

Human Rights Violation of Mentally Challenged

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Abstract

Human rights are based on equality and non-discrimination approach. They recognize the fact that each individual is of equal worth and has equal dignity and rights. In Article 1 of Universal Declaration of Human Rights (UDHR), it has been clearly explained that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'. It is quite clear that all human beings are equal in rights and dignity whether they are able or disabled, but persons with disabilities suffer discrimination in their daily life and moreover persons suffering from intellectual disability are considered as sub-humans. Persons suffering from intellectual disability are facing discrimination since times immemorial. They were considered as sub-human, a curse on the family and on the society, so all their rights were seized from them. Mostly, they were kept in prison-like situation, clowns in courtyards for entertainment, and in some cases, they were abandoned or killed by their own family members. In the world, according to many religions, being mentally challenged is considered as the sin of their past life and in some religions, they facilitate with charitable approach rather than right based approach. Even philosophers like Plato and Aristotle's thoughts were against them. In today's modern society also, they stand last in the queue of right holders. At the time of making Charter and UDHR of United Nations, their rights had been ignored by the framers. There are many soft law instruments for the protection of human rights of persons with disabilities in which persons suffering from intellectual disability have been ignored. In 2006, UNO passed its first legal instruments Convention on the Rights of Persons with Disabilities (CRPD) in which human rights of mentally challenged have been ignored because the needs are different for persons suffering from any other kind of disabilities.

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INTRODUCTION

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood” [1].

The belief of human rights recognises the fact that each individual is of equal worth and has equal dignity and rights; every person has the right to participate in social life. It also creates a duty for every individual to respect the rights, autonomy and dignity of other individuals without any kind of discrimination. Human rights are a need for human beings to live a decent and civilized life. It is unfortunate for those who are mentally challenged as they have been categorised and because of this categorization, they have been isolated, humiliated, stigmatised and marginalised. They are human beings like us

with only having some limitation of intellectuality due to some endogenous biological or genetical cause, due to pre- or post-natal trauma etc. It can also happen due to factors like poverty, lack of nutrients during pregnancy and in some cases, there is no specific cause. As they are suffering from deficiency in intellectual level, they are not able to raise their voice against violation of their human rights and in some cases, due to severity of their impairment of intelligence they are not even able to understand that their human rights are being violated. They are forced to live a poor quality of life and treatment and they are also denied of basic human rights like education, recreation, employment, and adequate food, which are necessary to live a dignified life. Although United Nations Organisation (UNO) has ignored the rights of persons with disabilities

at the time of making its Charter, but later it has adopted many conventions and declarations to provide the rights to persons with disabilities.

In today's scenario, mentally challenged are living in pathetic situations due to prejudice related to them and we cannot ignore the fact that persons suffering from intellectual disabilities were also present in the past, so it is also important to assess the religious, historical and United Nations approaches about them.

However, manifestation about mentally challenged has been changing from one religion to another; and religious aspects with regard to mentally challenged need to be taken into consideration as these have been directly influenced and affected by the blind belief that rules to be directly given by God or interpreted by the Sages, Prophets or Fathers of the religion. It appeals to the will of God. Those rules should be treated as the law and followed by the believers of a particular religion without any questioning. Although the ethical and moral values need not have any religious aspects, the religious mandates and directions were meant as norms for human living and welfare of human beings. And this fact has been illustrated in different books related to human rights showing that human rights were present earlier in the form of natural rights as can be found in many of the religious books.

Society's philosophy about mentally challenged has been changing from century to century and from one religion to another. Mentally challenged persons were considered as subhuman in history and they were taken as a sin on the society and on the humanity. In some cultures, they were abandoned in woods and were even killed by the society or by their own family members.

So, we cannot ignore the fact that people suffering from intellectual disabilities were always present in society and people treated them according to their culture and prejudice. The protection of human rights of these disabled persons is not only a matter of concern for today's world, but it had been in the past also. In the past, before medieval era

when people were totally dependent on the rulers and God of religion, people with intellectual disability were taken as sub-humans and in many courtyards they were appointed as a thing of entertainment for others.

