

LEGAL FRAMEWORK FOR PERSONS WITH DISABILITY: NEED A FRESH LOOK

Dr. N. Mudduraju*

* Assistant Professor of Law, Vidyodaya Law College, B.H.Road, Tumakuru, Karnataka

Introduction

Life forms the fulcrum of human actions. It is the sole factor responsible for human existence. It is the basis of all basic rights of man. Without it none of other basic rights can be exercised or enjoyed at all. While so much is the dependence of other rights upon right to life, the support that right to life gets from other rights and human actions is equally matching.

Possession of abilities to perfect one's personality fills dignity and joy to the life. Without human dignity, a process of human devaluation occurs to sap the essence of the system of life. Because of the increased awareness of the importance of dignified life, in our constitutional system various positive rights like right to food, shelter, education, and means of livelihood are traced under right to life.

Whereas; person with disability face many challenges due to his / her impairment and do need a very special attention. This has been so recognized in our constitution.¹ Within the limits of the economic capacity and development, under Article 41 the state is directed to make effective provisions for securing right to work, to education, to public assistance in case of unemployment, old-age, sickness and disablement, and other cases of underserved want. Again in Article 46 the State directed to promote with "Special Care" the educational and economic interests of the "Weaker sections" of society, obviously including within its ambit the disabled.

The concern of the international community of reflected in the resolution of the General Assembly of the United Nations proclaiming 1981 as the International year of the disabled persons with the following objectives.²

- i. Helping disabled persons in their physical and psychological adjustment of society.
- ii. Promoting all national and international efforts to provide disabled persons with proper assistance, training, care, & guidance to make available opportunities for suitable work and to ensure their full integration in society.
- iii. Encouraging study and research projects designed to facilitate the practical participation of disabled persons in daily life by improving their access to public buildings and transporting system.
- iv. Educating and informing the public of the rights of the disabled persons to participate in and contribute to various aspects of economic, social and political life promoting effective measures for prevention of disability and for rehabilitation of disabled persons.³

* Assistant Professor of Law, Vidyodaya Law College, B.H.Road, Tumakuru, Karnataka

¹ Arts 41 & 46.

² Report of curriculum development centre – law vol II UGC. New Delhi [1990]. P. 387.

³ India is a signatory to this resolution and intends to realize its objective through a sustained national plan of action.

By reading the provisions of the constitution of India and objective resolution of the General assembly of the United Nations we could understand that they are made to empower the persons with disability. Empowerment is basically infusing of competence into a category that does not presently possess it. This enables the category to overcome the prevalent disability and compete with other groups in access to good things of life and human rights. Welfare schemes for education employment, self help collective activities and better legal environment for people with disability equip them with the needed power.

Conceptions of disability:

A disability is a condition or function judged to be significantly impaired relative to the standard of an individual or group⁴ and is often used to refer to the individual functioning including physical impairment, sensory impairment, cognitive, intellectual impairment and mental health issues.⁵

Disability has been seen as an individual problem or as a societal problem. Accordingly, disability has been categorized to address the problem. They are:

1. Moral or Religious disability [charity model].
2. Pathological disability; physical and mental [Bio-centric model].
3. Social disability: [Functional model].
4. Legal disability [Human rights model].

Under the **charity model** disabled are considered as helpless victims, wherein disabilities were caused by irreligion or renunciation of religion; unchastely; addiction to vice; enmity to father or to prostitutes; adoption of religious order, which is tantamount to civil death.⁶

The **Biometric model** focuses on the biological origin of the disability conditions and concerns with the issues like disease, disorder, physical or mental characteristic.

In **the functional model [social disability]** the difficulties faced by a person are seen as arising from a mismatch of the individual's biological conditions and functional capacity on one hand and environmental and situational factors on the other. Social conception of disability does not necessarily follow the logic of biological nature of reality and vary from society to society, and even within the same society with the flux of time.⁷

Human rights model [Legal disability] considers disability as an important part of Human culture and it affirms that all human beings irrespective of their disability have certain inalienable rights.

Disability could be temporary or permanent, and it may be partial and total.

The disability could be with reference to body functions and by structures. Thus the WHO's international classification of functioning [ICF] disability and Health distinguishes between body functions [physiological or psychological] and body structures [anatomical parts]⁸

⁴ The world health organization [WTO] estimates that there are as many as Six Hundred [600] persons with disabilities.

⁵ 2001 census of India projects 22 million persons with disabilities. NHRC disability manual. New Delhi 2005 P.9.

⁶ CDC – [law] UGC report opcit. P. 388. [Supra Note 3]

⁷ Ibid.

