



THE ROLE OF DISABILITY LAWS IN BRINGING SOCIAL TRANSFORMATION IN INDIA

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ABSTRACT

The largest democracy of the world, with a Constitution that enshrines principles for social democracy, India has till recent times failed to recognise the persons of disabilities as individuals with equal rights. This paper analyses the effectiveness of the Rights of Persons with Disabilities Act, 2016 which was enacted as a rights-based legislation in line with the provisions of the UNCRPD in enabling social transformation. This paper is a combination of doctrinal and non-doctrinal research. The observations made in this paper is based on the data collected through questionnaire method involving 20 respondents in Kothrud, Pune district in the State of Maharashtra. It also analyses the past and present approach of the Indian society towards persons with disabilities, and analyse whether this change was brought in with the help of the social and human rights model of disability.

Keywords: Social Transformation, Disability, Social Model of Disability, UNCRPD, RPwD Act, 2016.

INTRODUCTION

Social change occurs when there is change in the existing social structure of a society including its patterns of social relations,

established norms, and roles¹. Of the many ways that can bring in this change, legislations are considered as the most important by many reformers especially the 19th and 20th century social reformers in India. This idea is philosophically rooted in the writings of jurists who considered law as a vehicle of social engineering². These jurists considered legislations as a tool to challenge ideas of autonomous and apolitical law.³ The Indian social reformers believed that legislations can reduce the existing inequality in the society and thereby release a person from the constraints of tradition or of the particular social group he belonged. However, according to Yehezkel Dror⁴, a law attempting to bring in change in the behavior and attitude of the society faces many problems. He, however, argues that law can bring about indirect social change indirectly by shaping the social institutions, by providing institutional framework and also by creating legal duties⁵. While one looks into whether a law has brought in social change, it is important to analyse not only the content of the law, but also how it is put into use by the agents of change strategically and meaningfully depending on the social, political, economic and cultural background of each State. So, it is essential to understand whether a particular legislation has brought in the change it intended to create, in order to understand the effectiveness of the same.

The Rights of Persons with Disability Act, 2016 (hereinafter the RPwD Act) is the outcome of India's international obligation which arose after the signing and ratification of the United Nations Convention on the Rights of Persons with Disabilities, 2006

¹ P.I. Bhatt, *Law and Social Transformation in India*, 45, (1st Ed. 2012).

² R. Jeffrey, N. Singal. *Measuring Disability in India*, 12 Economic and Political Weekly, 22, 24 (2008).

³ Ibid.

⁴ Y Dror, *Values and the Law*, 17(4) The Antioch Review, 440, 446 (1957).

⁵ Ibid.



(hereinafter UNCRPD). UNCRPD is an outcome of decades of efforts of United Nations (hereinafter UN) along with various disabled people's organisations and States to change the existing social structure towards persons with disabilities.⁶ It aims at transforming the society by challenging the fundamental traditional concept of regarding the persons of disability as objects of charity. It aims at a paradigm shift in both national and international levels by recognising that persons with disabilities are subjects of rights capable of enforcing them and not people in need of charity or medical intervention or protection of State. It intends to bring about social transformation by recognising persons with disability as an equal who were systematically marginalized and excluded from society. For this, UNCRPD calls up every State party to work with and for the persons with disability based on the social model of disability and rejects the traditional medical model. The medical model of disability does not distinguish between impairment and disability and treats the persons with disability in a paternal or custodial attitude. The social model recognised by the UNCRPD highlights the difference between impairment and disability and states while impairment is any physical, mental or sensory deficiency in a human body, disability is the result of a society's reaction to such impairments.⁷ The ratification of UNCRPD in 2007 by India, created an obligation to enact a legislation that gives effect to the rights enshrined in it and hence RPwD Act was enacted with an aim to bring about strategical difference in

the lives of the persons with disability by essentially changing the society.

This article analyses the effectiveness of the Rights of Persons with Disabilities Act, 2016 which was enacted as a rights-based legislation in line with the provisions of the UNCRPD in enabling social transformation. It also analyses the past and present approach of the Indian society towards persons with disabilities, and analyse whether this change was brought in with the help of the social and human rights model of disability. The article proceeds as follows: Part I briefly overview the capability of the social model of disability in bringing social transformation. Part II understands the evolution of recognition of disability rights in India and briefly outlines the RPwD Act. Next, Part III analysis certain sections of the RPwD Act in relation to the social reality. The observations made in the Part III is based on the data collected through questionnaire method involving 20 respondents in Kothrud, Pune district in the State of Maharashtra. The respondents included 12 men and 8 women. The respondents belonged to an age group of 18-50 years. The respondents were graduates and above and about 70 % of them had locomotor disability and 30% had communication disability. About 40 % of the respondents were disabled by birth and 20 % had disability because of accident. Finally, Part IV briefly illustrates how the certain judgements by the Indian judiciary has been in line with the social model of disability and how the judiciary can facilitate social transformation.

