

ACT OF DISABILITY VIS VIS CONSTITUTION OF INDIA; STUDY

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Abstract

“Unfortunate are those who lose their limb, thereby losing their right”

This research paper mainly focus on the rights of the disabled people, their legal aspects, types of disability recognized in India, and the steps taken by various countries for the upliftment of disabled people. People with disability are generally excluded from the society and are denied various human rights. There are various forms of discrimination against people with disability ranging from invidious discrimination to more subtle form of discrimination which nullifies the enjoyment or exercise of rights of person with disability. Firstly, the paper deals with different provisions and laws where disabled people are acknowledged in India such as Constitution of India, education laws, Health Laws, Family Laws, Succession laws, Labor Laws, Judicial Procedures, Income Tax Laws etc.. The paper will also discuss about various acts which were formulated for recognizing the right of disabled people such as The Person with Disabilities Act, 1995, The Mental Health Act, 1987, The Rehabilitation Council of India, 1992, The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999, Declaration on the Rights of Mentally Retarded Persons. Furthermore, the paper deals with treaties and accords, signed by the countries and the laws governing those countries regarding rights of disabled people. (The Core United Nation Human Right Convention, International Covenant on Civil and Political Rights, Convention on the elimination of all forms of racial discrimination, Marrakesh Treaty). This paper compares the laws of different countries with India. In the end, the paper will be concluded by giving suggestions from the authors and their viewpoint on the topic.

Keywords – Disability, Fundamental Rights, Judicial Procedure, Rehabilitation, Discrimination, Succession, Convention, International convention, Treaties

INTRODUCTION

The meaning of dis-ability has moved over a last few years from an individual to a society. When a Citizen is physically or mentally unwell or unsuitable, they are said to be dis-abled. It depicts a physical features of a person, but within today's world, it also depicts a features of a societal community. Citizen by means of dis-ability's within India have always been a marginalised group by means of little political clout. Despite a fact that an Indian Constitution asks for constructive measures for society's weaker parts, dis-abled citizens have been overlooked within basic areas such as work, education, access, & non-segregation/constructive separation. While other dis-advantaged groups include benefited from affirmative action, nothing has been done to help a dis-abled integrate into society. Because dis-abled citizens as a group do not have a strong political voice, affirmative action & positive measures for minority's within society, as well as constructive measures for individuals by means of dis-abilities, are largely implemented through a implementation of dis-ability legislation provisions. Citizen by means of dis-ability's are considered within this way as being restricted within their daily activity's because of a complex web of interconnected circumstances, some relating to a individual & others relating to a individual's condition & social/political plans¹. a societal concept of dis-ability is belief that society has created physical or mental barriers that affect Citizen by means of dis-abilities. As a result, government programmes & tactics have evolved to incorporate environmental improvement's (e.g., making buildings barrier-free) & providing financial assistance or business-related support to enable citizens by means of dis-ability's to participate within community & work place activities.

According to estimates, there are one billion individuals by means of dis-ability's worldwide W.H.O. face multiple obstacles within their effort's to participate within all aspects of society, while a number of Citizen by means of dis-ability's within India is estimated to be around 2.68 crore, according to Census 2011. (2.2 percent of aggregate population)². As a result, Citizen by means of dis-ability's despise equal access to society, including transportation, employment, education, equity, & political cooperation. Participation within societal life is essential for a development of democracies & citizenship. Citizens by means of Dis-abilities, on a other hand, are frequently denied this fundamental right. All nations gatherings are required under a United Nations Convention on a Right's of Citizens by means of Dis-ability's to advance & guarantee a political right's of all Citizens by means of Dis-abilities. Indeed, a World Health Organization (W.H.O.) goes beyond a medical approach to dis-ability to take a much broader view of a problem. It also recognises a influence of a environment within either facilitating or obstructing functioning.

CONCEPT & MEANING OF DIS-ABLEMENT

Dis-ability's is a broad phrase which encompasses impairments, activity constraints, & participative limitations. A trouble with a people's physical characteristic or shape is referred to as an impairment; a trouble with a people's capability to finish a mission or motion is referred to as an interest limitation; and a trouble with a people's potential to have interaction in existence event's is referred to as a participative restriction. As a result, incapacity is a complicated phenomenon that represent's a interplay among a person's frame and a lifestyle wherein they live.

¹ Dis-ability: a concept & related Indian legislations. Available at: http://www.psyplexus.com/mhr/dis-ability_india.html(Last visited on 24th April 2022)

² Disabilities in India: Statistics and Facts. Available at <https://www.statista.com/topics/8278/disabilities-in-india> (Last Visited on 25th April 2022)

World Health Organization, Dis-abilities

Disability is an inconvenience, not a tragedy. As stated, around 650 million Citizen which means 1/10th worldwide population, are considered to be impaired withinside some way, including visual, auditory, physical, speech, cognitive, & neurological dis-abilities. Unlike other countries' dis-ability legislation, India'sCitizens by means of Dis-ability's (Equal Opportunity, Protection of Right's, & Full Participation) Act., 1995recognises some types of dis-abilities, such as blindness³:

