



EXPLORING DISABILITIES WITHIN THE REALM OF HUMAN RIGHTS

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Abstract: Privileges of Persons with Disabilities is about more than ensuring that current human rights are connected to people with incapacity. It additionally quietly reformulates and stretches out existing human rights to consider the particular rights understanding of people with handicap. Handicapped/"contrastingly abled" people by ethicalness of being human reserve the privilege to appreciate human rights to life, freedom, uniformity, security, and nobility. Be that as it may, because of social lack of concern, mental obstructions, a constrained meaning of "inability" entitling insurance of law. Simultaneously, at whatever point the legal executive finds a chance, it goes about as a genuine defender of debilitated people, yet it isn't possible to thump on the entryway of the legal executive for each solicitation. Strikingly, different common social orders and human rights activists have every so often stated the privileges of the debilitated. Contemporary status of incapacitated individuals with present laws however the researcher believes and argues that it's not law which will provide solution to this problems, it is the people in the society that need to be more sensitive towards disable people and be more

protective towards the condition of the disable people.

Introduction

"When you focus on someone's disability you'll overlook their abilities, beauty and uniqueness once you learn to accept and love them for who they are, you subconsciously learn to love yourself unconditionally."
— Yvonne Pierre, *The Day My Soul Cried: A Memoir*

The United Nations (U.N.) Convention on the Rights of Persons with Disabilities (CRPD) defines persons with disabilities as "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹In many countries, disabled people as an inferior community excluded from the society. They are deprived of their rights and liberties and further are exposed to abuse and harassment. They are robbed of their right as equal citizens. — In India out of the 121 Crore population, 2.68 Crore persons are disabled which is 2.21% of the total population. Among the disabled population 56% (1.5 Crore) are males and 44% (1.18 Crore) are females. In the total population, the male and female population is 51% and 49% respectively.²Whereas, conservative estimates place Indians with disability at between 5-6% of the total population³. Majority (69%) of the disabled population resided in rural areas (1.86 Crore disabled persons in rural areas and 0.81 Crore in urban

¹ Article 23 of the Convention on the Rights of Persons with Disabilities; United Nations. Adopted 13 December 2006. Accessed December 2019 at <http://www.un.org/disabilities/convention/conventionfull.shtml>

² www.censusindia.gov.in

³ Deepanjali Bhas, "National Policy for the Disabled: No clear roadmap for action", InfoChange News & Features, August 2006



areas). In the case of total population also, 69% are from rural areas while the remaining 31% resided in urban areas. The CRPD is the first treaty that comprehensively addresses all aspects of discrimination based on disability, including employment, education, privacy, and self-determination. Out of nearly 200 U.N. member states, 142 countries are signatories to the convention.⁴The most recent two decades have seen an extreme change with regards to the methodology towards people within ability and guarantee their dynamic investment in political, monetary, social, and social life as it were that is aware and pleasing of their disparities. The debate about the rights of the disabled is therefore connected to a larger debate about the difference existing in society. In the new scenario, the disabled are viewed as individuals with a wide range of abilities and each one of them willing and capable to utilize his/her potential and talents.⁵Although, legislation cannot alone radically change the fabric of a society in a short span of time, it can at least make a beginning by giving a social human consideration towards the needs and requirements of the disabled⁶.

Overview of the International and National Instruments available for the protection of the rights of disabled people

There are certain resolutions which were passed to promote and protect the interests of the disabled people in the society such

as “*Declaration on the Rights of Mentally Retarded Persons*”⁷. This resolution states that such persons enjoy the same human rights as all other human beings and then list out the rights that are of special importance to them which includes education, training and rehabilitation, the resolution is focused on the need to protect the interests of such persons and to appoint a qualified guardian where necessary,”*Declaration on the Rights of Disabled Persons*”⁸. The Declaration asserts that persons with disabilities have the same civil and political rights as other human beings. Further, such persons are “entitled to the measures designed to enable them to become as self-reliant as possible” The Declaration also identifies a number of economic and social rights that are of importance for the development of capacities and social integration. It also refers to the right of disabled persons to have their special needs taken into consideration at all stages of economic and social planning, the right to protection against exploitation and treatment of an abusive or degrading nature and the right of organizations of persons with disabilities to be “usefully consulted in all matters regarding the rights of disabled persons”, “*World Programme of Action concerning Disabled Persons*” (WPA)⁹. The overall aims of the WPA are prevention, rehabilitation and equalization of opportunities and the WPA calls for the development of long-term national programmes to achieve the objectives of the

