

RIGHTS OF PERSONS WITH DISABILITIES WITH SPECIAL REFERENCE TO PUBLIC INFRASTRUCTURE FACILITIES IN INDIA

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“My advice to other disabled people would be, concentrate on things your disability doesn't prevent you doing well, and don't regret the things it interferes with. Don't be disabled in spirit as well as physically.”

-Stephen Hawking

“I am officially disabled, but I'm truly enabled because of my lack of limbs. My unique challenges have opened up unique opportunities to reach so many in need.”

-Nick Vujicic

INTRODUCTION

The word handicapped used to refer to a 'person with a disability'. This is because the word handicap means 'obstacles', restrictions or barriers that makes the life difficult'. Handicapped people are physically or mentally disabled people. A person with a disability is one who not able to do the major physical or mental function/s of life.

In our society there are many handicapped, disabled or physically disabled people. Some of them are physically born-handicapped and some others are mentally retarded. There are others who have lost limbs or sense organs on account of an attack of some diseases. Others are victims of accidents such as train or bus accidents, bomb-explosions, fire-burns etc., or injury in factories and so on.

In this or that way, they are deprived of the pleasure of enjoying a normal life. So we must not look down upon these persons as social burdens. They must be encouraged to face life boldly and to feel that life still holds the charm for them. They can be usefully employed in various craft and vocations befitting to them.

They can achieve great success if they are given enough opportunity. A man who is blind may develop a talent for music. Beethoven, who was deaf, became a world-famous musician. We can also take the example of Helen Keller who was blind, deaf and dumb but discovered a new horizon for the blind.

It is not charity but fellow-feeling which they need. There are some philanthropic organizations and NGOs that are doing good work to rehabilitate the handicapped. The government has also taken some steps for the handicapped such as free journey by bus or by train, reservation of some employment etc.

But that is not enough. 'Disabled people' or 'Differently abled people' should get the emotional, financial, and physical support from the society. We should have sympathy for them. We should all come forward to fight against discrimination against differently abled people. Every person on earth deserves equal respect. As for the handicapped children the parents and other members of the society should have a soft corner in their hearts to acknowledge their position in the society.

Further, since disabled people are actually 'differently abled' people, they should get enough opportunity to sharpen their skills and bring out the amazing hidden talents.

After India signed and ratified the UNCRPD in 2007, the process of enacting a new legislation in place of the Persons with Disabilities Act, 1995 (PWD Act, 1995) began in 2010 to make it compliant with the UNCRPD. After series of consultation meetings and drafting process, the Rights of PWD Act, 2016 (RPWD Act, 2016) was passed by both the houses of the Parliament. It was notified on December 28, 2016 after receiving the presidential assent. Principles stated to be implemented for empowerment of persons with disabilities (PWD) are respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons. The Act lays stress on non-discrimination, full and effective

participation and inclusion in society, respect for difference and acceptance of disabilities as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities. The principle reflects a paradigm shift in thinking about disability from a social welfare concern to a human rights issue.

HISTORY BEHIND THE RIGHTS OF PERSONS WITH DISABILITIES

Initially, disabilities have not been a field of social sciences or human rights research and have not been taught in many universities around the world. Disabilities as issue of law have commonly been addressed as aspects of social security and welfare legislation, health law or guardianship. Thus, persons with disabilities were depicted not as subjects with legal rights but as objects of welfare, health and charity programmes. The underlying social policy behind such a legal response has been one that segregates and excludes peoples with disabilities from mainstream society, providing them with special schools, workshops, housing and transportation. Most disability legislation and policies are based on the assumption that persons with disabilities simply are not to exercise the same rights as those without disabilities. Thus, the traditional legal policy was justified by the pervasive belief that persons with disabilities are incapable of coping with either society at large or the most of major life activities. For the last few decades, however, there is a shift at foundational level which has changed the underlying philosophical assumptions that are driving the process of change from welfare to rights.

As a result of the disability rights movement of the 1970s, five prominent jurisprudential approaches emerged on disability protection, namely-religious approach, charity approach, medical approach, social relations approach and human rights approach.

1. Religious Approach:

This approach is historically the oldest and is less prevalent today. However, there are many cultures that associate disability with sin and shame. This approach views disability as a

retribution for action committed in a previous birth. It is viewed as a punishment inflicted upon an individual or family by God. According to the traditional KARMIC theory of ancient India it is unfortunate to have a disabled child and it is believe that it is God's way of punishing for the past sins. For the individual with a disability, this approach is particularly burdensome. It is an extreme approach, which can exist in any society where deprivation is linked to ignorance, fear and prejudice.

2. Charitable Approach:

This approach treats the disabled as dependent upon the society. It has an emotional appeal towards the disabled. The disabled treated as helpless victims needing care and protection. Under this approach disabled people depicted as people deserving pity. This approach is used by non-disabled people to define and explain disability. Fund raising under this approach for the benefit of the disabled largely depends upon the benevolence of the able bodied. Although charity is praiseworthy since it helps raise considerable funds for the benefit of the disabled, it actually gives a negative image of the disabled to the society thereby by keeping them outside the mainstream social life. The charity approach makes the disabled powerless individuals rather than empowering them. Employers will view disabled people as charitable case. Instead of addressing the issue by creating suitable work environment for people with disabilities, the employer may donate money and avoid responsibility. Many orphanages, protection homes and special schools segregate persons with disability and thereby denying them full participation in social activities¹.

