

# WISDOM CRUX

[ISSN: 2456-6233]

[www.wisdomcrux.lawtimesjournal.in](http://www.wisdomcrux.lawtimesjournal.in)

---

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore,  
Tamil Nadu.*

---

### Abstract:

For every citizen there is nothing more prized than the fundamental right he carries as a weapon and an armor. While it is explicitly assured that it belongs to everybody born in this land. But for some what is the use of a blunt sword and a shield with a hole? The rights which belong to all work differently to the segment one belongs to. This paper gives importance to the challenged people, who face various hardships. It explores the provisions which are for them, and whether they have been of any use. What the authors want to bring out is that while the country is obsessed with classifying, they do so, not to those who are actual disadvantaged but for those of the various superficial classes where genuinely the protection is not required. Those who claim various rights under various categories of discrimination refuse to appreciate the genuine rights of people with disabilities. True concern is supposed to be on these deserving disabled. Their voices are to be amplified not only to be heard but to be acted upon, as they have been the silent victims muted with fear. The authors have explored the United Nations input and the Indian Constitution referring to different cases on this matter, to analyse what exactly is conferred and is offered to this special class.

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore,  
Tamil Nadu.*

---

### Introduction:

*"Aerodynamically the bumblebee shouldn't be able to fly, but the bumblebee doesn't know that, so it goes on flying anyway" - Mary Kay Ash*

Disability has been long regarded as a 'problem', a deficit to an individual, mental, physical or intellectual well-being. Always considered to be a burden of the society rather than a challenge. And the concentration was given to curing this impairment, which gave in to construction of various conventions. Thus, the whole issue was seen through the medical frame which cares to correct this deficit and the goal was to seek a cure or care. What this has resulted in is that people were to be defined by their impairment. And ultimately this has what become the problem. The medical frame only focused on the person's impairment and not the person themselves. What had been pursued was understanding the disability while the persons personhood, their rights to pursue their lives with support were overlooked.

Every day people with disabilities face discrimination which restricts them from participating in the society. Many general systems like school and jobs deny rights to disabled to be included in the natural workings of the community. The Universal Declaration of Human Rights guarantees a protection which should be equal to all. But most times the disabled are side-lined and are unable to fully exercise let alone enjoy their rights. Recent years have seen some improvement, a change in the outlook to reduce the existing gap to ensure and uphold that equality exists in this realm too. A shift from the medical or charity-oriented concern to one based on their basic rights.

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

Human rights by themselves are not revolutionary, but its application to disability is still a novel idea and is indeed revolutionary

### **Convention on the Rights of Persons with Disabilities:**

On December 13, 2006 the UN General Assembly adopted the convention on the rights of persons with disability. This clearly states the people with disability have equal and full access of all human rights and to the removal of any wall which will pose as an obstacle in its enjoyment. As an international framework it offers standards of protection for the civil, cultural, economic, political and social rights of persons with disabilities on the basis of inclusion, equality and non-discrimination. In other words, the purpose of this convention was to 'promote, protect, ensure'. Promote through the states action to support upholding of their rights, protect by ensuring that no one is denied of their rights and to ensure that the states engage in action to strengthen people's access to rights.

Person with a disability is not a defined term in the convention, which has led to a plethora of definitions on its meaning. Previous conventions have given their own definitions, one being proposed by the International Disability Caucus–

*A person with a disability is an individual whose ability to lead an inclusive life in the community of his/her own choice is limited by the separate or concomitant impact of physical, economic, social and cultural environments and/or personal factors that interact with physical, sensory, psychosocial, neurological, medical, intellectual or other conditions that may be*

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

*permanent, temporary, intermittent or imputed. If a definition of a person with a disability does not exist in a country, the definition in this convention shall be applied and any definition of disability that is applied in their countries' courts of law shall be at least as inclusive and broadly based as the definition contained in this convention.*

