

Access to Justice for Persons with Disabilities: International Perspective and Indian Reality

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INTRODUCTION

“The task of ensuring that people with disabilities in this country to enjoy equality of opportunity and equal rights is a challenge before us. Let us resolve to serve the disabled, promote their abilities, and increase their participation in the mainstream of national life.”

-Dr. Shanker Dayal Sharma, Former President, Republic of India¹

Disability exists in the human condition. It is a society where prejudice and oppression are directed against an individual's disability. Persons with disabilities have traditionally been seen as needing protection, charity, and social welfare. Because of their handicap, they face and confront prejudice that is unequal. They are viewed as having less functional bodies or dependents and are not welcomed in the mainstream. Social, cultural, and attitudinal barriers that prevent them from fully participating in society and from exercising equal rights and opportunities have a negative impact on their life. Many disabled people are forced to live meaningless lives because they do not receive the proper medical, psychological, legal, and social support. They have also been marginalized in society, either as a result of discrimination that is overt or covert, or because of the lower status that is attributed to them by customs and traditions. For these people, discrimination, marginalization, and segregation are the norm rather than the exception², and the worst kind of discrimination that they perceive as their grievance is that others do not understand.³

Referring to a person with a disability as lame, disabled retarded, handicapped, or even defective was a socially acceptable term until recently. The best way to appreciate the significance of language is to consider the differences between the terms “disabled person” and “person with a disability.” The earlier word emphasises the impairment, but the later term emphasises “the person,” signifying the use of ‘personfirst’ terminology. It is linguistically reinforced that the person is more significant than the impairment when person-first terminology is used. The general trend towards the use of more compassionate language to define the state of being disabled is indicative of the movement in public opinion and societal attitudes. Although alterations to widely used terminology may not appear revolutionary, they serve to both reflect and validate gradually changing societal perceptions of people with disabilities.⁴ In any community, disability is shaped by culture and society in addition to being a constant. This indicates that perceptions of and reactions to impairment are influenced by social and cultural factors. They also affect how an individual with a disability may respond in a certain community. Therefore, the identification, definition, and social reactions to impairments are influenced by common representations of the individual, the community, and the world.

Depending on these aspects, impairment gives rise to labels or terminology like ‘abnormality,’ ‘disability,’ ‘handicap,’ or ‘defective,’ which express how society views people with impairments. Similar to how a “person with an impairment” was originally perceived in ancient Greek society as a freak or monster, or in ancient Western society as ‘crippled’ or ‘infirm,’. But as numerous everyday experiences demonstrate, prejudice towards people with disabilities persists in many areas of daily life. The true causes of disability are social stigma and prejudice. Being a component of every human

¹ Ali Baquer and Anjali Sharma, *Disability: Challenges vs Responses* 272 (Concerned Action Now, 2nd edn., 2006).

² Rajib Bhattacharya, “Disability Laws in India: A Study” 1:4 *I.J.R.* 99 (2014).

³ B.S. Jag Jeevan Kumar, “Rights and Equal Opportunities for the People with Disabilities” 147(12) *A.L.T.* 33 (June 2007).

⁴ *Ibid.*

civilisation, it is a cross-cultural phenomenon and a part of the “natural social, physical, and cultural variation of human species.”

Securing socioeconomic prosperity, encouraging broader support for democratic norms, and fostering cooperative ties among governments, social institutions, and civil society globally have all advanced steadily during the previous 20 years. On the other hand, as a result, inequality and exclusion are not only continuing but also growing globally, both inside and between nations. Many civilisations are dealing with unfavourable social situations, like growing gaps and the marginalisation of particular populations or groups, on both a horizontal and vertical level. Societies must be equipped with the knowledge and skills necessary to effectively assess the situation and deal with current issues in a proactive, constructive, and comprehensive manner in order to prevent social tensions from rising even further. This will help societies become more resilient, better ready for new challenges, and able to respond to imbalances that arise more swiftly, peacefully, and sustainably.

