

WELFARE STATE AND DISABILITY

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Introduction:

The relation between state and people is always an important question for jurists, because the origin and evolution of the legal order can be theorised only on the basis of the interrelation between state and people. Recognition of institution of state or society both are the subject matter of the social contract. Still members of the society have certain specific expectations from the state or society. These expectations are going to govern the nature of the state. Chanakya in his treatises on politics and jurisprudence "Arthashastra" have provided three purposes of the State these are "Raksha" that is protection, "Palan" that is maintenance and ensuring opportunity of the development of human personality and "Kalyan" that is welfare of the people. The relation between subject and state is always went through the transformation. This change in the relationship is instigated by various forces. For ex- during the chaotic circumstances of society police state is desired, during the peaceful development of society laissez faire state is desired while when the society is suffering with the issues of disadvantages or marginalized issues for the sake of equalization of development opportunity, welfare state is expected. But in any way the nature of state depends upon the circumstances of society and social understanding of the circumstances. This above analysis is applicable with respect to all marginalized groups. In this research article, we are going to study how does the relationship of disability and law underwent transition with the nature of state underwent the change. For the above purpose it becomes crucial to understand disability first. Whenever reference to disability arise, we must consider the idea of ability. There may be a majoritarian idea of ability which can also be called as general idea of ability, which is also known as ableist paradigm. Therefore, it is necessary to understand the notion of ability. Ability can be understood as a capacity of a person to do or to perform or achieve or not to something but, this understanding of ability coupled with comparative analysis of others then give rise to social notion of ability for ex- I can walk on two feet others can also walk on two feet and therefore, anyone who cannot walk on two feet whoever he expected to have a same capacity will be considered as disabled, which means to say does not able.

The notion of disability is highly dependent upon the circumstances which causes experience of disability. Society developed certain perceptions about disability and these social perceptions transmit itself into the legal perception. No humanitarian society have advocated to treat the disabled as the disposable section of the society but, disability is considered not to be inherently equal in comparison with persons without disability. This social and legal understanding of disability can be considered as the cause of the barriers experience by the disables. Law started to interact with the issues of disabled by recognizing disables are entitled to receive the positive contribution of social resources. It means disabled are recipient of social benefit, it means disables are the dependent section of community in other word disables are the dependent or the burden on the community. And this is the precise reason why some of the extremist ideology considered disable as eligible to be disposed of to preserve the social resources. A very significant idea which under lines this approach disables are charity holders and not contributors in the society. Still state is trying to provide some affirmative action for persons with disability because, law was under impression that disables will be benefited by whatever we can give to them. As persons with disability are not able to contribute to the society therefore no question of any discrimination or violation can occur.

With the development of science and technology and with the evolving jurisprudence persons with disability started to contribute to a social fabric. And with the increasing contribution of PWD occasions of the demand for the equal treatment is increasing. Since law was only able to perceive disability as an incompetent to contribute like other, demand for the equal treatment and opportunities was surprising and inconceivable for the legal system. To justify the above claim disability was perceived to be the ground of disqualification of the government service for long time. The judiciary who is under duty to ensure the fundamental rights of the citizens is still cannot perceive an idea that blind person can be competent to work as a judge. Judging the competence of all the person with blindness by the experience of the one of the odd blind person appointed at Tamil Nadu could be considered as the legal reluctant of equal opportunity. It is the same judiciary who have enforced rights of PWD under the disability act of 1995 or the act 2016 but, the blanket ban on the persons with blindness is evident enough to prove that even judicial mind is blocked with the classical notion of disability.

The law deals with disability with objective to improve the capacity of disables. But whether the disability is provided assistant because society feels disables as the recipient of benefits or because society gives an opportunity of participation to disables, is something which will determine the approach of society to the issues of disability. Both the medical model of disability and social model of disability are the approaches of law for the disables but the social

contextual model of disability can be further subdivided into four different approaches. These approaches can be classified as minority based approach ,universalist approach ,human right based approach and capacity best approach. The minority based approach is identifying disability as a separate group or class is considered to be suffering with discrimination because of direct or indirect ignorance by the society. Discrimination usually speaks about political disadvantages and the overcoming of those disadvantages by providing protection to the minority class from majority and system. The similarity between racial discrimination on the basis of minority and discrimination on the basis of disability has been pointed out by Sandra Fredman. She argued that the parallels between racial minority and minority on the basis of disability can be easily identified because both are the product of social ignorance as well as both have suffered the systematic non inclusion . The minority approach treats disability as a glass in itself and its correct to an extent that social structures or infrastructures are designed with ableist considerations and not suitable for persons with disability. Therefore minority rights model who speaks to remove disadvantage based upon discrimination have some merit. But this approach of minority model have a significant limitation that eat speaks only discrimination while the other causes of disability experience are not disgust in this approach. Minority based approach is relying upon the definition of discrimination and they are completely dependent upon the construction of the concept of disability. Usually the discrimination based model or approach of law try to construe definitions or legal terms in its strict manner or conservative manner. Narrow construction of the term disability and their consequential disadvantages in the society will not be sufficient to provide equal opportunity in the society for disables. The major disadvantage of this approach is that person have to establish first that he falls into the category of minority before receiving the benefits on the basis of disadvantages.

