

## CRITICAL ANALYSIS OF RIGHT TO HEALTH OF PERSONS WITH DISABILITIES: NATIONAL AND INTERNATIONAL PERSPECTIVE

*Erika Yagnik<sup>1</sup>*

### ABSTRACT

Disability has been an ever-evolving concept that has been contested and debated about its meaning and relevance. Right to health of the persons with disabilities becomes all the more important if they belong to poor section of the society. They are eventually excluded from the mainstream society. As a result of societal exclusion and discrimination, individuals with disabilities are unable to develop properly within society, resulting in negative interactions between the individual with a disability and his or her contextual factors, which include environmental and personal factors. Right to health gives them the strength to fight disability. Hence, effective enforcement right to health of the persons with disabilities and their accessibility to the healthcare services provided by the government should be ensured. They form a major part of our society and should be treated at par with the other members of society.

*'None of us is without limitation, but sheer physical strength is no means of ability. There are no person with disability people – only people. There is, nothing which can substitute for human rights, no honours, no pensions, no praise, no subsidy can replace a wish to work with dignity'.*

**-Henry Viscardi Jr.<sup>2</sup>**

### INTRODUCTION

A person with disability has to carry a disequilibrium that comes with such physical or mental disability, and it relates to various other determinants like health, education, employment, access to various services. They necessarily form a class in themselves, and in order to bring them at an equal footing with the other people, they need to be given some

---

<sup>1</sup> LL.M. and UGC-NET

<sup>2</sup> As quoted in National Human Rights Commission, “*Disability Manual*”, 5 (2005).

leverage in required fields. Hence, the Rights of Disabled Persons and obstacles that come in the way of securing these rights is required to be addressed.

Although it is nowhere written directly in the Indian Constitution that right to health is a fundamental right, but the purpose of Article 21 cannot be accomplished without right to health. Article 21 reads, “No person shall be deprived of his life and liberty except according to the procedure established by law”. Health needs are based on several factors like age and disability. Person with disability has the Human as well as Constitutional right to live as a normal living being. While the persons with disabilities are more likely to have health care needs, they are less likely to benefit from accessible and appropriate healthcare for two main reasons; first, a limited understanding of disability by the health sector and second, numerous barriers hindering to health services like financial, attitudinal, physical or structural barriers. Article 14 of the Constitution of India also mandates that everyone be treated with equality. Thus, if the essence of Article 14 is followed, then persons with disability should also be treated equally as a normal individual. Also, special provisions should be made regarding the person with disabilities regarding the admission to educational institutions or employment in government services the way it has been made under Article 15 and 16 for the Other Backward Classes and Scheduled Caste/Scheduled Tribes.

Health of person with disabilities is of utmost significance. The government should be in charge of it. Many persons with disabilities often come from low-income background. Persons with disabilities are sent to a shelter home or other non-governmental organization due to the poverty-stricken conditions. The health of those with disabilities is negatively impacted by the circumstances in these shelter homes and other facilities for the person with disability. There have been reports of 228 shelter house residents dying in situations involving many shelter houses like Asha Kiran.<sup>3</sup> They suffer serious illnesses as a result of the unsanitary surroundings. Additionally, there is a problem with overcrowding in these facilities, which exacerbates the food issue and harms the health of people with disability.

A disabled individual’s inability to live a life of dignity is what renders them powerless. The existence of an enabling social environment negates the impacts of disability. They are empowered by education and universal access. Due to a lack of supportive environments, society is what renders people physically unable to access jobs, public spaces, etc. They are

---

<sup>3</sup> Drishti, Critical Analysis of The Rights and Privileges of The Person with disability, available at <https://www.legalserviceindia.com/legal/article-7500-critical-analysis-of-the-rights-and-privileges-of-the-person-with-disability.html> (last visited on March 11, 2024).

considered as liabilities because of a lack of fair chances, but if an enabling environment is created, they can actually be a national asset.

Access to basic and specialized health care services is a challenge for most of the individuals with disabilities. Access to health treatment is hindered by physical inaccessibility and financial obstacles for those with impairments. In addition to these obstacles, there is also the broader issue of inadequate health care services. Despite the fact that the Government of India and the State Governments have implemented a number of health initiatives to address the needs of the person with disability, they do not guarantee their right to complete and equal treatment. The right to health care access for person with disabilities is therefore a fundamental right, as it is essential to the existence of all other rights. Even rights such as the right to education and work would be useless unless individuals with disabilities have access to sufficient healthcare, since no one would be able to utilize job or school possibilities without proper health care. The right to health enshrined in the UNCRPD, which India has ratified, stipulates that the State shall ensure that persons with disabilities have the right to enjoy the highest attainable standard of health without discrimination on the basis of disability and that the State shall take all necessary steps to ensure that this right is realized.

