

# The Rights of Mentally Disabled Persons: An International Human Rights Approach

Adv. Dr. Priya Nair. V

Advocate, Thiruvananthapuram, Kerala

Email: [priyanairvinodk\[at\]gmail.com](mailto:priyanairvinodk[at]gmail.com)

Phone No.9446722672, 7012916741

***Being disabled should not mean being disqualified from having access to every aspect of life.”***

***Emma Thompson***

Over the last half century, the importance of human rights has been recognized progressively by the international community, commencing with the adoption of the Universal Declaration of Human Rights in 1948 and followed periodically by human rights conventions which more specifically address certain aspects of human rights. At present, no convention addresses the special concerns of individuals with disabilities or the subgroup of people with mental disabilities. On November 28, 2001, however, the United Nations General Assembly adopted a resolution calling for the creation of an Ad Hoc Committee “to consider proposals for a comprehensive and integral international convention to protect and promote the rights and dignity of persons with disabilities.

The term “mental disabilities” is a broad term that includes people with disabilities caused by a mental disorder (such as people with a diagnosis of mental illness or with intellectual or developmental disabilities). Since many people are subject to discrimination based upon the improper perception that they have a current or past mental disorder. Thus, the term “mental disability” in this document refers to any person who may be subject to discrimination on the basis of a perception that he or she is disabled or subject to a mental disorder. This paper refers to individuals with mental disabilities because some of the most important rights under international law are enshrined in international instruments as disability rights. For example, the UN Standard Rules on Equalization of Opportunities for Persons with Disabilities (StREOP) refers to people with disabilities. Under the StREOP “The term ‘disability’ summarizes a great number of different functional limitations occurring in any population. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.”<sup>1</sup>

Internationally, the definition of mental retardation has moved away from a medical model to that of an educational model which is functional and support based and emphasizes the rights of the individual. According to *the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, enacted in India, mental retardation means a “condition of arrested or incomplete

development of mind of a person which is specially characterized by sub - normality of intelligence”.

A complete and accurate understanding of mental retardation implies that mental retardation refers to a particular state of functioning, which begins in childhood, having many dimensions, and affected positively by individualized supports. As a model of functioning, it includes the contexts and environment within which the person functions and interacts, requiring a multidimensional and ecological approach that reflects the interaction of the individual with the environment. The outcomes of that interaction are with regard to independence, relationships, societal contributions, participation in school and community and to personal well - being.

## **What are the rights of the disabled persons?**

- Equality before the law without discrimination
- Right to life, liberty and security of the person
- Equal recognition before the law and legal capacity
- Freedom from torture
- Freedom from exploitation, violence and abuse
- Right to respect physical and mental integrity
- Freedom of movement and nationality
- Right to live in the community
- Freedom of expression and opinion
- Respect for privacy
- Respect for home and the family
- Right to education
- Right to health
- Right to work
- Right to an adequate standard of living
- Right to participate in political and public life
- Right to participate in cultural life

## **The International Instruments Recognize the Rights of Persons with Disabilities**

The main conventions which recognise the rights of the disabled persons are the following: -

- The International Covenant on Economic, Social and Cultural Rights.
- The International Covenant on Civil and Political Rights.
- The International Convention on the Elimination of All Forms of Racial Discrimination.
- The Convention against Torture.

<sup>1</sup> UN Standard Rules on Equalization of Opportunities for Persons with Disabilities

- The Convention on the Elimination of All forms of Discrimination against Women.
- The Convention on the Rights of the Child.
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- The International Convention for the Protection of All Persons from Enforced Disappearance.
- The Convention on the Rights of Persons with Disabilities. The Declaration on the Rights of Disabled Persons (1995).
- The World Programme of Action concerning Disabled Persons (1981).
- The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (1991).
- The Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993).
- The Declaration on the Rights of Disabled Persons (1995).
- Convention on the Rights of Persons with Disabilities (2006).

