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**PERSONS WITH DISABILITIES: A HUMAN RIGHTS PERSPECTIVE**

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‘None of us is without limitation, but sheer physical strength is no means of ability. There are no disabled people – only people. There is, nothing which can substitute for human rights, no honours, no pensions, no praise, no subsidy can replace a wish to work with dignity’.

**-Henry Viscardi Jr.**

**ABSTRACT**

The concept of disability is dynamic and emerges from the interactions between individuals with impairments and the cultural and institutional barriers that prohibiting them from contributing equally and completely to society. Put another way, the obstacles to equality that individuals with disabilities encounter stem from unfavourable or "disabling" attitudes held by the community and "disabling" social settings that they find difficult to enter or traverse due to their disabilities.

To ensure that advance and defend the rights of those who are disabled, it is necessary to recognise and eliminate the societal and mental frameworks that impede them from exercising their basic human rights in comparable manners as others. The Convention places a strong emphasis on an individual's dignity rather than their infirmity. This is the handicap that fits the "human rights model."

Each day, discrimination and obstacles stop individuals with disabilities from fully engaging on an equal level with others in the community. Their freedom to vote, live freely in their community, take part in sports and other cultural activities, get social protection, access the legal system, select their own healthcare provider, and enter into contracts like purchasing and selling real estate are both regularly turned down by them. Additionally, they are typically rejected the opportunity to participate generally education system, the labour force, to vote, and to live independently.

Individuals with impairments are qualified for a variety of services, including health care that is psychological, functional, and includes education, vocational training, prosthetics and appliances, health as well as social recovery, placement support and counselling, among more assistance that will help them reach their full potential and expedite the procedures involved in their rehabilitation or social integration. People with disabilities are entitled to a reasonable

level of living, in addition to financial and social stability. They have the freedom to join trade unions and, in proportion to their talents, to find and keep a job or to pursue a worthwhile, profitable, and productive career.

**KEYWORDS: Disability, Human Rights, Handicap, Discrimination, Talents, Freedom, Medical Care, Opportunity**

## INTRODUCTION

As the greatest minority in the world today, disabled people account for almost 10% of all inhabitants on Earth, or 650 million people, and suffer from various forms of disability. At least one person in ten in most nations has a disability that is either mental, physical, or sensory. In India, almost 50 million individuals struggle with a disability of one kind or another. Despite the fact that the Indian Constitution guarantees all social, cultural, political, and economic rights are accessible to individuals with impairments, the essential procedures to produce these rights There haven't been any realities in place up until lately. They're frequently excluded from society and denied basic human rights. This is particularly valid in the case of a mental impairment. There has been a rise in the understanding of the disability sector on a both at the national and worldwide level across the latter part of the 20th century. Since The years 1983–1992, as stated chosen by the General Assembly to be the UN Decade for impaired People, a global movement has grown to emphasise the significance of integrating impaired people into society. Disability-related issues are no longer only welfare concerns; rather, they are now essential human rights concerns, including calls for equal opportunity, full involvement, and protection of rights from all sides.

People with disabilities have historically faced a pity-based social climate, which gives giving birth to more subdued forms of prejudice and ultimately leads to their marginalisation and severe solitude. Discrimination on the basis of disability has proven particularly harmful in the areas of employment, housing, and transportation, culture, education, and public space and service access. Such abuses of the People with impairments do not always have their human rights systematically addressed in society despite modest legislative advances. Based on statistical data, it is evident that further reforms and policy adjustments are necessary for their status in India. Individuals with disabilities frequently have their situations maintained until social services and rehabilitation.

More extensive laws are required to guarantee the political, civil, cultural, and economic rights of those with disabilities, on par with those without impairments. It is necessary to take

appropriate action to address the consequently promoting chances for people considering social impairments and growth, and to end current prejudice.

### **THE DEFINITION AND CONCEPT OF DISABILITY**

"Disabilities" is a general term that includes limitations on participation, activity, and impairments. A disability is a problem with the structure or function within the body, whereas a task limitation is a challenge that an individual encounters when doing an action or task, as opposed to a participation constraint is an issue that people encounter when interacting with situations in life. Therefore, disability is a complicated issue that from the engagement of physical traits of an individual with social elements of their community.

