CHAPTER IV

CONSTITUTIONAL AND LEGISLATIVE PROVISIONS RELATING TO THE DISABLED


The framers of the Constitution of India seemed to have been aware of the problems of the weaker sections of the society and the disabled persons. Ensuring social and economic equality and justice also would require that some constitutional provisions should be made for the physically and mentally disabled. We find that such provisions have indeed, been made which are found scattered in different parts of the Constitution.

Although according to Entry 9 in the List II of Schedule 7 of the Constitution, the subject of 'Relief to the disabled and unemployable' is the responsibility of the State Governments, in practice, the Central Government also has a major role to play in this field. The Ministry of Welfare has been identified as the nodal Ministry by the Government for the welfare of the disabled.1 A brief survey of the constitutional and legislative provisions would enable us to have an idea of the concern shown by the Constitution-makers and different governments towards the disabled ever since the establishment of Indian Republic. Some such provisions which have been could have been and can be utilized for the upliftment of the disabled, are reproduced below.

(a) The Preamble, providing the very wide ambit, promises: We, the people of India, having solemnly resolved to secure Justice, social, economic and political, Equality of status and opportunity and fraternity assuring the dignity of the individual enact and give to ourselves this Constitution.2

(b) The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India.\(^3\)

(c) Nothing in this (Article 15) shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens.\(^4\)

(d) Nothing in this (Article 16) shall prevent the state from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.\(^5\)

(e) No person shall be deprived of his life or personal liberty except according to procedure established by law.\(^6\)

Though the fundamental rights listed above, in a way, do not have a specific mention of the physically handicapped or disabled, yet they do pertain to the socially, economically and educationally backward class of people. But the Ministry of Social Welfare has already recommended that the disabled be treated equal to women and other weaker sections of the community.\(^7\) The fundamental rights give more emphasis on political equality and justice. It is the Directive Principles of State Policy, which become more relevant while bringing about social and economic equality and justice which should be the main concern of the State and the society when it comes to doing something for the welfare and rehabilitation of the disabled. Directive principles of State Policy can be used as guidelines by the governments from time to time to undo injustice and step-motherly treatment meted out to this hapless and helpless section of Indian society for centuries. Some of the Directive Principles of State Policy which pertain to and can be a guiding spirit for the amelioration of the conditions of the disabled are reproduced below:

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3 Article 14
4 Article 15 (4)
5 Article 16 (4)
6 Article 21
7 Government of India (1994): *The Persons with Disabilities (Security and Rehabilitation) Bill*. All poverty alleviation programmes of the Central and State Governments or any other scheme for the benefit of women or other weaker sections of the community shall be equally applicable to persons with disabilities.”. Ministry of Welfare.
(i) The provisions contained in the Directive Principles of State Policy\(^8\) shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.\(^9\)

(ii) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life.\(^10\)

(iii) The State shall, in particular, strive to minimize the inequalities in income, and to Endeavour to eliminate inequalities in status; facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.\(^11\)

(iv) The State, in particular, shall direct its policy towards securing: \(^12\)

That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good; That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength;

(v) The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.\(^13\)

(vi) The State shall promote with special care the educational and economic interests of the weaker sections of the people and shall protect them from social injustice and all forms of exploitation.\(^14\)

\(^8\) Part IV of the Constitution of India.
\(^9\) Article 37
\(^10\) Article 38 (1)
\(^11\) Article 38 (2)
\(^12\) See clauses (b), (c) and (e) of Article 39
\(^13\) Article 41
\(^14\) Article 4
The word "justice" has different meanings for different disciplines. For example, the great Greek philosopher, Plato regarded justice as principle of well-adjusted social life witnessing an ideally harmonious combination of the three elements of human personality with three corresponding classes of his perfect stage. Different from this, in the realistic worlds of politics and law, justice is taken as a harmonious reconciliation of the conduct of the individual with the general good of the community. True that man is a selfish creature, it is required that his conduct must be in tune with the well-being of the people as a whole. Thus the essence of justice “is the attainment of the common good as distinguished from the good of the individuals or even the majority of them.”

Indian Constitution professes to secure to all its citizens justice, social, economic and political, even though the form of government prescribed by the Constitution is a majority government, which lies at the foundation of the representative system.

The important notable thing about the use of the word 'justice' in Indian Constitution is that it has three distinct forms social, economic and political, social justice is the sine qua non of a welfare state in as much as it prohibits discrimination on any artificial ground, it also prohibits forces creating artificial social ground, it also prohibits forces creating artificial social barriers like those of untouchability. As such, social justice demands equality along with liberty. In a country like India, it is required that the State must make concerted efforts to improve the lot of the downtrodden and weaker sections of the people. The area of social justice widens itself as to cover the economic domain of a people’s life for the obvious reason that it demands non-exploitation of the working class.

Economic justice is virtually a corollary to the social justice. It means non-discrimination between man and man on the basis of economic values. It also implies adequate payment for equal work for all.

If we have a look at the root of the rule of law, we find that law is the means, and justice, the end, as James Madison, put it: Justice is the end of government. It is the end

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17 Ibid., at p 66
of civil society. It ever has been and ever will be pursued until it is obtained or until liberty is lost in the pursuit.18

What is justice? To render to each his due to the blind man his sight, to the dumb his speech, to the deaf his hearing, to the retarded or deprived, restoration of impairment or absence of limbs or faculty.19

Let this art and right be materialized in some measure for every disabled one to feel the warmth of life. Sans a human order of rehabilitation for the disabled persons, the rule of law, even if constitutionally sanctified, will be but the opium of the people.20

The Preamble includes the term equality and specifies its dimensions in respect of status and opportunity. The equality of status is provided by the prohibition of artificial restrictions on the grounds of religion, race, sex, color, place of residence and the like. It is supplemented by the prohibition of untouchability and by the abolition of titles. At the same time equality of opportunity is provided by the guarantee of rule of law signifying equality before law and nondiscrimination in matters of public appointments and employment.

A great principle of the "Declaration of the Rights of Men and Citizens" as adopted by the authors of the French Revolution is thus incorporated into the body of constitution which says:

"Men are free and remain free and equal in rights. Law is the expression of the general will. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, are equally eligible to all public dignities, places and employments, according to their capabilities and without distinction than of their virtues and talents."21

The words "capabilities" and "talents" are very significant, if one has the intention to do as much as possible for the welfare of the disabled. Justice Krishna Iyer, a perceptive thinker supports this view:

19 Iyer, Krishna, at p. 42.
20 Ibid. at p. 39
21 J.C. Johari, at p. 148
"Rehabilitation is based on the philosophy that what a person is capable of doing is of greater importance than that which he or she cannot do. It is an approach to life based on the maximum of all the abilities each person may possess".22

The second last ideal in the Preamble is 'fraternity' ensuring the dignity of the individual. It seems to incorporate Article 1 of the Universal Declaration of the Human Rights of 1948 saying that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The phrase "dignity of the individual" signifies that the Constitution, as K. M. Munshi said, "is an instrument not only ensuring material betterment and maintaining a democratic set up, but also recognizes that the personality of every individual is sacred.”

The directive contained in Article 38 provides that the State shall protect the welfare of the people, as effectively as it may, a social order in which, justice social, economic and political shall inform all the institutions of national life. With this end in view, it is further stipulated that State shall direct its policy in securing inter alia, the adequate means of livelihood for all citizens, equal pay for equal work for all, provision for work and education for all the people, relief in case of unemployment, old age, sickness and disablement and in other cases of undeserved want, a living wage and decent conditions of work so as to ensure to the workers sufficient Leisure and raising the standard of living and the improvement of public health.

In the light of various directive principles of State Policy, also called the "fundamental axioms of State Policy,"23 we may now examine some of the enactments that are in consonance with the letter and spirit of these directives.

4.2. Legislation

A civilized and industrialized society requires social legislation in favor of workers, tenants and loggers. Thus, the legislator is doing a work of equalization
which is to improve the lot and prospects of the less fortunate classes. This becomes all the more necessary in a relatively less developed country like India. There is, indeed, an immense need for social security measures in the country. An individual with limited means cannot effectively provide for the risks to which he is exposed while at work. Indian government has not been unaware of the needs and problems faced by the workers. This becomes evident from the plethora of legislation brought about by Parliament in this regard from time to time.

Regulatory jurisprudence has manifested itself in the form of labor laws which are found scattered in various statutes passed at different times. This branch of law has turned out to be a focal point for those seeking job able-bodied or disabled persons.

