

**AN ANALYTICAL STUDY ON THE RIGHTS OF PERSONS WITH
DISABILITIES WITH PARTICULAR REFERENCE TO LOCOMOTOR
DISABILITY**

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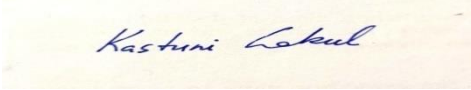


NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM

2021

SUPERVISOR CERTIFICATE

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DECLARATION

I, PARAS UPADHYAYA, pursuing Master of Laws (LL.M) from National Law University and Judicial Academy, Assam, do hereby declare that the present seminar paper titled **AN ANALYTICAL STUDY ON THE RIGHTS OF PERSONS WITH DISABILITIES WITH PARTICULAR REERENCE TO LOCOMOTOE DISABILITY** is an original research work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

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Dated: 4 August

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PREFACE

All men are born free and equal in dignity and right. The inherent dignity of all members of the human family is that the foundation of freedom and justice and peace within the world as given within the Universal Declaration of Human Rights in its preamble. Human rights are the ethical claims that are inalienable and inherent to all human people by virtue of their humanity alone. Human rights could also be considered those elementary rights that are essential always as person. Human rights are the rights that are possessed by each creature regardless of his or her status, race, religion, sex etc. just because he or she is a human being.

The persons with disability face varied types discrimination, social exclusion and social process that deprive societies of active participation and contribution by this group of people. Though persons with disabilities are entitled to complete range of human rights, even as all alternative impediments that stop them from exercising their rights and create it troublesome for them to participate totally within the activities of their societies. The violations faced by them embody deficiency disease, forced sterilization, sexual exploitation, denial of academic and education opportunities, unavailability to public services, institutionalization and also the denial of voting rights.

Persons with disabilities embody those that have long term physical, mental, and intellectual or sensory impairments that in interaction with numerous barriers might hinder their full associate degree effective participation in society on an equal basis with others. The convention failed to produce new rights for the person with disabilities. However, it specifically mentioned them in order that states parties to the convention might Raise awareness within the society to foster respect for the rights and dignity of persons with disabilities. Persons with disabilities need special production and necessity to relate them tuned in to their rights that are that the primary functions of the state.

Disability movement in India has succeeded in changing the approach and attitude towards disability from ethical model to charity model however restriction has been derived within the direction of human rights model, Collective efforts on the part of persons with disabilities that advantage voluntary organizations, government and society.

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Rehabilitation Council of India Act 1992

The National Trust for the welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999

Mental Healthcare Act, 2017.

TABLE OF ABBREVIATION

1.	AIR	All India Reporter
2.	Art	Article
3.	CRPD	Conventions on the Rights of Persons with Disabilities
4.	Govt	Government of India
5.	ibid	Ibidem means Source Mentioned Above
6.	ICCPR	International Covenant on Civil and Political Rights
7.	ICESCR	International Covenant on Economic, Social and Cultural Rights
9	Ors	others
9.	PWD	Persons with Disabilities
10.	p	Page
11	SC	Supreme Court
12	UN	United Nations
13	UDHR	Universal Declaration of Human Rights
14	UNCPRD	United Nations Convention on the Rights of Persons with Disabilities
15	UPSC	Union Public Service Commission
16	UOI	Union of India
17	WPA	World Programme of Action
18	WHO	World Health Organisations
19	v	Versus

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CHAPTER 1

INTRODUCTION

1.1.Introduction

Rights are the essential element of all creatures including, especially the Human beings. Human rights are extremely important in the process of humanization. Recognizing the rights of others is integral to our spirituality. The perspectives like all for one and one for all and unto the last, Sarvodaya (welfare of all) by Gandhiji and the Biblical concept of kingdom of God are quite related. Kingdom of God affirms the rights of all human beings. Bible stands for the rights of the last and the and the least that is the rights of the marginated or the subaltern. Human rights are meant to uphold the dignity and status of the persons.¹

Disability is a concept that is understood and interpreted by a variety of social intellectuals, social workers, and jurists, all while bearing in mind the philosophical underpinnings of the term in its most literal definition. Though the term disability connotes a lack or defect in some persons, whether physical, mental, or sensory, there are several cases when these people have proven otherwise.²

Persons with disabilities and their families often have to face lot of problems for their fulfilment of basic Human Rights. Their capacities have been misjudged, they lacked priority, they have to face many barriers in their life, because of the environment where they are living than as a outcome of their disability.

But now things are getting better, many regional, national organisations stood up for reform and changes to the legislation. World Health Organisation report (WHO) shows that, almost one billion people live in the world and among them 10 percent are children, young people. Developing countries have the highest number of disabled persons 200 million people have sensory intellectual or mental health impairment” People with disabilities have poorer health, lower educational attainment, fewer economic prospects, and higher poverty rates than people without impairments. This is primarily due to a lack of resources and the numerous barriers they face in their daily lives. The study presents the most up-to-date research on how to

¹Rev. M. Stephen, *Human Rights in Concepts and Perspectives* (Concept Publishing Company) New Delhi 2002

²Rajib Bhattacharyya, 'Disability Laws in India: A Study, International Journal of Research' (2004) Vol-1 IJR.

overcome health-care hurdles. But now things are getting better, many regional, national organisations stood up to reform and changes to the legislation.³

Today, India's crippled population is on the verge of a widespread movement aimed at realising their ambitions and dreams. The country's growth of disabled rehabilitation services is a post-independence occurrence. There is growing demand for speedier economic development among handicapped people. The decision to proclaim 1981 as the international year of the disabled and 1983-1992 as the Decade for the disabled by the U.N General Assembly has generated an awareness among the disabled population throughout the world, and India is naturally affected by this movement. It has now become important to pose the question how should India's policies and programmes be geared up to fulfil the rising expectations of its disabled people.⁴

It must be squarely accepted that Social Security Systems, well-organised and widespread in the developing countries, remain very rudimentary in India and many developing nations.⁵

Normally, in the past, it would be the joint family which took care of the disabled members, but when there was no family to look after such individuals, religious institutions often came to their rescue. However, when the economic conditions of a society were bad, its handicapped population were the first to suffer. Usually, they became objects of random charity and pity, apart from the basic needs of food clothing and shelter being provided to them, society did not realise that handicapped people can and should, lead a fuller and more normal life. While this was the general attitude, there also existed the opportunistic awareness that, in certain occupations, disabled persons could be employed more advantageously than normally-equipped persons. For example, many kings and nobles employed deaf and dumb persons as servants in preference to others. This would guarantee "that activities and conversations that took place within the palace would not go beyond it". The practice of employing deaf-mute personnel attendants in court appears to have been fairly widespread in past times.⁶

Further certain occupations were reserved for the blind. In South India, the preparation of flower garlands, which are very widely used for domestic and religious purposes, was reserved for blind women. Among the North Indian Hindus, many blind persons practice the art of music, earning a livelihood by being well-versed in traditional religious songs or bhajans.

³World Health Organisation, 'World Report on Disability', www.who.int accessed 17 July 2021

⁴M.C Narasimhan, A.K Mukherjee, *Disability: A Continuing Challenge* (Wiley Eastern Limited, 1990).

⁵*ibid* at p.1

⁶*id.*, at p.1,2

Bhakt, Surdas was the most famous among such blind vocalists. Among Muslims, the blind earned a livelihood by teaching and reciting the holy scriptures of the Quran. In course of time this occupation became the sole monopoly of the blind in Muslim countries to such an extent that it has become customary among Muslims to address a blind person reverentially as Hafiz or holy man, whether he has memorised the Quran or not. The orthopedically handicapped, however, were generally accepted as a part of normal society rather than otherwise. Congenital deformities of the limb, as well as loss of limbs due to accidents, war or penal measures were fairly common and not looked down upon. People with locomotor disabilities were commonly employed in such areas as the circus, where the dwarfs were popularly used as court jesters, or as tenders of cattle, and caretakers of village when the rest of the community went out for fishing or hunting.⁷

Many courageous men and women, despite their disabilities, have made their mark in society not by resigning to their fate but by accepting the challenge to develop their potentialities to the greatest extent. Dr, Helen Keller, who was completely deaf and dumb could carve out a niche for herself by writing four books to her credit, overcoming all the barriers². Sir Stephen Hawkins, the famous physicist, who was completely an orthopedically handicapped person, has come to be regarded as only behind another scientist, Albert Einstein, in his scientific works. He would use to give his computer signals by moving his eyelids only.

The past about fifty years may well be described as the period during which the age-old problems of the handicapped have been brought into the forefront of human concerns. A few years ago, rehabilitation of the disabled was merely an imperfectly understood concept in many countries. Now programmes and services are being developed by thoughtful individuals and organization and by governments concerned with the welfare of all the citizens. The concern is not entirely altruistic.⁸

From the eighteenth century onwards, considerable awareness had started building up in many western countries about the pragmatism of imparting a regular education and training to the blind and the deaf. Unfortunately, there are insufficient historical records to gauge the prevalent attitudes in India at this point in history. While in the mid nineteenth century, almost every country in the west had schools for the blind and the deaf, such a development occurred in India during the second half of the nineteenth century. In 1887, the first bling school was

⁷M.C Narasimhan, A.K Mukherjee, *Disability: A Continuing Challenge* (Wiley Eastern Limited, 1990). p.2

⁸Usha Bhatt, *The Physically Handicapped in India* (Popular Book Depot, 1963).

established in Amritsar by a Missionary, followed by another at Palamcottah in Tamil Nadu, the Calcutta Blind school in west Bengal, and the American Mission school for the blind in Bombay. In the Area of deaf education, the first school for the deaf in India was established in Bombay in 1884 by a Roman Catholic Mission, followed by another in Calcutta in 1893, and a third such institution at Palamcottah in 1896. Most of these nineteenth century institutions were established by Missionaries.

The onset of the twentieth Century in India also witnessed the emergence of the voluntary sector providing rehabilitation services for the disabled population. Such organisations confined their services to the deaf and the blind, and did not extend their orbit to that of locomotor disability also known by orthopaedic disability.

For the Orthopedically handicapped, however, no institutions came into being “during the first half of the 20th century. Along with major developments made in the treatment of crippling diseases, convalescent homes for the crippled were also set up in the western countries. Towards the end of the 19th century vocational needs of handicapped had also begun to gain prominence as an important issue. At the beginning of the 20th century, several institutions had emerged to provide vocational training and employment to the orthopedically handicapped. Such efforts gained considerable impetus “during the First World War” and immediately afterward, when the war-disabled had been rehabilitated; these pioneer institutions turned their attention to the civilian disabled population. At this time, however, even the most basic aspects of rehabilitating the orthopaedically handicapped were unknown in India. Barring a handful of institutes in the government sector in this period, the bulk of Indian rehabilitation services were in the voluntary sector. There was practically no initiative from the government to introduce any facilities for the disabled people.

The new path ahead for developing a disability-inclusive society in the post-independence age is for public policy to shift toward a social model of disability. Public policies in a disability-inclusive society will be more than just accommodating of people with impairments. Rather, they cherish and embrace all individual distinctions while remaining attentive to the entire range of human experience.⁹

For instance, being born with disability or a mother giving birth to a child with disability was treated as bad karma in India, as consequence of one’s “past actions and sins”. For a last few

⁹Deepa Talaniappan, “Enabling Policies for Differently Abled” (2020) Yojana page 36- 37.

decades, there had been considerable shift in how disability is approached and viewed upon who are right in the midst of a historic shift where social policies are moving towards a rights-based understanding of disability and interventions are gradually moving away from being steward by charity or pity. It is undoubtedly an obvious idea to situate disability as yet another sector that opens up readily to be placed inside a rights framework when seen in the contemporary of community centred social movements, however it is not as intuitive and free flowing as it may appear at first look. The way disability is viewed has far-reaching consequences for policies and other interventions.

Several efforts have been done to know about impairment through theoretical modes, classifications schemes and even different forms of measurements. How disability is understood has immediate impact upon the policy initiatives, impending environmental design and even attitudes of people in general. Disability scholars have consistently emphasized upon the need to understand disability in the right sense, before embarking on intervention measures.¹⁰

Within disability writings, it had been a common practice to describe approaches to disability using models, most commonly used approach is the Social Model vs Medical Model distinction. The medical view of disability has been the dominant mode of explaining disability since the early 1900s. The focus is on the bodily abnormalities and the dysfunction caused thereby. It is rightly referred to as a personal tragedies model, because the individual is regarded as a victim and as someone who is in a perpetual need of care and completely dependent on others.¹¹

Medical Model of disability can be explained as an individual tragedy approach to disability, where a person's disability and limitations to participating in social, economic political life, is seen as a tragic but in avoidable outcome of his or her own bodily impairment.

It has been this approach to disability that had been prevalent in policy frameworks as well as civil society engagements with disability.

Disability rights activists and scholars have critiqued medical model of disability and raised concern against viewing disability as a personal tragedy. The critique against medical model,

¹⁰Deepa Talaniappan, "Enabling Policies for Differently Abled" (2020) *Yojana* page 36- 37.

¹¹*ibid.*

moving the perception away from bodily limitation to societal discrimination is defined as Social Model of disability.

The Social Model of disability contributed to a landmark shift in the way disability was seen and perceived not just by the society, but by persons with disabilities themselves. Indeed, this normative shift marks an important phase for disability related policies and development practices globally because UN convention for the Rights of Persons with Disabilities embraces this critique of medical model, building upon a social model of disability put forward by impairments rights scholars such as Mike Oliver (1983) where society and barriers were seen as causing disability, rather than an individual's body or the limitations within. This approach is to look at the disability as caused externally by barriers (attitudinal, or environmental, or cultural) and has very little to do with physical limitations. This is the current global policy trend in disability and hence it was important to set this context clearly.¹²

1.2. Statement of Problem

Even though the U.N General Assembly has generated awareness among the disabled population throughout the world, it must be squarely accepted that Social Security Systems, well-organised and widespread in the developing countries, remain very rudimentary in India and many developing nations. Many laws ensuring rights for the persons with disability

In the light of above it has now become important analyse how India's policies and programmes are being geared up to fulfil the rising expectations of its disabled people.¹³The researcher through this work will analyse the various rights under laws and policies guaranteed to the persons with disabilities in general. It also examines status of persons with locomotor disability in India and whether they are able to enjoy their rights fully by actual implementation of the rights under various laws and policies. It will briefly examine the implementation of laws ensuring rights to persons with locomotor disability in the state of Assam.

1.3. Literature Review.

Usha Bhatt, The physically Handicapped in India, 1963, which is an abridged form of the author's elaborate thesis for Ph. D., throws light on a growing national problem of Social, economic and political significance. Dr. Usha Bhatt's book provides a truly comprehensive, rational and dynamic approach to the rehabilitation of India's orthopedically handicapped. It is

¹²Deepa Talaniappan, "Enabling Policies For Differently Abled, p-5

¹³M.C Narasimhan, A.K Mukherjee, *Disability: A Continuing Challenge*(Wiley Eastern Limited, 1990).

a valuable compendium of authentic information for all concerned with the welfare of the handicapped in India and abroad.

