

## Human Rights of Differently Abled Person: Statutory Provision and Civil Society Response

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**Abstract:** The paper has discussed the problem of disability with human being from a holistic perspective, not merely from a social and cultural context. An attempt has been made to highlight national & international initiatives to protect human rights of the differently abled persons. The paper argues while there is no dearth of laws and provisions (both inclusive & exclusive), still human rights of the disabled people in society is not properly respected, precisely due to lack of a community concern and civil society response [1]. At this backdrop, the present paper makes an objective assessment of status of differently abled persons in our society with respect to protection of basic human rights and civil society response to it.

**Keywords:** Differently abled person, Disability, Civil society, Circle of Support, LPG, Community Based Rehabilitation (CBR).

### INTRODUCTION

In the new millennium with dawn of Liberalization, Privatization and Globalization, (LPG) era, while the entire globe has been reduced to a 'Global Family' but human society has increasingly become dehumanized and asymmetrical with escalated vulnerability of people with disability. In India, even after 69 years of plan development and nurturing democracy, the state has failed to nurture an inclusive human society with deteriorating quality of human living for many excluded sections of society among which, the disabled people are most vulnerable.

In the 21<sup>st</sup> Century a number of key issues in the field of disabled which needs special attention for their pioneering role in the development of the disabled persons. They are the rights of the disable and the Mobilization of resources for the enforcement of those rights.

If we look at the annals of history, we may find a plethora of laws, enactments, charters and statutes having categorical reference to human rights of disabled persons. At the outskirts soon after the Second World War the issue of human rights attracted the attention of World Community and consequently the universal declaration of human rights was made on 10<sup>th</sup> December, 1948 [2]. Since then efforts began to be made to protect and preserve the rights of different sections of society including the children, youth, women, refugees etc. However, of late though, there began initiates for the rights of disable both at National and International levels.

### Problem statement

The phenomena of disability should not be treated purely from social science perspective but its historical, medical and cultural aspect should be taken into consideration for holistic diagnosis of the problem. 'Disability' is not an objective fact but rather than

attribute ascribed in social and cultural context [3]. Even today the whole discussion on problem of disabled people is in state of flux. However, in recent years with proactive civil society and community engagement, the problem of disabled people have taken a new turn - with a paradigm shift from integration to inclusive through a right based approach.

As per statistics of United Nations, nearly 600 million people in the world have a significant disability of which India alone share 18.53 million world bodies have continued India about multiplying of the problem by 2020 [4]. The burgeoning problem has accelerated the state of affairs as one of the highly escalated one; Rights of the disabled to lead a decent and honorable life still continue to be a distant reality or far cry.

### RIGHTS OF THE DISABLE & UNO

Since the creation of this World body on 24<sup>th</sup> October, 1945 several attempts were made to touch upon the rights of Disabled persons at International level though it's various specialized agencies. The issues like the education, employment, prevention of Disability and their total rehabilitation has been dealt with through various. U.N. declarations.

These include:

(1) UN Declaration on the rights of mentally retarded persons (20<sup>th</sup> December 1971) [5] which guarantees the rights like:

- The Right to Proper Medical Care & Physical Therapy.
- Right of their education, training, rehabilitation and guidance for the development of their ability and potential.
- Right of to Economic Security and to a decent standard of living.
- Right to be engaged in the meaningful occupations according to their capabilities.
- Right to live with their own families or with foster parents etc.
- Right to protection from exploitation abuse and degrading treatment etc.

(2) UN Declaration on the Rights of Persons with Disability (9<sup>th</sup> December, 1975) contents the features like:

- Definition of the “Term Disabled Persons”.
- Enjoyment of the different rights without the discrimination of race, color sex, language, religion, national, or social origin etc.
- Right to enjoy a decent life with dignity as normal and full as possible.
- Enjoyment of the same civil and political rights by the disabled persons as other human beings.
- Right of self reliance as far as possible.
- Right to Medical, Psychological and Functional Treatment ensuring their medical and social rehabilitation, education vocational training, aid, counseling, placement services etc.
- Right to economic and social security ensuring employment with production and remuneration occupation.
- Right to join the trade union.
- Reflection of the special needs of the disabled in all stages of economic and social planning.
- Protection against all exploitation, all regulations and all treatment of a discriminatory abusive or degrading nature.
- Right to have legal aid for the protection of the persons of the disabled persons.
- Consultation with the organizations of the disabled in the matters of their rights.

(3) UN Resolution on the prevention of Disability and the Rehabilitation of Disabled Persons (6<sup>th</sup> May 1975).

(4) 1982 UN World program of actions concerning disabled persons.

(5) 1990 World Conference on Education for All (including the Disability).

(6) 1993 U.N. Standard Rules on equalization of opportunities for persons with disabilities.

(7) 1994 Salamanca Statement on Principle Policy and practice in special needs education etc.

(8) Asian and Pacific Decade of Disabled persons 2003-2012.

(9) Proposed U.N. Comprehensive and integral international Convention on Protection and Promotion of the Rights etc. of persons with Disability.

The above Resolutions contain a number of rights of Disabled persons and the measures for the realization thereof. But since the UN efforts are not obligatory in nature the States parties to them are at discretion to accept them.

### **CONSTITUTION OF INDIA & PROVISIONS FOR THE DISABLED**

So far as protection of basic human rights of citizens, the Constitution of India applies uniformly to all including the disabled. There are no special provisions for disabled as it has provided for other groups like Women, Scheduled Castes, Scheduled Tribes, and Religious Minorities etc. However, a passing reference for the disabled was made in Article 41 under the Directive Principles of State Policy. It seems that the Constitution makers did not find it necessary to make special provisions for the Disabled in the constitution. But in view of the general applicability of different provisions in Part III and IV i.e. Fundamental Rights and Directive Principles of State Policy of the Constitution of India, it may be inferred that they too equally apply to the disabled persons.