- I. Blindness;
- II. Low visualization;
- III. Leprosy-cured;
- IV. Hear impairment;
- V. Locomotors dis-ability;
- VI. Mental retardation
- VII. Mental sickness

Disability refers to a state of being intellectually or physically handicapped or weak, as well as a incapacity or not able to do a given profession due to a physical or mental impairment, want, or legal qualification. a United Nations General Assembly, in conformity with a United Nations Charter, adopted a Declaration on a Right's of Disabled Citizens.⁴ "Any Citizen unable to provide for himself or herself wholly or partially a necessities of a normal individual & or societal existence as a result of a defect, either congenital or not, within his or her physical or mental capacities," according to a definition of "disabled person." There are two categories of disability issues that are addressed by legislation in India. One that determines pay based on a occurrence of disability—whether at work or on a road. Workmen's Compensation Act of 1923 and a Motor Vehicles Act of 1988 are two important acts that deal with compensation-related dis-ability laws. a second scenario in which dis-ability laws are implemented is when citizens are denied educational opportunities or employment opportunities due to their dis-abilities. Citizens with Dis-abilities (Equal Opportunities, Protection of Rights, and Full Participation) Act of 1995 is a most notable piece of law in this category.⁵

The New Millennium: Story After 2000

Disability data in our country did not canvassed in census from 1941 to 1971. Thus, person with disability have been excluded from a populace census till a 1980s. a 1981 census covered statistics on 3 styles of dis- abilities, an fully insufficient semblance of inclusion. Again, men and women with dis-abilities have been absolutely overlooked from a purview of a 1991 census. This led to developing call for Person with disabilityfor their inclusion withinside a populace census of India.

After an extended advocacy, a query on incapacity become subsequently covered withinside a 2001 census questionnaire on a remaining minute. With minimum cognizance and schooling, an enumerators determinedthat 2.1 percentage of a whole populace of us includes Person with Disability. However, men and women belonging to many extra dis-abilities, consisting of men and women with intellectual and highbrow dis-

³ Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 ⁴Dis-ability: a concept & related Indian legislations. Available at: http://www.psyplexus.com/mhr/dis-ability_india.html.(Last visited on 24th April 2022)

⁵ Pranav Sethi: "Disabled people's opportunities and protection of their rights in an egalitarian society" 2-3 IILS(2022)

abilities, have been absolutely excluded (handiest 5 classes of men and women with dis-abilities have been covered withinside a census).

Dis-ability Right's activists strongly dispute a census 2001 figures at a quantity of men and women with dis-abilities on numerous grounds: a non-inclusion of many dis-abilities, a flawed schooling of enumerators in figuring out men and women with dis-abilities, etc. Interestingly, many nations, consisting of a few evolved nations just like a United States, Australia, New Zealand, and a number of India's neighboring nations, have a much better percent of Person with Disability of their populace than India does. Evidently, a fantastic deal relies upon on how incapacity is defined.

The 2011 census discovered that over 26.8million human beings in India be afflicted by a few form of incapacity. This is equal to 2.21 percentage of a populace. Among a whole dis-abled withinside a us of a, 14.9million are adult males and 11.8 million are females,18.6 million P.W.D. live in rural regions at a same timeas eight.2 million live in city regions. People who propose towards a probably boom in reservation for P.W.D.from 3 percentage to 5 percentage factor out that human beings born with dis-abilities are developing fewer in quantity, specifically after improvements withinside an area of medicine, whilst as compared to folks who born to be dis-abled. To cite one ugly example, human traffickers pressure able-bodied human beings (mainly children) into a enterprise of begging through kidnapping after which reducing off their limbs, making them dis-abled for life. Looking at this example and a needs from civil society, a Union Government got here up with a National Policy on Dis-ability withinside a 12 months 2006. This become a complete country wide coverage on incapacity overlaying important regions like education, employment, assist services, access, societal security, etc. However, this coverage additionally had to be comprehensively changed withinside a mild of a UN Convention. Somehow, a country wide coverage is almost silent at a civil and political Right's of men and women with dis-abilities. Unfortunately, maximum of a states of India do now no longer have a state-degree incapacity coverage in area but, al even though some states are withinside a method of evolving this sort of coverage.

The Right's of Person's with Dis-abilities Bill (R.P.W.D. Bill), drafted in 2011, become supposed to codify India's responsibilities beneath a UN Convention at a Right's of Person's with Dis-abilities (U.N.C.R.P.D.), which it ratified. There become a committee installation in 2009 through a Ministry of Societal Justice and Empowerment to draft a invoice to this effect. In accordance with a U.N.C.R.P.D., a committee covered special human beings with special dis-abilities to draft this invoice. The Right's of Person's with Dis-abilities Bill, 2014, defines for a primary time a which means of incapacity and prolonged it from seven to 21 classes. Categories consist of sickle mobileular disease, thalassemia, cerebral palsy, continual neurological conditions, intellectual illness, and more than one dis-abilities. Based on essential amendments, a invoice, for a primary time, represented rights-primarily based totally incapacity legislation. Its consciousness is on remodeling a which means of incapacity, increasing its definition from a prevailing clinical framework to a societal one. An amendments covered trekking a quota of presidency jobs from 3 to 5 percentage and underlining a want to make non-public corporations liable for developing a pleasant place of business surroundings for personnel with dis-abilities⁶.

