

Human Rights of Especially Abled Persons In India: Theory And Practice

Dr. Kulwinder Singh
*Principal, The Royal Group of Colleges,
Borawal, Mansa*

AP Jaswinder Singh
*Department of Political Science
Mai Bhago Degree College, Ralla, Mansa*

Date of Submission: 24-04-2024

Date of acceptance: 02-05-2024

People with disabilities are vulnerable because of the many barriers we face: attitudinal, physical, and financial. Addressing these barriers is within our reach and we have a moral duty to do so..... But most important, addressing these barriers will unlock the potential of so many people with so much to contribute to the world. Governments everywhere can no longer overlook the hundreds of millions of people with disabilities who are denied access to health, rehabilitation, support, education, and employment—and never get the chance to shine.

-Stephen Hawking

The terms 'physically handicapped' and 'disabled' are often used with a certain confidence, suggesting as if we know exactly what they mean. But in reality, we don't. We just make an attempt to explain, much less define them. These mean different things to different individuals, society and the state and vary with time and place and therefore, the purport of these terms also varies. Efforts have been there to define them exactly, but there are certain problems: The question, 'Who is disabled', Give rise to other questions, " who is defining? What is his purpose? Under what circumstances is the attempt being made'? The cause and effect (degree or percentage) of disability are also important factors especially when the purpose of definition is to grant compensation to the disabled.¹

Disabled people are the largest minority in the world encompassing more than 500 million persons, of which 2/3 live in developing countries. The World Health Organization estimates that there are 600 million disabled people in the world which amounts to about 10% of the world population². In fact, in most countries up to 80% of persons with disabilities of working age are unemployed. Almost everywhere in world, it is found that there is a sizable gap between the working conditions of the employed disabled persons with those persons without disability. Moreover, persons with disabilities often are dependent upon begging, or similar sorts of livelihood, not through any meaningful employment.³

The Declaration on the Rights of Mentally Retarded Persons (1971): The Declaration proclaims that a mentally retarded person should have the same rights as other human beings. It also accepts the necessity of assisting such persons to develop their abilities to the fullest in various fields of activities and of promoting their integration in normal life. A mentally retarded person has the right to proper medical care and physical therapy just like other able persons and to such education, training, rehabilitation and guidance which will enable him to develop his ability and potential. Such a person should have the basic human right to economic security and to a decent standard of living, opportunity to perform productive work or to engage in any other meaningful occupation to the maximum extent of his/her capabilities. He has a right to protection against exploitation, abuse and maltreatment.⁴

The Declaration on the Rights of Disabled Persons, 1975, for the first time defines the term "disabled persons" to mean "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." Like the Declaration on Mentally Retarded Persons, it also emphasizes that disabled persons have the basic right to respect for their human dignity and the right to enjoy a standard life, as normal as possible.⁵

The Declaration on the Right to Development 1986: In this declaration through Article 2 it has been stated that States have the right and the duty to formulate appropriate national developmental policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their

active, free and meaningful participation in development and the fair distribution of the benefits resulting thereof. Article 3 declares that States have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development. Though this declaration does not say anything specific on the rights of disabled person, but the right to development is the precondition of liberty, progress, justice and creativity. Being a core right from which all the rights stem, it naturally covers the rights of disabled persons.⁶

This position has been further clarified in the Vienna Declaration and Programme of Action adopted on June 25, 1993 by the World Conference on Human Rights. Like the Declaration on the Right to Development, it also states that the human person is the central subject of development.⁷

The Convention on the Rights of Persons with Disabilities (CRPD) adopted on 13th December 2006 by the UN General Assembly is a fundamental instrument aimed to protect human rights of persons with disabilities. The Government of India ratified the Convention on 1st October 2007.⁸