### Convention on the Rights of Persons with Disabilities

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 third millennium.

**Article 1** defines the purpose of the Convention: *To promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.*<sup>2</sup>

### Declaration on the Rights of Mentally Retarded Persons

In 1971, the UN General Assembly adopted the "Declaration on the Rights of Mentally Retarded Persons".<sup>3</sup> The declaration does establish some important rights. The person with intellectual disability has "the same rights as other human beings" which cannot be restricted without due process that "must contain proper legal safeguards against every form of abuse." The MR Declaration protects against the common practice in some countries of stripping away a person's rights through a finding of mental incompetence or by placing people with an intellectual disability under guardianship for a lifetime without due process. Instead of relying simply on a medical diagnosis, the MR declaration provides every person with an intellectual

disability a right to an evaluation of his or her "social capability" by a "qualified expert." Any determination of incompetence must be reviewed periodically, and an individual whose rights have been limited has a right to appeal to a court.

The MR Declaration recognizes a right to community integration and inclusion in society by establishing that "the mentally retarded person *should* live with his own family or with foster parents and participate in different forms of community life."

Although guidelines, declarations, principles, resolutions and other documents are not legally binding, they express a moral and political commitment by States, and can be used as guidelines to enact legislation or to formulate policies concerning persons with disabilities.<sup>4</sup> It is important to note that some provisions of the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care have been criticized and the Convention on the Rights of Persons with Disabilities now supersedes these standards to the extent that there is any conflict between the two instruments.

### The Economic and Social Commission for Asia and Pacific (ESCAP)

The Economic and Social Commission for Asia and Pacific (ESCAP) at its forty - eighth session held at Beijing adopted a resolution 48/3 proclaiming the period 1993 - 2002 as the Asian and Pacific Decade of Disabled Persons. The agenda for Action for Asia and Pacific Decade of the Disabled Persons laid emphasis on enactment of legislation aimed at equal opportunities for people with disabilities, protection of their rights and prohibition of their abuse, neglect and discrimination.

### Why is it Necessary to have a Convention on the Rights of Persons with Disabilities?

The Convention is necessary in order to have a clear reaffirmation that the rights of persons with disabilities are human rights and to strengthen respect for these rights. Although existing human rights conventions offer considerable potential to promote and protect the rights of persons with disabilities, it became clear that this potential was not being tapped. Indeed, persons with disabilities continued being denied their human rights and were kept on the margins of society in all parts of the world. This continued discrimination against persons with disabilities highlighted the need to adopt a legally binding instrument which set out the legal obligations on States to promote and protect the rights of persons with disabilities.

### Indian Law on the Rights of Mentally Disabled Persons

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

The Act has been enacted under Article 253<sup>5</sup> of the Constitution read with item No.13 of the Union List. It gives effect to the proclamation on the full participation and

<sup>2</sup> Article 1, The UN Convention on the rights of persons with disabilities, 2006.

<sup>3</sup> The declaration is known as MR Declarations.

<sup>4</sup> Agrawal AK. Mental health and law. Indian J Psychiatry. 1992; 65-6.

<sup>5</sup> Article 253 Constitution of India, 1950.

equality of the persons with disabilities in the Asian & Pacific Region and provides for their education, employment, creation of barrier free environment, social security, etc. The implementation of the Act requires a multi - sectorial collaborative approach by the appropriate governments, including various Central Ministries and Departments, States and Union Territories and local bodies.

#### **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996**

The Rules indicate about evaluation and assessment of various disabilities and indicate the authorities, which are to give the Disability Certificate. The Rules also provide the procedure for holding Central Coordination Committee and Central Executive Committee meetings, procedure of notification of vacancies to Special Employment Exchanges, procedure to be followed by Chief Commissioner for Persons with Disabilities in handling the complaints of persons with disabilities, salary and allowances of Chief Commissioner for Persons with Disabilities and the manner in which annual report is to be submitted by him.