⁸ WHO. 1999

The impairment in bodily structure organization is defined as involving anomaly, defect, loss or other significant deviation from certain generally accepted population standards, which may functionate over time. The ICF lists nine broad domains of functions, which can be affected.

- i. Learning and applying knowledge.
- ii. General tasks and demands.
- iii. Communication.
- iv. Mobility.
- v. Self care.
- vi. Domestic life.
- vii. Interpersonal interactions and interrelationships.
- viii. Major life areas.
- ix. Community, Social and Civil life.

Thus, disability means many things to many people for many purposes. As the social dimension of disability gained momentum the functional and Human rights models have become important. The concept of disability from the legal point of view always encompasses the rights of persons with disability that the disabled stand denied.

A person has disability, if he has a physical or mental impairment which has a substantial and long term diverse effect on his ability to carry a substantial and long term adverse effect on his ability to carry out normal day to day activities.⁹

Disability with respect to individuals means¹⁰

- a. A physical or mental that substantially limit or more of the major life activities of such individual.
- b. A record of such an impairment or
- c. Being regarded as having such impairment.

In India **the persons with disabilities [equal opportunities, protection of rights and full participation] Act 1995¹¹** defines **“Person with disability** as a person suffers from not less than **forty percent** of any disability as certified by a medical authority¹² and **disability¹³** means,

- i. Blindness.
- ii. Low vision.
- iii. Leprosy cured.
- iv. Hearing impairment.
- v. Locomotors disability.
- vi. Mental retardation.
- vii. Mental illness.

⁹ The UK Disability discrimination Act 1955.

¹⁰ US American's with Disability Act [ADA] 1999.

¹¹ Here in after PWD Act

¹² S2 (t). PWD Act.

¹³ S2 (i) PWD Act.

Article 1 of the UN Convention on Rights of persons with disabilities [2006] defines that persons with disabilities include those who have long term physical, mental intellectual or sensory impairment which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹⁴

POTENTIAL SOURCES OF DISABILITY:

Disability is not a curse or the result of some sin committed in the past. It occurs because of genetic and medical problems, faulty dietary habits, improper birth practices, malnutrition, and non-immunization against common diseases, unhygienic living conditions, accidents and old age.¹⁵ Broadly, we could categorize sources of disability in to

1. Congenital disability.
2. Disability caused by Natural calamity [floods, drought, epidemics etc.]
3. Disability caused by accident.
4. Disability as a result of working in high risk industrial establishments.
 - i. Private undertaking – Eg Bhopal gas.
 - ii. Public Undertakings – Eg Atomic plants.
5. Self inflicted disability [smoking, drug addiction, drinking liquor].

Barriers: Persons with disabilities are not able to perform up to their potential remain marginalized because of their physical or mental handicaps but also an account of the barriers put up by society. These barriers fall in to **four**¹⁶ broad Categories:

1. **Environmental barriers** – these are inaccessible public and private buildings, hospitals, schools, colleges, offices, factories, shops, hotels and restaurants, places of entertainments, parks, transport, communication systems etc., as most establishment do not provide facilities for the disabled. The result is that they are excluded from the mainstream of society.
2. **Institutional barriers** – these include exclusion and segregation from key social institutions relating to education, employment, health, law and justice, recreation etc. Direct and indirect discrimination against persons with disabilities prevents them from availing services provided by such institutions.
3. **Attitudinal barriers** – In society there is a common perception that persons with disabilities are incapable, inadequate, a drain on family sources, etc. However, this is really the result of prejudice born out of ignorance, superstitions and misconceptions. It is therefore essential to transcend these barriers in understanding and to appreciate the potential of persons with disabilities to contribute to the gross domestic product [GDP] of the society.
4. **Information Barriers** - People with disabilities and their families especially parents are often victims of communication gap. Parents are not always told the truth about disability of their child, not told early enough for timely and appropriate intervention and not told with sensitivity. In many cases they are

¹⁴ UN General Assembly resolution on 13.12.2006 signed by 115 countries. India ratified this convention on October 2007.

¹⁵ P.C. SIKLIGAR. Institutional arrangement for upliftment of persons with disabilities; A study in North India. HSSI Quarterly Vol 23 No. 4: 2005. P. 68

¹⁶ Ibid.

not informed of appropriate referral services. The affected persons are not aware of the schemes, benefits and concessions available to them.

Basic approaches to disability:

The approach of society towards persons with disabilities needs to change from one of charity to providing fair opportunities, giving them their rights and treating them as an integral part of families and communities.