Disability laws are essential to ensuring that people with disabilities live dignified lives. But because of the lack of reflection and understanding of those with disabilities, they continue to be restricted and ineffectual. The extent to which the complete realisation of freedoms and rights is contingent upon and susceptible to market, philosophical, and technical developments is another way in which disability law is limited.⁵ Furthermore, “negative cultural notions and social views of disability” frequently lead to the law’s weakness. Having said that, disability legislation also provides the normative framework for engaging in ethical criticism of governments and influential figures with regard to the economy, society, and cultural structures and how they affect people with disabilities differently.

MEANING AND KEY CONCEPT

The terms ‘disability,’ ‘handicap,’ and ‘impairment’ have historically prompted social action. Words or terminologies used to address impairment always reflect the different ways of how societies have responded to it. This demonstrates how we think, how we feel, and how we view people with disabilities.⁶ Persons with disabilities have seen changes in how they are regarded and the manner in which they can engage in society over the past 20 years as a consequence of alterations in legislation, in the attitudes of persons with ailments, and in society at large.

As per section 2(s)⁷

“person with disability means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.”

According to World Health Organisation⁸,

The definition of disability has been threefold:

“impairment is any loss or abnormality of a psychological, physiological, or anatomical structure or function. Moreover, a ‘disability’ is a restriction resulting from an impairment of the ability to perform an activity as would be normal for a human being. Further, a ‘handicap’ is a disadvantage resulting from an impairment or a disability that prevents an individual from fulfilling a role considered normal.”

A handicapped person is defined as follows by the **Declaration on the Rights of Disabled Persons, 1975**:

“any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency either congenital or not, in his or her physical or mental capabilities.”⁹

In its **Vocational Rehabilitation (Disabled) Recommendation No.99**, the **International Labour Organization (ILO)** asserts that ‘Disabled Person’ means:

⁵ Oche Onazi, *An African Path to Disability Justice: Community, Relationships and Obligations* (Springer, 2020).

⁶ S. B. Renu Addlekha, *Disability and Society* 3 (Oriental Black Swan, New Delhi, 2009).

⁷ Rights of Person with Disabilities Act, 2016.

⁸ World Health Organization, *International Classification of Impairments, Disabilities, and Handicaps: A manual of classification relating to the consequences of disease* (World Health Organization, Geneva, 1993).

⁹ Declaration on the Rights of Disabled Persons, G. A. Res. 3447 (XXX) para 1 (Dec. 9, 1975).

“An individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment.”¹⁰

Article 1 of the United Nations Convention on the Rights of Persons with Disabilities defines:

“Persons with disabilities include those who have long- term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”¹¹

INTERNATIONAL NORMS PERTAINING TO ACCESS TO JUSTICE FOR DISABLED PERSON

There has been a significant global movement to defend the rights of people with disabilities since the United Nations (UN) was founded. The United Nations promoted a welfare perspective on disability throughout its first ten years of operation in the subject of disability. First focusing on the rights of those with physical disabilities, the United Nations addressed the prevention and rehabilitation of disabilities.

The Declaration on the Social Progress and Development is a worldwide awareness program that was endorsed by the UN General Assembly in 1969.¹² This proclamation demonstrated a global understanding of the rights of “persons with disabilities.” It said that it is essential to defend the rights of those who are physically or mentally challenged and placed a strong emphasis on establishing social environments in which those with disabilities are not subjected to discrimination.

UN Convention on the Rights of Persons with Disabilities¹³

The “UN Convention on the Rights of Persons with Disabilities” (hereinafter referred as UNCRPD) has precise provision on the accessibility to justice, as outlined in article 13. This article emphasises how crucial it is to guarantee that people with disabilities have equitable access to the legal system on par with everyone else. It states that it is necessary for parties to guarantee that individuals with disabilities have equitable access to justice on par with others. To enable them to effectively participate in all legal proceedings, including investigative and other preliminary stages, as witnesses and as direct and indirect participants, it is necessary to provide them with procedural and age-appropriate accommodations.

