



HUMAN RIGHTS OF PERSONS WITH DISABILITY IN INDIA

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ABSTRACT

Disability is an important public health and survival problem. Over 650 million persons around the world live with disabilities. The estimation in census 2011, that 2.21% of India's population is disabled is a gross underestimation. As per report of world health organisation, In Indian context, it would mean at least 192% million people with disability. In every region in the world, in every country in the world, persons with disabilities often live on the margins of society, deprived of some of life's fundamental experiences. In getting a job, having their own home, creating a family and raising their children, enjoying a social life or voting. For the vast majority of the world's persons with disabilities, shops, public facilities and transport, and even information is largely out of reach. Persons with disabilities make up the world's largest and most disadvantaged minority. Further, In India, it is reported, had 750 million internet/smartphone users in 2020. Applying the 16% figure here, this works out to be roughly 120million, internet/smartphone users with disabilities. Children with disabilities in developing countries do not attend school, thought children and youth are the future of every country they deserve stronger wings for fly high which can be given by government and society to give them equals right. an estimated 30 per cent of the world's street children live with disabilities; and the literacy rate for adults with disabilities is as low as 3 per cent and, in some countries, down to 1 per cent for women with disabilities. The convention on the right of persons with disabilities (CRPD) has been identified as a milestone in human rights protection, offering people with psychosocial disabilities the opportunity to hold their government accountable for the realization to their right.

KEYWORDS- Human Right, Disability, Disable Person, Survival, Disadvantage, Fundamental, Wings

INTRODUCTION

People with disabilities are vulnerable because of the many barriers we face: attitudinal, physical and financial. Addressing these barriers is within our reach and we have a moral duty to do so. But most important, addressing these barriers will unlock the potential of so many people with so much to contribute to the world. Government everywhere can no longer overlook the hundreds of millions of people with disabilities who are denied access to health, rehabilitation, support, education and employment, psychological balance and never get the chance to shine. **Stephen Hawking**

The World Health Organization (WHO) and the World Bank published the first-ever world report on disability, which stated that one billion people, or 15% of the world's population, experience some form of disability. Discrimination and stigmatization of people with mental illness have persisted throughout history, and it continues to prevail in the present civilized world. Persons with Mental Illness (PMI) are, or can be, particularly vulnerable to abuse and violation of their rights. Mental illness can have a devastating impact on any family, especially when the primary breadwinner suffers from the illness. PMI drift to poverty, adding to the suffering, which is a double disadvantage. Stigma and discrimination lead to pervasive human rights violations against people with mental and psychosocial disabilities in low-and middle-income (LAMI) countries. The discrimination is no doubt a basic human rights violation under the United Nation's International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and Convention on the Rights of Persons with Disabilities (CRPD). These are legislations/instruments by the United Nations to ensure that the countries that ratified the convention, develop appropriate, adequate, timely, and Humane health care services. It also helps in the protection of human rights of the disadvantaged, marginalized and vulnerable citizens.

CRPD is an International Human Rights Treaty of the United Nations intended to protect the rights and dignity of persons with disabilities. It was adopted by the United Nations General Assembly on December 13, 2006. The Preamble of the United Nations CRPD (UNCRPD) acknowledges that “disability” is an evolving, dynamic and complex phenomenon. Generally, disability results from an interaction of impairments with attitudinal and environmental barriers which hinder full and active participation in the society on an equal basis. Attitudinal barriers, rather than resource constraints, often create the strongest barriers in ensuring the rights of the person. This convention makes a paradigm shift from “charity” based approach to “rights”-based approach for persons with disability, thus marking the dawn of the new era. The UNCRPD mandated its signatories to change the existing laws in order to bring them in conformity with the principles of this Convention. The ratification of the UNCRPD in October 2007 by India, brought in the drafting of new legislation, “the Rights of Persons with Disability Act (RPWD Act), 2016”and “the Mental Healthcare Act, 2017.” Mental disorders (specifically, major depression, alcohol dependence, schizophrenia, bipolar affective disorder, and obsessive-compulsive disorder (OCD) account for five of the ten leading causes of disability. This article discusses the challenges and opportunities of the RPWD Act 2016 from the perspective of PMI

Meaning of Disability-

Disability is an impairment that may be cognitive, development, intellectual, activity, limitations, sensory or some combination of these. It substantially affects a person's life activities and may be present from birth or occur during a person's lifetime.

