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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

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COMPARATIVE ANALYSIS BETWEEN INDIA AND THE EU OF THE JURISPRUDENCE ON DISABILITY VIS A VIS NON-DISCRIMINATION.

AUTHORED BY - ATULYA SINHA

Introduction

In recent years, there has been a global emphasis on empowering individuals. Several governments have made equality and equal chances for all individuals their main priorities. This pattern hasn't been as evident in the daily lives of people with disabilities. People with disabilities have always existed, similar to other minority groups that have encountered prejudice, separation, and discrimination in society. Disability at work, in long-standing reality, has been disregarded as an issue by lawmakers everywhere in the world. However, a growing understanding of rights for disabled people and challenges has started to come into existence.

We can say that it is very difficult for a disabled individual to participate in specific economic endeavours due to the type and intensity of their impairment, which can separate them from people belonging to other minority groups, including people of different races. Despite this fact, a significant number of disabled people are capable of engaging with the general public the same as normal people, and it is very important for the world to highlight the skills of these people rather than focusing on their disabilities. There are several explanations that depict the marginalization and prejudice experienced by people dealing with disabilities. For instance, in the workplace, discrimination and malice on the part of both managers and workers might be the basis for it. This clarifies the fact that the stereotype of impaired people's talents is a more reasonable explanation. Moreover, we can further focus on the perceptions and views of society, which tell us that the sense of discomfort that physically fit people experience while interacting with the disabled provides an expression of indifference and unfamiliarity rather than explicit discrimination. The section of disabled people requires equal chances and opportunities and should not be treated as a means of charity for reaching maximum achievement and success. This needs to be acknowledged by society.¹

¹ Harme-Truter, *Disability: Discrimination and Equal Opportunities: a Comparative Labour Law Study*, (first published 1998, ProQuest Dissertations)

Laws pertaining to non-discrimination and disability in the European Union

After the racial equality directive, a second set of legislation was adopted by the European community, which is the employment equality directive of 2000 based on Article 13 EC (Treaty on European Union). In contrast to the Racial Equality Directive and the Sex Discrimination Directives, the Employment Equality Directive aimed at banning discrimination on the basis of a variety of factors, such as age, gender identity, religion or belief, and disability. However, this directive lacks clarification on the specific extent of the legislation concerning disabilities and fails to provide an explanation of disability, which is consistent with the generic perspective adopted by community non-discrimination directives.

The two situations involving disability under the Directive that were initially referred to the European Court of Justice are a result of the national courts' inability to resolve the issue of who gets protection from discrimination on the basis of disability within the Directive. Additionally, studies conducted by the European Network of Legal Professionals concerning the sectors of non-discrimination at the time show that various member nations have defined the same category of people differently when it comes to their national legal rights against discrimination based on disability, which has resulted in various measures of safeguarding across the European Union.

Furthermore, it is essential to keep in mind the fact that the Employment Equality Directive guarantees the implementation of adequate arrangements for people with disabilities. Corporations are required to provide reasonable accommodations or make reasonable modifications that satisfy the requirements of people with disabilities, so that will make sure that these individuals do not become an unreasonable burden on other employees. Article 5 of the Directive complies with current national disability employment non-discrimination laws that acknowledge the importance of dealing with workplace policies and other obstacles that hinder or eliminate disabled people, with the goal of guaranteeing equal opportunities for all. In the context of the ability of member states to execute the Directive, Article 5 appears to be the most difficult aspect. Also, there is misunderstanding about what constitutes a "disproportionate burden" and "reasonableness" in relation to adequate modifications. Consequently, the enactment of this article has presented challenges for many member nations. An examination of national laws indicates a range of solutions and approaches to implementing the need to provide adequate accommodations.

Guidelines for Rehabilitation and disability in the European Union

According to Article 7(1) of the Employment Equality Directive, member states can preserve or implement specific actions to avoid or make up for difficulties associated with any of the reasons mentioned by the Directive without violating the objective of fair treatment. Furthermore, the Directive's Article 7(2) offers greater safeguards for beneficial and positive behaviour with regard to individuals with disabilities. It declares that when it comes to people with disabilities, the rule of equal treatment is not a substitute for the rights of member states in order to uphold or enact laws protecting the well-being of employees at work or to take other actions targeted at establishing or preserving policies or resources that preserve or facilitate their acceptance into the workforce.

