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JAN SANCHAR VIMARSH

जब संचार विमर्श

A BI-LINGUAL MEDIA RESEARCH JOURNAL

A Special Issue for INC on Divyangs and PMG: A Global Media Perspective

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Chief Editor:

Dr. Sandeep Srivastava

Editors:

Dr. Dilip Kumar

Rahul Mittal

Anil K Jharotia

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Rights of Disabled Persons: An Analysis of Indian Legal Framework

Prof. (Dr.) Vaibhav Goel Bhattiya | Professor | Law | Swami Vivekanand Subharti University | Meerut
vaibhav.hnlul@gmail.com

Abstract: India is a huge country with the massive second largest population in the world with a large under privileged section. As per the report of the United Nations, 21.9% population out of 1.2 billion lives below the poverty line with a significant group of people who are deprived only due to their physical or mental disabilities. Out of all, most of them are disabled only because of the conditions created by poverty and its ancillaries, of which health care and education are the most important factors. Though an Act was enacted in 1995 to combat the situation but the ground reality remained unchanged even after ten decades of its ratification until the recent Legislation on this subject. This was reported that even after ten years of its enactment, it was hardly implemented anywhere and the commissioners appointed under the Act were never from the disability sector. And no matter whatever terms may be used such as 'differently abled' or 'especially abled' or 'gifted' or 'divyangs', the fact remains the same that they are impaired and handicapped. This is coupled with the fact they are socially a marginalized group.

Keywords: Disability, New Trends, Differently Abled, Marginalized group

Introduction

In the rural areas, the condition of the especially abled children is the most pathetic. Visually impaired are usually not admitted in Govt Schools which falls in rural belt due to lack of the facility required for them. And though mainstreaming is talked about, even the public schools do not have sign language interpreters or facilities for the blind and autistic and even the facilities for the locomotor disabled.

The situation in respect of access is so bad that if one was to visit the Supreme Court, the High Court of the States, the Reserve Bank of India, the Labour Commissioner's offices and even the offices of the Commissioners appointed under the Act, one would find that access has not even been thought of. Cinema halls, public buildings and railway stations etc continue to be built without that access even after the CPWD Notification of 1998.

It's seen that when an individual makes an effort to gather information and demands his rights guaranteed by the constitution, only then it can become his. As an impassioned advocate for India's especially abled citizens, Wright State University graduate Mr Javed, has given voice to an "invisible minority", one that has been denied by both political and social sectors for decades.

Pressing needs of the especially abled can be appreciated by the state of affairs Nandini Chandra briefly put in 1981 on the eve of the World Disabled Day, the same are relevant even in today's context:

"We don't need pity, we need acceptance.' No accurate statistics exist on the number of especially abled persons in the country, but a conservative estimate places them at 10 percent of the total population."

In fact the especially abled person in Indian society are often not treated with human dignity. They are considered as a perpetual curse, sometimes by their own kith and kin and then by the community altogether. The family may be kind to the pets, to the beggars, to the flora and fauna but not to them who are their own flesh and blood and whose deformity is a result of an accident, disease or a congenital defect. The problems as to rehabilitation of the especially abled have been voiced, e.g. considering the number of handicapped children especially, the development of schools and institutes in India has been very slow and their following shortcomings are visible enough:

- Most of the schools exist only in urban or semi-urban areas offering residential facilities. The schools lack in multilingualism, proper language of instruction method and approaches. The schools are seen to be unevenly located geographically with inadequate class-rooms and hostels.

- The schools lack a homogenous group and wide age difference exists amongst the students in the same class.
- A class comprises of children with varying intelligence. It has been reported that when multiple handicapped children are admitted to the hearing handicapped school, these children lag behind in their educational performance.
- Several shortcomings are seen to exist in the oral-aural communication.
- Speech and auditory training is followed in all the schools, but is not done systematically and thus the full potential of the child is not recognized.

Human Rights Law Network (HRLN) mapped the country and organised six zonal and three State specific trainings on a TOT project "Human Rights of Persons with Disabilities". An approximate 450 persons with disabilities, rehabilitation professional, special educators and registered organisations of the National Trust were equipped with training modules and positioned as potential trainers in the sector.