In the following text, we shall discuss some of the pieces of labor legislation and shall evaluate: whether they discriminate against the disabled secondly, whether they make provision for the rehabilitation of the workers becoming disabled in the course of employment; and thirdly, how far they have in fact, ameliorated the conditions of the disabled workers.

A deep probe into the provisions of various labor laws in our country shows that enactments like Trade Unions Act, 1926, Payment of Wages Act, 1936, the 24 The passing of the Trade Unions Act, 1926 is an important landmark in the history of trade union movement in the country. Now there is hardly any category of workers which has no union of its own. The importance of the trade unions lies in the fact that they encourage such collective bargaining as ensures better terms and conditions of employment to the labour and at the same time endeavors for maintenance of good relations between employer and employees. In pre-independence days, the increase in cost of living, the country-wide political upsurge, the industrial unrest and economic discontent led to a number of strikes by workers. It was on many occasions that these strikes were successful in getting the demands of the workers fulfilled. The success in strikes and establishment of International Labour Organization influenced the growth to the trade union movement in India. This Act provides a procedure for the registration, obligations, rights and privileges of a trade union. For any benefit to the members of the trade union, the Act does not discriminate against the disabled member worker.

25 The Preamble of the Act states that the object of the Act is to regulate the payment of wages to certain classes of employed persons. It provides for a speedy and effective remedy to the employees in respect of their claims arising out of illegal deductions or unjustified delay made in paying the wages to them. This Act was passed to do away with the prevalent practice (in England) whereby workers were paid in goods or other forms. The Act outlaws the old practice and provides that low paid workers must be paid in cash and without any deductions other than those permissible by law. The Act as such deals with employed persons and does not discriminate against the disabled workers.

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26 This Act provides for lying down of conditions of employment in industrial organization in a clear and precise form. The preamble to the Act provides “Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to the workmen employed by them, attempt is to have uniform service conditions in each establishment. The Act provides for the framing of standing orders defining the conditions of recruitment, discharge, disciplinary action, holidays, leave etc.

In all industrial establishments to which this Act applies. Model Standing Orders are appended to the Act for guidance and adoption by the employer. As such while framing the Standing Orders, the disabled workers are not discriminated against under the Act.

27 The object of the Act is to harmonize the relations between the employer and the employees and thereby to restore and maintain industrial peace. The Object of the Act as laid down in the preamble of the Act is to make provision for the investigation and peaceful settlement of the industrial disputes. The Act is a progressive measure of social legislation aiming at the amelioration of the conditions of the workmen in industry by preventing illegal strikes and lock-outs, providing relief to workmen in the matter of lay-off, retrenchment and closure of an undertaking and collective bargaining. The statute deals with the situation arising after employment and does not make any distinction between classes of workmen depending upon their physical attributes. Hence it bears no discrimination between able and disabled employees.

28 The demand supply formula determines the level of wages payable to workers in a free competitive market. The Indian labour class, being illiterate, poor, and non-organized, is not well equipped to protect its interests particularly, when the supply of the labour is always in excess of the demand in the market. The Minimum Wages Act, 1936 was enacted to prevent exploitation of the workers and for this purpose it is aims at fixation of minimum wages which the employer must pay. In order to fulfill this object of fixing minimum wages, the government appoints area-wise committees and advisory boards and after considering their advice along with the representations from affected public, the minimum wages are fixed. The government enjoys the power to include or exclude any industry from the schedule for the application of this Act. Apparently the disabled are not discriminated by the scheme of the Act.

29 The Act was passed to consolidate and amend the law regulating labour in factories. It was primarily to protect workers from being subject to unduly long hours of bodily strain and manual labour. The Act tries to secure for the workers employment conditions conducive to their health and safety. In order to obtain the information necessary to ensure that objects are carried out, the local governments are empowered to appoint inspectors to call for returns and to see that the prescribed registers are duly kept. In laying down the various measures for the welfare of the workers of the Act nowhere discriminates between the able and disabled worker.

30 This fact is meant to institute and administer funds for the employees in factories and other establishments so as to make some provisions for the future of the industrial worker after he retires or for his dependants in case of his death. The government frames the scheme applicable to specified scheduled industries. The principal duty is laid upon the employer to put the Provident Fund Scheme into operation and to make contribution of both the employees’ and employer’s share to the fund, then and there and deduct the employees’ share from their wages. The Central and State Boards administer the fund with the help of other officers. The government is empowered, under the Act, to exempt or to alter and amend the Schedule. The Act is applicable to employees irrespective of their physical ability. It does not discriminate against the disabled persons.

31 The Maternity Benefit Act, 1961 was passed to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits. This Act is the most important enactment dealing with the women working in factories, mines, plantations and other industrial establishments. This Act and two other laws on the subject, viz., the Mines Maternity Benefit Act, 1941 and the Plantations Labour Act, 1951 (which also provide similar benefits to women workers) do not in anywhere discriminate between able and disabled women employees.
oriented and bear no bias towards the par disabled persons. There are some other miscellaneous labor laws dealing with rules of employment, leaves, collection of statistics, welfare and social insurance schemes, standards and equipment for work place, provisions for ventilation, drinking water and lavatories etc. These laws, prima facie do not discriminate between the 'able-bodied' and 'disabled' persons. There are two notable laws, namely, The Workmen's Compensation Act, 1923 and, The Employees' State Insurance Act, 1948, where victims of the disability are paid compensation and attempt at rehabilitating the disabled workers and hence are special subject of our study. Along with these a couple of other enactments which need special attention are The Apprentices Act, 1961; The Income Tax Act, 1961 and The Motor Vehicles Act, 1988.

4.3. The Workmen's Compensation Act, 1923

The Workmen's Compensation Act, 1923 imposes an obligation upon employers to pay compensation to workers for accidents (resulting into death or disablement) arising out of and in the course of employment. Compensation is provided for temporary as well as permanent disablement and also for partial or total disablement. The Act was framed with a view to provide for compensation to workmen disabled/incapacitated by an injury from accident arising out of and in the course of employment. Rapid growth of industry with all its attendant complexities, increasing use of modern complicated machinery and consequent danger to the workmen along with their poor financial position to bear the cost of injury, and the awakening on the part of workers in the form of Trade Unions, were the reasons which compelled the initiation of the Bill. It was based on the philosophy that the cost of the product should bear the blood of the workmen.

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32 This Act is intended for a comprehensive legislative determination regarding the paying of bonus to workers by the concerned industrial houses. The bonus is supposed to be paid out of the surplus left after the prior charges of the industry have been met with. The concept of social justice, too, provides the base for the claim for bonus. It is supposed to fill in the gap between the living wages and actual wages and could be linked with productivity. It might also be called as deferred wages. Whatever be its real nature, it is far from being arbitrary or discriminatory towards the disabled and affects all workers:


34 The Act No.8 of 1923

35 Section2(1)(g)
disablement. The liability of the employer to pay compensation is dependent upon the following four conditions:

1. Personal injury to the workman;
2. such injury must have been caused by an accident;
3. The accident must have arisen out of and in the course of employment; and
4. The injury must have resulted either in death of the workman or in his total or partial disablement for a period exceeding three days.

However, the employer shall not be liable to pay compensation in the following cases:\(^{38}\)

1. If the injury did not result in total, or partial disablement for a period exceeding three days;
2. if injury does not result in death of the workman\(^ {39}\) but causes him disablement, partial or total, and the employer can prove:

The workman was at the time of accident under the influence of drinks or drug;

That the workman willfully disobeyed an order\(^ {40}\) expressly given by the employer or a rule expressly framed for the purpose of safety of workmen; and

The workman having known that certain safety grounds or safety devices are specifically provided for the purpose of securing the safety of workman, willfully disregarded or removed the same.

1. **Accident:** The expression 'accident' used in Section 3 has not been defined in the Act. But without any controversy, we can say that the term 'accident' means some unexpected event happening without design i.e. an unlooked for mishap or untoward

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\(^{37}\) Section 2 (1): The combined effect of these two provisions defining *partial and total disablement* respectively, is that if the injury has incapacitated the workmen from every employment which he was capable of undertaking at the time of accident then it is permanent or total and if he is incapacitated merely from a particular employment in which he was at the time of the accident resulting in disablement, then it is temporary or partial.

\(^{38}\) Proviso (b) to Section 3 (1).

