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# **SOCIAL-LEGAL ANALYSIS CONCERNING THE RIGHTS OF THE DISABLED**

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## **ABSTRACT**

Disabled person by virtue of being human have the right to enjoy human privileges to life, freedom, parity, safety, and dignity. The rights of an individual with disabilities have been identified more usually throughout the progress of the international human right laws.

In recent years, there happened a revolutionary change in approach, globally, to guarantee that individuals with disabilities enjoy the same standards of equality, rights and dignity as everyone else. The approach of the global community towards the rights of disabled persons has been transformed as a fundamental human rights issue, from a mere welfare or charity measure. This study is briefly related to those major laws and their enforcement which has been enacted to protect the rights of disabled people. The study tried to examine the International Instruments, National legislation and role of judiciary regarding the Rights of Disabled persons.

The study also compares the provisions pertaining to the protection given to the disabled in legal systems in India. There are enough statutory provisions to safeguard the interests of individuals with disability both countrywide and globally, the execution of these provisions are constrained by certain loopholes like insensitiveness of implementing Authorities, social apathy, high cost, lack of awareness, and stereotyping of abilities. Finally, the study tried to cross check the execution of law, the deficiencies in accomplishment and to determine the causes for not realizing the purpose of the laws associating to socially disabled persons in India.

## INTRODUCTION

The rights of person with disabilities have been recognize more normally throughout the development of the international human rights law. The importance of ensuring the rights of disabled persons in India cannot be overstated, as it is a fundamental aspect of upholding humandignity, equality, and social justice. Every individual, regardless of ability or disability, possesses inherent dignity and rights. Ensuring the rights of disabled persons reaffirms their status as equal members of society, deserving of respect, autonomy, and opportunities for self-determination.

The approach of the global community towards the rights of disabled persons has been transformed as a fundamental human rights issue, from a mere welfare or charity measure<sup>1</sup>.

The social and legal rights of individuals with disabilities, including those with social disabilities, vary by country and region. Individuals with disabilities have the right to be treated equally and fairly in all aspects of life, including employment, education, healthcare, and social services. Discrimination based on disability is prohibited in many countries' laws.

Access to public spaces, transportation, buildings, information, and communication should be ensured to accommodate individuals with disabilities. This includes physical accessibility as well as making information available in formats accessible to people with various disabilities, such as braille, large print, or audio formats. Individuals with disabilities have the right to receive an education on an equal basis with others. This may involve inclusive education within mainstream schools or specialized education services tailored to their needs. Employment discrimination based on disability is often prohibited, and reasonable accommodations should be provided to enable individuals with disabilities to perform their job duties. Individuals with disabilities have the right to access healthcare services without discrimination. This includes access to medical treatment, rehabilitation services, assistive devices, and other necessary supports.

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<sup>1</sup> Jayna Kothari, The UN Convention on Rights of Persons with Disabilities: An Engine for Law Reform in India, EPW (2010)

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People with disabilities have the right to live independently and participate fully in their communities. This may involve access to support services, housing options that accommodate their needs, and opportunities for social inclusion and participation<sup>2</sup>.

Many countries have laws and regulations specifically designed to protect the rights of individuals with disabilities. Individuals with disabilities have the right to participate fully in society and to have their voices heard in decisions that affect them. This includes opportunities for participation in political processes, community activities, and social events. Efforts are being made in many jurisdictions to recognize and support the individuals with disabilities so that they have the right to access social security benefits and support services to ensure their well-being and quality of life. Advocacy and activism play crucial roles in promoting and protecting the rights of individuals with disabilities.

### **MEANING OF DISABILITY**

As defined by the World Health Organization Disability “is an umbrella term, covering impairments, activity limitations, and participation restrictions. Impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Thus disability is a complex phenomenon, reflecting an interaction between features of a person’s body and features of the society in which he or she lives<sup>3</sup>

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<sup>2</sup> P. Sivakami and S. Muralidharan, *Social Inclusion and Justice for Persons with Disabilities: A Human Rights Perspective* (Palgrave Macmillan, 2016)

<sup>3</sup><http://www.who.int/topics/disabilities/en/>

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Disability generally refers to a physical, sensory, cognitive, or developmental impairment that may limit an individual's ability to perform certain tasks or activities. It can be a temporary or permanent condition, and it may affect a person's mobility, communication, cognition, or other aspects of functioning.

