



TREATMENT OF DISABILITY- STUDY OF EQUITY PRINCIPLE IN INDIAN LEGISLATIONS

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Our bodies have framed our futures and explained our past; our bodies write our stories. But it is not our bodies per se which write the story; rather it is the way in which we, as a society, construct our bodies which shapes our history and our future.

ABSTRACT:

Current research paper shall pursue the discussion on the disability of the body and the initiatives at the national to curtail the bias on the such ground. Following Indian society particularly in the poor and rural areas needs to be educated about physical and mental disability and about how it can be cured or alleviated. It must be impressed upon people that the disables person has as may rights as any other and that he is not to be regarded as an inconvenient burden.

Researcher has focused on the national laws for the treatment which afford equal treatment to those who are disabled or are differently abled. The progress of Indian government in framing the laws to keep pace with the international implementations, has been put into question in the present study.

KEYWORDS : *business environment , entrepreneurial behaviour , social and economic conditions.*

INTRODUCTION

Bodily difference has for centuries determined social structures by defining certain bodies on the norm, and defining those which fall outside the norms as 'other' with the degree of 'otherness' being defined by the degree of variation from the norm. In doing this we have created an artificial 'paradigm of humanity' into which some of us fit neatly, and others fit very badly. Life outside the paradigm of humanity is likely to be characterized by isolation and abuse.

The story we have assess of the lives of people with disability is a story of life lived on the margins. For people with disability, their history is largely a history of silence. The lives of people with disability have not only been constructed as 'other' but frequently as the 'other of the other'. People with disability are marginalized even by those who are themselves marginalized.

As a modern society steeped in tradition, India's responses to disability are many and varied. On the one hand India has a Disability-Discrimination act which is older than some other countries. On the other hand, because of severe poverty, many people cannot access any services and rely solely on family and extended family support. If such support does not exist people may have little alternative than begging for their survival.

There are several ways in which the needs of people with disability are addressed in India. These includes: (a) Government legislation; (b) Specific organizations; (c) Families and extended families; (d) Friends.



TREATMENT OF DIFFERENTLY ABLED IN INDIA

India has been in the forefront towards protecting the rights of disabled & has actively participated in **International Year of Disabled Persons (1981)**, **SAARC Year of Disabled Persons (1983)** & **UN Decade of Disabled Persons (1983-92)**. It- is also a signatory to the Proclamation on the Full Participation & Equality of People with Disabilities in the **Asian & Pacific Decade of Disabled Persons (1993-2002)**. The Proclamation makes special mention of the need to improve the living conditions of persons with disabilities in rural areas.

During 1990s, India's commitment to the cause of children at the national & international levels led to a drastic change in the situation of children. **The UN convention on the Rights of Child (CRC)** was adopted on 20th November 1989 came into force as an International Law on 2nd September 1990. The Government of India acceded to & ratified the convention on 2nd December 1992. The convention has facilitated conversion of basic needs of children into their normative rights. It draws attention to the rights of children related to their survival, protection, development & participation. The Right to Survival includes the right to life, the highest attainable standard of health, nutrition & adequate standard of living. This UN convention on the Rights of the child puts forth children with disabilities as one of the categories of children in especially difficult circumstances.

A disabled child has rights, identical to those of other children. Although all the articles of the convention have bearing on the Survival & development of children with disabilities. **Article 23¹** especially recognises rights of children suffering from one type of disability or the other & have provisions to take care of the special needs of these children for their holistic development. With the ratification of the convention both prevention of childhood disabilities & protection from the effect of childhood disabilities are mandated as the rights of every child in the country. CRC accords every child the right to achieve full development potential, for the fulfillment of which the State, the communities & families are collectively responsible.

