CHAPTER I
CHAPTER – I

INTRODUCTION

Disabled people live in deplorable conditions, owing to the presence of physical and social barriers which prevent their integration and full participation and in the community. As a result millions of disabled people throughout the world are segregated and deprived of virtually all their rights and lead a wretched married life.

A failure to embrace disability as a core concern can only impoverish the discipline both theoretically and empirically of critical importance is the assertion that disability is both socially and historically relative identity that is produced by the society:

The production of disability ... is nothing more nor less than a set of activities specifically geared towards producing a good – the category disability – supported by a range of political actions which create the conditions to allow these productive activities to take place and underpinned by a discourse which gives legitimacy to the whole enterprise.

Materialists have developed the following two fold definition of disability that embodies this idea:

Impairment, lacking part of or all of a limb, or having a defective limb organism or mechanism of the body.

Disability which is the socially imposed state of execution or constraint which physically impaired individuals may be forced to endure.


The problems of disabled people are basically the question of their human rights – the availability of conditions for the development of the innate characteristics, which nature has bestowed him/her with, as a human being. The promotion and protection of human rights is a continuing struggle, which is very pertinent to the subject of this study.

While the United Nations Declaration on the rights of the disabled persons (1975) gave its definition as any person unable to ensure by himself or herself, wholly or partly the necessities of a normal individual and or social life as a result of a deficiency either congenital or not in his/her physical or mental capabilities, the World Health Organization, with its experience, made a distinction between impairment, disability and handicap.

The nature and concept of disabilities are intertwined with many facets of human sufferings due to psychological, philosophical, socio-economic and political determinants, myths, social traditions besides 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, demand of their human rights haunted the persons with disabilities.

The causes and consequences of disability vary throughout the world owing to divergences in socio-economic conditions as well as provisions adopted by states for the well being of their citizens.

Persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world.\(^5\)

The global movement to achieve human rights for disabled persons, however, is a recent phenomenon, having sprouted since 1970 with the emergence of disability rights movement. Though there can be no denying the fact that even before the foundation of the United Nations System, some initiatives in this direction had already been taken at the global level under

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the auspices of the League of Nations, especially the International Labour Organization (ILO) during interwar period. Notwithstanding, the league provisions regarding health matters particularly in respect of the problems of disability and rehabilitation had not been institutionalised. The League Covenant itself suffered from several gaps and technical weaknesses. It was however, the lack of willpower on the part of the member states rather than resources constraints which accounted for its in effectiveness in this regard.⁶

During early 1980s, these activists received a big boost within the General Assembly, designating 1981 as the ‘International Year of Disabled Persons’ (IYDP) and adoption of ‘Standard Rules on the Equalization of Opportunities for Persons With Disabilities in 1993’.⁷

The States Parties to the United Nations are concerned about the difficult conditions faced by persons with disabilities who are subjected to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic indigenous or social origin, property, birth, age or other status⁸ and recognised that women and girls with disabilities are often at greater risk, both with in and outside the home of violence, injury or abuse, neglect or negligent treatment maltreatment or exploitation⁹ and also that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children and the states parties had already undertaken obligations towards this end.¹⁰

The principles proclaimed in the Charter of the United Nations recognised the inherent dignity and worth and the equal and inalienable

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⁷ Ibid, p.5.

⁸ Supra n.5, para (p).

⁹ Ibid para (q).

¹⁰ Ibid para (r).
rights of all members of the human family as the foundation of freedom, justice and peace in the world.

The United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights proclaimed and agreed that every one is entitled to all the rights and freedoms set forth there in, without distinction of any kind.

There exist the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination.

The member states of the United Nations, being parties to various Conventions and Covenants on Human Rights acknowledged that it is important to secure international cooperation for improving the living conditions of Persons With Disabilities in every country, particularly, in developing countries.

The Nation States recognised the valued existing and potential contributions made by Persons With Disabilities to the overall well being and diversity of their communities and felt that their rights need to be augmented in many respects. In order to enable their capacities in employment, education and to eradicate their poverty stricken conditions, further their rights, it would be better that their rights may be augmented significantly by adopting an independent convention dealing with their rights exclusively.13

11 International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social, Cultural Rights (ICESCR); International and Convention on the Elimination of All Forms of Racial Discrimination (ICRD); International Convention on the Elimination of All Forms of Discrimination Against Women (ICEDAW) International Convention Against Torture (CAT); International Convention on the Rights of the Child (ICRC) etc.

