

The Persons with Disabilities Act (1995) and its Impact on Society

Abstract

The persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act was passed by Government of India in 1995. The Act was the direct result of the developments that were taking place all over the world. The Act has proved to be watershed moment in the welfare of the persons with disability. The people who were earlier marginalized by the society due to disability were brought into main stream by the Act. It is due to the passage of the Act that the persons with disabilities are now visible in all the walks of life,. The paper tries to study the impact of the passage of the Act on the society.

Keywords: Act, Disability, Education, Constitution.

Introduction

Indian legal system is a dynamic system as envisaged by the founding fathers of our constitution while drafting the constitution of India, the different members of the committees went through the constitutions of all the major democracies of the world and tried to frame a constitution that included almost all the aspects and conditions of human life. The people who framed the constitution knew that to whatever extent they may go or extend their imagination; they will not be able to take all the problems in consideration, so they kept the way of amendments open. India legal system and constitution were kept open to amendments to encompass the futuresituation. However it does not mean that soul of the constitution can be altered. The constitution of India can that be altered at will. The Supreme Court of India decided in Keshavanand Bharti case decided that "Parliament could amend any part of the constitution so long as it did not alter or amend the basic structure or essential features of the constitution" (Datar). Thus Indian constitution retains its flexibility while preserving it soul.

So far there have been many amendments in the constitution. One of the important Acts that was passed by the parliament is "The persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995. The Act passed by the parliament was an important step to allow the people with disabilities to live a life of dignity and honour. The Act brought the physically marginalized people into the mainstream. The Act included disabilities like "blindness, low vision, leprosy-cared, hearing impairment; locomotor disability; mental retardation; mental illness (3) etc. in its ambit. The Act was one positive step that tried to end discrimination against the people. The discrimination was so rampant in the society against the persons with disabilities:

They are denied jobs, excluded from school, are considered unworthy of marriage or partnership, and are even barred from some religious practices. Millions of persons with disabilities around the world do not have access to the resources necessary to fulfill their basic need nor do they have influence over the policy decisions that affect their daily struggle for survival. Discrimination occurs in a range of arenas, including the workplace, schools, health care facilities, government, recreational facilities, as well as many more societal contexts. Moreover, as a result of discrimination, segregation from society, economic marginalization and a broad range of other human rights violations, persons with disabilities have consistently been excluded from the decision-making for a where positive changes in law and policy can be developed and implemented. (cited in Zhijiang 250)

To overcome and eliminate the discrimination several laws were enacted all over the world. Americans with Disabilities Act (ADA) was



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enacted in the United States in 1990, Disability Discrimination Act (DDA) was enacted in Australia in 1992; meeting to launch the Asian and Pacific Decade of Disabled persons was held at Beijing on 5th December, 1992 and a Proclamation was adopted for full participation and equality of people with disabilities in the Asia Pacific region. Indian Act passed in 1995 was also an important proclamation in addition to these international developments.

Another positive step that was taken to end marginalization was to end discrimination based on terminology. Earlier the term 'handicapped' was used for such people. This term stressed on "lack of something." In other words the people with handicaps were considered as people who were lacking in some abilities. This terminology itself thrust an inferiority on them. The word "handicapped" was replaced by the phrase "persons with disabilities." Thus the Act itself ended a negative term that was associated with such people.

Aim of The Paper

The aim of the paper is to study the impact of the passage of The persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 on the lives of the persons with disability in the field of education and employment.

Review of Literature

Disability is one of the most studied areas across the world and a lot many papers have been published on the disability. One of the most important document for the study was The persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act that was passed in 1995. Other relevant papers include: "Disability Law in India: Paradigm shift or Evolving Discourse?" by RenuAddlakha and Mandal. The paper is an important document because it studies the impact of the Act on Indian society. Other important papers include "Exploring Variations in State Laws Providing Protection for Persons with Disabilities" by Holbrook and Stephen L Percy published in 1992, "Subordination, Stigma and "Disability" by Samuel R. Bagenstos published in 2000, "What about a Disability Rights Act for Canada?" by Michael J. Prince published in 2010. The report "ATISSS initiative on Enabling Inclusion and Accessibility for students with Disability in Higher Education" available on the official website of Tata Institute of Social Science is also an important document. The researcher has not come across any other latest paper on the subject.

