

RIGHTS OF DISABLED CHILDREN: NEED FOR PRACTICAL IMPLEMENTATION OF LEGISLATIVE PROVISIONS IN INDIA

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Introduction

All school going children, whether they are disabled or not, has a right to education as they are the future citizens of the country.

Some children with special needs may not benefit from regular classroom education due to various reasons including disability. In such a case, it is only appropriate that they be provided with education in some other meaningful way. This entails changes in curricular decisions and classroom arrangements, provision of aids and appliances, arrangements for finances and above all, appropriate teacher preparation. The most important aspect of this situation is the economics of developing such a large task-force of personnel to meet the needs of persons with disabilities, whose prevalence is usually quoted as 'one in ten'. According to the *National Policy on Education, 1992* the number of school going children with disabilities in India is reported to be about 12.59 million. It is in this context that this paper critically analyses children with disabilities, and their education and law.

Concept of Disability¹

Since antiquity, society has detected disabilities arising out of obvious deficits in anatomical structures, sensory functions and intellectual developments amongst its members. These disabilities debarred the affected persons from participating in the mainstream of social

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¹ Singh, Aditi S., Nizamie, Haque, *Disability: The Concept and Related Indian Legislations*.

life. The concept of disability has become an important issue for re-examination and re-classification.²

In the past two and a half decades, as the disability rights movement has emerged, the concept of disability has shifted from individual impairment to a more social phenomenon. In this social view, persons with disabilities are seen as being restricted in performing daily activities because of a complex set of interrelating factors, some pertaining to the person and some pertaining to the person's immediate environment and social/political arrangements. The social concept of disability introduces the notion that society has erected barriers, physical or attitudinal, that affect persons with disabilities. Consequently, Governmental programs and policies have evolved to include fixing the environment (*e.g.*, making buildings barrier-free) and providing income assistance or work-related supports to help persons with disabilities participate more fully in the community and the workplace.

In November 2001, the World Health Organization³ (WHO) released a new framework, *the International Classification of Functioning, Disability and Health (ICF)*. The ICF was a seven-year effort involving some 65 countries. The ICF has since been accepted by 191 countries. This new framework goes beyond a medical approach to take a much broader view of disability. The ICF looks at the body, individual activities, social participation and social environments. Instead of a negative description of disability, impairment and handicap, the ICF provides a neutral description of body structure, function, activities, and participation. It also recognizes the role of environmental factors in either facilitating functioning (body functions, activities and participation) or raising barriers. Under the framework, the term 'disability' refers to externally imposed

² Banerjee, G., *The Concept of Disability and Mental Illness*, *Mental Health Review*, 2001.

³ World Health Organization (WHO) is a specialized agency of the United Nations (UN) that acts as a coordinating authority on international public health. Established on 7th April 1948, and headquartered in Geneva, Switzerland, the agency inherited the mandate and resources of its predecessor, the Health Organization, which had been an agency of the League of Nations.

impairments, activity limitations or participation restrictions.⁴

Disability in India

• Historical Perspectives

Until the recent past there was no comprehensive law for persons with disabilities. The first attempt was made in July 1980, when a Working Group was set up. A draft legislation known as the Disabled Persons (Security & Rehabilitation) Bill was prepared in 1981, which was also the International Year of Disabled Persons. In the year 1987-88 a Committee was constituted under the Chairmanship of Member of Parliament Shri Bahrul Islam who was the former Judge of Supreme Court. The Committee submitted its report in June 1988 with wide-ranging recommendations concerning the various aspects of rehabilitation, *e.g.*, prevention, early intervention, education, training, employment *etc.* These recommendations, however, could not be enacted into a law. Since welfare of the disabled is a State subject, Indian Parliament lacked jurisdiction in passing a comprehensive legislation at the national level.

In December 1992, a conference was held in Beijing under the aegis of 'Economic and Social Commission for Asia-Pacific'⁵ (ESCAP) which launched the Asia-Pacific

⁴ Human Resource Development, 2003.

