



# A CRITICAL STUDY ON PERSONS WITH DISABILITY AND THE HUMAN RIGHTS ISSUES UNDER INTERNATIONAL AND NATIONAL LEVEL

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**Abstract--**Persons with disability are the most excluded from the mainstream society. They are also the victims of multiple deprivations. Their quality of life will be significantly below than that of the able bodied people. They are denied of medical, educational facilities, employment opportunities and other access rights. Over 600 million people, or approximately 10 per cent of the world's population, have a disability of one form or another. Over two thirds of them live in developing countries. Only 2 per cent of disabled children in the developing world receive any education or rehabilitation. In essence, the Human Rights perspective on disability means viewing people with disabilities as subjects and not as objects. It entails moving away from viewing people with disabilities as problems towards viewing them as holders of rights. Importantly, it means locating problems outside the disabled person and addressing the manner in which various economic and social processes accommodate the difference of disability or not, as the case may be. The debate about the rights of the disabled is therefore connected to a larger debate about the place of difference in society. The shift to the Human Rights perspective is also reflected in the fact that national institutions for the promotion and protection of Human Rights throughout the world have begun to take an active interest in disability issues. This is important since these institutions help in providing a bridge between International Human Rights Law and domestic debates about disability law and policy reform. National institutions are strategic partners in the process of change, and their increasing engagement on the issue of Human Rights for persons with disabilities is a highly encouraging sign for the future. People with disabilities themselves are now framing their long-felt sense of grievance and injustice into the language of rights.

**Key words:** *Human Rights, Disability, Constitution, United Nation Charter, Discrimination.*

## INTRODUCTION

All humans are born free and equal in dignity and rights. The Human Rights stem in part from the ideology that all people are sacred. In fact, the modern Human Rights movement emerged after the Second World War with the UN Charter and its reaffirmation of the dignity and worth of the human person and of the equal rights of men and women. Since its founding in 1945, the UN has promoted Human Rights as one of its primary purposes. If, in western thought, rights make humans into "persons", in Indian thought it is dharma which qualifies humans to be persons. For Locke not only persons are born with rights, these rights are also inalienable.

Unfortunately, persons with disability are beings discriminated, stigmatized and marginalized. They are the most excluded from the mainstream of national life though the UN Declaration of Human Rights eliminates all forms of discrimination. They are invisible citizens living in deplorable conditions. They experience a loss of identity. They are victims of multiple deprivations. They are also denied of access rights. The society's obligation to create a fully accessible society for disabled people would be justified by Rawlsian theory of justice. Rawl's concept of justice also assures adequate protection of Human Rights, in his wider conception of moral development. Ronald Dworkin asserts that society has a moral responsibility to assist the individuals with disability

It is to be noted that the foundational faith of the rule of law that there is personhood in all the disabled is totally forgotten. They face physical and social barriers which prevent their integration and full participation in the community. As a result, they are segregated and deprived of equal opportunities. In the context of disability, the notion of substantive equality as suggested by Rawlsian's concept of justice would be more appropriate. The substantive equality concept implies affirmative action programmes making provisions for reasonable accommodation to ensure the social participation and integration of people with disabilities. The question is would the persons with disability find a place to enjoy the country's growth and development. In this article an attempt is made to address the issues raised above by tracing the disability discrimination laws both at



International and National Level. Suggestions are mooted at the end for their protection, participation and integration in the mainstream society.

#### HUMAN RIGHTS OF THE DISABLED AND INTERNATIONAL PERSPECTIVES

The United Nations was founded on the principal of 'Equality'. The preamble to the charter affirms the dignity and worth of every human being and gives primary importance to the promotion of social justice. The United Nations has dedicated itself to defending the basic Human Rights of all persons, including those with disabilities. Persons with disabilities are defacto, entitled to all the fundamental Human Rights upheld by the Charter and other Human Rights instruments. Through its developmental work, it has shifted the focus, in ways that have often inspired national legislation and policy making, stressing the importance of giving opportunities to the disabled to prove their ability. The United Nations commitment to assisting the disabled has been evolving since it began addressing the needs of individuals injured in the Second World War. The General Assembly established the foundation for the promotion and protection of Human Rights in 1948, when it proclaimed the Universal Declaration of Human Rights.