\(^{39}\) *Bhurangya Coal Co. Ltd. v. Sahebjan Mian* AIR 1956 Pat. 299

event. The basic and indispensable ingredient of the expression 'accident' is unexpected. Although an accident means a particular occurrence which does happen at a time at some place but the victim i.e., the workman may not be able to locate it exactly. It is not necessary, as well, for him to locate it with exactness. There would be cases, where a series of tiny accidents, each producing some unidentifiable results and operating cumulatively to produce the final condition of injury constitute together an accident within the meaning of this section.41

(2) **Arising out of and in the Course of Employment:** The most essential requirement for compensation under Section 3 is that an accident which causes personal injury to the workman must 'arise out of and in the course of employment. But this expression too, has not been defined as such by the Act but its meaning has been settled by a series of judgments42 on the issue. The expression 'arising out of' suggests the cause of accident. It applies to employment, as such, to its nature, its conditions, its obligations and its incidents. The question that should be considered was the act which resulted in the injury so outside the scope of the duties with which the workman was entrusted by his employer so as to/say that the accident did not arise out of his employment? The expression 'in the course of' points out to the place and circumstances under which the accident took place and the time when it occurred.

It is not limited to the period of actual labor. It means during the currency of employment. A casual connection or association between the injury by accident and employment is necessary. There may not be a direct connection between the injury caused by an accident and the employment of the workman. The distinction' between 'arising out of and 'arising in the course of' employment as pointed out by Bombay High Court43 is that the latter suggests the point of time, i.e., the injury must be caused

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43 Trustees, Port of Bombay v. Yamunabai, AIR 1952 Bom.382.
during currency of employment and the former conveys the idea that there must be some sort of connection between the employment and the injury caused to a workman as a result of accident.

(3) **Quantum of Compensation**

Once it is proved by the claimant that the injury is by an accident arising out\(^\text{44}\) of and in the course of employment, the court proceeds further for fixing the quantum of compensation to be paid by the employer to the disabled worker (or his dependants in case of his death). The Workmen's Compensation Act gives clear guidelines in assessing the quantum of compensation. It shall be as follows:

<table>
<thead>
<tr>
<th>Where injury results into death</th>
<th>an amount equal to forty percent of monthly wages of the deceased workman multiplied by the relevant factor;(^\text{45}) or an amount of twenty thousand rupees whichever is more;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where permanent total disablement results from the injury</td>
<td>an amount equal to fifty percent of the monthly wages of the injured workman multiplier by the relevant factor;(^\text{46}) or an amount of twenty four thousand rupees, whichever is more;</td>
</tr>
<tr>
<td>Where permanent (i) partial disablement results from the injury</td>
<td>in the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified, therein as being the percentage of the loss of earning capacity caused by the injury, and in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury.</td>
</tr>
</tbody>
</table>

\(^{44}\) Section 4, *Workmen's Compensation Act*, 1923.  
\(^{45}\) Explanation I to Section 4 (1) explains *relevant factor* as the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his first birthday immediately preceding the date on which the compensation fell due.  
\(^{46}\) Ibid., at p.53
Where temporary disablement, total or partial, results from the injury. a half-monthly payment of the sum equivalent to twenty-five percent of monthly wages of the workman, to be paid in accordance with the provisions of sub-section (2) of the Section 4.

Sub-section (2) of section 4 reads as follows:

The half-monthly payment referred to in clause (d) of sub-section (1) shall be payable on the sixteenth day-

(1) From the date of disablement lasts for a period eight days or more, or where such of twenty-

(2) After the expiry of a waiting period of three days from the date of disablement where such disablement lasts for a period of less than twenty-eight days; and thereafter half monthly during the disablement or during a period of five years, whichever period is shorter;

Provided that-

(a) There shall be deducted from any lump-sum or half-monthly payments to which the workman is entitled, the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump-sum or the first half-monthly payment, as the case may be; and

(b) No half-monthly shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

(4) Compensation not to be assigned, attached or charged

After assessing the amount of compensation payable to the disabled workman, the Act intended to give further protection to the workman, from being deprived of the benefit of compensation. Compensation granted to a workman cannot be assigned,
charged or attached by any process of law.\textsuperscript{47} It cannot be passed to another person by operation of law. No claim can be passed to another person by operation of law. No claim can be set-off against the same. Thus the Act makes it imperative that the amount of compensation is to be paid to the workman entitled for it without any delay or difficulties. But the dependants of a deceased workman have statutory right, to receive the compensation in case of death of the workman concerned.

Conditions precedent to the award of compensation: The workmen's compensation scheme provides for payment of cash benefits in case of-

(a) Temporary total disablement,\textsuperscript{48}
(b) Permanent total disablement,\textsuperscript{49}
(c) Temporary partial disablement,\textsuperscript{50}
(d) Permanent partial disablement,\textsuperscript{51}
(e) Death,\textsuperscript{52} and
(f) Occupational diseases.

Before compensation can be paid, certain conditions must be fulfilled:

(a) The injury, 'total' or 'partial' disablement must exceed 3 days.\textsuperscript{53}
(b) Notice of the accident\textsuperscript{54} has to be given to the employer as soon as practicable after the occurrence of the accident. No hard and fast rule can be laid down in regard to what is meant by “as soon as practicable”. It depends upon the individual circumstances. Unless, such notice is given, no claim for compensation is entertained in the Act.\textsuperscript{55} However, a claim for compensation shall not be turned down for want of defect or irregularity in the notice. The object of giving such notice is to enable the employer to check the fact of the accident, having occurred to the workman in the course of his employment and

\textsuperscript{47} Section 9, \textit{the Workmen’s Compensation Act}, 1923
\textsuperscript{48} Sub-section (1) (d) Section 4.
\textsuperscript{49} Sub-section (1) (b) Section 4.
\textsuperscript{50} Sub- section (1) (a) Section 4
\textsuperscript{51} Sub-section (1) (c) Section 4
\textsuperscript{52} Sub-section (1) (a) Section 4
\textsuperscript{53} Section 3 (1) (a)
\textsuperscript{54} Section 10
\textsuperscript{55} Ibid., at p.89
also to enable the employer to take such steps as he may think fit to mitigate the consequences of the accident.\textsuperscript{56}

(c) Claim for compensation can be preferred before the Commissioner within two years of the occurrence of the accident. However, the delay in filing the claim can be condoned if sufficient cause is proved by the claimant.\textsuperscript{57}

(d) The claimant must not have instituted in a civil court a suit for damages in respect of the injury against the employer or any other person for which he could have claimed compensation under the Act.\textsuperscript{58}

\textbf{4.3.1. Workman's Evaluation Compensation to Workman's Restoration of the Workmen's Compensation Act, 1923}

An analysis of the provisions discussed in the fore-going text reveals that the Workmen's Compensation Act, 1923 is intended to ameliorate the conditions of workers employed in industries in the event of an accident arising out of and in the course of employment. Enactment of this legislation by almost all the nations is an acknowledgement of the principle that in this industrial age of dust, fumes and accidents, the society must bear the cost of necessary human wear and tear. The society, as a whole, must share the responsibility to repair the effects of individual misfortune as a result of industrial accidents.\textsuperscript{59} Workmen's compensation (Law) is not to be thought of as merely a way of disposing of a private quarrel between

\begin{itemize}
\item \textsuperscript{56} \textit{Ahmedabad Victoria Iron Works Ltd. v. Maganlal Keshavlal Panchal}, A.I.R. 1941 Bom. 296.
\item \textsuperscript{57} Section 10: Limitation Act in such cases cannot be crystallized into a rigid rule of law. The court is to be guided in each case on its merits and with a view to furthering ends to justice: Surendra Mohan v. Mohendra Nath, A.I.R. 1933 Cal.21; \textit{Halemabai v. Ardeshir}, A.I.R. 1933 Born. 197; \textit{Pochiar and Co. v. Nagabhushanam}, AIR 1966 A.P.99; Delay in filing the claim after the statutory period on the ground of illness or continued medical treatment was excused in B.M. & Engineering Factory v. Bahadur Singh, A.I.R.1955 All.182; The public authorities would desist from raising pleas of delay irrespective of the margin of delay and avoid defending a claim on technical plea of delay or limitation avoiding an order on merits: \textit{Trustees of Port of Bombay v. Premier Automobiles}, A.I.R.1974 S.C.923.
\item \textsuperscript{58} Sections 3 (5) and 19 (2): The effect of these provisions is to impose a bar on the recovery by the workman of compensation twice for the same injury. The workman has an option either to go to civil court or claim compensation under the Act. It is not only a success to a claim that bars a subsequent claim to compensation but if a workman has brought even an unsuccessful claim against the employer; he would be debarred from making any alternative claim in respect of the same injury in \textit{Kanta Mills v. Bombay State} A.I.R.1965 S.C.1941 \textit{Oriental Fire and General Finlay and Co. v. Union of India}, A.I.R. 1975 A.P. 222 Trustees of the Port of Madras v. Bombay Co. (Pvt.) A.I.R. 1967 Mad.318.
\item \textsuperscript{59} K.L. Bhatia (1986): Administration of Workmen's Compensation Law, Deep & Deep Publication, Delhi, at p.36.
\end{itemize}
employer and about a personal injury but should include preventive and restorative services, so that after proper treatment and training, the workman is in a position to undertake fruitful and productive work.

