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Exploring the Human Rights Perspective on Persons with Disabilities
Kasturi Gakul & Shine Kashyap

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EXPLORING THE HUMAN RIGHTS PERSPECTIVE ON PERSONS WITH DISABILITIES

Kasturi Gakul¹ & Shine Kashyap²

“Being disabled should not mean being disqualified from having access to every aspect of life.”
— Emma Thompson³

I.

Introduction

‘Disability’ insinuates a deficiency or inadequacy in a person, whether physical, mental or sensory. Every individual possesses an equal right to life, equality, liberty security and dignity by propriety of a living person, but people with disabilities are often banished and segregated due to various social indifference and psychological barriers which restrict them from participating in society on an equal footing. There are even numerous discrepancies from unfair circumstances faced by persons with disabilities, including disgrace, poverty, exclusion from education or employment, and impediments faced in the health system itself. Thus, disability is a human right and laws related to disability must be evaluated and analysed by the means of inclusion of human rights, principles of natural justice, equity and other legal frameworks, in order to ultimately bridge the gap in the society in the real senses.

World Health Organization (WHO), has estimated that about 1.3 billion individuals suffer from significant disability which constitutes 16% of the population of the globe or one in six persons.⁴ This data makes them world’s largest and most down-sided minority living in the poverty and facing immense exclusion in all fields of life.⁵ Additionally, it is considered that they have twice the

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³ WECAPABLE available at <https://wecapable.com/disability-quotes-inspiring-words/> (lasted visited Nov. 30, 2023)

⁴ WORLD HEALTH ORGANIZATION, *Factsheets on Persons with Disability, United Nations Enable*, (Mar. 7, 2023) available at- <https://www.un.org/development/desa/disabilities/resources/factsheet-on-persons-with-disabilities.html> (last visited Nov. 30, 2023).

⁵ Gerard Quinn *et. al*, HUMAN RIGHTS AND DISABILITY: THE CURRENT USE AND FUTURE POTENTIAL OF UNITED NATIONS HUMAN RIGHTS INSTRUMENTS IN THE CONTEXT OF DISABILITY 120-128 (2002); OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Convention on the Rights of Persons with Disabilities 2006*, (Dec. 12, 2006) available at -

risk of developing serious ailments such as asthma, depression, obesity, stroke or poor oral health.⁶ The United Nations Development Programme confirms that around eighty five percent of people with disabilities live in the developing countries.⁷ Although there are certain laws that deal with the protection and promotion of human rights of the disabled persons but they are not fulfilling the true intention behind them, that is betterment in their conditions of living. They are unable to exercise their human right to the fullest potential. This problem of the persons with disabilities has never been addressed exclusively with a great emphasis in the past decade but just as an allied and ancillary issue which did not get weight-age until the uproar of disability movements and human rights activism in various parts of the world. The present paper explores the international and regional strides in transcending from the bane trajectory of invisibility to the promotion and protection of human rights of persons with disabilities.

II.

Disability and Person with Disabilities:

To understand persons with disability, it is important to explore the meaning of disability. Disability is defined as an impediment, which might be intellectual, cognitive, sensory, advancement-related, exercise-related, or a combination of all of factors. A person's responsibilities are affected by incapacity, which may develop from birth or even as an adult in certain circumstances.⁸ A disability can be commonly depicted as the failure, disruption, or loss of the normal operation of a person's physical, mental, or psychological processes, or as an obstacle in learning or adjusting to social situations, that conflicts in a person's normal growth and progress. There are various models and structures of the definition of disability which highlight a unique view and perspective towards it.

World Health Organization (WHO) offers three-fold explanation of the term disability as an impairment, any restriction or lack and a disadvantage.⁹ Furthermore, the diagnostic criteria of this definition are too medical and do not

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>. (last visited Nov. 30, 2023).

⁶NATIONAL INSTITUTES OF HEALTH, *Heart Disease and Stroke* (Apr. 2021) available at <https://www.niddk.nih.gov/healthinformation/diabetes/overview/preventing-problems/heart-disease-stroke> (last visited Nov. 9, 2023).

⁷ UNITED NATIONS, *Fact Sheet on Persons with Disabilities* (2014) available at <https://www.un.org/disabilities/documents/toolaction/pwdfs.pdf> (last visited Mar. 12, 2023).

⁸ OXFORD ENGLISH DICTIONARY available at <http://www.oxforddictionaries.com/definition/english/disability> (last visited Nov. 30, 2023).

⁹ WORLD HEALTH ORGANISATION, *Disability and Health*, (Mar. 7, 2023) available at <https://www.who.int/news-room/fact-sheets/detail/disability-and-health> (last visited Nov. 30, 2023).

consider the flaws and does not sufficiently explain how the standards of society combine with the unique circumstances of a disabled person.

For the first time, the most significant instance of the transition from conceptualizing disability as an individual pathology to a concept of society was presented in the United Nations Standard Rules on the Equalization for Opportunities for Persons with Disabilities which views impairment as a challenge that a person encounters in the nature of the environment in which he finds himself.¹⁰ A disability only pertains to an environmental factor that a person finds challenging to overcome which is due to the neglected facility of reasonable accommodation. It is neither unique nor synonymous to people with disabilities. From a very long time, the society has deep-rooted preconceptions and superstitions about persons who suffered from impairments or other differences. These views have also played a role in creating a negative discernment of persons with disabilities and shaping who is viewed as having a disability in each society. The prevalence of unfavourable misconceptions has been significantly influenced by the terminology used to describe people with impairments. It can be inferred that disability resides in a society and not in a person.

