CHAPTER II

RIGHTS OF PERSONS WITH DISABILITY:
THE CONCEPT
AND
THE INTERNATIONAL REGIME
2. Rights of Persons with Disability: The Concept and the International Regime

As an introduction to the concept of the disability, a brief study has been undertaken regarding the theories relating to disability. The study also includes the understanding of various models of rehabilitation and the historical development relating to the rights of the persons with disability. At the latter part of the chapter the study covers the international regime on rights of persons with disability.

2.1. Disability: Concept, Theories and Development

2.1.1. The Concept

'Disability' and the 'person with disability' have been referred to, by using different terminologies. 'Impairment' is one such initial term used to connote disability. According to the definition given by the World Health Organization in 1976, 'Impairment generally means any loss or abnormality of psychological or anatomical structure or function'. The word generally deals with physical status of the person. Whereas, the term 'Disability' has been defined as 'any restriction or lack of ability to perform an activity in the manner or within the range considered normal for a human being'. Therefore, disability is the cumulative effect of impairment. Impairment leads to abnormality; abnormality leads to lack of ability to perform certain activities which are considered to be normal.
The final stage of disability is being 'Handicap'. It is a disadvantage for a given individual resulting from impairment or disability which limits or prevents the fulfillment of a role that is normal, depending on age, sex, social and cultural factors, for that individual\textsuperscript{1}. Therefore disability is not a physical factor alone. It's a combined effect of physical impairment, environmental restrictions and societal prevention to fulfill certain role which is normal for a human being.

2.1.2. Theories of Disability

The concept of disability has developed over a period of time and has various theories underlying it. Their study becomes relevant to understand the rationality behind different approaches towards the rights of persons with disability

\hspace{1cm} i. \textit{Sociological Theory}

Sociological approach to the problems of disability is very important as it involves unlearning as well as learning process. It is important to have the unlearning process as the problem of disability differs according to the economic and cultural contexts. For example, according to a study\textsuperscript{2}, in the United States, blindness is treated as a loss requiring counseling; in Sweden it is a problem requiring support services; in Britain it is a technical issue requiring aids and equipment, and in Italy, blindness requires the seeking of consolation or even salvation through the Catholic church. A fundamental

\textsuperscript{1}Deborah Kaplan \textit{‘The Definition of Disability’}, published in http://www.accessiblesociety.org/topics/demographics-identity/dkaplanpaper.htm visited on 21.12.2008

\textsuperscript{2}Michael Oliver, \textit{‘Theories Of Disability In Health Practice And Research’}, (University of Greenwich, Eltham, London SE92UG)
aspect of the sociological theory concerns equality. The struggle for equality is often compared to the struggles of other socially marginalized groups. Equal rights are said to give empowerment and the "ability" to make decisions and the opportunity to live life to the fullest. As a result of the same problem, being viewed differently by different societies at different points of time, the sociological theory has developed.

ii. *Positivist Theory*

The positivist theory focuses on searches for cures, means of reducing impairments or assessments of clinical interventions and uses methods such as controlled trials, random statistical samples, and structured questionnaires\(^3\). However, a branch within Positivists called ‘the Social Medicine’ recognizes the social context to impairment as well as disability, and examines the environment as well as the individuals. Hence public health measures concerned with sanitation, poverty, health education and the like have proved extremely effective in preventing rather than curing a range of impairments such as tuberculosis, polio, rickets, and river blindness.

However, the problem lies not with prevention or studying the problems of disability as disease, but it lies with the attitude as mentioned by Begum N as,

\( ^3 \text{Wood P. 'International Classification Of Impairments, Diseases And Handicaps', (Geneva: World Health Organisation; 1980).} \)
“Life and death decisions are vested in the hands of people who have very little understanding of the reality of disabled people’s lives.”

**iii. Functionalist Theory**

This theory emphasizes on the role of medicine to cure and maintain the “normal” functioning of individuals and of the society. In this model, the “sick role” involves being compliant and wanting to get well. Therefore here the disability is considered as a disease which needs to be cured. The inherent defect with this approach is that it does not address the needs of people with incurable conditions, and in addition it classifies disabled as sick, and seems to be deviant. Functionalism confuses impairment and disability with the sick role. The theory has failed to recognize that disabled people do not necessarily have “something wrong with them”. It has continued the discriminatory norms and values.

**iv. Critical Theory**

Critical theory sees problems of persons with disability as the product of an unequal society. The theory finds solutions through social action and change. This theory treats notions of disability as means of social oppression that brings in prejudice and discrimination, which results in restricting people’s lives much more than impairments do.

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According to the theory, the crucial problem of the community of persons with
disability is that, regardless of the type and severity of their impairment, they
do not form a homogeneous group. This poses a challenge to accommodate
them within a society that takes little account of their individual or collective
needs.

2.1.3. Models of rehabilitation of persons with disability

Rehabilitation is a process of restoring the lost facilities to the needy persons.
The process of rehabilitation mainly depends upon the mode of understanding.
The study of the models of rehabilitation gives us an insight into the
understanding of the plight of the persons with disability.

The Medical Model of Disability: The Medical Model views disability as a
problem of the person, which is directly caused by disease, trauma, or other
health conditions. Therefore this model prescribes sustained medical care
provided in the form of individual treatment by professionals. Within its
framework, professionals follow a process of identifying the impairment and its
limitations and taking the necessary action to improve the position of the
disabled person. In the Medical Model, rehabilitation is aimed at a "cure," or
the individual's adjustment and behavioral change that would lead to an
"almost-cure" or effective cure.

5 Available at http://www.disabled-world.com/definitions/disability-models.php. Read more:
http://www.disabled-world.com/definitions/disability-models.php#ixzz1FW5cJo6R visited on
21.10.2008
The Social Model of Disability: The Social Model of disability considers disability as a socially created problem and a matter of the full integration of individuals into society. In this model, disability is not an attribute of an individual but rather a complex collection of conditions, many of which are created by the social environment. Hence, the management of the problem requires social action and is the collective responsibility of society at large to make the environmental modifications necessary for the full participation of people with disabilities in all areas of social life. The issue is both cultural and ideological, requiring individual, community, and large-scale social change.

Charity Model of Disability: This model considers the disabled as a victim of circumstance and deserves pity. This model does not consider the person with disability as entitled to rights but only to facilities. He is expected to lead an animal existence on the charity provided by the society.

Moral Model of Disability: This model adopts an attitude that people are morally responsible for their own disability. For example, the disability may be seen as a result of bad actions of parents if congenital, or as a result of practicing witchcraft if not. This attitude may also be viewed as a religious fundamentalist offshoot. Echoes of this can be seen in the doctrine of Karma in Indian religions.

Human Rights Model: This model looks at empowering the persons with disability by protecting rights rather than by providing charity. This model is
latest model adopted in the light of latest developments in the international arena. This model prescribes not only an animal existence but life with dignity.

2.1.4. Movements Relating to the Rights of Persons with Disability

Disability causes two thronged problem; one, the physical problem faced because of physical or mental disability, and other, which is more of social problem where disability results in to a social stigma. There is a need to look at the solutions from different perspectives. Even though the person with disability is physically challenged, 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

Law alone cannot deal with such socio-economic-legal problems. There is a need to change social outlook through social engineering, need to bring change in economic policies and finally a suitable law with incentives to adopt these developments.

The general mode of addressing the problem is by adopting deviance, pity, paternalism, and welfare-recipient status conferred by society, the academy and schools. However, the need of the persons with disability is exactly opposite.

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In recognition of the rights of disabled, there came up number of movements for the same. Most people with disabilities adhere to the general philosophy of the independent living movement.8

i. Independent Living Movement

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.9 It mainly relied on the concepts of self-help, self-reliance and personal responsibility. Initial thrust was on gaining back what has been lost, i.e. to recognize the legal right of providing access to all the facilities provided by the Government. At the later stage it graduated to the greater involvement of Government and demand for right to employment and allied rights. The movement has enlisted common difficulties to seek independence, which include the functional limitations which may to some extent inherently limit the disabled person's capacity to work; environmental barriers that further limit their options to obtain employment and live in the communities; and the attitudinal barriers that result in active discrimination against them.10

9 Gerben De Jong, "Independent Living: From Social Movement to Analytic Paradigm", (Archives of Physical Medicine and Rehabilitation, 1979), at 435
Even though the movement was gaining more recognition and acceptance among the disabled community, another movement surfaced with its own principles and approach. This movement known as the 'Conservative Movement' can be termed as anti-thesis to Independent Living Movement.

**ii. Conservatism**

According to the proponents of the Conservative Movement, ‘the Government is best which governs least’. Power should reside as close to individuals and their families as possible, with the responsibility for the person primarily belongs to the individual, then the family, then the community, then Local Government, then State and finally Federal Government as protector of last resort. Thus the concepts of personal responsibility by the individual and limitation on State responsibility are key ideas among most conservatives, irrespective of their specific ideologies".

There are different streams of conservatism. One among it, is Fiscal Conservatism which speaks about an attitude to spend less on social issues. There is a particular mention of Federal Government to restrict itself on spending. The Government has to categorize certain needs of people as a necessity and spend on it.

Another is the Federal Conservatism, which brings in the major role of Federal Government instead of the State. The facilities for disabled should be available uniformly all over the nation. If the State is asked to make provisions for

\[11 \text{id}\]
persons with disability, it may lead to 'adverse selection'. The people with disability will move to the States which provide better benefits, thus putting the disabled friendly State under undue pressure. This naturally leads to 'race to the bottom' among the States, which would make the State disabled unfriendly and drive the population out and save money. On the other hand, the Social and Religious Conservatism is a major problem faced by all the movements. This conservatism genuinely believes that disability is the result of the moral wrong committed by the individual. This belief makes people feel that charity is the best way to protect the interest of the persons with disability.

Like Conservatism, 'Libertarianism' is another approach which gained popularity. This approach is radical in the sense that it brought new and different argument for protection of rights of persons with disability.