The International Human Rights movement was born upon the notion of equality. However, the movement has focused almost entirely on the activities of the able bodied and able minded. Persons with disability were traditionally hidden from mainstream society. These groups vulnerable to Human Rights violations were not thought of when the International Bill of Human Rights was drafted and adopted. The global movement for the protection of the rights of the disabled persons has emerged only with General Assembly of UN proclaiming the Declaration of the Rights of the Mentally Retarded Persons in 1971 and Disabled Persons in 1975.

The General Assembly of the United Nations declared 1981 as the First International Year of the Disabled persons. The General Assembly of UN adopted the World Programme of action concerning Disabled Persons in 1982. The world Programme of Action is global strategy to enhance disability prevention, rehabilitation and equalization for opportunities. As a result there will be full participation of persons with disability in social life and national development. The UN General Assembly has unanimously adopted in 1994 the standard Rules on the Equalization of opportunities for the persons with disability to promote greater participation by the people with disabilities in society. Following the period of 1993 to 2002, proclaimed by the General Assembly as the 'UN Decade for Disabled Persons' integration of people with disability into society was recognized. Efforts were made to echo the disability rights concerns on the world stage to gain parity with other Human Rights. Vienna Declaration, 1993, World Summit for Social Development in Copenhagen, 1995, the Fourth World Conference on Women held in Beijing, 1995 recognized and raised the profile of disability rights. However, the movement till 2006 confined to the different declarations of the General Assembly and other florals and never concretized into a global Convention.

It was only in December 2006 the UN adopted Convention on the Rights of the persons with disabilities, 2006 elaboration in detail the rights of the persons with disabilities and setting out a code of implementation. The purpose of the convention is to promote, protect and ensure the full and equal enjoyment of all Human Rights by the persons with disabilities depending upon their needs and situations. It covers a number of key areas such as accessibility, personal mobility, rehabilitation and participation in political life etc. Once the Convention enters into force a Committee on the Rights of persons with Disabilities will monitor its implementation. States will be obliged to introduce measures that promote the Human Rights of persons with disabilities without discrimination.

#### DISABILITY ISSUES: THEORETICAL PERSPECTIVES AND POLICY CHANGES

In the beginning, disability problem was more a medical problem especially in the eugenics era. The medical model was tragic and highly individual model of disability. The model assumes that the difficulties faced by disabled people are a direct result of their individual impairments. The decision of the Supreme Court of America in *Buck V. Bell* affirming the States right to sterilize people with intellectual disabilities propelled the eugenics movement. In the U.S. those with mental retardation were still subject to capital punishment, a state of affairs that existed in no other country in the world until the Supreme Court's landmark decision in June 2002 in *Atkins V. Virginia*. Nazi Germany enacted its own eugenic sterilization law that led to the forced sterilization



of persons. Sweden and Denmark too had an active programme to sterilize people with disability. The unprecedented oppression against disabled persons culminated in the murder of those people by euthanasia as the lives not worth living. However, critical disability theory argues that disability is not fundamentally a question of medical or health problem nor is it just an issue of compassion rather it is a question of powerlessness. *In re Marion*, the High Court of Australia severely restricted right to authorize the involuntary sterilization of a person with an intellectual disability. Similar issues were extensively litigated in the U.S. particularly in the well known *Pennhurst and Mills* cases.

Slowly the issue of disability has commonly been included in social security and welfare legislation, health law etc. Persons with disability were depicted not as subjects of legal rights, but of objects of welfare, health and charity programmes. The underlying policy has been to segregate and exclude people with disability from the mainstream society and provide them with special schools, housing and transportation. This development of disability policy is called the shift from the medical to the social model of disability. It is submitted that, the social model of disability has liberated them from the individualizing tendency of the medical model. The crucial development in theories of disability in recent years has been the establishment of the social model of disability. This model of disability stands in direct opposition to the dominant individual medical models of disability. It promotes the persons and political empowerment of disabled people. It engenders self confidence and pride, rather than the guilty and shame associated with the individual tragedy model. The political implications of this model are to promote collective struggle by disabled people for social change, equality, social justice and rights of full participative citizenship. Sociological theories support this model of disability.