As far back as 1930, Commissioner Duxbury of Minnesota, formerly President of International Association of Industrial Accident Boards and Commissions, in his address to the national convention of that body, declared that the object of the compensation law was "the economic rehabilitation of the employee." In a similar scholarly analysis of the workmen's compensation laws before 1950 meeting of the same group, Marshall Dawson indicated that such "economic rehabilitation" presupposed the employee's physical restoration. He stated further that:

Attention is again being directed to rehabilitation as the goal of workmen's compensation - the word is used in its broad meaning as contrasting with 'indemnity. Success in rehabilitation is necessarily the culmination of the performance of the workmen's compensation system as a whole.

The latter meeting of the Association to consider the role of compensation administrators concluded:

Rehabilitation is the end results of the compensation process. If we, as compensation administrators, fail to realize this important fundamental and are satisfied merely to sit back and dole out to the injured workman a certain percentage of his wage then the entire compensation process becomes archaic and outmoded. Assisting and helping the injured workman to regain his former physical fitness

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64 Ibid., at p. 154.
65 International Association of Industrial Accident Boards and Commissions
following injury or industrial disease, in order that he may again become a productive, useful member of society, is, in our considered opinion the responsibility of compensation administrators.66

A rehabilitation committee, set up by the Association, in its report at the 1956 meeting of the Committee stated:

We can never compensate, in a monetary sense, for the self - respect and self - reliance they have lost if their injury deprives them of the opportunity to be productive workers meeting their responsibilities to their families and community. We can possibly restore them physically and vocationally if we bring all out resources and recently developed techniques and 'attitudes to bear on the problem.67

Arthur Larson, an authority on the subject of compensation to the injured workmen, considers rehabilitation of the workman as a component and logical extension of the compensation process. He observes that industrial accident had two major phases: Prevention and Cure. The spotlight now is on a third: Rehabilitation. Restitution is the proper remedy when money damages will not restore something that is unique.68

Arthur Larson emphasized the need for a complete reorientation of the basic approach to workman's compensation insurance and even suggested that the name "workmen's compensation" be changed to workmen's restoration". His idea was to place the principal emphasis on medical care and rehabilitation as a means to restore an injured worker to full work capacity rather than limiting administrative concern to indemnity benefits.69

The Somers book, one of the most definitive Works in the field of workmen's compensation, considers rehabilitation as of great of the system of

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69 Id.
significance In the further progress noting that "rehabilitation is obviously in the interest of workmen's compensation. After both the injured worker and the employer”, the book goes on to point out that:

Successful orientation towards this new goal will require many difficult legislative and administrative adjustments.... The strongest potential asset of the compensation programme is that it can make possible a cohesive and continuous medical and maintenance program for the injured worker leading to maximum physical adjustment and a return to economic productivity at highest capacity. This is the job of such conspicuous importance that a program which, if affected efficiently, would be hailed and unchallenged. Workmen's compensation has unique opportunity to achieve this goal.71

The idea of converting disabled worker from welfare recipients to productive wage-earners, tax-paying citizens dates back to the days of World War I from where it was picked up by International Labor Organization which showed a keen interest in the rehabilitation of the disabled worker. In order to assess the problem, committees of experts were set up, reports were prepared and published.72

The various aspects of the problem were discussed suggested that monetary compensation alone does not serve the purpose. The disabled worker needs to be trained in such a way that he becomes financially independent. The physical rehabilitation cannot be separated from the vocational rehabilitation. The experts in medical rehabilitation should treat the disabled worker in such a way that the subsequent vocational rehabilitation to him is facilitated.

The Workmen's Compensation Act, 1923 has been on the statute book for more than half a century. The main object of this welfare legislation has been to

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71 Id.
compensate in terms of cash, a worker who, unfortunately, has been rendered disabled because of some accident occurred while he was at work. No doubt, the worker at this stage needs hard cash to get him treated and be physically independent as far as possible. With the passage of time, he is out of the trauma fully. It is at this stage that nearly all the disabled people prefer to earn their livelihood rather than be dependent upon the lump-sum monetary compensation and benefits which are soon squandered and the disabled man is left without money at all. Hence he finds some other means, immoral or unlawful, to earn his livelihood. The result is beggar or a bad boy.

It is with this background in mind that it is suggested that there should be provision in the Act itself ensuring that disabled worker, subject to his limitations, is trained to his capabilities, to get some suitable employment. "This would not only be lowering the compensation costs but also be beneficial to employers, employees and the community." The most effective method of controlling and reducing disability is through a 'good medical care programme and good rehabilitation service. By such a planned operation, a worker can be returned to the dignity of self-support and to gain employment.

The Workmen's Compensation law belongs to a category of legislation designed to ameliorate the condition of the weaker section of the society. The fact that the legislature has enacted a law to provide compensation to victims of industrial accidents makes us often complacent that all is well. The statutory and decisional materials create the impression that a victim of industrial accident is adequately protected by the legal system and he or his dependent is bound to get compensation in the event of his disability or death.

From the discussion on various provisions and aspects of the Act in the foregoing text, we come to the conclusion that the Workmen's Compensation Act,

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1923 is intended' simply to compensate the persons injured in the process of production. The scope is altogether different from that of normal life. The Act makes provision neither for the prevention of industrial accidents nor rehabilitation of the victims. The amount paid as compensation is too meager to set off the handicaps caused by the disabilities incurred, nonetheless the law keeps it open for the injured to go to a court of law to demand by way of a civil suit. The torments and hardships of civil litigation are numerous to enumerate here. The fact remains that hardly any civil litigation worth the name on this count exists in India. The disabled person, who is surrounded by physical and financial hardships, finds it’s convenient to shun this course of action.


The need for social security schemes was felt badly after World War II. Social security to the workers of an industry can be provided by a self-balancing scheme of Social assistance and social insurance or a combination of the two methods. The Workmen's Compensation Act, 1923 is the first legislation of this type towards social security, which depends upon a number of factors viz., population, economic resources, standard of living, and availability of technical experts and development of industry. The Act of 1923 though designed to ameliorate the condition of the labor was in nature of social assistance and not social insurance. The Employees' State Insurance Act, 1948 was the first piece of social security enactment adopted in India. It aims at bringing about social and economic justice to the poor and weaker class of the land.

The relevant provisions of the Act dealing with the rehabilitation of the disabled worker are discussed below:

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77 There is no possible way of compensating adequately the disabled man or woman whose injury could have been avoided 98 per cent of job injuries are probably preventable, Somers and Somers, *Workmen's Compensation Prevention, Insurance and Rehabilitation of Occupational Disability*, supra, note 70 at 197.
78 H.H. Kessler (1953): “Rehabilitation of the Physically Handicapped”, Workmen's Compensation laws fall short of this goal by failing to include restoration of the worker to his former social and economic position, Columbia University Press, New York, at p. 46.
4.4.1. Employment Injury

The following are the ingredients of the employment injury:

(a) The injury must be personal to an employee.
(b) The injury must be caused by an
   (i) Accident; or
   (ii) Occupational disease
(c) The accident must arise out of and in the course of employment.
(d) The employment must be insurable.

4.4.2. Establishment of Employees' State Insurance Corporation

The Act provides that the Employee's State Insurance Corporation shall be established by the Central Government by notification in the official Gazette. The corporation shall be established with effect from such date as may be notified by the Government. The function of the Corporation is the administration of the Scheme of Employee's State Insurance in accordance with the provisions of this Act.