The Convention on the Rights of Persons with Disabilities (CRPD), under Article 1 intreats that “persons with disabilities include 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.”¹¹ The drafters of this Convention clarified that a person’s impairment is a function of how that person interacts with their surroundings. Disability is not something that an individual has because of some form of disorder. This agreement acknowledges that the idea of a handicap is one that is constantly changing, and that laws must positively evolve to reflect good social change.

III.

Exclusivity to Inclusivity - A paradigm shift in the international approach to Disability Rights

Human rights are privileges that are delegated to people by States under contemporary international law. Human beings are entitled to basic, inviolable

¹⁰ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (Dec. 20, 1993) available at- <https://www.ohchr.org/en/instruments-mechanisms/instruments/standard-rules-equalization-opport-uni-ties-persons-disabilities> (last visited Nov. 30, 2023).

¹¹ UNITED NATIONS available at- <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd> (last visited Nov.17, 2023).

and inalienable rights which are referred to as human rights. In other words, human rights are birth rights which are inherent in people irrespective of their sex, caste, creed, religion, race or nationality. These entitlements are significant for all the humans as they are in accordance with their freedom and dignity, and are conducive to moral, physical, spiritual and social welfare.¹² Countries around the world have an obligation to abide by the international human rights law, and address all the sorts of inequalities faced by the persons with disability within their domestic legal framework.

The international human rights instruments highlight on the issues of the individuals with disabilities in both ways, generally and exclusively. There are certain international instruments which attribute towards the advancement, assistance and safeguarding the rights of persons with disabilities. It has been evident by various research that there is double disadvantage for the women with disabilities as they are discriminated based on two factors – ‘disability and gender’ which has been addressed by the United Nations. Apart from these, there are various soft laws in the form declarations, resolutions and normative guidelines adopted by the UN General Assembly which though not legally binding yet proclaim the rights of persons with disabilities.

In 1976, the General Assembly proclaimed 1981 as the International Year of Disabled Persons (IYDP).¹³ The theme for IYDP was “full participation and equality”, and magnified to explain how freedom allows people with disabilities to actively participate in the progress and development of their societies, to live in circumstances that are equal to those of other citizens, and to benefit equally from socioeconomic development. It mandated the creation of an action plan at the national, regional, and global levels with a focus on equal access to opportunities, disability prevention, and rehabilitation.

People with disabilities have taken a prominent stance in expressing their strength and competence in their own capacities to live autonomously and sustainably. The accompanying brief history highlights United Nations initiatives. The idea of equality for all served as the foundation for the United Nations. The Preamble to the United Nations Charter acknowledges the dignity and worth of all individuals and emphasizes the achievement of social justice at the forefront of its objectives. United Nations supported the movement for the rights of persons with disabilities by utilizing a variety of social welfare initiatives. Later, these approaches were clubbed by the adoption of International Bill of Human Rights, which led to a significant assessment of the rights of persons with disabilities. The United Nations General Assembly notably addressed their human rights when it adopted

¹² Sangeeta Mandal, *Rights of Disabled Persons: A Human Right Approach* II IJHRLR 192 (2018).

¹³ UNITED NATIONS, *The International Year of Disabled Persons 1981*, available at <http://www.un-documents.net/a31r123.htm> (last visited Nov. 29, 2023).

the Declaration on the Rights of Mentally Retarded Persons, the Declaration on the Rights of Disabled Persons and addressed 1981 as the International Year for Disabled Persons. Later, in 1982 the World Programme of Action concerning Disabled Persons was adopted by the UN General Assembly which aimed at achieving the full involvement of people with disabilities as its guiding principle. The Convention on the Rights of Persons with Disabilities (CRPD), like other United Nations human rights treaties and conventions, is an outcome of decades of productive work during which criteria for group rights evolved from ambitions and desires to binding agreements. In December 2001, Mexico proposed to General Assembly to establish an Ad Hoc Committee to take into consideration suggestions for inclusion of an exhaustive and comprehensive international treaty to safeguard the rights and acceptance for individuals with disabilities. The readings of the outlines of the conventions during various sessions of the Ad Hoc Committee resulted in the revised text and finalized negotiations of the draft Convention and a separate Optional Protocol. The Optional Protocol and the Convention were made available for signatures on 30th March, 2007, at the UN's New York headquarters with 82 open signatories. This Convention entered into force on 8th May, 2008.

For human rights to be upheld, legal system must evolve domestically and internationally. By ratifying international human rights treaties, the States agree to enact domestic rules and legislation that uphold their obligations and commitments under the instruments. In situations where domestic legal processes fall short of addressing human rights abuses, there are mechanisms and procedures for individual grievances or communications at both the international and regional levels that seek to guarantee that international human rights standards are genuinely respected, put into practise, and enforced at the local level.

Universal Declaration of Human Rights, 1948¹⁴ adopted by the United Nations, on 10th December 1948 was brought with the aspiration to act as “common standard of achievement for all people of all nations” and emphasizes upon right to freedom, equality and non-discrimination fundamental to all human beings including persons with disability. UDHR under Article 25 acknowledges that in case of disability every person has the right to security.

¹⁴ AMNESTY INTERNATIONAL *available at* <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/> (last visited Nov. 29, 2023).

