CHAPTER 1

INTRODUCTION
1. Introduction

The vital difference between human beings and animals is the element of the extent of civilization. However, reaching the pinnacle of civilization is possible only if a comprehensive Code is created to meet all the requirements of the civilized world.

Such a Code has to address the needs of variety of areas, wherein there is recognition and opportunity provided to all, to lead a dignified life. Ensuring a dignified life is not an easy task, as one has to consider the needs of people with different capacities; people with social, economic, physical, mental, cultural as well as other incapacities. They have to be given an equal opportunity to lead a normal and more importantly a dignified life. This is necessary as “the disabilities and diseases both cause injustice by limiting a person’s normal range of opportunities”1.

It has been said that, “conditions at the edge of a society reveal more about the state and progress of a society than conditions at the middle”2. Therefore, the study of the status of persons with disability should be treated as a touchstone to determine how civilized the society is. For such a determination, it is necessary to create self-consciousness and empathy, as well as opportunities to be self-resilient,

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1David B. Resnik, East Carolina University, ‘The Concept of Disability in Bioethics: Theoretical and Clinical Issues, A Job’, (Summer 2001, Volume 1, Number 3) at 46

and creating prospects for non-dependency. The society, the academy and the schools need to confer welfare-recipient status on the disabled.

Unfortunately, until the late twentieth-century, disability was being viewed through the lens of a medical paradigm of individual pathology. The impairment was conceptualized as rooted in biomedical and genetic traits or some type of dysfunction, and medical treatment focused on the individual, with an attempt to cure the curable and eradicate the "incurable."³

Darwinian notions of scientific survival, eugenic policies, involuntary sterilization and medical experimentation of persons with disabilities characterized most of the disability policies during the twentieth century.

Further, the notion that the disabled are generally neglected could be visualized as deep-rooted in the society due to conceptualization of the idea that society makes choices about who should be considered as disabled. The perception that societies can choose whether to accommodate people with disabilities, or to provide medical treatment for disabilities, or to prevent people from being born with disabilities, confirms its apathy towards the disabled.

To a certain extent there was a change in the approach due to the advent of UNO⁴ and the International Human Rights regime. Universal Declaration of Human Rights 1948 and other International Covenants on Human Rights put all humans in


⁴It is an international organization established by 51 nations with the object of maintaining peace and security, ensuring human rights, developing friendly relations among nations and promoting social progress. It was a consequence of the Second World War.
one category and prescribed a series of rights, which are to be protected and respected by the State and the individuals.

But the formation of UNO, did not account for any sea change in the lives of disabled as it addressed the general needs and rights of all the people. A glaring omission of special provisions in relation to the disabled in several UNO Declarations and Conventions, confirms such an observation.

However, the Declaration regarding the Rights of the Child and the Declaration on the Rights of Mentally Retarded Persons have made a feeble attempt to realize the goal of achieving the dignified, normal and successful life of a disabled. It is the Declaration of the Rights of Disabled Persons in the year 1975, which directly tried to address the problems of disabled persons for the first time. It considered the necessity of defining the physical and mental disabilities and of assisting the disabled persons to develop their abilities in the most varieties fields of activities and of promoting their integration in the main stream life.

India is not an exception to the above developments. Article 14 of the Constitution of India, like the UDHR, provides equality in general terms. Moreover, the prohibition of discrimination on grounds of disability is conspicuously missing from Article 15 and 16 which prohibit discrimination on several grounds. In spite of such absence, the legislature has made attempts to bridge the gap between the disabled and normally abled through several legislations such as Income Tax Act, 1961, Employees State Insurance Act 1948, The All India Service (Special Disability Leave) Regulations Act 1957, The Mental Health Act 1987, The

1.1. Objectives of the Study

The study has the following objective:

1. To study the International Instruments, National Laws and Policies and the judicial attitude generally with regard to the Rights of Disabled persons, as well as with specific reference to their Right to Education and Employment.

2. To study the response of the various U.N Organs to the problems of disabled.

3. To understand the different schools of thought on realigning the nature of rehabilitation

4. To comparatively analyze the provisions pertaining to the protection given to the disabled in legal systems of different countries.

5. To study the law and policies relating to the rights of disabled during different periods in the State of Goa.
6. To cross check the implementation of laws, the deficiencies in implementation and to ascertain the reasons for not realizing the objectives of the legislations relating to disabled in the State of Goa.