The definitions of disability have undergone many changes. For example the website disabled world defined disability as:

Disability is conceptualized as being a multidimensional experience for the person involved. There may be effects on organs or body parts and there may be effects on a person's participation in areas of life. Correspondingly three dimensions of disability are recognized in ICF: body structure and function (and

Remarking An Analisation

impairment there of), activity (and activity restrictions) and participation (and participations restrictions). The classification also recognizes the role of physical and social environmental factors in affecting disability outcomes. ("What is disability")

On the other hand, Hahn states that the study of disability is being done from different angles:

The study of disability is experiencing significant changes which have affected all the social sciences Many of these changes can be traced to a definitional shift from a medical orientation, which focuses on functional impairments, and an economic approach, which stresses functional impairments, and an economic approach which stresses vocational limitations, to a socio-political approach which regards disability as a product of the interaction between the individual and the environment. (87)

This shift in looking at the disabilities from different angles: physical disabilities and work related limitations have had substantial impact on disability policymaking—pushing such policies beyond paternalistic concerns about care and rehabilitation toward recognition of basic civil rights" (Holbrook & Percy 201).

In case of India the problem for the people with disabilities was the paternalistic attitude faced by them. The people with disabilities were offered jobs, but they were offered job as an offer of mercy. It was believed that the people with disabilities are inferior to the average human beings so they must be shown mercy by the 'mainstream' human beings to help them adjust in the society. Since they were believed to be inferior to the average people so it was believed that they can be adjusted in the society only and only if some positive discrimination was shown by the society. Now this created problems for the people with disabilities as the common people believed that the people with disabilities are dependent "n doctors, rehabilitation professionals and Charity" (427). But the problem of the people with disability does not end here, they are stigmatized by the people:

It also stigmatizes people with disabilities, by defining them as something less than normal, and directs them into confining social roles in which they can enter society only "on the terms of the able bodied majority" (Bagenstosy 28).

The stigma point out to the tradition where the people with disabilities were excluded from the society. This problem was more pronounced in Indian society because of the Karmic beliefs. The people with disabilities were effectively kept out of the society. The important steps were taken to remove this stigma that existed around disability. In India the important step came in the form of the persons with disabilities (Equal Opportunities, Protection of Rights

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and Fuel Participation) Act 1995. The Act for the first time defined disabilities and provided a legal framework to provide equal opportunities to the people with disabilities.

One of the important features of the Act was the formation of the central coordination committee to exercise the powers conferred on, and to perform the functions assigned to under this Act. The Chairperson of the committee was decided to be the Minister-in-Charge of the Department of Welfare in the central Government. The important feature of the committee is that it does not consist only of the politicians and bureaucrats, but also of the people who were working the field. The committee also made a point to include the directors of the:

1. National Institute for the visually Handicapped, Dehradun;
2. National Institute for the Mentally Handicapped, Secunderabad;
3. National Institute for the orthopedically Handicapped Calcutta;
4. Ali Yavar Jung National Institute for the Hearing Handicapped, Bombay.

The inclusion of the experts in the central coordination committee meant that the government business. The directors of these Institutes were the experts who were working in the field for a long time and had an understanding of the problems of the people who were considered disable. One of the main aims of the committee is to "develop a national policy to address issues faced by, persons with disabilities."

The policies can only be framed by the people who are actively engaged with the people with disability. The people like Ministers and bureaucrats who are cut off from such people and do not understand the problems of the problems of the people with disabilities: however, it must be mentioned that inclusion of Minister and bureaucrats is an important decision because the Minister as the head of the ministry has to sanction the policy and the bureaucrats have to put that policy into action.

