

# Human Rights and Disability: National Initiatives

## Abstract

On 10 December 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights as under: - **“All human beings are born with equal and inalienable rights and fundamental freedoms.”** Indian Constitution also assure to make a society which has **Justice, Equality and Liberty** for citizens of India. Person with disabilities throughout the world are often marginalized and excluded from mainstream society. In many countries disabled persons are sent away from their families where they are isolated from home and society for their entire lives. They are more vulnerable to marginalization, exploitation, discrimination and abuse. Therefore, as for all disabled persons, the promotion and protection of their human rights, especially the right to family, equality, free movement, adequate standard of living and dignity becomes more critical. The present research paper is about analysing National Initiatives for disabled people.

**Keywords:** Human Rights, Disability, Discrimination.

## Introduction

### Meaning of Human Rights

“Human Rights”, in their basic meaning, “Are those minimal rights which every individual must have against the State or other public authority by virtue of his/her being a ‘member of the human family’ irrespective of any other consideration.”

### Meaning of Disability

“Disability” covers a broad range and degree of conditions, some visible and some not visible. A disability may have been present from birth, caused by an accident, or developed over time. There are physical, mental and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, and other conditions.

The concept of Human Rights is as old as the hills, as ancient as the very dawn of human civilization and as perennial and pure as the Ganges. Ancient Hindus, Greeks and Chinese knew in one form or the other, under one nomenclature or the other, the essence of Human Rights. Dharma, natural rights and natural law were manifestations of a primordial universal sense of Human Rights in the outlook of human kind everywhere. The concept of Human Rights was originally evolved in the field of domestic legislation as the Magna Carta in England. The real foundation of Human Rights in Constitutional Law actually dates back to the 17<sup>th</sup> century. In England, in the Petition of Rights of 1672, the Habeas Corpus Act of 1679 and the Bills of Rights of 1689. In the American Continent, the Charter of New Plymouth of 1620, expressed the principle of Human Rights. The Expression “Fundamental Rights of Man” Finds expression in the Declaration and other Constitutional instruments of Virginia, Maryland, New Jersey, Northern and Southern Carolina and in the American Declaration of Independence and the Bill of Rights of 1791.

### Aim of the Study

Many people with disabilities worldwide live in an isolated situation and therefore are denied of their basic human rights. The paper aims to study that who are these ‘disabled’ and what are their ‘human rights’. People with disabilities unfortunately are deprived of their basic rights such as to live free, equality, justice, adequate standard of living and human dignity. The paper intends to seek the causes responsible for the violation of human rights of persons with disabilities. It also aims to focus on the National initiatives taken for the promotion and protection of the rights of disabled persons.

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**Universal Declaration of Human Rights**

The Universal Declaration of Human Rights contains 30 Articles. It lays down the basis of Human Rights and Fundamental Freedoms to which all men and women everywhere are entitled, without any distinction as to race, sex, colour, language, religion, political or other opinions. It states the common standards of achievement for all people as "an expression of the legal conscience of mankind".

Article 1 of declaration proclaims, "All human beings are born free and equal in dignity and rights." Article 3 lays down, "Everyone has right to life, liberty and security of person." Article 5 says, "No one shall be subjected to torture or too cruel in human or degrading treatment or punishment.

Disabled persons have the inherent right to respect for their human dignity. Disabled persons whatever the origin nature and seriousness of their handicaps and disabilities have the same fundamental rights as their fellow-citizens of the same age which implies first and foremost the right to enjoy a decent life as normal and full as possible.

According to UN standard rules, "people may be disabled by physical, Intellectual or sensory impairment medical conditions or mental illness" such impairment conditions or illness may be permanent or transitory in nature a distinction has been made between disability and handicap. A handicap is considered a loss or limitation of opportunities to take part in community life on an equal level with others. The purpose of this distinction is to emphasise the focus on the shortcomings in the environment and in many organised activities in society that handicap a disabled person.

Thus, Standard Rules have defined disability from a perspective that emphasizes social conditions which disable a group of individuals by ignoring their needs of accessing opportunities in a manner conducive to their circumstances.

