

## Constitutional Responsibility towards Persons with Different Abilities - Human Rights Perspective

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### Introduction

Different ability is a part of the human condition. All over the world & in all sections of the society, this ability prevails in varied forms. The goal of human rights approach to these people is to ensure equal dignity and effective enjoyment of all human rights by people with different abilities. The human rights of people with different abilities are not extra protections or a separate and special category of rights, but part of the full range of human rights available everyone. These citizens have the inalienable right to a decent standard of living and economic security. They are entitled to all measures designed to enable them to become self dependent.<sup>1</sup>

### Constitutional responsibility towards persons with different abilities

The constitution of India is very liberal in its outlook. It represents the conscience of our nation and aims to bring new life to its people. It offers hope to millions of poor people and promises full opportunity to every Indian to develop himself according to his capacity, non-discrimination, and right to protection of life. Therefore, that we have a social responsibility towards persons who are with different abilities, including the mentally retarded, who are unable to achieve requisite independent living. Such persons constitute a fairly big number of our population.<sup>2</sup>

The objectives of Indian Constitution should be not only to improve the quality of life of the differently abled citizens, but also to see that they should live life with reasonable comfort and happiness. All people have the right to participate and to exercise self determination as equals in society. The protection of human rights of people with disabilities is therefore an immediate and crucial concern worldwide. Increasing the participation of people with disabilities in their societies benefits everyone and this is necessary to achieving a just & humane society it is mainly because focus has been shifting from charity based humanitarianism to right based humanitarianism. This emerging principle call for an egalitarian society, which is in tune with the human dignity. The physically and mentally challenged are

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<sup>1</sup> Dr Rumi Ahmed, Rights of Persons with Disability in India, White Falcon Publishing Solutions Llp; 1 edition (4 May 2015), pp. 11-34.

<sup>2</sup> Insa Klasing, Disability and Social Exclusion in Rural India Hardcover – 1 Dec 2007, Rawat, 2007, pp.22-28.

one of the groups whose rights are often violated. The existing framework of National & international mechanisms for their protection are generally insufficient for satisfying their needs.<sup>3</sup>

### **The Concept of Different Ability**

Disability is usually conceptualized as being multi dimensional for the person involved. The concept of disability is complex, and there are historical, social, legal and philosophical influences on its interpretation. Defining disability is a complex and controversial process. Though arising from physical or intellectual impairment, disability has social and health implications. Disability is the outcome of complex interactions between the functional limitations arising from a person's physical intellectual or mental conditions and the social & physical environment. It has multiple dimensions and is far more than an individual health or medical problem. Disability is an umbrella term, covering impairments, activity limitations and participation restrictions. An Impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Thus, disability is a complex phenomenon, reflecting an interaction between features of a person's body & features of the society in which he or she lives. World Health Organization A disability may occur during a person's lifetime or may be present from birth.<sup>4</sup> Disability is caused by impairments to various subsystems of the body , these can be broadly sorted into the following categories.

- Physical Disability
- Sensory Disability
- Visual Impairment
- Hearing Impairment
- Gustatory impairment.
- Somatosensory impairment
- Balance Disorder
- Intellectual Disability
- Mental Health and Disability
- Developmental Disability
- No visible Disability

According to word net dictionary, the disability means the condition of being unable to perform because of physical or mental unfitness. A common view is that having a disability makes an individual less capable of performing a variety of activities. To understand this term better, one has first to distinguish it from other related concepts that are often confused with disability like disease, medical conditions etc.<sup>5</sup>

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<sup>3</sup> Jayna Kothari ,The Future of Disability Law in India: A Critical Analysis of the Persons With Disabilities: A Critical Analysis of the Persons With Disabilities (Equal Opportunities, Oxford University Press,2012, pp,111-120.

<sup>4</sup> Agarwal Anjali Presentation at WwDs Network meeting in New Delhi October 2012

<sup>5</sup> Davar Bhargavi. 2013 Presentation at WwD Network Meeting in Pune on 8th April 2013

The persons with disabilities (equal opportunities, protection of Rights & Full Participation) Act, 1995 defines disability as a person suffering from not less than 40% of any disability as certified by a medical authority it further identifies disability. It further identifies disability as blindness, low vision, leprosy cured, hearing-impaired locomotors disability, mental retardation & mental illness. III. Approaches to Disability There are number of ways that people explain what "disability" is: The diverse approaches to disability can be traced in various definitions of disability. Law, Policy, Programmes and rights instruments also reflect these different approaches and associated discourses that treat disability either as an individual pathology or as a social pathology. The different approaches to disability sometimes referred to as models are the different ways that disability is perceived, and consequently, persons with disabilities are treated in society. These are in turn reflected in, and perpetuated by the laws.<sup>6</sup> Approaches to disability are defined as a variety of ways in which a particular country may choose to incorporate disability issues into their constitutional and national legal frameworks.<sup>7</sup>