⁶ R. Kayess, P. French, *Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities*, 8 Human Rights Law Review 1, 4 (2008).

⁷ O Lewis, *The Expressive, Educational and Proactive Roles of Human Rights: An Analysis of the United Nations*, 97, 112 in *Rethinking Rights-based Mental Health Laws* (B McSherry, P Weller, 1st ed. 2010).



I. SOCIAL MODEL OF DISABILITY AND SOCIAL TRANSFORMATION

Traditionally all States, implicitly or explicitly, considered people with disabilities as not deserving of the same rights as others. Persons with disabilities have traditionally been viewed by the society as vulnerable population who should be protected by the State rather than been considered as equal to other people. The cultural and social values of different societies also was a factor in which the disabled people were treated. International law recognized disability as a human rights issue only recently UNCRPD aimed to bring about inclusion rather than segregation of the persons with disability not only in their local community but also in the international community. UNCRPD with its 50 Articles and its optional protocol represents a paradigm shift in international law⁸. From the concept that persons with disability are in need of charity, medical intervention or protection of the State, the inception of UNCRPD brought in a concept that they are human beings having rights and capable of enforcing the same.

The world after the Second World War saw a significant rise in the number of human rights treaties signed and ratified internationally which aims to protect and preserve the rights of the human beings in order to protect their dignity and right to life along with preventing exploitation, discrimination and inhuman treatments. In this light, the UNCRPD is the first human rights treaty in the international

legal framework that addressed the needs of the persons with disability. And it is this Convention that had been the driving force for many States to take necessary steps for the same. So, the question whether mere ratification of a Convention makes a significant difference arises. The ratification of a human rights treaty is, in itself, is directly related to the human rights record of the country⁹. Governments often ratify human rights treaties as a matter of window dressing, radically decoupling policy from practice and at times exacerbating negative human rights practices.¹⁰ It is overly optimistic to expect that ratifying a treaty will produce an observable direct influence in a country.¹¹ Authors have identified that an effort should be made to enhance the monitoring and enforcing the treaty obligations so that the ratification of a treaty alone will not be used by States to exhibit that there is real improvement in the lives of citizens. Arlene S Kanter in her book¹³ has observed that by nurturing the application of the norms contained in the human rights treaties, like the UNCRPD, States have the opportunity to address the injustices to which people with disabilities have been subjected from time immemorial and this cannot be achieved without a combined effort by the State actors, the NGOs, and the people. So, unless an effective participation is done by the State parties, mere ratification of a human rights treaty does not make difference in the social structure of the society. The same is applicable to a legislation enacted by the

⁸ A. Kanter, *The Development of Disability Rights Under International Law: From Charity to Human Right*, 46, (2014).

⁹ O. Hathaway, *Do Human Rights Treaties Make A Difference*, Yale Law Journal, 111, 111 (2002).

¹⁰ E Burton, K Tsutsui, *Human Rights in a Globalizing World: The Paradox of Empty Promises*, 110(5) American Journal of Sociology 1373, 1387 (2005).

¹¹ L C Keith, *The United Nations International Covenant on Civil and Political Rights: Does It Make Difference in Human Rights Behavior*, 36 (1) Journal of Peace Research, 95, 107 (1999).

¹² Supra 9.

¹³ Supra 8.



legislators in a country. However, they do play a major role in initiating transformation in the society.

The social model of disability that the UNCRPD is based upon views disability as a “part of diversity of human experience” and places responsibility on society to remove physical, social, environmental, attitudinal or legal barriers that prevents the persons with disability in accessing facilities required to ensure their participation in society¹⁴. In the social model of disability, the society as a whole has to play a significant role in accommodating the people with disabilities in its various programs, facilities and services. UNCRPD recognizes certain fundamental principles including respect for dignity, individual autonomy, non-discrimination, full and effective participation, accessibility, respect for difference and equality of opportunities. Elif Celik¹⁵ states that the CRPD acknowledges the subject of disability as someone who is different in abilities yet complex, interdependent and social rather than a mythic, self-sufficient superhero. UNCRPD also recognises right of persons with disabilities to access justice, right to liberty and freedom to enjoy and exercise all recognised rights. All States have an obligation to provide an adequate standard of living to the people with disability, to ensure their full and equal participation in public life, to ensure equal opportunities in all matters of employment, education, health and other related services including rehabilitation

