

# Position of Persons with Disability in India: A Critical Analysis

Dr. Veena Kumari\*

Assistant Professor (Law) University Institute of Legal Studies, Himachal Pradesh University, Shimla-4

**Abstract – Indian Constitution has declared India as a welfare state. As a welfare State India is under obligation to take effective steps for the overall wellbeing of and development of each section of the society. However disabled persons are one of the most neglected sections of the society. Certain basic facilities like accessibility to the public places, offices, educational institutions and sufficient number of trained teachers, tools required for their education and training are not available to them. Although, Indian Constitution provides right to equality, but practically, this right is denied to them in many respects. If they will not get proper opportunity and means to develop their skills, their social and economic position will be adversely affected. India has signed various Conventions for the protection of rights of persons with disability. Various Human right Conventions also make it obligatory on the States to take effective steps to protect human rights of every section of the society. In order to fulfill the obligations under these Conventions, certain legislations have been passed by the Indian parliament. These legislations provide certain rights and concessions to the persons with disability. However the need of the hour is to understand the needs and problems of persons with disability from a new perspective and to take effective steps in that direction. The laws should be amended to the new challenges and requirements of the persons with disability.**

**Key Words: Disability, Persons with Disability, Constitutional Provisions**

-----X-----

## INTRODUCTION

In the past few Decades, the concept of human rights has attracted the attention of the entire humanity. Human rights are inherent of all human beings without discrimination. By virtue of being human, all humans are equally entitled to human rights irrespective of the nationality, place of residence, sex, religion or ethnic origin.[1] However the practical aspect is that disabled person suffers a lot of discrimination due to their disabilities. The disabled persons have been oppressed, marginalized, stigmatized in almost all societies. They constitute a section of the population, which is most backward, least reined and poorest of the poor and nearer of the leak. They have been racially, educationally and economically disadvantaged. Thus they are denied their right to self -ascertain Identity and development.[2]

As per the Census of 2011, in India, out of 121 Cr. Population, about 2.68 Cr. Persons are disabled, which is 2.21% of the total population.[3] Moreover it is apprehended that actual ratio is much more than this. Thus disabled persons constitute a significant section of the Indian population. In an era of inclusive development, 'where the emphasis has been laid the

retainable development, It is essential, that focused initiatives should be taken for the welfare of the disabled persons.

Rights have become powerful tool to compel States and non-State actors to ensure that their obligations are fulfilled. So for the promotion and protection of human rights of disabled persons, recognition of their rights is most essential. At the International level, the Non-Governmental Organizations are promoting Human rights very actively. The use of Internet and development of transitional civil societies in global interaction has also helped the cause of human rights protection. AT the institutional level, human rights have acquired newer meaning and this development has been aided by the formation of human rights institutions such as United Nations human rights committee, which enquires into the human rights situations in various States. Various Regional Courts are also playing an important role in human right protection. At the National level, these developments have significantly changed the human rights scenario. Most of the countries including India, have in their own Constitutions or

other legislations, provisions for fundamental rights or other major Human rights Covenants.[4]

### DISABILITY: MEANING:

Any restriction or lack of ability to perform activities in a manner or within the range considered normal for human beings, resulting from impairment is termed as disability. Disabled Persons means any person to ensure by himself or herself, wholly or partly, the necessities of a normal individual or a social life, as a result of deficiency, either congenital or not in his or her Physical or mental capabilities.[5] Persons with Disabilities' include those who have long term Physical, mental, intellectual or sensory impairment, which in interaction with various barriers may hinder full and effective participation in the society on equal bases with others.[6]

Disability is a contested concept, with different meanings of different communities. It may be used to refer to physical or mental attributes that some institutions, particularly medicine, view as needing to be fixed.[7] Disability is an impairment that may be cognitive, developmental, intellectual, activity limitations, sensory or some combinations of these. It substantially affects a person's life activities and may be present from birth or occur during a person's life time.