In India, laws relating to handicapped come under the VII Schedule of the Constitution's concurrent-legislative list. To accomplish an egalitarian socio-economic order constitution of India mandates that State shall make effective provision for securing the right to public assistance in case of unemployment, old age, sickness, disablement & other cases of undeserved want".²

It shall also strive to promote the welfare of the people by securing & protecting a social order in which justice, social, economic, & political shall inform all the institutions of the national life.³ Further State shall secure that the operation of legal system promotes justice, on a basis of equal opportunity & shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities⁴ and that state shall, in particular, direct its policy towards securing-⁵

- a) that the citizens men & women equally have the right to an adequate mean of livelihood;
- b) that the ownership & control of the material resources of the community are so distributed as best to subserve the common good;
- c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- d) that there is equal pay for equal work for both men & women;
- e) that the health & strength of workers, men & women, and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

¹ U.N. Convention on the Rights of Child, 1990.

² Constitution of India: Art. 41.

³ Ibid. Art 39-A.

⁴ Ibid. Art 39 -A.

⁵ Ibid. Art 39.

- f) that children are given opportunities to develop in a healthy manner and in conditions of freedom & dignity and that childhood and youth are protected against exploitation and against moral & material abandonment.

Apart from this constitution also imposes duty on state to raise the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks & of drugs which are injurious to health⁶ and also to promote with special care the educational & economic interests of weaker sections of the people & protect them from social injustice & all forms of exploitation.⁷ All these provisions imposes duty on state to protect weaker sections of society which includes disabled people also and to help them to grow in an environment favourable for them.

JOB RESERVATION: UNION AND STATE MEASURES⁸

Before, passing of Rights of Persons with Disabilities Act 1995 there was an executive order issued by the Bureau of Public Enterprises for public sector undertakings and another by the Union Ministry of Home Affairs providing for a job reservation of one percent each for the blind, the deaf and dumb and the orthopedically handicapped in class III and class IV posts of the Central Government and in public sector undertakings. Now Union Public Service Commission has to provide 3% job reservations in Class I, now disabled persons can join Class I services with some limitations. However this was not a statutory requirement and unfortunately there was lack of proper machinery to monitor these reservations by the concerned employers. In India, there were 169 public enterprises in 1979-80, with a capital of Rs. 16,354 crores and giving employment to 1.76 million persons (Government of India, 1981:38). Hence it was imperative to evolve suitable monitoring procedures to ensure that the provision for the reservation does go to the disabled.

At the State level, according to information available, 18 states had job reservation for the disabled. The exceptions were Assam, Bihar, Kerala, Tamil Nadu and some Union Territories. In the states, the percentage of reservation varied from one to four the lowest being in Orissa and the highest in Gujarat. The states which gave unemployment allowance to the disabled were: Andhra Pradesh, Bihar, Gujarat, Karnataka, Madhya Pradesh, Tripura, Haryana and Punjab. Five Union Territories - Chandigarh, Delhi, Goa, Mizoram and Pondicherry - propose to introduce unemployment allowance for the disabled persons in the future.

There was no apparent rationale behind fixing a uniform one percent reservation in posts for each category of the physically handicapped even though the estimated incidence of disability was 1.26 among the blind, 1.44 among the deaf and dumb, and 2.06 among the orthopaedically handicapped per 1000 persons according to the National Sample Survey Organisation (1973). The: "reservations were meant only for the physically disabled to the exclusion of the mentally disabled, some of whom were productive at different levels of competence. To this extent the existing provisions were discriminatory. The reservations were not applicable to private sector which employs large proportion of the total work force. Likewise the class-A and class-B posts in the Central Government were excluded from the purview of reservation.⁹

(i) Special Employment Exchanges

The Government of India had set up special employment exchanges all over the country for the benefit of disabled persons. It has been the experience with the employment exchanges that vacancies notified by employers in the private sector show no preference for employment of the handicapped persons. The penetration of employment exchanges in general was low as only about ten percent of the

⁶ Ibid. Art 47.

⁷ Ibid. Art 46.

⁸ Supra note 7.

