CHAPTER – V

Health Marginalisation: Human Dignity of Disabled Persons

Disabled persons are the most disadvantaged and are the most marginalised people of the society in India. These persons suffer from varied disabilities which may be due to many infirmities such as physical impairment, mental retardation or seribarium impairment, blindness, dumb and deaf and old age sickness. They are the bane of situational haplessness and they, as such, live in hopelessness from cradle to ashes. Their lives seem to continue to be hapless and handicapped by social, cultural and attitudinal barriers. What so ever their situational haplessness may be, they, too, have human right to dignified life.

In the background of this, it is imperative to analyze the meaning of disability and the legal framework both nationally and internationally that protects and promote their human rights to live with dignity; and to determine the lack of the improvements in the circumstances of the persons with disabilities despite a sound legal framework and a plethora of programmes as well as schemes. It is being felt and observed that the genesis of this skewed construction of disability can be traced at the level of genes and biology\(^1\). Therefore, disability should not be viewed as deviation, as abnormality, and a disqualification; rather persons with disability need more protection of their life, liberty and their dignity.

Thus there seems a greater realization that disability is a greater pervasive dimension of the diverse human cultures. Indeed it is expedient to redefine the norms of the social justice and human rights to make them relevant and meaningful in the context of disability. In the backdrop of this process, the very nature of disability shall mean that the governments and varied agencies dealing with the issues arising out of disability to

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recognize their obligations in understandable terms to set clear targets and strategies for the development of disability inclusive systems and processes\(^2\).

**Conceptual Approaches to Disability**

There is increasing conscientious thinking that the disabled persons deserve a dignified status in society in as much as the non-disabled persons. In this context one may recall the words of *Henry Viscardi, Jr.*, which may be conceded as the genesis of the conceptual approach to disability: “None of us is without limitation, but sheer physical strength is no means of ability. There are no disabled people-only people. There is nothing which can substitute human right that is no honors, no positions, no praise can replace a wish to work with dignity.”

It demonstrates to creating a more equitable and fairer approach to all human beings, including non-disabled and disabled. It means, equal participation of all persons- without the distinction of abled and disabled- in the sound growth of democracy, and this is only possible if the people with disabilities are helped to gain skills and knowledge through modern scientific instruments vital to their participation. This process shall alone help to eradicate different modes of injustices resulting in the exclusions of persons suffering from disability from the social mainstream of the nation. It may thus be seem that disability as a new dimension of the human right and human dignity had a new awareness emphasis. There are studies that revealed that the actual number of Indians with temporary and permanent disability could be as high as 50 millions\(^3\).

The Constitution of India guarantees to all persons, including persons with disability equality, justice, liberty, fraternity and dignity\(^4\). It also guarantees to all persons, including persons with disability, civil, political, economic, cultural and social rights. This is exemplified in the Constitution of India that “State shall endeavor to any person equality before the law, and equal protection of the laws\(^5\)” and prohibits discrimination

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\(^3\) See, Human Right Commission, “Report on Disability”, p.3, 2005

\(^4\) See, The Preamble to the Constitution of India.

\(^5\) See, Article 14 of the Constitution of India.
on the grounds of religion, race, caste and sex or place of birth. The use of the term person means “disabled or non disabled” person. However, the Constitution of India does not expressly states persons with disability as a group or class to be protected against discrimination and “there is no affirmative action” for persons with disabilities as a group or class. They seem to be deprived of the fruits of protective discrimination or permissible discrimination or positive discrimination or compensatory justice.

From it follows that the exclusion and isolation of persons with disabilities from “social mainstream” points to the social and legal barriers; and unequivocally states the poor treatment provided to the persons with disability in the society.

**Defining disability**

The earliest reference to the concept of disablement can be found in the Workmen’s Compensation Act which defines the disability in to temporary partial disablement and permanent partial disablement. The total disablement will result if the person is incapacitated of doing the work which he was doing before the accident or the aggregate result of injuries is more than 100% as per the schedule of the Act. Similar definition is incorporated in the Employees’ state Insurance Act.

Broadly speaking, disability does not merely mean physical disability; it is of a normative, cultural and legal construct. This definition of disability tells that disability has correlation with changing modes or notions of social norms and attitudes. Thus disability has three different definitions that inform the legal and policy framework perspectives.

