

## DISABILITY RIGHTS IN INDIA AND INTERNATIONAL CONVENTIONS: A CRITICAL ANALYSIS

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### Abstracts:

The concept of human rights is used by public at large. Often the concept varies from person to person. A theologian member of Christian denomination may have a different understanding than that of a philosopher. Similarly always' view is based on logical premises. Therefore, concept of Human rights differs from person to person. Human rights attached itself with human dignity and integrity which his an integral part of human freedom and enjoyment

**Keywords:** *Human rights, disabilities, International Conventions*

The concept of human rights is used by public at large. Often the concept varies from person to person. A theologian member of Christian denomination may have a different understanding than that of a philosopher. Similarly a lawyer's view is based on logical premises. Therefore, concept of Human rights differs from person to person<sup>1</sup>.

We are citizens of interwove global community. This global community or society is seen closely together by the process of globalization. The various unknown tribes, communities, migrants have come together through globalization. This global connection makes us realize how we are connected to one another. Human right is also a part of this process of globalization

which makes us realize not only one's own need but also the needs of others<sup>2</sup>.

Human rights simply mean one's rights and freedoms. A person has certain rights and freedom simply because he/she is a human. It not only affects oneself but also the surroundings i.e. friends, family, co-workers, colleagues etc. The controversy of universality of human rights, like other intellectual debates, has created a conceptual confusion. Human rights are universal as a concept but the scope of application when combined to *ratione loci*<sup>3</sup> to *ratione personae*<sup>4</sup>. Applicability means it applies to

<sup>2</sup> Philips A Douglas, "Global Connections: Human rights", Chelsa House Publication (2009), pg 7-9

<sup>3</sup> A court will consider whether it has jurisdiction *ratione loci* and will assess that jurisdiction where the item of property in dispute is within their territory, though the parties are not. Similarly, where the contract was accepted within the territory covered by the court or where an alleged tort which gives rise to the claim before it, occurred on the territory covered by the court though one or both of the parties reside elsewhere

<sup>4</sup> Jurisdiction of a judge in a case which has international elements may depend on the whereabouts of the plaintiff or, as in most cases, the defendant. In certain cases, jurisdiction will depend on the whereabouts of the object of the

<sup>1</sup> Brems Eva, "Human rights: Universality and Diversity", Martinus Nijhoff Publishres, Netherlands, (2001) pg 3-8



all persons regardless of place. Universality simply justifies that there is no barrier of times place, nationality, race, gender, language, religion, political opinion, birth, property etc. for applicability of Human rights<sup>5</sup>.

Human rights attached itself with human dignity and integrity which is an integral part of human freedom and enjoyment. The intellectual center of entire culture of human rights is based on human dignity. It is a part and parcel of legal order<sup>6</sup>.

But the question remains the same, what are human rights? Human rights are as basic as the human existence. Those rights which are enjoyed just because of the fact that he/she is a human, is a Human Right.

The human rights developed after the Second World War wherein atrocities were committed against people resulting in adoption of Universal Declaration of Human Rights by United Nations General Assembly in 1948. But the basis of UDHR lies in United Nations Charter, the preamble of which reaffirm faith in fundamental human rights, in the equal rights of men and women" and Article 1(3)<sup>7</sup> of the United Nations charter, for the first time used the words "Human rights" so as to encourage respect and freedom for all human beings. Similarly Article 55<sup>8</sup> provides that human

being should enjoy a good standard of living, employment opportunities and universal respect for human rights.

Of particular importance is Article 56<sup>9</sup> of the charter, all the members take joint and separate pledge to co-operate with each other to achieve the purpose set forth in Article 55. UDHR is a non-binding resolution, which has acquired the force of international customary law can be entreated by national and other judiciaries when needed<sup>10</sup>. The UDHR strive to promote civil, economic and social rights, as part of the foundation of freedom, justice and world peace. The declaration was the first international legal effort to limit the behavior of states and press upon them duties to their citizens following the model of the rights-duty duality. The Preamble of UDHR<sup>11</sup> recognizes the dignity and inalienable rights of human beings and to give them justice and freedom.

The UDHR was framed by members of the Human rights Commission, with former First Lady Eleanor Roosevelt as Chair, who began to discuss an *International Draft bill of Rights* in 1947. The members of the Commission did not immediately agree on the form of such a draft bill of rights, and whether, or how, it should be enforced. The Commission proceeded to frame the UDHR and accompanying treaties, but the UDHR quickly became the priority. The document was structured to include the basic principles of dignity, liberty, equality and brotherhood. Some of the UDHR was researched and written by a committee of international

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litigation (i.e. real estate); in others, jurisdiction will depend on whether or not the defendant is within the territory of the court or is a citizen of that court's nation.