According to the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, "Disability" included – Blindness, Low vision, Leprosy-cured, Hearing impairment, Locomotor disability, Mental Retardation, Mental illness. Thus, there was only 7 kinds of disability under this Act. However, the new RPWD Act, 2016 contains 21 kinds of disability, thereby expanding the scope of the word and bringing more and more people under the ambit of the Act.

### **ANALYSIS ON RIGHT TO HEALTH VIS-À-VIS RIGHT TO LIFE OF PERSONS WITH DISABILITIES**

By including health in its recognition of the basic right to life and by providing appropriate orders to the State authorities for the performance of their obligations, Supreme Court of India has played a pivotal role in the achievement of the right to health. The Supreme Court has ruled that promoting and protecting public health is a fundamental right protected by the Constitution, the achievement of which depends on a complex web of interrelated social and economic elements. The Universal Declaration of Human Rights enacted by the United Nations in 1948 states, in Article 25:

“(i) Everyone has the right to adequate food, clothing, housing, medical care, and other social services to maintain their health and well-being, and the right to financial security in the event of loss of income due to unemployment, illness, disability, widowhood, old age, or other causes beyond his control.

(ii) Motherhood and childhood are entitled to special care and assistances.”<sup>4</sup>

Article 47 of the Directive Principles of State Policy in the Indian Constitution mandates that the government enhance public health and nutrition. According to the document, “the State shall regard raising the level of nutrition and the standard of living of its people and improving public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medical purposes, of intoxicating drinks and of drugs which are injurious to health.”<sup>5</sup>

Person with disability have more complex medical needs than the general public and hence require more intensive and specialized treatment. Some handicapped people may be dealing with more than one illness or impairment. Person with disability were also shown to have a higher prevalence of chronic diseases such as hypertension, diabetes, and arthritis. Disability was associated with an increased risk of both diabetes and depression; the same study found that those with impairments were approximately five times more likely to be diabetic and six times more likely to be depressed than those without disabilities. According to a recent study conducted in rural Haryana, both diabetes and respiratory diseases were more widespread among the person with disability population there. Comparable research in Chandigarh also found an increased danger of developing respiratory ailments, arthritis, high blood pressure, eye difficulties, anaemia, and neurological disorders.<sup>6</sup>

Since releasing their first global report on the topic in 2011, WHO has been at the forefront of efforts to better the lives of person with disabilities. Disability policy has also undergone a paradigm shift, moving away from a focus on medical or charity-based solutions (the "medical model") toward one that prioritizes the protection of human rights and dignity while guaranteeing all people are treated equally (the “social model”).<sup>7</sup> The social model views impairment simply as a part of an individual's health, but disability is understood to have

---

<sup>4</sup> Article 25 of Universal Declaration of Human Rights, 1948.

<sup>5</sup> Articles 47, 39(e), 41, 43 of the Constitution of India.

<sup>6</sup> Bickenbach J., *The world report on disability* (Disabil Soc 2011;26:655-8).

<sup>7</sup> Shakespeare T., *The social model of disability: An outdated methodology? Exploring Theories and Expanding Methodologies: Where we are and where we need to Go*. 208 (Oxford: Elsevier Science Ltd.,2001)

been created by societies and communities that have ignored the needs of those with impairments. Global action plan of WHO for disabilities is to ensure that person with disabilities enjoy full respect for their human rights and the highest possible level of health and functional ability. India is a signatory to the Universal Declaration of Human Rights and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), both of which state that “persons with disabilities” have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability.”<sup>8</sup> In India, the Ministry of Social Justice and Empowerment and the Ministry of Health and Family Welfare are the two primary ministries involved in addressing the needs of person with disabilities. The primary one is in charge of delivering and implementing India's many national health initiatives. The welfare of the handicapped, minorities, and other social outcasts is protected by the Ministry of Social Justice. Many statutory bodies and national institutions, such as national trusts for people with autism, cerebral palsy, and multiple disabilities, etc., fall within the purview of the Ministry of Social Justice, as do policies, initiatives, and programs concerned with the health and rehabilitation of the person with disability. A new version of the legislation for the persons with disability, updated in 2016, was enacted by parliament to make it consistent with the UNCRPD. The legislation emphasizes non-discrimination, effective participation and inclusivity, tolerance for difference, equal rights (social model), and other similar concepts. While there are numerous social support programs, there is still a significant health care access gap between those with and without disabilities. Problematically, these two ministries are operating in silos, with no communication or coordination between levels. Although the vast majority of handicapped people regularly use health care facilities, the Ministry of Health rarely gets involved in the field of rehabilitation services. For the handicapped community, the health care system is often the initial point of contact. To that end, the Ministry of Health should prioritize the incorporation of disability services into national health policy. Healthcare providers and institutions everywhere must be sensitized and educated on the special health care requirements of the handicapped. There are a number of barriers to effective communication between hospital staff and patients with hearing and speech impairments, and they must be addressed as part of the health care delivery system. A focus on healthcare and inclusivity should be at the heart of all national health initiatives that have the potential to help the handicapped. The two departments should work together to improve rehabilitation services for everyone in state and local hospitals. The

