



## **A conceptual study on person with disabilities**

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### **Abstract**

In our country, the rights of women and people of minority class attains priority over other issues in political, geographical and social terms which leaves one such group unattended which is – People With Disabilities !!

India has a large number of people in these groups in comparison with other countries globally. Disability is caused by the way society is organised, rather than by a person's impairment. Also, constitution of India provides special provisions for them. It has restricted the difference on the basis caste, creed, race, religion, gender, colour in Article 15(1) of the India Constitution. Still, it outlaws disability related harassment, bullying, unwanted behaviour which causes feelings such as offence or humiliation or hurt. It includes name calling or making fun which can mentally affect them without their fault. They need motivation and not mercy which has recently been proved in Olympic Games by them.

People with disabilities are unable to live like other citizens due to weak financial and political support. They are only provided right to education and exemption in tax under section 88b of Income Tax Act and right to cast their votes in election. Also, they get concessions in travelling by bus, train, air etc. But, due to no proper reservation quota unlike other backward classes for them, they fail to represent themselves in Lok Sabha and Rajya Sabha and stand for their Rights. My research deals with all above aspects in respect of their protection and equal employment opportunities at every level for them under National Welfare Trust 1999, proper implementation of protection and being independent. Environment for autism spectrum disorder, cerebral palsy, mental illness and chronic conditions is to be considered. The most important objective is to cast responsibility on government to take effective measures to ensure support and equal rights at regional, district as well as panchayat levels. It also deals with improvement in various schemes and their benefits in future to be provided to them thus, the overall goals is only social welfare of person with disabilities, as below:

- Awareness of facilities to them implemented by central and state government.
- Local concerns and family details of PWD's and their attitudes towards welfare centres.
- This research will give general status to every activities of PWD's.
- Measures to improve awareness as well as implementation can be suggested.

**Keywords:** disabilities, motivation, person, people

### **Introduction**

#### **Preamble**

Disability is caused by the way society behaves towards them, rather than by a person's own impairment. Even the constitution of India provides special provisions for them. It has restricted any discrimination on the basis of caste, creed, race, religion, gender, and color in Article 15(1) of the Indian Constitution <sup>[1]</sup> and it also outlaws disability related harassment, bullying, unwanted behavior which causes feelings such as insult, humiliation or hurt. It includes name calling or making fun which can mentally affect them without their fault. One possible upside to being disabled can come as a result of no longer being able to take simple things for granted. Consciousness and acceptance of disability can, at least in some cases, to profound spiritual growth. It is easy for persons unimpeded by barriers to go through life in a fog of entitlement, complacency and false security. As estimated 21 million disabled persons are living in India. It is very large number in comparison with various countries across the globe.

The world health organization's (WHO) international classification of functioning. Disability and health (ICF) have been used in recent years to improve and standardize the measurement of disability. The constitution's language can be interpreted as a guide in the direction of the practice of the thought that people with special wants need motivation and not mercy. This has been highlighted in the recent Para Olympic Games where many of them have made the country proud by performing extra ordinary feats. India has a vibrant and growing disability rights movement and NGO/DPO and civil society involvement in service delivery for people with disabilities.

#### **Culture**

The practice of discrimination based on disability is as old as mankind itself. Disability in India is a complex phenomenon that coexists with other prejudices such as gender, caste, class, and religion. There is no unique pan-Indian characterization of issues being raised by disability. The experiences faced by people with special needs are heterogeneous, pluralistic and diverse, and they are influenced by personal, genetic and

<sup>1</sup>Article 15 Indian Constitution

socio-cultural elements. Concepts and meanings attached to disability have undergone fundamental historical shifts through pre-colonial, colonial, post-colonial and globalization eras. From the religious and charity approach of the pre-colonial time to the welfare and social approaches of the post-colonial time, the meaning of disability has been constantly shifting. While western models and theories are useful in understanding and documenting various factors associated with disability, one must keep in mind the particularity and contextual nature of disability in a pluralistic and multicultural society like India. In contemporary times, for example, a number of approaches were interacting to define disability such as religious, charity, welfare, social, materialism, rights-based and capability approaches.

