

LAW-RELATING TO DISABLED PERSONS AND THE PROPOSED REMEDIAL MEASURES IN THE CONTEXT OF PROSPECTIVE ACTION PLAN

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Law is a Social Science, which promotes and regulates its growth and development in the society. It is also a creative force and specially, in modern times law is a powerful instrument of social development. According to Judge Cardozo, welfare of society is becoming the greatest directive force of law in modern times. The principle of social welfare gave rise to the concept of social welfare state.

The objective of social welfare is intended to secure for each human being the economic necessities, a decent standard of health and living conditions, equal opportunities with his fellow citizens for education and employment and the highest possible degree of self respect of freedom of thought and action without interfering with the similar rights of others.

One of the goals of our Constitution is to secure socio-economic justice. It is the duty of the state to pursue the constitutional directions and to promote the welfare of the people. In pursuance of the Directive Principles of State Policy, the state is called upon to pass social legislation to fulfill the constitutional objective of attaining social and economic justice.

The emergence of human rights – social, economic in consonance with the needs have changed the character of the modern society.

For the improvement of conditions of disabled persons, the General Assembly of the United Nations, has adopted two Declarations: The Declaration on the Rights of Mentally Retarded Persons, 1971 and the Declaration on the Rights of Disabled Persons, 1975.

I. Declation on The Rights of Mentally Retarded Persons 1971

In 1971 General Assembly¹ adopted the declaration on the right of mentally disabled persons. The Declaration 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 the rights of disabled persons, which are enumerated as follows:

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1. General Assembly Resolution no. 2856 (xxvi) of December 20, 1971.

- (1) The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.
- (2) The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.
- (3) The mentally retarded person has a right to economic security and a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.
- (4) Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.
- (5) The mentally retarded person has a right to qualified guardian when this is required to protect his personal well being and interests.
- (6) The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.
- (7) Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to right of appeal to higher authorities.

II. The Declaration on The Rights of Disabled Persons, 1975

This Declaration was adopted by the General Assembly², keeping in view "the necessity of preventing physical and mental disabilities in the most varied fields of activities and of promoting their integration as far as possible in normal life."

2. General Assembly Resolution 3447 (xxx) of December 9, 1975

The Declaration lays down following principles:

1. The disabled person³ shall enjoy all the rights contained in this Declaration without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of health, birth or any other situation applying either to the disabled person himself or herself or to his or her family.
2. The disabled persons have inherent rights to respect for their human dignity and irrespective of the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age which implies the right to enjoy a decent life, as normal and full as possible.
3. Disabled persons have the same civil and political rights as other human beings.
4. Disabled persons are³ entitled to the measures designed to enable them to become as self-reliant as possible.
5. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthotic appliances to medical and social rehabilitation, education, vocational training and rehabilitation aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.
6. Disabled persons have the right to economic and social security, including the right, according to their capabilities to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.
7. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.
8. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities.
9. Disabled persons shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature.

3. "Disabled Person" has been defined as any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or otherwise, in his or her physical or mental capabilities.

10. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

According to provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, disabilities include blindness, low vision, leprosy, hearing impairment, locomotor disability and mental retardation. Severe disability means disability with 80% or more of one or more of multiple disabilities.

Under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 disability means a person suffering from any conditions relating to Autism, Cerebral Palsy, Mental Retardation or a combination of any two or more of such conditions and includes a person suffering from severe multiple disability. Disability also includes the mentally ill person meaning thereby that who is in need of treatment by reasons of any mental disorder other than mental retardation. Mental retardation is more severe than mental illness. In the Act of 1999 which has been passed by legislature for welfare of persons with Autism, Cerebral Palsy, Mental Retardation, legislature intended to give a wider interpretation to the definition of *disability* than given in the Act of 1995, i.e., the Persons with Disabilities Act, 1995. Now the definition of disability includes mentally ill person.

According to the Webster's dictionary the meaning of disability is lack of ability that disables the person to do work or in other words we can say that inability to act with the help of his five senses. Hence, in layman's language, a disabled person means a person who is not capable of understanding things or carrying out any work assigned to him in a normal manner, on account of any defect afflicting the five sensory parts of the body, due to which he is not in a position to see or hear or perform any act with the help of his/her limbs in a requisite manner, which could otherwise be expected from a man of normal prudence with an average intelligence.