⁹ Ibid. p. 727.

private sector recruitment was done through the exchanges. In order to improve the chances of the handicapped, employers, covered under the Employment Exchanges Compulsory **Notification of Vacancies Act, 1959**, were required to state whether handicapped persons were eligible against a vacancy; and this was done through a suitable amendment of the rules under the Act. Most of the disabled persons registered with the special exchange were not vocationally or technically trained with the result they were not easily accepted by the employers.¹⁰

(ii) Apprenticeship Programme¹¹

There is a need for training the disabled persons in suitable trades to improve their employability and to meet the growing need for skilled manpower in the country. An important pre-employment training scheme is apprenticeship training under the **Apprenticeship Act, 1996**. Under this Act more than 200 groups of industries have been notified and about 103 trades relating to engineering and non-engineering industries have been designated. Under this Act, it is a statutory obligation on all employers in notified industries to engage apprentices as per ratio prescribed in the designated trades. Under qualifications for admission in Apprenticeship Act, it is stated that a physically handicapped person, if declared fit, may be engaged as an apprentice in the particular trade for which he is fit.

It is estimated that in more than 50 percent of the trades, disabled persons can be easily trained. The Union Ministry of Labour has issued instructions that, as far as practicable, taking into account the limitations of the handicapped individual as well as his prospects of securing suitable employment, three percent of the vacancies of apprentices should be filled by physically handicapped persons. However, additional categories like the mentally retarded, leprosy cured and cancer disabled should also be accorded preferential treatment. The Seminar on the Training of Handicapped under Apprentices Act, 1961 and In-Plant Training in Industries held at Bombay in 1976 recommended: (a) reservation of seats for the handicapped, and (b) legislation to make it obligatory on the industries training them to absorb them as regular employees.

To improve the chances of employment for disabled persons, the Government of India needs to amend the Apprenticeship Act. Some points worth considering while amending the provisions of the Act are:

- (i) Selection of suitable trades for training of disabled persons, having regard to various types of disabilities;
- (ii) Fixation of ratio of disabled apprentices to the total number of apprentices in the designated trades; .
- (iii) Duration of training;
- (iv) Amount of stipend to be paid during the training period;
- (v) Standards of physical fitness;
- (vi) Educational qualifications;
- (vii) Costs of additional equipment which may be necessary; and
- (viii) Role of social service organisations in training.

LABOUR LAWS AND THE DISABLED

An analysis of the provisions of the labour laws in the country shows that laws like **Payment of Wages Act, 1965; Payment of Bonus Act, 1965. Industrial Disputes Act, 1947; and Minimum Wages Act 1948** do not apparently discriminate between the normal persons & the disabled persons. While some other laws are for promotion of safety & working condition perspective. **The Factories Act, 1948** contains provisions for fencing of machines use of hoists & cranes, *etc.*, aimed at promotion of safety, health & welfare of workmen in the factory. Commenting on the implementation of these protective provisions, the **National Commission on Labour (1969; 101)** observed that the safety

¹⁰ Ibid.

¹¹ Ibid. p. 728.

aspects is neglected by both the employers & the employees while some other Acts like **Workmen's Compensation Act 1923** and **Employee's State Insurance Act, 1948**¹² are remedial & not preventive. They are operative when misfortunes turns on able bodied to disabled one and also the ambit & scope of these laws are limited to men engaged in industries.

Workmen Compensation Act defines partial disablement¹³ that it is of 2 kinds (i) Temporary Partial Disablement (ii) permanent partial disablement.

To determine whether the injury is permanent or temporary the courts have to see whether the injuries incapacitated the workman from every employment which he was capable of undertaking at the time of accident or merely from the particular employment in which he was at the time of accident resulting in disablement. In the former case it is partial but permanent, in the latter case it is temporary.

Total disablement¹⁴ is when a workman is incapacitated of doing workmen is in incapacitated of doing any work which he is capable of performing at the time of accident resulting in total disablement. Under this Act¹⁵ the employer's liability for compensation depends upon the following 4 conditions:

1. Personal liability must have been caused to workman.
2. Such accident must have been caused by an accident.
3. The accident must have arisen out of & in course of employment.
4. The injury must have resulted either in death of workman or in his total or partial disablement for a period exceeding 3 days

PROBLEMS OF MENTALLY DISABLED

Mental disability presents manifold problems. Two major types of mental disability are mental retardation and mental illness. The very nature of mental affliction may handicap an individual in transacting normal communication with fellow human-beings, taking and acting on decisions, managing daily chores, and the disabled person and his family may have to cope with consternation, guilt, fear and misunderstanding. Legal provisions are of negligible 'utility as far as the social and emotional problems are concerned (McClellan, 1975: 134).

