CHAPTER III
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CONCEPT AND NATURE OF DISABILITY

1.0 DISABILITY: DEFINITIONAL DIFFERENCES

Disability, a reckonable word that assumes different meanings under different definitions - Etymological differences could be traced from the usage of the word ‘disability’ in hard and soft laws of International Instruments concerning to human rights of disabled. Municipal laws as are framed to suit socio, economic and political conditions that dictated such legal formulations concerning disability.

The persons with disability are in all parts of the world and in every society. The number is large and is growing day by day. In order to address the serious concerns of Persons With Disability (PWD) particularly concerning to their human rights.

The Americans With Disability Act (ADA) 1990’s definition means with respect to individuals – (a) A physical or mental that substantially limit or more of the major life activities of such individual, (b) a record of such an impairment or (c) being regarded as having such an impairment. This definition is adopted in US where Anti Discrimination Law exists.\(^1\)

In UK the Disability Discrimination Act 1995 says, for the purpose of the Act a person has a disability, if he has a physical or mental impairment which has a substantial and long term a diverse effect on his ability to carry a substantial and long term adverse effect on his ability to carry out normal day to day activities.

The UNs Standard Rules for Equalization of Opportunity for Persons With Disability\(^2\) acknowledge that towards the end of 1960s organization of


\(^2\) The UNs Standard Rules on the Equalization of Opportunities for PWDs was adopted by the General Assembly wide Resolution A/RES/48 1685 on Dec.20, 1993.
persons with disabilities some countries started to formulate a new concept of disability and definition of disability defined in tune with the changing concept of disability. The new concept indicated close connection between the limitation experienced by individuals with disabilities, the design and structure of their environments and the attitude of the general population. The etymological differences were obviously noticeable looked at from the point of view of the varying definitions in municipal laws as also international soft and hard laws besides the definition of disability adopted by UN and its specialized agencies.

The etymological definition of disabled worker who counts towards the quota for employment can be broad or narrow usually all employers subject to the law, works towards a national target set. In the western world the concept of an employment quota of disabled worker has a long history. Generally there are higher rates of unemployment amongst Persons With Disabilities, than amongst those without. Additionally persons amongst disabilities are non-visible and non-traumatic seem to have unique, compounded difficulties gaining credibility in the work place.

In Canada, review of workers compensation acts as automobile policy, extended benefits, policies and social assistance policies reveals the continuous nature of defining compensable disability. The benefits are restricting benefits for all those whose injuries are not “catastrophic” which is further narrowly defined to mean nearly total incapacitation. And under incoming work place safety and Insurance Act, 1996, limitations have been put in place on claims for mental stress or chronic pain.³

Unmindful of etymological differences of definition of disability ILO’s Convention No.159 provides the policy frame work for the Disability Strategy. This Convention views disability as a condition of occupational disadvantage which can, and should be over come through a variety of policy measures, regulations, programmes and services. It calls up on countries to base their

national policies on principles of equality of opportunity; equality of treatment; mainstreaming of both training and employment opportunities.\(^4\)

Since economic reforms that began in Central and Eastern Europe in 1989 people with disabilities have faced enormous difficulties accessing training and decent work. Previous means of providing financial security and protection under former systems have completely disappeared, while new strategies have yet to be fully and effectively implemented. Given continued high unemployment throughout Central and Eastern Europe much more needs to be done to ensure that people with disabilities are no longer marginalized from the work place.

In 1995 the ILO's Central and Eastern Europe multi disciplinary team in Budapest completed a study of disabled workers and the labor market for disabled people in selected countries throughout the region. This led to the publication of “Guide lines on Active Training and Employment Policies” for disabled in Central and Eastern Europe. Basing on the economic, social, political, legal and cultural backgrounds that exists, the definition of disability has been variedly drafted by the document in order to suit the needs of each country\(^5\) of the region.

The varying definitions of disability in the legislations / constitutions in the countries need to be considered.

The Republic of Bulgaria’s\(^6\) Act on Protection, Rehabilitation and Social Integration defines a person with disability, as “every person, not-withstanding her/his age, with physical, sensory or mental injury, which makes difficult his/her social integration, participation in public life, possibilities for communication and training or professional realization”.


In Cyprus’s\textsuperscript{7} new law providing for Persons with Disabilities (2000) defines disability as “Disability means, with respect to a person any type of limitation or handicap which causes permanent or, of indefinite duration physical, mental or psychological impairment, which, taking into account the medical history and other personal characteristics of that person, reduces essentially or makes impossible, the performance of one or more activities or functions considered normal and essential for the quality of life of any person of the same age not suffering from such limitations or handicap”.

In Estonia, disability is defined as “a loss of or an abnormality in an anatomical, physiological or mental structure or function of a person of disability.”\textsuperscript{8}

In Hungary the definitions of disability promulgated by the Act on equal opportunities for all, a disabled person has “insignificant or no organoleptic abilities – especially seeing, hearing, locomotor and mental abilities or, is substantially limited in his/her communications, thereby representing a prolonged disadvantage in actively contributing to society”.\textsuperscript{9}

In Latvia, Medical and Social Protection of Disabled Persons Act 1992 defines both the rights and obligations of the State when it comes to disabled persons.\textsuperscript{10}

In Lithuania, the definition of a person with disability is some one who can not “in whole or part, control his or her own personal and social life, or fulfill his or her rights and responsibilities due to physical or mental disability either congenital or acquired”.\textsuperscript{11}

In Malta a disabled person is defined as “a person, being over compulsory school age, who by reason of injury, disease, congenital deformity or other physical or mental incapacity, is substantially handicapped

\textsuperscript{7} Ibid, p.20.
\textsuperscript{8} Ibid, p.24.
\textsuperscript{9} Ibid, p.27.
\textsuperscript{10} Ibid, p.29.
\textsuperscript{11} Ibid, p.31.
in obtaining or keeping employment or in undertaking work on his own account, of a kind which a part from that injury, deformity or incapacity would be suited to his age, experience and qualifications. In Poland, a disabled person is defined as a person “whose physical, mental or intellectual condition permanently or temporarily impedes, restricts, or makes impossible the fulfillment of his/her social roles and who has received a legal assessment of total or partial inability to work”. In Romania, disability is defined as a “physical, sensorial, psychic or mental deficiency, which hinders or restricts normal access to social life in conditions of equality in concordance with the age, sex, social, material and cultural factors and which causes the need for measures of special protection in social integration. In the Slovakia Republic, a disabled individual is one who is officially recognized and who receives a partial disability pension. A person with ‘Severe’ disability is a person with a recognized handicap, who receives a disability pension and is able to perform his/her job permanently only under special conditions. These terms are in accordance with the 1983 ILO’s Convention No.159 on Vocational Rehabilitation and Employment of Disabled Persons. A citizen is also considered a disabled citizen when he/she demonstrates only a limited possibility for systematic training or is able to perform his/her occupation only under special conditions owing to long-term unfavourable health condition. In Slovenia, the definition of disability is fundamental to the placement of disabled persons into the labour market - Current definitions away from the medical model and onwards the functional and ergonomic sphere. In addition to diagnosis the assessment of handicap takes into account the

12 Ibid, p.34.  
13 Ibid, p.36.  
15 Ibid.  
16 Ibid.
functional consequences of the illness or disability in question and how it affects the integration in to the workplace and society as a whole.\textsuperscript{17}

In Turkey a person with disability as "Any Person who has lost at least 40 percent of his working capacity on account of a physical, mental or psychological disability and whose loss is confirmed by a certificate issued by the medical council shall be officially classified as disabled".\textsuperscript{18}

It would be appropriate, after a glance at the definitions of disability in Central and Eastern Europe’s thirteen countries, to look at nine countries in Asia and the Pacific.

In Japan ‘Disabled Person’ is defined as referring to “… persons whose daily life or life in society substantially limited over the long term due to a physical disability, mental retardation or mental disability.\textsuperscript{19}

It may be stated that persons with learning disability, autism, tourette syndrome and higher cortex dysfunction remained out of the current definition in Japan.

In India, the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 defines Persons With Disabilities as a person suffering from not less than forty percent of any disability as certified by a medical authority. In addition, the definition of disability is divided into seven groups, blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation and mental illness, with the exception of blindness, each of those has a specific definition in the Act.

A person with low vision is defined as a person with an impairment of visual functioning even after treatment or standard refractive corrective but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive devise.

Leprosy cured person is defined as any person who has been cured of leprosy but is suffering from:

\textsuperscript{17} Ibid, p.43.

\textsuperscript{18} Ibid, p.46.

(a) Loss of sensation in hands or feet as well as loss of sensation and paresis in eye and eye lid but with no manifests deformity.

(b) Manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity.

(c) Extreme physical deformity as well as advanced age which prevent him from undertaking any gainful occupation, and the expression "leprosy cured" shall be considered accordingly.

A hearing impairment is defined as the loss of sixty decibels or more in the better ear in the conversational range of pregnancies.

Locomotor disability is defined as a disability of the bones, joints or muscles leading to substantial restriction of the movement of limbs or any form of cerebral palsy.

Mental retardation is defined as a condition of arrested or incomplete development of mind of a person which is specially characterized by sub normality of intelligence.

Mental illness is defined as any mental disorder other than mental retardation.\(^20\)

In Australia the Disability Services Act 1986 defines disability, in relation to a person as total or partial loss of the persons bodily or mental functions; or total or partial loss of a part of the body; or the presence in the body of organisms causing disease or illness or the pressure in the body of organisms capable of causing disease or illness; or the malfunction, malformation or disfigurement of part of the persons body; or disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or a disorder, illness or disease that affects a persons thought processes, perception of reality emotions or judgment or that results in disturbed behaviour and includes a disability that presently exists or previously existed but no longer exists, or may exist in the future; or is imputed to a person.\(^21\)

\(^{20}\) Ibid, Country Report India, p.5-6.

In China the law of the people’s republic of China on the protection of Disabled Persons 1990 defines both “disabled person” and “disabled persons”. Disabled person is defined as a “person who suffers from abnormalities or loss of a certain organ or function, psychologically or physiologically or in anatomical structure and has lost wholly or import of the ability to perform an activity in the way considered normal ...”. The term “disabled persons” is defined as those persons”... with visual, hearing, speech or physical disabilities, intellectual disability, mental disorder, multiple disabilities and/or other disabilities...”\(^22\)

In Fiji National Council of Disabled Persons Act 1994, defines “disabled person” as “... person, who as a result of physical, mental or sensory impairment are restricted or lacking in ability to perform an activity in the manner considered normal for human beings...”\(^23\)

In Mangolia, the Mangolian Social Security Law for people with disabilities provides legal definition of disability. ’Persons with disabilities are those with limited physical or mental abilities, either generally inherited or acquired during life, persons born with deformations or disability caused by illness or accidents which limits full ability to work, mute persons or persons officially diagnosed with sight, hearing or body or mental disabilities.’\(^24\)

In Sri Lanka, since identification of disabled persons is done in a way that is relevant to each community definitions used have a local/cultural interpretation and may not be suitable for international comparative studies.\(^25\)

In Thailand, the Rehabilitation of Disabled Persons Act AD 1991, defines disabled as, “... a person with physical, intellectual or psychological abnormality or impairment”.\(^26\)

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24 Ibid., Country Report, Mongolia, p.6.
In Cambodia, the draft law, Rights of People with Disabilities defines a person with disability as, "...any citizen who lacks any physical organ or capacity or suffers any mental impairment which causes decent restriction on his or her daily life or activities such as loss of limbs, quadriplegia, visual or hearing, impairment or mental hardship."27

2.0 CONCEPT AND NATURE OF DISABILITY

In order to analyse disability as to its nature, historical materialistic framework is necessary. Such a framework should be drawn from a broader historical-geographical account of embodiment in order to examine functioning of various bodies as natural basis of human existence, and are given social significance with in particular societies. In deed any society has specific historical geographical boundaries and the socialization of embodiment therefore can take vastly different forms in different times and places. Historical materialisation has conceived the production of nature and within this the human body.28

On nature, debate began with writings of Marx and Engel’s. Their writings in the nineteenth century initiated a rich tradition of materialistic thought on nature.

