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# Safeguarding the Human Rights of Persons with Disabilities: An Analytical Approach

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## ABSTRACT

*'In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic'*

*-Justice R M Lodha*

*The link between disability and human rights has been well established after the world adopted the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol. For a long time, it was assumed that a person is born with a disability due to his past karma. The persons with disabilities not only suffer from the agony of being physically handicapped, but also suffers from the malice of being socially handicapped. They also face adjustment problems of different nature. They have to suffer from the feeling of insecurity, both physical and emotional. The biased or false notions about disability in the mind of a common man, deprive a disabled person of his right to live meaningful life, which results in deep mental anguish, physical discomfort, aversion, ridicule and scorn of the able-bodied, which escalates emotional problems. The world community has brought a variety of policies and conventions to ameliorate the living conditions of persons with disabilities, still there is something lacking probably the mindset of the society to accept and respect the persons with disabilities. As Supreme Court of India observed in the case of National Federation of Blinds, U.P. v. State of U.P. that 'the problems on disability are mere syndrome, the root causes are inherent in mass poverty, social segregation and illiteracy. The only permanent solution of disability problem, which a handicapped person faces, could be their psycho-social and economic integration and proper placement which will enable them to stand on their own with dignity and decency.' The present paper tries to trace the international attempts and their compliance to address various issues and challenges in India with a newly enacted law RPWD Act, 2016 which repealed the PWD Act, 1995. The paper also analyses the decadal growth of population as per census 2011.*

**Keywords:** Disabled persons, Discrimination, UNCRPD, RPWD Act, 2016.

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## I. INTRODUCTION

Disability is a situation that continues since human race has been originated, but the person with any form of disability always remained marginalized, and deprived of fundamental human rights like getting education, moving freely, living independently, getting jobs, appearing in competitive exams and asking for a scribe<sup>2</sup>, proper health care, creating family, and having a dignified & decent life<sup>3</sup>. For a long time, the society considers the disabled person as unwanted members and they are treated like second class citizens. There is dire need to give proper attention and empathy to persons with disability. They are also called as Especially Abled Persons. Hence special attention and little care is sufficient for their well - being and to remain in the mainstream of the society.

According to World Health Organization<sup>4</sup>, about 15 percent of the total population of the world live in condition of disability. In these 93 million children and 720 million adults are living with significant disability which lead them to face significant difficulties in functioning. This data probably makes them world's largest and most disadvantaged minority.

Another fact is that poor people are more likely to acquire disability during their lifetime as disability is closely related to poor socio-economic condition of the family, illiteracy, poor nutrition, and low rates of immunization against diseases, unhealthy and dangerous environment.

Similarly, disability can also result in poverty. The ignorance, neglect, and lack of will on the part of government leaves the person with disability deprived of job, family, movement, decision, education, independency, health care, and even some time voting. Other than the poverty, poor medical conditions during pregnancy, lack of pre-natal and post-natal care, disasters, and traffic accidents results in the disability of millions of people all over the world especially in developing countries. The situation in developed countries is a little better, as the aforesaid reasons of disability are controlled more effectively, but not satisfactorily.

### **(A) Who is a disabled person?**

“Disabled person” means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, because of a deficiency, either congenital or not, in his or her physical or mental capabilities<sup>5</sup>.”

“Persons with disability include those who have long term physical, mental, intellectual or

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<sup>2</sup> Krishnadas Rajgopal, Supreme Court bats for more facilities for disabled, THE HINDU, Feb 12, 2021, <https://www.thehindu.com/news/national/supreme-court-bats-for-more-facilities-for-disabled/article33815027.ece>.

<sup>3</sup> National Federation of Blinds, U.P. v. State of U.P. AIR 2000 All 258

<sup>4</sup> 10 FACTS ON DISABILITY, <https://www.who.int/news-room/facts-in-pictures/detail/disabilities>.

