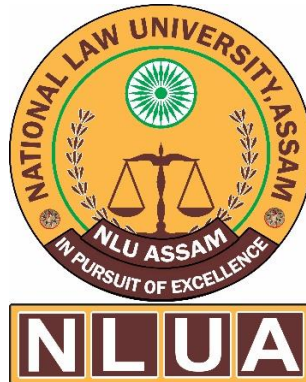


**THE RIGHTS OF DIFFERENTLY ABLED PERSONS  
IN INDIA: AN ANALYSIS**



Dissertation submitted to National Law University and Judicial Academy, Assam  
in partial fulfilment for award of the degree of  
MASTER OF LAWS

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## **CERTIFICATE**

It is to certify that Ms **Jaysri Sarmah** is pursuing Master of Laws (LL.M.) from National Law University, Assam and has completed her dissertation titled “**THE RIGHTS OF DIFFERENTLY ABLED PERSONS IN INDIA: AN ANALYSIS**” under my supervision. The research work is found to be original and suitable for submission.

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## DECLARATION

I, **Jaysri Sarmah**, pursuing Master of Laws (LL.M.) from National Law University, Assam, do hereby declare that the present dissertation titled: **The Rights of Differently Abled Persons In India: An Analysis**, 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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## PREFACE

“Abled does not mean enabled. Disabled does not mean less abled” – *Khang Kijarro Nguyen*.

The right to have an independent life is a significant right to all. Our ancient Vedic pronounced that the perception of human rights as the right to happiness and universal brotherhood. But discrimination in our society still continues to exist due to ignorance and prejudices. People suffering from disabilities in our country do have their inalienable rights but their conditions are always worse than of other citizens. Even though the term “disability” itself carries with an assumption of deficiency whether physical, mental or sensory in respect of some human being but there are lots of sceneries depicts clearly that these human being proved themselves as differently abled person by positive outlook towards life. However, there are various legal provisions and laws available in our country to mitigate the gap between abled and differently abled persons in their attainment of persona and dignity in true sense. The fact is that these differently abled persons have historically been isolated in the mainstream of society in respect of full participation. In this manner, there are two thirds of differently abled people live in developing countries like India. Since they are being treated as least served section such that they are forced to confront segregation, discrimination, barriers and stereotypes. However, the issues of disability are protected by effective health care, rehabilitation, empowerment including health care, employment, education, transportation services. But not enough steps were being taken to eliminate the barriers to their full participation in society.

Therefore, the study is giving much emphasis on the several statues, legal provisions, regulations, and schemes, programmes to perceive the rights, issues and challenges of differently abled people in India. However, this thesis also attempts to highlight the role of International and Regional Instruments in order to implement the provisions for the human rights of differently abled persons in our country.

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## TABLE OF ABBREVIATIONS

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1.	ADIP	Assistance to Disabled Persons for Purchase/ Fitting of Aids and Appliances
2.	BDO	Block Development Office
3.	CAT	Convention Against Torture
4.	CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
5.	CEHAT	Centre for Enquiry into Health and Allied Themes
6.	CERD	Convention on the Elimination of all forms of Racial Discrimination
7.	CRC	Convention on the Rights of the Child
8.	CRC	Composite Rehabilitation Centre
9.	DDRC	District Disability Rehabilitation Centre
10.	DRM	Disability Rights Movement
11.	DDRS	Deen Dayal Disabled Rehabilitation Scheme
12.	ESCAP	Economic and Social Commission for Asia and the Pacific
13.	H.C.	High Court
14.	ICCPR	International Covenant on Civil and Political Rights
15.	ICESCR	International Covenant on Economic , Social and Cultural Rights
16.	ICF	International Classification Functioning
17.	ID	Identity Card
18.	ILO	International Labour Organisation
19.	NGO	Non-governmental Organisation
20.	NHFDC	National Handicapped Finance and Development Corporation
21.	PWD	Persons with Disabilities
22.	SC	Supreme Court
23.	SIPDA	Scheme for Implementation of Persons with Disability Act
24.	WHO	World Health Organisation



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## CHAPTER I

### INTRODUCTION

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#### 1.1 Background

Throughout centuries, India has been witnessed with the group of person with disabilities being as stigmatized and marginalised in almost all societies. However, the attitude of society considered them to be as the most neglected and least served section of the populations in terms of socially, economically and educationally disadvantaged. An estimate of 40 to 80 million disabled people in India is making sheer indifference on society by customarily denial of their right to identity, self-assertion and development.<sup>1</sup>In such way, people with disabilities are facing challenges and hardships in their day to day life due to lack of literacy, inferiority of job opportunities as well as widespread social disgrace. In addition, children having disabilities are more likely to be in home rather than be in school same like as disabled adults are less likely to get job, opportunities and a disabled member in a family are often neglected than average. Number of differently abled person in India is prevalent with age growing disabilities. However providing better education and job security to disabled people can make help to generate higher economic growth in our country as a whole.

As per the census of 2011, India has been experienced with 2.68 Cr. disabled persons out of the 12 Cr populations where 1.5 Cr males are disabled and 1.18 Cr female are found with disabilities in the entire proportion of disabling population. However, disabled population with 69% resided in rural areas and rest of about 31% of disabled people resided in urban areas<sup>2</sup> which are pertaining to the disabilities of hearing, visual, speech, locomotor and mental. Regarding this view, phenomena of disability could not be counted adequately by using the medical model in India. Since disabled people are being neglected by society in preventing from going to school, participating in any family functions that led them made more difficult to cope up with society in living a life like anyone else. By analysing the situation of differently abled persons, it has been pointed out that the life could not be make so difficult if they will be provided with sufficient number of health care services and protection for their

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<sup>1</sup> [http://web.worldbank.org/archive/website01291/WEB/0\\_\\_CO-43.HTM](http://web.worldbank.org/archive/website01291/WEB/0__CO-43.HTM), (April 29,2018).

<sup>2</sup><http://enabled.in/wp/disabled-population-in-india-as-per-census-2011-2016-updated/>,(May 6,2018).

welfare of life but on the other hand public attitude and lack of support from society compel them to isolate from their participation in society. Furthermore, it's important that how society reacts to them and subsequently that will affect the status of differently abled persons from taking part in any political decision-making, religious worship or celebration.<sup>3</sup>With regard to the differently abled persons, Indian laws as well as UN conventions has provided several rights that are followed in Indian social context. As per the section 2(i) of PWD Act, 1995 the term “disability” includes low vision , blindness, leprosy cured , locomotor disability, hearing impairment , mental illness and mental retardation .<sup>4</sup> Though there are several rights available for them but the fact is that still those people unaware of their rights and subsequently they are living in inferior position to access to such rights in the light of universality. However India has been experiencing with the movement of growing disability rights for ages to achieve the progressive policy worldwide. Yet a lot of newer things need to be done in implementation and need to be emphasized on “getting the basic rights”.<sup>5</sup> However they will be entitled with certain basic right that has given below:

1) Disability Certificate : Disability Certificate is the most important document that ensures a disabled person to avail certain benefits and concessions at various fields. Disability certificate has been issued to disabled person by State governments under the State Medical Boards. After the check-up and determination of percentage of disability which should be more than 40% disability, the concerned person will get disability certificate. Such certificate will be viable for five years usually but it can be resumed by examining the nature of disability of concerned person, if it finds with permanent nature such that renewal of certificate will be valid for the entire life.<sup>6</sup>, 2) Train Concession: Secondly, disabled people can claim concession by showing the disability certificate in the amount of train tickets, however some states has provided concession at bus service as well.<sup>7</sup> To avail the train concession benefit, a photo ID card is required alongwith all documents including passport size by showing to Divisional Railway Manager Office. By following this requirement concerned people

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<sup>3</sup> Prashant Srivastava and Pradeep Kumar, Disability, Its Issues and Challenges: Psychosocial and Legal Aspects in Indian Scenario, DELHI PSYCHIATRY JOURNAL Vol. 18 No. 1, Apr. 2015.

<sup>4</sup> Nishu Khanna, “Rights of Disabled Persons in India”, Oct. 19, 2016.

<sup>5</sup> Ibid at 1.

<sup>6</sup> <https://www.lawfarm.in/blogs/rights-of-disabled-persons-in-india>, (April 29,2018) .

<sup>7</sup> [http://www.indianrail.gov.in/conc\\_Rules.html](http://www.indianrail.gov.in/conc_Rules.html) , (May 5,2018)

will get such benefits without any difficulties.<sup>8</sup>, 3) Pension for Disability: Under the scheme of Indira Gandhi National Disability Pension, people who are suffering disability with 80% or more and living below the poverty line will be benefited with disability pension but the person must have attained the age of 18 years or above. Concerned people can get their disability pension with the help of certain NGO's which are working to this cause<sup>9</sup>, 4) Legal Guardianship Certificate: Legal guardianship certificate will be provided to people who are suffering from cerebral palsy, mental retardation. In this manner disabled could not make up any legal decision when such concerned disabled becomes adult<sup>10</sup> however, the person who will be receive such certificate can take care of any legal decision of such disabled child one he becomes adult in such.<sup>11</sup>, 5) Income Tax Concession: Specially abled people are also make able to receive concessions at tax for income under the light of sections 80DD and 80U of Income Tax Act, 1961<sup>12</sup>, 6) Employment: Disabled people have been provided with 3% of seat reservation for government jobs.

Apart from these, there are some other various rights has being given to persons with disabilities as provided under The Mental Health Act, 1987, The National Trust for Welfare of persons with autism, cerebral palsy, mental retardation, The Rehabilitation Council of India Act, 1992 and several disabilities Act. However, Rights of persons with disabilities bill, 2016 introduces various provisions relating to disability rights. The bill encapsulated itself 19 categories of disabilities which have not been provided under the Persons with Disabilities Act, 1995. In such manner, Central government is planning to start a scheme for strengthening the rights of disabled people which will be providing identity card in unique nature. By getting such identity would become helpful for disabled people throughout the India except for some states. In such manner, multiple NGO's are also working to provide help and assistance to them in order to avail their rights easily and to live with dignity in society.<sup>13</sup>

To overcome of this stigma in our society, people with disabilities should themselves make their identity through active participation in all development processes.

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<sup>8</sup> Ibid at 4.

<sup>9</sup> Ibid.

<sup>10</sup> <http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india>, (May 5, 2018).

<sup>11</sup> Ibid at 4.

<sup>12</sup> Income Tax Act 1961, <https://www.lawfarm.in/blogs/rights-of-disabled-persons-in-india>.

<sup>13</sup> Ibid at 4.

## **1.2 Statement of Problem**

Disability elucidates as a reason for discrimination and denial of basic accommodation. Developing countries like India pertaining to disability has a direct interconnection with poverty. Since poverty causing disability, people with disability has little access to their basic civil and social rights such as education, livelihood, vocational training, employment opportunities, rehabilitation services etc. Unable to access welfare measures and entitlements led them to be neglected by society. The widespread ignorance of society about their status for holding rights made them stand marginalised and human rights of them are to be violated as well. Their marginalisation completed by inadequate information of laws and their inability to access the justice system.

## **1.3 Aim**

The aim of this work is to study and analyse the dilemma of disability rights with people existing in Indian context. Through this research work, researcher aims to analyse the existing laws and regulations pertaining to the issue.

## **1.4 Objective(s)**

In order to achieve the aim of this research paper, the researcher has endeavored to set forth the following objectives:

- To make a study on the concept of disability in the context of India;
- To analyse the issues and challenges faced by differently abled person;
- To study the International instruments relating to rights of disabled people;
- To determine regional perspective on disability rights;
- To analyse the Indian Legislative framework relating to disability rights;
- To make a study on the judicial trend pertaining to the rights of disabled people in India;
- To provide the measures and suggestions to neutralize the problem of people with disabilities.

## **1.5 Scope and Limitations**

The scope of this research would encompass in itself the study of issues and challenges faced by differently abled person to ensure their rights in the light of



existing Indian laws. The concept of disability and interest of the rights for differently abled person are protected by the Constitution of India and several laws of the Indian Government in regard to right to equality and right to adequate standard living of condition would be the general scope of the study.

## **1.6 Literature Review**

There is vast literature available on rights of disabled person. The disability rights are protected by various international instruments, regional and national legislations including Constitution of India and other various laws and acts like Health law, Education Law, Family law, Labour law, succession law, The Person with Disabilities Act, 1995, The Mental Health Act, 1987, The Rehabilitation Council of India, 1992 and more so. The gap lies between the promise embodied in various legal frameworks and legislations. The vacuum crafted among diverse human rights law and actual practice is frustrating, as those working in the field know well. The researcher has made effort to go through various existing sources of relevant literatures. In addition, the researcher exclusively explored books, legislations, articles, journals etc.

Under the Constitution of India, there are several fundamental rights have been guaranteed to disabled people in order to secure the right to equality in terms of their justice, status, equal opportunity, freedom of thought, expression, belief, faith for the promotion of fraternity as well. However, Article 15(1), 15(2), 17, 21 are addressing right to non discrimination for all irrespective of religion, race, caste, sex or place of birth; no citizen of India shall be subjected to any restriction, disability, liability condition that enshrined under art. 15(1) in order to the access to public properties such as shops, hotels, restaurant, places of public entertainment etc or using tanks, roads that are maintained under government aided funds in wholly or partly for the use of general public purpose; no citizen of India including disabled person shall not be treated as an untouchable irrespective to their belonging which will be considered as an offence punishable under law; every person has a right to life and personal liberty respectively including disability. In addition, Art. 32 states that every person including disability can approach to the Supreme Court in order to

enforce their basic fundamental rights.<sup>14</sup> However, there are more other several fundamental rights has been entitled to disabled person under the constitution of India.

In regard to the field of Education law, there some rights available to disabled people which are guaranteed under Article 29(2) of the Indian Constitution states that no citizen shall be refused to get admission into any educational institution without any discrimination, however they shall be provided with maintenance and aids of state funds. In addition, state is required to provide free and compulsory education has been provided to all children including the disability until they attain the age of 14 years enshrined under article 45 of the Indian constitution.<sup>15</sup>

Under the health laws of India, every citizen including disabled shall be entitled to proper level of nutrition, standard of living condition for the improvements of public health and consumption of any intoxicating drinks and drugs should be prohibited for health that has been enshrined under article 47 of Indian constitution. However, health laws of India have provided several provisions relating to disabled people as some of provisions may found under the Mental Health Act, 1987.<sup>16</sup>

Even though labour legislations have not been promoted the rights of disabled people, but there are certain provisions incorporated under labour legislations that addressed the relationship between disabled people and the employer that has emphasized under the delegated legislations such as rules, regulations and standing orders.

The Designs Act, 1911 emphasizes the judicial procedures for disabled people in terms of the protection of their property, the act provides provisions relating to disabled who is unable to make any decision or statement in regard to the protection of their property, therefore the laws under the act protect the design of property under section 74 in respect of making statement in relation to the protection of property in the name or on behalf of the person subject to the disability.<sup>17</sup>

“The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995” is one of the significant steps for the promotion of

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<sup>14</sup> <http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india> ,(May 5 2018).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid at 12.

opportunities on equal basis to disabled people with their full participation helping to build up the nation. The act encapsulated promotional measures to ensure rehabilitation of disabled and taking preventive action to overcome all barriers. The act stress on to provide reservation facilities, special education with vocational training, economic development for ensuring job opportunities, soundly environment, unemployment allowance for the disabled, special insurance for their security of life, instituting of special home for all category of person with any disabilities etc. In this manner India Parliament has passed a new disability legislation which is the Rights of Persons with Disabilities Act, 2016. To fulfil the obligation of United Nations Convention on the Rights of persons with Disabilities, the new Act replaced the existing Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995. Under resolution A/RES/61/106 the Convention on the Rights of Persons with Disabilities and Optional Protocol to the convention was adopted on 13 December in 2006 at United Nations Headquarters, New York. However, it had 82 signatories and ratified by one, on another hand 44 signatories had in Optional Protocol. It recognised as one of the highest number of signatories in UN history to Convention on its opening day. It is also considered as one of the 21st century's first comprehensive human rights treaties. Through the regional integration organisations, it is opened for signature as a human rights convention and subsequently it came into force on 3<sup>rd</sup> May 2008. By following the work of United Nations for a decade about the changes and developments of attitude towards disabilities of people, Convention has taken a new approach from human rights perspective, it examines the term person with disabilities with the object of medical treatment, social protection and charity that has shifted to viewing this term with the subject of rights providing to disabled people for exercising their rights with showing full and active participation in the mainstream of society .<sup>18</sup> As an explicit social development dimension, the convention is being human rights instrument is intended to clarify the all category of people having any kind of disability of in order to enjoy basic human rights and fundamental freedoms against any discrimination. The convention clarifies all qualifications for categorisation of disabled people to exercise their disability rights effectively. However it also identifies how their protection will be gained against the violation of their rights and on what basis with which area and

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<sup>18</sup> Ibid.

where they strengthen their rights as examining the all areas of them by the convention.

