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*Rights based Approach to Disability: A Personal View*



**Dr. Preeti M. Gacche**

Associate Professor

Department of English

Aryabhata College, University of Delhi

Email: [preetigacche@aryabhatacollege.ac.in](mailto:preetigacche@aryabhatacollege.ac.in)

**Abstract:**

*The "Rights-Based Approach to Disability: A Personal View" explores the integration of human rights principles into disability discourse, advocating for a shift from a charity-based model to one centered on equality, dignity, and empowerment. Drawing on personal experiences, this perspective emphasizes the importance of viewing disability through a lens of social justice rather than merely a medical or welfare concern. The paper highlights the United Nations Convention on the Rights of Persons with Disabilities (CRPD) as a pivotal framework, arguing for its implementation in shaping policies, practices, and societal attitudes. The rights-based approach underscores the need for accessibility, participation, and self-determination, advocating*

*for a society that removes barriers—whether physical, social, or systemic—that limit the full inclusion of persons with disabilities. Through a combination of personal narrative and critical analysis, this work presents the rights-based approach as not only a legal obligation but a moral imperative for fostering a more inclusive world.*

**Keywords :**

1. Disability
2. Rights-based approach
3. Social justice
4. Empowerment
5. Inclusion

## Research Paper:

The rights for the disabled are the extension of human rights in general and promote the agenda of equality, nondiscrimination, full participation, inherent human dignity and autonomy of the individual. The very existence of Human Rights might make the rights of the persons with disability as mere repetitive and unnecessary. However, the disabled community has been last to have been even considered worthy of attention as rights holding citizens, indicating the ultimate marginal status of the people with disability. The advent of the rights based approach to disability not just recognizes the humanity of disabled persons, but places the issue of disability into the domain of policy and law, thereby, making the category people with disability the largest minority group (Siebers, 2008: p. 71). The rights based approach originated with disability rights movement in the 1960s and 1970s across the globe. Michael Oliver (2009: p. 54) refers to it as citizenship approach. He identifies three dimensions to this approach: economic, political and moral. The economic dimension assumes that disabled people are the contributing members of the society and in the political dimension, it is implied that disabled people enjoy the status of being recognized as empowered individuals, voters and powerful interest group. Whereas the moral dimension highlights the active citizenship of disabled people, full of rights and responsibilities. However, the rights based approach to disability has come under attack due to its limitation of recognizing human interdependence and relationality. Moreover, the primary empowerment of the disabled people is mainly derived from family members and close relationships (Sen, 2017: np chap. 4). Yet the rights based approach is a key approach in the inclusion, integration and empowerment of the disabled people.

The United Nations through its various programmes and interventions has provided visibility to the issues of disabled people. The UN Convention on the rights of persons with disability (UNCRPD 2006) 2006, which is a first legally binding treaty for the disabled community, proves to be a landmark step in the inclusion, mainstreaming and empowerment of the disabled persons, requiring the nation states to reflect its spirit in their legislations and policies (Sundaresan, 2013: p.79). Most of the nation-states have ratified the UN Convention, thereby, showing their commitment towards the issues of disabled community. India has been the signatory to the Convention and ratified it in 2007. The rights of the persons with disability act 2016 (RPWD) echoes strongly the spirit of the convention. It has brought in a paradigm shift in the way in which disability is perceived in India. In this context I will briefly look at the 2016 disability legislation to examine its potential in creating impact in the lives of disabled population in India. Due to the issue of poverty, illiteracy, unemployment, the issue of disability becomes more complex, requiring innovative solutions, as the disabled population in India is not just substantial, but is ever on the increase. I will begin by generally describing disability as a concept, then go on to briefly talk about the politics of language used for the disabled. I will then contextualize the issue of disability in India to conclude it with the critical look at the RPWD Act 2016.

It should be noted that my critique of the RPWD Act is entirely based on my personal experiences as a blind woman living in Delhi. The critique is also based on my academic reading of the disability legislation and the study done on it.