7. To collect data on education, employment and other important aspects of the rights of persons with disability in the State of Goa and statistically analyze it to test the hypothesis.

1.2. Scope of the Study

1.2.1. Identification of Problem

Disability poses a challenge not only to the medical field, but also to the legal system, the State as well as the society. The magnitude of the problem of disability is unknown to the majority. This may not necessarily be due to ignorance, but due to the invisibility of a few sufferers. This invisibility of the disabled could be attributed to the lack of facilities which make them immobile. Immobility in turn makes them confined to the four walls of the house.

The United Nations estimates that 600 million people worldwide have a disability, of which approximately 70% are believed to live in a developing country. In other words, one in 20 people have a disability, of which an estimated 1 – 3% of the total population has an intellectual disability\textsuperscript{5}.

\textsuperscript{5}This is admittedly a conservative estimate. It has been noted that a more realistic figure is closer to one in 10. Available at http://hpod.pmbclients.com/pdf/Poverty-and-disability-inclusion-intl.pdf visited on 12.12.2010
Recent World Bank estimates indicate that people with disabilities may account for as many as one in five of the world’s poorest people, suggesting that approximately 1.3 billion are living on less than $1 per day. Out of that 260 million have a disability or an estimated 43% of the total disabled population\textsuperscript{6}.

The disability leads to multiple problems which force the disabled to lead a subhuman life. UNICEF notes that some 150 million children with disabilities, lack access to child care services, schools, recreation and other social services, and are likely to remain illiterate and untrained, ultimately unable to join the labour force\textsuperscript{7}.

As mentioned above, poverty is one of the main causes for disability. UN statistics state that, roughly 20% of all the disabilities are caused by malnutrition and over 10% are caused by infectious diseases. Both the causes result into at least 30% of disability, which can be brought down, if ‘poverty’ is eradicated. The mortality for children has been controlled substantially where it has been brought to 20% or below. However the mortality of children with disabilities is as high as 80%. In certain cases there seems to be a ‘weeding out’ process where the lives of an infant born with disabilities is severely undervalued\textsuperscript{8}.

Recent UNESCO studies suggest that only 1-2% of the children with disabilities in developing countries, receive education. Boys with disabilities attend school more

\textsuperscript{6}Available at http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/Background/elwan.pdf visited on 12.12.2010

\textsuperscript{7}Available at http://www.dfid.gov.uk/r4d/PDF/Outputs/ChronicPoverty_RC/32Bolt_Bird.pdf visited on 16.12.2010

\textsuperscript{8}
frequently than girls with disabilities. The position of a girl child with disability worsens due to social and cultural blockades. UNICEF estimates that only around 1% of the girls with disabilities are literate. It is also estimated that the schemes, packages and other social welfare programs of the State reach only 2% of the people with disabilities in developing countries⁹.

According to the ILO, the rate of unemployment is as high as 80%. The main reason for the lack of opportunity is their limited capabilities, resulting out of the lack of education, vocational training, in turn leading to lack of experience. Another cause for unemployment is the employers' prejudice. Lack of awareness of the abilities of people with disabilities is another major contributing factor to a staggering unemployment rate. Access to self-employment is also limited by inadequate credit and support services.

The recent estimate has predicted that approximately 6% of the Indian population is disabled, and considering the survey of various other nations conducted by the U.N Officials, the results are in double digits. Australia is having 18% of disabled population. U.K's disabled population is estimated at 14.2%, U.S.A is 9%. The figures of disabled persons in India are low as compared to the other countries due to the narrow definition of disability.

Disability causes two thronged problems; one, the physical problem faced because of physical or mental disability and other, which is more of social problem which is the social stigma attached to disability. The irony of these problems is that both

of them are preventable, but the State chooses to ignore them. There is a need to look at the solutions from different perspectives. Even though the person with disability is physically challenged, the challenges get multiplied when he faces obstacles to education, as well as to employment and personal relations.

These challenges are not due to inherent incapacities, but due to the physical and attitudinal barriers socially and politically constructed by the environment (society). The problem with the community is not the monolith that is often portrayed in policy debates. Although people with disabilities, on an average, are poorer and less employed than the overall population, they are also extremely diverse with respect to virtually all social and economic characteristics. Therefore it is not wrong to say that, disability and poverty always co-exists.

Problem of disability can be effectively addressed, only if the reasons behind the problem are understood. Poverty being one of the major contributor; education and employment play a significant role in diminishing the majority of the problems of disabled.

