

ENACTING FOR THE DISABLED—ISSUES AND SUGGESTIONS

Introduction

THE UNITED Nations Organization (UNO) had declared 1981 as the Year of the Disabled. The reasons behind this are clear when one considers that one in ten of the world's population is disabled for various reasons.¹ In launching the year of the disabled the UNO put forward five principal objectives to solve the problems faced by the disabled. These are: (a) helping them in their adjustment to society; (b) providing them with various facilities and work opportunities, as also ensuring social integration; (c) encouraging study and research projects facilitating their practical participation in daily life; (d) educating the public about the rights of the disabled; and (e) promoting prevention and rehabilitation of disabled people.

With these objects in view, this paper examines the position of law regarding disabled persons. What is the existing legal position in India? What is to be done immediately to achieve these objectives. What are the legislative problems that would arise and how to solve them? These are some of the questions which have to be answered.

In ancient times the Greeks and Romans destroyed the physically handicapped by throwing them in cold rivers. But, under Mosaic law they were not cursed. The law of the Eastern Roman empire (9th century A.D.) went even to the extent of providing property right to the deaf by inheritance. In India we find a striking similarity in Mahabharata, where the blind king Dhritarashtra succeeded to the throne. But this only related to kings and the question whether the same rule applied to a common man is doubtful.

In U.S.A. there came a comprehensive legislative enactment in 1921 entitled the Vocational Rehabilitation Act. The Act is very simple and provides for vocational rehabilitation for those injured in industry. In 1943 programmes were envisaged for the mentally retarded under the purview of the Act. In 1954 special research and project facilities were added to this. Again in 1965 flexibility in financing and administration of state rehabilitation programme was introduced with particular stress on the mentally retarded. In 1973 the scope of the vocational rehabilitation was widened by the Vocational Rehabilitation Act 1973, which underwent minor changes later.

In England Parliament enacted Disabled Persons Employment Act

1. *Disability Prevention and Rehabilitation Reports on Specific Technical Matters*, World Health Organization (WHO), Geneva, A29/INF. Doc/1 at 18 (28 April 1976).

1944. This led to the passing of similar enactments throughout Europe. It is not understood why similar legislation was not introduced in India though India was under the British rule. It is proposed to examine the law on the disabled in India.

Existing legislation

In India we do not have legislation similar to the U.S. or the U.K. Act. Concessions, reservations, scholarships and other benefits are granted by government under administrative regulations issued from time to time.²

The handicapped also fall under the purview of various enactments such as the Indian Penal Code 1860, Lepers Act 1898, Lunacy Act 1912, Workmen's Compensation Act 1923, Employees' State Insurance Act 1948, Apprentice Act 1961, Income-tax Act 1961 and Customs Act 1962.

The Workmen's Compensation Act which deals with the question of paying compensation to the injured during the course of employment, leaves the problem of the naturally handicapped untouched. Certain enactments, however, incidentally touch upon their problems. For example, section 80U of the Income-tax Act provides, in the case of the handicapped, a deduction of Rs. 5,000 from total income in computing the net income. Likewise, under the Customs Act, scientific instruments for the benefit of the handicapped are exempted from the levy of the customs duty. Literature for the blind could be sent stamp-free under the postal regulations.

The provisions are sporadic and haphazard and they cannot be a substitute for a comprehensive legislation with a clearly stated objective to alleviate problems faced by the disabled.

