

# Human Rights Legal Instruments on Disability

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## **Introduction**

Over 10 percent of the world's population has a disability of one form or the other, out of which only two third lives in developing countries and only around 20% receives any education or rehabilitation. Disability, poverty and social exclusion share a link throughout the world directly and strongly. The approach towards disabled persons has shifted from charity perspective to the one based on rights in past two decades. The human rights perspective on disability means viewing people with disabilities as subjects and not as objects i.e. persons with disability be theholders of rights and should not be denied basic rights.

Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever their origin, nature of seriousness of their disabilities have the same fundamental rights as their fellow citizens which implies first and foremost the right to enjoy a decent life as normal as possible. Even being the world's largest growing minority, disabled people were invisible in International Human Rights Law. People with disabilities themselves are now framing their long-felt sense of grievance and injustice into the language of rights. Isolated injustices need no longer be experienced in isolation. NGOs working with disability issues such as the collaborative project Disability Awareness in Action are beginning to see themselves also as human rights NGOs. They are beginning to collect and process hard information on alleged violations of the human rights of persons with disabilities. While still relatively limited, their human rights capacities are growing. A similar process of self-transformation is under way within traditional human rights NGOs, which are increasingly approaching disability as a mainstream human rights issue. This is important, since these NGOs have highly developed structures, and the development of a healthy synergy between disability NGOs and traditional human rights NGOs is not only long overdue, but inevitable. All in all, the time is right for a stock-taking of the current use and future potential of the United Nations human rights instruments in the context of disability.

## **Research Methodology**

To address the research question, the paper is dealing with the human rights instrument for the disabled persons. It constitutes a conceptual analysis, reviewing existing conventions and research in affirmative action for persons with disabilities. The conceptual analysis of the relevant developments in the right of disabled people and affirmative action acts as the

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backcloth to the empirical impact analysis which is to follow. The paper is multidisciplinary, applying a socio-legal approach to the question of affirmative action and the rights of persons with disabilities. Including both a legal and a social science perspective, the paper further analyses the international instruments for the disabled persons as well as the national policies.

### **Objective**

By focusing on the right of persons with disabilities at international level and its connection with the human rights. Despite the fundamental importance for guaranteeing the right to work, right to live, human dignity, and disability is a rather neglected field in the study of disability human rights. This paper attempts to complement the existing literature on disability and poverty, and disability and development, and consolidates the topic of disability rights with the instruments of human rights. The interest for this topic stems from a personal experience of seeing people with disabilities failing to get their due share of attention.

### **Research Questions**

1. What do you understand by disability?
2. Whether is disabled or differently abled?
3. What are the rights of the disabled persons? And whether there is any disparity in the rights with other individuals.
4. What all are the instruments dealing with the human rights at International level?
5. What is the present take on the human rights of the disabled persons?

### **Emergence of Disability Rights**

The Disability Rights Movement is a global movement for equal opportunities and rights for people across the disability spectrum. In the US, the disability rights movement began in the 1960s, encouraged by the examples of the Civil Rights Movement and women's rights movements. It was at this time that disability rights advocacy began to have a cross-disability focus. Throughout history, persons with disabilities have been among the most socially and politically excluded and economically impoverished members of society. There are currently more than one billion people living with a disability, many of whom face poorer health, lower education, less economic participation and higher rates of poverty. <sup>2</sup>The prevalence of disability is expected to be rising in the future, due to the aging populations' higher risk of disability and with global terrorism and counter terrorism as a worrying source of disability. Not only does disability add to the risk of poverty but conditions of poverty also add to the

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<sup>2</sup>Tina Minkowitz, *The United Nations Convention on the Rights of Persons with Disabilities and the Right to Be Free from Nonconsensual Psychiatric Interventions*, 34 SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE 405, 405-428 (2006-07).

risk of disability. Accordingly, ensuring the human rights of persons with disabilities as one of the most marginalized groups should be at the heart of the international human rights agenda. Several social movements took place during the second half of the 20th century in India. These included the women's movement, environmental movement, Dalit movement, etc, one such movement was the disability rights movement which originated during the late 1980s.

