



BOOK REVIEWS

THE FUTURE OF DISABILITY LAW IN INDIA: A CRITICAL ANALYSIS OF THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995(2012). By Jayna Kothari. Oxford University Press, YMCA Building, 1 Jai Singh Road, New Delhi, 110001. Pp. xv + 216. Price Rs. 695/-.

THE PERSONS with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 [PWD Act] is the primary law for the protection of rights of persons with disabilities in India and is in fact, the first law in the country which sought to provide equal opportunities and full participation to persons with disabilities. While the Act contains a number of positive provisions and measures in this regard, its provisions and implementation still have a number of drawbacks as far as ensuring equality and non-discrimination to persons with disabilities is concerned, as the book under review, *The Future of Disability Rights in India* notes. The author is an advocate who has been working on disability rights at the Karnataka High Court and through the Alternative Law Forum, Bangalore.

The book under review analyses the PWD Act, in the light of the worldwide movement of viewing disability as a human rights issue, and of the principles of equality and non-discrimination. The author notes that despite the PWD Act having been on the statute books for over sixteen years, it is not understood by lawyers, judges, academics or students and there is no commentary on the Act nor material on disability law in India. Another object of the author in critically examining the working of the PWD Act is the demand for amendment or replacement of the Act to make it compliant with the UN Convention of the Rights of Persons with Disabilities, 2008, (CRPD) which has been signed and ratified by India, for which purpose a committee has been set up by the Ministry of Social Justice and Empowerment.

The book comprises seven chapters, besides the introduction and conclusion, which analyse the major themes under the PWD Act, 1995. A CD of the book has also been provided. Each of the issues is examined from the point of view of the principles of equality and non-discrimination and various principles of the 'social model' incorporated in the CRPD. The author has referred to judgments from the EU, US and UK besides those of the Supreme Court and high courts in India and analysed the various themes by looking into approaches in other jurisdictions, particularly under the Americans with Disabilities Act, 1990 and the Disability Discrimination Act, 1995 in the UK. The introductory chapter sets out the objectives of the book, background of the issue, principles in the light of which the PWD Act is being analysed in the book and the chapter scheme.

The first chapter of the book examines the relatively new concept of treating



disability as a characteristic requiring civil rights protection pointing out that until the late 20th century, it was merely thought to be an issue for assistance through social security. The applicability of various theories of equality to protection of the rights of the disabled is considered, noting the advantages of ‘substantive equality’, which emphasizes the dignity, autonomy and worth of the individual and covers equality of opportunity, results and social inclusion. The concept of ‘reasonable accommodation’ is looked into which ‘goes beyond respecting difference to accommodating difference’ to enable access, participation and advance in employment and other aspects of social life. The chapter points out that persons with disability have largely been neglected in the Constitution. However, the substantive equality approach has been successfully used in landmark judgments on numerous issues. The author argues that grounds analogous to those in article 15 (1) can be included as grounds for non discrimination, and that to make the Act more meaningful, an interpretation where the principles of equality, non-discrimination and positive obligations to provide equal opportunities underline every provision of law should be adopted.

The focus of the second chapter is the definition of disability, which is crucial as it determines entitlement to affirmative action. The author highlights the deficiencies in the PWD Act in this regard as the definition therein is very narrow, medically oriented and confined to seven categories specifically enumerated though the term persons with disabilities ‘encompasses people with a wide range of differing life experiences’. The categories enumerated are analysed and certain disabilities that have not been defined or are ignored such as learning disabilities, long-illnesses, *etc.* are identified. The author also highlights the difficulties created by the requirement of certification, for instance in the case of mental illness, where the 40 percent disability as required cannot as such be measured. The distinction between the ‘medical model’ of the definition which locates disability within the individual, and seeks to change the person to integrate him/her into society, *vis-à-vis* the ‘social model’ which involves removal of physical barriers, stereotypes and prejudice from society, is discussed. The author argues in favour of an amendment to the Act in line with the social model. Discussing the approach of not having a definition in the statute, she feels that India is not ‘ready and mature’ for such an approach though it does provide a wider ground.

The third chapter looks into the provisions on education in the PWD Act. It points out that the Act goes far beyond the Constitution and Right to Education Act in this regard providing free education for persons with disabilities till the age of 18 but notes that while this right is not dependent on resources, it is not being implemented. Another shortcoming is that the onus under section 26 is on the state making private school education out of bounds for most. An important issue examined in this chapter is of segregated education versus inclusive education. The author highlights the advantages of inclusion which assimilates the needs of all learners and makes all stakeholders comfortable with diversity, but notes at the



same time that segregation might be an option where an inclusive environment is not capable of adequate response. It is pointed out that reasonable accommodation is present in sections 30 and 31 of the PWD Act which is crucial for the effective realisation of the rights of persons with disabilities. The issue of reservation is examined in detail pointing out the debate in this regard in India has been focussed on higher education and not primary, secondary or the high school levels. The initial confusion and misinterpretation of section 39 due to its placement in 'employment and disability' chapter is also discussed.

Public employment is the subject of the next chapter which notes that reservations and other facets of employment form the highest number of cases under the PWD Act. One of the major drawbacks of the provisions in the author's view is exclusion of private organisations from reservation. The author also feels that the provision for identification of posts is another major hurdle which should be dropped as there are discrepancies in identification, identification committees often have no representation of persons with disabilities, there is stereotyping, and periodic review does not take place as required. She argues that reasonable accommodation which 'lies at the heart of civil rights advancement in the context of disability' could make almost all posts suitable. The issues of non-implementation, reservation being horizontal, non-discrimination in disabilities acquired during employment, reasonable accommodation, and the functioning of special employment exchanges envisaged under the Act have also been discussed.