<sup>5</sup> Ibid 1.

<sup>6</sup> Tomuschat Christian, "Human rights: Between Idealism and Realism", Oxford University Press, (2008), 2<sup>nd</sup> Edn

<sup>7</sup> Article 1(3) of United Nations Charter states that one of the purposes of UN Charter is to "achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion".

<sup>8</sup> Article 55 of United Nations Charter shall promote:

a) higher standards of living, full employment, and conditions of economic and social progress and development; b) solutions of international economic, social, health, and related problems; c) international cultural and Educational cooperation; d) universal respect for, and observance of,

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human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion

<sup>9</sup> Article 56 of United Nations Charter states that "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

<sup>10</sup> Ball, Olivia, Gready, Paul, "The No-Nonsense Guide to Human Rights New Internationalist", Oxford

University Press (2001).

<sup>11</sup> Preamble of UDHR states that, "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".



experts on human rights, including representatives from all continents and all major religions. The Universal Declaration was later on divided into two important treaties, a Covenant on Civil and Political Rights and another on social, economic, and cultural rights<sup>12</sup>.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 were Adopted by the United Nations, between them making the rights contained in the UDHR binding on all states that have signed this treaty, creating human-rights law.

When we talk about Human rights, disability becomes a very important issue which needs to be dealt with in the context of Human rights. Social Values, norms and attitudes are not static and are liable to change depending on a wide range of factors are forces that operate at macro and micro level. The formal notion of disability has undergone revisions to accommodate changes in social norms and attitudes. What a society at a particular time in its history considers to be a disabling conditioning reflects its conception of a normal and socially functional human being and hence in a way it reflects society's self-image<sup>13</sup>.

Disability is a Human rights issue. Disabled people deserve the same rights. The disability movement identified Human rights as a major issue in the fight for equal rights and participation of Disabled people. International human rights treaties are needed to set a global framework and direction for the equal rights of Disabled people worldwide. The populations who live with a disability continuously encounter barriers to their full participation in society. People with disabilities are often denied

access to basic services such as primary health care and Education. Employment opportunities are extremely limited, hindering economic self-sufficiency. Exclusion and abuse of people with disabilities are violations of their Human rights<sup>14</sup>.

A Human rights approach to disability acknowledges that Persons with Disabilities are right holders and that social structures and policies restricting or ignoring the rights of PWD's often lead to discrimination and exclusion. A human rights perspective requires society, particularly governments, to actively promote the necessary condition for all individuals to fully realize their rights<sup>15</sup>

In spite of being one of the most detailed and voluminous constitutions in the World, Indian Constitution does not incorporate specific provisions for Education and rehabilitation of Disabled persons<sup>16</sup>.

There are various legislations in India regarding disabilities but its implementation has not been seriously taken by our government. The PWD Act 1995 was drafted with a vision of giving employment opportunities and barrier free environment has failed in providing so. With the ratification of United Nations Convention on Rights of Persons with Disabilities in 2007, the various social activists were of the view that it would bring changes regarding the perspective of people and create opportunities for Disabled persons. Since then, there has been no effort by the government to implement the ratification through an act. Recently, it has been reported by The Hindu Newspaper that Activists of the Disabled Rights Group protested against the non-passage of the

<sup>12</sup> Glendon, Mary Ann, "A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights", New York: Random House (2001).

<sup>13</sup> Disability: Definitions, Estimates and Causes, Disability Manual, National Human rights Commission, (2005) pg 9

<sup>14</sup> Dr. Kaur Prithpal, "Disability Issue: An New Strategic Alliance for the Disability Rights Movement", RGNUL law Journal, Punjab, Jan- Jun (2011) Vol. 1 pg. 1

<sup>15</sup> Ibid.

<sup>16</sup> Dr. Palande Jayshree, "Rights of Disabled Children: Need for Practical Implementation of Legislative Provisions in India", Bharti Law Review, Pune Jan-Mar (2013), pg100



Rights of Persons with Disabilities Draft bill. The he version tabled in the Rajya Sabha had been approved by the Union Cabinet on December 30, but disability rights activists opposed it, saying it was a diluted version. The activists, led by Javed Abidi, then launched a major campaign for bringing amendments in the draft of the proposed law and met senior Ministers in the government. As a result 14 new amendments were added and then tabled in Rajya Sabha<sup>17</sup>. Amita Dhanda in her Article in India Express Newspaper has posed two questions as regard to first, can the government enact the Draft bill of 2014 through the Ordinance route after it had been referred to the House Committee; and second, should the government take this route? The Draft bill was sent to a House Committee and not passed by Parliament because it was accepted that it needed more work. There is no urgency to enact the Draft bill<sup>18</sup>.