First, medical definition of disability considers disability as individual anthology – a condition grounded in the physiological, biological and intellectual impairments of an individual. The world Health Organization provides three fold definitions of disability

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6 See, Article 15 of the Constitution of India
7 Supra note 5
8 Section 2(1)(g) of Workmen’s Compensation Act, 1923
9 Section 2(1)(I) of Workmen’s Compensation Act, 1923.
10 See, Sections 15-A & 15-B of the Employees State Insurance Act, 1948
11 Id. at p.9
that may be due to impairment, disability and handicapped\textsuperscript{12} range considered normal for human beings. A handicapped is a disadvantage for a given individual resulting from an impairment or a disability, that prevents the fulfillment of a role that is considered normal (depending on age, sex social and cultural factors) for that individuals\textsuperscript{13}. This medical model description of disability identifies the people with disabilities unable to take charge of their own lives. This medical definition though may have medical diagnostic parameters, but such medical diagnostic parameters do not take into account of the imperfections and deficiencies in the basic social structures and process, that fail to accommodate the policy perspective of equality, life, liberty and dignity on account of disabilities\textsuperscript{14}. The WHO definitions is medical centric and fails to clarify any interactions with societal conditions and circumstances of disabled persons\textsuperscript{15}. Second the definition of disability by UN Standard Rules on the equalization of opportunities for persons with disabilities 1993, emphasis, social conditions which affect disabled persons. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. However, this delineation ignores their (disabled persons) needs of accessing opportunities in a manner conducive to their circumstances\textsuperscript{16}.

Third Human rights definition of disability takes into account the social conditions which disabled a group of individuals. According to Human Rights perceptions, “Disability is the disadvantage or restriction of activity caused by a society which takes little or no account of people who have impairments and thus excludes them from mainstream activities.” It discusses that disability is described as a consequence of discrimination and disregard to the unique circumstances of people with disabilities\textsuperscript{17} which tend to emphasis and birth defects over systematic and environmental factors. The focus has been more on preventive programmes to eradicate diseases such as measles, leprosy, polio, goiter, rubella etc., rather than rehabilitatory and resocialisation programmes from

\begin{itemize}
\item \textsuperscript{12} www.WHO.org, the WHO International classification of impairments, disability and handicapped, 1976.
\item \textsuperscript{13} Ibid
\item \textsuperscript{14} Supra note5
\item \textsuperscript{15} Supra note 5 at p. 10
\item \textsuperscript{16} Ibid
\item \textsuperscript{17} Id at p.11; See also “UN economic and social commission for Asia and Pacific”, 2002.
\end{itemize}
the standpoint of human rights to life, liberty, affirmative actions, and dignity. The policy planning and strategies have thus far been silent about the fundamental causes that perpetrate and exacerbate disability. Besides, there seems little planning of any strategies that may have taken care to over the consequences of disability. This shows lack of farsighted approach towards disability. Be that as it may, the World Programmes of Action (WPA) concerning disabled persons has handed down comprehensive range of causes of disability and the varied factors responsible for the eventuality of disability like wars, civil conflicts, poverty, over-crowding, unhygienic living conditions, constraints of resources, geographical distances, physical and social barriers, industrial, agricultural and transportation related accidents, natural disasters, stress and psycho-social problems. It may not be out of place to emphasise that example of spatial difficult terrains, manmade strife’s like Bhopal Gas Leakage and terrorism or military or civil war may, too, perpetuates and exacerbate disability.

Causes of disability

Poverty and disability influence each other and create new forms of barriers. It is ubiquitous that people with disabilities are vulnerable to poverty. The findings of the empirical studies show that rehabilitation and medical facilities are inaccessible to the disabled persons who live in poverty. The findings of the heuristic studies also shows that inadequate shelter, unhygienic living conditions, lack of sanitation and clean drinking water combined with poor access to health facilities lead to disability. Malnutrition indicates lack of nutritional security and is also a cause of disability. Undernourished people are more vulnerable to disabilities. Recent studies indicate that a sufficient and nutritious diet is essential not only for the achievement of optional

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18 See, Article 40
19 Ibid.
21 Ibid.
physical growth and development but also to ensure mental well being, the ability to withstand the inevitable processes of ageing with disability and functional impairments\textsuperscript{24}. Occupational hazards of the industrial levels- both organized and unorganized sectors- and occupation related problems after result in high rates of accidents, poisoning from toxins ,loss of hearing and vision and health deterioration contribute to short eart and long term, Disability, that is temporary disablement and permanent disablement\textsuperscript{25}. Poor farmers and peasants like industrial workers too are vulnerable to disability as they work for long hours exposed to sunlight, dust and smoke that may cause amputations, muscular, diseases and spinal cord injuries.

