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DECEMBER 22, 1995 heralded a new era for the handicapped in India. Parliament, cutting across party lines and heeding the persistent voice of the handicapped community, passed the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Bill during the concluding sitting of the winter session. It received presidential assent on New Year's Day, 1996 and was notified in the Gazette the same day.

Many in India may not be aware of the need for and significance of this historic legislation which, in the process of guaranteeing employment and education for the handicapped, also paves the way for non-discrimination in a barrier-free world. Close on the heels of the passing of the Act, the Government constituted the Handicapped Development Finance Corporation Ltd, with an initial corpus of Rs. 400 crores, to meet the financial commitments.

This is the first positive step in redressing the grievances of the handicapped in India. The Act is the culmination of several years of struggle in securing the constitutional rights of, and social recognition for, the disabled who comprise three per cent of the population.

While social discrimination against the handicapped is on the decline, they still face difficulties on the social, economic and medical fronts.

A welcome step towards alleviating their problems is the People With Disabilities Act, or the PWD Act. The bill was moved in Parliament by Social Welfare Minister Sitaram Kesri on August 21 and passed on December 22. The Act is making waves in the community and there are discussions on how to implement it and improve upon it. A national seminar on "The Law on the Handicapped" held by Amar Seva Sangam, a voluntary organisation in

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# Enabling change

## *A progressive Act for the handicapped*

Tamil Nadu's Tirunelveli-Kattabomman district dedicated to the cause of the poor among the handicapped (*Frontline*, October 7, 1994), had unanimously passed a resolution calling upon all parliamentarians to adopt the legislation which then was at the Bill stage.

The Act is expected, if implemented properly, to pave the way for a significant reform which would substantially meet the aspirations of the handicapped. Several of its provisions reflect their long-standing demands such as a

a committee which concurred with the Law Ministry's report.

In 1987, another committee headed by Justice Bahrul Islam, Judge of the Supreme Court, was set up. Its report, submitted in June 1988, recommended a comprehensive piece of legislation to protect the rights of the disabled. The recommendations did not receive the attention they deserved until 1993 when the Government picked up the Islam report from the archives. The Act in its present form was born after two drafts. Ironically, the preamble



Former Supreme Court Judge V.R. Krishna Iyer speaking at the seminar. At right in wheelchairs are Sankara Raman and S. Ramakrishnan, who started the Amar Seva Sangam.

barrier-free environment, special employment exchanges, three per cent reservation, relaxation of the age-limit for recruitment, free education and regulatory provisions for institutions run for the disabled. It also contains measures for the prevention and early detection of disabilities.

The Act is the outcome of a proclamation at a meeting in Beijing in 1992 when the "Asian-Pacific Decade of Disabled Persons (1993-2002)" was launched. However, the first glimpses of legal protection for the handicapped were visible way back in 1981, during the International Year of Disabled Persons. A draft, entitled "Security and rehabilitation of the disabled", was prepared in consultation with the Joint Secretary of the Law Ministry. In 1985, the Welfare Ministry appointed

gives the credit for the birth of the Act to the Beijing proclamation.

The Statement of Objectives, which spells out the state's responsibilities, is commendable: preventing disabilities; protecting the rights of the disabled; providing medical care, education, training and employment; rehabilitating persons with disabilities; ensuring easy mobility and access to various facilities; acting against abuse and exploitation; and drawing up developmental strategies and programmes are some of the highlights. The removal of discrimination against the handicapped and efforts to integrate them into the mainstream are also mentioned.

While these objectives are bound to make a favourable impact, the implementation of the law may run into dif-



ficulties, especially in rural areas where superstition, misguided belief and social inhibition prevail in the guise of heritage and culture.

The Act is divided into 14 chapters. Chapter I deals with definitions. It defines terms such as 'disability', 'persons with disability', 'persons with low vision', 'blindness' and 'hearing impairment' and the constitution of bodies such as the 'Central coordination committee', 'Central executive committee' and 'State executive committee'. Among other terms defined are 'employer', 'establishment', "institution for persons with disabilities" and 'leprosy cured'. Noticeably, it does not mention speech impaired persons.

Chapter II deals with the constitution of new bodies to protect the interests of the handicapped. First, a 37-member, policy-making Central coordination committee will be formed with the Minister for Welfare as ex-officio chairman. It will meet once every six months. The inclusion of the Chairman of the Railway Board in this committee shows the importance given to the mobility of the disabled. This body will, in turn, constitute a central executive committee which will meet every three months.

