

Disability of Prisoners and Reform in Prison: A Critical Analysis

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Abstract

Today, more than one billion people, or approximately 15 per cent of the world's population, live with some form of disability and 80 per cent live in developing countries [1]. The disability of a person requires special attention whatever is his status. Unfortunately, the people with disability is not adequately addressed in our correctional home system as they are the minority. This paper aims to explore how far our correctional homes are friendly with differently abled prisoners.

Keywords: Disability; Rehabilitation; Impairment; Handicap; environment; ICT; Equality of opportunity.

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Introduction

The obstacles a disabled person face, takes a wide range of forms in his life, together with those about the physical atmosphere, for the most part. Due to the shortage of services offered to them like information and communication technology (ICT), justice or transportation or those born out through legislation or policy, or from social attitudes or discrimination. The demand for any facility to their specific wants and treatment is sensitive to the rights of persons with disabilities to the dignity and physical integrity which are vitalelements of their right to life. Any departure from meeting their need could be a gross invasion to their right to human dignity and elementary freedoms. This paper aims to explore how far our correctional homes are friendly with the prisoners with disabilities.

Meaning of Disability

Persons with disabilities, have typically poorer

health, lower education achievements, fewer economic opportunities and better rates of adverse economic condition than individuals with no disabilities. The term disability has been explained as under-

- **Un Expression:** A disability is a condition or function judged to be significantly impaired relative to the usual standard of an individual of their group. The term is often used to refer to individual functioning, including physical impairment, sensory impairment, cognitive impairment, intellectual impairment, mental illness, and various types of chronic disease. This usage has been described by some disabled people as being associated with a medical model of disability [2].

- **WHO:** The following distinction is made by the World Health Organization, in the context of health experience, between impairment, disability and handicap:

- **Impairment:** Any loss or abnormality of psychological, physiological, or anatomical structure or function.



- *Disability*: Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.
- *Handicap*: A disadvantage for a given individual, resulting from an impairment or disability, that, limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual [3].

Generally, individuals with disabilities are at a higher risk of violence. A study has exposed that a baby with disabilities experiences nearly four-times more violence than non-disabled youngsters, whereas an adult with some kind of disabilities face nearly 1.5 times more violence than who doesn't have the same. Further, an adult with an improper psychological state of health are exposed to nearly at fourfold the danger of experiencing violence [4].

Disability & Justice: A Theoretical Backdrop

Sociological Jurisprudence: The sociological jurisprudence speaks about the thought of maximum satisfaction of human desires or expectations. The task of law, is to reconcile and regulate these desires- wants or expectations, interests etc. as much as possible, to secure the maximum amount of the totality of them. The legal rule as a general guide to the judge, leading him towards the just but insist that within wide limits he ought to be unengaged to deal with the individual case to meet the standard of justice between parties and accord with the final reason of normal men. One of the the vital jurist of this faculty of thought, Professor Roscoe Pound once commented, the problem that juridical science faces in the evolution and balancing of conflicting interests. For facilitating that process, in 1919, he developed *jural postulates* of civilized society that inter alia includes-

- i. others will not commit any internal aggression upon him;
- ii. others will act with due care and will not cast upon him an unreasonable risk or injury;
- iii. the society as a whole will bear the risk of unforeseen misfortunes such as disablement.

John Rawls

Concept of Justice: According to Professor. John Rawls, the principles of Justice is settled by prudence, are those that hypothetical rational persons would opt for in a hypothetical "original

position" of equality whereas, fairness results from reasoned prudence. In his *Basic Principles of Justice*, he stated: "social and economic inequalities are to be organized in order that they're both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle and (b) attached to offices and positions open to all under conditions of fair equality of opportunity."⁵ Hence, the disabled individuals need special attention of the society as a whole.