War also triggers disability rate. It seems to be the single largest factor responsible for causing permanent disablement not only to combatants in the battlefield but also to civilians who are forced to bear the hazards of lethal, chemical and nuclear weapons\textsuperscript{26}. War causes physical and Psychiatric disabilities which occur not just due to war injuries but are caused more by diminishing resources and growing demand on scarce resources available to communities\textsuperscript{27}. Crime is the main genesis of disability not only to the affected person but also to the victims of crime such as family and neighbourhood. Such crimes not only leave people with a sense of insecurity and fear but they also deprived them of live and liberty in such cases the risk of emotional, mental and physical disabilities increases many fold\textsuperscript{28}. Unfortunately, there have hardly any result oriented or meaningful research studies that have ever analyzed the nexus between crime and disability\textsuperscript{29}. But there seems no denying the fact that crimes and violent crimes caused a sense of insecurity, mental trauma, non peaceful atmosphere of mind and body, madness and languishing in mental asylums, psychological disorderliness etc. which establish nexus between crime and disability. However there are reportedly findings that show

\textsuperscript{24} See, National Human Right Commission Disability Manual, 2005; See also, Murickan and Kutty, Persons with disability society 1995.
\textsuperscript{25} Ibid.
\textsuperscript{27} Ibid.
\textsuperscript{28} See, Crime in India, 1999.
\textsuperscript{29} Supra note 5
nexus between law enforcement agencies and crime committed by them eventually resulting into disabilities caused by custodial rape, custodial torture, custodial death and custodial blinding that have drawn the attention of the apex court of India for its scathing criticism of violation of human rights and human dignity of victims of such crimes and disability and suggesting rehabilitation and resocialization of such sufferers. The Apex court has denounced the denial of due process protection and observed that the very highest level of due process protection of India’s Legal system is reserved for the loss right to life, liberty and dignity and as such access to a court to ensure such rights that is an important safeguard in any society.

Traffic indiscipline and disregarded of traffic regulation both by commuters and enforcers have been responsible for increasing number of road accidents in India, which seems to be leading cause of death and disability. It seems that for every road accidents there are deaths light injuries, serious injuries which may lead to disabilities among survivors of traffic hazards like quadriplegia, paraplegia, brain damage, and behavioral disorders.

**Approaches to Disability from International Law and National Law Perspectives:**

Four models viz. the charity model, the bio-centric model, the functional model and human rights model approach to disability is either as an individual pathology or as as a social pathology. The Charity Model treats disability by the application of “emetine appeals of charity” and treats people with disability as hapless as well as helper’s victims needing care and protection. This model relies heavily on the goodwill of benevolent humanitarians for custodial care of the disabled.

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The Bio-centric model views human disability as natural causes at the level of biology, and Persons with disabilities or positioned as abnormal in comparison to the established Norms for the normal human being. This model, thus, treats persons with disability undeserving and dangerous. It focuses on diseases, disorders, physical or mental characteristics as the chief causes of disabilities that are viewed as aberrant or abnormal. According to this model disability may be prevented or jettisoned orated through medical intervention. The “medical” intervention approach relating to mental health institutions or asylums manages and administers such mental health institutions or asylums on the custodial model of care characterized by prison like structures with high walls, watch towers, fenced wards, locked cells and fettered or chained legs and arms. These Institutions are generally described as the “great confinement”. Be that as it may, the bio-centric model may be a gloss to determining the quantum of disability for medical supportive service, but not the only lens through which the disability is viewed to influence to access to rights, entitlements and full social participation or rehabilitation or resocialisation with reference to education, employment and socio economic justice.

The functional model and human’s rights model perceive disability as a social pathology and these models have been encouraged through synergy approaches of human rights activists as well as theorists. The functional model approach to disability is seen as arising from a mismatch between the individuals’ biological condition and functional capacities on the one hand and environmental needs, situational factors on the other. Thus essential physical functions and the peculiarities of the environment are the basis to determine disabilities of persons. It seems that in the functional model, the onus is on the individual to fit within the system, not on the system to include the individuals. Models

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40 Supra note 5
do not position disability within the framework of rights and dignity so that entitlements to rights are not denied by individual inequalities and difference.\(^{42}\)

To overcome the shortcomings of the above three models, the Human Rights Model aims at by positioning disability in the paradigm of rights so that entitlements to rights and dignity are not limited by individual differences - disability and non-disability. The human rights model unequivocally “positions disability as an important dimension of human culture and affirm[s] that all human beings irrespective of their disabilities have certain rights which are inalienable.\(^{43}\)” It unequivocally discerns that the human rights model is built upon the spirit of the Universal Declaration of Human Rights 1948, which states “All Human Beings are born free and equal in rights and dignity.” This reveals that man is born free and they should not be deprived of rights and dignity just because of the chains of disabilities. Though there is a variation in human cultures such as gender, race, language, religion etc. but there should be no disrespect to rights and dignity on the basis of human diversity. Rather, human diversity should be complimentary to build an equitable and just society. This seems to be the human as well as humane approach with reference to disability, and this approach is built on the sound practical maxim coined by the great Greek Thinker and philosopher, who said, “Things that are alike should be treated alike, whereas things that are unlike should be treated unlike in proportion to their unlikeness.\(^{44}\)” It foresees human diversity in the context of disability as a part of human variation and certainly and not as negation of rights and dignity of persons with disabilities. Therefore the problem of disability stems from a lack of responsiveness of the State and civil society to the difference that disability represents.\(^{45}\) Justice Albie Sachs describes disability as a dimension of human diversity.\(^{46}\) In the backdrop of the above, it is expedient to note that the human rights model places the individual at the centre stage of all decisions affecting him/ her, because human rights focuses on the inherent dignity.

