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Medico legal status of deaf persons in India

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Introduction

Deaf persons worldwide constitute an invisible minority community. In India, 63 million people (6.3%) suffer from significant auditory loss.¹ The National Sample Survey (NSS) 58th round (2002) surveyed disability in Indian households and found that hearing disability was the second most common cause of disability. In urban areas, hearing loss was 9% of all disabilities and in rural areas it was 10%. Overall estimates show that hearing disability was 291 per 1, 00,000 persons.

The Constitution of India, is equally applicable to all citizens of India, whether normal or disabled². The term “disability” has not been defined in the Constitution of India. However, under the Constitution the disabled have been guaranteed fundamental rights.

Additional special legislations are in force, but these are only applicable for women, children and the socially and educationally backward classes.

Earlier, the Constitution of India was lacking in separate legislation specifically for disabled persons.

The first legislation enacted by the government of India, was the Rehabilitation Council of India Act in 1992. The Persons with Disabilities Act, passed later in 1995, has included hearing impairment in the list of disabilities. It also outlines the rights for persons with disabilities.

This article does not deal with rehabilitation of the hearing impaired in India.

We wish to shed light only on the current legal status and rights of hearing handicapped persons in India.

Deafness Definitions

The deaf are those persons lacking the power of hearing for ordinary purposes of life. They do not hear or understand sounds even with amplification.

WHO definitions:

The WHO definition of 'deafness' refers to the complete loss of hearing ability in one or two ears.³ The cases included in this category will be those having hearing loss more than 90 decibels in the better ear (profound impairment) or total loss of hearing in both the ears.

The WHO definition of 'hearing impairment' refers to both complete and partial loss of the ability to hear³.

Deaf blindness is a condition presenting other difficulties than those caused by deafness and blindness. It includes persons who may suffer from varying degrees of visual and hearing impairment⁴.

It includes children and adults who are blind and profoundly deaf, blind and severely or partially hearing, partially sighted and profoundly deaf and partially sighted and severely or partially hearing

Disability Definition

Terms such as impairment, disability and handicap are commonly used randomly.

WHO has adopted a sequence named WHO Disability Sequence⁵ as:

Disease —> Impairment —> Disability —> Handicap (Table 1)

Condition	Concerned with	Represents
Impairments	Abnormalities of body structure and appearances; organs or system functioning	Disturbances at organ level
Disabilities	Impairment in terms of Functional performance and activities	Disturbances at personal level
Handicaps	Disadvantages resulted from impairment and disabilities	Interaction with and adaptation to individual's surroundings

Table 1: Explanation of Various Terms as Adopted by WHO⁵: (Source: WHO Classification of Impairments, Disabilities & Handicaps)

The International Classification of Impairments, Disabilities & Handicaps⁵ (1980), has defined new nomenclature for functioning and disability.

“Disability” has been redesignated as “Activity Limitation” and “Handicap” as “Participative Restriction”.

Further, the term “Disability” will henceforth be an umbrella term covering all the three terms, namely- Impairment, Activity Limitation and Participative Restriction.

The International Classification Functioning, Disability and Health⁶ (ICF)(2001), describes the terms ‘health’ and ‘disability’ in a new light. It states that every human being can experience a decrement in health and thereby experience some degree of disability. Disability need not happen to a minority of humanity. The ICF thus ‘mainstreams’ the experience of disability and recognizes it as a universal human experience. (Table 2)

Grade of impairment	Corresponding audiometric ISO value	Performance	Recommendations
0 - No impairment	25 dB or better (better ear)	No or very slight hearing problems. Able to hear whispers.	
1 - Slight impairment	26-40 dB (better ear)	Able to hear and repeat words spoken in normal voice at 1 metre.	Counselling. Hearing aids may be needed.
2 - Moderate impairment	41-60 dB (better ear)	Able to hear and repeat words spoken in raised voice at 1 metre.	Hearing aids usually recommended.
3 - Severe impairment	61-80 dB (better ear)	Able to hear some words when shouted into better ear.	Hearing aids needed. If no hearing aids available, lip-reading and signing should be taught.
4 - Profound impairment including deafness	81 dB or greater (better ear)	Unable to hear and understand even a shouted voice.	Hearing aids may help understanding words. Additional rehabilitation needed. Lip-reading and sometimes signing essential.