The general principles are the core of a human rights treaty. They are what hold down the treaty, the very root. The first five emerged as early as in 2004, while the other three were subsequent provisions at an initiative in Japan, Thailand. The eight principles are –

- **Dignity** – The underlying importance of this entire concept in respect of an individual. Having the freedom to make one's own choices, to be free of patronizing behavior.
- **Non-Discrimination** – The legal stone of human rights is equality and where due weight is put. Discrimination is discussed under the Article 2 encompassing all types of discrimination and Article 5 for non-discrimination.
- **Full and Effective participation in the Society** – *'full inclusion of persons with disabilities as equal citizens and participants in all aspects of life'. 'realization of a barrier-free environment'*.
- **Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity** – A unique provision which highlights the paradigm shift of what the convention protects.
- **Equality of opportunity**– Where various systems of services, documentation and work is made available to all, including people with disabilities. To ensure equal opportunity for everybody's participation.

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

- **Accessibility** – This principle brings various perspectives under its ambit a few being access to public transport, building, to information and communication. Their requirements should be considered while planning construction in public environment and so on.
- **Equality between men and women** – The provision arose to realize both De facto and De jure equality.
- **Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities**

The convention enumerates on the basic rights which the disabled are born with, just like any person in this world, explicitly declaring these are nothing which are newly conferred but merely a reinforcement which has been already existing. However, rights exist, but its exercise is what makes it powerful. Can these people who are in dire situations many a times use these rights and receive what they deserve? Let it be respect, security or anything for that matter, in the end of the day the words eloquently put in papers may not help but its enforcement will only.

Every right is held to protect ourselves, to give us a privilege which is equally deserving of a disabled individual. The below discusses few of the most important rights of every individual and its relevance to the convention's direction towards the betterment of the disabled.

### **Right to Health:**

Article of 25 of the Convention on the Rights of Persons with Disabilities is in the context of health. People with disabilities have the right to enjoy the highest standard of health without any discrimination due to their disability. The CRPD clearly establishes that a disability is not

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

necessarily a medical condition and rather than focusing on impairment it focuses on the barriers which hinders in their participation in the society. This provision is one of the core principles of CRPD. Here the question of privacy has risen on whether additional requirement was to be taken to ensure free consent and was later decided that free consent was a standard principle and that any additions would not prove to be effective.

[Man has set his foot on the Moon, a long ago. The disabled are still unable to land on the bus, train, hospital or on an auditorium ]

Discrimination against these people is also prevalent in fields of health insurance. They are frequently treated as asexual or genderless people. This is an issue which was thought to be immediately addressed on the steps to abolish discrimination. Article 2 defines discrimination as “*Discrimination on the basis of disability*” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.” Thus, the states have a duty to ensure that there is no social, economic and cultural rights violation due to discrimination. It also emphasizes on the effectively progressing of the states’ efforts to fully realize the right to health, develop health care infrastructure, train health professionals and others. The state should make continued efforts and work expeditiously.

Accessibility of these health services is an imperative component to be achieved. The state has to take all appropriate measures that the disabled have easy access to health services and

# WISDOM CRUX

[ISSN: 2456-6233]

[www.wisdomcrux.lawtimesjournal.in](http://www.wisdomcrux.lawtimesjournal.in)

---

## Human Rights of people with Disabilities

---

*(Author /s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

rehabilitation; the lack thereof will pose as a huge detriment as there will be delays in diagnoses and treatments and existence of abuse and isolation. The State has to see to that they are all physically accessible within one's communities and this invariably also indicates that these centers are also to well equipped for any other checkups a normal person would need with the necessary adjustments. Secondly, they also have to be affordable. The world health survey reports that 51 – 53% of people with disabilities cannot afford health care. Reasonable prices are to be achieved as the disabled already have few choices in terms of employment which makes it more arduous for them to cover their health expenses. This is a measure to address the financial barrier the disabled suffer. Thirdly there should be no obstruction when it comes to accessing information. For instance, it can be in the form of Braille or sign language in public places to ensure smooth movement or delivering important messages through simple messages to make it more accessible. The above three constitutes a few of what is to be achieved to ensure that right to health is fully relished.