Corporation’s power to promote measures for health etc. of insured persons. Section 19 of the Act empowers the Corporation to take steps for the benefit and rehabilitation of the insured disabled workers. These measures permitted to be taken by the Corporation are in addition to any benefit scheme specified in this Act. The Section, provisional in nature, states. The Corporation may, in addition to the scheme of benefits specified in the Act, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of

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80 Sub-section (8), Section 2.
81 The term ‘accident’ has discussed Workmen’s Compensation 1923.
82 The meaning of the expression ‘arising out of and in the course of employment’ discussed under the Workmen's Compensation Act, 1923 applies to this Act also.
83 Section 2(13-A) of the Act states that the expression Insurable Employment means an employment in any factory or establishment to which this Act applies.
84 Section 3
85 Section 19

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insured persons who have been disabled or injured and may incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.\textsuperscript{86}

4.4.3. \textit{Disablement Benefits}: The purpose of the Employee's State Insurance Act\textsuperscript{87} is to provide benefits as detailed in the Act particularly in Section 46, to the insured disabled persons. Any insured person shall be entitled to periodical payments if

(a) he suffers from disablement;
(b) the disablement results from an employment injury; and
(c) He sustained the employment injury as an employee under conditions mentioned in the Act.

The disablement benefit is payable only when the injury is duly certified by an Insurance Medical Officer. Another section dealing with the details of the disablement benefits is section 51\textsuperscript{88} of the Act. This section provides for the payment of disablement benefit for -

(d) temporary disablement (which is payable only if it is for not less than three days excluding the day of accident)
(e) permanent disablement, total or partial;
(f) The question of payment would be as provided in the First Schedule. In case of permanent disablement total or partial - the payment may be for a limited period or for life.

\textsuperscript{86} Ibid., at p. 109
\textsuperscript{87} Section 46 and 51
\textsuperscript{88} Section 51 reads as follows, Subject to the provisions of this Act and regulations, if any-a person who sustains \textit{temporary disablement} for not less than three days (excluding the day of accident), shall be entitled to periodical payment for the period of such disablement in accordance with the provisions of the First Schedule
a person who sustains \textit{permanent disablement}, whether total or partial shall be entitled to periodical payment for such, disablement in accordance with the provisions of First Schedule;
Provided that where permanent disablement, whether total or partial, has been assessed provisionally for a limited period or finally, the benefit provided under this clause shall be payable for that limited period or as the case may be, for life.
(g) Disablement benefit is periodical payment to the insured person. It is paid on account of disablement resulting from an employment injury sustained as an employee under the Act.

4.4.3.1. Rate of Disablement Benefit:

The disablement benefit shall be payable to the insured person as follows:

(a) for temporary disablement at the full rate;
(b) for permanent total disablement at the full rate;
(c) for permanent partial disablement resulting from an injury specified in Part II of the Second Schedule, at such percentage of the full rate which would have been payable in case of permanent total disablement as specified in the said Schedule as being the percentage of loss of earning capacity caused by that injury;
(d) for permanent partial disablement resulting from an injury not specified in Part II of the Second Schedule, at such percentage of the full rate payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury;

When more than one injury are caused by the same accident, the rate of benefit payable under clauses (c) and (d) shall be aggregated but not so In any case as to exceed the full rate.

(e) In cases of disablement not covered by clauses (a), (b), (c) and (d) at such rate not exceeding the full rate as may be provided in the regulations.

4.4.3.2. Conditions Requisite for Getting Disablement Benefit

The claimants of disablement benefit have to observe the following conditions:

(a) Notice of accident: Every insured person who sustains personal injury caused by accident arising out of and in the course of employment in a factory or an

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89 Id.
90 First Schedule, Explanation to Para 7 (a)
91 Regulations 7, 65 and 66 and Section 64
establishment shall give notice of such injury -either In writing or orally, as soon as practicable after the happening of the accident\textsuperscript{92}

Compliance of directions by the Corporation: Every claimant for and every beneficiary in receipt of disablement benefit shall comply with every direction given to him by the appropriate Regional Office which requires him either-

(b) to submit himself to medical examination by such medical authority as may be appointed by that office for the purpose of determining the effect of the relevant employment injury or the treatment appropriate to the relevant injury or loss of faculty, or

(c) to attend any vocational training courses or industrial rehabilitation courses provided by any institution maintained by any Government, local authority or any public or private body recognized for the purpose by the Corporation and considered appropriate by it in his case.\textsuperscript{93}

4.4.3.3. Other conditions

The conditions listed below also pertain to claim\textsuperscript{94} of temporary disablement benefit. However, such conditions are not be observed by the persons who are entitled to benefit on account of permanent disablement:

(a) Such person shall remain under medical treatment at a dispensary, hospital, clinic or other institution provided under the Act. He shall also carry out the instructions given by the Medical Officer or medical attendant, in-charge thereof;

(b) he shall not, while under treatment do anything which might retard or prejudice his chances of recovery;

(c) he shall not leave the area in which medical treatment provided by the Act is being given, without the permission of Medical Officer, medical attendant or such other authority as may be specified in this behalf by regulations;

\textsuperscript{92} Regulation 65
\textsuperscript{93} Regulation 7
\textsuperscript{94} These conditions are enumerated in section 64
(d) He shall also allow himself to be examined by any duly appointed medical officer or other person authorized by the Corporation in this behalf.

4.4.3.4. Benefit not assignable or attachable

Various benefits are payable in the form of periodical payments under the Act. Some of them are payable to the insured persons only, while others are payable to the insured as well as to his family or dependents. The Act provides that none of these benefits payable under this Act shall be liable to attachment or sale in execution of any decree or order of any court Thus, the benefit is made inalienable and is exempt from attachment, No execution can lie against such a sum.

4.4.3.5. Persons not entitled to receive benefits in certain cases

Save as may be provided in the regulations, no person shall be entitled to disablement benefit for temporary disablement on any day on which he works or remains on leave or on a holiday in respect of which he receives wages or on any day on which he remains on strike.

4.4.3.6. Benefits not to be combined

The act lays down a prohibition against receiving two benefits at a time. An insured person shall not be entitled to receive for the same period the following combinations of benefits simultaneously:

(i) Sickness benefit and disablement benefit for temporary disablement; or

(ii) Both maternity benefit and disablement benefit for temporary disablement. The insured person entitled to more than one benefits shall have an option to choose one of the two benefits.

95 Section 60
96 Ibid., at p. 65.
97 Union of India v. Hira Devi A.I.R. 1952 SC 227
98 Section 63
99 Section 65
4.5. The Apprentices Act, 1961

In view of the rapid and large-scale industrial development of the country, there is an increasing demand for the skilled craftsmen. Although, both in public and private sector, certain establishments have been equipped to impart training of skilled workers in a systematic manner, however, the majority in the industry has been lacking in such programmes and arrangements. The result has been deterioration in the quality and increase in the cost of production.

For a long time the Government has been concerned about the question of undertaking legislation for regulating the training of apprentices in industry. The government considered it necessary to utilize the facilities available for the training of apprentices. Therefore, to ensure their training in accordance with the programmes, standards and syllabi drawn up by expert bodies, the Apprentices Act was enacted in the year 1961. The object of the Act is to meet an increasing demand for skilled craftsmen, in the development of the country. The Act provides for the regulation and control of training of apprentices in trade and for matters connected therewith.\(^{101}\)

According to the Act\(^ {102}\) a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he -

(a) is not less than fourteen years of age, and

(b) Satisfies such standards of educational and physical fitness as may be prescribed.

Different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.\(^ {103}\) In exercise of this power the government has made Apprenticeship Rules, 1962\(^ {104}\)

\(^{100}\) Act No. 52 of 1961


\(^{102}\) Section 3 of the Apprentices Act, 1961

\(^{103}\) Ibid., at p. 44


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laying down the minimum physical standards which an apprentice must satisfy. These rules are prescribed in Schedule I and II respectively of said Rules.

Sub-clause (2) of Rule 4 of the Apprenticeship Rules, 1962 makes provision for relaxation of the physical standards for physically handicapped persons.

4.5.1. **Standard of Physical Fitness reads as follows:**

(c) A person shall be eligible for being engaged as an apprentice if he satisfies the minimum standards of physical fitness prescribed in Schedule II: provided that a person who has undergone institutional training in a school or other institution recognized by the National Council or the All-India Council of a statutory University or a State Board of Technical Education and has passed the examination or tests conducted by these bodies or is undergoing institutional training in a school or institution so recognized or affiliated in order that he may acquire a degree or diploma in engineering or technology or equivalent qualification shall, if he has already undergone medical examination in accordance with rules for the admission to the school or institution, be deemed to have complied with the provisions of this rule.\(^{105}\)

(d) Without prejudice to the generality of the foregoing provision, where a physically handicapped person registered at any Employment Exchange is declared either by the Medical Board attached to Special Employment Exchange for the physically handicapped or the local Civil Surgeon where such Medical Board has not been constituted to be physically fit for being engaged as an apprentice in any of the designated trades under the Apprentices Act, 1961, he may be engaged as an apprentice in that trade.

