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***Introduction***

Modern society is founded on the following two basic principles: -

1. Every individual has a right to equality, and
2. All those civil, political, economic and social as well as cultural rights would be available to all individuals without discrimination of any kind.

These principles are reflected not only in the constitutions of all the states but, also in the Charter of the United Nations. Ever since the inception of the United Nations, international community has attached a greater importance to the attainment of ultimate goal of real equality for all individuals without discrimination of any kind. Towards this end, United Nations has not only adopted Universal Declaration Of Human Rights but also adopted the following two important Covenants: -

1. International Covenant On Economic, Social, and Cultural Rights and
2. The international Covenant on civil and political rights.

We are here concerned with the issue of the strategies to be employed for ensuring that violations of the rights of PWD are perceived and dealt with as 'violation of human rights' in accordance with the relevant international instruments as well as relevant legal frame works. Before endeavoring to conceptualize a workable strategy, it is important to critically examine the forms of violation of rights of PWD and their

linkages with the concept of human rights as understood by human rights activists.

### **Different forms of violation of rights of PWDs :**

Historically, PWDs have been victimized of attitudinal barriers, which are responsible not only for their exclusion from the mainstream society but also for deprivation and discrimination on the grounds of disability. All international instruments are based on the recognition of right to equality. No doubt, in theory, one may say that this right to equality embodied in these instruments also applies to PWDs but, in practice, more than often, Persons with disabilities are denied their rights. It is quite evident from the fact that many policies and laws of member States either do not provide for protection to the rights of the disabled viz positive discrimination in their favour or in certain cases there are policies and such laws which impede the participation of PWDs on equal footing.

Infact, the discrimination as well as violations of rights of persons with disability are largely related to their economic and social rights.

A very cursory analysis of the case law available and reports of certain studies indicate the following common forms of violations of their rights: -

- (a) Denial of equality of opportunities in earning their livelihood
- (b) Absence of conducive environment & required facilities at the work place.
- (c) Denial of/ removal from employment under the guise of set medical fitness standards.
- (d) Denial of career enhancement opportunities to persons with Disabilities.
- (e) Denial of equal access to educational programmes due to non-availability of required facilities and specially trained manpower for the purpose.
- (f) Denial of accessible transport services and barrier free built environment as well as public facilities.
- (g) Denial of freedom of decision making due to cultural bias and prejudices in matters of family, political and cultural life.
- (h) Emotional, sexual and physical harassment.
- (i) Discrimination against a disabled member of the family in the matter of distribution of family property.
- (j) Denial of necessary measures to ensure exercise of franchise by Person with Disabilities.

Besides these forms of discrimination, there are some other forms of violations of rights of Person with Disabilities, which either arise out of an existing legal provision, or absence of special legislative provision to meet the special needs of a particular disability group. E.g. Many contract laws do not recognise persons with mental illness as a competent party to the contract. This results into violation of their valuable economic rights. Similarly, in many procedural laws, both civil and criminal, there are no provisions to provide for special needs of a particular disability group such as persons with speech and hearing impairment. This violates their right to equal treatment and equal protection of law.

After having identified some more prevalent forms of violations of rights of persons with Disabilities, it is important to analyse how the violations could be remedied by taking recourse to the remedies available through various international declarations and conventions related to human rights. To begin with, a perusal of universal declaration of human rights reveal that international community has unequivocally and unambiguously recognised liberty, equality and dignity of all individuals to be the prime consideration in the governance of the member states. Article 1 of this declaration lays down that “All human beings are born free and equal in dignity and rights.”

In order to bring these common forms of violations of rights of Person with Disabilities within the ambit of this declaration and other international covenants which supplement this human rights declaration, it should be clearly understood that “equality as envisaged by this declaration and other related conventions is the “equality among the equals”. Hence, it is of critical important that member states provide for special measures necessary to compensate for the limitations imposed due to disability to bring persons with Disabilities on equal footing with non disabled counterparts enabling them to enjoy the right of equality assured by the said declaration.

