

Social Security Law in India and Persons with Disabilities: a Critical Study

Abstract

The paper analyses the legal provisions and court decisions related to the social security for persons with disabilities. Apart from the Constitution, the issue is primarily dealt with by the United Nations Convention on the Rights of Persons with Disabilities, 2006 and the Rights of Persons with Disabilities Act, 2016. In majority of cases, the courts in India have relied upon the Equality and Dignified Living provisions of Article 14 and 21 of the Constitution and liberally interpreted the provisions of Motor Vehicle Act, Disability Pension Regulations applicable to armed forces etc. This study shows that the courts by and large have given relief in favour of persons with disabilities. The new RPD Act has covered a wide range of areas. However, giving effect to these beneficial provisions is a big challenge. Involvement of persons with disabilities and customisation of schemes to meet the needs of an individual also needs to be ensured.

Keywords: Persons with Disability, Mental Disability, Compensation, Disability Pension, Insurance, Assistive Technology, Accommodation.

Introduction

The primary purpose of social security measures is to give individuals and families the confidence that their standard of living and quality of life will not be eroded by social or economic eventualities and to provide medical care and income security against defined contingencies.

The social security measures in India can be found in the Directive Principles of State Policy contained in part 4 of the Constitution¹. These include inter alia providing social security to the unemployed, aged, sick, disabled and other unprivileged class of people, provide free legal aid by legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, make provision for securing just and humane conditions of work and for maternity relief, secure, by suitable legislation or economic organization or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

For persons with disabilities, social security measures additionally aim to facilitate physical and vocational rehabilitation, protection against unemployment by allowances and job creation, providing assistive devices and other accommodations and provide benefits such as insurance, compensation, rehabilitation and maintenance of their dependants. The issue of social security becomes an important issue for Persons with Disabilities because disability and poverty work in a cyclic pattern which means that disability leads to poverty as disabled people are deprived of participating in the economic activities due to various reasons such as lack of opportunity of education and training, social stigma attached to disability etc. Social security measures are necessary for a dignified living and to provide a level playing field to Persons with Disabilities in order to make them capable of enjoying rights on an equal basis with others.

Another area which requires attention in this connection is providing Assistive Technology and wherever required Human assistance at affordable cost and in a dignified manner. For example, persons with visual disability should be provided the Screen Reading Software and necessary hardware in educational institutions and establishments where they are employed so that they can perform without much difficulty. Similarly persons with locomotor disabilities and persons with hearing disability be provided with wheelchair and hearing aids respectively at the affordable cost. It will help in developing confidence and making them the productive section of society. "segregation and isolation achieved through the imposition of social barriers" count as



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discrimination. It also stresses in relation to article 11 that the right to an adequate standard of living not only includes having equal access to adequate food, accessible housing and other basic material requirements, but also the availability of support services and assistive devices and technologies fully respecting the human rights of persons with disabilities²”

The preamble to the Convention on the Rights of Persons with Disabilities (CRPD) recognises this fact. It says, “ ... many persons with disabilities live in poverty and stress the need to address the impact of poverty. The cost of social exclusion is high as it perpetuates dependency and thus interference with individual freedoms. Social exclusion also engenders stigma, segregation and discrimination, which can lead to violence, exploitation and abuse in addition to negative stereotypes that feed into a cycle of marginalization of persons with disabilities.”

“A large number of people acquire disability due to various reasons such as natural calamities, war and other armed conflicts, accidents, industrial hazards, diseases, malnutrition, old age etc. These people need to be socially, economically, psychologically and medically rehabilitated. In majority of cases, these people are not in a position to support themselves. Hence a considerable amount of financial resources need to be spent on the rehabilitation of such people. The paper examines the legal provisions and courts decisions on the various aspects of social security to persons with disabilities.

Objectives of Study

The Study aims at-

1. Critically examine the International Law and Rights of Persons with Disabilities Act, 2016 (India) related to the Social Security for Persons with Disabilities.
2. Analyse the Judgements of the Supreme Court and High Courts in India which have expended the scope of Social Security Jurisprudence.
3. To provide suggestions as to how the benefits of Social Security measures can reach to a large number of stakeholders by better implementation of the Law.

Legal Framework

CRPD³ and Rights of Persons with Disabilities (RPD Act⁴) defines the term Persons with Disabilities as:

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.” RPD Act makes special provisions in favour of persons with High Support Needs⁵ and Persons with Benchmark Disability⁶

Convention on the Rights of Persons with Disabilities⁷ recognises the right of Persons with Disabilities to and adequate standard of living for themselves and their families, including adequate food, clothing and housing.

The Convention mandates the states parties to take effective and appropriate measures, including through peer support, to enable Persons with

Disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. For this purpose, comprehensive, Habilitation and rehabilitation services and programmes, particularly in the area of health, employment, education and social services should be organised in such a way that these services and programmes begin at the earliest possible stage and are based on the multidisciplinary assessment of individual needs and strength.

