



DISABLED CHILDREN: CHILD RIGHTS PERSPECTIVE

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'I can't say that my disability has helped my work, but it has allowed me to concentrate on research without having to lecture or sit on boring committees

Stephen Hawking

INTRODUCTION

The World Health Organization (WHO) in 1976, provided a three-fold definition of impairment, disability and handicap explaining that “an impairment is any loss or abnormality of psychological, physiological or anatomical structure or function; a disability is any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being; a handicap is a disadvantage for a given individual, resulting from an impairment or a disability, that prevents the fulfillment of a role that is considered normal (depending on age, sex, social and cultural factors) for that individual”.¹

The Convention on the Rights of the Child (CRC) recognizes the human rights of all children, including those with disabilities. The Convention contains a specific article recognizing and promoting the rights of children with disabilities. Along with the CRC, the Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations General Assembly in December 2006, provides a powerful new impetus to promote the human rights of all children with disabilities.²

DISABILITIES: MEANING AND KINDS

A disability is often defined as the malfunctioning, disturbance or loss in the normal functioning of physical, mental or psychological processes, or a difficulty in the ability to learn, or adjust socially, which interferes with a person's normal growth and development.³ The history of disability is for the most part one of exclusion, discrimination and stigmatization. Often segregated from society, persons with disabilities – and in particular, children with disabilities – have been regarded as objects of charity and passive recipients of welfare. This charity-based legacy persists in many countries and affects the perception and treatment received by children with disabilities.⁴

Section 2 (d) of the Juvenile Justice Care and Protection of Children Act 2000 defines children who are mentally or physically challenged with no one to support them as being “children in need of care and protection”. It is mandatory for the state to provide adequate services for such children with disabilities.⁵ Despite all the best efforts at prevention, children may be born with or develop the following disabilities in early childhood, from the causes

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¹ Anuradha Mohit, Meera Pillai & Pratiti Rungta, *Rights of the Disabled*, New Delhi: National Human Rights Commission, 2006, p. 11

² https://www.un.org/esa/socdev/unyin/documents/children_disability_rights.pdf as accessed on 17 January, 2019

³ https://nhrc.nic.in/sites/default/files/DisabledRights_1.pdf as accessed on 18 January, 2019

⁴ *Promoting the Rights of Children with Disabilities*, UNICEF: Innocenti Research Centre, 2007, p. 5

⁵ Anuradha Mohit, Meera Pillai & Pratiti Rungta, *Rights of the Disabled*, New Delhi: National Human Rights Commission, 2006, p. 27

which are not yet fully understood or could be prevented. Most common disabilities among children:

- Visual impairment
- Hearing impairment
- Loco motor impairment; Cerebral Palsy
- Mental retardation and Mental illness
- Children with learning disabilities
 - i. Dyslexia
 - ii. Dysgraphia
 - iii. Dyscalculia
 - iv. Attention Deficit and Hyperactivity Disorder (ADHD).⁶

Children with disabilities are the most vulnerable group and need special attention. The Government would strive to:

- ❖ Ensure right to care, protection and security for children with disabilities;
- ❖ Guarantee the right to development with dignity and equality creating an enabling environment where children can exercise their rights; enjoy equal opportunities and full participation in accordance with various statutes.
- ❖ Assurance inclusion and effective access to education, health, vocational training along with specialized rehabilitation services to children with disabilities.
- ❖ Ensure the right to development as well as recognition of special needs and of care, and protection of children with severe disabilities⁷

LEGISLATIVE SAFEGUARD FOR THE PROTECTION OF THE RIGHTS OF DISABLED CHILDREN

The Government of India has enacted three legislations for persons with disabilities viz.

- i. Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which provides for education, employment, creation of barrier free environment, social security, etc.
- ii. National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 has provisions for legal guardianship of the four categories and creation of enabling environment for as much independent living as possible.
- iii. Rehabilitation Council of India Act, 1992 deals with the development of manpower for providing rehabilitation services.⁸

Apart from this, the Constitution of India has guaranteed through the Directive Principles of State Policy and Fundamental Rights, equality before the law and equal protection of law for all its citizens, and prohibited discrimination on the grounds of 'religion, race, caste, sex, place of birth'. The Constitution of India also applies uniformly to every legal citizen of India, whether they are healthy or disabled in any way (physically or mentally). Under the Constitution the disabled have been guaranteed the following fundamental rights:

⁶ K.C Pant, *A Handbook for Parents of Children with Disabilities*, Government of India Planning Commission, February 2002, p. 5.