and social protection. States are to identify and eliminate barriers that prevent the persons with disabilities from accessing public transport or other facilities and services including information and communication facilities. Children and women with disabilities are specifically mentioned in UNCRPD and the States are to ensure the protection of their rights. UNCRPD does not create new human rights but rather elaborates existing international human rights law on persons with disabilities creating a “hybrid convention” containing both civil, political and social, economic rights.¹⁶ Certain authors¹⁷ also identify a concept of disability human rights which focuses not on the ability or inability of a person but on their talents and hence recognising their worth and dignity. The human rights model suggests that it is the individual’s own right to develop or recognize such talent and State has to provide for adequate opportunities that ensure her participation and inclusion in the society. The human rights approach propagates that the rights enjoyed by an individual “derives from common humanity, rather than actual or potential contribution to the society in reciprocity for benefits, or even from shared vulnerabilities as members of the community”¹⁸. The lack of a clear and explicit definition of disability under the UNCRPD helps an interpretation of its provisions based on both social and human rights approach. Thus, in a nutshell, the central theme that emanates from UNCRPD

¹⁴ Ibid at 48.

¹⁵ *The Role of CRPD in rethinking the subject of human rights*, 21(7) *The International Journal of Human Rights* 933, 940 (2017).

¹⁶ S Motz, *Article 11: Situations of Risk and Humanitarian Emergencies*, 314,320 in *The UN Convention on the Rights of Persons with Disabilities: A Commentary*, (V D Fella, R C G Palmisano, 2018).

¹⁷ M A Stein, J E. Lord, *Enabling Refugee and IDP Law and Policy: Implications of the U.N. Convention on the Rights of Persons with Disabilities*, 28 *Arizona Journal of International and Comparative law* 401, 423 (2011).

¹⁸ M C. Weber, *Disability Rights, Welfare Law*, 32 *Cardozo Law Review*, 101, 110 (2011).



and its obligations is the need to ensure the full participation of people with disabilities and the related organizations in all spheres of life, in the development of both national and international laws, policies and programs and also in the assessment, planning and implementation of social, economic, developmental and even humanitarian strategies. UNCRPD illuminates existing human rights obligations towards the persons with disabilities and creates an obligation to execute them to overcome the invisibility of persons with disability under the existing legal regime. The social model of disability as provided under the UNCRPD calls for a transformation of the society's attitude towards persons with disability in both national and international level. Thus, UNCRPD is a human rights treaty with great potential for bringing social transformation. The provision that each State party has to bring about a legislation in order to give effect to the rights protected under UNCRPD and that each State has to take active steps in protecting such rights and remove barriers that prevent the full inclusion of persons with disability in the society, helps bringing about substantive changes in societies. However, as Arlene S Kanter¹⁹ has observed, States have an opportunity to address the injustices to which people with disabilities have been subjected from time immemorial by nurturing the application of the norms contained in the human rights treaties, like the UNCRPD, and this cannot be achieved without a combined effort by the State actors, the NGOs, and the people. So, unless an effective participation is done by the State parties, mere ratification of a human rights

treaty does not make difference in the social structure of the society. This paper analysis the effect of social model of disability as enumerated in UNCRPD in the Indian society.

II. EVOLUTION OF DISABILITY RIGHTS IN INDIA

Traditionally, Indian societies has been believed disability to be a divine punishment or karma for acts of sinful acts in the previous life. This belief has guided society's treatments towards persons with disability. Manu Smriti and Dharmashastra had called upon people to support and look after the weak and disabled and according to them, such actions ensure a place in heaven for the people.²⁰ However, it has been the responsibility of family to look after the persons with disability. The joint family system that prevailed in the traditional Indian society provided the required economic, psychological and physical support to persons with disability.²¹ Being cohesive and stable social units, families provided essential physical, emotional and economic support along with a sense of security to its members especially the ones with disability. The economic and social status of the family, thus, affected the well-being of the persons with disability.

During the colonial era, the capitalistic ideology of British empire which considered the persons with disability as unproductive and incapable for the development of the economy of the country was passed on to the Indian society. The idea that persons with disability are to be rehabilitated, passed down through the charity organisations, influenced

¹⁹ Supra 7.

²⁰ A Dalal, *Living with a Chronic Disease: Healing and Psychological Adjustment in Indian Society*, 12 *Psychology and Developing Societies*, 67, 70 (2000).

²¹ Ibid.



the Indian elite exposed to western education and was practiced even after the independence.²²

The Nehruvian model of a welfare state was the guiding principle behind all the social development programs after independence and under this model, the government was responsible for providing and implement rehabilitation programs. This led to the setting up of various centralised and institutional rehabilitation centres in the first two decades of independence. These centers viewed disability as a disease, with an emphasis to cure or correct it to let them be as normal as possible.