To understand the real situation of mentally challenged, one should try to analyse things according to perspectives of different religions of the world.

Religious Aspects

Hinduism is the world's oldest living religion, dating back to at least 2000 BC. As its name suggests, Hinduism originated, developed and flourished mainly in India, and there are almost over 500 million followers in the world today.

According to the book of law of Hinduism, that is, *Manusmiriti (manav-dharmshastra)* disability was taken as a punishment for the sins one committed in one's previous birth.

'Annaharttamayabitvammekyimvanpaharakah Vastrapaharakahshwetrapangutamshwaharakah' [2].

It means that a person who steals grains will suffer from indigestion. If one recites the Vedas without the permission of a 'guru' he would become dumb and the one who steals clothes will suffer from white patches over his body. A person who steals horse shall be born disabled (Physical and Intellectual).

Ancient Hindu texts treat mental disability as any other disabilities like blindness, deafness, dumbness etc.

In India, in ancient times also, medicine provided guidelines for the treatment of mental retardation. Two well-known Ayurvedic manuscripts, the *Charak Samhita* by Charak, and the *Sushruta Samhita* by Sushruta, have established the roots of modern Indian medicine. The ancient Indian scripture, *Artharva-Veda*, mentioned that mental illness may result from divine curse. Descriptions of symptoms of schizophrenia and bipolar disorder appear in the Vedic texts. A vivid description of schizophrenia is also found in

Artharva-Veda. Other traditional medical systems of Hinduism such as *Siddha*, recognize various types of mental retardation. According to Charak and Sushruta, mental retardation was caused by genetic, nutritional, and environmental factors and the causative factors include *grah* or planetary influences. *Charak Samhita* had described various attributes for a hospital including its location, details of equipment, food and cleanliness and model code of conduct for physicians, nursing staff and ward attendants.

Hinduism is one of the world's oldest religions which says that persons face mental disability or challenges due to the bad *karma* of their past life and so there is no place for them in this religion. As the result, the mentally challenged had to suffer a lot. They were abandoned and kept isolated from the society.

The world's largest religion, Christianity, believes in the teachings of Jesus, who was given the title Christ by his followers. Christ is a Greek word for the Hebrew word *messiah* mean the savior. There are almost 10,000 million followers of Christianity.

According to Christianity, disabled people should be helped to be integrated into the society as creatures of God. It is written in the Gospels that Jesus used to live among the blind, paralyzed and the deaf as well as with the epileptics and with the mentally challenged [3].

Another religion which has 1000 million followers in the world is Islam, and followers of Islam are called Muslims. The religious text of Islam is Quran which Muslims believe to be a revelation from God (Allah) who recognizes the rights of the mentally challenged 'Those weak of understanding give not your property which Allah has assigned to you to manage, but feed, clothe them therewith, and speak to them words of kindness and justice' [4].

According to Islam, all those who are considered unfit to manage property, they should be treated with dignity and kept under the care by guardians. They should be provided with food and clothes, but they should not have any decision-making power and their whole life would be on the pity of other members of the society.

Followers of any religion follow their respective religious texts and behave accordingly. So, what different texts say about mentally challenged people of particular religion, they begin to start behaving with mentally challenged in the same way; if the religion says they are suffering due to *karma* of their past life, then people also treat them badly, and if religious texts say that they should be treated with dignity, then mentally challenged are treated with dignity.

Thus, we see that religious texts play a very important role on any issue related to conditions of disability of humans. We should also be well-acquainted with the historical approach about mentally challenged to get a clear picture of their conditions and attaining measures to improve them.

Historical Approach

In the historical perspective too, the mentally challenged are considered as sub-humans, a curse on the family and on the society at large. Therefore, their rights are always seized by the society and by their own family members to the extent that in some cultures, they were even killed or abandoned by their own family. It was believed that mentally challenged people were suffering because they were possessed by devil though the possessed in themselves were holy and innocent; they were children of God but having a diseased organism.

Greek people destroyed a crippled member because of their concept of perfection. The Athenians allowed their crippled children to die of cold and neglect while the Spartans took them to the hill tops and killed them. Among the Romans, the father had the right to destroy a deformed child if he exhibited the child to five neighbours and obtained their consent. The Romans had a tablet of 12 laws between 541 and 540BC according which the father had the authority to destroy a deformed child immediately after his birth [5].