Though, presently, the government has made efforts to draft a draft bill on Rights of Persons with Disabilities with amendments (2014) in 2011 but it has not been accepted by Rajya Sabha. Hence, the draft bill stands lapsed. The PWD Act of 1995 stands as a basic Act to deal with issues related to Disabilities. Not only has this, but also the other disabilities laws like The Mental Health Act, the Rehabilitation Council of India Act and The National Trust Act etc. needs amendments too<sup>19</sup>

## 1. HISTORICAL BACKGROUND

The history of disabilities prior to the 17<sup>th</sup> and 18<sup>th</sup> centuries has been referred to as a time of confusion, lacking in understanding of, and services for, persons with disabilities. However, the 17<sup>th</sup> and 18<sup>th</sup> centuries witnessed a more constructive, scientific

approach to individuals with disabilities. The earlier efforts of Sir Isaac Newton and Galileo contributed to an understanding of the physical world, while philosophers of the time tried to understand human nature.

1. **Mahabharatha:** Dhritrashtra, the blind Kaurav king was not found worthy of throne due to his blindness. Similarly, prince Shakuni, brother of Dhritrashtra's wife Gandhari and king of Gandhar, was handicapped but proved to be a very good politician in the kingdom of Kaurvas.

2. **Mughal Period:** Institution established for the welfare continued to thrive since zakat (a system of charity) was strictly adhered to. Mughal instituted special department with a head (sadar) to supervise charities and endowments. Facilities were opened to all citizens regardless of caste and class. Mughal Emperor Akbar took special care for maintaining social harmony and order<sup>20</sup>

3. **Charity:** Introduction of special school by Christian missionaries. First school for hearing impaired was established in 1884 by the Roman Catholic missionaries at Mumbai. Ms Annie sharp started the first school for blind in 1887 at Amritsar Punjab.

4. **Pre-Independence:** The first school for the disabled persons, i.e., the deaf, was established in Mumbai 1884 by a Roman Catholic mission. First school for the blind was set up at Amritsar in 1887. In Calcutta 1893 followed by Roman Catholic mission. In palam cottash 1896 in Tamil Nadu followed by Roman Catholic mission 32 institutions for the blind in 1947. Limited arrangement for vocational training or other forms of economic rehabilitation Traditional craft- re-caning, weaving, doormat making etc. Absence of a common Braille Code for

<sup>17</sup> Dhar Aarti, New Draft bill to strengthen definition of disabilities, The Hindu Newspaper, February 9, 2014.

<sup>18</sup> Dhanda Amita, Disability Rights on the Ordinance Route, Indian Express Newspaper, February 24, 2014

<sup>19</sup> <sup>18</sup> Mandal Sangeeta, "Rights of Disabled Persons: A Human rights Approach", Indian Human rights Law Review, December, (2010) Vol 1 pg 2.

<sup>20</sup> Eraly, Abraham, "The Mughal Throne: The Saga of India's Great Emperors Phoenix", Orion Publishing Group Ltd. (2004) pg. 115.



Indian Language No Braille Printing facility,<sup>21</sup>

**5. Post-Independence:** 1951, Bharti Braille came to be accepted as the National Code for the country. The central Braille Press and the workshop for the manufacture of Braille appliances established in Dehradun 1950s. RCI recognize first teacher training programmed in deaf blindness. National Institutes/ apex level institutions conduct long and short term specialized courses to train professionals in physiotherapy, occupational therapy, prosthetic and orthotic engineering, and mental retardation, special education, audiologist, speech rehabilitation, orientation and mobility etc<sup>22</sup>

## 2. DISABILITY JURISPRUDENCE

### Charity Model

Driven largely by sensitive appeals of charity, this model treats people with disabilities as helpless victims needing care and protection. As the term handicap implies, derived as it is from the image of a beggar with a 'cap in hand', this model relies largely on the goodwill of benevolent humanitarians for 'custodial care' of the disabled<sup>23</sup>.

The charity model shares a common feature with the bio-centric model that there is a similar imperative of social responsibility that is derived from charity and benevolence, rather than justice and equality. The notion of charitable privilege has its roots in the laws, which primarily protected drain on social resources and created criteria to limit

claims to rights. In other words, the charity model was based on an assumption that claim to rights is valid on certain grounds and invalid on certain others. Disability was perceived as a disqualification and perhaps for this very reason the expression 'invalid' became synonymous with persons with disabilities<sup>24</sup>. The charity model justified the exclusion of disabled from mainstream Education and employment, and other rights and privileges enjoyed by citizens who fitted into the criteria of valid holders of rights<sup>25</sup>.