12 Supra n.5, para (7).

13 The U.N's Convention on the Rights of Persons With Disabilities was adopted on December 13, 2006 vide Resolution No.
Disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.\textsuperscript{14}

International Year of Disabled Persons, Decade of Disabled Persons, regional initiatives like Africa, Asia Pacific, Europe decade of Disabled Persons did pave the way for hard and soft International laws and National Laws have come to be reckoned for promotion and protection of rights of the persons with disabilities. Finally national and global disability activists’ movement culminated in the formulation of National Laws and the International Convention on the Rights of Persons With Disabilities, National judges and advocates primarily apply the application of national legislation and other rules such as common law or customary law rules that form part of the national legal system. However there are number of reasons why knowledge of international human rights law is important, even in countries in which treaties ratified by the state have not been incorporated into domestic law.\textsuperscript{15}

An examination of the concept of disability rights clearly discloses that though the International Law of Human Rights play a significant role in promoting their rights, it is the Municipal Law that has to cope up with the international norms laid down by the Nation States at the international level.

In this regard it is the Municipal Courts that contribute vitally and uniquely in augmenting the rights of the physically challenged people, guaranteed by the International Law of Human Rights.

It is seldom possible for the decision of the Municipal Courts to realise the practice of the State towards the implementation of the International Law.

In tune with the changing philosophy of human rights of the disabled rights, taking into consideration of the regional movements and initiatives adopted by the Nation States at the Municipal level, finally convinced the

\textsuperscript{14} Ibid, para (e).

\textsuperscript{15} National Human Rights Commission, Disability Manuual, 2005, p.50.
international commodity to adopt an international convention on the rights of Persons With Disabilities under the auspices of the United Nations.\textsuperscript{16}

No doubt the comity of Nations, is always ahead of the Municipal law in extending protection to the needy. However individuals being objects of International Law to a great extent, it is only the implementation Nation States at the Municipal level help to deduce the success that International Law achieved at the international level could be measured.

Though the practice of the states may vary in adopting the principle of International Law, in the case of principles of human rights are concerned, they have an obligation to carry forward to the dictum of International Law to a maximum extent.

This can be deduced upon an examination of the executive, legislative and judicial practice of the Nation States. In all precisely, it is the judicial decision of the Municipal Courts that are helpful to a great extent to deduce the fact that to what extent the International Law has been implemented by the member states.

Thanks to the vision of the framers of the Constitution of India that they have embedded the provisions of human rights in various ways and means. Infact the Indian Constitution is the first one to come into existence after the adoption of the UDHR in 1948.

Taking into consideration of the tenets of human rights philosophy of the declaration, the constitution could ably incorporate these ideals, as a part and parcel of the constitution,\textsuperscript{17} that the fundamental rights and directive principles of state policy, through the prism of its preamble.

With due regard to the ideals of the constitution, the Government of India is always ahead compared to many regions in the world in enhancing

\textsuperscript{16} UNs Convention adopted on December 13, 2006 on the Rights of the Persons With Disabilities is the first ever comprehensive integral right based Treaty on disability and is the first International Human Rights Convention on disability in 21st Century for details see Appendix 1.

\textsuperscript{17} International Covenant on Civil and Political Rights as Fundamental Rights in Chapter III and International Covenant on Economic, Social and Cultural Rights as Directive Principles of State Policy in Chapter IV of the Indian constitution.
the rights of all sections of the people without any discrimination especially that of the PWDs by the enactment of law specific to disability.\textsuperscript{18}

The genetic technology such as food modification, cloning, have come to be debated contributing to the emergence of the perfect body, which in some ways works against the minority groups such as the people with disability.

Political implications on societies, policies and practices concerning disabled have come to be debated and views of public on medical debated on euthanasia and endemics are seen aired to receive support to influence policies and the law that eliminate defective bodies and mind. There is 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 ‘filter’ species, what is stressed in the Social Darwinism is that social policy should allow the weak and unfit to fail and die and this is considered to be normally right.

Cloning carries with it the current risk of physical, social and psychological harm, physical harm to embryo, psychological harm to the right of the child and their family is significant and justifies a prohibition on such experiment. As such 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, which recognises the need for regulating genetic research for protecting the dignity and integrity of human beings (UNESCO 1997).

