



A THORETICAL OVER VIEW ON HUMAN RIGHTS OF THE DISABLED - ENABLING THEM TO MAXIMISE THEIR POTENTIAL

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DISABILITIES AND HUMAN RIGHTS

Viewing disability from a human rights perspective involves an evolution in thinking and acting by States and all sectors of society so that persons with disabilities are no longer considered to be recipients of charity or objects of others' decisions but holders of rights. A right based approach seeks ways to respect, support and celebrate human diversity by creating the conditions that allow meaningful participation by a wide range of persons, including persons with disabilities. Protecting and promoting their rights is not only about providing disability related services, it is about adopting measures to change attitudes and behaviours that stigmatize and marginalize persons with disabilities. It is also about putting in place the policies, laws and programmes that remove barriers and guarantee the exercise of civil, cultural, economic, political and social rights by persons with disabilities.

Moreover, programmes on creating awareness and social support are necessary to change the way society operates and to dismantle the barriers that prevent persons with disabilities from participating fully in society. Furthermore, persons with disabilities need to be provided with the opportunities to participate fully in society and with the adequate means to claim their rights.

It is estimated that over 650 million people, 10 percent of the world's population, have a disability. Eighty per cent live in developing countries. Some women, men and children with disabilities are fully integrated in society, and are participating in and actively contributing to all areas of life. However, the great majority face discrimination, exclusion, isolation and even abuse. Many persons with disabilities live in extreme poverty, institutionalized, without education and or employment opportunities and face a range of other marginalizing factors. In some countries they are denied the right to own property and it is common for persons with disabilities to be denied the right to make decisions for themselves. The discrimination they face is widespread, cutting across geographical boundaries and affecting people in all spheres of life and all sectors of society.

The entry into force of the Convention on the Rights of Persons with Disabilities and its Optional Protocol in May 2008 marked the beginning of a new era in the efforts "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity" (Article-1). Although persons with disabilities have always been entitled to the same rights as everyone else, it is the first time that their rights are set out comprehensively in a binding international instrument.

The development of the Convention reflects the shift that has taken place in the way disability and persons with disabilities are seen. Historically, disability has been considered to be a personal condition residing in the individual. As an individual deficit, the status of "being disabled" has been viewed as the natural cause for some people being unable to attend regular school, get a job or participate in social life. When disability is perceived in this way, society's responses are restricted to only one of two paths: individuals can be fixed through medicine or rehabilitation (medical approach); or they can be cared for, through charity or welfare programmes (charity approach). According to this old model, the lives of persons with disabilities are handed over to professionals who control such fundamental decisions as where they will go to school, what support they will receive and where they will live.

Over the past few decades, there has been an important change in the way disability is understood. The focus is no longer on what is wrong with the person. Instead, disability is recognised as the consequence of the interaction of the individual with an environment that does not accommodate that individual's differences and limits or impedes the individual's participation in society. This approach is referred to as the social model of disability. The Convention on the Rights of Persons with Disabilities endorses this model and takes it forward by explicitly recognizing disability as a human rights issue. From this perspective, the social, legal, economic, political and environmental conditions that act as barriers to the full exercise of rights by persons with disabilities need to be identified and overcome. For example, their marginalization and their exclusion from education are not the result of their inability to learn but of insufficient teacher training or inaccessible classrooms; their exclusion from labour market might be due to a lack of transport to the workplace or negative attitudes among employers and colleagues that a person with disabilities is unable to work; and their inability to participate in public affairs might result from the lack of electoral material in accessible formats such as Braille or voting booths that are physically inaccessible to persons with disabilities.



3. GRAVITY OF THE PROBLEM

The total estimate population of desalted people globally is 500-580 million (WHO, IDF). Most disabled people (app 80%) live in economically poorer countries. In these voluntaries human rights are first and foremost access to the rights to life, food, water, and shelter. It's estimated that worldwide 82% of disabled people live below poverty line. The World Bank estimates that 25% of the entire population in developing countries is adversely affected as result of disabilities. Poverty are both a cause and consequence of disability. Poverty and disability reinforce each other, contributing to increased vulnerability and exclusion.