As per the data of survey in 1990 in the United States, proportion of families with a disabled member was 29.2%, while having a disabled member with individual was 13.7%. Individuals living alone (27%) were more likely to be limited than those who living with families (12.2%). But the difference was not clarified by age. People living alone with average age were 53 years as compared to 32.5 for those living with others. Regardless of disability of severity, adults living with a partner have the lowest rates of limitation in activity by all age intervals. <sup>19</sup>

In 1991, Welbourn's study finds that the exercise of wealth on rank based had not been discovered the people with disabilities considered to be as poorer by the local people and concluded with that disability could be prevent from expanding of poverty by providing adequate support networks and labor contacts. <sup>20</sup>

In developing countries like India has been facing for inadequate rehabilitation and other services for disabled people. Harriss-White.B., (1996) emphasized that a small part of disabled people in rural areas of India have access to NGO or government programmes in order to secure their rights and that majority are socially excluded. In particular, rural areas where many poor communities are constraining to access such NGO or government programmes by lack of information, travel costs, etc. ESCAP has been pointed out that developing countries are still in inferior position to communicate rehabilitation centre to meet rehabilitation services for disabled people as women, child in order to secure their basic rights and protection which are not adequate and expensive to access such services for poor communities in terms of time, money and effort. In addition, UNICEF has reported that since children and women are considered to be as vulnerable group, thereby they will be entitled less than 20 percent of rehabilitation services. <sup>21</sup>

Agrawal.G, et.al.(2009) stated that to provide adequate number of health care services among older person builds up a soundful environment with better socio

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<sup>19</sup> Review of Related Literature, Chapter II,  
[http://shodhganga.inflibnet.ac.in/bitstream/10603/86218/11/11.chapter\\_2.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/86218/11/11.chapter_2.pdf), (May 7 2018).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

economic status. Disabled people does not depend only socioeconomic factors in terms of seeking treatment; they also rely upon cultural factors, residence, status of literacy etc as spelled out by Patel SK on his study relating to disabled people . Hidray SZ has founded that to reaching and utilizing the health service by accessing through physical is a significant disadvantage disabled people. <sup>22</sup>

Baquer, (1997) , by reviewing the programmes and policies made under the State Government and Government of India on the matter of women with disabilities, he has found that the lack of responsibility of Commissioner for the issue of people with disabilities . State Governments should take the responsibility to see work of such commissioner whether their functions are properly going or not. Thereby the author criticized the functioning of state government by his report. <sup>23</sup>

Leni Chaudhuri (2006) in her article “Disability in India-issues and concerns” described that in India there about 42 percent disabled women are prevalent overall of total disabled population has been identified by the Centre for Enquiry into Health and Allied Themes (CEHAT), Mumbai. They are considered as the most marginalized group in terms of their health, social, political and economic status. Subsequently they are not recognised as a priority group in any kind of field such as rehabilitation programs, state policies, and mass movements and so on. Furthermore this group is often neglected by society and that led them to isolate from any kind of political and social participation. The author has also pointed out that developing country like India where the problem of implementation can be seen usually, subsequently the implementation of compulsory education to every child with disabilities is very difficult here. However, concerned child get easily deprived their education as they could not able to access any kind of information pertaining to social, political participation, skill development, economic empowerment etc. Lack of education made them to be deprived from claiming such participation in society. Regarding the empowerment of the disabled girl, civil society has a great challenge ahead. Because of discrimination, stigma, lack of technical expertise and physical excess etc. are facing by disabled women having scope to be limited in order to get employment. A lot of problems have been challenged by disabled women to be self-employed. Since they face health problem and which is not uniform in nature, they

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<sup>22</sup> Ibid at 17.

<sup>23</sup> Ibid.

face hardships in every aspects of life. They have to encounter different types of health problems in their day to day life.<sup>24</sup> However their challenges usually interpreted on two versions, to identify the health problem is a challenge for them and similarly to access to proper health care services at right time is also carry the same trouble. The prospects of women with disability have been affected by the problem of access to education, discrimination, employment etc.

Patel.S, (2009) has provided a detailed account of “An empirical study of causes of disability in India”. The result of his study founded that locomotor disability is one of the most common disabilities may found in India which affect the population of all ages. Author revealed that mental problem can be found in working aged population andxxhowever, visual and hearing impairment disability would affect people with aged population mostly. <sup>25</sup>

Raymond Lang (2001) has provided a detailed account on understanding of disability by South Indian Perspective; the author had presented his paper at the 14th Annual Meeting of the Disability Studies Association, Winnipeg, Canada. With the observation of disability, he stated that that disabled women comparatively have lower status than male counterparts in both India and internationally. Thereby disabled women are seems to be less likely to receive and claim their benefits from any kind of social development participation and also they receive rehabilitation services in less manner. The Indian social context has been apparently showcased that women are considered as weakest being than able bodies and even disabled men. Since disabled women deprived their basic rights such as lack of education, health services at their birth or during their early infancy such that they are characterised as inferior being so far by lack of self-identity in India’s context. Being a weakest category at their birth, society labelled disabled people as a second-class citizen and discriminate them by gender in claiming of rehabilitation services. However, priorities should be given to promote rehabilitation services, so that people with disabilities can pursue their substantial facilities as far as possible without any kind of discrimination. Thereby disabled people can engage into a gainful employment by their contribution. In such

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<sup>24</sup> Ibid.

<sup>25</sup> Ibid at 17.

way NGOs should promote more disability-awareness programmes to overcome the barriers for person with disabilities. <sup>26</sup>

### **1.7 Research Question(s)**

For the purposes of this research paper, the research questions are:

- Whether there is a need to introduce the concept of disability in India ?
- What are the issues and challenges faced by differently abled person in India?
- Are international instruments relating to disability rights effective in improving the conditions of disabled people in India?
- How regional instruments deal to rights of disabled people?
- Is the Indian legislative framework on rights of disabled people effective?
- Are the Indian laws relating to disability rights being implemented properly?

### **1.8 Research Methodology**

The present study is doctrinal in nature. The primary data is in the form of several National legislations, schemes, programmes, facilities conducted by Government of India, and judicial pronouncement made by Supreme Court and High Court on the rights of person with disabilities. The secondary data has been collected from several sources, books, articles, journals and international conventions and instruments.

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<sup>26</sup> Ibid.

## CHAPTER II

### CONCEPT OF DISABILITY IN THE CONTEXT OF INDIA

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#### 2.1 Introduction

The concept of disability is a complex phenomenon as it has evolved from individual worsens to social appearance by last three decades. It has shown an interconnection between notion of individual and aspects of society where he or she dwells. Such that people with disabilities are often being seen to be neglected with the society's widespread belief of discrimination for them in their contribution to social welfare whether it is their daily activities or pertaining to environment, social and political arrangements. Being an inferior category in society, disabled people has been facing hardships in their day to day upperforming activities . It reflects the behaviour of abled people in society towards the disabled people which made barrier on them to cope up with society unsuitably and subsequently it affected to their dignity. In this manner, Government policies and programmes are constantly trying to make the barrier free environment for disabled people and also proving income assistance to them so that they can easily participate in workplace by building their contribution into society. Having such concern for people with disability, the World Health Organization (WHO) has taken a broader initiative which goes beyond medical approach to them as it plays a environment role in either facilitating functioning or raising barriers.<sup>27</sup>

In last over the four decades, the evolution of disability rights movement (DRM) has taken place in India .Demanding for the disability rights begun in the early 1970s, however, at that point it formed to be a movement. Coming demands from various groups and individuals were significantly scattered . Following the 1980s , demands coming from various groups and their organisations have been consolidated to representing their interests. During that period many NGO's had started to operate working. Many NGOs started operating in the disability sector during this decade and subsequently further provided momentum to the DRM . However, regarding to people with disabilities a series of petitions and protests led government to passed the Persons With Disabilities (Equal Opportunities, Protection of Rights

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<sup>27</sup>H. Chandrashekar, C. Naveen Kumar, N. R. Prashanth, and P. Kasthuri, "Disabilities Research in India", *Indian J Psychiatry*, 52(Suppl1), Jan ( 2010 ),<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3146229/>.



and Full Participation) Act, 1995 (or PWD Act) . The act kept three percent reservations of government posts for those who fall into category of PWD. Hence the year 1995 became a remarkable benchmark for the DRM by beginning of a new era for those who are suffering from disability as well as found visibility in educational institutions and government services through the initiatives of the act itself.<sup>28</sup>

Adoption of the Convention on the Rights of Persons with Disabilities by the United Nations in 2006 where India was signed and ratified it by 2007 and after that demanded for the increase of reservation of PWD category through various working groups on disability issues. However, by such manner the Union Government of India came up with a disability bill in 2012 which was entered into the parliament the very next year after some amendments took place in original draft. Over the three years of wait, the Rights of Persons with Disabilities Bill was finally passed by both houses of parliament in 2016.<sup>29</sup>

## **2.2 Definition of Disability**

### **2.2.1 Disability in Indian Context**

In India, the definition of Disability is used as per Act of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) , 1995. By regarding this view, Government of India stressed that the definition of disability is need to be improved by evaluating the Population Census Process for a large population like that of India.

“According to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 , by defining the “Person with disability” is a person suffering from not less than forty per cent of any disability as certified by a medical authority for the purposes of this act notified by the appropriate Government. As per the act, section 2(i) defines “Disability” as – (i) Blindness; (ii) Low vision; (iii) Leprosy-cured; (iv) Hearing impairment; (v) Loco motor disability; (vi) Mental retardation; (vii) Mental illness.”<sup>30</sup> The above dimensions were defined as below:<sup>31</sup>

<sup>28</sup> Martand Jha, “The History of India's Disability Rights Movement”, THE DIPLOMAT, Dec 21(2006), <https://thediplomat.com/2016/12/the-history-of-indias-disability-rights-movement/>.

<sup>29</sup> Ibid.

<sup>30</sup> <https://www.ilo.org>.

<sup>31</sup> Lalithkumar Gujarati, “Disability definition: The Indian disabled definition”, Nov.1( 2014).

“Blindness” means a person suffering from any of the following conditions, (i) Total absence of sight. (ii) Visual acuity shall not exceed 6/60 or 20/200 in terms of better eye with correcting lenses;<sup>32</sup> (iii) Limitation of the field of vision subtending an angle of 20 degree or worse; “Person with low vision” refers to impairment of person’s visual functioning even after treatment for the correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device ; “Leprosy cured person” means a person who has been suffering from any of the following condition as (i) Loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity; (ii) Manifest deformity and paresis; but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity; (iii) Extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation, and the expression “leprosy cured” shall be construed accordingly but that person has cured of leprosy; “Hearing impairment” refers to loss of sixty decibels or more in the better ear in the conversational range of frequencies ; “Loco motor disability” means disability of joints muscles, bones which leading to substantial restriction from the movement of the limbs or any form of cerebral palsy; “Mental illness” refers to any kind of mental disorder but not mental retardation; and lastly “Mental retardation” defines a condition which leading to an incomplete development of mind of a person that is specially characterized by sub normality<sup>33</sup> of intelligence.<sup>34</sup>

### **2.2.2 Definition of Disability: International perspective**

As per the UN “Convention on the Persons with disabilities”, disability has been defined by a broad categorisation of person with disabilities which reaffirms to enjoy all human rights as well as fundamental freedoms by all people with all kind of disabilities. It emphasises that how all categories to qualify the rights of person with disabilities and also to identify the areas in order to adaptations of person with disabilities as well. Through these criteria the convention itself ensures to exercise their rights effectively and clarifies the areas where their rights have been violated as

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<sup>32</sup> Ibid at 30.

<sup>33</sup> <https://www.ilo.org>.

<sup>34</sup> Ibid.

well as where their protection of rights must be reinforced. However, promoting, defending and reinforcement of the human rights of all persons with disabilities have been the main “purpose of the UN Convention on the Rights of Persons with Disabilities (UN CRPD)”.<sup>35</sup>

With the view of UN CRPD, Persons with Disabilities refers to those persons who have been suffering from long-term physical, mental, intellectual impairment which resulted as a interaction with various barriers that may constraining their full participation in society in an effective way on an equal basis with others.

The International Classification of Functioning, Disability and Health which is commonly known as ICF has provided a standard framework and language based on the description of health-related states and health. Since ICF is a multipurpose classification, it intended to provide a wide range of uses in different sectors by describing the level of capacity of people with their health condition as describing their changes in body function or structure as well with what type of environment would to be adapting for them according to their health status. However, the concept of disability is defined by ICF with the fact that disability is multidimensional resulting from an interaction between an individual’s certain conditions and his or her physical, attitudinal and social barriers. The ICF broadens the perspective of disability with the model of bio-psychosocial that allows the functioning of disability is to be examined by the influences of medical, individual, social, and environmental. Structurally, it based on the three levels of functioning (body functions and structures, activities, and participation) with parallel levels of disability (impairments, activity limitations, and participation restrictions). Since human functioning can be understood as a series of health states in continuous manner, where every human being demonstrates the degree of functioning in each domain at their body, society levels etc. Contextual factors like environmental factor and personal factors also constitute disability as per the language of ICF. There are certain environmental factors responsible to define the status of people with health condition including availability of assistive devices, family and community support, attitudes of different people, supportive services and policies. In addition personal factors include health a condition is also tending to constitute disability.

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<sup>35</sup> Disabled Persons in India: A Statistical Profile 2016,  
[http://mospi.nic.in/sites/default/files/publication\\_reports/Disabled\\_persons\\_in\\_India\\_2016.pdf](http://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf).

Moreover, the core of ICF is not defining the disability as a problem that resides in the individual other than a health experience that occurs in this context.<sup>36</sup>

The World Health Organisation's (WHO) framework for health and disability has defined the term that covers health damages, weakness, restraint in activities which as well as to make hurdles in participation. Weakning can be understood as a problem to make difficult to act in bodily and that makes barrier to do any action subsequently it restrict to take any action in hand; while such kind of issue dealt by a person in their life flow. However, it has been pointed out that Disability is not considered to be just as a health problem. It is resulting from an interaction between features of a person's body and features of the society where he or she belongs which is known to be a complex phenomenon. People with disabilities require interventions to remove such kind of environmental and social barriers to overcome of their difficulties.<sup>37</sup>

### **2.3 Causes of Disability**

By analysing the point of medical or bio-centric, the causes of disability emanates from hereditary, birth defects over the factors of environment. In particular, lack of access to basic services and genetic factors are also tending to be causes of disability. For instance: before birth if any individual having poor nutrition, improper medication, taking drugs, smoking cigarettes, mental or physical trauma resulting disabled; premature delivery, complicated delivery becoming disabled during birth as well as after birth lack of vaccination malnutrition, Infections like meningitis polio, accident, trauma etc also becoming a reason for disability.<sup>38</sup>

### **2.4 Factors of Disability**

There are certain factors leading to disability, such as- Poverty and Disability; Malnutrition and Disability; Occupational Hazards; War and Disability; Crime and Disability and Traffic Hazards which has described below. Poverty and Disability refers to a correlation between disability and poverty in terms of how these two dimension influence on each other by constituting new forms of barriers. However,

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<sup>36</sup> Ibid at 33.

