



RIGHTS OF DISABLES PEOPLE IN INDIA

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Introduction

People with disability are in fact entitled to the full range of human rights like any other persons in our society. However, people with disability suffer from a relative invisibility and as viewed as objects of charity protection and custodial care rather than subjects of Rights. Disabilities can be physical in nature, cognitive behavioral or even emotional. All persons are born free and equal rights and dignity. Peoples with Disabilities all over the world experience Human Rights violations stigma and discrimination .Disability is not a health problem .It is a crucial phenomenon reflecting the interaction between the features of a person's body and features of the society in which he or she lives

Meaning of Disability

Disability is an impairment that may be cognitive ,elopement ,intellectual ,activity ,limitations sensory ,combinations of these .It affects persons lives activities and may be present from birth during a person's life time – Disability is the concept with different meaning 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 be refer to limitations imposed on people by the constraints of an ablest society. Persons with disabilities have the same health needs as non disables people for immunization, cancer screening etc.

Definition of Disability

Equal opportunities protection of Rights and full participation –Act 1995 , as a people suffering from not less than 40% of any disability as certified by medical authority .It defines disability as :

- 1-blindness
- 2-low vision
- 3-leprosy cured
- 4- hearing impairment
- 5-locomotor disability
- 6-mental illness
- 7-mental retardation

Extent of Disability

According to UN report ,over 600 million peoples or 10% of worlds total populations approximately ,have a disability of one form or the other. Over two thirds of them are in developing countries. In India, a survey conducted by the National Survey Sample organization in 1991, showed prevalence of disability at the rate of 1.9%. .The survey covered visual, hearing, speech and locomotors disability. In the Same year another sample Survey showed that 3% of the population in the age group of 0- 14 years suffered from delayed mental development. The average population of persons with physical disabilities in India is close to 5%. The estimates by NGO put figure at nearly 7%.

Denial of Rights to the Disables- As the U N has pointed out that peoples with disability are discriminated against, marginalized and socially excluded in various ways particularly in the fields of education, employment, housing, transport, cultural life and in public places and services.

Rights Based Approach to persons with Disability

Rights of persons with disability is based on International Human Rights and are directed towards promoting and protecting the human rights of persons with disabilities.



Objectives of the study

1. To study the physical condition of disabilities,
2. To examine the legal and constitutional status of disability,
3. Method of the study

The historical or analytical methods has adopted for this study.

Source of data collection

The data has collected from secondary sources through library work and various others.

Constitutional and Legal Provisions of Disability

International Human Rights Law is based on the idea of equality, dignity, liberty and autonomy. The constitution of India has also imbibed the spirit of these values .The preamble of the constitution clearly states, “ secure to all its citizens ; justice ,social , Economic and political ,liberty of thought ,expression belief ,faith and worship ; equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individuals and the unity and integrity of the nation .”

Equality –Article 14, under this Article –the constitution of India guarantees equality for all its citizens before law and equal protection of law.

Article 15 and 1, these provisions clearly prohibit discrimination on the grounds of religion ,race ,cast ,sex place of birth or any of them.

Judicial provisions

In India *Sawhney vs Union of India* (1992 Suppt (3) SSC), the highest court examined the legality of reservation in favor of the disabled who are not clearly covered under Article 16 of the Constitution .The Court stated that “mere formal declaration of the rights would not make unequal’s equal .To enable all to complete with each other on an equal plan, it is necessary to take positive measures to equip disadvantaged and the physically handicapped to bring them to level of the fortunate advantaged. Under Article 14 and 16 (1) not doubt would by themselves permit such positive measures in favor of the disadvantaged to make the equality guaranteed by them”.

- Discrimination –Discrimination on the grounds of disability is a modern development .Laws passed 20 years or back generally did not include disability on the list of prohibited heads of discrimination .For example, under Article 15 and 16 prohibits discrimination on the matter of employment and access to public facilities on the grounds of religion , race cast, sex and place of birth ,it is completely silent on disability. In fact until 1995, the service Rules prevented entry of persons with disabilities in higher grades of service. The Rule gave the employer authority to force premature retirement in public interest. Very often employees who acquire disability during service were either forced out jobs or reduced in rank .This opportunity for career enhancement was suspended for ever.