#### **National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999**

The Act provides for constitution of the Board of the National Trust, Local Level Committees, Accountability and Monitoring of the Trust. It has provisions for legal guardianship of the four categories of the persons with disabilities and for creation of enabling environment for their as much independent living as possible.

#### **Rehabilitation Council of India Act, 1992**

The Act provides for constitution of the Rehabilitation Council of India for regulating the training of rehabilitation professionals, maintenance of a Central Rehabilitation Register, recognized rehabilitation qualifications, minimum standards of educations etc.

#### **The National Trust Rules, 2000**

The Rules provide for election of Members of the Trust, Powers and Duties of its Chairperson and Chief Executive Officer etc.

#### **The National Trust Regulations, 2001**

The Regulations provide for conditions of service of the Chief Executive Officer and other officers and staff of the Trust, form and manner in which application is to be made for registration of NGOs and procedure for appointment of guardians etc.

#### **Criticism**

While international human rights law has grown tremendously over the last thirty years, the development of international law to protect specifically the rights of people with mental disabilities has been relatively slow and limited. Human rights oversight bodies that monitor the mainstream conventions and establish reporting guidelines have dedicated little attention to the rights of people with mental disabilities. The lack of language that pertains specifically to

people with mental disabilities in the International Bill of Rights and other mainstream conventions has long hampered the application of these conventions to people with mental disabilities. As a practical matter government that have ratified the International Bill of Rights, as well as activists and mental health professionals, simply do not know what the specific requirements of international conventions are as they apply to people with mental disabilities.

In recent years, there have been a number of important developments that greatly aid the application of convention - based rights. In 1991, the United Nations General Assembly adopted the “Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care”.<sup>6</sup> As this document will describe, the MI Principles are a non - binding UN General Assembly resolution, but they can be used as a guide to the interpretation of related provisions of international human rights conventions.

In 1993, the World Conference on Human Rights meeting in Vienna reemphasized the fact that people with mental and physical disabilities are protected by international human rights law and that governments must establish domestic legislation to realize these rights. In what has come to be known as the “Vienna Declaration,” the World Conference declared that “all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities.”

Pursuant to the recommendations of the World Conference on Human Rights, the United Nations General Assembly adopted a new resolution, the “Standard Rules on Equalization of Opportunities for Persons with Disabilities” (“Standard Rules”). The Standard Rules are a revolutionary new international instrument because they establish citizen participation by people with disabilities as an internationally recognized human right.

#### **United Nations convention for rights of persons with disabilities - 2006 and Indian laws**

UNCRPD<sup>7</sup> was adopted in December, 2006. It was ratified by the Parliament of India in May, 2008. Countries that have signed and ratified the UNCRPD are required to bring their laws and policies in harmony with it. Therefore, all the disabilities laws in India are currently under process of revision. The convention marks a paradigm shift in respect of disabilities from a social welfare concern to a human right issue. The new paradigm is based on presumption of legal capacity, equality and dignity.

#### **Suggestions**

- 1) Provide a barrier - free environment which enables people with disabilities to move about safely and freely, and use the facilities within the built environment. The goal of barrier free design is to provide an environment that supports the independent functioning of individuals so that they can participate without assistance, in everyday activities.

<sup>6</sup> This principle is known as MI Principle.

<sup>7</sup> United Nations Convention Rights of Persons with Disabilities, 2006.