The world is home to over 600 million people with disabilities. Over two-thirds of them live in developing countries with high density of their population in Sub-Saharan Africa and in South and South-East Asia. Over the past two decades, dramatic shift in the perspective have taken for disability. Disability is positioned as an important dimension of human culture by human rights model. According to human rights model all human beings irrespective of their disabilities have certain rights, which are unchallengeable. It is very pathetic that person with disabilities face discrimination and barriers that restrict them from participating in society on an equal basis with others every day. They are denied of their basic rights such as to live independently in the community, to enjoy social protection, to be employed or to participate freely in social activities. A large number of persons with disabilities live in developing countries, often marginalized and in extreme poverty.

There are many different disabilities which affect individual people in different ways:

**Intellectual Disability**

When a person experiences difficulty communicating, learning and retaining information, they may have an intellectual disability.

**Mental Disability or Illness**

A mental illness affects a person's thinking, emotional state and behaviours.

**Physical Disability**

A physical disability may affect either temporarily or permanent, a person's physical capacity and mobility.

**Sensory Disability**

A sensory disability affects one or more senses; sight, smell, touch, taste or spatial awareness.

Person with disabilities have, however, remained largely invisible, often side lined in the rights debate and unable to enjoy the full range of human rights. In last few years, there has been a significant change in approach, globally, to ensure the identity, existence and dignity of all persons with disability, so that they may also enjoy the standards of justice, equality, liberty and dignity.

**Review of Literature**

David Harris, Human Rights Law Review, Oxford University, Press (2017) seeks to promote awareness, knowledge and discussion on matters of human rights law and policy. While academic in focus, it is of wide interest to human rights community, inter governmental sphere, concerned with law, policy and fieldwork. A major section in it is dedicated to analysis of recent jurisprudence and practice of the UN and regional human rights system.

Struggles From Below: Literature Review on Human Rights Struggles by Domestic Actors (Feb - 2017), University of Denver, U.S., This report gives an reflection on the role of key actors in the struggle for Human rights. It focus on various aspects such as civil society, organisational structure of human rights, social movements and the role of courts in seeking remedy for violations. Scholars from anthropology to economics, studying every world region, have conducted a careful and interesting research in the direction of human rights.

Magnus Mfoafo – M Carthy, Stephanie Huls, Human Rights violations and mental illness, (2014), this research article examine human rights violations experienced by individuals with mental illness on a global level. These violations include denial of employment, marriage, procreation, education malnutrition, physical abuse and negligence. The author suggests that legislation needs to be modified, updated or created with relevant systems in place to make existing laws enforceable.

Chou Y C, Lu Z Y, Deciding about sterilization: Perspectives from women with an intellectual disability and their families in Taiwan, J Intellect Disabil Res. (2011) says that furthermore, it seems that decision making among individuals with intellectual disability may also depend, at least to some extent, on the social status of the individual as most married women who were sterilized came from relatively low socio economic background.

In an article on diversity (Allen, 2010) employers offered insights through dialogue of how they have recruited and employed persons with disabilities. The use of case studies and the sharing of best practices in hiring of persons with disabilities are

viewed as the means to develop the interest of other employers as well as dispel the myths around costs and accommodation and uncertainty of hiring persons with disabilities.

Dr. H.O. Aggrawal, "International Law and Human Rights in Constitutional Law" (2005) p.78 has made study of concept of Human Rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable condition for the material and moral uplift of the people. Because of their immense significance to human beings, human rights are also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. Human Rights are a generic term and it embraces civil rights, civil liberties and social, economic and cultural rights. It can be said that the rights that all people have by virtue of being human are human rights. These are the rights which no one can be deprived without a grave affront to justice.

Rahul Rai, "Human Rights: UN Initiatives", (2000) this book covered all the relevant initiatives of United Nations including the Universal Declaration of Human Rights, Vienna Declaration, Specialised Bodies on Human Rights, Child and Women issues, Enforced Disappearance and Methods of Combating Torture. In this book he tried to define that Violence affects the lives of millions of women and disabled worldwide, in all socio-economic and educational classes. All are violations of the most fundamental human rights.