Dr, Philips Nicholas, Guide book for the Rehabilitation of Specially the Orthopedically Handicapped People David& Charles, Newton Abbot London,1981, It is an illustrated manual of Help and self- help. This Comprehensively illustrated manual, published “in 1981, the international year of Disabled people”, is the first of its kind produced for Great Britain.

Anima Sen, “Psycho-Social Integration of the Handicapped” 1988, A Challenge to the Society, this pioneering work has broken new vistas in psychological field. The materials scattered at various places have been collected and put together to give a broader perspective of disability and handicap. The author also urges that the government plans and schemes should be properly monitored and implemented to outreach the services to the handicapped in rural and tribal areas.

M.C. Narasimhan and A.K. Mukherjee, Disability,1990, A continuing running challenge published “Wiley EASTERN” Limited, New Delhi, Guwahati, it presents an updated and comprehensive account of the rehabilitation scene in India Disability-Its nature and extent, the quality and execution of existing services for rehabilitation, the relevance and suitability of current policies and programmes-- all these have been realistically examined. It is hoped that this work will stimulate interest in this vital subject and encourage greater public participation in the cause of the disabled.

Anima Sen, “Mental Handicap Among Rural Indian Children,1992, Sage Publications”, This Path breaking study investigates the prevalence of mental retardation among school going children in Rural India. Nearly 13, 000 children between 6 to 16 years of age from mental retardation among school going children in Rural India. Nearly 13, 000 children between 6 to 16 years of age from sixteen villages around Delhi were examined. The results revealed that over 3 percent of these children were handicapped and that a large majority of them were in the category of mild retardation. The findings also revealed a larger percentage of retarded boys than girls.

R.K. Sinha, Human Rights of the World, Indian Publishers Distributors, Delhi, 1997 has been formed with the clear idea that the enjoyment of human rights and the achievement of development goals are inextricably linked. The right to live in a calm and safe environment has long been acknowledged as basic to all human beings. They are necessary for the development of a just, egalitarian, and healthy society.

For case and reference purposes, everything has been meticulously organised. Disabled is a term used to describe a person who is unable to do anything.

H.O Agarwal, International Law & Human Rights 22nd Edition 2004, Central Law Publications, this provides a brief overview of various attempts made at the international level especially work done by the UNO in ensuring the rights to the persons with disabilities. It talks about the “Convention on the Rights of Persons with Disabilities, 2006.

1.4. Aim

The aim of this research work is to study the rights of persons with disabilities and its national and international aspect with special reference to locomotor disability.

1.5. Objectives

- i. To study the International Legal framework with respect to the protection of rights of persons with Disabilities
- ii. To analyse the law relating to the rights of persons with Disabilities in India
- iii. To discuss the role of Judiciary both at the international level as well as the National level in protecting the “rights of persons with Disabilities
- iv. To study the “Rights of Persons with Disabilities” Act 2016 in the National prospective with respect to Locomotor Disability

1.6. Scope and Limitations.

This work of research deals with the rights of persons with disability in general and that of locomotors disability in specific.

It deals with various rights of the persons with locomotor disability in brief and does not discuss in detail one particular right only.

1.7. Research Questions

Q1. What is the International framework on rights of persons with Disabilities?

Q2. What are the Laws relating to the Rights of Persons with Disabilities in India?

Q3 What is the role of Judiciary with respect to protect rights of Persons with Disabilities in International as well as in National Level?

Q4. What are the Rights of Persons with Disabilities under the Disabilities in National Perspective with special reference to Locomotor disability?

1.8. Research Methodology.

This research work is a comprehensive study of rights of Persons with Disability with special reference to Locomotor Disability and is mainly doctrinal in nature. It relies upon the primary and secondary sources.

1.9. Chapterisation-

Chapter 1 entitled as “Introduction” deals with the introduction of the research work, the kinds of problem that persons with disabilities have to undergo and also discusses about aims, objectives, research questions, Literature review of the books, and articles which the researcher has relied upon while doing his research.

Chapter 2 entitled as International Legal Framework Relating to the Rights of Persons with Disabilities” deals with various kinds of International Law that helps in “protecting the rights persons with disabilities. The chapter provides an insight about the various international legal initiatives taken up for the protection of rights of the persons with disabilities. Before entering into the discussion about the international framework, the researcher attempted to introduce the term disability in general. The major convention dealing with the rights of persons with disability is the Convention on the Protection of the Rights of the Disabled Person. The objective of this chapter is to specifically locate and situate the rights of persons with disabilities in the various Articles of the international laws.

Chapter 3 entitled as “Law Relating to the Rights of Persons with Disabilities in India “deals with the position of “disabled people” in India. Before entering into the discussion about the national framework, the researcher attempted to locate the rights in historical context. It highlights how disabled people were looked upon in the primitive time, and their condition today. The provisions of the Constitution of India, to safeguards the disabled persons to get their rights. In this chapter a brief overview of rights of person with disabilities under the Domestic Laws will be studied where four important legislations on disability have been discussed at some length

Chapter 4 entitled as “Judicial Approach on the Rights of Persons with Disabilities” This chapter is basically divided into two parts wherein the “first part deals with the” role of judiciary in protecting the rights of disabled person, at the international level. The second part deals with the role of judiciary in protecting the rights of disabled persons the national level. Its role in developing the principle of non-discrimination as applicable to persons with disabilities has also been studied under this part.

Chapter 5 entitled as “Concept and National Initiative on Locomotor Disability in India.” deals with the Rights of Persons with locomotor disabilities under National Scenario and implementation of “Rights of Persons with Disabilities Act, 2016” in India in general and Assam in specific.

Chapter Six entitled as Conclusion and Suggestions of this work deals with the Conclusion, discusses the findings of research questions and also tries to give suggestions on how the rights of persons with disabilities disabled persons can be implemented in a better way.

CHAPTER 2

INTERNATIONAL LEGAL FRAMEWORK RELATING TO RIGHTS OF PERSONS WITH DISABILITIES

Persons with Disability confront daily challenges and discrimination that prevent them from participating in society on an equal footing with others. They are regularly denied their rights to attend public schools and work, to live independently in the community, to vote, and to participate in sports and cultural activities, to have social security, to have access to justice, to choose medical care, and to freely enter into legal agreements such as buying and selling property¹⁴. This chapter provides an insight about the various international legal initiatives taken up for the protection of rights of the persons with disabilities. Before entering into the discussion about the international framework, the researcher attempted to introduce the term disability in general. The major convention dealing with the rights of persons with disability is the Convention on the Protection of the Rights of the Disabled Person. The objective of this chapter is to specifically locate and situate the rights of persons with disabilities in the various Articles of the international laws.

2.1 United Nations Human Rights Instruments to Rights of Persons with Disabilities

2.1.1. The United Nations Charter, 1945

The UN plays a critical role in protecting disabled people's rights. The dignity of a disabled person is a significant aspect in the ongoing shift toward a human rights perspective on disability. It is significant that each individual is substantial; this is especially true in terms of per capita income.

Their disability should not be a barrier to their further education and empowerment. The Disability Rights Movement is a global movement that promotes a shift in mindset from charity to self-sufficiency.¹⁵

¹⁴Office of the High Commissioner for Human Rights, *OHCHR and the rights of persons with disabilities*<https://www.ohchr.org/en/issues/disability/pages/disabilityindex.aspx> accessed 21 July, 2021

¹⁵Michael Ashley Stein, 'Disability Human Rights' *California Law Review*, (2007) p.94

Today disabled persons constitute the largest minority in the world; more than 650 million individuals i.e., 10 percent of the world's total population suffer from some type of disability.¹⁶

On June 26, 1945, in San Francisco, the United Nations Charter was signed, and on October 24, 1945, it entered into force. It reaffirms its belief in fundamental human rights, as well as the dignity and worth of all people. They are dedicated to promote social progress and a higher standard of living for the people, as well as more freedom.¹⁷ The charter does not contain a specific definition for a disabled person, but it is reasonable to assume that it includes the disability aspect when it states that one of the charter's purposes and principles was to achieve international cooperation in the resolution of international problems of an economic, social, cultural, or humanitarian nature. and in promoting and supporting universal respect for human rights and fundamental freedoms, regardless of race, gender, language, or religion.¹⁸

2.1.2. Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights (UDHR) was approved by the United Nations General Assembly in 1948 and establishes universal human rights standards.

The UDHR is the normative foundation that led to the development of today's standards for people with disabilities. The UDHR particularly covers people's socioeconomic rights under Article 25 (1)

Article 7 guarantees equality before the law and equal protection by the law for all people, including against discrimination. The rights and freedom enumerated under the UDHR are not enforceable but today many recognised it as customary international law and some even as *jus cogens*.¹⁹

2.1.3 International Covenant on Civil and Political Rights (ICCPR) 1966

Along with the Universal Declaration of Human Rights, the ICCPR is a part of the universal bill of human rights. The ICCPR was adopted on December 16, 1966, and went into effect on March 23, 1976.. It is supervised by the “United Nations Human Rights Committee. It was adopted by the United Nations General Assembly. The Covenants consists a preamble and 53 Articles and it is divided into 6 parts. Part 1, 2 and 3 talks about different kinds of rights and

¹⁶United Nations Development Programme, *Official Records*, U.N. Document <http://www.un.org/disabilities/default.asp?id=18>, accessed 16 July 2016.

¹⁷Charter of The United Nations 1945, preamble

¹⁸ Charter of The United Nations 1945, article 1(3)

¹⁹H.O. Aggarwal, *International Law and Human Rights*, 17edn, Central Law Publication, 2020)

freedoms. Part 4, 5 and 6 talks about implementation process for the effective realisation of these rights” Though ICCPR does not specifically talk about the disability rights but persons with disabilities can also seek protection under these rights and get protection under it.²⁰ First, the Covenant covers all human beings in the sense that it is universal. Second, “the Preamble to the Covenant” states that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”²¹ This could be taken to encompass those with disabilities. Finally, disability is clearly encompassed by the word other status in articles 2 and 26, which together make up the treaty's non-discrimination clauses.

Art 26 of the ICCPR, which satisfies the technical conditions to be self-executing, is one of the most important articles for disabled people. All people are equal in the eyes of the law and are entitled to equal protection under the law without discrimination. In this regard, the law must outlaw all forms of discrimination and provide all people with equal and effective protection from discrimination on the basis of race, colour, sex, religion, political or religious beliefs, national or social origin, property, birth, or other position. The right under Art 26 is a free-standing equality norm that is not limited to preventing discrimination in the context of the other rights and freedoms guaranteed in the Covenant and hence consequently eliminate prejudice in condition of social and economic consideration²²

2.1.4 International Covenant on Economic Social and Cultural Rights 1966

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is often known as the second generation of human rights. The UN Committee on Economic, Social, and Cultural Rights oversees the agreement. The United Nations General Assembly approved it on December 16, 1966, and it went into effect on January 3, 1976.

The ICESCR keeps track of how the ICESCR is being implemented in States Parties. In response to a request from the Economic and Social Council, the Committee began to adopt general suggestions as early as its third session. Such suggestions are intended to assist States

²⁰Gerard Quinn and Theresia Degener, ‘The Current Use and Future Potential of United Nations Human Rights Instruments In The Context Of Disability’ (2002) OHCHR <https://www.ohchr.org/Documents/Publications/HRDisabilityen.pdf> accessed 21 July 2021

²¹International Covenant on Civil and Political Rights 1966, Preamble

²²See Spenger v. The Netherlands, Views adopted 1992; and General Comment CCPR/C/21/Rev. 1/Add. 1, Adopted by the Human Rights Committee under Article 40(4) of the ICCPR at its meeting 21 November 1989 at para. 12.

Parties in meeting their reporting duties.²³ In 1994, the General Comment 5 of took on the role of protecting the human rights of disabled people. Despite the fact that disability is not mentioned in the other general comments, they frequently allude to vulnerable and marginalised populations. Persons with impairments are surely included.

The philosophy of General Comment No. 5 is to use ICESCR rights to help people with disabilities attain independence, autonomy, and participation. The assessment of the consequences of each ICESCR right for disability is a key feature of General Comment No. 5. The international community has repeatedly emphasised the importance of the International Covenant on Economic, Social, and Cultural Rights in respect to the human rights of people with disabilities.

2.1.5. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

This Convention is one of the most important human rights accords approved by the United Nations to date. In 1984, it was adopted and made available for signing and ratification. It addresses the very specific human right to be free from torture, which is of apparent concern to millions of institutionalised people with disabilities, among others.

In such situations, there is frequently a tremendous power imbalance. Indeed, in institutional settings for people with disabilities, the inherent power imbalance between an inmate and those in charge is amplified many times over. Regulatory agencies and law enforcement officers are frequently unconcerned about such people's condition. Torture or other cruel, inhuman, or humiliating treatment of such people has a negative impact on their physical and mental well-being, is an affront to their dignity, and severely limits their liberty. As a result, legal laws against torture are critical in ensuring the safety of people with disabilities.²⁴

The provisions of article 2 are relevant in the context of disability, which reads as follows:

1. Respective parties of the state shall take affirmative, legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No

²³*supra note*, 22 While general comments are not legally binding as such, they represent an authoritative interpretation of the Covenant. As of January 2002, the Committee had issued 14 general comments: 1. Reporting by States parties (1989); 2. International technical assistance measures (1990); 3. The nature of States parties' obligations (1990); 4. The right to adequate housing (1991); 5. Persons with disabilities (1994)

²⁴H.O. Aggarwal, *International Law and Human Rights*, 17edn, Central Law Publication, 2020) note 20

exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Every State Party is required by Article 4 of the Convention to ensure that all acts of torture are criminal offences under its criminal law.²⁵ The importance of their relevance to people with impairments should be emphasised.

2.2 United Nations Moral Authorities to Rights of Persons with Disabilities

2.2.1. UN Declaration on the Rights of Mentally Retarded Persons, 1971

By the 20th of December 1971, the Declaration on the Rights of Mentally Retarded had been accepted. It protects mentally disabled people's rights, such as their right not to be exploited or abused, their right to economic stability, their right to a fair standard of living, and their right to competent medical care and therapy. The declarations urged for action at both the national and international levels to assure advancement..

i) To the utmost extent possible, mentally impaired people have the same rights as other people .

(ii) A mentally retarded person has the right to proper medical treatment and physical therapy , as well as to education, training, rehabilitation, and direction that will enable him to reach his full potential.

(iii) A person who is a mentally retarded has the right to financial stability and a fair level of living. He has the right to work productively or involve in any other useful activity to the best of his abilities.

(iv)A mentally impairment person should, wherever possible, live with his or her family or foster parents and engage in many types of public life. The family with whom he lives should be supported. If institutional care is required, it should be delivered in settings and situations that are as close to those of everyday life as possible.