Social legislation in India does not specifically recognise the 'mentally referred'. The terms commonly referred to in the existing laws are 'idiot' 'lunatic' or a person who is 'mentally unsound' However, these terms are not defined with precision. The Percy Commission in Britain described 'severely subnormal'¹ in terms of person with mental age below 7.5 to 9, or an I.Q. below 50-60. However, it was stressed by them that intelligence is not the sole criterion for judgement. There are instances where normal persons, in order to evade their contractual commitment, too refuge under the plea that they were of unsound mind when they entered into a contract.

The Indian Lunacy Act 1912 & The Mental Health Act 1987

These were the two Acts passed before the persons with Disability Act of 1995 dealing exclusively with the mental disabled in India. The Indian lunacy is intended to protect the society as in case of Lepers Act. Under the provisions of Lunacy Act the police are empowered to arrest wandering lunatics. Chapter VIII of Mental Health Act 1987 provide for protection of human rights of mentally ill persons.

PROVISIONS IN GENERAL LAWS

Many laws insist on soundness of mind as a precondition to be entitled to a privilege. To illustrate, a citizen ought to be mentally sound in order to be entitled to be a voter (Representation of Peoples Act, 1950; sec. 60). In a similar vein, even if a person has attained the age of majority, the contract entered into by him will still be void if he is of unsound mind as per section 12 of the Indian

¹² Sec. 51 and Sec. 64 of Employee's State Insurance Act, 1948.

¹³ Sec. 2(1) (g) of Workmen's Compensation Act, 1923

¹⁴ Ibid. Sec. 2 (1)(i)

¹⁵ Ibid. Sec. 3

Contracts Act. Unlike the Mohammedan Law, the Hindu marriage Act prohibits marriages where one of the parties is a lunatic at the time of marriage. However, the Hindu Succession Act, 1956 clearly states that unsoundness of mind is not a bar to inheritance of property. Chapter XXXIV of the criminal procedure code deals with the criminal lunatics. As per section 84 of the Indian penal code nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law.

Guardianship

The prevailing legal provisions relating to the retarded have a few drawbacks. The legal provisions do not make any distinction between various graders of retardation and the concept of protection is judged by the criterion whether a person is wholly or partly incapable of taking care of his person and property, regarding children, subsequent to the appointment of a guardian, there is no procedure whereby Courts are required to make assessment at reasonable interval whether such arrangement of guardianship should continue. The crucial thing is to have someone who has a personal interest and concern for the retarded child and is capable of guiding and supervising the child properly. According to law, parents are 'natural'¹ guardians. But it is better to designate someone as guardian for the disabled child to take care of the child after the death of the 'natural'¹ guardian, the parents, specially in view of the diminishing number of joint families. For this the parents have to move the court for appointment of a guardian (Baliga, 1976 : 35).

Trusteeship

Despite the populist pronouncements and constitutional injunctions, we are yet to evolve a viable alternative to the system of social insurance for the disabled hitherto provided by the institution of joint family. As a consequence, a major anxiety of the parents is the future of their disabled child after their death. Questions such as, who will look after the disabled person with care and affection, and for then how long constantly linger in the minds of parents. To offset this, some western countries has introduce trusteeship schemes by insurance companies to provide care and comfort to the disabled person after the death of parents. In Ireland, a parent of a mentally retarded session wishing to join the trusteeship scheme has to take an insurance on his life and assign the policy to the National Association for the Mentally Handicapped of Ireland (NAMHI). After the death of the parent, the NAMHI will periodically assess the general welfare and needs of the retarded individual and provide him the necessary services and comforts. In UK and Sweden, even if a parent does not provide for, the state provides the necessary care and support for the retarded after the parent's demise. In India, the Federation for the Welfare of Mentally Retarded has initiated action to evolve a trusteeship scheme for the retarded in India.

The motor vehicle (Amendment) Act 1994¹⁶ & Mines Act 1952 also provides compensation for accident involving death or bodily injury to persons arising out of the use of motor vehicles & working in mines respectively.