Its estimated that as many as 50% of disabilities are preventable and directly linked to poverty:- Un statistics state that 30% of all impairments are caused by malnutrition and a further 20% by infectious disease – WHO estimates there are 1.5 million blind children 70% if blindness is either preventable or treatable – WHO estimates 50% of hearing disability is also preventable Women with disabilities suffer double discrimination both on their gender as their impairment their literacy rates are for example lower than men.

Recent UNESCO studies suggest that 1-2% of children with disabilities receive a formal education: boys with disabilities attend school more often than girls. Studies show that women with disabilities are twice to three times more likely to be victims of physical and sexual abuse than other women. It is estimated that 3-4% of PWD's in developing countries have access to rehabilitation and appropriate basic services, like medical rehabilitation, orthopaedic devices (less than 1% have a wheel chair: 20 million people are in need of it), pre – school education, etc.

According to the census 2001, there are 2.19 core persons with disabilities in India who constitutes 2.13% of the total population whereas; conservative estimates place Indians with disability at between 5-6% of the total population. This includes persons with disabilities live in speech, loco motor and mental disabilities. Seventy five percent of persons with disabilities live in rural area, 49% of disabled population is literate and only 34% are employed. Women make up 42.46% of the total population of persons with disabilities.

HUMAN RIGHTS OF DISABLED - INDIAN CONTEXT

The Indian Constitution has incorporated some of the provisions in part III and part IV of the constitution which are directly or indirectly protecting the interest of disabled people in India. Interestingly a number of these rights are included in the fundamental rights of the citizen by the Constitution of India, but without mentioning reasonable accommodation for persons with disabilities. The fundamental right to equality under Article 14 is the most crucial, as it has guaranteed equality to all the persons. Article 15 and 16 of the Indian constitution expressly prohibit discrimination on the basis of certain specified criteria such as sex, caste and ethnic origin. Disability is not included amongst the list of the prohibited criteria.

However, in *Indra Sawhney and others v/s Union of India and others* (popularly called as Mandal Case) the disability rights was interpreted on an intervention application filed by the National Federation of Blind and argued by advocate Mr. S. K. Rungta. The specific issue was whether "Backward classed of Citizen" also include persons with disability and it was examined as a sub-issue with in the larger issue. It was held by a majority judgement that even though "Backward Classes of Citizens" as used in Article 15(4) and 16 did not cover persons with disabilities, the Constitution scheme and spirit of Article 14, 15(1) and 16(1) allowed for reservation and other kinds of affirmation actions in favour of persons with disabilities.

Further, Article 21 of the Constitution guarantees the right to life and liberty. It is evident from the various judgements of Supreme Court that the Article 21 is an overarching right under which several other rights are subsumed as necessary components of life.

The Directive Principles of State Policies have often used by Courts to adjust and expand the ambit of Articles 38, 42, 43, 46, 47, 48, to provide various rights to the persons with disability to further the right based approach towards the persons with disabilities.

In addition to the Constitutional provisions a number of legislations have been enacted by the Parliament providing various rights to the disabled, aimed at their protection and development equally with the non- disabled persons. The brief profile of such laws as follows;

MENTAL HEALTH ACT, 1987

The Mental Health Act was enacted to maintain psychiatric nursing homes and hospitals, regulate admission and reception of mentally ill persons in the institutions, conducting medical examination, levying penalties for those who detain a mentally



person improperly in a hospital, and ensuring protection of human rights of mentally ill persons. The Act also recognises the rights of the mentally ill, such as the right against indignity and cruelty, both physical and mental.

