

Enabling the Differently Abled

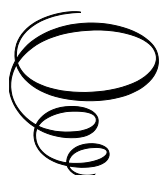
Enabling the Differently Abled:

*The Journey of Indian Mental
Health Jurisprudence*

By

Gireesh Kumar J

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To Gayathri and Geethanjali

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FOREWORD

PROFESSOR K C SUNNY

In today's increasingly polarised world, the need to amplify the unheard voices of marginalised communities is more crucial than ever. It is within this context that Dr Gireesh Kumar's book presents itself as a critical and timely contribution to this field.

Gireesh Kumar, an outstanding legal scholar in the field of human rights, approaches this topic from the perspective of the 'unheard', examining the intersection of disability, rights and the law in India. His profound understanding of the challenges faced by mentally challenged persons in India frames his arguments for rehabilitation, emancipation and 'enabling the differently abled' offers a refreshing and thoughtful perspective on this area. His extensive academic background and practical experience allows him to highlight the systemic issues within the legal system, providing compelling arguments for a rights-based approach to these challenges. The significance of this work cannot be overstated. In India, mentally challenged individuals are often subjected to a range of socio-legal hurdles that impede their ability to lead dignified lives. These challenges are compounded by societal stigma, inadequate legal frameworks, and insufficient policy implementation. Gireesh's book meticulously documents these issues, drawing from both legal analysis and research to present a comprehensive review.

A critical aspect of Gireesh's work is his ability to contextualise the Indian experience within the broader global discourse on disability rights. He adeptly traces the historical evolution of disability law in India, highlighting key legislative and policy milestones. This historical perspective provides readers with a deep understanding of the entrenched challenges and the progress made thus far. Furthermore, by comparing Indian practices with international standards, particularly those outlined in the United Nations Convention on the Rights of Persons with Disabilities (CRPD), Gireesh underscores the gaps and areas for improvement in India's legal and social systems. The book is organised into several insightful chapters, each addressing crucial aspects of the issue:

1. **Disability Facts, Factors, and Facets:** This chapter provides an in-depth overview of the definitions, types, and societal perceptions of disability. It emphasises the social and human rights approach to disability, which has evolved significantly over time, and critiques the limitations of the medical model that traditionally dominated this discourse.
2. **International Laws and Disability Rights:** Here, he explores the international legal framework governing disability rights, highlighting key conventions and treaties. He discusses the influence of global standards on national policies and the importance of aligning domestic laws with international norms.
3. **The Indian Legal System and Disability:** This chapter delves into the specifics of the Indian legal landscape, examining existing laws and policies designed to protect the rights of disabled individuals. It provides a critical analysis of the effectiveness of these laws and identifies areas needing reform.
4. **Legal Protection for the Mentally Challenged:** Gireesh discusses the unique legal needs of mentally challenged individuals and evaluates the adequacy of current legal protections. He advocates for more robust legal mechanisms to ensure their rights are upheld.
5. **Measures for Equalising Opportunities:** This chapter proposes practical measures to enhance opportunities for mentally challenged individuals, emphasising the need for inclusive education, vocational training, and employment support.
6. **Rehabilitation and Emancipation:** The focus here is on rehabilitation strategies and the role of community and government in supporting the integration of mentally challenged individuals into society. Gireesh underscores the importance of early intervention and continuous support.
7. **Enabling the Differently Abled – The Way Forward:** In the concluding chapter, Gireesh outlines a visionary approach for the future, advocating for comprehensive policy reforms and societal attitude changes. He stresses the importance of technology and innovation in improving the quality of life for the mentally challenged and calls for a collaborative effort from all stakeholders to create a more inclusive society.

Readers will find this book to be an enlightening and essential read for several reasons. Firstly, it bridges a critical gap in existing literature by providing a focused study on the Indian context, which is often overlooked in global discourses on disability rights. Secondly, Gireesh's interdisciplinary approach ensures a holistic understanding of the subject matter. This

approach not only enriches academic discourse but also provides practical insights for policymakers, activists, and legal practitioners. Moreover, his dedication to advocating for the rights of mentally challenged individuals is evident throughout the book. His thorough analysis and passionate argumentation make a compelling case for the urgent need to reform socio-legal structures. He offers pragmatic recommendations for legal reforms, policy initiatives, and community-based interventions that can significantly improve the lives of mentally challenged individuals. This book serves as both a call to action and a guide for effectuating meaningful change.

