

INAUGURAL ADDRESS

by

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People are disabled because of physical reasons, such as the loss of vision or the limbs, or because of mental or psychological disorders. They may have been born with such disabilities or they may have acquired them during the course of their lives. What is alarming is the enormous number of people who suffer from one or other kind of disability. The World Health Organisation estimates that one tenth of the world's population suffers from some disability and almost one fifth of the disabled population of the world lives in India. The disabled rights group in India puts this figure at sixty million. The National Sample Survey conducted in 1991 by the Union Ministry of Statistics Planning and Implementation found that the disabled population was 1.9 percent of its total population as compared to 0.6 percent in 1981. These facts and statistics show the urgent need for a discussion on the rights of the disabled persons and the Indian Law Institute must be commended for organising it.

For long the disabled person has been considered an unwanted member of society. This is particularly so when the disability is mental or psychological. It was not too long back that once I saw in the newspapers photographs of some mentally afflicted people, being confined in chains. There is almost no field where physical disability except perhaps blindness cannot be alleviated. Much the same position exists even in regard to mental and psychological problems. It has to be remembered that the disabled person is as much a citizen as any other and that he stands equal before the law and entitled to receive equal protection. Article 39A of the Constitution of India gives particular importance because it provides that the state shall secure the operation of a legal system that promotes justice, on the basis of equal opportunity to ensure that opportunities for securing justice, are not denied to any citizen by reason of economic or other disabilities. But Article 39A is a part of the directive principles and not an enforceable right. The law must recognise and provide that persons with disabilities have specific rights. It must require respect for such rights and therefore oblige others to enable disabled persons to effectively exercise them on an equal footing.

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While keeping in view the neglect and the discrimination being meted out towards the persons with disabilities, the United Nations Charter, 1945, the Universal Declaration of Human Rights, 1948, the Declaration on the Rights of the Child, 1959, the International Covenant on Economic, Social and Cultural Rights, 1966 and the UN Declaration on Social Progress and Development, 1969 were framed. They emphasised collectively on the need to assure to disadvantaged and marginalized sections of the people, equal opportunities for social and economic advancement in order to achieve an effectively integrated society. The Universal Declaration of Human Rights eloquently speaks of equality and the right to live with dignity for all people without discrimination on any ground. Subsequently in 1971 the United Nations General Assembly adopted the Declaration on the Rights of the Mentally Retarded Persons, which proclaimed that a mentally retarded person had, to the maximum degree of feasibility, the same rights as that of other human beings. He has the right to proper medical care and such education, training, rehabilitation and guidance as would enable him to develop his maximum potential. He has the right to economic security and to a decent standard of living to do productive work or engage in other meaningful occupations to the fullest extent of his capability. In 1975 general declaration on the rights of the disabled persons followed.

In India in 1987, the Mental Health Act and in 1992, the Rehabilitation Council of India Act were enacted. Following upon the proclamation on the full participation of people with disabilities in the Asian and Pacific regions in Beijing in 1992, India enacted the Persons with Disabilities, (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In 1999 the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act was passed. These two statutes, while very vehement, have attracted criticism, and it seems to me with good reason for their drafting leaves something to be desired, particularly the breadth of the definition of disability needs to be increased and I understand there is likelihood of amendments in the foreseeable future.

As Executive Chairman of the National Legal Services Authority, I must add that those who are mentally ill or otherwise disabled are entitled to receive free legal aid by virtue of the Legal Services Authorities Act, 1987. For this purpose unfortunately disability has to be assessed only upon a rather limited basis laid down by the Persons with Disabilities Act. It is important for you to consider what amendments to the law, or fresh laws are necessary, for effectively providing for the rights of persons with disabilities and for their enforcement. It is, I think, as much important that you should discuss how to bring about a change in society's mindset about disabled persons.

Indian society particularly in the poorer and rural areas needs to be educated about physical and mental disability and about how it can be cured or alleviated. It must be impressed upon people that the disabled person has as many rights as any other and that he is not to be regarded as an inconvenient burden. Unless and until the societal mindset changes, no change in the law can create an environment that enables disabled persons to exercise and enjoy their rights as citizens of India and as human beings.