Nature of Disabilities among Prisoners

Prisoners with incapacity is also broadly speaking are categorized into 2 segments viz.-

- *Pre- prison Disability*: Pre- jail disability suggests that the person before placed to jail was stricken by disability.
- *Disability occurred in prison*: In Prison disability might occur for various reasons that are asunder-
 - *Disability Due to Mental Illness*: The infrastructure of the correctional homes is pretty much dismal as the government is much interested to the safety system overlooking the needs to modernise the prisons respecting the rights of the prisoners. Overcrowding is another drawback to the system. In the given scenario, stress and alternative psycho-social issues adds to that. Many a time, we may notice that the inmates with the passage of time are attacked by mental disabilities of different forms.
 - *Disability Caused Due To Age*: As a captive gets older, s/he naturally become vulnerable. People become pray to various age-related diseases ranging from dental issues, arthritis, strokes, cardiopathy and deterioration in hearing and vision etc. calling for various forms of services.
 - *Disability Caused by the Inmates*: Many a time the scuffle breaks out among the inmates causing injuries to impairments to the victim. Sometimes, the inmates are subjected to different types of tortures by the co- inmates.
 - *Disability Caused by the Men in Uniform*: The men in Khaki is another reason at the background of suffering from disability by inmates. Unfortunately, till today, the number of inmates became disabled

is majorly unreported except few ones like Bhagalpur Blinding Case etc. In this context, the Supreme Court in DK Basu Case [6], the Supreme Court felt to exhibit additional sensitivity and adopt a realistic, sensible instead of a slender technical approach, while dealing with such cases in order to ensure, that the guilty mustn't escape misusing the power and position and the victim of the crime may enjoy the satisfaction and ultimately the loftiness of Law prevails.

International Instruments Involving Disability Issues

The folks in custody today suffer from various types of infringement of rights including the right to dignity and elementary freedoms as addressed under various international instruments like the UNCRPD, the Constitution and different statutory Laws. Now, let's have a glance over the leading principles and practices globally and a few countries one by one.

UN Resolutions: The relevant UN Resolutions are as under-

- ◆ *The UN Resolution 31/123 of 16th Dec. 1976:* The foremost vital issue that was resolved was the proclamation of the year 1981 because the International Year of Disabled Persons.
- ◆ *The UN Resolution 32/133 of 16th Dec. 1977:* The resolutions inter alia established the Advisory Committee for the International Year of Disabled Persons.
- ◆ *The UN Resolution 33/170 of 20th Dec 1978 & the UN Resolution 34/154 of 17th Dec 1979:* These 2 resolutions inter alia, are determined to expand the theme of the International Year of Disabled Persons to "Full participation and equality".
- ◆ *The UN Resolution 35/133 of 11th Dec 1980 & the UN Resolution 36/077 of 08 Dec 1981:* These 2 resolutions perceived the continued need to promote the belief that the disabled persons should fully enjoy the right to participate in the social life and development of their societies and to enjoy living conditions equal to those of other citizens, in addition they are to share equally in the enhancements of living conditions succeeding from social and economic development.

The International Year of Disabled Persons, 1981

The International Year of Disabled Persons was celebrated in the year 1981 (UN General Assembly Resolutions 31/123). It felt the importance to have a plan of action at the national, regional and international levels, with a stress put on levelling of opportunities, rehabilitation and hindrance faced by the people with disabilities. The theme of IYDP was "full participation and equality".

However, the other objectives of the Year included: increasing public awareness; understanding and acceptance of persons with disabilities; and inspiring persons with disabilities to create organizations through that they are allowed to express their views and promote action to better their status [7].

The Leeds Castle Declaration on the Prevention of Disablement, 1981

In the Leeds Castle Declaration on the hindrance of impairment of 12th Nov 1981, a world cluster of scientists, doctors, health directors and politicians called attention to the issues as under [8]-

- Impairment arising from nutritional deficiency, infection and neglect which may well be prevented by cheap improvements in primary health.
- Sustained education of the overall public and of professionals.
- Avoidable disability which is a major cause of economic waste and human deprivation in countries, industrialised and developing.
- The priority of existing national and international health programmes shifted to make sure the dissemination of information and technology.
- Both basic and applied research in biomedical sector over the approaching years.