In the absence of formal discrimination on the issue of disability , the Supreme Court in the case of *Nandakumar Narayanarao Ghodmare VS State of Maharashtra* (1995 6 SSC 720) has directed that the candidate who was rejected because of colour blindness should be appointed any of the posts of the Agricultural class 2 service post, other than 5 out of 35 posts which require perfect vision. Extra legal safeguards have been provided in several Jurisdictions. The persons with disabilities (Equal Opportunities, Protection of Right and full participation) Act, 1995, has an exclusive chapter titled “Non Discrimination Section 45, 46 and 47 clearly pointed out the Quasi and Judicial bodies to speedy and efficiently dispose case of discrimination. For example in *Rajbhir singh VS DTC* (97 2002 DLT 19) the Delhi High Court directed the respondent to “take petitioner back into service and pay salary from the date when the respondent stopped paying salary in termination of his service “.He was reinstated with full back wages and consequential benefits .



State obligations

The Constitution of India envisages a very positive role of the state towards its disadvantaged citizens. Article 41 clearly mentioned that the State within the limits of its economic capacity and development make effective provision for securing the right to work to education and public assistance in case of employment old age, sickness and disablement". However, the approach to disability in India has been motivated by charity and viewed as an individual issue. Even the Government of independent India relies heavily on charitable NGO to secure basic rights like education, work, shelter and health for persons with disabilities. A distinct a self advocacy movement of people with disabilities that started during the 1970s campaigned for protection and recognition for their human rights. However under Article 253 of the Constitution of India enables the parliament override the federal distribution of powers and to give effect to a treaty entered with foreign powers or an International body even if the matter of legislation relates to an entry in the state list. With signing of the proclamation of equality and Full participation of people with Disabilities in Asian and pacific region, the Legislation was enacted by the parliament in 1995.

Legislations

Disability Act, 1995, A Signal Achievement towards Disability Movement. The objective of the persons with disabilities (Equal opportunities Protection of Rights and full Participation Act 1995.

Promoting and ensuring equality and full participation of persons with disabilities,

Protecting and promoting their economic and social rights,

The Act also provides for addressing the individual grievances

Safeguard the rights and liberties of persons with disabilities.

Monitoring and implementing the rule and regulations in connection with disabilities.

As a result of this enactment, disability concerns have come into sharp focus.

2. Trust Act, 1999 -Certain groups among the disabled are more vulnerable than others. Therefore, the enactments of the National Trust for welfare persons with cerebral palsy, Mental Retardation and Multiple Disabilities Act 1999, aims to fulfill a common demand of families seeking a reliable arrangement for their severely disabled wards.

3. Mental Health Act-1987, The Mental Health Act, is a civil rights legislation that focus on regulating standards in mental health institutions. Despite the existence of this Act for the protection of the person's property and management of persons covered, until recently many ill persons were consigned to jails. Those living in mental health institutions were no better since the conditions both in prisons

Prisons and in mental institutions were far below the stipulated standards.

4. RCL Act, 1986—The Rehabilitation Council of India was set up by the Government of India in 1986 to regulate and standardize training policies and program for rehabilitation of persons with disabilities.

5. NHR(The National Human Rights Commission, focuses on human rights issues of persons with disabilities by integrating their concerns into all aspects of work. The commission has outlined a broad policy approach and has prioritized 14 areas for intervention with aim to remove structural inadequacies by encouraging disability inclusive laws, policies and programs at all levels.

Declaration on the Rights of Disabled Persons-

The UN Declaration on the Rights of Disabled persons, 1975, is a crucial comprehensive instrument which proclaims that "disabled persons have the same civil and political rights as their human beings. The declaration states "Disabled persons should receive equal treatment and services, which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration "due



to certain inadequacies of content these declarations have not been received enthusiastically by the Disability Movement .