The invoice has been authorised through a Cabinet of Indian Government on December 16, a parliament of India. It handiest look ahead to a signature of a president. Once that happens, a invoice turns into a regulation and could update a 1995 incapacity regulation.⁶ Rights of Person with Disabilities Act, 2016

This could have a massive effect on India, which in keeping with a few reassets has a biggest disabled populace withinside a world. a World Bank indicates that there are round eighty million disabled human beings in India a real numbers are contested however it's miles authentic that India has a reasonably big percentage of a worldwide dis-abled populace. a incapacity regulation will carry long-awaited desire and extrade to a lives of men and women with dis-abilities in India.

Despite a reality that a issue of "Dis-ability" figures withinside a State List withinside a Seventh Schedule of a Constitution, a Government of India has dependably been proactive withinside a dis-ability division. It is not simply jogging seven National Institutes (NIs) dealing with different types on inabilities and seven Composite Regional Centers (CRCs), which provide restoration administrations to P.W.D.s and run publications for healing talented but moreover price range infinite for similar administrations and moreover a National Handicapped Finance and Development Corporation (NHFDC) which offers advances at concessional charges crucial to P.W.D.s for impartial paintings.

The issue has gotten attention in special States Governments in fluctuating degrees. At a Central degree likewise Dis-ability being one of a few responsibilities of a M/o SJ&E, and being sorted through handiest one authority, has introduced approximately poor attention, because a more a part of its threat and energy is spenthandiest on enforcing Ministry's very own schemes, assembly their intake and bodily targets, and checking out every year time-sure physical games just like a National Awards for strengthening of P.W.D.s. In a above background, it become expressed withinside a 11th Five Year Plan that "The 'Dis-ability Division' of a Ministry of Societal Justice and Empowerment may be reinforced through converting over it right into a special Department, so it may liaise safely with a numerous involved Ministries/Departments and fulfill its obligations closer to a incapacitated". Looking to a unique concept of a issue on "Dis-ability", a huge paintingsto be carried out withinside a mild of a UNCRPT, and a deficiency of current utilization structure, a time hasnow come to overtake a modern Dis-ability Bureau withinside a M/o SJ&E. a preference to make a special Department of Dis-ability Affairs withinside a M/o SJ&E become taken up through a Government, on a fundamental degree on third January, 2012. This become likewise suggested through a President earlier than 2 locations of Parliament on 12TH March, 2012.⁷

LEGAL RIGHTS OF THE DISABLED IN INDIA¹¹

According to the World Health Organisation, more than one billion people in the world currently experience disability, of which approximately 200 million experience considerable disability in functioning. Such people typically suffer from poor health, lower educational achievements, limited economic opportunities and higher rates of poverty. Hence, initiatives undertaken to improve the lives of people with disabilities, through progressive legislations and/or policies by different local governments and NGOs, are relevant to all corners of the world.

The UN Convention on the Rights of Persons with Disabilities (the "Convention") was adopted during the sixty-first session of the General Assembly on December 13, 2006, and came into force on May 3, 2008. The objective of the Convention was to promote, protect and ensure the enjoyment of all human rights and fundamental freedoms by persons with disabilities, and to promote respect for their inherent dignity. As per the Convention, persons with disabilities are essentially those who have long-term physical, mental, intellectual or sensory impairments, which hinder their full and effective participation in society on an equal basis with others.

Countries such as India and Mexico were amongst the first to have ratified the Convention in the year 2007 itself, while most others including United Kingdom of Great Britain ('UK'), France and Ukraine ratified the Convention during subsequent years. Below is an outline of the laws / legal position prevailing in each of these countries concerning the rights of disabled persons.

India is a secular country. It's a mixture of all the religion. In this country, the right of each and every individual is protected. Indian constitution provides right to life and right to equality. To protect the right of disabled people many efforts and changes were made in Indian legal system. In each and every law whether it is a family law or our constitution the right of disabled people protected. General legal provisions relating to the disabled lies in

1. Constitution
2. Education Laws
3. Health Laws
4. Family Laws
5. Succession laws
6. Labor Law
7. Income Tax Laws, &
8. Various Acts

- The Person with Disabilities Act, 1995
- The Mental Health Act, 1987

- The Rehabilitation Council of India, 1992
- The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999
- Declaration On The Rights Of Mentally Retarded Persons

¹¹Pratibha Rai “Legal rights of the disabled in India” Available on <http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india>. Last Visited (30th April 2022)

DISABLED AND THE CONSTITUTION ¹²

The Constitution of India applies consistently to each legal citizen of India, regardless of whether they are sound or disabled in any capacity (physically or mentally). Under the Constitution the disabled have been guaranteed the following fundamental rights:

- The Constitution secures to the citizens including the disabled, a right of equity, freedom of thought, expression, belief, faith and worship, balance of status and of chance and for the advancement of fraternity.
- Article 15(1) orders the Government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, position, sex or place of birth¹³.
- Article 15 (2) States that no citizen (including the disabled) shall be subjected to any disability, obligation, confinement or condition on any of the above grounds in the matter of their entrance to shops, public restaurants, hotels and public spots of entertainment or in the utilization of wells, tanks, bathing ghats, streets and spots of open resort maintained completely or partly out of government funds or devoted to the utilization of the general population. Women and children and those having a place with any socially and educationally in backward classes or the Scheduled Castes and Tribes can be given the advantage of special laws or special provision made by the State.
- No individual including the disabled regardless of his belonging can be treated as an untouchable. It would be an offense punishable as per law provided by Article 17 of the Constitution¹⁴.
- Each individual including the disabled has his life and freedom ensured under Article 21 of the Constitution¹⁵.
- Article 24 prohibits employment of children (including the disabled) under the age of 14 years to work in any manufacturing plant or mine or to be occupied with some other dangerous business in which contractual worker representing the Government can't engage children below 14 years old in such business.
- Article 25 guarantees to every citizen (including the disabled) the right to freedom of religion. Every disabled person (like the non-disabled) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.
- 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 Article 32¹⁶.

Prohibition of Discrimination: Article 15 is a manifestation of Right to Equality under article 14, as it enshrines a specific dimension of the principles of equality relating to discrimination by state or various grounds. Under article 15 the protection extends only to citizens, unlike article 14 which protects any person. Thus in application article 15 protects from discriminatory state activities but the ambit of article

¹² “Legal rights of the disabled in India” Available on <http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india>. Last Visited 30th April 2022

¹³ The Constitution of India 1950, Article 15

¹⁴ The Constitution of India 1950, Article 17

¹⁵ The Constitution of India 1950, Article 21

¹⁶ The Constitution of India, 1950, Article 32

15 is narrower than that of Article 14. Article 15 of the Indian constitution deals with prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

Article 15(2) says, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disabilities liability restriction or condition with regard to:

(a) Access to shops, public restaurants, hotels and places of public entertainment; or

(b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the state funds dedicated to the use of the general public.

Equity In Social, Economics And Cultural Rights: Article 25 of the CRDP recognizes the right of a person with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, state parties shall ensure an inclusive education system at all levels and lifelong learning. They considered constitution to grant education to children with disabilities if they explicitly guarantee the right to education, the right to free education, or the right to compulsory education to children with disabilities or prohibit discrimination in education on the basis of disability. Globally only 28% of the countries provide some type of constitutional guarantee of educational rights or the children with disabilities¹⁷.

Right To Work: Article 27 of the CRDP instructs states to recognizes the right of persons with disabilities to work, on an equal basis with others; this includes the rights to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

Right To Liberty: Article 14 of the CRPD instructs state parties to guarantee people with disabilities the right to liberty and security of person. We considered the right to liberty to be guaranteed to persons with disabilities if they were explicitly granted the right to freedom or liberty. Globally, only 9% of the constitution explicitly guarantee the right to liberty to persons with disabilities. However 19% of the constitution specifies that the right to liberty can be denied to persons with the mental health condition.

Right To Freedom of Expression: In article 21, the CRPD states that to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communications of their choice.

DISABLED AND THE EDUCATION LAWS

The right to education is available to all citizens including the disabled. Article 29(2) of the Constitution provides 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. Article 45 of the Constitution directs the State to provide free and compulsory education for all children (including the disabled) until they attain the age of 14 years. No child can be denied admission into any education

¹⁷ The Constitution of India, 1950, Article 25

institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language.

DISABLED AND THE HEALTH LAWS

Article 47 of the constitution imposes on the Government a primary duty to raise the level of nutrition and standard of living of its people and make improvements in public health - particularly to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to one's health except for medicinal purposes. The health laws of India have many provisions for the disabled. Some of the Acts which make provision for health of the citizens including the disabled may be seen in the Mental Health Act, 1987¹⁸

DISABLED AND THE FAMILY LAWS

Various laws relating to the marriage enacted by the Government for DIFFERENT communities apply equally to the disabled. In most of these Acts it has been provided that the following circumstances will disable a person from undertaking a marriage. These are: (1) Where either party is an idiot or lunatic,

(2) Where one party is unable to give a valid consent due to unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for procreation of children'. (3) Where the parties are within the degree of prohibited relationship or are sapindas of each other unless permitted by custom or usage. (4) Where either party has a living spouse. The rights and duties of the parties to a marriage whether in respect of disabled or non-disabled persons are governed by the specific provisions contained in different marriage Acts, such as the Hindu Marriage Act, 1955, the Christian Marriage Act, 1872 and the Parsi Marriage and Divorce Act, 1935. Other marriage Acts which exist include; the Special Marriage Act, 1954 (for spouses of differing religions) and the Foreign Marriage Act, 1959 (for marriage outside India). The Child Marriage Restraint Act, 1929 as amended in 1978 to prevent the solemnization of child marriages also applies to the disabled. A Disabled person cannot act as a guardian of a minor under the Guardian and Wards Act, 1890 if the disability is of such a degree that one cannot act as a guardian of the minor. A similar position is taken by the Hindu Minority and Guardianship Act, 1956, as also under the Muslim Law.

