



Analysis of the beneficial provisions of constitutional framework of legal rights and the legislative enactment of the disabled persons in India

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Abstract

The present paper makes a modest attempt to analyze the provisions of the Constitutional framework of Legal Rights and the Legislative enactment of the Disabled persons. It is fact a humble attempt to scrutinize the provision from the angle of social, economic and political justice which as beneficial to the Disabled persons.

The paper has outlined the provision of Constitutional Rights and, other acts related to the Disabled persons. The present paper makes efforts to bring into the notice that state are really fulfill the Constitutional commitment for availing the safeguard and welfare measure to the Citizen including Disabled person.

In fact, this research paper deals with the constitution law, family law, Labour law income tax law and other major legislations that were enacted for safeguarding the right of the disabled person. For this purpose, the secondary data from books, articles, journal, newspaper etc. have been used.

Keywords: disabilities, constitutional rights, acts, labour law, income tax law, family law, statues

1. Introduction

According to census 2011, there are 2.67 crore persons with disabilities in India who constitute around 2.21 % of the total population of the country. Out of these 2.68 crore persons with disabilities, and about 1.50 crore are male while the rest of 1.18 crore are female¹. There are various kinds of disability and it's also categorized the persons with disabilities i.e. persons with visual, hearing, speech and loco-motor disability, mental – illness, mental retardation, multiple disabilities and other disabilities.

The Constitutional framework adopted the inclusive policy for Welfare and protects the rights towards the disabled persons. Similarly, the parliamentary provisions also have to ensure the dignity of disabled persons, and enforced some important legislative acts for prevention of all forms of discrimination against disabled persons. The duties of state to improved policies and much needed to protect the rights of disabled persons.

Besides, the Notion of Constitutional rights has some important privileges to protect and deal justice to disabled persons. There are number of issue has been identified the problems based on discrimination and infringement of constitutional rights one of the critical concerns for disabled persons in the country. So being a disabled, it should not means that he disqualified from having access to every aspect of life. In general parlance the disabilities means that lack or deficiency of psychical or mental respect of some persons.

On December 3, 2015, the Prime Minister Narendra Modi was first time suggested the term of “divyang” (divine body) should be used for person with disabilities (physically handicapped people) instead of “vikalang” (disabilities)². It further

suggested during his Manne Ki Baat, on December 27, 2015, that “We see a person’s disability with our eyes. But our interaction tells us the person has an extra power. Then I thought, in our country, instead of using the word “Viklangg”. We should use the term “divyang”. These are peoples who have a limb or serve limbs with divine powers which we don’t have. However, he suggested that to change the nomenclature generated a debate among consultants, activist and government functionaries with some of them expressing reservations over the proposed shift in terminology”³.

According to Indian Constitution has specified the several articles which as assures to every Citizen including disable persons are free from exploitation, and protect their rights. It ensure by state with under obligation of constitutional Norms to protect from the violation

2. Constitutional Beneficial Provision for Disabled person.

The Constitution of India provides Right to equally to its entire Citizen including disabled persons. The preamble of the Constitution of India seeks to secure to its entire Citizens; including the disabled, a right of justice-social economic and political; liberty of thoughts, expression, belief, faith and worship; equality of status and opportunity; and to promote among them all. And fraternity, Assuring the dignity of the individual and the unity and integrity of the nation”⁴.

Similarly, the fundamental rights are given equally to every citizen of India which was specified in the part-III of the Indian constitution. But all these rights and privilege are also applicable to all the persons as well as disabilities. Although, there was no specific mention of such persons appears either in

¹ See, www.indiatvnew.com dated 12th sep.2017

² Ibid

³ Ibid

⁴ J. N. Pandey, *Constituted Law of India*, Central Law Agency, 44th Edition 2007, Allahabad, at 29.

the preamble or part –III of the Constitution.

The framer of the Indian constitution was also aware about the problems of the depressed class of society including with a disabled person. It also ensured that social, economic, equality and justice also required; and thereby the constitutional provision should be made for the physically and mentally disabled persons.

Under the Constitution there are certain rights applicable to disabled person namely; Article 15(1) also applicable for disabled person on the concerned of the state is prohibited of discriminate against a citizen on grounds only of religion, race, sex, caste or place of birth or any of them”^[5]. Similarly, in Article 15(2) declared that no citizen including the disabled persons “shall be subjected to any disability, liability, restriction or condition with regards 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 public resort maintained wholly or partly out of state funds or dedicated to the use of the general public”^[6].

