

# Disable rights in the fundamental rights of the constitution of India

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**Abstract-** The constitution of India gives fundamental rights to people. These rights are basic human rights. Disable persons are 2.21 percentage of the total population as per the last census 2011. For this large population who are differently able need some different basic rights. The Supreme Court of India has the power of interpretation of the constitution. Using this power the apex court established various basic rights of the disables in the fundamental right of the constitution. This article studies those rights and the current status of the disables with respect to those rights.

**Key words-** Disable rights, fundamental right, Constitution of India, disables rights in India.

## Introduction-

More than 26.8 million individuals in India are disables as per the last census. This is the 2.21% of the total population of India (census 2011). When we talk for the whole world, there are 15 % of the total population of the world are disable people as per the WHO (2013). This statistic itself says that the importance of the disable rights in today's world.

The constitution is supreme law of the land. The fundamental rights provided in the part III of the constitution of India from article 12 to 35, are called the Magna Carta of the rights provide to the people. These are the basic rights provide to the citizens and most of them are also for non-citizens in India. The Supreme Court of India is the supreme protector of these rights of the people. The judgements of the Supreme Court itself become law. In various judgements Supreme Court established some rights for the disables in the fundamental rights of the constitution.

In anthropology we study man in systematic and holistic way. This includes Female study, Tribal study LGBT study and many more. Disable study is also equally important in the holistic study of man, which is less explored in anthropology. This article focuses that less explored part. Objective of the study is to study the disable rights provided in the fundamental rights of the constitution of India. Identifying various disable rights established by various judgement of the Supreme Court of India. To understand the present status of disables in the country with respect to the fundamental rights and to identify those rights or special provisions for disables which should be included in the fundamental rights.

## Methodology-

This paper is largely descriptive and analytical in nature. The information and data used are purely secondary sources according to the need of the study. In this paper attempt has been taken to review disable rights in the fundamental rights provided in the constitution of India.

## Who is disable –

According to the United Nations convention on the rights of the persons with disability, disability is long term physical, mental intellectual or sensory impairment which in interaction with various barriers may hinder (a person's) full and effective participation in society on an equal basis with others [1]. India is a signatory to this United Nations convention and Indian government recognises five types of disabilities, those are as following-

- (1) Physical disability-
  - Locomotor disability
  - Visual impairment
  - Hearing impairment
  - Speech and language disorder
- (2) Intellectual disability
  - Specific learning
  - Autism spectrum disorder
- (3) Mental Behaviour (Mental illnesses)
- (4) Disability caused to
  - Chronic Neurological condition
  - Blood disorder
- (5) Multiple disabilities [2].

Only these five categories of disabilities are recognized by the government of India under the Right of people with disability act 2016. All the special provisions for the disables are made by keeping them in focus. The definition by the united nation and the categorisation of the government of India clears that the disability is something that disturbs or creates problems to connect

properly with the society, either by physically or mentally or socially. We often heard that Man is a social animal. The disability hinders the social interaction of man with the society.

### **Disable rights in fundamental rights-**

The word 'disable' or 'handicap' or 'disability' is not mentioned in the fundamental rights of the constitution of India. The Supreme Court through its power of interpretation of the constitution and various verdicts placed disable and their rights in some of the fundamental rights of the constitution of India.

### **Right to equality-**

The state shall not deny to any person equality before the law or the equal protection of law within the territory of India [3]. This is the first right to equality in the fundamental rights. The right provided by this article enables the state and the government for the affirmative action, which creates the base for 'special provisions' for disables. The second right to equality in the fundamental rights is article 15, prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth [4]. And the third right to equality in the fundamental rights is article 16, which says, there shall be equality of opportunity for all the citizens in matter related to employment or appointment to any office under the state [5].

All these three articles do not prohibit discrimination on the basis of disability. The Supreme Court of India in a seven judges constitutional bench in the case of Indra Sahaney Vs. Union of India, allowed the state (government) to discrimination and affirmative action on the basis of disability [6]. This landmark judgement cleared the ground for disable reservations in India. Now the reservation in the government jobs and government educational institutions is the fundamental rights of the persons with disability. There are provisions of 5% reservation for the disabled persons in government higher educational institutions and 4% reservations for them in government jobs in India [7]. The current status is not accordance with these rights. The Prime minister's office in the Lok Sabha revealed that government sectors jobs for disabled persons have declined since 2018. It was 2036 appointments in 2018, which dropped 1709 in 2019 and only 1375 disables appointed in 2020 [8].