**iii. Libertarianism**

Libertarians are divided into two groups as far as their views are concerned. The extreme view to which few libertarians subscribe is that the Government has no right to intrude in private lives of citizens. Such policy of stopping governmental involvement is extended to private realm of citizens. Other generally more moderate view is that the State should play a limited role to protect the rights of the persons with disability. The proponents of Libertarianism are actually the protectors of civil liberties. Their primary focus is on freedom of speech and privacy as well as the rights of those accused of crimes.
The view of the extreme Libertarians is confined to the defense of virtual anarchy. Therefore most libertarians object to policies that give preference to certain individuals in obtaining social goods based on group membership\textsuperscript{12}.

However, some libertarians would be willing to accept those affirmative action policies that simply attempt to ensure that members of all groups have equal opportunity to obtain social goods. Many appear to accept a legitimate role for government in maintaining a short-term safety net, as long as it involves minimal intrusion in personal freedom and does not create long-term or permanent dependency on government\textsuperscript{13}.

In addition to the above movements, some governmental actions are considered as mandatory for the protection of the rights of the persons with disability. Affirmative action is the proactive role of the Government in private realm of the citizens.

\textit{iv. Affirmative action}

Affirmative action is one such process where philosophy of independent living can be achieved. It is an attempt to nullify the historical discrimination meted out to a minority group. This action began as a corrective measure for governmental and social injustices against demographic groups that have been said to be subjected to discrimination in areas such as employment and

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\begin{enumerate}
\item Group membership suggests that just on the basis of the fact of being part of a race, ethnicity or disability, a person is entitled for benefits. These benefits are provided ignoring the considerations like need, necessity resulting in wastage of fund and depriving benefits of deprived.
\item \textit{Supra} n. 10
\end{enumerate}
\end{footnotesize}
education. It involves positive act on the part of the government to provide equality, for example, reservation.

Based on the theories, movements and the models of rehabilitation, the International community has made attempts to realize the rights of persons with disability through various Declarations and Conventions. In the following part of the Chapter the researcher has analyzed these attempts of the International community.

2.2. International Regime on Rights of Persons with Disability

The concept of Human Rights has been the focal point of the International Law. The development of Human Right is a recent phenomenon, and United Nations Organization has successfully converted it into an international obligation.

It began as a mere Declaration\(^{14}\) and has graduated itself to the level of imposing obligations on the State. The development is to such an extent that a sovereign State is under the duty to submit report to the International Monitoring Committee. This development is a result of acceptance of Human Rights as an international phenomenon.

\(^{14}\) Declarations are basic instruments prescribing rights. These Declarations create mere moral obligation on the State and lack enforceability. The signatory of the Declaration cannot be made liable and subjected to the disadvantages for violating the rights prescribed under the Declarations.
2.2.1. Evolution of Human Rights

Development of Human Rights Law is primarily based on the international treaties, rather than customary sources of International Law. The major contributor to the development of International Human Rights Law has been the United Nations Organization\(^\text{15}\). The other major source of development of Human Rights Law has been the treaties of Regional Bodies\(^\text{16}\), Bilateral Treaties and International Non Governmental Organizations\(^\text{17}\).

There are seven Conventions which stand out as notable contributions. These seven Conventions create seven supervisory Authorities to oversee the performance of the State in protecting and promoting the rights enshrined in the respective Convention. These Conventions generally deal with the Human Rights issue, and cover the general needs of a human being. However, these instruments fail to create a proper platform for the special needs of the special groups like, indigenous groups, disabled groups, etc.

The study of the International Law relating to protecting the rights of the persons with disability will provide us with the important guidelines and standards. These standards help in listing the various rights of the persons with disability and also help us in providing an opportunity of assessing the performance of the State in the light of International norms. This Chapter is an

\(^{15}\) For the contribution of United Nation Organization, refer to the basic Human Rights Instruments.

\(^{16}\) African Union, European Union, Council of Europe and Organization of American States, etc.

\(^{17}\) The major contributor for the development of Humanitarian Law has been the International Committee of the Red Cross (ICRC). See M. K. Balchander and Rose Verghese ‘Introduction to International Humanitarian Law’, Indian Centre for Humanitarian Law and Research, ICRC, New Delhi
attempt to consolidate the International Conventions, Declarations, and norms dealing with Human Rights as a whole, and the rights of disabled persons in particular.

2.2.1 General Instruments vis-à-vis Rights of Disabled Persons

As the concept of Human Rights evolved with regard to second and third generation; the marginalized, minority and disadvantaged groups got the much needed recognition. This subsequent development, called for a fresh interpretation of the existing human rights instruments in the light of the needs of the disadvantaged groups. The fresh glance through human rights was aimed to make an attempt to provide a recognized right to the disadvantaged groups. In this process various Human Rights Instruments were studied and their applicability was expanded for protecting the rights of those disadvantaged.

Recently there has been an exponential growth of International Law in the area of rights of persons with disability. In the presence of specialized Instruments, an attempt to interpret the general Instruments and expanding their meaning seems to be a futile exercise. However, this exercise gives the insight of the intentions of the International Community while drafting the initial Human Rights Instruments and, an opportunity to understand the need and necessity of these special Instruments. Moreover, it helps to realize the ill effects of drafting the Human Rights Instrument without the holistic understanding of the needs of the human race.
i. Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights, (UDHR), 1948 is seen as a basis for all international legal standards for protection of human rights today. It is the first ever Declaration which comprehensively covers all the rights that a human being requires to possess, for a better life.

The UDHR aims to ensure all the basic rights necessary for the overall development of human beings. These rights are essential for ensuring inherent dignity of an individual, and the freedom, justice and peace in the world. It also aims to ensure access to redressal mechanism in case of infringement of any of the mentioned rights.

The UDHR by nature, though not binding, is still capable of being invoked by the judiciaries at the national as well as other levels, as minimum standards of human rights to be maintained. Thus the UDHR urges the member nations to promote a number of human, civil, economic and social rights of every individual, thereby leading to protection of rights of the disabled too.

ii. International Covenant on Civil and Political Rights, 1966 (ICCPR)

This Covenant is supported by two optional Protocols. It is applicable generally to all the humans. It has been developed to protect the Civil and Political Rights of an individual in particular and of the society in general.

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18 Adopted by the General Assembly in 1948

19 The Covenant was adopted and opened for signature in the year 1966; ratified and accessed by General Assembly Resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976, in accordance with Article 49
These rights are important to establish a ‘people centric’ and ‘people responsive’ Government.

The Covenant considers the principles proclaimed in the Charter of the United Nations, and declares that ‘to lay down the foundation of freedom, justice and peace in the world, it is necessary to recognize the inherent dignity and equal and inalienable rights of all members of the human family’. The Covenant considers these civil and political rights as derivative from the inherent dignity of the human person\textsuperscript{20}. As the name suggests, the Covenant mainly deals with the political and civil rights of the individual.

The Covenant prohibits discrimination on the basis, such as race, colour, language, religion, political or other opinion, national or social origin, property or other status. It prohibits discrimination based on political affinity, physical structure, social belonging and religion. But disability as a prohibitive ground for discrimination is conspicuously absent. However, the general terminology ‘other status’\textsuperscript{21} used at the end of the article suggests that, ‘disability’ can be added through interpretation.

The Covenant does not deal directly with the right to employment and education. The main thrust being on protecting the civil and political right of the individual against the State action, it concentrates on rights of arrested

\textsuperscript{20} See Preamble, International Covenant on Civil and Political Rights, 1966

\textsuperscript{21} See Art 2 of Part II, International Covenant on Civil and Political Rights, 1966
person\textsuperscript{22}, rights of individual to participate in the political development of the Nation\textsuperscript{23} and freedom of speech and expression.

The ICCPR imposes a duty on the States Parties, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, that they shall promote the realization of the right of self-determination\textsuperscript{24}. On the 10\textsuperscript{th} of July 1979, India became party to the Covenant, but in the capacity of a conditional signatory.

\textit{iii. International Covenant on Economic, Social and Cultural Rights, 1966\textsuperscript{25}}

This Covenant applies to all humans in common. This Covenant has been enforced to protect the enjoyment of freedom from fear of want. This objective could be achieved only by providing and protecting the conditions whereby everyone would enjoy his economic, social and cultural rights, as well as his civil and political rights. The duty of enforcing or respecting these rights is on the State and also on the fellow citizens. All the individuals are under the obligation to promote and observe the rights recognized under the Covenant\textsuperscript{26}.

The Covenant recognizes the right of every individual to enjoy and dispose of natural wealth and resources. The Covenant has made an attempt to avoid

\begin{flushleft}
\textsuperscript{22} Id, see Art 6, Art 9, Art 10, Art 11, Art 15
\textsuperscript{23} Id, see Art 25
\textsuperscript{24} Id, see Article 5
\textsuperscript{25} Adopted and opened for signature in 1966; ratified and accessed by General Assembly Resolution 2200A (XXI) of 16 December 1966
\textsuperscript{26} See Preamble of the International Covenant on Economic, Social and Cultural Rights, 1966
\end{flushleft}
individual ownership of natural wealth which should be owned commonly by
human race. Further, the Covenant recognizes the right to work, which aims to
provide an opportunity to everyone to gain living by work. Such a selection of
work is by exercise of free choice and acceptance. In order to recognize the
right to work, the State is under an obligation to provide opportunity to work,
and to build the human resource through education, vocational training, etc.

The right to education is also part of the Covenant. The Covenant makes an
over-generalization as to universal applicability of the right. The law does not
emphasize specifically on duty not to discriminate. However, the State is under
duty to recognize and provide the compulsory primary, secondary and tertiary
education based on the individual capacity.

The Covenant has given general recognition to the right to work and education.
However, the special mention of disabled person entitled to these rights, is
missing. The universal applicability of the rights and absence of exceptions can
help ensure the applicability of these rights to disabled persons also. However,
such interpretation will not create a positive duty on the State to make policy
changes and develop a curriculum to include disabled person in the main
stream of education. This entire new approach can be expected from a State
only if a special duty is cast on it. India became a conditional signatory to the
Covenant on the 10th of July 1979.

27 Id, see Article 6
iv. Declaration on the Rights of the Child, 1959

In 1959, the United Nations Organization passed an exclusive resolution protecting the rights and interests of the children. The need was felt because of the child’s physical and mental immaturity. The object of the Declaration was to provide special safeguards, care and appropriate legal protection before as well as after the birth of the child.