3. Medical Approach:

The medical approach treats disability as an inherent personal character personal characteristic rather than a feature that draws its meaning from social context. This is the oldest, most conventional and dominant approach towards disability focusing on medical treatment,

¹ Samuel R.Bagenstos, "Disability, Life, Death, and Choice,"29, Harvard Journal of Law and Gender (2006),pp. 425-463.

physical rehabilitation², charity, welfare and public assistance. The medical approach is based on the following assumption:

- (i) disability is basically a disease state and falls absolutely within clinical framework; essentially a problem focusing on the individual as a deviation from the norm, the role of the medical and paramedical professionals is to cure and ameliorate this problem in order to 'enable' them to be as normal as possible;
- (ii) there is an objective state of 'normality' which within the medical profession entrusts professionals, a crucial role leaving little scope for the persons with disabilities and their families to participate in the decision-making process;
- (iii) the persons with disabilities are deemed biologically and psychologically inferior to their able bodied counterparts and they are, thus, not considered lesser human and by implication, lack the competence to decide for themselves, and;
- (iv) the phenomena of disability is perceived as a personal tragedy, which occasionally affects individuals.

4. Social Relations Approach:

Some countries, eventually, made attempts to take a more integrative and inclusive approach to disability policy to open up employment, education, housing, goods and services for persons regardless of their disabilities as a consequence of growing understanding that disability issues belong in a social and not a medical category. A key element of this new concept is the recognition that exclusion and segregation of people with disabilities do not logically follow from the fact of impairment, but rather result from political choices based on false assumptions about disability. Inaccessibility problems are not inevitably raised by mobility, visual or hearing impairments, but instead are a corollary of political decisions to build steps but ramps, to provide information in printed letter version only, or to forgo sign language or other forms of communication.

² See, Parmanand Singh, "Disability, Discrimination and Equality of Opportunities: A Comparative Analysis of the Legal Framework," 45, Journal of India Law Institute, (2003).

Instead of viewing disability as an individual problem, the focus finally has shifted to how the environment and society as a whole fails to consider human differences. The social relations approach treats human differences as constructed by and residing in a social relationship. Disability is not considered as a product or limitation imposed by physical or mental impairment, rather disability is regarded as a result of interaction between societal barriers and the impairment. A person is disabled not because of his personal tragedy but because of the disadvantages suffered by him due to a disabling environment besides the prevalence of stereotypes, prejudices and neglect of the so called 'normal' individuals.³

5. Human Rights Approach:

With the paradigm shift from the medical to the social model of disability, disability was reclassified as a human rights issue under international law. Reforms in this area were intended to provide equality for persons with disabilities and expose their segregation, institutionalisation and exclusion as typical forms of disability based discrimination. Hence the disability rights discourse insists on a concept of equality that is based on the needs of all members of the society rather than those deemed "normal". The demand for equality is based upon the concept of human autonomy, comprising of personal capacities to have an access to the opportunities that society offers to all people. As pointed out by Joseph Raz: "the ideal of personal autonomy is the vision of people controlling to some degree, their own destiny fashioning it through successive decision throughout their lives". John Rawls describes personal autonomy "as the ability to frame, to revise and to pursue a conception of the good and to deliberate in with it". Thus, the norm of human autonomy is central to civil rights tradition which means self-governance. With the evolution of civil rights legislations for persons with disabilities such as the American with Disabilities Act, 1990 (ADA), Australian Disability Discrimination Act, 1992 (ADDA), United Kingdom's Disability Discrimination Act, 1992 (DDA) and The Indian Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act), national legal paradigms shifted even further from welfare law toward civil rights law.

³ Len Barton, "Sociology, Disability Studies and Education: Some Observations," in Disability Reader Social Science Perspective (1998), pp. 53-59.

DISABILITY- MEANING

“Disability” means:-

- (1) Lack of competence, power, strength, or physical or mental ability; incapacity.
- (2) A permanent physical flaw, weakness, or handicap, which prevents one from living a full normal life or from performing any specific job.
- (3) The state or condition or condition of being disabled.

In order to reduce the difficulty of the interpretation of the term, World Health Organization (WHO) has defined the term “disability” as “any restriction or lack (resulting from impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.”

Disability can either be mental or physical:

Persons with disability means suffering from more than 40% of any of the disability, below this percentage a person is not eligible to avail most of the benefits of legal provisions and programmes. For different disability the process of calculating the disability level differs. ‘Disability’ is state of being disabled: deprivation or want of ability, absence of competent physical, intellectual, or moral power, means, fitness, or the like, an instance of such want or deprivation.

Types of Disability:

- i. Blindness;
- ii. Low vision;
- iii. Leprosy cured;
- iv. Hearing disability;
- v. Loco motor disability;
- vi. Mental retardation;
- vii. Mental illness;

viii. Multiple disabilities.

United Nations Human Rights Conventions relating to persons with Disability are:

- (1) International Covenant on Civil and Political Rights, 1966;
- (2) International Covenant on Economic, Social and Cultural Rights, 1966;
- (3) Convention on the Elimination of All Forms of Racial Discrimination, 1966
- (4) Convention on the Elimination of All Forms of Discrimination Against Women, 1979;
- (5) Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984;
- (6) Convention on the Rights of the Child, 1989;
- (7) The International Convention on the Protection of The Rights of All Migrant Workers and Members of Their Families, 1990.

It is relevant to mention that during 1970s, with the promulgation of the declaration on the Rights of Disabled Persons, 1975, the rights of persons with disabilities become explicit subjects of human rights declarations. The world Programme of Action (WPA) concerning persons with disabilities adopted by the UN General Assembly in 1982 provides for participation the persons with disabilities in decision making. Another major event in this context was the appointment of a special rapporteur on Human Rights and Disability by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1984 to undertake a through studying 1991 which shows that the human rights of the persons with disabilities are seriously violated all over the world in both civil and political spheres as well as in the arena of the economic, social and cultural rights.

