



Disability is a matter of perception

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Abstract

The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped.”

Hubert Humphrey

Persons with disabilities face discrimination and obstacles that obstruct them from contributing and participating in society on an equal basis with others every day. 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 ordinary way of a living but also despair component strength and power. The protection guaranteed in the human rights treaties, and grounded in the Universal Declaration of Human Rights, should apply to all. Persons with disabilities have, however, remained largely ‘invisible’, often side-lined in the rights debate and unable to enjoy the full range of human rights. In recent years, there has been a revolutionary change in approach, globally, to close the protection gap and ensure that persons with disabilities enjoy the same standards of equality, rights and dignity as everyone else. The Convention on the Rights of Persons with Disabilities, which was approved in 2006 and entered into force in 2008, motioned a ‘paradigm shift’ from traditional charity-oriented, medical-based approaches to disability to one based on human rights. The first part of this paper deals with the basic emergence and the initiation of the recognition of the rights of the persons with disability worldwide along with Indian perspective. Further, the authors will put some light on the International conventions and treaties that took place for the rights of persons with disability. The extent of this paper is to the present legislations and provisions recognising the rights of these people along with some of the judicial decisions recognising the same. To conclude that the People with Disability are also human beings and they should also enjoy the same rights as of a normal person. A person with disability is a person who is different abled.

Keywords: disability, restrictions, convention, handicapped

Introduction: The Backdrop

Today, the world population is over 7 billion people. More than one billion people, or approximately 15 per cent of the world's population, live with some form of disability. 80 per cent live in developing countries.

A disability is an umbrella term, covering impairments, activity limitations, and participation restrictions. 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. Disability is thus not just a health problem. It is a complex phenomenon, reflecting the interaction between features of a person's body and features of the society in which he or she lives^[1].

A disability is a condition or function judged to be significantly impaired relative to the usual standard of an individual of their group. The term is often used to refer to individual functioning, including physical impairment, sensory impairment, cognitive impairment, intellectual impairment, mental illness, and various types of chronic disease. This usage has been described by some disabled people as being associated with a medical model of disability.

Persons with disabilities, “the world's largest minority”, have generally poorer health, lower education achievements,

fewer economic opportunities and higher rates of poverty than people without disabilities. This is largely due to the lack of services available to them (like information and communications technology (ICT), justice or transportation) and the many obstacles they face in their everyday lives. These obstacles can take a variety of forms, including those relating to the physical environment, or those resulting from legislation or policy, or from societal attitudes or discrimination.

People with disabilities are at much higher risk of violence:

- Children with disabilities are almost four times more likely to experience violence than non-disabled children.
- Adults with some form of disability are 1.5 times more likely to be a victim of violence than those without a disability.
- Adults with mental health conditions are at nearly four times the risk of experiencing violence.

History

During the Middle Ages, madness and other conditions were thought to be caused by demons. They were also thought to be part of the natural order, especially during and in the fallout of the Plague, which wrought impairments throughout the general population. In the early modern period there was a shift to seeking biological causes for

physical and mental differences, as well as heightened interest in demarcating categories: for example, Ambrose Pare, in the sixteenth century, wrote of "monsters", "prodigies", and "the maimed". The European Enlightenment's emphases on knowledge derived from reason and on the value of natural science to human progress helped spawn the birth of institutions and associated knowledge systems that observed and categorized human beings; among these, the ones significant to the development of today's concepts of disability were asylums, clinics, and prisons.

Contemporary concepts of disability are rooted in eighteenth- and nineteenth-century developments. Foremost among these was the development of clinical medical discourse, which made the human body visible as a thing to be manipulated, studied, and transformed. These worked in tandem with scientific discourses that sought to classify and categorize and, in so doing, became methods of normalization.

The concept of the "norm" developed in this time period, and is signalled in the work of the Belgian statistician, sociologist, mathematician, and astronomer Adolphe Quetelet, who wrote in the 1830s of *l'homme moyen* – the average man. Quetelet postulated that one could take the sum of all people's attributes in a given population (such as their height or weight) and find their average, and that this figure should serve as a norm toward which all should aspire.