²⁵Article 4 reads as 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

(v) When a qualified guardian is required to defend a mentally retarded person's personal well-being and interests, the mentally retarded person has the right to one.

(vi) Mentally retarded people have a right to be free of mistreatment, exploitation, and humiliating behaviour. If someone is charged with a crime, he is entitled to a fair trial, with his level of mental responsibility taken into account.

(vii) When mentally retarded people are unable to exercise all of their rights in a expressive way due to the sternness of their physical condition, or when it becomes essential to limit or to refute some or all of these rights, the procedure used to restrict or deny rights must include proper legal protection contrary to all forms of exploitation. This approach must be based on a trained expert's assessment of the mentally impaired person's social capabilities, and it must be subject to periodic review and the right of appeal to higher authorities.²⁶

2.2.2. Declaration on the Rights of Disabled Persons 1975.

This declaration was enacted on December 9th, 1975. The importance of preventing physical and mental disorders was underlined in this declaration. According to the Declaration, a handicapped person is someone who is unable to meet the needs of a normal individual and/or social life on his or her own, in whole or in part, as a result of a physical or mental defect, whether congenital or not., regardless of his or her physical or mental abilities. The following are the disabled people's rights, as stated in the current Declaration

(i) Disabled people are entitled to all of the rights outlined in this Declaration. These rights shall be granted to all disabled persons without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, state of wealth, birth, or any other circumstance affecting either the disabled person or the disabled person's family.

(ii) people suffering from disability have a natural right to be treated with dignity. Disabled people have the same fundamental rights as their peers of the same age, regardless of the cause, type, or severity of their handicaps and disabilities. This includes, first and foremost, the right to live a decent, normal, and full life.

²⁶ Declarations on the rights of Mentally Retarded Persons, proclaimed by General Assembly, United Nations, Resolution No. 2856-XXVI dated 20th December, 1971.

(iii) Impaired people have civil and political rights similar to other people; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any potential limitations or suppression of those rights for mentally disabled people.

(iv) people having disability are permitted to measures that will help them become as independent as feasible.

(v) A person who is suffering from impairment will avail the right to medical, psychological, and functional treatment, including prosthetic and orthotic appliances, as well as medical and social rehabilitation, assistance, counselling, placement services, and other services that will allow them to maximise their abilities and skills and speed up the process of social integration or restoration.

(vi) People with disabilities have a right to economic and social security, as well as a fair standard of living. They have the right to secure and retain employment or to participate in a valuable, creative, and lucrative occupation, as well as to join trade unions, based on their ability.

(vii) People with disabilities have the right to have their unique needs taken into account at all phases of economic and social planning.

(viii) Disabled people are protected from all forms of mistreatment, all guidelines, and all forms of prejudiced, rude, or demeaning treatment.

(ix) Disabled people are entitled to get legal assistance when it is necessary to protect their persons and property. If judicial procedures are brought against them, the legal procedure must take into account their physical and mental health.

(xi) Those organisations which work for the upliftment of Disabled peoples can be helpful in all aspects concerning disabled people's rights.

(xii) Family members of the Disabled people, and their communities must have the knowledge about their rights under this Declaration through all acceptable means.²⁷

2.2.2.1. Implementation of the Declaration on the Rights of Disabled Persons

In order to ensure effective implementation of the principles and rights laid down by the Declaration on the Rights of Disabled Persons, the General Assembly recommended (i) that all

²⁷General Assembly, Resolution - 3447 (XXX), 9th December, 1975. Declaration on the rights of Disabled Persons.

Member States should take account of the rights and principles laid down in the Declaration in establishing their policies, plans and programmes; (ii) that all international organizations and agencies concerned should include in their programmes provisions ensuring the effective implementation of those rights and principles²⁸

2.2.3. Declaration on the Rights of Deaf- Blind Persons 1979

On, September 16, 1977 in United States of America, this declaration was adopted by Helen Keller, World Conference. Its objective is to give services to the deaf-blind youth and adults and welfare of the blind persons. It is the first International Conference on service to the deaf and blind youths and adults. Article 1 of the Declaration states that ...every deaf-blind person is entitled to enjoy the universal rights that are guaranteed to all people by the Universal Declaration of Human Rights and the rights provided for all disabled persons by the Declaration of the Rights of Disabled Persons.”²⁹

2.2.4. World Programme of Action Concerning Disabled Persons. 1980

The General Assembly adopted the World Programme Action (WPA) in 3rdDecember 1982. The goals of the WPA are threefold: (i) prevention, (ii) rehabilitation and (iii) equalization of opportunities. The first and the second share a same kind of objectives. They are lean towards the traditional form of method in formulating disability law and framing policies. And the third objectives of “WPA” which echoed for the equalisation of opportunities is the process of making the general system of society, including the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational facilities, accessible to all. It signalled an irreversible change from caring to serving.

was defined as the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational facilities, are made accessible to all. It marked an irreversible shift from the caring to the rights model.

The following definitions are developed from that perspective.

²⁸United Nations, General Assembly, Resolution No. 31/82 of 13th December, 1976.

²⁹Declaration on the Rights of Deaf-Blind Persons 1979 <https://internationallaw.uslegal.com/international-human-rights/universal-human-rights-instruments/rights-of-persons-with-disabilities/> accessed 23 July, 2021

Prevention means measures aimed at preventing the onset of mental, physical and sensory impairments (primary prevention) or at preventing impairment, when it has occurred, from having negative physical, psychological and social consequences.

In order to reduce the incidence of impairment and disability, a prevention plan is required. The following are the main parts of such a strategy, which would change depending on a country's stage of development: The following are the most significant steps for preventing impairment: avoiding conflict; improving the educational, economic, and social standing of the most disadvantaged people within precise geographical location, to detect the kinds of impairment and their causes and the implementation of specific intrusion methods via proper dietary habits, Early detection and diagnosis, as well as improved health care; care during pregnancy and after the birth of the baby; appropriate health-care education, including patient and physician education; family planning; legislation and regulations; lifestyle changes; selective placement services; environmental hazard information; and the development of better-informed and stronger families and communities.

Rehabilitation means a goal-oriented and time-limited process aimed at enabling an impaired person to reach an optimum mental, physical and/or social functional level, thus providing his or her with the tools to change his or her own life. It can involve measures intended to compensate for a loss of function or a functional limitation (for example by technical aids) and other measures intended to facilitate social adjustment or readjustment.

Rehabilitation usually includes the following types of services: Early detection, diagnosis and intervention; Medical care and treatment; Social, psychological and other types of counselling and assistance; Training in self-care activities, including mobility, communication and daily living skills, with special provisions as needed, e g., for the hearing impaired, the visually

The following services are frequently included in rehabilitation that covers Medical care and treatment of the patient, to give him social psychological support and other sorts of counselling and help. It tries to identify firstly the disease and then proper diagnosis is done. After that self-care training takes place which look after mobility of the disabled person, his ability to handle daily situation and financially supporting the disabled person financially when it is required for the patient having hearing impairment or visually impaired etc. which early identification, diagnosis, and intervention; Self-care training, covering mobility, communication, and daily life skills, with additional allowances where needed, for example, for the hearing impaired and

the visually impaired. Rehabilitation gives emphasis on promoting special education as well as vocational training also by giving employment to them.

Equalization of opportunities means the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational facilities, are made accessible to all ³⁰

2.2.5. The United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

In 1993, the United Nations General Assembly passed a historic resolution.³¹ These are the primary United Nations laws that govern how people with disabilities are treated. These rules are divided into four sections: 1. Prerequisites for participation on an equal footing; 2. Areas where equal participation is desired; 3. Measures to be taken in order to put the plan into action; and 4. Mechanism for monitoring.

Although these Rules are not part of a treaty and have no legal force, they reflect a strong moral and political commitment on the part of States to take measures to ensure that people with disabilities have equal opportunities.³² The goal of the Standard Rules is to ensure that girls, boys, men, and women with disabilities have the same rights and obligations as other members of their societies. ³³

2.3. Convention on the Rights of Persons with Disabilities 2006

The General Assembly adopted the United Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol on December 13, 2006, and it entered into force on May 3, 2008. It has been ratified by 177 states parties. It was the era of first human rights treaty.

Convention is envisioned as a human rights treaty with a clear social development component. It advocates for a broad definition of persons with disabilities and stresses that all people with impairments, regardless of their type, should have access to all human rights and fundamental freedoms.

³⁰Declaration on the Rights of Deaf-Blind Persons 1979 <https://internationallaw.uslegal.com/international-human-rights/universal-human-rights-instruments/rights-of-persons-with-disabilities/> accessed 23 July, 2021 para. 12

³¹ General Assembly resolution 48/96 of 20 December 1993

³²*ibid.*, para. 14

³³. General Assembly resolution 48/96 of 20 December 1993 para. 15

It clarifies and qualifies how all types of rights apply to people with disabilities, and it categorises areas where adjustments must be made for people with disabilities to effectively implement their rights, as well as areas where their rights have been violated and where rights protection must be strengthened.

2.3.1. Purpose of the Convention

The new Convention comprises of fifty articles. Article 1 of the Convention says. The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. The Convention, in Article I, further does not limit to only the seven disabilities (Blindness. Low vision, Leprosy-cured. Hearing impairment. Locomotor disability, Mental retardation and Mental illness) that have been mentioned in the Persons with Disabilities Act but has opened up a wider definition as -

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.³⁴

2.3.2. Principles of the C.R.P.D

Article 3 of the Convention has stipulated the underlying principles of this convention as:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
- (h) Non-discrimination
- (c) Full and effective participation and Inclusion in society:
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- (e) Equality of opportunity
- (f) Accessibility
- (g) Respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities

³⁴Convention on the Rights of Persons with Disabilities 2006, Art. 1

(h) Equality between men and women ³⁵

2.3.3. General Obligations of the C.R.P.D

Article 4: General obligations

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention

(b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities

(c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes

(d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention

(e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise

(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility

³⁵ Convention on the Rights of Persons with Disabilities 2006 art.3

aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.³ In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions³⁶

2.3.4. Prospects of U.N.C.P.R.D.

The rights contained in the Convention span civil, political, social, economic, and cultural rights, as the General Assembly mandate under which the text was developed required the

³⁶Convention on the Rights of Persons with Disabilities 2006, art.4

drafters no to create any new rights, but to apply existing international human rights norms to the particular circumstances of people with disabilities. This aimed to redress the perceived invisibility of the rights of people with disabilities in international human rights law, as discrimination on the basis of disability was only prohibited in one of the major human rights texts, and then only in its application to children. The Convention has not only restated and reformulated rights to make them more relevant for people with disabilities, but it has come very close to creating new substantive rights, although many of those involved in drafting the Convention contest this issue. Egalitarianism and non-discrimination are the two strong pillars upon which rests the UNCRPD. It seeks to make, the existing human rights tenets available to the disabled persons. Even the Ad Hoc committee emphasized on the principle of holistic approach in the work done, in the fields of social development, human rights and non-discrimination. The Convention is also significant in that it recognises that legal measures alone will not be sufficient to ensure the protection and promotion of the fundamental rights of persons with disabilities.³⁷

2.3.5. Optional Protocol to the Convention of the Rights of Persons with Disabilities.

On 13th December 2006, the General Assembly had adopted the Optional Protocol and it came into force on 3rd May, 2008. It has been ratified by 96 Countries by 2020.

The Optional Protocol is an additional agreement to the United Nations Convention on the Rights of Persons with Disabilities. It establishes an individual complaints mechanism for disabled people who allege that their rights under the Convention have been denied.

The Optional Protocol enables individuals or groups, who claim to have had their rights breached under the Convention, to make a complaint to the United Nations Committee on the Rights of Persons with Disabilities. The Optional Protocol to the Convention gives the Committee competence to examine individual complaints with regard to alleged violations of the Convention by States parties to the Protocol.

Article 2 of the Optional Protocol sets out guidelines of the complaints that can be brought to the United Nations Committee. It says that:

- There must be a violation of rights under the Convention

³⁷Michael Ashley Stein & Janet E. Lord, 'Monitoring the Convention on the Rights of Persons with Disabilities: Innovations, Lost Opportunities, and Future Potential', Human Rights Quarterly, Volume 32 (3-4) 2010 at pp. 690-700

- The same question must not have already been examined by the Committee or another international body
- You must first have attempted to resolve your complaint using your national law for example by bringing your case to the highest court and bringing the complaint to the attention of all the relevant national authorities
- The complaint of a violation of rights must be based on facts and be genuine
- And the right must have been violated after or during the time that the protocol entered into force in your country.

CHAPTER 3

LAW RELATING TO RIGHTS OF PERSONS WITH DISABILITIES IN INDIA

The persons with disabilities encounter numerous obstacles owing to sensitivity and attitudinal barriers. Earlier the emphasis was on correcting the impairment and rehabilitating the individual so they may 'fit in' to society. Now there is recognition that disability is not a deviation therefore, all systems and structures of the society must be improved upon so as to allow equal access and full participation. As a result, States are bound by a multi-layer of obligations to guarantee both *de jure* and *de facto* equality. This implies introduction of legislation and provision for effective preventive and penal remedies. The States are also obliged to ensure that the conditions for equal enjoyment of rights are created with the introduction of positive and special measures and by enhancing the capacity of the basic systems of society and its functionaries.

In this chapter a brief overview of rights of person with disabilities under the Domestic Laws will be studied where four important legislations on disability have been discussed at some length.

3.1. History of Rights of Persons with Disability in India

Persons with disabilities have been the noticeable part of human society from ancient times. They have been mentioned in the Classic Indian scriptures in prominent position. A negative impression was also tried to show in Indian mythology by associating disability with the evil characters. Hunch backed Manthara from Ramayana and limping legged Shakuni from Mahabharata are negatively stereotyped characters in Indian households. These characters were guided by their motives of revenge, loyalty and acted more as dramatic devices to bring crucial changes in plot. On the other hand, the deities of lord Jagannath in Puri worshipped, without limbs, neck and eye lids which strengthens the notion that disability is an occasional but all binding phenomena in human civilization. The social model of disability brings forward the idea that the only disability is a bad attitude for the disabled as well as the society. In spite of his abilities Dhritrashtra did face discrimination because of his blindness. The presence of characters like sage Ashtavakra and Vamanavtar of Lord Vishnu indicate that by efforts, bodily limitations can be transcended.³⁸

³⁸Neha Kumari, 'Karmic Philosophy and the Model of Disability in Ancient India.'(2019) 7SIJASH 39-43.

Demands for the Rights of disabled people had been very long in India, almost over four decades, but at that time, the demands made by the groups, and by the individuals were significantly scattered. It was during 1980s that people started demanding in a consolidated manner with the help of various groups and organisations that are representing the interest of disabled people. Until 1970, s people suffering from any kind on disability were considered as outcasts from the mainstream society and were looked down upon. People take disability as a consequence of someone's previous life's sins and held them responsible for their conditions. This kind of ridiculousness cause injustice to the victim persons in India. Earlier times people associated with a disabled person were humiliated and scrutinised in many ways by their known one as by their relatives and family members.

