CHAPTER-I
INTRODUCTION

The problems of the disabled and their rehabilitation had occupied my mind ever since I became aware of my environment and my place in it as a toddler. While sitting in the lap of my mother, I watched the birds, the bees and the butterflies flying; cats, dogs, rabbits and squirrels frolicking; children running, skipping, and chasing each other. The ball bounced and rolled; the cars sped splashing the rain water; the trains and airplanes seem to shake the ground and the air on way to distant lands. The movement of all the things animate and inanimate fascinated me, as if motion was synonymous with life. I would wriggle out of the hands of my mother to go and be a part of this dynamic and pulsating world. But there was a difference. The birds had wings; cats had paws, the little girls skipping rope. Had the feet, I had none of these. I was disabled, born without feet. I fancied moving around the world on the strength of my lower legs, 'fibula' and 'tibia'. But in place of bones, there was only a vacuum where there existed no flesh and blood proclaimed my doctors! However, after a few amputations, they found a way out for me: my 'knees' became the answer to my physical existence. For some time, I carried my load on knees and could start my odyssey in order to explore the world around me, combining my physical and mental faculties.

The process of amputations and surgeries eventually culminated in the fitting of artificial legs. This 'acquired mobility' prompted me to make an attempt to improve my lot. The best way to do this, I thought, was to receive the best education as was possible under the circumstances my restricted movement meant time off the play ground, and more hours at the study table. Fortunately, managed to do reasonably well almost in all the examinations, I took. My academic achievements enabled me to join the as a law lecturer. Henceforth, the impulse to contribute to the society in some significant way impelled me to think further and afresh. My contact with the mundane affairs made me realize that there are many more in the world, which are beyond orthopedic limitations and are impaired visually, orally or by hearing and the spectrum continues. It was at this juncture that an idea occurred to me that it was the psyche, and not the physical disability itself, that had something to do with state of being handicapped. Here, then,
was a chance to do 'something' what at times I feel was my destiny. Yes, disability in all its manifestations! I should be studying.

One of my teachers, with whom I shared my agony and ecstacy, understood me, and my hopes and aspirations. He made me believe that I was one of the "most qualified" candidates to handle the theme on disability, because "I am living with disability". **Dr. Rattan Singh** graciously agreed even to formally supervise my work in this area at the doctoral level. He provided me valuable leads in this rather unusual area of disability. Consequently, the array of thoughts on disability eventually became the focus of my doctoral thesis.

It is my hope that the research findings, in the light of my own 'experienced' disability, would bring about awareness among the government, the society and the disabled themselves about the problems and issues related to disability. I am also sanguine, that the research findings, conceptualized in the background of *spiritual humanism* would rekindle the feelings of brotherhood, sympathy and cooperation, leading to humane but practical dimensions of rehabilitation of the disabled in India.

Although until relatively recently, the State concern towards the rehabilitation of the disabled was conspicuous by its absence, yet in the traditional literature, especially relating to Hinduism, Buddhism and Jainism, we find many provisions for the infirm and the handicapped. Under the sway of values and in the name of pity, the disabled were taken care of by the family, the neighbors, and the fellow-citizens.

However, the State became an involved agent in the rehabilitation of the disabled, particularly after the Second World War. The Christian missionaries also joined the rehabilitative ventures. This led to the setting up of a few institutions and organizations during the pre-independence era.

After independence, it is sad to note, the State concern for the disabled did not figure anywhere in the agenda of priorities in the first three Five-Year Plans! That such problem exists as a separate category was realized only during the formulation of the Fourth Five-Year Plan. Even at this stage the efforts made for the welfare of the disabled were at the most piece-meal and lacking momentum in the face of non-
availability of sufficient financial resources and an ambivalent attitude both at the Centre as well as State level. For example, there was a difference of opinion regarding who should be responsible for the working for the upliftment of the disabled—the Government or the voluntary organizations, or whether there should be separate schools for the disabled or they should study along with the normal children in the already existing education system. Yet another quandary which was faced was whether or not there should be separate homes/institutions for the disabled.

The State, however, became alive to the problems of the disabled in 1981, on the eve of the International Year for the Disabled Persons (IYDP) a declaration by the United Nations. The ideas, concepts and activities slowly started trickling down to India. The United Nations came out with its Action Plan for the Year-1981. India, too, formulated a National Plan of Action, which, in turn, inspired the State Plans of Action. One did witness some activity as a part of the celebrations of the Year. Some institutions and organizations were set up both at the central and state levels. Some more were promised to be established. The loose ends of the thread were picked up during the Decade for the Disabled (1983-1992). This did help us in creating conceptual and legal bases for the welfare of the disabled. It also helped to bring about clarity of thought in contrast to the confusion that had prevailed earlier. Interaction with international organizations enabled us to adopt new concepts, techniques and strategies.

But still there remains a lot to be done. The wide gap between the developmental activities relating to the disabled becomes evident when we compare their conditions in the advanced countries to those of in India. The disabled in the western countries, for instance, have been encouraged to participate and excel in sports as is evident from the Paralympics held in Atlanta, whereas such a happening seems to be just a dream for the disabled in India.