International Covenant on Civil and Political Rights¹⁵ (ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights¹⁶ (ICESCR) 1966 does not explicitly address persons with disabilities. However, the rights enunciated under the two Covenants expounds the enjoyment of the same by all. In 1994, the Committee on Economic, Social and Cultural Rights under ICESCR took a stand by disseminating General Comment No. 5¹⁷, in which the Committee affirmed disability as a fundamental human rights issue¹⁸. The provisions of ICESCR lay the groundwork for rights that place constructive and affirmative obligations on the government to render services. Economic, social, and cultural rights can encompass things like the right to an appropriate standard of living, the protection of one's family, the right to an education, the right to participate in scientific advancement etc. ICESCR propels that there should not be any kind of discrimination against anyone in exercising their rights and banking on this, the Committee on ICESCR has asserted that this would apply also to non-discrimination on disability grounds. Health is intrinsically related to disability concerns and hence ICESCR's advocacy towards all people's right to enjoy "highest attainable standards of physical and mental health" under Article 12 reinforces disabled person's human right to health.

The World Health Assembly Resolution, "*The highest attainable standard of health for persons with disabilities*" adopted by the 74th World Health Assembly aims to access effective universal health coverage and protection during the situations of medical emergencies. By addressing the significant obstacles that many persons with disabilities must overcome to receive healthcare, the resolution endeavours to make healthcare system more inclusive for all. This has not only improved collection but also the segregation of the reliable data on disability for discourse in health policies and programs.¹⁹

Disability is not only physical and people who disadvantaged mentally are to be ensured rights and provisions for their welfare and rehabilitation. Mentally retarded persons are human beings and the need to protect them from abuse,

¹⁵ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS available at- <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last visited Nov. 29, 2023).

¹⁶ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS available at- <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (last visited Nov. 29, 2023).

¹⁷ UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *General Comment No. 5: Persons with Disabilities*, (Dec. 4 1994) available at- <https://www.refworld.org/docid/4538838f0.html> (last visited Nov. 29 2023).

¹⁸ A.K. Sikri, THE DISABILITY HUMAN RIGHTS PARADIGM GIVING DIGNITY TO HUMAN LIFE 141 (2007).

¹⁹ WORLD HEALTH ORGANIZATION, *The WHO European Framework for Action to Achieve the Highest Attainable Standard of Health for Persons with Disabilities 2022–2030*, (2022), available at- <https://iris.who.int/bitstream/handle/10665/364994/WHO-EURO-2022-6751-46517-67449-eng.pdf?sequence=1> (last visited Nov. 20, 2023).

exploitation and degrading treatment and ensuring them human rights to proper medical care, physical therapy, economic security was acknowledged by the General Assembly in 1971.²⁰ To optimize the ability of persons who are mentally retarded and facilitate their integration, the Declaration stressed on providing guidance, education, rehabilitation and training. Mentally disabled people are socially ostracized. Their right to stay with family or in foster care along with community participation is vital for their well-being and the families of such persons must receive assistance. Institutional care should be made available only in case of necessity.

The interlink between disability and intersectionality reveals discrimination based on sex, race, colour, culture, religion etc which is further exacerbated by deprivation of civil and political rights. The two-fold principles of 'prevention of disability' and 'refurbishing and rehabilitating persons with disabilities' became the central focus of the Declaration on the Rights of Persons with Disabilities²¹ which proclaimed the adoption of international and domestic legal responses for promotion dignity, worth and independence of all persons, maximising the potential of disabled people through help, providing qualified legal aid, medical facilitation, rehabilitation, education and vocational training for social integration and inclusion.

People with deafness and blindness were specifically identified by the Hellen Keller World Conference on Services to Deaf-Blind Youth and Adults which culminated in the adoption of the Declaration on the Rights of Deaf-Blind Persons in 1979.²² This instrument aims at materialising the rights of UDHR and Declaration on the Rights of Persons with Disabilities and obligates the government official of different States to gather information about the skills of deaf-blind people so that they can lead a normal life and ensure right to effective medical care, economic security, right to work as per capacity with emphasises on reasonable quality of life to deaf-blind people.

Disabled persons can actively engage in the society and work towards national development when they are accorded the platform to access opportunities equally

²⁰ UNITED NATIONS & THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *Declaration on the Rights of Mentally Retarded Persons*, (1971) available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-mentally-retarded-persons> (last visited Nov. 20, 2023).

²¹ UNITED NATIONS & OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Declaration on the Rights of Disabled Persons* (1975) available at <https://www.ohchr.org/sites/default/files/res3447.pdf> (last visited Nov. 30, 2023).

²² UNIVERSITY OF MINNESOTA, *A Declaration of Rights of Deaf-Blind Persons, in Conference of Hope: Proceedings of the First Historic Helen Keller World Conference on Services to Deaf-Blind Youths and Adults* (Sep. 16, 1977), available at <http://www1.umn.edu/humanrts/instree/deaf-blindrights.html> (last visited Nov. 29, 2023).

and based on the central theme of “Equalization of Opportunities” World Programme of Action Concerning Disabled Persons, 1980²³ voiced for inclusion of disabled persons into socio-economic life through emphasises on deterrence of disability, early diagnosis and treatment, rehabilitation, vocational training, counselling, supply of external aids setting up of special schools and academy.

United Nations General Assembly addressed the implementation of this programme in 1982 and 1983 by calling upon the world community to formulate strategies, measures and precautions in their national policy including the utilization of technology to safeguard the rights of disabled persons and to eliminate prejudice and discrimination against such persons in the field of education and employment.

