

● INDIAN DISABILITY AND RAILWAYS JURISPRUDENCE IN THE PRISM OF RAIL JOURNEY FOR THE SPECIALLY-ABLED PASSENGERS



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Abstract

The differently-abled people need railways for transportation to pursue education, employment and even for medical treatment. But their beleaguered social status plays out during rail travel as well. During rail travel they have to interact with strangers in a crowded space which adds to their anxiety. This anxiety interacts negatively with their different physical appearance, which faces the brunt of prejudicial social attitudes of co-passengers. The commonly-abled (non-disabled) passengers carry a misconception that rude behaviour for the specially-abled people is nothing inappropriate and comes with impunity. This article is an attempt to explain the sociological importance of railways in India, the sociology of railways system including railway stations and trains and how the railway laws lack the ability to protect 'the self-esteem' of differently-abled person as we currently believe that 'pro-disability reasonable accommodation' is restricted to concessional travel or few facilities of assistance such as wheelchairs etc.

Key words

Differently abled persons, Transport, Law

INTRODUCTION

The railroads have been a critical element in several of the social metamorphosis of postcolonial India into a developing nation.¹ Indian Railways has been there to serve India as a synonym for nation-building, to carry coal, steel, fertiliser, and to help the 'happy and carefree peasants'² as well as general people. 'Mobility is perceived as a living human right, yet in mundanity, it runs conforming with class, racism, gender, and disability-based segregation in public space, in nationality, and the means of mobility at all scales'. In several ways, mobility justice is an inherently mobile doctrine, with a magnitude that it deems justice as an unpredictable arrangement that travels across scales and domains.³ Railways in India has had British roots and has subtly maintained

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¹Gurdial Singh Khosla, A HISTORY OF INDIAN RAILWAYS (Ministry of Railways: Railway Board Government of India- A.H. Wheeler & Company- Allahabad, 1988) p. vi.

²S.R. Malhotra, THE EMERGENCE OF THE INDIAN NATIONAL CONGRESS. 112. (Vikas Publications- New Delhi, 1971)

³Mimi Sheller, Mobility Justice: THE POLITICS OF MOVEMENT IN AN AGE OF EXTREMES 20 (Verso Books- London, 2018)

its feudal legacy.⁴ National Platform for the Rights of the Disabled (NPRD), had filed public interest litigation (PIL) before the Delhi High Court in 2019. The petition had alleged that the Indian Railways was issuing separate identity cards to differently-abled people for availing of travelling concession. It has not been accepting Unique Disability Identity Card issued by State Governments or the Ministry of Social Justice Government of India.⁵

We need to appreciate the fact that the capacity for humans to move about, whether to gather, hunt, and fish, or to communicate, trade, and celebrate together, or to hang out, 'loiter' and 'lime,' pre-exists European colonisation and enclosure.⁶ Transportation obstacles undeniably render the differently-abled least employable, and it creates little sense to protect persons from discrimination in employment if they have less than satisfactory, accessible public transportation services.⁷ Transportation law and policy for differently-abled people is one of the most critical access issues. To plainly put it: 'Without economical and useful transportation (that is, mass transportation), the specially-abled will remain homebound or institutionalised and unemployed or underemployed.'⁸

Why We Need Transportation Equity

Transportation mobility is a symbol of full-fledged membership in a society. The new phases of discrimination and segregation operationalise discriminatory practices that openly limited transportation access and movement of people representing vulnerable groups, including the differently-abled. The effects of limited transportation mobility persist, as the lack of mobility helps establish ghettos, *de facto* segregated schools, and

⁴"These hopes and priorities of Indian Railways were not realised as serious problems relating to the absorption and gradation of staff were created and these took years to resolve." See G.W. MacGeorge, WAYS AND WORKS IN INDIA: BEING AN ACCOUNT OF THE PUBLIC WORKS IN THAT COUNTRY FROM THE EARLIEST TIMES UP TO THE PRESENT DAY 221 (Archibald Constable and Company- Westminster, 1894)

⁵*National Platform for the Rights of the Disabled vs Ministry of Railways and Others* W.P.(C)5208/2019 in the Delhi High Court. Accessed at http://delhihighcourt.nic.in/dhc_case_status_list_new.asp on 22nd June 2020. See also Soibam Rocky Singh 2019. Plea in High Court Claims Railways Not Accepting UDID Cards. *The Hindu*, 11th March. 162 Accessed at <https://www.thehindu.com/news/cities/Delhi/plea-in-high-court-claims-railways-not-accepting-udid-cards/article26490146.ece> on 22nd June 2020.