REHABILITATION COUNCIL OF INDIA ACT, 1992

The present Act deals with the development of manpower for provision of rehabilitation services. The Act is to plan and administer training programmes to train rehabilitation professionals like therapists, clinical psychologists, and technicians, vocational counsellors who would help rehabilitation of the disabled people.

THE PROTECTION OF HUMAN RIGHTS ACT, 1993

The Protection of Human Rights Act, 1993, was brought into force after the ratification of International Covenant on Economics, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR). Thus the Act provides a mechanism to monitor the implementation of various constitutional provisions as well as the obligations under International Covenants on different rights including the rights of the persons with disabilities.

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

Under this Act, the state Governments are under obligation for providing the right of access for the disabled people to education and to vocational training, to employment, to travel on public transport and mobility schemes, to social security, to a barrier-free environment and integrated living, to medical care and treatment, to obtain information and communication, to independence and dignity as well as rehabilitation.

HUMAN RIGHTS AND CHALLENGES IN MAKING IT LIVE UP TO POTENTIAL

Persons with disabilities are mostly unseen, unheard and uncounted persons in. they are the most marginalized group and far away from the fruits of human rights. Persons with Disabilities face overwhelming barriers in education, Skills development and daily life>Most currently offered services focus on children, with little availability for adult persons with Disabilities. Persons with disabilities also face multiple social, Economic, physical and political handicaps, hampering their freedom of movement in society. These barriers include stigmatization and a misunderstanding of the abilities and aspiration of persons with disabilities. The challenges in making live up the Human Rights to physically disabled persons can be put under following heads:

Information and public awareness

One of the most critical issues in the problem of disabled is the lack of date and accurate information. The various efforts were not able to be more accurately represented. Data are not available to verify the claims of many governments. The problems surrounding disability data are many and of a serious nature. Adequate universally accepted definitions have not been available with the region data collected have not reflected the full extent of disability, collection procedures have not been transparent and comparison of data is meaningless.

Accessibility and communication

Lack of access to the physical environment has been one of the most restrictive barriers faced by person with disabilities in the region, even more so for people in rural areas or living in sum conditions in urban poverty. This was an obvious area of need and has received a lot of attention Tangible results have been achieved and momentum gained to continue the necessary work to make the Indian environments universally accessible.

Education, and Training and Employment

The issue of access to education for children with disabilities is one of the most critical concerns facing the region. Failure to educate young children with disabilities, limits all opportunity for their future development. It reduces their chances of reviewing training, employment, engaging in income generation or business development and of becoming calmed members of their families and communities; it greatly increases the likelihood of their lives being lived in poverty.

Convention on the rights of persons with disabilities

The work of the UN constitutes the most important actions taken by an international organization in the area of disability. Based on the International Bill of Rights, the UN formulated the first specific document regarding disabilities in 1971 in the Declaration on the Rights of Mentally Retarded Persons. Important other documents followed but none of them are legally binding. The 1980s mark the main phase of activity regarding establishing international norms pertaining to persons with disabilities. The Convention on the Rights of Persons with Disabilities marks the end of a long struggle by persons with disabilities and their representative organizations to have disability fully recognized as a human rights issue, which began

back in 1981, with the International Year of Disabled Persons and the World Programme of Action concerning Disabled Persons (1982) and the Decade of Disabled Persons 1983-1992. Throughout the 1990s all UN conferences dealt with disability rights and addressed the need for protective instruments (World Conference on Human Rights 1993, Fourth World Conference on Women 1995, Habitat II 1996). At present, the Ad Hoc Committee on Disabilities is involved in a process to create a convention that protects disabled persons on an international level. A high level of awareness is also demonstrated by the European Union, the year 2003 was declared as the European Year of People with Disabilities. Other important regional observances include the Asian and Pacific Decade of Disabled Persons (1993-2002), the African Decade of Disabled People (2000-2009), and the Arab Decade of Disabled Persons (2003-2012) contributed significantly to paving the way for a human rights approach. Other important landmarks were general recommendation (1991) on disabled women by the Committee on the Elimination of Discrimination against Women, general comment (1994) on persons with disabilities by the Committee on Economics, social and Cultural rights and the adoption of regional instruments, such as the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (1999). The Convention on the Rights of Persons with Disabilities supersedes these instruments as the most recent, specialized and comprehensive treaty to recognize the human rights of persons with disabilities and to clarify the obligations of States to respect, protect and fulfil those rights. By so doing, the Convention enshrines the social and human rights model of disability.