We need a comprehensive legislation on the lines of the Vocational Rehabilitation Act 1973 of U.S.A. Under section 2 the Act is intended to provide a statutory basis for the rehabilitation services administration, and to authorise programmes (a) to develop and implement comprehensive and continuing state plans providing vocational rehabilitation services with particular stress on most severe handicaps, evaluate the rehabilitation potential and conduct a study to develop it, and also assist in construction and improvement of rehabilitation facilities ; (b) to develop innovative methods of applying modern science and technology to solve rehabilitation problems and further research in those areas, and expand services to new groups of handicapped and focus on long neglected problem areas ; (c) to promote and expand employment opportunities, establish client assistance pilot projects and also provide assistance for the purpose of

2. See, for various details "Concessions and Programmes for the Physically Handicapped" and "Programmes and Concessions for the Disabled Persons", Government of India, Ministry of Social Welfare, New Delhi. See also various orders of central and state ministries.

increasing the number of rehabilitation personnel and their skills; (d) and to evaluate and develop public access for the handicapped through new approaches to architectural and transportation barriers impeding the handicapped individual.

From the point of view of social justice which is enshrined in the preamble of the Indian Constitution, it can be reasonably argued that the handicapped need special protection. In fact Krishna Iyer J. stated: "The test should be, are they functionally adequate to make a contribution to themselves and to the country? Undoubtedly, they are. A blind man may be deprived of his eye sight but in hundred other ways he is functionally fit ... for heaven sake do not call the physically handicapped man a physically unfit man... If Milton could write poetry as a blind barrel, if Homer could do this, if Bethoven could compose with no hearing, I wonder, why in this country we cannot bring up many of these flowers which blush unseen. That is the purpose of holistic approach to Community Justice which is the real connotation of Social Justice."⁸

Article 41 of the Indian Constitution says: "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want." The words "disablement" and in "other cases of undeserved want" are instances under which the handicapped would fall. This is a clear constitutional directive to the state to protect the handicapped.

International obligation

At the international level the General Assembly of the United Nations has passed several resolutions regarding the handicapped. The most important among them is resolution 3447 adopted without vote on 9 December 1975. It is proclaimed as the declaration on the rights of disabled persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of their rights.

Apart from the General Assembly of the United Nations, the Economic and Social Council and International Labour Organization (ILO) have also passed various resolutions on the problems of the handicapped. During 1975, an interregional adviser on rehabilitation of the disabled visited 11 countries and territories. An *ad hoc* interagency meeting, which was held from 16 to 19 June 1975 at Geneva, was attended by representatives of the United Nations Development Programme (UNDP), United Nations High Commissioner for Refugees, United Nations Children's Fund (UNICEF), ILO and United Nations Educational Scientific and Cultural Organization (UNESCO), World Health

3. *The Hindu* (26 November 1977).

Organization (WHO) and International Social Security Association. Among the subjects discussed were the formulation of a global programme for the rehabilitation of disabled persons and programme for the provision of technical assistance for the disabled. The inter-agency meeting also discussed the question of rehabilitation services for the blind in developing countries.

An authentic statistical data regarding the handicapped is lacking in India. But, according to a WHO survey conducted in 1969 in India, only one per cent of the disabled are the beneficiaries of the available facilities. This highlights the inadequacy of the action taken regarding the disabled in India. We should first of all have a specialised legislation for the welfare of the handicapped.

Certain legislative problems : issues and suggestions

(i) Definitional problem

This is the starting point of the whole problem. The definitions of the handicapped as found in the Central Government regulations for purposes of reservation in employment are as under :

The blind—The blind are those who suffer from either of the following conditions : (a) total absence of sight; (b) visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses; and (c) limitation of the field of vision subtending an angle of 20 degrees or worse.

The deaf—The deaf are those in whom the sense of hearing is non-functional for ordinary purposes of life. They do not hear and understand sounds at all events with amplified speech. The cases included in this category will be those having hearing loss more than 90 decibels in the better ear (profound impairment) or total loss of hearing in both ears.

The orthopaedically handicapped—The orthopaedically handicapped are those who have a physical defect or deformity which causes an interference with the normal functioning of the bones, muscles and joints.⁴

The mentally retarded are not covered here. Let us compare the above definitions with the definitions as found in the British and American enactments.