The World Conference on Human Rights 1993 confirmed, “all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. The conference calls on all governments, where necessary, to adopt or adjust legislation to ensure access to these (life, welfare, education, work, living independently and active participation in all aspects

of society) and other rights for disabled persons.” At the regional level the Proclamation on the Full Participation and Equality of the people with disabilities in the Asian and Pacific region was adopted in Beijing in 1992. The meeting also launched the Asian and Pacific Decade of Disabled Persons 1992-2002.

UNITED NATIONS DECLARATIONS AND PERSONS WITH DISABILITIES

For the protection of persons with disabilities certain declarations were adopted in international level. In this connection an important step was taken toward recognition that the mentally Retarded Persons. Under this declaration the mentally retarded person is given the same rights as other human beings “to the maximum degree of feasibility.” Mentally retarded persons are also given the 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,” and “to protection from exploitation, abuse and degrading treatment.” The Declaration on the Rights of Disabled Persons 1975 has also widened the scope and ambit of the rights by shifting the protection from mentally retarded persons to disabled persons.

Declaration on the Rights of Mentally Retarded Persons:

The 1971 UN Declaration on Right of Mentally Retarded persons addressed the human rights of persons with mental disabilities. Mental health and human rights, with notable exceptions, are rarely connected in thoughtful, systematic ways. Different philosophies, vocabularies, and social roles may explain the rarity of cross disciplinary work. Yet, mental health and human rights are both powerful, modern approaches to advancing human well-being; by viewing these two fields together, rather than each in isolation, they becomes mutually reinforcing.

Declaration on the Rights of Disabled Persons:

In addition to the 1971 Declaration on the rights of Mentally Retarded Persons, the United Nations has promulgated several other nonbinding disability-specific instruments, including

declarations outlining the rights of mentally retarded and disabled persons. The Declaration on the Rights of Disabled Persons 1975 was adopted by the UN General Assembly, 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”. The Disability specific instruments, while not specifically targeted at mental disabilities, generally apply human rights to persons with any type of disability.

RIGHTS OF PERSONS WITH DISABILITIES IN INDIA

In India with the increasing consciousness of the civil rights and emergence of large number of people with disabilities displaying their skills and knowledge to improve their lives, which contributed towards a new thinking and forced the law makers to overhaul the old law and come up with a new one. Hence, besides the protection of persons with disability under the Constitutional law and criminal law certain other legislations have been enacted in India to protect the rights of persons with disability since British period like Lunacy Act, 1858, Lunacy Act, 1912 the Mental Health Act 1987; the Rehabilitation Council of India Act 1992; The National Trust for Welfare for Person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999 and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. Now question arises whether these legislations are able to achieve the abode objectives. An attempt has been made in the following pages to examine critically these legislations whether they are working satisfactorily besides the Constitutional rights and rights ad rights under criminal law.

A. CONSTITUTIONAL RIGHTS:

The Constitution of India as the basic law carries the guarantee of legal security for all its citizens. Under Part-III (fundamental rights) and Part-IV (directive principles of state policy) of Constitution of India a large number of rights have been recognised for the protection and enjoyment of all persons in India. It mandates that the laws to be made pursuant to the authority of the Constitution must conform to the principle of fairness equal objectivity and fraternity of the people. There are for instance, fundamental rights guaranteed to the citizens who also have certain fundamental duties in relation to fellow citizens and the government. The Article 41 of

the Constitution specifically provides for the protection of the persons with disabilities. The rights conferred by the Constitution to the people of India including the persons with disability are discussed in below:

The Constitution secures the citizens including the disabled, justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity, just as it does for other citizens who are not disabled.

- (i) **Article 15(1)** not to discriminate against any citizens of India (including the disabled) on the ground of religion, race, caste, sex, place of birth or any of them.
- (ii) **Article 15(2)** no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access of any public place or in the use of any public commodity which is for the general public.
- (iii) **Article 17** no person (including the disabled) of his belonging can be treated as an untouchable. It would be an offence punishable.
- (iv) **Article 21** Each person (including the disabled) has his life and liberty guaranteed.
- (v) **Article 23** There can be no traffic in human beings (including the disabled) and beggar and other forms of forced labour is prohibited and the same is made punishable in accordance with law.
- (vi) **Article 24** Prohibits employment of children (including the disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment.
- (vii) **Article 25**-Guarantees to every citizen (including the disabled) the right to freedom of religion. Every disabled person (like the non-disabled) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.
- (viii) **Article 32** Every disabled person can move to the Supreme Court of India to enforce his fundamental rights.
- (ix) **Article 29(2)** Provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. This right is as much guaranteed to the disabled as much as the non-disabled. If the disabled belong

to the minority religion or language group they shall have the right to establish and administer educational institution under the management of the minority whether based on religion or language.

- (x) **Article 45** Directs the State to provide free and compulsory education for all children (including the disabled) until they attain the age of 14 years.
- (xi) **Article 47** Imposes on the Government a primary duty to raise the level of nutrition and the standard of living of its people and the improvement of the public health and in particular to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except for medical purposes.
- (xii) **Article 41** Provides that the State shall within the limits of economic capacity for development, make effective provision for securing the right to work to education, and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want.

*Sukhnandan Thakur v. State of Bihar*⁴

It was held that the expression “public assistance” in **Article 41** refers to economic relief to people who are needy. But this Article has no bearing on the interpretation of **Article 16**. Although Article 21 of the Constitution of India mandates that no person shall be deprived of his life and liberty, except in accordance with law, the interpretation given expressions “life” and “liberty” have invented so many rights. A most remarkable feature of these expansions of **Article 21** is that many of the non-justifiable directive principles embodied in Part IV of the Constitution have now been resurrected as enforceable fundamental rights by the magic wand of judicial activism playing on **Article 21**, for example, (i) right to education, (ii) maintenance and improvement of public health, (iii) right to pollution free air, (iv) right to reasonable residence, (v) right to access to roads, (vi) right to food and clothing, decent environment, (vii) right of every child to full development. A corollary development is that while so long as the negative language of Article 21 and use of the word “deprived” was suppose to impose upon the state the negative duty not to interfere with the life or liberty of an individual without the sanction of law, activist judges have now imposed a positive obligation upon the state to take stapes for ensuring to the individual a better enjoyment of his life and dignity. In the modern world of unemployment and under-employment, everyone ought to have a right to decent living

⁴ AIR 1957 Pat 617

for which the right to work should be made a fundamental right. Some people have even suggested for transferring **Article 41** from Part IV to Part III of the Constitution.

