



Rights of the Blind: Present Status and Additional Requirements

Authors

Ameeta Koul¹, Parul Singh², Achyut N Pandey³, P D Sharma⁴

Department of Ophthalmology, Veer Chandra Singh Garhwali Government Medical
Science and Research Institute, Srinagar Garhwal, Uttarakhand, India

ABSTRACT

India has a growing number of visually disabled people amongst its workforce and population. The Government of India has developed national, regional and district level programs and support centres to provide services to effectively meet their requirements for aids and appliances, education, training, employment and other suitable rehabilitation services. But all these laws which have been put in place for the benefit of differently abled persons need revision from time to time, so that they can be brought up to date with respect to the changing needs of the disabled people. Visually disabled people now have opportunities to actively seek jobs, housing, travel and prospects to live a normal life alongside the mainstream population. It is thus becoming imperative on the government to allow them special privileges, in order to safeguard their rights and provide them equal opportunities with the rest of the population, avoiding discrimination of any kind at the same time. These laws should be reviewed in context of benefits being given to the disabled people worldwide and revised from time to time so as to give equal benefits to differently abled population in India and allow them to live a life of dignity and self-reliance. This article reviews some most important laws and regulations of the world for protection of disabled-rights and compare them with the existing Indian laws in an attempt to find the lacunae and scopes of amendment.

Key Words-Blind, laws, Rights, Legal aid, Visually Impaired

INTRODUCTION

It has been estimated that India has over 90 million people with disabilities. Of these, 12

million are blind, 28.5 million have low vision, 12 million speech and hearing defects, 6 million are orthopedically handicapped, 24 million mentally

retarded, 7.5 million are mentally ill and 1.1 million have been cured of leprosy(NSSO – 1991)^[1], thus making visual impairment a major part of it. Discrimination against the disabled can be of various types e.g. where someone is treated less favorably directly on grounds of prejudices which are disability related, or indirectly where someone is treated less favorably for a reason relating to their disability, such as time taken off work for a disability related reason; or simply as a failure to make reasonable adjustments^[5]. Disabled people therefore required distinct services for their wellbeing and rights to fulfill their special needs. Provision of all such services, should to be done with extreme sensitivity, so that besides providing them independence, they also boost their self-confidence. Truthful implementation of these laws and range of services, aimed at making them self-reliant in all respects, can help restore the rights and dignity of the disabled people.

DISCUSSION

There are numerous laws present in various countries regarding the rights of the blind people. This article reviews some most important laws and regulations of the world for protection of disabled-rights and compare them with the existing Indian laws in an attempt to find the lacunae and scopes of amendment.

American Laws:

American laws for the protection of rights of disabled people are governed by the Americans with Disabilities Act. The Americans with Disabilities Act of 1990 (ADA) is a law that was

enacted by the U.S. Congress in 1990. It affords protections against discrimination to Americans with disabilities and prohibits discrimination based on disability. Disability is defined by the ADA as "...a physical or mental impairment that substantially limits a major life activity." This law has the following broad provisions:

The act prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment [2].

The act (ADA) requires an employer to provide reasonable accommodation for individuals with disabilities. A reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities [2].

The amendment of the law, enacted in 1997 focuses on teaching and learning, and established high expectations for disabled children to achieve real educational results. It strengthened the role of parents in educational planning and decision making on behalf of their children and reduced the burden of unnecessary paperwork for teachers and school administrators [2].

The law rules that entities such as hospitals, nursing homes, hotels, government agencies, retail establishments, restaurants, hotels, day-care centers, and professional offices of health care providers must ensure that persons who are blind, deaf-blind, or visually impaired have an equal opportunity to participate in and benefit from all

of the goods and services provided by such entities. Meaning that, depending on the circumstances, the policies or procedures must be modified, discriminatory eligibility criteria eliminated, auxiliary aids and services provided, or structural communication barriers removed in existing facilities [2].

The act prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with the established accessibility standards. The U.S. telecommunications law was amended to require telephones and telephone services to be more accessible e.g. new telephones would be designed for use by people with disabilities [2].

Rehabilitation Act was amended in the US to require Federal agencies to make their electronic and IT accessible to people with disabilities. The act provided to make available new opportunities for people with disabilities, and to encourage development of technologies that will help achieve these goals. The law applies to development, procurement, maintenance, or use of electronic and IT. All agencies are required to give disabled employees access to information that is comparable to the access available to others [2].