The World Programme of Action Concerning Disabled Persons, 1982

The World Programme of Action (WPA), a serious outcome of the International Year of Disabled Persons, adopted by the General Assembly on 3 Dec 1982, by its resolution 37/52. It's a world strategy to boost prevention of disability, rehabilitation and equalisation of opportunities, that pertains to full participation of persons with disabilities in social

life and national development. The issues outlined under the resolution 37/52 are as under [9] -

Equalization of opportunities: "Equalization of opportunities" was a central theme of the WPA and its guiding philosophy for the accomplishment of full participation of persons with disabilities in all aspects of social and economic life. A vital principle underlying this theme was the issues relating to persons with disabilities mustn't be treated in isolation, however within the context of traditional community services.

Principle of equality: The principle of equal rights for the disabled and non-disabled implies that the needs of each and every individual are of equal importance, that these wants should be based on the premise for the planning of societies, and that all resources should be used in a way to guarantee, for each individual, civil rights for participation. The policies for the Disabled need to check that the access of the disabled to all or any community services.

◆ Services for disabled persons need to be provided, whenever possible, within the present social, health, education and labour structures of society. These embrace all levels of health care; primary, secondary and higher- education, general programmes of education and placement in employment; and measures of Social Security and social services.

◆ Rehabilitation services should aim at facilitating the participation of disabled persons in regular community services and activities. Rehabilitation need to surface out in the natural environment, supported by community-based services and specialised institutions/ establishments.

◆ Specialized institutions, where they are necessary, need to be organized so as to guarantee the early and lasting integration of disabled persons into society.

The Vienna Affirmative Action Plan

The Vienna social action set up and adopted by the World Symposium of Experts on Technical Co-operation among Developing Countries and Technical Assistance in Disability Prevention and Rehabilitation is the continuation of the WPA, 1982.

The Convention on the Rights of Persons with Disabilities (CRPD), 2006

The Convention on the Rights of Persons

with Disabilities and its Optional Protocol (A/RES/61/106) was adopted on 13th Dec, 2006 at the UN Headquarters in New York. The Convention set a goal for countries to identify and eliminate obstacles and barriers so that they may access of their environment, transportation, public facilities and services, info and communications technologies [10]. It adopts a broad categorization of rights for persons with disabilities and reaffirms that anyone with disabilities of any type may enjoy all human rights and elementary freedoms. The rights got recognised under the Convention square measure as under-

- ✓ Rights against discrimination: Parties to the Convention are engaged to develop and carry out the policies, laws and administrative measures for securing the rights recognized in the Convention and abolish laws, regulations, customs and practices that represent discrimination (Article 4).
- ✓ Right to equality: Member Countries are to ensure that persons with disabilities enjoy their inherent right to life on equal basis with others (Article 10).
- ✓ Right to life, liberty and security: Countries should guarantee persons with disabilities to enjoy the right to liberty and security and aren't deprived of their liberty unlawfully or randomly (Article 14). Countries should shield the physical and mental integrity of persons with disabilities, like everybody else (Article 17). There should be a guarantee to enjoy freedom from torture and from cruel, inhuman or degrading treatment or penalisation, and veto medical or scientific experiments without the consent of the person involved (Article 15). Persons with disabilities aren't to be subjected to arbitrary or misappropriated interference with their privacy, family, home, correspondence or communication. The privacy of their personal, health and rehabilitation data is to be protected like that of others (Article 22).
- ✓ Right to freedom: Laws administrative measures should guarantee freedom from exploitation, violence and abuse. In the case of abuse, the states shall promote the recovery, rehabilitation and reintegration of the victim and investigate the abuse (Article 16).
- ✓ Countries acknowledge the correct to associate degree adequate normal of living and social protection; this includes housing development, services and help for disability-related desires, still as help with disability-related expenses

just in case of financial condition (Article 28).

- ✓ Countries should promote access to data by providing data meant for the general public in accessible formats and technologies, by facilitating the utilization of Braille, sign language and other alternative kinds of communication through encouraging the media and net suppliers to create on-line data offered in accessible formats (Article 21).
- ✓ Persons with disabilities have the right to the highest attainable standard of health without discrimination on the basis of disability. They should be within the provision of insurance (Article 25).
- ✓ To empower the persons with disabilities to realize utmost independence countries must provide a comprehensive habitation and rehabilitation services within the areas of health, employment and education (Article 26).

