

# ANALYSIS OF HUMAN RIGHTS OF PERSONS WITH DISABILITIES

Submitted by

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Subject

**HUMAN RIGHTS LAW**

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**DECLARATION**

“I **SWESTHIGA. K**, Register Number **BC0180052**, hereby declare that this Research Paper / Research Project work entitled **ANALYSIS OF HUMAN RIGHTS OF PERSONS WITH DISABILITIES** has been originally carried out by me under the guidance and supervision of **Dr. Vishnuprasad R**, Assistant Professor of Law, Tamil Nadu National Law University, Tiruchirappalli - 620 027. This work has not been submitted either in whole or in part of any Degree / Diploma at any University”.

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Date: 13. 05. 2022

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**HUMAN RIGHTS LAW - SYNOPSIS****TOPIC: ANALYSIS OF HUMAN RIGHTS OF PERSONS WITH DISABILITIES****INTRODUCTION**

According to the World Health Organization, 1 billion people of the world's population has disability. In India alone, 26.8 million people has the experience of disability. The word "disability" encompasses a wide range of diverse molecular impairments. Physically, mentally, or sensory impairments, health problems, or psychiatric disorder can all render people disabled. These disabilities, illnesses, or disorders can be short term or long term. They may have been born with a disability or developed one throughout childhood, adolescence, or later in life, while pursuing higher education or working. Their impairment may have little or no influence on their capacity to work, or it may have a serious effect, necessitating substantial assistance. Even with these disabilities, these kinds of persons have beautiful God gifted talents. From this paper we will come to know how the disabled persons can be protected through H.Rs with the relevant legislations nationally and internationally. The research paper also concentrates on Constitutional law perspective with respect to PWDs.

**STATEMENT OF PROBLEM**

Human rights for disabled people and their implementation have been a widely discussed topic all around world as a result of increased prejudice against them, as a result of weakness and inequalities. Persons with disabilities are no longer considered a distinct population in need of specialised physical and psychosocial care in isolated facilities. Rather of adapting the demands of disabled people to existing cultural rules, governments are altering their norms to fulfil the demand of PWDs. Also, these kinds of people face difficulties without accessibility like deaf ones cannot hear while seeing T.V. For this, digital literacy will help them by enabling subtitles to read and understand the content better.

**OBJECTIVES**

- To study the International and National H.R Legislations.
- To find out how the Indian Judiciary guarantee the PWD.
- To analyse how digital literacy plays a role in helping PWDs.

**RESEARCH QUESTIONS**

- Whether there is any clear strategy to reduce discrimination towards differently abled people in India?
- How does the health law play a role in PWD development?
- How does National Human Rights Commission (NHRC) promote the rights for differently abled people?
- How the persons with disabilities can be protected through digital literacy?

**RESEARCH METHODOLOGY**

The researcher will use "Doctrinal type of study" for the research paper. The sources which will be used in the project are the case laws, legislative provisions, web blogs, journals, articles and newspaper reviews.