<sup>5</sup> Article 1, Declaration on the Rights of Disabled Persons 1975.

sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>6</sup>”

## **II. INTERNATIONAL ATTEMPTS TO AMELIORATE THE RIGHTS OF PERSONS WITH DISABILITY**

The United Nations has been making attempt to secure the rights of disabled person since its inception. Other than the universal recognition of individuals rights in the United Nations Charter 1945, Universal Declaration of Human Rights 1948, U.N. Declaration of the Rights of the Child 1959, International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Socio and Cultural Rights 1966 etc. the United Nations adopted the “Declaration on Social Progress and Development, 1969” which addressed the provisions of rehabilitation of mentally and physically disabled person. In 1970’s the U.N. General Assembly made concrete efforts by adopting two major declarations especially on disabled persons i.e., Declaration on the Rights of Mentally Retarded Persons, 1971<sup>7</sup> and Declaration on the right of Disabled Persons, 1975<sup>8</sup>.

After that General Assembly declared 1981 as the “International Year for Disabled Persons” (IYDP), stressing its theme ‘Full participation and Equality’. Years 1983 to 1992 were proclaimed as United Nations Decade of Disabled person. Again in 1991 the General Assembly adopted 25 principles for the protection of persons with Mental Illness and for the Improvement of Mental Health. The United Nations General Assembly declared December 3 of each year as International Day of Disabled Persons (IDDP).

The latest addition to the already existing human rights instruments and treaties is the Convention on the Rights of Persons with Disability and its optional protocol of 2006 which offer the persons with disability an unprecedented level of protection. It deals in detail the rights that all persons with disability enjoy and the obligations of the state parties to insure them. The Convention and its protocol were opened for signature in March 2007. This Convention came into force on May 3, 2008.

## **III. LAWS IN INDIA FOR PERSONS WITH DISABILITIES - AN OVERVIEW**

The Constitution<sup>9</sup> does not define the term disability or identified the disabled as a separate social group but the words like “everyone”, “all” “every person” shows the intention of the makers to incorporate the concept of equality in its real sense as its ideal and give every person

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<sup>6</sup> Article 1, UN Convention on the Rights of Persons with Disabilities, 2006.

<sup>7</sup> General Assembly Resolution No. 2856 (XXVI) of Dec. 20 1971.

<sup>8</sup> General Assembly Resolution No. 3447 (XXX) of Dec. 9 1975.

<sup>9</sup> The Constitution of India, 1950

disabled or not the equal rights.

The Constitution of India without using the word disability secured their rights and placed them at same footing as any other citizen of India. However, under Article 39A and 41 the word disability was used.

Equal justice and free legal aid<sup>10</sup>- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Right to work, to education and to public assistance in certain cases<sup>11</sup>- 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. Thus, it is evident that the Indian Constitution does not discriminate between the disabled and non- disabled.

#### **(A) Special Laws for Disabled in India**

India ratified The Convention on the Rights of Persons with Disability, 2006 on 1<sup>st</sup> October 2007 and therefore is under a constitutional obligation to enact its provision in its domestic laws. The UN Convention on the Rights of the Persons with Disability, 2006 recognizes the importance of international development in supporting national efforts, because the only way to ensure the disabled persons is to guarantee those rights through national laws. India being a welfare state enacted some specific legislation for the protection of the rights of disabled persons. Mental Healthcare Act, 2017 has replaced The Mental Health Act, 1987; The Rehabilitation Council of India Act, 1992; The Rights of Persons with Disabilities Act, 2016 (RPWD Act) has replaced The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which defined disability<sup>12</sup> to mean – Blindness, Low vision, Leprosy cured, Hearing impairment, Locomotive disability, Mental retardation and Mental illness. These seven forms of disabilities have been extended to more than 15 forms of disabilities in the recent RPWD Act of 2016. Hence almost all sorts of disabilities find place in the Act of 2016 so as to address the human rights issues of persons with disability.

#### **(B) Disabled Population in India**

As per the census of India, 2011, the following tables<sup>13</sup> illustrate the total number of

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<sup>10</sup> Article 39A of the Constitution of India, 1950

<sup>11</sup> Article 41 of The Constitution of India, 1950

<sup>12</sup> Section 2(i) The Persons with Disabilities (Equal Opportunities Protection of rights and Full Participation) Act, 1995 (now repealed).

<sup>13</sup> Source: C-Series, Table C-20, Census of India 2001 and 2011.

populations of male and female disabled persons in India. A comparison is also provided for the understanding of change in the number of disabled persons during the span of a decade from 2001 to 2011.

