

**Seminar on ‘Rights based approach to disability
and developments in light of the United Nations
Convention’**

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Address by Hon^{ble} Shri K.G. Balakrishnan, Chief Justice of India

Justice Arijit Pasayat / Justice A.P. Shah / Justice Mukul Mudgal,
And ladies and gentlemen,

I welcome the initiative taken by the National Legal Services Authority (NALSA) and the Delhi Legal Services Authority (DLSA) for organising this seminar. Our legal system has tried to protect the rights and entitlements of persons with disabilities by way of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995. This enactment provides for measures to advance the interests of disabled persons in aspects such as access to education, employment, physical access to workplaces and public institutions as well as the government’s responsibility to provide healthcare and social security.

However, several activists and practitioners have pointed out the limitations of the statutory provisions . especially with regard to the definition of the word ‘disability’ It has been argued that the scope and understanding of ‘disability’ under Indian law is relatively narrow in comparison to some developed countries. The consequence of this is that the various statutory measures are not extended to a considerable number of individuals who actually need

them. Furthermore there has been empirically-grounded criticism showing the lack of public awareness about the needs of persons with disabilities and the poor enforcement of the existing statutory provisions. Notable examples of the same are practices such as the forced confinement and chaining of individuals suffering from mental illnesses. Such regrettable incidents take place in state-run mental institutions as well as in the private domain of the family.

However, the problem is not only one of poor awareness and enforcement. The discrimination suffered by persons with disabilities has its roots in social prejudices. The status of disabled persons has always been viewed from the prism of paternalistic social welfare, which looks upon them as those who are in need of special protection by the state and society in general. The consequence of the same is that individuals with disabilities or groups representing them are seldom given an adequate opportunity to participate in the framing of policies for their benefit. This lack of inclusion and effective consultation in policy-making leads to piecemeal measures that are often imposed or ineffective in meeting the legitimate needs. This limited conception fails to see persons with disabilities as rights-bearing citizens.

It is precisely this paternalistic social welfare approach that has been sought to be changed through the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) which was adopted by the General Assembly in December 2006, along with an Optional Protocol to facilitate the implementation of the same. This

Convention seeks to engineer a shift towards a rights-based approach for tackling the problems faced by persons with serious physical and mental impairments. The philosophical underpinning of this rights-based approach is that persons with disabilities should be accepted as part of the inherent diversity in society and that they should be given the full opportunity to participate in the creation of measures meant to regulate their conduct and protect their interests. It was felt that the traditional language of legal doctrines and human rights norms did not adequately respond to the needs and interests of differently-abled persons.

In this regard, there is an urgent need for our legal system to creatively interpret doctrines such as the right to equality for advancing the civil-political as well as economic, social and cultural rights of disabled persons. In Indian constitutional law, the idea of substantive equality has been used to address discrimination based on categories such as gender as well as social and economic backwardness (SEBC). Statutory remedies have also been fashioned to prevent and punish exploitation and discrimination on the basis of caste and religion. However, the rights and entitlements of disabled persons have not been articulated in these terms.

The Persons with Disabilities Act, 1995 Act has made an effort to place positive obligations on the state to provide for access to education, employment, healthcare and social security. These positive obligations need to be carefully structured in order to differentiate between the response to various kinds of disabilities.

Unlike the presumption of homogeneity in the nature of disadvantages associated with identities such as caste, religion and gender- the needs of disabled persons are highly diversified. For example, in the realm of education the needs of visually-impaired students require steps such as the availability of materials in the Braille-language which is different from the requirement of special teaching methods for students with learning disorders. Similarly, while the construction of ramps in public buildings may be a welcome move it is pertinent to note that such provisions are hardly ever made in privately-owned buildings.

Furthermore, the positive obligations being placed on the government are not a wholesome solution. There is also a need for sensitization on how to respond to the needs of differently-abled persons at the level of the family. We frequently come across reports of individuals who are either abandoned or neglected by their family members. While such neglect may have a correlation with poverty to a certain extent, there is also a need for the law to contemplate the status and duties of the family members of disabled persons. Just as there are maintenance obligations towards minor children, wives and senior citizens . there is also a compelling case for recognising such legal obligations to provide for those with physical or mental impairments. There is scope for clarifying such provisions in the existing provisions of family and criminal laws dealing with maintenance obligations.

Most of us tend to associate disability with visible or extreme form of impairments such as blindness, physical handicaps and serious mental disorders. However, a more nuanced understanding of the term reveals that a much wider cross-section of the population suffers from less serious disorders. The notion of disability does not arise from the impairments but is instead based on the social attitudes to the same. It is our duty to take proactive steps for recasting our legal norms in order to change these social prejudices and move towards creating a more inclusive society.

Thank You!