### CAUSES & EFFECTS OF DISABILITY:

There are various factors which leads a person to become disable. There can be genetic factors and lack of access to the basic services. These factors can be prenatal, natal and post natal. In prenatal factors can be poor nutrition, improper medication, taking drugs, smoking by the mother or mother may be exported to disease, mental or Physical trauma.[8] During the birth of the child and after the birth there are many factors, which can be responsible for disability, like poverty, malnutrition, occupational hazards, accidents and wars etc. These disabilities can be physical in nature, cognitive, behavioral or even emotional. To have a disability means that one has fundamental difficulty accomplishing things that others take for granted. The people with disability are often subjected to social stigma and discrimination. There are many social factors that can affect whether are not individuals with difficulty are included or excluded from participation in various activities. These factors in turn can affect the development, economic security and self-esteem. Persons with disability often have lower education accomplishments, poor health conditions, higher poverty rates and less economic engagements than people without disability. Our society is not enthusiastic to give employment to people with disability, especially in a situation where unemployment is major issue in the Country. In India, a majority of disabled people

resides in rural areas, where the rehabilitation services are not available to the people.[9] Disabled persons by virtue of being human, enjoy all human rights. However due to social indifference, Psychological barriers, disabled persons in India remain an invisible category.

### INTERNATIONAL PERSPECTIVE:-

United Nation has played a major role in awareness, promotion and protection of human rights of different sections of the society. For the improvement of conditions of persons with disabilities, the United Nation has adopted various declarations and conventions.

- (i) **The Declaration on the Rights of Mentally Retarded Persons; 1971:-** This declaration was adopted by the General Assembly keeping in view the necessity of providing help to mentally retarded persons and to enable them to develop their abilities to lead a normal life. This declaration laid down some basic principles for advancement of their rights. Firstly, the right to equal treatment with other human beings, Secondly right to proper medical care and physical therapy, thirdly, right to economic security and employment and their right to live with family or foster parents.
- (ii) **The Declaration on the Rights of Disabled Persons, 1975:-** This declaration was adopted by the General Assembly with the objective to prevent physical and mental disabilities and to assist the disabled persons to develop their abilities in different fields of activities and to promote their integration as far as possible. This declaration aimed at providing certain rights to disabled persons like right to medical care, Psychological and functional treatment, including prosthetic appliances to medical and social rehabilitation, educational services and other services which enable them to develop their capabilities and skills to the maximum and will hasten the process of social integration or reintegration.[10] Apart from these rights, this declaration also recognizes the right to economic and social security, right to employment, right to legal aid by qualified persons when such aid proves indispensable for the protection of their person and Property.

These declarations recognize various rights of persons with disabilities. However these are only declarations, where the signatory States have only recognized these rights and are not under obligation to provide them to their citizens. In order to bind the States for providing these rights to the

persons with disability, a major mile stone has been touched by United Nation Organization by adopting the Convention on the Rights of the Persons with Disabilities and Optional Protocol in 2006. It is the first comprehensive human rights treaty of 21<sup>st</sup> century. This convention is intended to act as human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reforms that all persons with all type of disabilities must enjoy all human rights and fundamental freedoms. This convention clarifies and quantifies how all categories of rights apply to the persons with disability and identifies the areas where adaptations have to be made for persons with disabilities.[11] The States are under the obligation to provide these rights to such persons and must provide remedy, where these rights are violated.

In order to monitor the implementation of this convention by the State parties, a committee on the rights of persons with disabilities (CRPD) has been established. Article 34 of the Optional protocol on the Rights of persons with disabilities makes the provision for establishment of such committee. All the signatory States will be under obligation to submit regular reports to the committee about the implementation of these rights. The optional protocol to the convention also gives power to the committee to examine the individual complaints with regard to the alleged violation of the convention by the State parties to the protocol. The committee can provide remedial measures where the States fail to redress his/her grievances. In order to implement this convention, the State parties are required to pass enabling legislation.