The Persons with Disabilities Act of 1995 defines a disabled person as an individual certified by a medical authority to have a disability of not less than forty percent<sup>4</sup>.

The NSSO considered disability as “Any restriction or lack of abilities to perform an activity in the manner or within the range considered normal for human beings.

## **Human Rights**

### **Universal Declaration of Human Rights (UDHR)**

UDHR promises to all economic, societal, political, traditional and civic rights that strengthen a life free from want and fear.

#### **Articles under UDHR:**

Article 1 and 2 affirm the principles of human dignity, equality, and brotherhood.

Article 12-17 encompass freedoms such as movement, nationality, marriage, family, and property ownership.

Article 18-21 address spiritual and religious freedoms, such as freedom of thought, conscience, opinion, assembly, association, and participation in government.

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<sup>4</sup> <http://www.who.int/topics/disabilities/en/>

Article 22-27 cover rights related to work, rest, leisure, standard of living, and education.

Finally, Articles 28-30 emphasize that rights are accompanied by responsibilities and must not be used to undermine the principles of UN.

Constitution of India was significantly influenced by UDHR, particularly in its Parts III and IV, which resemble the UDHR in guaranteeing fundamental rights and outlining principles of state policy. Additionally, the preamble reflects the aspirations for social, economic, political, and justice-oriented goals similar to those outlined in the UDHR, while Articles 28 and 29 of the UDHR resemble the concept of Fundamental Duties.<sup>5</sup>

### **INTERNATIONAL PERSPECTIVE-RIGHTS OF DISABLED PERSONS**

From an international perspective, the rights of disabled persons are addressed and protected through various treaties, conventions, and initiatives. Adopted in 2006, the CRPD is a comprehensive human rights treaty that specifically focuses on the rights of persons with disabilities. It recognizes disabled individuals as rights holders and outlines their entitlement to civil, political, economic, social, and cultural rights on an equal basis with others. The CRPD emphasizes principles such as non-discrimination, accessibility, inclusion, and full participation in society.

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While the UDHR does not specifically mention disability, its principles of equality, nondiscrimination, and the right to life, liberty, and security of person apply to all individuals, including disabled persons.

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<sup>5</sup>The Persons with Disability Act 1995

The WHO has developed a Disability Action Plan that aims to promote the health and well-being of people with disabilities, reduce inequalities, and ensure their full inclusion in society. The plan focuses on areas such as health services, rehabilitation, assistive technology, and community-based initiatives. The United Nations' SDGs include targets related to disability rights, such as ensuring inclusive education, promoting decent work for all, and reducing inequalities. Efforts to promote equal opportunities for persons with disabilities involve removing barriers to access and creating inclusive environments that enable their full participation and contribution to society.

The international perspective on the rights of disabled persons emphasizes the importance of recognizing their inherent dignity, promoting their full participation in society, and ensuring equal opportunities and access to services and resources. It reflects a commitment to upholding human rights principles and building inclusive societies where all individuals can thrive.

## **LEGAL FRAMEWORK AND RIGHTS OF DISABLED PERSONS IN INDIA**

### **CONSTITUTIONAL PROVISIONS ON DISABILITY IN INDIA :**

In India, the Constitution contains several provisions aimed at promoting the rights and welfare of disabled persons. These provisions ensure their inclusion, equality, and access to opportunities. Here are the key constitutional provisions related to disabled persons in India:

#### Article 14: Right to Equality:

Article 14 guarantees the right to equality before the law and equal protection of the laws to all persons, including disabled individuals. It prohibits discrimination on the grounds of disability and ensures that disabled persons are treated equally under the law.

#### Article 15: Prohibition of Discrimination:

Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. The provision has been interpreted broadly to include disability as a prohibited ground of

discrimination, ensuring that disabled individuals are protected from discrimination in various spheres of life.

