CHAPTER-VIII
A BLUEPRINT OF PROPOSALS

In the light of our review of the various provisions discussed in the preceding chapters, a few general proposals and some specific suggestions have been culled which are otherwise lying embedded in the context. These should, it is hoped, serve as an instant critique of policy formulations.

8.1. General Proposals

a. Idle manpower of the disabled is a recurring loss to the community, both in terms of its being direct burden and non-productive. Prevention of disability and the rehabilitation of the disabled, thus, require top priority.

b. Primarily, it is the Ministry of Social Welfare which is burdened with the responsibility of providing all sorts of services to the disabled. Instead, Ministries of Education, Health, Labor, Home, Industry, Science & Technology, Law & Legal Affairs and Agriculture & Rural Development, should all join in the venture, with the coordinating power vesting in the Ministry of Social Welfare.

c. There is a need to develop indigenous aids and appliances, and equipments, which would facilitate the training, employment and the rehabilitation of the disabled

The disabled themselves should be involved in the identification of their peculiar problems which could constitute the basis of on going research in our national laboratories manned by motivated scientists, technician’s engineers, research workers and other specialists in different fields. Attempt should be made to change the societal attitude of pity towards the disabled, and the attitude of the disabled towards themselves as being burden” on society. Both these are destructive of self-reliance.

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8.2. Specific Suggestions

8.2.1. Re Employment

a. Special Employment Exchanges

These are fewer in number (22 in all) and still much less efficacious in operation because the over-whelming private sector ignores the disabled with impunity. If 'the chances of the disabled for realistic employment are to be improved, employers covered under the Employment Exchanges (compulsory Notification of Vacancies) Act, 1959, should be compelled to recruit the handicapped persons against all available vacancies for which they are eligible. (Such a compulsive measure can be created through suitable amendment of the rules.

b. Vocational Rehabilitation and Rural Extension Centers

At present there are only 16 Vocational Rehabilitation Centers and 11 Rural Rehabilitation Extension Centers to cater the needs of the disabled in India. These are too-inadequate to meet the needs of millions of disabled accordingly; increased budget allocation is needed for the creation of the requisite number of vocational centers.

c. Support to the disabled, especially the mentally ones, and persons with severe multiple disabilities, within the family should be preferred to the outside institutional arrangements. This may be thought of, say, in terms of providing employment to at least one closest eligible member of the family of such disabled.

d. Reservation of jobs for the disabled should be done at all levels, because there seems to be no rational in restricting such a provision only to jobs in class III and class IV categories.

e. The D.G.C. circular of 1976, directing the universities and colleges to consider the cases of the blinds seeking teaching positions with 'utmost sympathy’, needs extension so as to cover all categories of the disabled persons.
f. The pre-employment apprenticeship training scheme for the disabled under the Apprentices Act, 1961, needs strengthening by creating an obligation on the industries to absorb the product of such training as regular employees.

g. The absorption of certain percentage of eligible disabled in the private sector should be made a condition precedent for the entitlement of public loans.

h. The existing provision of posting the disabled employee near his place of residence should be modified to the extent that the spouse of such disabled is also posted at or near his place of work/residence.

8.2.2. Re Economic Benefits

e. Every financial assistance given to the disabled the form of scholarships, stipends, loans, allowances, and other monetary concessions should be linked up with the rice index, and, reviewed periodically.

f. The procedures to enable the disabled to avail themselves of various economic benefits are rather tedious and therefore, need rationalization in all such respects as the issuance of identity cards, medical certificates, and the like.

g. The obligation of the employer towards the worker, who is disabled during the course of employment should include not merely to provide one-time lump sum compensation under the Workmen's Compensation Act, 1923 but also to provide placement depending upon his or her residua potentials.

8.2.3. Re Policy-Making

a. There is a need to maintain a national register; requiring compulsory registration of all the disabled, along with the nature and magnitude of their disability for a systematic planning towards their betterment.

b. There is a need for a periodical review of the policy programmes by the Legislature in the light of the input data reflecting the current state of the disabled.

c. The involvement of the disabled themselves in the policy formulations, both directly and indirectly, is consistent with the democratic approach. This idea
should find a concrete manifestation by providing organizational representation of the disabled at various levels of policy making forums.