The ADA requires that all current and future fixed rail and bus systems to be fully accessible and provides for supplemental para-transit service to be provided -- that is, demand-responsive service for people who cannot access fixed-route service[2].

The act ensures access to airports and airlines by people with disabilities. In general, air travel raises relatively few accessibility concerns. Airlines are required to accommodate guide animals (e.g., seeing-eye dogs) in the passenger cabin whenever possible; they are also required to inform people with hearing impairments about gate and other travel changes [2].

The law rules that state and local governments may not refuse to allow a person with a disability to participate in a service, program, or activity because the person has a disability; must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their services, programs or activities[2].

The law under the Fair Housing Act prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin. It is unlawful to discriminate in any aspect of selling or renting housing or in respect of financing, zoning practices, new construction design, and advertising to deny a dwelling to a buyer or renter because of the disability of that individual. The act also requires landlords to allow tenants with disabilities to make reasonable access-related modifications to their private living space [2].

British Laws:

The Disability Discrimination Act (DDA) is the act guarding disabled-rights in UK [3]. Definition of disable according to this law is—they must have a physical or mental impairment which has a substantial and long term adverse effect on their

ability to carry out normal day to day activities.

The British DDA has the following provisions:

The employment provisions of the DDA provide that an employer (and others such as those using contract workers, barristers' chambers, etc.) must not discriminate against a disabled person in any aspect of the employment process—from advertising the vacancy, the appointment process, through to dismissal or post-employment actions (such as the provision of a reference)[3].

The act also imposes duties on those providing services to the public (service providers). The act prohibits a service provider discriminating against a disabled person in any aspect of service provision, from refusing service to providing service on worse terms or in a worse manner. The service providers have to think in advance about what changes may be needed to their services to facilitate disabled users, rather than just waiting until a disabled customer approaches them [3].

There are similar provisions covering education to those relating to goods and services—in particular, there is an anticipatory duty to make reasonable adjustments to enable disabled students to have access to education and associated services. The duty is more limited in relation to pre- education than in post-education as there are separate special educational needs provisions covering those of school age. These provisions have been used to ensure that a visually impaired student has access to course materials, which are usually printed in standard print [4].

European Laws:

The EU perceives disability as the result of the dynamic interaction between a person and their environment, including social constructions, which lead to discrimination and stigmatization. It is therefore the environment that should be adapted to each individual person, including people with disabilities, by removing these barriers [6].

The European Commission Directive against discrimination on the grounds of religion or belief, disability, age or sexual orientation (European Commission 2000b) prohibits discrimination by setting a minimum standard which applies across the European Union. National laws determine the exact form of implementation.

The Directive (paralleling the UK Disability Discrimination Act) requires employers (and training providers) to provide ‘reasonable accommodations’ to meet the needs of disabled people [6].

The Marrakesh Treaty:

The Marrakesh Treaty ^[7] to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities, was a treaty signed in Marrakesh, Morocco, on 28 June 2013. The agreement focuses on copyright exceptions to facilitate the creation of accessible versions of books and other copyrighted works. It sets a norm for countries ratifying the Treaty to have a domestic copyright exception covering these activities, and allowing for the import and export of such materials. A total of 51 countries signed the Treaty as of the close of the diplomatic

conference in Marrakesh [8]. The treaty recognized the obligation of the right holder to make works accessible to persons with visual impairment and to the print disabled, recognized that though countries have different limitations and exceptions to their copyright law, but a uniform international framework to be followed and to ensure cross-border exchange of books in accessible format. In addition to this, other provisos of the treaty are:

A major development has been the inclusion of the 'print disabled' as a beneficiary (along with the blind and visually impaired). This is in keeping with the objectives of non-discrimination and equal opportunity [7].

Cross border exchange of copyrighted works in accessible formats is one of the primary aims of the treaty. Technologically advanced developed nations have the capability to convert works into various formats, whereas the developing nations may not have the same capabilities. The treaty enables easy access to converted works across borders.

Prior to the treaty, it was often unlawful to allow so-called authorized entities (libraries or NGO's) in one country to send accessible format books directly to authorized entities or blind individuals in another country. As a result, the same books had to be made accessible from scratch in each new country where a blind person needed it. Now cross-border shipment will be legal with little administrative burden [7].

Indian Laws:

In addition to being a signatory to the Marrakesh treaty, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995[9] governs the rights of disabled people in India. This act has the following provisions:

Identification of posts which can be reserved for persons with disabilities and at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology[9].