HRLN has also conducted trainings for visually impaired persons on the UNCRPD in partnership with the National Institute for the Visually Handicapped and very recently with the Harvard Project on disability in Kolkata. Several meetings on disability and the law have been organised in several States for DPOs, NGOs and persons with disabilities across the country.

As per the reports this is apparent that Human Rights Law Network also partnered with the National Trust, a statutory body of the government for welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities, and participated in the 'Disability Equity Training' programme wherein our lawyers conducted trainings to local level committee members in 18 States on 'legal capacity, guardianship and role of local level committees'.

On the direction of Supreme Court construction of ramps in polling booths, Braille ballot papers and Braille stickers on electronic voting machines (EVMs) and subsequently a national campaign was launched to ensure that the Lok Sabha elections in 2009 were made completely accessible to persons with disabilities.

On the other hand the experience of Nirmita Narasimhan as narrated by her, that the census takers came to her home and they didn't ask her question number nine. It was about disability. They said that it makes people uncomfortable.

The World Health Organisation (WHO) in a report in 2011 estimated that 15.3% of the world's population deals with disability of one kind or the other. The 2011 census puts India's disabled at 2.21% of the population.

Probably to meet out the challenges The Rights of Persons with Disabilities Act, 2016 (the "Disabilities Act, 2016") along with the Rights of Persons with Disabilities Rules, 2017 (together, the "Disability Law") has been enacted by the Indian government. On the outset the Act is being considered in consonance to the United Nations Convention on the Rights of Persons with Disabilities. Factually the act is to simplify and demystify the law on the issue. For the same disability is characterized in three broader categories along with 21 types of specified disabilities. Entire responsibility of overall development and support is casted upon the appropriate government and/or local authorities. And this is the first time when along with Govt bodies private players are also kept under the obligation to frame and publish an Equal Opportunity Policy.

Diverse National and International legislations stressed upon the prohibition of all sort of discrimination. International Human Rights Conventions, Constitutional Law of India and Human Rights Act are few to name with. But before 2016 equal opportunity in employment and clear cut prohibition of discrimination on the basis of disability was not in practice but the Act prohibits discrimination of persons with disabilities, unless it can be shown that the act of discrimination was a proportionate means of achieving a legitimate aim. And this will be the responsibility of the Govt to guard and protect the entire bundle of rights of disabled. The Act extends certain rights to the persons with for persons with benchmark disabilities only and these rights includes additional benefits to free education (between the age group of 6 and 18 years), reservation in education, government jobs, allocation of land, poverty alleviation schemes etc along with additional reservation in vacancies in government establishments.

The Act possesses wide range of obligations for unaided and private establishment for disabled employees. These obligations ranges from the establishment of the equal opportunity Cell, its officer, identified vacancies to all possible facilities required to facilitate them. Even special guidelines have been issued by the University Grant Commission for twelfth five year plan to protect the interest of Disabled persons. The Act made compulsory for every private establishment having 20 or more employees to maintain records with details of the employed disabled persons.

Though this is an early attempt to comment on the success of the Act but the way various government bodies are working for the compilation of the data from all the corners whether government or private, school-college or university, this was never before. Success can be understood with the increased number of disabled in educational institutions. Government efforts, National Legal Service Authority of India awareness initiatives and NGO's untiring support are actually supporting to fulfill the objective of the Act.

Still there are issues which need government attention and timely action. The problem is not so easy and need high financial implication too. Today specialized school and colleges are coming up for disables. Here the solution is inclusive education not the separate institution which has all sort financial implication along with a competitive Curriculum. To conclude this can be said that apart from inclusive education, there is a requirement of inclusive society with proactive involvement of the private employers with converse and stress upon for the rights of the disabled. Active participation of the private employers with converse and stress upon for the rights of the disabled. Lastly Health issues of the disabled are to be taken care of collectively in a robust manner.

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- Ratified by India in October 2007
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