<sup>37</sup> Ibid at 33.

<sup>38</sup> Prashant Srivastava, Pradeep Kumar, "Disability, Its Issues and Challenges: Psychosocial and Legal Aspects in Indian Scenario", DPJ Vol. 18 No. 1, April(2015).

relatable studies has discovered that people with disabilities make estimated of 15 to 20% poor in developing countries by lacking of economic and social policies to led them in extreme poverty. Subsequently, poor families could not be able to meet their basic needs.<sup>39</sup> In particular, inadequate of basic accommodation such as unhygienic living conditions, lack of shelter, lack of sanitation ,clean drinking water etc. which lead to disability with the poor access to health facilities as well. Malnutrition and Disability is another factor of causing disability which resulting the increase of disability conditions. The deficiencies of Vitamin A, B , D, Calcium etc. cause of blindness, beri-beri ( degeneration of the nerves, digestive system and heart), pellagra (central nervous system and gastro-intestinal disorders, skin inflammation ), anaemia., osteoporosis (fragile bones) that impedes the learning and activity of person. By the report of 2010, it has investigated that there about 680 million people could be undernourished yet whose disabilities likely to be in the roots of micronutrient deficiencies. Occupational Hazards pertaining to those unorganised sectors in India where their low standards of safety, low levels of technology and hazards working conditions resulted as the cause of health problems of workers employed in such industry yet have not received appropriate attention by those responsible for regulating work standards. For example , by lacking of safety, low levels of technology in industrial sectors lost limbs of 44,000 people during the period of Vietnam War in which 17,000 American soldiers became disabled .Wars and Disability factor is responsible for causing permanent or long-term disablement. Waging war does not only affect to combatants in the battlefield but also to civilians has been faced to bear the hazards of chemical, nuclear weapons For example, 206 communities, including Afghanistan and Cambodia during the war, landmine triggered the rate of disability where survivors are about 0.9% . Crime and Disability refers to such violent crimes emanate from social, political and economic arrangements of a society in which women and children are to be used in slavery, beggary and prostitution by the act of abduction. For instance, the Indian case of Bhagalpur blinding documented the illustration of this menace. Traffic Hazards is defined by unsystematic rules followed by cities with the rapid growth of number in vehicles as well as disobeying the traffic regulations have been responsible for

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<sup>39</sup> Ibid.

increasing the number of road accidents prevalent in India. With growing number of road accidents would become the cause of death and disability in the country. However, Dr Leslie G Norman as an expert of this field investigated that every road accident death caused 30- 40 light injuries and 10 - 15 serious injuries that may lead to disability. In particular, it was also predicted that road traffic accidents will be ranked as the third leading cause of disability in the Asian and Pacific region by 2020.<sup>40</sup>

## 2.5 Types of Disabilities in India

The concept of disability is dynamic and evolving in nature. By passing the “Rights of Person with Disabilities Bill, 2016” against the existing “Person with Disabilities Act, 1995” have been increased the types of disabilities from 7 to 21. The bill has covered 21 disabilities as given below – 1) Blindness, 2) Low-vision, 3) Leprosy Cured persons, 4) Hearing Impairment, 5) Locomotor Disability, 6) Dwarfism, 7) Intellectual Disability, 8) Mental Illness, 9) Autism Spectrum Disorder, 10) Cerebral Palsy, 11) Muscular Dystrophy, 12) Chronic Neurological conditions, 13) Specific Learning Disabilities, 14) Multiple Sclerosis, 15) Speech and Language disability, 16) Thalassaemia, 17) Hemophilia, 18) Sickle Cell disease, 19) Multiple Disabilities including deaf blindness, 20) Acid Attack victim and 21) Parkinson's Disease.<sup>41</sup> In addition, Government of India has responsibility to take effective measures to ensure that person with any kind of “disabilities enjoy their” basic rights and fundamental freedoms equally just like others. Particularly, person with disabilities can entitle some additional benefits such as reservation quota in the field of government jobs, education, land property etc.<sup>42</sup> Thus, the conceptions of disability are being subjective and contextual in so far it defined their norms by different cultures of doing things differently.

## 2.6 Case Law

Disabled Rights Group & ANR. Vs. Union of India & Ors.<sup>43</sup>

[Writ Petition (Civil) No. 292 of 2006]

<sup>40</sup> Ibid at 37.

<sup>41</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=155592>, (June 9, 2018).

<sup>42</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=155592>.

<sup>43</sup> Disabled Rights Group & ANR. Vs. Union of India & Ors. (2017) S.C.C., 12, 15, <http://www.advocatekhoj.com/library/judgments/announcement.php?WID=9558>.

[Writ Petition (Civil) No. 997 of 2013]

In these petitions, there are three issues are raised based on the public interest regarding to the benefits of persons suffering from the definition of “disability” as per the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act) 1995 which has now replaced by the Rights of Persons with Disabilities Act, 2016. With regarding these petitions, the first issue related to the provision contained under Section 39 of the Disabilities Act, 1995 and Section 32 of the Disabilities Act, 2016 in regard to the non-implementation of 3% reservation of seats in educational institutions while the second issue is equally important with connection of first issue in terms of accessibility to all facilities with freedom in educational institutions by orthopaedic disabled persons. The last issue pertaining to avail adequate provisions and facilities of teaching based on the nature of disability for disabled persons. In view these issues, Court decided to encompass all facilities in all educational institutions in regard to extend the coverage.

With view of the above issues, a bench of Justices A K Sikri and Ashok Bhushan emphasised that all public places such as government buildings as well as educational institutions must be accessible to the needs of differently-abled people instead of using disabled people because 50 percent of population in India suffering from visual disability. Since from the time of earlier disability is viewed as a health and welfare issue with providing care to persons with disabilities and Disabled persons are addressed to be an abnormal, deserving of pity, care so that they are denial of same opportunities like as other normal members in order to enjoy their full participation in any field of society which resulted disabled persons are being stigmatized and marginalised in the mainstream of society and enjoyment of their fundamental rights and freedoms. In such way the Supreme Court directs to States and Centre to make public places accessible to differently abled persons instead of using the term disabled persons<sup>44</sup> because perception of disabled seems to be different and ill from non-disabled persons which resulted their severe isolation from the society.

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<sup>44</sup>Amit Anand Chaudhury, TNN, Dec 15(2017), <https://timesofindia.indiatimes.com/india/supreme-court-directs-centre-states-to-make-public-places-accessible-to-differently-abled-people/articleshow/62087626.cms>.

## CHAPTER III

### RIGHTS AND CHALLENGES FACED BY DIFFERENTLY ABLED PERSONS IN INDIA

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#### 3.1 Rights at Stake

Since differently abled persons often get prejudice and ignorance in society such that they could not enjoy the same opportunities just like others people. Lack of access to essential accommodation of services led to be discriminated in order to participation in any social event. However, there are some stereotyped presumptions on differently abled persons make more complexity for them to live in society, if they think their life became worse because of their past journey in life. In such way this approach makes up a non-acceptable frame in people mind by considering them as the objects of pity and charity. However, the people with disabilities suffer a range of hardships into their day to day life whether it is education facilities or employment opportunities therefore they live in extreme poverty level without accessing their basic opportunities. In addition, they are also denied to possess the right to own property in some countries that led them to disallow in making any decisions for themselves. Being a marginalized section they face discrimination is widespread that affect people in all spheres of life. With the help of human rights law in international legal framework, every individual including disabilities is to be entitled with the notion of “equalization of opportunities” whereas differently abled persons often dominated with that above notion. With the notion of “equalization of opportunities”, every person including differently abled persons has right to employ and participate in society on the basis of equality.<sup>45</sup> However, considering differently abled person as owner of rights not the object of pity and warmth that they carry rights of education, health, security, employment, non-discrimination, and opportunity in equal basis, social integration.”<sup>46</sup> The current situation of differently abled people is radically interpreted with the major hurdles which concern for: 1) Disability implies discrimination with the denial of basic accommodations in society; 2) Lack of equal opportunities in all the educational

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<sup>45</sup> Amritpal Kaur, Differently abled Persons and Human Rights: Issues and Responses, International Journal of Law and Legal Jurisprudence Studies: ISSN:2348-8212 Volume 2 Issue 1, ijlls.in/wp-content/uploads/2015/01/D05:pdf.

<sup>46</sup> ijlls.in/wp-content/uploads/2015/01/D05:pdf.



institutions whether at the primary or higher levels ; 3) Lack of equal opportunities in employment and livelihood ; 4) Lack of physical Access in the built infrastructure; 5) Insufficient information in accessible formats; 6) Disallowing the rights to promotion and emoluments regarding disabilities; 7) Refusing to get reasonable accommodation in employment, education sectors; 8) Gender discrimination faced by women with disabilities; 9) Treating them basis of marginalisation; 10) Denial of access to Civil and Political rights. <sup>47</sup> These above rights are violated in our today's society that is clearly apparent. There are some basic fundamental rights of differently abled people are discussed below:

- **Right to Education**

Right to education has been the new approach towards the people with disabilities. Though in India where schools are poorly designed to avail the right to education by providing adequate education facilities to the needy students with disabilities, an agreement of UN and their bodies with the Government of India evolved the right with elaboration of this content from the perspective of human rights that has been given to the physically challenged persons. The lack of accessible to buildings for the purpose of disability friendly transportation services are deemed to be far greater problems than negative social attitudes and prejudice, in such manner under the persons with disabilities act appropriate government is required to provide free education with vocational training facilities to differently abled students who are seeking need in hand from government. Quite understandably, setting up special schools for them would be a great endeavour to promote their dignity and integrity in society. However, the act has itself some lacunae such as problems of differently abled female in their respective, activities of game, sports, and cultural, pre-school education of disabled children, exploitation of concerned children by their families, problem with parents of disables, higher education of disabled. With regarding this view, appropriate government should take initiative by conducting special part time classes to those differently abled children who drop-out of the schools as well as making sufficient numbers of schemes for imparting them all education facilities by

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<sup>47</sup> Ibid at 42.

open schools or universities with adequate number of trained teachers for their welfare.<sup>48</sup>

- **Right to Employment**

Being considered as a marginalized section in society, job opportunities for differently abled persons is very important to hold their families out of poverty. To get a good job for them is also important to make a position in today's modern society just like as others abled persons. But the current scenario of india is quite different, where most of the companies are following charity approach by getting benefits from competent staff with disabilities having proper skills that what they actually need for the benefits of companies. So it is very difficult for them to get job opportunities in a real sense. However, most of the corporations of human resource departments are not ready to employ differently abled persons yet . Even they neither invest for training or “modifying workplaces” to be suited for differently abled persons with special needs. Such kind of challenges they face need to be sorted with effective measures. However, in most of the public and private sectors have lacking access to vocational training and employment, so that women with disabilities are facing great difficulties in this manner. They even discriminated on gender basis in hiring, promoting rates, access to credit, other productive resources, training etc. They are likely to be institutionalized and also they can rarely participate in making any economic decision. Although as per the provisions of the act states that the reservation for the disabled is 3% in the ratio of 1% each for physically, visually and hearing-impaired persons but in reality this three percent of reservation would become one percent of the total vacancies by practice in sense as well as this existing act could not be able to cover the employees in the private sectors. Subsequently in the purview of government sectors where about 95 percent jobs has excluded differently abled persons. Having said that, the Rights of Persons with Disabilities Bill , 2014 has taken a new move towards the reservation of jobs for differently which extended the reservation quota from 3 to 5 percent with including categories of mentally disabled and people with multiple disabilities.<sup>49</sup>

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid at 42.

- **Right to Health**

The right to health is equally important like as others two above mentioned rights for differently abled person. With having this view, appropriate government have responsibility to look after the health needs of differently abled people. To diagnose and then take remedy to prevent the risk towards children with disabilities and mother at pre-natal and post-natal stages which are to be promoted as taken as a special care in this area. Therefore to take care of differently abled persons, medical professionals are need to be trained with special kind. Quite understandably, differently abled persons in India are to be forced into mental hospitals and institutions in india where they face unhygienic conditions, risk at p hysicallyio,mentally and undergone with terrible experience in case of treatment including electroshock therapy . The lack of appropriate government supports, schemes, and awareness led them to be treated more ridiculously than animals. Consequently they are considered as stigmatized and marginalised in society. From an instance it has got to know that due to overcrowding, unhygienic living conditions led to several deaths of differently abled children and adults since 2005 in a government run shelter home by 228 inmates of Asha Kiran through the affidavit filed in the Delhi High Court.<sup>50</sup>In another decided case of Suchita Srivastva vs Chandigarh Administration , where the apex court had been dealt with the matter of reproductive rights of a woman who is residing at a welfare institution ran by Government in Chandigarh suffering from mental retardation. She became pregnant due to a rape by an in-house staff and she wanted to deliver the baby . But owing to he ground of not capable to carry her pregnancy as well as not able to look after the child, so the Chandigarh Administration filed a petition in the high court by seeking permission to terminate her pregnancy under the Medical Termination of Pregnancy Act, 1971 . Even though Chandigarh Administration filed the case on her termination of pregnancy but the woman with her full consent about to carry her pregnancy and willing to birth the baby made appeal to the Supreme Court and present the main issue before the Supreme Court regarding the legal capacity of a woman with mental retardation to decide on her pregnancy . However, the right to legal capacity of women with mental retardation to take independent decisions on her pregnancy is recognised by Supreme Court . Having

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<sup>50</sup>Disability New and Information Service, Volume 9 Issue 12, September 01, 2012.

with the all considerations on this case, Supreme Court delivered the judgment on the basis of her reproductive choice should be respected irrespective of any other factors like lack of understanding of sexual act and question on her capacity to carry the burden of pregnancy as well as take care of her child. Therefore, apparently the case follows the Art. 12 of the Convention on the Rights of Persons with Disabilities (CRPD) based on the spirit of protection of legal rights.<sup>51</sup> In this manner, Supreme Court emphasized that the specific right to legal capacity which was fall into the subject of an understanding of one's situation and capacities.<sup>52</sup>

- **Right to Access**

The Right to access is also one of the important rights for differently abled persons. Every differently abled persons have right to access to public places or any other places relating to work, education, business, service, buildings etc without any barrier.<sup>53</sup> There should be no restriction for them by using elevators, rest rooms, parking zone, passenger loading zone, entrances, routes etc. In today's modern society, differently abled persons are facing challenges in each and every step by accessing to public facilities which are designed for abled bodied persons not equipped with special need persons. For example- using loudspeaker in Airport does not exist for those who are deaf or hard of hearing at all or whatever information they carry becomes no value for those who are suffering from vision impaired, provided they could able to read by touch. Quite understandably, the features in public placed need to designed equally for bodily abled and differently abled persons. It has observed that over 50 countries in which this kind of situation has been recognised by laws that protect the rights of differently abled persons from the non-discrimination and giving equal opportunities view. In this purview, the right guaranteed to them by access to all public facilities, education, services, business, employment etc. There are some provisions pertaining to this right for differently abled persons are encapsulated in the PWD act in India. However, Chapter VIII of the Act stipulated with the provisions basis of non discrimination that to overcome these barrier. Under the purview of India, appropriate Government is required to take steps for easy access to disabled persons with providing facilities for wheelchair users, engrave the surface of

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<sup>51</sup> [ijlls.in/wp-content/uploads/2015/01/D05:pdf](http://ijlls.in/wp-content/uploads/2015/01/D05:pdf).

<sup>52</sup> Supra note 42.