On a more personal note, I have had the occasion of knowing Gireesh Kumar for more than two decades, right from the days of his postgraduate studies and research as my student at the University of Kerala and as my colleague at the Central University of Kerala. Our relationship has allowed me to witness firsthand his unwavering commitment to social justice and his profound empathy for marginalized communities. His passion for advocating the rights of mentally challenged individuals is not just an academic pursuit but a deeply personal mission. His integrity, compassion, and dedication have been a constant source of pride and happiness to me. It is this blend of scholarly rigour and personal commitment that makes his work so impactful and compelling. Our numerous discussions over the years have continually reaffirmed my belief in the necessity of his work. Gireesh's ability to connect theoretical frameworks with real-world applications has profoundly influenced his own approach to human rights education and advocacy. His work serves as a reminder that academic endeavours must be intertwined with practical action and that the ultimate goal of research should be to foster a more equitable and just society. Accordingly, I can attest to the transformative potential of his work. It is an exemplary piece that not only advances academic knowledge but also has the potential to influence policy and practice. His insights into the intersectionality of disability with other axes of marginalisation, such as gender and economic status, further enrich the discourse and highlight the need for an inclusive and intersectional approach to human rights advocacy.

Gireesh's dedication to advocating for the rights of mentally challenged individuals is admirable and fully evident throughout the book. Within the analysis and arguments presented, his passion is clear, which makes a more compelling case for the need to reform social and legal structures. His words are more than just words; they are both a call to action and a guide for how we can effect meaningful change for those individuals who remain marginalised by society. On familiarising myself with his work and seeing the transformation on the ground that he has catalysed in these communities, I can honestly say that as a person and as an advocate for change, he is a

rare gem. His passion and dedication are clearly evidenced within this book, a book that not only advances our academic knowledge but has the clear potential to positively influence policy and practice. I am truly delighted to be asked to write the foreword to this book and to call Gireesh a very dear one among my students and colleagues. I take this opportunity to wish Dr Gireesh Kumar all the success and contentment in his endeavours to transform knowledge into wisdom by attempting to answer questions on the rights and welfare of the deprived sections of society.

PREFACE

Historically, individuals with disabilities have faced systemic exclusion across various domains of society, including education, institutional care, and social interactions. Despite occasional well-intentioned efforts, such exclusion has often been accompanied by profound mistreatment. Legal and social policies have often failed to address discrimination and failed to safeguard the rights and dignity of differently abled individuals. This underscores an urgent need to address the root causes and consequences of their marginalization by transforming societal attitudes and reforming legal frameworks.

Policies shaped by prejudice and fear frequently undermine equitable and humane treatment for individuals with disabilities in both community and institutional contexts. This inadequacy intensifies the professional obligations of legislators, policymakers, legal practitioners, social scientists, and health professionals to actively advocate for and advance the welfare of differently abled individuals. A critical re-evaluation of these societal roles is necessary, extending beyond mere legislative action to foster a broader culture of inclusivity.

The situation is particularly dire for individuals with intellectual disabilities, who often lack the capacity for informed understanding and judgment regarding their rights. Consequently, representatives from within their own demographic are seldom in a position to advocate effectively on their behalf. This places a heightened responsibility on governmental and non-governmental actors, as well as on civil society at large, to champion the rights of this vulnerable population. Comprehensive policies and innovative rehabilitation models are essential to enforce these rights effectively and to dismantle systemic barriers.

Distressingly, despite decades of legislative reforms, significant gaps persist in the laws and policies intended to address the challenges faced by persons with disabilities. A thorough and critical examination of various legal frameworks—including civil, criminal, personal, and social security laws—is imperative to identify and address these deficiencies. This book endeavors to shed light on the pervasive discriminatory attitudes of families, communities, and society at large toward the fundamental rights of differently abled individuals. It provides an analysis of existing laws and policies, identifying shortcomings within the current legal and policy

frameworks. By employing doctrinal, analytical, and descriptive methodologies, the book evaluates international, Indian, and comparative legal instruments to highlight pressing concerns regarding the rights of differently abled individuals, with a specific focus on those with intellectual disabilities.

Key issues affecting the rights of persons with intellectual disabilities are critically examined, alongside proposals for necessary reforms within the socio-political and legal domains, including constitutional and statutory measures in India. This work emphasizes the importance of transitioning from a charity-based to a right-based approach, advocating for a collaborative effort among policymakers, stakeholders, and civil society to create a disability-friendly socio-legal order. It is with humility and a commitment to advancing awareness that this book is presented to readers—whether academics or those with a general interest in the subject—in the hope of contributing to a deeper understanding of the vulnerabilities faced by individuals with disabilities and the collective responsibility of the society to address their enduring marginalization.

The author is holding full faith in the expectation that this work will definitely be an attempt to contribute to the existing knowledge on disability rights by adding an extra edge to the readers' perception.