The research takes the view that material exclusions and attitudinal barriers go together in creating a bind of structural and psycho-emotional view of disability and therefore it is necessary to understand and analyze the psychological aspects of characterization of disability in contemporary Indian context. It is essential to get to the root cause of exclusion which stems from the collective group mind of people. The research is a contemporary, critical, nuanced study of the psychological experiences of people with disabilities in the Indian cultural context from a phenomenological perspective drawing on live experiences and life worlds.

#### **Experiences over disability**

In ancient India, the disabled were treated with pity and compassion but their rights to social equality were never recognized. As per the theory of karma, disability was considered the result of “wrong actions” in a one’s past life or the present for the sins of previous births.

In ancient mythologies like Mahabharata we can observe that the portrayal of disabled people is overwhelmingly negative, and also exhibits a strong gender bias in terms of the perceived capacities of disabled men and women. Disabled men in the Hindu myths are in some cases powerful and capable people. Whereas, the visually impaired king Dritarashtra and the orthopedically impaired Shakuni side with the forces of evil in the Mahabharata war. In contrast, women with disabilities in Hindu mythology are simply irrelevant.

The Bhagwat Gita validates charity to the disabled in the form of money, education and courage. Nevertheless, Indian history provides evidence that people with disability were either regarded as object of pity or ridicule. Manu, an ancient law giver, recognized that the sick and disabled may be looked after on priority basis. He made it a priority to make special provisions for the welfare of the disabled like exemption from tax liberties, but at the same time Manu never showed any inclination to give physically handicapped an equal status in the society. They were deprived of the rights to get married, to take part in religious ceremonies and even a right to get share in ancestral property.

In ancient, India, the period of Chandra Gupta Maurya stands unique in this regard. The rules of those times had special consideration for the disabled but these considerations were more charity oriented.

#### **Privileges of paralyzed: global optics**

Human rights is a universal issue because rights have been imbibed in our society over its life and without these we cannot live as human beings. These rights consist of liberty, equality, dignity and security of men, women, youth and children and by which the instinctive dignity and significance of each human being will obtain respect and protection.

In olden times, it was seen as an individual’s issue, disregard of the rights of people with disabilities had not been adequately addressed by the international human rights system for a considerable length of time. But the 1970’s marked a new approach to disability. The concept of human rights for disabled persons began to become more accepted internationally. Increasing consciousness of civil rights and the emergence of people with disabilities, displaying skills and knowledge to improve their own lives are some of the factors which have contributed to the new thinking of a dignified status to them in society on the same terms as the abled.

This group comprise of a guide to build an equitable and just society without characterizing basically dissimilar human beings to a single group. In international human rights law, equality is set up upon two corresponding principles: non-discrimination and reasonable differentiation. The principal of differentiation is of special importance to people with disabilities.

The International Covenants on Human Rights, and the Convention on the Rights of People with Disabilities are the instruments which reaffirm that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing.

#### **United nation convention**

The member states of United Nations took pledge for a joint action and international cooperation for recognizing the rights of mentally challenged in 1971 to provide assistance to mentally retarded persons and promote their integration into normal life. Certain rights of the mentally retarded persons were duly recognized and national and international action were called to ensure their protection.

- The mentally retarded human being has same rights as other normal human beings.
- They have a right to medical facilities, education, guidance and rehabilitation to develop their potential.
- The mentally retarded person has a right to financial security for prudent living standard. They have a right to participate in productive vocation to the best possible level of his capabilities.
- They should be able to live normally with their own family unit and participate in community life. The family must be given special assistance.
- They have a right to a trained custodian to protect their individual well- being and welfare.
- The mentally retarded person has a right to safeguard from maltreatment, neglect and humiliating treatment.