⁷ Meira Kumar, *National Policy for Persons with Disabilities*, New Delhi: Government of India Ministry of Social Justice and Empowerment, 2006, p. 4

⁸ <http://disabilityaffairs.gov.in/upload/uploadfiles/files/National%20Policy.pdf> as Accessed on 20, February 2019

- The Constitution secures to the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.
- Article 15(1) enjoins on the Government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.
- Article 15 (2) States that no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, public restaurants, hotels and places of public entertainment or in the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of government funds or dedicated to the use of the general public.
- Article 16 there shall be equality of opportunity for all citizens (including the disabled) in matters relating to employment or appointment to any office under the State.
- No person including the disabled irrespective of his belonging can be treated as an untouchable. It would be an offence punishable in accordance with law as provided by Article 17 of the Constitution.
- Every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution.
- There can be no traffic in human beings (including the disabled), and beggar and other forms of forced labour is prohibited and the same is made punishable in accordance with law (Article 23).
- Article 24 prohibits employment of children (including the disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment.
- Article 25 guarantees to every citizen (including the disabled) the right to freedom of religion. Every disabled person (like the non disabled) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health
- Article 29 no disabled person will be deprived of the right to the language, script or culture which he has or to which he belongs.
- Every disabled person can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32.⁹
- Article 21A: education is the most effective vehicle of social and economic empowerment. By the 86th Amendment Act in 2002 to the Indian constitution, free and compulsory education to all children within the age of six to fourteen years was guaranteed as a fundamental right. This was the Sarva Shiksha Abhiyan (Education for All), a programme of the Indian government for the achievement of the Universalization of Elementary

⁹ Durga Das Basu, *Introduction to the Constitution of India*, Sixth Edition, New Delhi: Prentice Hall of India, 1976, pp. 77-79.

Education. SSA was implemented so as to address the needs of 192 million children and is undertaken with the help of the state governments. Within this programme, new schools were to be opened in those locations which did not previously have a school and also to strengthen the already existing infrastructure as well as provide extra teachers to schools that had inadequate teaching staff. The main focus of SSA was to provide education to girls and to children with special needs (Ministry of Human Resource Development, Government of India). In addition, a consequent legislation of this was The Right of Children to Free and Compulsory Education (RTE) Act which was passed in 2009, according to which every child had a right to “full time elementary education of satisfaction and equitable quality in a formal school which satisfies certain essential norms and standards.” The RTE Act promises to guarantee free and compulsory education to the children 6 to 14 years.¹⁰

THE RIGHTS OF PERSONS (Including Children) WITH DISABILITIES ACT, 2016

According to this Act, duties have been assigned to the educational institutions by appropriate government and local authorities for the overall development to the children with disabilities such as:

- admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
- make building, campus and various facilities accessible;
- provide reasonable accommodation according to the individual's requirements;
- provide necessary support individualized or otherwise in environments that maximize academic and social development consistent with the goal of full inclusion;
- assurance that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;
- detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;
- monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;
- provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs¹¹

Further Section (9) of this Act, has made fundamental liability towards parent that no child with disability shall be separated from his or her parents on the ground of disability except on an order of competent court, if required, in the best interest of the child. However, where the parents are unable to take care of a child with disability, the competent court shall place such child with his or her near relations, and failing that within the community in a family setting or in exceptional cases in shelter home run by the appropriate Government or non-governmental organisation, as may be required.

¹⁰ P. M. Bakshi, *The Constitution of India*, (Ninth Edition), Delhi: Universal Law Publishing, 2009, p. 57

¹¹ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

CONCLUSION

The proportion of disability varies from person to person. In majority of cases, ratio of disability keeps on fluctuating at various stages of life owing to age, illness etc. The early age of disabled child is the crucial stage where love, care, is required along with proper education. Health is also to be given a priority so that the budding years of the child are not ruined. For all these policies, programmes and awareness is required. In India, there is dearth of legislations to cater special needs of disabled children. The little legislation that we have even these is implemented properly. It is the high time to concentrate on the special needs and requirement of specially abled children so that they can bloom in their future.