The above stated forms of violation can be identified as violation of either the international covenant on economic, social and cultural rights or of civil and political rights or convention on the rights of the child, e.g. all forms of violation related to employment or earning livelihood violate following provisions of individual covenant on economic, social and cultural rights:

- (a) Article 6 recognizes “the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses and accepts.” Thus, when there’s a denial of job opportunity on the ground of disability, the aforesaid article is clearly infringed.
- (b) Article 7 refers to the “right of everyone to the enjoyment of just and favourable conditions of work which ensure adequate remuneration”. Thus, when the workplace is not suitably modified or adopted to ensure equality of opportunity to persons with disability in the matter of employment, the same would be qualified to be treated as violation of article 7.
- (c) Article 11 recognizes that everyone has the “right to an adequate standard of living for himself and his family, including adequate food, clothing and housing”. Available statistics show that world over this article is violated grossly in the case of persons with disabilities as they have been marginalised both by administrative actions and absence of suitable legislative and policy measures to enable persons with disabilities to enjoy this right.

(d) Article 15 recognizes the “right of everyone to take part in cultural life”. In action on the part of member states to make places connected with cultural activities accessible is a grotesque violation of the aforesaid right.

Another important international instrument viz. 'Covenant on civil and political rights' is also violated by most of the states. Article 25 of the aforesaid covenant “establishes the right of everyone to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and be elected at periodic elections by universal suffrage; and to have access, on general terms of equality, to public service in his country”. But, member states have not cared to provide for special measures to make polling booths accessible to enable person with disabilities to exercise their franchise freely and secretly.

There's yet another important international instrument viz. 'Convention on the rights of the child' which establishes "the rights of a disabled child to effective access to and reception of education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development". This obligation of the state is often violated than implemented, since majority of children with disability are excluded from any form of education, work, training, social, sports and cultural and recreational activities as well as preparation for their ultimate economic rehabilitation.

Probably, recognising the constant and common forms of violations and also treating these violations as human right issues, the UN in its General Assembly by resolution no. 2856 of disabled persons in rural areas, outline new criteria for creating jobs and, perhaps most importantly, point out the need to consult disabled persons themselves in planning and formulating policies and programmes that will affect their integration or re-integration into active working life.

In resolution 2856 (XXVI) of 20 December 1971, the General Assembly proclaimed the Declaration on the Rights of Mentally Retarded Persons. According to the declaration "the mentally retarded person should enjoy the same rights as other human beings, including the right to proper medical care, economic security, the right to training and rehabilitation, and the right to live with his own family or with foster parents. Furthermore, the Assembly declared that there should be proper legal safeguards to protect the mentally retarded person against every form of abuse if it should become necessary to restrict or deny his or her rights".

Thereafter, in 1975, the General Assembly of UN adopted the Declaration on the rights of disabled persons, which proclaimed that "disabled persons have the same civil and political rights as other human beings. The declaration states that disabled persons should receive equal treatment and services, which will enable them to develop their capabilities, skills to the maximum and will hasten the process of their social integration or reintegration". This declaration may be regarded as the extension of the universal

declaration of human rights having specific focus on the protection of rights of Persons with Disabilities on the same lines as the human rights of non disabled persons.

There are certain other international declarations/ covenants/ resolutions where there is either specific reference to the rights of person with disabilities or general provisions applicable to Person with Disabilities also e.g. ILO convention no. 159 concerning vocational rehabilitation of the disabled. This convention is aimed at obliging the member states to ensure equal access to training and employment.

Since the procedures laid down in various international covenants as well as Universal Declaration on human rights and not adequately cover the violations of rights of persons with disabilities, another international instrument of critical importance for persons with disabilities is the standard rules on the equalisation of opportunities for persons with disabilities. These rules can be used both as a tool for assessment of the progress made by member states towards ensuring equality of opportunity to persons with disabilities on one hand and also as a mechanism to collect information on discrimination and violation of various rights established by important international covenants listed here in above.