Nature, for Marx exists independently of human experience, but for humanity it attains and meanings of a transformative relationship of human labour.29 This nature is held at once to be both an objective external reality and also the environment in which human beings satisfy their needs.30 It is through labour the production and reproduction of material needs that nature

27 Ibid., Country Report, Cambodia, p.6.
is transformed and becomes an internal reality of human development.\textsuperscript{31} Marx used the notion of “two natures” to explain this historical transformation process.\textsuperscript{32}

First, the social practices of each human community are seen as transforming the basic materials – both physical and biological – received from previous societies.\textsuperscript{33} These inherited materials or “first nature” include everything from built and natural environments to physiologies. When these materials are received and remade by a succeeding society they become known as “second nature.” Consequently, almost all the natural world has been somehow altered through human intervention and nature indissolubly connected to human society.\textsuperscript{34}

Marx was of the view that nature is mediated through society and society through nature\textsuperscript{35} with the labour process providing the means for this metabolism. As the means through which labour is affected, the body constitutes an ontological exemplar for the unity of nature and human society. Marx vigorously insisted that humans and nature is both sensuous product of historical and social processes.\textsuperscript{36} Different definitions have been adopted by each society depending upon their socio-economic, political conditions. In view of the differences that exist with their treatment and recognition of rights on an equal footing among all societies, it is not easy to undertake comparative study. Further etymological differences that exist in defining disability also complicate to draw a singular inference to draw a single definition describing the concept of disability in its entirety. Thus

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\textsuperscript{34} Supra n.29, p.36.
\textsuperscript{35} Supra, 32, p.36.
\textsuperscript{36} Supra n.31, p.36.
\end{flushleft}
humans are never counter posed to a static external world of natural things, a conception which Marx held to be a great fallacy of bourgeois science yet neither are humans as social beings, simple products of natural phenomena. His great emphasis was to reject the view of humans as determined by nature. Marx saw nature, not as a law provider but rather as a field of human practice.

Foucault refers to a process called normalization to describe the way in which the ‘developments of modern medicine’ allowed the growth of a new form of disciplinary power concerned with the control of human bodies. It needs to be stated that the desire to control, amend deviation from the norm reflects in the medical model of disability.

As a modernist Foucault is in agreement with the normalization process and out rightly rejects the theory of social practices advocated by Mark. Rejecting the idea of “structural reality below the surface of social life which directs human behaviour but of which we are not always aware,” Foucault addresses the impact of “knowledge, language and culture” in society. This indicates an affiliation with an imperative rather than positive paradigm. For Foucault, “power exists with in culture but in terms of a huge variety of different power knowledge relations.”

These power relations culture shape at the micro level creating a complex web of “discourse, each offering particular ways of understanding aspects of our behaviour”, He also further argues that “our sense of self identity actually comes from the way in which we are positioned in relation to particular forms, knowledge or discourses.  

Disability is not a mere physical fact. Disabling conditioning what the society in its history reflects its conception of human beings in their social and normal functions. Disability besides being normative is also cultural and
legal aspect, reflecting society's self image. A society with a deep ethos of social responsibility is likely to be more open in its definition of disability. The formal notion of disability has undergone revisions to accommodate change in social norms and attitudes. Concept of disability encompasses access to their rights, which in most cases, the disabled stand denied, attribute mainly to three factors which include; (i) laws and polices are not supportive, whatever is there is not being implemented, (ii) social barriers and lack of awareness, (iii) lack of adequate coordination among those concerned with disabilities.

3.0 CAUSES OF DISABILITY

a. General Causes

According to research and investigations revelations, one of the main causes of disability is its linkage with poverty. Poverty and disability influence each other and with their contributions new forms of impediments have been given impetus for new types of disabilities and diseases.

In general people with disabilities are estimated to make up to 15 to 20% of poor in developing countries.\(^\text{41}\) Large number of people living in extreme poverty is the result of inequitable economic and social policies. Poor families can ill afford to have sufficient income to meet their basic needs. Industrial and non individual working environment and safety hazards contribute to a great extent for various forms of disabilities which include physical, mental, psychological visual and hearing impairments. Occupation related health problems of workers employed in stone quarrying, leather industry, glass work, weaving, diamond cutting hand embroidery and children employed in carpet, cracker and match industry have been recognized but have not received appropriate and sustained attention by those responsible for regulating work standards. It is stated that even in developed countries, permanent disablement as a result of industrial and highway accidents out

number war causalities.\textsuperscript{42} In the unorganized sector, poor farmers and peasants are also, like industrial workers very much vulnerable to disability due to the nature of their jobs, which include long hours exposed to sunlight, dust and smoke. Some common hazards associated with typical agricultural activities include wheat harvesting and amputations, paddy sowing and muscular diseases, coconut picking and spinal cord injuries. It the industrial and occupational standards are in conformity with Art.7 of ICESCR, which calls for the creations of just and fair conditions of work, occupational causalities and disabilities can be brought down to a great extent.

The World Programme of Action (WPA) Article 40 concerning disabled persons list out a comprehensive range of causes of disability which include factors like war, civil conflicts, poverty, over crowding constraints of resources, geographical distance and physical and social barriers, industrial, agricultural and traffic accidents, natural disasters and psycho social problems certainly the diagnostic parameters in WPA go beyond medical aspects of disability and locate its causes outside the confines of body of an individual. Wars and disability – Right from its inception, Human Civilization has engaged itself in wars to advance particular interest of their entities. Wars have been a single waver factor attributable for giving room to permanent disablement to combatants in the war field as also to civilian who are forced to bear the hazards of lethal, chemical and nuclear weapons.\textsuperscript{43}

Crime is yet another major factor for the cause for disability. During 1999, the percentage of share of crimes reported in India was 13.5 % of the total 2,38,081 cases reported under the IPC. Many children and women are

\textsuperscript{42} 44,000 people lost their limbs in industrial accidents during the period of Vietnam War in which 17,000 American soldiers became disabled.

\textsuperscript{43} Violent conflicts caused deaths of more than four millions people and forces about thirty five million people to become refugees or suffer internal displacement and live in conditions that contribute to diseases malnutrition and early death. Based on the study carried out in 206 countries, including Afghanistan and Cambodia land mines triggered disability among survivors is about 0.9%. About 6% of the house holds in Afghanistan are affected by landmines accidents alone.
abducted to be used in prostitution, slavery and beggary and in such cases the risk of emotional mental and physical disabilities increases many fold. One other horrifying cause for disability is that organized crimes of kidnapping children and cutting of their hands and legs by criminals in connivance with some unscrupulous of ortho doctors and using such physical of disabilities children for begging.

There were hardly any studies that have analysed the nexus between disability and crime. Unfortunately even law enforcement agencies themselves are known to commit acts of torture for fortune and inhuman treatment particularly to persons in detention. The Bhagalpur blinding case in India is a well known and documented illustration of this menace.

Traffic hazards, culminating in increased number of road accidents and rail accidents in India are also causes for disabilities. These could be attributed to unplanned cities with narrow roads, rapid growth in number of vehicles and the road users having no road sense and traffic rules and regulations.

Economic policies also form basis for disability, for the reason, Structural Adjustment Programmes (SAPs) on disability resulted in cut in expenditure towards preventive measures and programmes that escalates disease and disability. Even the World Bank had revised its perception of blanket privatization in Health sector and restored to promoting states capacity to protect social welfare. Tools like Disability Adjusted Life Year

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44 In mid nineties, the government of Saudi Arabia repatriated more than five hundred married children who were used for begging. The case of female domestic works with amputated finger tips, nose, ear lops also surfaced during the same time.

45 Supra n.37, p.14.

46 The Central Bureau of Health intelligence Report of 1997-98, 69,800 people died in road accidents that year. The number of dead in rail accidents was approximately 15,000. An expert in the field Dr. Lestie G. Norman estimates that for every road accident death there are 30-40 light injured and 10-15 serious injures which may lead to disability. It is estimated that by 2020, the road traffic accident will be ranked as the third leading causes of disabilities in the Asian and Pacific region.
(DALY) developed by the WHO also reflect the utilitarian approach as it is used to gauge cost effectiveness of interventions.\(^\text{47}\)

b. Disability Specific Causes

Mal-nutrition as a cause of disability has assumed a reckonable dimension\(^\text{48}\) inequality and political party reflects in malnutrition indicates poverty, lack of nutritional security; female children and women are comparatively disadvantaged in many Indian families in relation to boys and men.

Common micro nutrient deficiencies that affect disability includes vitamin A deficiency – blindness, vitamin B complex deficiency – beri beri, (inflammation or degeneration of the nerves, digestive systems and heart), pellagra (central nerves system) and gastro – intestinal disorders, skin inflammation and anemia, vitamin D deficiency - rickets (soft and deformed bones) iodine deficiency- slow growth, learning difficulties, intellectual difficulties and goiter, iron deficiency, - anemia which impedes learning and activity and is a significant cause of material morality, calcium deficiency – osteoporosis (fragile bones).\(^\text{49}\) Occupational hazards causes exposure of people to acquiring disability.

Quadriplegia, paraplegia, brain damage, and behavioral disorders are some common disabilities among survivors of traffic accidents.

In a nut shell to appreciate the causes of disability are:\(^\text{50}\)

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\(^{47}\) Supra, n.13.

\(^{48}\) Human Development in South Asia Report (2001) highlights includes of anemia among expectant and nursing mothers between the age groups of 15 to 19 years. Is highest in India in the SAARC countries.

\(^{49}\) By the year 2020, at the present rate, there could still be some 680 million chronically under nourished people whose disabilities are likely to have roots in micro nutrient differences. About 30 % of all infants burns in India are born weighing less than 2500 grams, which in the WHO cut off level to determine low birth weight with a lower chance of survival and high risk of disability.

Neurological causes of disability include mental retardation, learning disabilities, residual paralysis after poliomyelitis infection of the nerves system, hemiplegia and paraplegia; degenerative disorder of the neuro muscular system epilepsy; cerebral palsy.

Sensory causes of disability include (a) Eye-infections of the eye viz., trachoma and vitamin A deficiency (keratomalacia) and (b) Ear-Otitis media (infection of the ear) viz congenital deafness and deaf nudism.

Skeletal causes, of disability includes Sequa of fractures; infection of the bones and joints, severe rickets (Vitamin D deficiency).

Chronic Venereal Diseases causes of disability include congenital or acquired heart diseases.

Psycho-social causes of disability include: Orphan; Materna Deprivation; Emotional Deprivation and Maladjusted children.

4.0 MEANING AND DEFINITION OF DISABILITY
a. Meaning of Disability

Disability means many things to many people and for many purposes. However for extending certain applications of provisions of law, concerning promotion and protection of rights of persons with disability, explanation is given as to the meaning of disability, Section 2 (E) of Persons With Disability (Equal Opportunities, Protect on of Rights and Full Participation) Act 1995 says disability means a person suffering from not less than forty percent of any disability, as certified by a medical authority and disabilities have been listed in Sec.2 of the Act, include blindness, low vision, hearing impairment, loco motor disability or cerebral palsy, mental retardation, mental illness and persons cured of leprosy. This is besides the coverage of autism and multiple disabilities under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999.

It may be stated that the meaning of disability of a person which requires him to be in need of treatment by reason of such disability is said to be the person with a specific disability. For instance “Mentally Ill Person”,

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according to Sec 2(i) means a person who is in need of treatment by reason of any mental disorder other than mental retardation.

In the Rehabilitation Council of India Act 1992, the meaning of disability specific are explained as to the degree or extent of severity of the specific disability, for e.g., handicapped include visually handicapped, hearing handicapped, suffering from locomotor disability or suffering from mental retardation.

Besides this each of the handicap is explained, highlighting the extent or degree of severity of the handicap for the purpose of the provisions of Rehabilitation Council of India Act 1992. In fact the words ‘meaning’ of disability specific are explained under definition in each of the Acts concerning to persons with disabilities.

b. Definition of disability

Social values, norms and attributes are not static and are liable to change depending on a wide range of factors and forces that operate at macro and micro level. The formal notion of disability consequently has undergone revision to accommodate changes in social norms and attitudes.