A renowned social activist, Baba Amte dedicated his life whole life for the rehabilitation and empowerment of poor people suffering from leprosy. He was a prominent figure who inspired many others in sensitizing people towards this cause. This resulted in many people realising the importance and coming forward to become a part of Disability Right movement.³⁹

3.2 Constitutional Provision for The Protection of Rights of Persons with Disabilities

Constitutional protection is necessary for the persons with disability to guarantee social justice and human rights. The provisions protecting their rights can be found scattered in different parts of the Constitution. The Preamble, the Directive Principles of State Policy and the Fundamental Rights enshrined in the Constitution stand testimony to the commitment of the State to its people.⁴⁰ It is learned from the previous chapter that international human rights law is based on the principles of equality, dignity, autonomy, and liberty/security. The Constitution of India has also imbibed the spirit of these values. Some of such provisions which have been and can be utilized for the betterment of the persons with disabilities are reproduced below.

Part-III of the Constitution provides for a set of six Fundamental Rights to all the citizens (and in a few cases to non-citizens also). All these rights guaranteed under Part III are also available to the Persons with Disabilities even though no specific mention of such persons appears there. These Fundamental Rights include-

³⁹Martand Jha, *The History of India's Disability Rights Movement* (2016)<https://thediplomat.com/2016/12/the-history-of-indiasdisability-rights-movement/> accessed 25 July, 2021.

⁴⁰Anuradha Mohit, Meera Pillai &PratitiRungta, 'Rights of the Disabled' (NHRC, 2006) https://nhrc.nic.in/sites/default/files/DisabledRights_1.pdf accessed 24 July 2021

Right to Equality:

Right to equality under articles 14-18 is considered the foundation upon which the democratic edifice of other rights and liberties is built. While Article 14 guarantees equality before law and equal protection of laws, Article 15 eliminates the scope for discrimination of any individual on the ground of religion, race, caste and sex or on any of them when it comes to accessing public places.

Justice Krishna Iyer clarified that even apart from Articles 15 (3) and (4), equality is not degraded or neglected where special provisions are geared to the larger goal of the persons with disability getting over their disablement consistently with the general good and individual merit.⁴¹

Similarly, Article 16 prevents the State from discriminating against any one in matters of employment. Moreover, practicing untouchability has also been abolished and declared as an offence under Article 17 of the Indian constitution.

Right to Constitutional Remedies

Provisions under articles Article 32 to 35 give every citizen of India the right to move a court of law in case one feels that his rights are violated. It is through different writs such as habeas corpus, mandamus, prohibition, quo warranto and certiorari that the courts try to preserve or safeguard the citizens 'fundamental rights.

The Directive Principles of State Policy (DPSPs) have also been incorporated in Part – IV of the Constitution. These principles are intended to be the imperative basis of State policy and are really in the nature of instructions issued to future legislatures and executives for their guidance. These principles though not enforceable still they are fundamental in governance of this country in formulation of State policies.⁴²

The Ministry of Social Welfare has already recommended that the persons with disability be treated equal to women and other weaker sections of the community.⁴³

⁴¹Dr. Jagdish Saran & Ors. V. Union of India (1980) AIR820

⁴²The Constitution of India, 1950, Article 37 which states (a) That the directive principles are fundamental in the governance of the country, and (b) It shall be the duty of the State to apply these principles in making laws

⁴³Government of India (1994): The Persons with Disabilities (Security and Rehabilitation) Bill

All poverty alleviation programmes of the Central and State Governments or any other scheme for the benefit of women or other weaker sections of the community shall be equally applicable to persons with disabilities.", Ministry of Welfare.

Fundamental rights place a greater importance on political equality and justice, whereas Directive principles of State Policy can be used as guidelines by governments from time to time to correct injustice, and some of the Directive Principles of State Policy that pertain to and can serve as a guiding spirit for improving the conditions of people with disabilities are reproduced below.

The State must endeavour to promote the welfare of the people by establishing and protecting, to the best of its ability, a social order in which social, economic, and political fairness inform all aspects of national life. The State shall, in particular, aim to reduce income disparities and to eradicate disparities in status, facilities, and opportunities, not just between individuals but also between groups of people living in various places or working in different occupations.⁴⁴

Within the limitations of its economic ability and growth, the state shall make efficient preparations for safeguarding the right to labour, education, and public assistance in circumstances of unemployment, old age, sickness, and disablement, as well as other unjustified poverty.

Furthermore, under entry No. 09 of list II of the VIIth Schedule of the Constitution of India, relief to persons with disabilities is a state subject. In addition, the following clauses in the Constitution address concerns affecting people with disabilities:

a) Entry 26 of Eleventh Schedule to Article 243-G⁴⁵: —- Social welfare, including welfare of the handicapped and mentally retarded⁴⁶

. Constitution of India does not specifically forbid prejudice on the ground of ‘disability’ but includes non-discriminatory provisions which pledge equality and equal opportunities for all citizens⁴⁷

⁴⁴Government of India (1994): The Persons with Disabilities (Security and Rehabilitation) Bill

All poverty alleviation programmes of the Central and State Governments or any other scheme for the benefit of women or other weaker sections of the community shall be equally applicable to persons with disabilities.", Ministry of Welfare, art 38(2)

⁴⁵Article 243G- Powers, authority and responsibilities of Panchayats. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the evolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to— (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule

⁴⁶Schedule XI Entry No. 26 makes provisions for social welfare, including welfare of the handicapped and mentally retarded.

⁴⁷Sadiq Ahamad Jilani Syed. “Legal Framework for Social Integration of Persons with Disabilities" in *Infra* Chapter 2 note 6, pp. 154- 167 at p. 159

b. Article 249 of the Constitution: In order to meet its international commitments, the Parliament is given the authority to legislate on any issue that appears on any list.

The Decade of Disabled Persons was recognised by the United Nations from 1983 to 1992. Between 1993 and 2002, the Asian and Pacific Decade of Disabled Persons was launched. During this time, there was a lot of awareness about the challenges that persons with disabilities faced.

A Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region was adopted at a meeting of the Economic and Social Commission for Asia and the Pacific in Beijing in December 1992.

The proclamation was signed by a number of countries, including India. Countries are obligated to create legislation, policies, and practises that are consistent with international legal instruments if they sign them. As a result, India's most comprehensive law pertaining to individuals with disabilities was enacted. Persons with Disabilities (Equal Opportunity and Protection of Rights) Act 1995.⁴⁸

3.3. PROTECTION OF RIGHTS OF PERSONS WITH DISABILITIES UNDER INDIAN LAWS

3.3.1. The Rehabilitation Council of India Act, 1992.

The Rehabilitation Council of India was established by the Indian government in 1986, primarily as a registered organisation under the Societies Registration Act.

The Council was established by the Indian government in 1986 as a society to control and standardise training policies and programmes in the field of disability rehabilitation.

The need for basic requirements was felt urgently because the majority of people involved in education, vocational training, and disability counselling were not properly prepared.⁴⁹ So, on September 22, 1992, parliament passed the RCI Act, and on June 22, 1993, it became a statutory entity.

The Act's goals are to:

a) control and supervise the training of rehabilitation professionals; and

⁴⁸Anuradha Mohit, Meera Pillai & Pratiti Rungta, 'Rights of the Disabled' (NHRC, 2006) https://nhrc.nic.in/sites/default/files/DisabledRights_1.pdf accessed 24 July 2021 at pp 20-21

⁴⁹*ibid*, at p.24

- b) consistently standardise rehabilitation training courses across the country
- c) To establish basic educational and training criteria for various classes of professionals that work with people with disabilities
- d) To govern these criteria universally throughout the country in all training institutions;
- e) To encourage rehabilitation and special education research; and
- f) To maintain a Central Rehabilitation Register for the registration of professionals in the field of rehabilitation.⁵⁰

3.3.2. The National Trust for the welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999.

Because certain disabled people are more vulnerable than others, a particular law was deemed necessary to safeguard them, their property, and their well-being.

The statute intends to meet a widespread need among families who are looking for a secure solution for their seriously disabled wards.

The purpose of this act is to establish a national organisation for the welfare of people with autism, cerebral palsy, mental retardation, and multiple disabilities. Such a national organisation will be a trust with the following objectives:

- (a) to enable and empower people with disabilities to live as independently and fully as possible inside and near to their communities
- (b) to improve facilities that help people with disabilities living in their own families;
- (c) to address the needs of disabled people who do not have family support;
- (d) to promote measures for the care and protection of disabled people in the event of the death of their parent or guardian and
- (f) to develop procedures for the appointment of guardians and trustees for disabled people who
- (g) to assist in the attainment of equal opportunities, the protection of rights, and full participation of persons with disabilities and

⁵⁰Anuradha Mohit, Meera Pillai &PratitiRungta, 'Rights of the Disabled' (NHRC, 2006) https://nhrc.nic.in/sites/default/files/DisabledRights_1.pdf accessed 24 July 2021 at p 25

(h) to perform any other act incidental to the aforementioned purposes. The President gave his approval to the Act on December 30, 1999, and it covers the entire country. require such protection.⁵¹

3.3.3. Rights of Persons with Disabilities Act 2016.

This Act assures safety and prohibition of discrimination of the persons with disability. It replaces Persons with Disabilities Act “Equal Opportunity Protection of Rights and Full Participation) Act 1995” which was not in full compliance “with the United Nations Convention on the Rights of Persons with Disability Act 2006”. It was approved in the Parliament for the obligation of UNCPRD. India had ratified the UNCPRD Act in the year 7th October 2007. There was no law in India to bring UNCPRD 2006, in force which fulfil the requirement, for which on 7th February 2014, a draft bill had been introduced before the Parliament and Rajya Sabha passed this bill on December 2016 and in Lok Sabha 16th December 2016. Government had notified it in 13th December 2016 and it came into force in 15th June 2017. It comes under Ministry of Social Justice and Empowerment.

The Rights of Persons with Disabilities Act, 2016 along with the Rights of Persons with Disabilities Rules, 2017 together constitutes the Disability Law in India.

3.3.3.1. Objectives of the Act

1.The main objective behind the Act is to empower persons with disabilities by safeguarding their dignity, freedom to make their own choices, independence and their position in the society.

2.The society has a tendency to isolate people with specific disabilities, resulting in discrimination and exclusion from society. The distance between society and people with disabilities can be bridged with the help of this act.

3. The Act strives to attain equality between people with disabilities and others, to enable people with disabilities to participate in all aspects of life, to protect the rights of women and children with disabilities, and to ensure that their human rights are protected.⁵²

⁵¹The National Trust for the Welfare of Persons with Austin, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

⁵²Rights of Persons with Disabilities Act, 2016, purpose of the Act.

3.3.3.2. Types of disabilities covered under the Act

Under this Act the persons with disabilities have been categorized into three broad headings:

1. Person with benchmark disability
2. Person with disability
3. People with disabilities having high support needs.

In the RPWD Act 2016 the type of disabled has “been increased from 7 types to 21 types and the Central Government has the power to add more maladies

3.3.3.3. Rights and Entitlement

1. The UNCRPD promises to protect equality and non-discrimination to all persons with disabilities, with a special focus on women and children.
2. The Act's Section 13 provides that all people with disabilities have equal legal capacity. They have been guaranteed full legal rights, such as the right to possess and inherit movable and immovable property, as well as the ability to manage their financial affairs.
3. Persons with benchmark disabilities and those with high support needs have been provided with additional benefits such as reservation in higher education (not less than 5%), government jobs (not less than 4%), reservation in land allocation, poverty alleviation schemes (5 percent allotment), and so on.
4. Each child who is between the ages of 6 and 18 who has a baseline disability has the right to free education.
5. Government-funded and government-recognized educational institutions will be required to provide inclusive education to children with disabilities.
6. In order to strengthen Prime Minister Narendra Modi's Accessible India Campaign, emphasis has been placed on ensuring accessibility in public buildings (both government and private) within a certain timeframe.

3.3.3.4. Establishment of Authorities

1. Broad-based Central and State Advisory Boards on Disability will be established to develop policies for people with disabilities at the federal and state levels.
2. The Office of the Chief Commissioner of Persons with Disabilities has been enhanced, with two Commissioners and an Advisory Committee of no more than 11 members recruited from experts in various disabilities assisting him.
3. Similarly, the office of the State Commissioners of Disabilities has been enhanced, with an Advisory Committee of no more than five members recruited from experts in various disabilities assisting them.
4. The Chief Commissioner for Persons with Disabilities and the State Commissioners shall serve as regulatory bodies and grievance redressing agencies, as well as overseeing the execution of the act.
5. State governments will establish district-level groups to handle PwD's local problems. The state governments would establish the details of such committees' constitution and functions in the rules.
6. A national and state fund will be established to provide financial assistance to disabled people. The National Fund for Persons with Disabilities and the Trust Fund for Persons with Disabilities Empowerment will be merged into the National Fund.⁵³

3.3.3.5. Punishment for contravention of provisions of Act

The RPWD Act of 2016 imposes penalties and offences against people with disabilities, as well as violations of the new law's provisions. Any person who violates the terms of the Act, or any rule or regulation established under it, is subject to imprisonment for up to six months and/or a fine of Rs 10,000, or both, according to section 89 of the Act.

If there is a subsequent contravention then imprisonment for 2 years or a fine of Rs50,000/- to Rs 5,00,000/- can be awarded. Section 92 of the Act gives a detailed list of offenses which are punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

⁵³*Rights of Persons with Disabilities Act, 2016, purpose of the Act. chapter XIV*

If there is a subsequent violation, a sentence of two years in prison or a fine of Rs50,000 to Rs 5,00,000/- may be imposed. Section 92 of the Act lays forth a comprehensive list of violations that are punishable by imprisonment for a period of not less than six months but not more than five years, as well as a fine.

