

Article 5 : The confederation guarantees to the cartons their territory sovereignty within the limits fixed by Article 3. Their Constitutions the liberty and rights of the people. The constitutional rights of their people, the constitutional rights of the citizens and the rights authorities.

Article 15 : In case of the sudden danger from without the Government of the carton threatened must invoke the assistance of the confederated States and immediately notify the federal authority the measures which may subsequently be taken by the letter not being prejudiced thereby the cartons so called upon are based to give their assistance. The cost shall be borne by the confederation.

The particularity in the above section is that when there is external aggression (though not named as such). The Government of the cartons threatened must seek help of the confederation and the confederation can command any or some of the cartons to assist it in restoring normally. Though at the cost of the confederation itself.

Article 16 : In the case of internal disorder or of danger being threatened from another carton, the Government of the carton threatened must immediately notify the federal council, in order that the body may take the

necessary measures within the limits of its competence,³ or convene the federal Assembly. In case of urgency of the cartonal Government while immediately notifying the federal Council may call for assistance of the other confederated States which the latter are bound to render.

In case of cartonal Government cannot seek the help or conflation, the confederation on its own initiative resues the cortons.

Emergency provisions in Australia : Sections 61 and 113 of the Australian Constitution provide these powers.

Section – 61 : The executive power of the Commonwealth extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth.

Section – 119 : The Commonwealth shall protect every State against invasion and on the application of the executive Government of the State against the domestic violence.

Actually speaking there is no much practical applications to the above provisions. But these powers have been liberally interpreted by the Supreme Court. In this respect is similarity in both Australia and United Kingdom.

MENTALLY CHALLENGED PEOPLE - RIGHTS — A STUDY

By

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MEANING: The term “mental retardation” is a diagnostic term designed to capture and standardize a group of disconnected categories of mental functioning such as “idiot”, “imbecile”, and “moron” derived from early IQ tests, which acquired pejorative connotations in popular discourse

over time. The term “mental retardation” has itself now acquired some pejorative and shameful connotations over the last few decades due to the use of “retarded” as an insult. This may in turn have contributed to its replacement with expressions such as “mentally challenged” or “intellectual disability”.¹

3. Articles 102, 103, 10 and 11

1. “AAIDD POSITION STATEMENTS”. Retrieved on 2007-08-23.

In North America mental retardation is subsumed into the broader term *developmental disability*, which also includes epilepsy, autism, cerebral palsy and other disorders that develop during the developmental period (birth to age 18.)

The American Association on Mental Retardation continued to use the term *mental retardation* until 2006. In June 2006 its members voted to change the name of the organization to the “American Association on Intellectual and Developmental Disabilities,”

In the UK, “mental handicap” had become the common medical term, replacing “mental subnormality” in Scotland and “mental deficiency” in England.

Signs of Mentally Challenged:

Children with mental retardation may learn to sit up, to crawl, or to walk later than other children, or they may learn to talk later. Both adults and children with mental retardation may also exhibit the following characteristics:

- * Delays in oral language development
- * Deficits in memory skills
- * Difficulty learning social rules
- * Difficulty with problem solving skills
- * Delays in the development of adaptive behaviours such as self-help or self-care skills
- * Lack of social inhibitors

The limitations of cognitive functioning will cause a child with mental retardation to learn and develop more slowly than a typical child. Children may take longer to learn language, develop social skills, and take care of their personal needs such as dressing or eating. Learning will take them longer, require more repetition, and skills may need to be adapted to their learning level. Nevertheless, virtually every child is able to learn, develop

and become participating members of the community.

Causes:

Down syndrome, fetal alcohol syndrome and Fragile X syndrome are the three most common inborn causes. However, doctors have found many other causes. The most common are:

- * Genetic conditions. Sometimes disability is caused by abnormal genes inherited from parents, errors when genes combine, or other reasons. The most prevalent genetic conditions include Down syndrome. In the rarest of cases, abnormalities with the X or Y chromosome may also cause disability. 48, XXXX and 49, XXXXX syndromes affect a small number of girls worldwide, while boys may be affected by 47, XYY, 49, XXXXY, or 49, XYYYY.
- * Problems during pregnancy. Mental disability can result when the foetus does not develop inside the mother properly. For example, there may be a problem with the way the foetus's cells divide as it grows. A woman who drinks alcohol or gets an infection like rubella during pregnancy may also have a baby with mental disability.
- * Problems at birth. If a baby has problems during labour and birth, such as not getting enough oxygen, he or she may have developmental disability due to brain damage.
- * Exposure to certain types of disease or toxins. Diseases like whooping cough, measles, or meningitis can cause mental disability if medical care is delayed or inadequate. Exposure to poisons like lead or mercury may also affect mental ability.
- * Iodine deficiency, affecting approximately 2 billion people worldwide, is the

leading preventable cause of mental disability in areas of the developing world where iodine deficiency is endemic. Iodine deficiency also causes goitre, an enlargement of the thyroid gland. More common than full-fledged cretinism, as retardation caused by severe iodine deficiency is called, as mild impairment of intelligence. Certain areas of the world due to natural deficiency and Governmental inaction are severely affected. India is the most outstanding, with 500 million suffering from deficiency, 54 million from goitre, and 2 million from cretinism. Malnutrition is a common cause of reduced intelligence in parts of the world affected by famine, such as Ethiopia.²