ACKNOWLEDGEMENTS

Disability of body or mind has been viewed as a degrading status by able-bodied and stable-minded people for a long time. The term 'handicapped', originated from the practice of mercilessly addressing physically challenged beggars of on pavement, carrying a cap in their hand is still in use to address the disabled population. Even after centuries of liberal democratic culture, many societies did not do away with that demeaning term in addressing this vulnerable section of the society with physical or mental disability.

The main area dealt with in this work is the social stigma and vulnerability to which persons with physical or mental incapacities are subjected to in the society. It shall be noted that if a society can accept the fact that many differently abled persons can, with proper training, accept basic responsibilities, it is unfair to view them as inferior to anyone else. This book therefore focuses on how to practically perceive the principle of equalization and customization of opportunities for persons with physical and mental disabilities.

The completion of this work would not have been accomplished but for the valuable help from a number of people to whom I am deeply indebted. Therefore, it is time for extending some words of gratitude to all such great hearts. Above all is the immense help and guidance of **Dr. K.C. Sunny**, Formerly Professor of Law, Central University of Kerala and Vice Chancellor National University of Advanced Legal Studies, Kochi, Kerala, who has not only been my beloved teacher and resourceful research guide but also the lighting lamp in all my academic endeavours, who ultimately lead this task to a success and extended his love for me by giving this work a fitting foreword. I take this opportunity to extend my deep sense of gratitude to him.

The help and support I have received from my great teacher, **Dr. N.K. Jayakumar**, formerly Vice Chancellor, National University of Advanced Legal Studies, Kochi, Kerala, also was instrumental in the completion of this work. I express my most sincere gratitude to him. Equally valuable was the amount of support and encouragement shown by my loving teachers, **Dr. Bismi Gopalakrishnan**, Registrar, Mahatma Gandhi University, Kottayam, Kerala and **Dr. Sindhu Thulaseedharan**, Associate Professor, Department of Law, University of Kerala. My heartfelt thanks are due to both of them. The help and support extended by **Dr. K. Suryaprasad** and

Shri. Vamadevan Achari, formerly the librarians of Department of Law, University of Kerala, also are worth mentioning in my academic and research work. I express my sincere gratitude to them. During the course of this work, I was helped with library and other resources by **Dr. A. Philipose**, former Director, and **Smt. Bindu**, Librarian, C.H. Mohamed Koya Memorial State Institute for the Mentally Challenged, Pangappara, Thiruvananthapuram, Kerala. I would like to thank both of them and also all other staff members of the Institute.

I am indebted to a lot of individuals and institutions for the valuable support and assistance received for the completion of this work. I am highly obliged to **Dr. Sonia K. Das**, Associate Professor, Government Law College, Thrissur, **Dr. R. Girish**, Associate Professor, Gujarat National Law University, **Dr. Meenakumary**, **Dr. Moneyveena** and **Dr. Anju Rajan**, Professors of Government Law College, Thiruvananthapuram, **Shri. Prasanth Chandran**, IES, Director, Ministry of Agriculture, New Delhi, **Shri. Sayeed Rasheed**, IPoS, Postmaster General, Kochi, Kerala, **Smt. Veni Raj. IRS**, Income Tax Commissioner, Kerala, **Dr. K.N. Sreekumar**, Assistant Professor, Department of German, University of Kerala, **Dr. Saji George**, **Rehabilitation Officer**, Vocational Rehabilitation Centre, Thiruvananthapuram, Kerala, **Dr. Asif**, Formerly, Research Officer, Indian Society of International Law, New Delhi, **Dr. Sukumaran M**, Assistant Professor, V.K. Krishnamenon Memorial Government College for Women, Kannur, Kerala and **Shri. V. Nagaraj**, Civil Supplies Corporation, Government of Kerala, **Prof. (Dr.) Gigimon**, Professor, Amity Law School Mumbai, **Shri. Nikhil. M.C**, Civil Supplies Dept., Govt. of Kerala, **Dr. Jojoy Thomas**, Assistant Professor, S. D College, Kanjirapally, Kerala. I thank all of them with a deep sense of love and gratitude. My boundless gratitude and love are due to my beloved friend **Shri. S. Syamsunder IPS**, Inspector General of Police, Kerala for being with me through tough times as more than a friend during my personal as well as academic life.