In addition, special courts will be established in each district to address complaints involving violations of the rights of people with disabilities⁵⁴

3.4.4. Mental Healthcare Act, 2017

To make it certain, that mental healthcare facilities norms stay harmonized and aligned with the UNCRPD, the “Mental Health care Act”, 2017 is enacted, replaced the erstwhile Mental Health Act, 1987. It widens the meaning of mental illness stating that “it is *a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drug.*”⁵⁵

The purpose of the Act is to guarantee access to good quality mental healthcare services provided by Government or Government funded mental healthcare facilities at affordable cost. The following are the some of the important aspects of the legislation:

- There is a provision to make advanced directives which empowers a mentally-ill persons to explain how they wish to be handled in the event of illness, and who will be their appointed representative.⁵⁶
- The Act also regulates electroconvulsive therapy (ECT) and makes consent of family members mandatory. It prohibits ECT in case of minors and can be carried out with the approval of the guardian and with the permission of the relevant authorities.⁵⁷
- To Sterilize both men and women for the purpose of treating a mental condition is strictly prohibited.⁵⁸
- The Act also decriminalizes attempt to commit suicide.⁵⁹

⁵⁴*Rights of Persons with Disabilities Act, 2016, purpose of the Act Chapter XIII*

⁵⁵*ibid.* 2(S)

⁵⁶Mental Healthcare Act, 2017, s.5

⁵⁷*ibid.* s.95

⁵⁸*id.* s 95(c)

⁵⁹*Mental Healthcare Act, 2017, s.115*

- The Act also mandates setting up of monitoring bodies at the national and state level to register and supervise mental health establishments and maintain records of mental health professionals.
- To regulate mental health establishments, the Act also has created provision where every mental health establishment has to register itself with the respective Central or State Mental Health Authority.⁶⁰
- A Board is also mandated to be formed to cater to grievances of persons with mental illness and its redressal.
- The Act also confers institutions with the responsibility to maintain confidentiality of persons with mental illness.⁶¹
- The Act provides provisions for informed consent for treatment procedures for persons with mental illness.⁶²

⁶⁰*Mental Healthcare Act, 2017*. s.55

⁶¹*Id.*, s.23

⁶²*id.* s.22

CHAPTER 4

JUDICIAL APPROACH OF THE RIGHTS OF PERSONS WITH DISABILITIES

The judiciary plays a crucial part in ensuring the protection and empowerment of disabled people. The Indian judiciary has recently emerged as a champion of human rights. Despite its modest beginnings, judicial activism in the sphere of human rights is beginning to emerge as a new source of hope for vulnerable groups such as disabled people. This chapter is basically separated into two sections wherein the first section is about the role of judiciary in protecting the rights of disabled person, at the international level. Although certain decisions by national human rights complaints or conciliation agencies are included, the majority of the case laws reviewed in this section are those of higher, appeals courts. Despite the fact that some rulings by national human rights complaint or mediation authorities are included.

The second section discusses the role of the judiciary in preserving disabled people's rights on a national basis. This section also looks at its significance in defining the idea of non-discrimination as it applies to people with disabilities.

4.1. Judicial Protection of Rights Persons with Disabilities at International Level

A multitude of cases have been filed before the courts by the persons with disabilities in several International and regional human rights courts, such as the European Court of Human Rights, have heard the case. The courts have makes it clear to the states about their duty to preserve the right of a disabled individual clarified what states must do to preserve the rights of disabled individuals also by providing remedies who have suffered violations of their rights.⁶³

*Ryanair Ltd and Another v. Ross*⁶⁴

In this Particular case the airline and airport, according to the claimant, failed to offer sufficient access arrangements for him as a disabled person. There had been no wheelchair available to transport him through the airport to the plane.

⁶³Office of the High Commissioner for Human Rights, *From Exclusion to Equality: Realizing the Rights of persons with Disabilities*, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities and its Optional Protocol (Geneva, 2007) <https://www.un.org/disabilities/documents/toolaction/ipuhb.pdf> accessed 20 July 2021.

⁶⁴ [2004] EWCA Civ 1751

It was held in the instant case that a wheelchair should be provided by the air carriers, as part of their services to the customers at the airport from the check in counter and to the boarding aircraft, and it would be unlawfully discriminatory to ask for payment to use such equipment.

Eldridge v. British Columbia⁶⁵

When a non-profit organisation that provides sign language interpreting services in British Columbia's lower mainland ran into major financial difficulties, it turned to officials at the Ministry of Health for help. It was rejected.

The appellants, Robin Eldridge and Linda Warren, were born deaf. They claimed that the lack of interpreters put them at danger of misdiagnosis and inadequate treatment, and that the government's failure to include such services directly in relevant legislation infringed their right to equality.

A lack of reasonable accommodation, such as sign language interpretation for a person who was born deaf and relies on sign language to communicate, is incompatible with anti-discrimination legislation, according to the Court.

The right to equality places obligations on governmental actors to allocate resources to ensure that disadvantaged groups have full advantage of public benefits. The government had failed to demonstrate that it had a reasonable basis for denying medical interpretation services in light of their cost.

Governmental actors are obligated under the right to equality to allocate resources so that disadvantaged groups can take full use of public benefits. In view of the cost of medical interpretation services, the government had failed to show that it had a justifiable basis for refusing them.

University of British Columbia v. Berg⁶⁶

In this case, a graduate student suffering from depression was discriminated against by a university, which denied her entrance to a building after hours while granting access to other graduate students.

⁶⁵[1997] 3 SCR 624

⁶⁶[1993] 2 SCR 353.

The court ruled that the University's denial of access based on the student's mental health was discriminatory because the access was part of services that were normally open to the general public.

PGA Tour v. Martin⁶⁷

Casey Martin, a golfer, had a circulatory problem that prevented him from walking around golf courses. This disease was defined as a handicap covered by the Americans with Disabilities Act of 1990. (ADA). Martin requested PGA Tour, Inc, to let him use a “golf cart” during the tournament, which was declined by the PGA. So, Martin filed a lawsuit against PGA under the said Act asking that it should be accommodative of his disability and use a golf cart to be permitted. The district court issued an injunction against PGA, granting Martin’s request. The PGA then appealed. The district court’s decision was, however, affirmed by the Ninth Circuit Court of Appeals. The Court of Appeals, in its affirmation argued that during professional tournaments, golf courses are spots of public accommodation and that allowed Martin to utilize a golf cart which would not fundamentally change the tournament’s nature. The walking rule is not a vital feature of the game itself and, as such, could be suspended in individual cases without leading to fundamental alteration. The court held that PGA Tour failed to adhere to the ADA which necessitates sport’s governing organizations to establish reasonable adjustments to the rules to enable disabled persons to take part in athletic competitions unless making modifications fundamentally alters the sport’s nature.

Mouissel v. France⁶⁸

Jean Mouissel had CLL (chronic lymphocytic leukaemia). He was sentenced to fifteen years in jail for armed robbery in 1996. While in prison in 1999, his health began to deteriorate, necessitating chemotherapy. He was handcuffed on his way to the hospital and claimed to have been restrained during chemotherapy, however this was not proved. In June 2000, he discontinued treatment due to treatment circumstances and guards' violent behaviour. Mouissel required treatment at a specialised facility, according to a medical report issued at the request of the Ministry of Justice on June 28, 2000. He was sent to a prison near a hospital on July 19, 2000. He was freed on parole on March 22, 2001, for a period of time up to March 20, 2005, on the condition that he receive medical treatment. Mouissel claimed that his physical condition made extended incarceration impossible, and that his detention and confinement breached his

⁶⁷[2001] 204 F 3d 994

⁶⁸ [2002] EHRR

right to be free of torture and cruel or degrading treatment or punishment under Article 3 of the European Convention on Human Rights.

The court found that the prisoner's rights under Art 3 were breached, but that Article 3 did not constitute a general responsibility to release detainees who were unwell. Article 3 does impose an affirmative obligation on states to provide required medical care and to safeguard prisoners from discomfort or suffering beyond that which is inherent in detention. In Mouisel's case, continuous confinement, especially after the report, harmed his dignity and put him through extra hardship. The penitentiary was unprepared to handle Mouisel's deteriorating condition. Authorities neglected to take the necessary steps, such as admitting him to a hospital or another facility where he could be closely supervised. Mouisel's handcuffing during transport to the hospital was disproportionate to the security risk he posed, given his illness and weakness. Finally, Mouisel's transfer to another prison, then a hospital, rather than the required specialised care unit, did not comply with the recommendations of the European Committee for the Prevention of Torture.

For the distress he had as a result of his imprisonment, Mouisel was granted €15,000 in damages.

Thus, the failure by prison authorities to provide special facilities or treatment in the light of a prisoner's health problems was found to cause suffering beyond that which was inevitable during a prison sentence.⁶⁹

Department of Welfare v. Nontembiso⁷⁰

The Constitutional Court of South Africa held that 40-month delay in awarding a disability pension was not only a violation of social-welfare law, but also a violation of her dignity due to the impact on her ability to support herself.

.Olmstead v. L C⁷¹

It was held that Isolation and segregation of disabled people is a significant and widespread form of discrimination. This is especially important because the exclusion of disabled children from normal classrooms persists. .⁷²

⁶⁹[2002] EHRR

⁷⁰[March 2006] Case No. 580/04, at 32)

⁷¹ [1999] 527 US 581).

⁷² [1999] 527 US 581).

4.2. JUDICIAL PROTECTION OF RIGHTS OF PERSONS WITH DISABILITY AT NATIONAL LEVEL

1. *State of Kerala v. Leesamma Joseph*⁷³

In this particular case, “appeal” was filed before the Supreme Court against “Kerala High Court” Judgement, dated 9th March 2020 wherein the Kerala High Court set aside Kerala Administrative Tribunal’s order dismissing the respondent’s application by order dated 27th February, 2015. Leesamma Joseph, the respondent, was appointed on humanitarian ground after the death of her brother during his service, to the post of Typist/clerk in police department. She is also permanently disabled at 55%. She has also qualified all departmental test for the promotion and was tested qualified in December 1998. She was given a category change to Lower Division clerk in July, 2001 without losing her seniority and later on promoted as Senior Clerk (equivalent to Upper Division Clerk) on 16th of September, 2004, based on the seniority list of tests qualified LDCs. Later on, she was promoted to the post of Cashier on 5th may 2015.

The question which the respondent has raised was whether she was entitled to promotion as a Senior Clerk with effect from 1st of July, 2002 with all consequential benefits and as a cashier with effect from 20th May, 2012 with all consequential benefits and thereafter as Junior Superintendent. The state had advanced its argument that Section 32 and sec 33 of the Persons with Disabilities Act 1995 which mandated 3-4% posts identified by the government were to be kept for the appointment of people suffering from impairment. It was argued that this cannot be interpreted to mean that such a reservation would extend even to promotions. She was not appointed through recruitment process under the 1995 Act, but was appointed on the demise of her brother on compassionate grounds in a different way. It was thus submitted that she could not claim any right to reservation in promotion under the 1995 Act.⁷⁴

The Court by discussing the 1995 Act held that the legislative mandate has to be understood as providing for equal opportunity for career progression, including promotion. Thus, it would be negation of the legislative mandate if promotion is denied to PWD. The Court held that” the persons having disability need to have reservation in promotion. Supreme Court (SC) also direct the Government of Kerala to implement these judgements and provide for in reservation in promotion in the posts after identifying the said posts and it should be completed within a period of three months.

⁷³ [2021] SCC 59

⁷⁴*ibid*

Anmol Bhandari v. Union of India⁷⁵

Supreme Court held in this case that the Specially abled Persons will be entitled to get equal benefit and relaxation as it is given to the Scheduled Caste as well as Scheduled Tribes in public employment and in education sector. Under Art 15(4) and Art 15(5) of the Indian Constitution Scheduled Caste and Scheduled Tribes were given benefits for their upliftment Aryan Raj, a Government College of Art Chandigarh's student, filed a plea. In the Government College of Art Chandigarh, he was denied a waiver of the required qualifying marks in painting and applied courses. The college stipulated that disabled people must also satisfy the normal qualifying norms of 40% in the aptitude test, whereas SC/ST students were given a 35 percent concession. In this particular case Supreme Court held that the Persons with Disabilities candidates will have the same benefits as it is there for the SC/ST candidate.

Disabled Rights Group v. Union of India and Others⁷⁶

With respect to this case, a Law student Pooja Sharma, was a disabled student unable to pursue her study in a Nationally recognized Deemed University due to lack of facility which is needed for a disabled candidate. The university also refused to provide reasonable accommodation for her special needs and modify her hostel bathroom to accommodate a wheel chair. The university was also reluctant to accommodate an isolated room for her convenience if needed offer her a facility of assistant.

The Supreme Court requested the Bar Council of India to investigate the matter.

As a result, the BCI in 2011, passed a resolution making it necessary for all the law collages in India to make their courses, available for persons with disabilities. Also, it asked colleges to implement three percent reservation quota for the disabled candidate. The reservation will not serve the purpose if the law college is not prepared to deliver diverse requirements of disabled students, which would lead him or her to end studies. Every university is required now to have a minimum infrastructural facility for the disabled candidates.

⁷⁵[2014]W.P.(C) 4290

⁷⁶ [2006] SCC 292

Each center of legal education must be provided with the required physical, academic, and other facilities for disabled students, teachers, and staff to effectively participate in their respective activities.⁷⁷

Vikas Kumar v. Union Public Service Commission⁷⁸

Vikas Kumar, the appellant in this case, was appearing for the Civil Service examination in the Year 2018. He was suffering from dysgraphia, also known as “writer’s cramp which is a specific type of focal dystonia that affects, fingers, hand and forearm”. He had declared himself (not by an authority) to be a person with the benchmark of 40 percent disability and urged the Union Public Service Commission (UPSC) to provide him with a facility of a scribe for the examination on March 15, 2018. U.P.S.C rejected his request on the ground that, a scribe is accessible only to the blind candidates, also candidate who suffer from locomotor disability or cerebral palsy with impairment of at least 40 percent as per the Civil service examination notification 2018. And that the appellant did not meet this criterion⁷⁹

After the rejection, the appellant moved to the tribunal and the court ordered the UPSC to provide him a scribe, so that he can appear for the preliminary examination, But his result was withheld on the ground that, Ram Manohar Lohia Hospital in Delhi had refused to give him any disability certificate, so on that ground the appellant could not claim access to a scribe as a disabled candidate, after that that tribunal court also hold back from interfering in the rules enshrined in the Civil Service Examination notification 2018. Then the appellant “filed a writ petition” before “the High Court challenging the legality” of the Civil Service Examination Rules 2018. By that time, he obtained a medical certificate on the 27th August 2018, from the “National Institute of Mental Health and Neuro Sciences (NIMHANS) Bangalore”, declaring that he needs a scribe during his examinations. “A division bench of the Delhi High Court” on 25th September 2018, refused to interfere with the order of the tribunal and held that the appellant does not qualified at the preliminary examination for the Civil Service Examination 2018 to provide scribes to candidates with the specific disabilities was rendered functionless.

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⁷⁷Disability Law Initiative Affirmative Action for Persons with Disabilities Through Law, Available at <http://disabilitylaw.org.in/disability-law/access/landmark-cases-access/> accessed 1 July 2021

⁷⁸[2021] 1882 SLP (C)

⁷⁹*ibid*

After that Vikas Kumar, appealed before the S.C on dated 16th Jan 2020, The Apex had given direction to All India Institute (AIIMS) to form a medical board that can study the proper condition of the Appellant. After evaluating the condition of the Appellant his disability was found to be six percent, which is below the benchmark disability criteria as established under the Rights of Persons with Disability Act 2006. The Apex Court after examining all the submissions held that benchmark disability is not a precondition to obtain a scribe.⁸¹

The Court further stated that the government must abandon its fundamental misconception that only people with a 40% or greater impairment should be given with a scribe while sitting exams like the Civil Service Examination.⁸²

This arbitrary requirement obviously contradicts the simple provisions and intent of the Rights of Persons with Disabilities Act (RPWD) Act, 2016, according to the bench led by Justice D Y Chandrachud.