Disabled Population by Sex and Residence in India, 2011			
Residence	Persons	Males	Females
Rural	18,631,921	10,408,168	8,223,753
Urban	8,178,636	4,578,034	3,600,602
Total	26,810,557	14,686,202	11,824,355

Table 1 - Disabled Population by Sex and Residence in India, 2011

Decadal Change in Disabled Population by Sex and Residence, India, 2001-2011						
Absolute Increase				Percentage Decadal Growth		
Residence	Persons	Males	Females	Persons	Males	Females
Rural	2,243,539	997,983	1,245,556	13.7	10.6	17.8
Urban	2,660,249	1,382,584	1,277,665	48.2	43.3	55.0
Total	4,903,788	2,380,567	2,523,221	22.4	18.9	27.1

Table 2 - Decadal Change in Disabled Population by Sex and Residence, India, 2001-2011

### (C) Analysis

Here we can observe that the number of disabled persons has been increased from 2001 to 2011. Wherein the Rural areas' disabled population is higher which needs to be addressed and their human rights are to be ascertained by the society and government at large. There has been a significant proportion of disabled population in urban and rural areas. The number of disabled persons has increased in the year 2011 as compared to the census of 2001, may be because of the increased population. Hence, the percentage of disabled persons in India has increased both in rural and urban areas during the last decade. Proportion of disabled population is higher in rural areas. Decadal increase in proportion is significant in urban areas. Nevertheless, having the so called better medical facilities, it is ironical to see the rise in proportion. These increases have to be brought down. The census of 2021 is due to be conducted which has not yet undertaken because of covid-19 pandemic. There are multiple health related issues too during covid period and addressing them is the biggest challenge.

## IV. ISSUES AND CHALLENGES PERTAINING TO DISABILITY

Women, men and children are among the most marginalised in all societies and face unique

challenges in the enjoyment of their human rights.<sup>14</sup> The issues are somewhat similar in every part of the globe where the disabled are subjected to discrimination, exclusion, dehumanization, isolation and neglect. Regardless of a country's socio-economic condition or human rights activism the disabled persons are routinely denied of their basic human rights as they are still viewed as "object" of welfare or medical treatment rather than "holders" of rights. These challenges have been recognized and addressed by the United Nations in various conventions and declarations specifically in Convention on rights of Persons with Disabilities, 2006. Nevertheless, the core international instruments pertaining to human rights have recognised and offered significant potential for protection and promotion of rights of all men and women including persons with disabilities but unfortunately this potential could not be utilized for the persons with disabilities.

In India too, the persons with disabilities could not be given their due by the mainstream society, hence in the year 2016 a new law has been adopted to address the challenges specific to persons with disabilities. The following are some of the key challenges:

#### **(A) Discrimination**

Discrimination against persons with disabilities has to be seen in various segments which includes attitudinal approach at all stages of life ranging from birth to old age. Public attitude towards disabled persons passes through four phases: exposure and destruction, care and patronage, education and vocational training and social assimilation.<sup>15</sup> Aging discrimination and disability are another impediment in the society which is not less than race and sex-based discrimination.<sup>16</sup> There has been much reverence towards the older parents in Indian culture but due to changing lifestyles, modernization, influence of western culture and individualistic values the aged persons are considered as burden hence neglected, whereas in Western culture old parents are abandoned.<sup>17</sup>

There should not be any discrimination merely on the ground of disability unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.<sup>18</sup> Hence it shall be the duty of government to ensure that persons with disabilities shall enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.<sup>19</sup>

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<sup>14</sup> United Nations Human Rights Monitoring the Convention on Rights of Persons with Disabilities- Guidance for Human Rights Monitors, New York and Geneva, 2010, [https://www.ohchr.org/Documents/Publications/Disabilities\\_training\\_17EN.pdf](https://www.ohchr.org/Documents/Publications/Disabilities_training_17EN.pdf).

<sup>15</sup> Dr. G.N. Karna, *United Nations and the Rights of Disabled Persons: A Study in Indian Perspective*, APH Publishing India, 1999.

<sup>16</sup> R.L. Wiener, S.L. Willborn (eds), *Disability and Aging Discrimination*, Springer Science + Business Media, LLC 2011.

<sup>17</sup> *Ibid.*

<sup>18</sup> Section 3(3), Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016).

<sup>19</sup> Section 3(1), Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016).