This idea of a statistical norm threads through the rapid take up of statistics gathering by Britain, United States, and the Western European states during this time period, and it is tied to the rise of eugenics. Disability, as well as other concepts including: abnormal, non-normal, and normalcy came from this. The circulation of these concepts is evident in the popularity of the freak show, where showmen profited from exhibiting people who deviated from those norms.

With the rise of eugenics in the latter part of the nineteenth century, such deviations were viewed as dangerous to the health of entire populations. With disability viewed as part of a person's biological make-up and thus their genetic inheritance, scientists turned their attention to notions of weeding such "deviations" out of the gene pool. Various metrics for assessing a person's genetic fitness, which were then used to deport, sterilize, or institutionalize those deemed unfit. At the end of the Second World War, with the example of Nazi eugenics, eugenics faded from public discourse, and increasingly disability cohered into a set of attributes that medicine could attend to – whether through augmentation, rehabilitation, or treatment. In both contemporary and modern history, disability was often viewed as a by-product of incest between first-degree relatives or second-degree relatives.

In the early 1970s, disability activists began to challenge how society treated disabled people and the medical approach to disability. Due to this work, physical barriers to access were identified. These conditions functionally disabled them, and what is now known as the social model of disability emerged. Coined by Mike Oliver in 1983, this phrase distinguishes between the medical model of disability – under which impairment needs to be fixed – and the social model of disability – under which the society that limits a person needs to be fixed.

A New Round in the Era of Disability

There was a time when disabled persons were not included in the census of India's population. PWD was kept out of the census population till the 1980s. In the 1981 census, 3 types of disability were included. And the disabled cadre of the 1991 census was completely abandoned. After a long battle, disability was included in the 2001 census, which resulted in not being able to get accurate statistics due to minimum awareness and training and mathematicians found that 2.1% of the population was PWD. Although in the census of 2001, only 5 categories of disability were included, many disabled categories, including mental and intellectual handicapped people were kept out completely. In the census of 2011, it was found that 26.8% of people in India suffer from various types of disability and this is 2.1% of the population. Out of the total disability in the country, 14.9 million are men and 11.8 million are women. In rural areas, 18.6 million are disabled, whereas in urban areas, 8.2 million are disabled.

Disability rights movement in India is more than four decades old. In the beginning of 1970, persons with disabilities had demanded rights for themselves. However, their movement did not catch momentum because they lacked integration. In the 1980s, various organizations came together with same intention, representing the interests of incompetent people. In this decade the Disability Rights Movement got momentum and after the many protests the government passed "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". As a result, people with disabilities have got a place in government services, educational institutions etc. This act came to be known as the beginning of a new era for disabled persons. But due to some of its deficiencies and the lack of implementation it failed to achieve its goals.

Legislations Recognizing the Rights of Disabled

1. Constitution

The Constitution of India applies uniformly to every legal citizen of India, whether they are healthy or disabled in any way (physically or mentally).

Under the Constitution the disabled have been guaranteed the following fundamental rights:

- The Constitution secures to the citizens including the disabled, a right of justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity.
- Article 15(1) enjoins on the Government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.
- Article 15 (2) States that no citizen (including the disabled) shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, public restaurants, hotels and places of public entertainment or in the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of government funds or dedicated to the use of the general public. Women and children and those belonging to any socially and educationally backward classes or the Scheduled Castes & Tribes can be given the benefit of special laws or special provisions made by the State.

- There shall be equality of opportunity for all citizens (including the disabled) in matters relating to employment or appointment to any office under the State.
- No person including the disabled irrespective of his belonging can be treated as an untouchable. It would be an offence punishable in accordance with law as provided by Article 17 of the Constitution.
- Every person including the disabled has his life and liberty guaranteed under Article 21 of the Constitution.
- There can be no traffic in human beings (including the disabled), and beggar and other forms of forced labour is prohibited and the same is made punishable in accordance with law (Article 23).
- Article 24 prohibits employment of children (including the disabled) below the age of 14 years to work in any factory or mine or to be engaged in any other hazardous employment. Even a private contractor acting for the Government cannot engage children below 14 years of age in such employment.
- Article 25 guarantees to every citizen (including the disabled) the right to freedom of religion. Every disabled person (like the non-disabled) has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health.
- No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group.
- No Disabled person will be deprived of the right to the language, script or culture which he has or to which he belongs.
- Every disabled person can move the Supreme Court of India to enforce his fundamental rights and the rights to move the Supreme Court is itself guaranteed by Article 32.
- No disabled person owning property (like the non-disabled) can be deprived of his property except by authority of law though right to property is not a fundamental right. Any unauthorized deprivation of property can be challenged by suit and for relief by way of damages.
- Every disabled person (like the non-disabled) on attainment of 18 years of age becomes eligible for inclusion of his name in the general electoral roll for the territorial constituency to which he belongs.

