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DISABILITY LAWS IN INDIA

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Abstract

Disabled people are still human; it is not an object that can be separated into primary and secondary. Consequently, the right that an ordinary citizen receives from his birth also receives the same rights as a disabled person, as he is also a citizen of a country, not a secondary individual. Therefore, the Constitution of India applies equally to all legal Indian citizens, even if they are well or are disabled in some way (physical or mental). Indeed, it is obviously that the disabled person wants to get some preferential privileges instead of a normal person. This is because they are different (different child, special person). The second explanation is that we neglect people with disabilities and are kept away from their rights, perceived as problems and treated as a burden and a horror. This article briefly refers to the main new laws and their implementation that have been enacted to protect the rights of people with disabilities.

1. OVERVIEW

In India the campaign for disability rights is more than four decades old. By the early 1970's, people with disabilities had claimed their own rights. But their campaign did not catch traction due to lack of integration. In the 1980s, various organisations, representing the interests of incompetent citizens, came together with the same purpose. The Disability Rights Movement gained traction in this decade and the government passed 'The Persons with Disabilities (Equal Opportunities, Rights Enforcement and Full Participation) Act, 1995' after the several demonstrations. As a result, disabled people have a role in government facilities, educational institutions and so on. The act has come to be regarded as the launch of a new age for disabled people. Yet it struggled to achieve its targets because of some of its shortcomings and the lack of implementation.

There was a time when people with disabilities were not included in Indian population census. PWD remained outside the census population until the 1980's. Disability forms were included in the 1981 census. And the 1991 census census' handicapped cadre was completely abandoned. After a long struggle, the 2001 census included disability, which resulted in the lack of reliable data due to insufficient education and preparation, and mathematicians found that 2.1 percent of the population was PWD. While only five categories of disability were included in the

2001 census, other types of people with disabilities, including those with mental and intellectual disabilities, were left out entirely. In the 2011 census it was found that 26.8 percent of people in India are suffering from various forms of disability and that is 2.1 percent of the population. 14.9 million of the country's overall impairment are men, and 11.8 million are women. 18.6 million are disabled in rural areas while 8.2 million are disabled in urban areas.

In order to guarantee all the rights of people with disabilities, the United Nations held a conference on the rights of people with disabilities in 2006, during which UNCRPD published 50 papers on various aspects of disability-related issues, reaffirmed in 2007 by the 160 Member States, including India. UNCRPD is based on eight principals:

1. Nondiscriminatory care of disabled people
2. Total engagement and participation of people with disabilities in society
3. Security of the elderly and of the elderly for their natural integrity and personal autonomy
4. Respect for the distinction and recognition of disabled people as a part of society and diversity
5. Hop on equal opportunities

6. Availability
7. Male and female equality
8. Respect for the rights of children with special needs to grow and recognize children with disabilities.

Considering the values of the UN Conference 2006, a new Act was passed thus making appropriate changes to the provisions of the 1995 Act. The right of the disabled person, Act of 2016 obtained the President's pronouncement on December 27, 2016 and was published in the Official Gazette on December 28, 2016, which came into force on June 15, 2017. Section 102 of this Act refers to the cancelation of existing legislation in that it applies to the 1995 Act on persons with disabilities (equal opportunity, equality of rights and full participation) The intention of this Act explicitly states that its object is to maintain the dignity of every individual in society and to prevent discrimination of every sort. This talks of supporting people with some form of disability, and ensuring that they engage completely in these people and society. Because India is the signatory of the United Nations General Assembly's Conference on the Rights of Persons with Disabilities, such domestic legislation was in reality necessary for India.

2 INDIA 'S NEW LAW ON EXTENDS DISABILITY TO PRIVATE EMPLOYERS

The 2016 Legislation on the Rights of Persons with Disabilities (the 'Disability Act, 2016') together with the 2017 Rules on the Rights of Persons with Disabilities (together the 'Disability Statute') were enacted by the Indian government[1].

The new Disability Act brings the values of the UN Convention on the Rights of Persons with Disabilities into effect[2]. The Disability Law seeks, inter alia, to protect people with disabilities from different forms of discrimination, to improve measures for effective participation and inclusion in society, and to ensure equal opportunities and sufficient accessibility.

Prior to the enactment of the Disability Act, 2016, legislation governing the rights of persons with disabilities was scattered throughout India[3], the Equal Opportunity Protection of Rights and Full Participation Act, 1995 ('Disability Act, 1995'), the Mental Health Act, 1987, the Rehabilitation Council Act of India and the National Trust (for the welfare of persons with Autis) While these laws were intended to safeguard the rights of persons with disabilities, these laws did not explicitly provide for equal opportunities , particularly in employment-related matters.