8.2.4. Re Awareness

a. Re-orientation of the society including the disabled themselves through wide publicity is necessary in the light of the social philosophy underlying the new approach to the problem of the disabled and their welfare.

b. Publications, meetings and conferences, seminars and symposium on the theme of disability, should be encouraged so that disabled and those involved in the rehabilitation process could have a meaningful exchange of experiences.

c. A publicity campaign should be started to educate the disabled about the existing facilities and procedures contributing towards their meaningful existence.

8.2.5. Re Education

a. Free-education, which is specially made available to the disabled, should not be restricted either to a particular level of education or up to a particular age. They should be allowed to continue to explore potentials to the fullest possible extent.

b. A disability related theme, in its varying manifestations, should be incorporated in the educational curriculum at least up to high-school level.

c. Inter-disciplinary research projects dealing especially with the prevention and rehabilitation of, the disabled should be encouraged at higher levels of research through the allocation of separate grants.

8.3. Need for Legislation

The world for and of the disabled is changing at a rapid pace and the aspirations as well as expectations of people are also changing as fast. Advances
in medical and surgical sciences, breakthroughs in technology, greater understanding of the causes of disability and improved methods of coping with it, increasing consciousness of civil rights and the emergence of people with disabilities displaying skills and knowledge to improve their own lives, are some of the factors which have contributed to the new thinking that the disabled deserve a dignified status in society on the same terms as the non-disabled. Disabled people are a vast minority group which has been subjected to direct and indirect discrimination for centuries in most countries of the world, including India.\textsuperscript{116}

8.3.1. \textit{Charity to Rights}

The human rights movement has boldly and categorically shifted the attention of policy makers from the mere provision of charitable services to vigorously protecting their basic right to dignity and self-respect. In the new scenario, the disabled are viewed as individuals with a wide range of abilities and each one of them willing and capable to utilise his/her potential and talents. Society, on the other hand, is seen as the real cause of the misery of people with disabilities since it continues to put numerous barriers as expressed in education, employment, architecture, transport, health and dozens of other activities.\textsuperscript{117}

In a country like India the numbers of the disabled are so large, their problems so complex, available resources so scarce and social attitudes so damaging, it is only legislation which can eventually bring about a substantial change in a uniform manner.\textsuperscript{118} Although legislation cannot alone radically change the fabric of a society in a short span of time, it can nevertheless, increase accessibility of the disabled to education and employment, to public buildings and shopping centers, to means of transport and communication. The impact of well-directed legislation in the long run would be profound and liberating.\textsuperscript{119}

\textsuperscript{116} Driedger, Diana Feika, Batres, Eileen (1996): Across Borders, Gynergy books.
8.3.2. Anti-Discriminatory Law

Disabled people in India, as elsewhere, deserved comprehensive legislation to cover all aspects of their lives. They need legal power to directly tackle the blatant, and more importantly, the discreet discrimination against them.

The new Act, Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 represents the culmination of years of hard work behind the scenes, countless hours of consultation between officials of Ministry of Welfare and of other Ministries and experts/organizations working with and for disabled people, campaigning by disability activists for a better deal for disabled people. The more we discussed the problems of disability and the barriers society puts up to highlight them with knowledgeable people in India and abroad, the more convinced we became that our best endeavors would not make much progress without a legislative framework which outlaws discrimination. The greatest achievement was to convince people, ordinary men and women as well as politicians from all parties, convinced that disability is a civil rights issue and that discrimination against disabled must be recognised and stopped. Civil rights for disabled were seen as too important to be allowed to become the subject of political disagreements. Rights for disabled people moved up the political and social agenda of the nation. It became news, often on the front pages of the national press. There were several TV programmes, seminars and workshops. Until a coalition was formed, leading NGOs were competing with each other for leadership.

8.3.3. Partnership in Caring

The Government, through its comprehensive and just legislation, has taken a lead to support the large community of people with disabilities in India and has provided a framework for the implementation of legal, progressive and economic

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activities. In addition to the statutory provisions and the services rendered by NGOs, a tremendous amount of informal support is given by the families and friends of the disabled. There are still many voluntary agencies and private enterprises with immense potential to contribute to the creation of a just and caring society in India, without the disabled people’s rights clearly entrenched the law and the over-reaching legislation, there could not have been satisfactory progress in changing the age-old attitudes of our society and of improving the quality of life for people with disabilities and non-disabled alike. The disabled should not be dependent any more. They should become an integral part of the society in every way. It is their right and the new law with emphasis on full participation declares, in no uncertain language, that they shall have it.