<sup>53</sup> Ibid.

zebra crossing for the blind persons or persons with low vision in all transportation sectors. Furthermore there shall not be discrimination in consolidating environment i.e. auditory signals in lifts, ramps in the public buildings, special toilets for wheel chair users etc. By providing the right to access to class room for differently abled persons has developed their education and independence in society. In such way appropriate Government and local authorities are directed to take all these measures for the welfare of persons with disabilities within the ambit for the development of capacities economically. Unfortunately, the term person with disabilities is a narrow interpretation that deprived of many benefits guaranteed under the Persons with Disabilities Act, 1995.<sup>54</sup>

### **3.2 Challenges faced by differently abled persons in India**

In India, there is certain number of problems facing by differently abled persons in their day to day life. Since disabled population is one of the excluded sections of society, central as well as state government are taking some steps for the welfare of them. There are an ample number of schemes, policies and measures have been taken to develop their status and conditions. Disabilities with people are defined by the severity of disabilities.<sup>55</sup>

There are number of issues and challenges prevalent in society where people with disabilities are facing in every step and in every sector. There are some issues are given below –

Firstly, inaccessibility to any public as well as private facilities or buildings would be a challenge for differently abled persons in today's modern society. Because in india most of the public sectors or private sectors are lack of special kinds features for disabling population. Subsequently people suffering from impairment could not be able to access such facilities just like others people.<sup>56</sup>

Secondly, there is an issue for job opportunities where disabling population are often get ignorance in terms of getting job security for their welfare. However, with tackling such kind of issue led them to be very low representative in fields like government jobs, politics, economy etc. Even, most of the companies in India are not yet to be

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<sup>54</sup> Ibid at 42.

<sup>55</sup> <http://www.prepze.com/major-challenges-faced-disabled-population-india/>, (15 June,2018).

<sup>56</sup> Ibid at 50.

ready for recruit special abled persons in their sectors. Subsequently, prejudicial behavioural of society compels them to be excluded from society.<sup>57</sup>

Thirdly, the lack of appropriate health care services towards people with disabilities is another challenge for their welfare. The barriers to health care made their life more critical and endanger to sustain for them when they live. They could not afford appropriate health services and transportation services because of poverty. Consequently they are facing hardships in their day to day life.<sup>58</sup>

Fourthly, education system in India is not that much of developed for differently able people so that they can easily access their education in any educational institution. It is apparently showing that lack of school curriculum made them uneducated and backward. In india, the main problem is absence of special school curriculum as well as well trained teachers for specially abled people.<sup>59</sup>

Fifthly, attitudinal behaviour of society and prejudice for them to be considered as stigmatized and marginalized in society. They are facing discrimination in every domain that denies achieving their moral dignity, equality of opportunity and social integration as well.<sup>60</sup>

Sixthly, lack of communication system restrains them to access to information, knowledge and opportunities in making their opinion or participation in the field of social, political. Subsequently inaccessible communication system restricts to participation of people with disabilities.

Seventhly, many laws, practices, policies, strategies etc are to be discriminated against differently abled people. There are many laws, policies of India are not to be considered as suitable for differently abled people such that people of disabilities would become victimized in term of not getting concern from appropriate government. These Institutional Barriers are still intact in today's so called modern society.

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<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

Eighthly, inadequate of data, statistic is likely to be combined with lack of evidence that becomes delay in understanding the action or planning which has taken for inclusion of disability.

Lastly, poor implementation of plans, policies, legislations etc would become more difficult to take effective measures in curbing the problems of differently abled people as well as inclusion of them.<sup>61</sup>

Even though Person with Disabilities Act, 1955 has provided certain rights from the human rights perspectives, but in India the poor implementation of such rights and schemes, policies in a practical way to prevent curbing the situation of people with disabilities. However, in this manner appropriate Government shall be responsible to take all effective measures by giving protecting their rights.

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<sup>61</sup> Ibid at 50.

## CHAPTER IV

### INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK ON RIGHTS OF DIFFERENTLY ABLED PERSONS

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#### 4.1 Introduction

The fundamental aims of the United Nations is to protect and promotion of Human Rights. By the development of legal standards in the field of human rights, organisation has been putting vigorously a number of efforts in terms of progress of the standards of human rights with establishing of mechanisms for the implementation of such legal standards in practice. In regard to the rights of differently abled persons, there is absence of international human rights treaties which designed solely to disabling population. Even though there is not a single human rights treaty belongs to only the category of disability in the framework of international, but on the ground of non-discrimination there are many clauses contained human right treaties that addresses disability. Having said this, the recognised rights under the provision of treaty will be will be exercised irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status which has been undertaken by the state parties. Since disability is not to be covered by the grounds of discrimination, but it's explicitly fall under the heading of other status as widely accepted as ground in which discrimination is prohibited.<sup>62</sup>

Since the inception of United Nations Universal Declaration of Human Rights of 1948, the inclusion of disability is recognised under the world view of human rights model. There are certain rights of people such as civil, political, economic, social, cultural, development rights which has been laid down under this declaration without any adverse distinction of individuals. From the human rights perspective, the rights of disability is to be varied through the characteristics of human with disability, the variation of disability is defined by sensory, cognitive, motor ability as associated to the human condition. Such variation of disability does not restrict the contributions towards society. In such way a wide range of diversity lies in the contributions of society by realizing the potential of

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<sup>62</sup> United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/EN/Issues/Disability/Pages/Instruments.aspx>, (June 21,2018).



individuals. It is apparently perceives that society is providing necessary mechanisms which are important for individual to know their rights. The provision of support, aids, services are focussing to entertain the social, economic integration, enjoyment of social, legal rights and self-determination under the purview of people with disabilities. From this point of view, it has notably understood that all people have the right to participate and exercising their rights equally and enjoy the self-determination in society. But developing countries like India has greatest number of disabled people live under the marginalized and extreme poverty line.

The Universal Declaration of Human Rights express the rights which are to be guaranteed under the protection of human rights treaties shall be apply to all without any adverse distinction among individuals. However, differently abled person are often isolated from society and where their rights and challenges are always being to be debated. Subsequently, they could not enjoy their basic and fundamental rights freely. Over the years, the new approaches towards disability has been taken place to evolve the rights of differently abled people so that they could able to enjoy the same opportunities, equalities, rights just as everyone else. The evolvments of the changes for disabilities close the protection of gap globally.

The adoption of Convention on the Rights of Persons with Disabilities in 2006 has entered into force in 2008. It derives from the traditional charity based and medical viewed approaches to rights based approach on disability.

“The celebration of diversity and the empowerment of the individual are essential human rights messages” said by former UN High Commissioner for Human Rights, Louise Arbour. In such manner, the UN Convention on the Rights of Persons with Disabilities, 2006 convey it expressly by perceiving with the fully participation in the frame of society towards person with disabilities.<sup>63</sup>

## **4.2 The international framework**

### **4.2.1 The Convention and its Optional Protocol**

The Convention on the Rights of Persons with Disabilities, 2006 has been provided adequate number of rights for protection of their civil, cultural, economic, political as well as social rights with the subject of equality and inclusion irrespective

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<sup>63</sup> “United Nations Human Rights Office of the High Commissioner”, <https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx> , (June 21, 2018).

of discrimination. Therefore person with disabilities have fully right to live freely and independently in their communities and also to have right to make their opinions or choices that has been playing their active role in society. The Convention's Optional Protocol came into force in the legal framework simultaneously the Convention also came. The protocol has offered experts of committee with additional capacities. In regard to this view, the Committees are playing active role by examining the filed complaints by individual relating to the grave violations of human rights. The experts of Committee can also do inquiry if it to be necessary. The adoption of Convention and the Protocol has received wide support from international community as they considered being truly as an evidence for the commitment towards the universal human rights framework.<sup>64</sup>

#### **4.2.2 The Committee of experts**

There are 18 independent experts who engaging with the work of promotion and implementation of the Convention under the Committee on the Rights of Persons with Disabilities (CRPD). The nomination of such experts has been done by individual countries and process of selection has done by states after that those selected states have ratified the convention in which all States are obliged to the committee about the encapsulated of rights on what basis they being implemented in each of the countries. Furthermore, Committee can make suggestions as well as comments basis of each of the reports in terms of progress. In this manner, organisations of civil society and institutions of national human rights could also put their contributions with reviewing of reports. To interpreting the convention, Committee is responsible for making general comments for clarification and guidance on matter of specific articles.<sup>65</sup>

#### **4.2.3 The Special Rapporteur on the rights of persons with disabilities**

By the resolution of 26/20 of Human Rights Council has created the Special Rapporteur on the rights of persons with disabilities of special procedure. The purposes of Special Rapporteur is to mandate among others and collecting data, information for the research on the violations of the rights of persons with disabilities. It also recommends the better promotion and protection of their rights with proving assistance to that purpose. With the cooperation of state parties conferences for the Convention on the Rights of Persons with Disabilities and

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<sup>64</sup> Ibid at 57.

<sup>65</sup> [https://en.wikipedia.org/wiki/Committee\\_on\\_the\\_Rights\\_of\\_Persons\\_with\\_Disabilities](https://en.wikipedia.org/wiki/Committee_on_the_Rights_of_Persons_with_Disabilities) .

the Commission for Social Development, special Rapporteur reports to the human rights council. Ms. In this view, the first Special Rapporteur on the rights of persons with disabilities was Catalina Devandas Aguilar who was appointed in 2014.<sup>66</sup>

#### **4.1.4 The International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The main objective of this covenant is to protection and promotion of rights including social, economic, cultural. Even though, there is an absence of explicit reference for persons with disabilities just like as ICCPR, whereas many of its provisions of the covenant are focussing of great importance in order to ensuring equal opportunities and full participation for differently abled people in societies. Having said this Article 2 states that all States parties shall be required to take effective measures in terms of giving protection of rights who are seeking their rights to enjoy which are specified in the Covenant by overcome any disadvantages inflicted on them flowing from their disability. When children with disabilities are being disallowed to access to any public institutions or building which are associated with education such that Art. 13 of the right to education are violated under this Covenant.<sup>67</sup> Article 12 of Right to health has provided the same level of medical care to persons with disabilities just like as other members in society and also provided the access to facilities to get the benefit from medical care and social services. By using orthopedical means they can stay away from further disabilities and defects.<sup>68</sup> In this regard if states becomes fail to adopt policies and regulations to bring in the workplace which accessible to person with disabilities with providing vocational training in order to improve the capacities and skills of disabled people in mainstream employment, the Art. 6 of the right to work may be violated.<sup>69</sup>

#### **4.2.5 The International Covenant on Civil and Political Rights (ICCPR)**

As already mentioned above ICCPR does not mention any reference for person with disabilities explicitly. However, protection of the rights of civil and political has been recognised under the Covenant of 1966. It seeks to address the freedom of individual

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<sup>66</sup> Ibid at 58.

<sup>67</sup> Ibid.

<sup>68</sup> [https://www.nichibenren.or.jp/library/ja/kokusai/humanrights\\_library/treaty/data/CESCR\\_GC\\_05e.pdf](https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/CESCR_GC_05e.pdf) ,(June 23, 2018).

<sup>69</sup> [https://en.wikipedia.org/wiki/International\\_Covenant\\_on\\_Economic,\\_Social\\_and\\_Cultural\\_Rights](https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights), (June 23, 2018).

with aspects of political and civil rights. Although there is an absence of person with disabilities in an explicit manner, many provisions of this covenant are related to the reference differently abled persons directly. For instance, when differently abled persons are placed in an “<sup>70</sup>appropriate environment which endangers for their health and if they are undergoing with scientific experimentation without his/her prior consent such that Article 7 which subject to right to freedom from torture and other cruel, inhuman or degrading treatment and punishment may be violated. In this regard Art. 9 with subject of right to personal liberty and security may breach in terms of forced institutionalisation of a person with a mental or psychiatric disability without strict procedural safeguards. A person is deprived his or her legal capacity when disability is perceived without safeguards to protect their rights by competent judicial authorities, in such way Art.16 with the subject of person before law may be violated. With the subject of Art.23 and Art.17 of the right to marry and form a family and right to privacy and family life” respectively are to be violated in terms of refusing of the right to form a family and to live with one’s own family or to experience the parenthood.<sup>71</sup>

#### **4.2.6 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) deals with the right to be free from torture. This Convention has great importance to apply in all fields in terms of inhuman treatment, torture, degrading punishment are to be prohibited. It also equally applies to people with disabilities where torture is the result of often severe physical or mental disability. Especially those people with disabilities, who are live in institutionalized settings are more vulnerable to torture or other forms of inhuman treatment or degrading punishment. In particular, there has been apparently seen an imbalance of power in institutions between inmates and those in authority. In institutional settings, this imbalance is magnified many times over persons with disabilities. Torture and the less severe are to be defined by equally detestable phenomena of cruel, inhuman or degrading treatment or punishment. These are common in case of public or private mental and physical disability institutions which being harmed physically and

<sup>70</sup> <https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>.

<sup>71</sup> Supra note 58.

emotionally who are of their residents in a negative way.<sup>72</sup> In this manner, the protection of human rights and dignity of persons with disabilities with ensuring their rights to be protected wherever they reside, such that legal protection against torture shall have utmost importance.<sup>73</sup>

Article 1 of CAT defines the torture that covers all forms of ill-treatment intentionally which resulting from severe pain or suffering that has been carried out by individuals in exercising public functions shall not be using any kind of treatment which associated with torture or pain towards the persons with disabilities in institutions and other settings as well. States party to the Convention has responsible to prevent cruel, inhuman or degrading treatment or punishment which contained under Art.16 of the CAT. However, this provision may relate to all cases of ill-treatment against persons with disabilities. A State party may violate this provision under the conditions which has been given<sup>74</sup> below-

Firstly, if state party fails to take positive actions in regard to the provision of medical treatment or services for differently abled persons who are living in institutionalised settings ;

Secondly, if State party fails to investigate or to proceed the ground on which torture or inhuman treatment or degrading punishment has been inflicted upon differently abled people who living in a public or private institution;

Lastly, if State party fails to provide an appropriate means of redress and compensation including means of rehabilitation for the victim of cruel, inhuman or degrading treatment over differently abled persons.<sup>75</sup>

#### **4.2.7 The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

These two treaties, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965 and the Convention on the Elimination of All

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<sup>72</sup> Ibid.

<sup>73</sup> <https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>.

<sup>74</sup> <https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>.

<sup>75</sup> Ibid at 58.

Forms of Discrimination against Women (CEDAW)”<sup>76</sup>,1979 have utmost importance on the categories or groups of persons from the point of racial discrimination and discrimination against women.<sup>77</sup> In regard to this view, these treaties offer protection for rights of all human being including differently abled people who are at the risk of discrimination. Generally the treaties “serve two important purposes such as they emphasise the notion of non-discrimination against all categories of persons in order to enjoy all human rights. Secondly, to the extent these treaties add specificity to ICCPR and ICESCR rights by tailoring them to the circumstances of the all categorization of groups of persons. In the context of discrimination, these treaties play a significant role in the enjoyment of all human rights without any adverse discrimination among the all categorization of groups such as ethnic groups, women groups including disabling population.”<sup>78</sup>

“The main aim of CERD is to elimination of all forms of racial discrimination. When differently abled persons fall into the group of minority or group of racial , such that they face discrimination on the basis of disability and race both. Any form of distinction, exclusion, restriction based on race, colour, and descent,national or ethnic origin are to be prohibited under the CERD. The principle of CERD is to promotion and protection of human rights and fundamental rights for all people including persons with disabilities alongwith the enjoyment of the rights of social, political, economic, and cultural or any other sphere of public welfare equally.”<sup>79</sup> However, to maintain such rights of human being that has contained under CERD, special measures shall be taken for the purpose of securing adequate advancement of certain groups or individuals in order to equal enjoyment of human rights and fundamental freedoms. In addition, it shall not be based on racial discrimination.<sup>80</sup>

“CEDAW is the achievement for women in terms of equality by legally and practically. It covers the whole values of human rights such as civil, cultural, economic, political or social based on the principle of non-discrimination. Women are being considered as most vulnerable groups in society on account of both disability and gender; therefore they face more discrimination and challenges in their day to day

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<sup>76</sup> “<https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>”.

<sup>77</sup> Ibid.

<sup>78</sup> “<https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>”.