Attributes of the Handicap Act

- 'Disabled persons' were listed as: I persons with disabilities[4]; (ii) persons with a median disability[5] and (iii) persons with high support needs[6].

- Under the 2016 Disability Act, the definition of 'individual with disability' is an expansive concept as opposed to the exhaustive concept given under the 1995 Disability Act and includes 21 disability forms as 'defined disabilities.' The 1995 Disability Act dealt with only seven types of disabilities.
- Although most of the responsibilities under the Disability Law are enforced on the appropriate government and/or local authorities; other duties / obligations are also imposed on institutions (including the private sector).
- An Equal Opportunity Agenda must be formulated and distributed by all institutions (including in the private sector).
- This forbids discrimination against people with disabilities, unless it can be shown that the act of discrimination was a fair way of achieving a valid purpose.
- Onus was put on the Government to ensure the protection of people with disabilities. The government is expected to ensure / protect equally with others the right of a disabled person to equality, dignity and respect for his / her integrity; the right to personal rights, the right not to be discriminated against; the right to live in a community; the right to equal protection and security in danger circumstances, armed conflicts, humanitarian crises, natural disasters, etc.
- Additional benefits such as the right to free education (between the 6-18 age group), education reservation, government jobs, land allocation, poverty alleviation schemes, etc. have been given for people with benchmark disabilities.
- For certain individuals or groups of persons with benchmark disabilities, quotas in vacancies in government establishments [7] have been increased from 3% to 4%.
- In order to ensure speedy trial, special courts shall be formed in each district to deal with cases involving violations of the rights of disabled persons.
- Enhanced punishments with a monetary penalty of up to Rs 500,000 (~USD 7750) and up to 5 years in prison.

New Compliances

- If the Disability Act is passed private employers are expected to:
- Create an Equal Opportunity Policy: An Equal Opportunity Policy shall be communicated to every government. This regulation shall be shown on the website of the employer, in the absence of which the same shall be shown in the conspicuous locations of the premises[8]. A copy of said policy shall also be reported, as appropriate,

with the Chief Commissioner or the State Commissioner[9]. The Equal Opportunity Policy should include descriptions of the facilities and services that the employer must offer to the disabled workers in order to allow them to carry out their duties effectively at the establishment[10].

- Appoint a liaison officer: Private establishments with more than 20 employees are expected to appoint a liaison officer to supervise the recruitment of people with disabilities and make the appropriate arrangements and facilities for these employees at the establishment[11].
- Classify posts / vacancies for persons with disabilities: while the Disability Act does not prescribe quotas for persons with disabilities in the private sector, private employers are expected to classify posts / vacancies in a facility that would be appropriate for persons with disabilities and to provide information of the same in the establishment's Equal Opportunity Policy[12]. In addition, private organizations seeking grants from the correct government will need to ensure that at least 5% of their workforce is made up of people with benchmark disabilities[13].
- Prohibit Discrimination: The head of the institution shall ensure that no disabled person is discriminated against on account of his / her

disability[14], except where such act / omission is a proportionate means of attaining a valid objective[15].

- Providing additional facilities / benefits: Private institutions shall seek to provide additional facilities for the disabled, such as educational facilities, assistive devices, barrier-free accessibility[16] and to devise additional benefits for the disabled, such as transfer preferences, special leave, etc.[17].
- Revamp Current Hiring Practices and Policies: In view of the aforementioned conditions, employers will now need to revamp their current recruiting practices and amend their HR rules.
- Compliance with Accessibility Standards: All establishments will need to ensure that the establishment and physical setting, transport and information and communication technology building plan / building structure[18] adheres to the government's accessibility standards[19]. No organization shall be given a completion certificate or permitted to occupy a building unless it has complied with the Central Government's accessibility standards[20].
- Maintenance of records[21]: Every private establishment with 20 or more employees shall maintain records containing descriptions of

the persons with disabilities working at the establishment[22].

- The Handicap Act, 2016 repealed the 1995 Disability Act.

3. CURRENT AMMENDMENTS IN DISSABILITY ACT

The regulation introduced by the Union Ministry of Social Justice and Empowerment to amend the Right of Persons with Disabilities (RPwD) Act, 2016, to de-criminalize 'minor offenses to boost business sentiment and unblock court proceedings' met with protests from the group of disabled people, activists and organizations.¹ Although members of the disabled group claim that for the first time, giving their disadvantaged group robust security against punitive provisions contained in the law, the strong 2016 Act is being reviewed by ministry officials to render laws commensurate with the crime, this might not be the case under the 2016 legislation.