Special words of gratitude are due to my dear friend, **Dr. Samantha Spence**, Associate Professor in Human Rights and Social Justice, University of Staffordshire, United Kingdom for her immense help and support for materializing this work. The enduring help and support extended in updating, editing and finally making the work more resourceful and novel extended by **Dr. Arjun Philip George**, my beloved student of Post-Graduation and PhD and currently Assistant Professor, VIT School of Law, Chennai, the dedicated help by **Adv. Muhsina Jaffar**, my LLM student at Central University of Kerala and the resourceful support rendered by **Dr. Bhavana Rao**, my former student of Delhi University and currently Assistant Professor of Faculty of Law at University of Delhi, had been so

instrumental in the completion of this work, which is beyond a formal thanksgiving.

The interactions with many people and personal visits to various institutions have worked as resourceful content for this study. Among such personalities, I am deeply indebted to **Prof. Ramaswamy**, Honorary Director and Patron, Akshaya Kshethram, A Home for the Disabled, Tirupati, Andhra Pradesh, **Dr. H. S. Siddamallaiiah**, Principal Library and Information Officer, National Institute for Mental Health and Neuro Sciences, Bangalore, **Shri. Sanjay**, Librarian, Action for Ability, Development and Inclusion (AADI), Formerly known as the Spastic Society of India and presently part of the School of Rehabilitation Sciences, University of Delhi, **Dr. T. C. Shivakumar**, Director, National Institute for Mentally Handicapped, Secunderabad, **Smt. T. Revathi**, Director, **Smt. Jayanti Poojari**, Associate Coordinator and **Shri. Srinivasan**, Librarian, Thakur Hariprasad Institute for Research and Rehabilitation of the Mentally Handicapped, Secunderabad, **Shri. Naushad**, Manager, Health Care Society, A Home for the Disabled, Punoor, Kozhikode, Kerala, **Mrs. Ruby**, Librarian, National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, New Delhi, **Shri. Srinivas**, Librarian and **Mr. Raj Kumar Goyal**, Research Officer, Office of the National Human Rights Commission, New Delhi, **Shri. Tiwari**, Library and Information Officer, Human Rights Law Network, New Delhi and all the staff members of the office of the Chief Commissioner for Persons with Disabilities, and the office of the Rehabilitation Council of India, New Delhi. My sincere gratitude is due to all of them.

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The opportunity granted by the Department of Law, University of Kerala, for me to do doctoral research on a human rights-oriented topic like the issue of the differently abled was instrumental in the completion of this work. The positive and supportive action taken by the University of Kerala in granting permission for the publication of this work is thankfully acknowledged by me.

The love and care of my father, late **Shri. Janardhanan**, my mother **Smt. Santha** and my maternal aunt, late **Smt. Ponnamma**, have also been transformed into energy and encouragement for my academic journey

forward. I express my everlasting gratitude and love to them. Equally important was the help and support shown by my wife, **Smt. Ligisha. S.** and my daughters, **Gayathri** and **Geethanjali** for the successful completion of this work.

This work is humbly dedicated to my family, my teachers, my colleagues and students- both at the University of Delhi and the Central University of Kerala- and friends who have always worked together as the real force and motivation behind every endeavour I undertake. Last but not least, I thank the noble ideals of truth and humanity which serve to generate courage in me to face every phase of life. Finally, it is humbly stated that any views and opinions expressed in this work are personal only and I am the sole responsible person for any mistake, error or omission.

CHAPTER ONE

DISABILITY, FACTS, FACTORS AND FACETS

“Nature reveals some of her deeper secrets through the abnormal”

*Edward C. Lindeman

Physical and mental abilities coupled with the availability of opportunities result in the emergence of a successful human being. Ability of body and mind is a pre-requisite for the pursuit of happiness in all living things. Disability of any kind may tend to reduce the overall development of human beings in a fast-moving society. There are examples of extraordinary people in history who have crossed the hurdles of bodily disability by the courage and confidence of mind to strive for victory. However, this very notion of mental excellence gets defeated in the case of a person with some amount of disability of mind despite one's bodily ability.

Disability – Meaning and Manifestations

The term disability has been medically defined by the World Health Organization way back in 1976 as a condition grounded in the physiological, biological and intellectual impairment of an individual.¹ The WHO definition of disability explains that disability is an impairment that prevents the fulfilment of a role that is considered normal, depending on age, sex, social and cultural factors for any individual. This description frames disability within a medical model which does not take note of the imperfections and deficiencies in the basic social structures and processes that fail to accommodate the difference of an individual on account of disabilities. The legal definition of disability has become more objective with the explanation given by the Persons with Disabilities (Equal

* See Frank Coustin and Juris G. Draguns, *Abnormal Psychology: Patterns, Issues and Interventions*, 1st ed. (1989), 4.