Protective laws have been passed by the government for the physically, mentally and socially handicapped groups. Legislative measures providing for social security, social defence and social upliftment have been adopted. A meaningful attempt was made in the meeting held at Beijing from 1st to 5th December, 1992 and declared the decade for disabled from 1993. The meeting was held with the object to concentrate mainly on two aspects – *firstly*, to provide an opportunity for full participation of the disabled persons in various walks of life, which could be intended to enable them fully in terms of imparting them general and technical education, in order to equip them with competence and capacity so that they may be in a position to compete with other people. In terms of ability

for giving needed output to the employer so that any inhibition may not operate in the mind of employer due to which he may not directly or indirectly avoid absorbing disabled people from the inception stage till they are fully trained and well educated for the purpose of getting employment. *Secondly*, disabled people are generally considered to be a liability by the family members, due to which they fail to get equal opportunities for the purpose of obtaining higher education or attaining vocational qualifications. The problem becomes very acute in the context of modern day society in which the concept of joint family is increasingly phasing out not only in urban areas but in rural areas as well. The concept of nuclear family instead is dominant for the last one decade and this tendency is gaining ground with the advent of time. In this context, it becomes imperative to ensure equality for the disabled people in comparison to the other people. It is more pertinent to achieve the desired target in the Asian and Pacific region on account of socio-economic constraints which have more adverse effect in comparison to the affluent societies of Western and European countries.

In furtherance of the objectives stated in the Beijing Declaration, the Government of India took necessary measures to enact a suitable legislation to achieve the above said target. Consequently, an enactment namely, the persons with disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, was enacted by the Parliament in the year 1995, which came into force in February 1996. The Act seems to be exhaustive and suitably worded, in consonance with its object and purpose. But unfortunately the implementation process has been very slow, which could be easily gathered from the consequential outcome.

It becomes imperative to focus attention on the basic factor responsible for the improper implementation process in vogue so far. There could be no two opinions that the concerned governments, namely, the central as well as the state governments have miserably failed to evolve action plans and other programmes for achieving the desired results. At the same time, it will not be correct to say that nothing has been done for implementing the needed programmes to accomplish the desired goals mentioned in the Act. After having cursory glance over the intended scheme, we find that different schools have been set-up for the blind, mentally retarded children and other disabled persons. The government has also provided the facility of special education for the disabled children. But it is high time to evolve result oriented approach. The experience gained so far for implementing various schemes has indicated in clear terms that the machinery created under the Act by involving government departments and the NGOs has not been in a position to implement such a scheme in a desired manner, for which active involvement of the public has been lacking and which is the most relevant aspect. At the first instance, it is imperative to frame a basic suitable policy, so as to ensure the involvement of the government

machinery at the state, regional and district level. For this purpose secretary of the department of social welfare should organise meetings in which commissioner of each region and deputy commissioner of each district should participate, with an aim to frame policies to provide equal opportunities to the disabled in respect of their education, employment and insurance as well as admissibility of social security and social welfare schemes for their benefit.

Efforts should be made to assimilate them in the main stream. For this purpose various ways and means should be devised to minimise the disparity between disabled persons and normal one. It will be possible to do so firstly by providing proper education and meaningful training respectively to the persons with disability and secondly to provide them suitable job. In order to protect their interests in a best possible manner, it is essential to identify the jobs wherein they will be in a position to work conveniently and give optimum output or in other words maintain required efficiency as compared to the normal persons. It is needless to mention that an equal opportunity in all respects is to be provided to the disabled persons from every point of view, initially in terms of providing requisite and proper educational opportunities and later on suitable employment opportunities. Rather it is also to be ensured that they should be in a position to enjoy avenues in terms of getting promotion at par with the other employees, whenever it becomes due. It is very necessary to make the concerned employer feel that he is not suffering any loss by engaging disabled persons in his establishment and for that purpose they should be in a position to give optimal output. However, it is not so easy to accomplish desired goals, but constant efforts and endeavour made for the purpose of equipping the disabled persons with requisite education and training is certainly bound to bring them to that level. For this purpose, the government would be required to set up special schools as well as training centres at least in each district whose number can be increased.