---

<sup>8</sup> World Health Organization. Global disability action plan 2014-21. World Health Organization; 2015.

rising expense of medical treatment means that health insurance should be mandatory for all persons with disabilities. Including this topic in medical schools' curricula is a step toward bettering services for the handicapped. For the greatest possible reach in assisting person with disabilities across the country, the Ministry of Social Justice, in coordination with the Ministry of Home Affairs, should increase funding for non-governmental organizations (NGOs). It is important to have a reliable database of disability-related information that can be used to better prepare for the future of disability care.

The Preamble, the framework of the Constitution, guarantees respect for the inherent worth and dignity of every Indian citizen, as well as social and economic fairness. Article 14 guarantees everyone equal protection under the law. Freedom of movement across the country is guaranteed under Article 19, and right to life in Article 21 is interpreted broadly to include the right to work. The State shall promote the welfare of the people by establishing and safeguarding an effective social order in which socio-economic fairness shall influence all the institutions of national life, as stated in Article 38 of the Chapter of Directive Principles. As such, it mandates the fair distribution of resources and access to opportunities for all citizens, regardless of where they live or what they do for a job. Workers, men and women, and children of all ages are guaranteed protection of their right to a decent standard of living, health care, and protection from harm under Article 39. Distributing the community's tangible wealth in the most efficient way possible for the greater benefit is an obligation. Guarantee of Article 41 of social protection mandates that the government actively work to enhance citizens' quality of life and health care.

Although the Indian Constitution forbids discrimination in general, it does not specifically ban discrimination based on a person's handicap. However, in *Indra Sawhney vs. Union of India*<sup>9</sup>, a seven-judge constitutional bench of the Supreme Court of India ruled that the “spirit of Articles 14 i.e. right to equality, Article 15 (1) right against discrimination, and Article 16 right against discrimination in public employment” permitted discrimination and affirmative actions for persons with disabilities. Because of this ruling, the Constitution might be interpreted to forbid discrimination based on a person's disability. All citizens and permanent residents of India are guaranteed, by virtue of the Constitution, the right to life. Part of this universal right to life is the freedom to live with respect, dignity, and independence for all people. However, the idea of disability as a kind of human diversity has not yet been included

---

<sup>9</sup>1992 Supp (3) SCC 217.

into the official discourse on disability rights. Article 21 of the Indian Constitution protects the rights to life and personal liberty, which encompasses the ideals of inherent dignity and individual autonomy, for all citizens. In order to ensure that all people are treated equally before the law, as stated in Article 14, it is necessary to enact laws and implement policies that do so.<sup>10</sup> Person with disabilities were guaranteed protections under Article 21 of the Constitution, which guarantees the right to a decent standard of living as an essential component of the right to life.

The Indian government has a responsibility to protect lives of citizens, as outlined in Article 21 of the Indian Constitution. Article 21 provides as follows: "The right to life and freedom (Article 21) No one may be held in jail or denied their constitutional rights without following the due prescribed procedures. Article 21 of the Indian Constitution, together with Articles 39(e), 41, and 43, establishes the right to health care as a basic right, as affirmed by the Indian Supreme Court in a slew of precedent-setting judgments. The court has also ruled that the right to life guaranteed by Article 21 is basic, holy, priceless, and inviolable, and that the right to self-preservation is an integral part of that right."<sup>11</sup>

## **DIMENSIONS AND PROBLEMS OF EQUAL ACCESS TO PERSON WITH DISABILITY**

It is well-established that persons with disabilities have a higher rate of utilization of public health services. Many persons with disabilities also require medical attention for secondary health issues including pressure sores, exhaustion, discomfort, etc., in addition to the primary health issues caused by their impairments. As a result, despite the fact that individuals with disabilities are disproportionately high users of the health care system, they are disproportionately hampered by poor quality health care services and inefficient access to health care facilities. Poor infrastructure and ill-equipped hospitals and clinics, along with a shortage of particularly educated health care practitioners, physicians, and employees, portray a very grim image for person with disabilities seeking treatment and medical care tailored specifically to their requirements. Not only are resources limited, but prejudice and a lack of preventative and rehabilitative services also play a role. The necessity of accessibility as a reasonable accommodation should be made mandatory. The social disability model provides the theoretical underpinnings for reasonable accommodation provisions by emphasizing that

---

<sup>10</sup> M.P. Jain, *Indian Constitutional Law* 1000 (Wadhwa and Co. 5th edn.,2003)

<sup>11</sup>All India Lawyers Union (Delhi Unit) v. Govt, of NCT of Delhi & Ors., 163 (2009) DLT 319 SB).