**(B) Community Life<sup>20</sup>**

It is yet another big challenge for the persons with disabilities in as they hardly get opportunity to mingle in the society. The 2016 Act provides for the obligations<sup>21</sup> upon the state to take measures to promote and protect the rights of all persons with disabilities to have a cultural life and to participate in recreational activities equally with other members of the society. This includes the facilities, support and sponsorship to artists and writers with disability to pursue their interest and talents.<sup>22</sup> Also, they have to be provided with the facilities to participate in scouting, dancing, art classes, outdoor camps and adventure activities.<sup>23</sup> Every child with disability shall have right to stay with his family, he or she shall not be separated from the family on the ground of disability except on an order of the competent court, if required, in the best interest of the child.<sup>24</sup>

**(C) Education**

Education is the fundamental right of children hence they must not be devoid of this right. The children with disability have not been sent to schools for education but in case they got access to schools, they have to face different types of issues, like, ramps to reach the classrooms in case of locomotor disability, access to toilets, seating arrangement in classroom and most importantly awkward or disgusting attitude towards such children. Its ironical to see that the mainstream wants to 'invisibilise'<sup>25</sup> the differently abled. However, the appropriate government is under an obligation to provide reservation to the persons with benchmark disabilities in admission in terms of upper age relaxation of five years<sup>26</sup> for admission in higher education institutions which are run by government or aided by government. This has been highlighted by Delhi High Court in the case of Anmol Bhandari (Minor) v. Delhi Technical University<sup>27</sup> much before the Rights of Persons with Disabilities Act, 2016 that a mentally challenged person is at par with SC/ST person and thus the minimum of 35% marks as in the case of SC/ST should be the requirement under the Aptitude Test.

Realizing their pitiful position, the international communities united to reaffirm the basic rights and freedoms of persons with disability and to provide them effective legal tools through their states, to end the discrimination, injustice, humiliation, exclusion and isolation from which the

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<sup>20</sup> Section 5(1), Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016).

<sup>21</sup> Section 29, Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016).

<sup>22</sup> Section 29(a), Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016).

<sup>23</sup> Section 29(e), Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016).

<sup>24</sup> Section 9, Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016).

<sup>25</sup> Martand Jha, 'Recognizing differently abled as minority', <https://www.epw.in/journal/2016/36/letters/recognising-differently-abled-minority.html>.

<sup>26</sup> Section 32, Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016).

<sup>27</sup> 2012 (131) DRJ 583 DB

disabled persons are suffering from ages.

## V. JUDICIAL RESPONSES TO THE PROBLEMS OF THE PERSONS WITH DISABILITY

The Supreme Court as the guardian of the constitution and protector of the fundamental rights of the people secured the rights of persons with disabilities. Some landmark judgments recognizing the fundamental human rights of persons with disability are necessary to be discussed here to understand the judicial trend and inclination towards disabled persons.

In the case of **Javed Abidi V. Union of India**<sup>28</sup> the Supreme Court in lights of the objectives of the Person with Disability Act, 1995 directed the Indian Airlines to grant persons with 80% locomotive disability the concession which the airlines were already giving to the persons suffering from blindness. The court also observed that the government cannot use the financial constraints as a shield against all disability related duties.

The Supreme Court discharging its duties took a *suo moto* action on the incident of fire in the mental asylum in Ervadi in Ramanathapuram district of Tamil Nadu where twenty-five inmates died because they could not escape the fire as they had been chained to poles or beds. In this case of **In Re, Death of 25 chained inmates in asylum fire in Tamil Nadu**<sup>29</sup> the apex court issued direction to implement the provisions of The Mental Health Act, 1987.

In **Sharda V. Dharmpal**<sup>30</sup> Justice S.B. Sinha delivering the judgment said that “In the event a court of law may find a person as disabled either physically or mentally, an appropriate direction for his rehabilitation having regard to the Universal Declaration on the Rights of Disabled Persons, 1975, provisions of the Persons with Disability Act, 1995, the National Trust of Welfare Act, 1999 and other statutes may be issued.

The Supreme Court in the case of **Kunal Singh V. Union of India**<sup>31</sup> secured the rights of a disabled person and held that an employee who acquires disability during his service is to be protected under the provisions of Persons with Disability Act, 1995 and the Central Services Pension Rules cannot override it. The Court observed that Persons with Disability Act, 1995 is a special legislation dealing with the persons with disabilities to provide equal opportunities, protection of rights, and full participation to them. It being a special enactment, doctrine of ‘*generally specialibus non-derogate*’ would apply in this reference.