Nevertheless, new paradigm shift from the medical to the social model and from social welfare to the Human Rights model of disability in all the international and national disability policies is clearly reflected in comparative and international disability law. The ethical and moral considerations deeply rooted in the Human Rights are clearly demonstrated. It is submitted that, in the light of the changed disability perceptions, attitudinal and institutional barriers, disability issue is a Human Rights issue. In many countries legislatures have adopted statutory frameworks that reflect a new paradigm in which persons with disability are socially integrated.

#### DISABILITY PROBLEM: POSITION AT THE NATIONAL LEVEL

The problem of disability is as old as human civilization. In ancient India, children born with disability were said to have been cast to the Ganges. Historically these people were considered as a burden on the society and ways were found to get rid of them. Socrates advocated the termination of disabled infants at the earliest. India being a dharmic land, Human Rights are part of its culture and developed on the philosophy of dharma from ancient times. All human beings belong to one family and all men are equal through the concepts of *vasudhaiva Kutumbakam* and *Sarva manava Saubrathauya*. Kautilya, the author of the celebrated the political treatise *Arthashastra* not only affirmed and elaborated the civil and legal rights first formulated by Manu but also added a number of economic rights. He ordains that "the king shall provide the orphan, the aged, the infirm, the affiliated and helpless with maintenance, he shall also provide subsistence to the helpless expectant mothers and also the children they give birth to".

However, in the Aryans period persons with disability were condemned to physical extinction. The laws of Baudhayana envisaged grating of food, clothing and shelter by the kings to support the disabled. According to Manu the king should always give gifts and other kinds of charities to disabled. However, Manu was hesitant to provide equal status to them on par with others. It is submitted that by examining ancient Hindu literature, the theory of Karma played a major role in depriving the rights of disabled to a great extent. In the Medieval period, Buddhism and Jainism showed mercy, charity, kindness and non violence towards disabled and encouraged rehabilitation. In the golden age of Mauriyas disabled enjoyed rights. During the British rule, charity was introduced to them.

The emerging international trends as well as national issues relating to the disabled population have had a direct impact on the thinking of policy makers, professionals, persons with disabilities and NGOs working in the country. As a result of shift in the policy in the mid 90's today the issues relating to disabled are no longer mere welfare measures but have grown into fundamental Human Rights issues, a demand for full participation, equal



opportunity and protection of rights. The shift in emphasis led to the realization of the need for enacting legislation called Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

It is a comprehensive piece of legislation which inter alia treats rehabilitation as a right and aims at elimination of discrimination with reference to access like road, transport etc. It is virtually a piece of welfare legislation. The legislation aims at integrating the disabled into the mainstream society. The Act has imposed various responsibilities on the State towards disabled. It also aims for the creation of the society providing opportunities for the development of people. It provides for three percent reservation of jobs in the Government and the public sector.

The Act is passed to give effect to the Proclamation on the full Participation of the People with Disabilities in the Asian and Pacific Region held at Beijing in Dec.1982 to which India was a signatory. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1992 has been enacted to constitute the National Trust for welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities etc. The Pre Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, (PNDT) 1994 provides for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or certain congenital mal formations etc. By using PNDT one can easily detect genetic abnormalities in the foetus. Further, under the Medical Termination of Pregnancy Act 1971 pregnancies may be terminated where there is substantial risk that if the child was born, it would suffer from physical or mental abnormalities as to be seriously handicapped. It is sad that the eugenic philosophy behind the MTP Act encourages society to devalue persons with disabilities. It indirectly encourages a society of the able bodied people only. It is submitted that the termination of pregnancy in the eugenic pursuit of perfect persons is contrary to Indian philosophy as well.