Despite the aims of the Constituent Assembly in bringing about social revolution in the existing social structure in India with the help of the Constitution and drafting the same with this hope and aspiration, the Constitution did not mention about the people with disabilities in it. In the right to equality wherein the Constitution prohibits discrimination on the basis of gender, race, religion, sex, language, it does not explicitly prohibit discrimination on grounds of disability. The right of persons with disabilities to respect, dignity, and freedom is thus part of only Article 21 of the Constitution. It took almost 45 years after the independence, that the Indian legislators and government took initiative to enact a law for the rights and protection of the persons with disability. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) 1995, though been a significant step by the Indian legislature, was based on the medical model of the disability and hence failed to bring about substantial changes in the society's attitude towards

persons with disability. The persons with disability, hence, continued to be marginalized, exploited and considered as an object of charity in the Indian society.

The RPwD Act, 2016:

The ratification of the UNCRPD by India, made it pertinent for the government to enact a law which was in consonance to its provisions. The RPwD Act, 2016 provides that the Government shall ensure by taking appropriate steps that persons with disability enjoy a life with dignity, right to equality and respect for his or her own integrity equally as others. The Section 3 prohibits discrimination on the ground of disability. The government has to ensure measures to prevent inhuman treatment, abuse or exploitation of persons with disability and to remove barriers that prevent them from enjoying their full participation in the society. The government under the Act has also to ensure reasonable accommodation to all persons with disability in the country. The RPwD Act has tried to inculcate the idea of social model of disability in the Indian society through it and to ensure that the persons with disability will be considered as right holders and not objects of charity. The Act is however, often criticised²³ that it fails to completely understand the approach of UNCRPD and fail to adopt the UNCRPD's social model of disability within a human rights model rather than welfare model.

However, one significant change that can be accorded to the drafting of the Act can be that it involved the active participation of the persons with disability and their organisations in the consultation and drafting

²² Ibid at 72.

²³ R K Gupta, "Rights of persons with disability Act (2016): A Critique" 3(1)1, 4 Journal of Disability Studies (2017).



proceedings. This have helped the understanding to a large section of the people to understand that they are rightsholders, not merely recipients of services, treatment, or charity.

The effective implementation of the UNCRPD and the RPwD Act have the potential to bring about significant changes in the society. How the RPwD Act have achieved this in its four years of enactment can be understood in the following sections.

III. ANALYSIS OF THE PROVISIONS OF THE RPwD ACT

The 2011 Census²⁴ provides that there are over 21 million persons with disabilities in India. This constitutes about 2.1% of the total population and among this about 12.6 million are men and 9.3 are women. Article 15 of the Constitution provides that no discrimination shall be made on the basis of sex. The Directive Principles of State Policy also provide that State shall afford equal treatment to both men and women. The 1995 Act which had about 28 chapters did not, however, address the problems of women with disabilities. The 2006 National Policy for persons with disability endorsed the need for special attention to women with disabilities, especially in areas of special education, vocational training and employment. The RPwD Act calls for both State and Central governments along with the local authorities to take measures to ensure that women and children enjoy rights equally with others.

The majority of women with disabilities in India suffer from triple discrimination of being female, being disabled and being poor. They

are socially invisible category. As Amita Ghai²⁵ in 2002 stated, even the feminist movements in India had failed to recognise the plight of the women with disabilities in India. Women continue to face discrimination as there is a lack of accessibility to public places which hampers their overall development. The 8 women respondents in the present study have unanimously stated that they were discriminated on basis of their gender and disability in many occasions. Many of these discriminations was mainly in relation to their right to make decisions and personal choices.

➤ ACCESS TO CRIMINAL JUSTICE:

Article 39A of the Constitution provides for right to free legal aid for persons in need. In light of this right, the Section 12(d) of the Legal Services Act, 1987 provides for free legal aid to persons with disabilities and persons with mental illness. This ensures that legal assistance to persons with disabilities are provided, irrespective of their disability and economic status.

The premises of the Supreme Court of India are accessible for persons with disabilities.²⁶ This enables the people to approach the highest court for enforcing their rights. The Criminal Procedure Code (hereinafter Cr.P.C)²⁷ prescribes that those people who are unable to communicate or understand the proceedings against her should be provided with interpretation facilities. Section 119 of the Evidence Act also provides that persons who are not able to communicate orally in open court shall be allowed to make their statements either in writing or with the help of signs. The Ministry of Social Justice has also appointed an Office of Chief

²⁴ Available at http://censusindia.gov.in/Census_And_You/disabled_population.aspx Last seen on April 7, 2020.

²⁵ A. Ghai, *Disability in South Asia*, 17, (1st ed.,2018).