¹ World Health Organization, *International Classification of Impairments, Disabilities, and Handicaps: A Manual of Classification Relating to the Consequences of Disease* (Geneva: World Health Organization, 1980),
https://apps.who.int/iris/bitstream/handle/10665/41003/9241541261_eng.pdf

Opportunities, Protection of Rights and Full Participation) Act, 1995, which says, “Disability means blindness, low vision, leprosy-cured, hearing impairment, loco motor disability, mental retardation and mental illness”.² This has become furthermore elaborate and exhaustive by the Rights of Persons with Disabilities Act, 2016 which says, “Disability means a long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders a person’s full and effective participation in society equally with others.”³

Between 1910 and 1965, experts described people with severe intellectual disabilities as eternal children who would never grow up. Accordingly, these children were at the end, not the beginning, of their development.⁴ Disability of body is largely cured through medication, provision of assistive devices and physical medicine rehabilitation techniques with the growth of modern medical science. However, a person with mental disability could not be cured easily by mere material assistance but needs better care and protection through specially designed rehabilitation strategies. Thus, in addition to a medical approach, mentally challenged individuals need greater social attention to lead a dignified life in society.

Social and Human Right Approach to Disability

A social and human right approach to the problem of disability has emerged with the efforts of international organizations and documents working for the protection of basic human rights of individuals. One differentiating factor is the residual cultural taboos and stigma still attached to disability in low-wealth nations, much of which has been ameliorated in high-wealth nations. Another is the lack of national investment into rehabilitation and support services to families and people with disabilities and the low value placed on people often marginalized in less developed nations.⁵ Disability is never considered as a degrading status under the human rights model. This approach explains disability as a condition of reduced ability of an

² See Section 2(i) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

³ See Section 2(s) of the Rights of Persons with Disabilities Act, 2016.

⁴ Janice A. Brockley, “Rearing the Child Who Never Grew: Parents, Professionals, and Children with Intellectual Disabilities, 1910–1965” (PhD diss., Dissertation Abstracts International Section A: Humanities and Social Sciences 62, no. 10-A, April 2002), 3535.

⁵ Eric Emerson, Roy McConkey, Patricia Noonan Walsh, and David Felce, “Intellectual Disability in a Global Context,” *Journal of Policy and Practice in Intellectual Disabilities* 5, no. 2 (June 2008): 79–80.

individual to take part in normal community life on an equal level with his non-disabled peers.⁶ The social approach rejects the use of the word 'handicap' which refers to a condition of total inability and considers disability as a state of body or mind which could be transformed positively by a sound and humanitarian approach.

The central focus of the socio-human approach to disability is the acceptance and enforcement of basic human rights of persons with physical or mental disabilities. It considers the social conditions which disable a group of individuals by ignoring their need for accessing opportunities in a manner different from others. It also views these social conditions as infringing upon human rights of the differently abled as instances of discrimination against them. According to this approach, "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."⁷

The socio-human approach to disability recognizes a wide range of factors which cause or influence the occurrence as well as recurrence of physical and mental disabilities in the society. These include poverty, illiteracy, wars, epidemics, natural calamities, unhygienic living conditions, hereditary and birth defects of children, constraints of resources, geographical distance, physical and social barriers, stress and psycho-social problems etc.⁸ The limitations of national resources which result in the inability to prevent and care for different diseases experienced by underdeveloped nations contribute to the problem of vulnerability of people with physical or mental disabilities living in such nations.⁹ Persons with intellectual disabilities have historically been denied their rights or experienced severe rights restrictions. In recent decades, there has been a shift towards the respect for the rights of persons with disabilities.¹⁰ Therefore, it could be

⁶ The social and human right approach to disability was shaped mainly by the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993 which states that "people may be disabled by physical, intellectual or sensory impairment, medicinal conditions or mental illness, such impairments, conditions or illness may be permanent or transitory in nature, but there is considerable difference between disability and handicap."

⁷ See *Disability Manual 2005*, National Human Rights Commission p. 11.

⁸ Ibid.

⁹ A study titled, *regional trends impacting on the situation of persons with disabilities*, conducted by the "United Nations Economic and Social Commission for Asia and the Pacific" in 2002 reveals that people with disabilities are estimated to make up to 15 to 20% of the poor in developing countries.

¹⁰ Dorothy M. Griffiths et al., "Human Rights and Persons with Intellectual Disabilities: An Action-Research Approach for Community-Based Organizational Self-

easily underlined that the pitiable state of the differently abled population of the world has its roots in economic and social deprivation.

Mentally Challenged People and the Choice of Rights

According to the autonomy theory of rights, an autonomous person is one who is the author of his own life, and his life is his own making.¹¹ Accordingly, the enjoyment of every right is dependent on the capacity of the holder of such a right to have autonomous thinking, which leaves before him a variety of options as regards the conditions of life. A mentally challenged person is incapacitated to have a choice of options and rational judgments as regards his life based on the concept of rights and duties. In such a situation it is the duty of the State and the society to exercise their power of choice in a manner which maximizes the happiness and peace of a mentally challenged individual.