The above provision is simply an enabling one. It does not vest any right in the physically handicapped person to claim to be engaged as an apprentice in the trade or industry. Employer normally hesitates in engaging the physically handicapped persons as apprentices believing that by their engagement the production would be affected adversely and delayed too. We do not have any statistical data regarding their

\(^{105}\) Sub-clause-II of Rule 4 and **Notification** No.1538 dated September 28, 1966
engagement in industrial training but certainly their number is not much. Situation can improve for the disabled, if it is obligatory upon the employer to engage to some fixed percentage, the physically handicapped persons as apprentices.

A critical appraisal of the provisions of the labour laws discussed in the foregoing part of the chapter reveals that the problem or rehabilitation of the disabled is not met with by them in an effective and comprehensive manner. Strictly speaking, the two main laws (The Workmen's Compensation Act, 1923 and the Employees' State Insurance Act, 1948) discussed here, cannot be said to be covering and rehabilitating the disabled persons directly. And moreover, they become operative only when misfortune renders an able-bodied person to be a disabled one. The third law (The Apprentices Act, 1961) in the series does touch the physically handicapped directly but this, too, does not impose any obligation upon the employer nor does it lay down any penalty if employer does not engage a physically handicapped person as an apprentice in the trade or industry. Thus all these three laws have a limited application as they cover only persons engaged in Industry. Disabled outside the Industry seem to have been left to their own fate in absence of an appropriate legislation. It hardly needs mention; therefore, that bringing about a proper legislation in this regard should get the top priority. As compared to the advanced countries, India has lagged far behind.

4.6. The Motor Vehicles Act, 1988

This Act is an amended version of the Motor Vehicles, Act 1939\textsuperscript{106} which consolidates the law relating to motor vehicles. The Act of 1988, inter alia, takes into account the changes in the road transport technology, Pollution-control measures, standards for transportation of hazardous and explosive materials, pattern of passenger and freight movements, development of the road network in the country and particularly the improved techniques in the motor vehicles management. The Act provides mainly for the following matters, namely:

(a) rationalization of certain definitions with additions of certain new definitions of new types of vehicles;

\textsuperscript{106} Act No. 59 of 1988
(b) stricter procedure relating to grant of driving licenses,; and the period of validity thereof;
(c) laying down standards for the components and parts of motor vehicles;
(d) standards for anti-pollution control devices;
(e) provision for issuing fitness certificates of vehicles also by the authorized testing stations;
(f) enabling provision for updating the system of registration marks;
(g) liberalized schemes for grant of All-India Tourist Permit as also National Permits for goods carriages;
(h) maintenance of state registers for driving licenses and vehicle registration:
(i) Constitution of Road Safety Councils.

The Act, inter alia, defines permanent disablement, makes provision for compensation for permanent disablement on the principle of no fault and facult, resulting from an accident arising out of the use of vehicles and fixes the quantum thereof. Such provisions of the Act are reproduced and discussed below:

4.6.1. Liability to pay compensation in certain cases on the principle of no fault

(a) Where death or permanent disablement of any person\(^\text{107}\) has resulted from an accident arising out of the use of a motor vehicle the owner of the vehicle shall, be liable to pay compensation in respect of such Disablement in accordance with the provisions of this section.

(b) The amount of compensation which shall be payable under sub-section (1) in respect of the permanent disablement of any person shall be a fixed sum of twelve thousand rupees.

(c) In any claim for compensation under sub- section (1), the claimant shall not be required to plead and establish that permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle concerned or of any other person.

(d) A claim for compensation under sub-section (1), shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose

\(^{107}\) Section 140 of the Motor Vehicles Act 1988, The section corresponds to old section 92-A of Motor Vehicles Act 1939
permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such permanent disablement be reduced on the basis of the share of such person in the responsibility for such permanent disablement. Provisions as to other right to claim compensation for death or permanent disablement. 108

4.6.2. Provisions as to other right to claim compensation for death or permanent disability

(a) The right to claim compensation under section 140 in respect of permanent disablement of any person shall be in addition to any other right to claim compensation in respect thereof under any provision of this Act or any other law for the time being in force.

(b) A claim for compensation under section 140 in respect of permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(c) Notwithstanding anything contained in sub-section (1) where in respect of permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first mentioned compensation and -

(i) if the amount of first-mentioned is less than the amount of second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first-mentioned compensation;

108 Section 141 of the Act 1988, this section corresponds to old section 92-B of the Act of 1939.
(ii) If the amount of first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

**Permanent Disablement:** permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:

(a) Permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
(b) destruction or permanent impairing of the powers of any member or joint; or
(c) Permanent disfiguration of the head or face.

### 4.6.3. Applicability of certain claims under Act 8 of 1923

The provisions of this Chapter shall also apply to any claim for compensation in respect of permanent disablement of any person under the Workmen's Compensation Act, 1923 resulting from an accident of the nature referred to sub-section (1) of section 140 and for this purpose, the said provisions shall, with necessary modifications, be deemed to form part of that Act.

(a) **Liability without fault in certain cases.**

Section 140 of the Act of 1988 provides for liability to pay compensation on the principle of no fault. The claimant under this section shall not be required to lead and establish that the permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner (s) of the vehicle (s) concerned or any other person. This is so because irrespective of any fault, the person who had suffered a permanent disablement is to be given quick and effective temporary relief. This payment is to be made without prejudice to the award of compensation in a regular enquiry on a claim filed under Section 166 of the Act. The requirements under

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109 Section 142 of the Act of 1988, the section corresponds to the old-section 92-C of the Act of 1939.
109 Id.
110 The Workmen's Compensation Act, 1923:
112 Section 143 of the Act of 1988, the section corresponds to section 92-D of the Act of 1939.
113 Section 140 of the Act of 1988.
114 New India Assurance Company Ltd. v. Minquel Carrel (1987) I A.C.C. 524 at 530 (Bombay)
the said section are only whether; a vehicle had been involved in an accident; a person sustained permanent disablement as a result of such accident; and with whom the vehicle was insured.

The provision for payment of prompt and immediate compensation in respect of, no fault, under this section, is the spirit of social welfare legislation and should be interpreted beneficially in favor of the claimant and in such a matter the technicalities of law should not be allowed to have any upper hand, to undo and crush the spirit of legislation for social justice, joinder or non-joinder or mis-joinder of parties is too technical pleas to circumvent the spirit of such beneficial legislation. The very fact that the legislature decided to get the amount paid even without ascertaining any fault prime facie goes to show that the object is that the claimant should not be allowed to go high and dry for long and he must get immediate relief. However, in view of the section 141 (3) the amount paid under this section is to be taken into consideration at the time of any award in proceedings under section 166.

A statutory duty is cast on the Motor Accident claims Tribunal to decide the applications under this section (section 14Q) of the Act as expeditiously as possible, because this is a special provision enacted by the legislature so that some interim relief is granted to the claimants to enable them to survive. It is true that no time limit is fixed by the section for disposal of the application under this section however the very purpose for which the provision is enacted requires that such applications are given top priority and are decided in the shortest possible period.

The Constitutional position that obtains today in the country following the decision in *Olga Tellis v. Bombay Municipal Corporation* is that right to livelihood has to be considered a fundamental right embraced by Art.21 of the constitution. The permanent disablement of an earning member of the family is likely to infringe right to

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livelihood. It was in this background in the mind that the Court held that the power to act suo-motu under this section (section 140) has to be seen as constitutional necessity because the reasonable procedure to dispose of a claim which arises under this section would be when the court acts suo motu to exercise jurisdiction there under destitution.\textsuperscript{119}

The insurance company is also liable in proceedings under this section in same manner as the owner is liable under Section 166. As a result, the owner and the insurance company are jointly and severally liable for the claim under this section.\textsuperscript{120}

4.6.4. \textit{Rehabilitative Nature of the Act: An Assessment}

A careful study of the provisions discussed in the foregoing paragraphs and the interpretation attached to them by the Courts proves, beyond doubt, that the provision for the award of Rs.15,000 to the person who has been rendered permanently disabled by one stroke of the motor vehicle, that too, as expeditiously as possible, indeed, enables the claimant to survive for some time at least and pursue the proceedings for compensation on the basis of regular enquiry before the Motor Accident Claims Tribunal.