²⁶ First Country Report to UN available at https://www.ncpedp.org/parallel_reportof_india_Last_seen_on_March_27,_2020.

²⁷ S.318 Cr.P.C, 1976.



Commissioner for Persons with Disabilities and this officer has powers of civil court also facilitates access to justice.

The Criminal Law (Amendment) Act, 2013 and also the POCSO Act, 2012 mandates that distinct type of support has to be provided for persons with disabilities, especially women. All these legal provisions intend to facilitate access to justice to the persons with disabilities and to make sure that their rights are protected by law. However, the question whether these were able to actually change the lives of persons with disability is to be analysed.

Social Realities:

Human Rights Watch, an international organisation, in its 2018 report “Invisible Victims of Sexual Violence: Access to justice for Women and Girls with Disabilities in India”²⁸ reported that women and girls with disabilities face high risk of sexual violence in India as they find it more difficult to escape the threat. The report studied 17 rape and gang rape cases and concluded that even after 5 years of Criminal Law (Amendment) Act, 2013 the girls and women with disabilities continue to face significant barriers to justice. As per the report the government lacks system to register such attacks.

The distinct type of support that the Criminal Law (Amendment) Act, 2013 and the POCSO Act, 2012 mandates is not available in India²⁹. This is mainly because the police are not sensitive to the issues of the persons with disability and are not familiar with the rights available to the persons with disabilities. Another main reason for the lack

of access to criminal justice is that the people are ignorant of their rights. As per the report³⁰ of Human Rights Watch, 16 of 17 cases reported in India reflects the lack of information in an accessible format.

In the research conducted for the present study, about 8 respondents have been to police station to register complaints of various sorts and all the 8 respondents unanimously responded that the police officers were not sensitive to the needs of the respondents. One respondent was asked to wait for hours before he could see an officer. And respondents were of the concern that police officers did not inquire their complaints properly as they were not able to frequently visit the police stations with respect to the cases. Hence, even if it is for a small petty crime or for a serious crime, the police stations are not disable-friendly and the police officers are not efficiently trained to meet the needs of the persons with disability. There is lack of awareness among the public and the police related to the right to accessible information of the persons with disability. Unless, the persons with disabilities can be ensured that their rights will be protected through the system of law, and this been fully implemented, it is impossible to say that the legislation has brought in social transformation.

➤ ACCESSIBILITY:

The UNCRPD have adopted the accessibility principle to ensure empowerment of persons with disability and under this all State parties are to take necessary steps to ensure accessibility and also to remove barriers.

²⁸Human Rights Watch, *Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India*, 2018, available at <https://www.hrw.org/report/2018/04/03/invisible->

[victims-sexual-violence/access-justice-women-and-girls-disabilities](https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities), Last seen on March 27, 2020.

²⁹ Supra 22.

³⁰ Ibid.



Barriers³¹ that prevent full and effective participation of persons with disability can be communicational, cultural, economic, environmental, institutional, political, social, attitudinal or even structural. The UNCRPD and later the RPwD Act has recognised and acknowledged that unless these barriers are removed in schools, colleges, or other institutions, and in public buildings, public places and even in public transport, there will be no real change in the lives of the persons with disability.

The National Policy for Persons with disability, 2006 had provided that all schools are to be disabled-friendly by 2020. The National Building Code of India, 2009 had provided that accessible designs are to be made an integral part of building plans. The 12th Five Year Plan (2012-2017) had provided that transport facilities, government buildings and government websites are to be made disabled-friendly.

The Metro Stations are constructed in such a way that they enable access to the persons with disability. The schools and colleges are to compulsorily construct ramps and to have disability-friendly classrooms. Many schools and colleges have undertaken this step. The railway stations, are also slowly becoming disability-friendly with the availability of wheel-chairs and carts for the transportation of persons with disability. However, whether the law has brought in social transformation has to be analysed in light of the social realities.

Social Realities:

In the research conducted for the present study, all the 20 respondents had unanimously pointed out the lack of accessibility to public spaces. One respondent had recollected the incident

wherein she was not allowed to enter a temple as the temple was not wheel-chair friendly. Another respondent recollected an incident wherein restaurant owners commented that restaurants are not hospitals for persons with disabilities to visit.

So even when there is construction of ramps, rails, accessible public transport and so on, the law has not reached into the grass-root levels trying to change the way people behave and think towards the persons with disability.

India's first accessibility audit report in 2016 found no disabled friendly building in the country. This situation has improved a little after the initiatives by the government, however, the present study reveals that persons with disability still find the barriers hindering them from participating in the social life. And these barriers are not only physical, but also attitudinal barriers.