United States of America

In the USA, the legal mechanism regarding the protection of the rights of the disabled are as under-

The Rehabilitation Act, 1973: Section 504 of the Rehabilitation Act, 1973 was the first Disability civil rights law enacted in the USA. It prohibits discrimination against individuals with disabilities in programs which are funded by the Federal Government. An aggrieved individual with disability can ask for one or a lot of different remedies that stem from the Civil Rights Act of 1964 which incorporates, inter alia [11]:

- Temporary or preliminary relief unfinished final disposition
- Injunctions
- Appropriate social action
- Equitable relief
- Accrual of back pay
- Reduction of back pay

In *Preiser v. Rodriguez*, the American Court made it clear that the state prisons fall squarely among the statutory definition of "public entity," which incorporates "any department, agency, special purpose district, or alternative instrumentality of a State or States or local government." § 12131 (1) (B).

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The Americans with Disabilities Act (ADA), 1990

The Americans with Disabilities Act (ADA) became law in 1990. The ADA guarantees civil rights for people with disabilities particularly in public accommodations, employment, transportation, state and native government services, and telecommunications. It is the most significant papers in reference to the protection of the disabled. The Act provides inter alia as under-

Title II of the Act establishes elaborate standards for the operation of public transportation systems, together with commuter and intercity rail.

Title III of the Act needs the intervention of the U.S. Department of Justice in connection with setting the minimum standards for accessibility for alterations and new construction of facilities. This part of the Act additionally deals with the followings-

- Removal of barriers in existing public buildings where it's easy to do so without much of issues of expenses.
- reasonable customisation to their usual ways of doing things when serving individuals with disabilities.
- taking of necessary steps to interact effectively with people with vision, hearing, and speech disabilities.

Title IV of the Act provides provisions for regulating telephone and internet firms by the Federal Communication Commission. This Part inter alia speaks about the followings-

- to offer a nationwide system of interstate and intrastate telecommunications relay services.
- such services ought to enable people with hearing and speech disabilities to speak over the telephone.

In *Gregory v. Ashcroft* [13], it had been declared "One of the first functions of the government is the preservation of social order through the enforcement of the criminal law, and the maintenance of penal institutions is an essential part of that task." Again, in *Pennsylvania Dept. of Corrections v. Yeskey* [14], Ronald Yeskey was a jail inmate sentenced to eighteen to thirty-six months during a Pennsylvania Correctional facility. He sued,

alleging that his exclusion desecrated the Americans with Disabilities Act ("ADA"). The Supreme Court held that the ADA applies to prisons and jails, people with disabilities in correctional facilities still face tremendous obstacles in their efforts to achieve fair and equal treatment. In *United States v. Georgia* [15], the sentencing court recommended his placement in Pennsylvania's Motivational Boot Camp for first-time offenders and as he had a medical history of hypertension, admission to the program was denied.

'Justice Project', 2004

In the USA, the 'Justice Project,' aimed at to resolve complaints about the treatment of the prisoners with disability/s. Inmates with disabilities placed allegation about the violations of their rights at detention facilities. Many of the prisoner's folk with disabilities in America identified an absence of understanding about the nature of activities in which he/ she has been involved with. In addition to this, the common forms of complaints involve the followings:¹⁶

- Denial of access to disability-related devices and medical services.
- Denial of access/unequal access to the facility's activities and programs.
- Lack of effective communication for inmates WHO square measure deaf, laborious of hearing, blind, or have low vision.

Actions Taken after the Justice Project [17]

Funding through the Office of Justice Programs alongside providing relief to a great number of inmates with disabilities in jails, modifications have been taken place regarding the supply physical access to cells, showers, toilets, feeding areas, or adoption of ADA-compliant effective communications policies e.g.-

- TTY's [18] for inmates, workers members, and guests,
- Access to work release programmes and jobs for inmates with psychiatric disabilities,
- A treatment program in an accessible place for an inmate with a mobility disability,
- Talking books, magnifiers, tape recorders, and Braille writers for inmates with vision disabilities,
- A prosthetic leg for an inmate that allowed him to live with the general population rather than

with the infirm.

