) 24 hours every day.

Fair Housing Act requires owners of housing facilities to make reasonable exceptions in their policies and operations to benefit people with disabilities equal housing opportunities.

Air Carrier Access Act prohibits discrimination in air transportation by domestic and foreign air carriers with qualified individuals with physical or mental impairments. The same provision was adopted by European Union on February 16, 2005.

Individuals with Disabilities Education Act (IDEA) (16) (formerly the Education for all Handicapped Children Act of 1975) requires public schools to make available to all eligible children with disabilities a



required free public education in the minimum restrictive environment as per individual needs.

Telecommunications Act of 1996 which requires manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to and usable by persons with disabilities.

The Voting Accessibility for the Elderly and Handicapped Act 1984 requires polling places across the United States to be physically accessible to people with disabilities for federal elections.

Urban Mass Transit Amendments Act of 1970 required certain local jurisdictions to provide mass transit facilities and services so that elderly persons or people with disabilities could use them.

Rehabilitation Act, 1973 to include all persons with disabilities; provided for research and training to improve vocational prospects for differently-abled persons.

The National Voter Registration Act of 1993 makes it easier for all Americans to exercise their fundamental right to vote. Thus increase the historically low registration rates of minorities and persons with disabilities that have resulted from discrimination.

The Civil Rights of Institutionalised Persons Act (CRIPA) authorizes the U.S. Attorney General to investigate conditions of confinement at State and local government institutions such as prisons, jails, pre-trial detention centres, juvenile correctional facilities, publicly operated nursing homes, and institutions for people with psychiatric or developmental disabilities.

The Architectural Barriers Act (ABA)(17) mandates that buildings and facilities that are designed, constructed, or altered with government funds, or leased by a government agency, comply with government standards for physical accessibility.

Civil Rights Act, 1964 prohibited discrimination on the basis of race, national origin and religion.

Developmental Disabilities Assistance and Bill of Rights Act of 1975 specifically enacted for the welfare of mentally retarded persons.

Telecommunications for the Differently-abled Act, 1982 it is required that workplace telephones used by persons with hearing aids and emergency telephones had to be hearing aid compatible means that such phones had to be equipped to transmit signals that could be received by hearing aids.

United Kingdom on Rights of the Disabled

United Kingdom is working hard on the rights of the differently-abled persons. But approach is charity based, which was rejected by the post-modern theorists.

In the United Kingdom the differently-abled workers were protected by **Differently abled Persons (Employment) (18) Act 1944**, by which a system of statutory quota prevailed upon employers of twenty or more employees. This Act gives differently-abled people rights in the areas of: a) employment, b) access to goods, facilities and services, c) buying or renting land or property and d) education. (19)

Website Accessibility

DDA provides information access to the differently-abled people. Even, police and fire services are now legally obliged to make their websites, intranets and extranets accessible. since 1999, websites have had a legal obligation to become accessible.

Australia on the Rights of Disabled

Australia Disability Discrimination Act 1992 seeks to eliminate disability-based discrimination in all walks of life. The Act applies throughout Australia and to both public and private sector employment and recognizes the principle that persons with disabilities have the same fundamental rights as the rest of the community. The Act also covers HIV positive individuals (20).



The act covers vital fields of employment, education, access to premises, accommodation, buying/selling land, activities and clubs, sport, administration of commonwealth government laws and programs (21). Court may declare that the respondent should pay damages by way of The Australian DDA, is administered through the Human Rights and Equal Opportunities Commission.

Canada on Rights of Disabled

Legal Protection for the Persons with Disabilities

Prohibiting discrimination is ensuring equal opportunity and accommodating the needs of persons with disabilities are guaranteed by law in Canada.

Canadian Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms, enacted in 1982, includes a specific mention of physical or mental disability as a prohibited ground of discrimination.

The goal of the Canadian Constitution is to achieve a right to full inclusion and participation of the persons with disabilities in a barrier free society. The right to full participation includes the right of a differently-abled individual to have his needs accommodated where necessary (22)

Canadian Human Rights Act The Canadian Human Rights Commission is charged with implementation of the provisions of the Act, which includes making general recommendations to the employers to provide reasonable accommodation to the persons with disabilities (23).

Employment Equity Act to achieve equality in the workplace so that no person is denied employment opportunities for reasons unrelated to ability and to correct the conditions of disadvantage in employment suffered by persons with disabilities, women, aboriginal peoples and visible minority groups.

Germany on Rights of Disabled

The two world wars were so destructive for German

Government that they took first initiative to pass disability laws. As per the German Constitution that no person may be discriminated against because of his or her disability (24). These laws also have the goal of enabling all differently-abled people and their families to live a life that is as normal as possible, especially by promoting equal participation in all areas of life.

