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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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“EMPOWERING EVERY VOICE: A COMPARATIVE ANALYSIS OF DISABILITY RIGHTS IN INDIA”

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Introduction

Disability refers to the challenges individuals face in carrying out certain activities or attaining equitable access in a particular society due to various conditions. These conditions may encompass cognitive, developmental, intellectual, mental, physical, sensory, or a combination of factors. Disabilities can either be present from birth or acquired later in life. In the past, the recognition of disabilities was limited to a narrow set of criteria, but it is important to acknowledge that disabilities are diverse and not binary. They can manifest in distinct characteristics unique to each individual, whether visible or concealed. The rights of individuals with disabilities, an essential aspect of the wider human rights spectrum, have made substantial progress, evolving from an emphasis on charity to a more encompassing rights-based structure. The objective of the disability rights movement is to ensure that individuals with disabilities have access to equal opportunities and rights. The movement focuses on specific goals such as advocating for accessibility and safety in transportation, architecture, and the physical environment.¹ Additionally, it strives for equal opportunities in areas like independent living, employment, education, and housing. The movement also emphasizes the importance of freedom from abuse, neglect, and violations of patients' rights. This article sets out to investigate disability rights, examining historical details, present challenges, and persistent initiatives

¹ Hajira S, 'Advancing Disability Rights in India: From Fragmented Movements to Inclusive Policies' (SSRN, 26 May 2023)

aimed at creating a more inclusive global environment. By delving into international viewpoints, legal structures, grassroots activism, and the intersectionality of identity, this analysis aims to shed light on the varied and intricate path towards protecting the rights and dignity of individuals with disabilities.

Historical Evolution of Disability Rights

Prior to the enactment of the RPwD Act (Rights for Persons with Disabilities act), the primary legislation in India addressing Persons with Disabilities (PwDs) was the Persons with Disability Act, 1995 (PDA). This marked a significant step by the Government of India in articulating the rights of PwDs, emphasizing the need for equal opportunities and the prevention of denial of access to essential services like education and employment. The PDA categorized disabilities into seven types, ranging from "Blindness" to "Mental Illness," and notably included a provision for a 3 percent reservation for PwDs in government jobs. Despite its landmark nature, critics highlighted various shortcomings and loopholes, particularly the vague definition of a PwD as a person "suffering from 40% or more disability," which posed challenges in implementation. While the PDA mandated the creation of accessible public buildings and transport for PwDs, it lacked specific guidelines or timelines for the implementation of these measures. Additionally, the legislation stated that authorities should implement such measures "within the limits of their economic capacity and development." Critics argued that this provision has been exploited by officials to hinder progress in implementing accessibility regulations. The absence of oversight further compounds the issue, as there is no verification to ascertain whether financial constraints are a legitimate obstacle. In 2007, India ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which declares that disability arises from the interplay of impairments with attitudinal and environmental barriers, impeding full and active participation in society on an equal basis.[3] This convention represented a paradigm shift in the perception of disability, moving away from considering it as solely a medical issue to recognizing it as a societal challenge. The focus shifted from viewing individuals with disabilities as needing to be fixed to acknowledging the necessity for societal changes to accommodate their needs.² By endorsing this convention, India undertook the commitment to reassess and amend existing laws in alignment with the principles outlined in the UNCRPD. Subsequently, this process culminated in the enactment of the Rights of Persons with Disabilities (RPwD) Act. On

² Tibrewal A, 'The Slow March of Progress: An Overview of the History of Disability Legislation in India' (AIF, 28 July 2020)

December 14th, 2016, the Government of India enacted the Rights of Persons with Disabilities (RPwD) Act, a legislation that significantly broadened the scope of empowerment and recognition for individuals with disabilities (PwDs) in society, offering them increased opportunities to realize their potential. Regarded as a transformative force in the realm of disability rights, this law establishes a framework that delineates the rights of the approximately 100 million PwDs in India, a group that has historically faced discrimination due to societal, economic, and legislative challenges. This article will delve into the background of the law, its modifications and expansions of previous policies, and the current on-the-ground reality of its implementation.

International Perspective on Disability Rights

Around the world, people believe in and work towards making sure individuals with disabilities have their rights and dignity protected. This belief is shown in global agreements, with one important one being the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). This agreement was decided on in 2006 and started being followed in 2008. It has been very important in shaping how we think about and act on disability rights everywhere. The UNCRPD is a big change because it looks at disability not as just a problem for one person but as something that happens because society makes it hard for everyone to join in fully. It talks about treating everyone equally, being fair, and including people with disabilities, so they get the same chances as everyone else. It's all about making sure they have the same rights and opportunities. ³Some of the key principles of international perspective are-

- 1. Equal Recognition-** The global viewpoint stresses giving equal acknowledgment to individuals with disabilities in legal matters. This involves acknowledging their legal abilities and making sure they have the same rights and opportunities as others.
- 2. Inclusive Development-** More and more people are realizing the importance of making development efforts inclusive and taking into account the specific needs of individuals with disabilities. The United Nations, through the adoption of the Sustainable Development Goals (SDGs), has made a commitment to ensure that no one is left behind, explicitly recognizing the significance of addressing disability-related concerns in the pursuit of sustainable development.