### **Right to freedom –**

All the citizens shall have the right to move freely throughout the territory of India [9]. This fundamental right provides freedom of movement which is an important aspect of disable right. For visually impaired and locomotor disable persons, this right is as important as food and shelter. In the ruling of Supreme Court in Javed Abidi Vs Union of India (1999) case held that for accessibility of disables, aircrafts need to make accessible and 50% concession must be offered to them [10]. The concession offered by the Indian railway is also from this right. Now the government is running Accessible India campaign. Under this campaign disable friendly infrastructures are made for their easy and accessible movements.

Article 21 provides No person shall be deprived of his life on personal liberty except according to procedure established by law [11]. This is the most important fundamental right provided to the citizens and non-citizens both. Through various judgements in the Supreme Court held that right to work, right to health [12], Right to livelihood, marriage, etc are the part of this fundamental right. There is nearly 41.7% of disables are unmarried, and only 36.3% of them get work as per the 2011 census data [13]. For accessibility of the disable, India's first accessibility audit 2016 shows that 95% of the buildings audited did not have toilet for the disables, and 5% which had toilets were in sorry state [14].

### **Right to education –**

“Education is the most powerful weapon” - Nelson Mandela.

The quote is enough to say about the need of education. We have the fundamental right to education article 21 A, the state shall provide free and compulsory education to all the children of the age of six to fourteen years in such a manner as state may by law determine [15]. This is the fundamental right by the constitutions of India is equally for the disabled person's education. Under the RPWD act, there is provision that the maximum year covered under right to education is fourteen years for normal person that is increased to eighteen years for the persons with disability [16]. The current situation shows that only 8.5% disables in India acquire a graduate degree [17]. Less than 0.1% of disabled student in India are enrolled in primary education [18].

### **Right against exploitation –**

Under this right there is prohibition of traffic in human being and forced labour [19]. This right not only prohibits human trafficking, and forced labour but also the forced begging. In India it is quite common to see a disable person begging. The state-wise Census 2011 shows that there are 413670 beggars in India and 70506 of them are disabled persons [20]. Only 36.3% of disables in India are working [21]. Person with disabilities are more vulnerable to human trafficking [22]. Disabilities like mental illness need more care with this respect.

### **Cultural and Educational rights –**

Minorities are given right to establish and administer education institutions [23]. This right protects the minorities' cultural and educational rights. The constitution only recognises religious and linguistic minorities and protects their distinct language, script and cultures. Disables especially deaf and Dumb have special sign language. Visually impaired person has Braille script which are also distinct languages but this right does not include disable minorities. There are around 20 lakh deaf children in India out of them only 12 lacs attend basic schooling and rest 8 lakh either drop-out or cannot access education [24]. For visually impaired persons only 6.86 % schools in India have access to Braille books and an audio content-based education system to the blind students [25].

### **Right to constitution Remedies -**

This fundamental right protects rest fundamental rights of the people. Through this right the constitution guarantees the right to move the Supreme Court for enforcement of all or any of the fundamental rights conferred by part III of the constitution [26]. The Nation Legal services Authority of India helps the deprived class including the disables for legal assistance but that is not under any fundamental rights but the Directive principles of state policies (part IV) of the constitution of India, which is not enforceable by the court. The Delhi High Court justice Anoop kumar Mendiratta observed that the right to access to justice includes the right to receive documents to which the parties are legally entitled in the language and format and directed the government to provide the court documents to visually impaired in readable language in all cases wherever the circumstances so warrant [27]. Other categories of disables like deaf and dumb need the documents in sign languages.