(I): Traditional approach of sympathy and charity: According to the census 2001, approximately 3% of people in India are affected with impairment or disability. They are continued to be neglected and marginalized with the onus of care on the family rather than on the community. India **need to mark a shift from the medical model of intervention to community based rehabilitation of the disabled.**¹⁷

December 3rd of every year being the world disabled day, the day will be marked with programs where politicians, Bureaucrats, NGO's and Charity groups will distribute wheel chairs and hearing aids to some of the physically challenged. While this gesture is welcome, it is time that India moved beyond this annual one-day display of "generosity"¹⁸ to the physically and mentally challenged to adopting a more comprehensive approach towards addressing the multitude of challenges they encounter in their daily lives.

They are looked upon as a stigma and a burden. They are victims of discrimination, even ridicule. Buildings and public transport are inaccessible to the physically challenged. Studies reveal the disabled are among the most excluded sections in our society. A World Bank report has found that children living with disability are around 4 to 5 times less likely to be in school than dalit and adivasi children.¹⁹ The employment of disabled from employment has worsened over the past decade. The employment rate of disabled people has declined from 43 per cent in 1991 to 38 per cent in 2002.²⁰

We have a long way to go in mainstreaming disability into critical areas such as employment, education, barrier free access.

Given the wealth that India is generating for some of its citizens, it is not impossible to achieve a modicum of independence for the disabled or else they will remain indoors and the rest of us will take pride that our city or nation as no disabled people. After all you don't see them.²¹ Are we doing enough for the disabled amongst us, to help them lead independent lives? If so, why do we not see them around us? So called we the able in our society are among the least sensitive to their problems.

Our approach should be one of seeking to empower them rather than either ignoring their existence or Viewing them as recipient of charity. For this, while being sensitive to the special needs of the physically and mentally challenged, we need to focus on including and integrating them in the mainstream.

It is up to the policy makers and a responsible society to ensure that the lives of the less fortunate are enabled to an extent that they can lead normal lives.

¹⁷ Mukul Mudgal. Justice. Naya deep.

¹⁸ Editorial Deccan Herald 03.02.2008.

¹⁹ Considering disabled children among dalits & Adivasis.

²⁰ Supra note 14.

²¹ Jayalakshmi K. Enabling them to come out of confines. Deccan Herald. 03.12.2008.

Modern approach of rationality similarity and human dignity: (ii) The Rights Based approach:

During the last two decades persons with disabilities have, through their own organizations strived to make their voices heard in many countries by advocating for their rights and ensuring that disability issues became a priority and part of the disability agenda.

The rights based approach to disability and development is about leveling the playing field so that the people with disabilities can access health, education, employment and other services. This approach is about the removal of physical and social barriers; it is about attitudinal adjustments for policy makers' employers, teachers, healthcare professionals and even family members.²²

The positive approach to such problems should include right to food, clothing, shelter, preventive and primary health care, medical treatment and assistance, educational facilities, job opportunities, social security, etc., leading to their rehabilitation and integration into community for all purposes. What the disabled want is not charity but the removal of barriers – physical, social and psychological, so that they can have every access to facilities and enjoy all freedom and become independent, useful and contributive member of society.²³

India had enacted **the persons with disabilities [Equal opportunities, protection of rights and full participation] Act, 1995²⁴ to implement the Beijing proclamation of Ecosoc 1992 and the declaration on Rights of disabled persons 1975. The Mental health Act 1987** also contains prominent human rights principles. Parliament also enacted **the National trust for welfare of persons with autism, cerebral palsy, Mental retardation and multiple disabilities Act 1999²⁵**. The NTD Act provides for protection and development of persons who suffer from different disabilities. Whereas, the PWD Act 1995 assures the rights of the disabled persons and lays down the duties and responsibilities of the state and the community towards the disabled.

The Supreme Court and High Courts decisions on the matters of the disabled under the canopy of right to life (Art 21) are numerous. Personal law, labour law, health law, and educational law also have great bearing as the rights of the disabled.

A land mark development in the history of human civilization is the emergence of **the UN convention on the rights of persons with disability 2007**. The convention will be effective soon the ratification of convention by another 20 members. Under the convention, the persons with disability include people with long term physical, mental intellectual or sensory impairment, which can hinder their participation in society as equal basis with others. The general principles of the convention are respect for inherent dignity, individual autonomy, independence of persons, non-discrimination, full and effective participation and inclusion in society, equality of opportunity, accessibility and equality between men and women among other things. In addition to guaranteeing their basic human rights, states are obliged to provide for measures relating to their home and family, education, health, rehabilitation, work employment and adequate standard of living. Meaningful participation in various spheres of life is also contemplated. Measures for

²² Mukul Mudgal. Justice. Naya deep. P-56.