The RPD act⁸ which contains provisions analogous to CRPD, deals with various aspects of social security. Some of these provisions are mandated subject to the economic capacity and development of state. Some of the areas covered by the Act are:

Formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community taking into consideration the diversity of disability, gender, age, and socio-economic status. The quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five percent higher than the similar schemes applicable to others. The schemes shall provide for-

1. Community centres with good living conditions in terms of safety, sanitation, health care and counselling;
2. Facilities for persons including children with disabilities who have no family or have been abandoned, or are without shelter or livelihood;
3. Support during natural or man-made disasters and in areas of conflict;
4. Support to women with disability for livelihood and for upbringing of their children;
5. Access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas;
6. Provisions of aids and appliances, medicine and diagnostic services and corrective surgery free of cost with income ceiling.
7. Disability pension subject to income ceiling.
8. Unemployment allowance for those registered with Special Employment Exchange for more than two years and who could not be placed in any gainful occupation; care-giver allowance to persons with disabilities with high support needs; comprehensive insurance scheme to those not covered under the Employees State Insurance Schemes, or any other statutory or Government sponsored insurance schemes;
9. Free healthcare in the vicinity specially in rural area subject to such family income as may be notified;
10. Barrier-free access in all parts of Government and private hospitals and other healthcare institutions and centres;
11. Priority in attendance and treatment.
12. Make insurance schemes for their employees with disabilities.

Undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities.

Duty of State to Provide Medical and Financial Support to Mother with Mental Disability and her Child

In *Suchita Srivastava v. Chandigarh Administration*⁹ it was held that a woman with mild or moderate Mental Retardation has the right to give birth to the child and it is the duty of the state to provide the woman and the child the means of sustenance if required. Supreme Court gave recognition to the legal capacity of a mentally disabled girl to continue her pregnancy. The court held that since the victim had clearly expressed her willingness to bear a child. Her reproductive choice should be respected. The court observed:

“There is no doubt that a woman’s right to make reproductive choices is also a dimension of ‘personal liberty’ as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected. Taken to their logical conclusion, reproductive rights include a woman’s entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children even if it involves financial cost.”

The court directed that the best medical facilities be made available so as to ensure proper care and supervision during the period of pregnancy as well as for post-natal care. Since there was an apprehension that the woman might find it difficult to cope with maternal responsibilities, the court directed the Chairperson of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities to take her responsibility.

While Awarding Compensation for Disability, the Particular Circumstances be taken into Consideration

In *Mohan Soni V. Ram Avtar Tomar and Ors*¹⁰ the Supreme Court held that the amount of compensation would be different for a rickshaw puller or agricultural labourer as compared to a person doing desk work. In former case, loss of limb might amount to the total loss of future income while in latter case the person is still in a position to earn a living by performing various types of work.

Recently in *M.R. Krishna Murthi versus New India Assurance Co. Ltd & OTHERS*¹¹ it was held that it is the functional disability which has to be kept in mind. In this case a student studying in a prestigious school belonging to a family of senior Supreme Court lawyers met with an accident and suffered permanent locomotor disability. Considering the nature of disability, the court observed that though, not very seriously, the functional capacity has been impaired because of the disability as He cannot run around like other young advocates of his age. The court increased the compensation for the loss of future earning at Rs.5,000/-per month i.e. Rs.60,000/-per annum on which multiplier of 18 is to be applied.

In *Anand Bihari & Ors. v. Rajasthan State Road Transport Corporation & Anr*¹² the petitioners were employees of Rajasthan State Road Transport Corporation. During the course of employment, their eyesight became defective and they were discharged from service. The Supreme Court held that the Corporation should give each of the retired workmen their retirement benefits, and in addition offer them any available alternative job, which they were eligible to perform. In case no such alternative job was available, they should be paid an additional compensatory amount along with their retirement benefits.

In *R.D. Hattangadi v. M/s. Pest Control (India) Pvt. Ltd*¹³ the appellant met with an accident while travelling, as a result of which he suffered serious injuries resulting in 100% disability and paraplegia below the waist. A practicing advocate before the accident, he was unable to resume his practice due to the disability. The Supreme Court stated that while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those, which the victim has Actually incurred and which are capable of being calculated in terms of money, whereas non-pecuniary damages are those, which are incapable of being assessed by arithmetical calculations.

In *Kavitha v. Deepak and Others*¹⁴ [()

The Courts while determining the quantum of compensation, either for permanently or temporarily disabled persons, must make effort to adequately compensate them not merely for physical injury and treatment but also for loss of earning, inability to lead a normal life and to enjoy life’s amenities¹⁵.

Non-discrimination in Insurance Matter

The Delhi High Court in *Vikas Gupta v. Union of India and Anr*¹⁶ has held that Persons with Disabilities are entitled to the same amount of insurance coverage as available to other people. No extra amount of premium can be charged from them only on account of disability. The petitioner prayed for the issuance of directions to the respondent Postal Life Insurance Directorate, to keep the maximum sum assured for Persons with Disabilities at par with non-disabled persons and to reduce the premium for Persons with Disabilities by bringing it at par with that for non-disabled persons.