The general mode of addressing these problems is by adopting paternalistic approach and showing sympathy. However, the need of the persons with disability is exactly the opposite. Most people with disabilities adhere to the general philosophy of the Independent Living Movement.


Louis Harries and Associates, 'Harries Survey of Americans with Disabilities,' New York, 1994. The Independent Living Movement is a social movement that was initiated in USA in the early 1970s largely by people with disabilities, who sought to eliminate the barriers that prevent them from living independently and productively in their community. It mainly relied on the concepts of self-help, self-
1.2.2. Hypothesis

Prior exposure to the literature on the disabled persons has enabled the researcher to develop observable provisional ideas regarding the rights of the disabled in the areas of education and employment. However, such provisional ideas require to be put to test during the research with a scientific evaluation to check its veracity. Therefore, they have been framed as hypothesis. Following are the hypothesis:

(i) Lack of 'Human Rights Approach' makes the existing medical and social models of disability inadequate in understanding the rehabilitation of disabled.

(ii) The definition of 'disability' is narrow and inadequate, and fails to recognize several disabilities, such as old age, temporary disabilities due to medical reasons, pregnancy, diabetes, dwarfness, anatomical malfunctions like liver, pancreas leading to diabetes.

(iii) Although, there are sufficient provisions to protect the interest of the persons with disability both nationally and internationally, the implementation of such provisions are constrained by certain obstacles such as insensitiveness of implementing Authorities, social apathy, high cost, reliance and personal responsibility. The movement has enlisted common difficulties to seek independence. They are as follows;

1. Their functional limitations which may to some extent inherently limit their capacity to work.
2. Environmental barriers that further limit their options to obtain employment and live in the communities.
3. Attitudinal barriers that result in active discrimination against them.

See also Gerben De Jong, 'Independent Living: From Social Movement to Analytic Paradigm', Archive of Physical Medicine and Rehabilitation, 1979, at 43
lack of awareness, and stereotyping of abilities particularly in the education and employment sector in India.

1.2.3. Limitations of the study

The conceptual ideas presented in this study actually have prospects for an exhaustive study of the rights of disabled in India. The subject undertaken for the study is vast and covers broad areas such as economic, political, and cultural rights of the disabled. Therefore, to make a meaningful and exhaustive study of the subject and considering the time, human and material restrictions by which the researcher is bound, it compels the researcher to confine the empirical research only to the legislations relating to protection of right to education and employment of disabled and the contemporary socio legal issues and realities in guaranteeing these rights to the disabled in the State of Goa.

Further, while examining the issues regarding the rights of disabled persons particularly in the areas like education and employment, one has to bear in mind the different socio, political and economic conditions in the country. Thus, one has to be careful in expanding the results from a small State like Goa to another or larger area having different socio-economic conditions. Considering these limitations, the present study examines the rights of disabled at micro level in the State of Goa.

In spite of conducting the research with utmost fairness, there is a chance of bias which may arise due to several factors such as personal, institutional and peculiar
circumstances prevailing in the State of Goa with which the respondents are associated.

1.3. Importance of the Study

The protection of the rights of the disabled persons in order to help them to lead a normal and fully active life, could be guaranteed through the policies and laws. Among the rights of the disabled, the Universal Declaration of Human Rights has defined education and physical well-being as a human right to "be protected by the rule of law", as early as 1948.\(^\text{12}\)

Although, the Constitutions of several countries now include a language that embraces right to education, and health;\(^\text{13}\) disease and illiteracy remain pervasive throughout the world. Almost a billion individuals, i.e. a sixth of the international population, cannot read\(^\text{14}\). Disability perpetrates more illiteracy due to social apathy and special requirements and similarly it creates more hurdles for the disabled in matters of employment, particularly in free market economy.

Rights can be divided into different kinds. One of the important genera of rights is the 'basic rights'\(^\text{15}\). These rights are important as these are the windows as well as

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bridges to reach and enjoy all the other fundamental rights. Absence of basic rights makes the existence of all the other rights, meaningless. Right to education and right to employment being the basic rights, have been considered for the present research\textsuperscript{16}.

It is the Government which is expected to be the solution provider and rightly so, considering the fact that there is a high percentage of jobless disabled persons and their dependency rate is even higher. Another reason for dependence on the Government is the philanthropic approach in the earlier century which has not yielded much result, except for the unhealthy dependence on private sector charities.