⁶See Supra Note 3 (Sheller)

⁷Jayna Kothari, THE FUTURE OF DISABILITY LAW IN INDIA: A CRITICAL ANALYSIS OF THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT 1995. 136 (Oxford University Press-New Delhi, 2012)

⁸James J. Weisman, Book Review- *Institutional Disability, the Saga of Transportation Policy for the Disabled*. 4(1) NYLS Journal of Human Rights, 347, 350 (1986). See also Section 41(1) The appropriate Government shall take suitable measures to provide, -(a) facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets,

ticketing counters and ticketing machines.(b) Access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design.(c) Accessible roads to address the mobility necessary for persons with disabilities.(2) The appropriate Government shall develop schemes programmes to promote the personal mobility of persons with disabilities at an affordable cost to provide for, -(a) incentives and concessions.(b) retrofitting of vehicles; and(c) personal mobility assistance. See THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 (NO. 49 OF 2016).



housing, cementing social and community isolation-the central leaderships of society, have long-standing promises to cure these evils. These promises, together with guarantees of life filled with equity and human rights, to replace that destroyed in 'blight clearing' projects, often remain adjourned *sine die*. The commonly-abled (non-disabled) in the suburbs have predetermined physical mobility for social cohesion, while beleaguered social groups, neither have mobility nor social cohesion.

Endeavours to defy discrimination, segregation, and inequitable transportation policies have become sophisticated enough to incorporate a broad range of interlinked social impacts. The term transportation equity alludes to a spectrum of strategies and regulations that intend to address inequities in the nation's transportation planning and project delivery system. Across the country, community-based organisations of low-income and differently-abled citizens that organised to enrich their communities are acknowledging the crucial duty of transportation in moulding local prospects and their diversification. Though the definition of transportation equity may differ from place to place, most of the specially-abled would say yes that an equitable transportation system should:

- Guarantee prospects for consequential public participation in the transportation planning process, especially of the differently-abled who tangibly feel the effect of disability transportation projects or subsidised choices.
- Be subject to a decent benchmark of public accountability as well as financial transparency.
- Distribute the advantages and liabilities emanating from transportation projects proportionally across all income levels and social segments.
- Provide good-quality services-underlining access to economic opportunity and essential mobility-to the whole society, but with an emphasis on transit-dependent people.
- Equally prioritise efforts both to revitalise the specially-abled population and to boost the transport infrastructure.

On a broader level, transportation equity exemplifies metropolitan equity and the appropriate distribution of resources. These doctrines symbolise a progression of the relationship between civil rights and transportation and the degree of their interlinkages-mainly when we revisit the former cases involving labour transport and the events precipitating race-based anti-discrimination bus boycott in the United States in the 1950s.⁹ It means that transportation has a tangible stake in anti-discrimination jurisprudence *vis-à-vis* disability rights.¹⁰

⁹Thomas W. Sanchez and Marc Brenman, THE RIGHT TO TRANSPORTATION: MOVING TO EQUITY 7-8 (Routledge Publication- New York, 2017)

¹⁰Transportation rights have always travelled through the prism of sociological jurisprudence. As on 13th November 1956, the U.S. Supreme Court had affirmed the District Court's decision on *Browder vs Gayle*. Wherein, it was held that "a reaffirmation of the principle of segregated facilities are inherently unequal, and that the old Plessy Doctrine of separate but equal is no longer valid, either sociologically or legally." This decision augurs very well for disability-based transportation rights as it subtly says that transportation should be operated in a manner that it eliminates the social evil of discrimination. See *Aurelia S. Browder vs William A. Gayle*, 352 U.S. 903 p. 425.