#### **Others constitutional rights –**

One of the important constitutional rights is No person to be ineligible for inclusion in, or to claim to be included in a special electoral roll on grounds of religion, race, caste or sex [28]. Here the grounds of disability are not included. The representation of the people Act 1950 prohibits those with mental disabilities or mental health for voting and standing up for the elections but rest categories of disables are allowed for voting and standing up for the elections. The election commission does special provisions for them to vote but no or very few disables can be seen standing up for election. This situation hinders their representation in the parliament and legislative assemblies.

#### **Suggestions and recommendations –**

- There should be awareness programs about the affirmative action for the disables provided under the article 14, 15(1) and 16(1) of the constitution of India.
- Disable reservations in educational institutions under the article 15(1) should be extended to the private educational institutions because there are limited seats in government educational institutions and private institutions can bring more educational opportunities.
- The reservations for the handicapped (disable person) in government jobs under the article 16 (1) should be extended to the private and non-governmental organization because again there are limited opportunities in government organisations.
- Under the article 17 of the constitution, untouchability is prohibited for deprived classes. The disables are also socially deprived. Untouchability is something which is also faced by disables. Although the RPWD act 2016 has provisions against it but the social awareness is less. Including the prohibition of untouchability on the basis of disability in article 17 of the constitution can change the situation.
- Right to freedom of movement under the article 19 (1) (d) is an important right for the disabled persons. The accessible navigation and movement is fundamental need of man. Government and private sectors both should accept this and the Accessible India campaign need to reach to the rural areas.
- Article 21 is the most important right which gives right to life. This right covers right to livelihood, right to health, right to marriage etc. The correct implement of this right only can bring big positive change, so the efforts should be done for good implementation of this right.
- 21 A provides right to education. Disable people need special education which is limited to few cities only. Such special schools should also be established in rural areas for more inclusive access to education for them.
- Forced begging and human trafficking is prohibited under the article 23 for every person. Disables are vulnerable to both Forced begging and human trafficking, thus special care is the need to protect their fundamental right.
- Disables are also socially deprived minorities. Few categories of disables have different language like sign language for deaf and dumb people and Braille for the visually impaired. There should be provisions to protect their language under article 30 of the constitution of India.
- Without accessible Court, right to constitutional remedies is incomplete for the disable persons. Under the article 32 of the constitution of India, provisions should be made to get legal documents in Braille, sign language and audio, etc.

#### **Conclusion –**

The constitution of India is a living document. It accepts necessity of the modification according to the need of the society. Disable rights is the current need of the society and mostly these disable rights are the fundamental in nature. The word disable should be mentioned in the fundamental rights of the constitution rather being enforced through Supreme Court judgements. Although the Rights of person with disability act 2016 is enforced now which became the Magna Carta of disable rights in India but the implementation is not that fast. The awareness and educational level among the disabled persons need to be increased on priority basis. India is a signatory to the UN convention on the rights of the persons with disability 2007 and there are lots of provisions in India for inclusive development of all classes but the political inclusions of the person with disabilities cannot be scene. Now this

is the need of the hour for political inclusions of disables and there should be provisions for reservation of seats in parliament and legislative assemblies for disables like schedule caste and schedule tribes.

