



## HUMAN RIGHTS WITH REFERENCE TO DISABLED PEOPLE

**Dr. D.S.V.S. Balasubrahmanyam**  
Associate Professor  
Public Administration  
SRR & CVR GOVT. COLLEGE (A)  
Vijayawada

**Abstract:** *People who are disabled or "differently abled" are entitled to the same human rights as everyone else, including life, liberty, equality, security, and dignity. Disabled people in India, however, continue to be an unseen group due to social indifference, psychological hurdles, a narrow definition of "disability" giving rise to legal protection, and a dearth of accurate statistics. Even if there are rules in place to guarantee their active and complete involvement in society, they are nonetheless insufficient because they mostly depend on political will.*

*While acting as a genuine protector of people with disabilities whenever the opportunity arises, the judiciary cannot be expected to answer the door to every request. It's interesting to note how occasionally disabled people's rights have been defended by various civil society and human rights advocates.*

*But disabled people won't be able to fully use their rights unless the legal groundwork is strengthened. In order to safeguard their interests and strengthen their capacities, it is necessary to pass effective regulations that are swiftly put into effect and are based on a "rights-based approach" as opposed to charitable, medical, or social approaches. As a result, legal boundaries must be widened to create a "human friendly environment" where all impaired people can get over the obstacles preventing their development.*

*This article examines the current legal and philosophical status of persons with disabilities, but the researcher contends that changing how society views disability is more likely to lead to a solution than changing the legislation. In essence, it's not a problem; rather, it's an additional exceptional ability possessed by these so-called "disabled people."*

**Keywords:** *Disabled, Human Rights, Constitution, Social Awareness, Development*

### Introduction

Disability is an issue of concern of every community and every nation. Number of persons with disabilities in the world is large and growing. Causes and consequences of Disability vary throughout the world. These variations are the result of different socio-economic circumstances and of the different provisions that States make for the well-being of their citizens. If it is poverty that caused the disability in some of the

countries, isolation was the consequence in some of the countries. Ignorance, Neglect, Superstition and Fear are some of the factors that contribute to the isolation and delay in the development of disabled people.

### Types of Exceptional people

Basing on the inability of the organ, the Disabled are variously categorized as; Mentally Challenged, Visually challenged, Hearing impaired,



Emotionally Challenged, Physically challenged, Speech and Language Handicapped. Added to this list the socially disabled, which was prevalent especially in India since ancient times.

### Present Scenario

Let us look at the policy scenario at the international level, to understand the shifts that have taken place in understanding the disabled. The main thrust with regard to disabled was education for the children and rehabilitation for the adults before the World War II. After the World War II, Integration and Normalization were the basic concerns. This change of concern reflects the growing awareness of the capabilities of persons with disabilities. People started identifying them to be differently-abled rather than disabled. At the same time the problems of disability in developing countries were more and more highlighted. In some of those countries the percentage of the population with disabilities was estimated to be very high and, for the most part, persons with disabilities were extremely poor.

### Definitions:

The terms "disability" and "handicap" were often used in an unclear and confusing way. The terminology reflected a medical and diagnostic approach, which ignored the imperfections and deficiencies of the surrounding society.

In 1980, the World Health Organization adopted an international classification of impairments, disabilities and handicaps, which suggested a more precise and at the same time relativistic approach. Current terminology recognizes the necessity of addressing both the individual needs (such as rehabilitation and technical aids) and the shortcomings

of the society (various obstacles for participation).

UN Declaration of the Rights of Disabled persons 1975, defined disabled person as; "any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities."

The terms Exceptional, Handicapped, Disabled, Special, Impaired etc. are used synonymously though they do not represent same sense. WHO has clearly distinguished -

Impairment, Disability and Handicap.

Impairment: means abnormalities of body structure and appearance....impairment represents disturbances at the organ level.

Disability: reflects the consequences of impairment in terms of functional performance and activity by the individual.

Handicap: refers to disadvantages experienced by the individual as a result of impairments and disabilities. Handicaps thus reflect interaction with an adaptation to the individual's surroundings.

### Meaning of the Right

Right is something inalienable and indefinable. Usually rights are either listed as Right freedom, speech etc. or explained. Listing is based on the cognition of violation of something that one believes not to be so.

Need for an inclusive perspective of the definition Human being Usually humans are defined on the basis of their capability to reason or feeling. Thus, Rationality, Emotion and Intelligence have become the hallmarks of human



being. Unintentionally this kind of understanding of humans excludes the differently abled from its domain. Such exclusion would debar them from the possession of Human rights. Hence now there is an urgent need to change the perspective of looking at the very definition of human being from a more inclusive perspective.