### Bio-Centric Model/ Medical Model

The bio-centric model of disability is linked ideologically to a trend in Western thought that can be traced to the biological sciences and to a period referred to as the 'Enlightenment' era in Europe. In their struggle to grapple with apparent differences between groups of people, like disabled and non-disabled, the rich and the poor, men and women, western people and non-western people, the Europeans of this period tended to reduce social phenomena to their supposed natural biological roots. Similar construction based on biological and intellectual characteristics have also been deployed by lawmakers of ancient India who classified people into various caste categories. These scientists and philosophers were inclined to find scientific justifications for social inequality that fit into a mechanical world-view based on natural laws and natural causes at the level of biology<sup>26</sup>.

On this basis, under the bio-centric model, persons with disabilities are positioned as

<sup>21</sup> Inclusive Education in India: A Country in Transition available at <http://int1dept.uoregon.edu/wp-content/uploads/2012/12/INTL-UG-Thesis-Kohama.pdf> visited on May 4<sup>th</sup>, 2015.

<sup>22</sup> Verma, Gajendra K, Christopher Bagley, and Madan M. Jha, "International Perspectives on Educational Diversity and Inclusion: Studies from America, Europe and India", London: Routledge (2007) pg 126.

<sup>23</sup> The charity model available at <http://www.making-prsp-inclusive.org/en/6-disability/61-what-is-disability/611-the-four-models.html> visited on April 4<sup>th</sup>, 2014.

<sup>24</sup> Siebers Tobin, "Disability Theory", University of Michigan, Michigan, (2008), pg 211.

<sup>25</sup> Fleischer Z. Doris and Zames Freida, "The Disability Rights Movement: From Charity To Confrontation", Temple University Publications, (2001), pg 11-13

<sup>26</sup> Disability and health available at

<http://www.who.int/mediacentre/factsheets/fs352/en/index.html> visited on April 4<sup>th</sup>, 2015



‘Abnormal’ in comparison to the established norms of a normal human being. In its harshest forms, the bio-centric model treats disabled persons as undeserving and dangerous.<sup>27</sup>

### Human Right Model

- Diversity
- Equality and Non Discrimination
- Accommodation
- Convenience
- Equal Participation and Inclusion
- Private and Public Freedom

### Disability Right Model

The disability rights movement led by individuals with disabilities began in the 1970’s. The self-advocacy is often seen as largely responsible for the shift toward ‘independent living’ and ‘accessibility’. The term ‘independent living’ was taken from 1959 California legislation that enabled people who had acquired disability due to polio to leave hospital wards and move back into the community with the help of cash benefits for purchase of personal necessities for their normal subsistence. However, the movement and its philosophy have spread to the other countries after the US civil rights and consumer movements of the late 1960, and started influencing peoples’ self-perception, their ways of organizing themselves and their countries themselves<sup>28</sup>

### 3.INTERNATIONAL DEVELOPMENT

The International recognition of human rights emerged in response to atrocities committed to human beings during World War II (1939-45). After World War II efforts were made to codify those rights that had been infringed earlier. Subsequently, the International draft bill of human rights instruments acknowledged that there are

some groups (women, children, disabled, minorities, migrants) which are identified as vulnerable and need protection<sup>29</sup>. The Universal Declaration of Human Rights (UDHR), 1948, is another important document which affirmed the rights of all people without any discrimination. The Preamble enumerated the basic postulates and principles of human rights in most comprehensive manner. Pursuant to this the General Assembly Adopted the Declaration on Social Progress and Development in 1969, reflecting an international awareness about the right of the persons with disabilities. The declaration proclaimed the necessity of the rights of the physically and mentally disabled people and assuring their welfare and rehabilitation. UDHR provides that all human beings are free and possess inherent dignity and rights<sup>30</sup>. It also states that all persons have right to adequate standard of living for himself and his family in the circumstances which is beyond his control<sup>31</sup>.

*Hamilton v. Jamaica*<sup>32</sup> provides solid evidence that the HRC<sup>33</sup> realizes the potential of the ICCPR in the disability context. So far, the complaint procedure has not been used to a great extent in the context of disability. But it is highly likely that the number of disability communications will

<sup>27</sup> Ibid

<sup>28</sup> Bagenstos Samuel, “Law and the Contradictions of the Disability Rights Movement”, Yale University Press,(2009)

<sup>29</sup> Indian Scenario, Disability Manual, National Human Rights Commission (2005), pg.25

<sup>30</sup> According to Article 1 of UDHR, All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

<sup>31</sup> According to Article 25 of UDHR, Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or According to Article 25 of UDHR, Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or

<sup>32</sup> *Hamilton v. Jamaica* CCPR/C/60/D/616/1995.

<sup>33</sup> Human Rights Committee.



increase in the years ahead as awareness of its existence spreads throughout the disability community.