When speaking, many people use the word Disability to refer to their condition or impairment. Thus, there are four approaches of disability:

**Contributional advance:**

This is also known as Welfare Approach. This approach treats people with disabilities as helpless victims needing Care and Protection. It refers to society's belief that persons with disabilities are unable to take care of themselves, live independently. Society automatically responds to persons with disabilities with pity, & an impulse to care for those they consider weak & helpless. As the term Handicap implies derived as it is from the image of a beggar with a Cap in hand, this approach relies largely on the goodwill of benevolent humanitarians for Custodial Care of the disabled. This approach denies persons with disabilities equality in society & sees the individual as the cause of the problem. In turn, persons with disabilities are viewed as recipients of the good will of the society, and not as right holders. Therefore, the quality of the Care that is provided is rarely considered a priority.

**Medicinal advance:**

One view is that disability is a health problem. Persons with disabilities are by implication Sick because disability is perceived as a sickness. This approach emphasizes the biological origin of a disabling condition and focuses on a disease, disorder, physical or mental characteristic that is viewed as aberrant or abnormal, but, which may be prevented or ameliorated through medical intervention. In turn, the cause of the problem is seen in the individual person, and the corresponding solution is fixing this person. When this medical approach is adopted, the medical profession is assumed to bear the responsibility for persons with disabilities. Similar to charity approach, this approach sees the individual as the cause of the problem.<sup>8</sup>

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<sup>6</sup> Davar Bhargavi. 2012 "Legal Frameworks for and against People with Psychosocial Disabilities" Economic and Political Weekly. December 29. Vol. xlvii. No. 5

<sup>7</sup> Dhanda, Amita (2000): Legal Order/Mental Dis-order , New Delhi: Sage University Press, pp.33-50.

<sup>8</sup> Rajib Bhattacharyya, Disability Laws in India: A Study, International Journal of Research (IJR) Vol-1, Issue-4, May 2014.

Both these approaches have in the past resulted in isolation of persons with disabilities in hospitals, institutions & homes.. These approaches do nothing for creation of barrier free societies that are inclusive of all their members.

**Societal advance:**

A social construct. This view does not look to 'fix the individual, but to fix the society. In this approach the difficulties experienced by a person are This approach diverges from the first two in that it views disability as seen as arising from a mismatch between the individual's biological condition & functional capacities on the one hand & environmental & situational factors on the other. This approach tends to treat the perceived incapacity of the disabled individual through services & supports. This involves compensation rather than cure, in order for people to live lives that are as 'normal' as possible. The social approach emphasizes identifying, exposing, examining & removing the barriers that physical & social environments place on persons with disabilities.<sup>9</sup>

**Human Rights advance:**

This approach positions disability as an important dimension of human culture, & it affirms that all human beings irrespective of their disabilities have certain rights, which are inalienable. By emphasizing that the disabled are equally entitled to rights as others, this approach builds upon the spirit of the Universal Declaration of Human Rights, 1948. According to which, all human beings are born free & equal in rights & dignity. Therefore, persons with disabilities are right holders who can, and should, determine the course of their lives as much as any other members of society. According to this approach limitations imposed on persons with disabilities by the social & physical environment are regarded as violations of their basic human rights.<sup>10</sup>

This approach acknowledges that if something is necessary for a person to live in dignity, then it is a right that can be claimed & the government can be held accountable. Previously persons with disabilities were excluded, from mainstream society on the assumption that they were incapable of coping with either society or major life activities. They were also denied equal access to those basic rights & fundamental freedoms that those who enjoy them take for granted.

In the last two decades the approach towards disabled persons has been changed and they have started to be viewed as holders of rights. The shift to a rights based approach has been authoritatively endorsed by United Nations, & is reflected in several developments which have taken place at the international & national level since the proclamation by the General Assembly of the year 1981 as the International Year of the Disabled under the slogan Full participation and Equality. The rights based approach to disability essentially means viewing persons with disabilities as subjects of law.<sup>11</sup> Its final aim is to empower disabled persons, & to ensure their active participation in political, economic, social & cultural life in a way that is respectful & accommodating of their difference. This approach focuses on the human being, & locates the problem of persons with disabilities to fully participate, benefit & contribute to social life

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<sup>9</sup> Ghai Anita and Rachana Johri. 2013. "Prenatal Diagnosis: Where do we Draw the Line" pp. 97-122

<sup>10</sup> <http://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>

<sup>11</sup> World Health Organization and World Bank Report on Disability. 2011. [http://www.who.int/disabilities/world\\_report/2011/en/index.html](http://www.who.int/disabilities/world_report/2011/en/index.html)

outside the person and in the society. This approach is normatively based on international human rights standards and operationally directed to enhancing the promotion & protection of the human rights of person with disabilities. Strengthening the protection of human rights is also a way to prevent disability in some cases, disability is a direct consequence of violations of human rights & humanitarian law for ex.<sup>12</sup> Torture & abuse can cause permanent injuries, chronic and severe undernourishment and malnutrition almost invariably entail serious disability. Lack of access to basic health care can also result in disability. Four core values of human rights law are of particular importance in the context of disability.

