

CHAPTER 1

INTRODUCTION

International human rights law proceeds on the assumption that each and every human being, more or less, possess identical capacities in various spheres of life. However, this has been proved wrong as far as persons with disabilities are concerned. This even holds more true in the case of visually disabled persons who are entangled by darkness and remain unaware of their legal rights throughout their life. In most countries and most ages, the blind have been considered with a few outstanding exceptions, as objects of charity, of pity, of contempt, even of cruelty. The pain hidden in those who are surrounded with darkness can be felt from the words of Helen Keller. She explains what blindness is.... the feeling of inexistence and emptiness.....

I felt as if invisible hands were holding me, and I made frantic efforts to free myself. I struggled –not that struggling helped matters, but the spirit of resistance was strong within me; I generally broke down in tears and physical exhaustion.....¹

There are people who are disabled by birth or acquired disability during the life time. Due to such disability, their dependence is more on others. A disabled person is neglected or ill treated and same care and affection is not extended as is given to ordinary persons. In many instances, their basic needs are not attended. They are subjected to unequal treatment by deliberately forgetting that they are also entitled to all rights and safeguards bestowed in the Constitution of India. The persons with disabilities are equally entitled to the mandates of Articles 14, 16 and 21 as their able bodied counterparts. They equally have the right to a decent and honorable living. State and its instrumentalities in turn have duty towards them and must endeavor to protect and preserve their rights.² However, the reality is that there is still ill treatment and this ill treatment or neglect has become a universal phenomenon and mandates a need to analyse the problems connected with disability, extent of disability, factors that led to the need for an International Convention on disability and a new legislation on disability in India

¹ Helen Keller, *Story of My Life*, Cosimo, Inc., 2009

² *K. Srinivasa Rao v. APSRTC and Ors.* Writ Petition Nos. 33462 and 34419 of 2013 Decided on 01 June 2017

in order to enable the persons with disabilities to enjoy the rights and opportunities on the same wavelength at par with other citizens.

The disabled persons among other minority groups constitute the largest minority in the world. According to the data provided by World Health Organization (WHO) around 15 per cent of the world's population or estimated 1 billion population live with disabilities. Out of this, around 80% of persons with disabilities live in low-income States which are less equipped to address their needs. As per 2011 Census, there are 2.68 Crore persons with disabilities in India who constitute 2.21% of the total population. Among these 1.50 crore are male and 1.8 crore are female. These include persons with visual, hearing, speech and locomotor disabilities, mental illness, multiple disabilities and other disabilities. The 2011 Census is represented in Table:1

Table 1: Office of the Registrar General & Census Commissioner, India; GOI

Persons with Disabilities by Type of Disability Census: 2011			
Type of Disability	Persons	Male	Female
Total	2,68,10,557	1,49,86,202	1,18,24,355
In seeing	50,32,463	26,38,516	23,93,947
In hearing	50,71,007	26,77,544	23,93,463
In speech	19,98,535	11,22,896	8,75,639
In movement	54,36,604	33,70,374	20,66,230
Mental retardation	15,05,624	8,70,708	6,34,916
Mental illness	7,22,826	4,15,732	3,07,094
Any other	49,27,011	27,27,828	21,99,183
Multiple disability	21,16,487	11,62,604	9,53,883

Source : Primary data

As the population grows, so too does the number of persons with disabilities. WHO estimates that the blind population will double by 2020 due to rise in population and longevity.³ India has a gigantic blindness problem and the statistics reveals that of the total population, persons with disabilities suffering from '*seeing disability*' are more compared to the other types of disabilities. Blindness is classified into (i) congenital: Bupthalmos also known as infantile glaucoma or hydrophthalmos usually of a simple