The Declaration has only one provision directly dealing with the welfare of the disabled child, where it mentions that the child with the physical, mental and social handicaps shall be given special treatment, education and care as required by the particular condition.

The other principles of the declaration can be interpreted in the light of the needs of the disabled child. One important principle is for early detection and elimination of disease through pre-natal and post-natal care. This includes, right to nutrition, housing, recreation and medical services for both child and mother.

The general provision extends the scope of the Declaration to every child. It further prohibits creating of any exception, distinction, or discrimination on different basis. However, while enumerating the basis, the grounds of disability

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28 Proclaimed by the General Assembly Resolution 1386 (XIV) of 20 November 1959
30 Id, see Principle 5, the Declaration of the Rights of the Child
31 Id See Principle 4.
are conspicuously missing. However, the word 'other status' in the provision can very well include the disability through the interpretational exercise\textsuperscript{32}.

The Declaration makes education, free and compulsory at least at elementary stages. Further it enumerates the objects and the meaning of education. It also provides for the opportunity for recreational activities and play. It mentions the role and duties of the authorities involved with education\textsuperscript{33}. This provision has to be read with the general principle of the Declaration. If the Declaration would not have been extended to the disabled child, this principle of right to education could not have been used to protect the interest of the disabled children.

\textit{v. Convention against Discrimination in Education, 1960\textsuperscript{34}}

The Convention was passed in furtherance of a policy to achieve universal education and to achieve the pinnacle of civilization, culture as well as alleviate poverty. Under the Convention, the term "Education" referred to all types and levels of education, and it included access to education and the standard and high quality\textsuperscript{35}.

\textit{Foundation for the Convention:} The Convention was passed in consideration of the rights against discrimination recognized under Universal Declaration of Human Rights, in accordance with the Constitution of UNESCO and by

\textsuperscript{32} Id, see Principle 1
\textsuperscript{33} Id, see Principle 7
\textsuperscript{34} Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14 December 1960
\textsuperscript{35} See Art 1 (2) of Convention against Discrimination in Education, 1960
considering the problems of discrimination in the field of education in various countries\textsuperscript{36}.

The term "discrimination" was defined to have widest possible meaning. Discrimination includes any distinction, exclusion, limitation, or preference, which is based on race, colour, sex, language, religion, political, or other opinion, national or social origin, economic condition or birth\textsuperscript{37}. Limiting a person to education of an inferior standard\textsuperscript{38}, maintaining separate educational systems with an object to discriminate\textsuperscript{39}, also amounts to discrimination. It includes imposing of unreasonable conditions that have bearing on the dignity of man\textsuperscript{40}. Moreover, any act which results into deprivation of access to education is discrimination\textsuperscript{41}.

The Convention formulated the rules to eliminate discrimination under which the State has to abrogate any discriminatory law, administrative instructions, administrative practices, which involve discrimination in education\textsuperscript{42} and ensure non-discrimination in admission of pupils to educational institutions\textsuperscript{43}. Nevertheless, a classification based on merit or need is allowed in the matters

\textsuperscript{36} Id, see the Objective
\textsuperscript{37} Id, see Art 1
\textsuperscript{38} Id, see Art 1 (b)
\textsuperscript{39} Id, see Art 1 (c)
\textsuperscript{40} Id, see Art 1 (d)
\textsuperscript{41} Id, see Art 1 (a)
\textsuperscript{42} Id, see Art 3 (a)
\textsuperscript{43} Id, see Art 3 (b)
of school fees, scholarships or other forms of assistance for studies in foreign
countries.\textsuperscript{44}

\textit{Approach of the Convention:} The Convention also addresses the need of active
intervention of State, to formulate National Policy to provide free and
compulsory education at the primary level\textsuperscript{45}. It States that the secondary
education should be made available and accessible to all\textsuperscript{46} and in addition,
higher education should be made equally accessible to all based on individual
capacity\textsuperscript{47}. The National Policy should also include encouragement and
intensification of the adult education. It should address the needs of persons
who have not received or who have not completed the primary education
course, and the continuation of their education based on individual capacity\textsuperscript{48}

\textit{vi. International Convention on the Elimination of All Forms of Racial Discrimination, 1965}\textsuperscript{49}

This Convention was passed by considering various documents of the United
Nations including, the Charter of United Nation, where the dignity and equality
of all human is protected irrespective of their race, sex, language and religion.
The basis for this Convention is found in the Universal Declaration of Human
Rights, which provides for equality before law and equal protection of law

\textsuperscript{44} Id, see Art 3 (c)
\textsuperscript{45} Id, see Art 4 (a)
\textsuperscript{46} Id
\textsuperscript{47} Id
\textsuperscript{48} Id, see Art 4 (c)
\textsuperscript{49} Adopted & opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21
December 1965
without discrimination, and considering the basic concept that all human are born free, equal in dignity and rights. In furtherance of this affirmation, the Convention has been passed to eliminate all forms of racial discrimination. On the 4th of January 1969, India became signatory to the Convention.

The main aim of the Convention is to bring in equality between different human races. As the Convention was passed with a greater object, it failed to consider the requirements of the micro minority like the disabled persons. The Convention has successfully achieved its objective, but it is not useful as far as right to employment and education for the disabled persons is concerned.


This Convention defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” To this Convention too, India became a conditional signatory on 8 August 1993.

As stated above, the object of the Convention is to bring in equality among the two genders. The Convention however fails specifically to consider the plight of the disabled women. When normal women cannot lead an independent life

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50 Adopted in 1979 by the United Nations General Assembly, described as an International Bill of Rights for Women, it came into force on 3 September 1981
due to discrimination, it is not difficult to imagine the plight of a disabled woman, who would be doubly disabled. The Convention has not attempted to protect the right to education and employment of such women.

viii. *Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, 1984*\(^{51}\)

This Convention was signed by India on the 14\(^{\text{th}}\) of Oct 1997, but has not yet been ratified. This is an exclusive Convention to protect the rights of the accused person. This Convention was brought into force exclusively to fight against cruel, inhuman, and degrading forms of punishments. The subject of the Convention is the potential contributor to the population of the disabled persons. The strict implementation for the Convention can avoid the increase of the number of disabled persons; however, it does not deal with the rights of the disabled persons. This Convention can be studied as a preventive measure and not as a corrective measure.


This Convention addresses the need of protecting the rights of the child. Family being the fundamental unit of society, the natural environment for the growth and well-being of all its members and particularly children needs necessary protection and assistance so that the child can fully assume its responsibilities within the community. This Convention was signed by India on the 11\(^{\text{th}}\) of

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\(^{51}\) Adopted by the United Nations General Assembly on 10 December 1984 and it came into force on 26 June 1987.

\(^{52}\) Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989
January, 1993. The Convention recognizes the child’s need for the full and harmonious development of his or her personality, and his/her need to grow up in a family environment, in an atmosphere of happiness, love and understanding.

*x. International Convention on the Protection of Rights of All Migrants and Members of their Families, 1990*

The General Assembly adopted the Convention in December 1990. This Convention opened a new Chapter in the history of the efforts to establish the rights of migrant workers and to ensure that those rights are protected and respected. It is a comprehensive international treaty, inspired by existing legally binding agreements, by United Nations Human Rights Studies, by the conclusions and recommendations of meetings of experts, and by the debates and resolutions on the migrant worker issue in United Nations bodies over the two decades. This is another Convention, which does not deal the present area of the study. Presently India is not a party to the Convention.

*xi. World Declaration on the Survival, Protection and Development of Children, 1990*

The Declaration was made at the World Summit for Children on 30th September 1990. This Declaration has a comprehensive approach towards the needs of the children. The Declaration does not make a special reference towards ‘rights of disabled children’, but specific mention has been made

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53 Adopted by General Assembly Resolution 45/158 of 18 December 1990.
regarding the ‘plight of the disabled’. The Declaration can be broadly classified into four categories; the Challenge; the Opportunity; the Task and the Commitment. Firstly, the Challenge, enumerates the test faced by the human race in protection and development of children. The Declaration makes a mention of the disabled child, but in relation to war, violence, foreign occupation, apartheid, aggression, or annexation\textsuperscript{54}. The Declaration considers disability as a challenge arising from bloody conflict, where the child is an innocent victim. However, it fails to consider another important contributor of the disability, i.e, malnutrition. It considers ‘malnutrition’ only as a cause for the death of children and not their disability. Further, it addresses the immediate challenge of combating AIDS and drug abuse\textsuperscript{55}.

Finally under the ‘Task’, the right to education has been mentioned, but with special reference to the girl child. The Declaration makes a mention of the importance of education for overall development of the children. However, it fails to address the disabled child’s needs for education\textsuperscript{56}. Even the commitment of the Declaration mentions about the education, continuing education, vocational training and importance of enabling child to obtain employment, but lacks the mention of disabled children.

\textsuperscript{55} Id, see point 6.
\textsuperscript{56} Id, see point 13
The Declaration was considered and passed during the World Conference on Human Rights in the year 1993. The significance of the Declaration lies in its approach of considering the earlier attempts of the International Community in a new light. Among the major declarations, the Declaration as to Human Rights and Fundamental Freedoms as the birthright of all human beings; their protection and promotion as the first responsibility of Governments is one of the most significant observations.

When the Declaration is studied in the light of the ‘Rights of Persons with Disability’, the Article which attracts attention is the one that promotes the international cooperation for protection of all human rights and fundamental freedoms. It mentions that human rights are considered as a priority objective of the United Nations in accordance with its purposes and principles. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the International Community. The Organs and specialized Agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of International Human Rights Instruments. The article mentions cooperation of International Community as well as the cooperation

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58 See Art 1, Vienna Declaration, 1993
59 Id, see Art 4
between the organs of the UN in protecting the human rights and fundamental freedoms of all human beings.

This comprehensive approach benefits the people with special needs. The needs of the persons with disability, cannot be answered by one organ, it has to be a comprehensive approach of all the organs. Even though the UN has fulfilled this need in the past, it is for the first time that the cooperation among organs of UN was made mandatory.