The Convention on the Rights of Persons with Disabilities is an international human rights treaty of the United Nations intended to protect the rights and dignity of persons with disabilities. Parties to the Convention are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. The Convention has served as the major catalyst in the global movement from viewing persons with disabilities as objects of charity, medical treatment and social protection towards viewing them as full and equal members of society, with human rights. It is also the only UN human rights instrument with an explicit sustainable development dimension. The Convention was the first human rights treaty of the twenty-first century. The text was adopted by the United Nations General Assembly on 13 December 2006 and opened for signature on 30 March 2007.<sup>3</sup> Following ratification by the 20th party, it came into force on 3 May 2008. As of April 2018, it has 161 signatories and 177 parties, which includes 172 states and the European Union (which ratified it on 23 December 2010 to the extent responsibilities of the member states were transferred to the European Union). In December 2012, a vote in the United States Senate fell six votes short of the two-thirds majority required for ratification. The Convention is monitored by the Committee on the Rights of Persons with Disabilities.<sup>4</sup>

### **Human Rights Legal Instruments on Disability**

Human dignity is the anchor norm of human rights. Everyone is deemed to be of inestimable value and nobody is insignificant. People are to be valued not just because they are economically or otherwise useful but because of their inherent self-worth. Recognition of the value of human dignity serves as a powerful reminder that people with disabilities have a stake in and a claim on society that must be honored quite apart from any considerations of social or economic utility. Dignity as a value has been a crucial factor in the switch to a human rights perspective on disability. Owing to their relative invisibility, people with

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<sup>3</sup>Anna Nilsson, *Objective and Reasonable Scrutinizing Compulsory Mental Health Interventions from a Non-discrimination Perspective*, 14 (3) HUMAN RIGHTS LAW REVIEW 459, 459–485 (2014).

<sup>4</sup>Amita Dhanda, *Legal Capacity in the Disability Rights Convention: Stranglehold of the past or Lodestar for the Future*, 34 SYRACUSE JOURNAL OF INTERNATIONAL LAW AND COMMERCE 429, 429–462 (2006-07).

disabilities were often treated in the past as objects to be protected or pitied. The crucial change came when they saw themselves (and were seen by others) as subjects and not as objects. Human equality, a related value, is also central to the system of basic freedoms postulated by human rights law. Its core premise is that all persons not only possess inestimable inherent self-worth but are also inherently equal in terms of self-worth, regardless of their difference.

### **International Treaties that are Binding**

Till date there has been no international convention dealing exclusively with the rights of disabled persons. However, there are several international instruments which form the basis of the international bill of rights which affords extends to and affords protection to violation of the rights of the disabled. The core United Nations Human Rights Conventions that are binding on States that have ratified them are:

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic, Social and Cultural Rights
3. Convention on the Elimination of All Forms of Racial Discrimination
4. Convention on the Elimination of all Forms of Discrimination against Women
5. Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
6. Convention on the Rights of the Child
7. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

There are also some international and regional human rights conventions that protect the rights of persons with disabilities specifically, or have provisions concerning persons with disabilities. These include:

1. ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons)
2. Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities
3. Convention on the Rights of the Child (article 23)
4. African Charter of Human and People's Rights (article 18 (4))
5. The African Charter on the Rights and Welfare of the Child (article 13)
6. European Social Charter (article 15)

7. Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights in Economic, Social and Cultural Rights) (article 6 & 9)

**Declaration on the Rights of Mentally Retarded Persons**

On December 20, 1971, the General Assembly proclaimed the Declaration on the Rights of Mentally Retarded Persons, which states that “the mentally retarded [i.e., intellectually or developmentally disabled] person has, to the maximum degree of feasibility, the same rights as other human beings.” The declaration stresses that persons with intellectual disabilities should live with their families rather than being institutionalized and should participate in the community. The 1969 and 1971 declarations led to the creation of the Declaration on the Rights of Disabled Persons, which, in a sense, represents an attempt to delineate that the UN’s 1948 Universal Declaration of Human Rights clearly applies to persons with disabilities.

