CONCLUSION

Disability is a complex social issue and it is increasingly becoming a major concern all over the world. The number of disabled people is increasing across the world due to various reasons. Disabled people comprise a significant minority in most countries and their number also constitutes one of the largest minorities in the world. Traditionally, disability has long been considered to be an index of marginality\(^1\). They faced direct and indirect discrimination and were not able to enjoy the full spectrum of civil, political, social, cultural and economic rights.

Whatever the perception of the society towards the persons with disabilities may be, it has to be fundamentally accepted that disabled people are integral part of our society. No person can in fact claim to live long without experiencing some kind of disability or claim to be completely disable-free. What matters most is that every person must be able to feel that (s)he is part of the society without any kind of bias, prejudice and discrimination. If the society can properly address the concerns of the persons with disability, they too can contribute a lot for the development of the society. Contrarily, if the rights and issues concerning persons with disability are not addressed properly it can

have significant negative impact on our society (including widespread economic, cultural and political implications for society as a whole).

For a just society, welfare or rehabilitation measures are themselves not enough to tackle the discrimination faced by disabled people. A just society must be able to take care of socio-cultural, psychological, and political measures (including public awareness) for removing social barriers and discrimination. It is often far easier to cope with the physical aspects of a disability than with the discrimination and oppression encountered because of it. People with disabilities often encounter obstacles due to sensitivity and attitudinal barriers. A sense of ignorance, neglect, superstition and fear have isolated persons with disabilities and delayed their development. Thus, the issue of addressing the social construction of disability (by way of removing social barriers, prejudices, discrimination and isolation of disabled from mainstream social activities) is very important. There is a strong need to inject disabled people with self-assertion, identity and development for their own benefit and for the benefit of all of us.

Today the disability issue is not limited to what traditionally seemed to be linked with physical or medical aspects on one’s personal disability due to certain in-born or acquired bodily impairment. The social model of disability has led to a strong disability rights movement across the world challenging the traditional personal or medical model of disability. The social model of disability in fact sees disability as a social construction, leading to social oppression of persons with disabilities and denial of basic human rights to them. Viewed other way, if disability is an issue it is a part and parcel
of each and every individual. Every individual possesses both abilities and disabilities and the social structure must accordingly recognize that persons with disabilities are inherently endowed with basic fundamental rights to live with dignity and equality without any discrimination. There is a need to understand that each and every individual has certain inalienable rights, including right to live independently, make choices, contribute to society, and more importantly to pursue a meaningful and dignified living. Every effort should be made to see that persons with disabilities are able to live with dignity, equality and without any discrimination. Any kind of physical, environmental and social barriers that prevent the integration and full participation of the persons with disabilities in the social community must be thwarted.

In view of growing disability rights movement, there has been a noticeable change in the attention paid to disability in recent years and disability rights are now integral part of international human rights regime. Removing disabling barriers and providing opportunities to disabled people to live a decent living and to exercise their rights on an equal basis in accompany with others are no longer a matter of goodwill or charity; they all constitute the part of basic human rights. Social model of disability and rights of disabled people are given top priority in most of the recent legislations and policy guidelines on disability. The adoption and the entry into force of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol also mark a profound shift in recognizing such human rights concern for the persons with disabilities.
Important findings in Indian context

The disability rights movement across the globe also seems to have influenced India’s response to various disability issues. The needs and expectations of people with disabilities in India are changing, and in response, policies and practices in India have also slowly undergone some changes. However, despite a recent growth in social policy and reform, people with disabilities still continue to face significant social barriers. It is a matter of serious concern that despite the lapse of about five years of India signing and ratifying the UN Convention on Disability the Government of India has yet not been able to make any concrete law in compliance with its obligation under the Convention. The only existing comprehensive disability legislation, the Persons with Disabilities (PWD) Act of 1995, which seemed to have been a major legal instrument in delivering justice to the disabled mainly through the intervention of the judiciary, has already become outdated. Many provisions of the UN Convention on Disability are missing in the PWD Act. The PWD Act has largely remained an instrument of service-orientated and right-based entitlement in some select/specific sectors, based on medical definition of disability. The major issue of social environment, reasonable accommodation, equality, anti-discrimination, and political participation of persons with disabilities are largely missing in the PWD Act.