The exploration of the historical background of mentally challenged creates a backdrop for the subsequent discussion of the philosophical world of mentally challenged. In fact, the philosophers like Plato and Aristotle were

against the mentally challenged. While in the eyes of the great philosopher Plato, 'there was no room for the physically unfit and the disabled'; Aristotle declared that 'nothing imperfect or maimed shall be brought up'. Another religious leader of medieval Germany, Martin Luther supported the killing of disabled baby as they were considered as the incarnation of the devils and so it was not wrong to kill them.

Greek and Roman philosophers disparaged people with intellectual disability. However, Romans did allow some protection for children with intellectual disability who were born in rich family by PWID (person with intellectual disability) property rights by allowing them to have guardians. Before enlightenment in Europe, care asylum for mentally challenged was provided by the families and the church focusing on basics like food, cloth, shelter and security [6].

Before 18th century, people had different views regarding mentally challenged. Mild mentally challenged persons were excluded from the category of mentally challenged and they could not receive any identification and treatment.

However, mentally challenged persons who were suffering from severe conditions received protection and care from their families or in monasteries as there was a belief that people who are mentally challenged severely, were capable of receiving divine revelations.

In the late 19th century, in response to Charles Darwin's 'the origin of species', Francis Galton proposed selective breeding of humans to reduce the number of mentally challenged which provided foundation for the eugenics movement. The movement affected developed countries of that time like the United States and Britain.

In response to eugenics movement, United States enacted sterilization laws notably in Indiana, Virginia, North Carolina, Georgia and California, in which, Indiana passed the first sterilization law in 1907 for 'imbeciles' who had been diagnosed as 'unimprovable'. Between 1907 and 1944, more than 42,000

people were sterilized in the US to eliminate genetic diseases including feeble mindedness, of which, over half of them were from California. Another sterilization program was performed in 27 states to prevent mental retardation and other conditions between the year 1943 and 1963 [7].

Later on, in 1933, the Nazi government in Germany made compulsory sterilization law, under which a person diagnosed as feeble minded was forcibly sterilized and during the holocaust, a large number of mentally challenged were murdered by Hitler [8].

When people began to think about the mentally challenged, new concepts were introduced one after another. A very important human right i.e. Right to life had been denied to the mentally challenged because of some foolish reasons and accordingly, there was no place for them in this world. So, they were killed mercilessly.

In Britain, the Mental Deficiency Act of 1913 emphasized segregation of males and females over sterilization and remained in effect until 1959 when the British practitioners preferred to implement educational programmes for mentally challenged. They also defined mentally challenged as those who could not fit into the modern world [9].

In the late 18th century and in the beginning of 19th century, mentally challenged were kept in institutes to protect the so called normal society and to control the reproductive lives of the mentally challenged. In these institutions, the feeble-minded men and women were strictly kept apart and many of them were sterilized. In late 1942, many doctors in the US advocated 'euthanasia' of 'idiots' children to avoid the population of mentally challenged [10].

In the mid of 1970, many governments had supported deinstitutionalization. The institutionalized mentally challenged population was also declined in England, Canada, and Norway, and in Sweden, no mentally challenged lived in the institution.

Although, from these practices, mentally challenged got some focus as on disability

issues; and they were getting recognised which created the matter of discourse on the world map. Being mentally challenged as a disease was first diagnosed before 400BC by the Greek physician 'Hippocrates'; he emphasized that the disease was the product of environmental factors, diet and living habits, not a punishment inflicted by God.

In history, mentally challenged people were always deprived of their basic human rights and were treated like sub-humans. They were killed by their own family members and their right to life was often violated through movements like eugenic movement by Galton, and holocaust by Hitler.

It is ridiculous to say that in the late 1942, the second Gods on the earth, the doctors of the United States advocated euthanasia. Other human rights, like the right to live in family and to have a family were exploited by the institutionalization movement, and by movements to sterilize the mentally challenged, to separate the male and female who were mentally challenged to exploit their sexual life. As persons suffering from mental retardation were always deprived of their human rights by the so called normal society, they were unable to raise their voice against the violation of their human rights.