it is the person's environment, rather than their impairment, that creates barriers to full participation in society. Therefore, inaccessibility of bus to a wheelchair user is not due to the wheelchair user's handicap, but rather to the bus's inability to accommodate the needs of passengers who use wheelchairs.<sup>12</sup>

When it comes to healthcare, the same principle must be implemented so that all people, regardless of their impairments, have equal access to quality care. Persons with disabilities are often denied their constitutionally guaranteed right to health care because of barriers to access, which may be overt or covert, blatant or subtle. Almost every part of the healthcare system has to deal with this problem. Some of the most important aspects of accessibility that need to be addressed, if we are to guarantee that person with disabilities can exercise their right to health, despite the fact that questions of accessibility are complex and nearly inextricable from wider societal and administrative problems. Starting from the most basic elements, the structure of this section roughly mirrors the experience of persons with disabilities in the healthcare system, including:

- awareness and training,
- medical classification,
- early intervention,
- physical access,
- financial access,
- discrimination,
- rehabilitation.

## **EARLY INTERVENTION AND PREVENTIVE CARE**

The inability of the healthcare system to predict the health problems of person with disabilities and intervene at an early stage is a major barrier to their access to health care. Section 25 of Chapter IV of the Right to Person with Disability Act, 2016 addresses the prevention and early identification of impairments, underscoring the law's emphasis on such measures. The government and local authorities have a responsibility under Section 25 to take steps to minimize the prevalence of impairments and the health problems associated with them. These steps include:

---

<sup>12</sup> Human Rights Law Network (HRLN), *The right to health of persons with disabilities in India*, Access to and Non-Discrimination in Health Care for Persons with Disabilities, available at [http://www.slic.org.in/uploads/2018/10/Disability-report\\_august-2014.pdf](http://www.slic.org.in/uploads/2018/10/Disability-report_august-2014.pdf) (last visited on March 13, 2024).

- “undertaking surveys, investigations, and research into the root causes of disabilities,
- The advocacy for various preventative measures,
- Screening all youngsters at least once a year to look for those who could be at danger,
- Educating workers at primary care facilities
- Fund and spread the word on public health, sanitation, and hygiene education campaigns
- Steps that improve maternal and infant health care before, during, and after delivery,
- Preschools, schools, primary health care centers, village level workers, and aanganwadi workers all play an important role in educating the people and preparing the next generation of leaders.
- Using television, radio, and other forms of mass media to educate the public about the root causes of disability and how to mitigate them.”

Lack of reliable data makes it difficult to meet the demand for preventative and specialized medical services. Information on the number, scope, and type of difficulties experienced by people with impairments is completely lacking. Inadequate knowledge has resulted in the development of health care systemic gaps and the undermining of preventive care infrastructure. The ineffectiveness of early detection and intervention in health problems involving person with disabilities is linked to the ineffective data gathering procedures of numerous Government bodies. In reality, the welfare of person with disability children is the responsibility of two different government agencies rather than a single one. These agencies are the Ministries of Health and Family Affairs and Social Justice and Empowerment. Dispersed and disorganized government information is the outcome of this lack of focus.<sup>13</sup>

It's not just children that need help right away; adults and the elderly do, too. The Indian culture promotes the view that old age is where disease and health problems begin, hence these issues are given little attention. The elderly are a demographic that the conventional medical system does not serve. It's common for them to have mobility issues, vision and hearing impairments, joint stiffness, etc. Some of the more serious issues, like Alzheimer's

---

<sup>13</sup> The Essentials of Child Protection, Publications, available at <http://www.childlineindia.org.in/publications.htm> (last visited on March 14, 2024).

disease, call for round-the-clock medical attention and the assistance of experienced carers and attendants who are familiar with the unique challenges faced by the aged and person with disability. Early intervention, diagnosis, and treatment are crucial for everyone, even the old, and this view is supported by physicians, parents, and caregivers. As part of its efforts to minimize the prevalence of disability and the health problems that often accompany it, the government has launched and proposed a number of early detection programmes at the national, state, and local levels. People all around India are worried about the lack of protections for person with disability's right to health. Early screening and preventative treatment are already major focuses of several government-issued plans and programs. Some of these programs are for everyone, while others have been designed specifically for those with special needs. The efficiency with which these plans are being carried out is, however, up to debate.

### **DISCRIMINATION BASED ON DISABILITY**

To what extent do person with disabilities have the same opportunities to obtain health care as the general population? What about invasions of their personal space and respect? It has been shown that persons with disabilities are treated very unequally and discriminatorily by the vast majority of hospitals and clinics, both public and private.