DISABLED AND THE SUCCESSION LAWS

Under the Hindu Succession Act, 1956 which applies to Hindus it has been specifically provided that physical disability or physical deformity would not disentitle a person from inheriting ancestral property. Similarly, in the Indian Succession Act, 1925 which applies in the case of intestate and testamentary succession, there is no provision which deprives the disabled from inheriting an ancestral property. The position with regard to Parsis and the Muslims is the same¹⁹. In fact a disabled person can also dispose his property by writing a 'will' provided he understands the import and consequence of writing a will at the time when a will is written. For example, a person of unsound mind can make a Will during periods of sanity. Even blind persons or those who are deaf and dumb can make their Wills if they understand the import and consequence of doing it provided that the following circumstances will disable a person from undertaking a marriage. These are: (1) Where either party is an idiot or lunatic, (2) Where one party is unable to give a valid consent due to unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for procreation of children'. (3) Where the parties are within the degree of prohibited relationship or are sapindas of each other unless permitted by custom

¹⁸ Mental Health Act, 1946

¹⁹ Hindu Succession Act, 1956

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DISABLED AND THE LABOUR LAWS

The rights of the disabled have not been spelt out so well in the labour legislations but provisions which cater to the disabled in their relationship with the employer are contained in delegated legislations such as rules, regulations and standing orders.

ACTS PASSED BY GOVT OF INDIA

The Mental Health Act, 1987²²,

Mental health legislation is fundamental for securing the rights and respect of people with mental disorder, and for creating open and viable psychological well-being administrations. Effective mental health can give a legitimate structure to incorporate psychological well-being administrations into the group and to beat disgrace, separation and rejection of rationally sick people. The Mental Health Act, 1987: The MHA 1987 is in itself a great effort forward, replacing the century-old Indian Lunacy Act 1912 which was in force for 80 years. The Mental Health Act, drafted by the Indian Psychiatric Society in 1950 received the assent of the President in 1987 but was implemented from April 1993 only. Though

²⁰ Hindu Minority and Guardianship Act, 1956

²¹ Indian Succession Act, 1925

²² Dr. J. K. Trivedi, MENTAL HEALTH ACT, SALIENT FEATURES, OBJECTIVES, CRITIQUE AND FUTURE DIRECTIONS Available on <http://www.indianjpsychiatry.org/cpg/cpg2009/article7.pdf> (Last Visited 30th April)

the Act is conceptually far ahead of its predecessor, the drawbacks are so many that it needed a revision in less than 20 years. On the positive side, the act presents a more humane approach; clear guidelines were enumerated for admitting various categories of the mentally ill, a proper method of establishing State and Central mental health authorities was made and discharges simplified. However the Act lacked the direction in providing simpler mental health services at the community level. The role of the family, which is so essential in management, is completely ignored. The boundaries between rehabilitation centres and mental health centres are very blurred, leading to a lot of confusion.

The objectives of this act are as follows: -

1. To set up focal and state experts for authorizing and directing the mental healing facilities.
2. To set up such mental doctor's facilities and nursing homes.
3. To give a beware of working of these doctor's facilities.
4. To accommodate the guardianship of rationally sick people who can't care for themselves and are hazardous for themselves as well as, others.
5. To shield the general public from hazardous appearances of rationally sick.
6. To control method of confirmation and release of rationally sick people to the mental healing facilities or nursing homes either on willful premise or on ask.
7. To shield the privileges of these Disabled.
8. To shield nationals from being kept superfluously.
9. To accommodate the upkeep charges of rationally sick people experiencing treatment in such doctor's facilities.

The act was criticized because the act doesn't reflect the govt. policy on mental health framed in 1978 as well as Mental Health Programme, 1987. No attention was paid to WHO guidelines. Legal considerations have been given more weightage in comparison to medical ones. What needs to be changed: The State and Central mental health authorities need to be given both administrative and financial powers. The Act exempts government hospitals in stipulating norms which is absolutely unfair. Does it mean that the government can run the organisation with no staff and infrastructure? It may not surprise many that a few government hospitals have well-trained doctors, nurses and psychologists. Why should a general nursing home be asked to get a separate licence if it were to admit patients with any mental illness? If an individual with a head injury develops abnormal behaviour, should the hospital transfer such a patient to a nursing home where there are no facilities to deal with head injuries at all but has the licence to admit patients? No word is written about rehab programmes nor is any direction envisaged²³.

The Rehabilitation Council of India, 1992²⁴

The Rehabilitation Council of India (RCI) was set up as a registered society in 1986. On September, 1992 the RCI Act was enacted by Parliament and it became a Statutory Body on 22 June 1993. The mandate given to RCI is to regulate and monitor services given to persons with disability, to standardize syllabi and to maintain a Central Rehabilitation Register of all qualified professionals and personnel working in the field of Rehabilitation and Special Education. The Rehabilitation Council of India (RCI)—a statutory body set up to close the seeming gap of a lack of trained human resources for meaningful rehabilitation in case of a disability—has been attempting to harmonise its law with the RPD Act. Instead

²³ Mental Health Act, 1987

²⁴ The Rehabilitation Council of India, 1992

of working on the new RCI Act which it proposed in 2017, the Department of Empowerment of Persons with Disabilities invited comments on a proposal to amend the Rehabilitation Council of India Act, 1992. While fully supporting disability activists who have strongly flagged the Ministry's stance to propose merely amendments to the RCI Act when what it requires is overhaul both normatively and in practice, we have provided additional suggestions. These include defining "inclusive educators" under Schedules I and II, including experts with disabilities on the Council, providing clarity on the registration and re-registration processes for rehabilitation professionals and personnel, among others. The Act also prescribes punitive action against unqualified persons delivering services to persons with disability overhaul both normatively and in practice, we have provided additional suggestions. These include defining "inclusive educators" under Schedules I and II, including experts with disabilities on the Council, providing clarity on the registration and re-registration processes for rehabilitation professionals and personnel, among others.