It is pity to note that even a systematic authentic census of the disabled in India does not exist. Consequently, different sources mention different figures. For example, the recent data about the disabled released by the government puts their number at or around sixteen million; whereas the various organizations of the disabled claim their number to be more than 80 million. Such a wide gap is a serious reflection on the quality
of policy and programmed adopted for the welfare of the disabled. Another equally important thing that seems to have been overlooked to a great extent is the proper utilization of means of mass-communication to create awareness among the public about the problems of the disabled and solutions thereof. One finds that the mass-media is not yet tuned to play its part in effecting a meaningful integration of the disabled into society.

However, it is heartening to note a sudden spurt of research and developmental activities related to the disabled in the closing years of the present century. But once again the stimulus has come from outside the international community. In the light of a commitment made by India at the Beijing Meeting for the preparations for the Asia-Pacific Decade of the Disabled (1993-2002) some headway has been made. The most important thing to happen in this direction has been the enactment of “The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act”, 1995, by the Indian Parliament. The Act came into operation with effect from January 1, 1996.

But the mere passing of the Act is not sufficient. It is to be translated into action in letter and spirit. A perusal of the provisions of the Act shows that our legislators have finally been able to perceive the problems of the disabled. They have attempted to remove some of the socio-legal impediments which had hitherto plagued all efforts of the state and the society to ameliorate the conditions of the disabled. On the whole, the Act appears to be a bold step in the direction of a comprehensive legislation for the disabled. For the planners, it constitutes a significant policy document outlining philosophy, methodology and scope of rehabilitation. To what real extent the Act results in ameliorating the conditions of the disabled in India still remains to be seen.

It has to be remembered that successful rehabilitation has to be broad in scope, practical in purpose and integrated in practice. It cannot go forward without general participation. It requires the respect and co-operation of all those concerned, and also a socio-legal milieu conducive to the success of the efforts being made and to the fulfillment of the hopes and aspirations of the disabled. The people should be made to realize that rehabilitation is the best practical demonstration of one’s faith in his fellow men.
In the present study, an effort has been made to conceptualize and differentiate such key terms as impairment, disability, handicap and rehabilitation. We have then, examined the nature of the problems encountered by the disabled physical, educational, economic, vocational and Psycho social. We have also discussed the constitutional and legislative frame-work within which all the activities take place, besides reviewing the plethora of executive measures undertaken for ameliorating the conditions of the disabled.

The working of different institutions and organizations has been examined so as to remove bottlenecks and make them more efficacious. The aims, objectives and principles lay down by national and international declarations, resolutions and meetings, etc. have been studied to find out the relative position of India, and also how and to what extent she has been inspired and led by these. The ideas, concepts and activities generated in the wake of the International Year and the Decade for the Disabled Persons have been dealt with at length. An effort has been made to assess the work done by the government both at the national and the state level. Following the critical

Review, eventually we have attempted to cull a few suggestions for the policy-makers which, in author’s view, would further sharpen the focus of efforts towards the meaningful rehabilitation of the disabled by removing some of the socio-legal shortcomings.

An effort has been made to cover as much material as possible during the course of present study. However, doing full justice to as vast a subject as this is a task which is not possibly accomplished in the present work. How I wish, I had been able to visit all the places, meet all the people/officials. I wanted to search still more and more literature and spend still many more number of hours on the library shelves. But, may be, I have to be contented with what I have done within the range of my 'own disabilities'.
1.1. SIGNIFICANCE OF THE STUDY

The impact of new legislation on old and deep seated discriminatory practices and attitudes against disabled people would take along time to be felt. Disability is essentially a social construct and reflects a flaw in the thinking processes of our society. The person with polio does not have a problem; the problem is rather with the building which prevents his wheelchair to get inside or with the bus which stops him from riding in it or the taxi driver who ignores him on the roadside. The new law has given boost to the self-esteem of every disabled person in the country. The law is important since it liberates a disabled person. He/she should have ample opportunities to change his/her life rather than to remain dependent on others. Feelings of anger, frustration and self-disgust will gradually get replaced by competence, independence and health. Disabled people need no longer waste their energy in fighting oppression and discrimination but instead should invest them in improving the world around them.

New law should create an accessible society through not just the buildings and footpaths and railway platforms but the hearts and minds of Indian people will become more receptive, more open, more unbiased. The law could not have been enacted if lawmakers and those who formulate policies did not really care for disabled people with the enactment of the Law more and more people will pay attention to the real problems of disabled people because the law asks something from each and every Indian, whether disabled or not. This law, and its effective enforcement, will benefit the entire society and therefore it is imperative that all of us do our best to make it work. The law talks of independence, dignity and security. Disabled people have always experienced exclusion and segregation. They have been prevented from using opportunities to make contribution to society with their fullest capacity. The law offers them equal opportunities. Now that the law has been enacted, the issues before the advocacy groups are different and the government agencies and NGOs must find new ways of serving disabled people.¹ Measures to prevent and diagnose disabilities must be re-strengthened. There are a large number

of children with disabilities who are unable to attend schools or are actually barred from classes. Unemployment of people with disabilities shall remain a mighty challenge for quite some time. The responsibility for improving job outlook for these people rests with society. Economic independence is essential for people with disabilities to become active and useful members of our society.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 establishes responsibility on the society to make adjustments for disabled people so that they overcome various practical, psychological and social hurdles created by their disability. The Act places disabled people at par with other citizens of India in respect of education, vocational training and employment.

