

A study on disability and disables: legal rights and policies under the Indian constitution

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Abstract

According to the Census 2001, there are 2.19 crore persons with disabilities in India who constitute 2.13 percent of the total population. This includes persons with visual impairment, hearing impairment, speech impairment, locomotor impairment and mental disabilities. Seventy five per cent of persons with disabilities live in rural areas, 51 per cent of disabled population is illiterate and only 34 per cent are employed. The earlier emphasis on medical rehabilitation has now been replaced by an emphasis on social rehabilitation with right based approach. There has been an increasing recognition of abilities of persons with disabilities and emphasis on mainstreaming them in the society based on their capabilities.

The physically challenged persons are one of the excluded sections of the society and also they face number of problems in their daily life. In order to bring them in the main stream both the central as well as the state governments are introducing many welfare measures and schemes. To avail these welfare measures and the schemes, first of all they must aware about the same. The present study is conducted among the physically challenged persons about their problems in the daily life and also their awareness about various government welfare measures. The result of the present study indicated that the officials who are implementing the welfare measures know only few of the familiar welfare programmes of the physically challenged persons.

Keywords: disability, impairment, rehabilitation, physically challenged

1. Introduction

Disabled people are the people with physical or mental incapacities. Common physical disabilities include blindness, deafness and paralysis, while common mental disabilities include autism and the effects of Down's syndrome. Disabilities generally vary in severity. One person with Down's syndrome for instance may be very limited in terms of activities available while another person only relatively mildly affected may be able to hold down a job and be much more self-reliant.

There are four types of physically challenged, they are physically handicapped, Blind, Deaf, and Dump. The term disabled suggests a state of helplessness; something which falls short of the norm or standard viz., 'physical fitness'. Disability refers to any limitation experienced by the impaired individual in comparison with the activities of the unimpaired individual of similar age and sex.

The existing transportation and infrastructural facilities available to disabled are hardly adequate.

- Public transport related problem comprises the problems related to design of the vehicles (high and incompatible steps of vehicles from the platform level)
- Road constraints involve encroachment of bus stops by vendors, temporary structures and parked vehicles stopping of buses far from actual bus bays. Thus causing great inconvenience to them.
- Feeling of insecurity by the disabled while traveling in private buses.
- The disabled person is largely dependent on a family because they get economically and emotional support

from family. The disabled person also gets emotional support from friends and relatives and also gets encouragement.

The Government also as part of welfare measure introduced various welfare schemes to benefit physically challenged persons. However, there exists a gap in the utilization of the services. Hence, there is a need to study in detail about the problems, support systems and utilization of rehabilitation measures introduced by various agencies. As a matter of policy, Government has extended the rehabilitation programme in the field of medical, education, psychological support etc., for disabled persons.

The provisions of reservation of seats and the financial institutions providing loans and assistance have to collect necessary information in order to identify the nature for disability. While providing three wheelers, ambulatory services, armchairs, crutches etc., to disabled persons, the low-income groups disabled should be given priority.

Disabled people sometimes have difficulty doing things and other people may take for granted, such as travelling on public transport, climbing stairs or even using some household appliances. However, the greatest challenge that disabled people have had to face has been society's misperception that they are the "breed apart". Historically they have been pitied, ignored, vilified-even hidden away in institutions. Until the second half the 20th century, it was unfortunate today that the disabled people have some abilities, needs and interests as the rest of the populations. Nevertheless, discriminations continued to exist in certain important areas. Some employers were reluctant to take on or

promote disabled people; some landlords refused to give the land on rent to them; and courts sometimes deprived them of basic rights, including custody of their children. In recent decades, this situation has undergone some positive changes through adjustments in legislation and public attitudes. Also people with disabilities have lobbied for their rights as full citizens and productive individuals.