The another approach of law to deal with disability is universalist approach here that priority of law is to identify the equality or similarities between disables and non disables at first hand. Minority approach tries to identify the difference and disadvantages between disables and non disables. On the other hand universalist approach trice to assimilate the two identities by acknowledgement of human diversity. To the outer inspection it appears that minority and universalist model are antithesis of each other but in reality universalist approach is the advanced stage of minority based approach. Minority best approach maybe the initial response of a legal system to the issues of disability while universalist approach is the mature response of the legal system to the issues of disability. Universalist Model claim that society when is evolved in consideration of disables paradine then there will not be any barriers in the participation of disables in the society. When barriers will be removed or won't be present the whole social and infrastructural field will be equal for disables and non disables. This model is based upon the notion of universal design wherein the design is so useful which will not differentiate between the abled or disabled person. Social and infrastructure field may be transformed but it requires substantial amount of renovation and designing therefore for initial examples we can look at the Ram's at railway stations or elevators in the buildings which not

only create the system accessible for disables but also create a more easy to use for non disables. Until now we have consider the minority and universalist approach but both are not right based they are a kind of welfare model of law and therefore cannot be called as rights. Model or approach for disability can be found in human rights model where legal system acknowledges right of equal participation and independent life of disables. And human rights model recognises disability is not the fault of disable but it is the fault of an experience arising from interaction of barriers with the human impairment. This model changes the whole gamete of disability framework because there is a creation of legally enforceable rights and the legal mechanism is also provided for its enforcement. United Nations convention on rights of person with disability is the leading example where in disability rights which are little different than the human rights in first and second covenants for human rights because disability rights is a product of a critical legal studies movement and they are third generation rights. PWD Are already eligible for all the human rights declared under other international instruments but the realisation of these human rights for person with disability was suffering with substantial difficulties because of the changed circumstances and hence the specific disability oriented human rights needs to be provided in addition to the existing human rights and for the full realisation of the international human rights for PWD. The law has to secure certain additional legal provisions. The rights of persons with disability act 2016 is the example of this approach.

The last approach of law towards the disability issue is capacity based approach it can also be called as the justice oriented approach. Preamble of the constitution guarantees to the citizen of India justice social economic and political but with respect to persons with disability what kind of justice is secured by the constitution that has to be understood. Justice for the persons with disability is not going to be achieved only by some affirmative measures insuring the social economic or political justice but the disability justice can really be achieve only if the capacities of persons with disability can be developed to its possible extent and can be utilised in the society for the fruitful purposes so that persons with disability will be a contributing member of the society. therefore the author can conclude here that only welfare model is not sufficient to provide an equal playing field to the disables along with non disables but we require the realisation of rights of persons with disabilities with an intention to improve their innete capacities with respect to justice thatis objective of our constitution...and valuable asset of the society and will not remain only the recipient of the benefits and advantages. Person with disability can also participate in social happiness and can lead happy life with barrier free legal and social conditions.

Conclusion: Therefore we can conclude that, The welfare state that which is found in the DPSP of the constitution is also not able to conceive the idea of disability rights or an idea of equality of disables. The whole disability jurisprudence has evolved only after the Beijing declaration signed by India on disability rights. The disability act of 1995 which prevents the discrimination with PWD is based upon understanding of disability as a medical issue. The idea of medical model of disability is that disability of a product of medical problem in human body. Medical intervention will be more suitable to solve the issues of disability. Medical model fails to differentiate an experience of disability with the human impairment for ex- a person who cannot listen because of hearing disability and a person who cannot listen because of the sound barrier both will experience disability of hearing, but one of them had a physical issue and another person does not have a physical issue. when the sound barrier will be removed person with impairment will continue to experience disability and the person without impairment will not. in the above illustration disability may be an experience of person with impairment or without impairment. The whole sequence of disability experience is not depended on impairment alone but depend on social and infrastructural circumstances. The whole experience of disability is a product of medical issues and circumstantial barrier. Therefore law is not only expected to provide affirmative action in the welfare state for PWD but law is rather under positive obligation to remove social or infrastructural barriers in the system which may discourage or prevent participation of PWD to the full extent in society. welfare state is not which can be able to provide some of the positive benefits to the discriminated class of disables but, a true welfare state can be that where the institution of state along with the society will be able to realize the barriers and trying to remove those barriers to ensure the independent lives of PWD. .