\(^{42}\) See, Harlan Hahn, “Adjudicating or Empowerment : Contrasting Experiences with a Social Model of Disability”, Disability, Politics and the Struggle for change, p. 59, 2013

\(^{43}\) Supra note 5


\(^{46}\) Ibid
of the human beings\textsuperscript{47}. The human rights model aims at ensuring the rights, dignity and entitlements of the persons with disability on the basis of freedom of choice. The human rights model recognizes the inherent equality as well as equal entitlement of all the human beings. The concept of equality vis-a-vis disability encompasses various notions of equality, viz., equality of results, equal opportunities, that is, giving same to persons or groups of persons which are inherently different owing to disabilities. The concept of equality does not merely mean preventing discrimination, but it means embracing the notion of positive rights, affirmative action, and rehabilitation, resocialisation and reasonable accommodation of persons with disability\textsuperscript{48}. It has been rightly observed that “introduction of necessary and appropriate measures to enable a person with disability to fully enjoy fundamental rights and freedom and to have access without prejudice to all structures, processes, public services, goods, information and other systems\textsuperscript{49}. This is a step forward for equalization of opportunities of persons with disabilities in all aspects of social and economic life. This means that any distinction, exclusion, restrictions or performance or denial of reasonable accommodation based on disability would constitute discrimination\textsuperscript{50}.

Succinctly, human rights model affords greater protection to the rights and freedoms of disadvantageous disabled persons by enlarging the obligations of the States in relation to its actions of persons with disabilities.

In the background of the above delineation, it would be expedient to analyze the law and state policy on disability in India. The Indian state has propelled its national policies since the inceptions of the Constitution of India. There seems change in anti-discrimination policy and law in response to increasing appreciation and assertion of the rights of the disabled.

\textsuperscript{47} Supra note 43
\textsuperscript{48} See, Asia Pacific forum of National Human Rights Institutions, Third and Fourth submission to UN Adhoc Committee, Aug-Sep, 2004
\textsuperscript{50} See, The Committee on Economic, Social and Cultural Rights.
The Constitution of India aims at to secure to all its citizens justice, social, economic and political liability of thought, expression, belief, birth and worship, equality of status and of opportunity and to promote among them fraternity assuring the dignity of the individual and the unity and integrity of the Nation\(^{51}\).

Equality is the soul of the Constitution, which means guarantee to all citizens’ equality before the law and equal protection of the laws\(^{52}\). Equality prohibits discrimination on the ground of religion, race, castes, sex, and place of birth or any of them\(^{53}\).

The judiciary has had on many occasions examined the legality of such concepts with its consistency to equality to persons with disability who are not explicitly covered under Article 15 or 16 of the Constitution. In *Indra Sawhney v. Union of India*\(^{54}\), the Supreme Court held mere formal declaration of the right would not make unequal equal. To make all to complete with each other unequal an, it is necessary to take positive measures, to equipped disadvantaged and the handicapped to bring them to the level of the fortunate advantaged to make real equality. The Supreme court in *Dr. Jagdish Saran v. Union of India*\(^{55}\) has unequivocally recognized special positive measures promoted by the legislature as a means to achieve substantial equality to the sustainability of the disabled persons, Justice V. R. Krishna Iyer held that equality is not degraded or neglected where special provisions are geared to the larger goal of the disabled getting over their disablement consistent with the general goods and individual merit.

However, in *Narendra Kumar Chandla v. State of Haryana*\(^{56}\) has approved the phrase “little done vast undone”\(^{57}\), because it did not outlaw discrimination in the matter of carrier who acquire disability during services. In this case an employee was reduced in rank on acquiring disability during service. The Supreme Court justified his appointment in the lower rank as an L.D.C. (Lower Division Clerk) but ordered that his salary be retained at the higher scale, which he was initialing drawing.