Extension of social security benefits to persons with disability is another important area, which needs immediate attention. In most of the cases, they are neglected by members of the family on account of financial constraints, the head of the family is not in a position to meet with their basic requirements. So it is imperative that some stipend should be paid to them while they are getting education or undergoing training and unemployment allowance should be paid to them till they are absorbed in some gainful employment. A scheme in the form of social security or social insurance should also be introduced to provide supplementary benefits to them, so that financial security is enjoyed by them as well as their dependents. The concept of 'social security' is multi-dimensional in its broader perspective. It also includes within its ambit different measures taken by various agencies, viz. the government, the religious

and charitable institutions, the NGO's, the private agencies etc., in order to provide socio-economic and legal security to the citizens of a country including the disabled persons, in case of contingency to which they are exposed. It is desirable that the governmental as well as non-governmental organizations (NGOs) should focus attention on these areas and proper research should be conducted so as to serve the cause of disabled persons who otherwise continued to be neglected, particularly in developing countries where the number of such persons account for 80% of the total disabled persons in the world.

Lack of awareness and proper training on the part of parents of disabled children has been another important factor, which has prevented the concerned quarters to protect requisite interests of such children. Consequently, electronic and print media should be used to educate the parents of such children about their special needs.

Efforts should also be made through the media to prevent certain kinds of disabilities which are not genetic, viz., polio, deafness (arising out of noises), blindness (due to nutrition problems) etc. It is need of the time that basic policies should be framed for the aforesaid purpose on short-term as well on long-term basis, for ensuring effective implementation process in a well effective and systematic manner. The budget should be ear-marked exclusively for the disabled and maximum funds should be allocated to the NGOs and grant should be given to each NGO after appraisal of preceding performance. The department of social welfare of the central government as well as of concerned state government should monitor functioning of NGO's exclusively created for this purpose.

Identification of children with disability is a starting point followed by providing proper infrastructure for their education in special schools as well as in general schools for bringing disabled children at par in terms of their output with other children.

According to section 66(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the appropriate government and local authorities shall take steps for the rehabilitation of all persons with disabilities. Furthermore, according to sub-clause (2) of section 66, the government shall grant financial assistance to the NGO's. But despite this enactment, the central as well as state governments have failed to give effect to these provisions. NGO's should come forward to give suggestions for amending the provisions of the Act by making representations on the basis of their experience to the government.

The object of the provisions of social security enacted and incorporated in the Act of 1995 is intended to provide guarantee, which the state is expected to undertake to compensate the disabled persons, so that the disabled persons should be at par with the other persons in socio-economic and all other capacities. According to section 67 of the 1995 Act, there

is an endeavour to frame the insurance schemes for disabled persons. The object of the concerned legislation is to provide social and economic protection to disabled persons in every aspect of life, so that they will be at par with other people and for this purpose, meaningful, effective and result-oriented efforts necessarily have to be made consistently to achieve these objectives.

Effect of Noise Pollution

The problem of noise pollution in recent years has become a serious threat to human health. Noise disturbs the normal working of the people beside disturbing their sleep. It also affects the other rights of the people. Noise has, thus, become growing menace for the life and liberties of the people guaranteed under the Constitution.

Noise being one of the main pollutants of the environment carries its adverse effect on human health by way of causing various hazards depending upon its frequency, intensity and duration. These health hazards can be summarized as follows:

(i) Auditory Effects of Noise

Auditory effects of noise consist of either temporary or permanent hearing loss.

(a) *Temporary Hearing Loss*: Noise which includes temporary threshold shift (NITTS) is a temporary loss of hearing activity experienced after a relatively short exposure to excessive noise. Pre-exposure hearing is recovered fairly rapidly after cessation of noise.⁴ When the normal ear is exposed to noise at damaging intensities for sufficiently long period of time, a temporary depression of hearing results which may disappear either after few minutes or after few hours. The temporary hearing loss is a physiological phenomenon referred to as a temporary threshold shift (TTS)⁵ which is reversible.