⁴ UN Enable. Accessed August 2019 at <http://www.un.org/disabilities/>

⁵Dr Shankar Adawel, “Disability: Human Rights And Social Responsibility” at <http://www.disabilityindia.org/forum/viewmessages.cfm?Forum>

⁶Chakraborty, Dr. Sanjit Kumar, Disability Rights in India: A Paradigm Shift from 'Object' to 'Subject' (June 15, 2009). Calcutta Law Times, Vol III, 2009

⁷ General Assembly resolution 2856 (XXV1) of 20 December 1971

⁸General Assembly resolution 3447 (XXX) of 9 December 1975

⁹General Assembly resolution 37/52 of 3 December 1982



Programme domestically, “*Tallinn Guidelines for Action on Human Resources Development in the Field of Disability*”¹⁰. The basic idea underlying this document is that the development of the human resources of persons with disabilities has too long been neglected and should be viewed as a key means of enabling such persons to exercise their human rights and responsibilities like other members of society. Several strategies for human resource development are singled out. They include the participation of persons with disabilities in society (breaking down physical and communication barriers), strengthening of grassroots and self-help efforts, and promotion of education and training, employment, community awareness, and regional and international cooperation¹¹, “*Standard Rules on the Equalization of Opportunities for Persons with Disabilities*”¹². The Standard Rules are the main United Nations rules guiding action in this area and consist of four parts; Preconditions for equal participation, Target areas for equal participation, Implementation measures, and monitoring mechanisms. They imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities and although the rules are not compulsory, they can become international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law¹³. The purpose of the Standard Rules is to

ensure that girls, boys, men and women with disabilities, as members of their societies, may exercise the same rights and obligations as others¹⁴, “*Declaration on the Elimination of Violence against Women*”¹⁵. The Declaration specifically mentions women with disabilities as a group that is especially vulnerable to violence, and “*Comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities*”¹⁶. It decides to establish an Ad Hoc Committee, open to the participation of all Member States and observers to the United Nations, to consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.

Some of the core human rights treaties that were adopted to protect the rights of the disabled people are the *International Covenant on Civil and Political Rights (ICCPR) 1966*, which provides protection for a range of civil and political rights. It seeks to underpin the freedom of the individual and to ensure that he/she is enabled to exert influence over the political life of the polity, *International Covenant on Economic, Social*

¹⁰General Assembly resolution 44/70 of 15 March 1990, annex

¹¹ Gerard Quinn and Theresia Degener, Anna Bruce, Christine Burke, Dr. Joshua Castellino, Padraic Kenna, Dr. Ursula Kilkelly, Shivaun Quinlivan, *Human Rights and Disability : 'The current use and future potential of United Nations human rights instruments in the context of disability'* , United Nations New York and Geneva, 2002

¹² General Assembly resolution 48/96 of 20 December 1993

¹³ Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Para. 14.

¹⁴ Id., Para. 15.

¹⁵ General Assembly resolution 48/104 of 20 December 1993

¹⁶General Assembly resolution 56/168 of 19 December 2001



and Cultural Rights (ICESCR) 1966 which seeks to ensure that freedom is buttressed by appropriate social rights and social provision. These two themes of freedom and appropriate social support for freedom are crucial for people with disabilities, *The Convention on the Rights of the Child (CRC) 1989*, it contains a very specific article on the rights of disabled children¹⁷, *The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) 1965*, it is highly relevant to those who suffer double discrimination on grounds of race and disability, the Convention also provides for inter-State and individual complaints procedures¹⁸. Also, the *Universal Declaration of Human Rights (UDHR), 1948*, is an important document which affirmed the rights of all people without any discrimination.

At the national level as well, many rights have been provided in The Indian Constitution and many legislations have been enacted to promote and protect the rights of the disabled people.

Article 41 of The Indian Constitution states that, “*The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.*”, Article 46 states that, “*The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation*”. Apart from these there are

certain laws which have come into force such as *THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995*, it states that people with disabilities had the right to equal opportunities and full participation and it also provides the duties of the government at various levels and the other establishments under their control, it contains provisions providing the disabled people with proper education, employment and also have adopted measures to improve accessibility for people with disabilities, *THE REHABILITATION COUNCIL OF INDIA ACT, 1992* it aims, ‘To standardize training courses for professionals dealing with people with disabilities’, ‘To prescribe minimum standards of education and training of various categories of professionals dealing with people with disabilities’, ‘To regulate these standards in all training institutions uniformly throughout the country’, ‘To promote research in rehabilitation and special education’, and ‘To maintain Central Rehabilitation Register for registration of professionals’, *THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1990*, it aims to fulfill a common demand of families seeking reliable arrangement for their severely disabled wards and the main objectives of the Act are ‘To enable and empower persons with disabilities to live as independently and as fully as possible within and as close to the community to which they belong’, ‘To promote measures for the care and protection of persons with disabilities in the event of death of their parent or