All educational institutions getting Government aid are to reserve not less than 3% seats for persons with disabilities. Vacancies to the tune of 3% are to be reserved in poverty alleviation schemes for the benefit of persons with disabilities [9].

The employers have to ensure that 5% of their work force should be composed of persons with disabilities. Especially with respect to their economic capacity and development, the employers have to provide incentives to employees both in public and private sector [9].

The government by notification has to make schemes to provide aids and appliances to persons with disabilities. Schemes for preferential allotment of land for certain purposes have to be framed by the incumbent governments, in favor of persons with disabilities, for the preferential allotment of land at concessional rates [9].

Establishments in the transport sector are required to, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to adapt rail

compartments, buses, vessels and aircrafts in such a way as to permit easy access to such persons and adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently [9].

The local authorities are required to, within the limits of their economy capacity and development, provide for installation of auditory signals at red lights in the public roads for the benefit of persons with visually handicap, engraving on the surface of the zebra crossing for the blind or for persons with low vision, engraving on the edges of railway platforms for the blind or for persons with low vision [9].

The local authorities are required to, within the limits of their economic capacity and development provide for ramps in public buildings, Braille symbols and auditory signals in elevators or lifts, ramps in hospitals, primary health centres and other medical care and rehabilitation institutions[9].

Most State Governments in India provide pension to the visually impaired in the range of Rs 60 to Rs 200 per month. All nationalized banks are required to give loans to visually impaired persons at a differential interest rate of 4.5 percent for a value of up to Rs 7,500[9].

CONCLUSION

In light of the existent laws of the various countries, it can be concluded that developed countries, like U.S.A. and Britain, provide equal opportunities to persons with disabilities in education, jobs, accommodations, services

provided and accessibility in buildings. On the other hand, Indian laws has provisions of reservations in education, jobs and aids, grants and loans for people with disabilities. Developed countries can afford to have such policies as their long standing education policies have now catapulted people with disabilities on equal footing for competition with everyone else, unlike in India. In India, visual impaired children have problem in higher education due to lack of suitable educational material. Even basic education resources are not available in all public and private educational institutes for these children. The government should make reasonable adjustments to enable disabled students to have access to education and associated services, as in Britain. An amendment in law and availability of first-rate educational material is required to provide quality education, both at basic as well as higher education level, to visually impaired children in public and private institutes. This will enable them in future to compete for jobs with equality be sides instilling a strong sense of self-respect and worthiness in them. Access to telecommunication services, information and information technology, that is comparable to the access available to others, as is provided by the American law should be not only included, but implementation also ensured on ground level. As of now, there is a need to increase reservations in educational institutes and in jobs, for few more years until better education enables them for equal opportunities. The amount of pension and permissible loans for self-employment should be revised in keeping with inflation. Accessibility of

office buildings, lifts, hospitals, ATMs, transport mediums and stations is still a huge problem for people with disabilities. Unlike as in developed countries, majority of these required adjustments are not mandatory by law and are to be done “within the limits of their economic capacity and development” of service providers. These disabled-friendly modifications should be binding for the service providers to do in advance, rather than just waiting until a disabled customer approaches them, like the legislations in developed countries. Lastly, extreme vigilance and strong-will is required in working to strengthen as well as enforce the existing law, that would enable us to grant equitable rights to the visually handicapped improve their quality of life and, at the same time add value to them as human resources for the nation.

BIBLIOGRAPHY

1. Kundu C K et al. (2000) Status of disability in India, Rehabilitation Council of India, New Delhi.
2. Americans with Disabilities Act of 1990
3. Disability Discrimination Act 1995 s.1, TSO.
4. Disability Rights Commission Act 1999, Special Educational Needs and Disability Act 2001, Disability Discrimination Act 1995 (Amendment) Regulations 2003 SI No. 1673, Disability Discrimination Act 2005. TSO.
5. C Casserley, Br J Ophthalmol. Oct 2006; 90(10): 1220–1222.

6. Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181} /* COM/2008/0426 final - CNS 2008/0140 */
7. The Marrakesh Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities
8. Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities. World Intellectual Property Organization
9. The persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Ministry of Law, Social Justice and Company Affairs (1996): (no. 1 of 1996), New Delhi: the Gazette of India. Available at <http://socialjustice.nic.in/pwdact1995.php>. Accessed on 2nd June 2014.