Chapter III provides for similar committees at the State level.

A more decentralised approach would have been preferred at the district level. It is also felt that the representation given to institutions is inadequate and most of the policy decisions will be made without considering the views of the handicapped. Decentralised district-level committees would have been more practical.

The definition of disability is not without ambiguity in the Act. It is a conclusive definition, not an inclusive one, and as such would limit the application of the law to those specified in it. Section 2(1) says, "Disability means blindness, low vision, leprosy cured, hearing impaired, locomotor disability, mental retardation, mental illness." But the definition in American law is much broader and so flexible that any unknown disability which may come to the knowledge of the medical fraternity in future can also be included.

Further, cases of cerebral palsy, muscular dystrophy and quadriplegics need to be included properly in the Act. 'Locomotor disability' is defined in Section 2(o), which again is conclusive and talks of the disability of bones, joints or any form of cerebral palsy.

There is a problem in the definition of "person with disability" in Section 2(t). As the entire Act is applicable to "the person with the disability", this definition is crucial. It reads: "Persons

with disability means a person suffering from not less than 40 per cent of any disability as certified by a medical authority."

This means a disabled person cannot get the benefits of this law if the disability is less than 40 per cent. Instead of fixing such arbitrary percentages, for which the criteria is not mentioned, the clauses in the Workmen's Compensation Act could be taken as a guide. It spells out clearly the loss of a physical faculty with the percentage of disability.

The clause providing for non-formal education to disabled children is welcome. For those who have studied up to Class 5 or those who are not literate, the government concerned can introduce special schemes to impart education through part-time classes, open schools and the electronic media.

This section also provides for restructuring the curriculum and modifying the examination system for students with special disabilities. For example, the visually handicapped need not be made to take tests in pure mathematics. Similarly, the hearing impaired may be asked to study just one language. Free transport, uniform and notebooks are also to be made available to those who need them. A salient feature is the emphasis given to integrated schools. Three per cent of the seats in educational institutions are to be reserved for the handicapped.

The provisions regarding employment are elaborate and include the identification of posts for persons with disabilities, review of the list of posts identified once in three years, and reservation of one per cent each for the visually handicapped, hearing impaired and physically handicapped.

The highlight in this section is the concept of "carry forward" and "interchange". If a vacancy for a particular category of disabled persons cannot be filled owing to the absence of a suitable candidate, the employer can carry forward the vacancy to the next year. If the same problem arises the following year, the employer can appoint to the post a candidate from another category of disabled persons.

Another positive aspect of the Act is the creation of a "non-handicapping environment in places where persons with disabilities are employed". This is estimated to cost Rs. 200 crores over a five-year period. The reservations and related provisions are applicable to government departments, companies and local authorities.

It has also been made mandatory to allot three per cent of jobs to disabled persons in all poverty alleviation schemes. Private employers would be

encouraged to provide five per cent reservation. Clause 41(o) reads: "The appropriate government and local authorities shall, within the limits of their economic capacity and development, provide incentives to employers both in the public and private sectors to ensure that at least five per cent of their workforce is composed of people with disabilities."

"Appropriate government" is defined in Clause 2(a) as "Central Government, State Government... or any establishments... financed by Central or State Government..." It includes the Central and State coordination and executive committees. According to Clause 2(k), "establishment" means "a corporation established by or under a Central, provincial or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a government company as defined in Section 612 of the Companies Act, 1956 and includes departments of a government".

The Act has various security measures. Clause 42 provides for aids and appliances, Clause 67 for formulation of insurance schemes and Clause 68 for unemployment allowance. Clause 66 enjoins the government and local authorities to undertake "rehabilitation" of all persons with disabilities and to extend financial grants to non-governmental organisations. Rehabilitation is defined in Clause 2(w) as "a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels".

Chapter VIII deals with "non-discrimination" and is bound to have a significant impact on the mobility, transport and day-to-day life of the handicapped. It provides for special features in train compartments, buses, vessels and aircraft. It has been made compulsory to provide ramps in public buildings and hospitals and on roadsides and railway platforms for the convenience of wheelchair users. It provides for specially designed toilets, auditory traffic signals and engraved zebra crossings and railway platforms for the visually handicapped, as also Braille symbols and auditory signals in elevators.

Interestingly, the Act also contemplates amending Section 12 of the Legal Services Authorities Act, 1987 to include disabled employees.

At last, a citizen of India with disability has the right to work. This right comes only five years after the U.S. enacted legislation guaranteeing employment preferences for the handicapped, in 1991. ■