Table 2: WHO Hearing impairment grades⁴

(Grades 2, 3 and 4 are classified as disabling hearing impairment. The audiometric ISO values are averages of values at 500, 1000, 2000, 4000 Hz.)

Deafness in Indian Constitution:

In India, "hearing handicapped" as defined by The Rehabilitation Council of India Act, 1992,⁸ is - hearing impairment of 70 decibels and above, in better ear or total loss of hearing in both ears.

This law is applicable to only those persons with severe hearing impairment whose hearing loss is 70 decibels and above. A person with hearing levels of 61 to 70 decibels, (although suffering from severe hearing impairment, as per WHO classification), is automatically excluded in the hearing handicapped category.

Section 2(i)(iv) of the Persons with Disability Act, 1995,⁹ (PWD) states that 'hearing impairment' is a disability and a "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority. In addition, in Section 2(l) "hearing disability has been redefined as – "a hearing disabled person is one who has the hearing loss of 60 decibels or more in the better ear for conversational range of frequencies".

This is a step in the right direction, as all persons with severe hearing impairment are now included in the hearing handicapped category.

Calculation of percentage of handicap in deaf persons¹⁰

As stated above, "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority.

Percentage of hearing handicap can be calculated by the following formula:-

Degree of handicap:

The average pure tone hearing level in the 3 speech frequencies 500,1000 & 2000 Hz is calculated. If this average is 'X', then 25 is deducted from it eg. X-25. This value is then multiplied by 1.5.

Thus the formula is :

[Average of 3 speech frequencies minus 25] multiply by 1.5.

Similarly, the percentage of hearing impairment is calculated for the other ear.

The total hearing handicap of a person is then calculated as follows:

$$[(\text{Better ear \%} \times 5) + (\text{Worse ear \%})] \div 6$$

Legal provisions for the hearing handicapped in India

Fundamental rights

Under the Constitution the disabled have been guaranteed all the fundamental rights,(Articles 14,15,16 and 21) including equality of opportunity².

The Constitution provides effective guidelines for the government to make provisions including legislative provision for the disabled.

Education

The State can set up educational institutions for disabled persons such as schools for the deaf,etc. For admission to institutions of higher learning, reservation may be provided for those who are handicapped or disabled, but otherwise are competent to pursue higher education.

Health

There exist health laws relevant to the disabled. The Rehabilitation Council of India Act, was enacted in 1992. Provision for the health of the disabled has been made in the Persons with disabilities(equal opportunities, protection of rights and full participation) Act, 1995.

Driving license

Earlier, the Motor Vehicles Act and Rules automatically disqualified a deaf person from obtaining a driving license based on the premise that, deaf persons, if permitted to drive, would be a danger to the public.

India is a signatory to United Nation's Convention (2007) on persons with disabilities. As a result, a person, though deaf, but holding an international driving license could drive in India, and a deaf person from India going abroad could get an international driving license and would be eligible to drive both abroad and in India. Thus deaf persons from abroad, including Indians, who possessed an international driving license could legally drive in India while deaf persons from India were prohibited from the same. In a recent landmark judgment (14th February 2011), the Delhi High Court has permitted deaf persons to take a driving test, and if they pass, to get a driving licence¹¹. By allowing deaf persons to go through the test and drive if they are found capable, the High Court has, for the first time in this country, permitted deaf persons to legally drive a vehicle.

Employment (Reservation of posts/employment schemes)

The labour laws in India apply equally to the disabled and the non-disabled. Special Employment Exchanges have been established in some State Capitals and Special cells in other employment exchanges. The number of special Employment Exchanges

in India is 23 while the number of special cells in ordinary exchanges is 55. They register handicapped persons seeking jobs and also arrange for placement in public and private sector. Special provisions exist such as job quota for the disabled, etc. Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provides for a reservation of 3% in the vacancies in identified posts (1% for persons with hearing impairment) in the Government establishments including the Public Sector Undertakings¹². The service rules of the Government provide that an employee who becomes disabled should be adjusted in a post where his disability will not prevent him from rendering work. Deprivation of work due to disability should be ruled out. Workers who become disabled during the course of employment are entitled to compensation as per the Workmen's compensation Act, 1923.¹³

Workmen's Compensation Act, 1923¹³

Schedule I of the Workmen's Compensation Act, 1923 provides the list of injuries leading to Permanent Total disablement. This includes absolute deafness and awards 100 percent of loss of earning capacity.

