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The right of persons with disabilities bill, 2014 - An Appraisal

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Abstract

According to the Census of India, 2011 disable persons constitute of 2.21% of India's population. Currently, the laws such as the Mental Health Act, 1987, the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and the Rehabilitation Council of India Act, 1992 and the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 provides protection to the rights of persons with disabilities. The rights of Persons with Disabilities Bill, 2014 was introduced in the Rajya Sabha on 7th February, 2013. The paper critically analyses the Bill.

Keywords: right, disabled, education, access, recreation

Introduction

According to the Census of India, 2011 disable persons constitute of 2.21% of India's population. Currently, the laws such as the Mental Health Act, 1987, the National Trust Act for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and the Rehabilitation Council of India Act, 1992 and the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995 provides protection to the rights of persons with disabilities. In 2010, the Ministry of Social Justice and Empowerment constitute a committee under Dr. Sudha Kaul to draft a new Bill for persons with disabilities. The rights of Persons with Disabilities Bill, 2014 was introduced in the Rajya Sabha on 7th February, 2013. The main features of the Bill are -
The main object of the Bill is to give effect to the United Nation's Convention on rights of Persons with Disabilities. The convention lays down principles such as respect for inherent dignity, non-discrimination, full participation in the society, acceptance and respect for persons with disabilities, equality of opportunity, accessibility, equality and respect for the right of children with disabilities to preserve their identities. The Bill repeals the Persons with Disabilities (Equal Opportunities Protection of rights and Full Participation) Act, 1995. The Bill defines person with disability" means a person with long term physical, mental, intellectual or sensory impairment which hinder his full and effective participation in society equally with others and Persons with benchmark disabilities as those with at least 40 per cent of any of the above specified disabilities. Other features of the Bill includes:-

Right to equal treatment

The Bill imposes duty on the appropriate government to ensure equality of treatment and nondiscrimination to persons with disabilities. Their right to community life and reproduction is protected. The Bill imposes duty on the government to ensure that persons with disabilities are protected against violence, cruelty exploitation and inhuman treatment. The government shall take cognizance of the incidents of abuse, violence and exploitation and provide legal remedies available against such incidents. The Bill also imposes duty on the National and the State Disaster Management Authority to take steps to include persons with disabilities in the disaster management activities.

The Bill guarantees the right of a disabled child to be with his own family and in exceptional cases in shelter home of the government of non-governmental organizations. The person with disabilities has access to access to appropriate information regarding reproductive and family planning. They have the right to access to vote. The Bill ensures their accessibility to any

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court, tribunal, commission or authority without any discrimination. The bill assures that all persons with disability shall have right to inherit property and control their financial affairs and have access to bank loans, mortgages etc. thus the bill secure their right to legal capacity.

The Bill provides for guardianship to mentally ill persons. If a district court determines that a mentally ill person is unable to take care of himself or taking legally binding decisions, it may assign limited guardianship for such persons. A limited guardian will take joint decisions with the mentally ill person. In extra ordinary situations, where the limited guardianship cannot be awarded, the district court can award plenary guardianship where the guardians take legally binding decisions for the mentally ill person.

Right to Inclusive Education

The Bill provides for Inclusive education to all children with disability and casts a duty on the government to provide all opportunities and facilities to maximize their academic and social development. It is the duty of the government to ensure children with disabilities are provide education and opportunities for sports and recreation activities equally with others; make building, campus and various facilities accessible; the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication; detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them; monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability; and to provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

The Bill provides mandates the government with functions such as to conduct survey of school going children to identify children with disabilities; to establish teacher training institutions, to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability ; to promote the use of appropriate augmentative and alternative modes including means and formats of communication, Braille and sign language to supplement the use of one's own speech to fulfill the daily communication needs of persons with speech, communication or language disabilities and enables them to participate and contribute to their community and society and to promote participation of persons with disabilities in adult education and continuing education programmes equally with others.