2. Education Law

- The right to education is available to all citizens including the disabled. Article 29(2) of the Constitution provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language.
- Article 45 of the Constitution directs the State to provide free and compulsory education for all children (including the disabled) until they attain the age of 14 years. No child can be denied admission into any education institution maintained by the State or receiving aid out of State funds on the ground of religion, race, and caste or language.

3. Health Law

- Article 47 of the constitution imposes on the Government a primary duty to raise the level of

nutrition and standard of living of its people and make improvements in public health - particularly to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to one's health except for medicinal purposes.

- The health laws of India have many provisions for the disabled. Some of the Acts which make provision for health of the citizens including the disabled may be seen in the Mental Health Act, 1987.

4. Family Laws

Various laws relating to the marriage enacted by the Government for different communities apply equally to the disabled. In most of these Acts it has been provided that the following circumstances will disable a person from undertaking a marriage. These are:

- Where either party is an idiot or lunatic,
- Where one party is unable to give a valid consent due to unsoundness of mind or is suffering from a mental disorder of such a kind and extent as to be unfit for 'marriage for procreation of children,
- Where the parties are within the degree of prohibited relationship or are sapindas of each other unless permitted by custom or usage,
- Where either party has a living spouse.

The rights and duties of the parties to a marriage whether in respect of disabled or non-disabled persons are governed by the specific provisions contained in different marriage Acts, such as the Hindu Marriage Act, 1955, the Christian Marriage Act, 1872 and the Parsi Marriage and Divorce Act, 1935. Other marriage Acts which exist include; the Special Marriage Act, 1954 (for spouses of differing religions) and the Foreign Marriage Act, 1959 (for marriage outside India). The Child Marriage Restraint Act, 1929 as amended in 1978 to prevent the solemnization of child marriages also applies to the disabled. A Disabled person cannot act as a guardian of a minor under the Guardian and Wards Act, 1890 if the disability is of such a degree that one cannot act as a guardian of the minor. A similar position is taken by the Hindu Minority and Guardianship Act, 1956, as also under the Muslim Law.

5. The Mental Health Act, 1987

Under the Mental Health Act, 1987 mentally ill persons are entitled to the following rights:

- A right to be admitted, treated and cared in a psychiatric hospital or psychiatric nursing home or convalescent home established or maintained by the Government or any other person for the treatment and care of mentally ill persons (other than the general hospitals or nursing homes of the Government).
- Even mentally ill prisoners and minors have a right of treatment in psychiatric hospitals or psychiatric nursing homes of the Government.
- Minors under the age of 16 years, persons addicted to alcohol or other drugs which lead to behavioural changes, and those convicted of any offence are entitled to admission, treatment and care in separate psychiatric hospitals or nursing homes established or maintained by the Government.
- Mentally ill persons have the right to get regulated, directed and co-ordinated mental health services from the Government. The Central Authority and the State

Authorities set up under the Act have the responsibility of such regulation and issue of licenses for establishing and maintaining psychiatric hospitals and nursing homes.