³ Ramesh Verma, Pardeep Khanna et., al, The National Programme for Control of Blindness in India, *The Australasian Medical Journal*, 2011; 4(1): 1-3. See also www.ncbi.nlm.nih.gov

obstruction type affecting both eyes (ii) traumatic caused by blunt injury, penetrating injury or chemical injury (iii) inflammatory (iv) infective⁴ (v) neoplastic (vi) vascular (vii) idiopathic⁵ (viii) Senile.⁶ The factors, viz. war injuries, occupation hazards⁷, HIV/AIDS, malnutrition⁸, chronic diseases, accidents⁹ and environmental damage, population growth, medical advances that preserve and prolong life, have all contributed to this population growth. At the same time, the age-old disability based discrimination also persists. The linkage between poverty and disability is also well documented.¹⁰ A study by the World Bank estimated that persons with disabilities may account for nearly

⁴ Infective causes may be Corneal ulcer, Viral keratitis

⁵ Inflammation of iris and ciliary body leads to congestion of blood vessels and exudation of fibrin rich fluid and inflammatory cells in the tissues.

⁶ Cataract is one of the leading causes of reversible blindness in India.

⁷ Occupation-related health problems of workers employed in stone quarrying, land mining, leather industry, glasswork, weaving, diamond cutting, hand embroidery etc.; and children employed in the carpet, cracker and match industry, have not received appropriate and sustained attention, as occupation health has not been considered important enough both by the corporate and those responsible to regulate work standards. At the same time, poor farmers and peasants are very vulnerable to disability as they work for long hours exposed to sunlight, dust and smoke. Amputations, muscular diseases and spinal cord injuries are some common hazards associated with agricultural activities. With mechanization of agriculture these incidents are on the increase. However, there is no parallel improvement in the primary health system in the rural areas.

⁸ Inadequate shelter, unhygienic living conditions, lack of sanitation and clean drinking water combined with poor access to health facilities breed disability. Common micronutrient deficiencies that affect disability include:

- Vitamin A deficiency: Blindness
- Vitamin B deficiency: Beri-beri, (inflammation or degeneration of the nerves, digestive system and heart), pellagra (central nervous system and gastro-intestinal disorders, skin inflammation) and anaemia
- Vitamin D deficiency :rickets (soft and deformed bones)
- Iodine deficiency – slow growth, learning difficulties, intellectual disabilities, goitre
- Iron deficiency – anaemia, which impedes learning and activity and is a cause of maternal mortality
- Calcium deficiency – osteoporosis (fragile bones)

See ESCAP, *Economic and Social Survey of Asia and the Pacific*, United Nations Publication, Sales No.E.03.II.F.11, 2003.

⁹ Improvements in vehicle design and medical facilities, as well as stronger enforcement of traffic regulations concerning the compulsory use of seat belts (car use) and helmets (motorcycle use), and restrictions on alcohol consumption and other intoxicants need to be treated more seriously than it has been. Studies estimate that by 2020, road traffic accidents will be ranked as the third leading cause of disability in the Asian and the Pacific region. Quadriplegia, paraplegia, brain damage and behavioural disorders are some disabilities common among survivors of such accidents.

See National Human Rights Commission, *Know your Rights, Rights of Persons with Disabilities*, Know Your Rights Series, New Delhi, 2010.

¹⁰ Author says that disability and poverty are inter linked. As per her view, [N]ot only does disability add to the risk of poverty, but conditions of poverty add to the risk of disability.

See Elwan, Ann (1999), "Poverty and Disability: A Survey of the Literature Social Protection Discussion Paper No.9932, The World Bank Group", [Online: web] Accessed 12 April 2018, URL:<http://siteresources.worldbank.org/DISABILITY/Resources/280658-1172608138489/PovertyDisabElwan.pdf>

one out of every five of the world's poorest population. The study reveals the shocking but grim truth that,

People with disabilities in the developing world are among the poorest of the poor. With disabled people invisible in development initiatives, hundreds of thousands of people who see themselves as potential and willing contributors to family and national economic activity are instead relegated to the margins of society where they are a perceived and considered as actual burden. The result can be devastating, both to the individual and to the economy¹¹

The other major and related issues faced by the visually disabled include (i) Education (ii) Skill Development and Employment (iii) Social Security, Health, Rehabilitation and Recreation (iv) Environmental barriers (v) Accessibility. These problems faced by the visually disabled persons are only a glimpse of many and varied that is yet to be unraveled. Above all, they have to be made legally conscious of their available rights.