The bench decided that a scribe's service is in accordance with the statutory mandate to assist persons with disabilities to live a life of dignity and equality, based on society's respect for their mental and bodily integrity. They will no longer be viewed as second-class citizens as a result of this. The Court stated that the higher criterion as a disability benchmark could not be used to deny disabled people equal access. The Court referenced the case of Jeeja Ghosh v. Union of India, in which it was determined that equality encompasses not only the prevention of discrimination, but also a wide range of positive rights, such as "reasonable accommodation. In this context, the state has an obligation to make reasonable accommodations to people with disabilities, such as the use of a scribe, compensatory time, and so on, in order to ensure their safety.⁸³

When the Court stated, "Part III of our Constitution does not explicitly include persons with disabilities within its protective fold, it was attempting to translate human dignity enshrined in the Preamble into the legal regime for recognition and enforcement of rights of persons with disabilities. However, much like their able-bodied counterparts, the golden triangle of Articles 14, 19 and 21 applies with full force and vigour to the disabled.⁸⁴

⁸¹[2021] 1882 SLP (C)

⁸²Kshitij Goyal and Yash 'Why Vikash Kumar judgement is an important step forward for people with disabilities' *Indian Express* (New Delhi, 11 April 2021) <https://indianexpress.com/article/opinion/why-vikash-kumar-judgement-is-an-important-step-forward-for-people-with-disabilities-7268625/> accessed 23rd July, 2021

⁸³H.O. Aggarwal, *International Law and Human Rights*, 17^{edn}, (Central Law Publication, 2020)

⁸⁴iH.O. Aggarwal, *International Law and Human Rights*, 17^{edn}, (Central Law Publication, 2020)

The apex court also directed the Centre to come up with norms and guidelines within three months to protect the rights of persons with disabilities to appear in the examinations with the help of scribes for the progressive realisation of the rights of disabled people, in tune with the RPWD Act of 2016.

In accordance with the RPWD Act of 2016, the apex court further ordered the Centre to issue norms and guidelines within three months to preserve the rights of individuals with disabilities to appear in examinations with the assistance of scribes for the gradual realisation of disabled people's rights.

JavedAbidi v. Union of India and Others⁸⁵

In this case, the Supreme Court ruled in 1998 that people with disabilities have a fundamental right to public facilities that are accessible to them. Mr. JavedAbidi, an orthopaedic challenged individual, presented his case in person. The Petitioner presented both a specific issue of accessible air transportation for disabled people and a broader issue of how the People with Disabilities Act is being implemented.

The petitioner argued that orthopaedic disabled people have a difficult time using air transportation, and that Indian Airlines, the domestic carrier, should accommodate them by providing ambulifts to transport them from the ground to the plane, as well as aisle wheel chairs to get them to their seats. They had to be forcibly hauled up into the plane and to their seats because there were no such facilities, causing them not only great discomfort but also embarrassment and loss of dignity. In response, Indian Airlines first stated that deploying ambulifts at all of the country's main airports would be prohibitively expensive and beyond their financial capabilities. During the hearing, they changed their minds and stated that ambulifts were being given at all major airports, and aisle chairs had already been made available, all under the watchful eye of the Court. Despite Indian Airlines' rejection to the petitioner's request, the top court ordered that Indian Airlines grant airfare concessions to orthopaedic injured persons with more than 80% disability.⁸⁶

The petitioner also informed the Court that, despite the fact that the Persons with Disabilities Act of 1995 provided for the establishment of Central and State level committees to protect

⁸⁵ [1999] 1 SCC 467

⁸⁶*ibid*

disabled people's rights and advance their cause, these committees had not been established and the legal provisions for them remained on paper. The Central and State Governments assured the Court that they were taking steps to form the necessary committees as soon as the Court issued notices. We hope and believe that the respective committees will fulfil their obligations under the Act in order to achieve the objectives for which the Act was enacted, the Court stated.⁸⁷

The Supreme Court of India's observations in this case can inspire disabled people to continue fighting for their rights. The Court stated in its decision:

To create a barrier free environment for persons with disabilities and to make special provision for the integration of persons with disabilities into the social mainstream apart from the protection of rights, provisions of medical care, education, training, employment and rehabilitation are some of the prime objectives of the Act., also

The petitioner himself is an orthopedically impaired person...He appeared in person in this Court and successfully presented his case indicating several infirmities as well as callousness of the different organizations of the State in implementing the provisions of the Act...we cannot but thank the petitioner...which resulted in acceleration of the implementation of different provisions of the Act, not only by the Union Government but also by the State Government.

Deaf Employees Welfare Association v. Union of India⁸⁸

This petition was filed in order to obtain a Writ of Mandamus mandating the federal and state governments to provide hearing-impaired government employees with the same transportation allowance as blind and other disabled government employees. The stipend given to hearing-impaired employees was much less than that given to other employees with disabilities.

The Supreme Court granted the petition and ordered the Respondents to provide speech and hearing-impaired people with the same transportation benefits as blind and orthopaedically challenged government employees. The court ruled, "*there cannot be further discrimination between a person with disability of 'blindness' and a person with disability of 'hearing impairment'. Such discrimination has not been envisaged under the Disabilities Act*". It

⁸⁷[1999] 1 SCC 467 p 46

⁸⁸[2011] SCC 107

decided that all persons with disabilities who participate in government responsibilities are granted equality of law and equal protection of the law. Even the belief that a hearing or speech impaired person suffers less than a blind person marginalises them; as a result, they must be provided with the same benefits as blind individuals.⁸⁹

Sheela Barse v. Union of India⁹⁰

In this case The Supreme Court has ordered that physically and mentally retarded children, as well as abandoned or destitute children, be placed in protective or observation homes, and that if such children are accused of any crime, the investigation and trial against them be expedited by establishing juvenile courts in each district and forming a cadre of trained magistrates to handle such cases.

National Federation of Blind v. Union Public Service Commission⁹¹

The Public Service Commission has been ordered by the Supreme Court to enable blind people to compete in tests for Indian Administrative and Allied Services. The petitioners' request to write the examination in Braille scripts or with the assistance of a scribe was likewise granted by the Court

Chandan Kumar Banik v. State of West Bengal⁹²

The Supreme Court interfered to provide mentally challenged inmates of a Hooghly district hospital a reprieve from being shackled by the hospital management in order to control their unruly or aggressive behaviour

Anju Talukdar and Others v. State of Assam and others⁹³

While dealing with the legality of the provision of qualifying conditions for admission to paramedical courses in the State of Assam, where 3 percent of seats are reserved for persons with locomotor disabilities, Hon'ble Chelameswar C.J. limited its scope to and within that. Only the persons with Locomotor disability of lower limbs and having between 50% to 70% of disability shall be eligible for this Quota.

⁸⁹[2011] SCC 107

⁹⁰ [1986] 3 SCC 632

⁹¹ [1993] 2 SCC 411

⁹² [1995] Supp (4) SCC 505

⁹³ [2009] (2) GLT 185

CHAPTER 5

CONCEPT AND NATIONAL INITIATIVE ON LOCOMOTOR DISABILITY IN INDIA

The persons with locomotor disability form a considerable section of our population whose potentials should be utilised to the optimum limit. They are gradually coming to be recognised as useful citizens of society. Several schemes of the Central as well as the State Governments have been launched in order to educate and train the disabled persons so that place them in useful and suitable employment in offices, commercial organizations and industrial houses. At the same time, it is important to analyse the implementation of rights in real sense also. The RPWD Act has several provisions, which if implemented, could be a game changer for people with disabilities in India. This chapter in its first part deals with definition of the term locomotor disability and proceeds to explain its types, causes, symptoms etc. In the last part it deals with the status of Implementation of the Act in India.

5.1. Meaning and Definitions:

The term Locomotor is derived from the Latin words loco from a place and motivus -causing motion so it means movement from one place to the another. It effects movements of a person. Locomotor disability is also known as mobility disability or orthopedic disability.⁹⁴

According to the Rehabilitation Council of India Act 1992 A person with Locomotor disability is restricted in the activism of arms, limbs, or other parts of the body on account of damage to the bones, muscles or nerves.⁹⁵

According to the Individuals with Disabilities Education Improvement Act 2004, Orthopedic Disability is understood as a severe orthopedic impairment that adversely effects a child's educational performance. The terms include impairments due to the effects of congenital anomaly, impairments due to the effects of disease and impairments from other causes such as cerebral palsy, amputations, fractures or burns that cause contractures.⁹⁶

⁹⁴We Capable, What is the Meaning of Locomotor Disability?<https://wecapable.com/locomotor-disability-meaning/> accessed 26 July 2021

⁹⁵The Rehabilitation Council of India Act, 1992 s.2 (1) (e)

⁹⁶Department of Defense Education Activity, 'The 13 Disabilities Defined by the Individuals with Disabilities Education Act (IDEA)', (Dodea, 2020)
https://www.dodea.edu/dodeaCelebrates/upload/Disabilities_Defined_IDEA.pdf (accessed 26 July 2021)

In 1980's World Health Organizations (WHO) defines Locomotor disability as a disability to an Individual's ability to execute distinctive activities associated with moving both himself and objects from place to place.

. 5.2. Classification of Locomotor Disability.

i) Congenital Disability

Congenital disability is those disability that are present since birth. Most common among them are cerebral palsy, club foot, dislocation of hip, missing bones, webbed fingers etc. most of them are the result of infection, nutritional deficiency, mothers lack of nutrition.

ii) Acquired disability

It can be caused by polio, osteomyelitis, accidents, trauma etc. The major causes can be classified as non-congenital locomotor disability which further includes acquired i.e., a disability resulted from accident or disease after birth.

5.3. Causes of Locomotor Disability

The several causes of locomotors disability are classified as below:

i) *Cerebral Palsy*: It means a group of non-progressive neurological condition affecting body movements, muscle coordination's caused by one or more specific areas of the brain often arise before, during or after birth. It is understood as a group of chronic conditions affecting body movement, muscle coordination and often mental capability. It refers to several non-progressive disorders of voluntary movement or posture caused by malfunction of or damage to the developing brain that occurs before or during birth or within the first few years of life. In this condition the brain ability to send messages gets affected and therefore losses the coordination of body movements. It lacks the ability to control the muscle and even the ability speak gets affected. Individual with the cerebral palsy have abnormal involuntary and or uncoordinated motor movements. There are four most common types of cerebral palsy which are known as: a) Spastic Cerebral Palsy. b) Athetoid Cerebral Palsy c) Ataxic Cerebral Palsy d) Mixed.

a) *Spastic Cerebral Palsy*: It refers to the condition of very tight muscles occurring in one or more muscle groups that result in stiff, uncoordinated movements.

b) *Athetoid Cerebral Palsy*: It occurs when movements are contacted abnormal and purposeless.

c) *Ataxic Cerebral Palsy*: It refers to the conditions of poor balance and equilibrium in addition to uncoordinated voluntary movement.

d) *Mixed type*: It indicates any combination of these types.

Cerebral palsy is not a disease and hence cannot be cured. However, the use of aids such as wheel chair, walking aid and physiotherapy can help in the mobility of the individual. ⁹⁷

ii) *Poliomyelitis*: It is an acute infectious viral disease caused due to poliovirus. It multiplies after entering into the human body through the mouth and alimentary tract. Some special areas in the nervous system are selectively damaged by polio virus, the most commonly affected area being the anterior horn of the spinal cord. It mostly affects children below five years of age. It is very rare in adolescents and adults. The clinical picture ranges from in apparent illness to extensive paralysis of the arms, legs or muscles. It results in respiratory failure, paralysis and even causes death. It can be prevented by immunization of children. The polio eradication programme named the pulse polio programme in India has found results and India has been declared polio free.

iii) *Spina Bifida*: It is a disability which is present at birth time, also known as birth defect that occurs when the spine and the spinal cord do not form properly. It forms under the broader category of neural tube defects. The neural tube is the embryonic structure that eventually develops into the baby's brain and spinal cord and the tissues that enclose them. The neural tubes form early in pregnancy, and it closes by the 28th day after conception. In babies with spina bifida, a portion of the neural tube fail to develop or close properly, causing defects in the spinal cord and in the bones of the spine.

iv) *Osteomyelitis*:

It is a bone infection caused by bacteria and other germs. It is a chronic bacterial bone and joint infection that progressively destroys the bone and may also affects the joints. Normally the bone is resistant to bacterial infections but surgery, placement of a prosthesis, trauma and so on can make the bones vulnerable to infection. It can lead to severe physical impairment if not treated properly. Malnutrition, poor hygiene, diabetes extensive scurrying, chronic wounds and so on are some of the risk factors for developing osteomyelitis. Antibiotics can help in the

⁹⁷Gulati S, Sondhi V., 'Cerebral Palsy: An Overview. Indian J Pediatr'(2018) 85(11) Epub. 1006-1016.

early stages of infection. Surgical removal of infected bone and tissue is required once the infection becomes chronic.⁹⁸

iv) *Muscular Dystrophy:*

Muscular Dystrophies are a heterogeneous group of inherited disorders with gradual degeneration of the Muscle Fibers. Muscular Dystrophies are a heterogeneous group of inherited disorders with gradual degradation of the Muscle Fibers. Muscular Dystrophies get worse over time. Some forms are seen in infancy or childhood while other may not appear until middle age or later. It is caused by changes in the genes responsible for the structure and functioning of a person's muscles. There is no specific treatment to remove muscular dystrophy. Physical therapy, respiratory therapy, speech therapy, orthopedic appliances used for the support of the patient. Corrective orthopedic surgery and occupational therapy and so on can help individual live a better life.

v) *Spine tuberculosis:*

Tuberculosis of the spine is one of the most common spine pathologies in India. It is an infection of the spinal column that progressively destroys the backbone and causes severe physical impairment. The disease is caused by the tubercle bacillus. Tuberculosis of the spine occurs when a tubercular infection of the lungs touches the spinal bones. This frequently happens in children. Infection can be cured with anti-tuberculosis medicine, but extensive surgery is often necessary to stabilize the spine to correct the deformity. Allow recovery of the spinal cord.

vii) *Cleft lip and palate:* It is a common congenital deformity. It occurs when the separate areas of the face that develop individually and join together do not join properly. It is an opening between upper lip and the nose and looks like a split in the lip. A cleft palate occurs when the roof of the mouth has not joined completely. The conditions may occur separately or be combined.

viii) *Angular bone deformities:* Here bent in the knees which may be just above or below occurs which causes severe knee problem. Its deformity may lead to walk difficult. It damages joints which results in arthritis.