2-WPA, 1981—1981 was the International Year of the Disabled persons. Its theme was “Full participation and Equality “The state was held responsible to guaranteed enjoyment of full citizenship and Fundamental Rights by persons with Disabilities. To achieve their full participation in all aspects of social and economic life, he UN General Assembly adopted the World Program of Action in 1982with equalization of opportunities “as the theme .To give recognition to economic, social and cultural rights of persons with disabilities, the period between 1983-1993 was observed as the UN Decade of disabled persons.

3-Standard Rule 1993- The UN Standard Rule on the Equalization of Opportunities for people with Disabilities, 1993 is an instrument based on the principle of material equality .The UN standard Rules have been recognized as a Human Rights Instruments.

The Standard Rules can be classified into four parts.

Part (One) Pre- condition for equal participation .

1. Awareness raising
2. Medical Care and treatments
3. Rehabilitation and
4. Support services

Part (2)’ Target areas for equal participation ‘ describes the responsibility in society in

- Accessibility
- Education
- Employment
- Income maintenance and social security
- Family life and personal integrity
- Culture
- Religion
- Recreation and sports
- Part(3) “Implementation measures “
- Information and Research
- Policy making and planning
- Legislation
- Economic policies
- C-ordination of work
- Organizations of persons with disabilities
- Personal training
- National monitoring and evaluation of disabilities programs
- Technical and economic co-operation
- International co-operation

Part (4) Four-of the Standard Rules lays down a mechanisms for monitoring The special Rapporteur appointed by the UN monitors the implementation by the states and suggests measures for better implementation of the Rules

- 5 –ICCPR-1966 , the various civil and political rights contained in the International Covenant on Civil and Political Rights can be classified under four broad categories ,
- Rights that refer to human existence
- Liberty Rights
- Associational Rights
- Political Rights



6. CRC , 1989- Article 2 of the Convention on Rights of the Child (CRC) prohibits any discrimination in respect of the enjoyment of the convention Rights on the ground of disability . However, this is the only convention which has comprehensive and inclusive provisions regarding the rights of disabled children

7. Torture Convention, 1984- The Convention against Torture and others cruel , inhuman treatment or punishment is a particular relevance to millions of peoples with disabilities who are subjected to inhuman and degrading treatment in the institutions meant for their care and development .

8. Assian and pacific Decade (1993-2002)- The government of the ESCAP region proclaimed the Asian and Pacific Decade of Disabled persons,1993-2002 by resolution of 48/3 of April 1992 at Beijing. The resolution highlighted on strengthen regional co-operation in resolving issues affecting the achievement of the goals of the world program of Action concerning Disabled Persons ,especially those concerning the full participation and equality of persons with Disabilities .

9. Biwako Millennium Framework , 2003-2012)- In May 2002 ,the ESCAP adopted the resolution “promoting on inclusive barrier free and right based society for people with disabilities in the Asian and Pacific region in the 21st century .The Biwako Millennium Framework outlines the basic issues , action plans and strategies. The seven important areas are as fallows.

- Women and disabilities
 - Self help organization with disabilities
 - Early intervention and Education
 - Training and employment including self employment
 - Access to built environment and public Transport
 - Access to information and communication including ICT
 - Poverty alleviation through capacity building, social security and sustainable livelihood program.
- The next decade will ensure a right based approach to protect the civil, cultural, economic, political, social rights of persons with disabilities.