India has four major legislation relating to disability:

- Mental Health Care Act, 2017; (Mental Health Act, 1987 is replaced by the Act of 2017)
- The Rehabilitation Council of India Act, 1992¹²;
- The Rights of Persons with Disabilities Act, 2016; (Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act, 1995 (PWD Act) is replaced by the Act of 2016);
- The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

The PWD Act was a comprehensive legislation, which aroused a lot of hope and expectation among the persons with disabilities. Apart from an assurance of equal opportunities in all walks of life including education and employment, non-discrimination and removal of barriers (both physical and psychological) it sought to

¹¹ Deborah, Stienstra et. al. (2002), "Base line Assessment: Inclusion and Disability in World Bank Activities, Canadian Centre on Disability Studies", [Online: web] Assessed 12 May 2018 URL: http://www.iddc.org.uk/dis_dev/mainstreaming/incl_dis_wildbank.doc

¹² Rehabilitation Council of India Act was recently amended. See The Rehabilitation Council of India (Amendment) Act, 2000, Act. No. 38 of 2000 [4th September, 2000]

ensure certain affirmative action for their full inclusion. However, the way it was being implemented since its enactment left much to be desired; there was a wide gap between rhetoric and reality. The reasons are not far to seek; the Act suffered from structural and procedural lapses. Most important, it lacked teeth and binding force for its implementation in true spirit. The caveat that reforms should only be undertaken within the limits of State's economic capacity also nullified the potential of the Act for change.

The global disability rights movement can be traced since 1970s, this movement has culminated in the adoption of the United Nations Convention on the Rights of Persons with Disabilities (hereafter referred to as the UNCRPD) as also the Optional Protocol thereto on 13 December 2006. The Convention reflects the worldwide process of law reform in the field of disability.¹³ A glimpse on the evolution of the Convention on disability reflects a saddened reality of the oblivious United Nations human rights machinery. However, it would be wrong to say that the UN system as a whole paid no attention. The specialized agencies like International Labour Organisation (ILO), United Nations Educational, Scientific and Cultural Organisation (UNESCO), United Nations International Children's Emergency Fund (UNICEF) and the WHO were in fact very active on the disability issue and indeed participated actively in the drafting of the UNCRPD.¹⁴ The disability issue figured in the general UN system through the UN Commission for Social Development; as distinct from the Commission on Human Rights which itself demonstrates that the issue was framed more as a social policy issue than a human rights issue. Two resolutions of the General Assembly in the 1970s particularly revealed that they provided an early indication of a shift from a 'caring' agenda to a 'rights' agenda in the context of disability.¹⁵ In 1971 the General Assembly passed a resolution entitled Declaration on the Rights of Mentally Retarded Persons¹⁶ and another milestone Resolution in 1975 entitled Declaration on the Rights of Disabled Persons.¹⁷ The year 1981 was declared by the UN as the International Year of Disabled Persons. To follow through, the General Assembly created a World Programme of Action for Persons

¹³ The Convention is the first treaty to impact disability rights exclusively and globally.

¹⁴ Gerard Quinn, A Short Guide to the United Nations Convention on the Rights of Persons with Disabilities, 1 *Eur. Y.B. Disability L*, 89(2009)

¹⁵ T. Degener and Y Koster-Dreese (ed.), *Human Rights and Disabled Persons*, (Nijhoff, 1995).

¹⁶ UN General Assembly Resolution 2865 (XXVI), 20 December, 1971. This resolution starts by pointing out that persons with disabilities enjoy a parity of human rights protection with all other persons.