**a. Women with Disabilities:** Health care for women with disabilities, especially in the area of reproductive health, has historically been quite limited. Responses from physicians and other healthcare professionals to our survey suggest that the lack of training among medical personnel is to blame for their discriminatory attitudes. Due to a lack of familiarity with, and training in caring for, patients with impairments, medical staff may treat them without the necessary compassion. Women who identified as having a disability reported not receiving support or information on their health, particularly with respect to fertility and reproductive health issues.

**b. Children with disabilities:** In many cases, hospitals lacked the resources necessary to care for person with disability children. Respondents claimed that it was challenging for children with disabilities to receive medical treatment because hospitals lacked materials to keep children occupied such as toys, reading material, or playing spaces. One of the most prevalent forms of discrimination against person with disabilities is the disregard for their permission. Consent is an essential part of any operation involving a person with a disability because it recognizes the individual as an emotional subject. As numerous of our caregivers pointed out

in the survey, however, doctors seldom if ever seek for consent and instead take a dismissive, paternalistic stance toward person with disabilities. Medical professionals often assume that a person with a psychosocial disability lacks decision-making capability, which compounds the difficulty of obtaining informed consent when treating such a patient.

**c. The right to privacy and dignity:** It cannot be guaranteed that person with disabilities would be treated with respect and privacy during medical examinations. Exams of people with impairments are typically performed in open waiting rooms. Another patient mentioned that he had to take a picture of his bare legs in order to receive a wheelchair. And he wasn't given a private test, either. Another man said a female nurse requested him to undress in her presence. According to one respondent living with multiple sclerosis, hospital staff members often invade patients' personal space without asking for permission. Patients' privacy is often invaded when staff members peek in on them while they're using the restroom. Unfortunately, persons with disabilities are often disregarded, and this includes their sexual needs and the privacy issues that arise from them. Many people automatically assume that those who are person with disability are asexual. Since their sense of bodily autonomy is diminished as a result of this, they are more likely to be subjected to sexual harassment, assault, and rape. Reproductive autonomy, including sexual autonomy, is seldom granted to person with disabilities, especially those with mental impairments, because these decisions are not considered within their cognitive capacity. All of these incidents demonstrate how person with disability's right to privacy and dignity is often violated. It is especially crucial that handicapped people have these protections in place when it comes to medical care, as they are often completely at the discretion of physicians and nurses and cannot voice any objections to the procedures they may be forced to undergo.

**d. Persons with psychosocial disabilities:** It is important to outline the right to health for people with psychosocial difficulties for four key reasons:

1. In addition to the already severe prejudice that people with psychosocial impairments suffer, gaps in services make it difficult for institutions to meet their unique requirements in a timely and effective manner.
2. The often occurrences of health care providers engaging in demeaning and brutal behavior;
3. Patients with mental impairments often do not provide their voluntary permission for medical operations.

4. Psychosocial disability is more likely to be met with severe and pervasive discrimination from medical institutions. This occurs due to the widespread stigma that surrounds people with mental illness.

### **INTERNATIONAL LEGAL FRAMEWORK ON RIGHT TO HEALTH OF PERSON WITH DISABILITY**

When it comes to disability-based discrimination in healthcare, India has ratified both the UN Convention on the Rights of Person with disabilities (“UNCRPD”) and the Declaration of Human Rights (“UN Declaration of Human Rights”), both of which guarantee a person's right to the best possible health regardless of their disability.<sup>14</sup>

With the UNCRPD, persons with disabilities are recognized as having the same right to dignity, respect, and social inclusion as everyone else. The Convention aims to mainstream disability concerns as an essential aspect of development, among other things (UNCRPD, 2007). Signatory States are required to “consider the protection and promotion of the human rights of individuals with disabilities in all policies and programs” under Article 4 of the Convention.<sup>15</sup> This agreement was signed by India on March 30, 2007. It is possible to claim that the Millennium Development Goals (hereinafter referred to as “MDG, 2015”)<sup>16</sup> have resulted in development deficits in other areas not specifically specified, notwithstanding the advances made in sectors such as HIV/AIDS, TB, and child mortality. The MDG 2015 agenda does not include a goal for disability inclusion. Providing access to suitable services for person with disabilities can serve as a foundation for future inclusion initiatives in other areas. Person with disabilities, as well as the rest of the population, may benefit from a policy that promotes equal treatment. Rehab and basic treatments are thought to be available to just 2% of person with disabilities in poor countries. Many children with disability in underdeveloped countries do not go to school, with attendance rates as low as 2-3 percent. Consider the fact that many services come with a price tag. Poverty has a greater impact on those with disabilities than the general population (World Health Organisation & World Bank, 2011). Both physical and economic limitations to service accessibility exist. It is the goal of

---

<sup>14</sup> Convention on the Rights of Persons with Disabilities, United Nations, available at <http://www.un.org/disabilities/convention/conventionfull.shtml> (last visited on March 13, 2024).

<sup>15</sup> UNCRPD, 2007.