- Aides to help an inmate without arms in eating and other associated activities of daily living and to help an inmate who uses a wheelchair to move around the jail.
- Changes in policy permitting an inmate with disability to be thought-about for a trustee job, allowing a mother who uses an Oxygen tank to visit her inmate son, and permitting a blind inmate to the touch his children's faces during visits.
- Sign language interpreters to help a deaf inmate to participate in academic programs, another deaf inmate to participate in a treatment program needed for unleash, and another deaf inmate to participate in needed conferences with probation officers.

Indian Legal Framework and Issue on Disanility

An individual with disabilities needs constant help and support to enable him to enjoy his right to dignity and fundamental freedom. An individual, into custody is further protected against the cruel, degrading and inhuman treatment. In India, the Constitution, the Cr. PC, the UNCRPD, and even the Rights of Persons with Disabilities Act, 2016 they don't specifically discuss the prisoners with disabled prisoners in specofc, we may analyse the same in the context of such legal instruments as under-

Constitution of India

- **Art. 14:** The norm of substantive equality, well established through constitutional jurisprudence in India, speaks of the principle of equality that necessarily includes special treatment for persons who are vulnerable. The denial of special provisions, appropriate assistance and specialised health care access to a person with disabilities in custody, who uses a wheelchair and has special health care needs arising from chronic illness, comes firmly within the meaning of degrading, inhuman and cruel treatment.
- **Art. 21:** Article 21 of the Indian Constitution guarantees the right to life. Under Art. 22, No person shall be subjected to degrading, inhuman or cruel punishment that is violative of human dignity; the duty of care to be exercised in this matter during pre-trial custody is of a

much higher order. A prisoner with disability requires support and assistance for daily living, placing such a prisoner in solitary confinement and denying the right to accessible facilities for personal care and hygiene is violative of the right to dignity and bodily integrity – both guaranteed under Article 21 of the Constitution, but also under Article 17 of the UNCRPD [19].

Veena Sethi Case [20]: The Veena Sethi case within the early 1980's brought to light the treatment of prisoners with mental diseases and their prolonged confinement for periods starting from sixteen to thirty years in custody. The Apex Court felt that the case of those prisoners to disclose a surprising state of affairs involving total disregard of basic human rights. Therefore, the Court determined that it's the solemn duty of this Court to shield and uphold the essential human rights of the weaker sections of the society, and it's this duty we have a tendency to discharge in entertaining this public interest litigation. The Supreme Court issued the order as under-

- the District Judge for releasing the prisoner from the jail and the State Government will provide him with the necessary funds for meeting the expenses of his journey to his native place as also for his maintenance for a period of one week to the prisoners concerned who became sane or has regained his soundness of mind.
- the State Government to drop the cases which are pending against these prisoners an accused is ordinarily required to undergo even in case of sentence of life imprisonment is not more than 14 years as provided by Section 428 of the Code of Criminal Procedure, 1973, the Prisoners have already been in jail for, a period of over 25 years.

Khatri (II) et al vs State of Bihar & Ors [21], is another vital example in association with which "The cops had referred to as a doctor from the block hospital who asked one among the inmates 'can you see anything' as I cried and crooked in pain anytime the policemen dropped acid into my eyes," who was blinded at the Rajaun police headquarters on the orders of the Deputy SP. The same DSP supervised different 'operation' at Ishakchak police headquarters,". They perforated a 'takwa' (a long needle used for sewing bagging bags), a barber's nail cutter or a bicycle wheel spoke into the youths' eyes and so poured acid into the mutilated sockets with a pipet or a syringe or directly from a bottle. Here, in these cases, two issues were taken into

consideration, viz. the price of the treatment to be borne by the victims and second, the payment of compensation to the unsighted prisoners for violation of their basic Right underneath Article 21 of the Constitution. The bench headed by the then CJI, Y V Chandrachud, determined "there is nothing the court will do to revive the physical injury, that appears irreparable. However, the offenders should be dropped at book, a minimum of within the hope that such brutal atrocities won't be committed once more." Hence, every blind victim was given a payment of Rs 30,000/- and, then, a monthly pension of Rs 500/- that was later increased to Rs 750.