Disability term which has many different uses in various places and is therefore impossible to define objectively, disability may refer to a considerable range of human differences – including those defined by age, health, physical and mental abilities, and even economic status – that have impairment and handicap that have been associated with severe form of social restriction or material deprivation.

Definition of disability had become necessary with a view to make an assessment of the magnitude of the issues as to its quantum and severity but unfortunately no accurate figures could be collected as definitions different from one context to another.

One daunting characteristics of disability studies, and also of western disability policy realms, has been the seemingly endless shifts in definitional orthodoxies concerning the meaning of terms such as ‘disability’
“impairment” and “handicap”. It could be argued that this definitional complexity not to say confusion derives in part from the theoretical under development of disability studies. It is important to acknowledge why disabled people have placed so much emphasis on the definition issue. Disabled people have objected to and contested official construction of those subjectivities by institutions such as social service providers because these understandings have often been inaccurate and offensive.

It may be stated that the most acceptable definition of a disabled person is given by the United Nations (UN): “A person unable to ensure by himself or herself, or partly, the necessities of normal individual and/or social life, as a result of difference either congenital or not, in his or her physical or mental capabilities”.

From the analysis of conceptual framework of disability, it is evident that all approaches suffer from over generalization or over simplistic view of disability. These approaches fail to take into account the different aspects of disability in its entirety. Viewed from this perspective, the UN’s definition in its Declaration on the Right of the Disabled Persons was put forward as stated above.

Disability is made up social construction enforced to apply a social, cultural, political label to a natural aspect of life. Disability is not just a mere physical fact, it is also a normative and legal construct.

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52 Ibid, p.18.

53 About 450 million people, roughly 10 percent of the world’s populations are mentally or physically disabled, orthopaedically handicapped, mentally retarded, the blind, the deaf, the victims of leprosy etc., According to a recent WHO estimates the figures may be higher. There will be by the end of the century an estimated 800 millions disabled people of whom 250 million will be children. The UN estimated that not less than 25 percent of the world’s population are affected by disability, if the families of the disabled and those directly involved in seeking to support them are taken into account.
What a society at a particular time in its history considers to be a disabling condition affects its conceptions of a normal and socially functional human being and hence in a way it reflects societies self image.\textsuperscript{54}

The recognition of a physical and mental condition as disabling by a society is also a tacit acceptance by it, of its responsibility towards people considered disabled. A history with a deep ethos of social responsibility is likely to be more open in its definition of disability. A very recent and radical new development is the intervention of disabled people themselves in the social construction of disability.

What is most significant is the diversity of disability. There are divergencies in causation, type of impairment as also security and prognosis, the condition of the entire age range and is no respecter of race, sex or social class. Besides, there are also distinctions between acquired and life long disabilities. Equally varied are the responses to disability, which produces not to an identical but a variegated picture.

With in the world of disability, one can find contradictory images of success and failures, optimism and pessimism, tragedy and humour, matter of facts, reactions and pathological responses acceptance and stigma, recognition and individual differences and stereo typing, super support services and inadequate, sensible and silly legislation, community support and social isolation, resignation and rebellion, success carriers and appalling job prospects, deeply satisfying personal relationships and loneliness, acceptance and rejection.\textsuperscript{55}

The focal point of debates is on issues of definitions of disability and these have, since undergone substantial changes and modification, much of the impetus for this conceptual change could be traced to the major shift in the definition of disability. The various definitions of disability are:

\textsuperscript{54} Supra, n.37, p.9.

i. Medical

In medical definition, disability is considered as individual pathology— a condition grounded in the physiological, biological and intellectual impairment of an individual.

During the whole course of the twentieth century, the process of identification and classification has assumed as even more sophistication, requiring access to expertise usually residing in the ever burgeoning medical and paramedical profession.56

The three fold definition of disability provided by the WHO include impairment, disability and handicap, envisaging that an impairment is any loss of abnormality of psychological, physiological, anatomical structure or function: a disability is any restriction or lack of (resulting from an impairment) ability to perform an activity in the manner or with in the range considered normal for a human being, a handicap is a disadvantage for a given individual resulting from an impairment or disability that prevents the fulfillment of a role that is considered normal (depending on age, sex, social and cultural factors) for that individual. Such a description frames disability with in a medical model identifying people with disabilities as ill, different from their non-disabled peers and unable to take charge of their own lives. Moreover, the diagnostic parameters of a medical definition do not take note of the imperfections and deficiencies in the basic social structures and processes that fail to accommodate the difference on account of disabilities.

WHO's 1976 description of impairment, disability and handicap, was found to be confusing around the world’s disability sector, particularly for policy-making and political action and problematic from rights perspective.

It is pertinent to highlight that in response to the growing concern, the WHO redefined the relationship between impairment, disability and handicap establishing that 'impairment' refers to organ level functions or structures 'disability' refers to present level limitations in physical and psycho-cognitive

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activities, and 'handicap' to social abilities or relation between the individual and society.

Asia pacific region, in a workshop on disability for promotion of the rights of PWD stressed that the definition should include to mean that disability is not an individual pathology. It has a range of implications for social identity and behavior, and largely depends up on the context and is a consequence of discrimination, prejudice and exclusion and the definition should not be restrictive but should cover physical, sensory, intellectual, psychiatric and multiple disabilities. Disability can be permanent, temporary, episodic and perceived.57

(ii) Social

The UN's Standard Rules on the Equalization of Opportunities for Persons With Disabilities 1993, defined disability there by last reflecting the change in understanding of disability from an individual pathology to a social construct. According to these rules people may be disabled by physical, intellectual or sensory impairment, medical, conditions or mental illness such impairments, conditions or illness may be permanent or transitory in nature.

(iii) Human Rights

British Council adopted a definition of disability. The definition takes into account the social conditions which disabled group of individuals by ignoring their needs of accessing opportunities in a manner different from others. However, it also views these social conditions as infringing upon human rights of disabled and as instances of discrimination against them. According to this definition, "Disability is the disadvantage or restriction of activity caused by a society which takes little or no account of people who have impairments and this excludes them from mainstream activities" therefore, like racism or sexism, disability is described as a consequence of

57 website: www.nhrc.nic.in/asia-pacific-htm visited on 17.08.06.
discrimination and disregard to the unique circumstances of people with disabilities.

Though there exists different practices across the globe, theoretically no difference should be shown in any angle while extending respect for the rights for the disabled. Disability being the part and parcel of the philosophy of human rights, any difference shown to them is clear violation to the core concept of human rights which have been developed on the prism of equality before law at all time irrespective of social, economic, politico-legal, physical and cultural differences.

Hence, respect for human diversity underlines two critical ideas. One despite their apparent differences all people are same concerning their rights and dignity. And two the quality of rights and dignity does not imply that all people should be treated in the same or similar ways. The two ideas may appear contradictory but in reality they are complementary to each other. Together they constitute a guide to build an equitable and just society without forcing inherently human rights to a single mould. They follow the sound practical maxim of great Aristotle, the ancient Greek philosopher who said things that are alike should be alike where a things that are unlike should be treated unlike in proportion to their unlikeness.58

According to justice Anand the principle of diversity provides the foundation to accept disability as a part of human variation. However it is a sad reality that in practice our treatment of difference has been rather poor, especially in the context of disability. Legislation and social policies do not generally reflect the full range of diversity of abilities that exist in the society. The problem of ‘disability’ mainly stem from a lack of responsiveness of the State and civil society to the difference that disability represents.59

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58 National Human Rights Commission, Disability Manual, 2005, p.21

59 Ibid.
(iv) Legal

Although a number of enactments deal with the rights of the disabled in different fields, realising the growing significance of the human rights of the disabled, India started enacting specific legislations addressing their concerns directly. They are, the Persons With Disabilities (Equal Opportunities, Protections of Rights and Full Participation) Act 1995, the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999, and the Mental Health Act 1987, the Rehabilitation Council of India Act 1992. Basing on the provisions of the Act, the concept of disability has been defined according to the purposes and objective of each Act.

In these Acts the Disabilities have been defined for the purposes of application of the provision of the relevant Acts, which are discussed herein.

In terms of PWD Act 1995, disability means blindness; low vision; leprosy cured, hearing impairment, loco motor disability, mental retardation, mental illness,

Blindness refers to a condition where a person suffers from any of the following conditions viz., total absence of sight or visual acuity not exceeding 6/60 or 20/200 (Snellen) in the better eye with correcting lenses, or limitation of field of vision subtending an angle of 20 degree or worse.60

Hearing Impairment means loss of sixty decibels or more in the better ear in the conventional range of frequencies. Leprosy cured persons means any person who has been cured of leprosy but is suffering from:

(i) Loss of sensation in hand or feet as well as less of sensation and paresis in the eye and eyelid 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.

60 Chapter I sec 2 sub sec (i) and sub sec (b) of PWD Act 1995.
(iii) External physical deformity as well as advanced age which prevents him from undertaking any gainful occupation and the expression leprosy cured shall be construed accordingly. Loco motor disability means disability of the bones, joints, muscles leading to substantial restriction of the movement of the limbs or any form of Cerebral Palsy.\textsuperscript{61}

Mental Illness means any mental disorders other than mental retardation. Mental retardation means a condition of arrest or incomplete development of mind of a person which is specially characterized by sub normality of intelligence.

Person With Disability means a person suffering from not less than forty percent of any disability as certified by a medical authority.

Persons with low vision means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of task with appropriate assistive device.

The definition of disability as detailed in the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999. Autism means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behavior. Cerebral Palsy means the same what has mental retardation. Multiple disabilities means a combination of two or more disabilities.\textsuperscript{62}

Persons With Disabilities means a person suffering from any of the conditions relating to Autism, Cerebral Palsy, Mental Retardation or a combination of any two or more of such condition and includes a person suffering from severe multiple disability.

\textsuperscript{61} Cerebral Palsy refers to a group of ten progressive conditions of a persons characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the pre natal or infant period of development.

\textsuperscript{62} Clause (1) of section 2 of PWD Act 1995.
Severe disability means disabilities with eighty percent or more of one or more of multiple disabilities.

Under the Mental Health Act, 1987, Mentally Ill Person means a persons who is in need of treatment by reason of any mental disorder other than mental retardation. But mental retardation has not been defined under this Act. Mentally Ill Persons means a mentally ill persons for whose detention in or removal to a psychiatric hospital, psychiatric nursing home, jail or other place of safe custody, an order referred to in sec.27 has been made under the Rehabilitation Council of India Act 1992, “Handicapped:” means a person- visually handicapped, hearing impaired, suffering from locomotor disability, or suffering from mental retardation.

“Hearing handicapped” means with hearing impairment of 70 decibels and above in better ear or total loss of hearing in both ears. “Locomotor Disability” means a persons inability to execute distinctive activities associated with moving, both himself and objects from place to place and such inability resulting from affliction of either bones, joints muscles or nerves.

Mental retardation means the same as defined under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple disabilities Act 1999.

“Visually Handicapped” means a persons who suffers from any of the conditions viz., total absence of sight, visual acuity not exceeding 6/60 or 20/200 (snelling) in the better eye with the correcting lenses, or limitation of the field of vision subtending and angle or worse.

5.0 THEORIES OF DISABILITY

Theoretical clarity will some times be politically obscured by empirical messiness, while what appear to be significant defaults in particular with institutional and national contexts may get lost in the attempt to make broader generalization.

All societies have much to learn and develop in this matter, not least in terms of generalizing an open curiosity about different cultures and allow us
to listen better, to take notice and to dismantle preconceived ideas about values and practices in different social contexts, including with our own society\textsuperscript{63}.

Not withstanding the fact that there has not been much grand theorizing about disability it is, indispensably, the case that almost all studies of disability have a grand theory underpinning them that grand theory is normally termed as the personal tragedy theory of disability. As a result, the disabled persons themselves have sought to formulate their own alternate paradigms which might be characterized as social oppression theory.