<sup>79</sup> “<https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>”.

<sup>80</sup> Ibid at 58.

than bodily abled women or men both with disabilities. Like above mentioned covenants and treaties, here CEDAW also does not mentioned directly women with disabilities, but the provisions of CEDAW explicitly covers the all categories of women including women with disabilities.”<sup>81</sup> In this manner, State parties are required to take all feasible measures along with special measures to ensuring adequate advancement of all rights for women such as access to education, equal job opportunities, health services, participation in all the fields of social and cultural life.<sup>82</sup>

#### **4.2.8 The Convention on the Rights of the Child (CRC)**

“The Convention on the Rights of the Child (CRC), 1989 deals with the rights of children in international law. There are 42 detailed provisions of the convention covers the all spheres of rights for children including civil, political, cultural, social and economic. Unlike the other international human rights instruments, there are two detailed provisions of CRC which directly deals with disability. On the ground of disability, Art. 2 expressly prohibit any discrimination in regard to the enjoyment of rights of Convention. Art. 23 of the convention include specific provision relating to the rights of children with disabilities which are follows:”<sup>83</sup>

- i) There is a provision for mentally or physically disabled child in respect to enjoyment of their full and decent life. State parties recognised that children with disabilities should be facilitated in the community.
- ii) States parties shall provide special care to differently abled child by ensuring the extension with the subject of available resources to the concerned childrens. In particular responsible parents shall also to provide care and protections to those childs.
- iii) State parties shall be provided education, health care services, rehabilitation services, equal opportunities for employment to the special needs child which will be given by free of charge in achieving the social integration, development including his or her cultural, spiritual development.

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<sup>81</sup> “<https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>.”

<sup>82</sup> Ibid.

<sup>83</sup> “<https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>.”

iv) To recognising the special needs of a disabled child, States Parties recognised the rights of children by ensuring the promotion of international cooperation, providing medical treatment, access to information which are relating to education, vocational training, rehabilitation services etc. In this regard developing countries shall be taken all measures to the needs of especially for differently abled child.<sup>84</sup>

Apart from this above articles, the Convention has also provided other provisions pertaining to the children with disabilities, such as Art. 9 states that the right not to be separated from their family or home or parents, Art.27 states that the right to provide adequate standard of living, Art. 24 states<sup>85</sup> that the right to health care, the right to protection from abuse, the right to education and right to physical and psychological recovery and social reintegration for victims of neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment, or armed conflicts which are provided under Articles 19, 28, 29 and 39 respectively.

#### **4.2.9 Other treaties addressing the issue of disability**

There are also other international human treaties in international community who addressing the issue of disability. The UNESCO Convention against Discrimination in Education where Art.1 guarantees the right to equal access to all types of education that should not be prohibited the limitation of any person or group in order to getting their education. In this regard all person have right to access equal education irrespective of discrimination. Persons with disabilities can also enjoy the equal rights same as others. Vocational training, rehabilitation services, employment should be provided to disabled people with recognising appropriate training under the standard of ILO convention. The ILO convention recognised the rights for disabled people which are not only in specialised institutions but also in open labour markets where Government and organisations of disabled people both share responsibility by together in helping the differently abled persons to realise their rights to participation in the sphere of society. Even though Art.1 of the ILO convention does not mention the definition of discrimination in respect of Employment and Occupation on the account of disability, but article 1(2) of ILO <sup>86</sup> convention defines the term discrimination

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<sup>84</sup> Ibid at 58.

<sup>85</sup> Ibid.

<sup>86</sup> “<https://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>.”



on the basis of consultation with representative workers organisation and employers on impairing equality of opportunity or treatment in employment or occupation which be determined by the concerned Members on the ground of disability.<sup>87</sup>

To recognise the rights of differently abled person, the above mentioned rights which have been enshrined under said international human rights instruments from the human rights perspective which shall be applicable to disabling population in India in a same manner. For instance, the CAT states that any kind of torture, inhuman treatment, degrading punishment shall be prohibited in all fields as similarly though India has not been ratified the Convention yet; the right to be free from torture is also applicable to all people including disabilities without any discrimination of category of people, race, caste etc under the purview of India.

### **4.3 Regional Human Rights Instruments**

In regard to the issue of disability, regional human rights instruments are addressing this issue by proving special measures to protection of differently abled people.

#### **4.3.1 The African Charter on Human and Peoples' Rights, 1981**

Under the African Charter on Human and Peoples Rights, 1981, there is no direct provision relating to the right of social security in terms of disabled people. However, certain aspects of the right of social security towards differently abled people which may be constituted on the basis of the right to health, and the right of the aged and disabled to special measures of <sup>88</sup>protection that are contained under Article 16 and Article 18(4) respectively.<sup>89</sup>

#### **4.3.2 American Declaration on the Rights and Duties of Persons, 1948**

Article 16 of the American Declaration on the Rights and Duties of Persons, 1948 has recognized the rights of social security for every person by protection of individual from the consequences of old age, unemployment and any disabilities

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<sup>87</sup> United Nations Human Rights Office of the High Commissioner <https://www.ohchr.org/EN/Issues/Disability/Pages/Instruments.aspx#other>, (June 21, 2018).

<sup>88</sup> <http://socialprotection-humanrights.org/regional-human-rights-instruments/>.

<sup>89</sup> Social Protection Human Rights, <http://socialprotection-humanrights.org/regional-human-rights-instruments/>, (20 June,2018).

which resulted in physical or mental impairment that could be impossible for him or her to earn a living. In regard to this issue, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988 has recognised the right to social security and the right to health relating to disability.<sup>90</sup>

Article 9 states that, the right to social security have been provided to all persons including persons with disabilities that will protect people from the consequences of old age and any kind of disability pertaining to physically or mentally impairment that protect such persons from securing the means for a dignified existence. The benefits of social security shall be applied to beneficiary's dependants after the death of beneficiary.<sup>91</sup>

Article 10 of the additional protocol to the American Convention says that, everyone shall have the right to health which can be understood in terms of enjoyment of the highest level of physical, mental and social well-being. In regard to this article, state parties undertake the right to health as a public good by adopting effective measures to ensure the right with primary health care which is essential to every individuals and families including disabilities in the community. The benefits of health care to be extended to all individuals, prevention against infectious diseases, universal immunization for occupational and other diseases, treatment of health problems, endemic, and satisfaction of the health care services<sup>92</sup> for them who are at the highest risks that make them most vulnerable.<sup>93</sup>

#### **4.3.3 Inter-American Convention on the Protection of the Human Rights of Older Persons, 2015**

Article 17 of the Inter-American Convention on the Protection of the Human Rights of Older Persons, 2015 states that all older persons that seems to be differently abled persons who have been guaranteed to the right to social security that will protect them from any kind of consequences so that they can live in dignity. In this view, State parties shall promote the provision of income that to ensure a dignified life for all

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<sup>90</sup> <http://socialprotection-humanrights.org/regional-human-rights-instruments/>.

<sup>91</sup> Ibid .

<sup>92</sup> <http://socialprotection-humanrights.org/regional-human-rights-instruments/>.

<sup>93</sup> Ibid at 75.

older persons with social security and other social protection measures. However, with the institutional agreements, mechanisms, entitlement of benefits, pension etc. older persons will get facilitation from state parties to ensure their right to social security.<sup>94</sup> States Parties shall seek to facilitate, through institutional agreements, bilateral treaties, and other hemispheric mechanisms, the recognition of benefits, social security contributions, and pension entitlements for migrant older persons.<sup>95</sup>

#### **4.3.4 The Arab Charter on Human Rights, 2004**

Under the Arab Charter on Human Rights, 2004 every citizen is guaranteed to the right to social security with social insurance including differently abled persons that has been ensured by State parties under the Article 36 of the Charter.<sup>96</sup>

#### **4.3.5 Association of Southeast Asian Nations (ASEAN) Human Rights Declaration, 2013**

Article 28 of the Declaration states that the right to an adequate standard of living is to be entitled to every person and his or her family including disabilities. However, this right covers other following rights which are pertaining to the standard of living of persons, such as right to nutritious food, right to drinking water, right to clothing, housing, right to medical services, right to clean, safe, right to social services etc. Article 30 of the Declaration provided that every person including differently abled persons shall have right to social security with social insurance which secures the means of him or her for decent and dignified existence.<sup>97</sup> However, for the benefits of social security special protection care should be given to mothers during a reasonable period.<sup>98</sup>

#### **4.3.6 Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 1995**

Under the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 1995 the right to health care protection may be exercised

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<sup>94</sup> <http://socialprotection-humanrights.org/regional-human-rights-instruments/>.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> <http://socialprotection-humanrights.org/regional-human-rights-instruments/>.

<sup>98</sup> Ibid at 75.

either directly or cooperation with public or private bodies by taking appropriate measures that aiming at providing instructional schemes, advisory services, creating hygienic conditions for the development of health conditions of every persons in health care services which are provided under Article 15. In addition, Article 16 states that the right to social security shall be provided to every person including social insurance according to person age which will be determined by the cases of illness, invalidity and other case which are included in national legislation. For the purpose of ensuring the right, appropriate measures, medical assistance shall be exercised effectively for receiving necessary benefits under the social security system. <sup>99</sup>

#### **4.3.7 The European Social Charter, 1961**

Article 12 of the Charter states that the social security system has to be maintained by the contracting parties at a satisfactory level on the basis of equality. For the purpose of ensuring the social security, contracting parties shall take necessary steps to ensure equal treatment in respect of granting, maintenance and resumption of social security rights. In particular, under the purview of Article 13 of the Charter, right to social and medical assistance are to be given to all people on the basis of non-discrimination. However, the charter has recognised the benefits to family under Article 16. <sup>100</sup>

#### **4.3.8 Charter of Fundamental Rights of the European Union, 2000**

Under the Article 34, the European Union recognises the benefits of social security and social services in respect of providing protection to every person in terms of old age or dependency, illness, industrial accidents, maternity and even in the case of loss of employment that has been laid down by European Community laws, practices. In particular, whoever residing legally in Europe is entitled to receive social benefits of security, services in accordance with the European Community. The Right to access to medical treatment, benefits for everyone under conditions has been established by national laws and practices which have been contained under Article 35 of The European Union.<sup>101</sup>

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<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid at 75.

Even though the term disability is not mentioned directly under the regional human rights framework, but there are several provisions has been provided by human rights regional instruments pertain to differently abled person in respect of health service, right to social security with social insurance for all aged person, right to adequate standard of living condition, right to equality in terms of social, services, maintenance, medical assistance etc. However, the above rights relating to disability have the same weightage in the context of India as well.

## CHAPTER V

### NATIONAL LEGAL FRAMEWORK ON THE RIGHTS OF DIFFERENTLY ABLED PERSONS

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#### 5.1 Introduction

Since disability is considered to be as disadvantage or restriction of activity in the mainstream of society, so the persons with disabilities often get isolate virtually from all aspects of life. By emphasizing that Disability Act of 1995 in India has taken initiative to shed the light upon differently abled persons with various facilities to meet the needs for children as well as adults with disabilities. This act emphasise on viewing the disabilities with people to ensure the right to health, employment right, reservation, development , right to free education for children until they attain the age of eighteen years in school. For the purpose of right to education, the children with disabilities have right to access to school curriculum, books, uniforms, scholarships in the area of education without face any kind of barriers. Particularly special need of children has been entitled to all substantial materials that pertaining to education under the PWD Act. However, concerning to children with disabilities special schools are to be provided with vocational training facilities and non-formal education to meet the special education for them in India. In such way, India also promotes training institutions for teachers in terms of to cope up with differently abled people. However, appropriate court also deals with the redress of grievances for differently abled children as well as adults India. In such way parents of special need of children can approach to court for redress of them. Differently abled person is to be entitled to Disability Certificate which is available in India. Through this they can avail all facilities which are mentioned in the legal frame of disability rights within the territory of India. They can obtain such certificate from the nearest hospitals by fulfilling the all conditions that has been instructed in the concerned area. In particular, the Office of the Commissioner for Disabilities issues

such Identity Card. The concerned people who are living in rural areas, they can claim Identity Card from issuing by Block Development Officers.<sup>102</sup>

The provision for funding to construct roads, public ramps, building, and schools for differently abled people has been provided by Indian Government through panchayats. The reservation quota is provided to people with disabilities in terms of every areas of welfare of people such as transportation service, health service, employment etc. In particular, three percent reservations of quota for all government services are to be provided to differently abled people. The affirmative action is included under the PWD Act for concerned people. However, appliances, aids are to be made available for them such that allotment of land for differently abled people in regard to their housing, building, business, school, factories etc. is to be made at concessional rates in India. In regard to seek information to all facilities that has been available for people with disabilities would visit to the Office of the Commissioner for Disabilities in India. Furthermore, parents of special need of people could move to the office for redress in terms of inaccessible to means, ramp or disqualified by school. Subsequently the Commissioner of Disabilities can look after the matters for differently abled persons.<sup>103</sup>

It is significant to note that UN Convention on the Rights of Persons with Disabilities has been ratified by India though the protection of rights towards disabilities has to be done emphatically by India. In accordance with the Convention, India has given less importance to protect rights of disabilities. In such manner, the Ministry of Social Justice and Empowerment proposed to India to make amendments in the PWD Act in 2010, after that it came under criticism. After the series of consultations between several groups of people with disabilities and government, hence a new law has finally come in consonance with the Convention on the Rights of People with Disabilities by the United Nations, which India ratified in the year 2007.”

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Currently the India is dealing with different laws which relating to differently abled persons. However, these national legislations are strategic in nature to change the

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<sup>102</sup> DISABLED WORLD TOWARDS TOMORROW, <https://www.disabled-world.com/news/asia/india/>, (June 28, 2018).

<sup>103</sup> Ibid at 83.

<sup>104</sup> Ibid.

process of engagement for the matter of differently abled persons is an encouraging sign for welfare of future.<sup>105</sup> The laws of India pertaining to disabilities are given below:

i) 1987 of the Mental Health Act, ii) 1955 of the Persons with Disabilities Act, iii) The Rehabilitation Council of India Act, iv) 1999 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act.<sup>106</sup>

Even though most of the above legislations in India are based on Medical problem of differently abled people, but the definition of disability is shifted from medical model to social disability where UN Convention on the Rights of People with Disabilities defined the term 'disability' in a dynamic nature. It further adopts a welfare attitude. It is important to note that the disability derives from impairment to several areas that restrain differently abled people to participate in the mainstream of society. However, a new approach towards disability has come forth from human rights perspective which is pertaining to right based that corrected the century based norm on medical model of disability. By viewing this, it has been adopted by UN Convention on the Rights of People with Disabilities. However, it adopts a welfare attitude towards the societal needs for differently abled people where every category of people equally access to their all rights irrespective of discrimination within the framework of Human Rights.<sup>107</sup>

The main objective of the Act of Persons with Disabilities Act, 1995 is to emphasise the promotion and protection of rights of specially abled person in terms of their rehabilitation services, employment, education, health services etc. Apart from this provision, the act also introduces ample number of schemes, policies, and concessions in various areas in India which does not considered as non-negotiable rights yet. Inaccessible to basic rights and facilities as well as lack of suitable features to access such rights for people with disabilities is serious problem facing by concerned person in today's modern society in India. In this view, Government has provided various schemes, strategies to ensure the right to access to all substantial accommodation of human life in respect of economic capacity and development. In regard to this matter,

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<sup>105</sup> Ibid.

<sup>106</sup> <https://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india>.