Persons with Disabilities (Equal Opportunities Protection of Rights & Full Participation) Act, 1995, it provides various facilities for both children and adults with disabilities in India. It provides 3% reservation for disabled persons but the actual fact is alarming. A recent survey report¹⁷ shows that in public sector only 0.54% jobs have been provided to disabled persons more than 2 decades after 3% criteria was fixed by government for them and when compared it to private sector which at present accounts for only 0.28 jobs for these strata of the society.

RECENT DEVELOPMENT IN INDIA

The Rights of Persons with Disabilities Act 2016: The definition of disability as provided by the UN Convention on Rights of Persons with Disabilities (UNCPRD) states that "Persons with

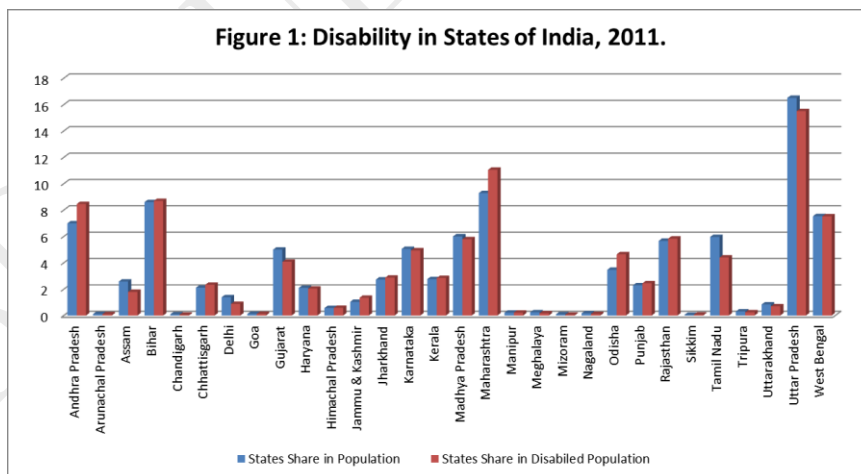
¹⁶ Sec. 140,141 & 142 of Motor Vehicle (Amendment) Act, 1994.

¹⁷ MNCs Turns a Blind Eye to Disabled; The Hindustan Times, 4th August, 1999.

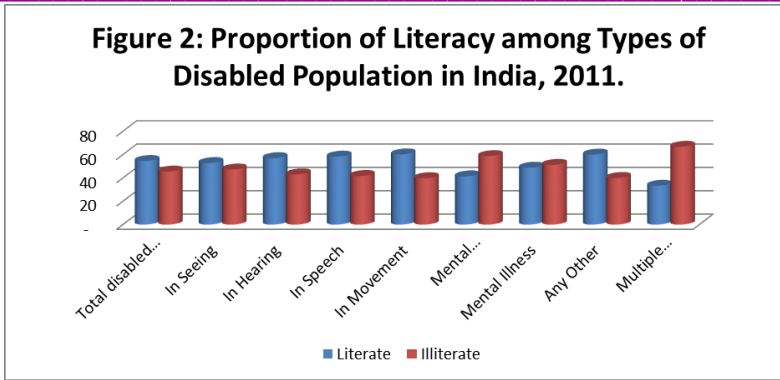
Disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

- Disability has been defined based on an evolving and dynamic concept.
- The types of disabilities have been increased from existing 7 to 21. It includes Speech and Language Disability, Specific Learning Disability, Acid Attack Victims, Dwarfism, muscular dystrophy. It also included three blood disorders: Thalassemia, Hemophilia and Sickle Cell disease have been added for the first time.
- It seeks reservation in vacancies in government establishments has been increased from 3% to 4% for certain persons or class of persons with benchmark disability. In addition benefits such as reservation in higher education, government jobs, reservation in allocation of land, poverty alleviation schemes etc. have been provided for disabilities.
- The bill claimed that every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education. The government will fund educational institutions as well as the government recognized institutions to provide inclusive education to the children with reasonable accommodation to disables.
- Special Courts will be designated in each district to handle cases concerning violation of rights of PwDs.
- The Bill provides for penalties for offences (imprisonment of 6 months to 2 years along with fine of 10000 to 5 lakh) committed against persons with disabilities and also violation of the provisions of the new law.
- The bill provides power to government to notify additional disabilities, a clear recognition of the need to factor in conditions that may arise as a result of an ageing population, an inevitable part of the demographic transition.
- The new law will not only enhance the Rights and Entitlements of Divyang-Jan but also provide effective mechanism for ensuring their empowerment and true inclusion into the Society in a satisfactory manner.