The insensitive society and the governments with indifferent public authorities needed to be resented as there are major hindering forces that thwart successful and satisfactory implementation of laws in favour of Persons With Disabilities.

In the fast changing scenario, the international human rights law has been paving the way for the review of existing laws and formulations of Municipal laws in favour of the disabled. Most municipal laws in various countries have not reached the Persons With Disabilities as these rights have not been made a justiciable for the reason of economic capacity of the State. Supplementing and complimenting efforts of the states and the UN and its specialised agencies will go a long way to provide conditions, conducive for the status to extend the basic rights to the disabled at par with any other citizen. It would be appropriate to point out that by internal and external networking of Human Rights entities and by sensitization of stake holders including the three wings of the government will help achieving the desired success to a considerable extent promotion and protection of rights of Persons With Disabilities.

In the Indian context the role of judiciary in the matter of securing the rights of disabled as also granting social security, it would be pertinent to highlight that there have been landmark judgements from the High Courts and Apex Court on the rights of the PWDs, which include right to: education, employment, access, housing, social security, mental health and on general principles.

The Welfare legislations in favour of persons with disability include Motor Vehicles Act 1988 and the Work men’s Compensation Act 1923. Two kinds of situations were dealt with by the legislations in the said Acts which include determination of compensations on the occurrence of disability on the road or at the work place. A fair degree of conflict arises which courts are to adjudicate. Some judicial decisions in favour of awarding disability pension and compensation include: Virendra Kumar v. Union of India,19 Anande Bihari v. Rajasthan Road Transport Corporation,20 Gurnam Singh v Union of India21 etc.

21 Gurnam Singh v. Union of India 1992 Lab IC 1594.
In *Indra Sawhney v. Union of India*, Sawant J. said in the matter of treating persons with disabilities as backward class, that while relief may be given under Article 14, 15(1) and 16(1) by adopting a rational principle of classification, Article 14, Article 15(4) and 16(4) cannot be applied to them.\(^{22}\)

The tragedy is that while science has made the World abundant and exploitative order keeps its inhabitants disabled even the rich mangle the unborn through ignorance and pharmaceutical trickery as the thalidomide bear genesome testimony.\(^{23}\)

It is necessary to point out that there are certain traditions, customs, and religious compulsions that act as unhelpful forces against mitigating laws in favour of persons with disabilities. Hence the Municipal Laws through which basic laws are extended to PWDs can not be realised in actuality through legislation alone, without the aid and assistance of various organs of the society.

It is very much necessary to stress that enforcement committee authorities and effective implementation machinery in the form of many legal entities sanctioned by law, single handed efforts by the government alone is impossible for translation of the objectives of the governments into action unless such efforts are supplemented by various organizations, NGOs, National and State level Human Rights Commissions and higher degree of commitment of the statutory authorities under the law supported by public awareness towards its commitment, for promotion and protection of the rights of the disabled. Toning up of the entire implementation mechanism and new direction for strategies to be adopted to secure rights to the persons with disabilities is the need of the hour.

Towards this end it is essential to ponder over the need for establishment of Ombudsman institution, Disability Rights Adalats at States and at the National level besides setting up of exclusive department for disability. It may also be necessary to stress that the district level committees

\(^{22}\) *Indra Sawhney v. Union of India* 1992. Supp (3) SCC.

under the States Human Rights Commission should be charged with the responsibility to entertain, examine and dispose off expeditiously the complaints from the individual persons with disability as also from the organizations representing them including NGOs.

1. Objectives and Scope of the Study

The problem of disability is as old as human civilization. A global dimension of disability today has assumed greater importance owing to the inevitable impacts of the fast changing social and political movements of disabled. The community of nations has woken up to hasten the process of reckoning the rights of the disabled. National laws received the impact of International Human Rights Laws in that multifaceted approaches are being taken recourse to not only to help mitigating the hardship of the people impacted by varying types of disabilities, charity dimension of disability has started getting shift to rights paradigm. Social barriers confronted with by persons with disabilities explain social exclusion and ostracisation deserved to be addressed. Disabled people are marginalised and social and legal protection of the rights of the disabled particularly in developing countries have not adequately impacted as yet. The International human rights laws under the fast changing global scenario in which international human rights law having made dent towards formulation of regional and national legal standards on disability, to ensure human rights are well promoted and presented. The world community has come to realise the importance of the disabled population considered as social assets particularly in developing countries. Segregation, isolation, marginalisation and subject to utter neglect of the disabled is undoubtedly against the interest of the family, state and the human kind in the world. It is necessary to emphasise that the disabled have right to self development and contribute towards social development, lest the maintenance of disabled, by keeping them at bay is not only beyond the capacities of economy of the state but also the society and the states by such courses of degrading action against them would be denying the society itself to secure best out of the potentialities of the disabled population. 'The history
has revealed that there is large number of eminent personalities in the world who contributed lot for unique accomplishments for self, society and the nation and even for human race.\textsuperscript{24}