According to Article 13 of the UNCRPD, persons with disabilities have the right to access justice. The phrase “**access to justice**” refers to a wide range of factors, including people's ability to effectively access the places, protocols, data, and systems utilized in the administration of justice. Persons with disabilities have encountered obstacles mostly because they have been refused equal treatment in front of courts, tribunals, law enforcement officers, prison systems, and other entities that comprise their nation's justice system.¹⁴

The Declaration on the Rights of the Mentally Retarded Persons, 1971 and the Declaration on the Rights of Disabled Persons, 1975

These Declarations are a reflection of the medical model of disability, which views “disabled” people largely as those who have health issues, are reliant on welfare and social security, and require specialized services and facilities.¹⁵

Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities

A regional human rights convention, signed by the “Organisation of American States” (hereinafter referred as OAS) in 1999, aims to uphold the rights of people with disabilities and end discrimination against them. One essential component of this Convention is access to justice. States Parties are required to implement the precise actions outlined in article IV in order to fulfil the goals of the Convention. Among these is the ability to access justice. States Parties must enact

¹⁰ International Labour Organization, *Vocational Rehabilitation and Employment of Disabled Persons*, Geneva, (June 1988).

¹¹ United Nations Convention on the Rights of Persons with Disabilities, 3 May 2008, 2515 U.N.T.S.3.

¹² G.A. Res.2542 (XXIV), Declaration on Social Progress and Development (Dec.11, 1969).

¹³ Adopted by the United Nations General Assembly; December 2006.

¹⁴ Stephanie Ortoleva, “Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System” 17:2 *Jour. Inter & Compara. Law* 282 (2011).

¹⁵ T. Degener, “International Disability Law: A New Legal Subject on the Rise: The Interregional Experts”18:1 *BJIL* (1999).

policies to guarantee that people with disabilities have efficient access to the legal system, including policies that make it easier for them to engage in legal and administrative proceedings.

Vienna Declaration and Programme of Action, 1993

This Declaration was adopted at the World Conference on Human Rights in 1993. It demanded that all governments enact laws, when needed, to protect the human rights of disabled persons in all spheres of society.¹⁶

INDIAN LEGAL FRAMEWORK PROMOTING ACCESS TO JUSTICE FOR DISABLED

For millennia, the Hindu community in India, both the aristocracy and the common people, have been influenced in their thought and behavior by the concept of Karma. According to the notion of Karma, a person's limitations are the result of misdeeds they did during past lifetimes. Hindu tradition holds that a crippled person reaps the consequences of his actions in this life, and that any effort to improve his lot in life would be an affront to the divine justice.¹⁷ 'Carcka' an ancient Indian scholar of medicine Known for the 'Caraka Samhita' which states that "diseases in this life are caused by undesirable deeds in the previous one."¹⁸ Many clauses in the ancient Hindu Constitution, known as the "Manusamriti" indicate that a person's infirmity is a result of the misdeeds they did during their previous life. One who recites the Vedas without the guru's consent will become dumb; one who steals others' clothes will have white patches over his body and who steals horses shall be born disabled, says Manu, the father of Hindu law.

Characters with impairments or physical or mental deformities gained thematic significance in the two great Indian epics, the Ramayana and the Mahabharata, albeit the portrayal of person with disabilities is predominantly negative.

When examining the legal framework for disabled people's access to justice from a national standpoint, we find that this right was barely taken into consideration prior to the Indian Constitution's drafting. Many laws for mentally ill people were passed during the British era, including the Military Lunatics Act, 1877, the Indian Lunatic Asylum Act, 1858, the Lunatic Removal Act, 1851 (which was discontinued in 1891), and the Lunacy (Supreme Courts) Act, 1858. However, the goal of these statutes was to safeguard society from those who were mentally unstable and deemed hazardous for it, not to acknowledge the rights regarding mentally ill people or assist in their recovery.