While no one is to be denied the basic right, more diversions are to be explored on this right. Rehabilitation for diagnosis which involves the mental care of a patient, should also be given a priority as a concern. A victim of abuse or rape which extensively exist are not merely to be awaited till they recover physically but also their mental recovery from the trauma they have gone through is also important. There is not yet a proper method to measure trauma for people with intellectual or other disabilities. There is a clear demarcation, classifying people into different boxes. Much has not been done to the divisions which have been made. Health in all its sense is important to the well-being of the people and the society and its maintenance is to be done in very branch it leases out.

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

### **Right to Work:**

Employment is where all sorts of discrimination are witnessed, it has been persistent from long before. And with the disabled it comes as no surprise that the rate of unemployment is two to three times higher than the people who aren't. And even if they are employed in most cases they are in low paid job with inconsiderable legal and social security. The right to work is a fundamental right which should be realized by all and forms an inherent part of human dignity. All should have the opportunity to earn his living by work which they should be able to choose out of their freewill. The right to work contributes to the survival of that person and their family. Article 27 requires the state to action measure on protecting and promotion of the right of world with people with disabilities, including the following

- Eliminating the prospective of discrimination with regard to all matters of employment like recruitment, hiring, career advancement and providing safe and health conditions to work
- Protecting their rights in terms of equal remuneration and opportunities in equal basis with others. And ensuring protection from possible harassment and grievances.
- Providing them with adequate and effective access to vocational and technical guidance's, services and training.
- Promoting their opportunities and advancement in the open labor market in the public and private sector.

The Standard Rules set by the United Nations accordingly states that persons with disabilities are to be treated equally in both rural and urban areas but for this to happen it's important to remove



## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

all artificial barriers and ingrained in the foundation of the society like the unavailability of assistance to the disabled in workplaces, transport where they are not designed to support wheel chairs. It is more important that the government formulates policies to bridge this inconvenience. States should actively sustain the incorporation of people with disabilities through incentive-oriented contracts, tax concessions, technical or financial assistance, training and quota schemes. States should also promote awareness to overcome the negative preconception if the concerning workers.

Opportunity to be able to sustain their own lives should be given. The preconception of whether a disabled can work to match the efficiency of a firm cannot be laid out to be unreasonable. However, jobs which can be tailored to them should be created by the state, so exclusion will not be a result. Incompetency merely due to disability should not be a criterion to not accept a person, while some jobs may demand physical fitness and competence, not all do. In such cases physical disability should never be attributed to their intellectual capabilities.

### **Right to Education:**

The Universal Declaration of the Human Rights recognizes the Right to Education as a fundamental right and has been also codified by the Convention on the rights of Person with Disabilities. To realize other important rights like social, economic and political rights is of basic knowledge that education is a must for everybody. The convention specifies that this right to education is not only centered to children but to all irrespective of their age as many need not have had primary and secondary education. 'Education is a lifelong process'. The Salamanca Declaration states that education should be provided to all in the regular system. The most

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

important factor the declaration delivers that even children who require special education should have access to regular school with such amenities, it is recognized as a step towards reducing discriminatory attitudes and their exclusion from the society. Article 24 requires the state to ensure that they should not be excluded from the general education system, reasonable accommodation, individualized support must be given to them and the professionals who work at such institutions should be trained in disability awareness and capable of using the required mode of communication which is suitable for that student.