#### **— World Health Organization (WHO)**

Disability is not a fatality; it is an annoyance. As before said, it is estimated that 650 million people, or 10% of the global population, are disabled in some way. These persons include cognitive, neurological, physical, sound, visual, and speech. In contrast to the disability laws only a few types of disabilities are recognised by the individuals with disabilities (Protection of Rights, Full Participation, and Equal Opportunity) Act of 1995 in India and other nations.

These include:

- I. Visual impairment;
- II. Blindness;
- III. Recovery from the disease leprosy;
- IV. Hearing loss;
- V. Impaired capacity to move;
- VI. Mental retardation
- VII. Psychological health conditions

Infirmity is defined as the state or characteristic of having a physical or mental impairment, weakness, incapacity to do a certain work due to a physical or psychological impairment, desire or prerequisites within the law. The United Nations General Assembly (UNGA) in line with the UN Charter, approved the Disabled Persons' Rights Declaration. The expression "disabled person" refers to "any person unable to ensure for himself or herself wholly or partly the necessities of a normal individual and or social life as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities".

In India, there are two types of circumstances where legislation has addressed disability problems. One that decides how much is paid when a disability occurs, whether it be at work

or on the road. The 1923 Workers' Compensation Act and the 1988 Motor Vehicles Act are two significant laws that are connected to disability laws pertaining to compensation. The second situation in which disability laws are made is when someone's condition prevents them from pursuing certain employment or educational prospects. Full Participation, Defence of Rights, and Equal Opportunities for Individuals with impairments Act, 1995 however, is the most significant among these laws.

### **WORLDWIDE INITIATIVES**

The United Nations, which was established in 1945, has fought an unrelenting campaign to safeguard everyone's human rights, but especially those of various marginalised groups. Drawing from worldwide the Human Rights Declaration, the United Nations created the first text that addressed impairments in 1971 through the Mentally Retarded Persons' Declaration on Their Rights. The values of equality and non-discrimination, as stated in human rights documents, essentially support the idea of universalism by protecting the universal human rights of those with impairments. According to international human rights laws, every individual possesses:

1. The equality right.
2. The anti-discrimination laws.
3. The entitlement to justice and equitable treatment.
4. The freedom to live on one's own.
5. The entitlement to complete integration.
6. The entitlement to safety.

The normative foundation for the current norms pertaining to people with disabilities was established through the United Nations Declaration on Human Rights. The socioeconomic rights of individuals with impairments are specifically mentioned under UDHR Article 25 (1), which covers the right to a sufficient quality of life, which includes access to food, clothes, housing, healthcare, and social services; also, the right to security in the event of incapacity to work owing to illness, disability, old age, widowhood, or other uncontrollable conditions; and many other rights. The Universal Declaration affirms that in the eyes of the law, all men are equal, free at birth, and endowed with equal rights and dignity. It also identifies a type equal and unalienable rights are inherent in human dignity, fostering equality rights serving as the basis for justice and freedom.

There are several rights included in 1966's International Treaty on Civil and Political Rights that are pertinent to handicap. As per Article 26, everyone is similar before the law and has the

entitlement to equivalent defence under the law. There is no explicit mention of disability in the International Covenant on Economic, Social, and Cultural Rights, although it might be covered by "other status" under Article 2(2), which outlaws' discrimination based on any including race and colour, as well as "other status."

The statement on the advancement and development of society, which was endorsed in 1969 by the UN General Assembly, served as the impetus for the campaign for disability rights. In addition to stating that everyone has the right to live in dignity, the Declaration placed special emphasis on the necessity to guarantee underprivileged Public groups have equal opportunities for both social and economic advancement. The General Assembly approved the statement on the rights of those who are mentally challenged in 1971. "The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings," the Proclamation reads.

The Proclamation asks for world and national leadership to enable him to fulfil his potential, adequate medical attention, additionally such rights to education, training, and personal rehabilitation with disabilities. People who are mentally retarded have the right to act in order to ensure that their rights will be protected and to have their rights to international action to guarantee that their rights will be protected. In addition, he will be entitled to a respectable quality of life and financial stability so that he can work as hard as he can at being productive or partake in other fulfilling activities.