Be that as it may, this segment of the Rights of Persons with Disabilities Act, 2016 (after this: Disability Act 2016) pertaining to access to public transport has obtained unexpectedly scant attention notwithstanding the significance of accessibility issues. With improved prospects in education and employment for differently-abled people, there has been comparatively no improvement made for adapting transport for use by persons with special needs. Access to education or jobs is meaningless if a differently-abled person cannot commute to the school or work because accessible transportation is absent.¹¹ But the question of economic and technical viability has remained intact. This mischievous lacuna of financial sustainability is a carry forward from the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (after this: Disability Act 1995). When the implementation of disabled-friendly transport is contingent upon availability of funds, it will always remain susceptible to political arbitrariness. In simple English, these provisions will not become a tangible reality and will remain in the cold storage under the garb of economic constraints.¹²

Neither for Indian criminal justice system nor for Indian railways Seating the differently-abled railway passengers on the upper berths of railway coaches, attract NO legal sanctions. As the phraseology of 'subject to availability of accommodation; the computerised Passenger Reservation System provides for allotment of only *one lower berth* to the differently-abled person,' that itself exposes the stoicism of the railway reservation system and its incompetence to accommodate the differently-abled travellers.¹³ The disability legislation ought to have specified the period during which the concerned agencies could have met their obligations to deliver accessible transport, keeping the expenses in mind.¹⁴ Numerous disability legislations have encompassed the imposition of a time-frame for operational sing pro-disability accessible transportation. As exemplified through, the Disability Discrimination Act in the UK, which mandated every bus to be fully accessible by 2016 and double-deck buses to become available by 2017 and the present accessibility regulations apply only to new vehicles coming into service and so is the situation for trains.¹⁵

Similarly, the Americans with Disabilities Act (here in after referred as ADA 1990) mandated all new buses or rail vehicles beseeched for purchase or lease by public entities must be 'readily accessible to and usable by individuals with disabilities, including wheelchair users.' Thus, new buses and rail systems must have lifts or ramps and fold-up seats or other wheelchair spaces with appropriate securement equipment.¹⁶ Such transportation departments are also required by law to facilitate the on-demand

¹¹Sharon Rennert, *All Aboard: Accessible Public Transportation for Disabled Persons*, 63 New York University Law Review 360, 361 (1988).

¹²*Ibid.*

¹³Annual Report & Accounts, 2012. Indian Railways: Directorate of Statistics and Economics, Ministry of Railways, (Railway Board) Government of India p. 109.

¹⁴See *Supra* Note 11 (Rennert) p. 362.

¹⁵Elaine Mackie, Design for Public Transport. Chapter 5 in Mike Tovey eds., *Design for Transport: A User-Centred Approach to Vehicle Design and Travel* (Routledge Publishers- London, 2016) p. 140.

¹⁶Bonnie P. Tucker, *The Americans with Disabilities Act of 1990: An Overview*, 22(1) New Mexico Law Review, 13, 51 (1992).



'paratransit' service to differently-abled people in case they are unable to take advantage of the standard public transit.¹⁷

Before ADA, Section 504 of the Rehabilitation Act of 1973, was the source of legitimacy for pro-disability accessible transit which permitted public transportation arrangements the option to either out?t their ?eet with accessible buses or to provide an exclusive, distinct transportation program for persons with disabilities. ADA made both accessible transit and complementary paratransit an obligation.¹⁸ Section 504, as mentioned above, decrees reasonable accommodation resulting inconsequential access to a programme or assistance to cure the conduct producing discrimination for the differently-abled population.¹⁹ Therefore, a transport agency must reasonably adjust its operations to allow disabled-friendly tangible access to the transit systems.²⁰ At least part of standard train fleets must be accessible to passengers with disabilities to ensure concrete comfort.²¹ Mainstreaming disabled-friendly transportation is 'the easiest and best' way to provide mobility to the specially-abled but as an essential mode of avoiding discrimination against them within this domain.²²

The ADA mandates one coach per train to be mandatorily set aside for the individuals with disabilities. Acquisition of new buses or trains or vehicles after the operational dates stipulated in the statute are to be ADA-compliant, and the deadlines for compliance of every organisation providing public transport are specified. Furthermore, the US Department of Transport offers detailed regulations of access to be served in all vehicles.²³ Lack of fixed implementation dates is a major statutory lacuna for the Indian

¹⁷Paratransit is a facility where individuals who are unable to use the standard transit system independently (because of a physical or mental impairment) are picked up and dropped off at their destinations. See *Ibid*.

¹⁸Robert Alan Olason, *Accessible Raleigh Transportation A Paratransit System Using Trip-by-Trip Eligibility Determination and Two-Tiered, User-Side Subsidy*, 1760 Transportation Research Record, 121- 123 (2001).

¹⁹*Alexander vs Choate*, 469 U.S. 287, 288 (1985).