**Article 21: Right to Life and Personal Liberty:**

Article 21 guarantees the right to life and personal liberty to all persons. This provision has been interpreted to include the right to live with dignity, which encompasses the rights of disabled individuals to access healthcare, education, employment, and other basic necessities essential for a dignified life.<sup>6</sup>

**Article 41: Right to Public Assistance and Social Security:**

Article 41 of the Directive Principles of State Policy emphasizes the obligation of the State to provide public assistance and social security to individuals who are unable to maintain themselves or are in need of support. This provision is particularly relevant for disabled persons who may require additional support due to their disability.

**Article 243: Reservation of Seats in Panchayats:**

States have the power to extend reservation to other categories, including disabled persons, to ensure their representation in local governance.

**Article 243D: Reservation of Seats in Municipalities:**

Similar to Article 243, Article 243D provides for reservation of seats in Municipalities for Scheduled Castes, Scheduled Tribes, and women.

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<sup>6</sup> Awadhesh Kumar Singh, Rights of the Disabled: Perspective, Legal Protection and Issues. (Serials Publication, 2012)

These constitutional provisions lay the foundation for the protection and promotion of the rights of disabled persons in India. They underscore the commitment of the Indian state to ensure equality, non-discrimination, and social inclusion for disabled individuals, as enshrined in the Constitution.<sup>7</sup>

### **National Policy for Persons with Disabilities**

The National Policy for Persons with Disabilities (PWDs) in India was adopted in 2006 with the aim of ensuring equal opportunities, social integration, and empowerment of persons with disabilities. Here are the key highlights and objectives of the National Policy for Persons with Disabilities 2006:

The policy broadens the definition of disability beyond physical impairments to include sensory, mental, and intellectual disabilities. It recognizes the diversity of disabilities and the need for a comprehensive approach to address the challenges faced by persons with disabilities.

The policy focuses on empowerment and rehabilitation measures to enable persons with disabilities to lead independent and productive lives. It emphasizes the provision of education, vocational training, assistive devices, and support services to enhance the capabilities and skills of persons with disabilities.

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<sup>7</sup> Dr.M.Padmaja, Human rights & disabled children in constitutional perspective, Asia-pacific journal of social science, vol.II(1), Jan-Jun 2010

## **Scheme of National Awards for Empowerment of Persons with Disabilities**

It is aimed at recognizing and honoring the achievements and contributions of individuals and institutions in the field of disability empowerment.

## **THE RIGHTS OF PERSONS WITH DISABILITIES BILL, 2014**

The Rights of Persons with Disabilities Bill, 2014 was a significant legislative initiative in India aimed at safeguarding the rights and enhancing the welfare of persons with disabilities. It aimed to replace the existing Persons with Disabilities Act, 1995.

### **Expanded Definition of Disability:**

The Bill expanded the definition of disability from the existing seven categories to twenty-one categories, covering a wider range of disabilities including physical, intellectual, mental, and sensory disabilities.

## **EDUCATION LAW FOR THE DISABLED**

In India, education laws for the disabled are aimed at ensuring equal opportunities and access to education for all, including persons with disabilities. Two key articles in this regard are Article 29(2) and Article 45 of the Constitution of India.

Additionally, the Sarva Shiksha Abhiyan (SSA) program, which aims to achieve universalization of elementary education, includes provisions for the education of children with disabilities and supports the creation of inclusive educational environments.

## **INCOME TAX CONCESSIONS**

In India, there are several income tax concessions and benefits available to disabled persons to provide financial relief and support. These concessions are aimed at promoting the economic well-being and financial independence of individuals with disabilities. Here are some of the key income tax concessions for disabled persons in India:

Deduction under Section 80U:

Section 80U<sup>8</sup> allows disabled individuals to claim a deduction for expenses incurred on themselves or their dependents with disabilities.