John Rawls argues that a democratic system based on social contract can serve justice only when principles which the society choose to govern the collective life of its citizens are questioned on the ground of whether different people having different associations will agree to these principles in an initial situation of equality.¹² In this context, while even the physically abled and socially forward sections of the society find the principles of governance difficult to agree to, the plight of differently abled sections of the society becomes the reflection of further sidelining of the interests of the weak by the strong and the powerful in the society. Thus, it is highly imperative to not only spell out a special rights- framework for the weak and the differently abled but to create a unique and specialized enforcement mechanism also for the meaningful enjoyment of such rights by the true right holders.

Further, Rawls adds that the status of being born into nobility or serfdom is no doing of the individual.¹³ Hence, he finds it extremely unjust to make one's life prospects depend on the arbitrary fact of attributing proper access to basic rights and justice to the surroundings in which a person is taking birth. However, John Rawls' theory of the predicted ability of the free market to offer due exercise of everyone's choice and decent distribution of

Evaluation," *Journal on Developmental Disabilities* 10, no. 2 (December 2003): 25–42.

¹¹See Joseph Raz, "Right-Based Moralities," in *Theories of Rights*, ed. Jeremy Waldron, 1st ed. (1989), 191.

¹² John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1971).

¹³ *Id.*

societal resources often gets wrongly placed in the current environment of deliberately created and knowingly preserved inequality. Apparently, the methods and models of action for eradicating inequality should be designed in a properly inclusive manner free from historical affinities and conventions but based on liberal expectations and plans about a level playing field for right holders and justice seekers. Thus, to awaken and emancipate people with limited or no ability, it is very much important that the socio-legal system of a society is considerate and accommodative to the welfare and protection of all its deprived sections including the physically or mentally challenged.

Another important feature of the problem of mentally challenged people in particular is their impossibility to have a representative from among themselves to raise their voice for their protection and welfare. The present-day society witnesses hues and cries from the oppressed and the disadvantaged sections of the society for enforcing their basic rights and claiming what is due to them. Incapacity to make decisions can crucially affect quality of life. Those who lack capacity are vulnerable to abuse from others, ranging from over-paternalism to exploitation, neglect and violence.¹⁴ The vulnerability of almost all such sections like the marginalized population, women, dalits and tribal people, refugees and the displaced, the physically challenged etc. has been grossly addressed by people from among the victims themselves in a representative character. However, in the case of the mentally challenged, owing to their incapacity of having a reasonable understanding and rational judgment as to their rights, there is hardly any chance for anybody belonging to their own class to address their problem in a representative capacity.

Mental Disability and the Problem of Social Acceptance

Disability of mind is specially characterized by abnormality of behaviour caused by medical and cognitive factors. A child may be mentally abnormal by birth, or such disability may be acquired during infancy or childhood. The abnormal mental condition called mental retardation (MR) disables an individual from adapting to the normal social life. Medical and legal definitions of mental retardation unfold the different attributes of this mental abnormality with the help of scientific and juridical tools. The conceptual analysis of mental retardation warrants its distinction from mental illness which is quite often considered as a curable disease.

¹⁴ Rowena Jones, "Review of the Mental Capacity Act of America, 2005," *Psychiatric Bulletin* 29, no. 11 (November 2005): 423–427.

The definitional approach to the problem of mental retardation underwent much transformation in the early 1990s through the efforts of medical experts and social scientists. As a result of development towards this direction, mental retardation was redefined as the existence of substantial limitations in the functioning of mind. Accordingly, it is said to be characterized by significantly sub verge intellectual functioning, existing concurrently with related limitations in two or more applicable adaptive skill areas such as communication, self-care, home living, social skills, community use, self-direction, health and work.¹⁵ Social and economic activities, according to this approach, shall be aimed at creating inclusive opportunities for the mentally challenged people.

People with profound intellectual and multiple disabilities have been the subject of diametrically opposed philosophies. Bioethicists have denied their personhood because of their lack of self-awareness and low level of cognitive functioning. Such a view has been used to justify both euthanasia and surgical and hormonal intervention to experiments on them.¹⁶ According to well-known utilitarian philosophers Helga Kuhse, James Rachels and Peter Singer, the present-day society is grossly influenced by the concept called 'bio utilitarianism', which views the potential existence of infants with intellectual disabilities as less valuable than the existence of 'normal' infants. By ignoring the social constructionist dimension of disability, the bio utilitarians make questionable moral conclusions. Also, the underlying assumption of their position is an 'intelligist' intuition, namely that intellectually 'normal' human beings are morally more valuable than human beings with intellectual disabilities.¹⁷

Classification of the Mentally Challenged

Based on the degree and magnitude of abnormality of mind, the World Health Organization in its International Classification of Diseases, classified mentally challenged people into certain groups which are in need of varying

¹⁵ See *Karavallamban Weekly*, vol. 6, no. 3 (September 1993): 8.