A number of International commitments and guidelines came into effect in recent past targeting the welfare of the disabled persons. India is signatory to the Declaration on full participation and Equality of people with Disabilities in the Asia Pacific Region (2000). India is also a signatory to the Bikwo Millennium Frame work (2002) for action towards the inclusive barrier free and right based society for persons with disability. India has ratified the UN convention on the Rights of Persons with Disabilities (2008). The Incheon strategy to 'Make the Right Real' for the person's with disability in Asia and Pacific (2012) provides the Asian and Pacific region and the world with the first set of regionally agreed disability inclusive development Goals. Apart from the Constitutional guarantee, India has passed various legislations for welfare of persons with disables

#### **INDIAN POSITION:-**

Indian Constitution has declared India as a welfare state. In tune with the Philosophy of welfare State, ideally, disabled persons should receive special attention and treatment. There should have been a constitutional Guarantee for full human rights,

protection against exploitation and discrimination. The Provision should be made for their all-round development. Under the Indian constitution, all fundamental and Constitutional rights are provided to all citizens of India. However, no special provision has been made for disabled persons. But even in the absence of a specific Constitutional provision, it is the duty of a State to provide sufficient facilities, training, rehabilitation to the handicapped, so that they may lead a normal life without any burden on their families and the communities.[12] Apart from the Constitutional guarantee, India has passed various legislations for the welfare of persons with disabilities.

#### **(1) Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act 1995:-**

The Government of India had passed this comprehensive piece of legislation, with a view to enforce the human rights of disabled in pursuance of the UN Declaration. This Act provided for both preventive and promotional aspect of rehabilitation like education, employment, vocational training, reservation, research, man power development, allowances for the disabled, special insurance schemes for the persons with severe disability.

#### **(2) The Rights of Persons with Disability Act, 2016:-**

This Act lays down stress on non-discrimination, full and effective participation and acceptance of disability as a part of human diversity and humanity. In the Rights of persons with disabilities Act 2016, 21 types of disabilities have been recognized, which were only 7 in the earlier Act. Under this Act persons with bench mark disabilities are defined as those, who at least must be suffering from 40% of any of these disabilities. These persons will have right to reservation in Government higher educational institutions and reservation in employment in the public sector, which will be 4% of the total seats.

It is endured under the Act that all Persons with disability (PWD) shall enjoy equal legal capacity on an equal basis with others in all aspects of life.[13] The Act provides for the Access to inclusive education, vocational training and self-employment of disabled persons without discrimination. For this purpose building, campuses and various facilities are to be made accessible to PWD and their special needs are required to be addressed. Appropriate health care measures, insurance schemes and rehabilitation Programmes for the PWD are also to be undertaken by the Government. The facility of recreation, cultural life and supports activities are also to be undertaken by the Government. The Act, intends to promote

reservation for PWD in the Private sector, by giving some incentives to the employer. Atrocities on the PWD have been made punishable with imprisonment of 6 months extendable to 5 years with fine.

### PROGRAMMES PROVIDING RIGHTS AND CONCESSIONS TO THE DISABLED PERSONS:-

Government of India has taken the responsibility of providing optimal environment to ensure full participation of persons with disability. In this context, Government has introduced a number of welfare Programmes, schemes, concessions and facilities for educational, vocational and economic rehabilitation.

#### (a) Scheme of Integrated education for the disabled children:-

Under the Scheme handicapped children are sought to be integrated in the normal school system. For this purpose 100% assistance is provided to the States/UTs for education of children suffering from certain mild handicaps in the common schools with the help of necessary aids.[14]

**(b) National Trust For welfare of Mentally Retarded Persons:-**The national Trust for interfere of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 provides for total care and protection to persons with Autism, cerebral palsy, Retardation and Multiple Disabilities and also to manage the properties bequeathed to the trust. It is an important legislation to take care of the most neglected section of Disability sector.

#### (c) Financial Assistance to the Persons with Disability:-

The National Handicapped Finance and Development Corporation (NHFDC), a subsidiary under the ministry of social Justice and empowerment, Government of India, promotes infrastructure development schemes directly leading to income generation. This corporation provides self-employment opportunities to the persons with disability by providing loans at the very low rate of interest to the persons with disability.