The Act also prescribes punitive action against unqualified persons delivering services to persons with disability

1. To manage the preparation strategies and projects in the field of recovery of people with handicaps
2. To realize institutionalization of instructional classes for experts managing people with incapacities
3. To recommend least gauges of instruction and preparing of different classifications of experts/work force managing individuals with incapacities
4. To control these gauges in all preparation establishments consistently all through the nation
5. To perceive foundations/associations/colleges running graduate degree/four year certification/P.G. Diploma/Diploma/Certificate courses in the field of recovery of people with incapacities.
6. To perceive degree/recognition/declaration granted by remote colleges/establishments on equal premise
7. To advance research in Rehabilitation and Special Education
8. To keep up Central Rehabilitation Register for enlistment of experts/staff
9. To gather data all the time on instruction and preparing in the field of restoration of individuals with incapacities from foundations in India and abroad
10. To perceive the national foundations and pinnacle establishments on handicap as labor improvement focuses
11. To enroll faculty working in national organizations and peak establishments on incapacity under the Ministry of Social Justice and Empowerment

JUDICIARY AND THE DISABLED

The Indian Judiciary has played a very significant role in developing the human rights of the disabled persons. In a number of cases the Supreme Court and the High Courts interpreted the disability legislations furthering the objectives contained therein. The extraordinary powers vested in the Supreme Court under Articles 32 and 142, and the High Courts under Article 226 of the Constitution of India, have ensured that the rights of the citizens, and more specifically, that of the disabled citizens, are not trampled upon. In **Javed Abidi v. Union of India**⁴⁵, while directing Indian Airlines to provide concessions for passengers suffering from locomotor disability, the Supreme Court keeping in view the object of the persons with disabilities Act, 1995, directed creation of various free environment for person with disabilities and making special provisions for their rehabilitation, medical care, education, employment, training and protection of their rights. In **D.N. Chanchala v. State of Mysore**⁴⁶, the Supreme Court advocating the right based approach to disability extended the equitable principle of preferential treatment under Art 15 (4) to persons with disabilities to bring them to the mainstream of the society by giving them equal opportunity in the field of education. The Allahabad High Court in **National Federation of Blinds UP Branch v. State of UP**⁴⁷ ordered the Lucknow Development Authority not only to give preference in the matter of allotment of land houses to handicapped persons, but also to provide concessional rates to them here the Supreme Court rescued mentally challenged inmates of a hospital in Hooghly District who were being kept chained by the hospital administration to control their unruly and violent behaviour. Absence of reservations for persons with a physical handicap in medical colleges was found by the Calcutta High Court to be an infringement of Persons with Disabilities Act and the Constitution as well in **Dy. Secy. (Mart), Dept. of Health and Family Welfare v. Sanchita Biswas**⁴⁸.

In **Sheela Barse v. Union of India**⁴⁹, the Supreme Court held that mentally ill non-criminal persons cannot be kept in jail and opined that keeping the non-criminals in jail along with other convicts is unconstitutional. The Delhi High Court held that people with disabilities can be appointed as physical education teachers provided they have passed the qualifying examination undergone the requisite training. Like this in a plethora of cases, the Indian judiciary has shown its concern towards the protection of the human rights of the disabled persons and played a vital role in the realm of disability rights in India.

INITIATIVE TAKEN BY THE GOVERNMENT FOR DISABLE PEOPLE⁵⁰

Education of People with is one Disabilities is one of the recent initiatives undertaken- Literacy and higher education level of PwDs is very low. Several schemes have been affirmed for empowering Students with Disabilities to secure education and further their employability potential.

New Schemes

⁴⁵ 1999 1 SCC 467

46 1971 AIR 1762

47 2000 (2) AWC 1234

48 AIR 2000 Cal 202

49 1986 SCALE (2)230

50 Swavlamban” - The Mantra for Inclusion of Persons with Disabilities Available on <http://pib.nic.in/newsite/mbErel.aspx?relid=115284>, (Last Visited on 20th April 2022)

“Pre-Matric Scholarship and Post-Matric Scholarship for Students with Disabilities Students with Disabilities has been initiated. The Pre-Matric Scholarship would award 46,000 students (Class IX and X) scholarship every year of Rs.Rs.10000/- per Student with Disabilities p.a. When the Post-Matric Scholarship is talked about, 16,650 disabled students (ClassXI and XII) will be provided scholarship worth Rs.15000/- per Students with Disability p.a.).

National Overseas Scholarship Scheme for SwDs, the total outlay of which is Rs.10 crores would benefit 60 students per annum @ Rs.13.00 lakh per annu min order to enable SwD in pursuance of higher education of Masters Degree or Ph.D abroad has been implemented from the current financial year 2014-15.