- 1) The Dignity
- 2) The Concept of Autonomy or Self Determination
- 3) The Inherent Equality
- 4) The Ethic of Solidarity.

A recent study on human rights and disability analyzed the relevance of the United Nations human rights system in the context of disability. Thus, United Nations human rights treaties have considerable potential in the field of disability, but have generally been underused in advancing the rights of persons with disabilities.

There has been increasing international recognition that disability is a human right issue we know that persons with disabilities frequently live in deplorable conditions & face physical and social barriers, which prevent their integration & full participation in the community. As a result millions of adults & children's throughout the world are segregated, deprived of virtually all their rights & sometimes lead wretched & marginalized lives. This is completely unacceptable.<sup>13</sup> The UDHR refers specifically to the rights of persons with disabilities although the international disability community has spoken of disability as a human right issue for at least two decades, not all persons with disabilities view discrimination and abuse in terms of international human rights instruments. For some people, discrimination & abuse have become normal, everyday occurrences that are part of their lives a person with disabilities.<sup>14</sup>

### **Empowerment of Differently abled groups**

To protect the interest of the persons suffering from physical disability many attempts have been made to provide them with comforts & happiness. The positive approach to such problems should include right to food, clothing, shelter, preventive & primary health care, medical treatment & assistance, educational facilities, job opportunities, social security, etc. leading to their rehabilitation and integration into the community for all purposes.<sup>15</sup> What the disabled want is not charity but the removal of barriers — physical, social & psychological, so that they can have every access to facilities and enjoy all freedom & become independent.<sup>16</sup>

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<sup>12</sup> Govt of India. Office of the Chief Commissioner for Persons with Disabilities Vol 1- 3. Reported Judgements

<sup>13</sup> Malayala Manorama. 2011. "Father Arrested for Sexual Abuse of Mentally Retarded Daughter". 5th July.

<sup>14</sup> Phadke, Anant and others v State of Maharashtra Writ Petition No, 1527 of 1994 World Bank. 2009.

<sup>15</sup> World Bank. 2009 People with Disabilities in India: From Commitments to Outcomes. New Delhi

<sup>16</sup> Pratim Sarkar, Persons with Disabilities- Rights, Rehabilitation and Resource Development, <http://www.legalserviceindia.com>

To achieve the above said objectives, the U.N. General Assembly, at its meeting held on 9th December 1973, adopted the Declaration on the Rights of Disabled Persons. The year 1981 was declared as the International year of Disabled Persons. The decade 1983 — 92 was observed as Decade of Disabled Persons & every year, March 20th is observed as World Disabled Persons Welfare Day.<sup>17</sup> In India also efforts have been made to safeguard the interests of disabled & to improve the quality of their life to the fullest extent possible. The persons with Disabilities (Equal opportunities, protection of Rights and Full Participation) Act, 1995 was enacted by the parliament.<sup>18</sup> The Act considers, the person suffering from blindness, low vision, leprosy — cured, hearing impairment, locomotors disability, mental retardation & mental illness as disabled persons.

### **Conclusion**

There are more than 100 million people in India who are handicapped in one way or another. For over a century the governments as well as over 2,000 voluntary organizations have been focusing on the disabled. But the effort has not been enough. Legislatures in India right from 1850s become sensitive to the plight of physically & legally disable persons and attempted enactment of suitable legislations to protect and safe guard the Human Rights and Disabilities 155 interest of such people. But it is unfortunate that an equal amount of attention at their implementation was not given by the governments of the day. More than that, as honest attempt was not made to educate the people regarding the existence of such legislations & rights benefits there under. The disabled are not helpless people. They don't want to live on other's mercy. They have right to be employed by government. All what they demand is a respectable position to earn a decent livelihood. Society in general and the government in particular have a duty to enable them to utilize their talents for their betterment & the development of the nation. There is a need for more judicial vision to protect the rights of disabled people, as enshrined in the disability act so that larger facilities are given to them to ensure their full participation in every aspect of human activity.

Every aspect of human dignity is human dignity is human rights. We need judicial creativity in many situations to protect the rights of people with disabilities. No doubt, the judiciary is doing yeoman service in this regard. But it is the responsibility of the governments & the public to provide a safe and contented life to the disabled persons & if all would participate in this noble mission, perhaps the efforts of the legislature and judiciary would reach its logical conclusion.

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<sup>17</sup> Govt of India, UNDP and Shanta Memorial Rehabilitation Centre A Multi State Socio Economic Study of WwDs in India (UNDP, Govt. of India and SMRC)

<sup>18</sup> Rights of Persons with Disabilities, National Human Rights Commission, <http://nhrc.nic.in/Documents/Publications/KYR%20Disabilities%20English.pdf>