

Technical Session IV

Towards A Disability Friendly Legal Regime

Chairperson: Ms. Rani Jethmalani, Advocate, Supreme Court of India

Co-chairperson: Prof. Ranbir Singh, Director, NALSAR University, Hyderabad.

Speakers: Mr. Ian Cardozo, Dr. D.K. Menon, Dr Padma, D. S.C. Ranga

Ms. Rani Jethmalani, Advocate, Supreme Court while initiating the discussion expressed her concern towards the problems being faced by the persons with disabilities and stated that these persons are challenging themselves every day to try and reach areas where even well-equipped are not able to reach. She remarked that the society is quite insensitive about the various legal provisions affording protection to the persons with disabilities. While referring to the constitutional provisions she said that the fundamental right to health is not defined in our Constitution as a right and it was incorporated in the chapter on Directive Principles of State Policy. It is the Supreme Court, which has really put the content of directive principles into the fundamental rights and created a judicially evolved right to health. So these are the basic needs which should have been made basic rights, but perhaps the State could not possibly fulfil this basic need because to give everybody the right to health-care in hospitals, dispensaries etc., was not considered so important, whereas the newly emerging countries of Tanzania, Zambia, South Africa, Mangolia have all created this as a fundamental right in their Constitutions. She expressed her hope that the Constitution Review Commission would consider all these matters and would render justice.

There can be no sustainable development in our country unless everybody is empowered. She emphasised the need for a comprehensive legal regime which deals with the right to health of all persons in this country, particularly of those who are much more vulnerable. Further, there is a need to enact a comprehensive law covering all aspects of life such as health, education, employment, rehabilitation etc., she added. She felt that the Government should assess the health care needs while making budgetary allocations.

Prof. Gursharan Varandani, Chairman, Department of Law, Kurukshetra University in his paper on 'Role of Law in Protecting the Rights of Persons with Disabilities, emphasised the need to create

awareness among common people. He suggested for providing requisite and proper education. He stressed the need for supplementary social security scheme.

Ian Cardozo, associated with Spastic Society of Northern India spoke on the 'Role of State in Protecting the Rights of Persons with Disabilities'. He said that the laws are inadequate, and for this the major share of the blame falls on the society as a whole. He highlighted the provisions of the Act and stated that the law has failed to define exactly what it meant by a public place. While making alternate solutions, he suggested for enactment of an umbrella Act covering whole gamut of problems concerning persons with disabilities and until such time, there is a need to have rules and regulations for the people with disability under the Act because to amend an Act is a big problem, but the enactment of new Act is not so difficult. Besides accountability of the law, a law which has no teeth is not worth the paper it is written on, he added. He called for extensive research and comparative analysis of the legal provisions existing in various countries and adopting suitable models for implementation in India. He suggested for collaborative efforts while enacting legislation by associating the concerned persons. He also suggested for deleting the words 'within the limits of economic capacity' from the respective legislations for better implementation and wider protection. The child is the father of man, the children today are a very important factor in getting things done. One may recall the *Diwali* of last year and this year, it is the children of Delhi who reduced the number of fire works. They are going to be not only the citizens of tomorrow but the leaders of tomorrow, they need to be sensitised to the disability in their schools, he added.

Dr. D.K Menon, Director, National Institute for the Mentally Handicapped, gave a brief description of its role and functioning of the Institute. He emphasised that law must recognise that people with disabilities have diverse needs depending upon the age, severity and the socio economic conditions in which the persons are living. Unfortunately, law does not make distinction between child and the adult. He cautioned that unless we create an environment conducive for exercising human rights, no person can exercise human rights. Human rights can be exercised only when we have appropriate environment. The existing environment is full of poverty and ignorance. As long as we have poverty and ignorance human rights cannot be exercised. Therefore, we need to remove poverty, we need to educate our people and then change the attitude. The present mindset and attitudes of the people are still colonial in nature, and sensitisation of the people and creation of awareness is a must to remove the prejudices.

Dr. Padma, Reader in Law, Kakatiya University made a presentation on the "Need for Environmental Protection to Prevent Disability". She

said that disabilities such as blindness, low vision, skin diseases, leprosy all these may result from environmental pollution. Even though we have legislations to protect environment such as the Environmental Protection Act etc., still thousands of persons suffer due to the environmental hazards. She outlined the various deformities caused due to pollution of water, air and land and suggested for taking measures for strengthening and strict enforcement of laws.

She cautioned that simply talking about the protection to be given for the early detection of disabilities under section 25 of the Disabilities Act is not enough. She called upon the government to undertake survey and investigation for the identification of disabled persons and to provide facilities to them. She also suggested for strengthening of the environment protection machinery both at the Centre and the State levels and also giving them more powers for effective implementation. There should be personal accountability of the industrial units for the lapses or negligence resulting into damage to environment as well as damage to public and disability to the human beings. The principle of 'polluter pays' should be given a statutory stand, she added.

Dr. S.C Ranga, Director, National Institute for the Physically Handicapped, New Delhi outlined the role of the government and other agencies in protection and empowerment of persons with disabilities. He made reference to the role being played by the Supreme Court in preventing noise pollution and also the guidelines being issued by the government in pursuance to the judgement through a notification on February 14, 2000. He also referred to the rules existing in Delhi since 1986 under the Delhi Police Act according to which the use of loud speakers after 10. p.m. is banned. Despite these rules and other guidelines, the noise pollution goes unabated due to the apathy on the part of the police officials. Cases are not lacking wherein police officials have refused to register a complaint.

He called for a concerted action by all agencies, both government and non-governmental, and most importantly the civic society. Every individual should make his efforts to ensure that the law and the rules made thereunder are implemented. In this context, the Indian Law Institute may take the lead in generating awareness about the law, he added.

Interventions

Cdr. Batra showed his concern that we have been always talking of rights but we hardly talk about fundamental duties laid down for citizens in the Constitution wherein protection of environment is very categorically laid down. He felt that all the citizens should follow the fundamental duties and participate in that action.

M.K Rastogi said the provision for various grant-in-aid schemes and scholarships by the government are meant to empower the persons with disability. Therefore we should not treat these provisions as charities. By making these provisions, the government is empowering very important segment of society and preventing them from becoming a burden on the society by making them self supporting and self reliant.

Dr. D.K. Menon referred to the issue of tax concessions. He said that the industrialists or the businessmen could be exempted from the tax in case they provide financial assistance to the organizations working in the area of persons with disability.