2. Literature Review

The relevant literature pertaining to the present investigation reports on problem faced by physically challenged persons and their rehabilitative measures. The main thrust of research is to understand the type of problems experienced by the physically challenged persons both within family and outside the family and their utilization of welfare measures which are implemented by both the central as well as the state government. Disability as a condition of impairment physically or mental is having an objective aspect that can be usually described by a physician (Coft and Tindall, 1974) ^[6]. Impairment is defined as any deviation from the normal which results in defective function, structure, organization or development of whole or any part of the individual (Sussaman, 1977) ^[24]. The term "crippled" or orthopedically "Handicapped" is restricted to one group among the disabled, i.e. those who have physical defect or deformity which causes an interference with the normal functioning of the bones, muscles and joints. (Jansson, 1957) ^[13]. As said earlier orthopedically handicapped are those whose physical capacity is impaired by the loss, deformity or paralysis of one or more limbs. They are the victims of diseases or injuries which after cure, leave behind a certain disability which is permanent and lifelong (Government of India, Planning Commission, 1951-61) ^[17]. The physically handicapped face problems as they attempt to adjust the demands of living in social environment. Their problems are not only those caused by their disability but also that of adjustment in a world that has apathetic or hostile attitude towards them magnifies their troubles and threatens their very existence as human beings. They face psychological, educational, employment and social problems. Among these, the most difficult is the adjustment to the hostile social forces in the society (Sharma, 1981) ^[22], disabled person suffers with the erroneous beliefs, which dry up their day-to-day way of life. It automatically generates a social resistance to accepting means of treating or ameliorating disability (Nirmala, 1977) ^[16]. The above literature gives an account of the problems experienced by the physically challenged and various welfare schemes introduced by the government. Yet very few empirical studies are available regarding the utilization of welfare services. In order to fill this research gap the present study being conducted among the physically challenged persons.

3. Methodology

The study is combination of both exploratory as well as descriptive in nature. The study is conducted within the urban limits of Puducherry and the beneficiaries are identified through the list available in the Social Welfare Department, Government of Puducherry and later 50 respondents are selected through accidental sampling method. The interview schedule is used as a tool to collect the data from the respondents. The schedule contains personal profile of the

physically challenged persons and their awareness on the various welfare schemes of the government.

4. Legal Rights for Disabled under the Indian Constitution

The Constitution of India applies uniformly to every legal citizen of India, whether they are healthy or disabled. Under the Constitution the disabled have been guaranteed the following Fundamental Rights:

1. The Constitution secures to the citizens, including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.
2. Article 15(1) enjoins on the Government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.
3. Article 15 (2) States that 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 to shops, public restaurants, hotels and places of public entertainment or in the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of government funds or dedicated to the use of the general public. Women and children and those belonging to any socially and educationally backward classes or the Scheduled Castes and Tribes can be given the benefit of special laws or special provisions made by the State. There shall be equality of opportunity for all citizens (including the disabled) in matters relating to employment or appointment to any office under the State.
4. No person including the disabled irrespective of his belonging can be treated as an untouchable. It would be an offence punishable in accordance with law as provided by Article 17 of the Constitution.
5. Every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution.
6. 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 (Article 23).
7. 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. Even a private contractor acting for the Government cannot engage children below 14 years of age in such employment.
8. 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.
9. No disabled person can be compelled to pay any taxes for the promotion and No disabled person will be deprived of the religious group.
10. No disabled person will be deprived of the right to the language, script or culture which he has or to which he belongs.