Although governments of different countries had started the work of welfare of the disabled at different levels, but even now voluntary organizations are playing a major role. There are, today, only 100 government organisations out of 8000 organisations in India. It is generally believed that most of the work has been done by the voluntary organizations. The types of organisations include service organisations, advocacy organisations and international organisations.

Under the circumstances the role of the state in general and the judiciary, legislative and the executive in particular towards ensuring extending the promotion and protection of rights of disabled deserve an in-depth study.

An international instrument of UN has since been adopted\textsuperscript{25} and consequently the municipal laws on disability specific require to be given a fresh look. There have been several conceptual issues like definition, theories and approaches to rehabilitation, mainstreaming of disabled in the society and inclusive education to children with disabilities. Large number of case laws on disability, providing landmark judgements and these need to be analysed. Suggestions from stakeholders in disability sector as also from National Human Rights Commission urging, for amendments to existing national law, specific to disability, also require appropriate analysis.

The rights based approach to the concerns of the disabled required to be researched from angles towards disability issues which include disability and human rights, role of NGOs in disability sector, and the problems with which they are confronted with and judicial activism on disabled concerns among other things.

\textsuperscript{24} Franklin Delano Roosevelt, an Orthopaedically handicapped Statesman, who became the President of USA.

\textsuperscript{25} The United Nations General Assembly adopted a comprehensive, Integral, rights based convention on the rights of Persons With Disabilities on 13, December 2006.
The dissertation will provide ample scope for making an in-depth study on similar topics of interdisciplinary nature including impacts of biotechnology and information technology with due regard to human rights. Focus on implementation mechanism and strategies adopted needed to be addressed with utmost urgency with a view to secure a viable environment and atmosphere to realise the rights of the disabled as provided in the international and national spheres.

2. Research Methodology

The main aim of law is to alleviate the conflicts among the members of the society (either international or national) and prepare the men to meet the exigencies of the future. This being the aim of law, law is not static but a dynamic institution. It changes according to the social relations. It is being reformed according to the needs the society. Taking this important tool into consideration to address the vital needs of the disabled that are neglected for centuries, the United Nations started addressing the vital issues concerning the disabled. Accordingly a number of declarations have been adopted by it addressing the states to take necessary steps to augment the right of the physically challenged people.

In order to cope up with the clarion call of the United Nations and that of international law of human rights, the Union of India has enacted a number of enactments to promote the rights of the disabled. However, due to the paucity of funds and insensitive to the special problems of the disabled, the implementation process by the execution is very slow. Many a times the lackadaisical attitude of executive heads in implementing the dictum of the legislature is causing several hardships to the disabled and their rights are relegated to a secondary position. In order to carry forward the dictum of both that of the human rights and the legislature, the judiciary is called-for quite often either by the disabled or by social activists. Whenever it gets an opportunity, the judiciary is doing its best to promote the rights of the disabled as guaranteed by international law and by the municipal law. In view of the above scenario, the study examines the rights of the disabled in the
international and national sphere, especially that of the Indian context, taking into consideration of legislative measures and the implementation mechanism as to the structure, powers and functions of various administrative entities and the role played by the judiciary. The study further examines inter-related issues that have a vital bearing on the rights of the disabled in the Indian context in order to arrive at a conclusion, the type of steps that need to be taken by the state by augmenting the cherished rights of the disabled, to achieve both the objectives of human rights and the legislative concerns.

Although law is a social science, it is distinct from other social sciences in view of its normative character. As a normative science, it not only regulates human conduct and relationship, but also provides stability and continuity of legal system to achieve the desired goals and social values. Since, the aim of the subject human rights of the disabled is also the same as above, the researcher feels that this type of research can be fruitfully carried out by employing “Analytical” method of approach than any other method.