Horticulture Employees' Union v. Delhi Administration⁵

In this case the apex court observed that the directive to make effective provisions for securing the right to work is qualified by its economic capacity and development and thus, court found that persons employed under scheme like Jawaharlal Nehru Rozgar Yojna cannot claim regularisation of their employment when the scheme come to end. Despite this dichotomous problem, as citizens of India, mentally ill persons are entitled to all these fundamental rights which are guaranteed to each and every citizen by the Constitution of India. Due to disability mentally ill persons are not deprived from enjoying basic rights. Article 21 of the Constitution provides right to life and liberty. This right is available to everyone without any discrimination. It includes the right to live with human dignity and right to health. Mentally ill persons are entitled to receive mental health care and human living conditions in mental hospitals. Right to life includes something more than mere survival of animal existence. It includes, right to live, to work as far as possible in the community, to privacy and to lead normal life. The seriously mentally ill are a very special group of disabilities. This group has right to live in the society along with other citizens and ensuring their right to protection from exploitation. Constitution in part IV provides Directive Principles of State Policy which clearly states that it is the duty of the State to raise the level of nutrition and standard of living and to improve public health.

Indra Sawhney v. Union of India⁶

In this case the Supreme Court had clearly brought out that “after selection and appointment of candidates under reservation for persons with disabilities they will be placed in the respective rosters of reserved category of open category respectively on the basis of category to which they belong and, thus, the reservation for persons with disabilities per se has nothing to do with the ceiling of 50%.” After detailed consideration of the entire issue pertaining to reservations for disabled persons the Supreme Court held that the computation of reservation for the persons with disabilities has to computed in case of Group A, B, C and D posts in an identical manner viz., “computing 3% reservation on total number of vacancies in the cadre strength” which is

⁵ AIR 1992 SC 789; (1992) SCC (4) 99

⁶ AIR 1997 SC 597; (1996) 6SCC 506

the intention of the legislature. Accordingly certain clauses in the OM dated 29.12.2005, which were contrary to the above reasoning were struck down.

In order to ensure proper implementation of the reservation policy for disabled and to protect their rights, it is necessary to issue the following directions:

1. We hereby direct the appellant herein to issue an appropriate order modifying the OM dated 29.12.2005 and the subsequent OMs consistent with this Court's Order within three months from the date of passing of this judgment.
2. We hereby direct the "appropriate Government" to compute the number of vacancies available in all the "establishments" and further identify the posts for disabled persons within a period of three months from today and implement the same without default.
3. The appellant herein shall issue instructions to all the departments/public sector undertaking/Government companies declaring that the non-observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and the Officer in department/public sector Undertaking/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.

B. RIGHTS OF PERSONS WITH MENTAL DISABILITY UNDER CRIMINAL LAW:

The Indian Penal Code, 1860 provides a detail scheme of protection for persons with unsoundness of mind. Section 84 of Indian Penal Code provides defense for such persons who are under a criminal charge on the basis that "one who is insane has no mind and hence cannot have the necessary mens rea to commit a crime!" Being deprived of free will a mad man is placed in even a worse predicament than a child because the latter can at least control his will and regulate his conduct. Whereas the former cannot. In fact, a mad man is punished by his own madness—"furiosus furore sui punier". Moreover, the act of an insane person being unintentional and involuntary. No court can correct him by way of punishment. But at the same time the society has to be protected against the attack of maniacs. Accordingly a provision has been made under Section 330 of the Criminal Procedure Code, 1973 for the detention of such persons in lunatic asylums. The Lunacy Act, 1912 provided guidelines for the treatment of insane persons and to segregate them from others which was replaced by the Mental Health Act,

1987. In the following pages an attempt has been made to discuss the specific protection for persons with insanity under criminal law as well as other laws.

Law of Unsoundness of Mind:

Section 84 of the Indian Penal Code, 1860 provides for “act of a person of unsound mind. According to Section 84 nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law”. Unsoundness of mind is commonly termed insanity and according to medical science, is a disorder of the mind which impairs the mental faculties of a man. In other words, insanity is another name for mental abnormality due to various factors and exists in various degrees. Insanity is popularly denoted by idiocy, madness, lunacy to describe mental derangement, mental disorder and all the other forms of mental abnormality known to medical science. Thus an uncontrollable impulse driving a man to kill or wound would come within the scope of the medical definition of insanity. However, insanity in law differs markedly from the medical concept. Insanity in law means a disorder of the mind which impairs the cognitive faculty, i.e. the reasoning capacity of a man, to such an extent as to render him incapable of understanding the nature and consequences of his actions. It excludes from its purview insanity which could be engendered by emotional or volitional factors. In other words, every arbitral act performed by a person cannot exempt him from criminal responsibility; it is only insanity of a particular or appropriate kind which is regarded as insanity in law that will exempt a man from criminal liability.