⁵ The Economic and Social Commission for Asia and the Pacific (UNESCAP or ESCAP), located in Bangkok, Thailand, is the regional arm of the United Nations Secretariat for the Asian and Pacific region. It was established in 1947 (then as the UN Economic Commission for Asia and the Far East) to encourage economic cooperation among its member States. The name was changed to the current in 1974. It is one of five regional commissions under the administrative direction of United Nations headquarters. The ESCAP has 52 member States and nine Associate members, and reports to the UN Economic and Social Council (ECOSOC). As well as countries in Asia and the Pacific, it includes France, the Netherlands, the United Kingdom and the United States. The ESCAP is headed by Executive Secretary Noeleen Heyzer of Singapore. Ms. Heyzer is the first woman to head ESCAP, which is the biggest of the UN's five regional commissions, both in terms of population served and area covered. Fifty-two countries are members of ESCAP, and there are nine countries which are associate members. ESCAP's regional focus is managing globalization through programs in environmentally sustainable development, trade, and human rights.

Decade of Disabled Persons, 1992-2002. It laid emphasis on enactment of legislation aimed at equal opportunities for people with disabilities, protection of their rights and prohibition of abuse and neglect of these persons and discrimination against them. Under Article 253 of the Constitution of India, Parliament can enact a law even in respect of a subject of State List in order to give effect to international commitment. This made it possible for Indian Parliament to enact a comprehensive law for persons with disabilities.

As a result of the Government of India's commitment at ESCAP Conference, recommendation of the previous Committees and strong NGO movements in the country, the process of discussion and consultation for drafting a comprehensive law was started in right earnest towards the end of 1993. Initially a draft was prepared and it was circulated to all the State Governments, eminent NGOs of the country, professionals and the other concerned Ministries of the Government of India. Finally, a comprehensive Act known as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996) was unanimously passed by both the Houses of Parliament on 22nd December 1995, which got the assent of the President on 1st January 1996. The Government notified the Act on January 5, 1996 and it has been in effect from 7th February, 1996.⁶

● **Need for Legislative Provisions in India⁷**

In spite of being one of the most detailed and voluminous constitutions of the world, Indian Constitution did not incorporate specific provisions for education and rehabilitation of disabled persons. The Constitution mentions the disabled at one place only. It happens while it delineates the legislative power of the Union and State Legislatures.⁸ Entry IX List II in the VIIth Schedule read

⁶ Mohit, A. (2000) Governance and Legislation: Initiative of the Government of India to advance Asia and Pacific Decades of Disabled persons.

⁷ Singh, Aditi S., Nizamie, Haque, *Disability: The Concept and Related Indian Legislations*.¹¹

⁸ The Union and State Legislatures in India are comparable to the Federal and State Legislatures in the United States.

as *Relief of Disabled and Unemployables*. Combining the 'disabled' with the 'unemployables' and 'relief' reveals the prevailing social attitude towards people with disabilities. In spite of the great intellectuals and social reformers among the Constitution framers and their best intention, one does not find any reason to put them at higher pedestal from the common people so far as their attitude towards the disabled are concerned.

However, members of the Constituent Assembly of India were eager to make the country as a modern welfare State. This spirit of the Constitution combined with positive social traditions of India did help people with disabilities find a rightful place in the society to a large extent.

Disability Related Legislations in India

At present there are following laws in our country to safeguard the rights of disabled persons:

- 1. The Mental Health Act, 1987:** This is an Act to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs, and for matters connected therewith or incidental thereto.
- 2. The Rehabilitation Council Act of India (RCI, 1992):** The Act was created to provide for the constitution of the Rehabilitation Council of India for regulating training of the rehabilitation professionals, and maintaining of a Central Rehabilitation Register and related issues.
- 3. The Persons with Disabilities (Equal Opportunities, Full Participation and Protection of Rights) Act, 1995:** The Act stipulates to set up a Central Coordination Committee and a Central Executive Committee at the national level. The former is a comparatively larger body while the later is smaller in its size and will translate the decisions of the Central Coordination Committee into actions among other functions. The Act further provides setting up State Coordination and State Executive

Committee for different States of the country. The Act further stipulates the appointments of a Chief Commissioner at the National Level and Commissioners for Persons with Disabilities in each State, who will ensure the implementation of its provisions.