²⁰"A human-friendly transport means- at least ones used for public purposes, a certificate may be made mandatory so that its accessible to people with all disabilities, i.e., it hasprovision for ramps, low-flooring, Braille signals for the blind, and audio instructions on opening/closing of gates, etc." See Tushti Chopra, *Expanding the Horizons of Disability Law in India: A Study from a Human Rights Perspective*, 41(4) The Journal of Law, Medicine & Ethics, 807, 817 (2013).

²¹See *Supra* Note 11 (Rennert) p. 363, n. 21.

²²Henry S. Richardson, *DEMOCRATIC AUTONOMY: PUBLIC REASONING ABOUT THE ENDS OF POLICY* 108 (Oxford University Press- New York, 2002)

²³The US Department of Transport Regulations mandates that vehicles already accessible to the differently-abled remain accessible and gave specific directions as to how wheelchair lifts should be maintained; stipulate that paratransit fares may not exceed twice the fixed- route fare for a comparable ride; forbid paratransit providers from imposing limitations on priorities based on an individual's trip purpose; mandate that certain key bus stops should be announced for specially-abled passengers; provides that where numerous bus routes serve one bus stop, transit systems shall provide means by which visually impaired individuals may identify the proper vehicle to enter; require that disabled passengers be allowed to travel with portable oxygen supplies and service animals; mandate that specially-abled passengers be provided with satisfactory information about public transportation; mandate that specific bus and train seats be designated as priority seating for the passengers with special needs; and set forth means of administrative enforcement of the ADA. See 49 U.S. Code of Federal Regulations PART 37 (49CFR37) pp. 412- 501. Accessed at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/part-37-transportation-services-individuals-disabilities> on 24th June 2020.

disability-rights legislation vis-à-vis transportation and a perfect breeding ground of socio-administrative apathy.²⁴

A statutory implementation approach could have served the transportation jurisprudence better while enacting the Disability Act 1995 and 2016, respectively. That is, to impose a date in the future within which time-table every one of public buses, trains, and aircraft would be made accessible to specially-abled people as it necessitates resources. Prerequisite of a time-frame based implementation was Constitutionally placed under Article 45, in the context of primary education. It was made free and compulsory with a completion time-frame of 10 years from the Constitution's commencement. That provision kept in mind the resources needed for making such a right real.²⁵ Indian disability and railway laws have been unable to induct travelling rights into their human rights regime.²⁶ Disability jurisprudence in the context of transportation rights walks a very tight rope because ambiguity creeps in easily as the process of reasoning was on two vague ends. On one end, it has to make transportation systems accessible to the especial passengers and avoiding discrimination against them is on the other. Combining those *two* distinct goals in such a way as to give rise to a new end, that of mainstreaming the differently-abled into existing transportation systems has been an enduring challenge.²⁷ This challenge becomes steeper when the disability-based facilities are put on hold due to economic considerations.

We need to appreciate that availability of disabled-friendly transport because it is not an isolated right, but a means to other rights.²⁸ Thus, accessible transport vehicles for differently abled persons is a hardcore human rights issue, and hence economic considerations must not stymie these facilities. The Disability Act's anxiety for costs under Section 41 weakens the jurisprudential resolve to eliminate discrimination and the creation of an inclusive society.²⁹

The Tumultuousness of Accessibility in Transport

Section 41 of Disability Act, 2016 merely mentions the pro-disability facilitative travel or examples of adapt railway coaches etc. It remains mute on any standards as to what

²⁴The jurisprudential approach of a specified time-based implementation 'must' have been a part of the statutory scheme of disability law in India. The voluntary nature of execution will undoubtedly leave the transportation rights of the specially-abled Indians in peril, because "corruption and hypocrisy ought not to be inevitable products of democracy, as they undoubtedly are today." See C. Raj Kumar, *Corruption and Human Rights: Promoting Transparency in Governance and the Fundamental Right to Corruption-Free Service in India*, 17(1) Columbia Journal of Asian Law, 31, 32 (2003).

²⁵State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of *fourteen* years." See Article 45 of the Constitution of India, 1950.

²⁶Abhinav Rajput 2017. Wheelchair-Bound Para-Athlete Says She Was Forced to Sleep on Floor of Train. *The Hindustan Times*, 11th June. Accessed at <https://www.hindustantimes.com/delhi-news/no-one-showed-sympathy-wheelchair-bound-para-athlete-forced-to-sleep-on-floor-of-train/story-5UDptWltp9Qbw20mxhAYDO.html> on 24th June 2020.