Treatment and Assistance:

By most definitions mental retardation is more accurately considered a *disability* rather than a *disease*. MR can be distinguished in many ways from mental illness, such as schizophrenia or depression. Currently, there is no “cure” for an established disability, though with appropriate support and teaching, most individuals can learn to do many things.

There are thousands of agencies in the United States that provide assistance for people with developmental disabilities. They include state-run, for-profit, and non-profit, privately run agencies. Within one agency there could be departments that include fully staffed residential homes, day habilitation programs that approximate schools, workshops wherein people with disabilities can obtain jobs, programs that assist people with developmental disabilities in obtaining jobs in the community, programs that provide support for people with developmental disabilities who have their own apartments, programs that assist them with raising their children, and

many more. The Burton Blatt Institute at Syracuse University works to advance the civic, economic, and social participation of people with disabilities. There are also many agencies and programs for parents of children with developmental disabilities.

Although there is no specific medication for mental retardation, many people with developmental disabilities have further medical complications and may take several medications. Beyond that there are specific programs that people with developmental disabilities can take part in wherein they learn basic life skills. These “goals” may take a much longer amount of time for them to accomplish, but the ultimate goal is independence. This may be anything from independence in tooth brushing to an independent residence. People with developmental disabilities learn throughout their lives and can obtain many new skills even late in life with the help of their families, caregivers, clinicians and the people who coordinate the efforts of all of these people.

International Conventions:

Joint Council for the Physically and Mentally Disabled - Hong Kong

Hong Kong SAR, China is a metropolitan city with a population of 6.8 million, and an estimated number of 450,000 people with disabilities. It has in place a comprehensive rehabilitation programme plan, a disability specific legislation (the Disability Discrimination Ordinance), and a range of legislative measures concerning people with disabilities. The Basic Law of Hong Kong has incorporated the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, and the Convention on the Elimination of all forms of Discrimination against Women. Moreover, self-help organizations of persons with disabilities are being increasingly recognized and involved in policy making in Hong Kong. In spite of these measures, the

2. “Malnutrition Is Cheating Its Survivors and Africa’s Future” article in the New York Times by Michael Wines, December 28, 2006

rights based approach is still far from firmly rooted in the society, and social discrimination against people with disabilities is frequently reported.

The new convention will ensure GOs to adopt a right-based approach to protect and promote full and effective participation in multi-track approach to the fulfilment of the human rights of persons with disabilities and the achievement of the goals of human and social development.

Some Rights recognised by convention:

1. Employment is important for people with disabilities to be able to gain a living by themselves. However, the unemployment rate of people with disabilities is still much higher than that of the whole population in Hong Kong and other parts of the globe, especially in those developing and third world countries. It suggest that the new Convention should protect the right to work of people with disabilities by proposing affirmative policies such as introduction of quota system through legislation, ensuring enough supports and accommodations to be provided in workplaces, *etc.* Moreover, vocational rehabilitation services should also be provided for those not suitable for open employment.

2. In general, mainstream education should be made available for people with disabilities. In many places, special schools still exist, but people with disabilities should enjoy their rights and have the chances to choose mainstream schools. We suggest adults, other than children, both with and without disabilities, may enjoy the rights to education. The quality of education for people with disabilities should be ensured as well as that for there non-disabled peers such that their personality, talents and abilities can be developed to the fullest potential.

United Nations Convention:

The United Nations was founded on the principle of equality for all. The Preamble of the Charter affirms the dignity and worth of

every human being and gives primary importance to the promotion of social justice. Persons with disabilities are, *de-facto*, entitled to all the fundamental rights upheld by the Charter and other human. Bearing in mind the necessity of assisting mentally challenged persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life, the Declaration on the Rights of Mentally Retarded Persons proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged. The Declaration also enumerated some rights as the pre-requisites to be complied with and protected to ensure the human rights of mentally disabled persons. These rights are:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.
2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.
3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.
4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.
5. The mentally retarded person has a right to a qualified guardian when this

is required to protect his personal well-being and interests.

