

PROTECTION OF VULNERABLE SECTION OF SOCIETY – DISABLED

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ABSTRACTS

Protecting the rights of individuals with disabilities is a crucial aspect of social justice in India, where millions face barriers in accessing essential services and full societal inclusion. Despite legislative efforts, persistent challenges remain, including discrimination, limited access to healthcare and education, and socio-economic disparities. This research explores the multifaceted dimensions of safeguarding disability rights, examining legal frameworks, socio-economic determinants, and existing support systems. Through rigorous analysis and evidence-based insights, the study aims to identify gaps in implementation and propose recommendations for enhancing protection and inclusion. By addressing these challenges, it seeks to contribute to ongoing discourse and foster positive change in policy and practice.

KEYWORDS: Disability Rights , Access Barrier, Inclusivity, Social Justice

INTRODUCTION

The protection of vulnerable sections of society, particularly individuals with disabilities, constitutes a fundamental aspect of social justice and human rights advocacy. In India, where an estimated 26.8 million people live with some form of disability as per the 2011 Census (a figure likely higher in reality due to underreporting and evolving definitions), ensuring their safety, dignity, and meaningful participation in society remains both a legal obligation and a moral imperative. The rights of persons with disabilities are deeply connected to the broader constitutional guarantees of equality, liberty, and dignity under Articles 14, 19, and 21 of the Constitution of India. Despite notable legislative and policy interventions such as the Rights of Persons with Disabilities Act, 2016, which aligns with India's commitments under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) the

ground reality often reflects a stark contrast. Persistent barriers in accessing healthcare, education, transportation, digital infrastructure, and employment opportunities continue to marginalize persons with disabilities. Structural inadequacies, coupled with social stigma, stereotypes, and discriminatory practices, significantly hinder their full inclusion in the mainstream. The lack of adequate accessibility measures in public and private spaces further compounds their vulnerability, often depriving them of equal opportunities and basic human rights.

Beyond legal guarantees, the issue is also socio-economic in nature. Poverty, rural-urban disparities, and inadequate welfare mechanisms disproportionately affect disabled individuals, making them more susceptible to neglect, abuse, and exploitation. Moreover, societal attitudes often reinforce exclusionary practices, reducing the disabled population to

passive recipients of charity rather than empowering them as rights-bearing citizens capable of active contribution to society. These challenges underscore the urgent need for comprehensive interventions that combine legal protection with social sensitization, institutional reform, and community based support systems. Understanding the complexities of protecting the rights and dignity of disabled persons in India requires a multidimensional approach. This entails examining not only the legal frameworks that govern disability rights but also the implementation gaps, the role of judicial interpretation, the impact of socio-economic determinants, and the influence of policy-making and governance mechanisms. Equally important is the study of comparative international practices, which can provide valuable insights into models of accessibility, empowerment, and inclusive development.

This research, therefore, endeavors to undertake a rigorous and holistic analysis of the existing challenges, institutional responses, and future possibilities in the domain of disability rights in India. By critically engaging with legislative frameworks, judicial precedents, policy initiatives, and ground-level realities, the study seeks to highlight the gaps that persist between normative commitments and lived experiences. Through evidence-based insights, it aims to contribute meaningfully to the ongoing discourse on disability rights, while also suggesting practical reforms and policy innovations that can foster genuine empowerment, inclusion, and protection of disabled persons within Indian society.

DISABILITY AND ITS TYPES

Disabled persons constitute the largest minority in the world; more than 650 million individuals i.e. 10 percent of the world's total population suffer from some type of disability²². disabled persons have been discriminated against in

various ways, ranging from invidious discrimination, such as the denial of education opportunities, to more subtle forms of discrimination, such as segregation and isolation because of the imposition of physical and social barriers.

The UN Convention²³ defines the term disability as long-term physical, mental, intellectual or sensory impairment that in interaction with various barriers may hinder full and effective participation of the individual in society or an equal basis with others. In simple terms, if any physiological or psychological problem is found in a person, then she is called a disabled person. The term disability includes impairment, activity limitations and participation restrictions.