<sup>107</sup> Ibid at 83.



there some group of lawyers has given their outlook, for instance Saptarshi Madal of the Lawyers Collective noted that India's current legislation is not harmonizing with the aspects of human rights, so that legislations in India are not effective to improve the condition of differently abled people in practically. Absence of advance technology and lack of medicine can also be seen in the legal framework of India. Since the laws were framed during the period of colonial so there is a gap between today's situation or knowledge o technology and the norms of old centuries where medical model have utmost importance regarding disabilities that is being seen apparently have to be updated by reflecting the rights of disabilities based on human rights perspective.<sup>108</sup>

The National director of Human Rights Law Network Rajive Raturi expresses about the absence of twenty provisions of the Convention on the Rights of Persons with Disabilities in the current legislation of India. Particularly of those provisions of the convention which are pertaining to rights of civil and political including freedom of expression, right to form a family, marry freedom from cruel, inhuman treatment, right to access information, right to participate in political matter etc. Consequently people who are suffering mental health disabilities have no right to enter into contract as per the provisions of the laws that are included in India. Subsequently they have no property rights under the laws of India. To the greater extent of the Convention has explicitly provided support to those who are suffering with severe disabilities .Through these supports they can be able to make exercise the rights which has been stipulated under the UN Convention on Person with Disabilities.<sup>109</sup>

By viewing the rights of especially abled children and women, in such way UN Convention on disabilities addressing the issues relating to above the two groups by providing the protection of rights for them, however India's current legislation attacks at these groups as well. There are some specific provisions of current laws in India that makes difficult to secure the rights of differently abled people in some way. For instance, in Pune, the Center for Advocacy in Mental Health of the Bapu has focussed that Section 19 of the Mental Health Act dealing with that admissions of women with disabilities to health care institutions by families with an intention to dump or get rid

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<sup>108</sup> Ibid.

<sup>109</sup> Ibid at 83.

of them has been abused many times in such institutions of India. While the entire world is engrossing to seek the rights of disabilities. The nation of India has signed the UN Convention on the Persons with Disabilities is a quite promising to consolidate the right based approach based on equality to reach the sense of harmonization with the rights of citizens and differently abled persons.<sup>110</sup>

## 5.2 Statistics of Disability in India

A person pertaining to disabilities can be identified by the census of years. However, India has witnessed with 1.2 million people with disabilities who are dwelling in households with only of people with disability. As per the census of 2001 to 2011, people with disabilities has increased from 22 million to almost 26.8 million whereas single member household identified by the persons with disabilities about 6.3 lakh who are lived alone and two-member households identified by 2.7 lakh who living their own households without any non-disabled person. Among the larger states, Jammu & Kashmir has the highest number of disabling population in households where 12 percent people with disabilities consisting at least one person with disability in a household, after that Odisha identified by 10 percent of such households. As compared to other states, Delhi and Tamil Nadu have strong disability rights movement where only 5 percent of households consisting people with disabilities. About 92 percent of households had free from people with disabilities in India whereas rural areas had 71 percent of these households and remaining 60.5 percent households were in urban areas that had been identified by the census of 2011. It is noted that the proportion of households with people with disabilities fell from 10 percent in 2001 to 8 percent in 2011.<sup>111</sup>

By governing the rights of persons with disabilities, national legal framework covers several others legislations and provisions pertaining to disability which understand the section of person with disabilities under the purview India. In addition, the provisions of constitution of India empower the rights of differently abled persons in various aspects of life. There are many statutes deal with the interest of rights on the issue of disability. In this manner, India has a vast list of legislations and regulations

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<sup>110</sup> Ibid.

<sup>111</sup> <https://www.disabled-world.com/news/asia/india/>, (June 28, 2018).

pertaining to protect and promote the interest of differently abled persons such as Persons with Disabilities (Equal opportunity, protection of rights and full participation) Act 1995, Health Act, Factories Act, National Policy on Education etc. However, the provisions of Indian Constitution guarantees the fundamental rights and freedoms to every citizen including differently abled persons without any discrimination.

### **5.3 Constitutional Framework in India**

The Constitution of India guarantees the all basic rights and fundamental freedoms to every citizen uniformly. Even though Constitution premises on the principle of human rights and social security, but it does not directly contain the term of disability. However the preamble, directive principles of state policy of the Constitution make testimony to stand to the commitment for the people including differently abled persons under the purview of Indian Constitution.<sup>112</sup> The provisions contained under the Constitution plays an active role in the strengthening the status of disadvantaged groups. To safeguard the interests of rights for people, Chapter III of the Constitution deals with the fundamental human rights of every citizen. Article 14 of Constitution stipulates that the right to equality in which no person will be denied equally before law. In regard to this Article, Persons with disabilities should not be discriminated rather treated as equally like others. The relevant Articles of 15 and 16 in Indian Constitution promotes the equality of employment in respect to provide equal opportunity for jobs to every citizen irrespective of adverse discrimination on the grounds of race, sex, caste, religion, place of birth. It means that no citizen shall be prohibited and restricted including differently abled people in matter of access to public services, employment or places of public. Since backward section of society usually get ignorance and social prejudices to ensure the right to equal opportunity in the matter of employment, in such way Constitution provides reservation quota in terms of appointment or post for public services that has been enshrined under Article 16 (3) and (4) of Constitution of India. In accordance with the Article of 16 of Indian Constitution, reservation has made for differently abled people in matter of equal opportunity for public employment which has been enshrined under the PWD

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<sup>112</sup> The Legal Framework for enforcement of Rights of Persons With Disabilities, THE CENTRE FOR INTERNET AND SOCIETY, <https://cis-india.org/accessibility/blog/the-legal-framework-for-enforcement-of-rights-of-persons-with-disabilities>, (June 28, 2018).”

Act. However, persons with disabilities shall be guaranteed to the right to equality based on the notion non-discrimination in order to recruitment for civil serviced as well. Apart from these articles every citizen including differently abled people in India shall be guaranteed to the right to life in accordance with the right to live with dignity has been interpreted by supreme Court, right to livelihood and right to free education for all children until the age of 14 years that has been contained under Article 21 and 21A of Constitution of India. <sup>113</sup>

In addition, Chapter IV of the constitution deals with the provisions of the Directive Principles of State Policy that aims at protection and promotion of rights to differently abled people to comply with the State of aim. Article 38 of the DPSP stipulates that inequalities should be minimizes in accordance with the direction of State Policy to ensure the right to standard living condition and to secure the access to legal justice. In particular there also the right to education, work, access to public services, public assistance in case of unemployment, sickness, old age or any other cases if necessary that has been enshrined under Article 41 of DPSP. Article 46 provides right to free and compulsory education until the age of 14 years for all children including disabilities. By emphasizing that State has also responsibility to provide special institution with special care as well as the development for economic capacities for differently abled adults including children in terms of education, employment. These all provisions have been made based on equality. By viewing this, any person can move to High Court and Supreme Court under the writ jurisdiction of Articles 226 and 32 respectively for the redress of grievances in terms of violation or denial of any rights of them. <sup>114</sup>

#### **5.4 The persons with disabilities (PWD) (equal opportunities, protection of rights and full participation) act, 1995.**

The Persons with Disabilities Act, 1995 set a landmark in the history of disability sector because there was no even a single law has recognised non-discrimination on the ground of disability until 1995.<sup>115</sup> So, it is the first law that introduced in India towards the persons with disabilities to ensure the right to equal opportunities and full

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid at 92.

<sup>115</sup> The persons with disabilities (PWD) (equal opportunities, protection of rights and full participation) act, 1995.

participation in society. The act passed in 1995 and came into force in 1996 by Indian Government due to an international pressure especially under Asia Pacific Decade of Disabled persons (1993-2002). The Act promotes several provisions relating to disability sector at various levels by elaborating duties of government authorities and other establishments or organisations to some extent. By emphasizing the rights of differently abled people, the act also provides appropriate measures, useful guidance in terms of enjoyment of all opportunities of substantial rights and facilities. It also facilitates various areas in respect of exercising the rights of them such as employment, education, health, welfare or social services.<sup>116</sup>

There some criteria need to be fulfilled by person with disabilities under the PWD Act, such as disability of person can be identified by having 40% or more disability of any of these disabilities such as Hearing Impairment, Blindness, Low vision, Leprosy cured, Mental illness, Mental retardation and Locomotor disability. It means that a person with disabilities can be defined by falling into the above categories with 40% or more disability under the PWD Act. Subsequently by recognising person with disabilities with the above criteria that led them to be entitled to all benefits of the rights and schemes which contained under the PWD Act. The act covers the all main rights for disabilities in the sphere of human life.<sup>117</sup>

In the field of education, children with disabilities have right to access to education institutions, public school, public transportation services, public employment, ramps, roads etc. and also to entitle to the process of redress in case of violation of their rights. PWD act states that right to free and compulsory education should be given to children with disabilities in accordance with the provisions of that is accessible Right of Children to Free and Compulsory Education Act, 2009, such children will be receive their education up to the age of 14. Furthermore, the act also provides obligations on this field in terms of getting formal education with vocational training facilities into a regular school. Therefore setting up of special schools for special need of children should be facilitated at local level and private sectors. However, 3% quota shall be reserved for students with disabilities in the seats of all Government backed educational institutions in accordance with the section 39 of PWD Act. Furthermore, it provides guidance, schemes for the implementation of functional, non-formal

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<sup>116</sup> Supra note at 94.

<sup>117</sup> Ibid at 96.

education. For the purposes of implementation of such education for children with disabilities, there some matters have been given by the Act. These are i) Part-time classes will conduct for special need children after such children have completed their fifth grade, ii) Special classes will provide those children within the age of 16 or above, iii) To provide non-formal education in educational institutions after orientation, iv) To provide education with the help of open schools and universities, v) Classes and discussions in school should be done by electronic media or means, vi) Every child with disabilities shall be entitled to substantial means for education such as books , equipments with free of cost. Furthermore, the act promotes teaching aid, teaching materials with sufficient manner to ensure the right to education based on the principle of equality such that every child with disabilities will receive appropriate education for their welfare with the help of appropriate teaching staff available for them. The Act facilitates various schemes and strategies pertaining to education for disabilities such that with the access of such facilities they will get scholarships and other appropriate means of materials. In addition, the parents of children with disabilities can approach to Indian courts for the redress of grievances in case of violation of their rights. <sup>118</sup>

In the field of employment, PWD act covers several provisions relating to employment of persons with disabilities. Even chapter VI of Act especially sections 32 to 40 deals the effective programme measures that help to improve the conditions of person with disabilities in respect of employment. The act requires that 3 % reservation shall be provided to all government posts for disabilities whereas people with disabilities of hearing, low vision, blindness, locomotor disabilities , cerebral palsy being reserved with 1%. For the purpose of recognising reservations for them, government is required to identify the reservation for disabilities in all public services which will be based on the suitability of each category of disability. Such identified of posts for disabilities shall be revised at interval of 3 years by the technological developments. According to article 38, there also provisions for providing reasonable accommodations and formulation of schemes to be provided by Government. The schemes are relating to training, relaxation of age limit, creation of suitable environment. In addition, government is also required to provide schemes relating to insurance for employees to secure their rights and that will make with the basis of

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<sup>118</sup> Ibid.

non-discrimination. And lastly unemployment allowance schemes are also available to those persons with disabilities who are registered under the special employment exchange but could not able find gainful employment over the 2 years. The PWD Act stipulates the provisions for right to access to public facilities, spaces that are enshrined under sections 44 to 47 of the Act. The act also includes measures to ensure the right to access for differently abled persons. By emphasizing that, every person with disabilities have right to access to all facilities that pertaining to public welfare. <sup>119</sup>

In addition PWD act addresses the provisions for grievance for redress in the case of violation of any of rights of people with disabilities. For the purpose of this issue, Chief Commissioner for Persons with Disabilities is appointed to mitigate or settle up the matters for person with disabilities. The appointment of such Commissioners is made at the Central level as well as State level under the sections of 57 and 60 of PWD Act respectively. By emphasizing that, such commissioners have several duties and power to deal with issue of persons with disabilities, such as to co-ordinate with the departments of State Government in order to deal with the programmes of benefits for disabilities, to monitor the funds of State Government, to take steps for safeguarding the facilities and rights of person with disabilities and to submit reports to the State Government in order to implementation of the act.<sup>120</sup> In addition, the rules have been enacted by Central Government and State Governments have enacted rules under the PWD Act in terms of filing complaints within the procedure before the commissioners. Furthermore, if a party is not satisfied with the judgement or said decision of the Chief Commissioner or State Government, in such way aggrieved party can approach to High Court or Supreme Court under the writ jurisdictions. <sup>121</sup>

- **Criticism of Person with Disabilities Act 1995**

Having said that the Persons with Disabilities Act (PWD) is a first law in Indian history on the area of disability that has been passed in 1995 to ensure the rights of differently abled persons in respect of equal opportunities, participation in society. It was the first significant step taken by Indian Government to protect interest of rights towards disability. Since the act deals with the mental illness with defining the

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<sup>119</sup> Ibid at 96.

<sup>120</sup> Ibid.

<sup>121</sup> [www.eyeway.org](http://www.eyeway.org).

category of disabilities, to some extent the act has some dilemma in itself. By defining disabilities with person suffering disability of 40 % or more, in such way it can be noted that the quantification of mental illness could not be measured in an appropriate way because of lacking such tool. Therefore it is difficult to understand the proportion of disability in India. Subsequently the act turns to be as injustice and discrimination instrument.<sup>122</sup>

To viewing with a new approach towards disability in India, after a long struggle the Rights of Persons with Disabilities Bill (RPWD) was passed recently by both of the houses of Rajya Sabha and Lok Sabha in 2016. In particular, lack of provisions in the existing PWD Act, 1995 and inadequate of such law that led to passed the Disability Bill, 2016. However, the PWD Act, 1995 stressed on a medical model and that became redundant and also difficult to deal with the knowledge of disability in today's modern society. The new Rights of Persons with Disabilities Bill (RPWD) replaces the existing Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995. However, this new legislation has extended the categories of disability from 7 to 21. To increasing the responsibilities of working agencies on disability has been encouraged by the new law. The new legislation brings several changes into the mainstream of society for disability. The bill states that, appropriate Government is required to promote necessary schemes and programmes in terms of protect the rights of persons with disabilities in respect of adequate standard of living.<sup>123</sup> It also provides affirmative actions for the reservation of seats in public jobs and employment. The new legislation stipulates several rights for differently abled persons based on the principle of equality within the development of economic capacities. It covers more than 100 clauses on the issue of disability. Furthermore, it introduces several new specific clauses such as gender specific clauses, violence against women clauses on the ground disability. Subsequently this legislation brings the gender basis clauses in India for the first time as being a part of disability based law. Legal capacity of especially abled person including all categories is facilitated by this new law. However, the new bill on the rights of people with disabilities highlights other important factors into the mainstream of society such as Health,

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<sup>122</sup> Prashant Srivastava, Pradeep Kumar, "Disability, Its Issues and Challenges: Psychosocial and Legal Aspects in Indian Scenario", DPJ Vol. 18 No. 1, April(2015).  
<http://medind.nic.in/daa/t15/i1/daat15i1p195.pdf>.

<sup>123</sup> THE BETTER INDIA, <https://www.thebetterindia.com/78948/why-rights-of-persons-with-disabilities-bill-worth-wait/>.



Employment with 3 to 4 % reservation for all government jobs for certain persons with disability, Education for children with disabilities, Social service and so on. It is significant to note that the Rights of Persons with Disabilities Bill (RPWD) recognised as a dynamic and evolving concept.<sup>124</sup>

### **5.5 The Mental Health Act, 1987**

Since a person with mental disabilities is considered to be one of the disabilities in the frame of disability sector, such that the Mental Health Act in India provides several rights to all mentally ill person including disabilities. However, the term 'Mental ill' is defined as a most drastic impairment that led to a normal human being becomes disabled in terms of doing activities differently from normal person. By regard to that they need treatment with care and support from their family or society. But it can be seen that in today's world they often treated with ill or thrown out of their houses. In this manner, the mental health Act defines mental ill as a person suffering mental disorder who needs treatment. The act covers all categories of persons who suffering mental ill. For the treatment of mentally ill person, the act has provided all facilities to improvement of their conditions. Adequate number of psychiatric hospitals, nursing homes has been provided by the Government with trained doctors for concerned people. The treatment of them shall not be subjected to any kind of cruelty, torture. Without the consent of those people, they shall not be used for the purposes of research and any kind of experiment. The act encourages various area relating to mentally ill persons such as their property, cost for treatment etc. Such person shall be also entitled to legal practitioner in respect of proceedings under the act.<sup>125</sup>

In India, the issue of mental health has utmost importance pertaining to the framework of different laws. Subsequently the rights of mentally disabled person shall be protected by vast legal framework in India. In such manner, Constitution of India guarantees several fundamental rights and freedoms to all mentally challenged people. Right to health, Right against discrimination are provided to all mentally ill persons that seem to be disabled in that manner.<sup>126</sup>

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<sup>124</sup> Ibid at 102.