In general “Analytical Method of Research” is concerned with analysis of Firstly, what the law is at present, Secondly, what are the provisions of the existing statutes and their applicability in the present conditions. Thirdly what are the analogies, Fourthly, what are the prevailing customs and their impact on existing statutes and the impact on the particular case law and the related acts and the law ought to be and Finally, to suggest reforms in the existing methods that need to be implemented. As the analytical method of research requires a researcher to find out the development of law in the past, present and future and the impact of new customary obligations which shape the futurist developments of the legal nuances with the help of the new principles developed by judiciary basing on the international and national principles. Hence in this study legal aspects developed by the international bodies and municipal statutes and theories dealing with physically challenged people have been restated in order to examine to what extent the executive organs and the various bodies are created to augment the rights of the disabled. Further, Judiciary being part of the state to what extent it played its role in
making the state to discharge its international and national obligations to arrive at a conclusion, the remedial measures that are required to be adopted in future. Thus analytical method provides sufficient approach to tackle rights problems of disabled. The relevant material is collected from legal and non legal sources like books mainly dealing with Political Science, Sociology, Anthropology and Law journals, original judgements of the Supreme Court, High Courts, newspapers, periodicals etc. Apart from the above relevant materials, original sources such as the Declarations of the various International, Regional and Intergovernmental bodies and Statutes enacted by the Government of India are also consulted to arrive at an apt conclusion to find out to what extent India adopted the principles of international law of human rights in order to discharge its constitutional and international obligations as a party to several Covenants and Conventions of human rights.

3. Review of Literature

In the context of the present study, existing literature relevant to the subject has been reviewed from various sources, research works, schools of thought of eminent jurists etc. The disability aspects are becoming more and more important and the research work being undertaken have come to be on the increase. Judicial interventions on the serious concerns relating to the subject have also been reviewed with reference to the literature on the socio-economic and legal domains. Various interpretations and analysis have been reviewed from different angles to ascertain the importance of such expressions on the vital issues concerning the subject.

According to Collin Barness and Geof Mercer, academic discussion of impairment and disability in the social sciences has been slow to undercut the prevailing ‘personal tragedy’ orthodoxy. Socio-political analyses of disability owe their momentum instead to the pioneering studies of disabled activists and the growing politicization of disabled people around the world.

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and a new, vibrant disability studies literature is now building alternative perspectives to the established, individualistic approach to disability.

Brendan Gleeson, in his work brought out relationship between space and disability. In particular it explores how social and spatial processes can be used to disable rather than enable people with physical impairment. According to him the topic is important for at least two reasons: first, space and related concepts such as mobility and accessibility, are profoundly important to the lived experience of disability, second this fact has been given relatively scant attention in the past by many scholars across the world including social scientists etc.

According to A.N.Singh, the overall conditions in which mentally retarded persons have been brought up to live, indicates the urgent need to enact legislation which can provide them overall protection and better quality of life. The important areas of care and protection against which disabled person need legal coverage: medical care/treatment, education, recreation, sheltered workshop, vocational training, employment, job reservation, marriage, inheritance, owning and management of property, social security scheme including pension, disability insurance, special trust and parents as well as government responsibility for care and welfare of the disabled persons.

According to Linton's, on the question as to what should be the scope of Disability Studies as an academic discipline, what is its border line and how does it differ from that of Not Disability Studies? The demarcation lies between them is blurred and fixed at different points by different scholars, though there can not be any absolute boundary of disability studies in the strictest sense of the term, how ever it would be worthwhile to out line its area.

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Barton and Oliver are critical of ‘personal tragedy’ models of disability and for them the difficulties of participating in society not due to personal limitations, but arise from the prejudices, discriminatory policies and practices and social restrictions of an adaptive society. For them disability is fundamentally political, social issue which is a form of oppression.\textsuperscript{30}

Oliver.M. opined that the major issue on the research agenda for the 1990’s should be on whether researchers do wish to join with disabled people to use their experience and skills in their struggle against operations or do they wish to continue to use these skills and expertise in ways in which disabled people find oppressive\textsuperscript{31}

Oliver’s (1996) highlighted that a noted Western expert writes: In terms of policy and programs this growing disability movement has turned away from the professionally dominated top down solutions provided able bodied experts; programs dependent upon extensive professional labor new technology, hardware, software and the like. Instead it has advocated policy based upon according disabled people full citizenship right through anti discrimination and programs designed to facilitate in dependence through the promotion of personal assistance schemes\textsuperscript{32}

Mason refutes the claims of disability movements of being an “organization”. Though he categorically considers the power of this organization to have got sustenance from disabled people’s own organization, he is not ready to call it an organization in strictest sense of the term. According to him, the disability movement is rather a political analysis of problems of disability.\textsuperscript{33}

\textsuperscript{30} Barton and Oliver (1992), Special Needs Personal Trouble or Public Issues. Cited in supra n.32P, 250.