The Department of Empowerment of Persons with Disabilities, under the Ministry, claimed in its notification issued on Wednesday that decriminalization of minor offences would reduce the possibility of incarceration for acts that do not actually have 'mala fide intent.' It claimed that the

possibility of jail is a obstacle in attracting investments – from domestic and foreign investors alike – that has become more important since the Covid-19 pandemic to revive the economy.

The Ministry of Empowerment of Persons with Disabilities has sought to decriminalize such offences in the Act on the Rights of Persons with Disabilities (RPwD) in a bid to 'boost market sentiment and unblock court proceedings.' Nonetheless, advocates fear that implementing these changes will simultaneously restrict disabled rights and make public spaces inaccessible to them. On Wednesday the Ministry of Social Justice and Empowerment put out the amendment proposal on www.disabilityaffairs.gov.in and sought public input by 10 July 2020.²

The object of the amendment is to reduce the punishment under Sections 89, 92(a) and 93 of the RPwD Act by compounding those offences. The penalties apply to violating its rules, deliberately offending or threatening a individual with a disability or failing to provide documentation under this Act, respectively. The statutory punishments range from fine to Rs 5 lakh for violation of the Act and up to five years imprisonment for bullying or public offense.

¹ Esha Roy (2020) Govt looks to 'amend' parts of Disabilities Act, community protests. The Indian Express. <https://indianexpress.com/article/india/govt-looks-to-amend-parts-of-disabilities-act-community-protests-6490577/>

² Sushmitha Ramakrishnan (2020) Modi government's proposal to amend disability rights act worries activists, Express News Service <https://www.newindianexpress.com/nation/2020/jul/02/modi-governments-proposal-to-amend-disability-rights-act-worries-activists-2164515.html>

Activists in the area of disability rights argued that the Act and these Parts are protecting the rights of the disabled, and softening the provisions would make public and work environments inaccessible to them. 'The Act only covers people with disabilities if they are humiliated in public or abused. Therefore, if anyone is humiliated in private, a person with disabilities cannot use this Act. Its scope is already restricted, and this provision could further restrict the rights of people with disabilities,' said Vaishnavi Jayakumar of the Disability Rights Alliance.

Section 92(a) of the Act providing for a punishment of imprisonment if a person 'intentionally threatens or intimidates a person with a disability in any place from a public point of view'

"This provision offers safeguards in a manner similar to The Scheduled Castes and Tribes (Atrocities Prevention) Act. Will the government be able to do away with that?" she asked."

Jayakumar said that "where a law involves an individual's right, the legislation should preferably be widely circulated in many regional languages and people should be given ample time to comment and provide feedback. The proposal was published in English, and the public feedback was given for ten days."

Murganatham Linguswamy, "a lawyer at the Madras High Court and an activist in the area of disability rights, argued, "The

government is seeking to build a conducive business climate at the cost of an individual's integrity-which is a fundamental right." He also claimed that the National Crime Record Bureau has not released data on disabled offences. "So it is unreasonable to modify the law without credible data," he said."

Only Section 92(a) allows for imprisonment.

The incarceration clause should be phased out according to the new agreement and the fine will be determined by the sparring parties under the control of either the Chief Commissioner for Persons with Disabilities or the State Commissioners for Persons with Disabilities.

Satendra Singh, "a Delhi-based disability activist, said: 'The punitive provisions of this Act are intended to be as successful as those rendered for SC / ST persons. As the SC / ST Act is stringent, it serves as a major barrier to committing offences. The RPwD Act was supposed to do just the same for us. By eliminating the penal clause, the government not only dilutes the Act, but also goes against promises it has made to the UN and internationally."

Rao said "the department is 'flexible' and would consider extending the feedback date from July 10 to allow more time for the group to respond."

Singh said: "In September last year the UN had made some recommendations for the Indian Act to improve it, and the

government wants to dilute it instead. This is rarely enforced even though this Act is in effect. There are very few FIRs, if any, and in the last three years since its introduction no-one has gone to court. And there is no backlog of cases piling up in tribunals that the government wants to speed up. Until now, Singh has lodged three complaints with Disability Commissioners over Section 92(a). In 2017, he filed a lawsuit against UP minister Satyadev Pachauri for allegedly insulting a Class IV employee; filed a complaint with the Election Commission against Godda Nishikant Dubey's BJP MP for alleged derogatory remarks against persons with disabilities; and against West Bengal's Union minister and Lok Sabha MP Babul Supriyo for allegedly threatening to break the leg of a disabled person in a public.”