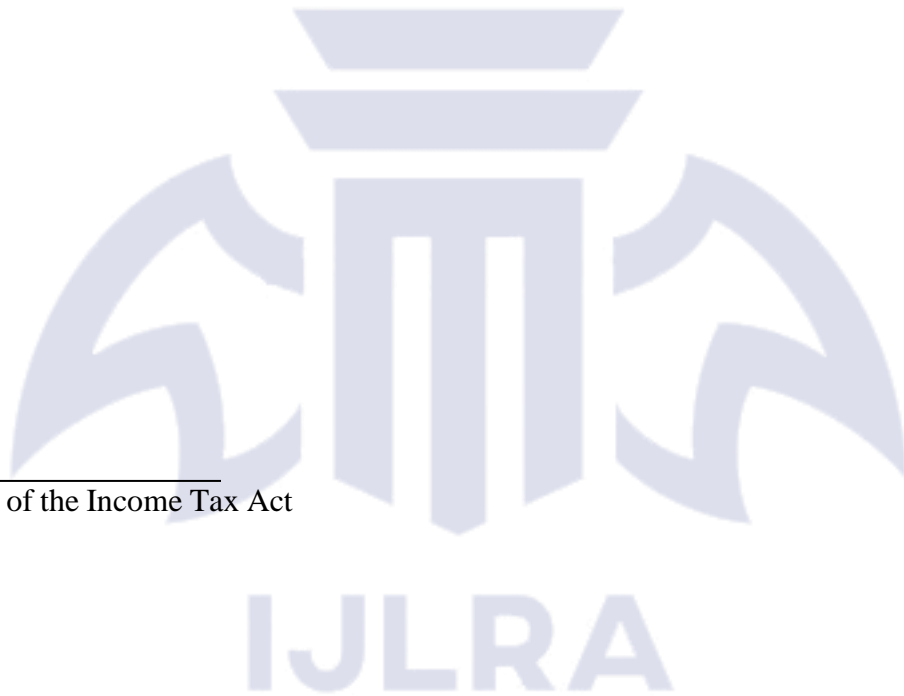
Deduction under Section 80DD:

Section 80DD of the Income Tax Act allows individuals to claim a deduction for expenses incurred on the maintenance and medical treatment of a dependent with a disability.

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<sup>8</sup> Section 80U of the Income Tax Act



## JUDICIAL APPROACH

Deaf Employees Welfare Association v Union of India<sup>9</sup> is a landmark case in Indian jurisprudence concerning the rights of deaf employees. In this case, the DEWA, representing the interests of deaf individuals, filed a petition against the Union of India, asserting that the lack of adequate provisions for the employment and welfare of deaf individuals violated their fundamental rights guaranteed under the Constitution of India.

The case primarily focused on the right to equality and equal opportunity in employment, as well as the right to life and personal liberty, which includes the right to live with dignity and pursue livelihood without discrimination. The Association argued that the absence of reasonable accommodations and facilities for deaf individuals in the workplace amounted to discrimination and deprived them of their constitutional rights.

The court's decision in this case had significant implications for the rights of persons with disabilities in India, particularly in the context of employment. It emphasized the duty of the government and employers to provide reasonable accommodations and ensure equal opportunities for individuals with disabilities, including those who are deaf. The outcome of the case likely led to the implementation of policies and measures aimed at promoting the employment and welfare of deaf individuals, such as the provision of sign language interpreters, accessible communication technologies, and training programs tailored to their needs.

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<sup>9</sup> Civil Petition 107 of 2011, decided on December 12, 2013.

Suchita Srivastava v. Chandigarh Administration<sup>10</sup>

This is a landmark case in Indian jurisprudence related to reproductive rights and women's autonomy. The case was heard by the Supreme Court Of India. In this case, the petitioner, Suchita Srivastava, a pregnant woman, approached the court seeking permission for the termination of her pregnancy on the grounds of fetal abnormalities. However, her request was denied by the Chandigarh Administration, citing the Medical Termination of Pregnancy Act, 1971, which prohibited abortions after 20 weeks of pregnancy except under certain circumstances. The Supreme Court, in its judgment delivered in 2009, recognized a woman's right to make decisions regarding her own body, including the right to terminate a pregnancy if it poses a threat to her physical or mental health. The court emphasized the need to balance the state's interest in protecting the life of the fetus with the woman's right to autonomy and bodily integrity.