¹⁷ UN General Assembly Resolution 3447 (XXX), 9 December, 1975.

with Disabilities (WPA) in 1982¹⁸, and in order to facilitate the implementation of WPA, the UN created the UN Decade of Disabled Persons.¹⁹ Although, the implementation of the World Decade was reviewed several times there was no much progress in the way. Some progress was witnessed when Italy and Sweden proposed drafting a new human rights convention on the rights of persons with disabilities. However, due to treaty fatigue, the General Assembly declined to consider a new Convention and instead they opted for a special resolution entitled the UN Standard Rules for the Equalisation of Opportunities for Persons with Disabilities, 1993²⁰ which was instrumental in moving away from the traditional “welfare approach” towards a “rights-based” approach for more than eight years.²¹ The negotiations on the convention originated in an initiative taken by Mexico during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, from 31 August to 7 September 2001.²² At that conference, Mexico invited the UN General Assembly to adopt an International Convention to protect the rights of persons with disabilities. At the 56th session of the General Assembly in 2001, Mexican President Vincente Fox Quesada reiterated the need for a comprehensive and integral convention and presented a proposal for the same which resulted in the establishment of an Ad Hoc Committee.²³ In response to this, the General Assembly by its Resolution 56/168 of 19 December 2001 decided to establish an Ad Hoc Committee to consider the proposal for a Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of

¹⁸ UN General Assembly Resolution 37/52, 3 December, 1982.

¹⁹ The UN General Assembly proclaimed 1983-1992 the United Nations Decade of Disabled Persons.

²⁰ Adopted by General Assembly Resolution 48/96, 20 December 1993. Though comprehensively drafted it lacked legal status in spite of Rule 14 which provided that if they gained sufficient support they might obtain the status of customary international law.

²¹ In the 1940s and 1950s the United Nations gave emphasis in promoting the well-being and rights of persons with disabilities through a range of social welfare approaches. The United Nations provided assistance to Governments in disability prevention and the rehabilitation of disabled persons through advisory missions, workshops for the training of technical personnel and the setting up of rehabilitation centres and in 1970s, a shift could be witnessed towards the concept of human rights of persons with disabilities and equalization of opportunities for them.

²² The UN drafting process began in 2001 and the treaty was adopted in 2006 following eight adhoc sessions of negotiation. The treaty was open for signature in March 2007, ultimately coming into force in May 2008. The drafting process was unique as there was participation by civil society, particularly groups focused on issues of disability or Disabled Peoples Organisations (DPOs) themselves. This was new for the development of any UN treaty as it reflected the needs and desires of persons with disabilities around the world allowing them to live full participatory lives in the society. See Esme Grant and Rhonda Neuhaus, *Liberty and Justice for All: The Convention on the Rights of Persons with Disabilities*, 19 *ILSA J. Int'l and Comp. L.* 347 (2013)

²³ The General Assembly by its Resolution 56/168 of 19 December 2001 decided to establish an Ad Hoc Committee

Persons with Disabilities based on a holistic approach. Thus the Ad Hoc Committee started its negotiations²⁴ on the draft convention at its third session from 24 May to 4 June 2004 (A/AC/265/2004/5) based on the draft text prepared by the working group in accordance with General Assembly Resolution 58/246. The negotiations went through eight sessions and finalized the negotiations which resulted in the adoption of the International Convention on the Rights of Persons with Disabilities and Optional Protocol. India signed the Convention on the opening day itself and ratified it on 1 October 2007.

Having ratified the Convention, it became imperative for India to harmonise all disability-related legislation and policy provisions in keeping with the guiding spirits and ethos of the Convention. To achieve this objective, the government replaced the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act of 1995 with a new legislation, that is, the Rights of Persons with Disabilities Act, 2016 (hereafter referred to as RPWDAAct)

The 2016 legislation is no doubt an improvement over the 1995 Act which treated disability in only medical parlance. Salient features of the Act can be summed up as follows:

- The Act covers 21 categories of disabilities compared to 7 in the 1995Act²⁵
- The persons with disabilities enjoy various rights such as right to equality, life with dignity, respect for his or her integrity, etc., equally with others
- Duties and responsibilities of the appropriate Government have been enumerated
- All educational institutions funded by appropriate Government are to provide inclusive education to the children with disabilities
- National fund is proposed to provide financial support to persons with disabilities
- Stakeholder's participation in the policy making through Central and State Advisory Boards

²⁴ One of the unique characteristics within the process of drafting and negotiating the convention has been the active involvement of civil society. Disabled Peoples Organizations (DPOs) and NGOs have established the International Disability Caucus (IDC). This is a consortium of approximately fifty organizations that provided critical input into the convention process, including detailed comments on the draft articles, and making comments on key issues. During the Second Ad Hoc Committee meeting it was agreed that UN accredited NGOs and DPOs could attend any public meetings of the committee and make statements within the plenary sessions, when required. See Lang, Raymond (2006), "Human Rights and Disability-New and Dynamic Perspective with the United Nations Convention on Disability", *Asian and Pacific Disability Rehabilitation Journal*, 17(1):3-11.