11. ILO-Discrimination (Employment and Occupation) Convention, 1958- The Human Rights conventions, The International Labor Organization has develop the number of International conventions relevant to disability

Endemic Areas and important Statistics-

1. Poverty and Malnourishment- Persons with disabled are estimated to make up 15 to 20 percent of the poor in developing countries. Poor families they do not have sufficient income to meet the basic needs. Inadequate shelter, unhygienic living conditions, lack of sanitation and clean drinking water combined with poor access to health facilities breed disabilities.
2. Crime and Disability- violent crimes under line shortcomings in the social, political and economic arrangements. Such crimes not only leave people with a sense of insecurity and fear but also deprive them of their life and liberty. Many women and children are abducted to be used in prostitution, slavery and beggary. The risk of emotional, mental and physical disabilities increase manifold.
3. Accident and Disability- According to the Central Bureau of health intelligence Report the large numbers of death due to road and train accidents which may lead to disabilities.
4. Occupation Hazards and Disability- The maximize profit, production is often located wherever costs are lowest regulations are loose and workers are least likely organize for better working conditions and fair wages. This often results in high rates of accidents, poisoning from toxins lose of hearing and vision and health deterioration. The large numbers of workers they are employed in leather industry, diamond cutting, weaving, stone quarrying and hand embroidery etc and children are engagements in bricks factories, carpet, cracker and match industry; they have not received any appropriate and sustainable attention.
5. Employment of the Disabled- Creation of opportunities for gainful employment is a task which government all round the world performs. According to 2000 National population Census of the



National Statistics –disabilities was 942 , 98 or 1.23% of total population .According to the Sample Survey ,conducted by the NSSO in 1991, the rate of employment among the persons with disabilities in rural areas was 29.1% and in the urban areas 25.2%

Table Employment Status of the Disabled (in millions)

SL No.	Status	Rural	Urban	Total
01	Self Employment Agriculture	1.65	0.07	1.72
02	Self Employment Non agriculture	0.52	0.37	0.89
03	Regular employee	0.25	0.28	0.53
04	Casual	1.18	0.20	1.38
	Total	3.60	0.92	4.52

6. Education

The first school for hearing impaired children was established in Mumbai in 1884 and for the blind at Amritsar in 1887 .Between then and now we have not been able to create an educational infrastructure that can cater to the needs of children with disabilities. As a result more than 80%of them remain in uneducated lacking then basic literacy skills. Of the children dropped out in 1991, 43% is said to have acquired disability. This picture clear that the inadequacies of the education system.

General policy instruments ,such as the outcome of documents of world summits and conferences ,are applicable to persons with disabilities .These instruments include for example ,the Copenhagen Declaration and program of Action, adopted at the world summits for social development(6-12,March)1995,and the Millennium Development Goals adopted at the United National Millennium Summits in September ,2000.

Several disability

Specific non binding international instruments have been adopted at the International level. These instruments include;

Declaration on the Rights of mentally Retarded person.

Declaration on the Right of Disabled Persons.

World Program of Action concerning Disabled Persons.

Guidelines for Action on Human Resources Development in the field of Disability.

Principle for the protection of persons with mental illness and the improvement of mental health care.

Standard Rules on the Equalization of opportunities for persons with disabilities

ILO recommendation concerning vocational Rehabilitation and Employment of the Disabled persons

Policies in India

The government of India formulated the National Policy for persons with disabilities in February, 2006 which deals with the physical, educational and rehabilitation of persons with disabilities .The National policy recognizes the persons with disabilities are vulnerable human resources for the country and seek to create an environment that provides them equal opportunities, protection of their rights and full participation in society .Some of the aspects with the policy focuses on are:



Prevention of Disabilities

1. Women and Disabilities,
2. Rehabilitation measures,
3. Women and disabilities
4. Children with disabilities.

Conclusion

Disability refers to the disadvantage restrictions of activity caused by the way society is organized which takes little or no account of people who have physical ,sensory or mental impairments .Disability is an unfortunate part of human life which can not only the natural way of a living but also a despair component strength and power .The government should provide more social security and schemes for disabled sections and generate more employment opportunities for them .we should have soft approach towards disabled persons .

References

1. Reading material from 7th RCin Human Rights and social inclusion (interdisciplinary) from ASC Jamia Millia Islamia, New Delhi.
2. Archived copy, archived from the original one july 24, 2013,,Retrived January ,8 ,2014.
3. Physical disability, California, State University, Northridge .