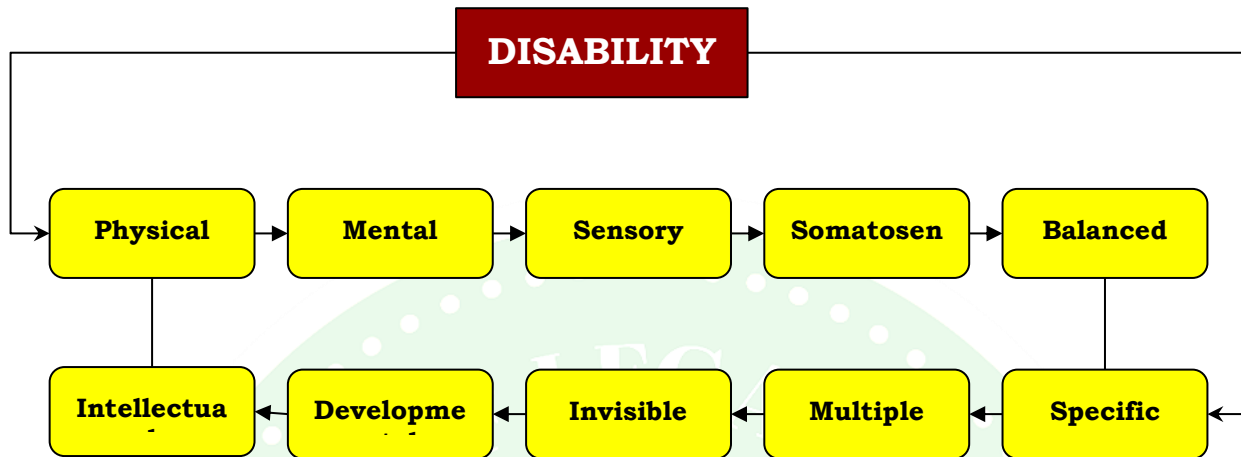
Person with Disabilities²⁴ - means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

²²WHO, Disability, Available at: <https://www.who.int/news-room/fact-sheets/detail/disability-and-health#:~:text=Key%20facts,earlier%20than%20those%20without%20disabilities>. (Last Visited on 19.04.2024)

²³ Convention on the Rights of Persons with Disabilities, 13 December 2006

²⁴ The Rights Of Persons With Disabilities Act, 2016 (Act. No: 49 of 2016) S. 2(s)

TYPES OF DISABILITIES



Physical Disability - It refers to a condition that results from a physiological impairment or abnormality which restricts a person's physical functioning, mobility, or stamina. It encompasses a wide range of limitations arising from impairments of body organs or systems, such as musculoskeletal disorders, neurological conditions, respiratory disorders, and chronic illnesses that affect day-to-day activities. Physical disabilities may include, but are not limited to, mobility impairments (such as paralysis, amputation, or locomotor disability), visual impairments (including partial or complete blindness), hearing impairments or hearing loss, dwarfism, and neurological or developmental conditions such as autism that manifest with physical or functional limitations. These conditions may be congenital or acquired and can vary in degree of severity, ranging from partial restrictions to complete loss of function in specific areas of the body.

Sensory Disability - It refers to impairments that affect one or more of the five fundamental senses of the human body sight, hearing, taste, touch, and smell. Such disabilities often arise

from neurological or physiological disorders that interfere with the brain's ability to receive, transmit, or process sensory information effectively. They may manifest as partial or complete loss of function in a particular sense, thereby limiting an individual's ability to interact with their environment or perform daily activities. Sensory disabilities can range from visual and hearing impairments to less commonly recognized conditions affecting taste, smell, or tactile perception. In broader terms, they encompass any disorder in which the sensory pathways between the external world and the central nervous system are disrupted, leading to difficulties in perception, communication, and overall quality of life.

Sensory Processing Disorder - This type of sensory disability is otherwise known as sensory integration function. It is a neurological disorder which affects the body's ability to interpret sensory messages from brain and convert those messages into appropriate motor and behavioral responses. Sensory processing disorder makes the patients difficulties in filtering the right message from environment.i.e Unable to tolerate

bright lights and loud noises, Fearful of surprise touches.

Balance Disorder – Balance disorder is also a kind of disability of the human body. In this condition, one will not have control over the body. If you are standing, sitting or lying down, you might feel as if you are moving, spinning or floating

Intellectual Disability – The term ‘intellectual disability’ refers to a term when there are limits to a person’s ability to learn at an expected level. Intellectual disability can be caused by a problem which may persist at any point of time before child turns 18 years. Intellectual disability not only makes a person disabled but also makes one a poor learner.

Mental/ Emotional Disability – Mental health means the ‘condition of the mind of an individual’ while emotional disability refers to ‘a disability that impacts a person’s ability to effectively recognize, interpret, control and express fundamental emotions. Emotional disability and mental health of an individual must be balanced so that behavioural problem does not arise.