The main cause for the disability is not war, but poverty. The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights. It also leads to more complications in the ability of a person to lead a fulfilling life. Therefore, the need to its immediate alleviation and eventual elimination must remain a high priority for the International Community.60

Persons with Disability and the Declaration: The World Conference on Human Rights reaffirmed that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. As every person is born equal, he should have equal right to life and welfare, education and work, to live independently and to participate actively in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights. The Declaration calls on

60 Id, see Art 14
Governments, to adopt or adjust legislation to assure access to these and other rights for person with disability.\(^{61}\)

The Declaration affirms that the place of disabled persons is everywhere. Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers; be they physical, financial, social or psychological, which exclude or restrict their full participation in society.\(^{62}\) The Declaration also reaffirms the World Programme of Action concerning Disabled Persons, adopted by the General Assembly at its thirty-seventh session. Moreover, the World Conference on Human Rights makes an appeal to the General Assembly and the Economic and Social Council to adopt the Draft Standard Rules on the Equalization of Opportunities for Persons with Disabilities, at their meetings in 1993.\(^{63}\)

*Disabled Children:* Art 21 of the Declaration makes a mention of the need of protection of the ‘other category’ of the children.\(^ {64}\) The Declaration makes a mention of the ‘children with disability’, separately. It states that special attention needs to be paid to ensure non-discrimination and equal enjoyment of

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\(^{61}\) *Id, see Chapter 6*

\(^{62}\) *Id, see Art 64*

\(^{63}\) *Id, see Art 65*

\(^{64}\) The Article makes a mention of the girl-child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies.
all human rights and fundamental freedoms by disabled children, including their active participation in all aspects of society.\textsuperscript{65}

2.2.2. Ancillary Efforts of International Community in Recognizing Rights of Persons with Disability.

\textit{i. Copenhagen Declaration on Social Development, 1995}\textsuperscript{66}

The Summit was the first of its kind, called to address the urgent needs of the world at large. The world has seen prosperity but unfortunately, it has been accompanied by growth of unspeakable poverty for others. UN convened the meeting to address this glaring contradiction.\textsuperscript{67}

\textit{Impact of Globalization:} Globalization has increased human mobility, enhanced communications, which in turn has greatly increased trade, capital flows and technological developments. This has led to the opening of new opportunities for sustained economic growth and development of the world economy, particularly in developing countries. Further, globalization ensured sharing of experiences and learning from one another's achievements and difficulties and promoted a cross-fertilization of ideals, cultural values and aspirations. At the same time, the gray part of the globalization as the rapid process of change and adjustment has been accompanied by intensified poverty, unemployment and social disintegration. It also created threats to

\textsuperscript{65} Supra no. 49, see Art 22  
\textsuperscript{66} Declaration was made during the World Summit for Social Development, Copenhagen 1995  
\textsuperscript{67} See Part A: ‘Current Social Situation and Reasons for Convening the Summit’, Para 13
human well-being, such as environmental risks. These threats were earlier localized, but have now been globalized\textsuperscript{68}.

This new phenomenon has converted world into a global village. The event in one corner of the world has no more remained as an isolated, geographically restricted event, but it became an event of the world. This interdependency should have in fact reduced the disparity between the developed and underdeveloped countries. However, in reality it could not be achieved.

\textit{Position of Rights of Persons with Disability:} The Declaration relates to meeting challenges of the 21\textsuperscript{st} century. Rights of the persons with disability have been made a part of it. The Declaration has agreed in principle to ensure the protection to the rights of the disadvantaged and vulnerable persons. Such groups should be a part of the social development, and society has to acknowledge and respond to the consequences of disability by securing the legal rights of the individual and by making physical and social environment, accessible\textsuperscript{69}.

The Declaration has made commitments towards the society. These commitments are meant to create friendlier atmosphere in the world. Some of the commitments are towards achieving the goals of rights of persons with disability. One such statement is, 'to make the society acknowledge its duty towards disabled, establishment of a stable legal framework, in accordance with the Constitutions, laws and procedures, and in consistence with

\textsuperscript{68} \textit{Id.} see Para 14

\textsuperscript{69} \textit{Id, see Part B: Principles and Goals, Para ( I )}
international law and obligations'. The legal framework shall include and promote equality and equity between women and men, full respect for all human rights and fundamental freedoms and the rule of law and access to justice. The special mention was made regarding the elimination of all forms of discrimination, transparent and accountable governance and administration and the encouragement of partnership with free and representative organizations of civil society.\(^70\)

*Role of Poverty in Disability:* The Declaration attempts to eradicate the menace of disability by attacking the main cause for disability, i.e., 'poverty'. The commitment is to focus on the efforts and policies, and address the root causes of poverty and provide the basic needs for all. These efforts should include the elimination of hunger and malnutrition, the provision for food security, education, employment and livelihood. The prevention of disability can be achieved through efficient primary health-care services including reproductive health care, safe drinking water and sanitation. The adequate shelter and participation in social and cultural life helps to prevent secondary disability that could be created due to lack of acceptance and opportunity. The Declaration expects that special priority should be given to the needs and rights of women, vulnerable, disadvantaged groups and children, who often bear the greatest burden of poverty\(^71\). The commitment should include development and implementation of policies to ensure that all people have adequate economic

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\(^{70}\) *Id*, see Part C: Commitment 1.

\(^{71}\) *Id*, see Commitment 2.
and social protection during unemployment, ill health, maternity, child rearing, widowhood, disability and old age\textsuperscript{72}.

The main strategies and policies of Governments should be the creation and the promotion of appropriately and adequately remunerated employment. These strategies shall provide full respect for workers' rights. Adequate provisions are to be made for the participation of employers, workers and their respective organizations to provide special attention to the structural problems. There should be development of policies to address the problem of long-term unemployment and underemployment of youth, women, people with disabilities, and all other disadvantaged groups and individuals\textsuperscript{73};

\textit{Self-employment:} The employment is only a small aspect of ensuring economic stability of an individual. The improved access to land, credit, information, infrastructure and other productive resources for small and micro-enterprises brings in more stability. The disparity can be brought down, if access system includes, the informal sector and special emphasis is given to the disadvantaged sectors of society\textsuperscript{74}. The goal of quality jobs should include safeguarding the basic rights and interests of workers. The Declaration states that the State should freely promote respect for relevant International Labour Organization Conventions, including those on the prohibition of forced and child labour, the

\textsuperscript{72} \textit{Id, see Commitment 2, para (d)}

\textsuperscript{73} \textit{Id, see Commitment 3 para (a)}

\textsuperscript{74} \textit{Id, see Commitment 3, para (c)}
freedom of association, the right to organize and bargain collectively, and the principle of non-discrimination\textsuperscript{75}.

*Education as a Means to Achieve Civil and Political Rights:* The Declaration aims to provide meaning and respect to the civil, political, economic, social and cultural rights and imposes duty on the State to promote access for all to education, information, technology and know-how as essential means for enhancing communication and participation in civil, political, economic, social and cultural life\textsuperscript{76}. This shall also ensure the protection and full integration into the economy and society of disadvantaged and vulnerable groups and persons\textsuperscript{77}.

The direct commitment towards the rights of the disabled is found in commitment 5. It urges to promote changes in attitudes, structures, policies, laws and practices in order to eliminate all obstacles affecting the human dignity, equality and equity of the disabled in the family and in the society. Promote full and equal participation of urban and rural women, as well as women with disabilities in social, economic and political life, including the formulation, implementation and follow-up of public policies and programmes\textsuperscript{78}. Further, the State shall strive to ensure that persons with disabilities have access to rehabilitation and other independent living services

\textsuperscript{75} *Id*, see Commitment 3, para (i)
\textsuperscript{76} *Id*, see Commitment 4, para (c)
\textsuperscript{77} *Id*, see Commitment 4, para (d)
\textsuperscript{78} *Id*, see Commitment 5, para (a)
and assistive technology to enable them to maximize their well-being, independence and full participation in society\textsuperscript{79}.

\textit{ii. Beijing Declaration and Platform for Action, 1995}\textsuperscript{80}

The Declaration aims at providing equal status to women. Even though women form 50\% of the world's population, their accessibility to property is negligible. This inequality was recognized, and it was resolved to promote women's economic independence, including employment, and to eradicate the persistent and increasing burden of poverty on women. This eradication was sought to be done by addressing the structural causes of poverty through changes in economic structures. In addition, it also aimed at ensuring equal access for all women, including those in rural areas, as vital development agents, to productive resources, opportunities and public services\textsuperscript{81}. But, as women generally are discriminated on the basis of gender, a disabled woman would obviously be subjected to greater discrimination. The Conventions on Women concentrate on bringing women and girl child on par with the man and boy. However, these Conventions have failed to consider the plight of the women with double discrimination. The broad interpretation of the provision may be said to include disabled women, but an express mention would have clarified the intention of the members of the Conference.

\textsuperscript{79} \textit{Id}, see Commitment 6, para (n)

\textsuperscript{80} The Declaration is the part of The Fourth World Conference On Women, held at Beijing on 4\textsuperscript{th} to 15\textsuperscript{th} Sept 1995

\textsuperscript{81} See Art 26, Beijing Declaration on Women, 1995
Concerns expressed in the Declaration: The Declaration classified certain areas as critical areas of concern, which include the persistent and increasing burden of poverty on women, inadequate facilities, unequal access available to women in the area of education, and training, health care, and related services. One of the critical area is, the effects of armed or other kinds of conflict on women, including those living under foreign occupation and persistent discrimination against and violation of the rights of the girl child. These areas of concern have been discussed in the light of rights of women. However, protection in these areas of concern will effectively prevent and to some extent reduce the menace of disability caused due to malnutrition, lack of health care facility, etc. Further, it also helps in ensuring economic rights through education.

The Declaration discusses the right to health of women, but it restricts itself to the discrimination persisting as to the access to health centers. The need of health care for women with disability has not been addressed under the Declaration 82.