#### **1. UN declaration over rights of disabled, 1975.**

UN statement on social agenda and growth has proclaimed the obligation of protecting the rights of the physical and mentally

disadvantaged. They declared the following Human Rights for disabled persons: <sup>[2]</sup>

Disabled person shall have the benefit of all the rights and privileges set forth in the Declaration. The rights shall be granted to the disabled without discrimination on the basis of color, race, sex, religion, language, political or national origin, birth or any other to the disabled person himself or his family.

Disabled person shall have the right to respect and dignity.

Disabled person have the same civil and political rights as other human beings.

Disabled persons shall be sheltered against all type of exploitation, maltreatment.

Disabled persons shall be provided legal aid for the protection of their rights and property. In judicial trials, their physical and mental condition must be taken into account.

## **2. Convention on the rights of person with disabilities, 2006**

The United Nations Convention on the Rights of Persons with Disability, 2006 was adopted by General Assembly of United Nations on 13th December, 2006. This convention has been adopted by various countries all over the world for the welfare of persons with Disabilities. The main objects of the convention is to preserve the human dignity of disabled persons by promoting their full enjoyment of the basic Human Rights as other abled bodies' persons.

### **Constitutional & Legal Provisions: Indian Optics**

The Constitution of India does not specifically prescribe discrimination on the ground of "disability", but it does contain non-discriminatory provisions that guarantee equality and equal opportunities for all citizens under Articles 14, 15 and 16. Article 14 and Article 16(1) is no doubt would by themselves permit such positive measures in favor of the disadvantaged to materialize the equality guaranteed by them. This means that the Constitution may be read as explicitly prohibiting discrimination against persons with disabilities.

The directive principle under Article 39A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice, on the 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. The directive principle contained in Article 41 imposes a duty on the State (within the limits of its economic policy and development) to 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 unforeseen requirements.

The Workmen's Compensation Act, 1923 provides compensation to workmen or their dependent family members in case of an accidental death or disablement during employment. Section 3 of the Act says that if personal injury is caused to a workman by accident arising out of or in the course of his employment, his employer shall be liable to pay

compensation. Section 4 of above Act talks about the quantum of compensation to be paid for different categories of disablement underlined within the Act.

Section 46(c) of the Employees' State Insurance Act, 1948 says that periodical payment shall be made to an insured person suffering from disablement as a result of an employment injury sustained as an employee under this Act and certified to be eligible for such payments by an authority specified in this behalf by the regulations. Section 51 of the same Act mentions the disablement benefits for temporary disablement and permanent disablement (whether total or partial).

As per Section 4 of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment on his death or disablement due to accident or disease if he has rendered continuous service of five years. There are special provisions in the Income Tax Act for persons with disability and for the parents/legal guardians of persons with disability under Section 80 U and 80 DD. Section 80 U allows additional exemption from the income of the assessee with disability; and Section 80 DD allows additional exemption to parent or relative upon whom the person with disability is dependent. Deductions are also allowed to persons making donations to registered trusts and societies doing work for the handicapped (Under Sections are 80G and 80GGA of the Income Tax Act).

Although no disabled person who is found guilty of a criminal offence or a civil liability can claim any special treatment before the judicial authority and procedure, special procedures have nevertheless been laid down in Sections 328 to 339 of the Criminal 271 Procedure Code, 1973 (CrPC) for trial of accused persons of unsound mind who are incapable of making their defense. CrPC protects persons with psychiatric disabilities from facing trial. Section 328 of the CrPC says that if a Magistrate determines that "a person against whom [an] inquiry is being held is of unsound mind and consequently incapable of making his defense," he is required to "postpone further proceedings in the case". Section 330 of the CrPC instructs the Magistrate or Court to "order the accused to be detained in a safe custody in such place and manner as he or it may think fit, and on shall report the action taken to the State Government". India's criminal laws give complete protection to a lunatic. Section 84 of the Indian Penal Code, 1860 lays down that nothing is an offence which is done by a person, who owing to unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law <sup>[3]</sup>.