The ICESCR rights from the peculiar perspective of disability can be grouped under: (a) Overarching right to non-discrimination

- The right to non-discrimination (Article 2)
- The right to equality between men and women (Article 3)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly on 10 December 1984 it came into force on 26 June 1987. The convention deals with the protection against discrimination from torture of inhuman conditions or treatment to any human being. Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions<sup>34</sup>

#### National Scenario:

A large section of disabled people live in India, which is an issue of great concern so far the availability and enforcement of their human rights is concerned. They being the most marginalized section of the society suffer from a number of complex problems deserving comprehensive legislation to cover

<sup>34</sup> Article 1(1) of CAT

all aspects of their lives. Although, legislation cannot alone radically change the fabric of a society but it can make a beginning by giving a socio- human consideration towards the needs and requirements of the disabled.

In essence, the human rights perspective on disability means viewing people with disabilities as subjects and not as objects. Importantly, it means locating problems outside the disabled persons and addressing the manner in which various economic and social processes accommodate the difference of disability, or not, as the case may be. The debate about the rights of the disabled is therefore connected to a larger debate about the difference existing in societies.

#### 4. CONSTITUTION OF INDIA

A Constitution is a document having a special legal sanctity which sets out the framework and the principal function of the organs of the government of a state declares the principles governing the operations of those organs. Constitutional law is a rule which regulates the structure of the principal organs of the government and their relationship to one another, and determines their principle functions. The rules consist of both of legal rules in the strict sense and of usages, commonly called conventions, which without being enacted are accepted as binding by all who are concerned in the government

The Constitution of India incorporates the principles of social justice and human rights. The preamble, fundamental rights and directive principles of the state policy enshrined in the Constitution reflects the commitment of the state to its people. Disability as the ground of discrimination is not prohibited expressly in the Constitution. However, the state could initiate programmes in favour of the disabled on the basis of 'reasonable classification', which permits different person should be treated differently.



Any differential treatment which helps the disabled to overcome the disadvantage of disability is permissible under Article 14, 15 & 16 of the Constitution. Article 21 guarantees 'Right to life and personal liberty' which includes right to live with human dignity and extends to disabled persons as well. The Constitution of India gives an assurance in the form of directive principles of the state policy for the right to work, to Education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want<sup>35</sup>.

### Mental health Law

In the recent decades, mental health and human rights have emerged as converging field of research and practice. The relationship between the two i.e. that health is human rights issue, whereas, mental health constitutes part of health itself<sup>36</sup>. Therefore, both are interrelated. Mental disorders not only produce an enormous impact in their own right but through their interaction with physical conditions resulting in complex patterns of reciprocal causality.

People with mental health conditions including schizophrenia, bipolar disorder, depression, epilepsy, alcohol and drug use disorder, child mental health problems and intellectual impairments; have been largely overlooked as a target of development work. The economic impact on families and communities lead to social stigma, discrimination and exclusion. The need for development for people with mental health conditions is required in mainstreaming of

disability issues into strategies for sustainable development

Mental health legislations were initially drafted to safeguard the public from dangerous patients by isolating them from the public. A paradigm shift from custodial care to community care has occurred due to (i) Advances in medical technology in assessment and treatment of mental disorders; (ii) the human rights movement; (iii) World Health Organization's (WHO) definition of 'health' ; and (iv) Promotion, preventive, curative, rehabilitative approaches and mitigation of disability. This shift has given a new perspective to the care of mental disorders and has led to the review of mental health legislations worldwide.

In *Raj Kumar v. Rameshchand and Ors*<sup>37</sup>, Raj Kumar, is a mentally retarded person. An application through next friend was filed on his behalf for eviction of the respondents from the premises which was owned by Raj Kumar, In reply to the Eviction Petition, it was inter alia stated that the appellant was a man of unsound mind and was not capable of doing any business and as no guardian has been appointed by the District Judge, the father could not act as a guardian. Regarding the Judicial inquisition alleged mentally ill person possessing property, custody of his person and management of his property. An application for appointment of a guardian in accordance with the said provisions was filed. An application to this effect was filed before the Rent Controller and the father was appointed as the guardian. The Appeal was allowed and the impugned order of High Court stating the non- maintainability of eviction petition was set aside

<sup>35</sup> Article 41 of the Constitution states that, the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to Education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

<sup>36</sup> Dudley Michael, Silivi Derrick and Gale Ran, "Mental Health and Human Rights: Vision Praxis and Courage", Oxford University Press (2012), 1<sup>st</sup> Edn., pg 2-3.