Coherence between employment for disabled people and the Employment Equality Directive is another possibly challenging problem. There are quotas in several EU member states, in fact, quotas are considered an essential component of disability hiring strategies in nations like Germany and France. The minimum standard set by the European Court of Justice (ECJ) in Kalanke, which included challenging a favourable engagement policy that aimed at women, was not applicable to such programs. Under those circumstances, the Court effectively disallowed gender-based employment quotas.²

Protection of rights for disabled people under the UN Convention on the rights of persons with disabilities

Despite their significant contributions to European civilization, people with disabilities frequently encounter difficulties that restrict them from engaging with everyday life and enjoying equal treatment. Eliminating the barriers preventing the 80 million persons with disabilities who live in the EU from fully and effectively participating is necessary to realize the fundamental EU principles of respect, independence, fairness, and engagement.

The European Union's Convention of Fundamental Rights forbids discrimination based on a person's disability and acknowledges the right of those who have disabilities to receive benefits that would guarantee freedom, economic and professional acceptance, and engagement in society as a whole. Therefore, the rights of disabled people are safeguarded by the UN Convention on

² <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

the Rights of Persons with Disabilities (CRPD).

Decisions held by the European Court of Justice with respect to different aspects of disability

The court was directed to consider who should be classified as disabled for the objectives of the Employment Equality Directive pertaining to the requirements of the Directive's disability.

Here, we can take reference to a case, Chacon Navas vs. Eurest Colectividades (2006) C-13/05, [2006] IRLR 706, [2007] All ER (EC) 59, where Ms. Chacon Navas was unable to work for her Spanish employer, Eurest Colectividades foe, due to her illness. After a particular period of absence from work, she was fired, and she opposed the decision by contending that it was violative of the Employment Equality Directive. However, the national court addressed a pair of inquiries to the ECJ and ruled that the proceeding would not take place further. The court ultimately questioned whether or not the Directive's ban on discrimination based on disability also protected an employee who had been fired for no other reason than that she was ill. In addition, the court inquired as to whether illness might be included in the broad range of justified reasons included by the directive or not.

In response, the ECJ clarified what was meant to be considered a disability for the intent of the Directive and found that illness could not be included in the group of protected categories in order to bring it under the jurisdiction of the directive.³

Structure of the Indian Constitution against discrimination on the basis of disability

The Indian constitution assures the right to equality, freedom of expression, including belief, faith, and thought, equality on the basis of social standing, opportunity, and the promotion of brotherhood to all the lawful citizens of India, regardless of their level of disability, be it mental or physical. Article 14 of the Indian Constitution ensures that no individual shall be deprived of equal treatment before the law protecting the rights of the underprivileged segments of the community. Articles of the Indian Constitution that are essential and give legal protection to

³ <https://tandis.odihr.pl/bitstream/20.500.12389/20813/1/06267.pdf>

everyone, including the disabled, are Article 15(1), since it forbids the authorities from treating any Indian citizen as disabled or discriminating against them on the basis of their religion, race, caste, sex, or place of birth. Article 15(2) plays an important role here since it explicitly mentions that people with disabilities should not be treated as vulnerable groups and denied the rights that are given to a normal person. There should not be any limitations for disabled people with regard to their ability to visit public places or with regard to the usage of resources that are either entirely or partially funded by government agencies or intended for public enjoyment. According to Article 17, considering any individual as untouchable, including the disabled, will be considered an offense as per the law. Every person, including the disabled, is guaranteed the right to life and liberty, which is assured by Article 21. Human trafficking of people, including the disabled, is forbidden, and acts of forced labor such as begging are also deemed illegal and are subject to legal penalties as per Article 23. Everyone has the right to education, even those with disabilities. No citizen shall be excluded from enrolling in any government-owned school or from obtaining financial assistance as per Article 29(2). Lastly, every person suffering from a disability is guaranteed the right to move to court and exercise the rights assured by Article 32 of the Indian Constitution.

Acts pertaining to disability in India

The Rehabilitation Council of India Act 1992 aims to control competent instruction in rehabilitation and provides the foundation for a Central Rehabilitation Record. The Rehabilitation Council of India Act was enacted by the parliament and implemented in 1993, with the objective of providing the council with legislative authority so it could execute its functions efficiently. However, there was an amendment in the act by which the supplementary duty of fostering research was given to the council. Here, the council's primary responsibilities involve recognizing the credentials awarded to rehabilitation specialists by Indian universities and confirming the validity of credentials from organizations located outside India.

The Persons with Disabilities Act of 1995 protects the rights and entitlements of disabled people. In addition to other rights and entitlements, this act offers 3% reservations for disabled individuals who are blind or have low eyesight, suffer from hearing loss, or have neurological disorders in government educational institutions, administrative positions, and reduction of poverty schemes. The legislation's precise goals involve preventing and identifying disabilities promptly. When it comes to education, more than 3% of seats are reserved for impaired students in all government-

run educational facilities. When it comes to employment, it offers a 3% reserve policy; any handicapped positions that remain unfilled after a period of three years will be transferred over and replaced by an unaffected individual.