<sup>16</sup> Adopted by the United Nation in 2013 to set targets and achieve them.

this study to determine whether or not India's Disability Policy complies with the Human Rights Core Concepts.<sup>17</sup>

Human rights are an international concern that is implemented at the level of distribution. Governments throughout the world are increasingly evaluating their people' rights in accordance with international human rights laws, and international human rights efforts are beginning to treat disability within the context of human rights. This tendency is associated with changes in disability-related ways of thinking. In certain domains, remnants of a paradigm of disability as a matter of deviance, deficiency, or sickness - the pathology of an individual's or family's failure to meet normality criteria exist. Nonetheless, it is becoming increasingly apparent that this approach not only exacerbates individual limits and exacerbates deprivation, but also produces marginalization and prejudice. Disability is increasingly considered as a disease of society, that is, as a result of environmental and sociological factors connected to a society's inclusiveness or lack thereof. This new human rights framework paves the way for governments to promote the social welfare of all their inhabitants.<sup>18</sup>

This is the result of the United Nation's recognition of the rights of person with disabilities and the adoption of a number of agreements and declarations, which gave momentum to the disability rights movement. In accordance with the conventions adopted by the General Assembly, many countries have incorporated the disability rights movement into the human rights movement and enacted laws prohibiting discrimination on the basis of disability and promoting the integration of person with disabilities into all aspects of society.

The right-based perspective on disability in general, and equal-opportunity model in particular, were slow in gaining ground under international law and policy, in the field of disability. However, from the mid-1970s onwards, they have manifested themselves at the UN level in four ways:

---

<sup>17</sup> Jessica O'Dowd, India's Disability Policy – Analysis of Core Concepts of Human Rights, available at <file:///C:/Users/lenovo/Downloads/IndiasDisabilityPolicyAnalysisofCoreConceptsofHumanRights.pdf> (last visited on March 15, 2024).

<sup>18</sup> Gerard Quinn and Theresia Degener, The current use and future potential of United Nations human rights instruments in the context of disability, available at <https://www.ohchr.org/sites/default/files/Documents/Publications/HRDisabilityen.pdf> (last visited on March 17, 2024).

- (1) at the level of ideas, especially as reflected in the various non-binding declarations and resolutions of the General Assembly and in United Nations sponsored studies,
- (2) in the way the general human right treaties are being interpreted,
- (3) in the drafting of the thematic human rights treaties, and
- (4) in the ongoing work and work programs of the various specialized agencies.<sup>19</sup>

From the standpoint of human rights, disability is viewed as a human right. Individuals who have impairments are no longer deserving of the label “problem.” One must look beyond the person to identify any problems, especially in how different economic and social systems treat person with disabilities. There is a connection between disability rights and the larger discussion about the importance of diversity in society.<sup>20</sup>

Persons with disabilities are entitled to the same human rights and fundamental freedoms as everyone else, and these rights, which include the freedom from discrimination based on disability, stem from their inherent dignity and equality. More specifically, they are entitled to their right to health, since disability itself is a health disorder and thus their right to health should be prioritised and optimised. According to the UN Charter, “the foundation for a durable peace lies in ensuring social fairness and social security.” It was so decided to take these following steps:

- (i) The U.N. General Assembly proclaimed a Declaration on the Rights of Mentally Retarded Persons, 1971 vide resolution No. 2856 (XXVI) dated 20th December, 1971.
- (ii) The U.N. General Assembly declared the Rights of Disabled Persons by its resolution No. 3447 (xxx) of December 3, 1975.<sup>21</sup>
- (iii) The year 1981 was declared as an "International Year of Disabled Persons" by The UN General Assembly.

---

<sup>19</sup> United Nations, World Programme of Action Concerning Disabled Persons, available at <https://www.un.org/development/desa/disabilities/resources/world-programme-of-action-concerning-disabled-persons.html> (last visited on March 17, 2024).

<sup>20</sup> United Nations, Declaration on the Rights of Disabled Persons, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-disabled-persons> (last visited on March 17, 2024).

<sup>21</sup> UN General Assembly Res No. 3447 (xxx) 30 UNGA OR (No. 34 (88) U.N. Doc. A/10034 (1957).

(iv) The UN General Assembly adopted the World Programme of Action concerning Disabled Persons by its resolution No. 37/52 of December 3, 1982 and declared 1983-1992 as U.N. Decade of disabled persons.

(v) The General Conference of International Labour Organisation Adopted the Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) on 20th June, 1983

(vi) The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, 1988 declared the Human Rights of the Disabled Persons;

(vii) A proclamation on the "Full Participation and Equality of the Person with disabilities in the Asian and Pacific Region", adopted by the Economic and Social Commission for Asia and Pacific, Beijing.

(viii) The Pan American Health Organisation declared at Caracas vide resolution No. AG/RES 1249 (XXIII-0/93) the "Situation of Persons with Disabilities in the American Hemisphere".