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\(^{51}\) See, Preamble of the Constitution of India
\(^{52}\) See, Article 14 of the Constitution of India
\(^{53}\) See, Articles 15 & 16 of the Constitution of India
\(^{54}\) AIR 1993 SC 477
\(^{55}\) AIR 1980 SC 820
\(^{56}\) AIR 1995 SC 519
\(^{57}\) Vide Upendra Baxi
Directive principles of the state policy are the backbone of the nation. Article 41 lays down an obligation on the state to make effective provision for securing right to work, to education and to public assistance in cases of unemployment, old age and disablement. Article 46 also lays down an obligation on the state to promote with special care the educational and economic interest of the weaker sections of the people and protect them from social injustice all forms of exploitation. A careful reading of these two Articles of the Constitution of India unfold the policy directives to the legislature and the executive not merely pay lip service to these policy directives and do not lag behind to translating these policy. Directives in the actions just on the pretext of lag of resources rather the legislature and the executive should make the basis of their legislature and executive actions that they may be taking in the matter of the governance of the country.\textsuperscript{58} Such policy directives are the high edifice in the good, transparent and accountable governance of the country as objective to achieving social justice and the fundamental rights are the means through which weaker section, disadvantaged groups and marginalised ones including the persons with disabilities can reach to the edifice\textsuperscript{59}.

The policy directives have been realized through disability laws, which are in tune with human rights model. The disability laws have been enacted with human right and human dignity approach with special emphasis on social and economic rights. Intriguingly, the government recognized the need for disability laws belatedly in 1995 only.

**The Mental Health Act 1987**

The Mental Health Act 1987 is described as a civil rights. The provisions of this Act deals and provides the regulating standards in mental health institutions and to make provisions with respect to their property and affairs. From a human rights perspective the act states:

a. no mentally ill person shall be subjected during treatment to any endeavor indignity or carnality

\textsuperscript{58} See, Mohini Jain v. State of Karnataka, AIR 1992 SC 1858
\textsuperscript{59} See, State of Kerala v. N.M. Thomas, AIR 1976 SC 490
b. no mentally ill persons shall be used for the purpose of research, unless (i) such research is of direct benefit to him for purposes of diagnosis or treatment

c. such persons being voluntary patients has given his consent in writing or where such person is competent to give valid consent the guardian or other person competent to consent on his behalf, has given his consent in writing for such research.

However the legislation suffers from many question marks on the affortiveness of this legislation for ensuring the protection of the person, property and privacy of communication of mentally ill.

**The Rehabilitation Council of India Act, 1992** aims at:

1. To standardize trainings courses for professionals dealing with persons with disabilities.

2. To prescribe minimum standards of education and training of various categories of professionals dealing with people with disabilities.

3. To regulate these standards in all training institutions informally throughout the country.

4. to promote research in rehabilitation and special education and

5. To maintain central rehabilitation for registration of professionals.

This act is historic in the sense of developing a social order for rehabilitation and resocialisation of persons with disabilities.

**Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**

The Persons with disability (equal opportunities protection of rights and full participation) Act makes explicit legal safeguards and strives to ameliorate disability-based discrimination. The Act arms aims to protect and promote economic and social rights of the people with disabilities. It is a historic legislation and is a corner stone of
evolution on the rights of persons with disabilities in India. This Act is a single achievement of the disability movement in India. The Act aims at promoting need ensuring equality and full participation of persons with disabilities and aims at protecting as well as promoting social and economic rights of the people with disabilities. The biomedical model is followed to determine the quantum of disability. The Act defines the disability in these words means a person suffering from not less than 40% of any disability as certified by a medical authority. Disabilities include blindness, low vision, hearing, impairment, locomotors disability or cerebral palsy, mental retardation, mental illness and persons cured of leprosy. It further lays down specific measures for the development of the services and all programmes for equalizing opportunities for the enjoyment of right to education, work, housing, mobility and public assistance in case of severe disability and unemployment. A Central Coordinating Committee, State Coordinating Committees, disability NGO’s having a woman with disability as a member have been envisaged to execute the development programmes.

In addition, it makes provision for the constitution of the institution of Chief Commissioner in the centre and Commission for persons with disability in the State. These institutions have been proposed with a mandate to redress individual grievances providing safeguards to the rights of the persons with disabilities; and to monitor implementation of disability related laws, rules and regulations and oversee utilization of budget allocated on disability. These are quasi judicial bodies and are vested with the powers of civil court. Be that as it may, there is no powerful implementation instrumentality, and there is weakness of the Act because of the dictum of soft state. The Act prohibits discrimination on the basis of disability in the matter of public employment and in access to public facilities. Therefore this Act is a signal achievement of the Indian disability movement.