⁹⁸Ebrahim, S., Adamson, J., Ayis, S., Beswick, A., &Goberman-Hill, R. 'Locomotor disability: Meaning, Causes and Effects of Interventions', (2008) 13 Journal of Health Services Research Policy.

vii) *Congenital Anomalies:*

They are also known as birth defects, congenital disorders or congenital malformations. It can be defined as structural or functional anomalies (for example, metabolic disorders) that occur during intrauterine life and can be identified prenatally, at birth, or sometimes may only be detected later in infancy, such as hearing defects. ⁹⁹

vii) *Deformity due to injury, Accidents and Trauma:* Due to injury of any organ or due to an accident, the hands or legs either become twisted or stop functioning. But severe deformations normally caused due to injury of the spinal cord. There can be two types of injury to the spinal cord.

a) Partial injury

b) Complete injury

viii) *Clubfoot:* It is a condition in which the child is born with a foot turn inwards and pointing down either one or both the feet may be affected. If it is left untreated the condition causes the person walk painfully on the top of the foot. The majority of the clubfoot cases are congenital or hereditary and result from abnormal development of the muscles, ligaments and bones while the baby is formed in uterus. ¹⁰⁰

5.4. Symptoms of Locomotor Disability.

i) Reaching motor skills milestone, such as pushing up one arms, sitting up alone or crawling are delayed

ii) Favoring one side of the body, such as reaching with only one hand or dragging a leg while crawling.

iii) Difficulty in walking such as walking in toes, a crouched gait, a scissors-like gait with knees crossing, a wide gait or an asymmetrical gait.

iv) Problems in swallowing and drooling faced by the patients

⁹⁹Ebrahim, S., Adamson, J., Ayis, S., Beswick, A., &Gooberman-Hill, R. 'Locomotor disability: Meaning, Causes and Effects of Interventions', (2008) 13 *Journal of Health Services Research Policy*.

ⁱibid

- v) Patients face Trouble in chewing or sucking.
- vi) Speaking delay and difficulty.
- vi) Difficulty with precise motions, such as picking up a crayon or spoon.
- vi) Seizures.
- vii) It gets effected in Tremors or involuntary movements of a patient.

5.5. Health Programmes for Prevention of Locomotor Disability at National Level

A number of steps have been taken by the Indian government towards the prevention of locomotor disability prevention. Some of the important actions taken are screening of 'at risk' cases, research in areas of prevention of disability, provision of awareness campaigns on causes and prevention of locomotor disability and provision of training to medical and paramedical personnel are some of the important actions taken.

5.5.1. Universal Immunisation Programme

Universal Immunisation Programme has begun in the year 1985 in our Country. It comprises of two major components: first is to immunise pregnant women against tetanus, and second is to immunise children in their first year of life against the six Expanded Programme on immunisation (EPI) targeted diseases, which are the most common preventable childhood diseases viz. tuberculosis, diphtheria, pertussis (whooping cough), tetanus, poliomyelitis and measles. The influence of the programme is seen in the decreasing trends of the diseases e.g., poliomyelitis which has shown a considerable drop in the number of cases reported. With the objective to eliminate poliomyelitis, in addition to the regular immunisation programme, Government of India has introduced the Pulse Polio Immunisation programme since 1995. This is a mass polio vaccination programme given to all children irrespective of their immunisation status on two National Immunisation days at interval of 30 days each year. Initial target age was 0-3 year but later all children in age group 0-5 years were included. From the year 1999, the programme has been further modified by giving 4 doses in a year from November to February, with the aim to eradicate Polio by the end of 2000 AD.

5.5.2. National Leprosy Eradication Programme

The National Leprosy Control Programme (NLCP) has been in action from in year 1955 to attain control of leprosy through early detection of cases and DDS (dapson) mono therapy on

an ambulatory basis. In 1983, the control programme was redesignated as National Leprosy Eradication Programme. Their objective was to eliminate leprosy by the year 2000. Multi-drug chemotherapy was recommended aimed to reduce the quantum of infection in the population, reduce the sources of infection and break the chain of transmission of disease.

5.5.3. National Tuberculosis Control Programme

This programme was started from 1962 onwards. The objectives of the programme are

- a) To reduce serious infectious tuberculosis disease in the community to that level when it ceases to be a public health problem
- b) Through this programme it aims to detect the disease and do effective treatment of TB cases
- c) Under this programme the newly born babies and infants are being vaccinated with BCG.
- d) A revised strategy for National Tuberculosis Programme was taken place in 1982 by undertaking objectives in an integrated manner through all the health institutions of the Country. The salient features included
 - i) Achievement of at least 85 per cent cure rate of infectious cases through supervised short course Chemotherapy involving peripheral health functionaries
 - ii) Augmentation of case finding activities through spectrum microscopy to detect at least 70 percent of estimated cases, and;
 - iii) Involvement of NGOs, information, education and communication, and improved operational research.

5.5.4. National AIDS Control Programme

National AIDS Control Programme was started in the year 1987. In 1991, a strategic plan for prevention and control of AIDS was introduced. The Ministry of Health and Family Welfare has set up a National AIDS Control Organisation (NACO) as a separate Early Identification wing to implement and closely monitor the various components of the programme. Important components of the national strategic plan include : establishment of surveillance centres to cover the whole country, identification of high risk groups and their screening: issuing specific guidelines for management of detected cases and their follow up, formulating guidelines for blood banks, blood product manufacturers, blood donors, and dialysis units, information, education and communication activities by involving mass media, research, reduction of

personal and social impact of the disease, control of sexually transmitted diseases and condom programme.

5.5.5. National Cancer Control Programme

National Cancer Control Programme was started during the year 1975-76 by providing financial assistance to institutions for purchase of Cobalt Therapy Units for treatment of cancer patients. Over the Sixth and Seventh Five Year Plan periods, the scheme continued, and at the same time, ten major institutions were recognised as Regional Cancer Centres which received central financial assistance. During the Eighth Five Year Plan emphasis was on prevention, early detection and augmentation of treatment facilities in the country. Other schemes include: scheme for District Projects; Development of Oncology Wings in medical colleges/ hospitals; and scheme for financial assistance to voluntary organisations for the purpose of undertaking health education and early detection activities in cancer.

5.5.6. Programme for safe Motherhood and Child Survival

This national programme launched by the Government of India assumes great importance in prevention of childhood disabilities. Care of mother during pregnancy such as protection against nutritional anaemia, infection, use of toxic drugs, exposure to radiation, prevention of complications during the delivery process which would lead to hypoxic brain injury or intracranial haemorrhage to the child, and, care of problems in the new born, for example, jaundice, septicaemia, head injury etc., are major contributory factors towards locomotor disability prevention in children. The Government of India has taken up a programme of Social Safety Net Scheme with assistance from World Bank, under which, facilities at the Primary Health Centres will be upgraded in ninety districts in the country. These facilities would include labour rooms, equipment, trained staff, regular supply of water and electricity and facilities for education and information. It is intended that mother will be helped with institutional deliveries and safe motherhood. The scheme has been taken up from 1992-93.

5.6. Locomotor Disability in National Scenario

In India, the data of persons having locomotor disability as estimated by the national sample survey is 10.66 million persons.¹⁰¹ The proportion (per 1000) of PWD with the deformity of limb is maximum in comparisons to other types of locomotor disabilities. It was also found by the study that polio is the major cause of this disability and other being injuries other than burns which accounts for 26 to 27%. There are various causes of traumatic locomotor disability such as road traffic accidents, railway accidents, falls, bullet injuries, machine injuries. Though there are many studies available outside, there have not been many studies in India to determine contribution of trauma to loco motor disability.¹⁰²

According to the Census of India 2011, about 2.21% of the entire population found to be suffering from one form of disability or other. Out of this disability of movement emerged the highest category with 20.3 percent. The census also revealed that Locomotor disability is more among man than in women in India. As compared to urban areas it is mostly prevalent more in rural areas.

5.7 Implementation of Rights of Persons with Locomotor Disabilities under the Disability Laws with special reference to Assam

The RPWD Act, 2016 is applicable in the whole to the three broad-types disabilities that is person with benchmark disability, person with disability, people with disabilities having high support needs and read with Schedule I to the Act, and as locomotor disability is the first classification under the Schedule and further a person with locomotor disability is a person with disability and can also fall under benchmark disability and disability having high support. So, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India¹⁰³ can be interpreted for purpose of locomotor disability also.

¹⁰¹ National Sample Survey Organisation. Disabled Persons in India. NSS 58th round (July – December 2002). New Delhi: Ministry of Statistics and Programme Implementation, Government of India; 2003 Dec. Report No. 485 (58/26/1).

¹⁰²*ibid*

¹⁰³National Centre for Promotion of Employment for Disabled People, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India, 2018 https://ncpedp.org/documents/Report_of_Status_of_RPWD_Act_Final.pdf accessed 25 July 2021.

5.7.1. Notification of State Rules.

As per Section 101 (1) of the Act, The State Governments within six months from the date of commencement of the RPWD Act, 2016 are required to notify the State Rules.¹⁰⁴

The States, which have not notified the State rules accounts to 58.3%¹⁰⁵ despite the Act directing it be notified within six months of the enforcement of the Act.

The State of Assam has still not notified the rules. However, draft rules have been prepared.¹⁰⁶

5.7.2. The State Advisory Board

A body to be known as the State Advisory Board on disability to exercise the powers conferred under the Act is to be constituted by every state.¹⁰⁷

The States and UTs not having formed State Advisory Boards accounts to 50%.¹⁰⁸The State of Assam has constituted the SAB.

5.7.3. District Committees.

In order to implement the Act at district, the District Committee plays an important role. There should be made detailed rules with respect to the functions and composition of the Committee by the State Rules.¹⁰⁹ Again in case an aggrieved person is not satisfied with the action taken by the Grievance Redressal Officer of an establishment on her/his complaint he/she can file a complaint with the District Level Committee.¹¹⁰

83.3% of the States and UTs have not constituted the District Committees. The State of Assam has not constituted District Committees.¹¹¹

¹⁰⁴ Rights of Persons with Disabilities Act, 2016, s.101(1)

¹⁰⁵National Centre for Promotion of Employment for Disabled People, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India, 2018, p7

¹⁰⁶ Assam State Rules under Rights of Persons with Disabilities Act, 2016, https://socialwelfare.assam.gov.in/sites/default/files/swf_utility_folder/departments/sw_webcomindia_org_oid_3/menu/document/draft_rules_rpwd_act_rules_and_forms.pdf(accessed 26 July 2021)

¹⁰⁷ supra 121 s.66(1)

¹⁰⁸ National Centre for Promotion of Employment for Disabled People, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India, 2018 https://ncpedp.org/documents/Report_of_Status_of_RPWD_Act_Final.pdf(accessed on 26th July)

¹⁰⁹ supra 104 s.101(1)(k)

¹¹⁰ *ibid.* s.21(1)(4)

¹¹¹*ibid* at p.8

5.7.4. Appointment of State Commissioner

State Commissioner for Persons with Disabilities may be appointed by the State as per the Act.¹¹² State Commissioners have a crucial role to play in implementing and enforcing the provisions of the Act. They are meant to have the power of a Civil Court.¹¹³ 37.5% of the States do have not them. There are Commissioners in 62.5% of the States but the progress has not been significant which may be due to no full-time commissioners. Even where there are full time Commissioners, their position is comparatively low in hierarchy and so, the person is less effective in working with various Ministries to implement the Act or to strictly enforce the law. The Act of 1995 also provided for the appointment of a State Commissioner. Therefore, it is really a sorry state of affairs that 37.5% of the States do not have a State Commissioner till now.

The State of Assam has state commissioners appointed for Persons with Disability.¹¹⁴

5.7.5 Special Courts at district and special public prosecutors.

Having a Special Court and a Special Public Prosecutor in every district is a significant to make the justice system easier for PWD to access.¹¹⁵ In order to file a complaint under the Disability Act of 1995 a person was required to go to the State Commissioner located in the State Capital to file a complaint.

In 58.3% of the States the Special Courts in the Districts for the purpose of trying offences under the Act have not notified and in 87.5% Special Public Prosecutors have not been appointed as mandated by the law. Special Courts and Special Public Prosecutors at Districts are specified in the State of Assam.¹¹⁶

¹¹²Rights of Persons with Disabilities Act, 2016, s.79(1)

¹¹³*ibid.* s.82

¹¹⁴National Centre for Promotion of Employment for Disabled People, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India, 2018 https://ncpedp.org/documents/Report_of_Status_of_RPWD_Act_Final.pdf, p.9 (accessed on 25 July 2021)

¹¹⁵Rights of Persons with Disabilities Act, 2016, s. 84, 85

¹¹⁶National Centre for Promotion of Employment for Disabled People, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India, 2018 https://ncpedp.org/documents/Report_of_Status_of_RPWD_Act_Final.pdf, (accessed on 25 July 2021), p.10

5.7.6. Executive Magistrate.

The Act provides that the Executive Magistrate on receipt of information of abuse, exploitation, violence, she/he should take immediate steps to stop or prevent its occurrence, as the case may be, or pass such order as she/he deems fit for the protection of such person with disability including an order –

- a) to rescue the victim of such act, authorising the police or any organisation working for persons with disabilities to provide for the safe custody or rehabilitation of such a person, or both, as the case may be
- b) for providing protective custody to the person with disability, if such person so desires;
- c) to provide maintenance to such person with disability

The Act also states that the complainant is required to be provided with the particulars of the EM in that area by the Police Officer who receives a complaint.¹¹⁷ In order to provide support to the victims with disability who have experienced abuse/violence/exploitation some support, only 20.8% states have designated Executive Magistrates. In the State of Assam, the Executive Magistrates has not designated for the purpose of the Act¹¹⁸

5.7.7 State Funds for persons with disabilities

According the Act, for the persons with disabilities there shall be constitute a State Fund there by a State Government in such manner as may be prescribed by the State Government as provided under S 18(1). 79.2% of the States have not constituted the State Fund for implementing the Act. In states where funds have been allocated is extremely low in comparison to the population of persons with disabilities present there

The State of Assam has not constituted State Funds for implementing the Act¹¹⁹

¹¹⁷Rights of Persons with Disabilities Act, 2016 s.7(3)

¹¹⁸National Centre for Promotion of Employment for Disabled People, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India, 2018
https://ncpedp.org/documents/Report_of_Status_of_RPWD_Act_Final.pdf, (accessed on 25 July 2021)

¹¹⁹National Centre for Promotion of Employment for Disabled People, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India, 2018
https://ncpedp.org/documents/Report_of_Status_of_RPWD_Act_Final.pdf, (accessed on 25 July 2021)

5.7.8 Supporting of people with high support needs by Designated Authorities

In order to provide support in exercising their legal capacity by the persons with disabilities and to decide the limited guardianship support required by them or total support while taking legally binding decisions, the Designated Authority is specified ¹²⁰

In order to support persons with disabilities, the designated authorities are obligated to create social awareness to exercise their legal capacity and mobilise the community. Suitable support arrangements should be set up by the Authority for persons with disabilities with high support needs and living in institutions ¹²¹

Designated Authorities are not there in 87.5% of the States to decide the manner and nature of support to persons with high support needs for exercising their legal capacity

For supporting people with high support to exercise their legal capacity the State of Assam has not specified designated authorities

5.8 Employment Related Provision

5.8.1 Govt and Public sector job Reservation

The reservation in Government and public sector jobs is 4% as per the RPWD Act, which is 1% more than the one provided by the earlier Act of 1995. Only people with locomotor disability, visual disability and hearing disability were entitled. The current Act ensured 1% increase for people with multiple disabilities, autism, intellectual disabilities, mental illness, and specific learning disabilities.