\textsuperscript{31} Oliver.M, (1992) changing the social relations of research production? Disability, Handicapped and Society, Special Issue, 7(2) PP 101 sighted in supra n.32P.269

\textsuperscript{32} Karna.G.N, 2001 Disability Studies in India, Gyan Publishing House, New Delhi P.234

\textsuperscript{33} Ibid P.222.
French, Sally asserts: the dynamic driving force between organizations of and organizations for disabled people is nonetheless, in a fluctuating and transitional stage. Though their relationship can never be expected to be smooth one, many organizations of and for disabled people cooperated and collaborated mutually, and some organizations for disabled have even changed their constitutions in order to adapt to organizations of disabled people\textsuperscript{34}

Anita Ghai asserts: The personal tragedy model posits a “better dead than disabled” approach and reinforces the stereotype that the disabled cannot be happy or enjoy an adequate quality of life. The disabled person’s problems are perceived to result from bodily impairment and a troubled mind, rather than the failure of society to meet that the persons needs in terms of appropriate human help and accessibility. This understanding places specific burdens on the disabled to reconstruct themselves as normal people as they contend with both implicit as well as explicit assumptions about their reluctance to acknowledge their disabled existence. Consequently disabled people are subjected to many disabling expectations by able bodied society. For it is mandatory for them to be “independent”, “normal” and to “adjust” and to accept their situation. \textsuperscript{35}

Crow and Morris stressed the importance of understanding the personal experience of impairment and actualizing the sentiment that “personal is indeed political”. In fact an insight into Crow’s reservation regarding a social model approaches that placed impairment has biological and caused a bio-social split, is a worthwhile exercise. By bemoaning the silence of impairment from the domain of disability, Liz Crow who critiqued this silence about impairment, says, ‘this silence prevents us from dealing effectively with the difficult aspects of impairment’\textsuperscript{36}

\textsuperscript{34} French, Sallyl, 1984, the Disability Movement, In Ed. On equal terms: working with disabled people (Oxford: Butterworth)


\textsuperscript{36} Ibid, P.120.
Velkoff and Adlakha point out that a study on implications for health care policy in India point to the need for public health insurance system in India that can serve as a safety net for the individuals with disabilities. Even when appropriate systems are in place, close monitoring are required, because our studies find that women are especially vulnerable to non receipt of preventive care. In the Indian context it is highly significant because of the fact that the Indian Women are often viewed as economic burden and given poor access to health care leading to higher female mortality.\textsuperscript{37}

Gupta, Dipankar observes: A good way of judging how modern a society 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 gizos , but much of that is very superficial .An objective indication of modernity is the number of wheel chair ramps , facilities for the blind in buses at home and in the work place as well as rehabilitation measures for the sick and infirm.\textsuperscript{38}

Brown R,I. is of the view that 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 society .Of course, public attitudes have considerable effect on the rehabilitation and adjustment processes and the research reveals that these attitudes are negative.\textsuperscript{39}


\textsuperscript{38} Gupta, Dipankar,(1998)National Handicap, the Telegraph November 21,kolkata, cited in supra n.32p.104.

In the opinion of Lord Denning,40 in the present state of motor traffic, any civilised system of law should require as a matter of principle that the person who uses this dangerous instrument on the roads dealing death and destruction all round, should be liable to make compensation to any one who is killed or injured in consequence of the use of it. There should be no need for him to prove that he was negligent. There should be liability without proof of fault to require an injured person to prove false result in the greatest injustice to many innocent persons who have not the wherewithal to prove it. It is fault enough that the driver should use this dangerous instrument on the roads – thereby putting others at risk. Accordingly, he finds himself in agreement with one of the best common law judges of his time Mr. Justice Surift – of whom Mr. Justice Geddard said in 1938:

The late Swift J who, at the time of his launched death had an unrivalled experience of these cases, said, on more than one occasion, using the vigorous language which characterised him, that if parliament allowed such potential dangerous things as motor cars to use the public streets, it also to provide that people who were injured by them, though no fault of their own should receive compensation.