The "Declaration on the Rights of Disabled Persons" was approved in 1975 by the General Assembly. It was a first effort to define the word "disability" in an international declaration. Similar to The Declaration on Persons with Mental Retarders, this Proclamation emphasises that people with impairments possess the innate right to be treated with regard for their right to a normal, meaningful existence and for their human dignity. They are entitled to programmes that support their transition to maximum independence, and all phases of social and economic development should take their unique requirements into account.

Every deaf-blind individual is likewise guaranteed universal rights of humans by the 1979 Deaf-Blind Persons' Rights Declaration. "Every deaf-blind person is entitled to enjoy the universal rights that are guaranteed to all people by the Universal Declaration of Human Rights," reads Article 1 of the Declaration. The Human Rights Declaration and the rights guaranteed by the Declaration of the Rights of Disabled Persons to every disabled person".

The UN General Assembly declared 1981 to be the "International Year of Disabled Persons" with the subject "Full Participation and Equality" in a landmark decision that was approved on

16 December 1976. Two international agreements on human rights, specifically the convention on The Convention on the Rights of the Child (CRC) and the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) both emphasised how particularly vulnerable women and children are to abuse. Therefore, by adopting numerous agreements, declarations, and recommendations, the United Nations and its various agencies are making a significant contribution to the integration of people with disabilities.

### **NATIONAL FRAMEWORK FOR LAW**

**"A state's citizens swear to treat each other with justice through the establishment of laws."**

#### **1. The India Constitution**

Global human liberties legislation is founded on the essential values of liberty, equality, respect for human dignity, and self-determination. The fundamental law has been adequately impacted by these values are included in the majority of democratic governments' political systems and democratic politics constitutions, encompassing India. The Preamble of the Indian Constitution unambiguously declares, "secure to all its citizens; justice, social, economic, and political; liberty of thought, expression, belief, faith, and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation," all while offering a framework and governing philosophy.

- **Parity**

The Indian Constitution's Article 14 provides equal protection under the law and equality before it under it for all citizens. It also forbids prejudice based on "race, religion, and, gender, caste, birthplace, or any combination of these (Articles 15 and 16). Furthermore, under Articles 16(3) and 16(4), it uplifts the State to enact legislation or provide provisions for the purpose of scheduling scheduled meetings or postings favouring any underprivileged class of people who, according to the State, are underrepresented in its services in order to ensure parity in the result.

- **Not exhibiting bias**

Disability discrimination has only recently been officially recognised, and even legislation passed 20 years ago usually did not include disability as a forbidden prejudice. For example, the Constitution forbids discrimination in the workplace due to sex, religion, ethnicity, caste, or place of birth and access to public facilities (Articles 15 and 16), but it says nothing about disability. In actuality, individuals with impairments were not allowed to enter higher grades of service under the service regulations until 1995. These regulations allowed the employer the power to require an early retirement in the benefit of the public, and many times, workers who (Website-lexscriptamagazine.com) 8 (lexscriptamagazine@gmail.com)

were disabled while serving their country were either demoted or had their status lowered. Most of the time, their opportunity was put on indefinite hold in order to further one's career.

## **2. Federal Constitutional Rights and State Policy Directives**

The Declaration of Independence, the Bill of Rights, and the Guidelines for State Policy all envision the State engaging in a very constructive part in assisting its underprivileged citizens. Article 41 states that "the State shall make effective provision for securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness, and disablement, within the limits of its economic capacity and development." Article 46 mandates that the State "...protect them from social injustice and all forms of exploitation, and promote with special care the educational and economic interests of the weaker sections of the people."

## **3. The 1993 Protection of Human Rights Act**

Following the United Nations Declaration of Human Rights and the Economic, Social, and Cultural Rights International Covenant, India brought the 1993 Protection of Human Rights Act into effect. To improve the defence of human rights, this Act calls for the creation of the National Human Rights Commission (NHRC) and State Human Rights Commissions. The rights of an individual to life, liberty, equality, and dignity that are protected by international agreements or the Constitution and enforceable by Indian courts are defined as "human rights" under Section 2(d) of this Act. As a result, the Act offers a system for keeping track of how different constitutional clauses and commitments made according to international agreements on certain rights—such as economic, social, and cultural rights—are being implemented. This suggests that India is prepared to enact Rights that are not subject to litigation as well.