¹⁶ James Hogg, "Complex Needs and Complex Solutions: The Challenge of Profound Intellectual and Multiple Disabilities," *Journal of Policy and Practice in Intellectual Disabilities* 4, no. 2 (June 2007): 79–82.

¹⁷ Simo Vehmas, "Discriminative Assumptions of Utilitarian Bioethics Regarding Individuals with Intellectual Disabilities," *Disability & Society* 14, no. 1 (January 1999): 37–52.

amount of attention, care and treatment. The division can be elaborated as follows.¹⁸

- (i) **Mildly Retarded:** This class of MR people are otherwise called ‘the dull’, having intelligence quotient (IQ) range between 50 and 70. The cognitive development in this class of mentally challenged individuals is much slower. Proper care and techniques of training can produce great results in these people, if correctly approached.
- (ii) **Moderately Retarded:** This group of people is considered to be ‘educable mentally retarded’ characterized by an IQ ranges from 35 to 49 approximately. Though they are much behind in adaptive skills compared to the class of mild MR, they are educable if special educational and protective services are provided to them.
- (iii) **Severely Retarded:** Yet another class of mentally challenged people with IQ ranges from 20 to 35 is considered to be ‘severely mentally retarded’. This class of people cannot adapt to the normal education system but could be trained under optimum conditions and in some instances may undertake productive work. A combined and coordinated effort by educational and health authorities can produce considerable development in this group of MR people.
- (iv) **Profoundly Retarded:** The last group in this broad classification of mentally challenged people with a very low range of IQ from zero to 19 approximately is the profound MR. These people, otherwise called ‘imbeciles’, are so grossly retarded intellectually that they require nursing care and protection throughout their lives and are, therefore, the concern of health and welfare agencies, rather than educational authorities.

In 1992, the American Association on Mental Retardation had formulated a modified definition and classification of mental retardation which is slightly different from the earlier models. Accordingly:

1. A single diagnostic code of mental retardation is used if the person meets the three criteria of age of onset (18 or under), significantly sub average abilities in intellectual functioning, and related limitations in two or more adaptive skills areas.
2. The person's strengths and weaknesses are described in reference to four dimensions: intellectual functioning and adaptive skills; psychological and emotional well-being; health, physical well-being, and etiology; and life activity environments; and,

¹⁸ World Health Organization, *The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines* (Geneva: World Health Organization, 1992)

3. A profile of needed supports is developed across the four dimensions.¹⁹

Mental retardation is a complex concept influenced to a large extent by cultural factors and its determination involves the administration of sophisticated psychological tests.²⁰ Therefore, for an effective understanding of the different problems faced by mentally challenged people and to strive for finding effective solutions for such problems, it is necessary to have a scientific temper coupled with a socially responsible attitude on the part of policy makers and executors.

Other Forms of Mental Abnormalities

In addition to mental retardation, mental abnormalities get manifested in some other forms having different magnitudes and degrees depending on the causes and nature of such disabilities. The commonly found such forms of mental abnormalities are 'autism', 'cerebral palsy' and 'spasticity'. An analysis of the nature and effects of such mental abnormalities will clarify its distinction from the condition of mental retardation.

Autism: Autism is a disorder of neural development characterized by impaired social interaction and communication, and by restricted and repetitive behaviour. Autism is recognized as the third most common developmental disorder, and is characterized by abnormalities in social interactions, communication and motor skills.²¹ It is one of the three recognized disorders in the autism spectrum, the other two being Asperger syndrome, which makes delays in cognitive development and language, and Pervasive Developmental Disorder, which is diagnosed when the full set of criteria for autism or Asperger syndrome are not met.²² Legally, autism means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behaviour.²³ Thus, autism is a mental abnormality which is

¹⁹ Robert L. Schalock, Jack A. Stark, Martha E. Snell, and David L. Coulter, "The Changing Conception of Mental Retardation: Implications for the Field," *Mental Retardation* 32, no. 3 (June 1994): 181–193.

²⁰ See M. Afsal Wani, "Disabled Children's Right to Education," in *Rights of Persons with Disabilities*, ed. Shashi Kant Verma and S. C. Srivastava, 1st ed. (2002), 110.