1. *Neuntes Buch des Sozialgesetzbuches SGBIX* (Book 9 of the Social Code)

The *Neuntes Buch des Sozialgesetzbuches* provides that differently-abled people receive extraordinary benefits in order to live a dignified life, to have equal opportunities in society and protection against any discrimination. In addition, the special needs of differently-abled women and children are taken into account.

2. *Behindertengleichstellungsgesetz BCG* (Equal Opportunities for Differently-abled People Act) The purpose of the *Behindertengleichstellungsgesetz* (and supplementary changes to other laws) is to implement equal rights for differently-abled people in public and private areas for less dependency on other people.

In Germany each person with a physical, mental or psychological disability can claim a social right to the assistance required to prevent the disability or to remove it. The 'social right' is the legal and guiding principle for Germany's rehabilitation and disability policy (25).

Work Force Quota

Failure to comply with the quota obligation entails civil penalty DM 200 per month for every job not filled by a differently-abled person and in a serious case of breach, criminal fine up to DM 5000 might be imposed. The proceeds of this penalty are spent on differently-abled employment policies (26).



Severely Differently-abled People

On May 1, 2004, a new law to promote training and employment of severely differently abled people came into effect (27). The employers are not only bound by 6% quota but also by the procedure prescribed in the statute for terminating a differently-abled worker.

Japan

The Action Plan is a seven-year strategy from fiscal 1996 to fiscal 2002 and includes not only health and welfare measures, but also measures for people with disabilities which includes housing, education, employment, communications and broadcasting.

Section 75 of the Danish Constitution have provision that “any person unable to support himself or his dependants shall, where no other person is responsible for his or their maintenance, be entitled to get public assistance.”

Marrakesh Treaty:

The Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled (2013), entered into force on 30th September, 2016. India ratify the treaty on 24th July, 2014. The treaty aims at improving access for the blind, visually impaired and print disabled to published works in the formats such as Braille, large print text and audio books.

Incheon Strategy to Make the Right Real for disabled persons in Asia and the Pacific

At International level, the 2030 Agenda for Sustainable Development and Sustainable Development Goals (SDGs), the Convention on the Rights of Persons with Disabilities (CRPD) and the Sendai Framework for Disaster Risk Reduction 2015–2030 (Sendai Framework) helps governments toward disability-inclusive sustainable development.

Constitutional Provisions in India:

The Constitution of India applies does not discriminate between all legal citizen of India, healthy or disabled. The Constitution preamble secures to the

citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.

The concept of equality enshrined in Article 14 itself enjoins duty on the State to bring about a situation where the fundamental rights can be exercised on the footing of equality.

Article 15(1) of Constitution assures that no discrimination against any citizen of India on the of religion, race, caste, sex or place of birth.

Article 15 (2) of Constitution guarantees that no citizen shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, public restaurants, hotels and places of public entertainment or in the use of bathing Ghats, wells, tanks, roads and places of public resort which are maintained through government funds or for use of the general public. Women and Children and those belonging to any Socially and Educationally backward classes or the Scheduled Castes and Tribes can be given the benefit of Special laws or Special provisions made by the State. The Article also provides the equality of opportunity for all citizens in matters relating to Employment or Appointment to any office under the State.

Article 17 of the Constitution prohibits Untouchability and punishable in accordance with law so no person irrespective of his belonging can be treated as an untouchable.

Article 21 of the Constitution guarantees every person the right of life and liberty.

Article 21A state to provide free and compulsory education to all children of the age of six to fourteen year. All children include disables also.

Article 23 says there can be no traffic in human beings, and beggar and other forms of forced labour is prohibited and the same is made punishable in



accordance with law.

Article 24 of the Constitution prohibits employment of children below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. Even though the private contractor acting for the

Government cannot engage children below the age of 14 years in such employment.

Article 25 says that every citizen has the right to freedom of religion. So every person including disabled has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.

Article 29(1), any section of citizen residing in the territory of India having a distinct language, script or culture of its own shall have the right to conserve the same.

Article 29(2) says that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language.

Every disabled person can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by right of constitutional remedies under Article 32 of Constitution.

Article 39A says that states on the basis of equal opportunity, and provide free legal aid, by suitable legislation or schemes. Also opportunities for securing justice are not denied to any citizen due to economic or other disabilities.

Article 41 obligates the state, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and even in the other cases of undeserved want.

Article 45 says that the state shall provide early

childhood care and education for all children until they complete the age of six years.