The Act makes it clear that it is in addition to all other existing laws and executive orders meant to serve different groups of persons with disabilities. It is a comprehensive Act and therefore the author plans to deal only with its provisions on education and employment in some depth.

4. Educational Provisions: stipulates that the Government and appropriate local authorities shall "ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of 18." It is certainly a laudable provision and will go a long way in promoting the educational facilities for them. The Act talks of different modes of the service delivery to attain this goal. Moreover, it stipulates provisions of aids and appliances as well as researches in this sector. However, it does not set any deadline to achieve the goal of universalization of education for children with disabilities. Consequently, the goal set out in the Act gets defeated to a large extent.

The Act makes some provisions for preferential allotment of land to the disabled for the following purposes:

The Act goes on to stipulate non-discrimination with the disabled persons by taking the following measures:

- Adapting rail compartments, buses, vessels and aircrafts in such a way to permit easy access to disabled persons.
- Adapting toilets in rail compartments, vessels, aircrafts and waiting rooms.

- Installing auditory signals at red lights in the public roads for the visually handicapped.
- Engraving on the surface of the zebra crossing for the visually handicapped.

Education is the key to the advancement of children with disabilities as it provides access to information, enables them to communicate their needs, interests and experiences, brings them into contact with other students, increases their confidence and encourages them to assert their rights. Without a basic education, their chances for employment are almost nil. Hence, there is an urgent need to consider policies and programmes that will place greater emphasis on the participation of children with disabilities in the mainstream education system. Certainly the challenges are great.⁹

- 5. The National Trust (For Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities) Act, 1999:** The Trust aims to provide total care to persons with mental retardation and cerebral palsy and also manage the properties bequeathed to the Trust. The Trust also supports programmes that promotes independence and address the concerns of those special persons who do not have family support. The Trust will be empowered to receive grants, donations, benefactions, requests and transfers.¹⁰

Suggestions

1. The Rehabilitation Council of India Act, 1992 and the Persons with Disabilities Act, 1995 as well as the National Handicapped Finance and Development Corporation registered under section 25 of the Companies Act, 1956 need to be amended appropriately to make them mandatory for including the persons with disabilities themselves on various committees.

⁹ *Hidden Sisters*, 1995, Women and Girls with Disabilities in the Asian and Pacific Region (ST/ESCAP/1548), United Nations.

¹⁰ Disability India Network, 2001.

2. There must be a deadline for each goal to be achieved.
3. The phrase 'within economic capacity and development' must be removed at the earliest from important clauses in the Disabled Persons Act, 1995.
4. Teachers should celebrate date of 3rd December as the International Day of Disabled Persons in school.
5. To implement the current concept of inclusive education, pre-school teachers should have in-service training on disabilities, and future training courses should include education of children with disabilities.
6. In-service training programmes of two to three weeks' duration for general educators and special educators in all the disabilities and in specific areas of disability are essential to effectively teach children with disabilities.
7. Pre-service programmes at degree and post-graduate levels are necessary to improve the quality of teacher training and to promote research and development activities in the field of special education.
8. All universities should have a department of special education to promote education of children with disabilities.
9. There should be separate training programmes for staff working in Community Based Rehabilitation (CBR) programmes. The preparation of teachers for rural special education programmes should be planned differently, as the aim of these programmes would be to integrate disabled persons in their own environment and community.
10. Periodic evaluation of the training programmes and constant updating to meet the challenges of changing trends in special education should be part of the planning of teacher preparation.
11. The curriculum for each of the above programmes should be carefully developed by an expert group which includes practicing special teachers. The

feedback from the teachers is imperative in making the correct decisions about the content.

- 12.** Parents need to be given more support so that they are able to enhance the capabilities of their exceptional children. Special courses, programs should be organized for these parents so that they can help their children in overcoming their disability. Professionals can help parents to learn about and understand their child's exceptionality; provide needed social emotional support; and serve as a resource for keeping in view the diverse needs of children with disabilities and the different models of service delivery systems. There is a need for reorienting the existing pre-service programmes in general education from pre-school to university levels and to plan in-service and pre-service programmes in special education at all levels.

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