Surendra Mishra v. State of Jharkhand⁷

The Supreme Court was dealing with a case where the accused was charged for an offence under Section 302 of the Indian Penal Code and Section 27 of the Arms Act. While denying the protection of Section 84 of the Indian Penal Code to the accused, the Court observed thus:

“Expression “of unsoundness of mind” has not been defined in the Indian Penal Code and it has mainly been treated as equivalent to insanity. But the term insanity carries different meaning in different contexts and describes varying degrees of mental disorder. Every person who is suffering from mental disease is not ipso facto exempted from criminal liability. The

⁷ AIR 2011 SC 627; (2011)11 SCC 495

mere fact that the accused is conceited, odd, irascible and his brain is not quite all right, or that the physical and mental ailments from which he suffered had rendered his intellect weak and affected his emotions or indulges in certain unusual acts, or had fits of insanity at short intervals or that he was subject to epileptic fits and there was abnormal behaviour or the behaviour is queer are not sufficient to attract the application of Section 84 of the Indian Penal Code, 1860.

Bapu v. State of Rajasthan⁸

In this case the accused dumped the head of his wife and held it in one hand with the blood stained sickle on the other when he was caught the defence of insanity was taken up. The accused had at some point of time taken treatment for insanity. The court deliberated at length on the defence of insanity and the distinction between legal insanity and medical insanity. The court rejecting the plea made a very apt observation thus:

The crucial point of time for deciding whether the benefit of this section should be given or not, is the material time when the offence takes place and in coming to that conclusion, the relevant circumstances are to be taken into consideration, it would be dangerous to admit the defence of insanity upon arguments derived merely from the character of the crime. For the application of the Section 84, it is essential to show that:

1. the accused was of unsound mind;
2. He was of unsound mind of the time when he did the act, and not merely before or after the act i.e.. Every person, who is mentally diseased, is not ipso facto exempted from criminal responsibility; and
3. As a result of unsoundness of mind, he was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

⁸ (2007) 3 SCC (Cri) 509

Evidential Relation of Law of Unsoundness of Mind:

The evidential relation of law of unsoundness of mind has been developed by the courts through judicial decisions. Thus, it has been rightly reiterated that there should be independent evidence to prove insanity i. e. unsoundness of mind under Section 84 of the Indian Penal Code.

Mariappan v. State of Tamil Nadu⁹

There was a homicidal death of a women over property dispute. Evidence was lead to proof that there had been a dispute between appellant and the deceased on the issue “who was the appellant’s parental aunt” over a portion of land. The appellant had threatened her a day prior to the murder that if money in lieu of land was not paid he would kill her and her husband. On the fateful day he went to her house, locked the place from inside and gave her repeated blows on the head and she died. The deceased women’s grand daughter who was witness to the crime raised cries for help. The neighbours came and saw the appellant running out of the house. The murder weapon was found and the blood stained matched. The appellant took the plea of insanity-that he was suffering from “Paranoid Schizophrenia” at the time of doing it and sought benefit of exception under Section 84 of the Indian Penal Code. The law is settled on the point that the onus to prove that the case falls under the general exceptions is on the accused claiming the exception. The appellant submitted report from the doctor which certifying that he had “Paranoid Schizophrenia” and was under treatment from 11.07.2001 to 08.08.2009, and had also a termination letter LG. Police, Northern Sector, CREE. New Delhi. However the incident occurred 3 months after the treatment period and around the same time he had also requested his department to let him rejoin stating improvement in his health. The language of the Section is very clear that the insanity must be at that particular time and instant case the accused could not discharge the burden of proving the same and hence his appeal was dismissed and stood convicted under Section 302 of the Indian Penal Code.

Bihari Lal v. State of HP¹⁰

In this case the accused tried to prove that he was suffering from schizophrenia by way of a certificate issued by an independent practitioner. The court rejected the defense. Similarly in

⁹ (2013) 12 SCC 270

¹⁰ 2006 Cri LJ 3832 (HP)

*Sadashivu Balappa Samagar v. State of Karnataka*¹¹, the abnormal behaviour of the accused in having attempted to cut the pennies of his 5 year old nephew and sending his wife to the parents, the Karnataka High Court ruled that at the most the acts of the accused indicate his sexual deficiency and mental imbalance which need to be treated but does not reduce the culpability of the accused. He was not entitled to take the defense of insanity under Section 84 of the Indian Penal Code.

*Mariappon v. State of Tamil Nadu*¹²

In this case the accused, who was living very amicably with his wife and behaved in a friendly manner towards her, murdered her and his son by stabbing them with a knife No motive could he suggested. The medical opinion was definite about the accused not being in a position to understand the nature of the act. It was held that the plea of insanity could well be substantiated by the statement of the doctor. Accused could not be termed as an "insane" person since there was no evidence as to unsoundness of mind of Accused at time of occurrence.

Legal and Medical Unsoundness of Mind:

A distinction is to be made between legal and medical insanity i.e. unsoundness of mind. A court is concerned with legal unsoundness of mind and not with medical unsoundness of mind. According to medical science, insanity is another name for mental abnormality due or various causes and existing in various degrees. Even an uncontrollable impulse driving a man to kill or wound comes within its scope. But a man, whom the medical science would pronounce as insane does not necessarily take leave of his emotions and feelings. Hope, ambition, revenge, etc. may still govern his mind Fear may exercise its influence over him and threats may have a deterrent effect. Such persons, though insane, would refrain from committing any act of violence or mischief if more powerful men are present. It is not every form of insanity or madness that is recognised by law as a sufficient excuse Indeed nothing short of particular degree of insanity, as laid down to Section 84 of the Indian Penal Code would bring a case within the exception, all other forms of insanity, and all other minor aberrations of mind, which are recognised by the medical science as mounting to madness, are excluded in the eye of law.

¹¹ Cr. Appeal 1308 Of 2003, Decided On, 27 October 2005.