A number of International commitments and guidelines came into effect in the recent past targeting the welfare of the disabled persons. India is a signatory to the 'Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region' (2000). India has ratified the 'UN Convention on the rights of Persons with Disabilities' (2008). India is also a signatory to the 'Biwako Millennium Framework '(2002) for action towards an inclusive, barrier free and rights based society. The 'Biwako Plus Five (2007): further efforts towards an inclusive, barrier-free and rights-based society for persons with disabilities in Asia and the Pacific' added the emphasis. The Incheon Strategy to "Make the Right Real" for Persons with Disabilities in Asia and the Pacific (2012) provides the Asian and Pacific region and the world with the first set of regionally agreed disability inclusive development Goals. The Incheon strategy will enable to track progress towards improving the quality of life, and the fulfillment of the rights, of the region's persons with disability. The Sustainable Development Goals (2015) pledges for 'leaving no one behind'. Recognizing that the dignity of the human being is fundamental, the SDGs wish to see the Goals and targets met for all nations and peoples and for all segments of society and to Endeavour to reach the furthest behind first. The implementation and monitoring of these international commitments demand sound database of disabled persons.⁹

There is a long tradition in India of caring for the weak and vulnerable by family members at a great personal sacrifice, yet the role of the family as a sole support for the disabled grew out of the failure of colonial rulers in maintaining social safeguards that were available throughout ancient and medieval India. In fact, the concept of charity got introduced in India during British rule, basically to tackle problems of destitution, beggary, crime, and delinquency, which grew out of proportion with the diminishing of social safeguards that existed earlier.¹⁰

For instance, Kautilya, the renowned political economist of the Maurya period and author of Arthashastra, said that the king should provide the orphans, the aged, the infirm, the afflicted and the helpless with maintenance.' For their self reliance and economic independence he suggested awarding work on priority to women who are widowed, single, crippled and abandoned. He also recommended earmarking certain jobs exclusively, such as spinning, weaving and cutting of wool, cotton, and flax, for the disadvantaged and vulnerable to help them socially and economically as well Emperor Ashoka had developed an elaborate public health system.¹¹

The king made hospitals along the highways and deputed physicians and made arrangements for medicines, food and drinking water. At the village level records were maintained of birth, death, caste and also to provide for the ill, infirm and those in needs of help¹². In comparison the reign of Chandra Gupta Maurya stands to be unique in its arrangement of workshops for the rehabilitation of the physically disabled as well as other socially and economically disadvantaged members.¹³

Even during the Mughal period, institutions established for welfare continued to survive under Zakat, a system by which part of the income was set apart for the central fund for maintaining social institutions. In fact, the Mughals instituted a special department with a head to supervise and manage Zakat.¹⁴

Apart from these realities, the foreign authors often suggest that disabled children in ancient India were often thrown into the Ganges. Even it is known that the blind, deaf, crippled and the idiots had to perform the ritual of 'Bandhayana' where the kings were suppose to provide fooding, clothing and shelters to these incapable persons.¹⁵

Thereafter in the British India initially in the eighteenth and nineteenth century we find that there was not much concern for these unfortunate people of the society; the reason may be that in the earlier stage the British Government was busy in putting their foot firmly on the soil of India. They had no interest or even concern for the welfare of the Indians and hence social security measures for persons with disabilities does not arise. Yet during this time there was few legislations made by the British Government in twentieth century like the Lunatic Asylums Act 1858 which was the very first Act of this kind to deal with the disability issues and was a weak effort on part of the British Government to provide protection mechanism for unprivileged class. Apart from it the other Acts during those times which had provisions relating to the persons with disabilities was

Indian Penal Code 1860, Indian Contract Act 1872, The Lunacy Act 1912 or The Lepers Act 1898 and the like.¹⁶

It is only after 1947 that the Government of India took positive steps in various areas from physical to vocational rehabilitation for the disabled citizens. In spite of Legislations like Persons with Disabilities Act 1995, National Trust Act 1999, the general attitude of the society towards the disabled did not yet change. As in the ancient times even in modern days we find that the disabled are ostracized from the society; sadness, pity, sympathy are always associated with disability. This sympathetic attitude has got various manifestations. In India, Census 2001 has revealed that over 21 million people (approximately 2.1%) suffer from one or the other kind of disability. This is equivalent to 2.1% of the population. Among the total disabled in the country, 12.6 million are males and 9.3 million are females. Such proportion has been reported between 57-58 percent for males and 42-43 percent females. The disability rate (number of disabled per 100,000 populations) for the country as whole works out to 2130. This is 2369 in the case of males and 1874 in the case of females.¹⁷