8.4. Mechanisms for Implementation of the Law

Sufficient attention has been paid to matters relating to the implementation of the intentions and provisions of the Act. This shall be done through constituting of coordination committees at the Central and State levels with the Welfare Minister as the chairperson and officials of ministries and concerned departments, NGOs working with and for disabled people and eminent people with disabilities as members to coordinate disability-related activities of the government, NGOs and others. Since most of the disabled complain against the discrimination they face throughout their lives on account of their disability, the new Act is designed to eliminate discrimination and create an equal society. It encourages greater involvement of disabled people in the world around them so that they may themselves contribute to improving the quality of their lives. In order to realize the intentions of the Law, disabled people willing to take part in consultative exercises with the planners and providers of services and goods, must be identified, supplied with information on the range of services available and helped to work through existing or new action groups to deal with disability issues.

8.5. Disability Issues Kept Out of Politics

With this long-delayed and much-awaited piece of social legislation, India has succeeded in outlawing discrimination against disabled people. During the Winter Session (1995) of the Parliament when the political parties had locked horns over political and ideological concerns and the business of the Parliament had been suspended for several days,\(^{127}\) disability issues did not lend themselves to become the cause for political division. The support for 90 million disabled people in India\(^ {128}\) remained the primary concern for all Members of Parliament and no one involved disability in any political controversy and debate. All the lawmakers were determined to give their full support to the Disability Bill. They seemed to have a clear idea on how a civilized society should behave towards those countrymen who are disabled.

In the passing of the law the Parliament has stopped pretending that although disabled people do exist, they can not be included in the priority list of entitlements claimed by non-disabled Indian citizens. The new law demonstrates the undeniable philosophical shift from charity and welfare to civil rights.\(^ {129}\) Talking down to disabled people in patronizing and paternalistic terms has given way to a language ensuring equality and dignity. Instead of segregation of disabled people there is now emphasis on their full participation and total integration.

8.6. Critical Analysis of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

A. Definition of disability in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

Disabilities are conventionally defined in medical science on a three-point scale established by the World Health Organization in 1980 ranging from impairments,
disabilities and handicaps. The World Health Organization,\textsuperscript{130} in its International Classification of Impairments, Disabilities and Handicaps, makes a distinction between impairment, disability and handicap. These three concepts are defined by it as follows:

a. Impairment is “any loss or abnormality of psychological, physiological or anatomical structure or function”. Impairments are disturbances at the level of the organs, which includes defects in or loss of a limb, organ or other body structure, as well as defects in or loss of a mental function.

b. Disability is a “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”. It describes a functional limitation or activity restriction caused by impairment.

c. A handicap is a “disadvantage for a given individual, resulting from an impairment or disability that limits or prevents the fulfillment of a role that is normal (depending on age, sex and social and cultural factors) for that individual”. The term is also a classification of “circumstances in which disabled people are likely to find themselves”.

However, it seems that the definition under Section 2(i) of the Act does not recognize the international classification given by the World Health Organization.\textsuperscript{131} It also seems that the Act has tried to cover every kind of disability under Section 2(i), but in fact the term disability is included in a very narrow sense in the Act.

The definition, in fact, has left some of the important categories, which are included in the term disability world over. According to conservative estimates, approximately 6\% of India’s population is disabled.\textsuperscript{132} And if we go by what the UN officials or various other experts say, the figure could very well be in double digits. After all, Australia does admit officially that 18\% of their population is affected by one form of disability or the other.


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The United Kingdom’s disabled population is estimated at 14.2%, whereas in US it is 9%. Why are the numbers as high for such “developed” nations as Australia or UK or USA? The answer is quite simple. Their definition of “disability” is much broader and embracing. For example, in such countries “people with internal conditions” are also considered disabled. These are individuals where the disability is not very visible.

A person with one lung or one kidney or a person with a severe heart ailment would be termed “disabled”. In certain countries, even diabetics are given shade under the umbrella of disability.

Such countries and societies are now looking at disability as a social issue and not as a medical one, as is the case in India where disability is a stigma. To be disabled means to be a person without a leg or arm or eye or twisted or worse, crooked! People are ashamed to be labeled “disabled”.