The 19 out of 20 respondents had recorded that one of the greatest problems they face every day is the lack of accessible public transport system, and the sympathetic stares they receive from strangers. All 20 respondents found it difficult to communicate and interact with the society as they viewed them sympathetically and not as persons with equal rights. About 6 respondents found it difficult to access educational opportunities. The 6 respondents were of the opinion that assistive teaching aids and accessible classrooms are to be made compulsory in all academic and research institutions. About the working conditions and opportunities about 9 respondents found it extremely unsatisfied. And 12 respondents were extremely unsatisfied with public transport facilities and

³¹ Section 2 (c) of RPwD Act, 2016.



the social behaviour related to the same. The persons with locomotor disabilities were the ones who had more difficulty in accessing public spaces when compared to the other disabilities in the present study.

About 15 respondents were extremely unsatisfied about the availability and conditions of accessible washrooms and toilets in their educational, work or residential area. With regard to the assistive technologies, about 12 respondents were extremely unsatisfied with the current availability of the same in public places. About 7 respondents were extremely unsatisfied with the announcement through audio-visual techniques. And One respondent answered that there were no audio-visual techniques available.

The present study, thus, throws light to the social reality that despite the small work done by the Government and the legislators, there are many numbers of people who face discrimination and exploitation because of lack of accessible environment.

➤ Political Rights: Legal position and government initiatives:

The UNCRPD provides³² that the State Parties have to guarantee persons with disabilities to participate in political and public life and ensure their right to vote and be elected. The RPwD Act³³, thus provides for accessibility in voting to the persons with disabilities. In furtherance of this, the Election Commission had initiated steps³⁴ to allow persons with disability to access this

right. Under this initiative, the persons with disability have to register as a voter or elector with reduced mobility

The Election commission have directed every State commissioner to make the polling stations accessible and also to provide priority for a person with disability in casting his vote. In 2018 during the Telangana Legislative Assembly Elections, for example, the State Election Commission launched an App which facilitated Persons with disabilities to book transport to their polling stations and back and also to know more about the facilities available.

Social realities:

The right to be elected requires special mention as the Persons with Disabilities had raised a slogan during the drafting of the UNCRPD that no law should be made without listening to their needs and aspirations. In India, though a group of persons with disabilities and their organisation were duly consulted during the initial drafting of the RPwD, Act, India did not have a disabled legislator. Till now, we have had only about less than 10 politicians who have been disabled and elected to the legislative. In this, Mr. Jaipal Reddy who was the Minister of Science and Technology in the 2014 UPA government and Karunanidhi, the former Chief-Minister of Tamil Nadu are the only prominent leaders with disability in India. In 2014³⁵, Mr. Karunanidhi had stormed out of the Tamil Nadu Legislative

³² Article 29 UNCRPD.

³³ Section 11 RPwD Act.

³⁴ Available at <https://ecisveep.nic.in/pwd/guiding-principles/the-rights-of-persons-with-disabilities-act-2016-r36/> Last seen on March 20, 2020.

³⁵ *Assembly not conducive for disabled, ailing: Karunanidhi*, The Hindu(04/12/2014) available at <https://www.thehindu.com/news/national/tamil-nadu/karunanidhi-visits-tt-assembly/article6661497.ece>, last seen on March 22, 2020.



Assembly stating that it is not accessible to people with disabilities as he was unable to carry his wheel-chair inside the building. Thus, there is a need for more people with disabilities to be elected to the legislative.

The disability rights activists claim that the initiatives taken by the Election Commission has not been implemented successfully all over the country. In the survey conducted for the present research about half of the respondents were unable to cast their vote in the General Elections, 2019 and 4 out of the 5 respondents answered that it was due to lack of accessibility of the polling booths or stations that they were unable to cast votes. This points to the fact that there is lack of proper implementation of the laws and even the government initiatives in creating a disability-friendly environment to enable the exercise of one of the most basic right as an Indian citizen. The study reveals that there is lack of proper implementation of the RPwD Act and this has led to the continued discrimination towards the persons with disability and their exploitation in the society.

IV. JUDICIAL INTERPRETATION ON THE SOCIAL MODEL OF DISABILITY:

The judiciary have, with the help of UNCRPD, provided a broad interpretation to rights of disabled persons, even before the enactment of the RPwD Act. Briefly, three cases can help illustrate the approach of judiciary towards the social model of disability. One of the first cases which referred the UNCRPD was in 2009 wherein the Bombay High Court³⁶ held that in the absence of conflict between an international law and municipal law, it can be read into

Article 21 and can be made enforceable. The court, hence found that the dismissal of the petitioner who had kidney transplant on the grounds that the employer cannot accrue the monthly medical expense, is violative of the test of reasonable accommodation.