### **The rights of person with disability bill**

More than 8% of the total world's population suffers from mental or physical disabilities. The overall plight of the disabled persons in both the developing and developed countries presents a gloomy picture, where they have often been deprived of their basic human rights such as education and employment opportunities and they are given menial or poorly paid jobs.

In the light of above figure "The Rights of Persons with

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<sup>2</sup>Prof.S.R. Bhansali, "Law Relating to Human Rights in International and National Laws and Constitutions", Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2013, p.953

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<sup>3</sup>Code of criminal producer.

Disabilities Bill - 2016"<sup>[4]</sup> was passed by Lok Sabha replacing the existing PWD Act, 1995. The Rajya Sabha has already passed the Bill on 14.12. 2016. The salient features of the Bill are:<sup>[5]</sup>

- Disability has been defined based on an evolving and dynamic concept.
- The types of disabilities have been increased from existing 7 to 21 and the Central Government will have the power to add more types of disabilities.
- Speech and Language Disability and Specific Learning Disability have been added for the first time. Acid Attack Victims have been included. Dwarfism, muscular dystrophy have been indicated as separate class of specified disability. The New categories of disabilities also included three blood disorders, Thalassaemia, Hemophilia and Sickle Cell disease.
- In addition, the government has been authorized to notify any other category of specified disability.
- Responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others.
- Additional benefits such as reservation in higher education, government jobs, reservation in allocation of land, poverty alleviation schemes etc. have been provided for persons with benchmark disabilities
- Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education.
- Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education to the children with disabilities.
- For strengthening the Prime Minister's Accessible India Campaign, stress has been given to ensure accessibility in public buildings (both government and private) in a prescribed time-frame.
- Reservation in vacancies in government establishments has been increased from 3% to 4% for certain persons or class of persons with benchmark disability.
- Creation of National and State Fund will be created to provide financial support to the persons with disabilities. The existing National Fund for Persons with Disabilities and the Trust Fund for Empowerment of Persons with Disabilities will be subsumed with the National Fund.
- The Bill provides for penalties for offences committed against persons with disabilities and also violation of the provisions of the new law.
- Special Courts will be designated in each district to handle cases concerning violation of rights of PWDs.

### **Crux of disability**

People with disabilities are unable to live a life of normal citizen due to weak financial and political support. They are only provided right to education and exemption in tax under section 88B of Income Tax Act and right to cast their votes in election. Also, they get concessions in travelling by bus, train,

air etc. But, due to no proper reservation quota unlike other backward classes for them, they fail to represent themselves in Lok Sabha and Rajya Sabha and stand for their Rights.

All that the disabled need is an equitable opportunity and not pity and sympathy. The researcher believes that self-pity is the biggest foe of persons with disabilities. If you respect yourself, stick to your ground and show courage, others will follow it.

The subject of present research is vast. My research deals with all above aspects in respect of their protection and equal employment opportunities at every level for them under National Welfare Trust 1999, proper implementation of protection and being independent. Environment for autism spectrum disorder, cerebral palsy, mental illness and chronic conditions are to be considered. The most important objective is to cast responsibility on government to take effective measures to ensure support and equal rights at regional, district as well as panchayat levels. It also deals with improvement in various schemes and their benefits which should be provided to them with advent of time as priority. Thus, the overall goal is only social welfare of person with disabilities, as below:

- Local concerns and family details of PWD's and their attitudes towards welfare centers.
- This research will give general status to every activity of PWD's.
- Measures to improve awareness as well as implementation can be suggested.

This is the topic for research to provide a well formulated mechanism for ensuring empowerment of people with disabilities & there full, true and foremost inclusion in the main stream of the society.

Also, it will help in disqualifying any deprivation or lack of power or talent etc. in them and enlighten the human spirit of perseverance and courage that no disability can steal away from them.

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