In U.K. section (1) of the Disabled Persons (Employment) Act 1944 defines "disabled person" as "a person who, on account of injury, disease or congenital deformity, is substantially handicapped in obtaining

4. These definitions are found in the Government of India/Ministry of Home Affairs/Department of Personnel and Administrative Reforms vide. No. 39016/6/77-Estt (C); Annexure I of "Concessions and Programmes for the Physically Handicapped," Government of India, Ministry of Social Welfare. See also various state orders.

or keeping employment, or in undertaking work on his own account, of a kind which, apart from that injury, decease or deformity, would be suited to his age, experience and qualifications." The Act also defines "disease" as "physical or mental condition arising from imperfect development of any organ."

Section 7 (1) of Vocational Rehabilitation Act 1973 of the U.S.A. says: "Handicapped individual means any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to titles I & II of this Act". The title I deals with vocational rehabilitation services and title II with special federal responsibilities.

On comparison with the British provision we find that both physical and mental conditions are taken into account. While the British definition is absolute, the American definition is qualified, the qualification being getting benefits from vocational rehabilitation services. Since the rehabilitation services are poor in India, it is better to go by the absolute standards of the British.

As the identity of the blind, deaf, *etc.* involves the technical skill of doctors, a committee may be constituted to study what degree of this deficiency can be taken to include them under the handicapped category.

(ii) Registration

We have special employment exchanges for the handicapped.⁵ It can only be guessed as to how many people could be able to go and register themselves in one or two centres available in a state. A direct registration from training institutes looks a better idea for the skilled unemployees. With regard to unskilled and untrained lot, much will have to be done through mass media, village workers and social organizations to bring out these people into light.

(iii) Research, training and education

The research that is going on in India with regard to the disabled is negligible. It is better if research institutes like Indian institutes of technology take up their problem as a part of their research. This is apart from various schemes which may be provided separately. There is a grave necessity to establish institutes of research and training for the handicapped at national and state level. In linking the research schemes with the Indian institutes of technology, the University Grants Commission and Indian Council of Scientific and Industrial Research will be of great help.

5. There are at present 21 such exchanges functioning at Agartala, Ahmedabad, Bangalore, Baroda, Bhubaneswar, Bombay, Calcutta, Delhi, Gauhati, Hyderabad, Jabalpur, Jaipur, Kanpur, Madras, Patna, Rajkot, Simla, Surat and Trivandrum. There are two at Chandigarh, one each for Punjab and Haryana.

The training that is being received by the handicapped is only a traditional one like music, book-binding, *etc.* It is necessary to widen the field of training so as to fit them in a variety of jobs.

(iv) Campaign and social integration

Generally the problem of the handicapped is viewed as a matter of charity or morality. There is also a misunderstanding about what these people are able to do. This is the result of communication gap which is prevailing today. There is every need to educate and inform people about their capabilities. For this, a systematic campaign is necessary through mass media like films, newspapers, radio and television. At the same time, any attempt to create negative image should be curbed by censorship laws.

(v) Employment

This is the most important aspect as it provides handicapped persons their daily bread. Therefore, the special protection contemplated earlier can be extended to cover this most important area. This is necessary because of the prevailing fear psychosis about their abilities and also because of the lack of proper training facilities to make them equally competent with the general public. It is here that the question of reservation comes. Under the existing regulations of the Central Government and various state governments, a maximum of 4 per cent of jobs are reserved for them.⁶ But this is not uniform in all states.

The British Act solved this problem in a different way. Under section 2 the Secretary of State classifies certain employments as designated employments, where the handicapped are preferred. They are taken either under standard percentage or under special percentage. This may to some extent soothe the feeling of public against creating a general reservation category in all jobs. In U.S.A. the practice is that the handicapped will go to even fields which the general public does not prefer. The problem in India is, do we have such kind of employment here? It is learnt that the Hindustan Machines Tools Limited has such kind of employment. There, in a particular job one has to work in complete darkness. For such a job the blind is to be preferred. However, the point to be probed is as to how many such jobs are available. This can be done by an inter-agency committee at national level. Even such employment can be named in the schedule of the Act providing a preferential treatment to the handicapped.