1.2. OBJECTIVE OF THE STUDY

1. The objective of disability policy must be a society that enables people with disabilities to participate fully in the life of the community.

2. The efforts should pursue the following national objectives:
   (i) A social community based on diversity
   (ii) A society designed in a way that allows people with disabilities of all ages, full participation in the life of the community.
   (iii) Equal living conditions for girls and boys, women and men with disabilities.

3. Making it possible for young people and adults with disabilities to lead independent lives and to make decision that affect their own lives.

4. Identifying and removing obstacles to full participation in society for people with disabilities.

5. Access to the transport system should be continuously improved and should be taking into account in all planning and procurement procedures involving the infrastructure, means of transport, traffic and other services.

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The highlight of the Act is that it gives statutory recognition to the policy of three per cent reservation in all Group ‘C’ and ‘D’ posts and has extended the reservation to Group ‘A’ and ‘B’ posts also. The Act declares that the State shall progressively ensure that every child with disability has access to free education until the age of 18 years. Until now the provision of free education had been restricted to children below 14 years.

The Act has several provisions to ensure equal opportunities, protection of rights and full participation of disabled people in mainstream activities of the society. The State has been entrusted with the responsibility to prevent disabilities, provision of medical care, education, training, employment and rehabilitation of persons with disabilities.

Furthermore, it provides that implementation of the intentions and provisions of the Act 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 departments concerned, 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.

The Indian disability law treats disability as civil rights rather than a health and welfare issue. The law recognizes the importance of consultation with disabled people on issues, which directly or indirectly affect them.

As judicial response is essential to enforce the provisions of any Act, the question, which arises here is, what is the trend of response of the Indian judiciary

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towards this Act? There has been a gradual rise in the response of the Indian judiciary to this law. The next section tries to show the trend in the judicial response by referring to some important decisions in this regard.

Before the enactment of this Act, one got to see a very feeble response of the Indian judiciary regarding human rights of the persons with disabilities. But, still one can find that the judiciary was influenced by the shift to a rights-based perspective on disabilities. In this regard, one could refer to the case of D.N. Chanchala v. State of Mysore.\(^8\)

Though, this case involved the issue of reservation of seats for various categories of persons and classification on university basis under Articles 14 and 15(4) of the Constitution of India,\(^9\) but the Hon’ble Supreme Court tried to extend the equitable principle of preferential treatment under Article 15(4) to persons with disability to bring them in the mainstream by giving them equal opportunity in the field of education.

In National Federation of Blind, U.P. Branch v. State of U.P.\(^10\) the question to decide before the Allahabad High Court was, whether the Lucknow Development Authority\(^11\) while giving preference for allotment of plots and houses to blinds and other handicapped persons, should also accord in the rates of the land?

The Court referred to Section 43 of the PWD Act,\(^12\) which provides for scheme for preferential allotment of land for certain purpose. The Court ordered the respondent to not only give preference in the matter of allotment of land and houses to handicapped persons, but also to provide concessional rates to handicapped persons.

\(^8\) (1971) 2 SCC 293
\(^10\) AIR 2000 All 258
In Javed Abidi v. Union of India the petitioner’s grievance was that there was lack of facilities like providing aisle chair and ambulift by Indian Airlines. The petitioner contended that it was a social obligation of the Airlines and the Airlines must provide these minimum facilities to permit easy access to the disabled persons, particularly those who are orthopedically impaired and suffer from locomotors disability.

The major grievance of the petitioner was that Indian Airlines was not giving any concession to such disabled persons for their movement by air even though such concessions were given to blind persons, who were also disabled persons under the Act.

The Court held that those suffering from locomotors disability to the extent of 80% and above would be entitled to the concession from Indian Airlines for travelling by air within the country at the same rate as has been given to those suffering from blindness on their furnishing the necessary certificate from the Chief District Medical Officer to the effect that the person concerned is suffering from the disability to the extent of 80%.

But, attention must also be paid to the lacunas in the Indian disability law, which has forced the petitioners to knock the doors of the court of justice after the enactment of this Act. The following section tries to critically evaluate this Act in the terms of the definition of “disability” and problems in implementation.

1.3. RESEARCH METHODOLOGY

The present study is primarily a doctrinal study. The researcher will go through various books, journals, articles and newspapers on the subject for the purposes of collecting literature for the study. The researcher will go

13 (1999) 1 SCC 467
through various libraries of various universities and also collected data from internet.

The researcher is concentrating on doctrinal research due to the physical restraints. The lack of facilities has discouraged the researcher to go for Empirical research that is why the researcher is relying on the material available for the doctrinal research.