#### Reference-

1. UN General Assembly, Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106, available at: <https://www.un.org/development/desa/disabilities/resources/general-assembly/convention-on-the-rights-of-persons-with-disabilities-ares61106.html>
2. The Rights of Persons with Disabilities Act, 2016; 27 December. 2016. Available at: [https://legislative.gov.in/sites/default/files/A2016-49\\_1.pdf](https://legislative.gov.in/sites/default/files/A2016-49_1.pdf)
3. The constitution of India,1950, Art. 14
4. The constitution of India,1950, Art. 15
5. The constitution of India,1950, Art. 16
6. Indra Sawhney v. Union Of India (1992), AIR 1993 SC 477. Available at: <https://indiankanoon.org/doc/1363234/>
7. The Rights of Persons with Disabilities Act, 2016; 27 December. 2016. Available at: [https://legislative.gov.in/sites/default/files/A2016-49\\_1.pdf](https://legislative.gov.in/sites/default/files/A2016-49_1.pdf)
8. the wire staff,(27-07-2022) 'Official Data Shows Central Govt Jobs for Disabled Persons Have Declined Since 2018' the wire. Available at:<https://m.thewire.in/article/government/government-jobs-for-persons-with-disabilities/amp>
9. The constitution of India,1950, Art. 19 (1) d.
10. Javedc Abidi v. Union Of India (supreme court judgement on 17 December, 1998) available at:<https://www.aicb.org.in/images/advocacy/SupremeCourt/Javed%20Abidi%20vs%20Union%20Of%20India%20&Ors.PDF>
11. The constitution of India,1950, Art. 21.
12. Mohinder Singh Chawla v. Union of India (AIR 1997 SC 1225), available at:<https://indiankanoon.org/docfragment/232640/?formInput=%20air%201997%20sc%201225>
13. "Disabled Population in India: Data and Facts." (n.d.). Wecapable.com. Retrieved January 18, 2023 from <https://wecapable.com/disabled-population-india-data/>
14. Sharma, Nidhi,(08-07-2016),"Country's first accessibility audit fails to find a single disabled-friendly building", the economic Times, Available at: [https://m.economictimes.com/news/politics-and-nation/countrys-first-accessibility-audit-fails-to-find-a-single-disabled-friendly-building/amp\\_articleshow/53106243.cms](https://m.economictimes.com/news/politics-and-nation/countrys-first-accessibility-audit-fails-to-find-a-single-disabled-friendly-building/amp_articleshow/53106243.cms)
15. The constitution of India,1950, Art. 21A.
16. The Rights of Persons with Disabilities Act, 2016; 27 December. 2016. Available at: [https://legislative.gov.in/sites/default/files/A2016-49\\_1.pdf](https://legislative.gov.in/sites/default/files/A2016-49_1.pdf)
17. "Disabled Population in India: Data and Facts." (n.d.). Wecapable.com. Retrieved January 18, 2023 from <https://wecapable.com/disabled-population-india-data/>
18. Bansal, Ayushi, "Affirmative Action Without Accessibility: India's Higher Education System Fails Disabled Students" (OxHRH Blog, 10 January 2019), Available at: <https://ohrh.law.ox.ac.uk/affirmative-action-without-accessibility-indias-higher-education-system-fails-disabled-students>
19. The constitution of India,1950, Art. 23.
20. Press Information bureau, (26-02-2015), available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=115990>
21. "Disabled Population in India: Data and Facts." (n.d.). Wecapable.com. Retrieved January 18, 2023 from <https://wecapable.com/disabled-population-india-data/>
22. Jagoea, Caroline, "Disability and the Risk of Vulnerability to Human Trafficking: An Analysis of Case Law", Journal of Human trafficking, (19 -08-2022) , available at: <https://doi.org/10.1080/23322705.2022.2111507>
23. The constitution of India,1950, Art. 30.
24. Chakrabarty, Roshni,"This organisation is trying to build India's first sign language college for deaf children" India Today Web Desk,( 26-08-2018), available at:<https://www.indiatoday.in/amp/education-today/featurephilia/story/deaf-children-hearing-impaired-dont-have-college-options-teach-organisation-solving-problem-html-1313347-2018-08-24>
25. Jose,Bijin,"World Braille Day 2022: Screen-readers, customised apps, HR automation bring some hope to visually impaired", the economic Times, (04-01-2022), available at: [https://m.economictimes.com/magazines/panache/world-braille-day-2022-screen-readers-customised-apps-hr-automation-bring-some-hope-to-visually-impaired/amp\\_articleshow/88686000.cms](https://m.economictimes.com/magazines/panache/world-braille-day-2022-screen-readers-customised-apps-hr-automation-bring-some-hope-to-visually-impaired/amp_articleshow/88686000.cms)
26. The constitution of India,1950, Art. 32.
27. Thapliyal, Nupur, "Visually Impaired Litigants Entitled To Receive Court Documents In Their Preferred Means Of Communication/ Braille Script: Delhi High Court", Live [law.in](http://law.in), (09-04-2022). Available at: <https://www.livelaw.in/amp/news-updates/delhi-high-court-visually-impaired-litigants-court-documents-in-braille-script-196209>
28. The constitution of India,1950, Art. 325.