### **DISABILITY ACTS**

In the 1970s, a unique self-help movement emerged among disabled people, calling for the defence and acknowledgement of their rights of human. This movement lasted for several years. In order to do this, it aimed to pass comprehensive legislation that prioritised social and economic rights and took a rights-based approach. Even though the government realised in 1980 that such a law was necessary, it wasn't until 1995 that it was put into effect. The reason for the delay may be because the Indian Constitution retained the disability concern listed at Schedule 7's Entry 9 on the State list even though it divided legislative authority between the Centre and the States. The Proclamation of Equality and Full Participation gave the Indian Parliament the authority to enact laws pertaining to handicap concerns of Individuals with Disabilities in the Asia-Pacific Area. To fulfil its obligations on the international stage, the

Parliament may enact laws on any topic included in any list, as specified in the Constitution's Article 249. Among the additional significant Acts are:

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

This Act blends rights-based and service-oriented legal frameworks, with a focus on the following: outlawing discrimination against individuals with disabilities in various contexts; promoting positive discrimination against them; granting them accommodations to help them overcome their particular disabilities; and integrating them into mainstream programmes. A barrier-free environment, reserves, research and manpower development, employment and vocational training, and education reservations are only a few of the preventive and promotional components of rehabilitation that the Act addresses.

**2. The National Trust for Welfare of Persons with Multiple Disabilities, Mental Illness, Autism, and Cerebral Palsy Act of 1999**

The Parliament passed the Act with the highly progressive goal of enabling the entitlement of enabling those with impairments to lead an autonomous life and completely as they can in their local communities. The intention is to promote living with family instead than to keep them in residential institutions and force them out of society. The right to reside with their family is theirs. Developing new protocols for the appointment of trustees and guardians for people with impairments who need this kind of protection is another goal. The Act also envisions therapy and training, as well as establishing a supportive environment in the community.

**JUDICIARY OF INDIA**

**"Without courts to clarify and define the true meaning and operation of laws, they are a dead letter."**

The judiciary is essential to preserving and empowering people with disabilities. The Indian judiciary has shown itself to be a champion of human rights recently, and it has responded positively to abuses of these rights. Judicial activism in the human rights domain, however sparse at first, is starting to show promise for the marginalised communities. The Disabilities Act of 1995 has been gradually interpreted by the Apex Court for the advantage of disabled people in a number of situations. The SC Court held in *Javed Abidi v. Union of India* that it could not disregard the Act's genuine spirit and purpose, which is to provide an environment free of barriers for people, while also taking the Act's goals into consideration of people with impairments and to establish specific guidelines for their inclusion into the general community. The Supreme Court had to step in in *State of West Bengal v. Chandan Kumar Banik* to provide

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mentally challenged hospital inmates in the Hooghly district some reprieve as the hospital administration was keeping them shackled to control their disruptive or aggressive behaviour. The SC ruled in *Sheela Barse v. Union of India* that children who are intellectually and physically impaired as well as those who have been abandoned or are impoverished must be put in observation or protective homes. Should these kids be charged with committing any crimes, the inquiry and that their trial be expedited by setting up juvenile tribunals in every area and assembling a team of qualified magistrates in charge of these matters.

The Supreme Court was summoned to hear the case *National Federation of Blind v. Union Public Service Commission* in order to order the Public Service Commission to let unseen applicants to sit for the tests for Indian Administrative and Associated Services. The Court granted the petition. Additionally, the Court acknowledged the petitioners ask that the exam be written either with Braille or the assistance of a scribe.

### **CONCLUSION**

The overview presented in the previous paragraphs makes it clear that the global movement for disability rights has changed the way that individuals without disabilities think about the need for society to treat and create opportunities for those with disabilities. The numerous data points make it clear that, despite both domestic and foreign migration, the current infrastructure is woefully insufficient. While in certain situations the groundwork has already been done, in others it is necessary to start from scratch. Although There is now law safeguarding the rights of those who are disabled, and it is being implemented has lagged. However, until we as humans believe that the new legislation cannot secure the rights of the disabled in addition to healthcare, education, and accessibility. All persons with disabilities require an environment that is accessible, safe, and considerate of their dignity in order to receive employment and rehabilitation services. We must learn to treat every person with respect for their differences and as fellow humans.

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