Dr. G.N. Karna41 is of the view that the problems, perspectives and contribution of disabled persons are now being visualized as part of the process of human existence and the disabled individuals are increasingly occupying centre stage positions of leadership and are self consciously speaking out as individuals who happen to be disabled, but have unique perspective.

D.S. Mehta,42 asserts that the magnitude of the task makes it clear that voluntary efforts alone could provide the quality and quantity of services needed for the gigantic task of the welfare and rehabilitation of the

handicapped and there is need for close partnership between the
government and voluntary agencies. The formation of the Central Social
Welfare Board in 1953 was recognition of the fact that voluntary
organisations had come to stay in many ways. He also asserts that voluntary
agencies enjoy the prerogative of a certain flexibility of action, willingness to
experiment, and a close personal touch with the clientele which government
agencies do not have.

Dr. D. Ramamani\textsuperscript{43} advocates that favourable economic and social
benefits in the form of independence and employability as against the
expenditure on the dependant handicapped for life will create a more positive
altitude towards social services for them and also strengthen the current
trend towards the ‘normalization’ of handicaps and since social attitudes are
reflected in the behaviour of individual such a development would have
welcome consequences for the handicapped themselves, their families,
employers etc.

Justice V.R. Krishna Iyer\textsuperscript{44} asserts that the heart of social justice is law
with a heart, a humanist jurisprudence sensitive to the disabled sector, a
versatile legal technology rich with substantive rules, operational processes
and sympathetic personnel, judicative and executive, ready to give relief in
the spirit of love and armed with law. The core truth that there is person
hood in all the ‘disabled’ is the foundational faith of the rule of law turned to
the new wave of human rights, he stresses, while highlighting that it is the
summons of the Constitution’s preamble and of the International Year of the
Disabled Persons.

\textsuperscript{43} Dr. D. Ramamani, The Physically Handicapped in India, Policy and Programme, 1988,
Ashish Pub-House, p.10

\textsuperscript{44} V.R. Krishna Iyer, Law Justice and the Disabled, 1982, Deep and Deep Publications,
New Delhi.
4. Plan of Study

The present study envisages investigation of various aspects of the rights of the disabled by the coverage of information addressed in various cases in Supreme Court and High Courts besides Tribunals. The study also addresses various aspects of disability, those were exposing the conflicting legal provisions in different legislature enactments concerning disabled and the rules being applied as are framed under the law and to prevent violations of principle enactment in national and international laws on disability.

The entire study is divided into six chapters addressing various aspects of the problem under study. The First chapter covers the introduction consisting of the objectives and the scope of the study of the problem, the methodology adopted and review of the literature and the scheme of chapter for the plan of study.

The second chapter reports the genesis of Disabled Rights, International Disability Perspectives, Regional Disability Perspectives, and Rights of Disabled in Indian Perspective.

The third chapter examines. Disability – nature and concept of disability, causes of disability, meaning and definition of disability, theories of disability, and classification of disability.


The fifth chapter emphases conceptual issues, disability rights and the role of the state, role of Coordination Committees, power and functions of

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45 These various rights of the disabled include, set of social and cultural rights viz., right to food and clean water, right to adequate housing and shelter, right to health, right to education, linguistic rights, access to place of entertainment, sports and culture, access to medical and communication and information technology (ICT): set of economic rights viz., right to work, right to just and favorable conditions of work, right to social security, right to own and administer property: set of civil rights viz., right to life, liberty and security of persons, equal recognition as a person before the law and protection of law, freedom from torture or cruel, inhuman or degrading treatment, freedom of expression and opinion, access to information, freedom of association, right to marry and found family, right to respect for privacy of home and correspondence and right to participate in political and public life.
Chief-Commissioner for Persons With Disabilities, role of National Human Rights Commission, role of National Commission for Women, Rehabilitation Council of India, the Non-Governmental Organization and the Role of Judiciary in the Indian context.

The last chapter brings out the conclusion in general, and, in specific with respect to the role played by Indian courts on laws on disability, and specific focus on the implementation mechanism and strategies adopted.