#### (d) Travel concessions:-

Government provides various travel concessions to the persons with disability. These concessions are provided in the buses and trains. While travelling by air, such persons can carry an extra bag for carrying their assistance aids, if required.

#### (e) Disability Pension:-

People who are above 18 years of age, suffering with more than 80% disability and are living below poverty live are entitled to the disability pension under the

Indira Gandhi Disability pension scheme. Various Non-Governmental Organizations help such persons to get their pension.

#### (f) Income Tax concession:-

Under sections 80 DD and 80 U of Income Tax Act, 1961 persons with disability are entitled to certain Income Tax concessions.

#### (g) Certification of Disability:-

The Medical boards have been constituted at state level, District level to assess the percentage of Disability and then issue disability certificates, whose disability is 40% and above.

### JUDICIAL RESPONSE:-

The rights of people with disabilities should be approached from the human rights perspective, which recognize that persons with disabilities are entitled to enjoy the full range of guaranteed rights and freedoms without discrimination on the ground of disability. There should be full recognition of the fact that persons with disability are integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedom like others.[15] The Indian judiciary has adopted a proactive approach in the matters of differently abled persons. An Important issue was raised before the Supreme Court in the *Disabled Rights groups & another v/s union of India & others*. [16] In this petition, the petitioners claimed the proper access to orthopedic disabled persons so that they are able to move freely in the educational institutions and access the facilities. Other important issue raised in the petition pertained to pedagogy i.e. making adequate provisions and facilities of teaching for disabled persons, depending upon the nature of their disability, to enable them to undertake their studies effectively. In this case the Supreme Court directed University Grant Commission to constitute a committee of experts including disabled persons, to consider the feasibility for accessibility for students with disabilities in University, college concerned. The committee shall also consider feasibility of constituting an in house body in each educational institution (of teachers, staff, Students and Parents) for taking care of day to day needs of differently abled persons.

In another landmark judgment in *Suchita Srivastava V/S Chandigarh Administration* [17] the reproductive rights of a women with mental retardation residing at a Government run welfare institution, who wanted to keep the baby and carry on the pregnancy, which was the result of a rape. The Chandigarh Administration filed a petition in High Court to seek permission for termination of pregnancy. High Court gave directions for the termination of pregnancy. But this woman

approached Supreme Court with the help of Amicus. The Supreme Court clearly held in this case that the MTP Act required the consent of mentally retarded women for the termination of Pregnancy. The Supreme Court held that "her reproductive choice should be respected in spite of other factors such as lack of understanding of sexual act as well as apprehensions about her capacity to carry the pregnancy to its full term and assumption of maternal responsibilities thereafter. There are various rights which are provided to the disabled persons under Rights of persons with disability Act and other relevant Acts in **Javed Abidi V/s union of India**[18] a person with orthopedic disability was not given concession by the Indian Airlines, even though a person with visual disability was given concession by the same Airline. This was claimed as a sort of class level discrimination among the disabled group at large. The Supreme Court held in this case that a person having orthopedic disability 80% or above, can be given concession as they have difficulty in moving. The court ruled that Indian Airlines will have to give the concession to persons with orthopedic disability, on the production of Disability certificate, issued by the chief medical officer only. Same ground was taken in a writ petition filed by the Deaf Employees welfare Association seeking the direction to the central and state Governments to grant equal transport allowance to its Government employees suffering from hearing impairment as what was being given to the other disabled including blind employees. The court allowed the writ petition and held that "there cannot be further discrimination between a person with disability of blindness and a person with disability of hearing impairment.[19]

