

# HUMAN RIGHTS OF DISABLED

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## **Role of United Nations**

United Nations is the only international organisation which has focussed its unceasing attention to the area of human rights. Ever since the United Nations Charter came into force on October 24, 1945, the United Nations has become an ardent champion of fundamental freedoms for all and this part is reflected in the United Nations Charter itself and in various instruments of its specialised agencies.

### **UN Declaration on the Rights of Disabled Persons**

In pursuance of the UN Charter, the General Assembly of the United Nations, adopted the Declaration on the Rights of Disabled Persons.<sup>1</sup> The term "Disabled Person", means "any person unable to ensure for himself or herself wholly or partly the necessities of a normal individual and or social life as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities."<sup>2</sup>

The preamble to the Declaration recalls the principles of the Universal Declaration of Human Rights, 1948, the International Covenants on Human Rights, the Declaration on the Rights of the Child, 1959 and the Declaration on the Rights of Mentally Retarded Persons. It also recalls the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the specialised agencies of the UN, like the ILO, the UNESCO, WHO and the United Nations Children's Fund and other principles listed in the above instruments are also applicable to the disabled as to any other citizen.

The preamble is mindful of the pledge made by the states under the Charter of the United Nations to take joint and separate action in co-operation with the UN to promote higher standards of living, full employment and conditions of economic and social progress and development.

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1. The General Assembly of the United Nations, Resolution 3447 (xxx), 9 December, 1975.

2. *Id.*, Article 1.

Bearing in mind the necessity of preventing physical and mental disability and of assisting disabled persons to develop their activities in the most varied fields of activities and of promoting their integration as far as possible in normal life, the United Nations proclaimed the Declaration of Rights of Disabled Persons and called for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of their rights.

The Declaration, *inter alia*, emphasises the following:

### **Respect for Human Dignity**

- Disabled persons shall enjoy all the rights set forth in the Declaration.
- These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of health, birth or any other situation applying either to the disabled persons himself or herself or to his or her family. Disabled persons have the inherent right to respect for their human dignity.
- Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens.
- This implies, first and foremost, the right to enjoy a decent life, as normal and full as possible.

### **Same Rights as other human-beings**

- Disabled persons have the same civil and political rights as other human beings.
- Article 7 of the Declaration of the Rights of Mentally-retarded Persons applies to any possible limitation or suppression of these rights for mentally disabled persons.
- Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.
- Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthotic appliances, medical and social rehabilitation; education; vocational education; training and rehabilitation; aid; counselling; placement services and other services, which will enable them to develop

their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.

- Disabled persons have the right to economic and social security and to a decent level of living.
- They have the right, according to their capabilities, to secure and retain employment or to engage in a useful productive and remunerative occupation and to join trade unions.
- Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.
- Disabled persons have the right with their families or with foster parents and to participate in all social creative or recreational activities.
- If the stay of a disabled person in a specialised establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

### **Protection against Exploitation and Discrimination**

- Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.
- Disabled persons shall be able to avail themselves of qualified legal aid that proves indispensable for the protection of their person and property.
- If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition into account.
- Organisations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons.
- Disabled persons, their families and communities, shall be fully informed, by all appropriate means, of the rights contained in this Declaration.

In short, under the International Charter of Human Rights (consisting of Universal Declaration of Human Rights and two Covenants), everyone has a right to have a standard of living, adequate for his well being, including food, clothing, housing, medical care, and other necessary social services. Every man is also entitled to enjoyment of his life and reasonable fulfilment of his hopes and aspirations. In a welfare state, a

handicapped person being a human being, is also entitled to such rights, including rehabilitation. Such a person is also entitled to get employment suited to him. All civilized nations of the world, which are party to the International Bill of Human Rights, are identifying and helping the handicapped people to find their place in society where they can live as useful citizens, and cease to be burden on the families in which they are born.