<sup>125</sup> <http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india>, (June 21, 2018).

<sup>126</sup> Ibid at 104.

## **5.6 The Rehabilitation Council of India Act, 1992**

The Rehabilitation Council of India Act lays provisions relating to training of good professionals in respect of rehabilitation. It regulates the personnel of rehabilitation with proper training given to them. So that good quality of services comes out from such personnel in rehabilitation. The Act requires to minimum standard of qualification for the purpose of rehabilitation rendered by professionals in rehabilitation. The names of personnel are maintained by the Council. Professionals shall be maintained their standards of profession and conduct without entailing any penalty action or engaging any act that may lead to removal of their profession from the Register of Council. In particular, Central Government of India controls the regulation of the profession of rehabilitation personnel. By emphasizing that, a bunch of good trained professionals of rehabilitation can protect the rights of persons with disabilities in rehabilitation in India. <sup>127</sup>

## **5.7 The national trust for welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities act, 1999**

The Central Government has instituted the national trust in Delhi at accordance with the obligation of Government to secure the rights to adequate standard of living for the benefits of differently abled people with autism, cerebral palsy, mental retardation and multiple disabilities. Section 10 of the Act fulfilled the objects of build-up of National Trust. It provides appropriate programmes for the benefits of differently abled people. Under this act, guardianship shall be entitled to differently abled people.<sup>128</sup> Such guardianship will be appointed by the 'Local Level Committees' in accordance with the provisions of the Act. Subsequently, property of such disabled person goes under the care of their appointed guardians. Due to negligence or abuse towards disabled people by their guardian led them to be removed from their guardianship by disabled person. Under the act, disabled person has right to complain to the central Government for reconstituted of Board of trustees in the event of default has been

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<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

made by the Board of Trustees. The provisions of this Act obliges to National Trust in respect of monitoring, accountability, audit, finance and accounts. <sup>129</sup>

### **5.8 National Policy for Persons with Disabilities Act 2005:**

In response to the rights of differently abled persons, the National Policy for Persons with Disabilities Act was liberated in February 2006 to promote the rights of equal participation in society, equal opportunities in employment that too in a suitable and sound environment from every aspect of welfare of life. Since disability as a human rights concern and person with disabilities is an important section for the country, the act promotes accessibility to programmes for the development of infrastructure of physical environment. The Act requires to state to take effective steps for rehabilitation measures, physical rehabilitation strategies to ensure the rights of disabled people in India. However, it emphatically focuses on to consolidation of various platforms of the State and Central Governments. In particular, there are certain programmes have been followed by the policy, these are early detention, counselling, intervention, rehabilitation measures, prevention of disabilities, medical as well as physical rehabilitation strategies. The act also stress on to the establishment of extensive infrastructures for the welfare of disabled people under the purview of legal framework for India. The establishment of such institutions are National Institute for Mentally Handicapped, National Institute of Visually Handicapped, Dehradun, and Institute for the Physically Handicapped, New Delhi, “National Institute for Orthopedically Handicapped, Kolkata, National Institute of Rehabilitation Training & Research, Cuttack, National Institute for Hearing Handicapped, Mumbai, National Institute for Empowerment of Persons with Multiple Disabilities, Chennai.”<sup>130</sup> These are all above institutions are formed under the provisions of the Act for the welfare of disabled people.<sup>131</sup> It is important to point out that by analysing the survey of 2004 in India that whatever facilities has been provided to disabled people are sufficient for instance, lack of standardized sign language, lacking of information of education to disabled people, definition of disability does not directly mentioned under the Constitution of India as well as less information on the definition of disability has

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<sup>129</sup> <http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india> .

<sup>130</sup> <http://medind.nic.in/daa/t15/i1/daat15i1p195.pdf>.

<sup>131</sup> Ibid.

been found in the legal context of India. However, the main aim of this act is to make better coordination between the Central Govt. and the various fields of States.

### **5.9 The Disability and Rehabilitation WHO Action Plan 2006-2011**

The main aim of this document is to overview the future activities of WHO by providing job opportunities to differently abled people under public sectors, autonomous bodies including universities in accordance with expert committees and sub-committees of PWD Act, 1955. In particular, team of the department of Injuries and Violence Prevention on disability and rehabilitation and department of Mental Health together coordinated the document in pursuance of future plan for WHO's activities. In regard to this plan, the sub-committees of PWD Act had reviewed the suitable jobs and prepared the list of posts for differently abled persons in 2007. By submission of report through expert committee, in 2013 the Central Government approved such report by identification of posts for persons with disabilities.<sup>132</sup>

In addition to the various legislations on ground of disability, the Constitution of India deals with the protection and promotion of rights for person with disabilities in every sphere of legal framework. India has a vast legal outlook towards disability which protect the interest of physically and mentally challenged persons. In particular, the Constitution of India guarantees several rights and fundamental freedoms to differently abled people in respect of Education Laws, Health Laws, Family Laws, Labour Laws, Succession Laws, Income tax Laws and Judicial Procedures. In such manner, every citizen including disabilities has right to free and compulsory education until they attain the age of 14 years, children cannot be refused to get education in educational institutions irrespective of race, caste, religion that enshrined under articles of 29 (2), 45 of the Indian Constitution. In the field of health, article 47 of the Constitution requires to Government to provide an adequate standard of living condition and level of nutrition to all including disabilities. There are several laws pertaining to marriage which shall be equally applicable to disabled persons, such as Hindu Marriage Act, 1955, Divorce Act, 1935, Special Marriage Act, Christian Marriage Act, Child Marriage Restraint Act etc. enacted by the Government of India. The Ward Act, 1890 states that the category of person with

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<sup>132</sup> Ibid at 108.

disability cannot be a guardian of minor. These above mentioned marriage acts, ward act fall under the legal framework of family laws. In regard to the property laws, the Hindu Succession Act, 1956, similarly in the Indian succession Act, 1925 stress that physically challenged people should not be deprived from inheriting their ancestral property as there is no such provision for disabled people under these Acts. Even though the rights of disabled people have not been contained under the labour legislations of India, but there some provisions deal with the relationship between disabled person and employer in pursuance of rules, regulations of labour legislations. To viewing the property rights of disabled persons, the Design Act, 1911 provides the protection of designs for property of person with disabilities.

### **5.10 Schemes, Programmes and concessions for the disabled person**

Apart from the statutes and provisions of Indian Constitution relating to the rights of differently abled people, Government of India has introduced several schemes, programmes, facilities and concessions for the welfare of disabled person. The programmes, schemes and concessions are given below:

- **Education: Children's educational allowance**

The Central Government of India has enhanced the reimbursement of tuition fees form Rs.50/- to Rs.100/- per month for physically challenged and mentally retarded children.

- **Financial assistance to persons with disabilities**

In order to the welfare of person with disabilities in respect of their financial condition, the National Handicapped Finance and Development Corporation (NHFDC) owned by the Ministry of Social Justice and Empowerment, Government of India encourages schemes for the development of infrastructures that directly lead to income by providing self-job opportunities with loan at low interest of rates.

- **Scheme of integrated education for the disabled children**

Government of India has provided scheme of integrated education in normal school by providing 100% assistance to states of schools for those children who are suffering

from handicap or physically challenged. The scheme promotes an adequate number of specially trained teachers with necessary for the welfare of special needs children in respect of their education.

- **Employment of handicapped**

For the purpose of gainful employment, assistance shall be given by Government to physically challenged persons either through special employment exchanges or special cells in national employment exchanged for physically challenged. In particular, the case of special cells and the case of special employment to state government or union territory administration shall have been provided with 100% and 80% respectively in terms of financial assistance.

- **Travel concession: By rail and air**

A person who are suffering from mental retard or orthopedically handicapped shall be entitled to 75% concession by the showing the medical certificate to concerned authorities in rail service. Similarly, Indian Airlines provide 50% concession to person with 80% locomotor disability.

- **Conveyance allowance**

Transportation allowance shall provide at lower rates than normal to those persons who are suffering from orthopedically handicapped disability. In particular, Government promotes accommodations to those physically challenged government employees with handicapped who are residing far from their work place. They shall be entitled with government accommodations within the campus of their work place or a distance of 1 kilometre from their work place

- **Family pension to disabled children**

Government provides also family pension to special abled children. In particular, after the retirement of parent of such children from government servant, in this manner

physically challenged children will get the benefits of family pension. They even entitled to such pension if they have been born after the retirement of parents.<sup>133</sup>

- **Ad-hoc allotment of central pool residential accommodation to the physically handicapped employees**

Government of India encourages ad-hoc allotment of poor residential accommodation to those government employees who are suffering from cancer, physically handicapped. They may entitle such government accommodation by approval of the ministry of urban development

- **Deen Dayal Disabled Rehabilitation Scheme (DDRS)**

The main purpose of this scheme is to create barrier free environment, such that people with disabilities can access to their substantial facilities such as right to equality in terms of employment, education, right to access all public facilities, social justice. Voluntary action can also be taken for the implementation of PWD Act under the scheme.<sup>134</sup>

- **Assistance to Disabled Persons for Purchase / Fitting of Aids / Appliances (ADIP)**

This scheme is designed especially for needy persons in terms of assisting to purchase sophisticated appliances. It provides scientifically manufactured products, standard quality of aids, appliances for differently abled people. By this modern and standard of appliances promote physical, psychological, social rehabilitation of special needy persons. For the purpose of the scheme, it may keep those needy persons far away from defects of disabilities and at same time it also enhances their economic capacities.<sup>135</sup>

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<sup>133</sup> Supra note 101.

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[http://googleweblight.com/i?u=http://welfareofdisabled.kar.nic.in/schemes\\_central.asp&hl=en-IN](http://googleweblight.com/i?u=http://welfareofdisabled.kar.nic.in/schemes_central.asp&hl=en-IN).

<sup>135</sup> Ibid.

- **Scheme for Implementation of Persons with Disability Act, 1995 (SIPDA)**

The scheme promotes financial assistance for the activities which has been contained under PWD Act. Under this scheme, it required to state government and central or state aided organisations for the implementation of various activities of PWD Act. However, financial assistance is being given for the constituting of District Disability Rehabilitation Centre (DDRC) and Composite Rehabilitation Centres (CRC) under this scheme. <sup>136</sup>

- **District Disability Rehabilitation Centres (DDRCs)**

DDRC has been created under the scheme for Implementation of Persons with Disability Act in order to encouraging the building of infrastructure and development of capacity at district level. The scheme covers training, guidance of rehabilitation, awareness generation, and professions for rehabilitation service. The scheme promotes comprehensive services to persons with disabilities who are living in unserved districts of India. <sup>137</sup>

- **Incentives taken for private sector employees in respect of employment towards differently abled persons**

The employees with disabilities who are in private sector, they will be entitled to insurance, provident fund and monthly emoluments upto Rs. 25,000/- under the scheme made by the Government of India. The scheme was launched in the year 2008 to 2009 in respect of private sector. <sup>138</sup>

### **5.11 Judicial Approach towards Disability Rights**

In India, the Supreme Court and High Courts play a significant role in order give decisions or judgement on the issue of disability rights. There are some of judgements delivered by Supreme Court and High Courts given below:

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[http://googleweblight.com/i?u=http://welfareofdisabled.kar.nic.in/schemes\\_central.asp&hl=en-IN](http://googleweblight.com/i?u=http://welfareofdisabled.kar.nic.in/schemes_central.asp&hl=en-IN).

<sup>137</sup> Ibid at 111.

<sup>138</sup> Ibid.



### 5.11.1 Supreme Court Decisions

- **“Deaf Employees Welfare Association v. Union of India**

This petition was registered based on a Writ Mandamus that tends to direct the Central and State Government to ensure the right to allowance in respect of transportation service on equal basis to physically challenged government employees who are suffering from hearing impairment and also person on par with blindness and other government employees with disabilities. Under the case employees with hearing impairment received allowance in respect of transport which was comparatively less than the allowance usually given to other employees with disabilities .

Under this case, the respondents was directed by the petition that was allowed by Supreme Court to grant transport allowance to those employees who are suffering from hearing and speech impairment and also persons with blind and orthopedically challenged. However, the discrimination between a person with disability of ‘hearing impairment’ and a person with disability of ‘blindness’ is mere held by the court but such discrimination has not been mentioned under the provisions of the Disabilities Act. It emphasises that a person with disabilities are to be protected by law based on the principle of equality. Subsequently these two above laws will be followed while participating in government functions. In particular, the State is required to protect the rights with human dignity of persons with hearing impairment. Even though the assumption highlighted that the severity of person with impairment of hearing or speech is inferior compared to the severity of a blind person, but benefits must be awarded to them equally in a same manner as like blind person. Furthermore the State made mode on this objective in accordance with the principles that enshrined in Articles 14 of PWD Act.<sup>139</sup> By emphasizing that, mute and deaf people should be entitled with allowance for government transportation on par with blind and handicapped employees orthopedically of government in an equal manner that held by the Supreme Court in the case.

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<sup>139</sup> Deaf Employees Welfare Association v. Union of India, Civil Petition 107 of 2011, decided on December 12, 2013 , [https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights,\(July 2,2018\).](https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights,(July 2,2018).)

- **Union of India v. National Federation of the Blind**

This appeal moved from the decision of the High Court of Delhi. The petition was filed favored on public interest in the High Court of Delhi for the implementation of Section 33 of the PWD Act, but herein the appellant had unsuccessful to ensure the right to reservation to persons with blind and low vision disabilities. Subsequently they had been virtually excluded by entitlement of Government jobs that are contained under the provisions of PWD Act.

By emphasizing the section of 33 of PWD act, the court observed with the reservation of minimum 3% for all government public sectors and 5% reservation on the ground of disability for all workplace both public as well as private sector in respect of employment under the legal framework of India. In regard to this case, the court also investigated the calculation of 3% reservation in accordance with cadre strength or number of vacancies. However, there 3% reservation makes reference to the total vacancies of posts in cadre strength as held by the court.<sup>140</sup>

- **Government of India v Ravi Prakash Gupta**

In this case, the respondent got refusal to get appointment in a civil service whereas he was secured 5<sup>th</sup> position in the merit list of impaired candidates visually in the examination of civil service conducted by the Union Public Service Commission. In this manner, respondent approached to the Central Administrative Tribunal to secure for the job. But the tribunal rejected his application after that he moved to the high court. In such way, the high court had given direction the government to reconcile with the respondent in the merit list. However, an appeal had filed to the Supreme Court by the state. However, the state highlighted with that since the respondent applied for the post which was not identified for persons with disabilities, subsequently that post was not for persons with disabilities, so that Government could not appoint such person for this applied post and at the same time Government could not make reservation for him. But the Supreme Court was opposed with the statement of state government, because as per the section 33 of the PWD Act, state government has a duty to appoint in every establishment with 3% reservation

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<sup>140</sup> Union of India v. National Federation of the Blind,(2013) 2 SCC 772, <https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights>.

for disabled people, so state government has responsibility for the purpose of identification of job in respect to the appointment and reservation for persons with disabilities.

