

## Legal Equality And Physically Challenged Women

**Hetal Ramani**

*Ph. D Scholar, Teaching Asstt., Deptt. of Law,  
Veer Narmad South Gujarat University, Surat, Gujarat*

**Abstract**

*The General Assembly of United Nation encouraged national and international protection of human rights to all. The aim of paper is to focus on legislative and constitutional protective provisions for the women with disabilities. Paper tries to focus on the loophole with the special rights of economic, social security, protection against all exploitation and to avail them of legal aid.*

**Key words** - *Concept of physically challenged, Constitutional provisions, Special laws and case laws*

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## **INTRODUCTION**

Physically challenged women face multiple discrimination and have lived experiences separate from those of non-disabled women and of other persons. The UN Convention on the Rights of Persons with Disabilities that the specific concerns of physically challenged women has been addressed. To fight double discrimination faced by women and children with disabilities, the CRPD has adopted a mirror image approach, where a dedicated provision has been provided for the vulnerable group, and at the same time, their concerns has been addressed in several other provisions of the Convention and in the constitution of India. **The movement for Rights of physically challenged in India** started in 1990s. Asian and Pacific Decade of Disabled Persons in 1993 gave a definite boost to the movement. The roots of statutory provisions for ensuring equality and equalization of opportunities to them in our country could be traced to Part III fundamental rights, duties and part IV directive principles of state policy.

## **OBJECTIVES OF THE STUDY**

- To study the concept of disability
- To study the rights which is available in international convention
- To study the rights provided in the constitution of India for women with disabilities
- To study the legal frame work for women with disabilities and offer suggestion

**UNIVERSE AND PERIOD OF STUDY** -International conventional rights and legal as well as Indian constitutional rights. The secondary data in this study collected from relevant sources like official books, journals, articles and websites. The study was carried out from March 2016 to September 2016.

**RESEARCH METHODOLOGY** - base on non-doctrinal data which have been occupied from official enactments and study.

## **DEFINING 'DISABILITY'**

As per the PwD Act 1999, Blindness, Low vision, Leprosy-cured, Hearing impairment, Loco motor disability, Mental retardation, Mental illness are included as disabled person. As per sec. 2(t), 'persons with disability' means a person suffering from not less than forty percent of any disability as certified by the medical authority. In addition, there are other frameworks being presently used as reference points for describing it. The National Trust Act says Autism, Cerebral Palsy, Mental Retardation, Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities and Multiple Disabilities and for matters connected therewith. Government of India ratified the United Nations Conventions on the Rights of Persons with Disabilities in October 2007. Persons with disabilities include those who have long term physical, mental,

intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others<sup>1</sup>. Disability is therefore not defined as a standalone medical condition but rather as the product of interaction between the environment broadly defined and the health condition of particular persons. The legislative provisions around disability in India are managed by total four different laws, which govern different and varied aspects. And it is calculated.

### **INTERNATIONAL CONVENTIONAL RIGHTS**

We have number of Specific human rights instruments on the rights of persons with disabilities. Some of them are as ; Declaration on the Rights of Mentally Retarded Persons 1971, Declaration on the Rights of Disabled Persons 1975, WPA 1981, Standard Rules 1993, Asian and Pacific Decades 1993-2002, Biwako Millennium Framework 2003-2012, ILO Discrimination Convention 1958. All of the Disability Convention expressly recognises the following rights; Right to equality and non-discrimination. Right of women and girls with disabilities to full and equal enjoyment of all human rights and fundamental freedoms. Right to access to the physical environment, rights transportation including information and communications system. Right to life with protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters. Right to access justice with procedural and age-appropriate accommodations. Right not to be subjected to cruel, inhuman treatment. Protection from exploitation, violation and abuse, gender-based and otherwise. Right to respect for physical and mental integrity. Right to freedom of movement and the right to acquire and change a nationality. Right to privacy, right to marry, right to retain fertility and other reproductive rights. Right to an adequate standard of living including adequate food, clothing and housing. Right to participate in political and public life including the right to vote and to be elected. Right to participate in cultural life.