¹² 2013 (6) SCALE 185; (2013) 12 SCC 270

There can be no legal unsoundness of mind unless cognitive faculties of the mind are, as a result of unsoundness of mind, so completely impaired as to render the offender incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. Thus, it is only unsoundness of mind which naturally impairs the cognitive faculties of the mind that can form a ground of exemption from criminal responsibility. A person may be a fit subject for confinement in a mental hospital, but that fact alone will not permit him to enjoy exemption from punishment. Crotchetiness of cranks, feeble mindness, any mental irresponsibility, mere frenzy, emotional imbalance, heat of passion, uncontrollable anger or jealousy, fits of intense hatred or revenge, moral depravity, dethroning reason, incurable perversions, hypersensitive excitability, ungovernable fits of temper, stupidity obtuseness, lacks of self-control, gross eccentricity and idiosyncrasy and other similar manifestations, evidencing derangement of mental functions, by themselves, do not offer relief from criminal responsibility. These are forms of mental deficiency which will not excuse the commission of the crime. It is only unsoundness of mind which materially impairs the cognitive faculties of the mind that can form a ground of an exemption from criminal responsibility. For purposes of the criminal law, the emphasis is, therefore on unsoundness of mind which incapacitates the person from knowing the nature of the act or that he is doing what is either wrong or contrary to law.

C. LAW OF LIMITATION RELATING TO LEGAL DISABILITY:

Section 6 of the Limitation Act, 1963 provides for the law relating to legal disability applicable for extending the period of limitation Sections 7, 8 and 9 also deal with the circumstances under which and the extent to which limitation will be extended. Section 7 applies in case of disability of one of several persons while Section 8 provides for special exceptions Section 9 states that once time has begun to run no subsequent disability to institute a suit stops it. Therefore, these four Sections are supplementary to each other and together constitute a unit and are not mutually exclusive¹³.

Legal Disability: Section 6

According to Section 6 of the Limitation Act, 1963 a minor, insane or an idiot may institute a suit or make an application within the same period after the disability has ceased Persons under disability are not subject to the ordinary rule of limitation because the law considers them

¹³Jatindra Kumar Das, Code of Civil Procedure (PHI Learning Delhi,2014), pp. 1026-1033.

incapable of forming a proper judgment as to bring suits or otherwise manage their own affairs. Section 6 does not prevent-the running of limitation but only, extends the period of limitation. The extension is given upon the ground-of disability of the person entitled to sue or apply. But this Section does not contain, the entire law on the subject. It enumerates the kinds of disabilities on account of which limitation will be extended Section 6 excuses an insane person, minor and idiot to file a suit or make an application for the execution of a decree within the time prescribed by law and enables him to tile the suit or make an application after the disability has ceased, counting the period of time from the date on which the disability ceased. Besides at the time of in computing the period of limitation, the disability period should be excluded.

P. Sainath Reddy v. G. Narayana Reddy¹⁴

The Court observed: Under Section 6 of the Limitation Act, where a person is under disability, being I minor or imam, or an idiot, the time during which the person is under disability has to be excluded in computing the period of limitation prescribed for filling a suit or application for execution of a decree.

Harikumar Radhakisan v. Uderam Ramkuwar¹⁵

It was held that once the limitation thus has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. If one disability supervenes another disability or one disability is followed by another without a gap, the suitor application for execution may be filed after both the disabilities have ceased to exist. If the disability or disabilities continue(s) till the person's death, then the representative of the deceased on whom the title devolves is allowed to file a suit or make an application for execution within the time allowed by the law continuing it from the death of the person entitled. However, in Ranodip Singh v. Parmeshwar Pershed, it was held that extension of three years given under Section 6 of Limitation Act is not available for non-existent (unborn) son, and held that, the suit is barred by limitation. Therefore, Section 6 outlines a general rule.

¹⁴ AIR 1982 AP 247: [1982 (1) An WR 328]

¹⁵ AIR 1970 Bom. 262: ILR 1971 Bom. 283

Continuous Running of Time: Section 9

According to Section 9 of the Limitation Act, once time has begun to run, no subsequent disability or inability to sue can stop it. Therefore, in a case on the date on which the cause of action arose, the plaintiff was under no disability or inability, time will naturally begin to run against him since there is no reason why the ordinary law should not have full Operation. Section 9 contemplates a case of subsequent and not of initial disability, that is, it contemplates cases where the disability occurred after the accrual of the cause of action (in computation to a case of initial disability that has been provided under Section 6). The right to sue accrues only when a cause of action mixes, and limitation runs only after a cause of action has arisen. Time begins to run when the cause of action accrues, and the cause of action accrues only when: (i) there is in existence of a person who can sue and another who can be sued; and (ii) all the facts which are material to be proved have occurred to entitle the plaintiff to succeed¹⁶.

Maheshwari Builder v. Dr. Mohd Shafiuddin Junaidi¹⁷

Time had begun to En since the right to sue had accrued and the plaintiff was not in any way disabled from suing. Therefore, the Andhra Pradesh High Court held that where time has begun to run with respect to the right to sue having accrued toe person not labouring under any legal disability; the subsequent disability of himself or any other monotone will not be a ground for exemption from the operation of the ordinary rule, and it cannot be suspended for any reasons other than those specified in the Act. The Limitation Act does not affect a claim for which there is to corresponding remedy or for which judgement cannot be obtained. Consequently, the hue test to determine when a cause of action has arisen is to ascertain the time when the plaintiff could have maintained his action for a successful result.

¹⁶ State of West Bengal v. Satyanarayan Rice Mill, AIR 1985 Cal 391.

¹⁷ (2008) 5 ALD 806.

PUBLIC INFRASTRUCTURE FACILITIES FOR THE PERSONS WITH THE DISABILITIES

Is Indian Infrastructure disabled friendly?