²⁵ Nineteen specified disabilities have been defined in the new Act.

- Reservation in education and employment sectors
- Increase in reservation in posts from existing 3 per cent to five per cent in the vacancies for persons or class of persons with benchmark disabilities in every establishment and reservation of seats for students with benchmark disabilities in higher educational institutions including persons with blindness and low vision
- Incentives to employees in private sector
- Vocational training and self-employment schemes including loans under concessional rates
- Special schemes and development programmes for persons with benchmark disabilities
- Right to free legal aid and penal provisions for offences committed against them
- Not to subject persons with disabilities to any medical procedure which leads to infertility without their free and informed consent
- Access to information on reproductive and family planning as their able bodies counterparts.
- Right to access to justice and to any programme, scheme, facility or service offered by National and State Legal Services Authorities under Legal Services Authorities Act, 1987
- Setting up of National and State Commission to act as Grievance Redressal Mechanism, monitor implementation of the proposed legislation replacing the Chief Commissioner and the State Commissioners for persons with disabilities
- Guidelines to be issued by the Central Government for issuance of certificates of specified disabilities
- Penalties for offences committed against persons with disabilities; and
- Court of Session to be designated as Special Court by the State Government in every district to try offences
- Adequate social security measures within the limits of economic capacity of the government.

The PWD Act of 1995 had defined persons with disabilities as those having not less than 40 percent of disability and identified only seven categories of disability such as (i) Blindness (ii) Low vision (iii) Leprosy-cured (iv) Hearing impairment (v) Locomotor disability (vi) Mental retardation (vii) Mental illness. Instead of seven disabilities, the new

Act covers 21 conditions and has defined visual impairment under specified disability which includes 'blindness' and 'low vision'. While the 1995 Act had identified only the following seven categories of disability, that is,²⁶ (i) Blindness, (ii) Low vision, (iii) Locomotor disability, (iv) Leprosy cured, (v) Hearing Impairment, (vi) Mental retardation,²⁷ (vii) Mental illness and defined 'person with disability' as one suffering from not less than forty per cent of any disability as certified by the medical authority,²⁸ the RPWD, 2016 has categorised persons with disabilities into three categories: (i) person with disability (ii) person with benchmark disability (iii) person with disability having high support needs. "Persons with disability" is defined as a person with long term physical, mental, intellectual or sensory impairment which hinder his full and effective participation in society equally with others.²⁹ "Person with benchmark disability" means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability as certified by the certifying authority. Further, the Act also defines "person with disability having high support needs" as a person with benchmark disability certified under clause (a) of sub section (2) of section 58 who needs high support.

²⁶ Before the PWD Act the following five categories were officially used in India (i) Visually handicapped (ii) speech and hearing handicapped (iii) locomotor handicapped (iv) mentally retarded (v) neurologically handicapped – in this category, the concern is restricted to only the cerebral palsied. See Ali, Baquer and Anjali Sharma (1997), *Disability: Challenges Vs Responses*, New Delhi: Concerned Action Now.

²⁷ Mental retardation and blindness are defined in the same manner as that in the RCI Act; while in case of hearing impairment it is the loss of sixty decibel or more in the better ear in the conversational range of frequencies, compared to loss of 70 decibel or more under RCI Act.