### **LEGAL CAPACITY**

**Civil Political Rights** are of special concern to women with disabilities should be explicitly recognized under the Act and the relevant entitlements and programmatic interventions be mentioned. Apart from the right to equality, where sex should be mentioned as a ground on the basis of which discrimination is prohibited, the following rights should address gender concerns. **Right to Integrity** is basically the right to be 'you'; self-determination is an important issue for women with disabilities. **Right to Privacy and to live independently** includes privacy in family, home, correspondence, honour and reputation and personal, health and rehabilitation information. **Right to home and family** -law should recognize the right to home and

family for women with disabilities. The state needs to ensure that disabled women have the right to marriage, family, parenthood, and relationships on an equal basis with other<sup>2</sup>. According to CRPD's legal capacity loom, the best interest approach cannot survive and non-medical hysterectomy, forced abortion cannot be performed on disabled women. The law must recognize the reproductive autonomy of women with disabilities and their right to retain their fertility. CRPD<sup>3</sup> deals with participation in political and public life. In furtherance of this right, a provision for reservation for women with disabilities should be at all levels of governance, including local governments. This should include institutionalized women, who are furthest from the democratic process. An appropriate environment for the exercise of the right to associate can also increase political participation. The part of the capability development address socio- economic rights which are most effective segment. CRPD deals with education for girls with disabilities. Providing special allowance to families to meet the educational expenses, allowances covering transportation costs, scholarships, etc. can serve as effective incentives by reducing financial costs of the families. **Employment, Work, Occupation, Health, Rehabilitation and habilitation** – legislation gives recognition to the equal rights of disabled women with respect to employment opportunities. Affirmative action, like reservation in employment and poverty alleviation programmes that is taken for the benefit of persons with disabilities should include women. This includes providing for safe and healthy working conditions, maternity leaves, etc. Women with disabilities are also often subject to harassment at work and sexual exploitation. In furtherance of Article 27(1) (b) of the CRPD, the Act must also provide for protection from harassment and grievance redressal mechanism.

CRPD<sup>4</sup> also requires states to provide gender-sensitive health services. It must include sexual and reproductive health. The notions of free and informed consent in relation to healthcare need to be specifically extended to women with disabilities, especially mental disabilities, in relation to sexual and reproductive health. CRPD<sup>5</sup> requires the states parties to provide for habilitation and rehabilitation programmes, particularly in the areas of health, employment, education and social services. This provision is meant to ensure the full inclusion and participation of persons with disabilities, which requires the state to implement programmes on certain issues which are of special concern to women with disabilities. CRPD<sup>6</sup> guarantees adequate standard of living and social protection. It specifically mentions women with disabilities in relation to access to social protection and poverty reduction programmes.

**WOMEN WITH DISABILITIES** :There are about 93 lakh and 43 percent of total disabled population as per census 2001. Census 2011 said 11,824,355 out of 26,810,557 are females with disabilities.

### **CONSTITUTIONAL FRAMEWORKS IN INDIA**

The preamble, providing the very wide ambit, promises: we, the people of India, having solemnly resolved to secure Justice, social, economic and political, Equality of status and opportunity and fraternity assuring the dignity of the individual enact and give to ourselves this Constitution. The state shall promote with special care the educational and economic interests of the weaker sections of the people and shall protect them from social injustice and all forms of exploitation<sup>7</sup>. The denial or violation of any of these rights would entitle any person to approach the High Courts or the Supreme Court in their writ jurisdictions under Article 226 and 32, respectively, if there is no other alternative or equally efficacious remedy available. Indian Constitution professes to secure to all its citizens justice, social and political, even though the form of government prescribed by the Constitution is a majority government, which lies at the foundation of the representative system.