Theory building, in fact is the fundamental concern of any intellectual, enterprise in social sciences, especially in the area of Disability Studies, so a brief discussion of the nature of theory generated through the new research paradigms would not be out of place. Etymological theory has two meanings- firstly a view or a conception of relationship between facts and secondly a view or a conception of a system of the law or principles governing an art of science.\textsuperscript{64} The term theory is derived from the Greek word ‘thea’ implies a spectacle. Since the concept of theory has a derivative relationship with ‘thea’ theory constitutes a sort of spectacles (lens) through which one could visualize reality. In this sense theory is a medium of selectivity or principle of cognition. In other sense theory implies a map or model of reality drawn up conceptually. It is a frame of reference in the process of learning, comparison, recalling and all such mental activity.\textsuperscript{65}

\begin{itemize}
  \item\textsuperscript{63} Felicity Armstrong and Len Barten, \textit{Disability and Human Rights Education}, Open University Press, Buckingham, 1999, p 2.
\end{itemize}
The basic concern of contemporary scientists is to generate theories. Facts must be ordered in such a way that their connections may be established. Theory is a generic concept involving three levels—such as low level or narrow gauge theory, partial or middle gauge theory and general or broad gauge theory. At the lowest level, one may find singular generalization which includes statements of observed conformities between two isolated and easily identifiable variables. For instance a proposition that the disabled individuals are stigmatized and marginalized in all societies falls under this category. The partial or middle gauge theory seeks to explain some more general sets of facts. It links a wider collection of laws or generalizations than those coming under the low level or narrow gauge theory. This partial or middle gauge theory is obviously of a limited kind. It is applicable only to a particular item or aspect of a field of knowledge. Goffman’s theory of stigma \((1963)\) could be placed under this category.\(^{66}\)

In so far as the general or broad gauge theory is concerned the philosophical systems advanced by great thinkers like Plato, Aristotle, Manu, Kautilya, Marks are the glaring examples of the most general or broader gauge theory.

In the contemporary age, the writings of the leading advocates of human rights as also socio-political approaches to disability—Han Oliver and Barnes could be put under this category. General theories are also referred to as over arching or meta theories, as they encompass more or less all aspects of knowledge.\(^ {67}\)

There are many ways of theory building. It is pertinent to point out that the purposes which theories envisage to achieve may normally differ and occasionally even clash with each other. Generally the varieties of theories include:

Normative theory- In common parlance this is also known as the value theory and incorporates ethical norms and values. It seems to project utopias

\(^{66}\) Supra n.34 p. 254.

\(^{67}\) ibid.
lay down norms of correct behaviour condemn bad practices and proposed social transformation. The philosophical systems put forth by the great thinkers fall under this category.

Causative theory - It implies empirical causal theory. Its aim is to investigate the actual behaviour of individuals and their institutions with major focus on the variables and their interactions.

Manipulative theory – It is defined as a set of recipes for action and systematic advise on state craft. It encompasses policy oriented theory in social services.

5.1 Historical

There is a Sanskrit Sloka which means that there is nothing in the world which is without any defect or with out any quality. All materials and living beings have some defects as well as some qualities. Only the almighty God is an exception and He has made this law to keep the balance in nature. According to this view, all useful people have some defects and all people who are considered useless or disabled have some good qualities.

The problem of disability is as old as human civilization. In ancient times, man used to live in the forests and used to survive by eating the flesh or wild animals. It was quite after those wild animals used attack a human being and makes him so wounded that he had to become permanently disabled. The anger of nature was more or less the same as it is today. Man used to live in caves where security was negligible. Forest fire and the fury of nature used to affect human beings and the reasons for making human beings disabled were generated along with generation of mankind on earth.

Initially the human population was small. The resources were also limited. There was no method to treat a person when he was wounded by a

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68 Supra n.3 p.225.


70 Ibid.
wild animal or became a victim of natural calamity. Also enough resources were not available to look after the person who became disabled. It is said that man was earlier animal and later on he evolved as a civilized human being today we see that when an animal becomes injured or loses its organ then it has to crawl itself for its needs and other animals don’t bring food to it. A silent animal is not able to express its agony in human language, but, if we carefully watch a lame cow or a dog then we can assess its condition. Definitely the situation of disabled persons would have been the same in ancient times.

Increased wars and other reasons increased the population of the disabled with good speed. Since resources were limited, the space for the disabled in the hearts of normal people was also limited. Historically these people were considered a burden on the society and ways were found to get rid of them. History reveals that in ancient times, the blind, orthopaedically handicapped and mentally sick people were drowned in water, a number of deadly wells were made in Spain in which these people were put. Different ways were invented to get rid of the disabled at different places. Historically the society was not agreeing to give them the right to live as there was no utility of these people in the prominent activities such as war, hunting, etc., It was also thought that if these people married then their future generation would also be disabled. The public perception about blind by birth and mentally retarded prevailed for a long-time. It was said that famous philosopher Socrates also advocated the termination of disabled infants at the earliest.

According to historical theory, Public Policy in US reflected three distinct social attitudes, first, the old views which considered handicapped persons as being incompetent to take care of their own needs or incapable of full participation and life’s activities secondly, handicapped people are

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71 Ibid p.19.
72 Ibid p.2.
73 Selected state and federal laws affecting employment and certain rights of people with disabilities. The President Committee on employment of the Handicapped
capable of limited participation and some life activities and finally
handicapped people being part of a democratic society, it has a responsibility
to establish and maintain an environment conducive to their participation in
all social activities.

Historically, society has tended to isolate and segregate individuals
with disabilities and despite some improvements discrimination against
individuals with disabilities continued serious and pervasive social problem.
It was found that unlike individuals who have experienced discriminations or
race, coloured sex, national origin, religion or age individuals have
experienced discrimination.74

The dread of impairments is reinforced by an example drawn from
Bible suggesting that it is a punishment for past sins. The negative picture
gathers further corroboration in the denunciation of newly born children with
improvements as changelings or inhuman beings substituted by the devil, by
a continuous line of medical clerics from Augustine to Martin Luther. There is
also ample evidence that every day life and popular culture were permeated
with views that associated impairment with evil and wrong doing and as a
source of ridicule fear and pity.75 While the force of cultural imperialism is
abundantly evident a major shortcoming is that there are very few attempts to
explore a material basis to this changing historical detail.76

Any historical analysis must have both an empirical starting point and
a frame work for understanding temporal social change. Disabled people
lives have been shaped and differentiated by the historical structuring of

policy and organizational issues Indian Institute of Public Administration New Delhi

74 Section 2(a)(2) of and 2(a)(4) of ADA.

75 Ryan J. with Thomas F. 1980: The Politics of Mental Handicap, Harmondsworth:
Penguin, Thomas, H, 1992, Disability, Politics and the Built Environment", Planning,
Practice and Research, 7, 1, 22 & 24, Barnes, 1997. A Legacy of oppression: a
history of disability in western culture, cited in Colin Barnes and Goef Mercer, Disability
– Polity, 2003 Blackwell Publishers Ltd.

76 Collin Barnes and Geof Mercer, Disability, Blackwell Publishers Inc MA, USA 2003 P
23.
social behaviour around a variety of social cleavages such as class, gender, race, and sexuality.

The historist tendency to 'beggar' the entire history of disability is revealed in major chronicle of western public policy towards impaired people.\textsuperscript{77}

5.2 Philosophical

The issues of disability are not just questions of impairment, functional limitations or enfeeblement: they are issues of social values institutional priorities and political will. Philosophy and political theory of disability are intertwined. They also engage with critical disability theory\textsuperscript{78}. Liberalism as a dominant ideology and principle of social organization has particularly hard time dealing with disability. Liberalisms approach to disability incorporates embedded assumptions that conceptualize disability a misfortune and privilege normalcy over the abnormal. The corollaries are presumption that the structures for societal organization based on able bodied norms are inevitable, and that productivity is essential to personhood. The goal of critical disability theory is to challenge these assumptions and presumptions so that persons with disabilities can more fully participate in contemporary society\textsuperscript{79}.

Rehabilitation of persons with disability is based on the philosophy that what a person is capable of doing is greater importance than that which he or she can not do. It is an approach to life based on the maximum use of all the abilities, each person may possess. Critics against this philosophy argue that


\textsuperscript{78} Critical theory argues that disability is not fundamentally a question of medicine or health, nor is it just an issue of sensitivity and compassion rather, it is a question of politics and power (lessness) power over and power to critical disability theory gives rise to its own particular set of challenges to the core assumptions of liberalism. Liberalism is a dominant ideology and principle of social organization has particularly hard time dealing with disability.

rehabilitation will enable to some extent secure persons with disabilities benefits to overcome specific difficulty in the performance of jobs but will not enable him or her to participate with activities in the community.

As western scholars maintain;

people with disabilities are excluded from the political system as they are in many other areas of life. As a result they are prevented from playing their full and rightful part in society.\(^{80}\)

Disabled people in general are absent from all major areas of social life where they may have a hearing not only on decisions that affect their lives but also wither of their communities from this point of view, disabled people do not exist are socially dead.\(^{81}\)

In a philosophical climate increasingly suspicions of sameness and intrigued by different-one in which philosophical interest in variations related to gender, colour and ethnicity has grown steadily. It is remarkable now that little we know about the adequacy of our philosophical theories to account for the experiences of people with disabilities. Fifty million strong in the United States and with even greater representation in other parts of the world, individual with physical, sensory or cognitive impairments prevent them from performing one or more major life activity which figure as problems rather than as persons in the philosophical literature in which they appear at all.\(^{82}\)

Ron Amundson, the late Greg Kavka and Susan Wendel all complained that the usual venues for philosophical discussions of disability are bio-ethical treatises on killing, letting die or not being born at all.\(^{83}\)

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More generally what philosophy has usually considered important about people with disabilities is their differences from other people. Asking if profoundly impaired neonates should live tests how much we value life itself, as distinct from valuing individual’s potential accomplishments in life. As Peter Singer and Jeffrie Murphey have noticed, questioning why we favour severely intellectually compromised people over clever animals suggests where we locate the value of being human. Furthermore, writers like Norman Daniels, Amartya Sen, Richard Arneson and Allen Buchanan among several others, have views on whether justice permits the several allocation of greater than equal shares of public resources to people with disabilities.84

The philosophical practice of prototyping people who are physically sensitive or cognitively impaired and presenting than as limiting cases cannot help but marginalise them, especially because, for the sake of argument, they are portrayed as greatly suffering, immensely suffering, immensely limited or exceptionally needy.

In fact in pre historic days most of the primitive tribes discarded their disabled fellow beings on the grounds of physical unfit to fight the foes and wild animals.

Similarly Eskimos and dense tribes in North America, Masai, Diery, the Carib and many tribe in Australia and Hama and new Negro tribes in Africa had been following inhuman practices with the crippled and they were killed as for them they were unfit to struggle for land for existence. Similarly the Hebrews did not permit a crippled or deformed levite or priest to officiate in the temple. But the attitude towards the crippled as a member of the society was one of the considerations. Crippled priests were given their share of the Holy things. The attitude of Roman society expressed by Will Durant towards the crippled had found expression in the form of law which extended to the authority of the father so that he, individually, could destroy a crippled a child immediately after his death. The grate thinker like Plato and Aristotle

84 Ibid.
spoke of gruesome practice of disposal of the disabled. In Plato’s ideal state there was no room for the physically unfit.

The presence of the Christian ideals in the West and the Buddhist doctrines in the east generally changed the traditional practice of treating the crippled as both religious fought for the protection of the handicapped and the under privileged group of the society. The Christian culture prevented the killings of the crippled. Social reformers and thinkers like Martin Luther held the physically handicapped in contempt and tried to justify to free them from the society by death as an act which will please God. Gradually in 590 A.D. Pope Gregory included the crippled in his classification of the infirm and the destitute to be supported from public fund. In 1569 aged impotent sick, lame or blind were taken to hospital for treatment. Similarly in England Poor Relief Acts were passed in 1573 and in 1601 for supporting those who had no capacity to work. The era of renaissance brought a great intellectual, social and spiritual awakening which included different types of institutions for physically and mentally handicapped.