4. CONCLUSION

India has been under lockdown since the middle of March because of the Coronavirus pandemic. The lockdown has bared many of India's ingrained disparities for all to see. The policies of the ruling government for the weak and the underprivileged were ambiguous, to put it mildly. For the 27 million disabled Indian people, govt. Directives was nothing short of satisfactory. The Ministry of Family Welfare and Health released directives in formats that are not available to many disabled persons. The televised speeches by the Prime Minister had been without language interpreters. The Department of Empowerment of Persons

with Disabilities provided guidelines only for the people with disabilities, their families and Organizations working with the PwD group on e-passes by March 27. Three weeks into the lockdown, Ungender spoke with five disability rights advocates about the effects of the COVID-19 lockdown, attitudes about the sexual assault problem, the various capacity forms and how to address it, and more. The ensuing dialogue was a crash course on how we could best sensitize and educate ourselves on the many challenges that people with disabilities face when navigating public spaces, both systemic and behavioral.

It is important to stress here that these reforms are not being made taking into account the needs of people with disabilities, but instead are pro-corporate and pro-business. In December 2019, NASSCOM reported that only people with disabilities constitute a mere 0.6-1 percent of India's IT market. The Confederation of Indian Industry listed 37 laws that were to be changed for business convenience in India and the Disability Act was not on that list. Since of the Disabilities Act, it is not clear what firm finds it difficult to do business in India. The apathy of the Indian Government towards one of the country's most vulnerable communities , particularly in a pandemic state when the community needs more state help, is now evident with the proposed amendments to the Disability Act.

5. SUGGESTION

1. Citizens ought to be aware of legislation relating to disabilities and impairment. They ought to change attitude. We have to clarify that disability is not a burden; like us, PWD is human too. They do have feelings, and their talents can be put before society if sufficient attention is paid to them. We can also be put on their feet by working hard for them, and they can be made autonomous.
2. The government will promote families with disabilities, so that the family can come forward to help the disabled. Not only this, members of such family should be given special training, they should be provided with necessary / helpful equipment. Either regular or disabled, first school is the home. The family is the first escalator he learns to ascend from. Community support is the biggest support for any adult, and it's crucial that their families support the disabled children in every way.
3. In today's fast-paced world where multi-national companies are searching for multi-talented talents, why would the companies come forward for the employment of people with disabilities, where they need to spend extra on them? So it is appropriate for the companies to be invited by the government with the aid of beneficial schemes and incentives.
4. Where the benefits of reserving for disabled people have been made in educational institutions, syllabus should be made according to them. Further, emphasis should be placed on simple methods of education and language of education.
5. In this regard, it is necessary for school / college students to make street shows to spread awareness to village, to village, and town, to city. In this context, there should be an active participation of electronic media, print media and coaching centres.
6. Much as ADA (American Disability Act) provides clear and concise requirements for the enforcement of effective dates, time limits, alternate solutions, temporary relief etc., so does PDA include such services.
7. ADA Watch " is an effective monitoring program to track law enforcement. The supervisory system should be made highly effective under PDA. All agencies that earn ADA are required to adhere to positive action programmes. PDA will implement a sustainable successful plan of action.

. REFERENCES

1. Effective as on April 19, 2017, http://disabilityaffairs.gov.in/upload/uploaddfiles/files/RPwD%20Act_enactment.pdf
2. Ratified by India in October 2007
3. Enforceable only against the State/ Centre.
4. RPWD Act, section 2(s) "person with disability" means a person with long term physical, mental, intellectual, or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.

5. RPWD Act, section 2(r) (r) “person with benchmark disability” means a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.
6. RPWD Act, section 2(t) (t) “person with disability having high support needs” means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support;
7. The RPWD Act , (k) “Government establishment” means a corporation established by or under a Central Act or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 2 of the Companies Act, 2013 and includes a Department of the Government;
8. Rule 8(2) of the Rights of Persons with Disabilities Rules, 2017
9. Section 21 (2) of the RPWD Act
10. Rule 8(4) of the Rights of Persons with Disabilities Rules, 2017
11. Rule 8(3) (e) of the Rights of Persons with Disabilities Rules, 2017
12. Rule 8(3) (b) of the Rights of Persons with Disabilities Rules, 2017
13. Section 35 of the RPWD Act
14. Rule 3 (1) of the Rights of Persons with Disabilities Rules, 2017
15. Section 3 (3) of the RPWD Act
16. Section 2 (c) of the RPWD Act defines “barrier” as any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hamper the full and effective participation of persons with disabilities in the society.
17. Rule 8 (3) sub-clauses (c) and (d) of the Rights of Persons with Disabilities Rules, 2017
18. Rule 15 (1) of the Rights of Persons with Disabilities Rules, 2017
19. Section 44 (1) of the RPWD Act
20. Section 44 (2) of the RPWD Act
21. Section 22 of the RPWD Act.
22. Rule 9 of the Rights of Persons with Disabilities Rules, 2017