The study has also come out with the following important findings:

1. There is no doubt that the Persons with Disabilities Act, 1995 Act has made an effort to place positive obligations on the state to provide for access to education, employment, healthcare, barrier-free environment and social security for disabled persons. However, majority of the stakeholders under the PWD Act seemed to be unaware of the various
provisions of the Act itself. There are lack of public awareness and sensitivity on how to respond to the needs of such persons at the level of the family and society. Moreover, the quasi-judicial bodies of Commissioners of Disability have limited powers, and therefore have failed to produce a noticeable change in society.

2. The PWD Act has failed to take into account that the term “people with disabilities” encompasses a very wide range of differing life experiences and physical and mental states. Further, many of the provisions made by the Act in support of persons with disabilities come with the rider “within the limits of economic capacity”. Thus, it is very easy for the appropriate authorities to get away without effectively implementing the provisions of the Act.

3. Many of the obligations of the appropriate authorities under the PWD Act are not specific and are, therefore, difficult to interpret in terms of enforcement. It thus seems that many of the provisions are merely statements of intent only. The Act has failed to ensure social protection and adequate standard of living to persons with disabilities. It does not specifically provide rights to basic services such as food, clothing, and access to clean water, sanitation, and other livelihood opportunities, etc. The Act also fails to address the specific concerns of most vulnerable groups of disabled persons – such as woman and girl child with disability, old-age disability.

4. The scope and understanding of ‘disability’ under Indian law is relatively narrow. The growing Indian disability movement has not yet been able to bring about any substantive human right approach to disability. There are several instances of violation of human rights of the persons with disabilities (including violation of human dignity of such persons). The greatest drawback of the Indian disability rights movement has been neglect of the rights of persons with mental illness and persons with speaking difficulty.

5. Mentally ill persons are particularly deprived from their rights, even not treated as normal human beings and not even able to access medical facilities and rehabilitation services in comparison to the other disabled people. There still exist laws and practices in India that constitute discrimination against such persons with disabilities. For example, the continued existence of the Article 326 (in the Constitution of India), barring voting rights to such (mentally ill) persons, is glaring example of the neglect of such persons.

6. Continuing existence of Article 326 of the Constitution has further been affirmed by Section 16(1) (b) of the Representation of People’s Act 1950, which disqualifies a
person from being registered in an electoral roll if he/she is of **unsound mind**, and is found to be so by a **competent court**. Further, Section 16(2) of the Representation of People’s Act 1950 provides that the name of a person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included. It is very absurd to retain all such vague and mischievous provisions, more particularly when they have no practical relevance and goes against the prestige of certain kind of (mentally) disabled persons. The denial of suffrage to persons with mental disabilities under **Article 326** of the Constitution is discriminatory and against the very principle of equality before law mentioned in UNCRPD. There is no need to retain such provisions under the Constitution of India. In fact, insertion of such provision also does not serve any purpose because any person claiming voting rights cannot be declared to be of **unsound mind** by any natural and just interpretation of law and justice.

7. Apart from Article 326, Article 246 in the Seventh Schedule of the Constitution (which is about distribution of powers between the Union and the States) talks about ‘lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients’. The official language or words used in this Article 246 seems to be defamatory or derogatory for persons with disability and there is need to deconstruct such official construction of disability in official discourse\(^2\).

**Broader suggestions and policy recommendations**

Since India is contemplating to harmonize UNCRPD laws in its domestic law through amendment/replacement of the existing PWD Act 1995, it is important to highlight some of the broader legislative and policy measures that need to be given top priority. In this regard, some broader and important suggestions/recommendation that can conclusively be drawn from the present study are as follows:

1. To begin with, the Government of India should immediately bring in legislation in compliance with its commitments to the international community under the UN

Convention on Disability. In this regard, the draft Rights of Persons with Disabilities Bill 2011 (RPDB), which is pending with the Ministry of Social Justice & Empowerment for quite long time, needs to be placed before the Parliament at the earliest for its consideration and adoption. India has not only failed to bring in legislation in compliance with its commitments to the UNCRPD but has also failed to comply with the mandatory requirement of submitting its country specific report within the statutory 2 years’ time. This is a serious matter and any further delay to comply with the UN Convention will only undermine India’s concern for its disabled people.

2. There is a need to make constitutional amendments making explicit mention of the term ‘disability’ under Articles 15 and 16 of the Constitution as a prohibited ground of discrimination as well as for the realization of the equality in opportunities.