Specific Learning Disability – ‘Specific Learning Disability’ is a neuro-developmental disorder that affects an individual’s abilities. A person having such disability problem cannot listen, speak, read, write or make calculations. This type of disorder usually begins at an early age and it is easy to identify the learning difficulties in childhood. The learning defects include dyslexia, dysgraphia and dyscalculia.

LEGAL FRAMEWORK

As the cliché goes, India is a land of social, cultural and economic diversity. Thus, principles of equality, non-discrimination, affirmative action and even reasonable accommodation

have also become deeply embedded in the Indian policy making process. Unfortunately they are yet to expand and form a part of Indian jurisprudence of laws relating to disability. The human rights approach to disability has at its root the right to full and equal participation in society.

Although the Constitution of India does not contain any specific provision in the chapter on fundamental rights for elimination of discrimination against disabled persons, Articles 14²⁵ and 21²⁶ are relevant. These two Articles provide for the three universal human rights doctrines: equality, life and liberty. Articles 39A²⁷ and 41²⁸ are two specific provisions in the chapter on directive principles of State policy in connection with the protection of disabled persons.

While the fundamental right to equality, life and liberty of the individual guaranteed under Articles 14 and 21 are enforceable²⁹, the duty of the State embodied in Articles 39A and 41 are not³⁰ since they are part of the directive principles of State policy. Despite the issue of enforceability, Directive Principles and Fundamental Rights are considered to be on a similar footing in terms of importance³¹. Thus there is a constitutional mandate for protecting and promoting the rights of persons with disabilities. According to Article 253 of the Constitution, the Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Also, under Article 246(3), the Legislature of any state has exclusive power to make laws for the protection of persons with disabilities

²⁵ The Constitution of India, 1950. Art. 14 “Right to Equality”

²⁶ The Constitution of India, 1950. Art. 21 “Right to Life”

²⁷ The Constitution of India, 1950 “opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”

²⁸ The Constitution of India, 1950 “the right to work, to education and to public assistance in cases of ...old age, sickness and disablement...”

²⁹ The Constitution of India, 1950, Art. 32 & 226 “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed”

³⁰ The Constitution of India, 1950, Art. 37

³¹ *Minerva Mills Ltd. v. Union of India*, A.I.R. 1980 S.C. 1789.

under the head of “Relief of the disabled and unemployable”³²

The conditions of persons with disabilities have been dealt with by legislations in India in different kinds of situations. Some legislations have been enacted for providing treatment and care for mentally ill persons, establishment of trust, rehabilitation, and full participation and equality of the people with disabilities. Main legislations in this category are :

- (i) National Trust for Welfare of Person with Austin, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999;
- (ii) Persons with Disabilities (Equal Participation) Act, 1995;
- (iii) The Rehabilitation Council of India Act, 1992; (iv) The Mental Health Act, 1987; and
- (v) The Rehabilitation Finance Administration Act, 1948.

Some other legislations determine compensation on the occurrence of disability, be it on the road or at the work place. The Motor Vehicles Act, 1988 and the Workmen’s Compensation Act, 1923 are two statutes illustrating such disability related legislations.

Right of Persons with Disabilities Act, 2016

- The Act replaces the Persons with Disabilities (equal opportunities, protection of rights and full participation) Act 1995.
- Persons with disabilities means a person with long term physical, mental, intellectual or sensory impairments which in interaction with barriers, hidden his full and effective participation in society equally with others.
- Person with benchmark disability means a person with not less than 40% of a specified disability.

- Measurable parameters have been developed by certifying authorities.
- Disability has been defined based on an evolving and dynamic concept.
- The principles for empowering persons with disabilities include respecting their internal dignity, promoting individual autonomy, and fostering independence, reflecting a shift from social welfare to human rights.
- The Act expanded the disability categories from 7 to 21, including mental illness, autism spectrum disorder, cerebral palsy, muscular dystrophy, chronic neurological conditions, speech and language disability, and multiple disabilities.

CHALLENGES FACED

Discrimination against disabled individuals is a significant challenge, requiring equal treatment across platforms. The Equality Act aims to ensure equal treatment, regardless of whether it is unlawful or not.

Let us understand the different ways people discriminate the disabled that is not at all acceptable by law. It’s an offence. The society should be more conscious of the vulnerable sections with all sensitivity, care, love, affection and co-operation.

1. *Direct discrimination* – This happens when someone treats you worse than another person in a similar situation because of disability.
2. *Indirect discrimination* – It happens when an organization has a particular policy or way of working which has an adverse impact on disabled person in comparison to a healthy person.
3. *Disabled individuals may face discrimination if their employers fail to make reasonable adjustments, such as providing parking for employees with mobility impairments. Employers, service providers, and organizations must*

³² The Constitution of India, 1950, entry (9) of List II (State List) of the Seventh Schedule.

ensure accessible accommodations for disabled individuals.