(ix) The Vienna Declaration and Programme of Action was adopted by the UN World Conference on Human Rights, 1993 (157/93) by resolution No. AG/RES 1356 (XXV-0/95).

(x) The Resolution No. AG/RES 1356 (XXV-O/95) on "Situation of Persons with Disabilities in the American Hemisphere" adopted by the OAS.

The above said declarations/protocols furthers the attention of the world at large towards the pressing need of improvising the health rights of the persons with disability.

## **LEGAL FRAMEWORK IN INDIA FOR RIGHT TO HEALTH OF PERSONS WITH DISABILITY**

The Indian Constitution gives significant room for the establishment of legislative mechanisms to safeguard the rights of persons with disability. Some of the most important Constitutional provisions that facilitate supporting provisions for the person with disabilities in India are outlined here.

The Preamble of the Indian Constitution strives, among other things, to provide for all its citizens: social, economic, and political justice; freedom of opinion, speech, religion, faith,

and worship; and equality of position and opportunity. The dignity of the individual is a key concept underlying the fundamental rights provided by Part III of the Indian Constitution. Part III of the Constitution grants all people a set of six Fundamental Rights (and in a few cases to non-citizens also). These include the Right to Equality (Article 14), the Right to Freedom (Article 19), the Right against Exploitation (Article 23), the Right to Religious Freedom (Article 25 to 28), the Right to Cultural and Educational Rights (Article 29-30), and the Right to Constitutional Redress (Article 32). All of these rights are also applicable to Persons with Disabilities, despite their being no mention of them in this section of the Constitution.

In addition, the state is mandated by numerous parts of the constitution to treat all individuals equally (including person with disability).

Article 15(1) of the Constitution of India reads as follows:

“The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”

The word “disability” does not find a place in this clause. However, disability is one such ground on which persons are discriminated in India.

Further, Article 15(4) of the Constitution of India says, “Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”

Article 15(5) says, “Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.”

In both the above said clauses also, “disability” is absent which is very surprising as they form a class apart in themselves who are very much deserving of the aforesaid reservation.

Similarly, Article 16 of the Constitution of India provides reservation to the citizen of India in the matters of employment on various grounds, but “Disability” as a ground is not mentioned there.

Article 41 of the Constitution of India states that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and incapacity, as well as other cases of unjustifiable want.<sup>22</sup>Hence, person with disability should be given effective help by the state since they are also covered under the word “Incapacity”. All the beneficial enactments for the upliftment of persons with disability germinates from Article 41 of the Constitution of India only.

Article 46 stipulates that the state is obligated to support with particular care the educational and economic interests of the weaker segments of the population and to safeguard them from social injustice and all types of exploitation. Persons with disability, being one of the weaker sections of the society and also being highly vulnerable to social injustices and exploitations, needs to be taken care of and supported by both central and state governments.

While dividing legislative authority between the Centre and the States, the Indian Constitution placed disability on the State list. In accordance with entry No. 09 of list II of the Indian Constitution, disability relief is a subject of the state. In addition, the following clauses of the Constitution address concerns relevant to persons with disabilities:

- (i) Eleventh Schedule to Article 243-G: “Social welfare, including welfare of the handicapped and mentally retarded.” (Entry No. 26)
- (ii) Twelfth Schedule to Article 243-W: “Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.” (entry 09).

Article 249 of the Constitution empowers the Parliament to legislate on any subject falling in any list in order to fulfill its international obligations.<sup>23</sup>India being signatory to the international conventions on disability is supposed to make laws in order to fulfil those obligations which the conventions impose on India.

---

<sup>22</sup> V.N. Shukla, Constitution of India, 90 (Eastern Book Company, 2019).

<sup>23</sup> Ministry of Statistics and Programme Implementation National Statistical Office Social Statistics Division, Persons with Disabilities (Divyangjan) in India - A Statistical Profile: 2021, available at (last visited on March 16, 2024).

Some of the important Acts enacted by the Government of India for the welfare of persons with disabilities are-

1. The Mental Health Act, 2017
2. The Rehabilitation Council of India Act, 1992
3. The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999
4. Rights of Persons with Disabilities (RPWD) Act, 2016
5. The National Medical Commission Act, 2019
6. Indian Medical Council (Professional Conduct, Etiquette and Ethics) (Amendment) Regulations, 2020.

## **CONCLUSION AND SUGGESTIONS**

Laws enshrining human rights offer a foundation for the individual's basic freedom and protection against abuse of power, as well as a space for the development of human feeling. It's hardly a stretch to suggest that human rights offer people the ability to stand up for themselves in the face of society. A person's right to self-respect is equally as important as his or her rights. Person with disabilities are unique individuals who require particular treatment, and they should be afforded the same rights as everyone else. However, persons with disabilities are frequently compelled to live in poor health conditions and they are deprived from health facilities, which affects their mental and physical health. They are subjected to the most appalling, filthy, and miserable circumstances within the health centres and mental institution.