Landmarks in the history of the Rights of Differently abled

The Universal Declaration of Human Rights - 1948

The Declaration on the Rights of Mentally Retarded persons - 1971  
The Declaration on the Rights of Disabled Persons - 1975

The Declaration on the Rights of Deaf-Blind persons (Adopted by Economic and Social Council, UNO) - 1979

International Year of the Disabled persons - 1981

World Program of Action concerning disabled persons - 1982

UN Decade of Disabled Persons 1983-1992

Standard Rules on the Equalization of Opportunities for Persons with

Disabilities-1993

International Day of Disabled persons: 3rd December

Let us discuss some of these landmarks to have a better understanding of the perspectives of the rights of the differently abled.

### **1. Universal Declaration of Human Rights - 1948**

Universal declaration of Human rights attempts to encompass the possible rights of all human beings. The rights listed in the declaration exhaust all the possible rights that a human being needs

to lead a dignified life. Every article of the declaration refers to either 'all' or 'everyone', implying the universal applicability. At some places special references are made to discriminations of various kinds such as race, colour, sex, language, political, national or social origin, birth or other status. These belongs to either social, ethnic, racial or political, but does not refer to differently abled persons. Though no prejudice can be attributed to the declaration, it is a pity that the people who are met with both biological and social discrimination do not find a place in it.

### **2. The Declaration on the Rights of Disabled Persons**

The Declaration on the rights of Disabled persons calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights. According to the declaration, Rights shall be granted to all disabled persons without any

exception and without any distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family. The declaration highlights the Disabled person's inherent right to respect for their human dignity. It once again confirms that Disabled persons also have the same fundamental rights, Civil and Political rights as their fellow-citizens, of which first and foremost comes the right to enjoy a decent life - as normal and full as possible. Disabled persons, their families and communities shall be fully informed of the rights contained in this declaration.



### 3. Standard Rules on the Equalization of Opportunities for Persons with Disabilities - 1993

The equalization of opportunities for persons with disabilities is an essential contribution in the general and worldwide effort to mobilize human resources. Special attention may need to be directed towards groups such as women, children, the elderly, the poor, migrant workers, persons with dual or multiple disabilities, indigenous people and ethnic minorities. Some of the important aspects of these rules are;

1. Persons with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services.
2. As persons with disabilities achieve equal rights, they should also have equal obligations. As those rights are being achieved, societies should raise their expectations of persons with disabilities. As part of the process of equal opportunities, provision should be made to assist persons with disabilities to assume their full responsibility as members of society.
3. Awareness-raising should be an important part of the education of children with disabilities and in rehabilitation programmes and should be a component of teacher-training courses and training of all professionals.
4. Persons with disabilities could also assist one another in awareness-raising through the activities of their own organizations.
5. Increased self-reliance and empowerment will assist persons with

disabilities to take advantage of the opportunities available to them.

### Invisible Minority is the Situation in India

Differently-abled are an invisible minority in India. "There has been a systematic neglect of the disabled people in India," says Javed Abidi, chairman of the National Centre for Promotion of Employment for Disabled People (NCPEDP). He adds, "Be it in the area of education, employment of access, the starkness will stare you in the face. Even without number-crunching, we can see that 99% of the disability-related NGOs are working in the area of service delivery special schools, welfare support or vocational training. Still, the government officially admits that less than 2% of disabled people are getting educated." According to conservative estimates, approximately 6% of India's population is disabled. And if we go by what the U.N. officials or various other experts say, the figure could very well be in double digits. In India disability is a stigma. To be disabled means to be a person without a leg or arm or eye or twisted or worse, crooked. People are ashamed to be labelled 'disabled'. What is most tragic as far as disabled people in India are concerned is the fact that our Census Commission never bothered to collect statistics on disability. At least, not since India attained independence from the British Raj. Thus, to put it simply, the name of the game thus far has been: No Census, no statistics, no problem! The only attempt India made was in 1991, when a National Sample Survey was conducted. It pegged the population of disabled people in India at 1.9%. And that perhaps is one of the reasons for the false impression that citizens are just simply not affected by disability. After a massive public campaign, the Government of India finally



yielded and has included disability as a category in Census 2001. If we agree on the conservative estimate of 6%, we are talking about the welfare and well-being of approximately 60 million of our citizens. So, for how long are we going to ignore the facts and the realities? The fact that a disabled person in India can neither attend school, nor go to a college; that getting employment is next to impossible; that something as simple and ordinary as going to a cinema hall or to a park becomes a sort of an ordeal. The most grievous mistake our policy makers and decision makers have made is to have looked at disability as a charity issue, as a welfare issue whereas it was, it is and it should rightly be a development issue, a progress issue and an economic issue. What we have done, most probably without even realizing it, is to have left this 6% of our population totally behind, to the point that they, our own brothers and sisters, are no longer visible. They have become 'the invisible minority of our great nation.