S. K. Verma and S. C. Srivastava, "Rights of Persons with Disabilities", (2002) at pp. 109-110, in their book have analysed the various rights of disabled persons. They have also deeply discussed and made classification of mental or behavioural disorder, according to them, one in four families have at least one member currently suffering from a mental or behavioural disorder, and that about 450 million people are currently suffering from neuropsychiatric conditions. Actually, it is very difficult to make a proper classification of mentally disabled persons. They stated the various causes of disability like Traffic Hazards, Wars, Crimes, Occupation, Malnutrition, Poverty etc.

Sophie Mitra and Usha Sambamoorthi, "The Employment of persons with Disabilities: Evidence from the National Sample Survey", (2006), in their book examined the employment of disabled persons in public and private sectors. They pointed out that poverty can be the consequences of disability through the loss of employment or the reduction in work earnings following the onset of disability for the individual and household.

#### **National Initiatives**

The Human Rights models believe that every person has the right to participate fully in social institutions and avail fully of the services offered to a country's public, regardless of ability. In other words, governments have a duty to make mainstream institution sensitive and flexible so that all persons, including those with disabilities, can make use of them.

The disabled are also the human being so they are also entitled to all the rights and privileges which abnormal person can enjoy. The rights of person suffering from disabilities are founded on International Human Rights Norms. In India even though human dignity is not an enumerated Fundamental Right but the Apex court of India treated as an essential element of right to life and personal liberty guaranteed under Article 21.

**Here are some Indian constitutional provisions for disabled:**

#### **Article 14**

Under the right to equality, the Constitution of India guarantees equality for all its citizens before law and equal protection of law.

#### **Article 15 and Article 16**

These provisions prohibit discrimination on the grounds of "religion, race, caste, sex, and place of birth or any of them."

#### **Article 41**

"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".

#### **Article 46**

"The State shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation"

Other than Indian constitutional provisions, there are many other statutes which deal with the promotion of the rights of disabled persons. In India there is a long list of which protect and govern the rights and interests of the physically challenged persons such as the Payment of Gratuity Act 1972, Equal Remuneration Act 1976, The Factories Act 1948, Dockworkers/safety, Health and Welfare Act 1986, the National Policy on Education 1986, the Persons with Disabilities (Equal opportunity, protection of rights and full participation) Act 1995 (persons with Disabilities Act).

#### **Disabilities Act, 1995**

It is a landmark Achievement of Disability Movement. The objectives of this Act are to secure rights of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995: Promoting and ensuring equality and full participation of persons with disabilities and Protecting and promoting their economic and social rights.

The Act covers seven disabilities. The criteria for classification are medical and not based on the social perception of disability. The Persons with Disabilities (Equal Opportunities, protection of Rights, and Full Participation) Act 1995 (PWD Act) adopts a medical model and defines disability as:

1. Blindness
2. Low vision
3. Leprosy-cured
4. Hearing impairment
5. Locomotor disability

6. Mental retardation

7. Mental illness

**Some Key Provisions in the Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act, 1995**

S. No.	Thematic Area	Relevant Section of the Act
<b>A</b>	<b>Education</b>	
1	Provision for free education in an appropriate environment for every child with a disability up to 18 years of age.	Section 26
2	Provision for reservation of not less than 3% seats for admission Government and/or Government aided educational institutions.	Section 39
3	Government to prepare comprehensive education schemes with provision for transport facilities, barrier free access to schools, Section 30 supply of uniforms, books, other materials, scholarship, etc., to children with disabilities.	Section 30
4	Provision for amanuensis for students with blindness or students with low vision	Section 31
<b>B</b>	<b>Employment/Affirmative Action/Social Security</b>	Section 33
1	Provision for reservation in vacancies to the tune of not less than 3% in Government establishments (which includes public sector undertakings) (in all grades of jobs).	Section 33
2	Provision for reservation of not less than 3% quota for persons with disabilities in all poverty alleviation schemes.	Section 40
3	Provision for providing incentives to public sector and private employers to ensure that at least 5% of their work force is composed of persons with disabilities.	Section 48
4	Provision for unemployment allowance for such persons with disabilities who could not be gainfully employed even after two years of their registration with a special employment exchange	Section 68
<b>C</b>	<b>Non-Discrimination And Barrier-Free Access</b>	Section 44
1	Provision for special measures to adapt rail compartments, buses, vessels and aircrafts in such a way that they become accessible to persons with disabilities, including toilets.	Section 44
2	Provision to make roads and public places barrier-free including installation of auditory signals at red lights, causing curb cuts and slopes to be made in pavements for the easy access of wheelchair users; engraving on surface of the zebra crossings for the blind or for persons with low vision; engraving on the edges of railway platforms for the blind or for persons with low vision; warning signals at appropriate places, etc.	Section 45
3	Provision for barrier-free access in public buildings, work places, and recreation centres including provision for ramps, Braille symbols and auditory signals in elevators or lifts; ramps in hospitals, primary health centres and other medical and rehabilitation institutions	Section 46
4	Ban on dispensing or reducing in rank an employee who acquires a disability during his/her service	Section 47 (1)
5	Promotion cannot be denied to a person on the ground of his/her disability	Section 47 (2)
<b>D</b>	<b>Complaints</b>	Section 59
1	Provision for lodging complaints in respect of deprivation of rights of persons with disabilities, etc., with the Chief Commissioner, disabilities	Section 59
2	Provision of lodging complaint with Commissioner Disabilities (state level) in respect of deprivation of rights of persons with disabilities, etc.	Section 62

**Mental Health Act, 1987**

The Mental Health Act is a civil rights legislation that focuses on regulating standards in mental health institutions. Despite the existence of this Act for the protection of the person, property and management of persons covered, until recently many mentally ill persons were consigned to jails.

**National Policy on Disability, 2006**

The Government of India has adopted a comprehensive National policy on disability covering critical areas like education, employment, support services, access, social security, etc. Somehow, the National policy is nearly silent on civil and political

rights of persons with disabilities. Unfortunately, most of the states of India do not have a state level disability policy in place yet. A few states however, are in the process of evolving such a policy. The state of Chhattisgarh now has a state level policy on disability.

**Conclusion**

After analysing all constitutional provisions, legislations and regulations, It is suggested that Govt of India should replace existing laws with new laws. The act of 1995 was a great initiative which covers all the aspect of disabled. But there are two most important aspects Education and Employment could

have been handled with more care. Some shortcomings of 1995 Act are:

Firstly, the Office of the Chief Commissioner for Persons of disabilities is not empowered to utilize the judicial power conferred on them under Persons with Disabilities Act 1995. Secondly, State Governments does not take initiatives to involve private sector by giving them incentive to employ persons with disability, which would assume importance in view of lack of availability of jobs in the Government sector. Thirdly, the situation of women with disabilities among persons with disabilities is further marginalized, but no attention is given on employment needs of such women. Fourthly, vocational rehabilitation centres do not get employment notifications on time, which needs to be specially emphasized. Fifthly, there is no regular training programme in each Ministry and Department on issues related to reservation for persons with disabilities.

The Indian disability law still remains in a very nascent stage. These are still predominantly charity and welfare oriented. They lack vision of social integration. We came on a conclusion that government is making efforts by taking these National Initiatives but the Society is not much aware about these efforts. Much of the society is designed without consideration to the needs and requirements of the disabled individuals. The discriminatory effects of architectural, transportation and communication barriers largely contribute to the denial of opportunities to the people with physical and mental impairments for example a person using wheelchair cannot have access to the work place because access to the workplace is possible only through stairs. Nor he can travel by bus because buses are equipped with wheelchair lifters. In all above examples, the society has failed to make modifications to the existing facilities. The disabled people are thus stigmatized as second-class citizens and as inferior human beings by social norms. So, the

biggest challenge is to change society's perception towards disabled people.

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