Disability and Girl Child: In the Chapter relating to the rights of girl child, the Convention makes mention about the discrimination existing against the girl child. The reason for discrimination varies from harmful attitudes and practices, such as female genital mutilation, preference of son over daughter which results in female infanticide and prenatal sex selection, early marriage including child marriage, violence against women, sexual exploitation, sexual

82 Id, see para 89-111
abuse and discrimination against girls in food. The fact is that, this
discrimination against the child is based on the gender. If the girl child is
suffering from a disability, the chances of that girl reaching adulthood are very
remote. The discrimination may result into elimination. The Chapter
recognizes, the right of the girl child with disabilities, and mentions additional
barriers faced and need to address them. The Declaration attempts to achieve
non-discrimination, and equal enjoyment of all human rights and fundamental
freedoms in accordance with the Standard Rules on the Equalization of
Opportunities for Persons with Disabilities. However, the urgent measures
and protection needed to be ensured to the group of women with disability,
unfortunately is missing.

iii. World Declaration on Education for All, 1990

In the year 1990, UNESCO organized the World Conference on Education for
All: Meeting Basic Learning Needs, to formulate action framework for
providing education for all. As a result, the ‘World Declaration on Education
for All and Framework for Action to meet Basic Learning Needs’ was adopted.

Objectives of the Declaration: The Declaration addresses the need to provide
child, youth, and adult with all the opportunities of education, which would be
designed to meet their basic learning needs. These basic needs comprise of
essential learning tools and content intended to provide development of full and

83 Id, see para 259-285
84 Id, see para 270
85 Adopted by the World Conference on Education for All Meeting Basic Learning Needs, Organized by UNESCO at Jomtien, Thailand in 1990
overall capacity of an individual\textsuperscript{86}. The content of education policy were intended towards empowering individual and making him a responsible citizen by transmitting common cultural and moral values, and providing him individual identity personally, and identity for the society collectively\textsuperscript{87}. The concerned article further expands the vision regarding providing of the right to education. The expanded vision encompasses the following:

- Universalizing access and promoting equity;
- Focusing on learning;
- Broadening the means and scope of basic education;
- Enhancing the environment for learning and
- Strengthening partnerships\textsuperscript{88}.

\textit{Education for All- A New Look}: The most important part of the Declaration is Article 3. This provision recognizes the need to provide education to all children, youth and adults. The Declaration gives priority to improving quality of education for girls and women. The active commitment is to achieve right to education in order to remove disparities among poor, street and working children, rural and remote population, nomads and migrant workers, indigenous people, and ethnic, racial and linguistic minorities.

\textsuperscript{86} See Art 1 (1) World Declaration on Education for All, 1990

\textsuperscript{87} Id, see Art 1 (2) and (3)

\textsuperscript{88} Id, see Art 2
Disability and Education for All: The main objective of UNESCO was to universalize the right to education. In this regard, the right was recognized and the general policy was formulated. However, under the World Declaration for All, UNESCO has recognized the different categories of the children, youth and adults in need of special mention, care, policy and commitment to fulfill the dream of universal right to education. The clause 5 of Art 3 makes a special mention of need for special attention and demands to make equal access to education to every category of disabled persons as an integral part of the education system.\(^{89}\)

This special mention was regarding the needs of the persons with disability. The right to education under the article extends to all the different kinds of disability. The approach of the article is twofold; one, is to provide special attention to the learning needs of the disabled, wherein, the needs vary from development of new tools of learning to specialized training to the instructors, to sensitizing them regarding the need of education for all. Second, is that the State should work towards making special arrangement to provide equal access to education to every category of disabled persons. The requirement of 'Equal access' imposes varieties of duties on the States, which include removal of physical barriers and making the school premises equally accessible to persons with disability. The duty of the State extends to removal of cultural barriers to encourage persons with disability to access the facility without reluctance and

\(^{89}\) Id, see Art 3
shame. Further, it includes removal of social barriers, and making the person with disability an integral part of the education system.

To achieve the objective of making the disabled child an integral part of the learning process, the society must ensure that all learners receive the nutrition, health care, and general physical and emotional support, which is needed to participate actively in and benefit from their education. In order to achieve this, the knowledge and skills that will enhance the learning environment of children should be integrated into community learning programmes for adults. The education of children and their parents or other caretakers is mutually supportive and this interaction should be used to create, a learning environment of vibrancy and warmth for all\textsuperscript{90}.

\textit{iv. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998}\textsuperscript{91}

The International Community understood the need and the importance of involvement and contribution of individuals, groups, and Non-Governmental Organizations in the development and protection of Human Rights. To make these informal contributors into well-organized contributors, an important right was created in their favour, wherein everyone was entitled to the right, individually and in association with others, to promote and to strive for the

\textsuperscript{90} Id, see Art 6

\textsuperscript{91} The Declaration was passed by General Assembly of United Nations Organization passed vide Resolution 53/144
protection and realization of human rights and fundamental freedoms at the National and International Level\textsuperscript{92}.

This attempt of the Declaration became more meaningful, when the same facilities were extended to everyone individually or in association with others in order to develop and discuss new human rights ideas and principles and advocate for their acceptance\textsuperscript{93}. This provides recognition to the contributions made by the various organizations in recognizing and developing of new rights and principles\textsuperscript{94}.

However, the rights provided under the Declaration would loose their meaning in the absence of the right to information. The individual or association can exercise the right meaningfully, only if they have access to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms. Considering this need, the same right has been provided under the Declaration. Further, the right has been made more meaningful by including access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems\textsuperscript{95}.

\textsuperscript{92} See Article 1, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms passed by UNO General Assembly vide Resolution 53/144

\textsuperscript{93} Id, see Article 7

\textsuperscript{94} For example, the International Humanitarian Law was largely developed due to the efforts of International Committee of Red Cross (ICRC)

\textsuperscript{95} Id, see Article 6(a)
To enable the dissemination of the information, the right was extended to freely publish, impart or disseminate the information and knowledge of all the human rights and fundamental freedoms\textsuperscript{96}.

Finally, to generate the public opinion and support, the individual has a right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms\textsuperscript{97}.

The Declaration has not created any express rights for the protection of the human rights of disabled person. However, this Declaration has empowered the individual and non-State actors to play major role in development of minute and unknown areas of International Law. This step of the International Community will go a long way in overall development of the International Human Rights Law. More importantly, this permission to contribute will help the micro-minority groups like disabled persons to study and create new right for more meaningful life, and lobby for the same.

\textit{v. The Dakar Framework for Action: Education for All, 2000\textsuperscript{98}}

The pledge of providing education for all was renewed and fresh attempt was made with new vigor at meeting in Dakar, Senegal, in April 2000. The World Education Forum has resolved its commitment to the achievement of Education For All (EFA), goals and targets for every citizen and for every society. Governments have an obligation to ensure the same. This can be achieved and

\begin{itemize}
\item \textsuperscript{96} \textit{Id}, see Article 6(b)
\item \textsuperscript{97} \textit{id}
\item \textsuperscript{98} Adopted by the World Education Forum, Dakar, Senegal, 26-28 April, 2000
\end{itemize}
sustained effectively through broad-based partnerships within countries. This responsibility can effectively be discharged with the support and co-operation of regional and international agencies and institutions.

The main objective behind the Dakar framework was the fact that in the year 2000 more than 113 million children were not having access to primary education. Therefore 880 million adults were illiterates. Gender discrimination continued to permeate education systems, and the quality of learning and the acquisition of human values and skills fell far short of the aspirations and needs of individuals and societies. These figures are the main obstacles in poverty reduction, and inequalities between countries and within societies.

The process of rapid globalization has influenced the societies and economies of the twenty-first century. Education being the key to sustainable development, peace and stability within and among countries, the EFA goals became a necessity and these could not be postponed any longer.

The Dakar Framework has resolved to achieve the expansion and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children. The framework has concentrated on the education of girl child, education of ethnic groups and other disadvantaged groups. The word ‘other disadvantaged group’ can very well include the needs of the persons with disability. This framework has been designed mainly to provide education in the light of life skills as well as education for girls. Nevertheless, it has effectively supported the needs of the disabled.
vi. *Discrimination in (Employment and Occupation) Convention, 1958* \(^9^9\)

Considering the various Conventions of the UNO, the International Labour Organization came up with the bold step of passing a Convention against the discrimination in employment. The definition of discrimination given in this Convention is not comprehensive and it States that the distinction, exclusion and preference are prohibited in employment if it is based on race, sex, religion, political opinion, national extraction or social origin \(^1^0^0\). But it does not address the discrimination on basis of disability that occurs in the employment world.

The ignorance of the International Community is further confounded through special permission granted to each Member State to take special measures. These measures are designed to meet the requirements of providing special protection or assistance to persons who for reasons such as sex, age, disablement, family responsibilities or social or cultural status cannot perform normal activities \(^1^0^1\). The Declaration has failed to consider, disability as one of the ground of discrimination. However, in the same Declaration, the word ‘disablement’ is mentioned in the exception clause, wherein any special measures leading to discrimination will not violate the Declaration. This leads to an obvious conclusion that the exclusion of the word ‘disabled’ is not due to mistake but due to lack of sensitization towards the needs and the rights of the disabled.

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\(^1^0^0\) See Art 1, Discrimination (Employment and Occupation) Convention (No. 111)

\(^1^0^1\) Id, see Art 5(2)
The Convention states that the disabled persons shall receive from the community, services adapted to their specific personal needs. Through decentralization and sectorization of services, the needs of disabled persons shall be taken into account and satisfied within the framework of the community to which they belong.

On the basis of the study of the above Conventions, the International Human Rights Law can be classified in to two categories, viz, the Mainstream Instruments, which apply to all humans; and Group-Specific Instruments, which provide special protection to persons with special needs\textsuperscript{102}. This phenomenon of Group Centric Instruments is a recent development in the area of Human Rights. The need arose, when the mainstream Instruments, as discussed above, were found not sufficiently competent to provide justice to the requirements of the special groups. These Group Specific Instruments reiterate rights in the similar path of mainstream Instruments. However, these Instruments specifically address the special needs, which are not capable of being addressed in the main stream Instruments. The further research will reveal the contribution of the Group Specific Instruments to protect the rights of the disabled.

2.2.3. International Instruments\textsuperscript{103} Specific to the Rights of Disabled.

\textsuperscript{102} Disability Manual, 2005, National Human Rights Commission, New Delhi, 2005 at p 40

\textsuperscript{103} The conventions are further classified as disabled specific instruments as earlier discussed instruments deal with disability in the course of dealing the general rights.
The UNO's early approach was to promote rights of disabled persons by formulating projects and creating bodies to implement these projects. This approach of the UN did not help in recognizing the rights of the disabled persons. The general Human Rights Instruments were not capable of broad interpretations to provide shelter to their rights. The approach rather had charity aspect inbuilt. Moreover, the UN considered only physical disability as a criterion to be eligible under the project. Considering the fact that the concept of the 'Rights of Disabled' was in a nascent stage, the insensitive approach of the UN can be condoned.