### **Role of the Government in a Welfare State**

Indian Constitution has declared India as a Welfare State. In tune with the philosophy of welfare state ideals, disabled persons should receive special attention and treatment. There should have been a constitutional guarantee for full human rights, protection against exploitation and discrimination as well as for their all around upliftment. Even in the absence of a constitutional provision, it is the duty of the state to provide sufficient facilities, training, rehabilitation of the handicapped so that they may lead a normal life without any burden on their families and the community.

### **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**

Of late, the Government of India, has enacted a comprehensive piece of legislation namely, "the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" with a view to enforce the human rights of the disabled in pursuance of the UN Declaration. This law is an important landmark and will ensure equal opportunities for persons with disabilities and their full participation in the nation building. The Act provides for both preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier-free environment, rehabilitation for persons with disability, unemployment allowance for the disabled, special insurance scheme for the employees and establishment of homes for persons with severe disability, etc. The Act has been enforced w.e.f. 07.02.1996. All the state governments have been requested to take necessary steps for speedy implementation of the provisions of the Act.

### **National Trust for Welfare of Mentally Retarded Persons**

"The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999" provides for total care to persons with Autism, Cerebral Palsy, Retardation and Multiple Disabilities and also manage the properties bequeathed to the

Trust. It is an important legislation intended to take care of the most neglected section of disabilities sector.

### **National Handicapped Finance and Development Corporation**

The Government has also set up a National Handicapped Finance and Development Corporation with an authorised share capital of Rs. 400 crores and paid up share capital of Rs. 200 crores to make the persons with disabilities productive and bring them into the mainstream of economic activity.

### **National Human Rights Commission**

India being the signatories to the Human Rights Charter of the United Nations, constituted a high powered Commission namely, National Human Rights Commission to protect not only human rights of citizens but also of all categories of disabled persons. The Commission also deals with violation of human rights as well as protection against exploitation, discrimination etc.

In the absence of a proper forum to take up the cases on behalf of disabled persons before the National Human Rights Commission, the disabled have not so far taken any advantage from the Commission. Hence there is an urgent need that some organised groups of people should come forward to help the disabled in taking up their cases pertaining to violation of rights and exploitation and discrimination against them.

### **A Modest Beginning for India**

It is hoped that the UN Declaration and other international instruments will prove useful guide not only to officials responsible for the implementation of these standards but also non-governmental organizations, employers and workers organizations, and all others who are actively involved in helping disabled persons to become fully integrated in the mainstream of the society. Although a modest beginning has been made in India but it may take decades to ensure full implementation and effective enforcement of all national and international instruments on human rights. Such an exercise is worth while as, with the progressive removal of illiteracy and poverty, the spread of education and a sustained campaign for attitudinal changes and creating community awareness, the concept of human rights will gradually spread throughout the globe.

The following measures for creating awareness and removing ignorance are suggested:

- (a) The child is the father of man. It is therefore, desirable that students from primary level should be introduced with the subject of the disability to enable them to develop better understanding

towards the disablement over a period of time. Obviously, proper awareness and understanding is absolutely necessary to treat them on equal footing or at par with normal human beings and offer them the opportunities to unfold their capabilities without any exploitation and discrimination.

- (b) Orientation of students as well as faculty members at University level and professional institutes like engineering colleges, management institutes, medical colleges, law institutes, staff colleges for IAS, IPS, PCS, judicial officers and other professions will certainly help them to understand the problems faced by the disabled in securing admission in schools and colleges, vocational training institutes, employment, placement etc. Such an orientation of the above professionals will go a long way to help them to view the problems with sympathy in their career.
- (c) The Ministry of Social Justice and Empowerment should take up the matter with the Ministry of HRD; University Grant Commission (UGC) and All India Council of Technical Education (AICTE) regarding introduction of the subject on disability in all academic and professional courses in the country. This will also generate goodwill for the disablement, besides development of better understanding.
- (d) The NGOs can also play a vital role in removing ignorance and creating awareness about the rights of the disabled through constant efforts and programmes.
- (e) Mass media, like newspapers, radio, TV and films may also be helpful in dispelling the prejudices and discriminations against the education, placement and rehabilitation of the disabled by depicting success stories of the people with disabilities.