The theory that most of the diseases of mankind emanate from failure to observe, 'the laws of nature' had been endlessly reformulated in every possible form and mood, in ponderous treaties and witty epigrams.85

With the advent of the eighteenth century the idea of liberty, equality, gained currency and the rights of people were realized. Along with the educational and vocational rights of the crippled and the right to be socially accepted were considered justified for them as social beings. Thus education and training institutions for educating and training the crippled in different skills were set up with the latest skill and trained personnel.86

The Human Rights ideals were articulated more forcefully in the America Declaration of Independence drafted by Thomas Jefferson:

85 A.N.Singh, Enabling the Differently Able,(1999),Shipra Publishers,Delhi,p.127-128.

"We hold that the truths to be self evident that all men are created equal that they are endowed by their creator with certain inalienable rights that among those are life, liberty and pursuit of happiness.  

Despite the fact that both the French Declaration of the rights of man and the American struggle for independence shared so many common characteristics, one might note the difference in one important respect. While the rebellious colonies had waged struggle for the establishment of independent sovereign state in the USA, the French revolutionaries were inclined to abolish the old system of governance and replace it by a new democratic order.

Western scholars like Etticot et al., and Finkle Stein maintain:

People with disabilities are excluded from the political system. As they are in many other areas of life. As a result they are prevented from playing their full and rightful part in the society.

Disabled people in general are absent from all major areas of social life where they may have a hearing not only on decisions that affect their lives but also the welfare of their communities. From this point of view, disabled people do not exist. If not they are socially dead.

During the last decades a number of studies have been undertaken in the developed societies regarding the social integration of disabled people. Most of these studies reveal that the disabled do not routinely participate in the normative roles and are usually not regarded as 'normal' adults.

Goffman and Davis maintain that in the United States strained social interactions between able bodied and disabled individuals restrict the

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89 V.Finkle Stein 1993, p.62


latter's participation in the normal social relationship and thus in normative roles. Interesting as it may seem Irving Zola\textsuperscript{93} (an American sociologist, who has physical disability) spent about 10 months in Dutch village meant for disabled people. Zola claims that in the United States and in Holland physically disabled people are treated as infants or children and are denied the status of valid adult. He notes the difference between 'valid' people and 'invalids' as pinpointed by the disabled people in Dutch Village.

Satilios-Fothchild\textsuperscript{94} examines societal responses to disability in western affluent societies and concludes that the rehabilitation process in these societies has failed to integrate the disabled in to broader society because of personal and social discriminatory practice, which limit their participation in the social roles of friend, lover, spouse, and worker. These studies suggest that the availability of rehabilitation services and social programs do not ensure the social Integration of disabled adults in western societies.

While disability, human rights, and education in United States are to be considered for discussion there are many ways of thinking about disability.

The lives of persons with impairments, especially children, are not set in fixed and immutable arcs but are open to a range of opportunities limited less by the impairments than by social attitudes. The determination of these attitudes is a consequence of the way people view others including those with disabilities.

Society establishes the means of categorizing persons and the complement attributes felt to be ordinary and natural for members of each of these categories. Responses to disability are not natural rather they are


\textsuperscript{94} Ibid.
invented, different at one time or another, from one culture to another from
the perspective of one discipline or another.

In United States provision of education to students with disabilities
encompasses issues of educational services to children and youth, federal
state relationships, the rights of parents of children with disabilities, pedagogy, ways of conceptionalising disability, and civil and human rights
Analysis of the newly authorized Individuals with Disability Education Act
(IDEA)(PL 105-17(1997)will enable to address these issues.

The Central feature of the law is a rights formulation viz., that all
children with handicapping conditions are entitled to a ‘free appropriate
public education’. This is so called ‘Zero Reject’ principle. The courts also
endorsed the law that no child with a disability was to be excluded from the
law's scope.95

Other key principles include the entitlements of parents to participate
in the decisions affecting their children, also the rights matter, the
requirements that a programme be created to meet the children’s individual
needs and he requirement that to the maximum extent possible students with
disabilities be educated in general education environment with necessary
supplemental aids and support services.96

The two essential principles the law enunciated are:

Children with disability were to be treated as individuals worthy of
respect (i.e., capable of benefiting from education) and they are to be part of
the larger society (i.e., they were not to be segregated from their non-
disabled peers).

The honouring of the first of these principles was at the root of the
major debate as Congress deliberated. In keeping with the principle of
treatment of each as an individual the law provided that:

95 Felicity Armstrong and Lan Barten, Disability, Human Rights and Education- Cross
Cultural Perspective, Open University Press,Philadelphia,PA,USA,p.110

96 Ibid.
Each child was to be individually assessed as to whether he or she was handicapped and in need of special education services;

An individually designed programme was to be developed for each child, which was to be documented in an Individual Education Plan (IEP).

The principle that each belongs, was expressed in the laws requirement that to the maximum extent students with disabilities were to be educated with their own non-disabled peers, and that they were to be removed from regular classes only when they could not be educated in this setting with supplementary aids and support services.

The expression of human in the education of students with disabilities is seen in the honouring of the principles of respect and belonging. And in keeping with the understanding that disability must be seen in a social context, the implementation of these principles requires not simply individual adaptation but over all school restructuring.\(^{97}\)

Dr. Amartya Sen observed:

"the effectiveness of freedom as an instrument lies in the fact that different kinds of freedoms interrelate with one another, and freedom of one type may greatly help in advancing freedom of other types. The two roles are thus linked by empirical connections, as relating freedom of freedom of one kind to other kinds.

I shall consider the following types of instrumental freedoms, (1) Political freedoms; (2) Economic facilities; (3) Social opportunities; (4) Transparency guarantees, and (5) Protective Security. One and another. While development analysis must The instrumental freedoms tend to contribute to the general capability of a person to live more freely, but they also serve to complement, on the one hand, be concerned with the objectives and aims that make these instrumental freedoms consequentially important, it must also take note of imperial linkages that tie the distinct types of freedom together, strengthening their joint importance, these connections are central to a fuller understanding of the instrumental role of freedom. The claim that freedom is not only the primary object of development but also its principal means relating particularly to these linkages.

Dr. Sen has concluded thus:

"these instrumental freedoms directly enhance the capabilities of people, but they also supplement one another and can further

\(^{97}\) ibid p.115.
reinforce one another. These inter linkages are particularly important to seize in considering development policies. He has further aid that: "similarly the creation of social opportunities through such services as public education, health care, and development and to significant reductions in mortality rates.

This approach goes against and to a great extent undermines the belief that has been so dominant in many policy circles that 'human development' (as the process of expanding education, health care and other conditions of human life is often called) is really a kind of luxury that only richest countries can afford. Perhaps the most important aspect of he type of success that the east Asian countries, beginning with Japan have had is the total understanding of that implicit prejudice. These economics went comparatively early for massive expansion of education, and, later also of health care, as this they did, in many cases before they broke the restraints of general poverty. And they have reaped as they have sown. 98

The disability movement which is continuously strained by diverse interests that arise because individuals with different kinds and degrees of impairment have few common functional requirements and objectives, has as much to learn as philosophy does from imaginative and careful analysis of the roles various human capabilities (should) play in moral and political bonding. There is a tendency, both within and beyond the disability movement in the U.S., to attribute the social distancing people with disabilities experience to "normal" peoples fear that they, too, may become disabled. The British disability movement differs from U.S. disability activists by eschewing diagnosis that reference individual emotional reactions, instead, in British disability studies it is more useful to analyse the inequitable treatment of people with disabilities in terms of oppressive social practices such as their commodification by the social service system. But United States disability scholars typically propose that fearful reactions on the part of non disabled people explain why people with disabilities have been segregated to

98 Sircar. V.K. Human Rights in India, Asia Law House, Hyderabad. p.44.
institutions, euthanized, or genetically identified so they can be prevented from being born or from reproducing.99

In the matter of disability and social policy in the Indian Society though the barbaric practice of infanticide was never practiced, disabled people were, traditionally, viewed as second class citizens, as is substantiated by ancient folklores and texts. This despite the fact that fostering the old, the sick and the disabled has been a part of the fundamental social ethos of India with its strong roots in familial and community bonds. The religions of India – such as, Hinduism, Buddhism, Jainism and Christianity – also reinforced the spiritual significance of compassion, charity, philanthropy and mutual assistance. Further more, the custom of the joint family, kinship, guild system and other social institutions provided stimuli to the philanthropic activities.100

It may be noted that as being as the state and the joint family system postured are and protection to the disabled individual, disability was not regarded as a social problem. During the early British imperialism, racial changes were witnessed in social structure in the wake of the western education; which motivated social reformers to venture into social services sector. The reformers espoused for egalitarianism and eradication of institutionalism, which perpetuate discriminatory practices, such as untouchability, sati, marriage and restriction on widow-remarriage. The voluntary organisations like Arya Mahila Samaj, Anjuman-e-Islam, Rama Krishna Mission, Theosophical Society, Servants of Indian Society and a host of Christian missionaries contributed significantly to deliver welfare services to the disabled and other disadvantaged strata of society.101

5.3 Anthropological

Anthropological studies conducted from time to time confirm that physical differences of human kind are the common characteristics of the

99 Ibid.
100 G.N. Karna, Disability Indies in India, Retrospects and Prospects, 2001 Gyan Publishing House, New Delhi, p.299.
101 Ibid, p.299.
Indian society which can be seen in all historical ages. These differences, one finds in the form colour, height even between one family to another or even among the members of the same family. However these differences have never been regarded as the problem for those who had differences of that physical characteristic as well as for the society at large. Similarly the problems of disability have been existing since the day we joined the human life. There are several factors responsible for the problem. Hereditary factor contributes a lot in producing disabled children. Other prominent factor for making people disabled are emergence of industrialization, fast changes in communication, opportunity of mobility from one place to another, accidents, illness non availability of safety and medical facilities.

Anthropological as also historical studies on disease and medicines give the impressions that the notion of disease is determined by judgment rather than the objective facts. The linkage of disease with moral imperfection and evil as traditionally influenced the social attitude towards diseased (or disabled) persons. The social attitude toward the disabled persons may normally be characterized as a deplorable tragedy by the norms of contemporary societies. Through out the centuries many, if not most, of the individuals who today are regarded seriously disabled, were eliminated in most of the societies except ours. Social perceptions of such perception however have evolved towards more humanitarian concern since ancient times, especially in the Indian society. Four distinct determinants of social attitudes towards disabled persons are noticeable through out the history of man kind, exposure and elimination, care and patronage, education and vocational training and social assimilation.

During the first phase physical strength and activity were regarded as essential pre-requisite for survival. Towards the end of first phase, superstitions began to replace survival as the major determinant of social attitude towards disability, thus started the second phase. Though the Darwinian concept of survival of the fittest did not evaporate completely the evolution and dissemination of religious doctrines produced pseudo-

religious explanations of social attitude towards disability. The third phase was marked by growing scientific temperament/ orientation especially during the renaissance period. The final phase of social assimilation represents the current social attitudes towards severely and profoundly disabled persons. Although far from ideal, the on going stage is marked by more humanitarian care and concern for the disabled strata of the society. During the recent decades, especially in the after math of the disability right movement, there has been an increased interest in questions of social attitude towards disabled persons, the emphasis is on equal rights and opportunities for them.

5.4 Psychological

Every physical disability is accompanied by some sort of psychological reaction. The transition of the body from health to sickness only a few moments, but the persuasion of the mind to accept disability may take months, years or few decades. It was believed at one time that disability was confined to a certain parts of the body and was treated by doctors as such, which did not help much to ameliorate the situation. It is recognized that people are not rehabilitated by others. They are helped to help themselves, human motivation center of the whole process of rehabilitation. The physically handicapped individual is not merely a person with lost limbs or one who is paralised from the waist downwards or one with stiff joint or the like. Last he is also a person, gifted with a throbbing heart, a thinking mind, a stirring soul and one who lives in a real world of his own, surrounded by his family and friends.103 The physically handicapped individual suffers from self devaluation because he is unable to satisfy many of the emotional needs104

An able bodied adult enjoys independence and security as well as a good social life. He has adequate outlets for aggression and physical tensions. In normal personality there is a balance between security and


independence. He can not satisfy many of the basic emotional needs under normal circumstances. Therefore feels frustrated and inferior. The devolution from that he encounters in his social contacts reflects up on his idea of 'himself' constitutional deflects of any sort give rise to a sense of being different from others. \textsuperscript{105}

Emotional factors cast adverse effects detrimental grossly to the interest of disabled over the security. The change in the circumstances arising out of disability setting in a person, a noticeable difference is felt by the individual creates uncertainty. The psychological theory reckons disability as certain psychological disturbances arising out of the on set of disability. Among the scholars who have highlighted the psychological aspects of disability, the names of Barker, Albrecht and Roessler\textsuperscript{106} are worth mentioning. The protagonists of this school of thought have reinforced the idea that the disabled individuals are not merely persons with limbs or sensory organs persons gifted with tremendous potentialities and contemplative mind. The personal response of individuals to their disabilities can not be dismissed merely as a reaction to trauma or tragedy but has to be considered with in a frame work. Thus material understanding of the individual must be focused on two aspects of the ensemble of social relations, of which the person is constituted; the performance of labour and the incorporation of ideology. There can be no denying the fact that the historical process has had a significant impact on identity formation in general, for... identify formation in mass is seen as a historically located in historical sequence.\textsuperscript{107}

\textsuperscript{105} Ibid.