After the adoption of the declaration, the UN system made the inclusion of disability issues in broader human rights initiatives a priority. Disability-specific policies were incorporated within broader human rights instruments, and acts were adopted that specifically targeted persons with disabilities. Even more significant was the UN Convention on the Rights of Persons with Disabilities, which was adopted by the General Assembly on December 13, 2006. It enumerates the civil and political rights of disabled persons as well as such rights-related issues as access to education, health, and employment. The convention was endorsed by 82 countries on the first day it was open for signature, and it entered into force on May 3, 2008.

This Declaration on the Rights of Mentally Retarded Persons proclaims about the protection of these rights:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.
2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.
3. The mentally retarded person has a right to economic security and to a decent standard of living. He fully has a right to perform productive work or to engage in any other meaningful occupation of his capabilities.
4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.
6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.
7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

### **Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care**

Historically, however, people with mental disorder have often experienced high levels of abuse or neglect of human rights, including the rights to liberty and treatment. There are specific provisions on informed consent, confidentiality, standard of care and treatment and the rights available to inmates of mental disability institutions. Principle 1(4) prohibits discrimination on the ground of mental disability. It was adopted by General Assembly resolution 46/119 of 17 December 1991. Key principles include as follows:

1. All people are entitled to receive the best mental health care available and be treated with humanity and respect
2. There should be no discrimination on the grounds of mental illness. All people with mental illness has the same rights to medical and social care as others
3. Everyone with mental illnesses has the right to live, work, and receive treatment in the community, as far as possible
4. Mental health care should be based on internationally accepted ethical standards
5. Each patient's treatment plan should be reviewed regularly with the patient
6. There shall be no misuse of mental health skills and knowledge
7. Medication should meet the health needs of the patient and shall not be administered for the convenience of others or as a punishment
8. For voluntary patients, no treatment should be administered without informed consent, subject to some exceptions (e.g., patients with personal representatives empowered by law to provide consent)

9. For involuntary patients, every effort should be made to inform the patient about treatment
10. Physical restraint or involuntary seclusion should be used only in accordance with official guidelines
11. Records must be kept of all treatments
12. Mental health facilities must be appropriately structured and resourced
13. An impartial review body should, in consultation with mental health practitioners, review the cases of involuntary patients.<sup>5</sup>

### **Standard Rules on the Equalization of Opportunities for Persons with Disabilities**

Among the major outcomes of the Decade of Disabled Persons was the adoption of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities by the General Assembly on 20 December 1993. Although it is not a legally binding instrument, the Standard Rules represent a strong moral and political commitment of Governments to act to attain equalization of opportunities for persons with disabilities. The rules serve as an instrument for policy-making and as a basis for technical and economic cooperation.

The Standard Rules consists of 22 rules summarizing the message of the World Programmed of Action. The Rules incorporate the human rights perspective which had developed during the Decade. The Standard Rules for the Equalization of Opportunities of Persons with Disabilities provides for the appointment of a Special Rapporteur to monitor the implementation of the Rules.

### **Conclusion**

Persons with disabilities be guaranteed equal rights both at regional, national and international level. In conclusion, it could be said that some lacunas and problems in its implementation makes Indian disability law lag behind in the international scenario. It is ironical to note that every time it takes a court notice for the authorities to start the implementation of the provisions of any legislation. And, it is only to the extent of initiating the process of constituting different committees. Even before the 2030 Agenda had come into play, the world had started to move in the right direction with the 2006 adoption of the Convention on the Rights of Persons with Disabilities (CRPD). CRPD has been a vital framework to ensuring all rights for PwD – civil, cultural, political, social and economic; and

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<sup>5</sup> Brendan D. Kelly, *Mental health, mental illness, and human rights in India and elsewhere: What are we aiming for*, 58 (2) INDIAN J PSYCHIATRY 168, 168–S174 (2016).

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has a scope and ambition that goes well beyond previous initiatives such as 1993's 'Standard Rules on the Equalization of Opportunities for Persons with Disabilities'. Beyond these commitments, it is essential for the global processes that support and drive global development to consider the diverse needs of PwD and enable them to be the agents of change in their own lives. Special efforts must be made to ensure that PwD are consulted in preparatory conversations, are visible through specific language, have the appropriate accommodations to be included in implementation, are counted in monitoring and data collection, and have their voices heard in reviews and follow-ups.