

## Legal and Fundamental Rights of Physically Handicapped

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### Abstract :

*The constitution of India applied uniformly to every citizens of India whether they are healthy or disabled in any way. The Government of India and Karnataka has also passed various laws and acts for the overall development of the physically handicapped.*

### Introduction

India is the largest democratic country in the world and is on its way to become a key player in the global scenario. It is our responsibility to ensure that this developmental cycle touches all the citizens of this country that is able and, especially, the physically handicapped, who are often referred to as the invisible minority. But before we stamp them as minority, let us consider the recent census reports. According to the 2011 census the government figure for the physically handicapped was 2.7% of the entire population. A reserved guess would place that figure between seven to ten crores. The National Policy identifies the Persons with Disabilities (PWD) as necessary and valuable assets of this country and the basic goal is to create an atmosphere for them in conjunction with the basic constitutional rights i.e. equality, freedom, justice and dignity. This will also guarantee equal opportunities for the PWD thereby ensuring the protection of their rights and enabling their full participation in the society.

Physically handicapped are those things that prevent people with impairment from functioning properly in the society. Many studies argue that disabilities can occur at birth but in some cases, disability is acquired later in life. Common disabilities include physical deformities that affect the upper and lower limbs, manual dexterity problems, inability to coordinate body organs and others.

The cause of the disability may be due to old age, a viral infection such as polio, a hereditary condition and paralysis or amputation. Other disabilities include speech and hearing impairment. This category includes individuals suffering hearing impairment; some partially while others totally, a condition also known as deafness. There are a number of individuals who have problems with speech, where others cannot speak and are said to be mute. Sufferers of speech impairment may stutter and stammer while speaking while others may have

voice disorders. However, People suffering from disabilities face a lot of challenges every day. Simple tasks that ordinary people perform on a daily basis as routine are extremely delicate and difficult to those suffering from disabilities. Thus accomplishing simple tasks such as taking a shower, dressing up, brushing teeth or even having a meal are tasks that may take much longer than normal and in many cases, may require the assistance of others. Individuals with disabilities are faced with stigma and discrimination from the society where they live. Most people look down on them and treat them as special. Disabled people may find it hard to socialize with members of the society. With above back drop the study assumed great significance to study the problems and prospects of physically handicapped.

### Definitions of Physically Handicapped :

According to the medical model, disability lies in the individuals, as it is equated with those restrictions of activity. Faced with the line of thinking, individuals would feel pressured to work on 'their' restrictions, bearing the burden of adjusting to their environment through cures, treatment or rehabilitation.

According to World trade organization disabilities are an umbrella term, covering impairments, activity limitations, and participation restrictions.

According to Equal Opportunities, Protection of Rights and Full Participation Act, 1995, "Person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority (any hospital or institution, specified for the purposes of this Act by notification by the appropriate Government). As per the act "Disability" means Blindness, Low vision, Leprosy-cured; ,Hearing impairment; Loco motor disability, Mental retardation; and Mental illness.

**Research Methodology:**

The size of physically handicapped population is very large in Belgaum district like other district. In view of the said reasons the study of all handicapped in Belgaum district is very difficult and it is time consuming and it is not manageable by the researcher to complete the study on time hence, the study has adopted cluster sampling method and has been divided into different stratum like ten taluka and each taluka has taken 30 sample physically handicapped respondents by adopting simple random sampling techniques. Therefore, the total sample respondents' is 300 While selecting sample respondents from each taluka of Belgaum district, equal weightage has been given to different types of physically handicapped

**Health Laws to Physically Handicapped:**

Article 47 of the constitution imposes on the Government a primary duty to raise the level of nutrition and standard of living of its people and make improvements in public health - particularly to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to one's health except for medicinal purposes.

The health laws of India have many provisions for the disabled. Some of the Acts which make provision for health of the citizens including the disabled may be seen in the Mental Health Act, 1987 (See later in the chapter).

**Family Laws relating to physically handicapped:**

The different law has been enacted relating to marriage by the Government and these laws applicable to different communities equally to the disabled. Most of these Acts has been provided that the following circumstances will disable a person from undertaking a marriage. These are Where either party is an idiot or lunatic, Where one party is unable to give a valid consent due to unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for procreation of children' Where the parties are within the degree of prohibited relationship or are sapindas of each other unless permitted by custom or usage. Where either party has a living spouse. The rights and duties of the parties to a marriage whether in respect of disabled or non-disabled persons are governed by the specific provisions contained in different marriage Acts, such as the Hindu Marriage Act, 1955, the Christian Marriage Act, 1872 and the Parsi Marriage and Divorce Act, 1935. Other marriage Acts which exist include; the Special Marriage Act, 1954 (for spouses of differing religions) and the Foreign Marriage Act, 1959 (for marriage outside India). The Child Marriage Restraint Act, 1929 as amended in 1978 to prevent the solemnization of child marriages

also applies to the disabled. A Disabled person cannot act as a guardian of a minor under the Guardian and Wards Act, 1890 if the disability is of such a degree that one cannot act as a guardian of the minor. A similar position is taken by the Hindu Minority and Guardianship Act, 1956, as also under the Muslim Law.