The Bill guarantees free education to children with benchmark disability between the age of six to eighteen in neighborhood schools or in special schools Reservation of not less than five percent is provided to children with benchmark disabilities in all government institutions of higher educational institutions At least five percent of the vacancies are to be filled by persons or class of persons with at least 40 percent of any of the disabilities. Of this, one per cent shall be reserved for persons with blindness and low vision; hearing and speech impairment; locomotors disability; autism, intellectual disability and mental illness; and multiple disabilities. The Bill guarantees free education to children with benchmark disability between the age of six to eighteen in neighborhood schools or in special schools. Reservation of not less than five percent is provided to

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Right to Employment and Social Security

The bill imposes duty on the government to formulate schemes and provides loans at concessional rates to support employment of persons with disabilities especially vocational training and self-employment. The bill also provides that every establishment in which persons with disabilities are employed shall maintain records containing the manner of employment provided and the facilities provided to them. A Grievance Redressal Officer shall be appointed in every establishment so as to ensure that the establishments follow equal opportunity policy with regard to persons with disabilities. The Grievance Redressal Officer shall have the power to investigate into the complaints, if any received against the establishment.

The bill obliges the government to take measures so as to safeguard and promote the rights of persons with disabilities for adequate standard of living to enable them to live independently. The schemes shall provide for community centers, support to women with disabilities, support during disasters, insurance schemes, unemployment allowances etc. the government shall also provide persons with disabilities barrier-free access to hospitals and free health care facilities. The government shall also provide rehabilitation programmes especially in the areas of health, education and employment for all persons with disabilities. The cultural and recreational facilities to persons with disabilities by the government include sponsorships to artists, promotion of recreational centers to persons with disabilities, sporting activities etc.

The bill assures persons with benchmark disabilities with free education till the age of eighteen, not less than five percent reservation of seats in higher educational institutions, incentives to persons employed in the private sector and special employment exchange programs. The Bill also imposes special duties on the appropriate government to promote the rights of the persons with disabilities. It includes awareness campaigns so as to promote values of inclusion and foster respect to persons with disabilities. The government shall also take measures to provide accessibility to transport to persons with disability. The Bill also make registration as obligatory for every (not only government established or maintained) institutions for persons with disability and the state government shall appoint a competent authority for this purpose. The state government shall also appoint certifying authorities to grant certificate of specific disabilities.

Advisory Boards, Commissions and National Fund

The Bill provides for the constitution of Central and State level Advisory Board on disability. The central and the state board shall be the consultative and advisory body on disability matters. The board shall facilitate on policies relating to disability, develop a national policy to address issues with disabilities and take up causes of persons with disabilities with the concerned authority and international

organizations and to recommend steps to ensure accessibility, reasonable accommodation, non-discrimination, etc. A district level committee on disability shall be also constituted by the state government.

The Bill obliges the central government and the state governments to constitute a national and state commission for disabled person. The main function of the commission is to identify any laws, policies or programmes inconsistent with the Act, inquire into matters relating to deprivation of rights and safeguard them, monitor the implementation of the Act and the utilization of funds disbursed by the government for the disabled persons etc. The commission shall consists of a chairperson who shall be a person with a distinguished record of service of not less than twenty-five years in the field of disability and two members with a distinguished record of service in the field of rehabilitation, advocacy, law, management and technology concerning disability matters. Out of the two members, one member shall be a person with disability.

A National Fund called as the National Fund for the persons with disabilities is also constituted under the Bill. The central government shall maintain proper accounts and records with regard to the fund. They shall also prepare annual statements with regard to the income and expenditure with regard to the fund. Any person who violates the provisions of the Act shall be punishable up to six months and/or fine of ten thousand rupees or both. For any subsequent violation, imprisonment up to six months and/or fine of fifty thousand to five lakhs can be awarded. The state government shall notify a session's court to be special court, in each district, to try offences under the Act.

Conclusion

The Bill appears to be a good move, but there are some concerns over the bill. The main concern is that whether the Parliament can impose legal obligations on states with regard to disability, which is a state subject. Other concern is with regard to the powers given to the plenary guardian, who is under no obligation to consult with the mentally ill person while taking decisions. Such a provision will lead to situations where the guardian may misuse his powers. The bill did not provide for any safeguards in this regard. Other concerns are with regard to the penalty imposed on outraging the modesty of women with disability. The Bill punishes the offence with six to five years, whereas the Indian Penal Code punishes the same offence with imprisonment of one year to five years. Here, the main concern is that the bill lowers the penalty for offenders. Other concern is with regard to Apart from all these concerns, the bill widens it scope covering nineteen disabilities when compared to the Persons with disabilities Act, 1995 which covers seven disabilities only.

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