- 2) Special educational facilities to develop their personal skills and ability should be provided.
- 3) Special training based on their skill is to be provided in order to get a job to meet their livelihood.
- 4) Employment opportunity should be given to meet their economic needs without depending upon the other and thereby to become independent.
- 5) The mentally retarded persons are to be treated apart from other disabled persons for the mentally retarded persons could not be able to understand everything as compared to other disabled persons.
- 6) A special law especially for the mentally retarded persons are to be enacted and be properly implemented.
- 7) The Mental Health Act is primarily giving importance to the mentally ill persons and it is also intended for the issuing of licence on the establishments. There is no mention on the mentally disabled persons. So a special legislation for the mentally disabled persons touching every aspects of their live is very important in this hour.
- 8) Promulgating a set of clearly stated rights that protect the person against unlimited discretion of custodians and service providers. Such a set of rights should be posted in each institution in prominent locations where patients can see them. The content of the rights should be included as part of the orientation for newly admitted patients.
- 9) Supporting the formation of NGOs of consumers, families and other advocates and empowering them to participate in the development of public policy, drafting legislation and regulations, and in monitoring the implementation of the public policy and legislation.
- 10) Encouraging open access to institutions by families and friends and NGOs involved in advocacy on behalf of people with mental disabilities. Specifically, the observation of institutional conditions by such groups should be incorporated into the process of periodic monitoring of the health and safety of residents by qualified professionals.
- 11) Building connections to community resources through rehabilitation and work programs that help preserve pre - existing skills of patients or develop the skills needed for community living.
- 12) Building connections to community resources through rehabilitation and work programs that help preserve pre - existing skills of patients or develop the skills needed for community living.
- 13) Developing a process for professional and thorough investigations of reports of physical and sexual abuse and for monitoring and following up on serious injuries, including injuries of unknown origin, illnesses, and all deaths.
- 14) Creating a grievance/compliant process for patients and their families, which protects them against reprisals while assuring them fair and impartial investigations into their complaints. One model is to create an independent Ombudsman office with the responsibility for managing the grievance/complaint function and which also has access to all institutions and to any information needed to carry out oversight responsibilities.

- 15) Providing institutional residents with access to legal and non - legal advocates to assist them when other means of resolving their problems have proved unsuccessful.

### Conclusion

Quality of life of persons with mental retardation has been significantly enhanced. Families of the affected are being empowered. Self - advocacy measures are being taken and independent living skills are imparted to the persons with mental retardation. Reaching the persons in remote, rural, tribal and hilly areas is a priority for the Government of India. Educational and training programs suitable to the social cultural milieu of each region are being developed, so that persons with mental retardation develop competencies to live independently in their own environments. Translating the policies and training materials in Indian languages in print and non - print media to reach out to every person with disabilities in his community is of prime importance. This task has been undertaken effectively. Continuous research and development in all dimensions of mental retardation is of utmost importance for future development.

### References

- [1] Agrawal, A. K. Mental Health and Law, 1992. [PMC free article] [PubMed].
- [2] Singh, M. P. Constitution of India.9th ed. Lucknow: Eastern Book Company; 1994.
- [3] Banerjee, G. The Law and Mental Health: An Indian Perspective.2001. [Available from: <http://www.psyplexus.com/excl/lmhi.html>].
- [4] Dutta, A. B. The Long March of Mental Health Legislation in Independent India; Dr. L. P. Shah Oration delivered at IPS - WZ Conference at Goa. Goa Psychiatric Society; 2001.
- [5] Dhandha, A. Status Paper on Rights of Persons living with Mental Illness in light of the UNCRPD, in Harmonizing Laws with UNCRPD, Report prepared by the Centre of Disability Studies. Human Right Law Network.2010 May.

### Legislation

- [6] Rehabilitation Council of India Act, 1992.
- [7] National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999.
- [8] The National Trust Regulations, 2001.
- [9] The National Trust Rules, 2000.
- [10] National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999.
- [11] The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996.
- [12] Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- [13] Rehabilitation Council of India Act, 1992.
- [14] Constitution of India, 1950.

**Websites**

- [15] [http://www.mhrg.org/Why - We - Against - MHAA.  
aspx.](http://www.mhrg.org/Why-We-Against-MHAA.aspx)
- [16] [http://www.un.org.in.](http://www.un.org.in)
- [17] <http://www.psyplexus.com/excl/lmhi.html>