6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.
7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse.

Then in 1976, the General Assembly declared that the year 1981 will be the *International Year of Disabled Persons* and called for a plan for action at the national, regional and international levels with an emphasis on equalization of opportunities, rehabilitation and prevention of disabilities. An important outcome of the International Year of Disabled Persons was the formulation of the World Programme of Action concerning Disabled Persons, adopted by the General Assembly in December 1982. For implementing the activities recommended in the World Programme of Action, within a time frame, the General Assembly proclaimed 1983 - 1992 the United Nations Decade of Disabled Persons. The Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (MI Principles) were adopted by the UN General Assembly and UN Commission on Human Rights in 1991.

The Position of Mentally Challenged in India:

According to one estimate there are two crore mentally challenged patients in India.

Take example of Chandigarh, about 65000 people face mental problems of some kind. To serve these two crore patients India has only 3500 doctors and 36 hospitals, to compound the problems further, these hospitals are severely understaffed. It is relevant to mention that about 80,000 doctors of Indian origin are working in western countries as Psychiatrists or related fields. There was a legal provision to deal with this brain drain, but proved to be a toothless dog. Government is helpless as to fight with this growing problem, now Government has apportioned 190 crores as budgetary provisions along with new short-term courses to tackle the menace³.

The Preamble to the Constitution of India assures the equal treatment and equality of opportunity and status to all the citizens. No discrimination is allowed on the basis of race, religion, race, caste, place of birth, sex code or any of them *etc.* It assures the dignity of the individual. It is important to point out here that dignity of the individual is a fundamental notion behind all the fundamental rights guaranteed under part III of the Constitution. Right to dignified life is not only a fundamental right but also a human right, civil right recognized by number of international treaties and obligations. The Preamble to the Constitution of India and Part III of the Constitution imposes a negative obligation on the part of the state not to restrain the liberties and rights guaranteed under the same part. Further the State has been directed under the various provisions of the Constitution to extend similar treatment to all persons.

Article 41 declares that, The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement. *Article 46 lays down an obligation on the State.* To promote

3. Dr. Wolf Wolfensberger

with special care the educational and economic interests of the weaker sections of the people, and protect them from social injustice and all forms of exploitation. *Apart from this, various international conventions also compelled Indian Government to join the worldwide movement to protect the dignity of mentally disabled persons.*

The movement for Mentally Challenged People has started in the earlier years of decade of 1980. When General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons. However, a little attention has been paid to the rights of disabled persons while passing of Universal Declaration of Human Rights. The Declaration was intended as a common standard of attainment for all nations. Though it was not seen at the time as imposing binding legal obligations on Governments yet in practice the Declaration has obtained a substantial force.

World and Domestic Static's:

As it is estimated that 600 million persons with disabilities are all over the world, while in India about 70 million disabled live. People with biophysically and mentally challenged persons are most marginalized and disabilities comprise between 4 and 8 per cent of Indian population (around 40-90 million). Census of 2001 reported that 21.91 million (2.13 per cent of total population) people with disabilities while the 2002 NSS Rounds' disability estimate is 1.8 per cent of the population, which would come to around 1.8 million. NSS Rounds estimates that 8.4 per cent of rural households and 6.1 per cent urban households had a member with disability. The prevalence of disability is increasing as globalization, liberalization and modern life style have promoted accidents rate causing impairments and disabilities⁴.

Social welfare organisations:

Many NGO have come forward to bring some respite. The first to take initiatives was Father *Hank Nim*, who started *Athma Shakti Vidyala Society* in year 1979. There are many day care schools for the mentally challenged but, there are only two residential homes for the mentally challenged women in north India, one at Baroda, Gujarat and second at Ludhiana, where Nishkam Sewa Ashram undertook efforts to address the plight of mentally challenged girls and women.

There are nearly 49 Organisations and 42 Schools for Mentally Challenged people in and around Mumbai.

Matri Shakti Sewa Sadan, a 7000 sq. yards campus, is an attempt to address this horrifying tale of mentally challenged women. This home for mentally challenged women, is working professionally against this problem these women will be given appropriate therapies, counselling and education. There are provisions for rehabilitation, candle and chalk making, stitching and many suitable vocational and rehabilitative activities. Services provided at Matri Shakti Sewa Sadan are free. The expenses of the Matri Shakti Sewa Sadan are met with the contributions from the society.

Conclusion

The attitude of the society towards persons afflicted with mental illness has changed considerably and it is now realized that no stigma should be attached to such illness, as it is curable, particularly, when diagnosed at an early stage. Mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible.

4. Rights of the Disabled: Perspective, Legal Protection and Issues/Awadhesh Kumar