The first decade of functioning of the United Nations Organization (1945-1955) created two principal bodies; viz, the United Nations Secretariat and the Economic and Social Council. Their focus was on promoting the rights of persons with physical disabilities, such as blindness and deafness. The Projects concentrated on disability prevention and rehabilitation. In the year 1946 a special body called the Social Commission was established to specifically look into the issues relating to disability.

In the year 1950, in its sixth session, the Social Commission took two reports for consideration on "The Social Rehabilitation of the Handicapped" and "The Social Rehabilitation of the Blind". The problems faced by the disabled, and the rehabilitation of disabled were discussed at the Geneva Conference. This Conference has a unique achievement of having a comprehensive approach towards the rights of disabled by involving all the UN bodies. In the effort the Conference was attended by the Secretariat, the International Labour
Organization (ILO), the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Refugee Organization, (IRO) and the United Nations International Children Emergency Fund (UNICEF), later renamed the ‘United Nations Children's Fund’. The outcome of the session was an agreement on the need to establish international standards for the education, treatment, training and placement of disabled persons, with particular attention to be given to the blind in the underdeveloped countries. The Economic and Social Council also recommended the States to consider measures to help the handicapped persons.

In 1952, during the eighth session, the Social Commission discussed international rehabilitation for the physically disabled. The UNO made an attempt to raise awareness on the disability issue and emphasized the need for rehabilitation programmes throughout the world\(^\text{104}\). Programmes approved by the United Nations, ILO, WHO, UNESCO, UNICEF and IRO fall under the following headings: viz

- A new approach to disability,
- The education of public opinion,
- A complete rehabilitation programme,
- Developing rehabilitation services,
- Training rehabilitation personnel,

\(^{104}\) The attempt was made in the year 1956 and UNO created a fund in the name of International Social Service Review
• Organizing and financing rehabilitation services,

• The contribution of the United Nations and the specialized agencies,

• The contribution of non-governmental organizations,

• Developing methods of coordination

In spite of achieving major progress in the area of rehabilitation of the disabled, the approach of the Social Commission in these sessions was to create awareness, and it laid special emphasis on rehabilitation, etc. But lately the UN has changed its approach by making gradual attempts to read the needs of the disabled person as rights under the established International Instruments.

In the year 1969, the General Assembly adopted the Declaration on Social Progress and Development, which affirms the fundamental freedoms and principles of peace articulated in the Charter of the United Nations. The Declaration was based on Article 19 of the Charter which addresses the provision of health, social security, and social welfare services for all persons, aiming at the rehabilitation of the mentally and physically disabled so as to facilitate their integration into society.

On 20th December 1971, the General Assembly proclaimed the Declaration on the Rights of Mentally Retarded Persons and made a call for national and international action to ensure that it becomes the accepted basis and frame of reference for protecting the rights of the disabled.
At its twenty-fourth session in the year 1975 the Commission for Social Development recommended elimination of physical and architectural barriers that prevent the full social integration of disabled persons. On the 6th of May 1975, the Economic and Social Council adopted Resolution 1921 (LVIII) to deal with disability prevention and rehabilitation of the disabled. In the month of December of the same year, the General Assembly adopted the Declaration on the Rights of Disabled Persons, which states that all persons with disabilities are entitled to the rights stipulated, without discrimination as to race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation.

In 1976, the General Assembly recommended to all the Member States to take into account the recommendations outlined in the Declaration on the Rights of Disabled Persons while formulating policies, plans and programmes. It also proclaimed '1981' as the International Year for Disabled Persons, stressing that the Year should be devoted to fully integrating the disabled persons into society and encouraging relevant study and research projects to educate the public on the rights of the disabled persons. The Secretary-General established a trust fund for Member States’ Contributions to the International Year. In the year 1978, the Secretary-General established the Intergovernmental Advisory Committee for the International Year of Disabled Persons. International Non-Governmental Organizations participated in the International Year and established First Founding Congress of Disabled Peoples International at Singapore.
The General Assembly adopted the World Programme of Action concerning Disabled Persons in the year 1982. The Disability Policy was completely restructured and it is now structured in three main areas viz, Prevention; Rehabilitation; and Equalization of opportunities.

In 1988 the General Assembly called upon Member States to place special emphasis on the equalization of opportunities for disabled persons.

In 1989 the Secretary-General was requested by the General Assembly to bring the attention of Member States to the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability\textsuperscript{105}. The Guidelines recognize disabled persons as agents of their own destiny rather than as dependent objects of Governments and seek to realize the full potential and capabilities of each individual. Employment is seen as a means for disabled persons to exercise effectively their full rights as citizens. The Guidelines state that disabled persons should be trained and employed in the work force on an equal basis with the other members of society.

In 1991, the Rapporteur submitted the Report to the Sub-Commission biannually on the Human Rights situation of the disabled. In the last report the Rapporteur recommended the establishment of an International Ombudsman. Later the General Assembly adopted the Principles for the Protection of

\textsuperscript{105} The International Meeting on Human Resources in the Field of Disability convened at Tallinn, Union of Soviet Socialist Republics, from 14 to 22 August 1989. Having considered the situation of human resources development in the field of disability, the recommendations were made for development in the field of disability
Persons with Mental Illness and for the Improvement of Mental Health Care. The General Assembly adopted Twenty-five principles to define the fundamental freedoms and basic rights of persons with mental illness.

The end of the Decade of Disabled Persons was marked by the General Assembly with the Declaration of 3rd December as the 'International Day of Disabled Persons'. The General Assembly also summarized the United Nations' goals in the field of disability, emphasizing once again the importance of the full integration of disabled persons into society and encouraging future United Nations Conferences to include discussion on disability issues. The Economic and Social Council welcomed the proclamation by establishing the Economic and Social Commission for Asia. The Council further declared 1993-2002 as the Asian and Pacific Decade of Disabled Persons.

In 1993, The Standard Rules for the Equalization of Opportunities for Persons with Disabilities was adopted by the General Assembly. The Rules summarize the message of the World Programme of Action and state preconditions for equal opportunity. They also target areas of equal participation and promote implementation measures and monitoring mechanisms.

The World Conference on Human Rights reconsidered the universally recognized Human Rights Instruments in light of contemporary issues and adopted the Vienna Declaration and Programme of Action. The Conference

recognized all human rights and fundamental freedoms as universal, and thus to unreservedly include persons with disabilities.

The International Conference on Population and Development was held in Cairo in 1994. It recognized the importance of equalizing opportunities for people with disabilities.


The UNO initiated an endeavor to pass an exclusive Convention on the rights of disabled persons. As an outcome of the idea mooted in the late 90's, the Convention on the Rights of Persons with Disabilities and its Optional Protocol were adopted by the United Nations General Assembly on 13 December 2006, and opened for signature on 30 March 2007. On the same day, 81 Member States and the European Community signed the Convention. It is known to be the Human Rights Convention having the highest number of signatures on its opening day. 44 Member States signed the Optional Protocol, and 1 Member State ratified the Convention.

The Convention was negotiated during eight sessions of an Ad Hoc Committee of the General Assembly from 2002 to 2006, making it the fastest negotiated
Human Rights Treaty. The Convention aims to ensure that persons with disabilities enjoy human rights on an equal basis with others.

i. Declaration on the Rights of Disabled Persons, 1975

After considering various Human Rights Instruments and studying them in the context of rights of persons with special needs, the General Assembly emphasized the need to extend all the Human Rights Instruments to the disabled persons. This resulted into the proclamation of Declaration on the Rights of Disabled Persons in 1975. The Assembly declared that the special progress and development necessarily include welfare and rehabilitation of the physically and mentally disadvantaged group. Further, the Declaration considered three kinds of necessities, to prevent physical and mental disabilities, assisting disabled person to develop their abilities in the most varied fields of activities and promoting their integration as far as possible in normal life.

The Declaration has brought the disabled and a normal person on equal level. It also seeks to ensure to the disabled person the inherent right to respect for human dignity and have the same fundamental rights as the fellow-citizens of the same age, ignoring origin, nature and seriousness of their handicaps and

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107 Proclaimed by General Assembly Resolution 3447 (XXX) of 9th December, 1975
108 See, Objectives of the Declaration on the Rights of Disabled Persons, 1975
109 id
disabilities. This implies that the first and foremost right enjoyed by the disabled person is to enjoy a decent life, as normal and full as possible\textsuperscript{110}.

To achieve the above objectives the Declaration has to recognize most basic and important rights. Along with recognition, the International Community is under the duty to develop international cooperation to meet the rights irrespective of the economic capabilities of the State.

The most basic right recognized by the Declaration along with other rights was the right to education, vocational training, and rehabilitation. Fulfilling of this right will hasten the process of social integration or reintegration\textsuperscript{111}. Further, the Declaration has recognized the right to secure and retain employment or engage in useful, productive and remunerative occupation. It tries to build social integration by mentioning expressly that right to employment includes right of join trade unions. The right to employment has come with the rider that it cannot be claimed as an absolute right and is subjected to the restriction 'according to their capabilities'. Even though, restriction seems to be necessary, this can potentially create hindrance while implementing these recognized rights in reality\textsuperscript{112}.

\textit{ii. Sundberg Declaration, 1981}\textsuperscript{113}

\begin{flushleft}
\begin{footnotesize}
\textsuperscript{110} Id, see Art 3
\textsuperscript{111} Id, see Art 6
\textsuperscript{112} Id, see Art 7
\textsuperscript{113} The Declaration is a result of a World Conference on Actions and Strategies for Education, Prevention and Integration, organized by Spain and UNESCO, held at Malaga, Spain in Nov 1981
\end{footnotesize}
\end{flushleft}
The Declaration recognized the right of disabled to education and training as a fundamental right,¹¹⁴ and created a duty on the part of the Governments, National and International Organization to take effective measures for full participation of the disabled persons¹¹⁵. This right includes the right to utilize the creative, artistic and intellectual potential of a disabled to the fullest extent and the maximum use of their talent¹¹⁶.