²⁷See *Supra* Note 22 (Richardson) p. 108.

²⁸*Ibid.*

²⁹See Disability Act 2016, Section 41(1), *supra* note 9.



type of adjustments maybe necessary for easy access for persons with diverse kinds of disabilities. Legislative lacunae procreate administrative arbitrariness.³⁰ By exclusively aiming at making buses and trains accessible for wheelchair users, it would not satisfy the requirements of all differently-able individuals. For example, people with acute vision impairments cannot utilise regular trains and buses without assistance if they are travelling in unusual locales.³¹

Railways establish new socialites and transform people's senses of self. They procreate new forms of spectatorship.³² That viewership revamps how bodies are sensed and perceived in the landscapes that they moved through,³³ now witnessed as a speedily passing vista. At the same time, this 'parcelling' of travellers hurled through the terrain at high speed spawns various social and bodily anxieties, disclosed most acutely in accounts that underscore fears for personal safety and concern of criminal activity and 'railway spine'.³⁴ The railway gathers new, mobile publics, expecting the differently-abled passengers to develop new skills to negotiate with crowds and handle strangers.³⁵ The quality of those skills is dependent upon 'extraordinary' preparation on the part of especial travellers vis-à-vis their disabilities to accomplish their journeys.³⁶ Undeniably, the space of the train carriage is a place where social relations amongst unacquainted gentry are bargained and redrawn.³⁷

Soft national legislation drives the rights system for differently-abled travellers that is ineffective at bringing about change because specially-abled people are not accustomed to asserting or even requesting their rights. The inefficiency of these laws reflects the fact that trains and stations lack the disabled-friendly construction with no attention to the needs of passengers with disabilities. Apart from that, both technology and trained professionals who can take pro-disability facilitative action are absent from the system. The government and non-governmental organisations should work together to raise levels of public awareness and improve facilities.³⁸ Because the commonly-abled

³⁰"Legislation is necessary to assure the opportunity to attain civil rights goal, since experience has proven the unfortunate fact that 'no civil right has ever been secured without legislation'." See Bonnie P. Tucker and Bruce A. Goldstein, *LEGAL RIGHTS OF PERSONS WITH DISABILITIES: AN ANALYSIS OF FEDERAL LAW 2* (Volume 1, LRP Publications- Pennsylvania, 1991)

³¹Michael Lewyn, *Thou Shalt Not Put a Stumbling Block before the Blind*, 52(5) *Hastings Law Journal*, 1037, 1065 (2001).

³²Lynne Kirby, *PARALLEL TRACKS: THE RAILROAD AND SILENT CINEMA* 105 (Duke University Press- Durham, 1997)

³³David E. Nye, *NARRATIVES AND SPACES: TECHNOLOGY AND THE CONSTRUCTION OF AMERICAN CULTURE* (Columbia University Press- New York, 1997) pp. 180-181.

³⁴Ralph Harrington, *On the Tracks of Trauma: Railway Spine Reconsidered*, 16(2) *Social History of Medicine*, 209, 223 (2003).

³⁵Orvar Lofgren, *Motion and Emotion: Learning to be a Railway Traveller*, 3(3) *Journal of Mobilities*, 331, 332- 335 (2008).

³⁶Jack Simmons, *THE RAILWAY TRAVELLER'S HANDY BOOK OF HINTS, SUGGESTIONS AND ADVICE: BEFORE THE JOURNEY, ON THE JOURNEY AND AFTER THE JOURNEY* 62 (Lockwood and Company- London, 1862)

³⁷Peter Thomas, *Railways*. Chapter 20 in *The Routledge Handbook of Mobilities* 215 (Taylor & Francis- New York, 2014)

³⁸D. Nanda, 1998. *ACCESSIBILITY OF PEOPLE WITH PHYSICAL DISABILITIES IN INDIAN RAILWAYS*. In 8th International Conference on Transport and Mobility for Elderly and Disabled People Loughborough University of Technology, pp. 797-802.