Article 46 obligates on the State to promote with special care the educational and economic interests of the weaker sections of the people, and protect them from social injustice and all forms of exploitation.

Article 51A(k), parent or guardians must provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Relief to the person with disabilities is a State subject. following provisions in the Constitution relating to Persons with disability:

- (i) XI Schedule to Article 243-G: Social welfare, including welfare of the handicapped and mentally retarded. (Entry No. 26),
- (ii) XII Schedule to Article 243-W: “Protecting the interests of weaker sections of society, including the handicapped and mentally retarded.” (entry 09).

Article 253 empowers the Parliament to legislate on any subject falling in any list in order to fulfil its international obligations.

Landmark Judicial Decisions:

In **Francis Coralie Mullin v. Administrator, Union Territory of Delhi & others. (1981) 1 SCC 608** it was held that the fundamental right to life which is an umbrella right which subsumes several other rights that enables life to be led meaningfully. It is the most precious human right and which forms the ark of all other rights. Right to dignity recognized as one of the facets of right to life: every act which offends against or impairs human indignity would constitute deprivation pro tanto of this right to live.

The issue of Accessibility right of visually disabled persons in **State of Himachal Pradesh & Anr. v. Umed Ram Sharma & others., (1986) 2 SCC 68** where the right to life under Article 21 has been held broad enough to incorporate the right to accessibility.



Article 21 which embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. Denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution.

In **Jeeja Ghosh & Anr. v. Union of India & Ors.5, (2016) 7 SCC 761** it was held that Right to dignity ensured in Indian Constitution for every citizen applies with much more vigour in case of persons suffering from disability. It is necessary to provide such facilities to ensured level playing field, enjoy life meaningfully and they contribute to the progress of the nation.

In **Rajive Raturi vs Union of India (2016)**, Supreme Court gave directions to the central government as per section 46 of the disability Act 2016, all Government buildings providing any services to the public are to be made fully accessible by 2019.

Indian Legal Provisions:

The Rehabilitation Council of India Act, 1992 provides for both preventive and promotional aspects of rehabilitation like education, employment and vocational training, job reservation, research and manpower development. Also creation of barrier-free environment, rehabilitation of disabled person, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability. A Rehabilitation Council of India Act for regulating the training of rehabilitation professionals and the maintenance of a Central Rehabilitation Register and includes punishment against unqualified persons delivering services to persons with disability.

The National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act enacted on December, 30 1999 with objective to provide for the National level body for the Welfare of Persons with Autism,

Cerebral Palsy, Mental Retardation, Multiple Disabilities.

The Person with Disability Act, 1995:

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act was passed by the Parliament of India. The Act incorporates provisions for non-discrimination and affirmative action and provides equal opportunities in education and employment to disabled persons. This act was replaced by rights of persons with disability Act 2016.

The Rights of Persons with Disability Act, 2016:

Types of disabilities have been raised from earlier 7 (as defined in the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, to 21 and the Central Government will have the power to include more types of disabilities.

Low-vision, Leprosy Cured persons, Hearing Impairment, blindness, Locomotor Disability, Dwarfism, Intellectual Disability, Mental Illness, Autism Spectrum Disorder, Cerebral Palsy, Muscular Dystrophy, Chronic Neurological conditions, Specific Learning Disabilities, Multiple Sclerosis, Speech and Language disability, Thalassaemia, Haemophilia, Sickle Cell disease, Multiple Disabilities including deaf-blindness, Acid Attack victims, Parkinson's disease.

The aim of this act to give effect to United Nations Convention on the Right of Persons with Disabilities. United Nations General Assembly adopted its Convention on 13th December, 2006 which come in force on 27th December, 2016. The Act includes some important Sections which assures right of persons with disability some of these are, Equality and non-discrimination [Sec 3], Protection and Safety [Sec 8], inclusive education [Sec 17], Vocational training & self-employment [Sec 19], No discrimination in employment [Sec 20], Social security [Sec 24],



Healthcare [Sec 25], Reservation in higher educational institutions [Sec 32]. Section 41 provides for comprehensive accessibility in all modes of transport including but not limited to bus transport, Section 42 provides for comprehensive accessibility in information and communication services including audios, print and electronic media, Section 46 requires that all service providers, both Government and private, make their facilities, including buildings, accessible within a period of two years from the date of notification of the Accessibility Rules (notified in June 2016). Thus all government buildings providing any services to the public are to be made fully accessible by June 2019 as per Harmonized Guidelines.

Government Policies:

National Fund for People with Disabilities set up on 1.8.1988 has been activated and assistance has been sanctioned to non-government agencies. 17 projects have been sanctioned under the scheme. A new scheme - the *Viklang Bandhu* has been formulated to provide training disabled volunteers.