Quality education is to be ensured for children with disabilities, and it cannot be certainly the work of one person or an organization. To guarantee inclusiveness many factors are to be addressed. It is important to promote learning spaces which are accessible and friendly to the students. Moving and commuting should be made easy around the institution's environment and should also quick access to facilities like water and sanitation. The materials which are used in the school also should be friendly and in formats which can be used by the students. These all come into use when there is a reliable teacher. Investments are necessary to have teachers who are trained exclusively for inclusive education. While previously disabled children were sent to specific special school, the preference has shifted to enrolling them in with normal ones. But to address them is not the say as every other student. So, preparation and orientations are to be held to make understand children's pedagogy, the attitude towards the children and how to prepare and support their families to help them and to inform them about their ward. Involving the community and the external environments has proven always to be beneficial in the success of this type of education.

## Human Rights of people with Disabilities

---

*(Author /s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

### Freedom from Exploitation, Violence and Abuse:

Most times what comes with disabilities is not the care which should but abuse and exploitation which exist as persistent threats. According to reports<sup>1</sup> disabled are 4 to 10 times more likely to be abused frequently, for longer periods of times and are less likely to be heard. There are also high chances of them being abused by a caregiver, a known person.<sup>2</sup> The United States Department of Health and Human Services reported that 11% of all child abuse victims had a disability of a sort. The rate of being sexually abused is considerably high that is five times more than the children who do not have disabilities<sup>3</sup>. This being so due to the perceived notion that the disabled are weak and vulnerable. Being isolated in circles or being only with their caregiver who is the abuser leaving it difficult for them to choose abuse or an unknown future. Reporting with cognitive disabilities also poses as a difficulty which makes it harder for them to come out of the vicious cycle of being a victim. Constant abuse also instills a belief that they deserve to be abused and that it is a norm. They experience the same forms of violence, exploitation as the general population but they are also targeted with lesser common forms of abuse. Withholding medicines and equipment or by not providing required assistance by their assistant is also common for them when abused. Article 16 concerns with the above issue and its prohibition. It brings into ambit “all forms of exploitation, violence and abuse, such as physical or mental violence, injury or abuse or negligent treatment including sexual or economic exploitation” the

---

<sup>1</sup> <https://disabilityjustice.org/justice-denied/abuse-and-exploitation/>

<sup>2</sup> People with Disabilities Affected by Violence: Court Advocacy and Intervention Tips. I-CAN Accessibility Project, Virginia Commonwealth University School of Social Work & Partnership for People with Disabilities, Jackie Robinson, 2012. Retrieved from

<sup>3</sup> Smith, N. and Harrell, S. March 2013. Sexual Abuse of Children with Disabilities: A National Snapshot. Center on Victimization and Safety, Vera Institute of Justice.

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

first step is to take protective measure in the legislative, administrative, social and educational spheres.

Laws come into action only when the wrong is committed, it is very important that some values are also inculcated to the young about these too. Children only see their parents showing sympathy or in many cases also disgust when they come across people with disabilities. That's how they react later when they come into contact with such people. There is no need for pity, but there is for understanding and the thought to help others. Everybody is born with an irregularity, some more physical and mental. All have problems, that alone do not give anyone the right to use it as a tool for abuse and exploitation. Various schools see the isolation of children with symptoms of mental illnesses, and bullying centered on them. Even if the school or the teachers don't notice it, the classmates should know it is right to report such, because many are afraid to do so and assume staying out of such problem is the best. Legislations do help but sometimes only when the root of the cause is pulled out will the weed stop to grow.

### **Persons with Disabilities - Constitutional Framework:**

Social justice, Human Rights, Safety are the few principles which the premises for our Constitution are. The Preamble, Fundamental Rights and the Directive principles of State Policy conforms the State the duty of protection to all vulnerable groups. In India out of the 121 Cr population, 2.68 Crore persons are 'disabled' which is 2.21% of the total population<sup>4</sup>. The State must strive for the upliftment of the disabled persons and must ensure equal opportunities in par

---

<sup>4</sup> Disabled Persons in India – A Statistical Profile – 2016, Social Statistics Divisions, Ministry of Statistics and Program Implementation

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

with the normal persons. Today the country is more focused on conferring special rights to various caste groups and other assemblages which have only divided our country and brought more strife. The more important segments are however left unheard just because they are not loud enough.