¹⁷The Convention on the Rights of the Child (CRC) 1989, Article 23

¹⁸ Supra Note 5.



guardian’, and ‘To extend support to registered organizations to provide need based services during the period of crisis in the family of disabled covered under this Act’, *THE MENTAL HEALTH ACT, 1987*, it aims to regulate standards in mental health institutions and to make provisions with respect to their property and affairs, it states that “No mentally ill person shall be subjected during treatment to any indignity (whether physical or mental) or cruelty”¹⁹, and “No mentally ill person under treatment shall be used for purposes of research, unless Such research is of direct benefit to him for purpose of diagnosis or treatment, or Such persons, being a voluntary patient has given his consent in writing or where such person (whether or not a voluntary patient) is incompetent by reason minority or otherwise, to give valid consent, the guardian or other person competent to give consent on his behalf, has given his consent in writing for such research”²⁰. Also, the Indian Judiciary has played a significant role in developing the human rights of the disabled persons. In a number of cases the Supreme Court and the High Court have interpreted the disability legislation in a way so as to achieve the objectives contained therein. In *Javed Abidi v. Union of India*²¹, the Supreme Court directed creation of free environment for person with disabilities and making special provisions for their rehabilitation, medical care, education, employment, training and protection of their rights, in *D.N. Chanchala v. State*²², the Supreme Court extended the equitable principle of preferential treatment to persons with disabilities to bring them to the mainstream of the society by giving them

equal opportunity in the field of education, and in *Sheela Bharse and Ors. v. Union of India*²³, the Supreme Court held that mentally ill non-criminal persons cannot be kept in jail and opined that keeping the non-criminals in jail along with other convicts is unconstitutional. Like this way various measures have been taken in the field of disability rights towards the protection of the human rights of the disabled persons.

Implementation Gap

Though various steps have been taken by the government in order to improve the conditions of the disabled people but still due to the ineffective and inefficient implementation of the laws the outcome for which the government is aiming is still not achieved. Firstly, there are no sufficient funds or financial backing provided to the local government for providing the facilities mentioned for the disabled people. Secondly, there is lack of awareness and sensitization due to which the general public is unable to contribute towards the needs of these people. Thirdly, many of the private firms and at times even the government sector refuse to provide them with employment stating their disability as the reason and lastly, due to the social barriers and a little difficulty in the implementation they are denied the basic public services. One of the examples relating to this issue is that “ On 19th June, 2019 Disabilities rights activist Arman Ali, executive director of the non-profit National Centre for Promotion of Employment for Disabled People (NCPEDP), was allegedly off-boarded from an Uber cab in Chennai as the driver refused to accommodate his wheelchair, he said that though the

¹⁹THE MENTAL HEALTH ACT, 1987, Section 81(1)

²⁰ Id., Section 81(2)

²¹(1999) 1 SCC, 467

²²AIR 1971 SC 1762

²³(1993) 4 SCC, 204



Government talks about PWDs (persons with disabilities) being *divyang* (divine bodies), but we are being treated like third class citizens and like burdens on society”²⁴.

Problems faced by the Disabled People

Incapacity has numerous aspects, to start with, it is imperative to comprehend that there are a wide range of types and severities of hindrance which lead to inabilities. To name some are visual hindrance, hearing hindrance, development hindrance and subjective/language hindrance .Inside every one of these real kinds, there are numerous varieties and degrees of disability. Each of these may show various obstructions. People with inabilities face an expanded danger of being victims of violent crime Ladies with handicaps in specific experience a high pace of abusive behavior at home and rape. Studies recommend that ladies with formative handicaps are 4 to 10 times bound to be explicitly struck than other ladies.²⁵Youth with disabilities are between 1.5 and 3.5 times more likely to have experienced abuse and neglect, and to be surrendered into the child welfare system.²⁶There is restricted association or no contribution of Children with disabilities (CWDS), their folks or guardians in plan, dispersal and usage of the laws and approaches that identifies with them. More regrettable to that, even the relevant persons that deal with CWDS are likewise not occupied with the detailing, scattering and usage of such laws and arrangements. Notwithstanding the way that the privileges