Part III of the Indian constitution grants its citizens certain fundamental rights, which are said to be applicable to all. Even in this though special mention was made of socially disabled such as racial, caste and gender groups, people with other disabilities did not find any mention at all.

Article 15 clause 2 considers the reasons for the disability to be religion, race, caste, sex, place of birth. It reads, 'No citizen shall be subjected to any disability on the grounds of religion, race, caste, sex, place of birth or any of them.' This ignores the disability caused by biological impairment. With regard to Directive principles of State policy, 42nd amendment act 1976 which added article 39 A mentions the disability with an inclusive reference. It reads, 'State should

provide free legal aid in cases of economic or other disability.' Even here, 'other disability' could only be referring to social or gender categories, but not about biological categories.

### **Landmarks in the history Differently abled in India are;**

1. The Mental Health Act, 1987
2. The Rehabilitation Council of India Act, 1992
3. The Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation), 1995
4. The National Trust for welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities Act, 1999
5. National policy for persons with disabilities

Among these the persons with disabilities act, 1995 is a significant one, for more than one reason. It not only gave a region specific inclusive account of the disability in India, but also attempted to protect the rights of the estimated one crore differently-abled Indians. Let us discuss some of the important features of the act.

### **The Persons with Disabilities Act 1995**

A high power committee under the chairmanship of Justice Baharul Islam was constituted to work on the disability issue during late 1980s. The committee gave its report in 1988. 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995' was passed by the Indian Parliament in December of 1995. It was notified on 7th February, 1996 and thus, it became the law of the land. The act redefines welfare measures for an estimated One Crore disabled Indians.





"Disability" means-

1. "Person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;
2. It is mandatory for Central and state governments to intensify campaigns to prevent disabilities.
3. It calls for nationwide screening programmes for preschool children at risk of disabilities from poor nutrition, infections, or other causes, and it advocates free education up to the age of 18 for children with disabilities.
4. Learning aids to help those with poor vision and hearing disabilities, and prosthetic devices for people with physical disabilities, will be provided free.
5. An unemployment allowance will be paid to disabled people registered with employment agencies.
6. Only a tenth of people with disabilities in India receive government sponsored benefits.
7. The bill proposes reserving jobs in government institutions for people who are blind, have a hearing impairment, or are physically disabled. The government will also offer incentives to private sector organizations that recruit disabled people for at least 5% of their workforce.
8. The bill prescribes fines and imprisonment of up to three months for parents or relatives who "wilfully neglect, reject, discriminate against or deprive a disabled child of food, clothing, and shelter."

Central Coordination committee and Central Executive committee; State

coordination committee and State Executive Committee were to be constituted to monitor and execute the work related to the differently abled at both state level and national level respectively.

### **Present scenario**

Growing awareness regarding the Abilities of the differently abled among the policy makers and the people has paved a way for the improvement in their conditions. Consequently, India has ratified a UN convention to promote and protect the human rights and fundamental freedoms of those with disabilities and also respect for their inherent dignity. India is now committed to the elimination of barriers that persons with disabilities face and the Constitution of India implicitly mandates an inclusive society for all, including those with disabilities.

### **Social Responsibility**

It should be noted, however, that mere making of policies will not improve the situation. These are people with special needs, hence they need special rights. Who will identify these rights? Who has to argue for their rights? They need empathy than sympathy. Only empathy can make both policy makers and the people around to comprehend the problems of the disabled.

Problems lies both at the execution of the policies and also at the perception of the social responsibility by the people.

At the individual level the social responsibility with regard to differently abled lies primarily with, teachers, Parents/ family members and Neighbours and friends. Teachers are placed first because unlike others, they have to take care of more number of pupils with



disabilities. Teacher gets the first chance to identify the impairment of the pupil. Hence, teachers have the responsibility of bringing awareness about the Rights of the Disabled.

### **Conclusion**

Disabled are not disabled because of their impairment but because of our inability to see their inner capabilities and treat them sympathetically with regard to their impairments. There is deepening of knowledge and extension of understanding concerning disability issues and the terminology used in recent times. This emphasized the need for recognition of necessity of addressing both the Individual needs - Such as rehabilitation & Technical aids; and Shortcomings of the society - such as various obstacles for participation.

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