

DE JURE NEXUS LAW JOURNAL

Author:

Priyanci Prasad

JEMTEC School of Law

2nd Year.**PERSON WITH DISABILITY AND THEIR RIGHTS****ABSTRACT**

Disability is a disorder or a disease that differentiate themselves form the person who are not disabled. To have a disability means that one has fundamental difficulty accomplishing things that others take for granted. Disabilities can be physical in nature an inability to walk due to amputation, or muscular or neurological dysfunction, for example, sensory (as in blindness, or deafness), cognitive (as in brain damage or mental retardation), behavioural (as in an inability to work), or even emotional. These particular disabilities topic centre contains mostly references to physical and sensory forms of disability, as other forms are adequately covered in other topic centres. Physical and sensory disabilities can be major impediments to participating in normal society. As a simple example, consider the computer. Being able to use a computer effortlessly is practically a basic literacy skill required for employment these days. But blind people, and people who have lost the ability to use their hands for typing have a great deal of difficulty operating a computer. The same group is more or less unable to operate a car without assistance. The disability rights movement aims to secure equal opportunities and equal rights for disabled people. The specific goals and demands of the movement are accessibility and safety in transportation, architecture, and the physical environment; equal opportunities in independent living,

employment, education, and housing; and freedom from abuse, neglect, and violations of patients' rights. Effective civil rights legislation is sought to secure these opportunities and rights

Keywords: Disability, ability, person, difficulty, rights.

WHAT IS DISABILITY?

Disability basically means loss of person's bodily Or mental functions or one can refer it to as disorder or in simple words we can also define it as a disease that effects person through processes, perceptions of reality, emotions or judgement, Disability can be either acquired or can be inculcated within one individual through the time he or she is born. The Disability Services Act (1993) defines 'disability' as meaning a disability, Which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of those impairments ,Which is permanent or likely to be permanent ,Which may or may not be of a chronic or episodic nature, Which results in substantially reduced capacity of the person for communication, social interaction, learning or mobility and a need for continuing support services.¹The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity. This includes people who have a record of such an impairment, even if they do not currently have a disability. It also includes individuals who do not have a disability but are regarded as having a disability. The ADA also makes it unlawful to discriminate against a person based on that person's association with a person with a disability.²

WHO ARE PEOPLE WITH DISABILITY?

We all are aware of the fact from the very the very earlier that disability can either be acquire or can be inborn, It can be temporary or permanent as well, it can also be hidden or sometimes ithe problem of disability that is faces by the person can be clearly seen by the others,i.e. can be visible as well. Person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. Disability is part of human diversity. With the increase in

¹ Available at (<http://www.disability.wa.gov.au/understanding-disability1/understanding-disability/what-is-disability/>) last accessed on 11:10:2021

²Available at (<https://adata.org/faq/what-definition-disability-under-ada>) last accessed on 11:10:21

population, advancement, growth, development there is too increase in disabled persons. People with disability too perform the same work and continue their daily life just like the people who aren't disabled. They go to markets in order to sell and purchase, they do even gain education but only problem is they face barrier , they come across a lot of hindrance and difficulties. Often times they are not recognized and kept at the back , people with disability come up against significant barriers while trying to do the things that many of us take for granted.

TYPES OF DISABILITY.

Disability can be inherited or acquired (due to illness or injury) and can be temporary or permanent. Physical disability affects a person's mobility or dexterity, Intellectual disability affects a person's abilities to learn ,Mental Illness affects a person's thinking processes, Sensory disability affects a person's ability to hear or see, Neurological disability affects the person's brain and central nervous system, there is also Learning disability, Physical disfigurement. People with disability are not just restricted to particular class of a people rather it affects indiscriminately to one and all irrespective of gender, caste credit etc. No two people with the same disability experience their disability in the same way.

RIGHTS OF PERSON WITH DISABILITY.

Responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others. Additional benefits such as reservation in higher education (not less than 5%), government jobs (not less than 4 %), reservation in allocation of land, poverty alleviation schemes (5% allotment) etc. Have been provided for persons with benchmark disabilities and those with high support needs. Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education. Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education to the children with disabilities.