The World Programme together with the International Year of Disabled Persons, 1981 marked the beginning of a new shift in defining disability as the interaction between people with disabilities and their surroundings and it necessitated the removal of societal barriers for full participation of people with disabilities in society. In 1993 the United Nations General Assembly brought in the standard rules with the cardinal objective of achieving positive and full inclusion of persons with disabilities in all the aspects of society. To ensure equal participation of disabled persons awareness, medical care, rehabilitation, support services are pre-requisites to achieve the participation in targeted areas of accessibility, education, employment, family life, social security, sports, recreation etc. Measures like information and research, legislation, policy making and planning, personnel training etc have been demarcated for implementation of the standard rules.

Soft laws on rights of disabled persons though not binding, did set a pathway for welfare of people with disabilities as the recommendations and provisions therein urged towards application of the principle of equality and non-discrimination in ensuring their human rights. However, empowerment of persons with disabilities through human rights under a legally enforceable instrument propelled in the adoption of Convention on the Rights of Persons with Disabilities (CRPD), 2006 by the General Assembly of the United Nations.

However, empowerment of persons with disabilities through human rights under a legally enforceable instrument propelled in the adoption of Convention on the Rights of Persons with Disabilities (CRPD) 2006²⁴ by the General Assembly of the

²³ UNITED NATIONS & DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS DISABILITY, *World Programme of Action concerning Disabled Persons* (1980), available at <https://www.un.org/development/desa/disabilities/resources/world-programme-of-action-concerning-disabled-persons.htm> l#:~:text=The%20purpose%20of%20the%20World (last visited Nov. 29, 2023).

²⁴ UNITED NATIONS available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> (last visited Dec. 12, 2023)

United Nations. States who are parties to the CRPD are accountable to protect, promote and ensure the full enjoyment of basic human rights to persons with disabilities, along with equal protection under the law. To ensure human rights to disabled people, CRPD aims at ending discrimination, infusing diversity in the system of education, enabling independence and assuring safeguard against violence.

The analysis of the disability related international instruments prior to CRPD projects the influence of sociocultural, diplomatic and economic components on the human rights of individual but it is CRPD which has been a giant leap in exclusively addressing the human rights of persons with disabilities.²⁵ CRPD is the first integrated human rights treaty encompassing a multitude of rights – economic, social, cultural, political and civil for enabling participation of person with disabilities in different aspects of life.²⁶ CRPD has acknowledged that equal participation of such persons in society is constricted by barriers imposed by environment and attitude and the interaction of these people with barriers results in disability. CRPD promotes an inclusive definition of person with disabilities with due regard to long term impairments in the physicality, mentality, intellect or sense of such persons. This recognition of hinderance to equal participation in society owing to interaction between impairment and barriers reflects a shift from a medical model to social model of disability.

Every disabled person is different and to ensure enjoyment of human rights, certain need-based and appropriate modifications and adjustments are advocated by CRPD through reasonable accommodation. If people with disabilities are not provided reasonable accommodation, then it would amount to discrimination. Thus, the principle of reasonable accommodation under Article 2 of CRPD guarantees that everyone has accessibility and is treated equally under all relevant employment terms and conditions. This adheres with the International Labour Organization's (ILO) bedrock concept that adjustments should be made in the place of work to promote inclusion and diversity.²⁷ The ILO has an extensive record of fostering social justice and secure meaningful employment for those with disabilities. It also attempts to incorporate disabled individuals in every aspect of its operations, including internal procedures and collaborations with other UN organizations.

²⁵ Tina Minkowitz, *The United Nations Convention on the Rights of Persons with Disabilities and the Right to Be Free from Nonconsensual Psychiatric Conventions*, XXXIV 405 SYRACUSE J. INT'L L. & COM (2007).

²⁶ Michael Ashley Stein, *Disability Human Rights*, XCV CLR 95 (2007).

²⁷ INTERNATIONAL LABOUR ORGANIZATION, *Disability and Work* (2016), available at https://www.ilo.org/global/topics/disability-and-work/WCMS_475650/lang--en/index.htm (last visited Nov. 23, 2023).

CRPD obligates the States to take up measures for ensuring that person with disabilities (PwDs) enjoy basic rights. Right to life²⁸ encompasses the respect for physical and mental integrity²⁹ of disabled persons. Privacy issues pertaining to personal information and health related data are critical and hence right to be protected against such infringement has been accorded to PwDs.³⁰ Persons should not be deprived of their liberty³¹ and nationality including their right to reside or leave or enter their country³² because they are disabled as the same would result in double disadvantage. Deprivation of liberty should not be arbitrary rather based on lawful grounds. To protect against arbitrariness, it is important to ensure that PwDs can access justice and be legally recognized and have legal capacity to participate and exercise rights.³³ Incorporation of appropriate accommodations for PwDs will maximize their right to justice.³⁴

Right to participation of PwDs necessitates a platform to express their opinion through varied disability friendly communicational modes such as sign language, Braille³⁵ including accessibility in physical surroundings³⁶, sporting activities³⁷, cultural events³⁸, right to vote³⁹, travelling, public amenities and services etc.

CRPD aims at preventing isolation and segregation of PwDs and stresses on the right of such persons in take part in community life.⁴⁰ All people do not have same degree of disability and there may some PwDs who can live independently whereas some would require support of in-home places. It is obligation of the State parties to respond to the varying needs of PwDs by granting them the choice to reside on their own or to seek support living facilities.⁴¹ Access to information by States about mobility aids, assisted technologies, services and facilities are vital for enabling PwDs to make decision regarding the usability of the same by them.⁴² To implement this States to the CRPD should take effective steps and thereby facilitate personal mobility at affordable cost.⁴³ CRPD advocates for protection of persons with disabilities against torture, degrading treatment, abuse and

²⁸ Article 10.