In article 15(3) also stated that it nothing shall prevent the state from making any special provision for Women and children”^[7] including disable person. However, those who belonging to any social and educationally backward classes or the Scheduled Castes and Tribes can be given the benefit of special provisions for advancement of backward classes under article 15(4) which as applicable to disable persons.

Similarly, under article 16(4) it empower the State to make Special provision for the Reservation of appointments of Posts in favour of any backward classes”^[8] of citizens included of disable persons. In the case of the Dr. Jagdish Saran & Ors. v. Union of India (1980 2 SCC 768), Justice Krishna Iyer clarified that even apart from Articles 15 (3) and (4), equality is not degraded or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistently with the general good and individual merit”^[9]. Hence the fourth clause which was added provisions for the protection of the interest of the backward classes of citizens including with disable person. Therefore, an exception to article 15 and 29 (2) of the con situation.

Similarly, under article 16(1) there shall be equality of opportunity for all citizens in matters relating to the employment or appointment to any post under the State”^[10] including the disabled. Clause (2) says that No citizen shall, on ground only of religious, race, caste, sex, descent, place of birth, residence or any of them, ne ineligible for or discriminated against in respect of, any employment or office under the state”^[11]. Another case of Indra Sawhney v. Union of India (1992 Supp (3) SCC), the Apex Court observed and examined that the legality of reservation in favor of the disabled who are not clearly covered under Article 16 of the Constitution. The Court also pointed out that the mere formal declaration of the right would not make unequal’s equal. It is also enable to all compete with each other on an equal plain. It

is also necessary to take positive measures to equip the disadvantaged and the handicapped to bring them to the level of the advantaged. Similarly, article 14 and Article 16(1) no doubt would by themselves permit such positive measures in favour of the disadvantaged to make real the equality guaranteed by them”^[12]. It would be an offence punishable in accordance with law as provided by Article 17 of the Constitution.

The right life and personal liberty guaranteed under Article 21 of the Constitution which is applicable to every person including the disabled. There can be no “traffic in human beings and beggar and other forms forced labour is prohibited”^[13] which has also protectable for disabled and the same is made punishable in accordance with law (Article 23).

Article 24 of Indian constitution also applicable and provide protection to the disabled person. According to article 24 of the constitution prohibits employment of children below age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment”^[14]. Even a private contractor acting for the Government cannot engage children below 14 years of age in such employment.

Article 25 guarantees to every citizen the right to freedom of religion including the disabled. Every disabled person (like the non disabled) has the “freedom of conscience and the right to practice and propagate religion”^[15] subject to proper order, morality and health. No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group. Even the disable people also protect the right from deprivation of the right to the “language, script or culture”^[16]. Article 32(1) guarantees the right to move the Supreme Court by appropriate proceeding for the enforcement of the fundamental rights”^[17] conferred by part II of the constitution and it also applicable to every disabled No disabled person owing property like the non disabled can be deprived of his property except by authority of law though right to property is not a fundamental right. Any unauthorized deprivation of property can be challenged by suit and for relief by way of damages. Every disabled person (like the non disabled) on attainments of 18 years of age becomes eligible for inclusion of his name in the general electoral roll for the territorial constituency to which he belongs.

The right to education is available to all the 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”^[18].

Article 45 of the Constitution directs the State to provide free and compulsory education for all children until they attain the age of 14 years”^[19] including the disabled. No child can be denied admission into any education institute maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language”^[20].

⁵ *Ibid* at 123

⁶ *Ibid* at 124

⁷ *Ibid* at 125

⁸ *Ibid* at 145

⁹ National Human Rights Commission, *Rights of persons with Disabilities*, 2010, published by National Human Rights Commission Faridkot House, New Delhi at 6

¹⁰ *supra* Note 8 at 135

¹¹ *supra* Note 10 at 136

¹² *supra* Note 9

¹³ *supra* Note 11 at 299

¹⁴ *supra* Note 13 at 300

¹⁵ *supra* Note 14 at 307

¹⁶ *supra* Note 15 at 325

¹⁷ *supra* Note 16 at 350

¹⁸ P.M.Bakshi, *The Constitution of India*, 14th Edition 2017, published by universal Law Publishing, Haryana India at 98

¹⁹ *Ibid* at 128

²⁰ Article 30(2), *Ibid* at 99.

Though the fundamental rights which do not have a specific mention of the physically handicapped or disabled. But it pertains to the socially, economically and educationally backward class of people.