One of the most important thing which everyone is concerned about is the development of India and disabled friendly atmosphere is the most important thing which should be brought into force for the development.

Universal applicability for growth of the country as a whole is very necessary. Disability is an umbrella term. A disabled person has a problem in the structure of his body which makes it difficult for the execution of any task or action.

The Indian infrastructure in most of the places is not disabled friendly:

Assistive technology is something which helps the people with disability by giving them assistance and rehabilitative devices. It increases functional capabilities of the individuals with disabilities.

Such devices are not installed in India that makes it inconvenient for disabled people to access public infrastructure.

If we see the problem from sociological perspective, there have not been any upgrades or advancements in the system. Henceforth, there is no growth for the disabled person. There are still a lot of places where barrier free access is not available to the disabled or handicapped. This is needed in both rural as well as urban areas.

Making Indian Infrastructure Disabled Friendly:

Millions of disabled people live in underdeveloped infrastructure. Aside from metro, none of our open transport frameworks are disabled friendly.

There are a lot of public infrastructures where it gets very hard for the disabled people to get access to and having access to the disabled people is still a neglected issue.

An attempt to get out of the house and travel places, for the disabled people, is still a far cry. **Like any other person, barrier free environment for a disabled person is his legal right too under the constitution of India.**

Policy makers should consider it very important to build a disabled friendly based Indian infrastructure.

According to a survey, **only 11% of the architects are aware of the designs and information that is used for accessibility design for the disabled.** Indian law for Indian infrastructure is not that well developed and not a lot of things are mandated which should be given importance.

To ensure uniform and appropriate accessibility, there should be standard rules of set provided to the disable. India might not be ready right now to create disabled-friendly infrastructure but, there are major steps which are taking place to update the latest design requirements as per the international standards.

According to me, the **first step required** to ensure effective changes in the country is to have accessibility standards.

- To provide complete accessibility to the people with disabilities, a lot of campaigns have been launched for them to gain equal opportunity, live independently and participate fully in all aspects of life in an inclusive society.

Its primary motive is to enhance access to the physical environment, public transportation and to provide knowledge. There should be accessibility across public places for disabled people.

According to NBC (National building code), it is mandatory for all the airports and railway stations to provide accessibility to the disabled but, there is no mandation related to accessibility regarding the other public places which are used by the disabled people. Hence, this leads to a lot of problem to be faced by the disabled.

There is such a ghastly measure of shame attached to handicap that we neglect everything else connected with the individual who bears it. Rather than saluting the battling soul of individuals with in-capacities, society in general tends to dismiss their entitlement to live.

India has been a focal point of unity and a place that is known for empathy in the midst of the diversities. As capable subjects of the nation, we have to trust that handicapped people merit measure up to rights and openings, far beyond our obligation to bolster them.

Voyaging is, by a long shot, a standout amongst the most enhancing encounters of an individual's lifetime. Each individual is ought to have the chance to travel and investigate at their pace.

As the Year of Accessible Travel attracts to the county, India as a country can embrace the accompanying measures to make wheelchair relaxes a sensible thought.

- The majority of the national landmarks in the nation **need appropriate foundation to guarantee** a handicapped individual can stroll in and explore at his/her own pace.
- Building stages and inclines to move around and giving wheelchairs and sound aides are a portion of the means that should be taken to ensure that all our national landmarks are open for guests with disabilities. While travelling, one of the most critical concerns is getting around.
- India's open travel frameworks can be redone to offer smooth access to the handicapped. Holding seats are not sufficient. The railroad stages should be adjusted to make the wheelchairs move effortlessly between roads.
- Offering public toilets in parks, malls, offices etc is one step easier to make travel accessible for the handicapped.

Of course, everyone gets the urge to travel. Disabled person can also travel if there are local disabled travel guides appointed to help them.

Awareness about the Acute Need of Disabled Friendly Zones:

- **Steps are formed to conduct zone based awareness for all the architects and builders and real estate developers** about how much of the growing population is disabled and how India badly need friendly disabled zones.
- There should be **creation of blogs and videos** to make everyone understand the meaning of accessibility.
- Proposals should be made and accepted for the **creation of ramps and accessible toilets**.
- India is now becoming internet accessible country, in relation to that steps should be taken to build up a **mobile app** which shows different areas and localities where access is available to disabled people.

Today Indian Infrastructure Disabled Friendly:

India has come a long way in becoming disabled friendly country but there are a lot of improvements been done and implemented.

- The airlines have provided **parking zones for physically handicapped people** and other necessary arrangements which is needed by the disabled.
- Metros have **started building elevators** so that they get access to public domain easily without any effort.
- Indian Railways have also made **ramps which are not slippery and are easily walkable**. There are toilets built on the ground floor and there are different seats reserved inside the train for the disabled.
- There are measures which are been taken to give employment to the disabled people, the Lemon hotel chains are in total support of giving employment to the disabled people, where there will be 7% cut off for these people. They seek to provide them higher positions instead of just a low wage work.

- Museums have started building **tactile texture** so that the visually disabled realize that where do they have to stop with accordance to different patterns of the tiles.
- We often forget that even if a person is blind, he can have some other talents too. There are a lot of spas where the visually challenged people learn different styles of massages of different country and are fully employed only on the basis of their talents leading to no discrimination.
- The government has also built an app where the disabled people can easily locate places that have disabled friendly atmosphere.

Another great story about **making beaches disabled friendly** has come in contact. It says that a two km long stretch will be made disabled friendly. This is a great initiative taken by the government to ensure that everyone gets the benefit to enjoy their rights equally.

- The government has recently launched the **Accessible India Campaign** to promote accessibility.

Under this campaign over 50% of the buildings in India will be made accessible to disabled people. There will be standard sets by the government also by the year 2010 to meet the friendly based requirements of the disabled. This is a major step taken by the government towards building an inclusive society.