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60 See, Preamble of the Act. “Persons with disabilities (equal opportunities, protection of rights and full participation)” Act, 1995
61 Ibid.
62 See, Section 2(4) of the Act.
63 See, Section 2 of the Act.
64 See, Sections 45, 46 and 47 of the Act
National trust for Welfare of Persons with Autism Cerebral Palsy, Mental Retardation, Multiple Disabilities Act 1999

Besides, autism and multiple disabilities have been covered under the National Trust for Welfare of Persons with Autism Cerebral Palsy, Mental Retardation and Multiple Disabilities Act which basically aims at fulfilling the common demand of families seeking reliable arrangement for their severely disabled wards. Thus objectives of the Act are:

1. To enable and empower persons with disabilities to live as independently and as fully possible within and as close to the community to which they belong.

2. To promote measures for the care and protection of persons with disabilities in the event of their death of their parents or guardians and to extend support registered organization to provide need based services during the period of crisis in the family of disabled covered under the act. The Act mandates the creation of local level committees with the power to decide upon applications for legal guardianship.

3. The Act also lays down the duties of the legal guardians. The overall supervision of this act is vested with a national trust board appointed through a democratic process by the registered organization of the parents and others providing services to this segment of the disabled population.

Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Welfare and Maintenance of old aged and Senior Citizens Act, 2007 is a milestone in the promotion of the human rights model for old aged persons and senior citizens. The Act has different aims to achieve with regard to the welfare of the old aged and seniors. Family is the nursery where a child receives the initial lessons of group culture and moral education. The elders transmit the religious, social and traditional values to their progeny which edifies a cohesive organised society, as the process reverberates in the social fabric. The family not only regulates the behavioral patterns of an individual but also extends security of person and mind in addition to comforts of health and vigor. It rejuvenates the tired body and soul of a person for fresh bout with the endless struggle for
survival. An individual being a mortal undergoes a constant transformation from childhood to adulthood which is classified as process of aging. During this transformation various stimuli are experienced and individual learns to respond to them in a more mature way. Thus aged person is not only an individual superior in age but also a repository of vast experience, traditions, knowledge and cultural values. The young generation is expected to tap the vast resources to enjoy the abundance in the shortest possible time without undergoing the agony and which is transmitted to the coming generations. The aged persons are therefore the treasure of economic, educational, emotional and psychological resources for the society. In the ancient era, the people used to have a sense of responsibility towards the group and used to as a part of their religious, social and community service. Generally the people did not require any means for maintenance as the family, community and the society was sufficient enough to take care of the person in distress. There was less dependency for the means of survival as the life was pretty simple. Therefore the maintenance was not a matter of concern for the society. Everybody was taken care of by everybody

The modernization has significantly altered the age old pattern of survival and has transcended the traditional methods of economic, educational, emotional and psychological support system. It has provided alternative mechanisms which have seriously affected the family and the worst sufferer are the aged persons. The individual has shun the group oriented approach and has adopted the self oriented approach which is considered to be scientific and realistic. The children consider their upbringing to be their right which in turn is attributed the social, moral and legal duty of their parents and there is no reversal of roles for them. This approach is patently responsible for the destitution of the elders who are robbed off their strength and hard earnings of prime youth.

Case for protection

The aged and infirm require care and protection on account of following reasons;

1) **Reward of sacrifice**: The aged persons have contributed and performed their role in the society and its development throughout their lives, thus require recompense from the society in the form of care and protection.
(2) **Recompense for parenting**: They deserve the care and protection as a recompense for performing the role of parents as they have undergone the trauma of rearing and up bringing the children and shaping their future in the existing form.

(3) **Economic recompense**: The aged persons have contributed a lot economically in the upbringing of their progeny; therefore they also deserve the same as recompense on pure materialistic considerations. Moreover the aged persons have worked throughout their prime age to accumulate the wealth for the enjoyment of their progeny and the same wealth is enjoyed by the progeny. Therefore it becomes necessary for the progeny to take care and protect their aged persons. They cannot enjoy the fruits of the hard labour of their parents without providing them their due share.

(4) **Religious considerations**: The children are considered to be under a religious and ethical duty to maintain the aged persons in their family; therefore the aged persons should get due care and protection from the progeny. The performance of the duty will expectedly liberate the progeny from the debts which they owe to their ancestors.

**Causes for destitution**

The aged persons are not taken care of properly by the progeny on account of various reasons which include the following:

(1) **Family structure**: The neglect of the aged persons is the result of the shift in the family structure. In the ancient times, the joint family system was prevalent especially in India which was self sufficient in taking care of the children, women, aged and infirm. The erosion of the joint family system led to the destitution of the persons.

(2) **Moral and ethical degradation**: Family is the first school which inculcates the ethical and moral values in the members. In the contemporary era the modernity has taken its toll on the parenting as the parents are too busy in accumulating materialistic things in order to uplift their social standing as well as to make their
both ends meet. Therefore, they have less time at their disposal to infuse moral and ethical values in their progeny. Even the aged persons do not have time to practice the moral and ethical values in their lives, thus the progeny fail to observe and learn such values from their mentors. This leads to creation of a wedge in the emotional ties between the ancestors and the progeny. It is rightly said, “As you sow, so shall you reap”.

