



SPECIAL LEGISLATIONS FOR THE DISABLED

MITESH PANDYA

Research Scholar
Hemchandracharya North Gujarat University
Patan (GJ) INDIA

*"In nature there is no blemish but the mind;
none can be called deformed but the unkind."
(William Shakespeare: Twelfth Night)*

ABSTRACT

For disabled people in India, life is a constant struggle -- for education, employment and access to public places. In the bigger cities, there is a glimmer of awareness about the need to include the disabled in mainstream activities. In poor rural areas, however, people with disabilities are among the most marginalised sections of the population. In addition to the lack of special services that would allow them to lead independent and fruitful lives, disabled people in India have to battle cultural prejudices. There is a belief that in some way people who have a disability are paying in this life for sins committed in a previous life.

INTRODUCTION

Government support for the disabled has been long in coming and is still inadequate. For a government struggling to provide basics such as food and water, disability is a low priority.

DEFINING DISABILITY:-

- The term '**Disability**' has been defined in many ways. It includes terms such as 'Impairment' and 'Handicap'. The World Health Organisation (WHO) defines each term distinctly.

MITESH PANDYA

1P a g e



- **Impairment** is any loss or abnormality of psychological, physiological or anatomical structure or function.
- **Disability** is any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.
- **Handicap** is a disadvantage for a given individual, resulting from impairment or a disability that limits or prevents the fulfilment of a role that is normal (depending on age, sex and social and cultural factors) for that individual.
- The WHO definitions do not take into consideration the social perspective. The **Social Model** defines disability as the loss or limitation of opportunities to take part in the normal life of the community on an equal level with others due to physical and social barriers.
- According to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, of the Government of India, a person with disability is a person suffering from not less than 40% of any disability as certified by a medical authority. The conditions included as disability are blindness, low-vision, hearing impairment, locomotor disability, mental retardation, leprosy and mental illness. Autism, cerebral palsy and multiple disabilities (e.g. mental retardation with blindness) have been listed as disabilities in the National Trust Act of 1999.

PREVALENCE OF DISABILITIES:-

There are no definitive figures on the number of disabled people in the country. The 2011 Census report points to a disability percentage of 2.13%, putting the number of disabled people at 2.19 crore or 22 million.

According to the National Centre for Promotion of Employment for Disabled People (NCPEDP), a leading voluntary organisation fighting for the rights of the disabled, the figure is much higher. NCPEDP's most conservative estimate puts the number of disabled in India at 5% to 6% of the population or 60-70 million.

According to the National Sample Survey 2010, disability among people in rural areas is much higher than in urban areas: 1.85% as against 1.5% in urban areas. Some 2.12% of males in rural areas are affected by some form of disability compared to 1.67% males in urban India. Similarly, disability among females in rural areas is 1.56%, compared to 1.31% in urban areas.

MITESH PANDYA

2P a g e



The survey also found that 55% of the disabled were illiterate; only 9% had completed higher secondary education. About 11% of disabled people in the age-group 5-18 years were enrolled in special schools in urban areas; in rural areas it was less than 1%.

CAUSES OF DISABILITIES:-

According to WHO, as many as 50% of disabilities are preventable and directly linked to poverty.

Poor nutrition, limited access to vaccination programmes and health and maternity care, poor hygiene, inadequate information about the causes of impairment, are some of the causes of disability in poorer sections of the population. Inbreeding, sanctioned by social practice in some communities, has led to significant increase in disabilities. Hazardous working conditions are another cause of disabilities in people.

Prevention, early detection and intervention are key to containing the number of disabled. Government hospitals are expected to have the expertise and equipment to screen and identify disability. Positive steps towards early identification of disability include the organisation of eye camps and the involvement of anganwadi workers (nursery teachers in rural and urban poor areas), village communities and mass media.

ROLE OF THE GOVERNMENT:-

The government passed a flurry of legislation concerning the disabled.

- **The Rehabilitation Council of India Act 1992** led to the establishment of the Rehabilitation Council of India (RCI). The RCI is responsible for standardising and monitoring training courses for rehabilitation professionals, granting recognition to institutions running courses, and maintaining a Central Rehabilitation Register of rehabilitation professionals. The RCI Act was amended in 2000 to give the RCI the additional responsibility of promoting research in rehabilitation and special education.
- **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995** for the first time provided a legal framework for persons with disabilities and protected their rights. It lays down what education and employment opportunities must be created for the disabled, stipulates the creation of barrier-free access to public places and public transport, and supports the right of disabled persons to live independent lives.