Disabled people continued to be depicted during nineteenth and twentieth centuries, whether in novel, magazine, media or story as more than or less than human revelry as ordinary people performing activities with out fuller exposition of images of disability it is not possible to do other than depict these images. Sir Chiffor in Lady Chaterley's lover is a glaring illustration of the portrayal of disabled people as less than human on the contrary the saga of Sir Douglas Bader as sketched in Reach for the skewed illustrations of disabled persons being depicted as more than human. These portrayals perceive disabled people whether as specific victims of some appalling tragedy or as super heroes struggling to over come a tremendous burden.\(^{106}\)

It would be appropriate to highlight a significant feature of disability usage projections in movies as to how society previously from time immemorial psychological factors as to the society’s perception towards disabled kept on changing and would eventually keep on changing. This is evident from the projection of our changing images in movies in societies in the world. After all the disability image project serve the twin purposes of one for presenting perceptions as generally perceived by society in actuality and the other for attempting to revolutionary change in the society for the pattern of the disabled.

Sensitization process to secure enlightenment towards breaking the in human, frustrating and haunting perceptions of the people in the societies in several countries will certainly bring about change in perception in favour of disabled, in varying degrees of acceleration of process. This would certainly go a long way in enabling changes in inter personal relationship between members of the families, society and to secure them rights by legislative measures. To promote and protect the rights of persons with disability in the sphere of preventive health care, social security, education, rehabilitation more particularly mainstreaming of children, woman, aged with disabilities in different societies situated in varying factors of customs, religion, legal, social and cultural aspects. In the matter of rehabilitation movement during the

\(^{106}\) Ibid.
twentieth century was that period—1955-1970, envisaged psychological measures, and the period from 1970 onwards the psycho-socio-political initiatives were prominent.

In a paper Valenie Sinasons suggest that psychological interventions can have the political implications. Sinasons pioneering psycho analytic work with learning disability (mentally handicapped) clients show that often behind complaint behaviour there exists (an appropriate) rage about a hostile eternal world.

Some handicapped people behave like smiling pets fear of offending those they are made to depend on. When people depend for their lives on cruel regimes they need to cut their intelligence and awareness. Black slaves and their descendants in the USA learned to show their intelligence in private and adopt a stupid appeasing way of talking in front of Whites.

According to Sinason the unbearable sense of stupidity 'from which we all suffer and how many of us (especially if we are academics) disavow our sense of shame about the things we do not know. The roots stupidity and the shame about "not knowing" are according to psychoanalytic writing located in painful early experiences. Further more in a society oppressed obsessed with measuring intelligence, those institutionally and designated as mentally handicapped can be profoundly unsettling the normals. As a society we treat the birth of babies with disability as a tragedy we fail to provide sufficient support to parents of children with certain kinds of handicaps and often segregate disabled peoples within institutions. All these oppressions have psychic as well as social consequences, both for disabled and non disabled people.

109 Deborah Marks, "Introduction: counselling, Therapy and emancipating praxis" Disability Studies Quarterly, Summer 2002, Vol 22 No.3 WWW.cds.hawai.edu/dsq website visited on 17.08.06.

110 Ibid.
5.5 Sociological

Problems of disabled are far many. Persons with disabilities have social problems and economic plights too. There is correlation between disability and socio economic disadvantages and no single intervention would solve, at any one stage. What is complex and multifaceted problem of the disabled is that a community should accept the basic right of disabled to human decency and to a life of productivity. It is immaterial whether the disability is mild or severe, single or multiple, incurred at birth or latter in life. It is also not necessary that a disabled person lives in an urban or rural environment or family income or poor. Hence the socio-economic environment should be taken in to account while caring for the disabled.

While social and economic rights are to be extended, economic feasibility of the state is reckoned. While civil and political rights are extended by legislation and implemented instantly, in so far as extending economic rights to disabled are concerned, even the national law on disability envisages to extend economic rights subject to economic resources of the state. Priorities are to be assigned to the welfare of disabled and resources crunch should not be an excuse to delay and deny the basic socio-economic right in favour of the disabled. Hence the socio-economic environment of policy should extend dire consideration to the concept of welfare of the disabled than that of other social parameters or economic conditions.

Sociological dimensions of disability such as role, status, normative frame work and sub culture features, apart from other factors, contribute to the total image of disability. There is increasing realization among the disabled of the fact that their problems are directly produced by social prejudice and discrimination rather than from their functional impairments. The problems and difficulties en-counted by disadvantaged persons are largely the fall out of the disabling social environments. These definitions however have failed to receive universal acceptance, specially amongst the

non-disabled people and professionals. Understandably, the social environment is quite distinct from the natural environments in many respects. According to conceptual frame work of Michael Oliver,\textsuperscript{112} this dichotomy could be analyzed in the following four ways.

In the first place human beings offer meanings to objects of the social environment and subsequently orient their behaviour towards them in terms of perception. W.I. Thomas succinctly couches it in these words: "If men define situations as real, they are real in their consequences". In so far as the concept of disability is concerned, if it is perceived as tragedy than disabled people would, of course, be treated as the victims of some tragic phenomena or circumstances. Such tendencies may be noticeable not just in our everyday interactions but also in social policies geared towards compensating those victims who have befallen by tragedies.\textsuperscript{113} If the disability is defined in terms of social oppression then disabled people may virtually be viewed as the collective victims of natural phenomena or circumstances. Such perception is liable to be transmitted into social policies aimed at alleviating oppression rather than compensating individuals. In the present consumerism culture, the individual and tragic view of disability normally pervades through social interaction and policies\textsuperscript{114}.

The distinguished sociologist C.Wright Mills, dismisses the works of scientists as being either 'grand theory' or 'abstracted empiricism'\textsuperscript{115} ultimately social assimilation represents the current social attitude towards severely and profoundly disabled persons. An Indian sociologist observes:

> A good way of judging how modern a society really is to assess its sensitivity towards the handicapped. Many societies may be technologically modern, many institutions too can boast of being up with the latest gizmos, but much of that is very superficial. An objective indication of modernity is the number of wheelchair


\textsuperscript{113} Ibid p 30.

\textsuperscript{114} Ibid.

\textsuperscript{115} Supra, n.92, p.28.
In the matter of social integration there are many obstacles which come in the way of complete social integration. The physical disability whether it is the loss of sight, hearing or limb greatly affects the outward appearance of handicapped person. Disabled looks different from others and therefore is considered abnormal. Unfortunately the physical disability becomes his distinguishing mark and this considerably hinders his integration into his family and community.

A handicapped child is often segregated from his play mates because he or she is not considered fit enough to play with them in a normal way and compete with them in equal terms. Some times the parents are also ashamed of their handicapped child and so they try to conceal him from the friends and relatives. All these factors greatly reduced the chances of a disabled child to come in to contact with normal children resulting in social segregation.

It is often erroneously ashamed that disability is synonymous with intellectual inferiority, occupational handicapped and even emotional instability. But this assumption has been conclusively proved to be false by outstanding achievements of handicapped persons in almost all important areas like education, administration, law, teaching, fine arts, journalism, medicine besides industry and politics etc. Unfortunately these great achievements have not been appreciated by the society which still continues to attach disproportionate value to physical perfection.

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117 D. Ramamani, The Physically Handicapped in India, Policy and Programmers, Ashis Publishing House New Delhi, 1988, p.35. The film 'Anjali' taken by Maniratnam in all leading Indian Languages, Depicts the mental condition of a child.

118 Ibid., p.35.
Sociological accomplishment in favour of person with disabilities continue to evade, albeit, there has been some progress that impediments are needed to be overcome only with endless and untiring effort with appropriate networking of stake holders in disability sector.119

What Social Model theorists fail to address is that segregation extends to the kinds of therapeutic treatment offered. Generally in UK the more underprivileged is a client is, the more likely that they are to be offered short term practitioner. General interventions and emotional difficulties e.g., middle class professionals are more likely to receive talking treatments, whilst clients who are employed are more likely to be offered behaviourable treatments. Learning disabled people in the UK who have challenging behaviour are more likely to be subjected to control and restraint than offered therapy, since the aim is to get rid of rather than understand their behaviour. They are seen so often as not having the emotional intelligence required to make use of taking treatments120.

The social model of disability has liberated people from the individualizing tendency of the medical model, removing self blame and calls for self alteration, because instead of seeing the environmental as static and the disabled person as alterable, the social model reverses this understanding. However this model has been criticized for taking a narrow approach towards disability based on structural barriers neglecting the issues of impairment and experience which isolates those with impairments like anorexia from fitting in to it.

Incorporating impairment and experience in to the social model is essential because it allows disabled people to define disability for themselves.

119 Impediments include: increasing population of the disabled and their relegation to the margin of society, ignorance and illiteracy, neglect in immunization campaign, manpower problem, problems concerning to rehabilitation technology, lack of political and administrative will power, lack commitments, social barriers, lack of well conceived definitions.

120 Supra n.97, p.30.
In addition, including these areas may make the model more relevant to those diverging the 'disabled norm'. If the social model were applicable to a wider rage of people who might consequently identify as disabled, the political power of the disability movement would strengthen because of a growth in numbers, a growth that would also be aided by the convergence of disability and service movement, anorexia, a mental and often invisible impairment is an important topic for disability studies to include in its work. It highlights the fact that impairment and experience are crucial areas for the social model to investigate because how people encounter visibility is influenced by various factors. Disabled peoples' lives cannot be considered as a homogeneous entity. Incorporating anorexia in to this definition will explain and enhance understanding of this condition and could also benefit disability studies widening it's a scholarly limit which needs to broadened, if it is to move out of the ghetto, it presently finds itself into become a mere main stream accessible field of academia.

For the social assimilation or the integration of the disabled by world community, rehabilitation movement of 20th century could be chronologically divided in to five stages. They are (i) Medical stage (1935-1945); (ii) Vocational stage (1935-1955); (iii) Psychological Evaluative stage (1955-1970); (iv) Psychological development stage (1955-1979 and (v) Psychovocational-political stage (1970 to present).121

The social model needs to acknowledge the personal experiences of people with mental disabilities, as they struggle against attitudinal rather than structural barriers. This calls for an element of compassion within the model for those unable to deal with impairment, which is often seen as a sign of weakness and threat to the disability movement campaign for independence and acceptability. Social model theory literature fails to clearly define whether

people with mental disabilities (survivors) are part of the general discussion giving little recognition to such individuals or their organizations.\footnote{122}

5.6 Economic

Persons with disabilities are human beings like any other persons they are entitled not merely to exist but to live with dignity and with equality. The economic rights of the disabled are not only necessary for them to lead a dignified life, they are also pre-conditions for a robust economy which thrives of capacity of consumers.