An important issue that is addressed in the fifth chapter is that of access and public services, to which the author notes, surprisingly little attention has been given and only negligible steps have been taken towards adapting transport as compared to education and employment. It is pointed out that access includes environmental barriers, institutional barriers as well as attitudinal barriers. The author also notes that while section 42 envisages provision of aids and appliances and is crucial and has no in-built limits, the schemes under the provision have cost limits and would not cover substantial equipment required by persons with disabilities 'to lead fully engaged lives'. Little attention has been paid to one of the most significant access issues, *i.e.* public transport, for which requirements in the Act are not mandatory nor have any time frame for completion, but which can enable access to other rights. Improper awareness and lack of implementation are also issues in this regard. The chapter looks into land allotment at concessional rates, concessional fares for transport and access to information and technology. Another significant issue discussed is that of access to voting rights towards which some important measures have been taken pursuant to Supreme Court and consequent Election Commission directions, though there is no serious attempt to publicise them. The erroneous disenfranchisement of a 'not so negligible' part of the population suffering from mental illness has also been pointed out.

The PWD Act has by and large been interpreted to apply to state and state



funded institutions and in the next chapter, the author examines the issues under the Act as to the private sector. The applicability of many fundamental rights to non-state actors and an emerging method of interpretation by reference to international human rights instruments as an aid to interpreting domestic law are looked into in this regard. She argues that a close reading of the provisions on education show that they would be applicable to the private sector. Similarly, the provisions of section 28, 29 and 30 as well as those of section 41 would also be applicable. It is noted that the applicability of the PWD Act to the private sector would be in line with the CRPD. The author points out that there are compelling arguments for amending the PWD Act making it applicable to the private sector. She also identifies two issues that remain unaddressed by the Act which are abuse faced by persons with disability within their families and the issue of protection of persons with disabilities from exploitation.

The final chapter deals with the UN Convention on the Rights of Persons with Disabilities, 2008, which is the first international convention dealing with human rights of the disabled as earlier human rights instruments including the UDHR did not address disabilities and other attempts made were only 'soft law' which had little impact. The CRPD represents a paradigm shift in the way in which disability is viewed and its major themes include blending civil and political rights with economic, social and cultural rights; and shifting from the 'medical model' to the 'social model' focussing on capability, inclusion, individual dignity and personal autonomy. The PWD Act though a step forward is, in the author's view, greatly lacking. She feels that several important principles in the CRPD including equality, non-discrimination and dignity; a broad and inclusive definition of disability; principles of reasonable accommodation and horizontal application would find place in a forward looking disability law in India, and the CRPD can provide create a permanent place for disability within the human rights framework.

The conclusion looks into the role of the chief commissioner and commissioners for disabilities who have various powers including inquiring into complaints by persons with disabilities but have remained ineffective and whose reports have also been inadequate. The author stresses on the need for a stronger research agenda and accountability of commissioners. Another issue which is not addressed in the PWD Act is that of the right to independent living including protection against forced institutionalisation. She points out that not only is there a need for new legislation, the rights and safeguards of persons with disabilities should be integrated into all existing laws to meet obligations under the CRPD.

The author provides an excellent analysis of the provisions of the PWD Act and its working, in the light of the current international approach to the issue of disability. She identifies several drawbacks in the Act including, most importantly, inadequate provisions on equality and non-discrimination, lack of an adequate definition as well as lack of proper implementation and attention to its various

provisions. Some of the ‘positives’ of the Act and of the judicial approach, are also noted such as the ‘reasonable accommodation’ measures that have been incorporated in sections 30 and 31, and the courts in the country giving a more expansive interpretation to the definition of ‘disability’ as compared to the Americans with Disabilities Act, under which the interpretation of the definition by courts has been restricted. Note has also been taken of instances where the guidelines or approach adopted for instance by the government in the provisions on aids and appliances, are curtailing the provisions of law. The author also highlights by reference to judicial pronouncements of the Supreme Court and different high courts in the country besides approaches in other jurisdictions, how a more positive approach can be taken in the implementation of the current provisions of the Act to make it more effective until the Act is suitably amended or replaced by new legislation. The discussion also underlines the need for change in notions and attitudes towards persons with disabilities which has led to a restricted and even regressive approach in some cases.

It may be mentioned here that the committee appointed by the Ministry of Social Justice and Welfare had in June 2011 submitted its report and a draft bill – The Rights of Persons with Disabilities Bill, 2011. A revised version of the bill, the Rights of Persons with Disabilities Bill, 2012 has been prepared, the guiding principles for which (clause 3) include respect for inherent dignity, individual autonomy including freedom to make one’s choices, non-discrimination and equality. The bill addresses some of the issues raised by the author, requiring the appropriate government to ensure that persons with disabilities enjoy the right guaranteed by article 15 equally with others; not restricting the definition of ‘persons with disabilities’ to specified disabilities; recognizing various offences in relation to persons with disabilities, and containing provisions on accessibility and awareness.

The book has been painstakingly written and is difficult to fault. However, some points may be mentioned. As the book critically reviews the PWD Act, it would have been useful, particularly for readers unfamiliar with the Act, if the general scheme of the Act had been broadly discussed before proceeding to examine the major issues in focus. As is well known, even among persons with disabilities, women form the most vulnerable section, an additional focus on women would have been appreciated. Also, a more careful editing of the text would have removed the few typographical errors that detract from the quality of the text.

The book would serve as a valuable resource, particularly for advocates, academics, activists, students and others working in the field.

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