- **The National Trust Act 1999** provides for the constitution of a national body for the welfare of people with autism, cerebral palsy, mental retardation, and multiple disabilities. The Act mandates the promotion of measures for the care and protection of persons with these disabilities in the event of the death of their parents, procedures for appointment of guardians and trustees for persons in need of such protection, and support to registered organisations to provide need-based services in times of crisis to the families of the disabled.

Government has also given concessions in travel, customs duties, income tax and bank loans for disabled people.

- **The Disability Discrimination Act 2005** and **The Disability Equality Duty** introduced new duties for most public bodies to
 - promote disability equality
 - take steps to eliminate discrimination and harassment
 - publish a Disability Equality Scheme, setting out how they plan to do so

The aim is to influence the way public bodies – including education providers - make decisions and develop their policies, encouraging them to consider the needs of disabled people as part of their everyday activities.

- **The Mental Health Act, 1987:-**

This Act consolidates and amends the Indian Lunacy Act, 1912 relating to the treatment and care of mentally ill persons, with a clear aim to making better provision with respect to the management of their property and affairs .

- **National Policy for persons with Disabilities, 2006:-**

The National Policy recognizes the dignity of persons with disabilities and seeks to create an environment that provides them protection of their rights and freedoms as well as full participation in society. It focuses especially on prevention of disability, rehabilitation measures, education, protection of children and women with disabilities.

The problems in implementing and monitoring the legislations:-

There is lack of political will, financial support and excessive bureaucracy.



- Lack of awareness among government departments about the Act.
- There is no monitoring mechanism for the implementation of the Act.
- Lack of awareness among disabled people about the Act.
- Lack of strong advocacy groups to influence decision and policy makers.

The ground reality:-

On paper, there is an impressive agenda for protecting and promoting the interests of the disabled. The ground reality, however, is very different.

Little has been done to change the way people view disabilities. It is still seen as either an unalterable medical condition or an act of fate. At its worst, society rejects the disabled person and makes him or her an outcaste. At best, he is an object of pity. The onus of caring falls on the family and not the community. The concept of the community providing sufficient inputs to allow the disabled person to be an independent, earning member of society has not taken hold.

Prevention and early detection of disabilities still lag behind. While the Pulse Polio drive and immunisation against diphtheria, tetanus and pertussis have been quite successful, efforts for the prevention of other conditions such as blindness, deafness and neurological disabilities have been dismal⁶. The incidence of developmental disabilities (e.g. mental retardation, autism) has increased to an alarming level.

Various schemes have been offered for the welfare of the disabled population, but little effort has been made to publicise them. Consequently, disabled people, their families and organisations that work for them are either unaware of the provisions or cannot avail of them⁷. At times the process of availing of the benefits of schemes is so cumbersome and time-consuming that most people prefer to bypass them.

Government officials charged with implementing the schemes often fail to do so, particularly in rural areas. Detection and treatment camps are not held; Government hospitals that are supposed to treat disabled people often do not have the required medical expertise, and even the simple process of getting a medical certificate that declares a person officially disabled is a time-consuming one.



The 1995 Act makes several provisions for the employment and education of disabled persons. A fairly extensive government infrastructure has been built to facilitate employment of the disabled. There are 23 special employment exchanges in the country, 55 special cells in the regular employment exchanges, and 17 vocational training centres across the country. There are five national institutes for the handicapped⁸.

Three per cent of jobs in government services are reserved for the disabled under the law. It is unclear how many are filled. A report brought out by the National Centre for Promotion of Employment for Disabled People (NCPEDP) in 2011 revealed that in the past four years, the annual reports of the Chief Commissioner for Persons with Disabilities, the Ministry of Social Justice and Empowerment and the Ministry of Labour do not provide any information on the implementation status of the 3% reservation.

The report also reveals that the office of Chief Commissioner for Persons with Disability, who is responsible for coordinating and monitoring work in this field, and the utilisation of funds by the central government, had been vacant for over nine months.

Education for the disabled has also been adequately provided for under existing legislation. There are more than 3,000 special schools in India today. Of them, 900 are schools for the hearing impaired, 400 for children with visual impairment, 700 for those with locomotor disabilities, and 1,000 for the intellectually disabled. More than 50,000 children with disabilities are enrolled in the Integrated Education for Disabled Children, a government-sponsored programme⁹.

A few schools have resource rooms and employ special education teachers to help retain children with special needs in their system. Sadly, these facilities are found in very few cities. There are almost no special schools or special educational services in rural India.

Efforts at integrating children with disabilities into mainstream schools have been even less successful. Under the law, 3% of seats in educational institutions must be reserved for the disabled. A countrywide survey on the enrolment of disabled children in educational institutions released in September 2011 revealed that only a fraction obtained admission. Between them, the 119 universities that responded to the survey conducted by the National Centre for Promotion of Employment for Disabled People (NCPEDP) had enrolled only 1635 disabled students.