3. There is also a need to remove certain derogatory and defamatory language or words used in the Constitution under Article 246. Similarly, the denial of suffrage to persons with mental disabilities under Article 326 of the Constitution has no practical relevance but its continued existence is discriminatory and very much against the principle of equality before law. Such provisions are in contradiction with the UN Convention on Disability and should be removed from the Constitution. Parallel to the removal of the Article 326 of the Constitution, Section 16 of the Representation of People’s Act 1950 (which denies registration of persons of unsound mind in the electoral roll) should also be amended and done away with.

4. There is a need to do away with all the different kinds of definitions of disability under different Acts/Statutes. As far as possible, a uniform definition of disability shall be adopted based on the new Disability legislation to be adopted in compliance with the UNCRPD. In addition to uniformity in the definition of disability there is a need to widen the scope and definition of disability. Simply defining disability on the basis of certain medical criteria is not enough. The extent or severity of impairment of a person should play an important role in deciding whether (s)he suffers from disability or not. The social barriers experienced by a person due to her/his impairment may also be recognized as criteria in defining disability.

5. There is an urgent need to have some authentic and reliable data on the numbers of persons with disability in India. Present data on disability is grossly under-estimated and not reliable due to poor research methodology adopted in conceptualization and collection of data. A comprehensive and exclusive Census on various aspects of
disability needs to be carried out immediately so that a proper database of disabled persons may be maintained and same can used as basis for implementing various beneficial and welfare measures for such people.

6. Education & employment of persons with disability is very important for them to live a dignified living. Education enhances the employment and livelihood opportunities for disabled persons. While provision have been made for education of disabled children upto the age of eighteen that itself is not enough. Every effort should be made to ensure that no disabled child (particularly disabled girl child) is left out from the education system. The educational rights of disabled children are different from such rights for other children. It requires reasonable accommodation, additional support and accessibility infrastructure, including special educators. There is, thus, a need to amend the recently enacted Right to Education (RTE) Act in order to incorporate adequate provisions for education of the disabled, including education of disabled children in the age group of fifteen to eighteen for whom there is no provision in the present RTE Act. There is also a need for recognizing educational rights and entitlements for the disabled at the higher education (tertiary level). Coming to employment, it is important that, along with public establishments, the private establishments employing people beyond certain numbers may also be forced through legislation to employ persons with disabilities. There is also a need to create employment and livelihood opportunities for persons with disability in all the sector of the economy, including the informal sector.

7. Poverty, malnutrition and inadequate healthcare are the major factors in causing disability in the long run. Adequate and long term policy needs to be adopted to deal with these problems.

8. Old-age disability is increasingly becoming a major concern for all of us. There numbers are increasing day by day. There is a need to have adequate legal and policy measures (including social security and welfare measures) to deal with this growing and old-age disabled population.

9. Woman and girl child with disability face double discrimination due to existing gender discrimination and social inequality. They are socially, culturally and economically more dis-advantaged people. Accordingly, whenever any law or policy is made for disabled persons, specific provisions should be made for this highly discriminated and dis-advantaged group of people.
10. The monitoring and implementation of the existing laws and policies for the disabled persons is very weak. They have not been able to draw the desired attention and public awareness about their role and functioning. The Commissioners for Persons with Disabilities under the PWD Act have been envisaged to be the watchdog bodies with the powers of a civil court; but very few power and facilities have actually been provided to these offices. These offices are not equipped well with adequate human and office resources. There is a need for strengthening the implementation and monitoring mechanism for the laws and policies. Adequate funding and infrastructure should be provided for implementation and monitoring purpose.

11. The creation of a separate Department for Disability under the Ministry of Social Justice & Empowerment is a welcome move; but that is not enough. Considering the significance in their number and the enormous problems and discrimination faced by them it is highly desirable to have a Separate Ministry to look after the issues of persons with disability. There is also a need to make adequate budget allocation for the same.

To conclude, persons with disability have enough potential to contribute to the society and its development provided they are allowed to fully participate through recognition of their rights and dignity. The legislations meant for safeguarding the persons with disabilities and the various policies / schemes / programmes must be able to address the issues of alarming rate of illiteracy, unemployment and poverty among the persons with disabilities. The issue of accessibility correlates the issue of education and employment and economic development of a country. Therefore to incorporate provisions regarding accessibility in legislations and to execute them is the need of the hour, including the removal of discriminatory provisions that are still prevalent in some legislation. However, laws and policies alone may not be enough. Public perception, attitude and awareness have significant role to play. There is a need for social change through public awareness. There should be endeavour for attitudinal changes in the sense of bringing a
culture of belonging. The public in general may be empowered and educated to take action and advocate the human rights and fundamental freedoms of persons with disabilities.