Mentally challenged is one of the vulnerable groups among other disabilities. They are isolated, neglected, stigmatized, humiliated, marginalized and often remained last in the mind of framers of legislation and policy makers. They are incapable to participate in making the government and so their value is less than as a voter because of which none of the political parties take interest in mentally challenged persons. In the family also, they are neglected because of the disability they are suffering from.

PROTECTION UNDER INTERNATIONAL HUMAN RIGHTS LAW

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations in 1948, and this was the first legal document of human rights comprising of 30 Articles related to

protection of human rights of human beings. In the year 1966, two Covenants were adopted by General Assembly of the United Nations namely, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These three earlier legal instruments of United Nations which make up the International Bill of Human Rights never mentioned people with disability as a part of one of the discriminated groups like discrimination against women, racial discrimination etc.

It is ridiculous to be noted that mentally challenged people or persons suffering from any other disability could not hold a position of beneficiary in earlier legal instruments of the United Nations but there are a number of soft law instruments with clear focus on mentally challenged and disabled persons.

1. Declaration on the Rights of Mentally Retarded Persons, 1971;
2. Declaration on the Rights of Disabled Person, 1975;
3. World Programme of Action, 1982;
4. Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, 1991; and
5. Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993.

Many steps have been taken by the United Nations to protect the human rights of persons with disability through these soft instruments but these soft instruments are non-binding in nature, which means State parties are not bound to consider them while making policy or law.

However, in the year 2006, a Convention was adopted by General Assembly of the United Nations 'Convention on the Rights of Persons with Disabilities (CRPD)', which was the first legal instrument for the protection of human rights of persons with disabilities. It also clarified State parties to adopt a non-discrimination approach and to create such environment in which persons with disabilities enjoy all their human rights. It also recognized that discrimination against any person on the

disability is a violation of the inherent dignity and worth of that particular person. It also recognised the diversity of persons with disabilities. The Convention also emphasised the need to promote and protect the human rights of all persons with disabilities including those who require more intensive support. It emphasised the importance of the individual autonomy and independence, including the freedom to make their own choices of persons with disabilities. The Convention recognized that both within and outside home, women and girls with disabilities are often at greater risk of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation and recognized that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis. The Convention also stated that despite various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights happen in all parts of the world. The Convention comprises of 50 Articles and the purpose of all the Articles of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

The convention shifted the charity view of the society to the right based approach towards the person with disability. Convention covers almost all the aspects to provide human rights to disabled population. The present convention never mentioned any discrimination on the basis of incapability of mind and any provision on this ground to provide human rights and fundamental freedoms to mentally challenged. They are deprived of many rights due to their disability like right to vote, right to education, right to marriage etc. The present convention is not fully applicable to protect the human rights of mentally challenged. They are suffering from development disability which is not curable. They are having improperly developed brain as compared to their age. The situation of mentally challenged people is miserable than persons suffering from any other disabilities because of the under developed brain and as a consequence they are

incapable to think, to ask, to make decision, to fight for their rights and to raise their voices if they face any kind of discrimination. On the contrary, mentally challenged people's rights depend on other's wish because they are not able to make decision and fight for their rights. CRPD which is the first binding treaty for disabled people, also maintains silence on the rights of mentally challenged, and in the Convention too, there is no mention of any special provision for mentally challenged which creates a huge gap between the human rights and mentally challenged.

CONCLUSION

The human rights of mentally challenged people have been violated since early ages and continue to exist in modern era. Nothing much has been done to protect the human rights of mentally challenged people due to prejudice related to it. And due to lack of understanding about this disability in society, the condition of people suffering from it could not be improved till now.

To overcome the prejudices related to the mentally challenged, a strong initiative should be taken with the help of print and satellite media to change the views of the society about them that they are also part of the society and are entitled to enjoy their human rights. Mentally challenged persons are not suffering from any disease, but they are suffering from a condition of mind and they should be accepted as they are. They do not need any clinical care like the mentally ill. They need social care to live inclusively in society.

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