These groups are also prime targets for hate crimes, as societies grow with wrongful concept that disabled are incapable of being educated, independent and productive and are to be mindlessly thrown to institutions which will take care of them. This prejudice acts as the motive for developing hate crimes. However, these crimes largely go unreported mainly due the victim's probable isolation or their relationship with the abuser.

Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India has reported the challenges that women who are disabled face while fighting for justice and it starts from the basic ones like while filing a police report, obtaining medical care, complaints being investigated and getting adequate compensation. These women find it more difficult to escape such violence, they may not be able to call for help or may not even know that non-consensual sexual acts are criminal offences and that it should be reported. It is also found that only few police officers have training to handle such cases, and in many cases the police excluded women with disability from assistance which is guaranteed. This is clearly acted upon in the case where a 15-year-old girl with physical and mental disability was raped and when conveyed to the police who did not note her disabilities and due to her age being wrongly noted as above 18 she was excluded from receiving protection from the POSCO Act. This shows the

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

strength and attention given to the evidence collection process. While this ignorance continues to persist, they also find it harder to gain any compensation if the case proceeds.

The Preamble of the Constitution envisages social, political and economic justice to all the persons which includes disabled persons. This vision can be achieved only if special rights are given to the disabled persons. The judiciary being the watchdog of democracy has ensured equal rights for the persons with disabilities through its intervention in various cases. Different categories of persons have been categorized as disabled and have been provided justice in light of the Constitutional transformation from time to time. It has helped in expanding the boundaries of the meaning of disabilities and what it comprises of. This is of prime importance as disabilities are not merely what the common public presumes it to be but much more. Stigma against mental health is still much prevalent and only until recently did it come to the understanding that it is also a type of disability. This is why the laws of the country and the heart of it, the Constitution should be well equipped to protect all.

### **Rule of Law:**

Rule of law is the heart of the constitution. Equality is the fundamental aspect of rule of law. Rule of law is the basic feature of democracy<sup>5</sup>. A.V. Dicey stated three main principles of Rule of law i.e., supremacy of the law, equality of the law and predominance of legal spirit. Through the innovative interpretation of the fundamental rights of the constitution, the State has been obligated to provide equal socio-economic status to the disabled persons. The primary duties of the

---

<sup>5</sup>Keshvanandha Bharati v. State of Kerala A.I.R. 1973 S.C. 1461

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

state are to ensure that legal aid service free of cost is provided to the disabled and the disadvantaged and that their fundamental rights to liberty, freedom and life of the handicapped is protected.

### **Fundamental Rights:**

Fundamental rights have been furnished in the Constitution to protect the civil liberties of an individual. It is included in the Constitution with the intention that no person must be deprived of his/her equality and personal liberty. Fundamental rights are primarily enforced against the state if any right has been abridged but certain rights can be enforced against individuals such as those rights under articles 15,17,23 and 24. However these rights are not absolute and are imposed with reasonable restrictions. There has been a series of cases debating whether fundamental rights can be amended. In **Shankari Prasad v.Union of India**<sup>6</sup> and **Sajjan Singh v.State of Rajasthan**<sup>7</sup> the Supreme Court has upheld the validity of the Constitution (First Amendment) Act, 1951 holding that, any law included under the Ninth Schedule will have legal immunity under the Art. 31-B of the Constitution, moreover an amendment made by the Parliament under Art.368 is outside the purview of the term law within the ambit of Art.13 (3), hence amendments are not subject to judicial review. Later this holding was overruled in **Golaknath v.State of Punjab**<sup>8</sup>, stating that, an amendment to the Constitution is subject to judicial review, if it abridges the Fundamental Rights under Part III and can be declared void as it is within the purview of the term law under Art.13 (2). Nullifying this ruling the Parliament brought in Art.13 (4) through the Constitution (24th Amendment) Act, 1971 which envisaged that Constitutional

---

<sup>6</sup>A.I.R. 1951 S.C. 458

<sup>7</sup>A.I.R. 845, 1965 S.C.R.