(non-disabled) people have parochial ways of interpreting disabilities. They often contemplate disability to be a synonym for wheelchair usage, which automatically leaves millions of masses without any access to transportation. The transportation system has to assimilate the doctrine of 'reasonable accommodation for disability rights'. The transport laws have to encompass the adaptable vehicles as well as architectural designs of the railway stations, platforms, lifts, wheelchair handlers and baggage moving trollies for even the mofussil towns as an obligatory disability-based service with a legally defined timeline for implementation as discussed above.³⁹

"It is not enough to provide wheelchairs without dignity as the commonly-abled (non-disabled) have the habit of staring at the differently-abled person as if he/she is an alien. Eliciting his familiarity with the New Delhi station, Doctor 'S' said, "I am myself a person with a disability and was waiting for the battery-operated car deployed for the differently-abled, but it was nowhere traceable. Astonishingly, there are no lifts at the railway station'. Singh said he also discovered to his horror that whenever a wheelchair user arrived, in the absence of a lift, coolies lifted them onto the escalator. 'The Prime Minister called us divine. But the dignity of differently-abled people has regularly been compromised with perfect impunity.' The government spent over 1,000 crore rupees on its two-year bash but had it contributed 1% of the amount for the benefit of the differently-abled, and they would not have to face this kind of humiliation."⁴⁰

- Whenever I seek help in crossing the road from other pedestrians, they hold me by my collar or my shirt sleeve and 'haul' me across the road, making me feel exceedingly small and insignificant" says a visually impaired man.
- Polio afflicted person complained that his feet terribly ache while standing. But when travelling on buses, all his requests for a seat fall on deaf ears, if it is an overcrowded bus.
- A differently-abled woman living in Mumbai says she never travels in local compartments reserved for the specially-abled. Why? "Drunkards and other suspicious characters always occupy it, and I feel very unsafe. I would rather go to a crowded ladies compartment where I am physically uncomfortable but at least mentally secure."⁴¹
- The coach for the differently-abled passengers is located at the end of the train just behind the engine, which is exceptionally inconvenient for the special passengers.

³⁹Rajiv Ranjan, 2017. I Have Cerebral Palsy: Indian Railways Is Indifferent to My Train Travel. *New Delhi Television Ltd: Every Life Counts Series*, 24th July. Accessed at <https://everylifecounts.ndtv.com/cerebral-palsy-indian-railways-indifferent-train-travel-15571> on 28th June 2020.

⁴⁰Gaurav Vivek Bhatnagar, 2016. Railways Fails to Treat Persons with Disabilities with Respect and Care: Doctor with disability exposes the lack of sensitivity at New Delhi railway station - a wakeup call ahead of India's bid to modernise hundreds of its stations. *The Wire*, 02nd June. Accessed at <https://thewire.in/rights/railways-fails-to-treat-persons-with-disabilities-with-respect-and-care> on 28th June 2020.

⁴¹Samir Ghosh, 2015. The Disabled Die Young Due to Neglect and Apathy of Society. *Nagpur Today*, 22nd March. Accessed at <https://www.nagpurtoday.in/the-disabled-die-young-due-to-neglect-and-apathy-of-society-says-samir-ghosh-unesco-advisor/03220914> on 28th June 2020.



The Dignity of Differently-Abled Travellers

The dignity of differently-abled passengers is severely compromised when adults with disabilities are hauled in the luggage porter's lap or when they are helped in crossing the platform by their shirt's collar. For wheelchair users, the core issue is the toilet experience for urinating, which they described as painful and humiliating.

Inconvenience and humiliation *vis-à-vis* differently-abled rail travellers have two elements: the way from the seat to the toilet and the difficulty in entering the toilet cabin. Getting to the washroom is a Herculean task, wherein, the co-passenger must carry a wheelchair as the coach attendants are generally ill-behaved and less educated, as the room is almost always too small for a wheelchair. Consequently, the specially-abled travellers try to avoid going to the toilet by using catheters or by fasting before long voyages. In contrast, some even use a diaper, a bottle or hygroscopic bag. Such insurmountable hardship to enter the toilet lead to accidental defecation. In others, cases the unique travellers have to urinate or defecate in a diaper, that exemplifies a great sense of humiliation and personal suffering due to the resultant stench and stares of other passengers.⁴² Such indignities come with tightly knitted inconvenience and pathetic sanitary hygiene.⁴³ Travelling also becomes undignified for passengers with disabilities because they are financially vulnerable and cannot jounce the market forces as their well-placed commonly-abled counterparts.⁴⁴ Dignity is as essential for the specially-abled as it is for commonly-abled people. The Delhi High Court, while deciding upon the role of disability legislation in India in accruing dignity for the people with disabilities, pronounced as follows-

"The said Disability Act came into being to give effect to the United Nations Conventions on the Rights of Persons with Disabilities, to which India was a signatory. The Preamble to the said Act does not permit for any deviation from the stated objective, namely, to accord respect for the inherent dignity, individual autonomy, freedom of choice, right against non-discrimination, full and active participation in society. Equal opportunities in all walks of life, as eloquently elaborated therein, to differently-abled persons."⁴⁵

Such behaviour amounts to indirect discrimination and is a tangible onslaught on the dignity of 'person' of the differently-abled.