(3) **Industrialization**: The industrial development has sought the regular engagement of the people at the work place which leaves lesser time at their disposal for their dear ones. Moreover the busy schedule is concentrated on the economic front; and the aged ones are considered non-productive and liability units which are conceived as a threat to their economic well being.

(4) **Individual mobility**: People are migrating from one urban centre to another for upgrading their job profile and for better avenues. This individual mobility is taking its toll on the family life leading to social disorganization because the road forward rarely turns back. Once a person moves out of the family setup, the other compulsions do not let the person come back to the family environment. The aged and infirm that are left at the native place get neglected in the course of the transition. Furthermore they are not in a position to accompany the person for varied reasons ranging from economic viability to visa problems.

(5) **Family disorganization**: Family organization can be maintained in the family by love and affection rather than the conflicts. The economic compulsions and modern lifestyles have increased the gulf between the family members leading to conflicts and confrontations. The worst sufferers in these situations are the aged and infirm as in majority of the conflicts, they are made a fomenting party.

(6) **Improper role-models**: The failure of aged persons in becoming a perfect role model for their progeny is one of the important causes of the destitution of the aged persons. They could not inculcate the nursing and caring abilities in the progeny by setting an example before them by their deeds in the family structure. Therefore the
progeny could not imbibe the positive traits in them leading to the neglect of the aged persons.

(7) **Self-interest approach**: The present generation is guided by self-interest and they are less inclined to take care of the elderly people. Their prime concern is their betterment and if the elders fit in their design for betterment, they are taken care of. The care is predominantly determined by the utility factor.

**Expectations of the aged and infirm**

The aged people have a right to live with dignity and enjoy their lives to fullest possible extent like a normal human being. They should have the opportunity for the full development of their potential and must have access to educational, cultural, spiritual and recreational resources. They require all the amenities not in charity but as a matter of right for having played their innings in the play field of the life. In order to enjoy the life, they require the following;

(1) **Maintenance**: Maintenance is a measure which accords protection to persons in distress. Commonly the children, handicapped persons, old and infirm cannot survive and bear the onslaught of nature in the absence of maintenance. Therefore it is the subject matter of great importance especially in the modern times. It is a significant economic contribution which necessitates the sustenance of life for the elderly people. The concept of maintenance is not new concept that has been reverberating for ages as every religion has incorporated this as a fundamental principle for its followers. It is the moral, ethical and legal duty of the progeny to maintain their elders. Generally the elderly people sacrifice their earnings for the betterment of their progeny in a hope that their real treasure is their children and in their betterment lies their future. This hope turns out to be a dupe in the times of distress or when they have parted with their earnings. Yet the provision for maintenance is a significant relief for the aged people.

(2) **Effective care and protection**: No doubt maintenance is a significant requirement for the aged persons, but it is not the only requirement. The elderly people need effective care and protection more than mere economic contributions. They need a
person by their side to lend ears, arms and love. In recent times especially in the urban areas many elderly people have died naturally and unnaturally unnoticed because there was nobody to protect them or care for them. They become an easy prey to the criminal elements of the society. When one is physically fit, one can take care of all adversities; but in the event of weakness, sickness and disability, one easily succumbs to the adversities. In the contemporary era, the aged persons are living alone because the children do not want to live with them or they are living in a different State or country. In such a scenario the effective care and protection which they should have got for having earned is missing.

(3) **Emotional and psychological needs**: The aged persons are the repository of vast experience and knowledge which they always desire to share with the younger ones and in the absence of their dear ones; they need to bury this desire in their chest. This hard felt reality breeds negativity in their behaviour and agitates them emotionally and psychologically. Moreover they are human beings, so they always require somebody to talk to; and if the young ones are not there to listen to them, they die sooner in desperation and isolation.

(4) **Physical help**: The aged persons require physical help in the performance of day to day chores. They cannot be expected to run around in maintaining the household and property. In the absence of their heirs, they are expected to manage every affair alone and such an intensive exercise is beyond their stamina. Moreover the fruit of such labour will expectedly go to their heirs who are not even ready to recognize and appreciate their daunting efforts.