The categories, which may be considered to be included in the definition of “disability”, are:

1. **Difficulty in speaking** - this category of disability is not included in the Act; whereas this category is covered under the scope of disability by the World Health Organization in international categorization.

2. **Disability of the internal organs** - It is submitted that the term disability should not only include disability of the external organs, but it should also include disability of the internal organs like kidney, lungs, heart. A person belonging to this category also lacks physical ability to do many kinds of physical jobs.

Further, it could be said that mental disability directly relates to the brain, which is an internal organ. Thus, disability of an internal organ like brain can be included in

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the term “disability”; disability related to other internal organs should also be included in the term “disability”.  

3. **Eunuch** - It is submitted that this category should be considered both at the national and international level to be included in the category of disability. This is a section of human being, which is living a life without dignity. These people are fit physically and mentally.

So as to say, they are in better condition than other persons with disabilities. This section is deprived of very many human rights and fundamental rights. They are disabled but their disability is not of the character, which prevents them from performing day-to-day functions.

Because of the social stigma attached to them they are deprived of their family property, right to pursue a profession, right to education and right to get a dignified funeral ceremony after death. Their existence as human being is denied just because they are not categorized as male or female.

As a result, they are totally segregated from the human society and the mainstream, because of this they are forced by the circumstances to get involved in antisocial activities and crimes.

4. **Persons suffering from AIDS** - A person suffering from AIDS carry with him a social stigma in the same way as that of a person who is leprosy-cured. AIDS weakens the immunity system of a person, which in turn reduces their normal capacity to work. They are prone to health hazards. So, providing special protection is necessary not only for them but also for the society at large.

B. **Problems in Implementation**

Even after the enactment of the Indian Act, the aims and purposes with which the Act was enacted are not served. The reasons are some lacunas in the Indian Act, as well as lack of implementation.

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137 Christoffle Blindenmission (1979): Without Holding Hands, Christoffle Blindenmission, Bensheim.
And, these are the reasons why India is lagging behind in the international arena from the country like US, which has enacted the Americans with Disabilities Act, 1990 (hereafter referred as the US Act).\textsuperscript{138}

It is worthwhile to mention here that, the salient features of the statutes of both countries are similar and seek to provide for education, employment, affirmative action, full participation, non-discrimination, and research and manpower development.

1. No guidelines as well as deadlines in the Indian Act for the authorities concerned to comply with the provisions of the Act. Section 44 of the Indian Act provides for the special measures to be taken by the establishments in the transport sector, within the limits of their economic capacity and development for the benefit of persons with disabilities.\textsuperscript{139}

In India authorities concerned are yet to take measures to ensure the implementation of the provision for “accessibility”. The authorities are taking undue advantage of the term “within the limits of their economic capacity”. They have been using this term as a defense to negate the right granted by the statute.

To ensure strict implementation of the provision it is necessary that a deadline must be fixed for the authorities to comply with the provisions of the Indian Act. Whereas, the US Act provides specific guidelines for implementation with effective dates, deadlines, alternate arrangements, temporary relief etc.\textsuperscript{140}

For example, the US Act provides for the requirements for accessibility under the different provisions and even the manner of compliance. The failure to comply is termed discrimination. When effective dates for implementation are far into the future or cause undue financial burden, the statute has prescribed temporary arrangements.


2. **“US Act Watch”** is an effective watchdog system to monitor the implementation of the statute. The watchdog system under the Indian Act is not effective. **“US Act Watch”** has been operational since 1992. It reviews and evaluates on an ongoing basis, the effectiveness of all policies, programmes and activities concerning individuals with disabilities.

Under the Indian Act the Chief Commissioner and Commissioners for Persons with Disabilities are envisaged to be the watchdog bodies with the powers of a civil court. However, very few facilities have been provided to these offices and they thus remain ineffective.

3. **ADA** requires compliance with affirmative action programmes by all agencies that receive federal assistance. PDA must initiate and sustain affirmative action programmes. Under ADA, government contracts include a clause saying that the contractor agrees to take affirmative action. The contractor must prepare and maintain affirmative action programmes.

If the authorities determine that the above provision has been violated they may impose a variety of sanctions including cancelling, terminating or suspending the contract or debarring the contractor from future contracts.