4. *Discrimination arising from disability is a common attitude, protected by the Equality Act, and is unlawful unless sufficient reasons are provided, and workplace arrangements are made.*
5. *Discrimination arising from disability is a common attitude, protected by the Equality Act, and is unlawful unless sufficient reasons are provided, and workplace arrangements are made.*
6. *Victimisation* – This is a condition when someone complains of discrimination under the Equality Act. It can also occur if you are supporting someone who has made a complaint of discrimination. It is always lawful to treat a disabled person more particularly with all support than a non-disabled person.

ACCESS TO EDUCATION, HEALTH & EMPLOYMENT

HEALTH

The general “right to health for all” provides for the health care of the people and directs the state to undertake measures for the improvement of health conditions of all the people. The Supreme Court, while examining the issue of the constitutional right to health under Articles 21, 41³³ and 47 of the Constitution of India in ***State of Punjab v. Ram Lubhaya Bagga***³⁴, observed that the right of one person correlates to a duty upon another, an individual employer or a government authority. Hence, the right of a citizen under Article 21 casts an obligation on the State, which is further reinforced under Article 47. The government has established numerous hospitals and health centers, but they must be accessible and of high quality. Health care is a sacred citizen and state right, and citizens prioritize this obligation, including adequate funding.

³³ *The Constitution of India, 1950. Art. 41* “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”

³⁴ (1998) 4 S.C.C. 117.

The Supreme Court in Paschim ***Banga Khet Mazdoor Samity and Ors. v. State of West Bengal & Anr.***³⁵ while widening the scope of Article 21 used the argument of India being a welfare state to extend the duty of government hospitals to provide medical assistance to safeguard human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in violation of his/her right to life guaranteed under Article 21³⁶.

Therefore, the Supreme Court through landmark judgments has rendered medical facilities an integral part of life and liberty, and imposed the duty not only upon the state and its instruments but even on the private employer.

EDUCATION

Provision of the right to education is a part of the Directive Principles of State Policy provided in Part IV of the Constitution under Article 45³⁷, along with Articles 41³⁸ and 46³⁹. The theory of the complementary nature of rights declared in Part III and Part IV, and the harmonious interpretation of these rights has been the foundation for the realisation of primary education as a Fundamental Right today in India.

Two crucial judgments of the Supreme Court of India paved the way for the declaration of the right to education as a Fundamental Right, giving full recognition to the interdependence argument of social and civil/political rights. Education as a necessary means of achieving socio-political justice was largely ignored until the 1992 Supreme Court judgement in ***Mohini***

³⁵ (1996) 4 S.C.C. 37

³⁶ *Akshil Bharatiya S.K. Sangh v. Union of India, (1981)*

³⁷ *The Constitution of India, 1950. Art. 45* “The State shall endeavour to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years”

³⁸ *The Constitution of India, 1950. Art. 41* “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”

³⁹ *The Constitution of India, 1950. Art. 46*, “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”

Jain v. State of Karnataka⁴⁰. The zeal demonstrated in Mohini Jain was sustained in the decision of the Constitution Bench in Unni Krishnan v. State of A.P.⁴¹ where the Court articulated that the fundamental right to education flows from Article 21. While declaring the right to education a Fundamental Right, it was held not to be an absolute right, and its content was defined by the parameters of Articles 45 and 41.

The much-debated, controversial Eighty-third Amendment was providing for right to primary education for children below the age of fourteen, finally passed in 2002 and was inserted in the Constitution as Article 21-A. Despite the general nature of the above mentioned decisions, amendment and legislations, they are applicable to persons with disabilities too.

EMPLOYMENT

Though the interpretation of Article 21 (right to life and personal liberty) initially did not include the right to livelihood⁴², it now does.⁴³ Despite the fact that the courts have largely agreed on the principle that livelihood is integral to right to life, it has not been yet recognized as a positive right. Thus in Olga Tellis v. Bombay Municipal Corp., recognizing this right, the court observed that the implication of such a right is that a person deprived of this right without just and fair procedure being followed can challenge the same as violation of Article 21. The court thus developed a right to livelihood as a significant economic right.⁴⁴ But the problem arises as the Supreme Court till date has not regarded the right to work as a positive fundamental right against the state.⁴⁵

Instead the state has included this right as a part of public policy as indicated in Part IV of the Constitution. Article 39, imposes an obligation on the state to ensure that the citizens have “the

right to an adequate means to livelihood” while Article 41 categorically entrusts the state with the responsibility of providing the right to work, with the only limitation being the “economic capacity” of the state for the same. In response to these obligations, the state has launched numerous Employment Guarantee Schemes, both rural and urban, including the much discussed National Rural Employment Guarantee Scheme. Through this scheme, the government ensures a minimum time period of employment to all people who wish to utilize the opportunity.