Disability is a contested concept, with different meanings of different communities. It may be used to refer to physical or mental attributes that some institutions, particularly medicine, view as needing to be fixed. It may refer to limitations imposed on people by the constraints of an ablest society. People with disabilities have the same health needs as non-disabled for immunizations, cancer screening etc.

They may also experience a narrow margin of health both because of poverty and social exclusion and also, because they may be vulnerable to secondary conditions.

International Human Rights: UN Charter:

The charter of the United Nations of 1945 is the foundational treaty of the United Nations, an intergovernmental organization. Article 55 says that with a view to the creation of conditions of stability and well-being which are necessary for the peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people's, the United Nations shall promote:

- (a) Higher standard of living, full employment and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems and international cultural and educational cooperation
- (c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Declaration On the Rights of Persons with disability:

The Declaration of the Rights of Persons with disability was a declaration of the General Assembly of the United Nations made on 9 Dec 1975. It is the 3447th resolution made by the Assembly.

The person with disability shall enjoy all rights contained in this declaration without distinction or discrimination. The persons with disability have inherent rights to respect for their human dignity and irrespective of the origin, nature and seriousness of their handicaps and disabilities, have same Fundamental Rights. Persons with disability have the same civil and political rights as another human beings. Persons with disability are entitled to the measures designed to enable them to become self-reliant as possible. Persons with disability have the right to economic and social security, including the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions. Persons with disability have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. Persons with disability shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature.

Provisions of the Declaration includes-

1. The definition of "person with disability" as anyone who cannot ensure the necessities of a normal individual and or social life as a result of deficiency in physical or mental capabilities.
2. A non-discrimination clause applying the Rights to all persons with disability regardless of "race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth " or another situation
3. A statement regarding persons with disability right to respect for their human dignity.

The Convention on the Rights of Persons with Disabilities:

The Convention on the Rights of Disabilities is an international human rights treaty of the United Nations intended to protect the Rights and dignity of persons with disabilities. Parties to the convention is required to promote, protect and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. In the charter of the United Nations, it is proclaimed that the inherent dignity and worth and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Similarly, the United Nations, in the universal declaration of human rights and in the international covenants on Economic, Social and cultural rights. It is supposed that the convention would make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, and social and cultural spheres with equal opportunities, in both developing and developed countries. The convention on the Rights of Persons with disabilities deals with matters such as, general principles on the basis of which the rights of the persons with disability are to be promoted and protected, the obligations that have been undertaken by the State parties to adopt measures. The protocol has been added to the present convention authorizing the Committee on the Person with Disabilities to receive and consider communications from or on behalf of individuals or groups of individuals, who claim to be victims of a violation by a state party of the provisions of the present convention.

Constitutional Rights of Persons with disability: Prohibition of Discrimination:

a) Article 15 is a manifestation of “Right to Equality” under Article 14, as it enshrines a specific dimension of the principles of equality relating to discrimination by state or various grounds. Under Article 15 the protection extends only to citizens, unlike Article 14 which protects ‘any person’. Thus, in application Article 15 protects from discriminatory state activities but the ambit of Article 15 is narrower than that of Article 14.

b) Article 15 of the Indian constitution deals with “prohibition of discrimination” on the grounds of religion, race, caste, sex or place of birth.

It runs as follows:

Article 15(2) says, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability’s liability restriction or condition with regard to:

- a) Access to shops, public restaurants, hotels and places of public entertainment; or,
- b) The use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of the state funds dedicated to the use of the general public.

Equity In Social, Economic and Cultural Rights:

Article 25 of the CRDP recognizes the “right of a person with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, state parties shall ensure an inclusive education system at all levels and lifelong learning.” They considered constitution to grant education to children with disabilities if they explicitly guarantee the right to education, the right to free education, or the right to compulsory education to children with disabilities or prohibit discrimination in education on the basis of disability. Globally only 28% of the countries provide some type of constitutional guarantee of educational rights or the children with disabilities.