5. Data Analysis

| S. No. | State | Total Disabled Population | No. of Disabled Persons | | | | | | | |
|--------|------------------|---------------------------|-------------------------|---------|--------|----------|--------------------|----------------|-----------|---------------------|
| | | | Seeing | Hearing | Speech | Movement | Mental Retardation | Mental Illness | Any Other | Multiple Disability |
| 1 | Delhi | 234882 | 30124 | 34499 | 15094 | 67383 | 16338 | 10046 | 37013 | 24385 |
| 2 | Bihar | 2331009 | 549080 | 572163 | 170845 | 369577 | 89251 | 37521 | 431728 | 110844 |
| 3 | UP | 4157514 | 763988 | 1027835 | 266586 | 677713 | 181342 | 76603 | 946436 | 217011 |
| 4 | Uttarakhand | 185272 | 29107 | 37681 | 12348 | 36996 | 11450 | 6443 | 30723 | 20524 |
| 5 | Rajasthan | 1563694 | 314618 | 218873 | 69484 | 427364 | 81389 | 41047 | 199696 | 211223 |
| 6 | Himachal Pradesh | 155316 | 26076 | 26700 | 8278 | 32550 | 8986 | 5166 | 29024 | 18536 |
| 7 | Haryana | 546374 | 82702 | 115527 | 21787 | 116026 | 30070 | 16191 | 116821 | 47250 |
| 8 | MP | 1551931 | 270751 | 267361 | 69324 | 404738 | 77803 | 39513 | 295035 | 127406 |
| 9 | Chhattisgarh | 624937 | 111169 | 92315 | 28262 | 190328 | 33171 | 20832 | 76903 | 71957 |
| 10 | Gujarat | 1092302 | 214150 | 190675 | 60332 | 245879 | 66393 | 42037 | 197725 | 75111 |
| | TOTAL | 12443231 | 2391765 | 2583629 | 722340 | 2568554 | 596193 | 295399 | 2361104 | 924247 |

Source: Ministry of Social Justice and Empowerment, Government of India

Among the 10 states researched, we can see that Uttar Pradesh has the largest population of disabled people (4157514) followed by Bihar (2331009) and then comes Rajasthan (1563694). From the following data we can infer that population of disabled persons in Uttar Pradesh is 43% up in comparison to that of Bihar.

Social Welfare department organizes tour every year for three to four days for the physically challenged persons. Only nine respondents have attended such tours. Except one all respondents have received financial assistance, two fifth of respondents have received the identity card but many of them feel it was not much use. All respondents have received 10 kgs. Of rice per month but they complained that it was not regular. One fourth of the respondents have participated in awareness camp and four respondents have utilized welfare schemes for the professional training for typewriting and computer course. Three fourth of the respondents came to know about various welfare scheme from the Anganwadi workers, Two third of respondents stated that they follow cinema actors as role models in their life. Two fifth of respondents read books during the free time.

In the light of the above analysis, it is possible to outline certain basic tenets in planning for rehabilitation. Respondents express that increase in amount of financial assistance and scholarships would be beneficial. Government should also take steps to create awareness about the welfare schemes through the Anganwadi workers, Television, Radio, Newspapers. Respondents also opine that it would be beneficial if government give money for travel rather than the bus pass since they have to wait only for government buses to travel. Suitable self-employment opportunities should be provided for all physically challenged person Rehabilitation attempt should be functional and should enable the physically challenged persons to be economically independent, provide capacity, building and integrate them into the society.

Rehabilitation should be viewed as total community service involving a combination of preventive, curative and servicing aspects. Government should ensure that every child with a disability has access to a free education in an appropriate environment until he /she attains 18 years of age. It is observed that the physically challenged people do not consider disability as a problem. They are confident of performing jobs but only when they are depressed. They feel that they are unable do the work.

6. Conclusions

Most of the officials and Anganwadi workers are not aware of the various government schemes which introduced for the welfare of the physically challenged. In general, they are only aware about financial assistance and provisions of 10 Kg. of rice per month but they are not aware of other types of welfare schemes and measures. Therefore it is necessary for the officials and other service providers must know the various welfare schemes of the physically challenged and that in turn help them to introduce the same to the beneficiaries. The new schemes should be given sufficient publicity and awareness campaigns should be conducted at various level. The respondents also stated that it takes more time for processing of their requests and availing benefits. Therefore a genuine attempt has to be made to remove any discrimination in sharing the development benefits, there by integrating this group into society's mainstream.

7. References

1. Addlakha R. Disability-Linked Deprivation: A Neglected Dimension of Social Exclusion in India. In Contemporary Perspectives on Disability in India: Exploring the Linkages between Law, Gender and Experience. Saarbrücken, Germany: LAP LAMBERT Academic Publishing, 2011.
2. Albrecht GL, Devlieger PJ. The disability paradox: high quality of life against all odds. Social Science & Medicine.
3. Atijosan O, *et al.* The orthopaedic needs of children in Rwanda: results from a national survey and orthopaedic service implications. Journal of Paediatric Orthopaedics.
4. Bhambani, M. Societal Responses to Women with Disabilities in India. In A. Hans, & A. Patri (Eds.), Women, Disability and Identity. New Delhi: Sage Publications. 2003, 76-88.
5. Caulfield LE, *et al.* Stunting, wasting and micronutrient deficiency disorders. In: Jamison DT *et al.*, eds. Disease control priorities in developing countries. Washington, Oxford University Press and World Bank. 2006, 551-567.
6. Coft L, Tindall R. Definition of the Handicap: As a Function of Age and Sex. Psychological Report. 1974; 119(98):10.