In the cases of **Deputy Secretary V. Sanchita Biswas**<sup>32</sup> and **State of Rajasthan v. Dr. Vijay**

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<sup>28</sup> AIR 1999 SC 512

<sup>29</sup> (2002) 3 SCC 31

<sup>30</sup> (2003) 4 SCC 493

<sup>31</sup> (2003) 4 SCC 524

<sup>32</sup> AIR 2000 Cal. 20

**Kumar Agarwal**<sup>33</sup> in which the court provided for reservation in educational institutions.

In another Landmark judgment of **National Federation of Blind v. Union of India**<sup>34</sup> the apex court issued directions to the Union Public Service Commission to allow the blind persons to compete in the exam for Indian Administrative and Allied services.

In the case of **Aryan Raj v. Chandigarh Administration & Others**<sup>35</sup> the Hon'ble Supreme Court held that "people suffering from disabilities are also socially backward, and are, therefore, at the very least, entitled to the same benefits as given to the Scheduled Castes/Scheduled Tribes candidate."

In **Syed Bashir-ud-din Qadri v. Nazir Ahmed Shah**<sup>36</sup> Justice Altamas Kabir held that a person having cerebral palsy should be given access to an external electronic aid as a reasonable accommodation to offset the impact of his inability to write on the blackboard.

Hon'ble Supreme Court Bench (consisting of Justices Dr. D Y Chandrachud, Indira Banerjee and Sanjiv Khanna) in **Vikash Kumar v. Union Public Service Commission and Others**<sup>37</sup> very beautifully addressed that the cases like this 'offer us opportunity to make a meaningful contribution in the project of creating the RPWD generation in India. A generation of disabled people in India which regards as its birth right access to the full panoply of constitutional entitlements, robust statutory rights geared to meet their unique needs and conducive societal conditions needed for them to flourish and truly become co-equal participants in all facets of life.'

We have seen that the judiciary has always played a positive role in protecting the human rights of person with disabilities, should be promoted for the same reason that human rights are promoted for all other people; because of the inherent and equal dignity and birth of each human being, the society should understand that the disabled persons are not asking for any special treatment, they are asking for equality and opportunity to be recognized and accepted as the part of the society for their abilities rather than disabilities.

## VI. CONCLUSION AND SUGGESTIONS

While it is both appropriate and desirable that persons with disabilities should speak for themselves as they have the expertise of lived experience of disability, it is also true that like all other marginalized and excluded groups, they need active support and solidarity from the larger civil society. It is in this sense that organizations for persons with disabilities can play a

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<sup>33</sup> AIR 2001 Raj. 358

<sup>34</sup> AIR 1993 SC 1916

<sup>35</sup> Civil Appeal No. 2718 of 2020

<sup>36</sup> (2010) 3 SCC 603

<sup>37</sup> Civil Appeal No. 273 of 2021

significant role. Contribution of such organizations in matters of delivering services must also be acknowledged. It is desirable that organizations for persons with disabilities should also play their part in promoting and strengthening organizations of persons with disabilities. Disabled persons presently suffer discrimination on social and economic terms. The Rights of Persons with Disabilities Act, 2016 is a step in the right direction in ensuring their potential can be maximized and thus they can overcome their difficulties.

It has been found that every section of the society at both international and national levels is trying to bring the disabled persons into the mainstream. The United Nations Convention on the Persons with Disabilities, 2006 has been the founding stone for many countries like India to assure the human rights of the persons with disabilities.

It is therefore recommended that for proper assurance of the human rights of persons with disabilities there is need to motivate the social inclusion of disabled persons and creation of jobs which suit them as well as empower them. The reasonable accommodation is the need of the hour so as to avoid discrimination in the employment<sup>38</sup>, There is further need of proper and free medical assistance to this special section of the society.

The newly enacted law in India must be implemented with honesty so as to develop faith in the governance to be considered as good governance for the persons with disabilities. They must be given due respect and importance instead of sympathetic treatment. They must be recognized and accepted as a part of society for their special ability rather disability.

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<sup>38</sup> Section 20 (2) The Rights of Persons with Disabilities Act, 2016.

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