Another important decision by the judiciary wherein it paved path to the shift from the traditional model to the modern model as understood under UNCRPD can be seen in the judgment of the Supreme Court (hereinafter SC) in *Suchita Srivastava v. Chandigarh Administration*³⁷. Quashing the decision of Punjab and Haryana High Court which ordered for an abortion in a pregnant rape victim with an intellectual disability, the SC observed that court did not have the power to order abortion without the woman's consent irrespective of disability status. It was observed that court cannot exercise *parens patriae* jurisdiction in the best interests of the woman who clearly wanted the child. This observation by the SC that the non-consideration of the opinions of persons with disability on the basis of promoting their bests interests is impermissible, reiterates the fundamental basis of the social model of disability.

The next important judgment by the SC was in *Jeeja Ghosh v. Union of India*³⁸, wherein the petitioner was disembarked from the flight on the directions of pilot, without her consent, because of her disability. The court held that the shift from sympathy to equality in the cases related to persons with disability, though formally recognised was not actually realised in India. The court held that the persons with disability should be able to

³⁶ *Ranjith Kumar Rajak v. State Bank of India* 2009(5) BomCR 227(Bombay High Court).

³⁷ AIR 2010 SC 235 (Supreme Court of India).

³⁸ *Jeeja Ghosh v. Union of India* AIR 2016 SC 2393(Supreme Court of India).



enjoy their rights without discrimination on the grounds of their disability. Justice Sikri through his judgments have made it clear that the reality of the persons with disabilities has changed a little with the enactment of the RPwD Act and has ever since tried to create the reality envisaged in the Act through the judiciary. He also stated that no social change is possible unless the mindset of the people changes.

In *Rajiv Rathuri v. Union of India*³⁹ the Court while discussing the accessibility requirements of persons with visual disabilities with respect to safe access to roads and transport facilities, also directed the University Grants Commission to constitute a committee to recommend inclusive infrastructure in schools and colleges as well to mandate a change in the teaching and examination structure in such schools and colleges.

The judiciary in *Ranjit Rajak* contributed to the expanding concept of life and personal liberty under Article 21 of the Constitution to acknowledge that there exists a duty of reasonable accommodation towards persons with disability. The court through its decisions in *Suchita Srivastava*, *Jeeja Gosh* has acknowledged the paradigm shift brought in by the UNCRPD and has observed that the medical model of disability and the paternalistic approach of the State attached to it, is in contrast to the underlying principles of the UNCRPD and hence the RPwD and they do not promote the interests of persons with disabilities. Judiciary being the beacon of hope for the common people in India, these decisions that accept the core principles of UNCRPD is a big step in facilitating social transformation in Indian society.

³⁹ (2018) 2 SCC 413 (Supreme Court of India).

CONCLUSION

Outcomes for people with disabilities in India are not consistent with the aims of its disability legislation or its ratification of the UNCRPD. The Constitution lays responsibility of protection of rights and guarantees of persons with disabilities on States and hence there is a need to improve the institutional capacity of the State machineries to improve the services provided to them. The government should initiate efforts to bring about effective implementation of the provisions of the RPwD Act along with creating awareness campaigns among the public that persons with disability have equal rights and that their disability is not a ground for discrimination. Only this can help achieve full and equal participation of persons with disability in the society and unless this is achieved, the RPwD Act cannot be said to have achieved social transformation in its fullest sense. A provision in the RPwD Act providing for political reservations to persons with disabilities at least for the next 10 years will help in bringing about more representatives. Unless there is a proper representation of the persons with disabilities in the three organs of the government, the true aim of the disability law in achieving social transformation cannot be achieved. Judicial decisions like in *V Surendra Mohan v. State of Tamil Nadu*⁴⁰ wherein the Supreme Court approved the rule of Public Service Commission that a person with more than 50% disability cannot be appointed as Civil Judge because of the nature of the job, defeat the purpose of the RPwD Act as they rely on the disability and not on the worth or talent of the person to understand his capability. People with disability have been living in a

⁴⁰ 2019 SCC Online SC 53 (Supreme Court of India).



denial of right to life and person liberty in the past due to the inaction of the State of which judiciary is also a part⁴¹ and hence an integrated approach which takes into account the needs of persons with disabilities can only bring social transformation. Renu Addlakha and Saptarshi Mandal⁴² has observed that there is enormous need for legal literacy on the issue of disability in India and that mere awareness generation is not enough. There is also an urgent need to create mechanisms that assist persons to undertake legal proceedings in cases where their rights are violated. Unless this is done, the law will remain as a “paper tiger”⁴³. Proper implementation of the RPwD Act, along with active involvement of the government and the executive is required to bring about real changes in the lives of persons with disability. First and foremost, step towards this should be understanding the needs of the persons with disabilities in the society. The executive including the police officers and judicial officials are to be trained and made sensitive to the needs and requirements of the persons with disabilities to enable access to criminal justice. The public should be enabled training and students should be taught from lower classes to treat the persons with disability with respect and not sympathy. Only a close-knitted work among the State machineries, the executive and the local administrative bodies like Gram Sabha or village panchayats, coordinating and implementing necessary policies for the benefit of persons with disability can only bring in social transformation in the Indian society. Though the adoption of RPwD Act, 2016 in India can be seen as a paradigm shift in the Indian

legislative’s approach, unless the Indian society acknowledges and responds to its past mistakes towards persons with disabilities, an inclusive society which protects the rights of the persons with disability cannot be achieved.