<sup>8</sup> 1967 S.C.R. (2) 762

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

amendments passed under Art.368 is not law within the ambit of Art.13 (2) and therefore cannot be challenged for the violation of Fundamental Rights. The majority ruling in **Keshvanandha Bharti v. State of Kerala** stated that, retaining the basic framework of the Constitution the Parliament can exercise its amending power under Art.368. Judicial review forms the utmost important part of the basic structure of the Constitution which can never be ruled out.

Article 32 of the Constitution allows for enforcement of writs. Dr. B. R. Ambedkar has referred to Article 32 “*as the very soul of the Constitution*”. It has largely helped in enlarging the scope of justice. For what is justice? To render to each his due to the blind man his sight, to the dumb his speech, to the deaf his hearing, to the retarded or deprived, restoration of impairment or absence of limbs or faculty.

### **Right to Equality:**

Article 14 of the Constitution of India guarantees right to equality to all its citizens. Article 14 provides that the state shall not deny to any person equality before law and equal protection of the law within the territory of India. “Person” includes every person including the persons with disabilities. The Constitution of India is embedded with the principle of equality. The preamble which is the basic structure envisages that no section of the society enjoys special privileges and individuals are provided with adequate opportunities without any discrimination.

In the case of **Jagannath Prasad v.State of Uttar Pradesh**<sup>9</sup> The Supreme Court has stated that what equal protection of law does not mean an identical application of the law in varying

---

<sup>9</sup> A.I.R. 416, 1963 S.C.R. (2) 850



## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

circumstances, the court stresses on equality of treatment to the people who are in similar situations and that there should be no case of discrimination on any basis. The state should play an active role in ensuring equal opportunities to all its citizens.

Justice V.R Krishna Iyer has opined that “The State is equally concerned to obtain justice, equality and dignity implicitly also to the mentally and physically backward sections of the community is evident clauses of Article 15 (4) and 16 (4) of the Constitution. Thus, a comprehensive backing for humanitarian jurisprudence in the area of handicapped classes is spelt out in the Constitutional scheme and legislative framework is also to be found pursuing the social policy to uplift them. Notwithstanding the fact that the Constitution of India implies in principle that the disabled citizens are well within their right to enjoy the same rights and privileges as are guaranteed to other citizens, it would be necessary for legislature to make laws which suitably give effect to the rights and privileges in view of the handicaps with which the disabled section of the section is suffering”.

To solidify the vision of equality the Article 15 of the Indian Constitution forbids discrimination on any grounds like religion, sex, caste. However, disability is not regarded to be a restriction for discrimination and as such there is no liability for such prejudice. Therefore, discrimination based on disability is prevalent in the cases of access to shops, restaurants and the other public places. It has also gone far to the usage of wells, roads, tanks which have been constructed for public use. This due to the presumption that disability is merely a personal problem and does not affect the society adversely unlike what bias on the basis of sex and religion result on wide outrage. The lack of concern in this aspect has resulted in the obstruction in people’s life to live

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

their life smoothly. The intervention of the state in preventing discrimination against the disabled people is minimal as it is seen as their individual problems.

Further explored in the fundamental rights is the equality of opportunity in public employment which is offered by Article 16. Here the state has the authority to make necessary provisions on reservations for the advancements of weaker or backward sections of the society, if that section is not duly represented. However here too the basis for such reservations is based on gender, religious minority, disability clearly being not considered.