<sup>37</sup> *Raj Kumar v. Rameshchand and Ors*, 1999 Supp(3) SCR 345





### Rehabilitation Council of India Act 1992 (Amendment 2002)

The objectives of the RCI<sup>38</sup> are to:

- To regulate the training policies and programmes in the field of rehabilitation of persons with disabilities.
- To bring about standardization of training courses for professionals dealing with persons with disabilities.
- To prescribe minimum standards of Education and training of various categories of professionals/ personnel dealing with people with disabilities.
- To regulate these standards in all training institutions uniformly throughout the country.
- 5. To recognize institutions/ organizations/ universities running master's degree/ bachelor's degree/ P.G.Diploma/ Diploma/ Certificate courses in the field of rehabilitation of persons with disabilities.
- To promote research in Rehabilitation and Special Education.
- To maintain Central Rehabilitation Register for registration of professionals.
- To collect information on a regular basis on Education and training in the field of rehabilitation of people with disabilities from institutions in India and abroad.

### Judicial Interpretation

In *Delhi Transport Corporation v. Rajbir Singh and Sadh Ram*<sup>39</sup>, the respondents Rajbir Singh met with an accident on 12.8.1996 as a consequence whereof his left femur bone was fractured. He remained under treatment till 16.2.1997. He was advised rest by his doctors for three months initially. They were prematurely retired on the ground of medical invalidation.

<sup>38</sup> Sundar S., "Textbook of Rehabilitation", Jaypee Brothers Medical Publishers Ltd, New Delhi (2007), pg. 1.

<sup>39</sup> *Delhi Transport Corporation v. Rajbir Singh and Sadh Ram*, (2003) ILLJ865Del.

Questioning the said orders, writ petitions were filed by the respondents praying that they be reinstated in service with full wages. The respondent allegedly filed a fitness certificate. However, he was directed to appear before a medical board, which declared him medically unfit and pursuant to and in furtherance thereof, the appellant passed an order on 10.7.1998 retiring him prematurely on medical grounds. Before a learned Single Judge, a question was raised that in a situation of this nature the appellant herein could not have terminated the services of the respondent in view of the provisions of PWD 1995.

### National Trust for Welfare of Persons with Autism, Cerebral Palsy and Mental Retardation and Multiple Disabilities Act 1999

- To empower the independent living of persons with disabilities in the community<sup>40</sup>.
- To provide support and facilities to persons with disabilities<sup>41</sup>.
- To support those organizations which provide facilities to persons with disabilities and their families<sup>42</sup>.
- Address problems of the disabled persons<sup>43</sup>.
- Care and protection of the disabled in the event of death of parents or guardian<sup>44</sup>.
- Evolve procedures for appointment of guardians and trustees for people requiring a supported lifestyle<sup>45</sup>.
- To facilitate equal opportunities, rights protection and full participation for disabled persons.

<sup>40</sup> Chapter II Section 10 (a) of National Trust Act, 1999

<sup>41</sup> Chapter II Section 10 (b) of National Trust Act, 1999

<sup>42</sup> Chapter II Section 10 (c) of National Trust Act, 1999.

<sup>43</sup> Chapter II Section 10 (d) of National Trust Act, 1999

<sup>44</sup> Chapter II Section 10 (e) of National Trust Act, 1999

<sup>45</sup> Chapter II Section 10 (f) of National Trust Act, 1999



### **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**

- To spell out the responsibility of the state towards the prevention of disabilities, protection of rights, provision of medical care, Education, training, employment and rehabilitation of persons with disabilities.
- Create a barrier free environment.
- To counteract any situation of abuse and exploitation of persons.
- To make special provision of the integration of persons with disabilities into the social mainstream

#### Obligation Government

1. Undertake surveys, investigations and research concerning the cause of occurrence of disabilities
2. Promote various methods of preventing disabilities
3. Screen all the children at least once in a year for the purpose of identifying "at risk" cases
4. Provide facilities for training to the staff at the primary health centres
5. Sponsor awareness campaigns and disseminate information on general hygiene, health and sanitation,
6. Take measures for pre-natal and post-natal care of mother and child;
7. Educate the public through the pre-schools, schools, primary health centres, village level workers and anganwadi workers;
8. Create awareness amongst the masses through television, radio and other mass media on the causes

### **5. COMPARATIVE ANALYSIS**

The international community began to pay increased attention to the issues and conditions surrounding persons with disabilities (PWDs) after the United Nations proclaimed 1981 as the International Year of Disabled Persons, and the years 1983 to 1992 as the UN Decade of Disabled Persons. In

1992, the General Assembly of the UN Economic and Social Commission for Asia and the Pacific (ESCAP) Adopted the resolution that the period from 1993 to 2002 should be declared as the Asian and Pacific Decade of Disabled Persons and that ESCAP should adopt the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region and the Agenda for Action for the Asian and Pacific Region<sup>46</sup>.