The court observed that the material resources of the community are required to be so distributed as best to sub serve the common good. Though a contract of insurance is a bilateral agreement on human life upon payment of premia but the insurer is not entitled to impose unconstitutional conditions which deny the right of entering into the contract, limiting only to a class of persons under a particular policy. Insurance being a social security measure should be consistent with the constitutional animation and conscience of socio-economic justice adumbrated in the Constitution. The court directed the respondents to make suitable changes in the policy in the light of the above observations.

Disability Pension

In *Lance Dafadar Joginder Singh V. Union of India and Others*¹⁷ it was held that a military personnel is entitled to disability pension even if he acquires disability during casual leave.

Preferential Allotment of House etc

The Supreme Court and various High Courts have directed that the schemes should be framed for the preferential allotment of land and houses on concessional rates to persons with disabilities. In *Godawari Bai v. Delhi Development Authority*¹⁸ the Court directed the respondent Authority to make an out of turn allotment to the petitioner who was blind.

Conclusion

The newly passed RPD Act makes very broad provisions with regard to the social security for persons with disabilities. This will help in adding new dimensions to the jurisprudence on the subject. These provisions include inter alia adequate standard of living to enable them to live independently or in the community, community centres with good living conditions in terms of safety, sanitation, health care and counselling, facilities for persons including children with disabilities who have no family or have been abandoned, or are without shelter or livelihood, support during natural or man-made disasters and in areas of conflict, disability pension, unemployment allowance etc. The provisions cover wide variety of area. However their implementation in time bound manner and in such a manner that benefits reach to large number of people is a big challenge. It is also significant that persons with disabilities should be involved while formulating these schemes. Wherever required, individuals with disabilities should be consulted while applying these schemes to them.

The cases coming up on social security are mainly related to providing security to the pregnant mentally disabled lady and his child, protection and care of mentally ill persons in protection homes, proper civic amenities, alternative employment and compensation, loss of future income taking into consideration the nature of work and possibility of alternative work, prolonged medical treatment and hospitalization to be taken in to consideration while awarding compensation, Non- Discrimination with respect to insurance coverage and premium amount, preferential allotment of land and house, considering the case of a person appointing for a fix period against the permanent post etc. People got relief because they were able to go through the costly and time taking litigation. In a large number of cases the government has been one of the litigating parties. There needs to be mechanism to settle the matters through alternative modes. Persons with disabilities should not be forced to go through the cumbersome legal procedure.

Endnotes

1. Constitution of India Article 41, 39A, 42, 43, 46.
2. Committee on Economic, Social and Cultural Rights General Comment No. 5 (1994) on persons with disabilities para 13.
Most of the cases discussed here are pronounced by applying the Equality and Dignified Living principles under Article 14 and 21 of the Constitution or Motor Vehicles Act, various

disability regulations for armed and paramedical forces etc. Judgments pronounced under the repealed Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act), 1995 are also discussed as the new RPD Act contains similar provisions.

3. Convention on the Rights of Persons with Disabilities, 2006 Article 1.
4. Rights of Persons with Disabilities Act, 2016 section 2 (s).
5. *Ibid* Section 2 (l) "high support" means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;
Section 2 (t) "person with disability having high support needs" means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support;
6. *Ibid* section 2 (r) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;
7. *Supra* note 3 Article 26.
8. *Supra* note 4 ss. 24-28.
9. AIR 2010 SC 235.
10. Civil Appeal No. 237 of 2012 (Arising out of SLP (Civil) No. 9850 of 2010) Decided On: 10.01.2012.
11. Civil Appeal nos. 2476-2477 OF2019 (arising out of SLP(C) nos. 31521-31522 of 2017) decided on march 05, 2019
12. (1991) 1 SCC 731.
13. (1995) 1 SCC 551.
14. (2012) 8 SCC 604
15. *Kavitha v. Deepak and Others* [(2012) 8 SCC 604]
16. Decided on 15th February, 2012, Delhi High Court.
17. 1995 Supp (3) SCC 232
See also *Gurnam Singh v. Union of India and ors* (2005) 1 PDD (CC) 174, Petitioner enrolled as sepoy discharged from service as he got epileptic fits, held this disability is attributable to military services hence he is entitled to disability pension.
Bhagwant Singh S/o Nanak Singh v. Union of India, Ministry of Defence, New Delhi (2005) 1 PDD (CC) 182, Petitioner, a civilian clerk in Army developed diabetes on account of "diabetes mellitus" – Medical board declared him unfit was granted permanent disability pension – Subsequently, this pension was cancelled as the Board had re-assessed disablement at 20 per cent which initially was assessed at 50 per cent. Held such cancellation was not as per law and most arbitrary – Pension is to be secured as of right.
18. 1990 (Supp.) SCC 124.
See also *National Federation of the Blind & Anr. v. State of Uttar Pradesh & Ors* 2000 (2) AWC 1234