The 89 schools that responded to the survey had enrolled 382 students with disabilities. About 18 schools cited the existence of "special schools" as reason enough to refrain from doing so.

MITESH PANDYA

6P a g e



Provision of a barrier-free environment also remains a pipe dream, though it, too, has been mandated. It is the odd public building that will have any kind of access for the physically handicapped, or signposting in Braille, even in the biggest cities. Public transport is mostly out of bounds for independent disabled travellers anywhere in India.

The government clearly needs to do more than just enact legislation and announce action plans. It must put enforcing and monitoring mechanisms in place. An Action Plan for making education disabled friendly by 2020, announced by the Human Resources Development Ministry in March 2010, sets no interim targets.

The Indian mindset, too, must change. Most Indians view disability as a matter of charity rather than a human rights issue. From this perspective, the disabled remain beneficiaries of a scheme rather than managers of interventions meant for them.

Suggestions:-

By taking the ups and downs of the rest of the world legislation, model legislation has to be enacted which would be based on certain objectives which are mentioned below:

(i) To spell out the responsibility of the State towards the prevention of disabilities, protection of rights, right to human dignity, provision of medical care, education, training, employment and rehabilitation of persons with disabilities.

(ii) To create a barrier-free environment for disabled persons.

(iii) To remove any discrimination against disabled people in the sharing of development benefits vis-a-vis non-disabled persons.

(iv) To counteract any situation of abuse and the exploitation of disabled persons.

(v) To lay down strategies for the development of comprehensive programmes and services and the equalisation of opportunities for disabled persons.

(vi) To make special provisions for the integration of persons with disabilities into the social mainstream.

These aspects also have to be covered:



- (i) Pre-school education of disabled children;
- (ii) Special problems of the parents of the disabled;
- (iii) Special problems of the female disabled;
- (iv) Games, sports and cultural activities;
- (v) Exploitation of disabled by their own families; and
- (vi) Higher education of the disabled

Other steps can be taken as follows:-

1. Effort has to be made to promote, expand and protect the human and legal rights of persons with disabilities through the provision of information, training, advocacy and legal representation.
2. Legislation on disability has to advance the dignity, self-determination and equality of individuals with disabilities.
3. Make sure that persons with disabilities (whatever be the form) have equal opportunities in education and vocational training by keeping reserved seats for them.
4. Introduce in the regular educational curricula, inclusive education for the persons with disabilities.
5. Modify existing educational infrastructure in a way conducive to persons with disabilities.
6. Extend new educational and training institutions purposely meant for persons with disabilities.
7. Enhance the involvement of persons with disabilities in marketable vocational training schemes.
8. Create reserved places for persons with disabilities in both formal and non-formal workplaces.



9. Scale down unemployment among persons with disability, in a gradual, systematic manner.
10. National associations have to be formed depending upon the disability, then most of the PWDs' problems may be solved.
11. Travel concessions, incentives, awards, scholarship (Eritrea is providing), special quotas in education and employment has to be provided to PWDs.
12. Awards for workers and institutions, organizations etc., working for the welfare of the PWDs.
13. Calling the PWDs with nicknames which shows their disability, has to be avoided. No metaphors have to be used, one has to avoid such statements or proverbs.
14. One has to assure and guarantee an opportunity but not charity to the PWDs.

The First Steps on a Journey of a Thousand Miles :

"What is disability – your frame of mind is the real disability". Let us change our attitudes and help to change others. Make a commitment to end unfair and unfounded prejudices. Open minds and doors to people with disabilities. Repeat in speeches, writings and films three words: Disability, Equality, and Liberty. Listen to disabled people. Serve disabled people. Work with disabled people. Travel with disabled people. Have them as friends. Every year December 3 is observed as the World Disability Day.

REFERENCES

1. International Classification of Impairments, Disabilities and Handicaps, Geneva, WHO 1980.
2. See <http://www.disabilityindia.org/pwdacts.cfm> visited on 20/8/12
3. Barton Len, "Sociology, Disability Studies and Education: Some Observation" pg. 129 (1996).
4. See http://www.censusindia.net/results/disabled_main.html visited on 24/8/12
5. Oliver M., "Discrimination, disability and social policy" pg. 9 (2001)
6. See <http://www.childrensdisabilities.info/> visited on 21/8/12
7. Dixit V.K., "Historical Foundation of Disability Discrimination in Classical Hindu Law" Pg.65-70 (1998)
8. Bagenston Samuel R., "Subordination, Stigma and Disability" pg. 397 (2000).
9. See <http://www.un.org/disabilities/> visited on 1/9/12.

MITESH PANDYA

9P a g e