- Treatment at Government hospitals and nursing homes mentioned above can be obtained either as in patient or on an out-patients basis.
- Mentally ill persons can seek voluntary admission in such hospitals or nursing homes and minors can seek admission through their guardians. Admission can be sought for by the relatives of the mentally ill person on behalf of the latter. Applications can also be made to the local magistrate for grants of such (reception) orders.
- The police have an obligation to take into protective custody a wandering or neglected mentally ill person, and inform his relative, and also have to produce such a person before the local magistrate for issue of reception orders.
- Mentally ill persons have the right to be discharged when cured and entitled to 'leave' the mental health facility in accordance with the provisions in the Act.
- Where mentally ill persons own properties including land which they cannot themselves manage, the district court upon application has to protect and secure the management of such properties by entrusting the same to a 'Court of Wards', by appointing guardians of such mentally ill persons or appointment of managers of such property.
- The costs of maintenance of mentally ill persons detained as in-patient in any government psychiatric hospital or nursing home shall be borne by the state government concerned unless such costs have been agreed to be borne by the relative or other person on behalf of the mentally ill person and no provision for such maintenance has been made by order of the District Court. Such costs can also be borne out of the estate of the mentally ill person.
- Mentally ill persons undergoing treatment shall not be subjected to any indignity (whether physical or mental) or cruelty. Mentally ill persons cannot be used without their own valid consent for purposes of research, though they could receive their diagnosis and treatment.
- Mentally ill persons who are entitled to any pay, pension, gratuity or any other form of allowance from the government (such as government servants who become mentally ill during their tenure) cannot be denied of such payments. The person who is in-charge of such mentally person or his dependents will receive such payments after the magistrate has certified the same.
- A mentally ill person shall be entitled to the services of a legal practitioner by order of the magistrate or district court if he has no means to engage a legal practitioner or his circumstances so warrant in respect of proceedings under the Act.

6. UN Declaration On The Rights Of Mentally Retarded Persons

This declaration on the rights of mentally retarded person's calls for national and international actions so as to ensure that it will be used as a common basis and frame of reference for the protection of their rights:

- The mentally retarded person has, to the maximum

degree of feasibility, the same rights as under human beings.

- The mentally retarded person has a right to proper medical care, physical therapy and to such education, training, rehabilitation and guidance which will enable him to further develop his ability, and reach maximum potential in life.
- The mentally retarded person has a right of economic security and of a decent standard of living. He/she has a right to perform productive work or to participate in any other meaningful occupation to the fullest possible extent of capabilities.
- Whenever possible, the mentally retarded person should live with his own family or with his foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If an institutional care becomes necessary then it should be provided in surroundings and circumstances as much closer as possible to that of a normal lifestyle.
- The mentally retarded person has a right to a qualified guardian when this is required in order to protect his personal well-being or interests.
- The mentally retarded person has a right to get protection from exploitation, abuse and a degrading treatment. If prosecuted for any offence; he shall have right to the due process of law, with full recognition being given to his degree of mental responsibility.
- Whenever mentally retarded persons are unable (because of the severity of their handicap) to exercise their rights in a meaningful way or it should become necessary to restrict or deny some or all of their rights then the procedure(s) used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure for the mentally retarded must be based on an evaluation of their social capability by qualified experts, and must be subject to periodic review and a right of appeal to the higher authorities.

The Current Decade and the new Disability Act

In order to ensure all the rights of persons with disabilities, the United Nation convened a conference on the Rights of Persons with Disabilities in 2006, during which UNCRPD included 50 articles of different aspects of disability related issues, which was reaffirmed by the 160 member states including India in the year 2007.

UNCRPD is based on eight principals:

1. Non-discriminatory treatment of persons with disabilities
2. Full participation and involvement of persons with disabilities in society
3. Freedom of persons with disabilities and disabled persons towards their inherent dignity and personal autonomy
4. Respect for the difference and acceptance of persons with disabilities as part of humanity and diversity
5. Equality of opportunity
6. Accessibility
7. Equality between man and woman
8. Respect for the rights of special children for the development and identification of children with disabilities.

Keeping in view the principles of the United Nations

Conference 2006, a new Act was passed while making necessary amendments in the provisions of the Act 1995. The right of the person with disability, Act of 2016 received the pronouncement of the President on December 27, 2016 and was published in the Official Gazette on 28 December 2016, which came into effect from 15 June 2017. Section 102 of this Act speaks of cancellation of comprehensive law in that it means that the Act of 1995, the persons with disability (equal opportunity, protection of rights and full participation) The proposal of this Act clearly states that its purpose is to maintain the dignity of every person in the society and prevent any kind of discrimination. It speaks about the acceptance of people with any type of disability and ensures their full participation in such persons and society. Since India is the signatory of the Conference on the rights of people with disabilities of the United Nations General Assembly, such a domestic law for India was in fact mandatory.