REFERENCES

STATUES

1. UN CONVENTION ON RIGHTS OF PERSONS WITH DISABILITY, 2006.
2. THE RIGHTS OF PERSONS WITH DISABILITY ACT, 2016

ARTICLES

1. Ak Dalal, Living with a Chronic Disease: Healing and Psychological Adjustment in Indian Society, 12 Psychology and Developing Societies, 67 (2000).
2. Elif Celik, The Role of CRPD in rethinking the subject of human rights, 21(7) The International Journal of Human Rights 933 (2017).
3. Emilie- Burton, Kiyoteru Tsutsui, Human Rights in a Globalizing World: The Paradox of Empty Promises, 110(5) American Journal of Sociology 1373 (2005).
4. Linda Camp Keith, The United Nations International Covenant on Civil and Political Rights: Does It Make Difference in Human Rights Behaviour, 36 (1) Journal of Peace Research, 95 (1999).
5. Mark C. Weber, Disability Rights, Welfare Law, 32 Cardozo Law Review, 101, 110 (2011).
6. Michael Ashely Stein, Janet E. Lord, Enabling Refugee and IDP Law and Policy: Implications of the U.N. Convention on the Rights of Persons with Disabilities, 28

⁴¹ K Kannabiran, *Disability-based Discrimination in India*, 156, in, *Disability, Rights Monitoring, and Social Change: Building Power out of Evidence* (M Rioux, P C. Pinto and G Parekh, (eds.) (2015).

⁴² R. Addlakha, S. Mandal *Disability Law in India: Paradigm Shift or Evolving Discourse?* 44(41) Economic and Political Weekly, 62, 68 (2009).

⁴³ Ibid.



Arizona Journal of International and Comparative law 401, 423 (2011).

7. Oona Hathaway, Do Human Rights Treaties Make A Difference Yale Law Journal, Vol. 111, 2002.
8. Raj Kumari Gupta, “Rights of persons with disability Act (2016): A Critique” 3(1) Journal of Disability Studies 1(2017).
9. Renu Adlakha and Saptarshi Mandal Disability Law in India: Paradigm Shift or Evolving Discourse?, 44(41) Economic and Political Weekly, 62 (2009).
10. Roger Jeffrey, Nidhi Singal. *Measuring Disability in India*, 12 Economic and Political Weekly, 22 (2008).
11. Rosemary Kayess and Phillip French, “Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities,” 8 *Human Rights Law Review* 1(2008).
12. Yehezkel Dror, Values and the Law, 17(4) The Antioch Review, 440 (1957).

BOOKS

1. Arlene Kanter, The Development of Disability Rights Under International Law: From Charity to Human Right, 2004.
2. Bernadette McSherry, Penny Weller (Ed.) Rethinking Rights-based Mental Health Laws ,2010.
3. Marcia Rioux, Paula C. Pinto and Gillian Parekh (Eds.), Disability, Rights Monitoring, And Social Change: Building Power Out of Evidence, (2015).
4. P.Ishwara Bhatt, Law and Social Transformation in India, 2012.
5. Peter Blanck, Eilionóir Flynn (Ed.) Routledge Handbook of Disability Law and Human Rights, Routledge, 2018.
6. Valentina Della Fella, Rachele Cera, G Palmisano (eds.) The UN Convention on the Rights of Persons with Disabilities: A Commentary, 2018.

CASES

1. Disability Rights Group & Anr v. Union of India (2018) 2 SCC 397(Supreme Court of India).
2. Jeeja Ghosh v. Union of India AIR 2016 SC 2393(Supreme Court of India).
3. Rajiv Rathuri v. Union of India (2018) 2 SCC413 (Supreme Court of India).
4. Ranjith Kumar Rajak v. State Bank of India 2009(5) BomCR 227(Bombay High Court).
5. Suchita Srivastava v. Chandigarh Administration AIR 2010 SC235 (Supreme Court of India).
6. V Surendra Mohan v. State of Tamil Nadu 2019 SCC Online SC 53 (Supreme Court of India)