The fundamental rights give more emphasis on political equality and social justice. It is the Directive Principles of State Policy, which become more relevant while bringing about social and economic equality and justice which should be the main concern of the State and the society when it comes to doing something for the welfare and rehabilitation of the disabled. Directive principles of State Policy can be used as guidelines by the governments from time to time to undo injustice and step-motherly treatment meted out to this hapless and helpless section of Indian society for centuries.

Some of the Directive Principles of State Policy which pertain to guiding spirit for the amelioration of the conditions of the disabled are reproduced below: Article 37 the provision contained in this part shall not enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making of law” [21]. Hence the Article 38 (1) the state shall strive the welfare of the people by securing and protecting as effectively as it may a social order in which justice, Social, economic and Political, Shall inform all the institutions of the national life” [22], Article 38 (2) the state shall, in particular, strive to minimize the inequalities in income, and Endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations” [23].

The most important article 39 clauses (b) (c) and (e) are also applicable to disable persons. However, clauses (b) deal that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good” [24], (c) that the operation of the economic system does not result in the concentration of wealth, and means of production to the common detriment” [25] and (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age pr strength” [26] of Article 39. Article 41 it stated that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want” [27].

The State shall promote with special care the educational and economic interests of the weaker sections of the people and shall protect them from social injustice and all forms of exploitation” [28].

Article 47 of the constitution imposes on the Government a “primary duty of the state to raise the level of nutrition and standard of living of its people and make improvements in

public health” [29] – particularly to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to one’s health except for medicinal purposes.

According to entry 9 in the list-II of scheduled 7 of the constitution was specified that subject of relief to the disabled and unemployed. Meanwhile, it also responsibility of the state’s and central government to obligation of constitutional Mandates.

The constitution does mention handicapped and mentally retarded at two places, firstly Eleventh schedule to article 243-G (Social welfare including of the handicapped and mentally retarded. Secondly, it mention in the Twelfth scheduled to article 243-W (Safeguarding the interests of weaker sections of society including the handicapped and mentally retarded).

3. Beneficial provisions for Disable person under various laws in India.

There are various laws relating to marriage was enacted by the parliamentary Legislative for different communities in India. All these laws’ relating to marriage is also equally applicable to the disabled persons. The most of these acts which was passed by parliament, and it has been provided that the following circumstances to the disable person at the time of undertaking a marriage.

According to the Acts, either party is an idiot or lunatic which as unable to give a valid consent due to unsoundness of mind or suffering from a mental disorder. Such an extent as to be that the party is unfit for marriage to procreation of children. Even the parties are within the degree of prohibited of relationship or the parties sapindas of each other. Unless it permitted by custom, usage or either party has a living spouse.

The Indian family Laws there are the certain rights and duties of the parties to marriage in respect of disabled or non-disabled persons. The family law of India are governed by the specific provisions contained in different marriage Acts.

Under such acts as the Hindu Marriage Act 1955, the Christian Marriage Act 1872, the Parsi Marriage and Divorce Act 1935. Whereas, the other marriage acts were also exists in India such as the Special Marriage Act 1954 and the Foreign Marriage Act 1959. It pertained to note here that the special Marriage Act, which as special for spouses of different religions and Foreign Marriage Act, for marriage outside India. The Child Marriage Restraint Act 1929 are also applies to the disabled person. This Act was amended by the parliament in 1978 to prevent the solemnization of child marriages in India” [30]. Similarly, it also specified that the disabled person cannot act as a guardian of a minor under the Guardian and Wards Act 1890. Even if the disability is of such a degree that one cannot act as a guardian of the minor. The same position was taken by the Hindu Minority and Guardianship Act, 1956 which has also covered under the Muslim Law” [31].

In the connection under the Hindu Succession Act 1956 which were applied only to Hindus. It has been also specifically provided that physical disability or physical deformity would not disentitle a person from inheriting ancestral property. Hence, the Indian Succession Act 1925 applied in the case of intestate and testamentary succession. There is no provision

²¹ *Ibid* at 121.

²² *Ibid* at 122

²³ *Ibid*

²⁴ *Ibid* at 123

²⁵ *Ibid*

²⁶ *Ibid*

²⁷ *Ibid* at 125

²⁸ *Ibid* at 128

²⁹ *Ibid* at 129

³⁰ See, vikaspedia.in/education/parents...for...disabilities/legal-rights-of-the-disabled-in-india, dated 12 October 2017.