It is submitted that the amount of compensation under the section is too meagre taking into consideration, the minimum cost of living, expenses for treatment before permanent disablement is diagnosed and expenses to be incurred on initiating regular proceedings for compensation on the basis of regular enquiry.

It is only the person with permanent disablement who is entitled for compensation under this section. In our submission a person with temporary disablement of the degree envisaged in section 142, too, should have been a subject of compensation, because he, too, has to spend equally, may be more on his medical treatment, for living and for litigation with all its known torments and hardships.

\textsuperscript{119} \textit{Mahila Ramdei v. Manad Kumar} A.I.R.1988 M.P.98 at 100
\textsuperscript{120} \textit{Gattu Prabhakar v. Thummanpalli Barhmaiah}, A.I.R. 1986 A.P. 173 at 176
The study of the provisions of this Act makes it amply clear that it is neither preventive nor rehabilitative in nature. Monetary compensation alone does not serve the Purpose. Let the owner of the vehicle, insurance company and the State be partners in providing some vocational training to the disabled taking his disability and capabilities into Consideration and helping him to get some suitable employment. By such a partnership, the disabled can be returned to the dignity of self-support and to gain employment.

4.7. The Income Tax Act, 1961

The Act, inter-alia, makes provision for the deduction of some fixed amount while computing the total income of totally blind or physically handicapped resident persons. This provision was inserted for the first time, by the Finance Act, 1968, with effect from 1st April, 1969 for providing tax relief only to totally blind individuals resident in India. This relief was not extended to the other categories of physical disability or mental disability. The relief under the new section was made available for and from the assessment year 1969-70.

The deduction under this section, for the assessment years 1969-70 and 1970-71 was fixed sum of Rs.2,000 and that too only to a totally blind assessed. The scope of this section has been subsequently widened to include other kinds of permanent physical and mental disabilities. The amount of deduction available was increased to Rs.5,000 from the assessment year 1971-72 to Rs.10,000 from assessment year...

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121 Section 80S (U)
122 Act No. 19 of 1968.
123 Section 80 (U) as it stood at the time of first insertion in 1968 read: "In computing the total income of an individual being a resident, who is totally blind as at the end of the previous year, there shall be allowed a deduction of a sum of two thousand rupees."
124 Section 30 of the Finance Act, 1968 read with items 10 and 20 of Third Schedule.
126 The relevant part of the amended section 80(U) reads: In computing the total income of an individual, being a resident who, at the end of the previous year, is suffering from a permanent physical disability (including blindness) or is subject to mental retardation specified in the rules made in this behalf by the Board, which is certified by a physician, a surgeon, an oculist or a psychiatrist, as the case may be, working in Government hospital, and which has the effect of reducing cons ideally such individual’s capacity for normal work or engaged in a gainful employment or occupation, there shall be allowed a sum of twenty thousand rupees (forty thousand rupees from the assessment year 1996-97).
127 Taxation Laws (Amendment) Act, 1970 w.e.f. 01.04.1971
1981-82\textsuperscript{128} and further increased to Rs.15,000 from assessment year 1988-89\textsuperscript{129} It was further increased to Rs.20,000 from assessment year 1990-91\textsuperscript{130} and Rs.40,000 from assessment year 1996-97.\textsuperscript{131}

The guidelines have been issued in a departmental circular\textsuperscript{132} for the purpose of availing deduction under section 80 (U). The question under consideration has been the scope of the expression "permanent physical disability". The Central Board of Direct Taxes, in consultation with the Ministry of Health, has identified the following permanent physical disabilities for the purposes of relief under the section:

Bilateral paralysis of upper limbs; Paralysis of dominant upper limb; Other paralysis of upper limb Bilateral paralysis of lower limb; Other paralysis of lower limb; Paralysis of upper and lower limbs on same side; Paralysis of three limbs; Paralysis of four limbs; Other paralysis of limbs; Other bilateral motor impairment of upper limb; Other motor bilateral impairment of dominant upper limb; Other motor impairment of upper limb; Other bilateral motor impairment of lower limb; Other motor impairment of lower limb; Other motor impairment of upper and lower limbs on same side; Other motor impairment involving three or four limbs; Other motor impairment of limbs Transverse deficiency of arm and shoulder, Transverse deficiency of forearm; Transverse deficiency of corpus and first metacarpal; Transverse deficiency of thigh and pelvis; Transverse deficiency of leg.

Besides the above, the following orthopedic problems should also be added:

(a) Cerebral palsy with athetosis
(b) Ankylosing spondylitis of both the hip joints
(c) Rheumatoid arthritis involving upper limbs reducing the functional capacity to less than 30%.
(d) Mal united fractures resulting the functional disability of above 50%

\textsuperscript{128} Finance (No.2) Act, 1980 w.e.f. 01.04.1981
\textsuperscript{129} Finance Act, 1987 w.e.f. 01.04.1988
\textsuperscript{130} Finance Act, 1989 w.e.f. 01.04.1990
\textsuperscript{131} Finance Act, 1995 w.e.f. 01.04.1996
\textsuperscript{132} Circular No. 246, dated 20 September, 1978: 1979 116 I.T.R. St. 26

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The concession has led to litigation as claims for deduction under this provision have been made by persons with a physical disability of a relatively minor nature. The Board received a large number of references on the ground that these guidelines laid in the circular don’t provide situation for the case of deaf and dumb persons and mentally retarded persons etc. The matter was examined by the Board in consultation with the Ministry of Health and Family Welfare. The Board pointed out that the earlier circular\textsuperscript{133} was only illustrative and not conclusive and there could be other situations or other categories or physical handicaps, such as deafness, dumbness and mental retardation. It\textsuperscript{134} pointed out that the facts and circumstances of each case will have to be gone into in determining whether the requirements of section 80 (U) are fully satisfied. According to the later circular\textsuperscript{135} a physical disability shall be regarded as permanent physical disability for the purposes of section 80 (U) "if it falls in anyone of the following categories specified below, namely:

(a) Permanent physical disability of more than 50 percent in one limb; or  
(b) Permanent physical disability of more than 60 percent in two or more limbs; or  
(c) permanent deafness with hearing impairments of 71 decibels and above; or  
(d) Permanent and total loss of voice.

**Blindness:** According to the Circular,\textsuperscript{136} blindness shall be regarded as a permanent physical disability, if it is incurable and falls in anyone of the categories specified below, namely:

<table>
<thead>
<tr>
<th>Better Eye</th>
<th>Worst Eye</th>
</tr>
</thead>
<tbody>
<tr>
<td>6/60-9/60 or field of vision 110-20</td>
<td>3/60 to Nil</td>
</tr>
<tr>
<td>3/60 to 1/60 or Field of vision 100</td>
<td>F.C. at 1 foot to Nil</td>
</tr>
<tr>
<td>F.C. at 1 foot to Nil or Field of vision 100</td>
<td>F.C. at 1 foot to Nil or Field of vision 100</td>
</tr>
<tr>
<td>Total absence of sight</td>
<td>Total absence of sight</td>
</tr>
</tbody>
</table>

\textsuperscript{133} Ibid., at p. 321  
\textsuperscript{135} Id.  
\textsuperscript{136} Ibid., at p. 101
Mental Retardation: According to Circular, the mental retardation shall be regarded as a mental retardation if intelligent quotient is less than 50 on test with a mean of 100 and a standard deviation of 15 such as the Wechsler scale.

4.7.1. Deduction in respect of medical treatment of handicapped dependents

Under this provision, deduction of a sum of Rs.15, 000 for and from the assessment year 1993-94 shall be allowed in the case of individuals and Hindu undivided families, resident in India, who incur expenditure on the medical treatment (including nursing), training and rehabilitation of a person suffering from a permanent physical disability (including blindness) or mental retardation as specified in the rules made in this behalf. The deduction is to be allowed if the person suffering from permanent physical disability or mental retardation is a relative of the individual or in the case of a Hindu undivided family is a member of the joint family and is in either case wholly dependent on the assessed. The deduction will be available only to those assesses whose total income in respect of the previous year as computed before making any deduction does not exceed rupees one lakh.