Dr. G.N. Saibaba Case [22]: In this case, the suspect was a University Professor and was placed into custody with the allegation of getting Maoist "links" and a Maoist "sympathiser". He was placed into Andhra jail, which implies elliptical jail wherever he wasn't allowed to use the rest room for future seventy-two hours. The harassment took a significant toll on his health. He suffered a 14-month imprisonment at the Central Jail in Nagpur, a wheelchair-bound captive. Saibaba was further arrested in 2014 for his alleged reference to Maoists extremists. Later he was sentenced to life imprisonment in March 2017. Recently, the Special Rapporteurs of the international organisation urged the govt. to right away guarantee health care to Saibaba, who is reportedly in solitary confinement in Nagpur jail [23].

The Rights of Persons with Disabilities (Equal Opportunities, Protection of Rights, and Full Participations) ACT, 1995: The Rights of Persons with Disabilities Act doesn't give any specific provision regarding the plight of the disabled prisoners. The Act listed seven conditions of disabilities, which includes *blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation [24], and mental illness [25]*. The Act adopted an approach of welfare in respect of PWD and the main focus was on prevention and early detection of disabilities, education and employment of the PWD. The Act also provided 3% reservation in Government jobs and academic establishments. It stressed on creating the barrier-free things as a live of non-discrimination.

The Rights of Persons with Disabilities Act, 2016

India signed the UNCRPD in 2007, the Rights of PWD Act, 2016 (RPWD Act, 2016) got notified on 28th December, 2016 when receiving the presidential assent. The followings are the salient features of the

Act-

- The RPWD Act, 2016, has enlisted twenty-one conditions of disability.
- Section 7 (2) of the Act, states that any individual or registered organization, who or that has reason to believe that an act of abuse, violence, or exploitation has been, is being or seemingly to be committed against any PWD, may give such information to the Local Executive Magistrate who shall take immediate steps to prevent its incidence and pass necessary order to protect the PWD.
- The Police Officer shall conjointly inform necessary particulars to the PWD of nearest organization operating for the rehabilitation of the PWD, right to free legal aid, and right to file criticism underneath the provisions of this Act or the other law addressing such offence.
- Equal protection and safety in situations of risk, armed conflict, humanitarian emergencies, and natural disasters area unit to be provided to PWD.

Conclusion & Recommendations

Protection of Rights of subject could be a state responsibility. The State may have its monetary constraints and its priorities in expenditure, but however, as discerned by the court in *Rhem v. Malcolm* [26], the court unconditionally expressed, "The law doesn't allow any Government to deprive its citizens of constitutional rights on a plea of economic condition." To quote the words of Justice Blackmun in *Jackson vs. Bishop* [27], "humane concerns and constitutional needs aren't in this day to be measured by dollar concerns." In India, the prevailing services, facilities and social actions for the prevention of impairment, the rehabilitation of disabled persons and their integration into society are closely associated to the Governments' and society's willingness and ability to distribute resources, income and services to under privileged population. However, since human actors are there in implementing such rights, faulty implementation and non-recognition of rights of individuals many times create issues within the state affairs. At this, the task of the state machinery is to correct such errors. Thus, during this context, the followings may be recommended-

- Prisons ought to be disabled friendly. wherever jail and custodial facilities don't seem to be equipped in the slightest degree to trot out

the precise desires of persons with disabilities, arrest and detention in custody ought to be a measure of last resort.

- The training of personnel ought to be prime agenda generally fields like supplementary benefit, public health, medicine, education and business rehabilitation;
- Enhancement of capacities for the native production of the appliances and instrumentality required by disabled persons ought to be taken care of;
- The institution of social services, social insurance systems, cooperatives and programmes for mutual help at the national and community levels is also prioritised;
- Appropriate vocational training and work preparation services, as well as increased employment opportunities for disabled persons ought to be in top priorities.

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