Under the “Rajiv Gandhi National Fellowship for Students with disabilities”, applications were invited for the year 2014-15. Selection is being done by University Grants Commission. UGC is in process of selecting 300 students for Fellowship.

Flagship scheme of the Department

Deendayal Disabled Rehabilitation Scheme (DDRS) and ADIP, the Department has introduced a centralized on-line application system developed by NIC on the website www.ngograntsje.gov.in.

The revised ADIP Scheme has been operationalised. The Department in collaboration with TIFAC, an autonomous body of the Dept of Science & Technology, has launched a dedicated web portal for meeting the accessible needs relating to aids & appliances for persons with disabilities. The Ministry is establishing Centres for Disabilities Sports to develop and encourage disabled sports persons. A new “Scheme on Awareness Generations and Publicity” has been launched in the current financial year 2014-15 for creating enabling environment for social inclusion of the Person with Disabilities in all fields of life by promoting awareness, encouraging volunteer action, financially supporting national/international events and accomplishments, etc. for the realization of the aspirations of PwDs.

Future Plans and New Initiatives on Good Governance:

"Accessible India campaign (Sugamya Bharat Abhiyan)" is proposed to be launched for the empowerment of persons with disabilities. In order to facilitate People with Disabilities, process of equipping them with Universal ID has been initiated and the detailed project report (DPR) has been prepared. A “Job portal for the PwDs” for facilitating employment of PwDs is being developed for the sector through National Handicapped Finance Development Corporation (NHFD). A toll-free “Help Desk/Help Centre” is being developed by the Department through Business Process Outsourcing (BPO) for dissemination of information relating to PwDs, The Department in collaboration with Ministry of Skill and Entrepreneurship Development and National Skill Development Council (NSDC) is preparing a comprehensive Strategy and Action Plan for upscaling the skilling needs of the PwDs and their placement/employment The Department is formulating a scheme of “Scholarship for Top Class Education for Students with Disabilities” for Post Graduate Degree/Diploma in specified premier Institutions of Excellence in India⁵¹.

51 “Swavlamban” – “The Mantra for Inclusion of Persons with Disabilities” Available on <http://pib.nic.in/newsite/mbErel.aspx?relid=115284>. Last Visited on 20th April 2022

Comparison of Indian Disability LAWS with UK AND US

Basis	India	US	UK
Meaning of Disability	<p>According to section 2(i), Right of Person with Disabilities Act, 1955⁵²</p> <p>“Disability means:</p> <p>(i) blindness; (ii) low vision; (iii) leprosy-cured; (iv) hearing impairment; (v) locomotor disability; (vi) mental retardation; (vii) mental illness;”</p> <p>Note: right to person with disability act, 2016 have added more disabilities and there are around 21 disabilities recognized in India.</p>	<p>According to section 12 of Americans with Disability act, 1990⁵³</p> <p>“disability” means, with respect to an individual (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment”</p>	<p>According to section 6 (1) of The Equality Act, 2010⁵⁴</p> <p>“A person (P) has a disability if—</p> <p>(a) P has a physical or mental impairment, and</p> <p>(b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities”.</p>
Education	<p>Government Educational Institutes and other Educational Institutes receiving grant from Government shall reserve at least 3% seats for people with disabilities.</p> <p>The ministry of human resource development have been trying to implement the scheme of ‘Integrated Education for the Disabled Children’ (IEDC) in formal schools since 1982. The disabled children who are allowed to study in normal school include children with handicaps, mildly and moderately hearing impaired, partially sighted, mentally handicapped educable group, children’s with multiple handicaps, orthopedic.</p>	<p>Schemes like Individualized education program (IEP), And Free appropriate public education have asked that a school system must design to meet the unique needs of each child with disability. And schools must also provide Students with an related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”</p>	<p>It’s illegal for a school or other training supplier to treat crippled under studies ominously</p> <p>All openly financed pre-schools, nurseries, state schools and neighborhood experts must endeavor to distinguish and assist evaluate kids with unique instructive needs and handicaps (SEND).</p> <p>In the event that a type has an a training, wellbeing and care (EHC) design or an announcement of exceptional instructive needs, these must be explored every year. From year 9 the youngster will get a full audit to comprehend what support they should set for adulthood.</p>
Employment	<p>3% of vacancies in government employment shall be reserved for people with disabilities, 1% each for the persons suffering from:</p>	<p>The Americans with Disabilities Act of 1990 (ADA), which became effective in 1992, denies private employer, state and</p>	<p>Blind Person's Allowance is an additional measure of tax-free allowance. It implies you can earn more before you begin paying Income Tax. In case you're</p>