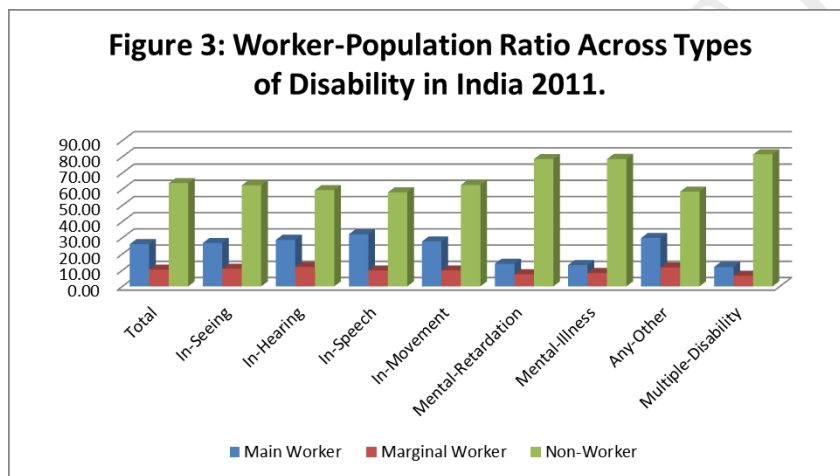
NATIONAL SCENARIO ON DISABILITY WITH THE HELP OF CENSUS 2011:



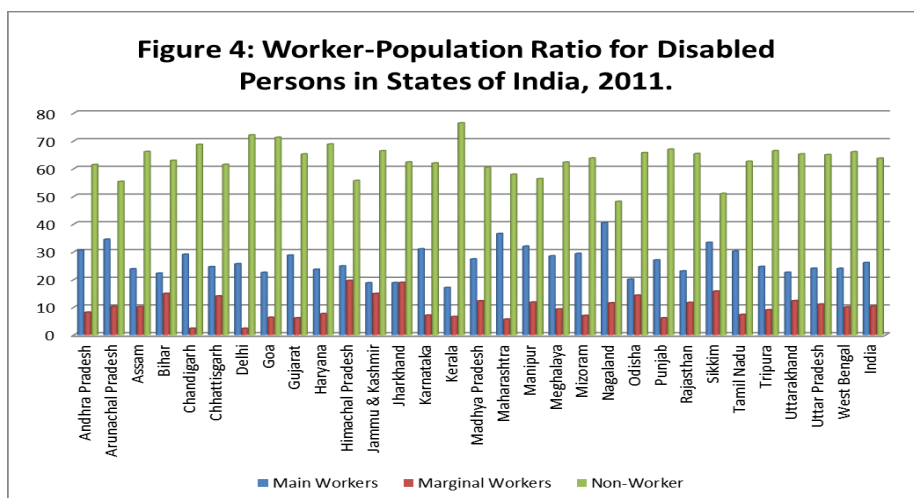
The percentage of total disabled persons in aggregate (rural plus urban) population remained at about 2.22%. The rural disabled persons constituted about 2.23% in the rural population, while the urban disabled persons made up about 2.16% of the urban population according to the 2011 Census data.



The proportion of literacy is found to exceed that of illiteracy in all physical disability types, viz., disabilities in seeing, hearing, speech and movement, as well as in the total disability. On the other hand, the proportion of illiteracy remained higher in the case of mental disability, mental illness and multiple disabilities.



It is found that about 60% or more of disabled persons are non-workers and about 25% are main workers, while and the remaining 15% remain as marginal workers in all the groups of disabled persons, excepting for the groups of mental retardation and mental illness. There are about 75% of non-workers, 15% of main workers and 5% marginal workers in the groups of mental retardation and mental illness in India.