To make the right to education a reality, the Declaration requires the family members of the disabled person to be involved in the education, training, rehabilitation and development of capabilities of disabled persons¹¹⁷. The educators and other professionals need to be trained¹¹⁸. In addition, all the equipments necessary for the education and training of the disabled person have to be provided¹¹⁹.

iii. World Programme of Action Concerning Disabled Persons, 1982¹²⁰

World Programme of Action is a basic plan of action for the recognition and implementation of the rights of the disabled persons. In this plan, main emphasis is placed on enumerating the reasons for need for protection and the

¹¹⁴ See Article 1 of Sundberg Declaration, Malaga, Spain, Nov 1981
¹¹⁵ Id, see Article 2
¹¹⁶ Id, see Article 3
¹¹⁷ Id, see Article 8
¹¹⁸ Id, see Article 9
¹¹⁹ Id, see Article 11
¹²⁰ Adopted by the General Assembly on 3rd December 1982, vide Resolution 37/52.
causes and kinds of discriminations faced by the disabled. This became a
reality mainly due to observation of International Year of Disabled Person.

The main objective of the World Programme was to enhance disability
prevention, rehabilitation and equalization of opportunities, which address most
basic protections like full participation in social life and national development.

World Programme addresses the right to education at two different places.
Rehabilitation usually demands the learning of skills. Under the heading of
'Vehability', the World Programme of Action tries to include training of
self-care activities, communication and daily living skills, including vocational
training and placement in open or sheltered employment.

The Programme mentions that, as the world population comprises of at least 10
per cent of children who are disabled, they have the same right to education as
non-disabled persons and they require active intervention and specialized
services. However, most disabled children in developing countries receive
neither specialized services nor compulsory education.

Reiterating disparity existing worldwide regarding the facilities to the disabled,
the World Programme of Action states that there is a great variation among
some countries with a high educational level for disabled persons to countries
where such facilities are limited or non-existent. The lack of facility may be
due to economic status, but the main cause is the lack of knowledge of the
potential of disabled persons. Furthermore, there is often no legislation which
deals with their needs and there is shortage of teaching staff and facilities. So
far, in most countries the disabled persons have not been benefited from a lifelong education.

Significant advances in teaching techniques and important innovative developments have taken place in the field of special education and much more can be achieved in the education of disabled persons. However, the progress is mostly limited to a few countries or only a few urban centers. The advances were relating to early detection, assessment and intervention, special education programmes in a variety of settings with many disabled children able to participate in a regular school setting.

Employment under the World Program of Action: As many persons with disabilities are denied employment or given only menial and poorly remunerated jobs, the World Programme of Action has a dedicated paragraph which recognizes and attempts for implementing the right to employment of the disabled persons. This is true even though great majority of disabled persons can perform a large range of tasks in accordance with prevailing work norms.

iv. The World Program of Action concerning Disabled Persons, 1989\textsuperscript{121}

The implementation of World Programme was an important development in realizing the dream of human rights of disabled persons. This was exclusively passed to recognize the World Programme of Action passed in the year 1982

\textsuperscript{121} Resolution was passed vide 44/70 at 78\textsuperscript{th} Plenary Meeting, 8\textsuperscript{th} December 1989

This programme considered the importance of coordination between National Disability Committee and other bodies involved in the implementation of the World Programme of Action. This implementation strategy has placed special emphasis on the equalization of opportunities for disabled persons. Recognition of this right provides protection to a series of subsidiary rights. Equalization of opportunity is a higher level of right. It is not an individual right but a product of bundle of rights. By providing emphasis on higher level of right, the implementation document of World Programme of Action has achieved umbrella protection to right to education, health, information, independent living, vocational training etc.

The implementation of the Plan of Action has developed multi-thronged approach. The prominence is given to prevention of disability. This lays stress on the development of primary health service and special care taken for the protection and care of the health of mother and the newborn. Further, the emphasis is on rehabilitation of the disabled person. This is based on the combined recognition of right to education and employment. The rehabilitation of disabled provides economic independence which in turn helps in recognizing other important human rights.

Empowering the disabled person by providing education or vocational training becomes meaningless if equalization of opportunity is not provided. It is an
important tool to provide rehabilitation for the disabled persons. To achieve the implementation of Plan of Action, the need was felt for development of professional input by experts in implementing rehabilitation. To spread the rehabilitation program, there is a need for strong national organization assisted by local organization. At the international level, Regional Commissions and specialized agencies, international organizations were required to be established to generate required support and for collecting funds.

v. *Convention on Vocational Rehabilitation and Employment of Disabled Persons, 1983*\(^{122}\)

This Convention, which is a binding international treaty, is based on the principles of equal opportunity and equal treatment\(^{123}\). It calls upon the member States to formulate, implement and periodically review the national policy on vocational rehabilitation and employment of persons with disabilities\(^{124}\). The main aim is to equalize the opportunities and services wherever possible and appropriate\(^{125}\).

Under the treaty, the member State has to formulate an implementation strategy for the policy. This implementation strategy has to be finalized in consultation with the social partners and with organizations of and for persons

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\(^{122}\) Convention No.159 adopted by the ILO in 1983 at the beginning of the United Nations Decade of Disabled Persons; entry into force generally; 20 June 1985

\(^{123}\) *Id*, see Art 4

\(^{124}\) *Id*, see Art 6

\(^{125}\) *Id*, see Art 7
with disabilities\textsuperscript{126}. Measures to be introduced should include vocational guidance, vocational training, placement, employment and other related services\textsuperscript{127}. Provision should be made for the needs of disabled persons in rural as well as urban areas, and those in remote communities. Provision should also be made for the training and availability of suitably qualified staff\textsuperscript{128}. The Convention has been ratified by 73 States till 2003, with 14 new ratifications since 1999.

While implementing the Recommendation No. 168 concerning Vocational Rehabilitation and Employment (Disabled Persons), 1983 along with its other two important instruments, Recommendation No. 99 concerning Vocational Rehabilitation of the Disabled of 1955 and the Convention No.159 were also pushed for implementation. The recommendation proposed the mainstream training and employment opportunities for people with disabilities wherever appropriate, as well as financial incentives to employers to encourage them to provide training and subsequent employment for disabled persons. It also required the employers to make reasonable adaptations to workplaces, job design, tools, machinery and work organization to facilitate such training and employment\textsuperscript{129}.

The Government was required to provide appropriate support to the employer

\textsuperscript{126} Id, see Art 5
\textsuperscript{127} Id, see Art 8,9
\textsuperscript{128} Id, see Art 9
\textsuperscript{129} Id, see R No 11 (a) Recommendation No 168
in relation to the access and employability of person with disabilities\textsuperscript{130} and bring about cooperation between production unit and sheltered unit to improve chances of mainstream employment of persons with disability\textsuperscript{131}. The recommendation is made to remove all physical barriers and provide unobstructed approach to the employed disabled person to his workplace\textsuperscript{132}. ILO ably supports the above activities in implementing the Convention through activities of the ILO Disability Programme - including policy advice, training programmes, seminars, meetings, publications as well as technical cooperation activities. Regular reporting is required to be done and the ILO Committee of Experts monitors the implementation of the Convention\textsuperscript{133}.

\textit{ILO Code of Practice:} The ILO brought in the change in approach towards the implementation of the right to work, of the persons with disability. As a result of the change the ILO Code of Practice ‘Managing Disability in the Workplace,’ was adopted in October 2001, which provides guidance on managing disability issues in recruitment, promotion, job retention and return to work\textsuperscript{134}. While Convention 159 targets national governments, the Code is aimed primarily at medium-sized or small enterprise, in the private or public sector, in urban and rural areas of developing or highly industrialized

\textsuperscript{130} Id, see R No 11 (b)
\textsuperscript{131} Id, see R No 11 (c)
\textsuperscript{132} Id, see R No 11 (g)
\textsuperscript{133} See Art 76 of C 102 Social Security (Minimum Standards) Convention, 1955
\textsuperscript{134} See Chapters 4,5,6,7 of ILO Code of Practice ‘Managing Disability in the Workplace, Geneva, International Labour Office, 2002
countries, in market economies and transition economies\textsuperscript{135}.

The Code also addresses employer organizations, which have an important role to play in the process of promoting disability management, and thus employment opportunities for disabled persons among their member companies\textsuperscript{136}. They may act as advocates, providing information and advice, as well as providing opportunities for employers and disabled persons to meet in both formal and informal settings. The Code is also aimed at workers' organizations and Governments, whose support and cooperation is required if the integration of people with disabilities into the workplace is to be effectively promoted. The role of organizations of and for people with disabilities is also part of the mosaic, and important for effective implementation. This is acknowledged in the Code, which recommends consultation with these organizations, in addition to consultation with the individual worker with a disability.

The Code, which is an agreed set of guidelines on the topic of disability management, adds to the range of standards which the ILO uses in its work to promote the employment of disabled persons, reflecting the significant changes which have taken place in the understanding of disability and in legislation, policies and services concerning disabled persons since 1983.

\textsuperscript{135} \textit{Id}, Principles to be adopted No 1.2.5

\textsuperscript{136} \textit{Id}, see 1.2.3 and 1.3.2
vi. Tallinn Guidelines for Action on Human Resources Development in the Field of Disability, 1989

The Tallinn Guidelines are framed with high priority to the development of human resources of disabled persons. According to the guidelines, in order to convert the dependent population of disabled into independent human resource, specific attention has to be paid to the education, training, employment, science and technology.

The importance of tools to achieve the final destination of creation of human resources is based on the education, training and work opportunities. Tallinn Guidelines is the first document which laid emphasis on converting disabled persons into human resource pool. This change in approach has enabled International Community to develop acceptance of the disabled population as human resource. The international law has moved from charity to right. More importantly it has converted the idea of ‘society spending on disabled’ to ‘disabled contributing to the society’.