²¹ Latheef Wafa "Dealing with Autism", *The Hindu*, Delhi, 21st June 2009.

²² *American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders. 5th ed. Arlington, VA: American Psychiatric Association, 2013.*

²³ See Section 2(a) of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

slightly different from mental retardation in terms of nature and magnitude of the syndrome.

Cerebral palsy: Cerebral palsy (CP) is an umbrella term encompassing a group of non-progressive, and non-contagious motor conditions that cause physical disability in human development, chiefly in the various areas of body movement. Resulting in limits in movement and posture, it causes activity limitation and is often accompanied by disturbances of sensation, depth perception and other sight-based perceptual problems, communication disability, and sometimes leading to epilepsy.²⁴ In legal terms, cerebral palsy means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, perinatal or infant period of development.²⁵ Cerebral palsy is also a form of mental abnormality resulting in developmental disorder of the body and mind of an individual.

Spasticity: Spasticity is a feature of altered skeletal muscle performance occurring in disorders of the central nervous system of human beings impacting the upper motor neuron in the form of a lesion. It gives rise to neuromuscular disabilities centered on muscles which become permanently "tight" or spastic. When there is a loss of descending inhibition from the brain to the spinal cord, such that muscles become overactive, this loss of inhibitory control can cause an ongoing level of contraction, with decreased ability for the affected individual to volitionally control the muscle contraction, and increased resistance felt on passive stretch.²⁶ Spasticity is not addressed anywhere by laws dealing with mental or physical disabilities but considered to be a condition which affects both the body and mind of the victim.

Historical Account of Disability Management

In the past, the attitude of the society has been totally negative and indifferent towards the differently abled. They were regarded as deviant, considered social evils, viewed as a menace to the society, sub-human, unspeakable objects and objects of ridicule. Consequently, the tendency to

²⁴ Mayo Clinic, "Cerebral Palsy-Symptoms and Causes," *Mayo Clinic*, <https://www.mayoclinic.org/diseases-conditions/cerebral-palsy/symptoms-causes/syc-20353999>.

²⁵ See Section 2(c) of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

²⁶ Angshuman Mukherjee and Ambar Chakravarty, "Spasticity Mechanisms – for the Clinician," *Frontiers in Neurology* 1 (2010), <https://www.frontiersin.org/articles/10.3389/fneur.2010.00149/full>.

segregate them was motivated due to the thinking that the differently abled are not good to the society. Society did not rehabilitate them, on the contrary, it warehoused them under custodial centres from cradle to grave. However, slowly and gradually these attitudes have changed for the better management of such people. The society had realized that persons with physical or mental disabilities can be trained to live and work within it. Keeping this in view, the society had adopted the policy of deinstitutionalization that is to bring persons with mental retardation to the mainstream.

The ancient Indian cultural ethos is found to be very much sceptical to the practice of charity and service directed towards the welfare of the needy and the disadvantaged. The 'weak' has been given paramount consideration in social and economic allocation of resources right from the Vedic and Upanishad period.²⁷ Disability of body or mind of an individual placed them under the focus of the society to have an equal share in life amenities. However, mentally retarded people have historically been treated separately, in institutions, in education, and other aspects of society; and despite good motives, they have been grossly ill-treated. As Karl Menninger observed, "if society could accept the fact that many mentally challenged persons can, with proper training, accept responsibility, it has been unfair to judge them as inferior to anyone else."²⁸

Historically, the law has directly discriminated against mentally challenged persons and has failed to protect them from discrimination of every kind. Policy decisions based on prejudice and fear tend to jeopardize fair and humane treatment of mentally challenged persons in community and institutional settings. Such inadequate legal protection for mentally challenged persons escalated the significance of the professional responsibility of psychologists and other mental health professionals to promote respect for the personal autonomy of their clients and to strive to preserve their clients' constitutional rights of due process and equal protection under the law.²⁹

²⁷ Dr. S. Radhakrishnan's version of *Brahad Aranyaka Upanishad* and *Chandogya Upanishad* (1953, pp. 306-423) refer to "children mindless" or "undeveloped minds" (*bala amanasah*) to be considered as important with regard to educational and social preaching mechanisms.

²⁸ Karl Menninger, "Mental Retardation and Criminal Responsibility: Some Thoughts on the Idiocy Defense," *International Journal of Law and Psychiatry* 8, no. 3 (1986): 343-357.

²⁹ Gary B. Melton and Ellen G. Garrison, "Fear, Prejudice, and Neglect: Discrimination against Mentally Disabled Persons," *American Psychologist* 42, no. 11 (November 1987): 1007-1026.