**Judicial procedures for the disabled:**

Under the Designs Act, 1911 which deals with the law relating to the protection of designs any person having jurisdiction in respect of the property of a disabled person (who is incapable of making any statement or doing anything required to be done under this Act) may be appointed by the Court under Section 74, to make such statement or do such thing in the name and on behalf of the person subject to the disability. The disability may be lunacy or other disability.

**Succession Laws for Physically Handicapped:**

According to Hindu Succession Act, 1956 which applies to Hindus it has been specifically provided that physical disability or physical deformity would not disentitle a person from inheriting ancestral property. Similarly, in the Indian Succession Act, 1925 which applies in the case of intestate and testamentary succession, there is no provision which deprives the disabled from inheriting an ancestral property.

The position with regard to Parsis and the Muslims is the same. In fact a disabled person can also dispose his property by writing a 'will' provided he understands the import and consequence of writing a will at the time when a will is written. For example, a person of unsound mind can make a Will during periods of sanity. Even blind persons or those who are deaf and dumb can make their Wills if they understand the import and consequence of doing it.

**Labour Laws for the Disabled:**

The rights of the disabled have not been spelt out so well in the labour legislations but provisions which cater to the disabled in their relationship with the employer are contained in delegated legislations such as rules, regulations and standing orders.

**Pwd Act 1995 – (The persons with disabilities):**

The main aim of this act is to provide equal opportunities, protection of rights and full participation of disables. The said act is a significant step which ensures equal opportunities for the people with disabilities and their full participation in the nation building. The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier- free environment, rehabilitation

of persons with disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc. However, the followings are the important provisions.

**Rehabilitation Council of India Act, 1992:**

This Act provides guarantees so as to ensure the good quality of services rendered by various rehabilitation personnel. Following is the list of such guarantees.

**National Trust for Welfare Act, 1999**

1. The Central Government has the obligation to set up, in accordance with this Act and for the purpose of the benefit of the disabled, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability at New Delhi.
2. The National Trust created by the Central Government has to ensure that the objects for which it has been set up as enshrined in Section 10 of this Act have to be fulfilled.
3. It is an obligation on part of the Board of Trustees of the National Trust so as to make arrangements for an adequate standard of living of any beneficiary named in any request received by it, and to provide financial assistance to the registered organizations for carrying out any approved programme for the benefit of disabled.
4. Disabled persons have the right to be placed under guardianship appointed by the 'Local Level Committees' in accordance with the provisions of the Act. The guardians so appointed will have the obligation to be responsible for the disabled person and their property and required to be accountable for the same.
5. A disabled person has the right to have his guardian removed under certain conditions. These include an abuse or neglect of the disabled, or neglect or misappropriation of the property under care.
6. Whenever the Board of Trustees are unable to perform or have persistently made default in their performance of duties, a registered organization for the disabled can complain to the central government to have the Board of Trustees superseded and/or reconstituted.
7. The National Trust shall be bound by the provisions of this Act regarding its accountability, monitoring finance, accounts and audit.

**Fundamental Rights of physically Handicapped:**

The Constitution of India applies uniformly to every citizen of India, whether they are healthy or disabled in any way. The constitution of India have been guaranteed the following fundamental rights.

1. The Constitution secures to the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.
2. Article 15(1) enjoins on the Government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.
3. Article 15 (2) States that no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, public restaurants, hotels and places of public entertainment or in the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of government funds or dedicated to the use of the general public. Women and children and those belonging to any socially and educationally backward classes or the Scheduled Castes & Tribes can be given the benefit of special laws or special provisions made by the State.
4. There shall be equality of opportunity for all citizens (including the disabled) in matters relating to employment or appointment to any office under the State.
5. No person including the disabled irrespective of his belonging can be treated as an untouchable. It would be an offence punishable in accordance with law as provided by Article 17 of the Constitution.
6. Every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution.
7. There can be no traffic in human beings (including the disabled), and beggar and other forms of forced labour is prohibited and the same is made punishable in accordance with law (Article 23).
8. Article 24 prohibits employment of children (including the disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. Even a private contractor acting for the Government cannot engage children below 14 years of age in such employment.

9. Article 25 guarantees to every citizen (including the disabled) the right to freedom of religion. Every disabled person (like the non-disabled) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.
10. No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group.
11. No Disabled person will be deprived of the right to the language, script or culture which he has or to which he belongs.
12. Every disabled person can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32.
13. No disabled person owning property (like the non-disabled) can be deprived of his property except by authority of law though right to property is not a fundamental right. Any unauthorized deprivation of property can be challenged by suit and for relief by way of damages.
14. Every disabled person (like the non-disabled) on attainment of 18 years of age becomes eligible for inclusion of his name in the general electoral roll for the territorial constituency to which he belongs.

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