The Convention does not include a definition of disability or [persons with disabilities in the strict sense but rather provides some guidance on the concept of “disability “and its relevance to the Convention. The preamble clearly endorses a social approach to disability, referred to as the social model of disability by recognizing that “disability is an evolving concept and that disability results from interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”. The explicit reference to the barriers that are external to the subject as constituting factors of disability represents an important step away from notions that equated disability to the existence of functional limitations.

Article - I

Accordingly, article 1 states: “Persons with disabilities include 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”. From this perspective, persons with disabilities ‘participation in society- be it having a job, going to school, visiting a doctor or running for elections is limited or excluded not because of their having impairment, but because of various barriers, which might include physical barriers but also legislation and policies in some cases. For persons with physical disabilities these barriers might include uneven terrains, steps to connect different levels, heavy doors or narrow passages. For example, a person using a wheelchair might be excluded from attending meeting if the door to the meeting room is too narrow for the wheelchair to pass, or if there is no ramp or lift. The inexistence or inadequacy of accessibility standards in building codes could also amount to a barrier. The Convention does not preclude the use of definitions in natural legislation and, in fact, definitions might be particularly necessary in some sectors, such as employment or social security. It is important, however, for such definitions to reflect the social model of disability enshrined in the Convention and for definitions based on a list or a description of impairments or on functional limitations to be revised.

Monitors should observe whether national legislation: (a) recognizes that discrimination can occur in relation to mental, intellectual, sensory or physical impairments; (b) incorporates the social mode by referring to disability as the result of the interaction between the person with an impairment and external barriers; (c) focusses on the prohibition of discrimination and the promotion of equality rather than on the categorization of various disabilities.

Article - II

Article 3 of the convention identifies a set of overarching and foundational principals. These guide the interpretation and implementation of the entire Convention, cutting across all issues. They are the starting point for understand and interpreting the rights of persons with disabilities, providing benchmarks against which each right is measured.

The convention on the Rights of Persons with Disabilities is a wide ranging human rights treaty covering the full spectrum of civil, cultural, economic, political and social rights. The Convention does not establish new rights for persons with disabilities; instead, it elaborates on what existing human rights mean for persons with disabilities and clarifies the obligations of States parties to protect and promote these rights. In order to ensure an environment conducive to the fulfilment of the rights of persons with disabilities, the Convention also includes articles on awareness-raising, accessibility, situations of risks and humanitarian emergencies, access to justice, personal mobility, habilitation and rehabilitation, as well as statistics and data collection.



To illustrate how rights are relevant to specific situations facing persons with disabilities, consider the following examples when monitoring the convention:

- **The right to equal recognition before the law** – eliminating disability as a ground for depriving someone of his or her legal capacity. For example, by eliminating the practice of appointing guardians who make decisions on behalf of persons with disabilities and, instead, providing support to persons with disabilities so that they can make their own decisions.
- **The right to liberty and security of the person** – monitoring psychiatric and other institutions to ensure that no one is placed there on the basis of their disability, including mental and intellectual disabilities, unless with their free and informed consent;
- **Freedom from torture** – examining whether institutions resort to practices and treatments such as electroshock therapy and cage beds for persons with disabilities, or impose intrusive or irreversible medical treatments aimed at correcting the disability against a person's will;
- **Freedom of movement** - examining whether the state withholds travel documents from someone on the basis of his or her disability;
- **The right to education** – examining whether pupils and students with disabilities are not excluded from the general education system on the basis of their disability, that reasonable accommodation of the pupil's requirements is provided in the general education system and that effective individualized support measures are provided to maximize academic and social development consistent with the goal of inclusion;
- **The right to health** is not only an examination of whether there is universal access to essential medicines but also whether treatments are provided on the basis of the free and informed consent of the person with a disability;
- **The right to work** is examining whether labour laws prohibit discrimination in the workplace and requires employers to take positive steps to ensure physically accessible buildings as well as accessible technology such as computer and internet technology for those persons with disabilities that may require it;
- **The right to an adequate standard of living** – an examination of social programmes and policy frameworks, poverty reduction strategies, national development plans and projects, such as projects related to the Millennium Development Goals, to ensure that they include the promotion and protection of the right to food, clothing, housing and other rights of persons with disabilities;
- **The right to participate in public and political life** – election monitoring to ensure that election materials are provided in accessible formats and that voting booths are accessible (for example, with ramp access);
- **The right to participate in cultural life** - examining whether sign languages and deaf culture are explicitly recognized and supported and whether copyright protection does not inhibit access to cultural materials such as talking books.

Civil, cultural, economic, political and social rights are indivisible, interdependent and interrelated. An understanding of this interdependence is important to monitor the rights of persons with disabilities. For example, the monitoring of institutions requires monitoring whether the persons have been deprived of their liberty based on the existence of a disability (the right to liberty and security of the person), whether the persons are subject to medical treatment without their free and informed consent (the right to health, to physical and mental integrity and to be free from torture) as well as whether persons in the institutions enjoy adequate food, clothing, light, sanitary conditions and so on (the right to an adequate standard of living).

Article – 2 and 4

With regard to economic, social and cultural rights, the Convention on the Rights of Persons with Disabilities reaffirms the obligation of States to progressively implement them, as already recognized in Article -2 of the International Covenant on Economics, Social and Cultural Rights and Article-4 of the Convention on the Rights of the Child. The recognition that the full realization of economics, social and cultural rights may be constrained by limited resources is balanced by the requirement that measures should be taken to the maximum of a State's available resources and, where needed, within the framework of international cooperation.

Policy regarding disabilities is often dominated by the notion of “equalization of opportunities”, which means that society must employ its resources in such a way that every individual, including persons with disabilities, has an equal opportunity to participate in society.

In India, two national instruments were passed, the Rehabilitation Council of India Bill and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act.



CONCLUSION

The core international human rights instruments that precede the Convention on the Rights of Persons with Disabilities recognize the rights of all, including persons with disabilities. While these instruments offer significant potential to promote and protect the human rights of persons with disabilities, this potential has not yet been fully realized. Persons with disabilities are entitled to exercise their civil, political, social, economic and cultural rights on an equal basis with others. Disability “summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illness may be permanent or transitory in nature”. Persons with disabilities have historically been invisible in the human rights system and have been overlooked in human rights work. This is no longer acceptable.

Disability must first be defined as it is experienced by all disabled persons, regardless of age and gender, including those with sensory, physical and intellectual impairment and mental health difficulties. Then, with this shared understanding, an assessment can be made of how well disabled people are being supported within mainstream agendas for health and wellbeing, the fight against global poverty and the human rights agenda. The article then shows how disabled people are taking control over their lives, changing their environments and demanding their right to full participation in society and to equality in freedom and dignity, despite massive violations of their rights and lack of visibility on mainstream development agendas. The approach to people with disabilities both nationally and internationally, has, for far too long, been built on a model of care and entitlement based on charity and the assumptions that disability is an individual pathology, a condition grounded in the psychological, biological or cognitive impairment of the individual. Having taken note of the historic grounds, which perpetuate on the inequalities on the basis of physical and intellectual characteristics, the Commission is committed to create conditions in which persons with disabilities can enjoy their human rights and fundamental freedom on equal basis. This means combating disability based discrimination.

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