The judgment affirmed that women have the right to access safe and legal abortion services in cases where continuing the pregnancy would endanger their life or health. This case has been instrumental in shaping the legal framework surrounding reproductive rights and access to abortion in India.

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<sup>10</sup> 2009 (9) SCC 1.

Ritesh Sinha v. State Of Haryana<sup>11</sup>

In this case, a significant break request was passed by the High Court Of Punjab and Haryana and the matter is as yet forthcoming. The solicitor was a person with locomotor handicap and was selected as a clerk by the District and Meetings Judge, Karnal in the post saved for physically disabled persons. From that point his services were ended because of his powerlessness to play out the obligations as an expected clerk to put down the office notes and keep up with accounts in his own hands.

The court held that as the solicitor was well conversant with computer tasks and that there could be a lot of work done by him like readiness of everyday cause arrangements of all courts, certified copies of decisions, etc., which could be doled out to a computer sagacious person like him. The court directed that meanwhile, his excusal request would remain, and the respondents were directed to reestablish the candidate in service with all advantages. The court even directed the respondents to quickly construct an incline/slant so the candidate could enter his office and a compliance report to be submitted to court about something similar. Further, it directed the respondents to see that a congenial air is created at work so the Candidate is made a fundamental piece of the standard workforce.

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<sup>11</sup> CWP NO. 3087 OF 2011

Union of India v National Federation of the Blind<sup>12</sup>

This case originated as an appeal from a ruling by the Delhi High Court. The appeal was prompted by a public interest petition aimed at enforcing Section 33 of the Act. The petition alleged that the appellants had not fulfilled their obligation to reserve positions for blind and visually impaired individuals. Consequently, these individuals were effectively excluded from the government recruitment process as mandated by the Act.

The National Federation of the Blind filed a petition against the Union of India challenging the government's failure to implement the reservation policy effectively. The Supreme Court of India delivered a significant judgment in this case, emphasizing the importance of providing equal opportunities to PWDs in employment. The court directed the government to ensure that the reservation policy for PWDs is implemented effectively and efficiently. It also issued guidelines for the proper implementation of reservation, including the identification of suitable posts, relaxation of standards, and provision of necessary facilities and assistive devices. This case has had a significant impact on the rights of persons with disabilities in India, setting important precedents for their inclusion and equal participation in various spheres of life, particularly in employment.

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<sup>12</sup> (2013)2 SCC 772.

## CONCLUSION

The conclusion on the rights of socially disabled persons underscores the critical importance of upholding their fundamental human rights and ensuring their full inclusion and participation in society. Socially disabled individuals, including those with physical disabilities, mental health conditions, or other impairments that affect their social interactions, deserve equal opportunities, dignity, and respect.

Socially disabled persons have the same rights as everyone else and should not face discrimination or prejudice based on their disabilities. Efforts must be made to dismantle societal barriers that hinder their full participation in various aspects of life. Governments, institutions, and communities should adopt inclusive policies and practices that promote accessibility, accommodation, and support for socially disabled individuals. This includes ensuring physical accessibility, providing reasonable accommodations, and offering support services tailored to their needs.

Socially disabled persons should be empowered to actively participate in decision making processes that affect their lives. Their voices should be heard, and their perspectives should be considered in all aspects of policy making, planning, and implementation. Access to quality education and employment opportunities is essential for the social inclusion and economic empowerment of socially disabled individuals. Efforts should be made to eliminate barriers to education and employment and provide necessary support for skill development and vocational training.

Access to healthcare services, including mental health support, rehabilitation, and social services, is crucial for the well-being of socially disabled persons. Governments and relevant stakeholders should ensure the availability and affordability of these services and support networks.

Promoting awareness and sensitization about the rights and needs of socially disabled individuals is essential for challenging stereotypes, reducing stigma, and fostering a more inclusive society.

Education campaigns and training initiatives can help promote understanding, empathy, and acceptance.

The rights of socially disabled persons must be upheld, protected, and promoted in all spheres of society. By recognizing their inherent dignity and worth, addressing systemic barriers, and fostering inclusivity, we can create a more equitable and compassionate world for all individuals, regardless of their social abilities or disabilities.