⁴²Yaniv Poria et al, *The Flight Experiences of People with Disabilities: An Exploratory Study*, 49(2) Journal of Travel Research, 216, 221 (2010).

⁴³"The toilet technology used in the railways is not in line with the overall ethos of the sanitation campaign which is trying to eliminate open defecation to derive maximum health benefits. With the introduction of *Total Sanitation Campaign and Nirmal Gram Puraskar*, many villages are becoming open defecation free but the railway lines crossing through the district or panchayat bring undisposed excreta for such rural areas which is sufficient to increase their health risk." See Kumar Alok, *SQUATTING WITH DIGNITY: LESSONS FROM INDIA* 348 (Sage Publications- New Delhi, 2010)

⁴⁴Gareth Shaw and Tim Coles, *Disability, Holiday Making and the Tourism Industry in the UK: A Preliminary Survey*, 25(3) Journal of Tourism Management, 397, 402 (2004).

⁴⁵Tina Sharma (Minor) through Bhagwati Prasad Sharma vs Union of India & Others (2018). Accessed at http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=181678&yr=2018 on 17th June 2019. See Paragraphs 19 and 20, respectively.

Importance and Universality of Dignity

Due to its significant centrality in both the United Nations Charter and the Universal Declaration of Human Rights, the concept of 'human dignity' now plays a crucial role in the human rights debate. The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) both state that all human rights develop upon the intrinsic dignity of the human person. Self-Esteem or dignity has become a commonplace legal phenomenon in the texts providing for human rights protections in many jurisdictions.⁴⁶ In bucolic societies, dignity was often confused with the snobbish value of royal lineage or holding a high public office.⁴⁷

Dignity lacks mathematical or theoretical quantification,⁴⁸ but it may undoubtedly serve as an impeccable argument.⁴⁹ Despite all its vagueness, courts have resorted extensively to the concept.⁵⁰ It is a constitutional right in Germany, Hungary, Israel, and South Africa, among others, while in the European Convention on Human Rights the Prohibition of "inhuman and degrading treatment" may be seen as a negative formulation of the right to dignity. In some of these jurisdictions, dignity may serve as the springboard for a series of rights. Dignity is a guiding principle in other constitutions and international human rights law.⁵¹

Breach of Dignity: An Indirect Discrimination

The Judiciary has time and again considered that right to life a right filled with human dignity.⁵² In doing so, the Judiciary has not even shown keenness to procure evidence of bias, or a discriminatory state of mind or any malign purpose. The Courts tend to believe that hardcore proof is needless to establish a claim for indirect discrimination. Nor is corroboration of the non-existence of such intention builds up any defence or excuse for

⁴⁶Christopher McCrudden, *Human Dignity and Judicial Interpretation of Human Rights*, 19(4) *The European Journal of International Law*, 655, 656 (2008).

⁴⁷"The concept of *dignitas hominis* in classical Roman thought largely meant 'status'. Honour and respect should be accorded to someone who was worthy of that honour." See *Ibid*.

⁴⁸Roger Gibbins, *How in the World Can You Contest Equal Human Dignity? A Response to Professor Errol Mendes' "Taking Equality Into the 21st Century: Establishing the Concept of Equal Human Dignity"*, 12(1) *National Journal of Constitutional Law - Canada*, 25, 30 (2000).

⁴⁹Dietrich Ritschl, *Can Ethical Maxims be Derived from Theological Concepts of Human Dignity?* Chapter 5 in David Kretzmer and Eckart Klein eds. *The Concept of Human Dignity in Human Rights Discourse* (Columbia University Press- New York, 2002) pp. 87-98.

⁵⁰David Feldman, *Human Dignity as a Legal Value- Part 1* *Public Law: The Constitutional and Administrative Law of the Commonwealth*, 682, 689 (1999).