²⁹ Article 17.

³⁰ Article 22.

³¹ Article 14.

³² Article 18.

³³ Article 12.

³⁴ Article 13.

³⁵ Article 21.

³⁶ Article 9.

³⁷ Article 30.

³⁸ *Id.*

³⁹ Article 29.

⁴⁰ Article 19.

⁴¹ Article 19.

⁴² Article 4.

⁴³ Article. 20.

exploitation.⁴⁴ Unless PwDs voluntarily express their consent, they cannot be subjected to any kind of scientific or medical experimentation.⁴⁵

PwDs have right to marry, live in home and raise a family.⁴⁶ CRPD requires the governments to provide appropriate measures to support the disabled persons in the upbringing of their children⁴⁷ as well as provide maximum assistance and participation via provisions of habitation and rehabilitation services.⁴⁸ Disability raises many serious health concerns and CRPD under Article 25 have recognized that all persons with disability including those in rural areas should not be discriminated in accessing gender-sensitive, affordable health-related care, programmes, services, rehabilitation and insurance. States are obliged to focus on identification, intervention, sexual and reproductive health of PwDs.

Right to education of PwDs is recognized under CRPD and it has emphasized against exclusion of PwDs including children from general education system, primary and secondary education and advocates for providing reasonable accommodation so that all PwDs can develop life and social skills, mobility skills and receive vocational training, adult education and lifelong learning.⁴⁹ Inclusive education is imperative for ensuring effective participation and social and academic development of PwDs.

Disability cannot be a criteria for discriminating against PwDs in the field of employment and States must enact laws for according protection to PwDs by providing for safe and healthy workplace free from harassment, equal remuneration and opportunities, labour rights, technical and continuing training, promotion, job retention in public and private sector.⁵⁰ It is noteworthy that CRPD has acknowledged the States responsibility in protecting women, girls⁵¹ and children against multiple discriminations arising out of intersection between disability and gender. States are required to take up measures for enjoyment and exercise of human rights by women and children and to conduct their child related activities based on the principle of best interest⁵². To protect women and girls from forced sterilisation, CRPD under Article 25 states that PwDs including children should have the right to equally retain their fertility.⁵³ The Optional Protocol to the

⁴⁴ Article 16.

⁴⁵ Article 15.

⁴⁶ Article. 23.

⁴⁷ *Id.*

⁴⁸ Article. 26.

⁴⁹ Article 24.

⁵⁰ Article 27.

⁵¹ Article 6.

⁵² Article 7.

⁵³ UNICEF available at <https://www.unicef.org/documents/using-human-rights-framework-promote-rights-children-disabilities-discussion-paper> (lasted visited Dec. 10, 2023).

Convention on the Rights of Persons with Disabilities, 2006⁵⁴ facilitates complaints to be filed by individuals who claim that their State which is a party to the CRPD has violated or denied the enjoyment and exercise of rights guaranteed under CRPD.

Disability discourse needs to address the synergies between the Convention on the Rights of Child (CRC), 1989, CRPD and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979. There is no express provision under CEDAW for women with disabilities. However General Recommendation No 18 of the Committee on the Elimination of Discrimination of Women has viewed that there is dual marginalization of women with disabilities along with dearth of data and that periodic reports of the State Parties should reflect this information and that there should be efforts by States to ensure women and girls with disabilities participate in the social and cultural life.⁵⁵ CRC prohibits discrimination among children on various grounds including disability⁵⁶ and obligates State Parties to ensure that children with mental and physical disability are ensured dignity to live a decent life. Disabled children should be made self-reliant and special care including free access to education, training, health services, rehabilitation should be made available to such children for their development and social integration⁵⁷. Though the focus of the three Conventions is different yet collective understanding of them reinforces and enriches the promotion and protection of rights of PwDs including women and children in recognizing their legal capacity, right to inclusion, participation and respect for family life.⁵⁸

The global agreement known as the Sendai Framework for Disaster Risk Reduction 2015-2030 adopted March 8, 2015 at the Third UN World Conference on Disaster Risk Reduction recognises that at all stages of disaster risk reduction planning PwDs must play a critical role and it also advocates for integration of policies relating to disaster risk reduction with disability.⁵⁹

Resolution 2475 was adopted by Security Council on 20th June 2019 wherein it has asserted that in conflict situations person with disabilities are to be protected by Member States and parties to the armed conflict and that it is the responsibility of the parties to ensure that humanitarian assistance,

⁵⁴ UNITED NATIONS, *Optional Protocol to the Convention on the Rights of Persons with Disabilities* (Dec. 16, 2006), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-persons-disabilities> (last visited Nov. 29, 2023).

⁵⁵ UN WOMEN available at <https://www.unwomen.org/en/what-we-do/women-and-girls-with-disabilities/global-norms-and-standards> (last visited Dec. 12, 2023).

⁵⁶ Article 2.

⁵⁷ Article 23.

⁵⁸ *Supra.*, note 52.