### **LEGISLATIVE FRAMEWORKS IN INDIA**

**A. Rehabilitation Council of India Act, 1992** -The council regulates and monitors the training of rehabilitation professionals and personnel and promotes research in the rehabilitation and special education.**B. Persons with Disabilities Act, 1995** - The act concerning disability in the country. It provides for education, rehabilitation, employment, non-discrimination and social security for persons with disabilities. It ensures three percent reservation for PwDs in poverty alleviation programmes as well as in certain job categories. It casts obligations on central government, state governments and local authorities to ensure benefits to PwDs. In our country indifferent thing is not easy. **C. National Trust Act, 1999** - This act is concerned with enabling and empowering PwDs to live independently and as fully and close to their community as possible, to evolve procedures for appointments of guardians and trustees for PwDs, to extend support to registered organizations to provide need based services, to facilitate realization of equal opportunities, protection of rights and full participations of PwDs.**D. Mental Health Act, 1987** -Mental Illness is one of the disabilities mentioned in the PwD Act 1995. However, treatment and care of mentally ill persons is governed by this act, which is administered by the Ministry of Health and Family Welfare.

The National Policy recognizes the basic principles of equality, freedom, justice and dignity of all individuals that are enshrined in the Constitution of India and implicitly mandate an inclusive society for all, including women with disabilities. It

distinguishes the fact that a majority of persons with disabilities can lead a better quality of life if they have equal opportunities and effective access to rehabilitation measures.

### **CASE LAWS**

Francis Coralie v. Union Territory of Delhi<sup>8</sup> the Supreme Court held that the right to life includes the right to live with human dignity. Javed Abidi v. Union of India<sup>9</sup>, the SC held that the concessions be allotted to locomotors disability and if such disabilities are up to 80 %, wheel-chair should be provided by Airport Authority. In Suchita Srivastav v. Chandigarh Administration<sup>10</sup>, the Court interpreted ‘disability’ under sec.47 to be broader than the medical model. In Ranjit Kumar Rajak v. State Bank of India<sup>11</sup>, Rajak was denied the post of a probationary office due to renal transplant. The court cited Article 27 of CRPD; the right to work and employment and obligates state parties to take appropriate steps detailed under the provision and also referred to the definition of ‘reasonable accommodation’ under Article 2.

### **SUGESTIVECONCLUSION**

A comprehensive policy was enacted with covering major areas like education, employment, access etc. however, the policy need to be modified in the light of the convention. With regard to definition adopted by PWD Act, Census of India stated “the concept and definitions of disabilities coupled with measuring its extent and its types contained in the PWD Act, 1995 were founded to be extremely difficult to canvass even in normal circumstances, assuming people had times, were willing and forthcoming to share this information and there was an expert investigator to bring out this information.” Women with disabilities require protection against exploitation and abuse. Special programmes should be developed for education, employment and providing of other rehabilitation services to women with disabilities keeping in view their special needs. Special educational and vocation training facilities should be setup. Programmes should be undertaken to rehabilitate abandoned disabled women/girls by encouraging their adoption in families, support to house them and impart them training for gainful employment skills. The Government should encourage the projects where representation of women with disabilities is ensured at least to the extent of twenty five percent of total beneficiaries. Steps shall be taken to provide short duration stay homes for women with disabilities, hostels for working disabled women, and homes for aged disabled women. It has been noted that women with disabilities have serious difficulty in looking after their children. The Government should take up a programme to provide financial support to women with disabilities so that they may hire services to look after children. Such support should be limited to two children for a period not exceeding two years.

Indian Constitution professes to secure to all its citizens justice, social and political, even though the form of government prescribed by the Constitution is a majority government, which lies at the foundation of the representative system. It is managed by four different laws in matter of differently abled people which govern different and varied aspects of disability.

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#### **(Footnotes)**

- <sup>1</sup> Art. 1 of UNCRPD
- <sup>2</sup> Art. 23 of the CRPD
- <sup>3</sup> Art. 29 of the CRPD
- <sup>4</sup> Art. 25 of CRPD
- <sup>5</sup> Art. 26 of the CRPD
- <sup>6</sup> Art. 28 of the CRPD
- <sup>7</sup> Article 4 of the constitution of India

#### **(Endnotes)**

- <sup>8</sup> AIR 1981 SC 746<sup>1</sup>
- <sup>2</sup> 1999 (1) SCC 467

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