In India, the movement for the rights of persons with disability has been more dependent on the involvement of the State, as the State behaves as a parent of each individual.\textsuperscript{17} In this context, an in depth study of whether such dependence reveals the contribution of State towards attaining respect for the rights of persons with disability, becomes significant.

As a result, examining various laws passed by the Central and the State Legislatures for the protection of ‘the right to education and employment of

\textsuperscript{16} Such an advocacy for Basic Rights Movement gained momentum in early 1970s in USA, which is popularly known as ‘Independent Living Movement’ started by persons with disability. This movement typically focused on removal of environmental barriers and the ability of individuals with disabilities to live in their communities. See also Andrew I. Batavia, ‘Ideology and Independent Living: Will Conservatism Harm People with Disabilities?’, (Annals of the American Academy of Political and Social Science, Vol 549, Sage Publications, Jan 1997 ), pp 10-23 Like Civil Rights Movement, it relied upon the concepts of self-help, self-reliance and personal responsibility. This initial attempt was liberalized at the later stage. The demand for government intervention was demanded.

\textsuperscript{17} It is called as the ‘paternalistic approach’. It is a recent development in the role of the State which initially was functioning as ‘Lesseiz Faire State’ and later on became ‘Social Welfare State’. Now it has reached a stage where it governs and regulates every aspect of an individual’s life.
disabled’, and implementation of the said legislations is not only necessary, but also inevitable.

Further, the study of the development of jurisprudence of the rights of disabled through the International treaties and Organizations and also in ‘Developed’ and ‘Developing’ countries becomes crucial in understanding the saga of disable rights movement in India.

Any study on the rights of disabled would not be complete unless it critically appreciates the impact of policies of affirmative action of the Government for the proper rehabilitation. This study is precisely aimed at the same, and hence its importance.

1.4. Methodology

This study being both doctrinal and empirical, the researcher has used permutation of qualitative and quantitative methodology. The qualitative approach examines the supra-level law and policy instruments on the rights of the disabled in educational as well as employment matters; their fundamental basis, legal and otherwise, as well as the different implementation mechanisms and the frameworks of different legal systems.

The quantitative approach in this thesis has been principally used in gathering and assimilation of data through various methods such as structured and unstructured questionnaires in order to test the hypotheses and present the conclusions in the study. The doctrinal propositions in the study, find basis in the Constitution of India, 1950 and judicial enumeration of components of Fundamental Rights and
Directive Principles of State Policy there under. There are also several legislations as mentioned earlier. There is also a Bill pending for consideration, titled the Blind and other Physically Handicapped Persons (Rehabilitation, Employment and Welfare) Bill, 2002. The empirical analysis in the study involves different analytical research methods including a number of structured questionnaires, interviews, collection and analysis of data in order to assist in the determination of status of various issues identified in the study and solutions thereto.

1.5. Structure of the Study

The present study consists of six Chapters. The first Chapter focuses on the objectives of the study, understanding the problem, formulation of research hypothesis, identification of limitation, importance of the study and the methodology to be adopted.

The Second Chapter lays down the contributions of the international community towards the protection of rights of the persons with disability. The Chapter firstly analyzes the Human Rights Conventions which are of general application and attempts to interpret such Conventions in the light of protection of right of persons with disability. Secondly, it also analyzes specific Conventions that are adopted to promote the rights of the disabled and their role in protection of right to education and employment. While doing so, this Chapter also studies the regional international organizations and their contributions.

18 See, Preamble, Part III and IV of the Constitution of India.
The third Chapter focuses on a comparative study of the rights of disabled in the legal systems of different countries. This study has been divided into two categories; the legal regimes in developed countries, and in the developing countries.

The fourth Chapter exclusively lays emphasis on the position of India in protection of rights of persons with disability. The focus of the study is on the provisions of the Constitution of India and other Central and State legislations dealing with the protection of rights of disabled. In addition, this Chapter also considers some of the drafts which are still in the bill stage. Certain definitions and terminologies used to describe the person with disability have also been explained.

The fifth Chapter defines the method, the results and the extrapolations that can be drawn from the empirical exploration undertaken in this study. The study covers implementation of legislations, schemes and policies in the State of Goa. An attempt has been made to enlist the stumbling blocks faced in implementing these provisions, attempts made to overcome the hurdles and the success achieved by the State of Goa towards the same.

Finally, Chapter six enumerates the outcome of the study in the form of conclusions and suggestions.