This deduction has always been in the statute book since I April, 1965 except for a short period between assessment years 1985-86 and 1990-91 (both inclusive). The amount of this deduction, up to and including the assessment year 1981-82 was RS.2400. Then, up to and including the assessment year 1990-91 it was Rs. 4800. It was enhanced to RS.6000 for the assessment years 1991-92 and 1992-93 and Rs.12, 000 for the assessment year 1993-94; Rs.15, 000 for and from the assessment year 1994-95.

Medical proof for deduction, both under this section (Sec.80DD) and section 80 (1) is available only if it is certified by a physician, surgeon, an oculist or psychiatrist, as the case may be, working in a Government hospital. Such certificate has to be

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137 Id.
138 Section 80 DD.
139 Ibid. at p. 31
140 Rule 11 vide Circular No. 375, Supra, note 134.
141 Section 80-B up to assessment year 1967-68 thereafter, Section 80 D
produced before the Assessing Officer in respect of the assessment year for which
deduction is claimed under either of these two sections.

4.8. The Persons with Disabilities (Equal Opportunities, Protection of Rights
and Full Participation) Act, 1995

To provide recognition by the State\(^{142}\) of the rights of the persons with
disabilities to enjoy equality of opportunity and full participation in the national life, the
Indian parliament has passed the above said comprehensive legislation. This came as a
New Year gift to the disabled community, having been notified on January 1, 1996. It
covers areas like constitution of central and state Co-ordination committees,
appointment of commissioners for persons with disabilities, prevention, early detection,
intervention, habilitation and rehabilitation, education, employment and vocational
training, non-discrimination, licensing of institutions for the disabled, social security.

It also aims at promoting research, inter-alia, in the following areas:

(a) prevention of disability;
(b) promote aspects of rehabilitation;
(c) restorative aspects of rehabilitation;
(d) curative aspects of rehabilitation;
(e) educational rehabilitation;
(f) vocational and professional rehabilitation;
(g) social rehabilitation;
(h) psychological rehabilitation;
(i) development of assertive devices;
(j) job identification;
(k) on site modifications in offices, factories and firms;
(l) Any other aspect of rehabilitation that may improve the quality of life of
persons with disabilities.

The Act seems to have gone a step further when it proposes to assign the
central, State and local bodies to promote facilities for prevention of occurrence of

\(^{142}\) Act NO.1 of 1996.
physical and mental handicaps. This would certainly be viewed as a welcome initiative as compared to the efforts made earlier only after a person had become disabled. This indeed is in keeping with the philosophy of a utilitarian state.

A special emphasis has also been given to the education of the disabled. The concept of 'Integrated Education Programme would make anyone having a concern for the disabled happy. The Act rightly proposes that education appropriate the part-time, special part-time and non-formal education by to the disabled be provided in the most environments. Provision is also to be made for utilizing the manpower in rural areas and giving them appropriate orientation. There can be no two opinions about the realization of the needs of the disabled from the rural areas where an overwhelming majority of Indian population lives. The legislators deserve all the praise for such a realization as far as the educational needs of the disabled from rural areas are concerned.

Another very significant aspect of rehabilitation of the disabled, i.e., their employment, too, has been sufficiently recognized by the Act. A glance at the provisions of the Act shows that the government intends to pursue this matter with more zeal and commitment now than ever before. The need, nay, the right of the disabled persons to have adequate means of livelihood through education is most crucial. This would go a long way in ameliorating the conditions of the disabled and ensuring their social security and dignity too.

Another provision worth-noting the Draft Bill was that every worker in sheltered employment shall enjoy the "same rights as any other worker in India" and "shall particularly be covered by the Industrial Disputes Act, 1947; The Minimum Wages Act, 1948; Workmen's Compensation Act, 1923 Employees' State Insurance Act, 1948 and such other legislation as is applicable to ordinary workers. However, such a provision is conspicuously missing in the text of the Act.

Keeping pace with the theme of the International Year for the Disabled Persons-1981, the Act provides for recognition by the State of the rights of persons with disabilities "to enjoy equality of opportunity and full participation in national life." One

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of the major hindrances in providing rehabilitation services to the disabled is the lack of uniform definition of the disability. In an attempt to overcome this problem, the Draft had sought to define disability. It said that a person with disability is one "who is unable to ensure by himself, wholly or partly, the necessities of a normal individual or social life, including work, as a result of deficiency, whether congenital or not, in his physical or mental capabilities and includes a person (i) who is blind or who is a person with low vision, (ii) who is deaf, or (iii) who has a locomotors disability on account of orthopedic or neurological; or (iv) who is mentally retarded." But the Act does not define disability in such terms instead, it’s simply supplies a list of various categories of the disabled while defining the term disability.

The government seems to be taking the problems of the disabled seriously. It becomes evident from the manner in which a high-level central co-ordination committee for the promotion of security, welfare and rehabilitation of persons with disabilities, with; the Union Welfare Minister as the chairperson, is to be set up. That ‘only the wearer knows where the shoe pinches’ is not of proverbial significance only but of practical importance also. It is with this lesson in mind, that it is suggested that persons with various disabilities be associated with these committees while formulating the rehabilitation schemes for the disabled.

It is heartening to note that the subject to the provisions of the Act, the’. National Coordination Committee shall serve as the national focal point on disability matters and "facilitate the continuous evolution of a comprehensive national approach in consonance with the World Programme of Action covering persons with disability.” Thus it seems that the intention of the legislators is to bring efforts at the national level in line with those being made at the international level. In fact, the Act has been stimulated by the declaration at a meeting of ESCAP to launch the Asia and Pacific Decade for the Disabled Persons (1993-2002) held in Beijing (1-5 Dec,1992).

The social security scheme promised by the Act also looks quite attractive. By applying it seriously, the genuine kind of rehabilitation of the disabled would be made possible. The Act would enable the disabled in India, to enjoy a status almost similar to their counter-parts in Europe and America.
Another remarkable feature of the Act is that free education is to be provided to
the disabled till the age of 18, although one wishes that they had been provided free
education till the time they liked to study. Although for the purpose of integrating the
disabled children into society, they would study in the normal schools, the needs of those
needing special education in special schools (with vocational training facilities) has not
been overlooked. Provision of part-time classes for those who cannot attend the school
for whole of the time, functional literacy and the utilization of electronic and other media
for the benefit of the disabled shows that the government is keeping pace with the needs
and opportunities of the time.

A proper emphasis has also been laid on research, an area which had been sadly
neglected earlier not only by India but some other countries also. There is also provision
for the much desired man-power-development.

That the law-makers have perceived the problems of the disabled to a very large
extent becomes evident from the way they have studied their problems in minute details
and sought to provide appropriate solutions. For example, they have promised to remove
architectural barriers plaguing the disabled from schools, colleges and other institutions.
Keeping in mind their right to be mobile, legislators have expressed a desire that there be
no discrimination in transport and inbuilt environment. What is more, they are thinking of
installation of auditory signals at traffic lights on the public roads for the benefit of
persons with visual handicapped and causing curb cuts to be made in pavements for the
easy access of wheel-chair users. There is also talk of developing appropriate symbols for
disability, and warning signals at appropriate places, ramps in public buildings, adapt ion
of toilets for wheel- chair users, Braille symbols and auditory signals in elevators and
lifts, ramps in hospitals, primary health centers, and other medical care and other
rehabilitation institutions. This, indeed, is an idea that would help the disabled to get
rehabilitated physically and then enjoy the fruits thereof. What, after all, was the fun of
doing physio-therapy and having aids and appliances if one could not go out and mingle
in society, to feel it and be part of it?

One must appreciate the legislators of India who have shown enormous insight and
political will in enacting this piece of legislation. There is hardly any aspect of disability
and the disabled persons which has not been foreseen by them. When, how and what use
the government agencies make of the provisions of this Act would be known in 'the times
to come. One only wishes that, as has become the fate of most of the promises made in
the past, there are no more bureaucratic bottlenecks, red-tapism, misappropriation of
funds allotted for the welfare of the disabled and lack of awareness at all levels. And then
there is no greater sin than giving a false hope to someone, especially the disabled. If the
programmes and welfare schemes to be launched within the framework of this legislation
are delayed, it would be yet another case of 'justice delayed is justice denied'. At the
moment, the expectations of the disabled have risen high and they shall feel uneasy and
cheated if their hopes fall to the ground with a thud. One prays that it does not happen
and the Act is implemented in letter and spirit.