In the year 2007 on International Day of Disabled Persons the government focuses on how to ensure decent work for persons with disabilities. The recently adopted U.N. Convention on the Rights of Persons with Disabilities 2006 recognized in Article 27 the rights of persons with disabilities to work and employment on an equal basis with others; it stresses on the right of persons with disabilities to earn a living from freely chosen work and to work in an environment that is both accessible and accepting. But in India it is often seen that employers normally resist employing a disabled person because it is believed that they will be unable to perform their roles and would be too expensive. This attitude is almost like questioning the capabilities of a disabled person rather than on their abilities of the individual. Empirical study, however, shows that persons with disabilities have high performance ratings than their colleagues without disabilities.¹⁸

Gradually, also a growing consciousness was emerging to protect the rights of the disabled persons in the international sphere, and India being a signatory to International Covenant on Civil and Political Rights (1966) together with the next two other human rights documents like Optional Protocol to International Covenant on Economic, Social and Cultural Rights (1966) International Convention on Elimination of all Forms of Racial Discrimination (1965), Convention on All Forms of Racial Discrimination Against Women (1979) and Optional Protocol to the Convention (1999) has actively engaged herself to make a comprehensive domestic legal framework for protecting the rights of the persons with disabilities.

Reference

- [1]. M. Blaxter: *The Meaning of Disability: A Sociological Study of Impairment*, Heinemann Educational Book Ltd., London, at p.5. 1976.
- [2]. Degener, Theresia and Yolan Koster, *Dreese Human Rights and Disabled Persons: Essays and Relevant Human Rights Instruments*, Martinus Nijhoff, Oxford University Press, 1995, p.4
- [3]. www.disabilityworld.org
- [4]. Banerjee Goutam, 'Disability and the Law', Commercial Law Publishers (India) Pvt. Ltd. 1 51 ed., 2005, p. 12
- [5]. Ibid.
- [6]. UN, *The United Nations and Human Rights 1945-1995*, The United Nations Blue Book Series, vol. VII New York: Department of Public Information, 1995
- [7]. www.un.org/esa/socdev/enable/rights/ahcwgreportax1.htm.
- [8]. www.disabilityworld.org
- [9]. www.mospi.gov.in
- [10]. Paul Chowdhury, D.; *A Handbook of Social Welfare*, Delhi: Atma Ram & Sons, 1981, p.1, A. R. Wadia, ed., *History and Philosophy of Social Work in India*, A Souvenir Volume of the Tata Institute of Social Sciences, Bombay: 1961, p. 17-25
- [11]. Shamasastri R. (trans.), *Kautilya's Arthashastra*, Mysore: Wesleyan Mission Press, 1923, 2nd ed., 1923.
- [12]. Smith, V.; *Asoka: The Buddhist Emperor of India*, Oxford: Clarendon Press, 3rd ed., 1920, p.66.
- [13]. National Human Rights Commission Disability Manual 2005, National Human Rights Commission, New Delhi, p.34-35
- [14]. Chopra.P. N., B.N. Puri & Das; *A Social, Cultural & Economic History of India*, Macmillan, Volume I & II, 1974, p.50
- [15]. Majumdar, R.C.; *Social work in Ancient and Medieval India*, pub. Wadia, 1st ed., p.66 as cited in G.N. Kama *United Nations and Rights of the Disabled Persons*, A study in Indian perspective, A.P.H. Publishing Corporation, New Delhi, 1st ed., 1999
- [16]. Government of India, *A Report on Disabled Persons*, No. 393 of the National Sample Survey Organisation (July- Dec.2009); *A Report on Delayed Mental Development among Disabled Children*, No. 391.
- [17]. Ibid.
- [18]. Singh, Ramindar, *The Handicapped Getting their Due*, India Today, p. 187, November 30, 1998.