There are various strategies that provide instruction and social security, including lowering the minimum age restriction, regulating work, and enacting laws regarding safety and health in order to guarantee that people with disabilities are employed. Here, equal treatment also focuses on the factual preferential distribution of land for specific purposes by government entities.⁴

Rights of persons with Disabilities Act, 2016

This act was passed in 2016 and was implemented on April 19, 2017. It provided persons with disabilities equal rights and protection in the eyes of the law, the same as a normal individual. This act guarantees that every disabled person has the opportunity to lead a peaceful life without any sort of bias and enjoy equal chances to succeed in life. India has also signed UNCRPD (the Convention on the Rights of Persons with Disabilities) with the United Nations, which integrates the rights guaranteed to disabled people by the UN.

The legislation acknowledges a number of disability groups and offers equal treatment and development initiatives. It ensures that they are entitled to equality, respect, and dignity and requires the establishment of an atmosphere that supports their full abilities. The act places a major priority on the availability of appropriate facilities, including enjoyment of public areas and modes of transportation.

In addition, the act supports the creation of laws and initiatives that advance the financial and social welfare of people with disabilities, as well as safeguards against aggression, assault, and extortion. Additionally, it creates procedures for the implementation of the act's privileges and the dispute resolution process, which helps to create a fairer and more accepting community in India for people with disabilities.

⁴ https://www.researchgate.net/profile/Pradeep-Kumar-168/publication/277139451_Disability_Its_Issues_and_Challenges_Psychosocial_and_Legal_Aspects_in_Indian_Scenario/links/5c3a192892851c22a36fa110/Disability-Its-Issues-and-Challenges-Psychosocial-and-Legal-Aspects-in-Indian-Scenario.pdf

Under the 2016 Rights of Persons with Disabilities Act, government organizations are required to reserve a minimum of 4% of all available positions for individuals with qualifying disabilities. It promotes the growth of educational practices and highlights the offering of free schooling for children with disabilities up to the age of 18. The statute also emphasizes how important it is for people with disabilities to have access to technology and adequate medical treatment. Furthermore, it encourages them to engage in social and intellectual initiatives that will create a more welcoming and accessible atmosphere for their overall growth and assimilation into the general public.

The Act promotes the appointment of State Representatives and a Chief Commissioner for Persons with Disabilities to oversee the application of the laws and protections granted to individuals with disabilities. It places a strong emphasis on encouraging scientific research for the benefit of people with disabilities, involving the creation of new technologies and aids for people with disabilities. Additionally, the Act compels the business industry to initiate action in order to facilitate the successful reintegration of people with disabilities into working life. Overall, the act seeks to encourage a more diverse and sensitive mind-set within society at large and increase knowledge of the rights of people with disabilities by providing them with efficient assistance.⁵

Benefits and programmes for people with disabilities

The Indian government has decided to take the lead in creating the best arrangements available to guarantee that people with disabilities can participate fully. It has implemented several assistance programs, plans, modifications, and resources for informative, professional, and financial recovery within this area. They have created programs regarding allowance for the schooling of children, a plan of coordinated schooling for children with disabilities, assisting those with impairments in terms of finances, providing them with travel subsidies, communications regarding employment opportunities, concessions for conveyance, accommodations, and family pensions for children with disabilities.

⁵ <https://nhrc.nic.in/sites/default/files/DisabilityRights.pdf>

Conclusion

In conclusion, the Employment Equality Directive and the subsequent rulings of the European Court of Justice demonstrate the European Union's dedication to eliminating discrimination and safeguarding the rights of persons with disabilities. Considering the obstacles to execution and understanding, the EU regulation places a strong emphasis on the need to promote equal treatment and make adequate modifications for people with disabilities in places of employment. The UN Convention on the Rights of Persons with Disabilities offers greater scope for safeguarding the rights of the disabled people, and the European Union works on establishing an inclusive atmosphere that respects the basic rights and dignity of individuals with disabilities.

On the other hand, the provisions of the Indian Constitution and the legislative acts related to disability demonstrate the nation's dedication to defending the rights and advancing the welfare of disabled people. Notably, the Persons with Disabilities Act of 1995, the Rehabilitation Council of India Act, and the Rights of Persons with Disabilities Act, 2016, overall highlight the importance of providing broad assistance, social inclusion, and equal chances for people with disabilities in a variety of contexts, such as social assistance, work, and educational opportunities. The Indian government strives to promote the active engagement and comprehensive growth of people with disabilities by implementing various support programs and initiatives. This is done in an effort to create an atmosphere that is both accessible and encouraging for the general well-being of these people.

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