### **HUMAN RIGHTS OF THE DISABLED AS PROTECTED THROUGH OTHER ACTS**

With the strengthening of disability sector in the country there was a growing realization at the National & State levels for the protection and preservation of the rights of the disabled leading to their empowerment.

In view thereof some special Acts were made to deal with various aspects relating to the disabled persons. They include: The Mental Health Act, 1987, The Rehabilitation Council of India Act, 1992 & The National Trust for Welfare of Persons with Autism, Cerebral palsy, mental retardation and multiple disabilities Act, 1999.

Although several rights for the disabled persons have been enshrined in those documents, they cannot be discussed due to the shortage of the space here.

### **RIGHTS OF THE DISABLED AND THE PWD ACT 1995**

A demand for a comprehensive legislation dealing with the important issues of the disabled was met by enacting the persons with disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 [6] and the Rules made there under in 1996.

The Act guarantees for the first time several rights in detail to the disabled persons. They include:

- Rights to equal opportunity with the non-disabled
- Right to ensuring the Protection of Legal Right of the Disabled.
- A Commitment for the Full Participation in all the affairs along with the non-disabled persons
- Right to relating to the Care and Rehabilitation of the disabled in the mainstream of the society.
- Provisions for the prevention of arresting the occurrences of disabilities.
- Right of the disabled children to get free education till the age of 18 through special schools and integrated set up.
- Reservation of posts for the disabled under the Government and Public Sector undertakings.
- Reservation of seats for the disabled children in the Governmental and aided educational institutions.
- Absence of discrimination of the disabled persons in transport facilities, in built environments and in Government employment.
- Provision of unemployment allowance for the disabled persons etc.

#### **PROBLEM IN IMPLEMENTATION OF THE STATUTORY PROVISION AND THE RIGHTS OF THE DISABLED**

Beyond doubt there is plethora of national & international initiatives to protect the rights of the disabled in society. But all such statutory provisions often find implementation bottlenecks. The implementation problem finds hard reality due to lack of proper resource mobilization and the effective management of the resources which play a pioneering role in the enforcement of the rights granted to the disabled persons in different Acts.

At India, unlike, the Western countries, the resources in the society are improperly mobilized and poorly managed. The Human and the financial resources are mostly concentrated in around the cities and the towns in the country. The rural disabled greatly suffer due to the in efficient management and poor mobilization at grass root level. The concepts of resource mobilization and rights of the disability Act 1990, the Disability Discrimination Act (UK) of 1996 and other Legislations for the disabled in the developed countries ensure proper mobilization of resources, avoiding the concentration and duplication of activities for the welfare of the disabled persons. However thanks to the recent efforts of the NGO's and Central and the State Governments that the resources have started reaching the grass root level of the society which will go long way to ensure the empowerment of the disabled persons through fruitful implementation of their rights. Rights are just a paper work if these are not backed by proper social planning, efficient implementation of the

schemes for the disabled and effective participation of the community at large.

A plethora of such Acts and Enactments at national and international arena, have not yielded much of result in dealing with protection of human rights of the disabled in our society who still struggle hard to lead a honorable life.

A real and objective assessment of this sensitive human problem has made us to conclude that our approach to the whole problem is just like trying to run away from the devil, we have emerged in the deep sea. In this conflicting and confusing scenario, civil society intervention to the burgeoning problem of differently able persons could be more effective and appropriate [7]. Civil society, an alternative to formal institutional democracy has preferred to address each and every social problem/human problem in a more implicit forum of sociability.

If the state is unresponsive and bureaucracy is even repressive and exploitative, civil society calls for the regeneration of grassroots organization of marginal, dispossessed and vulnerable groups [8].

Civil societal groups, being most natural and organic forms of human solidarity, essentially inclined to approach various escalated human problem from a micro aspect for its objective realization.

In 21<sup>st</sup> century in the LPG era, welfare state across the world taking a back seat has created space for civil society to emerge as principal actor in protecting the civil liberties of these disabled in society and these deprived through Para support groups: Civil societal care giving by a composite micro group on some of the important aspects of prevention, early identification and intervention and by creating a circle of support [9]. It comes forward to motivate an ignorant rural parent about the psychological, emotional and moral aspect of behavioral, pattern in taking care of person with disability.

Thus, civil societal response to the problems of human disability could able to translate the statutory provision in to reality be sensitizing individual family, peers, community, govt. and bureaucracy who could develop a positive attitude towards the fellow member who are in a deplorable condition

Thus to say to ensure human rights of disabled as enshrined in various national and international charters, civil society approach of moral, emotional and psychological care are most important, and formidable for its applicability.

#### **CONCLUSION**

To sum up, unless a pro-active civil society come to forefront any number of legislation or

statutory Provision would not able to ensure human rights of disabled to lead a honorable life. So, human rights of disabled could be best protected with a proper civil societal response and it alone could able to place the deprived and neglected disabled people in community in its right perspective [10]. Their vulnerability must be countered through an accommodation approach to foster social cohesion. The rights of disabled as dignified members of the community must be acknowledged first.

So it is hoped that the rights of the disabled as depicted in different National and International documents would not be mere pious wishes, they would rather be implemented with sufficient planning copied with community and civil society response.

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