The court held, it is only logical that as provided under section 32 of PWD act for the identification of job or post in terms of reservation for the purposes of section 33 of PWD act, but simultaneously such identification comes under the process of Act that entails for the provisions of Section 33. However, the legislature never intended to take the provisions of section 32 for the implement in terms of employment and subsequently it failed to entertain the benefits of section 33 for the category of persons with disabilities. It was noted that such submission would strike the establishment of the provisions in regard to the responsibility of appropriate government to ensure the reservation for differently abled persons in respect of employment.<sup>141</sup>

- **Syed Bashir-ud-Din Qadri v. Nazir Ahmed Shah**

In this case, the appellant was a B.Sc graduate who suffering from the disability of cerebral palsy. He had applied for a job in the State Jammu & Kashmir as a teaching guide. However, his appointment for the job as a teaching guide was objected by the state government on the ground of disability. Thereafter by the direction of high court, he was appointed under the purview of Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998.<sup>142</sup>

After that the respondent filed a petition subjected to the challenging of order for his appointment. In such way the head of the Department of Neurology had gone through with the health condition of appellant with disability. With the report of neurology found that he had significant problem in terms of writing and speech due to cerebral palsy such that he would face difficulties to carry his job with responsibilities. Since the appellant was not fit for his post as a teacher, the high court revoked his appointment and ordered that alternative employment should be given to him.

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<sup>141</sup>Government of India v Ravi Prakash Gupta, (2010) 7 SCC 626, <https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights>.

<sup>142</sup>Syed Bashir-ud-Din Qadri v. Nazir Ahmed Shah, SLP(C) Nos. 10669-70 of 2008 decided on 10 March 2010, <https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights>.

However, division of the bench of the high court reversed his appeal. After that he moved to the Supreme Court .

The Supreme Court observed that, this case subjected to live life with human dignity that would make possible by a beneficial piece of social legislation. Since it is a sensitive case for the concerned appellant who is suffering cerebral palsy so it has to be handled with sensitivity rather than bureaucratic apathy . In this manner legislation must be given 1 % reservation to such persons in respect of employment because such persons who are suffering from cerebral palsy would uncontrollable on the version of locomotor disability . Subsequently their speech would become impaired somehow such that they should be treated with appropriate measures. With this view, the appellant had not been discharged from his duties without stumbling made in the study of children. In particular, there could not be reason to constrain him to continue his job as a teacher as long as his students themselves stated that they did not find any difficulties to understand his being taught by him as they got used to his talking manner. However it was also noted that by the committees of the school that his appearance and demeanour made himself to be achieved highly appreciation in school.

In addition, the court directed the state to provide help with electronic means to the appellant rather of using black board for writing that could also be eliminate to draw diagrams for studies whereas same thing could be done by visualizing picture on a screen. By providing reasonable accommodation to appellant, the Supreme Court sets aside the order of such high court.

### **5.11.2 High Court Decisions**

- **The National Association for the Deaf v. Union of India**

The public interest petition was filed by the National Association for the Deaf before the High Court against the Union of India on the ground of non-availability of sign language interpreters in public services.”<sup>143</sup> Adequate numbers of sign language interpreters were not available in various public places and that had been the reason to file the complaint before the High Court. In particular, the petition solicited directions from High Court to ensure the right to access to better training of sign language

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<sup>143</sup> <https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights>.

interpreters “against the Ministry of Social Justice and Empowerment and other authorities.”<sup>144</sup>

The court noted that due to lack of availability of sign language interpreters, persons suffering from hearing impairment were facing difficulties to avail their facilities such as medical, banking, transportation facilities. Even they also unable to seek police help that had been agreed with the Petitioner Association on the ground of non-availability of interpreters. In this manner, court relied on the UN Convention on the Rights of persons with disabilities to ensure the availability of support in the form of interpreters and” the court held that.

The Government of India has ratified the United Nations Convention on the Rights of persons with disabilities on 1<sup>st</sup> October, 2007 which was adopted by the General Assembly. The Convention encourages taking appropriate measures in terms of providing assistance and intermediaries including readers, guides, professional sign language interpreters in respect of ensuring the right to accessibility to buildings and other public facilities. However, all the said rights which contained under UNCRPD to form a composite part of life that enshrined under Article 21 of the Constitution of India.<sup>145</sup>

By emphasizing the above grounds respondent authorities received specific directions from the court that issued. Such directions included to undertake a survey in terms of evaluating the availability as well as requirements for sign language interpreters. Such that appointment of nodal officers to investigate the information from the concerned authorities and after that to prepare a report on the basis of information that can be used for creation of new courses, curricula, new posts for training of interpreters.

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<sup>144</sup> The National Association for the Deaf v. Union of India ,W.P.(C) No.6250/2010, Judgment dated 24.11.2011 (Delhi High Court ).

<sup>145</sup><https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights>.

- **U.P. Vishesh Shikshak Association v. State of U.P.**

In this case, a “public interest petition was filed by the petitioner association before the Allahabad High Court. The petition was filed to deal with the ratio of pupil-teacher so far as specialised teachers for concerned children with disabilities which was not adequate in manner and claimed that on the basis of government aided Integrated Education for Disabled Children Scheme”<sup>146</sup> that authorised the ratio of pupil teacher is 8:1. In addition, the Rehabilitation Council of India Act, 1992 is required to State to make arrangements for at least sufficient number of teachers for persons with disabilities had been claimed by the case.<sup>147</sup>

The statutory duty of the State to provide all necessary facilities to students with disabilities in respect of proper assistance and help had been recognised by the court. Since right to education and right to livelihood are fundamental rights that enshrined under articles 21 and 21-A of Indian Constitution, however in response to the argument of handicapped children did not require specialised teachers, it held with the view of articles 21 and 21-A of Indian Constitution, state government requires to make all possible efforts to ensure the right to education and livelihood by providing necessary assistance to all children with disabilities.”<sup>148</sup>

- **Manjunatha v. Government of Karnataka and Ors**

In this case, the petitioner was suffering from blind who desired to apply under the government quota for the seat in the course for B. Ed in Karnataka. But he was refused to get admission due to the condition of disability having more than 75 per cent would not be eligible for admission. However, the respondent permitted applications for the purpose of admission from persons with disability but there is limitation of such applicant that disability would not have been exceeding 40 per cent but below 75 per cent which had been announced by respondent in this case.

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<sup>146</sup> <https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights>.

<sup>147</sup> U. P. Vishesh Shikshak Association v. State of U.P.,

Misc Bench No. 5622010 ( Allahabad High Court ). / 2010, order dated 17 June 2.

<sup>148</sup> <https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights>.

In such manner, with holding such provision made in such announcement ran counter the “PWD act as allowed petition by the Karnataka High Court. The upper limit had made in the announcement on the basis of making similar provision in case of Selection of Candidates for Admission to Teachers Certificate Higher Course in Karnataka and Bachelor of Education Course Rules 1999 had been argued by respondent government. Therefore, challenged could not be made for such notification.”<sup>149</sup> However, the bench rejected the contention of such government authorities and held that state government could not be relied upon the rules to refuse to get admission in college who having more than 75 disability even such rules contrary to PWD act. It was significant to note with the decision of high court that such petitioner was entitled to get admission through CET in the course of B.Ed. such that he shall not be restricted to get the admission on the ground of disability exceeding 75 percent. In regard to this matter, the court strengthened the provisions for the protection of rights towards persons with disabilities by the observation made under the case.<sup>150</sup>

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<sup>149</sup> <https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights>.

<sup>150</sup> Manjunatha v. Government of Karnataka and Ors ,  
W.P. 35969/2010, judgment dated 29-09-2011 (Karnataka High Court) .

## CHAPTER VI

### CONCLUSION AND SUGGESTIONS

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#### 6.1 Conclusion

Disabling population in India is large as they virtually face discrimination in all aspects of life. Social stigma and attitudinal barriers toward person with disabilities led them to be isolation from the mainstream of society. As they treated as second class citizens in society, they have to confront barriers each and every steps whether it is relating to daily course of their life or in public work place. The fact is that person with disabilities historically restricted to access the barrier free rights in India. It can be changed by dismantling such barriers that hinders differently abled person to enjoy their full participation in society. In such manner, Government of India is persistently providing several legislations, schemes, programmes, facilities, concessions at various areas, opportunities relating to disabilities that enable them to claim their rights adequately. However, it is important to note that even though India has a long list of statutes pertaining to disabilities, it can be understood with that some lacunae are still exist between the statutes of disability and right based approach towards differently abled person from the human rights perspective. In response to the condition of rights for differently abled person, social stigma and prejudice for them must be changed by encouraging adequate number of education programme for both teachers and general populace. In particular, national and state must be cooperated to promote such programmes with the help of support through financially. However, the state education stakeholders in partnership with universities also must be input their contribution to facilitate the research-based initiatives in respect of creating awareness among the people in today's modern society on the matter of disability. Since public attitude is a main significant reason to treat them as a least served section in terms of socially, economically, educationally, such that to overcome the barriers of disabled section it is necessary to change the public attitude towards person with disabilities by ensuring the right to barrier free environment so that differently abled people themselves can able to build up their own identity with dignity. However, political considerations can also deal with the interest of rights for differently abled people by strengthening and enforcing the existing laws in countries. In developing countries like India where population of disabled is struggling for their rights in every aspects of



life, such that Government of India should be more vigilant on this issue in respect of taking welfare measures by way of affirmative action.

## 6.2 Suggestions

- Government of India should be provided home-based income programmes for differently abled person including women.
- Special education should be available to all special needy children in every school of India.
- Suitable technology must be available in every public places for person with disabilities to close the gap between advancement of technology and knowledge of information for providing facilities in order to adjustment with today's world for the welfare of life.
- Efforts must be given to the modification of designs pertaining to machines, facilities under the work place, work environment should be facilitated by the Government for differently abled people so that can easily operate such facilities without any barriers.
- Gender discrimination should be curbed in respect of employment opportunity by inculcating belief in them to meet their confidence on the basis of equal.
- Private sector organisations must be provided job opportunity to differently abled person.
- Although Government provides enormous attempts to minimise the problem of disability, they also should be treated with love and affection by public.
- To promote more awareness programme on the issue of disability among public and inculcate
- Poverty alleviation programmes must cover women with disabilities and treat them with honour and dignity
- Government of India should be more vigilant for the implementation of provisions of disability legislations.

## BIBLIOGRAPHY

### *Journals:*

- i) Prashant Srivastava and Pradeep Kumar, Disability, Its Issues and Challenges: Psychosocial and Legal Aspects in Indian Scenario, *DELHI PSYCHIATRY JOURNAL* Vol. 18 No. 1, Apr. 2015.
- ii) Nishu Khanna, "Rights of Disabled Persons in India", Oct. 19, 2016.
- iii) H. Chandrashekar, C. Naveen Kumar, N. R. Prashanth, and P. Kasthuri, "Disabilities Research in India", *Indian J Psychiatry*, 52(Suppl1), Jan (2010).
- iv) Martand Jha, "The History of India's Disability Rights Movement", *THE DIPLOMAT*, Dec 21(2006).
- v) Lalithkumar Gujarati, "Disability definition: The Indian disabled definition", Nov.1 (2014).
- vi) Prashant Srivastava, Pradeep Kumar, "Disability, Its Issues and Challenges: Psychosocial and Legal Aspects in Indian Scenario", *DPJ Vol. 18 No. 1, April(2015)*.
- vii) Amit Anand Chaudhury, *TNN*, Dec 15(2017).
- viii) Amritpal Kaur, Differently abled Persons and Human Rights: Issues and Responses, *International Journal of Law and Legal Jurisprudence Studies*.
- ix) Hasanuzzaman M, Khan S. "Disability and access to higher education in India."
- x) Mohit A, Pillai M, Rungta P. "Rights of the Disabled, 2006". *National human right commission*.
- xi) Committee on Economic, Social and Cultural Rights. (1994, December 9). General Comment 5: Persons with Disabilities, E/1995/22.
- xii) Despouy, L. (1992). "Human rights and disabled persons. Geneva", *Centre for Human Rights*. Retrieved August 2003
- xiii) Disabled People's International. (2002, October). *Sapporo Declaration*. Retrieved August 7, 2003.
- xiv) Economic and Social Commission for Asia and the Pacific. (1992a, December). *Agenda for Action for the Asian and Pacific Decade of Disabled Persons, E/ESCAP/902, annex II*. Retrieved August 7, 2003.
- xv) Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities. AG/RES. 1608, 7. Retrieved June 1999, from <http://www.oas.org/juridico/english/treaties/a-65.htm>.

- xvi) United Nations Commission on Human Rights. (1990, September 2). *Convention on the Rights of the Child. General Assembly Resolution 44/25, annex.*
- xvii) Quinn, G., & Degener, T. (2002). Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability. *Geneva, Office of the High Commission for Human Rights.*
- xviii) Report of the United Nations Consultative Expert Group Meeting on International Norms and Standards Relating to Disability. (n.d.). *Retrieved August 7, 2003, from <http://www.un.org/esa/socdev/enable/disberk0.htm>*
- xix) Rioux, M. (Ed.). (2001). "Let the world know: Report of a seminar on human rights and disability". *Geneva, United Nations Special Rapporteur on Disability.*

***Internet Sources:***

- i) [http://web.worldbank.org/archive/website01291/WEB/0\\_\\_CO-43.HTM](http://web.worldbank.org/archive/website01291/WEB/0__CO-43.HTM).
- ii) <http://enabled.in/wp/disabled-population-in-india-as-per-census-2011-2016-updated/>.
- iii) <https://www.lawfarm.in/blogs/rights-of-disabled-persons-in-india>.
- iv) [http://www.indianrail.gov.in/conc\\_Rules.html](http://www.indianrail.gov.in/conc_Rules.html).
- v) <http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india>.
- vi) <https://www.lawfarm.in/blogs/rights-of-disabled-persons-in-india>.
- vii) <http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india>.
- viii) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3146229/>.
- ix) [http://shodhganga.inflibnet.ac.in/bitstream/10603/86218/11/11.chapter\\_2.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/86218/11/11.chapter_2.pdf).
- x) <http://www.prepze.com/major-challenges-faced-disabled-population-india/>.
- xi) <https://www.ohchr.org/EN/Issues/Disability/Pages/Instruments.aspx>.
- xii) [https://en.wikipedia.org/wiki/Committee\\_on\\_the\\_Rights\\_of\\_Persons\\_with\\_Disabilities](https://en.wikipedia.org/wiki/Committee_on_the_Rights_of_Persons_with_Disabilities).
- xiii) <https://cis-india.org/accessibility/blog/summary-of-judgments-on-disability-rights>.
- xiv) <https://www.thebetterindia.com/78948/why-rights-of-persons-with-disabilities-bill-worth-wait/>.
- xv) <http://lawmin.nic.in/coi/coiason29july08.pdf>.

- xvi) <http://www.internationaldisabilityalliance.org/Special-Rapporteur>
- xvii) <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>
- xviii) <https://www.lexology.com/library/detail.aspx?g=c606f652-6bf9-42d7-ab1d-a764c3215e0e>
- xix) <http://hrlibrary.umn.edu/svaw/law/un/unenforce.htm>
- xx) <http://www.eyeway.org/?q=international-legal-framework-disability>
- xxi) <http://www.eyeway.org/?q=international-legal-framework-disability>
- xxii) <http://www.prepze.com/major-challenges-faced-disabled-population-india/>
- xxiii) [http://web.worldbank.org/archive/website01291/WEB/0\\_\\_CO-43.HTM](http://web.worldbank.org/archive/website01291/WEB/0__CO-43.HTM)
- xxiv) [https://www.researchgate.net/publication/225273980\\_Disability\\_Rights\\_Movements\\_in\\_India\\_Politics\\_and\\_Practice](https://www.researchgate.net/publication/225273980_Disability_Rights_Movements_in_India_Politics_and_Practice)
- xxv) <http://www.hrln.org/hrln/disability-rights.html>
- xxvi) <https://www.epw.in/journal/2011/06/special-articles/disability-rights-movements-india-politics-and-practice>
- xxvii) <https://www.livemint.com/Specials/mChxRgIXLY9i6GSYcaeddJ/Voice-of-Indias-disability-rights-movement>
- xxviii) <http://www.un.org/esa/socdev/enable/stockholmnov2000.htm>