³¹ *Ibid*

which deprives the disabled from inheriting an ancestral property”^[32].

Similarly, the Muslims, Christians, and the Parsis are also the same position. In facts disabled person can also dispose his property by writing a ‘will’ provided he understands the import and consequences of writing a will at the time when a will is written. Even blind persons or those who are deaf can make their wills if they understand the import and consequence of doing it”^[33]. Thirdly, the rights of the disabled have not been spelt out in the labour legislation, because the provisions which cater to the disabled in their relationship with the employer are contained in delegated legislation such as rules, regulations and standing orders. Further, it also provides answer to various issues related to disabled person employed under PWD Act 1995”^[34].

Fourthly, another important act which was enacted during the British Rule to Judicial Procedures for the disabled. These act also known as the designs Act 1911”^[35]. According to these act which deals with the law relating to the protection of designs any person having jurisdiction in respect of the property of a disabled person (who is incapable of making any statement or doing anything required to be done under this Act) may be appointed by the court under Section 74”^[36], to make such statement or do such thing in the name and on behalf of the person subject to the disability. The disability may be lunacy or other disability.

There are several beneficial provisions which have been specified in the income Tax law especially for disabled person. According to under section 80 DD”^[37], to provide for a deduction in respect of the expenditure incurred by an individual or Hindu Undivided Family resident in India on the medical treatment (including nursing), training and rehabilitation etc. of handicapped dependents. For officiating the increased cost of such maintenance, the limit of the deduction has been raised from ` 75,000 to ` 1, 25,000. In case the tax benefits get only Individual Suffering from disability”^[38] as well as any dependent family member of the individual is suffering from a disability”^[39]. Similarly, a new section 80V”^[40] has been introduced to ensure that the parent in whose hands income of a permanently disabled minor has been clubbed under Section 64, is allowed to claim a deduction up to 20,000 in terms of Section 80 V. It also provides for an additional rebate from the net tax payable by a resident individual who has attained the age of 65 years which was specified under Section 88B”^[41] of income tax,. It has been amended to increase the rebate from 10% to 20% in the cases where the gross total income does not exceed ` 75,000 (as against a limit of ` 50,000 specified earlier).

³² *Ibid*

³³ *Ibid*

³⁴ *Ibid*

³⁵ *Ibid*

³⁶ *Ibid*

³⁷ See, Income tax Axt, 1961, <https://www.hrblock.in/.../section-80dd-tax-deduction-on-medical-expenses-of-disabl...dated 21/10/2017>

³⁸ See, Section 80U Under Income Tax Act 1961

³⁹ See, section 80DDB under Income Tax Act 1961

⁴⁰ See, Income tax Act, 1961, <https://www.hrblock.in/.../section-80dd-tax-deduction-on-medical-expenses-of-disabl...dated 21/10/2017>.

⁴¹ See, *supra* Note 36

4. Legislative Enactment

India has passed various laws to protect the rights and interests of the Disable person in order to fulfill the Constitutional Provisions pertaining them. These include:

1. Indian Lunacy Act, 1912
2. Mental health act 1987
3. Rehabilitation council of India act 1992
4. The Persons with disability act 1995
5. National Trust act 1999
6. Right to education act 2010

5. Statues of disabled person in Goa

Goa has 33,012 persons with disability as per Census 2011, out of which 17,016 are males and 15,996 are females”^[42]. Disability is one of the most important issues in the present contemporary society. The Stigmatization of the people with disabilities to contributed the formation of biases and prejudice which has put them into the disadvantageous position compared to other peoples. The major concern of biases and prejudices contributed to the discrimination of peoples with disabilities which has been eliminated consistently in the society.

The major challenges the people with the disabilities to face the various Challenges in the Professional training and their related to development. Sometime, the disabilities may be limited learning abilities of individual that prevent them from obtaining the target education and making a successful career.

The Constitutional law of India must be located within the context of modern disability rights to advocacy. Every person should be treated with equality and human dignity without any discrimination, which was specified under the constitutional law of Indian and international human rights. However, this common acceptance has not been able to sufficiently protect disable person but it need special care and attention to stand up independently within society. Accordingly, Indian constitution specified that every citizen including disabilities have a right to enjoy all human rights and fundamental freedom without any discrimination. Such Notifications to be issued on related matters like: Special Employment Exchanges, Training, Health and Safety Measures, Creation of a non-handicapping environment in work places employing disabled persons.