(b) *Permanent Hearing Loss*: Noise includes sometimes permanent threshold shift (PTS) which is an irreversible loss of hearing, caused by prolonged noise exposure. Prolonged exposure to excessive noise produces varying degree of inner ear damage,

4. World Health Organisation, Environment Health Criteria 12 – Noise, 1, p. 13 (1980)

5. Mayer S. Fox, "Industrial Noise Exposure and Hearing Loss" in Jacob John Bellenger (ed.), *Diseases of the Noise, Throat, Ear, Head and Neck*, 1063 at 1066 (13th ed., 1985) (Lea and Febiger, Philadelphia.)

which is initially reversible.⁶ But if one is subjected to continuous excessive noise, damage to inner ear becomes irreversible and consequently permanent loss to the ear is caused thereby resulting in a disability. Permanent threshold shift is gradual irreversible damage inflicted to the nerves in the inner ear. It begins with a drop in sensitivity around 4 KHZ (ear's most sensitive frequency) at which the maximum energy of noise lies.⁷ Generally this type of deafness is a case of occupational hearing loss by extended noise exposure.

It is well known that extremely loud noise injures the ear. Sound of 160 decibel (dB)⁸ can cause total deafness due to rupture of the ear drum resulting in the damage to the inner ear. Few hours of exposure to sound around 90 dB can cause a temporary shift in the threshold of hearing. If such stimuli is continued for greater than 8 to 12 hours, recovery may not take place within 24 hours of cessation. For comfortable hearing one needs sound at the level of 55 dB and for relaxed conversation a background of 45 dB or less.⁹

- (c) Noise and Health Hazards: According to a report of the World Health Organization (WHO) certain noises, especially impulsive ones may induce a startle reaction. This consists of contraction of the flexor muscles of the limbs and spine a contraction of arterial, which can be recorded as an eye blink and focussing of attention towards the location of noise. Besides, noise may induce a chronic fatigue that could lead to non-specific health disorders.

Further according to a study conducted by Dr. Deka¹⁰, exposure to noise over 90 decibel continuously for 10 minutes can produce damaging

6. S.R. Khirsagar, "Noise as an Occupational Hazards and Public Nuisance", 53 *Journal of the Institute of Engineering* 60 (1973).

7. Rahul Verma, *Study of Impact of Noise in an Engineering Industry*, Thesis, p. 31, (1987) (University of Roorkee, India).

8. A decibel 'dB' is the standard unit for the measurement of noise. The Zero on a decibel scale is at the threshold of hearing the lowest sound pressure that can be heard on this scale. According to Smith, the noted industrial psychologist of 20th Century, 20 dB is a whisper, 40-dB the noise in a quiet office, 60-normal conversation, 80-in bus, 100-in train, 120-dB in loudthunder, and 140 dB is the level at which a sound becomes physically painful. Nomita Aggarwal, "Noise Pollution" in Paras Diwan (ed.) *Environmental Protection*, 357 at 358 (1987) (Deep and Deep Publications, New Delhi).

9. Y.N. Mehra and S. Biswas, "Noise Pollution" in R. Kumar (ed.) *Environmental Pollution and Health Hazard in India*, 176 at 177 (1987) (Ashish Publishing House, New Delhi).

10. Secretary, Neurootological and Equilibriomatic Society of India and an expert on the effect on sound on health.

effects on the hearing system. Sound louder than 100 decibel can even produce permanent damage to the hearing system. Constant exposure to such loud noise can cause not only hearing damage but also other general neuro-physiological reactions making the child irritable and hyperactive thus restricting the proper development in its mental faculty.¹¹

In a recent judgement of a Japanese court, it has been found that ailments like stomach ulcers, sleeplessness and hearing difficulties are caused due to the noise of jet flights. The court while awarding the compensation to the people of Fukuto city based its judgement on aforesaid findings of health hazards.¹² In another case, Hachioji division of Tokyo district awarded compensation to the inhabitants living near the U.S. Air Force base on the ground of noise pollution which prevented them from sleep.¹³