⁵² Right to Person with Disability Act, 1955

⁵³ The Americans with Disability Act, 1990

⁵⁴ The Equality Act, 2010

	<p>1. Blindness or Low 2. Vision 3. Hearing Impairment 4. Locomotor Disabilities & Cerebral Palsy</p>	<p>nearby governments, work organizations and worker's organizations from victimizing qualified people with disabilities in work application systems, procuring, terminating, headway, pay, work preparing, or in the terms, conditions and benefits of business.</p>	<p>handicapped or have a physical or psychological wellness condition that makes it hard for you to carry out your activity, you can converse with your boss about changes they should make in your work environment apply for Access to Work on the off chance that you require additional assistance. Managers must ensure specialists with handicaps, or physical or psychological well-being conditions, aren't significantly distraught while doing their jobs. This applies to all laborers, including learners, students, contract laborers and business accomplices.</p>
<p>Attendance Allowance</p>	<p>No attendance allowance</p>	<p>No attendance allowance</p>	<p>There is Attendance allowance. The benefit is for people who are over 65 when they first claim. They must have satisfied the conditions for at least six months before they are entitled unless they are terminally ill - which means not expected to live more than 6 months.</p>
<p>Health</p>	<p>Section 25 of the Person with Disability Act⁵⁵ mandates the government to take appropriate measures for early detection, screening and prevention of disabilities, provide training to staff at primary health centres, organise or help organise awareness campaigns to disseminate information, and provide pre-and post-natal care to both mothers and children. The Mental Health Act 1987 provides for admission of mentally ill persons to psychiatric hospitals or psychiatric nursing homes, facilities for establishing guardianship or custody of mentally ill persons, and the establishment of Central Authority and State Authorities for</p>		

	<p>Mental Health Services. It also regulates the powers of the Government towards establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons.</p>		
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CONCLUSION

The disability rights debate is not so much about the enjoyment of specific rights as it is about ensuring the equal effective enjoyment of all human rights, without discrimination, by people with disabilities. The non-discrimination principle helps to make human rights in general relevant in the specific context of disability, just as it does in the contexts of age, sex and children. Non discrimination and the equal effective enjoyment of all human rights by people with disabilities, is therefore the dominant theme of the long-overdue reform in the way disability and the disabled are viewed throughout the world. The primary responsibility for ensuring respect for the rights of persons with disabilities rests with the government. Our government has taken various steps to provide equal opportunities to persons with disabilities by enacting several Acts and implementing various policies and schemes for the empowerment of persons with disabilities. Our constitution guarantees equal rights to each individual of our country. India is one of the first signatory to United Nations Convention on the Rights of Persons with Disabilities which means we have to adopt it in its full spirit.

India has recognized various rights of disabled people in constitution, family laws, and various acts. All these enactment try to improve the present condition of disabled and include as many benefits as possible. The ambit of disabled has also been widened by including much other incapacity which was not recognized earlier so that people with disability can be benefited. India has given 3% reservation for disabled children in normal schools and 3% reservation for disabled in government jobs. It has also provided various health benefits and income tax exemption for disabled people. From all the above initiative taken by India for disabled, it is very clear that India actually believes in equality and follows the pathway of Indian Constitution. The disabled people in India do not believe them to be beneath any individual because India has given them that power.

The Indian laws on disabilities adhere to international standards laid down by the United Nation convention on the Right of Person With Disability (UNCRPD) and other international treaties. While comparing Indian laws run parallel to the laws in UK and US and there is no lacking in Indian laws as the laws are amended and new laws are formed from time to time for the upliftment of person with disabilities. The passing of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995 and the right of person with disability act, 2016 is the most remarkable achievement in the history of disability rights movement in India, after India's participation in the Asian Pacific .

Suggestions.

1. Establishment of Mechanism to manage the preparation strategies and projects in the field of recovery of people with Disability.
2. There should be institutionalization of instructional classes for experts managing people with Disabilities.
3. There should be recommendation of least gauges of instruction and preparing of different classifications of experts/work force managing individuals with incapacities.
4. There should be control on these gauges in all preparation establishments consistently all through the nation
5. There should be foundations/associations/colleges running graduate degree/four year certification/P.G.Diploma/Diploma/Certificate courses in the field of recovery of people with Disabilities.
6. Even these degree/recognition/declaration granted by remote colleges/establishments on equal premises should be treated equal with other academic institutes.
7. There is a need of advance research in Rehabilitation and Special Education.
8. There needs to be maintenance to keep up Central Rehabilitation Register for enlistment of experts/staff.
9. There needs to be mechanism that collects data all the time on instruction and preparing in the field of restoration of individuals with inabilities from foundations in India and abroad
10. Trainings should be provided to energize proceeding with training in the field of recovery and custom curriculum by method for cooperation with associations working in the field of handicap.
11. There should be Vocational Rehabilitation Centers as labor improvement focuses
12. There needs to be enrollment of professional educators and other faculty working in the Vocational Rehabilitation Centers.
13. There should be introduction of faculty working in national organizations and peak establishments on incapacity under the Ministry of Social Justice and Empowerment.

Above mentioned suggestions are capable enough to bring drastic change in present situations of Disabled in our Country. I believe governments should introduce a committee under the leadership of Supreme Court Judge. Such committee should be provided some reasonable goals which could be achieved in a given stipulated time. The Goals of such committee should be Upliftment of Disabled in our Country. In reality they need to be treated like minorities and also our constitution favours concept of Intelligible differentiation. Here in this concept it is being defined how unequals should not be treated equally as their needs will be totally different. It also promotes the ultimate goal of any democratic principles.

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