In the state of Goa, the Government has prepared the number of welfare scheme for disable persons. The Directorate of social welfare, government of Goa had take initiative to prepare the following schemes for the disabled person namely, Identity Card, Free Transport in Kadamba buses and ferries in Goa, Stipend to disabled students, Scholarship to disabled students from Std. IX onwards, Books, Uniforms, Stationery to the Disabled studying in special schools, Financial assistance for self-employment to disabled persons, Dayanand Social Security Scheme, Claim of 50% subsidy for motorized vehicle on petrol/diesel to disabled, Conveyance allowance to disabled persons, Awards for marriage with the disabled, Assistance to disabled to purchase aids/appliances, Financial assistance to persons with severe disabilities, Incentive to private entrepreneur to employ disabled, Award for best NGO employer and disabled employees.

Similarly, the 3% vacancies on identified posts in each

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See, censusindia.gov.in/2011census/censusinfodashboard/stock/profiles/.../IND030_Goa.p...dated 21 October 2017

government departments are reserved for disabled persons, 1% each for: (i) persons with blindness or low vision (ii) persons with hearing impairment and (iii) persons with locomotor disability or cerebral palsy. The Carry-forward of a reserved vacancy in the next recruitment year if not filled in any

recruitment year. While filling up of the reserved vacancy by interchange among the three categories in the next recruitment year if it remains unfilled or when a vacancy cannot be filled by a given category of disabled due to the nature of the vacancy.

Table 1: Disable Population in the of Goa as per 2011 Census

Sr. No.	Types of disabilities in Goa	Total Number of disable persons.	%
1.	Mental Illness	1675	5%
2.	Locomotors Disabilities	5578	16%
3.	Visually Impaired	4964	15%
4.	Speech Impaired	5272	16%
5.	Intellectual Impairment	1817	6%
6.	Learning Disorder & Austism	5784	18%
7.	Hearing Impaired	5347	16%
8.	person with Multiple Disorder	2575	8%
9.	Total	33012	6.92

Source: Date collected from Directorate of social welfare, Government of Goa, Panji-Goa.

As per the 2011 Census, there are 33012 persons with Disabilities, in above the table it mention the list of disabilities and among the disabilities the learning Disorder & Autism is highest 18% of disable persons are existed in Goa. Similarly disabilities like locomotors disabilities, Speech Impaired, Hearing Impaired are 16%, Visually Impaired 15%, and other disabilities like person with Multiple Disorder 8%, Intellectual Impairment 6%, Mental Illness 5% are existed in Goa.

6. Suggestion and Conclusion.

The duties of the states to oblige of constitutional norms regard to provide equal opportunities and protection of disabilities rights, because the majority of disable persons can lead a better quality of life in the society. However, the Constitution of India are also ensures the equality, freedom, justice and dignity of all individuals including persons with disabilities.

It also required special attention to women with disabilities to provide a protection against exploitation and abuse in the society. In keeping of view, it needs Special programmes for with women disabilities to developed for education, employment and providing of other rehabilitation services. However, the state should take an initiative for prevention of disabilities and organized the various Programmes for prevention of diseases.

Another important thing that it needs special attention to children with disabilities is the most vulnerable group. The states should strive to ensure right to development as well as recognition of special need and of care, protection and security for children with disabilities. It ensure that right to development with dignity and equality creating an enabling environment and also Organized the special health vocational training along with specialized rehabilitation services Children with disabilities.

Every state also ensures that the persons with disabilities obtain the disability certificates without any difficulty in the shortest period of time and adoption of obtain the disability certificates must be simple procedures. It provides additional expenditure for facilitating activities of daily living, medical care, transportation, assistive devices, etc to disabled persons. Sometime disabled person's families and care givers are not afforded to give the better treatment to them. The state Government as well as Central Government also encouraged

developing a comprehensive social security policy for persons with disabilities.

Besides, the NGO's has played a very important role to provide affordable services to complement the endeavors of the Government as well as the provisions of services for persons with disabilities. The states also have a very important role to formulation policy, planning, implementation, monitoring and also seeking their advice on various issues relating to persons with disabilities.

Every state should strive to improve the quality of life of persons with disabilities. It also ensures to establish the research center for disabilities person regarding to do the research on their socio-economic and cause of disabilities. The state should take necessary steps to provide them opportunity for participation in various sports, recreation and cultural activities. In many decades central Government has passed very important acts for the Persons with Disabilities. It brings the developments programmes in the disability sector, and makes a certain amendments to the disabilities Act which have become necessary.

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