According to another report, a sound between 20 to 30 dB is considered quite reasonable for normal conversation. The extent of noise which can easily be treated by the ears lies between 40 to 50 dB. It is important to note that noise of 120 to 140 dB is sufficient to cause permanent hearing loss. The normal range of musical noise on radio lies between 50 to 60 dB while that of alarm clock's ring rises upto 60 dB, while 70 dB for heavy transport and 120 dB for disco music and motor cycle. Further it is found that the greatest noisiest city in the world is Rio de Janeiro, the capital of Brazil where noise is found at 120 db while in India in the cities like Delhi, Calcutta and Bombay noise has crossed the limit of 90 dB.¹⁴

There is an increase in the background noise at the rate of one decibel per year. Scientists believe that even short exposure to sound at 150 dB level can lead to hearing damage permanently and the noise of 180 dB would prove fatal to human beings. The deleterious effects of high intensity sound on the hearing apparatus is still ignored. Lack of mental concentration becomes visible at around 90 decibels; blurring of vision and distorted brain waves may occur at a sound pressure level at 125 decibles.¹⁵

Keeping in view the aforesaid circumstances, the Supreme Court has stated the need to put restrictions on the use of loudspeakers and microphones to protect the right of the citizen under article 19(1)(a) of the

11. "All that Noise can Knock You out Cold", *The Hindustan Times* (April 24, 1989, New Delhi).

12. "Foreign News" *id.* (December 18, 1988).

13. "Damage for Jet Noise Paid", *id.* (March 16, 1989).

14. "Shor Pradushan ke Khatre", *The Swantra Bharat* (May 24, 1990, Moradabad, (U.P.): Vijay S. Waghule, "The problem of Noise Pollution and Legal Measures", in Paras Diwan at p. 405 (1987).

15. B.K. Ray Chaudhari, "Quitness of Midnight Jungle", Editorial 42 *Indian Journal of Ototaryngology* (1990).

Constitution of India. "Public health" has been another ground to restrict the use of loudspeakers. The question that how far the right to use loudspeakers hits public health, came up for consideration before the Supreme Court in *State of Rajasthan v. G. Chawla*.¹⁶ The Supreme Court, while allowing the appeal, expressed its opinion about the legislative powers of the state legislature to enact the rules for the control of amplifier under the subject of public health as follows:

It can not be said that public health does not demand control of the use of such apparatus of day or night or in vicinity of hospitals or schools or offices or habited localities. The power to legislate in relation to public health includes the power to regulate the use of amplifiers as producer of loud noises when the right of such user by the disregard of comfort of and obligation to others emerges as a manifest nuisance to them.

Further in *Francis Coralie Mullin v. Union Territory of Delhi*,¹⁷ Chief Justice, P.N. Bhagwati, Fazal Ali and Murthaza, JJ, while stressing quality of life and its enjoyment within the purview of Article 21, rightly said:

The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it.

Thus the expression "personal liberty" is not confined to the protection of limb and faculty but includes everything essential for the enjoyment of life with all human dignity.

Similar question has recently been discussed by Rajasthan High Court in *L.K. Koolwal v. State*.¹⁸ While issuing the writ of mandamus against the municipal corporation of Jaipur, the court observed:

Maintenance of health, preservation of sanitation and environment falls within the purview of Article 21 as it adversely affects the life of the citizens and it amounts to slow poisoning and reducing the life of the citizens because health hazards are created, if not checked.

The judiciary has played a vital role by giving various relevant directives in order to preserve and maintain the health of the people in

16. AIR 1959 S.C. 544.

17. AIR 1981, SC 746.

18. AIR 1988 Raj. 2.

consonance with Article 21 of the Constitution of India. In spite of these efforts of judiciary, the objective of preventing disability is not being achieved to the desired level on account of limitations on the part of judiciary and at the same time, lack of initiative on the part of the executive, which is otherwise expected to play an effective role on this account. Therefore, the need of the time is that judiciary and executive should coordinate with each other and guidelines put forth by the judiciary in its various pronouncements from time to time should be strictly adhered to and implemented in an effective manner.