### **Comparative Analysis of 1995 and UNCRPD**

The PWD 1995 was enacted as India was signatory to the ESCAP. The Act spells the responsibilities of the state towards the development of persons with disabilities, medical care, rehabilitation, training, employment etc. It also states that the state should create a barrier free environment and to remove any discrimination against PWDs

The preamble of the UNCRPD provides for the state parties to recall, recognize and reaffirm the principles laid down in UN Charter which recognizes the dignity of all persons and equal and inalienable rights of all persons. The Preamble also provides that the state parties to recall the principles of ICCPR, ICESCR, CEDAW, and Convention against Torture etc. The preamble of the UNCRPD provides for the state parties to recall, recognize and reaffirm the principles laid down in UN Charter which recognizes the dignity of all persons and equal and inalienable rights of all persons. The

<sup>46</sup> ESCAP adopted the Agenda for Action at its 48th General Assembly, which was held at the Beijing Conference in December 1992. The Agenda for Action identified 12 areas for action: (i) establishment of a national coordination committee on disability matters; (ii) enactment of legislation for PWDs; (iii) collection and analysis of data on the disability situation, and facilitation of access to information; (iv) public awareness building; (v) guarantee of access to build environments and communications; (vi) guarantee of integrated Education for children with disabilities; (vii) vocational training and employment of PWDs; (viii) prevention of causes of disability; (ix) expansion and improvement of rehabilitation services; (x) production and supply of assistive devices; (xi) promotion of self-help organizations of PWDs; and (xii) regional cooperation through networking.



Preamble also provides that the state parties to recall the principles of ICCPR, ICESCR, CEDAW, and Convention against Torture etc.

### General Principles

Article 3 of the UNCRPD provides for principles for the present convention which the state party shall keep in mind while drafting legislation. These principles provides for inherent dignity, non-discrimination, equality of opportunity and equality between men and women.

1. There are no such general principles in the PWD Act 1995 that specifically provides for dignity, equality between men and women etc. as it does in UNCRD under Article

3. These principles are explained in detail under the Convention itself regarding the implementation by state party and obligations thereof.

2. There is no provision in the Act which provides for inherent dignity whereas the preamble of the convention starts with recalling the principles of UN Charter which recognizes inherent dignity<sup>47</sup>. Also para (h) states that, 'discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person'. The purpose of the convention is to protect the dignity of persons with disabilities.

<sup>47</sup> The Preamble of UNCRPD, (a) *Recalling* the principles proclaimed in the Charter of the United Nations

which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world

### Judicial Interpretation

- With respect to discrimination faced by persons with disabilities in government employment and the scope of such employment, the Supreme Court in the case of *Dalco Engineering Private Ltd. v. Shree Satish Prabhakar Padhye and Ors*<sup>48</sup> held that the definition of 'establishment' under Section 47 included within its ambit government companies set up under the Companies Act, 1956. Hence, Section 47 is applicable to any person who acquires a disability during service in a Government company. However the section would not apply to private companies.
- While considering the question of discrimination in the promotion of persons with disabilities in government employment, the Hon'ble Supreme Court held in the case of *Union of India (UOI) v. Devendra Kumar Pant and Ors.*<sup>49</sup>, that under Section 47 of the PWD, promotion of a disabled employee with disability shall not be denied to a person on the ground of his disability if the disability does not affect his capacity to discharge the higher functions of a promotional post.

### Comparative Analysis of UNCRPD and Draft RPD Draft bill

The United Nations Convention on Rights of Persons with Disabilities consists of some important general principles which every state party who is a signatory to the convention needs to comply with. These general principles are incorporated in Article 3 of the convention.

Keeping in mind these general principles, the Rights of Persons with Disabilities Draft bill was drafted in 2011. Efforts have been made to incorporate all the general principles and

<sup>48</sup> *Dalco Engineering Private Ltd. v. Shree Satish Prabhakar Padhye and Ors*, AIR 2010 SC 1576.

<sup>49</sup> *Union of India v. Devendra Kumar Pant and Ors*, AIR 2010 SC 1253



give persons with disabilities all the rights irrespective of socio-economic or civil political rights. The draft bill gives equal opportunities to persons with disabilities without discriminating on the ground of disability.

- The preamble of the draft bill itself provides for protection, promotion and ensuring that persons with disabilities have a right to integrity, dignity and respect with full participation and inclusion<sup>50</sup> Similarly, Article 3 (a) of UNCRPD provides for respect of inherent dignity, autonomy and independence.
- The appropriate government shall take necessary measures to ensure the protection of woman and girl with disabilities from all form of abuse, violence and exploitation and shall provide such an environment to protect the dignity, self-respect and autonomy of the person<sup>51</sup>. The Convention provides for protection of dignity of persons with disabilities. It provides for protection against abuse, violence and exploitation of persons with disabilities and provides protection to women with

#### Drawbacks of draft bills of 2012

- Article 1 of the Convention seeks to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. The definition of “persons with disabilities” is an

<sup>50</sup> Preamble of RPD draft bill states that, Persons with Disabilities have a right to integrity, dignity and respect with full participation and inclusion; to live a life free of shame, ridicule, or any form of disempowerment and stereotyping; and to be entitled on an equal basis with others to all civil-political and socioeconomic rights guaranteed by international and national law.