PROTECTIONS SCHEMES FOR DISABLED

There are various schemes launched by government for empowering persons with disabilities. A list of various schemes is given below for helping persons who come under the umbrella of disability.

1. SAMARTH – A scheme to provide respite home for orphans, families in crisis, persons with disabilities (PwD) from below poverty line (BPL), low-income group (LIG) families with at least one of the four disabilities concerned under the national Act.
2. GHARAUNDA – (Group home for adults) – This scheme provides housing and care services throughout the life of a person with autism, cerebral palsy, mental retardation and multiple disabilities.
3. NIRAMAYA – This scheme aims to provide affordable health insurance to persons with autism, cerebral palsy, mental retardation and multiple disabilities.
4. SAHYOGI -- This is a scheme to set up caregiver cells (CGCS) for training and creating skilled workforce of caregivers to care

⁴⁰ (1992) 3 S.C.C. 666.

⁴¹ (1993) 1 S.C.C. 645

⁴² In Re: Sant Ram, A.I.R. 1960 S.C. 932.

⁴³ Board of Trustees of Port of Bombay v. Dilipkumar R. Nandkarni, A.I.R. 1983 S.C. 109

⁴⁴ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1612 (2007).

⁴⁵ Secretary, State of Karnataka v. Umadevi, A.I.R. 2006 S.C. 1806.

for persons with disabilities (PwD) and their families.

5. VIKASH – In this day care scheme, PwDs will get an opportunity to enhance their inter-personal and vocational skills as they grow in age. There are seven VIKASH centers functioning in Odisha.
6. GYAN PRABHA – The scheme is to encourage people with autism, cerebral palsy, mental retardation and multiple disabilities for pursuing educational/vocational courses.
7. PRERNA – A marketing scheme to create viable and widespread channels for sale of products and services produced by persons with autism, cerebral palsy, mental retardation and multiple disabilities.
8. SAMBHAAV – This is a scheme to set up additional resource centers in each city, to collate and collect the aids, software and other form of adjective devices.
9. BADHTEKADAM – This scheme supports registered organizations (RO) of the National Trust to carry out activities for increasing the awareness of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.

Besides the above schemes, there are specific schemes for persons with disabilities by Ministry of Social Justice and Empowerment, Government of India

CONCLUSION

The research on safeguarding the rights and well-being of vulnerable sections of society, with a particular focus on individuals with

disabilities in India, highlights the critical need for comprehensive and targeted interventions to address the multifaceted challenges faced by this marginalized group. Systemic discrimination, pervasive social stigma, and a lack of awareness continue to exacerbate the vulnerabilities of persons with disabilities, significantly impeding their ability to fully participate in and contribute to society. Through a rigorous analysis grounded in evidence-based insights, this study illuminates the complex dimensions of disability rights protection, identifying key areas requiring urgent reform and improvement. The research thoroughly examines the existing legal framework governing disability rights in India, alongside the socio-economic determinants that shape the lived experiences of disabled individuals. It also scrutinizes the practical challenges in implementing laws and policies intended to protect and empower this community. The findings underscore the necessity for a robust, inclusive policy framework that promotes equal opportunities, accessibility, and empowerment for persons with disabilities, ensuring their full integration into Indian society. To this end, the study advocates for the adoption of a special vertical reservation policy in the education and employment sectors to address systemic barriers and foster greater inclusion. Such a policy would provide targeted opportunities for individuals with disabilities, enabling them to overcome socio-economic disadvantages and achieve greater self-reliance and dignity.

It is imperative that stakeholders including government bodies, civil society organizations, private sector entities, and community leaders—collaborate to address these challenges holistically. Concerted efforts are required to strengthen the implementation of existing laws, raise public awareness, and eliminate discriminatory practices. By fostering an environment of inclusivity and respect, stakeholders can ensure the full realization of the rights, dignity, and potential of all individuals, regardless of ability. This research

lays a strong foundation for advocating transformative policies and practices that uphold the principles of equality, justice, and inclusion for persons with disabilities in India.