### **CRITICAL ANALYSIS:**

United Nation is playing a very important role in promotion and protection of human rights. In the last two decades, exemplary work has been done by the united nation, by concluding various human rights treaties. The convention on the rights of Persons with disability, 2006 is one of the examples of such conventions. This convention intends to protect the human rights of disabled persons. India is a signatory to this convention; hence India was under obligation to implement these conventions at the national level. For that purpose a number of enabling Acts have been passed by India, from time to time. For the protection of interests of Disabled persons, a number of bodies and committees have been constituted from time to time. Some steps have been taken by the Government in this direction. But still we are very far from our goal. Although, our Constitution provides rights to equality and other fundamental rights equally to every citizen of India but practically, disabled persons are not treated equally in our society. They do not have equal access to education, public places, employment, public services and so on. A large number of children with disability remain out of school. Even if they do stay in school, the facilities which are required for the

persons with disability, are not available to them . Sufficient trained teachers, teaching aids for blind, deaf and dumb children are generally not available. Lower education ultimately leads them to lower employment and income. Although the Sarva Shiksha Abhiyan has made an effort to promote the inclusion of children with disabilities. The system faces a lot of challenges in identifying these children as well as responding to their needs. In order to improve this system, there should be proper co-ordination between the ministries of social Justice and Empowerment and Human Resource development, Rehabilitation council of India and the teacher training system.

The statistical Data of 2016 shows that majority of Disabled person's lives in rural areas where there is lack of awareness among the masses about the pre-natal and natal facilities provided by Government of India .Various deficiencies during the pregnancy and mal- nutrition are some of the major reasons for disability. These disabilities can be avoided and prevented including those that arises from medical issues during pre-natal, natal and post-natal conditions. But health sector is not pro-active in spreading awareness in this regard, particularly in rural areas .Even though many persons with disabilities are capable of productive work, they remain unemployed. Both public as well as private sectors, hardly offers employment to these people. Although 4% posts are reserved for persons with disability but only 10% ports are identified as suitable.[20]

In order to improve the condition of the persons with disability, public awareness and understanding of disability must be increased. This can be done with the use of media, social media and others such modes. Government organizations, voluntary organizations and professional Associations should consider running social marketing champions that can change attitudes on stigmatized issue such as disability, HIV, Mental Illness and leprosy. Involving the media is vital to the success of these campaigns and to ensuring the dissemination of positive.

### **REFERENCE**

1. Zecharian John (2014). Globalization and the humanized Society, (Ed) Human Rights Today, Gandhi PJ, Regal Pub. 2014, P.3
2. Shrivastava P & T Kumar P. (2015). 'Disability, its issues and challenges: Physosocial and legal aspects in Indian scenario, Delhi Psychiatry Journal, vol 18. No 1, April 2015, P.195
3. Disabled persons in India- A statically Profile 2016, Ministry of statics and

- Programme implementation, Govt. of India,  
<http://www.mospi.gov.in>
4. Kumar. C.R & Chochalingam K. (2001). Human rights, Justice & constitutional Empowerment, (ed) Oxford University Peers 2001, P.28
  5. [www.legalservicesindia.com](http://www.legalservicesindia.com).
  6. The 1975 Declaration on the Rights of Disabled Persons, Para 1
  7. The convention on the Right of Person with Disabilities, Article 1.
  8. Supra Note 2, P.196
  9. S. Ganesh Kumar, Guatam Roy & Sitanshu Shekher Kar: Journal of Family Medicine and Primary care, Walter klumer-Medkhow Publications, [www.ncbi.nlm.nih.gov](http://www.ncbi.nlm.nih.gov).
  10. The 1975 Declaration on the Rights of Disabled Persons, Para 6.
  11. <https://www.UN.org/development/desa> (visited on 12/12/2018).
  12. Prasad Lakshman, Human Rights of Disabled.p,104
  13. Section 13, The Rights of Persons with Disability Act, 2016
  14. Supra Note 2, P. 197
  15. National Federation for blinds UP Branch v/s state of UP AIR 2000 All 258
  16. Writ petition (cinil) No 292 of 2006.
  17. 2009 (9) SCC 1
  18. (1999) I SSC 467
  19. Deaf Employees welfare Association V/s Union of India. Civil petition 107 of 2011, Decided on Dec 12, 2013.
  20. <http://medium.com>

---

### Corresponding Author

**Dr. Veena Kumari\***

Assistant Professor (Law) University Institute of Legal Studies, Himachal Pradesh University, Shimla-4