*Conceptualizing Disability:*

In the words of Michael Berube, “Disability” is the most labile and pliable of categories: it names thousands of human conditions and varieties of impairment, from the slight to the severe, from imperceptible physical to inexplicable developmental delay” (Berube, 1998: p. vii). This conceptualization of disability signals the diversity of the group disabled people as against the common understanding which recognizes disability as a singular category having same or similar characteristics across different disabilities as well as people with disability as a monolithic group. There are two ways in which disability is primarily defined. One way in which disability is defined is through legislative language which is mainly dominated by the nondisabled view of disability, as these definitions are made by government officials, policy makers, and the medical professionals. Therefore, in many of the legislations in the world, prior to the UN Convention 2006 and even after it, is viewed from the perspective of biomedicine. The other way of defining disability is by according primacy to the experiential and lived reality of persons with disability themselves, thereby, their voice becomes prominent in defining disability. The UNCRPD definition of disability exemplifies the primacy of experiential reality of disabled persons, thus, demonstrating the active participation of the disabled people in formulating the Convention. This definition appears to be influenced by not just the disability rights movements across the world, but also by the perspective of discipline of Disability Studies (Dhanda, 2018: pp. 385-386).

Disability Studies is an interdisciplinary field of studies which locates disability in a socio-political, cultural, and attitudinal barriers rather than in the individual body. Therefore, it destigmatizes and denaturalizes disability and places it in the domain of demands, rights, citizenship, cultural studies, and change of attitude. Thus, disability becomes the issue of policy, society, culture, history and so on (Goodley, 2017: p. 10). The UN Convention’s formation with the disabled peoples’ participation signals the strength of disability rights movement as well as the influence of disability rights groups across the world. The UNCRPD 2006 proves to be a landmark step in the inclusion, mainstreaming and empowerment of the disabled persons, requiring the nation states to reflect its spirit in their legislations and policies. It defines disability as an evolving concept’ (UNCRPD, 2006, p. 1), and defines persons with disabilities as those who have ‘long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others’ (UNCRPD, 2006, p. 4). This definition is informed by both social constructionist view of disability as well as the embodiment perspective which emphasizes upon the realism of the disabled body (Sibbers, 2008: p. 64).

Many a nation-states have revised the definition of disability to echo the principles of equality, respect for the dignity and human rights of the disabled persons. For instance, the Indian Rights of the Persons with Disability Act (RPWD 2016) strongly

echoes the spirit and principles of UNCRPD. As per this legislation, “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others” (RPWD Act, 2016: p. 6). This definition has a potential to alter the common perception that disability is a terrible misfortune caused by divine retribution, and bad karma or past sins (Ghai, 2002: p. 51). This liberating definition, however, is limited by the provision of the concept of benchmark disability, according to which person with a benchmark disability qualifies for the benefits and reservations. The concept of benchmark disability fails to take into account the complexity of the issue of disability. For instance, the person having less disability may face more discrimination due to poverty, illiteracy, rural background or on account of their gender is completely overlooked. The category of disability by introducing the measure of 40 per cent disability, the concept of disability gets diluted because disability in India is a complex issue. The 40 per cent disability provision also gives primacy to the medical professionals who assert their power over disabled people, thereby, objectifying them (Dhanda, 2018: p. 390 and Ghai, 2002: p. 52). The provision of benchmark disability ignores the diversity of disability of lived experience of disability in the Indian context.

#### *The Politics of Language:*

In order for the disability activism to form and to flourish, it is important to use politically correct language not just to refer to disabled person, but to name and expose the discrimination as well as to empower disabled people. The word “disabled” in terms of disability politics is the most powerful and empowering one. In the West, people with disability claim their disabled identity with pride and a sense of empowerment, celebrating their difference and acknowledging their limitations. For instance, Simi Linton identifies herself as a “disabled woman” rather than a woman with disability. This kind of self-naming not just signifies the power of disability politics, but also it makes people wins and think out of their complacency (Linton, 2006: p.118). However, in India, we constantly use euphemistic terminology like visually challenged or physically challenged or differently abled and recently the state imposed *divyang*. The RPWD in Hindi translation makes use of this word to refer to disabled people. The word *divyang*, apparently exalts disabled people to the divine or extraordinary level, creating a positive image of sorts. As a blind woman myself, I find this positive word to be a positive stereotypicalization which may isolate the disabled person as different and extraordinary or as ‘the other’ (Jernigan, 1974: np).