The employment need not always be a government job by reservation. It could be at unorganised level also. Under the U.S. Act grants have been provided to (i) individuals, (ii) states and (iii) voluntary

6. Government of India/Ministry of Home Affairs/Department of Personnel and Administrative Reforms. Vide No. 39016/77 Estt. (C). See also various state orders.

organizations. These grants are utilised in providing various schemes which generate employment. If the proposed legislation provides for such a system it is possible to generate employment at both organised and unorganised level. What is more, if the industries exclusively meant for generating employment for the handicapped are encouraged by giving subsidy to their products, the problem can be solved to a great extent.

(vi) An administrative set up

Under the British Act the Secretary of State and a minister especially designated are responsible for the welfare of the handicapped. At the national level there is a national advisory body and at district level there are advisory committees and panels.

The U.S. Act provides for the rehabilitation services administration, which is with the department of health, education and welfare. A consolidated rehabilitation plan is to be submitted by states to the Secretary of State. Basing on the *per capita* income of states, the Secretary of State allots different percentages of grants to various states. Co-ordination and consultation between the centre and the states is always ensured. The grants are given to (i) individuals, (ii) states and (iii) voluntary organisations. In every state, there is a rehabilitation bureau, director and staff. Linked with the machinery there is regular system of reporting. Every year a report by the commissioner of rehabilitation is to be submitted to the Congress and the President. There is also a committee called the inter-agency committee on the handicapped. The committee deals with the problem of providing employment and also that of reviewing it. It seeks assistance from the civil services commission. This is a most comprehensive model.

In India we have the social welfare department at the centre dealing with this issue. But there is a lot of dissatisfaction with its work. This has been attributed, *inter alia*, to the lack of proper machinery. At state level, it is astonishing that only some states like Tamil Nadu have a small cell to deal with the problems of the handicapped.

In this context it is advisable to have a better administrative set up taking positive points from the models seen above. The British model of a ministry for the handicapped may be adopted in India. At both state and district level separate bodies and panels should be created. An inter-agency committee like the one in the U.S.A. may be established giving participation even to the representatives of the handicapped. Its regular yearly report to the President and through him to Parliament should prove to be of great use in reviewing the progress.

Any expenditure on the handicapped is well spent and in this regard we can quote Andrew Marrin's⁷ remark: "It has been estimated that a dis-

7. Chief, Vocational Rehabilitation Service, California State Department of Education.

abled person who has been provided with vocational rehabilitation services and has been placed in employment, will pay back in taxes in the course of his working life 10 times the amount of money spent for this rehabilitation.”⁸

Conclusion

To conclude briefly, there is a grave and immediate need for enacting a comprehensive Act for the benefit of disabled persons. It is necessary not only to provide statutory basis for the rehabilitation services administration, but also to authorise rehabilitation programmes. It will help implement and streamline various activities. This necessity is evident from the 1969 WHO survey in India according to which only one per cent of the disabled are the beneficiaries of the available facilities.

The Act should state its purposes on the lines suggested by the UNO and prescribed in section 2 of the U.S. enactment. It should define the term “disabled” taking both physical and mental conditions so as to cover all sections of disabled people. In categorising various groups technical skill of experts both in medicine and science should be utilised. The Act should provide for rehabilitation services, administration on the lines suggested above, and also for a minister responsible for the welfare of the handicapped as in Britain. The U.S. model at the lower level may be adopted. An inter-agency committee should be provided not only for co-ordination but also for periodical reporting to the President and Parliament.

The Act should also provide for rehabilitation facilities, training, research and various pilot projects. It should further make provision for financing both private and public sectors. Certain incentive programmes should be provided to attract investment for the welfare of the disabled. While giving a preferential treatment in designated employments as under the British model, it should give a list of these designated employments in the schedule to the Act.

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8. *The Encyclopaedia Americana*, Vol. 28 at 211 (1969).

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