³ 'Disability History: The Disability Rights Movement (U.S. National Park Service)' (National Parks Service)

- 3. Participation in Decision Making-** The global community supports the active involvement of individuals with disabilities in decision-making at every level. This engagement is considered essential to ensure that policies and practices truly represent the diverse needs and viewpoints of the disability community.
- 4. Cross-cutting Nature-** The rights of individuals with disabilities are seen as overlapping and linked to different human rights. The global viewpoint acknowledges the interconnectedness of identities and the importance of addressing various forms of discrimination that individuals with disabilities might encounter.
- 5. Global Collaboration-** Global collaboration is promoted to exchange effective methods, resources, and knowledge in promoting disability rights. Governments, non-governmental organizations (NGOs), and international agencies work together in joint efforts to build a world that is more inclusive and accessible.

Comparative Analysis of Disability Rights

In most of the countries of European Union, the disability rights are more of a social policy rather than a matter of social legislation. For example, in Belgium, the disability policies focus on the opportunity in the employment, education and better living standards. There is no separate legislation for the same. In the United Kingdom, the disabled workers were protected under Disabled Persons (Employment) Act, 1944. But this did not cater to the needs of the nation. The latest legislation is Disability Discrimination Act (DDA), 1995. This statute provides for the accessibility to goods and services by the disabled persons, management of the premises etc. The quota system that was prevailing in the earlier Act was abolished. It envisaged for non-discrimination against the persons with disabilities in the schools, colleges and industries. The statute puts burden on the educational institutions to encourage the disabled pupils to attend classes. But the 1995 statute fails to take into consideration the social model as envisaged by United Nations regarding disability. In Germany, the German disability law was enacted for the protection of the disabled group. One of the provisions was that every employer, with at least 16 employees, has to reserve the posts for 6 percent of the total for the persons with disability. The problem was with the employers going away from their duties after the quota is filled. In the United States of America, the Americans with Disabilities Act, 1990 was passed to provide protection to the disabled group. The statute stated about providing a clear and

comprehensive mandate for the elimination of the discrimination of the persons with disabilities.⁴ It spoke about the accessibility of the public services by the persons with disabilities. This Act applied during employment as well as pre-employment proceedings. This statute is binding on the employers with at least 15 employees. The employers have to provide with reasonable accommodation for the persons with disabilities. But as per the reports the main point in the United States is that the disabled persons were treated on individual basis rather than on group basis. The Indian disability laws suffer from major flaws. Unlike the above laws, the private sector is not covered under the Indian statutes. There are no provisions for tribunals for the enforcement of the rights of the persons with disabilities or to impose penalty in case of any discrimination. It is not at all compulsory for the government to remove structural and environmental barriers for the protection and integration of disabled persons.

Challenges and Barriers

India encounters numerous obstacles and impediments in the domain of disability rights, impeding the complete achievement of equal opportunities and inclusivity for people with disabilities.⁵ Some of which are:

- 1. Limited Accessibility-** Numerous public spaces, transportation systems, and infrastructure in India are not structured to be accommodating for individuals with disabilities. This absence of accessibility curtails their ability to move around freely and hampers their independence.
- 2. Social Stigma and Discrimination-** In India, enduring social stigmas and stereotypes related to disabilities persist. Individuals with disabilities frequently encounter discrimination, bias, and exclusion across different facets of society, including in the realms of education and employment.
- 3. Inadequate Legislation and Enforcement-** Despite the existence of legislation, like the Rights of Persons with Disabilities (RPwD) Act of 2016, ensuring effective enforcement remains a challenge. Issues such as a lack of awareness, loopholes in the legal framework, and insufficient implementation impede the robust protection of disability rights.
- 4. Educational Barriers-** Individuals with disabilities frequently encounter limitations in accessing high-quality education, primarily because of the absence of inclusive facilities,

⁴ (Disability rights- A comparative analysis -LIBERTATEM magazine)

⁵ Gupta S, 'Rights of the Disabled' (Punarbhava, 27 November 2018)

adequately trained educators, and suitable learning materials. These constraints curtail educational and career prospects for people with disabilities.

5. **Limited Employment Opportunities-** People with disabilities face difficulties in obtaining employment opportunities due to bias, insufficient workplace accommodations, and employers' limited awareness of the capabilities of disabled individuals.
6. **Healthcare Disparities-** Individuals with disabilities frequently experience challenges in obtaining suitable healthcare services tailored to their needs. Healthcare facilities may lack essential accommodations, and medical professionals may not possess sufficient training to address the diverse needs of individuals with disabilities.
7. **Lack of Assistive Technologies-** The accessibility and cost-effectiveness of assistive technologies, including devices for mobility and communication, are restricted. This hinders the independence and overall quality of life for individuals with disabilities.
8. **Lack of Social Support Systems-** Systems of support for individuals with disabilities, which encompass counseling services, rehabilitation, and community inclusion programs, are frequently insufficient. This deficiency in support has the potential to influence their mental health and overall well-being negatively.