Merely in 8 States (33.3%) expert committees with representation of persons with benchmark disabilities have been constituted for identification of posts in the establishments which can be held by the respective category of persons with benchmark disabilities.¹²² The notifications for increasing the reservation quota from 3% to 4% have been issued in 11 States/UTs (45.8%).

It is vital to send notification to adhere to the mandates of the Act in recruitment by all the relevant organisations. Otherwise, they may not stick to new provision.

¹²⁰ supra note 117, s.14

¹²¹ *ibid.* s.15

¹²² Rights of Persons with Disabilities Act, 2016 s.33(ii).

An Expert Committee to identify suitable jobs which could be reserved for persons with benchmark disabilities has not been constituted in the State of Assam.

5.8.2 Grievance Redressal Officer.

According to the Act, all Governments establishment must appoint a Grievance Redressal Officer (GROs) and the Chief Commissioner or the State Commissioner, as the case may be should be informed about the same

As per report, the Commissioners received information about the appointment of GROs in establishments by the 8 States (33.3%) only. The State of Assam has grievance Redressal Officer.¹²³

5.8.3 Disability Certificate for newly added disabilities in the Act.

The RPWD Act has added new disabilities (i.e., dwarfism, blood disorders, chronic neurological condition, acid attack victims, specific learning disabilities, multiple sclerosis etc.). The study made out that only 50% of the States /UT have started issuing disability certificates to these new disabilities that have been introduced in the Act. In spite of the guidelines issued by the Central Government, other states have not even started issuing Disability Certificates to the newly added disabilities. It is crucial that people with disabilities get their certificates in order to access benefits provided in the Act.

The issuing of Disability Certificates with regard to those added in the new Act as against the earlier has not been started issuing in the State of Assam¹²⁴

5.9 Schemes for Assistance in the State of Assam, Department of Social Welfare, Govt of Assam.

The Directorate of Social Welfare was created by Government of Assam in the Year 1960. The Directorate was made permanent with effect from 20-09-1985 and a full-fledged Social Welfare Administrative Department was created on 19th September, 1991.

The role and responsibilities of the Social Welfare Department are destined to witness a phenomenal expansion in the coming years due to the heightened social awareness of the

¹²³National Centre for Promotion of Employment for Disabled People, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India, 2018
https://ncpedp.org/documents/Report_of_Status_of_RPWD_Act_Final.pdf, (accessed on 25 July 2021)

¹²⁴National Centre for Promotion of Employment for Disabled People, Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India, 2018
https://ncpedp.org/documents/Report_of_Status_of_RPWD_Act_Final.pdf, (accessed on 25 July 2021)

problems faced by the children, women and physically challenged persons. Some of the Activities of the Department specially dealing with differently abled:

A) Govt B.D.S Deaf and Dumb school, Guwahati provides special education facilities to deaf and dumb students, both boys and girls, upto H.S.L.C standard. Teachers are trained with required skills and methods specifically devised for teaching this category of disabled students. The school has hostel facilities with intact capacity of 250 students.

B) Blind School Jorhat provides special education facilities to the blind students “both boys and girls.”

C) Blind School Basistha, Guwahati is an institution which caters to the educational need of blind students as Grants in aid plan of the state government.

D) 3% reservation for physically challenged in govt jobs.

E) Rehabilitation grants and scholarship to physically challenged girl.¹²⁵

5.9.1 Steps by Assam Government for the benefit of Disabled

- An Act by the title, “Assam Employees Parent Responsibility and Norms for Accountability and Monitoring act,2017(Assam Act No XL. III of 2017) has been enacted to fix responsibility on the employees of the State Government or employees working in other institution of the state to take care of their parents or their disabled brothers and sisters.”
- Under the “Sarbatmak Shiksha Scheme” meant for middle schools of the state 90 Resource classroom has been constructed. During the 2016-17 and 2017-18 year, 3114 and 2459 numbers of disabled children have been provided with useful implements, allowance and scholarships for encouragement. Along with these 39 numbers of special educators and 158 number of reasonable resource persons have been pressed into service for providing educational needs for the especially abled children in the middle level.

¹²⁵Compendium on all Relevant Acts, Rules and Departmental Schemes under state and Central govt for women . Vol:1, Chapter 5. The Law Research Institute, Eastern Region, Guwahati High Court.

- State Disabled Games and Sports celebration (special Olympics) 2018 -19 was successfully held on the 13th February,2019 for the especially abled students at Sarusajai Sports Complex, at Guwahati.
- In Dibrugarh the construction of Industrial Training Institute for the disabled persons is 25 percent complete.
- A special pension scheme has been formulated by the Assam Government for the disabled, old and the persons of 3rd sex.
- Upto 1 January,2019 a total of 1,32,979 disabled persons have been provided with disabled certificate.
- The specially disabled have been provided with special disabled identification card.¹²⁶

¹²⁶ Disability related-Assam Govt (3) Parivartan, A journey towards good governance. P 14 & 40

CHAPTER 6

6.1 CONCLUSION

Disabled people are individuals just like able bodied people. Sometimes they desperately want to try to do things for themselves even though they may not be very successful. Some days they desperately want to be helped and comforted. On other days they want to be left alone.¹²⁷

Today, there is a growing realization that disabled persons must have the same rights and opportunities as the rest of society, including the opportunity to work and the right to live a full and fulfilling social life.; the right to go where they please; the right, quite simply, to develop their full potential as valued members of our society. Old attitudes, which created two separated elements in society, must give way to a new determination, to strive for integration. And while the main responsibility for providing for the physical, medical and financial needs of the disabled must remain quite properly with the government of the day, integration its fullest sense depends on each and every one of us. ¹²⁸ There will be no peace, harmony, or enjoyment in the universe unless all human beings are able to fully use their rights.¹²⁹

The human rights are not rooted merely on charity. Charity is used as a means to escape from the real challenge of human rights. Charity creates dependance, but creating sense of rights bring freedom and independence.¹³⁰ Charity is a peripheral attempt to deal with poverty and is not to uphold human rights. In the question of human rights, charity is superficial. If anyone understands charity as human rights or as justice it is a misconception¹³¹.

Available statistics indicate that proportion of Mentally Handicap persons in our society is alarmingly high. However, given the fact that India is the second most populous Nation in the world, it is virtually impossible to establish precisely the incidence of Mental handicap prevailing in the Country.

Parents, educators, social scientists, administrators and voluntary workers must work hand in hand to develop the limited potentialities of the mentally handicapped child. The government and voluntary agencies must work in a coordinated manner to help the less fortunate individuals

¹²⁷ Dr. Philip Nichols with Ros Haworth and J. Hopkins, 'Disabled: An Illustrative Manual of Help and Self-Help.' David & Charles, (Newton Abbott, London.)

¹²⁸*ibid.* foreward by The Rt. Hon. Earl of Snowdon-GCVO.

¹²⁹ Jagannath Mohanty, 'Human Rights Education', (Deep & Deep Publication Pvt.Ltd.)

¹³⁰Rev M. Stephen, 'Human Rights' (Concept Publishing Co, New Delhi), p.10

¹³¹*ibid* p.10

find a place in society, to understand the causes of mental handicap, to adopt suitable strategies for the prevention of mental handicap, and to identify suitable strategies for the providing appropriate facilities. Handicapped children are an integral part of society, they have a right to maximize their potential, so that they can function as useful members of the society. Such an objective can only be achieved through community awareness and developing a positive attitude towards the handicapped; by early identification, followed by early intervention and adoption of appropriate measures to provide services for their upliftment.¹³²

The judiciary also must create a social-legal atmosphere in the Country so that the poorest of the poor can have easy access to justice. The Indian judiciary, as an interpreter of the Constitution and statutes and as a dispenser of justice has a role to provide justice to the poor and the weak. Chief Justice Bhagwati (1985) spoke about Indian Courts in the following words.

“The goddess of justice in Anglo Saxon jurisprudence is painted blind. But, should she be? Is the neutrality of the Law not one of the factors responsible for perpetuating inequality between the weak and the strong with conquest injustice for the former? Law in its wider connotation, cannot afford to retain a stance of neutrality. It has to be weighed a stance of neutrality.

It has to be weighed in favour of the weaker sections of the community. Even the administration of justice cannot remain blind to the gross inequality of the parties. The goddess of justice must keep her eyes wide open so that she may see how unequal is the contest between the contenders before her.¹³³

No human theme has ever more provoked the psyche of the common man and the think tanks as well as the elites at the threshold of the 21st century than the Human rights. In the words of the Naorem Sanajaoba: Beyond the rhetoric, the Universal discourse on Human Rights after having been inevitably de-ideologized, has constructed a strong international opinion on accountability, responsibility of the member states of the United Nations towards human rights standard settings, monitoring and enforcement¹³⁴

The “Human Rights philosophy is the quest for translating the international standards of human rights from phrase to action” The incorporating of a bill of rights in written Constitutions is to incorporate the Human Rights regime into the Municipal laws and make them justifiable and

¹³²Anima sen, ‘Mental Handicap among Rural Indian Children, (Sage publications. New Delhi-London,1992) p.269.

¹³³V.V Devasia and Leelamma Devasia, ‘Women, Social Justice and Human Rights’ (APH Publishing corporation. New Delhi).

¹³⁴ N. Sanajaoba, ‘Human Rights’(Omsoms Publications)

enforceable. If it is so incorporated in the Constitution which is fundamental laws of the land, Human rights transform themselves into enforceable Fundamental Rights. With objective to ensure admiration for an observance of human rights, it is sine qua non to generate an awareness of human rights in people's mind. This task of conscientization can be achieved only by silent efforts of thousands of people and hundreds of well-meaning organizations holding aloft the honor of human rights. When an individual complains of violation of human rights and seek remedy, he often pitches himself against the might of the state and its agencies. He is, in the words of Marc Galanter, merely a one-time player pitched against the "repeated player" which is the state. Therefore, the Human Rights Commissions and organizations seek to remedy this imbalance by providing an individual with institutional support.¹³⁵

The first documented use of the term human rights may be found in the United Nations Charter, which declares the promotion and protection of human rights as one of the organization's primary aims. The United Nations Charter does not specify what constitutes human rights. The International Bill of Human Rights, which was subordinated to the charter's architects, was given the responsibility by the organisations themselves.: (1) Universal Declaration of Human Rights (1948) (2) International Covenant of Economic, social and Cultural Rights (1966) (3) International Covenant on Civil & Political Rights "(1966) (4) Optional Protocol providing the rights of individual petition". They include a huge number of rights that are today recognised as human rights by the world community. Human rights have now matured into a corpus of international law defined in the United Nations Charter, the Universal Declaration of Human Rights, and other international treaties..¹³⁶

As a result, the notion of human rights has grown in prominence globally in recent decades, and it now has international significance because every country is scrutinised by an international body that indicts member-states for transgressions. While there is growing awareness about universal respect and observance of human rights, serious abuses of globally recognised norms continue.¹³⁷

In last about fifty years the age-old problems of handicapped persons have been brought into the forefront of human concerns. Until some years ago, people did not take much interest in the problem of rehabilitation of the disabled in many countries. Now programmes and services

¹³⁵Sankar Sen, 'Human Rights in a developing society', (A.B.H Publishing corporation) Foreward by Justice M.N Venkata chaliya . Chairman N.H.R.C.

¹³⁶H.O Agarwal,(Human Rights: Central Law Publication. 2007). Foreward by Justice P.N Bhagwati.

¹³⁷Mamta Rajawat, 'Burning issues of Human Rights', (Kalpas Publications, 2001)(inner front page)

are being developed by thoughtful individuals and organizations and by governments concerned with the welfare of the citizens. The concern is not only altruistic; it has been proven that it is economically sounder to rehabilitate a person and return him to a productive and useful life than to maintain him as a community charge. It has become a truism that the ultimate objective of help is to make help unnecessary.¹³⁸

The world of rehabilitation has no boundaries, no racial or religious barrier. Advances and discoveries in all fields of rehabilitation are freely shared among the communities whose chief objective is to create a better life for people who have previously been condemned to the shadows of pain, neglect and stagnating idleness. It perhaps, would not be out of place here to quote the words of “Eleanor Roosevelt on the 50th Anniversary of Universal Declaration of Human Rights, in 1998.

Where, after all, do universal human rights begin? In small places, close to home in so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person, the neighborhood he lives in; the school or college he attends; the factory, firm or office where he works. Such are the places where every man, woman and child seek equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.¹³⁹

6.2 SUGGESTION.

On the basis of the study, underlying proposal, suggestion is being put forward for the protection of disabled persons: -

- i) Education is the most vital method for the progress of disabled persons. It empowers the powerless disabled persons to be aware of their causes of disability, and to take measures for its prevention and rehabilitation. Educational Institution should also be made Disabled friendly.
- ii) For the upliftment of disabled persons, employment is the fundamental aspect to have a voice and take control of their own future. Government should give specific focus on the condition of disabled women and to help them getting job in govt as well as in private sector.

¹³⁸Usha Bhatt, ‘The Physically Handicap in India’, (Popular book depot, 1963)

¹³⁹Elisabeth Reicherd (Editor) Rawat publications, Jaipur, Guwahati. Indian Reprint, 2008 Page no-1

iii) N.G. O's can also take lead in resolving the difficulty faced by disabled people, by pushing the govt, to formulate and effectively execute the existing law for preserving the disability rights.

iv) Skill developmental programme should also be promoted, among persons having disability that will be helpful for them to make carriers in different fields.

v) Awareness campaign should be done within the disabled community and also among society at large in both National and International level, that disability should not be dealt stereotyped, negative attitude towards disabled people should be stopped because of their impairment. Proper care during the time of pregnancy is very crucial to prevent disability.

vi) Media can play effective role by giving voice to the voiceless to get them strengthen, adequate awareness of law, legal provisions for their protection and proper implementation of the laws. Along with spreading awareness campaign among the masses.

vii) Create appropriate women's home-based income-generation programmes. Persons with disabilities and their caregivers may be encouraged to obtain skills for work.

viii) Govt need to allocate funds for the disabled and provide the financial support, and also tried to bring them in the mainstream.

ix) Persons with disabilities that affect their hearing, speaking, reading, writing, or understanding face communication difficulties, and they communicate in different ways than people who do not have these limitations.

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