Disability Act, 2016

Classification of persons with disabilities

- persons with disability
- persons with benchmark disability
- persons with disability having high support needs

Contrary to the definition of the person with disability provided by the Act 1995, under this Act, a complete definition has been provided including 21 types of specific disability. Most of the liability under this Act has been put on appropriate government and local authorities. With this (some private sector) establishments, some obligations have also been imposed. Act 2016 prohibits discrimination against persons with disabilities unless it can be shown that the act of discrimination was a proportional means of obtaining legitimate objectives.

The government is entitled to facilitate the rights of disabled people. Therefore, it is the duty of the government to make necessary laws, rules and plans and strictly enforce them for the convenience of the disabled people; the onus has been placed on the government. The government is required to secure the rights of the disabled person towards equality, dignity and respect as normal people get; Do not discriminate against the right of personal liberty; The right to live in a community; Right to safety and security in situations of risk, armed conflict, human emergency, natural disasters etc.; Access to materials related to polling stations and electoral processes; The right to access judicial or semi-judicial or investigative powers without any court, tribunal, authority, commission or body; Ownership or successor of property (movable or immovable); The right to access one's own financial matters and other forms of bank loans, mortgages and financial credits; The right to obstruct free access to health care institutions and centres; The right to attain cultural life and participate in recreational activities and sports activities etc.

All establishments (including the private sector) need to frame and publish the same opportunity policy. Additional benefits such as rights for free education (between the ages of 6 to 18 years), reservation in education, government jobs, land allocation, poverty alleviation schemes etc. have been made available to people with benchmark disability. Reservations in Government vacancies Establishments have been increased from 3% to 4% for the persons with disability.

In order to ensure speedy trial, provision of special courts has been made in each district to handle matters related to violation of rights of persons with disabilities.

New disability law affects the principles of the United Nations Conference on the basis of persons with disabilities. Disability Law 2016 protect disabled persons from various forms of discrimination, Increases their effective participation and inclusion in the society and ensures equality of opportunity and adequate accessibility.

Balancing the Scenario

The following are a few suggestions

- The disabled should demand benefits; we should remember that family has the prime responsibility to look after disabled and get the benefits due to them
- The voice of the disabled needs to be recognized by the government
- Strong encouragement and assistance needs to be given to people with mental disability and their representatives to form organizations
- Information regarding disability needs to be disseminated far and wide across the country
- The attitude of a professional needs to change
- Organized monitoring of disability services and benefits disbursed is needed
- Lacunae in mental health laws include need to periodically review existing legislation and plan amendments or bring in new legislation from time to time
- There needs to be more research on factors associated with disability and psychiatric disorders

Conclusion

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. The evolution of the disability rights movement (DRM) in India spans over four decades. Voices began demanding the rights of people suffering from disabilities in the early 1970s; it was, however, nowhere close to being a movement at that point. The various demands from groups and individuals were significantly scattered. The Rights of Persons with Disabilities Bill (RPWD Bill), drafted in 2011, was meant to be an enactment to codify India's obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which it ratified without reservations. There was a committee set up in 2009 by the Ministry of Social Justice and Empowerment to draft a bill to this effect. In accordance with the UNCRPD, the committee included different people with different disabilities to draft this bill.

The Rights of Persons with Disabilities Bill, 2014, defines for the first time the meaning of disability and extended it from seven to 21 categories. Categories include sickle cell disease, thalassemia, muscular dystrophy, autism spectrum disorder, blindness, cerebral palsy, chronic neurological conditions, mental illness, and multiple disabilities.

Based on vital amendments, the bill, for the first time, represented rights-based disability legislation. Its focus is on transforming the meaning of disability, expanding its definition from the existing medical framework to a social one. The amendments included hiking the quota of government jobs from three to five per cent and underlining the need to make private companies responsible for creating

a friendly workplace environment for employees with disabilities.

The bill has been approved by the Cabinet of Indian Government and, as of December 16, the parliament of India. It only awaited the signature of the president. Once that happens, the bill will become a law and will replace the 1995 disability law.

This would have a huge impact on India, which according to some sources has the largest disabled population in the world. The World Bank suggests that there are around 80 million disabled people in India. The actual numbers are contested but it is true that India has a fairly large share of the global disabled population. The disability law will bring long-awaited hope and change to the lives of persons with disabilities in India.

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