As a holdover from colonial authority, the Indian government was dependent on nonprofit organizations to provide the necessities of life to "people with disabilities" after independence. It is regrettable to see that the first three Five-Year Plans did not include any mention of the State's concern for the legal protection of "persons with disabilities" in their list of priorities. For instance, throughout the first three-Five Year Plansl (1951–1966), aid to NGOs made up the only source of grant support for people with disabilitiesl.

Constitutional Provision

The Indian Constitution acknowledges the entitlement of disabled individuals to access justice by means of the fundamental rights as well as Directive Principles. In view of the rule of law, a right to equal treatment, and the right to a dignified existence, this right can be safeguarded under the Indian Constitution. The principles of equality, nondiscrimination, and equal access to justice for all Indian citizens are all mentioned in the country's constitution. The principles of liberty, equality, and justice are expressly mentioned in Preamble.

The Indian Constitution's Article 14, commonly known as the equal protection clause, addresses both equality before the law as well as equal protection under it. Nonetheless, there is a broader meaning for the phrase "equal protection under the law." It also imposes a duty on the government to defend the rights of people with disabilities.

A number of factors were taken into account for the initial stage of retrofitting buildings (that are fully operational and occupied) in order to make them barrier-free, in accordance with the Accessible India Campaign. In accordance with the campaign's annexure no. 1, tactile pavers were installed to make it easier for those with visual impairments to navigate around the campus and inside the buildings.

¹⁶ Education for persons with disabilities, UNESCO (Mar.22, 2017), [http:// en.unesco.org/ themes/ inclusion-in-education/ disabilities](http://en.unesco.org/themes/inclusion-in-education/disabilities), (accessed on 12th April, 2024).

¹⁷ Renu Addlakha, *Disability Studies in India Global Discourses, Local Realities* 62 (Routledge India, 1st edn., 2013).

¹⁸ *Id.* at 44.

It was rightly reiterated by the Hon'ble Justice Krishna Iyer in the case of **Dr. Jagadish Saran & Ors. v. Union of India**¹⁹ that:

“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.”

Further in another case of **Social Jurist, A Civil Rights Group v. Govt of NCT of Delhi**²⁰ where in response to a public interest petition that brought attention to the lack of special teachers and necessary teaching aids for students with disabilities in Delhi's aided as well as unaided private schools, the division bench ordered the GNCTD and other local education institutions, such as the cantonment board, to make sure that every school has two or more special educators along with ensuring the students with disabilities have access to the study materials and teaching aids they need. In order to provide children with disabilities unrestricted mobility and access, the court has also mandated that buildings and school premises be made barrier-free.

Free legal services for the poor are encouraged by article 39A of the Indian Constitution, and people of this nation are guaranteed access to justice without prejudice or disability under section 341 of the Bhartiya Nagrik Suraksha Sanhinta. However, the question of whether it is possible for people with disabilities to seek justice under our nation's current legal structure emerges. Following the adoption of “Information Technology Act”, the criminal statute was amended to include a number of unique provisions pertaining to the recording and admission of evidence from people with disabilities. As a result, some clauses are added to procedural legislation, and testimony from people with disabilities is collected and allowed in court.

Apart from the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 and the provisions of the Constitution, other laws like the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999; the Mental Health Act, 1987 and the Rehabilitation Council of India Act, 1992 have cleared the path for the advancement of individuals with disabilities. The Protection of Human Rights Acts, 1993 establish a framework for keeping an eye on how several constitutional clauses and international covenant responsibilities pertaining to the rights of persons with disabilities are being implemented.²¹