However, the list of injuries leading to Permanent Partial disablement does not include hearing impairment.

Factories Act¹⁴

The Factories Act does not contain any specific provision for noise control.

However, under the Third Schedule of the Act, noise induced hearing loss (exposure to high noise levels), is mentioned as a notifiable disease.

Housing

Disabled persons are conferred preferential allotment of land at concessional rates for housing². Residential houses are allotted to the handicapped persons who are in Government service on a priority basis. An example is the Delhi Development Authority¹⁵ which reserves shops, residential plots and flats in each housing scheme for disabled persons.

Railway travel concession¹⁶

The Ministry of Railway allows the disabled persons/patients to travel at concessional fares in Indian railways.

Deaf persons are allowed 50% concession in rail fares on production of Medical Certificate issued by the Govt. Medical Officer.

50% concessions is also allowed in monthly seasonal (first and second class) ticket fares to the deaf. No concession is allowed for the escort of the deaf person.

Income tax laws²

The Income Tax Act, 1961 allows concessions to those subject to permanent physical disability and also allows deductions incurred on the maintenance of the disabled. In the IT (Third Amend) Rules, 1992, Section 80U has included permanent deafness with hearing impairment of 71 decibels and above.

Section 80U of the said Act provides that in computing the total income of a resident individual, who is suffering from a permanent physical disability specified by the Central Board of Direct Taxes, which is certified by a physician or Surgeon, working in a Government hospital, and which has the effect of reducing considerably such individual's capacity for normal work or engaging in a gainful employment or occupation, there shall be allowed a deduction of a sum of Rs. 50,000 with enhanced limit of Rs. 75,000 for the severely disabled.

Under Section 80DD, deductions will be available to an assessee resident in India, in respect of maintenance including medical treatment of a handicapped dependant.. The said disability must be certified by the physician or surgeon, working in a Governmental hospital and which has the effect of reducing considerably such person's capacity for normal work or engaging in a gainful employment or occupation.

Earlier in the Finance Act disability was referred to as handicap and was defined in Rule 11A and 11D of the Income Tax Rules. To avail of any benefit or exemption a person had to have a permanent physical disability which included disability arising out of hearing, etc. to the extent specified. This was required to be certified by Government Doctor specializing in the respective field. Income Tax law accepted disability to be incurable while describing it as a permanent physical disability.

The exact nature of disability under the law was brought in line with the Persons with Disability Act, 1995. Under this act, the term disabled has to be treated as defined in the said Act, even if it may be cured after some time. Curable disability or disability which is severe now but may not be severe later requires to be certified for a limited period. The burden of proof for such certification lies on the disabled. Under Section 80 V, the parent of a permanently disabled minor is allowed to claim a deduction up to Rs.20,000.

Indian Penal Code (1860)¹⁷

Assault leading to hearing impairment falls under the purview of grievous hurt. The Indian Penal Code (Section 44), has defined injury as 'any harm whatever illegally caused to any person, in body, mind, reputation or property. Further, in Section 320, Permanent privation of the hearing of either ear is designated as a 'Grievous Hurt'.

Future legislation

Ministry of Social Justice & Empowerment had, constituted a committee, to draft a new legislation for persons with disabilities, replacing the present Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 1995. The Committee submitted a draft called The Rights of Persons with Disabilities Bill, 2011.(9th February, 2011 version)¹⁸.

Every person with disability has the right to be informed of the various rehabilitation options and make the final decision on the course of rehabilitation.

All persons with disabilities have a right to be provided aids and appliances of recognized quality at an affordable cost along with the requisite training to utilize it.

There shall be constituted for the purposes of this Act, a Fund to be called the National Fund for Persons with Disabilities

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