**CHAPTERISATION****INTRODUCTION**

## INTERNATIONAL PWD CONVENTIONS UNDER H.R.

## LEGISLATIVE &amp; JUDICIAL MEASURES IN INDIA

## DIGITAL LITERACY &amp; PWDs

## CONCLUSION

## SUGGESTIONS

## BIBLIOGRAPHY

**INTRODUCTION**

According to the World Health Organization, 1 billion people of the world's population has disability. In India alone, 26.8 million people has the experience of disability. The word "disability" encompasses a wide range of diverse molecular impairments. Physically, mentally, or sensory impairments, health problems, or psychiatric disorder can all render people disabled. These disabilities, illnesses, or disorders can be either short term or long term. They may have been born with a disability or developed one throughout childhood, adolescence, or later in life, while pursuing higher education or working. Their impairment may have little or no influence on their capacity to work, or it may have a serious effect, necessitating substantial assistance. The Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participation) Act of 1995 has medically defined the term "disability". As per section 2(t), a "person with disability" is defined as someone who has at least 40% of any illness or disability as determined by a healthcare professional. In addition, in section 2(i), the definition of disability is defined as follows: i. blindness; ii. poor vision; iii. leprosy-cured; iv. hearing impairment; v. locomotor disability; vi. mental retardation; vii. Illness of mind. Even with these disabilities, these kinds of persons have beautiful God gifted talents. Human rights for disabled people and their implementation have been a widely discussed topic all around world as a result of increased prejudice against them, as a result of weakness and inequalities. Persons with disabilities are no longer considered a distinct population in need of specialised physical and psychosocial care in isolated facilities. Rather of adapting the demands of disabled people to existing cultural rules, governments are altering their norms to fulfil the demand of PWDs. Also, these kinds of people face difficulties without accessibility like deaf ones cannot hear while seeing T.V. For this, digital literacy will help them by enabling subtitles to read and understand the content better. The main objectives of the paper are to study the International and National H.R Legislations, to find out how the Indian Judiciary guarantee the PWD and to analyse how digital literacy plays a role in helping PWDs. From this paper we will come to know how the disabled persons can be protected through H.Rs with the relevant legislations nationally and internationally. The research paper also concentrates on Constitutional law perspective with respect to PWDs.

**INTERNATIONAL PWD CONVENTIONS UNDER H.R.**

The UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993, best represent the evolution in perspective of disability from an individual problem to a sociological perspective. "People may be disabled physically, intellectually, or sensory disability, medical complications, or psychological problems", as per the Standard. These disabilities, sicknesses, or disorders can be reversible or irreversible. The terms "disability" and "handicap" have been distinguished. A handicap is defined as a loss or restriction of one's ability to participate in communal life on an equitable basis with others. The British Council's interpretation of disability also reflects the societal structures that hinder a group of people by disregarding their requirements to access opportunities in a different way than others. The British Council has defined disability as, "Disability is the disadvantage or limitation of action created by a society that takes little or no consideration of people with impairments and thus removes them from mainstream activities". Furthermore, it considers these societal situations to be violations of disabled people's human rights and cases of bias towards them. The International Bill of Human Rights is made up of three legal mechanisms. The Universal Declaration of Human Rights (UDHR) was recognised by the UN General Assembly in 1948, followed by the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both of which were established in 1966. People with disabilities have not always been appropriately understood in the context of what it means to be human under international human rights legislation. Nevertheless, concerns addressing the human rights of people with disability are receiving more worldwide attention.

Discrimination is defined as "any differences, exclusion, limitation or preference, or denial of reasonable accommodation relying on disability that has the effect of nullifying or impairing the recognition, enjoyment, or practise of economic, social, or cultural rights", according to the General Comment No. 5 issued by the Committee on Economic, Social, and Cultural Rights in 1994. There are also a few soft law mechanisms with a distinct disability concentration. They are:

*Biwako Millennium Framework towards an Inclusive, Barrier-free and Rights based Society for Persons with Disabilities. (2002)*

Declaration on the Rights of Disabled Persons. (1945)

Declaration on the Rights of Mentally Retarded Persons. (1971)

Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region. (1992)

UN Standard Rules on the Equalization of Opportunities for People with Disabilities. (1993)

*World Programme of Action. (1982)*

Because these soft law mechanisms are non-binding, governments are not obligated to take them into account when developing policy or legislation. Furthermore, several of these non-binding documents, such as the UDHR and Standard Rules, have been commonly agreed to the point that they have become component of customary law, implying that their use is widespread. The UN General Assembly approved the Convention on the Rights of Persons with Disabilities (CRPD) on December 13, 2006, and it went into effect on May 3, 2008. Germany ratified the CRPD on February 24, 2009, after signing it on March 30, 2007. Germany has also accepted the convention's Optional Protocol, which allows the CRPD contracting party to investigate individual complaints and conduct investigations in cases of serious violations of the convention. In 2010, the European Union became the first international political organisation to approve an international human rights convention. After years of intense discussion in the global community about the necessity to acknowledge persons with disabilities as rights-holders, the convention came into force. At the turn of the century, there were calls for a formal international treaty on the rights of people with disabilities. Between 2004 and 2006, a group of experts comprised of government and international members created the CRPD. The CRPD represents a trend away from seeing disabled people exclusively as receivers of charity, medical treatment, special services, and social welfare and toward seeing them as "rights-holders" and contributing members of society. The CRPD recognises the many types of impairments in its definition of disability. It also emphasises their close connection, with obstacles playing an equal role in the idea of disability. Persons with disabilities are guaranteed to all civil, political, economic, social, and cultural rights outlined in the eight key conventions, according to the treaty. State parties to the CRPD are obliged to follow, safeguard, and achieve the rights of people with disabilities, as well as to take all legislative action, regulatory, and other steps to ensure that the rights established in the convention are implemented. Alteration or repealing established laws that discriminate against people with disabilities, enacting guidelines equal employment opportunities for people with disabilities in the private and public sectors, and encouraging the access to cheap connectivity and accessibility aids for people with disabilities are all examples of such measures. National parties to the CRPD are obligated to inform on their attempts to integrate the convention to the UN Committee on the Rights of Persons with Disabilities on a regular basis. The Committee examines the State report and makes suggestions for the nation to consider in the coming term. Moreover, if approved by the State party, the Optional Protocol to the Convention allows the Committee to consider individual complaints regarding alleged CRPD infringement and to conduct investigations in the case of credible data of serious and systematic CRPD infringement.