Shifting Societal Perceptions: From Pity to Inclusion

Shifting societal perspectives on disability rights entails moving away from a mindset rooted in pity to one centered on inclusion. Instead of perceiving individuals with disabilities with sympathy or as recipients of charity, the aim is to cultivate a culture that upholds their rights and actively integrates them into all aspects of life. This transition signifies a broader recognition that individuals with disabilities have an entitlement to the same rights, opportunities, and dignity as everyone else. Departing from the pity paradigm involves challenging stereotypes and deconstructing preconceived notions that portray people with disabilities as subjects of charity or as burdens. The emphasis is now on acknowledging their inherent value and potential contributions to society. In the context of this transformation, the concept of inclusion underscores the creation of environments that cater to diverse needs and ensure equal access to opportunities. This encompasses the design of public spaces, educational institutions, workplaces, and various social settings with a focus on accessibility. Inclusion extends beyond physical aspects, involving the cultivation of a mindset that values diversity and actively seeks to dismantle barriers that exclude individuals with disabilities. Promoting inclusion

in societal perspectives of disability rights requires educational initiatives, awareness campaigns, and policy adjustments. Encouraging empathy, understanding, and a shift in language and representation can contribute to the evolution of society towards a more inclusive mindset. The ultimate objective is to foster a culture where individuals with disabilities are not perceived as objects of pity but as essential members of a diverse and inclusive community, deserving of equal rights and opportunities.

Future Prospects and Recommendations

Continued advancements in technology have the potential to improve accessibility and independence for individuals with disabilities. Progress in assistive technologies, communication devices, and mobility aids can significantly enhance their overall quality of life. Shifting towards more inclusive education systems can create expanded opportunities for people with disabilities. The implementation of accessible learning materials, provision of trained educators, and the cultivation of inclusive environments contribute to their academic and personal growth. Future reforms in legislation and policies can address current gaps and reinforce the safeguarding of disability rights. Clearer guidelines, heightened penalties for violations, and improved enforcement mechanisms are key elements for a more resilient legal framework. Raising ongoing awareness about the rights and capabilities of individuals with disabilities is imperative. Advocacy campaigns play a crucial role in challenging stereotypes, diminishing stigma, and promoting a more inclusive society⁶. Initiatives that advocate for equal employment opportunities, reasonable accommodations, and workplace inclusivity are pivotal in enhancing the professional prospects of individuals with disabilities. Encouraging employers to recognize and harness the diverse talents of individuals with disabilities is essential. Implementing comprehensive training programs for educators, healthcare professionals, and employers can heighten awareness about the needs and capabilities of individuals with disabilities, fostering a more inclusive and supportive environment. Creating universally accessible public spaces, transportation systems, and workplaces by incorporating features like ramps, elevators, and sensory-friendly environments is vital to ensure physical spaces are inclusive. Encouraging community participation in disability rights initiatives is crucial. Establishing platforms for individuals with disabilities to voice their concerns, share experiences, and actively participate in decision-making processes can lead to more inclusive policies. Collaborating with international

⁶ (Future prospects for the United Nations Convention on the rights of) [lord_future_prospects_for_un_on_disability_rights.pdf](#)> accessed 19 January 2024

organizations to exchange best practices, research findings, and resources is essential. Learning from global experiences contributes to the development and enhancement of disability rights frameworks. Recognizing and addressing mental health challenges faced by individuals with disabilities is vital. Establishing accessible counselling services and mental health support networks can significantly improve their overall well-being. Providing incentives for employers to hire individuals with disabilities, such as tax benefits or recognition programs, can encourage the creation of more inclusive workplaces and reduce employment disparities. Sustained public awareness campaigns challenging stereotypes, eliminating prejudices, and promoting a more inclusive understanding of disability are essential. These campaigns, utilizing various media channels, aim to reach a broader audience. Investing in research initiatives to gather comprehensive data on the experiences, challenges, and successes of individuals with disabilities is crucial. This information is essential for evidence-based policymaking and targeted interventions. Embracing these future prospects and recommendations can empower societies to create a more inclusive and equitable environment for individuals with disabilities, ensuring they have equal access to opportunities and a dignified quality of life.

Conclusion

Despite these advancements, obstacles persist. Attitudinal, institutional, and infrastructural barriers continue to impede the complete inclusion and involvement of disabled individuals. For instance, the entertainment industry in India lacks content accessible to those who are blind or have hearing impairments. There is a pressing need for increased awareness, sensitivity, and the implementation of accessibility measures across various sectors to ensure equal opportunities and rights for persons with disabilities. Their distinctive perspectives and experiences contribute to diversity, innovation, and inclusivity within organizations. Establishing inclusive environments and eliminating barriers is vital for individuals with disabilities to access leadership opportunities. Embracing disability-inclusive leadership can dismantle barriers, challenge stereotypes, and create avenues for individuals with disabilities to thrive and make positive contributions.