The Right to Health bill that is now in the legislative process should also be reviewed and revised to align with Article 25 of the UNCRPD. The following should be covered by these proposed laws:

A. all person with disabilities have access to health care in accessible settings, using accessible practices and requiring no special modifications or adjustments. To achieve universal coverage, it is necessary that: a. domiciliary services be made available wherever they are needed;

B. all schemes and programs conceived to realize health care rights, entitlements, and benefits are universally available, with due consideration accorded to gender, age, and socio-economic status;

C. person with disabilities, especially those living in remote regions, have easy access to high-quality medical treatment that doesn't break the bank. Medical care can be delivered by interdisciplinary groups that perform early detection, intervention, and referrals to more specialist organizations as needed;

D. There has to be a set of non-discriminatory ethical guidelines for things like getting full attention of people and keeping information private;

E. Health and life insurance coverage for those with disabilities at affordable rates;

F. Formulation of plans and programs involving person with disabilities and their caregivers, which includes, but is not limited to:

1. Reducing the severity of existing impairments and preventing the onset of new ones by appropriate education, training, information, and intervention;

2. The provision of emergency medical services to person with disabilities in times of natural disasters and other times of risk;

3. The availability of accessible healthcare facilities, public buildings, and other locations as informed from time to time by the relevant authorities;

4. "Critical care services" for all urgently required diagnostics, treatments, and surgeries;

5. Sexual and reproductive health, with a focus on women with disability;

6. Maternal and Infant Health Care during pregnancy, childbirth, and the postpartum period;

7. Dietary support for kids with special needs;

8. Providing psychological and social support throughout the whole medical procedure, from diagnosis to follow-up care and beyond;

9. Ensuring that all residents, especially those in low-income urban and rural locations, have easy access to quality primary health care;

10. Providing free or low-cost healthcare (including surgery, therapy, medications, pathology, and follow-up care) to vulnerable and low-income populations as necessary;

11. A complete insurance plan that includes benefits for medical care, transportation, and psychological support for person with disabilities.

## BIBLIOGRAPHY

### I. BOOKS

1. V.N. Shukla, *Constitution of India*, 90 (Eastern Book Company, 2019).
2. M.P. Jain, *Indian Constitutional Law* 1000 (Wadhwa and Co. 5th edn.,2003).

### II. ACTS

1. The Mental Health Act, 1987 (Act 14 of 1987).
2. The Mental Health Care Act, 2017 (Act 10 of 2017).
3. Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996).
4. Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016).
5. The National Medical Commission Act, 2019 (Act 30 of 2019).

### III. RESEARCH

1. Bickenbach J., *The world report on disability* (Disabil Soc 2011;26:655-8).
2. Shakespeare T., *The social model of disability: An outdated methodology? Exploring Theories and Expanding Methodologies: Where we are and where we need to Go*. 208 (Oxford: Elsevier Science Ltd.,2001).
3. World Health Organization. *Global disability action plan 2014-21*. World Health Organization; 2015.

### IV. WEBSITES

1. Ministry of Statistics and Programme Implementation National Statistical Office Social Statistics Division, *Persons with Disabilities (Divyangjan) in India - A Statistical Profile: 2021*.
2. United Nations, *Declaration on the Rights of Disabled Persons*, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-disabled-persons>.

3. United Nations, World Programme of Action Concerning Disabled Persons, available at <https://www.un.org/development/desa/disabilities/resources/world-programme-of-action-concerning-disabled-persons.html>
4. Gerard Quinn and Theresia Degener, The current use and future potential of United Nations human rights instruments in the context of disability, available at <https://www.ohchr.org/sites/default/files/Documents/Publications/HRDisabilityen.pdf>
5. Jessica O'Dowd, India's Disability Policy – Analysis of Core Concepts of Human Rights, <file:///C:/Users/lenovo/Downloads/IndiasDisabilityPolicyAnalysisofCoreConceptsofHumanRights.pdf>
6. Convention on the Rights of Persons with Disabilities, United Nations, available at <http://www.un.org/disabilities/convention/conventionfull.html>
7. The Essentials of Child Protection, Publications, available at <http://www.childlineindia.org.in/publications.htm>
8. Human Rights Law Network (HRLN), *The right to health of persons with disabilities in India*, Access to and Non-Discrimination in Health Care for Persons with Disabilities, available at [http://www.slic.org.in/uploads/2018/10/Disability-report\\_august-2014.pdf](http://www.slic.org.in/uploads/2018/10/Disability-report_august-2014.pdf)
9. Drishti, Critical Analysis of The Rights and Privileges of The Person with disability, available at <https://www.legalserviceindia.com/legal/article-7500-critical-analysis-of-the-rights-and-privileges-of-the-person-with-disability.html>