Under Section 39 of PDA, all government educational institutions and institutions receiving aid from the Government shall reserve not less than 3% seats for persons with disabilities.

Under Section 42, aids and appliances are to be provided to the disabled. Under Section 43, there should be preferential allotment of land to the disabled.

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144 Murty, S.P. Gopalan (2005): Workbook on Community Based Rehabilitation Services, Karnataka Welfare Association For the Blind, Actionaid: Disability Division, Bangalore.
145 Narayan, Jayanthi. Organization of Special in a Regular School, National Institute for the Mentally Handicapped, Secunderabad.
However, there is no pressure for compliance with any of these affirmative action programmes and much need to be done.

4. ADA constantly ensures that the disabled are a group “who know what to do when discriminated against”. By 1992, within 2 years of ADA in USA, approximately 2 million pamphlets or information pieces on the rights of the disabled were mailed out.\footnote{National Association for Retarded Citizens, Residential Programming For Mentally Retarded Persons, National Association For Retarded Citizens, Texas.}

Information on the rights of the disabled should be disseminated through assistance manuals, question-answer booklets, media campaigns etc. Every disabled person and his family should be armed with a manual (preferably approved by the government authority concerned) listing their rights.\footnote{Chattopadhyay, Anjana (1986): All India Directory of Educational And Vocational Training Institutes for the Handicapped. Patriot Publishers, New Delhi.}

They should know their rights as they encounter day-to-day situations at the railway stations, post offices, cinema theatres, and libraries and as they seek admission to educational institutions or seek employment. Each time they encounter discrimination, there should be agencies assisting them and taking up the issue for them.

5. ADA has a strong research agenda. Research under PDA is inadequate. ADA requires studies to be done on an ongoing basis by the Office of Technology Assessment and National Council on Disability.\footnote{Mohan, Dinesh (1998): Aids For the Disabled: A Research Bibliography Centre For Biomedical Engineering, New Delhi.} The access needs, all forms of boarding options, cost-effective methods are all being constantly studied.

Thousands of projects are continuously taken up aimed at improving the conditions of the disabled. Chapter IX of PDA deals with research and manpower development.\footnote{Mohit, Anuradha (1995): A Surplus of Illusions: The Case of Disabled Women, Health for the Millions, Vol. 21, No. 6, New Delhi.} The Chief Commissioner and Commissioners are required to submit reports to the Central Government and the respective State Governments.
However, research is hardly done and reports are never submitted. A strong research agenda is required to study the ways and means of better realizing the rights of the disabled. The reports bring in more accountability.

8.7. CONCLUSION

One out of every ten people in India suffers from one form of disability or the other that is they possess physical or mental impairment substantially limits one or more of major life activities. In other words, 90 million of our countrymen live with, and learn to overcome in their own individual ways, problems which non-disabled can seldom understand.\(^\text{150}\) The law should enable not only one in ten people but nine out of every ten people to lead their lives to their fullest potential. The law declares that disability need not be an insurmountable handicap as long as it can be properly understood and catered for. The law attempts to eradicate factors which produce low self-esteem in disabled people and empowers them to confront the insensitivity and ignorance of others. The real danger now is that those who had been vigorously demanding its enactment might become complacent and think that the job has been done. The Act must be implemented in schools and colleges, in factories and workplaces, in transport and shopping centers. People with disabilities, and those who care for them, must ensure that discrimination is outlawed and barriers are removed as much from the physical environment as from the attitudes of ordinary people. The real battle for the right to full citizenship and active participation of disabled people is ahead. The Act is comprehensive but must be enforced with sincerity and determination. In conclusion, it could be said that some lacunas and problems in its implementation makes Indian disability law lag behind in the international scenario. Here, the case of Javed Abidi v. Union of India can be referred again, where the petitioner brought the ignorance of the authorities under the Indian Act, to the notice of the Supreme Court.\(^\text{151}\) It is ironical to note that every time it takes a court notice for the authorities to start the implementation of the provisions of any legislation. And, it is only to the extent of initiating the process of constituting different committees. As far


as the actual working of these committees goes, probably it would require another notice of the court of law. The Hon’ble Supreme Court in this case, has expressed its hope and trust that the respective committees will discharge their obligations under the Act so as to achieve the objectives for which the Act has been enacted.