<sup>51</sup> According to section 9(2) (c) of RPD draft bill, the government shall ensure such a Provision of gender, disability and age sensitive protection services, assistance and support for victims of abuse, violence or exploitation, for physical, cognitive and psychological recovery and development, rehabilitation and social reintegration, in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person

inclusive definition, and 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.

- According to Article 4 of Convention, state party is obliged to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. Section 64 of the Draft bill 2012, lays down the Functions of the Central Advisory Board on Disability, which is to “advise the Central Government and State Governments on policies, programmes, legislation and projects with regard to disability.” Another function is to “review and coordinate the activities of all Departments...dealing with persons with disabilities”.

#### Comparative Analysis of Draft bill and PWD Act 1995

The Preamble of the RPD draft bill provides for the promotion, protection and ensures the rights recognized in UNCRPD. It states that the persons with disabilities have right to integrity, dignity and respect, live peacefully and free from shame and guarantees the equality with other non-disabled all civil, political and socio- economic rights.

The PWD Act of 1995 does not guarantee any of the above. The preamble states that the PWD law is enacted to give effect to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region.

The RPD draft bill includes many important definitions like Abuse, Augmented and Alternative Communication (AAC), Barrier, Care Giver, Communication, Disabled Persons Organizations (DPOs), Discrimination on the basis of Disability, Language, Reasonable Accommodation and Universal Design. Under section 2 of PWD none of the aforementioned definitions are provided.



## Child Rights

Chapter 5 of the PWD 1995 provides for Education for children with disabilities. The appropriate government and local authorities to provide the children with disabilities free Education till the age of eighteen years. The government shall also take measures to ensure that the children with disabilities are integrated in normal schools. If needed, the government may run such schemes and programs beneficial for the children with disabilities. According to section 27(a), the appropriate Governments and the local authorities shall by notification make schemes for connoting part-time classes in respect of children with disabilities who having completed Education up to class fifth and could not continue their studies on a whole-time basis. According to section 30 the appropriate governments to prepare a comprehensive Education scheme providing for transport facilities, supply of books, etc. The RPD draft bill provides for the rights of children with disabilities. It states that the children with disabilities have quality before law and equal rights and it cannot be denied on the basis of age or disability.

## 6. CONCLUSIONS

Disability has been a major issue in our society since ages. Disability affects similar transformations on racial, sex and class identities not only because they also rely on ability but also because disability appears at first glance to be so individualizing that it overwhelms any sense of group identity. Disability affects many aspects of day-to-day life. Many disabled people lack the health to hold full-time employment, affecting their economic well-being. Still others can hold full-time employment, yet face discrimination from employers who may choose healthier employees or discount the ability of someone with lesser problems, such as a limp, or hearing difficulties. There is a stigma which is often associated with disability. The people without any disability many a times fell uncomfortable when they are around people with disabilities. They are more likely to be

isolated from the society than the people without disability.

Society often acts blindly to the ongoing violation of when it comes to the treatment of persons with disabilities. Rehabilitative programs offer a bridge to full-time employment, but even in that realm, the person with disabilities must overcome his share of discrimination, and prove that he can do the same duties as everyone else. This attitude can be changed through awareness and empowerment. The purpose of the present Dissertation is to convey that disabled people are also human beings.

The human rights approach acknowledges that persons with disabilities have equal rights but they are often lead to discrimination. The major changes were when disability was recognized internationally with the establishment of UN Charter. There were many International Convention and National Legislations which came into existence for purpose of human rights protection i.e. UDHR, ICCPR and ICESCR etc. The legislations, then, legally protected and promoted the rights human being in many aspects like employment, Education and reservation etc. This gave awakening to many other groups like women, children and migrant etc. to fight for their rights. With this awakening, CEDAW, CRC, CAT and CERD were established provides right to the people who were discriminated. Along with the recent growing national and international recognition of the need for equal enjoyment of all human rights by people with disabilities, the Non-Governmental Organizations are increasingly incorporating disability rights into their advocacy agendas. There are increasing opportunities to bring together the human rights movement and the disability movement. Increased awareness of disability rights as human rights is essential to acknowledge the disability rights violations that are occurring and to add to the effectiveness of work to eliminate disability discrimination.