The economic rights are important facets of human right and broadly pertain to the creation of opportunities and facilities for enabling human being to earn their livelihood fair and just conditions established on the principles of equality and equity. They also refer to the rights of human beings to own, possess and manage properly both moveable and immovable and they envisage a system of social security in old age, sickness and similar circumstances. It is now well accepted that there cannot be any strict division between human rights as they are not only interdependent but in fact are indivisible. The obligations of state parties to the covenant to promote progressive realization of the relevant rights to the maximum of the available resources clearly requires governments to do much more than merely abstain from taking measures which might have a negative impact on the PWDs. The obligation in the case of such a vulnerable and disadvantaged group is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people which disabilities in order to achieve the objectives of full participation and equality within society for all Persons With Disabilities. The International Covenant on Economic and Social and Cultural Rights has described on the basis of disability in the following terms. For the purposes of the covenant, disability based discrimination may be defined as including any distinction, exclusions, restrictions or preference or denial of accommodation based on disability.

\footnote{122} P. Beresford, Disability and Society 2000 15(1), 167-72.
For the protection and promotion of economic right of the persons with disabilities, community care from the perspective of enabling justice is necessary, but it was recognized that community care alone cannot deliver justice for the disabled people. First this policy sphere is only of relevance to service dependent disabled people, there by not directly touching the lives of many who sustain themselves by other means. (e.g, work and kin networks). Second residential social programmes cannot address certain critical injustices which disabled people face, including exclusion from labour markets and political fora nonetheless it is recognized that community care has the potential to diminish the specific injustices which many disabled people have faced in the past through incarceration with in the institutional spaces of social dependency.\(^{123}\)

The social origins of impairments and disability bear the clear imprint of western style economic, technological and cultural development. Although there may be significant different in emphasis, there is general agreement that industrialization, urbanization, liberal utilitarianism and medicalization along with cultural understanding of able bodied normalcy, particularly as disseminated through western media have influenced the social construction of disability. This leads to the systematic exclusion of disabled people from the mainstream of every day life. These forces are now being exported more quickly than ever throughout the world. The end result is that the disabling tendencies generally associated with minority world economic and cultural development are being replicated through out the majority world.\(^{124}\)

Pt. Jawaharlal Nehru had a vision for India to have National Research Laboratories. Prevention of disability by eradicating the common cause leading to disability is most essential. Involvement of National Research Laboratories in preventing and seeking solution for the rehabilitation of the disabled is all the more necessary. It is the realization the world over that it is much more economical to prevent disabilities than to maintain life long

\(^{123}\) Supra n.28, p.170.
rehabilitation for the disabled. Particularly the scarce resources can ill afford to ignore this economic factor in the matter of prevention versus rehabilitation activity. Economic gains besides combating the disability are immeasurable. Research plays a vital role in this regard. Disabled themselves are capable of identifying disability factor in their correct perspective and to indicate direction for research to be undertaken relating to their economic concerns among others. Exploiting the potentials of the disabled in favour of disabled as also to the society and the nation is a factor to be pondered over towards which already great contributions from International Organizations are being attempted by appropriate enabling legislative measures to be undertaken by countries in the world. It would not be judicious on the part of the societies and the governments in the world to ignore the need for appropriate social, legal and economic steps besides sensitizing the world community at large. It is possible to restore disabled to normalcy by appropriate rehabilitation and training, so that the disabled could become substantially productive and contributive members of the society.

The disabled at work generate new purchasing power. They boost up morale of the work force and by their own production motivate labour to better efforts. This they contribute to the economy of the country. Those rehabilitated successfully can become tax payers rather than continuing the remains as tax consumers. Besides, rehabilitation reduces to a great extent unnecessary human suffering. It restores human dignity of the individual. These advantages are positive and cannot be evaluated in monetary terms alone. Rehabilitation adds to the sum total of happiness. Rich dividends would be secured by training and rehabilitation. Integration of the disabled in the national main stream will become a dream fulfilled to a considerable extent with better further prospects for future. The National Policy, appropriate legislation with effective implementation mechanism will certainly go a long way in empowering disabled by fine tuning priorities in planning and re-defining planning orientation.
5.7 Socio-Political

As a sharp reaction to medical, physiological, economic, vocational approaches a new socio-political theory of disability emerged recently. This approach has grown out of deep sense of dissatisfaction among the disabled with the traditional approaches. Like most under privileged minority groups, these views have been disregarded and suppressed. Consequently the issue of disability has undergone radical changes during recent years, shifting its focus from a medical/clinical problem for the socio-political one. Basically drawing on the sociological theories of labelling or stigmatization, this theory regard disability as a by-product of interaction between individual and environmental.125

According to this point of view, disability emanates primarily from the failure of the structured social environments in adapting to the needs and aspirations of disabled people rather than from inability of a disabled individuals to adjust the demands of the society. The disabled people are also subjected to the same biological inferiority, segregation and discrimination. The socio political approach considers these problems as a manifestation of external deficiencies in the social and economic order rather than as an indication of internal or individual disorder 126.

Prominent among the contemporary advocates of the socio-political approach, the contribution of Hahn, Bowe and Oliver deserve mention. In the opinion of Hahn, the difficulties faced by disabled people are largely the by-product of disabling environment instead of personal disorders or deficiencies. He categorically maintains that the extent to which environmental modifications could ameliorate the functional barriers of difficulty may ultimately be determined technology and by the limits of human imagination is shaping a world suited to the needs of everyone.127

125 For a background study of the socio-political approach, see the works by western scholars: Hahn, “disability and rehabilitation policy: Is paternalistic neglect really begin”.


127 Ibid.
According to him there are two corollaries to the socio-political view of the problems of deprived persons.  

First this approach lays stress on the functional demands extended on human by the environment are determined by public policy to a significant extent.

Secondly the awareness that environment is fundamentally moulded by the past and present public policy suggests public attitudes as a vital component of the surrounding with which disabled people must contend.  

For policy formulation to meet the socio-economic demands of the disabled and to secure them social justice in a welfare state in terms of the constitution and law of the state, it is necessary that appropriate stratified data is made available. The projection of 1991 census, highlight certain figures concerning to various types of disability on Table 1.

The Pioneer in its editorial entitled “helping the disabled” aptly remarks:

There is urgent need to change the present apathy of most people towards the life of misery and humiliation that many handicapped persons lead today. Unless we see as a nation, are able to take care of our less advantaged countrymen who have the faculties impaired, India can hardly claim to be modern democracy.  

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Table 1
Estimated Population of Disabled Persons in India – 1991

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128 Ibid.
129 Ibid., p.64.
130 Ibid, p.132.
## Table: Type of Disability

<table>
<thead>
<tr>
<th>Type of Disability</th>
<th>Rural</th>
<th>Urban</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>Persons</td>
</tr>
<tr>
<td></td>
<td>(Persons)</td>
<td>(Persons)</td>
<td></td>
</tr>
<tr>
<td>Visual</td>
<td>1.539 (46.15)</td>
<td>1.796 (53.81)</td>
<td>3.335 (83.27)</td>
</tr>
<tr>
<td>Hearing</td>
<td>1.409 (54.76)</td>
<td>1.164 (45.24)</td>
<td>2.573 (79.36)</td>
</tr>
<tr>
<td>Speech</td>
<td>0.942 (62.84)</td>
<td>0.557 (37.16)</td>
<td>1.499 (76.25)</td>
</tr>
<tr>
<td>Hearing and/or speech</td>
<td>2.009 (57.42)</td>
<td>1.490 (42.58)</td>
<td>3.499 (78.07)</td>
</tr>
<tr>
<td>Locomotor</td>
<td>4.396 (64.58)</td>
<td>2.411 (35.42)</td>
<td>6.807 (76.15)</td>
</tr>
<tr>
<td>Physical (at least one of the above)</td>
<td>7.442 (58.82)</td>
<td>52.10 (41.18)</td>
<td>12.652 (78.32)</td>
</tr>
</tbody>
</table>


**Note:**
1. Figures in brackets indicate percentages, and percentages shown up in cols 1&2, in cols 3&6, and cols 4&5 add up to 100.
2. Figures of hearing, speech and hearing and/or speech disability exclude the age group below five years.

Disabled people in contemporary western cities and societies endure a multi-faceted form of social oppression. The obstinacy of this oppression in spite of long history of public and private efforts to help disabled people in western countries, would seem to indict the fundamental political, ethical bases assumed by many of these reformists traditions. Therefore in order to distil a new political ethical principle that might aid the emancipatory struggles of disabled people in one important arena, public policy, it is felt necessary to look at the broad question of social justice itself. If justice is the antithesis of heterogeneous oppression facing physically impaired people,
then political and institutional remedies must address the full range of needs that disabled people have denied to them in western societies. Recent conventional approaches to justice in western countries have failed to appreciate both the diversity and disability oppression and the set of deep inter related socio-special changes that are needed to remove this form of disadvantage. 131

Oliver & Bernes observed:

Not only has state welfare not ensured the basic human rights of disabled people, through some its provisions and practices it has also infringed and even taken away some of these rights. Examples of this include the provision of segregated residential facilities which deny some disabled people the right to live where they choose. 132

Disabled feminist took the lead in challenging the disregard of impairment in socio-political approach. According to Jenny Morris:

There is a tendency with in the social model of disability to deny the experience of our bodies, insisting that our physical differences and restrictions are entirely socially created. While environmental barriers and social attitudes are a crucial part our experience of disability – and do indeed disable – to suggest that this is all there is to deny personal experience of physical and intellectual restrictions, of illness, of fear of dying. 133

In socio-political context, it is pertinent to highlight that in order to secure rights to the disabled to account for nearly three quarter of the world’s 500 million disabled people lack help they need to live the full life. They can be found in every part of the world but the majority live in poor countries and the least developed countries. Here poverty joins with impairment. The untenable alibi urged by many nations is want of resources. The answer is obvious.

Alfred Morris, the former UK Minister for disabled observed:

"Let no one say that the resources are not available for a achievement of a better life for the worlds disabled people. For the

131 Supra n.28, p.143-144.


truth is that too much is spent on the munitions of war and to little on the munitions of peace. If only one percent of which now spent on the munitions of war were to be spent on the prevention disability and rehabilitation of disabled people, the lot of the disabled in the Third World could quickly be transformed. This is why we must insist that the problem is not one of resources but our political will and priorities”.

5.8 Socio-Cultural

The extent to which any type of disability or deformity will be considered a ‘handicap’ or ‘impairment’ is strictly relative to the expectations of the culture in which the person lives. What may seem to be natural and normal in one culture may be viewed otherwise in another culture. Binding of feet and thereby restricting their full natural growth for example is very much in China but is considered uncommon in American culture. Colour blindness is a disability and is for obvious reasons an absolute bar to employment in such occupations as those of navigating officer at sea and locomotive driver on shore. Out side those limited fields the colour blind worker is at a little disadvantage in employment and many colours blind people live right through their lives without ever discovering that they are not as others.

Desai and Khetani assert that in India “non institutional services using the family as a base and emphasizing mutuality to help and benefit should be encouraged, because of the nature of traditional Indian society “this same approximate recommendation could as well be made in American or through out the world. There would appear to be the growing consensus among many in the getentological community and as well in many countries

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134 Cruick Shank, wm, a study of relation physical disability to social adjustment, the American journal of occupation therapy, no. 3 (1952) p.8 cited in D Ramamani, the physically handicapped in India – policy and programme, Ashish Publishing house, New Delhi, 1988 p.14.

135 Ibid.

through out the world that nursing home institutions or institutions of any kind should be used as only a last option.\textsuperscript{137}

The status of the disabled women in most countries is, indeed very abysmal. They are discriminated – firstly because of the sex and secondly because of their disability.\textsuperscript{138} The discrimination can be reflected in all aspects of their lives, such as education, employment, economic status marriage and family, health care and rehabilitation.

It is pertinent to highlight that in certain societies, different religious segments offer different entities to the status of women with disabilities. Discrimination cast on women with disabilities makes three folds due to sex disability and religious customs. This culture of discrimination in their being denied of right to life with dignity, education, rehabilitation, besides social economic front.

In Western societies, male and female employment is still influenced by the age old concept that man is the provider and income earner and women are home makers and child carers wherever such influence prevails disabled women are treated economically depended on men and their world outside the home appear secondary. The situation of disabled women in third world countries like India is much more distressing. Their chances of medical care, social support and vocational assistants are much less. Gender disability are more likely to mean that such women live in rural communities in appalling poverty and in danger of being deprived from the marriage or subsistence farming\textsuperscript{139}

Studies of interaction between social division and process provide a picture of “double” or “multiple” oppression\textsuperscript{140} although Ossie Stuart\textsuperscript{141} argues

\textsuperscript{137} Ibid.