of CWDS are recognized, a portion of the arrangements to acknowledge them don't satisfy the guidelines expected by the CRC and the UN CRPD and accordingly. Insufficient data and guidance about how to enter the open work environment and get continuous help, there is no 'one-stop shop' for individuals with incapacities searching for data, guidance and progressing support. Now one of the major issue the arrives is inflexible working environment ,difficulties with physical access to the workplace, and getting to and from work ,inadequate adjustments and adaptations to workplace equipment and inflexible working hours one they find work for themselves. The Indian society as for long have neglected the needs and aspirations of differently abled person. Their right to gainful employment has long been hindered by the lack of political will of successive government. When we specially talk about work environment for the people which have visual disability Written operating instructions and other documentation may also be inaccessible if they are not provided in electronic or alternate form (e.g. Audio tape or braille) and even then people may have difficulty accessing graphic or pictorial information included in documentation. Incapacitated people are in truth diversely abled people yet the generalizations and preferences appended to them by society makes them debilitated. Subsequently, they are separated on various checks. Disabled people don't feel sense of inclusiveness in our society. Lack of optimism creates obstacle in their self-

²⁴The Hindu, 22-June- 2019

²⁵Dick Sobsey. “Faces of Violence against Women with Developmental Disabilities.” Impact, vol. 13 no. 3, Fall 2000. Accessed December 2019.

²⁶National Council on Disability. February 2008. “Youth with Disabilities in the Foster Care System:

Barriers to Success and Proposed Policy Solutions.” Accessed December 2019 at http://www.ncd.gov/newsroom/publications/2008/FosterCareSystem_Report.html



empowerment.as we talk about employment for them we see that there is reservation for disabled people in the government service but no such thing in the private sector which resulted into the negligible share of disabled people in private sector and due to their disability, they have lesser access to educational facilities. They face numerous hurdles for gaining education such as the absence of proper administrations for individuals with incapacities is a noteworthy hindrance to social insurance. Affordability of health service and transportation are two main reasons why people with disabilities do not receive needed health care. School condition needs lodging for genuinely rehearsing comprehensive instruction. Notwithstanding, such lodging are not there in greater part of the schools, facilities like ramps, lifts, and directional cues etc. are mostly absent in schools. Due to their disabilities, earning a livelihood becomes difficult for them. Due to this, they are financially weak. The government has numerous schemes which offer them scholarships and grants to support them. The government also provides for their 'medical equipment' special calipers (e.g. Jaipur foot) for them.

Recommendations

The Constitution of India fuses the standards of social equity and human rights .Handicap as the ground of separation isn't disallowed explicitly in the Constitution. Be that as it may, the state could start programs for the handicapped based on 'sensible order', which grants diverse individual ought to be. The future of the disabled individuals is not all that gloomy there is lot of scope for

amendments to the existing legislation "*THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995*" in conformity with UN Convention on the Rights of Persons with Disabilities (2006) to which India a signatory. Disability is both a cause and consequence of poverty; it is a reason which can generate unemployment which can lead to numerous different difficulties that can further prompt financial hardship. The poverty rate for working-age people with disabilities is nearly two and a half times higher than that for people without disabilities, yet the intersection of disability and poverty is too rarely discussed. Policymakers have a number of policies and solutions at their fingertips that could have a genuine effect today. Growing Medical aid would make it workable for all the more low-salary Indians to get to preventive consideration, and diminish money related strain with disabilities. Guaranteeing paid leave assurance and paid days off would profit the two workers with incapacities and workers who care for relatives with inabilities. Raising the lowest pay permitted by law would help the wages of numerous specialists with inabilities, who are particularly prone to work in low-wage occupations. Likewise, boosting the Earned Income Tax Credit for workers without dependent children would benefit many workers with disabilities, who are less likely to have children. The Guiding Principles on Extreme Poverty and Human Rights²⁷, adopted by the Human Rights Council in September 2013, highlight the particular vulnerability of persons with disabilities to