⁵⁹ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS available at <https://www.ohchr.org/en/disabilities/international-standards> (last visited Dec. 12, 2023).

accessibility to justice and basic services are provided to PwDs without any impediments.⁶⁰

The mandate of the Special Rapporteur on rights of Persons with Disabilities was established in 2014 by the Human Rights Council (HRC) and in 2023 the same has been renewed by resolution A/HRC/RES/53/14. The main purpose of the mandate is to provide strength to efforts for recognition, promotion, implementation and monitoring the human rights of PwDs in consonance to the CRPD. From 1st of November 2023 Ms. Heba Hagrass has been appointed as the Special Rapporteur by the Human Rights Council. If any PwDs alleges that their human rights have been violated in their country, then based on such information the Special Rapporteur can seek clarification from the concerned State by sending communication. When the government of a country invites, then Special Rapporteur can conduct country visit and examine the situation pertaining to protection of human rights in that country and submit reports to this effect to the HRC. Reports of different themes relating to concerns and protection of human rights of PwDs are annually submitted by the Special Rapporteur to the General Assembly and HRC.⁶¹

Mr. Gerar Quinn, the Special Rapporteur on the Rights of Persons with Disabilities in his report of 2021⁶² has discussed that artificial intelligence (AI) when used in a responsible manner can positively impact the rights imbibed in CRPD by enabling PwDs inclusion, promote equality, improve disability services, provide accessibility to education, employment, services and ensure support for PwDs to lead an independent life. AI tools such as assistive technology for mobility of PwDs, eye tracking, voice recognition, speech-to-text software, exoskeleton etc are beneficial for PwDs. However, it is imperative to regulate the use of AI because it may violate the privacy of PwDs and make unfair decisions if bias information is utilized in training the machines. This report has addressed a serious concern of AI's adverse impact of the life of PwDs during risk situations or armed conflict as automated weapons cannot distinguish people including PwDs who are not party to the conflict. The unfettered use of AI in war will contravene the principle of distinction under international humanitarian law. Mr. Quinn has recommended that countries should respect the rights of PwDs under CRPD while enacting laws on AI and digital inclusion and special rules should be

⁶⁰ *Supra.*, note 57.

⁶¹ OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS available at <https://www.ohchr.org/en/special-procedures/sr-disability> (lasted visited Dec. 12, 2023).

⁶² Gerar Quinn (Special Rapporteur on Rights of Persons with Disabilities), *Artificial Intelligence and the Rights of Persons with Disabilities*, A/HRC/49/52 (Dec., 28, 2021).

formulated for AI tools which are using facial and emotional recognition technology. Further countries in their periodic report have been urged to indicate problems in utilizing AI and what measures they have taken in effectively using AI in ensuring the enjoyment of rights under CRPD by PwDs.⁶³

Discussion on Sustainable Development Goals (SDGs) vis-à-vis persons with disabilities is pertinent with respect to the implementation of the pledge of *not leaving anyone behind* proclaimed by United Nations on adopting the 2030 Agenda for Sustainable Development. Disability is a cross cutting issue under 2030 Agenda and specific targets under various SDG Goals related to poverty and hunger, health and well-being, sexual and reproductive rights, access to justice, education, gender equality, employment, disaster and climate change, violence etc are explicitly and implicitly relevant for persons with disabilities. Implementation of the provisions of international normative framework such as UDHR, CRC, CEDAW, ICESCR, CRPD, UNESCO Convention against Discrimination in Education etc are intrinsically linked with the achievement of SDG.⁶⁴

IV.

Regional Arrangements and Human Rights of Persons with Disabilities

The purpose of UNCRPD and its Optional protocol has enabled individuals with disabilities to manoeuvre their all-basic human rights to the fullest potential. States have established regional rules and standards all around the world to improve the international mechanism for safeguarding persons with disabilities to accommodate regional peculiarities. Domestic rules governing security of persons with disabilities may vary from country to country within a region. In furtherance of providing some uniform principles and protection, various regional instruments have been adopted.

The Economic and Social Commission for Asia and the Pacific (ESCAP) declared the Asian and Pacific Decade of Disabled Persons, 1993-2002, during the conclusion of the United Nations Decade of Disabled Persons (1983–1992) to give the World Programme of Action concerning Disabled Persons in the ESCAP region a fresh boost after 1992. This resolution was adopted at ESCAP's forty-eighth session in 1992. United Nations Economic and Social Commission for Asia and Pacific Region (UNESCAP) is a regional development wing of the UN which supports this geographic region and boost the support of the regional governments to enhance the social participation of the disabled groups. This aid

⁶³ *Supra.*, note 60.

⁶⁴ UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, *UN Flagship Report on Disability and Development* (2018) available at <https://social.desa.un.org/publications/un-flagship-report-on-disability-and-development-2018> (lasted visited Nov. 30, 2023).

and assistance are allocated through various operational activities, networking and collaborative effort growth, finding effective practical scenarios, and consulting services on putting the Asian and Pacific Decade of Disabled Persons Agenda for Action into practice.⁶⁵

The Biwako Millennium Framework for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific (BMF)⁶⁶ was adopted for announcing the continuance of the Asian and Pacific Decade of Disabled Persons (1993-2002) and for promoting an inclusive, barrier-free, and rights-based society for people with disabilities in the Asian and Pacific region in the twenty-first century. The millennium development objectives and its pertinent targets are clearly included in the regional framework for action to guarantee that issues pertaining to people with disabilities are taken into consideration when making efforts to achieve the goals. The Meeting on the Final Review of Asian and Pacific Decade of Persons with Disability (2013-2022) was concluded in Jakarta on October 2022 and it recommended that governments, people with disabilities, and other beneficiaries must assess the progress accomplished and map out the next steps for a new phase of development in the area that is disability-inclusive.