The Act is watershed moment in the history of disability laws because prior to the Act no rules laws present in the country. The problem of disability laws in the country prior to the passage of the Act is highlighted by AmitaDhanda:

The expansive ambit of mental infirmity was also demonstrated in Ramlal vs. Mt. Laxmi (AIR1949 Ajmer 48) where in the High Court held that a plaintiff whose physique was so affected by paralysis that he could not speak except for making a few sounds, and could not stand on his feet for more than a couple of minutes, was allowed to file through next friend even through his mind was not affected and he was able to understand equestions put to him and signify answers by means of gestures. It was perhaps the multiple nature of physical disability suffered by the plaintiff which led to him being considered "mentally infirm because,

Remarking An Analisation

in S Muthasankara Nada (1972 ST (242) a physically disabled person who was unable to walk was not permitted to take recourse to this order. In Nanak Chand vs. Banarasi Das (AIR 1930: 425), it was held that while the order was applicable to totally deaf and dumb persons, the incapacity of persons who were partially deaf and dumb would require enquiry (cited in Addlakha& Mandal 63).

The above quote shows how the judges used to interpret the situation according to their wisdom. The persons with disability Act provided the much needed legal framework for deciding the cases regarding the people with disabilities. Prior to passage of this Act most of the cases regarding the people with disabilities were filed under Right to Equality (Article 14).

The Act was able to put things into perspective for the people with disabilities. For example regarding the educational facilities for the persons with disabilities, the Act directs the Appropriate Governments and local authorities to:

1. Insure that every child with a disability has the access to free education in an appropriate environment till he attains the age of eighteen year;
2. Endeavor to promote the integration of students with disabilities in the normal schools;
3. Promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to school;
4. Endeavour to equip the special schools for children with disabilities with vocational training facilities (Section 26 of the Act).

The section 26 of the Act is one of the most important sections of the Act because generally the disabled children were treated as a curse by the family and they were considered incapable of leading a normal life. Their education was largely neglected and they were considered a burden on the family.

The Act for the first envisaged a national policy for the persons with disabilities. The Act allowed these people to heap the benefits of liberal education and allowed them to integrate in the society and prove that they are not a burden on the society. The impact of the Act is already visible in the society. Empowered by the education the people with disability are already making their presence felt in the society doing various jobs. Availability of modern education for these people have made them self reliant and allowed them to make a mark in their respective fields.

One of the important points of the section 26 is to "integrate the students with disabilities in normal schools." The integration of such students in normal schools allow them to cultivate their talents and allow them to overcome their disabilities. In fact, the section 26 of the Act anticipates the NNESSCO:

Society misperception of different forms and

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types of disability and the limited capacity of social actors to accommodate special needs often place people on the margin. Persons with disabilities experience inequalities in their daily lives, and have fewer opportunities to access quality education that takes place in an inclusive environment (Kolhe 43).

It is the impact of this visionary section of the Act that the students with disabilities are able to study with other students. Inspired by the Act UGC also initiated schemes and incentives for the differently-abled students. The UGC started the scheme of assistance to colleges and universities for Higher Education for Persons with Special Needs (HEPSN).

The main targets of HEPSN were:

1. To provide equal educational opportunities to differently abled persons in higher education institutions.
2. To create awareness among the functionaries of higher education about the specific educational needs of differently abled person. To equip higher education institutions with the facilities to provide access to differently abled persons.
3. To provide special devices to higher education institutions that will augment the learning experiences of differently abled persons.
4. To monitor the implementation of all existing and future legislation and policies, which are pertaining to higher education of differently abled persons. ("guidelines for Persons with Disabilities Scheme in Colleges plan (2012-17) 1).

The UGC provided money to the Higher education institutes to create "special facilities such as ramps, rails and special toilets, and make necessary changes to suit the special needs of differently abled people."