It can be seen that the proportion of non-workers varied between 60-70% in different states.

JUDICIAL OPINION ON INCLUSION

Rajneesh Kumar Pandey v Union of India (2016): is an ongoing public interest litigation (PIL) case before the Supreme Court. This PIL concerns the shortage of special education teachers in Uttar Pradesh. The petitioners have sought directions from the court to the state government in this regard. In an interim order passed in November 2017, a three-judge bench of the court asked the state government to submit its affidavit. While passing this order, the court also made the following observations:

"It is impossible to think that the children who are disabled or suffer from any kind of disability or who are mentally challenged can be included in the mainstream schools for getting education... The students who suffer from blindness, deafness and autism or such types of disorder may be required to have separate schools with distinctly trained teachers."

In the case of *Disabled Right Group and Anr. V. Union of India and Ors (2018)*, the Supreme Court had stated:

"It hardly needs to be emphasised that Disabilities Act is premised on the fundamental idea that society creates the barriers and oppressive structures which impede the capacities of person with disabilities... To ensure the level playing field, it is not only essential to give necessary education to the persons suffering from the disability, it is also imperative to see that such education is imparted to them in a fruitful manner. That can be achieved only if there is proper accessibility to the buildings where the educational institution is housed as well as to other facilities in the said building, namely, class rooms, library, bathrooms etc. Without that physically handicapped persons would not be able to avail and utilise the educational opportunity in full measure."

CONCLUSION AND SUGGESTIONS

People are disabled because of physical reasons, such as the loss of vision or the limbs or because of mental, psychological disorders. They may have been born with such disabilities or they may have acquired them during the course of their lives. Situation is alarming due to significant number of persons who suffer from one or other kind of disability.

Though we have entered into new millenium but disability still remains one of the major social and medical problems. Globally it is estimated that one-in-ten children in the world are born with or acquire physical, mental or sensory impairment. As per the estimates of World Health Organization (WHO) more than 500 million persons *i.e.* 10% of world's total population suffer from some type of disability. Although 75% of childhood disabilities can be prevented through early detection and timely health care but it is unfortunate to know that every year 1.5-2 million persons are added to the category of disabled due to neglect of primary preventive care.

The Government of India in the recent times has enacted legislations for protecting and granting the rights to the disabled. The persons with Disabilities (PWD) Act, 1995 and the National Trust Act, 1999 are the recent ones, and we had deliberations for amending the PWD Act, which is in process. The National Trust Act, 1999 and The Persons with Disabilities (PWD) Act, 2016, have recently been passed which is for providing a large number of services.

While every nation on planet Earth continues to struggle with disability-related issues such as accessibility, employment, housing, rights, and more; the nation of India very clearly has quite a ways to go before it reaches a sense of equality in relation to people with disabilities. The fact that India has signed the Convention on the Rights of Persons with Disabilities is promising. One can hope that the nation of India will pursue the Convention, and find itself with equality in society for their citizens with disabilities.

Corporate sector of India is a big employer for people of country and hence, researcher would like to propose these suggestions for companies to afford unbiased treatment to the disabled:

1. By having a positive attitude towards people with disabilities and following non-discriminating.
2. By reserving a percentage of jobs at all appropriate levels for disabled persons.

3. By including disability in the Mission statements of the company. The various departments (HRD, Finance, R&D, Administration *etc.*) should have clear cut objectives to support people with disabilities.
4. By having a policy to retain employment without reduction of rank of people who may become disabled.
5. By being accessible not only to people with mobility problems but also those with visual and hearing impairments, for example: barrier-free buildings, ramps, adopted toilets, braille symbols and auditory signals in lifts, signage *etc.*
6. By providing appropriate aids/technology/attendants to support disabled employees in the work place.
7. By giving certain extra benefits like providing transport to work, rights to special leave, additional medical allowance, *etc.* to people with disabilities and to parents with disabled children.
8. By not denying promotion to people with disabilities on grounds of disability.
9. By providing a safe working environment to prevent health hazards and accidents.

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