### **Right to Life and Personal Liberty:**

Article 21 of the Constitution of India states that No person shall be deprived of his life and personal liberty except according to the procedure established by law. Every person has the right to live with liberty and dignity. Even though the concept of personal liberty and dignity is well extended in the contemporary times the status of the disabled persons remain the same. A right with dignity includes all the rights such as education, employment, healthcare and others. According to 2011 census the disabled persons among male and female are 55.9% and 44.1% respectively. Out of which only 47.2 % in males and 22.6% in females are employed. **Munn v. Illinois**<sup>10</sup>, Field, J. spoke of right to life in the following words that “By the term life used here in something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the

---

<sup>10</sup> 94 U.S. 113 (1876)

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

destruction of any other organ of the body through which the soul communicates with the outer world.”

Justice Bhagwati has held in the case of **Francis Coralie v. Union Territory of Delhi**<sup>11</sup> that the right to life includes to live with human dignity and all which accompany the idea such as basic necessities of life like clothing, shelter, nutrition and other's including education, expressing oneself in various forms, able to freely move about and to mingle with human beings.

Right to live with dignity is a fundamental right which means to enjoy every limb of the body. There are some fundamental rights associated with the disabled persons – Right to education, Right to healthcare, Right to shelter, Right to food, Right to clean water.

### **Right to Education:**

Education is a vital need in today's economy. The Constitution of India guarantees right to free and compulsory education between six to fourteen years of age. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. Education is the primary aspect of development of a society as a whole. The government has brought about a lot of schemes for ensuring that every person is denied of education. **National Federation of the Blind v. Govt. of NCT of Delhi & Ors**<sup>12</sup>, In this particular case we can see an opposition of a clear non adherence to an existing law. The rules

---

<sup>11</sup>A.I.R. 746 1981 S.C.R. (2) 516

<sup>12</sup> MANU/DE/1052/2005

# WISDOM CRUX

[ISSN: 2456-6233]

[www.wisdomcrux.lawtimesjournal.in](http://www.wisdomcrux.lawtimesjournal.in)

---

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

followed by the Ragkiya Andhvidyala Government Boys Senior Secondary School for Blind Boys were clearly contradictory to Section 26 of the Disabilities Act. The school followed the rule that free education will be only available to the residents of Delhi till class 10 and is subject to the student's parent's financial capacity. While Section 26 of the governing act did not lay any ceiling on domicile or figures to receive the benefits. The rules were thus struck down by the Delhi High Court. Duties of the state include providing free education to students with disabilities till the age of 18. And financial situations cannot be a constrain in availing these benefits and in such cases the Union has to take make necessary provisions.

The State in the case of **Dhawal S. Chotai v. Union of India & Ors**<sup>13</sup>, dealt with the issue of relaxation of time for a written examination which was attempted by the petitioner with a condition of cerebral palsy who had difficulties in the functioning of bones, joints, muscles and skills like communication. Yet he had graduated in commerce and passed the examination for Chartered Accountants. He had requested for a 3-hour extension for another examination for professional Education-II, the institution had only granted extra half an hour. The Court however instructed the institution to provide with an extra of 3 hours and to further cooperate with the petitioner in the case of similar occurrence

The Court further insisted in the case of **Parminder Pal Singh v. Union of India**<sup>14</sup> that people who are visually handicapped should be supported to lead a normal lifestyle without being aware of their disability. Efforts should be made to give them opportunities for them to attempt exams. People who can only read with the assistance of lenses or bolder print should not be considered

---

<sup>13</sup>A.I.R. 2003 Bom 316, 2003

<sup>14</sup> 2000 (55) D.R.J. 677

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

as totally blind, and they should not be forced to take their examination in Braille. Therefore, their exam paper should be accustomed to a suitable form.

In the case of **P. Rajaprabakram (minor) v. The Secretary of Higher Education Department** the court examined the validity of the prospectus issued by the Director of Medical Education that candidates with 50% to 70% were qualified for reservation. The petitioner was disabled physically due to polio and had applied for admission under the physically disabled quota for the M.B.B.S. course. However, the application was rejected as the assessment concluded that his disability to be at 48%. His petition was first rejected by a Single Judge who held that the State Government had the power to issue a higher level of disability as a basis for reservation, than what is enumerated in the Act. Despite that the bench later held that the petitioner clearly falls under the ambit of the definition of Section 2 and was therefore applicable to the benefits of the Section 36. And the prospectus put forth by the Director was held to be invalid and thus the petitioner was eligible to apply for his preferred course, the next year.