²³ Suresh V Nadagoudar. Right of disabled persons: an overview of the PWD Act. IBR Vol 27(2) 2000. P. 174.

²⁴ Here in after the PWD Act 1995.

²⁵ Herein after the NTD Act 1999.

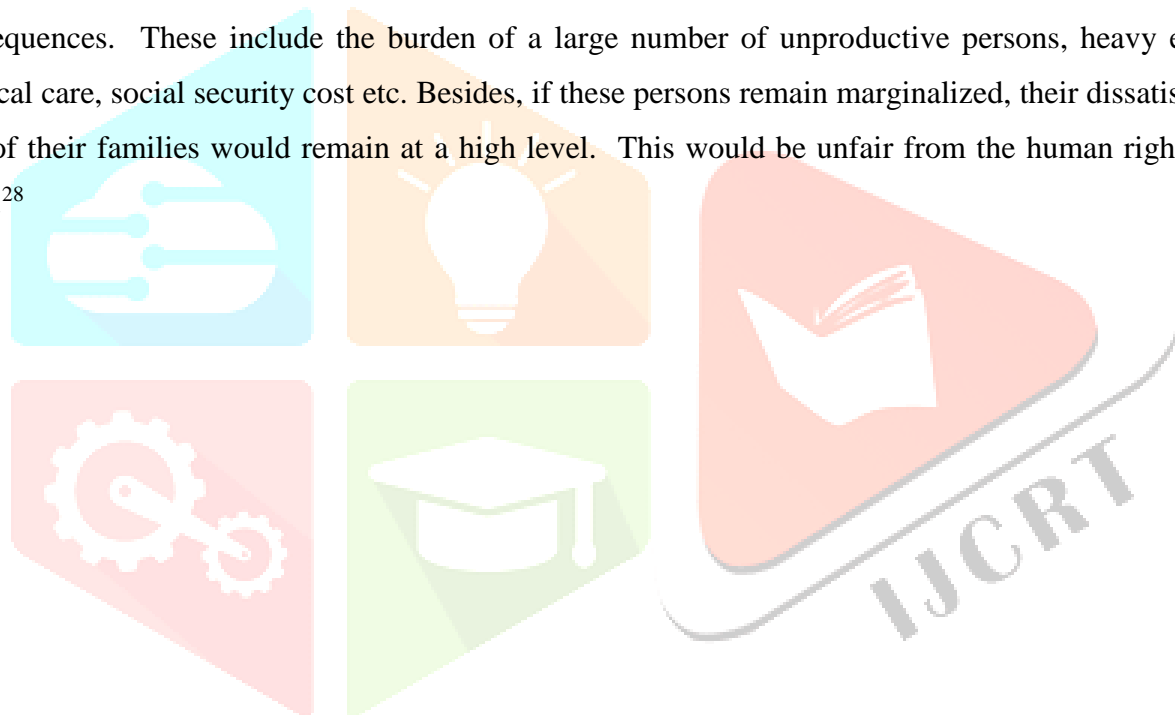
implementation include data collection, internal co-operation national monitoring, work of expert committee and respiring system. Thus in this background of the 2007 convention, there is the need for upgrading the Indian law to suit the requirements of effective protection in addition to slugging the existing loopholes.²⁶

Institutional Arrangement for the welfare of persons with disabilities:

The humanness of society is determined by the degree protection it provides to its weaker and disadvantaged sections to lead a life commensurate with dignity and honour. Persons with disability are among the most marginalized sections of society cutting across castes, creed, community etc., the people with disabilities have been getting shelter, protection, and assistance from family, relatives, religions charitable trusts, state etc., the rehabilitation and empowerment of disabled persons has become a statutory responsibility of government.²⁷

Conclusion:

India has around 50 million persons with some type of disability, which is more than the population of many countries. Ignoring the developmental needs of such a large population has therefore many long-term consequences. These include the burden of a large number of unproductive persons, heavy expenses of medical care, social security cost etc. Besides, if these persons remain marginalized, their dissatisfaction and that of their families would remain at a high level. This would be unfair from the human rights points of view.²⁸



²⁶ P. Ishwar Bhat, Perse.

²⁷ P.C. Sikligar. Institutional arrangement for upliftment of person with disabilities: A study in North India IASSI Quarterly Vol 23 No.4. 2005. p. 67.

²⁸ Ibid. P -68.