²⁷ UN Human Rights Council, 2012: Guiding principles on extreme poverty and human rights,

submitted by the Special Rapporteur on extreme poverty and human rights



extreme poverty. They emphasize the importance of the progressive development of comprehensive national social security systems. Most countries have committed to protect the right to education for people with disabilities, which offers a reason for responsibility. In any case, surveying consistence with this privilege is muddled by obscured definitions and a lack of monitoring mechanisms. Associations of people with inabilities and networks can play a significant role in monitoring country commitments to the right to education. Measuring progress in education for children with disabilities requires also having measures based on nationally representative household surveys, rather than only on children who are in school. Governments should create comprehensive educational plans to help separate boundaries looked by youngsters with handicaps in the classroom. Isolating kids from their companions or families is unfavorable to their advancement and potential. Instructors must be upheld with preparing and educational apparatuses to achieve youngsters with exceptional needs. More teachers with disabilities should be hired. Along with this, Countries should enforce minimum standards on school accessibility for children with disabilities. Inclusion of a new definition on 'persons with disabilities that endorses the social model of disability as it locates the problem of disability outside the individual person .Accessibility is a key component to fighting discrimination against persons with disabilities. According to the Department of Transportation, only 55-60% of public transit buses are equipped with wheelchair lifts. In certain cases when you have extra needs and cannot use metro, train, bus, in these cases the government should introduce Taxi Transport Subsidy Scheme or community transport

which can be specially provided for the disable people who wish to travel and work. Governments should introduce disability pass for traveling so that it is easy to access to public and private transport .A Twin track approach is required - incapacity explicit measures to empower those confronting specific such as women and girls with disabilities, persons with intellectual and psycho-social disabilities and others need to be introduced, alongside measures to promote the inclusion of persons with disabilities in programmers and services for the general population. Work open doors for people with handicaps to guarantee that they know about issues identifying with handicap consideration and the privileges of people with inabilities. As ladies and young ladies with inabilities are increasingly helpless against a wide range of misuse, they must be taken care off in all settings at all places including, home, care-houses, educational institutions, institutions, workplaces. The government can also include disabled people in the Make in India and Skill India drives, so as to make them financially independent. Making a mobile app which will enable the disabled to click pictures of the inaccessible areas and share them on the Accessible India Portal. Creation of Accessible ATM's, bank counters , police stations , hospitals and facilitating Accessible tourism across the country. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring; Facilitating the learning of sign language

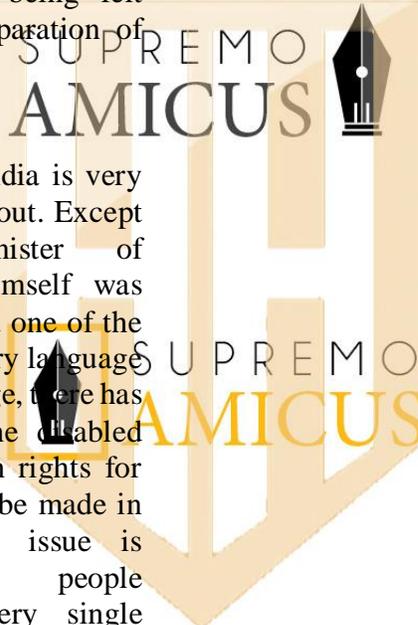


and the promotion of the linguistic identity of the deaf community; Ensuring that the education of persons, and in particular children, who are blind, deaf or deaf-blind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development. The separate teacher education programs for regular and special education do not equip teachers with an integrated knowledge of the expected roles, functions and responsibilities to meet the diversity of learning needs in the classroom. Therefore, a need is being felt for a new paradigm for the preparation of teachers.²⁸

Conclusion

Disability rights movement in India is very inept and has nothing to boast about. Except Kautilya, the Prime Minister of Chandragupta Maurya, who himself was physically disabled, had recorded one of the earliest laws against discriminatory language and sarcasm in the use of -language, there has been no history of laws for the disabled persons,²⁹ his dialogue of human rights for the people with incapacities can be made in an incredible detail, yet the issue is straightforward one. As people notwithstanding access to every single essential right, handicapped people need a protected, secure, advantageous, and gainful open condition which is deferential of their human pride. With a web of legal framework government has to an extent succeeded in protecting the differently-abled, but still a lot needs to be done to sensitize the government

officials and society in large so that differently-abled are facilitated rather than discriminated. We know that the implementation of the laws still lacks efficiency and effectiveness but we need to fill the gaps required and focus on achieving the objectives for which the country is aiming and also make efforts to change the mentality of the people in the society. The disabled people should actively take part in the policy making regarding their rights so as to bring “Disability Rights” to reality.



²⁸Singh, Dr. Yash & Anju Agarwal, Dr. (2015). ‘Problems And Prospects Of Inclusive Education In India’, accessed on august 3, 2019

²⁹Sathya Narayan, “A Worn Out Manifesto: For the Disabled in India” in S.P.Sathe(eds) Liberty, Equality and Justice: Struggles for a New Social Order, 174, f.n. 11 (2003)