### **Strategies and recommendations for collection and documentation of information on human rights issues**

**The procedures established by international covenants on human rights are primarily based on the need for collecting and documenting information to ensure the implementation of these covenants. For enforcement of covenants related to human rights, the following three procedures at international level have been established.**

- a) **Reporting Procedures:** This is the first step for addressing any violations of human rights as any individual violation or general violation of human rights may be reported either through individual petitions or general petitions, to the commissions of the human rights and other relevant committees.
- b) **Complaint Procedures:** This is adopted mostly in the case of individual violation of human rights in order to seek intervention by international bodies, the complaint has to be founded on very credible grounds.
- c) **Thematic and Country Procedures**

**Despite these well established procedures, we have not been able to use them for mainstreaming human rights issues of Person with Disabilities. Whatever little use has been made by disability rights activists, has been in the area of civil liberties and in the matter of abuse or torture in institution care, particularly related to Persons with mental illness and severe disability.**

Therefore, before developing a strategy for documentation of violation of human rights of Person with Disabilities, one has to explore the reasons for not having used available instruments, document, procedures and remedies. Probably, this is primarily because of lack of education and awareness about possibilities at the institutional level among disability organisations. Secondly, it can also be attributed to the general understanding of the meaning of human rights violations, which are often equated to arbitrary detentions, arrests and tortures in criminal investigating agencies.

Human rights activists also do not perceive isolation of social and economic rights of Person with disabilities as Human Rights issues concerned by the inclusion of persons with disabilities. In view of the poor reporting, the UN General Assembly in its 56<sup>th</sup> session adopted resolution no. 2000/51 and called upon the member states to cover fully the question of the human rights of persons with disabilities in complying with reporting obligations under the relevant United Nations human rights.

Generally all methods employed for the collection of information of the data may also be applied for collection and documentation of information on violation of human rights of persons with disabilities. These may include collection of information through questionnaires, research studies, reference and review of case law digests,

reports of human rights organisations and commissions at regional, national and international level, reports of various judicial or quasi-judicial law enforcing bodies envisaged under respective laws on protection of rights of disabled persons and by searching through media archives etc.

In order to use the above mentioned sources of information collection effectively, it would be imperative to involve:

- a) Disability Organisations
- b) Human Right activists
- c) Human Right advocates
- d) Regular and Open Universities
- e) Human Rights commissions and bodies at national and regional levels.
- f) Funding agencies such as European Union, World Bank, Asian Development Bank etc.

In addition, the following steps are to be taken urgently in this direction:

- a) Preparation of manuals – one targeted at education of disability rights activists and the other at the Human Rights activists advocates and those responsible for the reporting under the relevant conventions and treaties as well as institutions engaged in reviewing laws at national levels.
- b) Organisation of short term training programmes and seminars on the human right instruments and procedures for the above said target group.

- c) Preparation of a Questionnaire for collection of information through NGO's in the disability sector, Human Right Sector, and social development sector and bodies responsible respectively for reviewing laws at the National Level such as law commissions.

The crucial issue to be addressed in any such endeavour in the identification of a nodal agency for collection, analysis, processing and documentation of the information.

There is a need for involving all major international disability organisations such as WBU, World Federation of the Deaf, DPI, RI and Inclusion international in this process. It would be desirable and more effective if all the above mentioned major disability organisations form a joint group to undertake this important task with professional support. The nodal agency established for this purpose should initiate dialogue with Organisations like Secretariat of common wealth, European Union, SAARC, ESCAP and Chancellor of Open University to plan training programmes and seminars and to prepare manuals and to hold awareness colloquia with members of the judiciary and Human Right Commissions.

#### a) Conclusion

In conclusion, it is suggested that:

- a) a questionnaire to collect information be designed in a manner that information is elicited on the most common forms of human rights violation of persons with disabilities within the framework of human rights covenants and treaties.
- b) that the questionnaire be so designed that it systematically gives information for reporting the instances of violation
- c) the data collected in form of petitions and complaints through the questionnaire be systematically qualified, edited forwarding it to the appropriate commissions and committees at the international level.
- d) that open universities through the mode of distance education can play a vital role in spreading the education and awareness among the disability rights activists and human rights activists which is vital to collection of data and reporting of cases of violation to the international bodies.

Finally, the ombudsman and the other quasi-judicial institutions at the national level can work as meaningful partners in the endeavour of collection of data, e.g. the institution of Chief commissioner Disabilities in India can provide ready data on the violation of human rights of persons with disabilities.