## **LEGISLATIVE & JUDICIAL MEASURES IN INDIA**

Individuals, along with the disabled, have the right, individual liberty, freedom of speech, religion, profession, and worship, equality and opportunity, and the development of unity under the Constitution of India. Article 15(1) says that no one should discriminate any Individual and it also includes the disabled person on any grounds. The Preamble, Directive Principles of State Policy, and Fundamental Rights contained in the Indian Constitution indicate the government's intention to its citizens. These articles contemplate the state playing a particularly constructive role in improving the status of vulnerable groups. "The State shall, within the limitations of its economic ability and growth, make efficient provisions for safeguarding the right to work, to education, and to public aid in circumstances of unemployed, old age, illness, and disablement", according to Article 41. "The State helps encourage with special care the social and professional goals of the weaker parts of the people, especially of the Scheduled Castes and Scheduled Tribes, and shall protect them from social inequality and all types of mistreatments", according to Article 46. Disability has been a key consideration in policy development. The country's 10 five-year plans do contain a specific mention to disability, although in the outskirts. This movement can also be seen in the establishment of a policy of job reservation for people with disabilities in 1977 and the design of a system of education programs for impaired children in 1976. The Directive Principles and the Fundamental Rights tend to be inextricably linked and interdependent, according to legal system.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995<sup>1</sup>, provides lists of the rights of disabled individuals in India, was established by the Indian Parliament on December 12, 1995, and published on February 7, 1996. The Act recognized that people with disabilities had the right to equal opportunity and full socialisation, and that these freedoms would be safeguarded by the law. The Act goes into great detail about the tasks of the government at all levels, as well as the other institutions under its authority. It also offers helpful advice on the kind and scope of measures that would equalise possibilities for the exercise of fundamental rights and freedoms. There are totally 14 Chapters under this Act. The 1<sup>st</sup> Chapter talks about the definitions and it has also defined the term "disability" and other disabilities. It also mandates that a person with a disability must have a 40% impairment to be entitled to benefits under the Act. This has also been established who has the power to verify disability. A disability certificate can be issued by a medical board made up of three experts from a government hospital. So basically Chapters 1 to 4 talks about implementing the administrative framework. Chapters 5 to 11 talks about how to improve the status of these kinds of people through education, employment, affirmative action, equality, etc. Chapters 12 to 14 talks about provision on monitoring mechanism in the Centre and the States by establishing the office of the Chief Commissioner and State Commissioners for Pwds. There are also others Acts for the rights of Pwds like The Rehabilitation Council of India Act 1992, The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999, The Mental Health Act, 1987, Juvenile Justice Care and Protection of Children Act 2000 - which supports the children who are mentally and physically challenged and the Income Tax Act, 1961 - which provides subtraction on Pwds' taxable incomes to the extent of Rs. 75,000 and also subtractions for maintenance and medical use.