The Declaration of the Rights of Disabled persons was a declaration of the General Assembly of the United Nations made on 9 Dec 1975. It is the 3447th resolution made by the Assembly. The disabled person shall enjoy all rights contained in this declaration without distinction or discrimination. The disabled persons have inherent rights to respect for their human dignity and irrespective of the origin, nature and seriousness of their handicaps and disabilities, have same

Fundamental Rights. Disabled persons have the same civil and political rights as other human beings. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible. Disabled persons have the right to economic and social security, including the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. Disabled persons shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature³

CASES

Union of India v National Federation of the Blind

This was an appeal from the decision of the Delhi High Court wherein a public interest petition had been filed which sought the implementation of Section 33 of the Act alleging that the appellants herein have failed to provide reservation to the blind and low vision persons and they are virtually excluded from the process of recruitment to the Government posts as stipulated under the said Act. The court looked into the calculation of the 3% reservation –whether it refers to cadre strength, or number of vacancies. It was held that 3% refers to a part of the total vacancies in cadre strength. The court also observed, “It is clear that while section 33 provides for a minimum level of representation of 3 per cent in the establishments of appropriate government, the legislature intended to ensure 5 per cent of representation in the entire workforce both in public as well as private sector”

BhagwanDass and Anr v. Punjab State Electricity Board

In this case, the Appellant was an Assistant Lineman in the Respondent Board. During his service, he became totally blind and the Respondent failed to accommodate him in an alternative post as per Section 47 of the PWD Act and terminated his service. Therefore the appellant approached the High Court of Punjab and Haryana against the termination of his service. The high court dismissed the petition and the Appellant appealed to the Supreme Court.

³ Available at(<https://www.legalserviceindia.com/legal/article-98-rights-of-disabled-persons.html#:~:text=Disabled%20persons%20have%20the%20right%20to%20live%20with%20their%20families,discriminatory%2C%20abusive%20or%20degrading%20nature>) last accessed on 11:10:2021.

PROBLEMS FACED BY DISABLED PERSONS

Human life in real is such a vast thing to explain with great changes and challenges faced everyday by each and every one of us. But the challenges that we face , typically shows the limit of our human nature. One should not low down themselves after facing such challenges rather everyone of us should strongly build our selves to overcome it. There have been a lot of problems faced by everyone of us, but I would highlight the problem faced by the disabled persons who are often times left ignored in our society.

- **Accessibility:-** we face Many challenges in our daily life We have to face several obstacles in every step we take. This is much worse for physically disabled people. They mostly move around in wheelchairs or use crutches. So, moving around freely is not a luxury that they can afford. Moreover, the public places that we have, are rarely made keeping in mind the comfort of people with disabilities. There are no ramps, or the hallways are too narrow for them to move. Nowadays, many wheelchairs are automated, and buildings are constructing a private residential elevator to make the movement of the disabled people a little bit easier .
- **Education:-** Article 14 clearly states equality before law, there one should not be biased whatever the reason may be. With the modernization, one and all needs to be well educated which will undoubtedly result the betterment of the society itself. A large number of children with disabilities remain out of school and thus they are deprived of basic education. They are not able to run the race of life like the other normal kids.
- **Access to health care :-** Health care system is from the beginning Worsened and along with the poor people the disabled too can't access to this system. They are again left ignored. Disabilities are mistreated by the health workers and this makes matters worse.
- **Lack of employment:-** Employment of any citizen is based upon his education and skills he has picked up along the way. When these people are deprived of basic education, they are bound to fall behind other candidates for that job.
- There are many more problems that are also frequently faced by the disabled persons and they are as feeling of being incompetent, bored. They are many a times teases and abused which truly hurts their emotional sentiment.

CONCLUSION

All the issues can be handled smoothly if people improve their understanding level and give special care to those who really needs it. One should be patient while dealing with these types of people and love them purely with care. Work for disabled should be made available, this will give them financial independence and provide them with satisfaction in life. We should make our surroundings more accessible to disabled people. People with disabilities are at a higher risk for poor health outcomes. For public health efforts to reduce health disparities among people with disabilities. Knowledge about the health status and public health needs of people with disabilities is essential for addressing these and other health disparities. The Government needs to launch more social security schemes for disabled sections and generate more employment opportunities for them . Several schemes and benefits conference on the disabled persons has come up as relief and has successfully served to provide equal opportunities to the disabled section.



De Jure Nexus

LAW JOURNAL