Therefore the need was felt to inculcate selflessness in the individual through the agency of law and it was made obligatory for the individuals to take care of their dependents if they are economically incapable of taking care of themselves, especially in the far end of their life. Necessary obligations have been incorporated under the Constitution of India wherein it is mandated that the State must protect the persons in their old age, provide them means of livelihood and to accord public assistance in cases of old age, sickness and disablement, and in other cases of undeserved want. Similarly the statutory enactments
also favour the care and protection of the aged persons. The Hindu Adoption and
Maintenance Act impose an obligation for the maintenance of aged and infirm parents.
Similar obligation is imposed under Muslim law and is dependent upon the capacity and
inability to maintain. The Criminal Procedure Code also imposes an obligation on the son
to maintain the aged parents and the Indian judiciary has extended this obligation to the
daughters also. Many exercises have been made at the international level in appreciating
the concern for the senior citizens. As a result of these exercises and growing concern for
the older people, the Parliament of India enacted the law, “Maintenance and Welfare of
Parents and Senior Citizens Act, 2007”.

The Act incorporates provisions for the maintenance of parents and senior citizens, thus
classifies the elder generation on the basis of children. It makes it obligatory for the
children to maintain their parents who are not in a position to support their living. Even
the maintenance can be claimed by the senior citizens from their grand children also. The
option lies with the senior citizens to claim the maintenance from one or all. It also makes
it obligatory for the relatives to maintain the senior citizens if they are likely to succeed
the property of the senior citizens. This obligation is dependent on the fact that the person
must have sufficient means to maintain. The relative who has no chance of succeeding
the property of senior citizen is not legally bound to maintain. Moreover the maintenance
can be claimed only if the senior citizen is not in a position to maintain himself out of his
earnings or the property owned by him. Thus the Act only take cares of the economic
necessities of the senior citizens and does not make provisions for the emotional and
physical needs of the aged persons. The idea of the enactment is principally in according
maintenance to the elderly class whereas they require more than that. Just maintenance
cannot arm them with the necessities required for leading a normal life. Since this is a
special enactment, therefore it should have been more comprehensive in nature. The
necessary provisions concerning maintenance could have easily been incorporated in
Criminal Procedure code by adopting a criminal amendment. Furthermore the obligation
is imposed on chances of succession which may or may not happen in reality. If one
extends the theory of chance succession, the government can also be included within the
purview of the provisions as it can also acquire the property by escheat.
The enactment envisages the constitution of tribunals for determining the cases for the claim of maintenance. The tribunal can initiate proceeding on the basis of a complaint or suo-moto. This provision can be very effective in determining the cases of maintenance. The primary condition for the grant of maintenance by the tribunal is to establish that the children or relative has neglected or refused to maintain the parent or senior citizen. The neglect or refusal to maintain shall be there if the heirs are absolutely not doing anything for maintaining senior citizens. It will not cover those cases where they are paying a paltry sum for the maintenance to the senior citizen which is an unrealistic approach because the sum has to be a life sustaining amount. Therefore insufficiency of maintenance should be incorporated as a ground for the claim of maintenance depending rationally on the earning of the person made to pay the maintenance. The Act incorporates punitive provisions for the enforcement of the orders of the tribunal concerning maintenance which are expected to inculcate a habit in the younger generation to maintain the elder ones. The senior citizen can claim maintenance either under the Criminal Procedure code or under this legislation.

Furthermore, if the children or relatives have gone abroad which generally is the case in contemporary era, there can be complications in the compliance of the process as well as the order of maintenance. In such cases, there must be some interim measures which can be adopted to take care of the senior citizens pending enforcement.

The enactment makes provisions for establishment of oldage homes wherein the senior citizens could be adjusted. The primary condition for the accommodation of senior citizens in such homes is that the senior citizens must be indigent. If the senior citizen is not indigent, he cannot be adjusted in such oldage home. Thus the childless persons/parents who have means to support their life cannot be adjusted in such oldage home which seems to be an unrealistic approach as the isolated senior citizens are forced to leave the isolated life just because they are economically sound.

The realistic approach should have been to accommodate any senior citizen in the oldage homes who desires to live in there so that they could lead the normal life in the company of fellow persons. This can be a life supportive exercise for the senior citizens as they
can share their feelings with others and enjoys the facilities in the oldage homes as provided in the enactment which otherwise would be difficult for them to avail.

The Act should make provisions for the creation of the recreational halls and special flats for the adjustment of senior citizens which can take care of majority of their problems. This facility will take care of the emotional and physical needs of the elders sparing them of the in dignified survival and the ever haunting seclusion. Special psychological clinics/neurotic centers should be opened which can perform a positive role in broken families and unite the elders with the younger.

In the background of the above delineation, it is submitted that the legislative initiatives in India promote equality of persons with disabilities by ensuring them basic social, economic and cultural rights to live a life with dignity and by taking various affirmative action and special measures such as care, cure, rehabilitation and resocialisation to achieve real equality. How far the legislative measures are sufficient for the corresponding improvements in the lives of the persons with disabilities needs in depth heuristic investigations and analysis.