There is also another PwD Act, that is, Persons with Disabilities Act, 2016<sup>2</sup>. The Disability Act of 2016 protects disabled people from social injustice, promotes their effective involvement and social inclusion, and assures fair chance and proper mobility. The Act has classified people with disabilities as, “persons with disability, persons with benchmark disability and persons with disability having high support needs”. also, 21 types of disabilities have been included along with neurological disorders, blood disorders, dwarfism, victims of acid attack, etc. Mental illness/intellectual inefficiency have also been included under this Act. People who are intellectually/mentally ill needs special care and in some cases, families doesn't play a major role. When we look at section 7 of the 2016 Act, we can see that it was created for a valid reason, to safeguard pwds from acts of cruelty, crime, and exploitation. However, when a family or supplementary individual tries to control or cure a mentally ill person with rigidity, section 7 turns on them. As a result, Section 7 needs to be amended to solve this issue. Specially for mentally ill person's rights we have the Mental Health Act, 1987<sup>3</sup>. The rights are like, right to get admitted into a special hospital, right to get cured, also, police authorities are held responsible and they have the duty to take these persons into protective custody and to produce them before a Magistrate for issue of reception orders. There should be a special guardian for these kinds of people where a mentally ill person cannot manage his/her properties and thereby the court should appoint manager/guardian for them to take care such property. These are the special provisions given under the Mental Health Act.

The National Trust for The Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999<sup>4</sup> was established by the Central Government for the protection of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disability in New Delhi. The Board under the trust should make special organization for these people's standard of living by giving financial help. Also, guardianship will be appointed to these people and the guardians will be held responsible to take care of their property. In some circumstances, a disabled person has a right to have his/her guardian terminated. Mistreatment of the disabled, as well as negligence or misuse of the property under protection, is examples. The national trust should be held responsible and if it fails so, these disabled persons have the right to complain.

In the case of *National Federation of Blinds, U. P. Branch v. State of U.P.*<sup>5</sup>, the National Federation of Blinds' Uttar Pradesh branch challenged the court to order the administration to provide priority allocation of properties at reduced costs to those with vision impairments. The court determined that the application met with the People with Disabilities Act of 1995 and did not violate any other laws, and hence must be allowed. In the case of *Dr. Vijay Kumar Agarwal vs State of Rajasthan*<sup>6</sup>, Dr. Agarwal applied to the court for enrolment to a post-graduate medical study, citing academic benefits provided by the PDA to people with disabilities. The court upheld the petitioner's motion and told the government that the arguments that the Coordinating Committees had not been created and that no strategies had been developed were insufficient grounds for failing to follow this act. In the case of *Kunal Singh vs Union of India & Anr*<sup>7</sup>, Kunal Singh worked with the Special Services Bureau as a cop. A leg accident came while he was on job. As a result of the infection, the limb had to be removed. Singh was discharged from the military. The court ruled in his favour, citing the plain language of the People with Disabilities Act, which states that “the employer shall not discharge or demote an employee who develops a handicap during the tenure”.

## DIGITAL LITERACY & PWDs

### SUGGESTIONS

Implementation of the right to a barrier-free setting in all establishments, both rural and urban, to maintain complete mobility to people with disabilities. In this context, the government must periodically adopt appropriate Specifications by modifying current international norms on the natural setting, ICT and developing systems that are appropriate for Indian contexts. Because women and girls with disabilities are more subject to manipulation, harassment, and aggression, they must be protected in all situations, also at residence, in care homes, in academic system, and in jobs. Because the right to access justice is an important part of ensuring the fulfilment of any right, all structures associated to the judicial process, including courts and police stations, must be given access to people with disabilities. The most crucial elements for optimal Internet use are digital accessibility, digital skills,

### CONCLUSION

Although global and regional initiatives, the existing systems are insufficient. In some circumstances, the framework has already been set, while in others, a start must be created. Despite the fact that legislation protecting the rights of people with disabilities have been enacted, their implementation has been slow. The new laws, even so, will not bring disabled people's rights until we, as human beings, recognise that, in terms of accessibility, training, medical services, treatment programs, and jobs, all people with disabilities require a secure, stable, and convenient environment that respects their integrity. The importance of laws, regulations, and administration in driving digital connectivity in a country cannot be underestimated. Governments can also promote the development and distribution of regionally and ethnically suitable ICT availability tools and information by forming public-private role in supporting invention and domestic industries. Normally every human has a problem and it can be permanent or temporary. All we have to do is helping each other and for the pwds we should give special attention and assistance. Although pwds have some impairment, they are blessed with beautiful God-given talents.

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