7. Coleridge P, Simonnot C, Steverlynck D. Study of disability in EC Development Cooperation. Brussels, European Commission, 2010.
8. Cross H. Interventions to address the stigma associated with leprosy: a perspective on the issues. *Psychology, Health & Medicine*.
9. Dalal AK, Pande N. Cultural Beliefs and Family Care of the Children with Disability. *Psychology and Developing Societies*. 1999; 11(1):55-75. Doi: 10.1177/097133369901100103.
10. Dhar A. As RTE turns two, monitoring division sans staff. Retrieved November 15, 2012, from The Hindu, 2012. <http://www.thehindu.com/news/as-rte-turns-two-monitoring-division-sansstaff/article3273840.ece>.
11. Emerson E, *et al*. Socio-economic position, household composition, health status and indicators of the well-being of mothers of children with and without intellectual disabilities.
12. Implementing the internationally agreed goals and commitments in regard to gender equality and empowerment of women. New York, United Nations, Economic and Social Council, 2010.
13. Jansson, K. The Social and Economic Basis and Objectives Rehabilitation, Seminar on Rehabilitation of the Physically Handicapped for Participants from Asia and the Far East, 1957.
14. Mannan H, Turnbull A. A review of community based rehabilitation evaluations: Quality of life as an outcome measure for future evaluations. *Asia Pacific Disability Rehabilitation Journal*.
15. Mwendwa TN, Murangira A, Lang R. Mainstreaming the rights of persons with disabilities in national development frameworks. *Journal of International Development*.
16. Nirmala, K. Existing Social Barriers and Community Attitudes and Law Concerning the Disabled, Seminar Report on Legislation Concerning the Disabled. Indian Council of Social Work, Mumbai. 1977, 15.
17. Planning Commission, Government of India. Plans and prospects of Social Welfare in India. 1951-61, 53.
18. Quinn G, *et al*. The current use and future potential of United Nations human rights instruments in the context of disability. New York and Geneva, United Nations, 2002b (<http://www.icrpd.net/ratification/documents/en/Extras/Quinn%20Degener%20study%20for%20OHCHR.pdf>)
19. Rao I. Equity to women with disabilities in India. Bangalore, CBR Network, 2004. <http://v1.dpi.org/lang-en/resources/details.php?page=90>.
20. Sartorius N. Lessons from a 10-year global programme against stigma and discrimination because of an illness. *Psychology, Health & Medicine*.
21. Sen A. Inequality re-examined. New York and Cambridge, Russell Sage and Harvard University Press, 1992.
22. Sharma SL. Changing Social Structure and Status of the Disabled. *Open Hand*. 1981; 11(6):21.
23. Spencer MS. A Social Worker's Reflections on Power, Privilege and Oppression. *Social Work*. 2008; 53(2):99-101.
24. Sussaman HB. Dependent Disabled and Dependent Poor: Similarity of Conceptual Issues (Ed.) Social and Psychological Aspects of Disability. London University Park Press. 1977, 247-59.
25. Thomas Jr RR. From Affirming Action to Affirming Diversity. In *Harvard Business Review on Managing Diversity*. Boston, USA: Harvard Business School Press. 2001, 1-31.
26. Vernon A, Swain J. Theorizing divisions and hierarchies: Towards a commonality or diversity. In C. Barnes, M. Oliver, & L. Barton (Eds.), *Disability Studies Today*. Cambridge, Oxford, MA: Polity Press. 2002, 77-97.
27. Wang CC. Portraying stigmatized conditions: disabling images in public health. *Journal of Health Communication*.