The words like blind, deaf are hardly found used even by disabled people themselves. The words like visually challenged and visually impaired indicate limitation and lack and also a tendency to sugar-coat conditions. We in India also use the person first language i.e., person with disability. This appellation imparts personhood, identity, dignity and respect to the disabled person, but at the same time it relegates the disabled status to the secondary level. This in turns dilutes the fact of disability being the crucial identity. Yet, in legislative language this terminology prevails.

#### *Disability in India:*

In India due to the issue of poverty, illiteracy, unemployment, the issue of disability becomes more complex, requiring innovative solutions, as the disabled population in India is not just substantial, but is ever on the increase (Ghai, 2002: pp. 51-52). The approach towards disability in India has always been that of welfare and charity. The Constitution of India especially the Article 41 (The Directive Principles of State Policy) provides the guidelines for the protection of rights of disabled persons as well as for the necessary provisions, ensuring their social inclusion. However, this is to be done within the budgetary limitations or if the economic condition allows. This rider relegates the responsibility of disabled people's rights to the wish and will of the government. The first comprehensive legislation for persons with disability came into effect in 1996, partly on account of the protest of the disability rights groups in the major cities like Delhi and also partly because of the international obligation.

This disability legislation is recognized as a landmark move which gives visibility to the cause of disability in the Indian context. However, its implementation has always been neglected or overlooked. Dhanda recognizes two limitations of this legislation: first, the medical definition and second is the absence of civil and political rights. The medical definition of disability, according to her, objectifies and labels the disabled person, by asserting undue power over their condition. The socio-economic rights are recognized in order to integrate the disabled persons like reservations in jobs and education, but the civil-political rights seem to be missing from it (Dhanda 2018: pp. 390-391). This lack of recognising the civil and political rights restrict the disabled persons from being full-fledged social beings. Plus it deprives them from being considered as marriageable, familia, parental aspects of the society.

Rukamini Sen also complains about absence of inclusion of ethics of care which finds mention in 2014 bill of RPWD Act. She also focuses upon the absence of right to family and relationships (Sen, 2018: p. 409-410). Nandini Ghosh in her introduction marks the predominance of medicalization not just in defining disability, but also in making provisions for the persons with disability. She calls attention to the compartmentalization of the disabled person, for instance, she notes that employment issues of the disabled persons are dealt by ministry of social justice and empowerment and education comes under then human resource development (now education) Ministry. This compartmentalization of disabled person, as Ghosh observes, is reminiscent of the medical understanding of the disability which only looks at the affected body part. After India ratified UNCRPD 2006, the national policy was adopted which more or less echoes the PWD legislation (Ghosh, 2017: np chap. 1 introduction). The lack of proper implementation and growing dissatisfaction in the legislation, the disabled people began to agitate for the new legislation which promises to give effect to the principles of UN Convention, yet, this promise remains even after seven years unfulfilled. The 2016 legislation has promised four per cent reservation in employment and education, yet the persons with disability are still unemployed and uneducated.

The issue of accessibility even after seven-eight years remains unresolved. The access India campaign launched in 2015 and the RPWD Act claim to make all the public



spaces, transports, physical environment fully accessible to disabled persons by 2022, yet this promise appears to be a distant goal in 2024. The government has passed all the deadlines related to the legislation, indicating complete apathy towards the disabled people (Singh, 2024: 28 January, The Indian Express). The roads in India, in Delhi, do not have favorable arrangement for the movement of wheelchairs, as they are full of potholes neither are they safe for the blind, contributing to the lack of visibility of the disabled persons on streets in India. Moreover, the public transport remains inaccessible hindering the transport of disabled persons, for instance, even the low floor buses in Delhi are unsuitable for the wheelchair users. They also should have the voice prompt to announce the stations for the benefit of the blind. Although, people are getting employed, they lack not just the reasonable accommodation, but also social inclusion of the disabled people at the work places. Therefore, along with the proper implementation of the legislation, the change of peoples' perception and the social participation of the disabled people is needed in order to empower the disabled persons (Ghosh, 2013: pp. 416-417). The right to reproduction and marriage should be made explicit in the legislation in order to grant the full humanity to the disabled people.

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