\textsuperscript{140} C. Baxter et al., \textit{Double Discrimination, Issues and Services for People With Learning Difficulties from Black and Ethnic Minority Communities}, London, 1990, Kings Fund
that being a black disabled person is not a “double” experience but a single
one grounded in British Racism, he contends that the distinction of black
disabled peoples oppression is three fold, first limited to or no individuality
and identity, second, resource discrimination, finally isolation within black
communities and the family. In Britain, racism is not so much located in color
but widened to cultural difference so that black disabled people are distanced
from both anti racists and the disabled peoples movement. This is evident in
the absence of black people in disabled peoples organization and suggest
they need to build a distinct and separate black disabled identity. Yet black
disabled people are also marginalized within the black community because of
their exclusion from employment and leisure activities and their inability to
attain accepted roles within black communities. It follows that other minorities
within the black disabled communities experienced further “unique” form of
simultaneous oppression

Is there a distinctive disabled peoples culture of Lois Bragg answers
‘no’ on the grounds that disabled peoples’ claim fails to meet the qualifying
condition of a common language, a historic lineage, cohesion, political
solidarity, actuation from an early age, generational / genetic links and pride
in difference. She is not the first to identify deaf culture as the sole exception
"the deaf community apart, there is no unifying culture, language or set of
experiences. “People With Disabilities are not homogeneous, nor is there a
must prospect of trans-disability solidarity in complete contrast, Simi Linton
argues that disabled people in America ‘solidified’ as a group.

Centre Cited in Colin Barnes and Goef Mercer, Disability-Polity, 2003, Blackwell

141 O. Stuart, Double Oppression, an Appropriate Starting Point, 1993, Sage 93-100, cited
Oxford, p.60.

p.60

143 Peters, S. 2000, Is there a disability Culture? A Synchronization of Three Possible
World Views. Disability and Society, 15 (k) 583-601 cited in Colin Barnes and Goef
Susan Peters similarly argues that disability culture is alive and vibrant. It is held together by shared values of “radical democracy and self empowerment” as well as identity, voice, justice and equality\textsuperscript{144} and contra the doubters, disability culture demonstrates communalities in historical, linguistic terms by a commitment to social/political issues and changes and through its personal/aesthetic values. Concerns that the emphasis on ‘difference’ will thwart a coherent and unifying culture are rejected on the ground that difference is source of strength and allows people to generate new forms of solidarity\textsuperscript{145}.

Culture itself is a contested concept. Stuart Hall reconceptualizes “culture” as follows,

Culture is not settled, enclosed or internally coherent. In the modern world culture like place is a meeting point where different influences, traditions and forces intersects.

Culture is formed by the juxta position and co-presence of different cultural forces and discourses and their effects. It does not consist of fixed elements but of the process of changing cultural practices and meanings. The identities which culture helps to construct are not guaranteed in their “sameness” by some simple origin are fixed in their eternal belongingness to shared values and meanings.

5.9 Medico-Legal

This theory is conventional and dominant theory from the point of view of service provision to the study of disability. Most approaches to disability are based upon the populate the problem, difficulties experienced by disabled persons are directly related their individual, physical, sensory or intellectual impairments. The position is articulated most clearly in the medical–clinical approach to disability. The medical – clinical approach

\textsuperscript{144} Ibid.
\textsuperscript{145} Ibid, p.102.
offers four assumptions in this regard. To begin with disability is defined basically as a disease state and absolutely in clinical frame work, essentially a problem focusing on the rehabilitation process. Secondly, the medical paradigm holds that there is an objective state normality which within the medical profession entrust professionals, crucial roles, This leaves little scope for the disabled and their families to participate in the decision making process. Thirdly according to the medical model, the disabled individuals are biologically and psychologically inferior to their able bodied counter parts. They are thus not treated as fully human and by implication, lack the competent to decide for themselves. Fourthly the phenomena of disability is visualized as a personal tragedy which occasionally affects individuals. The medical approach reduced disability to impairment and sought to locate it within the body or mind of the individual while the power to define, control and treat disabled individual was located within the medical and paramedical professional.

The medical theory disability is best represented by WHO. The conceptual frame work of WHO is based on the international classification of impairment, disability and handicap. The International Classification of Impairment, Disability and Handicap, here in after to be called as ICIDH is a classification scheme created and approved by the WHO. In the aftermath of the success International Classification of Diseases (ICD), a classification of consequence of disease was put forth in the early 1970. However by the middle of 1970 ICIDH was basically in the present form, but existed only in the internal documents of WHO. Phillips Wood, a British physician was interested by the WHO to get the work up to that point and produce classification system. ICIDH offers the definition of disability as any loss or abnormality of a physiological or anatomical structure of function.147

147 Ibid. p.37.
This definition of impairment is intended to incorporate both the disease and disorder. Like wise disability is defined as any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or with in the range considered normal for a human being.

It defines handicap as a disadvantage for a given individual resulting from impairment or a disability that limits are prevents the fulfillment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual\(^{148}\) briefly stated a ICIDH seeks to medicalise disability. Thus one might say that to move from impairment to handicap is to cover the distance from symptoms to social role. It is also a move from objectivity to subjectivity.

Therapy and rehabilitation have had a bad reputation with many disabled people. They are seen as individualizing and medicalizing disability. As such they distract energy from challenging to main source of oppression which is the socio-political environment which discriminates against and marginalizes disabled people.\(^{149}\)

### 6.0 CLASSIFICATION OF DISABILITY

Arising out of criticism over the approach of WHO that disability ignored social factors including the disadvantaged experienced by the disabled people, the WHO produced its International Classification of Impairments, Disabilities and Handicaps (ICIDH) (WHO 1980)\(^{150}\). In what disabled critics dismissed as a characteristically individual approach,


\(^{149}\) Deborah Marks, *Enefied child guidance clinic*, www.eds.hawaii.edu/dsq, visited wesbsite on 17.08.06.

\(^{150}\) WHO’s three fold definition of disability is (i) Impairment – any loss or abnormality of physiological, psychological, or anatomical structure or function... (ii) Disability: any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being... (iii) Handicap: a disadvantage or disability, that limits or prevents the fulfillment of a role (depending on age, sex, social and cultural factors) for that individual. (WHO 1980. 29).
impairment, refers to those parts are systems of the body – mind that do not function. Most of the novelty of the WHO schemes lie in the interpretation of ‘handicap’. This highlights the social consequences associated with an impairment and/or disability. It raises difficulties in performing social roles, while acknowledging that these vary across social groups and cultural contexts.\textsuperscript{151}

The ICIDH found immediate favour with many social scientists but provoked considerable criticisms from disabled peoples organizations. First, the approach realize primarily on medical definition and uses a biophysiological definition of normalcy\textquoteright. It disregards the impact of social criteria in forming judgements about whether body weight and shape, mental distress or cognitive functioning, is normal rather than pathological. Moreover the definition of handicap ignores social and cultural relativity in role of allocation\textsuperscript{152}

Second ‘impairment’ is identified as the cause of both disability and handicap. This privileges medical and allied rehabilitative and educational interventions in the treatment of social and economic disadvantages. It justifies the domination of disabled peoples lives by health professionals. In contrast disabled people increasingly argue that disability (as defined in a social perspective) is not a health issue, and therefore that health professionals are not the appropriate judges of the support needs.\textsuperscript{153}

This leads to a third criticism that the ICIDH represents the environment as neutral and ignores the extent to which disabling social, economic and cultural barriers are significant in the social exclusion of people with impairment. Even though social and environmental influences are recognized, these have little significant are credibility in the application of the ICIDH in service planning are provision. The overwhelming clinical focus


\textsuperscript{152} Ibid.

\textsuperscript{153} Ibid.
dictates strategies for individual adjustments and coping unrealistic hopes and amities are constrained. Whether a person is born with impairment or acquires it later in life, ICIDH reinforces socialization into dependant role and identity. For lack of any other choice certainly medical and allied interventions have had many positive outcomes for the disabled people, but the ICIDH concentrates on diagnosing and treating the individuals limitations, rather than persons social exclusion\textsuperscript{154}

Widespread disenchantment among disabled people and their organizations, as well as criticism from mainstream medical researches persuaded WHO to revise its classification scheme. This resulted in the formulation of International Classification of Functioning (ICF) disability (WHO 1999) or more popularly ICIDH-2. It sought to incorporate the medical and social models in a new bio-physico-social approach. The over all result is a multi purpose classification system that retains the concept of impairment in body functions and structures, but replaces disability with activities and handicap with participation. In addition ICIDH–2 assumes that functioning, activity and participation are influenced by a myriad of environmental factors, both material and social. This opens of new possibility for socio-medical analysis of disablement, although it retains individualistic medical notions of disability and its causes.\textsuperscript{155}

Notwithstanding these developments, there is ample evidence internationally of the continued acceptance of the individual model of disability in policy circles. Thus the ‘functional limitations’ approach is widely incorporated within anti-discrimination legislation (as in the USA and Britain), and it continues to inform surveys of the prevalence of disability with in European Union.\textsuperscript{156}

\textsuperscript{154} Ibid.


SUMMARY

From the time immemorial the disability aspect of mankind has been receiving the attention of the philanthropists, social scientists, political thinkers and philosophers. Marx and Engel’s set the trend by highlighting the human experiences as to human labour and its transformations. The Nature and concept of disability are intertwined with many facets of human sufferings due to psychological, philosophical, socio-economic and political determinants, myths, social traditions, lack of awareness, cultural identities, health and hygiene apart from other causes of disabilities created a situation in that preventable disabilities of various types were consciously allowed to perpetuate and sufferings, neglect, denial of their human rights haunted the persons with disabilities.

Theoretical framework to address serious concerns of persons with disabilities were engaging the attention of the stake holders in disability sector on the path towards removal of all barriers to secure socio-economic justices undoubtedly the medical, socio economic and political theories highlight the reckonable issues over the rights of the disabled with conflicting views. Individualization and mainstreaming of Persons With Disabilities have come to be acknowledged as key words in disability sector in that securing promotion and protection of the rights of PWDs are core issues. International voices towards securing anti-discrimination and rights based comprehensive norms to be adopted globally have come to be acknowledged all over the world. Much needs to be done in the matter of disability education and to undertake researches on various dimensions of disability. Towards this end for the promotion and protection of the rights of the disabled globally, the UN has adopted a comprehensive, integrated, rights based convention on disability, albeit, the existing international instruments in the matter has created a dent on the welfare of the disabled to a considerable extent.

It is pertinent to highlight that genetic technology such as food modification and cloning, have come to be debated contributing to the emergence of the ‘perfect body, which in some way works against the minority groups such as people with disability. The debate on this have
political implications on societies' policies and practices concerning to PWDs. Medical debate on euthanasia and eugenics have received public acceptance and support of policies and practices that eliminate defective bodies or minds. The on going process of developing universal code of ethical practices in social and technological research impacting disabled people equally important is the debating process and their production. Disabling from the social perspective is socially created notion and it is culturally produced by the disabling society. This does not deny the physical and functional limitations of living with impairments. Many social policy theorists advocate for solution through restructuring the society, especially the economy.

There is a linkage between social Darwinism theory which promoted ‘survival of the fittest’ and the genetic debate. This has been considered as pointer by genetic engineering, which seeks to improve human genome, to produce a ‘better’ and ‘fitter’ species. Social Darwinism stresses that social policy should allow the weak and unfit to fail and die and this is considered to be morally right.

The current risk of physical, social and psychological harm concomitant to cloning – physical harm to embryo, psychological harm to the right of the child and their family is significant and justifies a prohibition on such experiment. Based on the analysis put forward there is dire need to develop ethical codes of practice concerning genetic research relating to persons with disabilities. UNESCO’s Universal Declaration on Human Genome – which is based on human rights approach to life – life recognizes the need for regulating genetic research for protecting the dignity and integrity of human beings (UNESCO 1997). It is in the fitness of things that there has been a recent debate over genetic issues in the discussion of the UN’s draft disability Convention, which is a step in the right direction (UN ESA 2004).