They also want to take initiative to include **scholarship programs for a better education and for the development of the new braille language.**

- National awards are given to the disabled people to encourage them to live a positive life and maintain atmosphere feasible to them.

India will soon have incentive to develop disable friendly buildings and it will be developed both in public sector and private sector. It's time for some fair play.

There will be ethical push given in the corporate sector. Private sector will soon be adopting new measures to build buildings which are easily accessible to disabled people. The government will soon enact more laws which only focuses on the rights of the disabled people.

Indian Infrastructure is not a very disabled friendly but there are laws which are slowly getting implemented.

Supreme Court push to public access for disabled persons:

The Supreme Court has come out with a series of directions to ensure that public infrastructure is accessible to differently-abled persons and ordered that the June 2019 deadline set by the Rights of Persons with Disabilities Act, 2016 to make all government buildings providing public services made fully accessible to them be strictly adhered to.

Disposing of a PIL filed by one Rajiv Raturi, a bench of Justices A K Sikri and Ashok Bhushan said on Friday, “There cannot be any dispute about the rights of the differently-abled persons, particularly those who have visual impairment with which category we are concerned in the present case, to provide them adequate access to all the facilities on the road as well as convenient access to transport facilities etc. Without these facilities, movement of such persons gets impaired and this can even be treated as infringement of their fundamental rights under Article 19(1)(c) of the Constitution, which is guaranteed to each and every citizen of this country.”

“In order to ensure that this right is exercised by visually disabled persons as well, it becomes the duty of the State and public authorities to lay down proper norms in respect of the built environment and public facilities i.e. roads, buildings, public places, transport (air, land and water) carriages etc,” it said. The petitioner had sought adequate access to public places, roads and transport facilities for visually impaired persons.

On the question of making 50 per cent of all government buildings of the national capital and state capitals fully accessible by December 2018, the court found that although the deadline for identifying the buildings was February 28, 2017, a status report dated August 8, 2017 said that only seven states had identified the buildings. Accordingly, the bench directed the rest of the states to identify the buildings by February 28, 2018 and added that no further time will be

granted. The bench directed states to identify 10 most important cities or towns and complete the accessibility audit of 50 per cent of government buildings at these places by February 28, 2018, and complete retrofitting work by December 2019. Regarding Central government buildings, the bench said that the work be completed by August next year.

The bench referred to provision of the 2016 Act and said it provides for comprehensive accessibility to disabled persons in all modes of transport. “Therefore, it becomes the duty of the Union, states as well as Union Territories to ensure that all government buses are disabled friendly in accordance with the harmonized guidelines,” the 78-page judgment said, while asking authorities to ensure that even the private buses are made disabled-friendly. The court also directed the government to lay down a plan giving dates by which this task would be undertaken and asked it to furnish the same before it within three months. The court has listed the matter for directions after three months on receiving the reports in terms of its order.

SUGGESTIONS

In India, there is great need to invest more in disabled friendly infrastructure and facilities. Inaccessibility of infrastructure to any social group creates a risk of social exclusion, unable to participate in and contribute to society.

Disabled people need assistive technology which is a piece of equipment or product that is used to increase, maintain, or improve functional capabilities of individuals with disabilities. Accessibility audit is also an important tool to identify barriers and can help to improve accessibility for people with disabilities.

India needs to adopt such technologies into its infrastructure so as to help and make it easier for the disabled people as there are still a lot of public infrastructures where it gets very hard for the disabled people to easily access. These kinds of technologies can help people with disabilities to live more independently.

Prime Minister Narendra Modi had stated that all new government infrastructures' being created in the country will be disabled friendly. He was speaking at the Samajik Adhikarita Shivir to distribute aid and appliances to disabled persons at the Nav lakhi ground in the city.

Transport Infrastructure is crucial, as it is the means through which other services are accessed, including health, education, employment, etc. Without a universally accessible transport system people living with disabilities maybe excluded, marginalising them and breaching their human rights. Keeping this in mind it shows that Delhi metro has worked its way into creating a disabled friendly system.

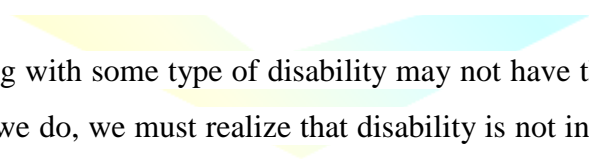
India has come a long way in becoming a disabled friendly country and still has a very long way to go but with a lot of improvements that need to be made and implemented. There is a hope that India will soon have incentive to come up with more disable friendly infrastructures in the near future.



CONCLUSION

Disabled people with extraordinary talents succeed and contribute to the world economy every day.

Not everyone is a genius, but a great many people can be extraordinary and I strongly believe that with the right support, many more people with disabilities can secure work, making a valuable contribution to society and leading a fulfilling life for themselves.



Although people living with some type of disability may not have the opportunity to live life in the same way that we do, we must realize that disability is not inability. Disability simply requires a little creativity and resourcefulness and a lot of hard work and determination. Society has a tendency to view individuals with disabilities as incapable of making contributions to the world. This perception, however, is anything but accurate. To live with a disability requires a certain amount of ingenious, and for that reason, people with disabilities deserve nothing but respect considering they have to work hard just to be able to live life in the same way that people without a disabilities do.

Some of the greatest contributions that have been made to this world have come from people living with various types of disabilities, proving that their creativity and ingenious are invaluable. Disabled or not, all people are capable of doing great things with the life they have been given. We are all unique in our own way, and we all possess the potential to have a positive impact on the world.

“Your success and happiness lies in you. Resolve to keep happy, and your joy and you shall form an invincible host against difficulties.”

-Helen Keller.