The African Decade of Persons with Disabilities (2000- 2009)⁶⁷ was regarded as a commendable effort by non-governmental organizations to expand opportunities for people with disabilities in collaboration with member countries and the Organization of African Unity. The core objective of the decade was to enable all parties involved, to collaborate and embrace disability and people with disabilities in all facets of development in the context of Africa. According to the Action Plan, authorities were to work with organizations of people with disabilities, international bodies like the African Union and its specialized agencies, social partnerships classes (employer-worker associations), non-governmental organizations, and other civil society organizations to implement the purposes

⁶⁵ UNITED NATIONS, *The Asian and Pacific Decade of Persons with Disabilities 1993 - 2002 Resources*, available at <https://www.un.org/esa/socdev/enable/comp304.htm> (last visited Nov. 14, 2023).

⁶⁶ UNITED NATIONS, *The Biwako Millennium Framework for Action towards an Inclusive, Barrier-Free and Rights- Based Society for Persons with Disabilities in Asia and the Pacific* (May 22, 2002) <https://digitallibrary.un.org/record/501592?ln=en> (last visited Nov. 29, 2023).

⁶⁷ UNITED NATIONS, *The African Decade of Persons with Disabilities (2000- 2009)* (Jul. 2000) available at <https://www.un.org/esa/socdev/enable/disafricadecade.htm#:~:text=The%20period%202000%20to%202009,promoting%20awareness%20and%20commitment%20to> (last visited Nov. 29, 2023).

and objectives of the African Decade.⁶⁸ Poverty is one of the major causes of disability. The New Partnership for Africa's Development (NEPAD)⁶⁹, whose fundamental objectives include encouraging rapid and sustainable development and eradicating ubiquitous and severe poverty, has been recognized as a sub-program of the Africa Decade. Africa's masterplan '*Agenda 2063: The Africa We Want*' under Goal 1 has identified "social security and protection including persons with disability" as one of the priority areas.

The pervasive problems of disability discrimination have been confronted in Protocol to the African Charter on Human and People's Right of Persons with Disability in Africa, 2018⁷⁰ and it aims to ensure that everyone has stigma-free access to health, education, and employment. The Protocol safeguards and espouses human rights of persons with disabilities and basic freedom in the member states of the African Union and has taken into consideration the unique geographical conditions of Africa and asserts that no person is distinguished from other. It has given due regard to CRPD's broad observations and perspectives and extends around the principles of the CRPD and UDHR. It takes a rights-based approach and is more specific and illustrative in capturing the unique characteristics of the African setting. In the context disability rights, the Protocol covers a wide range of subjects including the impact of customs, harmful practices and traditional beliefs on disability and the roles of families, relatives, and the community in the context of persons with disabilities have been addressed in Protocol. Minority groups such as albino individuals within the African disability community and rehabilitation in the community are also brought within the coverage of the Protocol.

Incorporation of disabled folks into the society entails educational initiatives, development of laws and conduct of social programmes. The call for such effort was made by the Organisation of American States (OAS) through the adoption of the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, 1999⁷¹. The Convention purports to promote the full integration of people with disabilities into society and to prohibit and eliminate all forms of discrimination against them. The definitional aspects of 'disability' and 'discrimination' has been explored within the Convention and it states that as long as the *distinction or preference* does not restrict the right of people

⁶⁸ UNITED NATIONS, *World Programme of Action Concerning Disabled Persons* available at- <http://www.vvaf.org/humanitarian/omega.shtml> (last visited Dec. 8, 2023).

⁶⁹ Zein Kebonang, *The New Partnership for Africa's Development: Promoting Foreign Direct Investment through Moral Political Leadership*, XXXV SAJL (2005).

⁷⁰ S. A. Djoyou Kamga, *A Call for a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa*, XXI AJICIL 219 (2013).

⁷¹ ORGANIZATION OF AMERICAN STATES, *Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities*, (Jun. 7, 1999) available at- <https://www.refworld.org/docid/3de4cb7d4.html> (last visited Dec. 9, 2023).

with disabilities to equality and people with disabilities are not coerced into accepting *the distinction or preference*, a state party's adoption of a *distinction or preference* to support the social integration or personal development of people with disabilities does not amount to discrimination.⁷²

The Declaration on the Decade of the Americas for the Rights and Dignity of Persons with Disabilities (2006-2016) based on the theme of "Equality, Dignity and Participation" primarily involves aims at acknowledging and promoting the full enjoyment of the privileges, rights and sobriety of people with disabilities, as well as their right to actively cooperate and assist in political, economic, social, and cultural life.⁷³ Adhering to the postulates of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, 1999 the Declaration envisages the evolution of their communities free from bigotry and on an equitable basis with others.⁷⁴

The need to recognize the rights of person with disabilities at the 2004 Arab Summit in Tunis led to the adoption of Arab Decade for People with Disabilities (2004-2013) by the United Nations Economic and Social Commission for Western Asia. It had dual objectives: to forge a common stance on the creation of an Arab Plan of Action to aid in the accomplishment and administration of the Arab Decade for Persons with Disabilities and to review various task and duties being done by the UN Ad hoc Committee to create an international convention to advance and defend the rights and privileges of people with disabilities. It also focused towards strengthening the areas of policy, programmes, design and arrangement for disabled persons in the Arab nation. This has been viewed as a milestone because for the first time Arab world took a concerted step towards formulation of regional principles and guidelines for national initiatives on disability.⁷⁵ The international community two years later adopted the Convention on the Rights of Persons with Disability 2006 and as per United Nations Development Programme the said Convention has been signed or ratified by most of governments in the Arab world and disability inclusion has been cited as a priority by many governments from the Arab region in the Universal Periodic Review or Voluntary National Reviews.⁷⁶

⁷² *Supra.*, note 69.