It is to be noted that the disabled person is as much a citizen as any other and that he stands equal before law and entitled to receive equal protection under Art.14 of the Indian Constitution. Under Art.39-A of the Constitution, equal opportunities for securing justice are not to be denied to any person by reason of economic or other disabilities. However, mentally challenged people are being treated worse than animals. Such persons are prone to many onslaughts. Circumstances force them to commit petty thefts and slowly they become a menace to fellow men. It is so pathetic that several mentally ill persons are chained to trees. "Man is born free and every where he is in chains", exclaimed Rousseau. It is submitted that chaining of the mentally ill in mental hospitals is unconstitutional. Similarly jailing non-criminal mentally ill persons is illegal and unconstitutional. The Supreme Court of India maintained that reservation provisions are also applicable to persons with disability. The Supreme Court again upheld the lowering of the minimum qualifying marks for the reserved category. It is unfortunate that visually impaired people are treated like second class citizens. It is surprising to note that the visually impaired teachers were denied Life Insurance cover on the ground of blindness.

#### SUGGESTIONS

States are undertaken to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind of the basis of disability. To this end, States Parties undertake;

1. To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.
2. To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes.
3. To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.
4. To promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost.





5. To Amendment should be made to the Constitution of India to guarantee specific rights to the disabled persons.
6. To ensure Education, Employment, Vocational Training, rehabilitation, to all persons who are with disabilities.
7. The attitude of the people towards the disabled persons should be changed to ensure security for these people.
8. People should voluntarily come forward to help the disabled persons whenever they need assistance for their security and safety.
9. State should ensure adequate funds for the welfare of the disabled persons.

#### CONCLUSION

Though Constitution of India guarantees non-discrimination to all citizens, yet in a democratic and welfare state there is a need to provide special privileges and benefits for the disadvantaged groups including disabled persons. In order to ensure 'equality', 'dignified life' and distributive justice even to the disabled persons, the state should take positive steps to assist those persons who are suffering from many disabilities. Any definition of disability must address the needs of the disabled individual as well as the society's preparedness in accommodating the disabled on the basis of non discrimination. The UN Convention marks a shift in thinking about disability from a social welfare concern to Human Rights issue. In view of the specific adoption of the UN Convention on the Rights of the Persons with Disability, 2006 now there is an urgent need on the part of the nation states particularly India to reformulate its existing laws on disability in consonance with that of the global Convention. It is heartrending to note that the Constitution does not prescribe discrimination on the ground disability. Hence, it is high time to amend Art.15 (1) of the Constitution by inserting 'disability' as one of the grounds of discrimination or else the State striving for the constitutional mandate of egalitarian society is impossible. As the disability is a Human Right component, it is to be seriously dealt with by the state authorities as well as the people.

#### REFERENCES

- [1] Art. 1 of the Universal Declaration of Human Rights, 1948
- [2] M. Rabinson, UN High Commissioner for Human Rights, Video message to the International Seminar on Human Rights and Disability, ( 2000)
- [3] L. Henkin, *The Rights of Man Today*, (1978)
- [4] V.R. Krishna Iyer, *Law, Justice and the Disabled*, (1982)
- [5] S.K. Varma, "International Legal Regime, on the Rights of Persons with Disability: Its Relevance to National Legal System", (2003)
- [6] Vinod Kumar Mishra, *Eminent Disabled People of the World*, (2002)
- [7] Richard Delvi and Dienne Pothier, *Critical Disability Theory: Essays in Philosophy, Politics – Policy and Law*, (2006)
- [8] Gleeson B.J., *Disability Studies: A Historical Materialist View*, (1997)
- [9] Berker Margo, *Current Behavioral Trends for the Developmentally Disabled*, (1978)
- [10] Oliver M. and Sapey B., *Social Work with Disabled People*, (3<sup>rd</sup> edn), (2006)
- [11] Sally French and John Swain, "The Perspectives of the Disabled Peoples Movement", *Social Work*, (2008)
- [12] A.N. Singh, *Enabling the Differentiable*, (1988)
- [13] Satyanarayanan, "Disabled-Do they have the Right to be Born", (2005)
- [14] Gostin, Lawrence O. and Gable, Lance, *The Human Rights of Persons with Mental Disabilities: A Global Perspective on the Application of Human Rights Principles to Mental Health* (May 19, 2009).