The Rights of Persons with Disabilities Act, 2016

A comprehensive piece of legislation in India, the “Rights of Persons with Disabilities Act, 2016” (hereinafter referred as RPWD Act) aims to safeguard the rights and advance the welfare of individuals with disabilities. It aims to guarantee equal opportunities and access to a range of services for people with disabilities and is consistent with the tenets of the UNCRPD. It delineates the necessary steps that the government should take to guarantee that individuals with disabilities have efficient access to the legal system. It is mandatory for the government to guarantee that individuals with disabilities receive suitable accommodations so they can engage in all judicial procedures in an effective manner. This covers accommodations made during the initial phases of an investigation and other legal actions.²²

Apart from this there are numerous acts specifically made for the protection of rights of person with disabilities both at national and international level. In addition to these laws, there are other helpful labor laws that safeguard and advance the rights of people who become disabled while working, such as the Public Liability Insurance Act, 1991; Workmen's Compensation Act, 1923; Employees State Insurance Act, 1948 and Payment of Gratuity Act, 1972.²³ The Indian government created the National Policy for Persons with Disabilities, 2006 in addition to these laws, with an emphasis on the economic, educational, and physical rehabilitation of persons with disabilities.

¹⁹ 1980, 2 SCC 768.

²⁰ 163 (2009) DLT 489.

²¹ The Protection of Human Rights Act, 1993, s.12.

²² Rights of Persons with Disabilities Act, 2016, s. 12.

²³ Pratim Sarkar, *Persons with Disabilities- Rights, Rehabilitation and Resources Development*, Lab IC. 275 (Sept 2008).

ROLE OF JUDICIARY IN PROMOTING HUMAN RIGHTS AND SECURING ACCESS TO JUSTICE

The judiciary, which upholds human rights, has been essential in safeguarding the rights of those who are disabled. The Hon'ble Supreme Court in the case of *Suchita Srivastava and Anr. v. Chandigarh Administration*²⁴ overturned the Division Bench of the Hon'ble High Court of Punjab and Haryana's decision to end the pregnancy of a mentally retarded orphan who became pregnant after being allegedly raped while a prisoner at a government-run welfare institution in Chandigarh. In another case of *National Federation of the Blind v. Union Public Service Commission*²⁵ The Hon'ble Supreme Court has made sure that reservation policies for people with impairments are upheld. The right of visually handicapped individuals to participate in civil services exams was maintained by the court. Furthermore in another case of *Amita v. Union of India*²⁶ the Hon'ble Supreme Court has stressed upon the right to accessible learning for children with disabilities in instances by ordering educational institutions to offer the required facilities and accommodations. Also in the case of *Disabled Rights Group v. Union of India*²⁷ The Supreme Court has ruled that public accommodations, transportation and buildings must be accessible to those with disabilities. For instance, the court ordered the government to make ensure that every government structure are made accessible in a timely way.

CONCLUSION

Ensuring that individuals with disabilities have equitable access to the legal system in India necessitates seeing them as equal participants in the legal system. This entails removing obstacles that can prevent their participation, making legal procedures accessible, and making the required accommodations. Our nation's current legal system is not made to recognise the demands and requirements of people with impairments. As a vulnerable population in our society, accommodations for people with disabilities should be made to enable them to be successful in the enforcement of justice. The judicial system in our nation is robust, but when we discuss how accessible it is to people with disabilities, it falls short of meeting their needs for access to justice.

Accessibility to justice for people with disabilities continues to advance extremely slowly. All societal classes ought to be cognisant of the challenges encountered by those with impairments. The organisations that make up our legal system, including judges, police officers, and advocates, should prioritise the issues facing people with disabilities and educate themselves on how to create policies that will allow them to deal with them in a way that is comfortable. The development of the value of evidence gathered by a technological technique has been significantly influenced by information technology. For these individuals, utilising technology can improve their involvement in the administration of justice. Such a robust system for people with disabilities need to be provided by the current legislative structure in our nation. Therefore, our nation's system needs to be improved in order to better apply the provisions pertaining to disabled people's access to justice.

²⁴ AIR 2010 SC 235.

²⁵ 1993 SCR (2) 556.

²⁶ 2005 (13) SCC 721.

²⁷ AIRONLINE 2018 SC 543.