⁵¹Rory O'Connell, *The Role of Dignity in Equality Law: Lessons from Canada and South Africa*, 267, 269 (2008). "The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the humanrights into one whole. It ensures the normative unity of human rights." See Aharon Barak, *HUMAN DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT* (Cambridge University Press-UK, 2015: Translated by- Daniel Kayros) while quoting Miriam Naor: former President of the Israeli Supreme Court pp. 103-104. See also *Jeeja Ghosh vs Union of India and Others*, *Others* (2016) 7 SCC 761, 762-763.

⁵²*Jiby P. Chacko vs Principal, Medicity School of Nursing & Another*, 2002 (2) ALD.



the conduct that amounts to indirect discrimination.⁵³ Life without dignity loses its purpose, resolve, and the spark of intelligence starts evaporating, which reduces the social productivity of an individual.⁵⁴ For example, a differently-abled commuter while on the train is misbehaved with, can have a poor performance in his official duties.⁵⁵ Therefore, 'reasonable accommodation' for a unique traveller must envelop the protection of her self-esteem and those assisting or accompanying them. During incidents of disability-based intimidation, even the family members helplessly tolerate the disgrace of watching their loved ones being the subject of abuse as railway passengers. That fear of indignity gets transmitted to all those who object to disability-based harassment. It makes them refrain from any intervention to stop the impugned bullying. Co-passenger related to the victim of the hostility, generally remain silent and do not retaliate on behalf of the specially-abled victim, even if she or he is a relative. It is also noteworthy that although the co-passenger might not be the primary target of abuse, those escorting the differently-abled person were themselves, victims of emotional upset.⁵⁶

Observations and Recommendations

Any name-calling or hostile behaviour should be able to attract strictures and appropriate punishments under the Railways Act 1989, instead of exclusively depending on the Disability Act 2016 or/and the Indian Penal Code. There must be a disability help desk on every railway station, whether local or national. The train ticket examiner (TTE) shall be re-designated as the 'Coach Superintendent.' His powers and authority shall be defined appropriately in case of differently-abled passengers. There is an urgent need to amend Section 145 of the Railways Act 1989. That Section states as follows-

Drunkenness or nuisance. -If any person in any railway carriage or upon any part of a railway-

- (a) is in a state of intoxication; or
- (b) commits any nuisance or Act of indecency or uses abusive or obscene language; or
- (c) wilfully or without excuse interferes with any amenity provided by the railway administration to affect the comfortable travel of any passenger,

he may be removed from the railway by any railway servant. He shall, in addition to the forfeiture of his pass or ticket, be punishable with imprisonment which may extend to six months and with fine which may extend to five hundred rupees:

⁵³Hugh Collins and Tarunabh Khaitan, *Indirect Discrimination Law: Controversies and Critical Questions*. Hugh Collins and Tarunabh Khaitan eds. Chapter 1 in *Foundations of Indirect Discrimination Law* 11 (Bloomsbury Publishing- London, 2018)

⁵⁴Francis Coralie Mullin vs Administrator, Union Territory of Delhi and Others, AIR 1981 SC 746.

⁵⁵"Indirect discrimination while travelling includes verbal abuse, such as name-calling, behaviour such as graphic and written statements, or conduct that is physically threatening, harmful or humiliating." See Michele A. Paludi, *PSYCHOLOGY FOR BUSINESS SUCCESS* 123 (Volume 1 Juggling, Balancing and Integrating Work and Family Roles and Responsibilities- Praeger Publication- Oxford, London, 2013)

⁵⁶David Wilkin, *DISABILITY HATE CRIME: EXPERIENCES OF EVERYDAYHOSTILITY ON PUBLIC TRANSPORT* 59 (Springer Nature Publications- New York, 2019)

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than-

- (a) a fine of one hundred rupees in the case of conviction for the first offence; and
- (b) imprisonment of one month and a fine of two hundred and fifty rupees, in the case of conviction for a second or subsequent offence.

The Section mentioned above should carry specific provisions to 'intimidating differently-abled passengers with rude or abusive or any disrespectful behaviour must attract a significant monetary fine or/and imprisonment, which have a deterrent value. The subsequent offences if committed for the *third* time, must be treated as a cognisable offence, and the quantum of punishment shall be *seven* years along with a permanent prohibition on rail travel for every convicted offender.⁵⁷ 'Reasonable Accommodation' for the special passengers means a 'journey with dignity' and not mere charitable concessions.

⁵⁷The Railways Act 1989. Accessed at http://legislative.gov.in/sites/default/files/A1989-24_0.pdf on 01st July 2020.