²⁸ Although a comprehensive legislation, the reality was that it lacked teeth and binding force for its implementation and the caveat that reforms should only be undertaken within the limits of State's economic capacity also nullified the potential of the Act for change. All these led to a need for amendment in the legislation which resulted in 108 amendments to the PWD Act including 50 new provisions. However, the Disabled Rights Group (DRG) raised voice for a brand new law on disability. In the midst of these developments, India ratified the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and the need for a new law on disability by harmonizing all related legislations with the ethos of the Convention strengthened. This resulted in the Rights of Persons with Disabilities Bill, 2011.²⁸ However, Ministry replaced 2011 Bill with 2012 Bill. The Bill of 2012 was not comprehensive and inclusive and there were serious issues raised before the Ministry on the notification of 2012 draft, however, the Cabinet scrutinized and approved it in December, 2013 and finally the 2014 Bill was replaced by the Act of 2016.

²⁹ The definition provided by the Brand new law on disability in India corresponds the definition of the UN Disability Convention.

Under the category of visual impairment, the Act has defined blindness and low vision as follows:

Blindness: means a condition where a person has any of the following conditions, after best correction—

- (i) total absence of sight; or
- (ii) visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or
- (iii) limitation of the field of vision subtending an angle of less than 10 degree.

Low-vision: means a condition where a person has any of the following conditions, namely:—

- (i) visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or
- (ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree³⁰

The 2016 Act is indeed a much awaited remedy for the disabled community. However, there is great need to sensitize the disabled community of their rights which is the responsibility of every able bodied peer groups. There is more obligation on the government to protect their rights and should be taken care that economic constraints should not come in the way of implementation of their rights.

1.1 Objectives:

- To make visually disabled persons legally conscious of their rights under the existing legislative provisions
- To examine critically the policy measures taken by the Government of India with regard to implementation of economic, social and cultural rights as also civil and political rights, and thereby analysing their impact on empowerment of the persons with disabilities.
- To analyse the role of civil society in the implementation process.
- To educate the organizers and instructors working in blind schools in order to achieve the objective of 'inclusive education'

³⁰ Clause (zc) of Sec. 2 of RPWD Act, 2016

1.2 Research Questions:

- To what extent the visually impaired are aware of their rights?
- Are the social security measures adequate to protect the rights of visually impaired?
- Whether the legislative and administrative measures are adequate in the implementation of the Persons with Disabilities Act, 2016 in India?
- What will be the cost to implement the Act?
- Will there be any economic constraint for implementing the Act?
- What will be the barriers in the implementation of the Act, apart from the economic constraints?
- What is the role of civil society in the implementation of the Act?

1.3 Research Methodology:

The study will be both doctrinal and non doctrinal in nature. Analytical and historical methods will also be followed for carrying out this study. Accordingly, primary and secondary source materials will be utilised extensively for completion of the study. In addition, the official reports and other publications of the United Nations and other global bodies as also various departments/ministries of the State Government will also be used in all possible ways. The empirical study will focus on the visually impaired persons with disabilities in the Hubballi- Dharwad area mainly in schools and rehabilitation centres by using Questionnaire method, Interview, Schedule, case study etc., as research tools for the collection of the proposed data.

1.4 Structure of the study:

The present study will be divided into five chapters. The first chapter, **Introduction** analyses the problems connected with disability, extent of disability, factors that led to the need for a new legislation on disability in India in order to enable the persons with disabilities to enjoy the rights and opportunities on the same wavelength at par with other citizens.

Chapter 2, **Legislative and Administrative Measures** makes an effort to elaborate briefly all major legislation and statutes on disability and also elaborates the role of administrative wherein, an effort will be made to analyze critically the major schemes and programmes launched and implemented by the departments/ministries of the State Government for empowering the visually impaired.

Chapter 3, **Empirical Study on Visually impaired in Hubballi- Dharwad area** seeks to analyse the extent of legal awareness of the new legislation and to ascertain their views to help them to become part of the society as their able bodied peers and to make suggestions to improve the quality of their lives.

Chapter 4, **Inclusive Educational Measures as a Remedy** aims to integrate the visually impaired with their able bodied peers with a view to harmonise the national legislation on disability in lines with the UN Disability Convention (UNCRPD) and also to analyse its adaptability in Hubballi- Dharwad.

The concluding chapter provides an exploratory overview of the need to be taken by the State government in the implementation of the Act and offers certain constructive suggestions for accelerating and streamlining the actualisation of the goal of empowering the visually impaired.



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