⁷³ ORGANISATION OF AMERICAN STATES available at https://www.oas.org/dil/ag-res_2230_xxxvi-o-06_eng.pdf (lasted visited Dec. 12, 2023).

⁷⁴ *Supra.*, note 71.

⁷⁵ ECONOMIC AND SOCIAL COMMISSION OF WESTERN ASIA (ESCWA), LEAGUE OF ARAB STATES available at https://einclusion.unescwa.org/sites/default/files/resources/disability_in_the_arab_region-an_overview_-_en_1.pdf (last visited Nov. 29, 2023).

⁷⁶ Mourad Wahba and Sarah Poole, *Towards Disability-Inclusive Development in the Arab States*, (Dec. 04, 2018) available at - <https://www.undp.org/arab-states/blog/towards-disability-inclusive-development-arab-states> (last visited Nov. 29, 2023).

Human rights of all including persons with disabilities have been significantly advocated by the Council of Europe through promotion, protection and monitoring the implementation of such rights. The enjoyment and accessibility to human rights specified under Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and UNCRPD have been ensured to disabled persons. The 'Council of Europe Strategy on the Rights of Persons with Disabilities – Human Rights: A Reality for All (2017-2023)' aims at achieving equality and dignity by ensuring that persons with disabilities actively participate in society, are independent and free to make choices. Five priority areas have been identified in the Strategy. Persons with disabilities are susceptible to violence, abuse and exploitation and the Strategy prioritizes the freedom from same and emphasizes upon protection against discrimination and that law should equally recognize disabled persons. Persons with disabilities residing in the 47 Council of Europe member States are beneficiaries of this Strategy and implementation of the policy under it is entrusted to the respective governments of the member States.⁷⁷ The jurisprudence of disability rights of persons have also been spearheaded by the European Court of Human Rights through decisions on death of disabled person in police custody and care home, forced abortions of disabled women, detention, physical harassment, accessibility to public buildings etc.⁷⁸

V.

Conclusion

With the establishment of the United Nations, the movement for safeguarding rights of persons with disabilities and rehabilitation has gained a widespread recognition. The emergency of international and regional human rights instruments has proved to be a major catalyst in the world-wide disability rights movement that shifts from objectifying a person with disabilities as a means of charity, medical treatment to guaranteeing them treatment as full and equal members of society with fundamental human rights.⁷⁹ Barriers of accessibility, availability and affordability challenge the fulfilment of SDGs. People including children with disabilities may not be able to access health care services owing to

⁷⁷ Council of Europe, HUMAN RIGHTS: A REALITY FOR ALL DISABILITY STRATEGY 2017-2023 (2017) available at <https://edoc.coe.int/en/people-with-disabilities/7276-pdf-human-rights-a-reality-for-all-council-of-europe-disability-strategy-2017-2023.html> (last visited Nov. 29, 2023).

⁷⁸ EUROPEAN COURT OF HUMAN RIGHTS available at www.echr.coe.int > documents > d (last visited Nov. 30, 2023).

⁷⁹ Coomara Pyaneandee, INTERNATIONAL DISABILITY LAW: A PRACTICAL APPROACH TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES 19–21 (2019); Aart Hendriks, *UN Convention on the Rights of Persons with Disabilities*, XIV EJHL 273 (2007); Shouvik Kumar Guha, *Protecting the Disabled Persons under the Human Rights Regime - the Shift from Welfare to Rights* XXXIII JILS (2011).

poverty which may also deprive them from receiving education and affect their employability prospects and livelihood thereby reinforcing exclusion, discrimination and violence upon such persons. According to the Special Rapporteur's report in many countries support services are not treating PwDs as people, PwDs are not allowed to make their own choices, laws on support services are inadequate; lack of adequate support staff for PwDs, insufficient financial capacity to bear the burden of support services and technology has not been used to provide support to PwDs.⁸⁰ This means that PwDs are not included and are deprived to their human right to participate in community life. Removal of these barriers requires concerted efforts nationally, regionally, and globally by providing support services to enable PwDs to exercise their human right to be heard, to make choices, and to be included in the community life. It has been recommended by the Special Rapporteur that countries should change their laws relating to support services, provide financial assistance to families of PwDs, permit licences to service providers who include PwDs etc.⁸¹ The guiding principles embedded under CRPD, more particularly the thrust on respecting differences and acceptance of person with disabilities in the light of diversified humanity⁸² is the hallmark of emerging human rights model of disability. As of 2023 there are 188 State Parties to the CRPD.⁸³ To materialize the principles of CRPD and to address the problems affecting the human rights of persons with disabilities, it is contingent upon the concerned State Parties to implement the provisions of the CRPD through domestic legislation, international cooperation, and regional efforts.

⁸⁰ Gerar Quinn (Special Rapporteur on Rights of Persons with Disabilities), *Transformation of Services for Persons with Disabilities*, A/HRC/52/32 (Jan., 30, 2023).

⁸¹ *Id.*

⁸² Article 3.

⁸³ *Supra.*, note 78.