Right To Work:

Article 27 of the CRDP instructs states to “recognizes the right of persons with disabilities to work, on an equal basis with others; this includes the rights to opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

Right To Liberty:

Article 14 of the CRPD instructs state parties to guarantee people with disabilities the right to liberty and security of person. We considered the right to liberty to be guaranteed to persons with disabilities if they were explicitly granted the right to freedom or liberty. Globally, only 9% of the constitution explicitly guarantee the right to liberty to persons with disabilities. However, 19% of the constitution specifies that the right to liberty can be denied to persons with the mental health condition.

Right To Freedom of Expression:

In Article 21, the CRPD states that to “take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion include the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communications of their choice.”

Rights of Persons with disability In India:

Persons with disabilities are one of the most neglected sections of our nation. This is due to the sheer indifference of the society which subjects such people to disapproval and antipathy. Such people have several rights under various Indian laws as well as UN conventions that are followed in India. Under section 2(i) of Persons with

Disabilities Act,1995,"disability" includes blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental-illness.

Disability Certificate: It is the most basic document that a person with disability should possess in order to avail certain benefits and concessions. The State Medical Boards established under the State governments can issue a disability certificate to any person with more than 40% disability.

Disability Pension: People who are above 18 years of age, suffering with more than 80% disability and are living below the poverty line are entitled to the disability pension under the Indira Gandhi National Disability Pension Scheme. Various NGOs are dedicated to this because i.e., they help such persons with disabilities to get their disability pension. Employment: In government jobs, 3% of the seats are reserved for persons with disabilities

Person with Disabilities Act 1995

The Persons with Disabilities Act, 1995 had come into enforcement on Feb 7, 1996. It is a significant step which ensures equal opportunities for the people with disabilities and their full participation in the nation building. The Act provides for both the preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development and rehabilitation of persons with disability, unemployment allowance for the persons with disability.

Main Provisions of the Act:

- 1) Prevention and Early Detection of Disabilities
- 2) Education
- 3) Employment
- 4) Non-discrimination
- 5) Social Security
- 6) Research and manpower development

Grievance Redress in **Javedc Abidi vs Union of India & Ors** the supreme Court bearing in mind the discomfort and harassment suffering by a person of locomotor so disability would face while travelling by train particularly too far off places issued directions to the Indian Airlines to grant persons suffering from locomotor so disability to the extent of 80%.

In **National Federation of Blind v. UPSC** The supreme Court held that, UPSC may be directed to allow blind persons for appearing the examinations for Indian administrative and allied Services.

In **Government of NCT of Delhi v. Bharat Lal Meena and Surrinder** , The Delhi High court held that people with disabilities can be appointed as physical education teachers provided, they have passed the qualifying examination undergone the requisite training.

Policies In India:

National policy for persons with disabilities, 2006. The Government of India formulated the national Policy for persons with disabilities in Feb 2006 which deals with the physical, educational and economic rehabilitation of persons with

disabilities.

The National Policy recognise the Persons with Disabilities are valuable human resources for the country and seeks to create an environment that provides them equal opportunities, protection of their rights and full participation in society. Some of the aspects which the policy focuses on are:

- 1) Prevention of Disabilities
- 2) Rehabilitation Measures
- 3) Women with disabilities
- 4) Children with disability

CONCLUSION

Disability refers to the disadvantage or restrictions of activity caused by the way society is organised which takes little or no account if people who have physical, sensory or mental impairments. Disability is an unfortunate part of human life which can affect not only the natural way of a living but also despair component strength and power. The Government needs to launch more social security schemes for disabled sections and generate more employment opportunities for them.

Human right is not just to stand up with respect to society. Human rights are not just rights but self-respect for any person. Therefore, a person with disabilities is a special person who needs special attention, so he should be given special human rights. To conclude, by ratifying the UNCRPD in 2007, India took on a set of obligations to transform the treatment of PwD from being objects of charity to subjects with rights who can claim those rights. However, there are several shortcomings in the RPWD Act, 2016, which needs to be addressed at the earliest. Although RPWD Act, 2016 is a rights-based legislation, the success of the statute will largely depend on the proactive measures taken by the respective state governments on its implementation. While it may be possible to discuss the issue of disability rights in much greater length and depth, the issue is ultimately a simple one. As human beings, in addition to access, education, health care, rehabilitation services and employment, all people with disabilities need to learn to care for all human beings as human beings, with due respect for all their differences.

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