The Ministry of Statistics and Programme Implementation has brought out a statistical publication namely, '**Persons with Disabilities (Divyangjan) in India- A Statistical Profile: 2021**', based on the findings of recent National Sample Survey of Persons with Disabilities and Census of India 2011.

Conclusion and Suggestions:

America has the most comprehensive legislation on disability rights. The needs of persons with disabilities in every walk of life are taken care of and measures are taken so that more people with disabilities can participate fully in the society. The Americans with Disabilities Act (ADA), 1990 specifically prohibits discrimination against differently-abled people and guarantees equality of opportunity for people with disability in employment, public services (including

transport), private sector services and accommodations (access), and telecommunications. The approach of the law is right-based and every possible barrier in the way of a person with disability is sought to be removed.

Almost 60- 70 million disabled persons are in India and nearly 50% of them suffer from visual disability. The main problems of these visually impaired persons are secured and safe accessibility to walk on footpaths, movements on roads and during transport. Installation of auditory signals which emits a series of sounds, which would indicate the opportune time to cross the road at every red light to cross the roads safely, unobstructed footpaths for obstacle-free walking, temporary barricade around places where construction work is in progress and protective fencing around obstacles on footpaths, an efficient audio announcement system in all modes of mass public transport and easily accessible entry and exit points, constructing toilets to make them accessible for disabled person, building ramps in all public places, providing auditory feedback in lifts, providing ramps in all healthcare facilities, Elevators must have clear Braille signs and audio announcement, such measures will surely help the disabled persons.

The disadvantages suffered by people with disabilities are largely the product of prejudice, ignorance, neglect and sheer thoughtlessness. The first and second generation rights are more charity based in nature. The introduction of solidarity rights and its community based approach has revitalized the lives of 'Persons with disability', which are vulnerable to discrimination and disadvantages in all walks of life. Law has only partly succeeded in empowering disabled persons, largely because of inadequate enforcement, conflicting interpretations and limited scope. Persons with Disabilities Act, Rehabilitation Council of India Act and National Trust Act are effective instruments if they are implemented in right



earnest. The right-based model of the United States can be used in India for future reference. Individual legislation in relation to every aspect of the life of the disabled persons is praiseworthy. India must also look beyond the Persons with Disability Act, and enact or amend law on every aspect of disability. To circulate information on the rights of the disabled. Pressure groups and advocacy groups should actively work towards their implementation. The voice of the disabled is weak and society has to come out stronger on their behalf.

The role of Rehabilitation Council of India should be changed. It could be a networking and liaising body, liaising and networking with the concerned Ministries including HRD Ministry, Department of Education. It should not be a training body.

The annual observance of the International Day of Persons with Disabilities, 03 December, aims to promote an understanding of disability issues and mobilise support for the dignity, rights and well-being of persons with disabilities.

Time bound programme for issuance of disability certificates in the States (by State Governments), Utilisation and enhancement of seats in Universities and other offices of government (by State Governments), Barrier Free Environment, Access Audit, Employment - Clearance of backlog, Loans from Central Government, solving of grievances - mobile courts should be organised, Compendium of guidelines for various benefits of Persons with Disabilities, Recommendation for helpline, Sensitization of module for the parents, students in regional language and Coaching facilities for appearing in examination for the Persons with Disabilities will definitely help the differently abled person.

International Day of Persons with Disabilities by General Assembly resolution on 18 December 2007. India in recent times has signed United Nations

Convention of the Rights of Persons with Disabilities (UNCRPD), 2006, which surely provides 'personhood; to the differently-abled persons.

UN Secretary General on the occasion of a recent 'International Day for Persons with Disabilities' reaffirmed the commitment of the United Nations to work with people with disabilities to build a sustainable, inclusive and transformative future where women, men, girls and boys with disabilities, can realize their true potential qualities. Working towards an inclusive and barrier free society for Persons with disabilities is in consonance with the motto of the United Nations Sustainable Development Goals, i.e., "No one is left behind". Further, in 2020, the UN's theme for observing International Day for Persons with Disability was "Building Back Better: toward a disability-inclusive, accessible and sustainable post COVID-19 World" as Persons with disabilities everyday face discrimination and barriers that restrict them from participating in society on an equal basis with others.

If persons with disability are to be considered as full citizens of India, their right to equal opportunity and respect must be expressly mentioned in the constitution of India. The struggle for equal rights is a continuous process, and we may have to face severe problems on different levels of the struggle. In addition to access to all basic rights; disabled persons need a safe, secure, convenient, beneficial and accessible environment which is respectful of their human dignity.

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