### **Directive Principles of State Policy:**

Various articles of the directive principles of state policy dealwith the protection of the disabled by the state and the safeguards that the state must provide to them. Under Article 41, of the Constitution of India, the State is directed to ensure people within the limits of its economic capacity and development: - a. Employment, b. Education and c. Public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.

An important realm dealt by the Directive Principles of the State Policy is the inclusion of the provision of free education to all children till the age of fourteen, compulsorily which is stated in

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

Article 45 of the Constitution. The term children also include disabled children. The Constitution had provided ten years from its commencement to achieve this ideology. In the case of **Unnikrishnan, J P v. State of Andhra Pradesh**<sup>15</sup>, the court has discussed that the right to life and liberty guaranteed by the Article 21 encompasses the right to education. As the fundamental rights and the Directive Principles go hand in hand, to execute Article 21 to its full potential Article 41,45 and 46 should be considered. The State should take sincerely take effective efforts to ensure that education is reached to disabled children with ease. The education to the disabled children demands sincere and persistent endeavor both from the state and the society. Many policies and programs were brought by the state for the disabled children to assimilate them into the normal population of the country. In 1986 the National Education Policy which compiled the Commission's recommendations for expansion of facilities for the disabled including physical and mental for educational purposes. This involved various integrated programmes and the idea of helping disabled students to attend regular schools. The then Ministry of Welfare introduced the Integrated Education for Disabled Children Scheme to implement the recommended ideas and suggestions.

Lastly the Article 47 directs that the State should take necessary steps to ensure that the nutrition level, standard of living is maintained, and public health is duly taken care of. The State can also attempt to impose restrictions on drugs and liquor which are otherwise used for medicinal purposes to be banned. Disability and wellbeing, health is a broad subject which should be dealt deeply.

---

<sup>15</sup> (1993) 1 S.C.C. 645

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore, Tamil Nadu.*

---

The millennium development goals (MDGs) is one such policy which brings up a link between health and disability.

The Constitution has provided safeguards for the development and protection of the disabled people and the state must implement and execute the same.

### **Conclusion:**

There are lakhs of people in our country who are deprived of their basic rights. In a country like India there are 260 crores of hands available to lift our fellow disabled compatriots and it is a shame that they still feel helpless.

What our Constitution offers is only unattainable delicacy, which should not be the case. The government should ensure that these rights can be exercised by these segments too without any doubt. Many fields are to be aware of such too. Let it be the educational system or the justice. People and students alike should learn to respect them and help at the time of need and aid in their fights for justice. As a society we notice that we are growing self-obsessed and spend most of our time only thinking about our needs, it is important to branch out to support others, groups like these as even with the existence of such rights they are subject to abuse and pain. It should be the duty as citizens to reach out even if not explicitly asked. Various judgments as seen deliver that we have to protect such people, but as we see mere words don't change anything today, only actions do. To become a more inclusive and respectable society we have to acknowledge everybody regardless of what they lack. Our country is home to everybody irrespective of their disability, the society has to come to an understanding to accept all and to help in each other's development.

# WISDOM CRUX

[ISSN: 2456-6233]

[www.wisdomcrux.lawtimesjournal.in](http://www.wisdomcrux.lawtimesjournal.in)

---

## Human Rights of people with Disabilities

---

*(Author /'s Name)– Vaishnavi.S & Madhuharanjani. P; SASTRA Deemed to be University Tanjore,  
Tamil Nadu.*

---

The Constitution that does not able to address the apathy of those disabled will be looked upon by the people as a disabled Constitution.