The persons with Disabilities Act 1995 framed by Indian government is probably inspired by Disability discrimination Act passed by the Government of Australia in 1992. According to Michael J. Prince, the Disability Discrimination Act of Australia has three objectives:

1. To eliminate, as far as possible discrimination against persons on the grounds of disability.
2. To ensure, as far as practicable, that people with disabilities have the same rights to equality before the law as the rest of the community; and
3. To promote recognition and acceptance within the community of principle that people with disabilities have the same fundamental rights as the rest of community. (205)

The Act in India also aims at all the three points. The discrimination is eliminated when the others group realizes that he has misunderstood the other. The persons with disabilities were misunderstood because they remained hidden from the public eyes and no real contact was established. Even in the homes the center of attention were the "normal" children. The children with disabilities remained neglected even at homes. So when the persons with disabilities integrated into the schools meant for mainstream children, a new level of understanding is reached; the misconceptions vanish and stereotypes are shattered. Suddenly the other group realizes that the children with disabilities are not

Remarking An Analisation

different; they are also intelligent and eager to learn and they also deserve a chance to earn a livelihood and need a normal life and most importantly they need support not mercy.

Thus the Disabilities Act, 1995 has been a game changer as far as the persons with disabilities are concerned. It has empowered them to claim education and employment as their right rather than a favour. The various provisions of Acts have made sure that the persons with disabilities no longer remain marginalized in the society. It empowers them with education and employment; the two factors that are important for living a life of dignity.

The legal framework is important is important because it makes for the authorities to take care of the basic necessities of the people concerned. Without legal framework; the society on the whole remains apathetic to the problems of the people with disability. It must be understood that this is not a problem in India only, rather in egalitarian countries like America the problem remained the same:

Before the adoption of America's antidiscrimination statutes related to disability, most institutions of higher education were conforming participants in a society that, by indifference, prejudice, or structure excluded individuals with disabilities from nearly every aspect of human endeavor. (Grossman 42)

This indifference was largely a result of suspicion that the people with disabilities are slow learners or in some cases they can't develop even basic proficiency in learning. This meant that by accepting the people with disabilities in such institutions, the institutions will have to lower their standards. So the students with disabilities were not preferred for admission by the institutions.

However, the things changed with the passage of the Act in 1995. Now the institutions are conscious about the laws regarding the rights of students with disabilities. All the institutions follow the guidelines by the Ministry of welfare and provide reserved seats for the students with disabilities.

The important aspect of the classroom is to make learning conducive for all the learners; that includes the learners with disabilities also. American Disability Law (ADA) stresses on this aspect of the classroom learning:

When the educational institution involved is a government entity, the ADA requires that the students with disabilities are to be provided communication "as effective as" that provided to students. "Communication" has been defined as the "transfer of information". (Grossman 42)

The Indian counterpart also mentions the same things. The section 28 of the Indian Act underlines the importance of new and innovative devices for the students with disabilities:

The appropriate Governments shall initiate or cause to be initiated research by official and non-

Governments agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

However, the use of innovative technology is not sufficient for the better communication or the transfer of knowledge. The teachers must be sensitized to the needs of such special students. The Act also stressed on the need of setting up "adequate number of teachers' training institutions" to train such teachers. The result of the section 29 of the Act was that most of the government universities started offering special courses to train the teachers who could cater to the needs of such students.

Even more important aspect of the Act was to provide motivation to the parents of he children with disabilities and the children themselves to enter the educational institutions. The Act provides elaborate so procedures to make the buildings as will as the syllabus of the institutions friendly for the students with disabilities. Section 30 of the Act stresses for such provisions:

1. Transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools;
2. The removal of architectural barrier from schools, colleges or other institutions importing vocational and professional training.
3. The supply of books, uniforms and other materials children with disabilities attending school;
4. The grant of scholarship to students with disabilities.
5. Setting up of appropriate for a for the redressal of grievances of parents regarding the placement of their children with disabilities;
6. Suitable modifications in examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;
7. Restructuring of curriculum for the benefit of children with disabilities.

All these provisions in the Act have paved the way for the betterment of the persons with disabilities. The infrastructural changes are visible in almost every public place. The colleges and universities have made sure to construct ramps so that the physically challenged people face no problems. Toilets for physically challenged people are also available in the institutions.

All these provisions along with the

Remarking An Analisation

scholarships for the persons with disabilities have motivated the parents to get their Children Educated. After all these provisions such children no longer remain disadvantaged. Discrimination that was so common is past diminishing from the society. So the Act has been very successful in eliminating discrimination from the society.

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