Guiding Philosophy: The change in the approach of the policy makers is based on the changed philosophy underlying the Tallinn Guidelines. This changed approach has certainly changed the complete process of rehabilitation. Making disabled persons into a human resource is a difficult job, but it can certainly

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137 The Guidelines were developed at the International Meeting on Human Resources in the Field of Disability, convened at Tallinn, Union of Soviet Socialist Republics, from 14 to 22 August 1989

138 See point 2 of Tallinn Guidelines for Action on Human Resources Development in the Field of Disability, 1989

139 Id, see point 3
change the outlook of the society towards disability. Sympathy will give way for respect.

The guiding philosophy behind the development of human resource is that, the process is concentrating on the human person that seeks to realize the full potential and capabilities of human being

The philosophy is that the disabled persons being full citizens have the same rights and responsibilities as other members of society. The uniqueness of this philosophy is that the disabled person is not only provided with rights, but in addition responsibilities too. The disabled has to discharge obligations towards society, which therefore makes the disabled person a full citizen in the real sense. This philosophy gave way to a new thinking which was designed to develop the capabilities of the disabled. The policy framers initially have to dedicate time in developing the policy to make the disabled a human resource and the imposition of responsibility can be done at a later stage. Such recognition will provide right to life, as declared in International Human Rights Instruments. It will also help them make choices as other citizens in the social, cultural, economic and political life of their communities

Another important guiding philosophy is that a disabled person is an agent of his own destiny rather than object of care. This philosophy recognizes most basic need of the community. If the community as such is not involved in the

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140 Id, see point 6
141 Id, see point 7
142 Id, see point 8
decision making process, then it will have a feeling of degraded existence. The philosophy can be explained by the Statement, ‘nothing about us, without us’. This is a simple requirements of the community which has been recognized at all levels e.g., a Women Commission is headed by a woman; Minority Commission, by a person representing minority; Commissions on Financial and Industrial Matters are headed by industrialist, Education Commission by educationist, etc. Only by adopting a similar approach, the disabled persons can be involved in the decision making process.

Self-determination is the last philosophy recognized under this Instrument\textsuperscript{143}. The philosophy, demands strengthening of the abilities of the disabled person and their families, as only such strengthening can give meaning to the expression ‘self-determination’.

*Promotion of Education and Training:* Under the Tallinn Guidelines, the International Community has understood the meaning of education. There is a deviation from all the earlier attempts as these guidelines are developed to treat the disease and not merely the symptoms. A special mention has been made to design an education policy for the overall development of the disabled person\textsuperscript{144}. The success of such an education policy depends upon the acceptance by the family members of the disabled. So sensibly a Statement has

\textsuperscript{143} *Id*, see point 9

\textsuperscript{144} *Id*, see point 22, Chapter D
been made to that effect under the guidelines to foster a positive attitude of the family\textsuperscript{145}.

The basic requirement for converting the community of disabled person into pool of human resource, is to assimilate the community with the society. This could be possible, only if their primary, secondary and higher education including vocational training is done in the regular educational system\textsuperscript{146}. The main thrust should be towards acquisition of skills, career education and vocational training\textsuperscript{147}, including teaching of social and self-help skills to prepare them for independent living\textsuperscript{148}. The idea of special schools should be an exception and not the rule.

The idea of sending disabled persons in a regular school can be made realistic, if necessary modifications are made to the education system. This modification should be physical as well as intellectual. The State should encourage for development of specific education program to promote indigenous sign language\textsuperscript{149}, development of cost effective alternatives, appointment of special education teachers as consultants to regular teachers, construction of resource rooms, special classrooms with specialized personnel, etc\textsuperscript{150}. The State should

\textsuperscript{145} \textit{Id}, see point 22
\textsuperscript{146} \textit{Id}, see point 23
\textsuperscript{147} \textit{Id}, see point 27
\textsuperscript{148} \textit{Id}, see point 28
\textsuperscript{149} \textit{Id}, see point 24
\textsuperscript{150} \textit{Id}, see point 25
empower general teacher to handle the disabled children by providing training curricula\textsuperscript{151}

As the challenge posed by disability is multi-disciplined, the approach of the State should also be multi-departmental. The education should involve cooperation and concerted efforts of health and social service\textsuperscript{152}. A national plan should be formulated to develop pool of trained professionals for training of health, education and vocational professional\textsuperscript{153}. Under this National Plan, a preference for recruitment is required to be given to the disabled person.

Keeping in view the larger goal of making the society sensitive about the needs and necessities of the disabled person, the education curricula needs to include a module on disability in education, labour, health and social services, law, architecture and technical development\textsuperscript{154}

Promotion of Employment: The Guidelines discuss the development of competence of the disabled to match with the opportunity that can be created in the job world. The main thrust should be given to the right to be trained, along with equal terms in the regular labour force and better job opportunities\textsuperscript{155}.

The approach towards creating job opportunities must be multidimensional. Creating job opportunities should include, creating self-employment

\textsuperscript{151} Id, see point 29
\textsuperscript{152} Id, see point 26
\textsuperscript{153} Id, see point 30
\textsuperscript{154} Id, see point 31
\textsuperscript{155} Id, see point 33.
opportunities. The initial push of providing soft loans, training and equipment for such activities should be present\textsuperscript{156}.

The confidence of the disabled person can be built, if equality is maintained in the labour market. Equality should not only relate to the level of availability of the job, but also salary standards that apply to all workers. Further, the support system has to be developed to keep them in the job. This includes offering special support and incentives. The base for job market should be broadened by developing policies in the area of self-employment, cooperatives and other group income generating schemes. The Guidelines demand preference of the disabled person over normally abled person, if two are equally qualified, and apply for a job\textsuperscript{157}.

The job opportunity should also provide a feel of belonging to the disabled person. The workforce should also involve actively in developing disabled friendly environment. The attempts include having cooperation with organization of disabled persons and policies to promote the training and employment of disabled person\textsuperscript{158}.

\textit{vii. World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs, 1990}\textsuperscript{159}

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\textsuperscript{156} \textit{Id}, see point 34.
\textsuperscript{157} \textit{Id}, see point 35.
\textsuperscript{158} \textit{Id}, see point 36.
\textsuperscript{159} Adopted by the World Conference on Education for All Meeting Basic Learning Needs, Jomtien, Thailand, 5-9, March 1990
The Framework for Action to Meet Basic Learning Needs derives its validity from the World Declaration on Education for All, adopted by the World Conference on Education for All. The Framework was approved with the main intention of providing reference and guide to National Governments, International Organizations, Bilateral Aid Agencies, Non-Governmental Organizations, and all those committed to the goal of Education for All in formulating their own plans of action for implementing the World Declaration.

The framework has three-pronged approach. Firstly, direct action within the countries and provide sufficient support to the individual countries in implementing the rights. Secondly cooperation among groups of countries sharing certain characteristics and concerns which will help in sharing of experiences and trying out new methods of approach to deal with a similar situation. Finally, multilateral and bilateral co-operation in the world community, which would bring in uniformity in the protection of rights of disabled person. This uniformity would actually help in providing better international protection to the rights\textsuperscript{160}.

**Targets and Goals of the Framework:** The framework provides general dimensions to all the member States to create their own targets and goals. Dimensions include the Expansion of early childhood care and developmental activities, including family and community interventions, as well as universal access to and completion of primary education.

\textsuperscript{160} World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs UNESCO Publication, de Fonetnoy Paris, Sept 1994, at P1
It also aims at the improvement in learning achievement such that on an agreed percentage, as well as reduction of the adult illiteracy rate, with sufficient emphasis on female literacy to significantly reduce the disparity between male and female illiteracy rates and the expansion of provisions of basic education and training in other essential skills required by youth and adults\textsuperscript{161}

**Principles of Action:** It requires that the universal education including the education for disabled person should address the need of each nation. The education system should be designed in such a manner as to protect and propagate unique cultural identity of the nation. The principle of action under the Statement recognizes the need to identify the traditional learning systems which exist in the society. The need includes studying the actual demand for basic education services whether expressed in terms of formal schooling or non-formal education programmes\textsuperscript{162}. The need implies the active involvement of a wide range of partners, families, teachers, communities, private enterprises (including those involved in information and communication), government and non-governmental organizations, institutions, etc, in the planning, managing and evaluation of various forms of basic education.

The major suggestion under the framework is to avoid implementation of a new system without studying the existing system. The action framework demands careful evaluation of current practices and institutional arrangements for

\textsuperscript{161} *Id.*, at p 3

\textsuperscript{162} *Id.*, at p 4
delivering basic education and the existing mechanisms for co-operation in this regard, before new institutions or mechanisms are created.

The major drawback of bilateral and multilateral cooperation is to duplicate the models of education, which ignores the local needs. The framework mentions that the primary purpose of bilateral and multilateral co-operation should be in true spirit of partnership and should not be mere transplanting of familiar models, but to help develop the endogenous capacities of national authorities to meet basic learning needs effectively. Action and resources should be used to strengthen the essential features of basic education services, focusing on managerial and analytical capacities. Further, the international cooperation prioritized in favour of the countries is currently least able to meet the basic learning needs of their populations. It should also help countries redress their internal disparities in educational opportunity.\textsuperscript{163}


The Standard Rules are framed for the guidance of the State parties. It is one of the most important outcomes after World Program of Action concerning Disabled Persons adopted by General Assembly in 1982. It is a result of the experience gained by the United Nations during the Decade of Disabled Persons (1983-1992).

\textsuperscript{163} \textit{Id} at p. 5

\textsuperscript{164} Resolution adopted vide Res/48/96, during 85\textsuperscript{th} Plenary meeting on 20\textsuperscript{th} Dec 1993
The attempt of the General Assembly was not to pass mandatory rules with mechanism for enforcement, but to pass rules which are not compulsory, and the only way of their enforcement is by lapse of time and acceptance by greater number of nations. Their rules would get the status of a custom and can form a part of the International Law. This may seem to be halfhearted effort of the United Nations for the protection of the Human Rights of the Disabled Person. However, this can be considered infant step towards new branch of law. The force of law lies in understanding and accepting it rather than forcing on to somebody through fear of law. This attempt of the United Nations will provide an opportunity for its member States to understand its necessity. Further the rules offer an instrument for policy-making and action to person with disabilities and their organizations. They provide basis for technical and economic cooperation among States, the United Nations and other International Organizations.

Importance of Right to Education and Employment in Rehabilitation: The right to education and employment are the means to achieve the destination called ‘Rehabilitation of the Disabled’. The rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, intellectual, psychiatric and social functional levels. The aim of rehabilitation is to overcome the functional limitation imposed due to disability. The study of Chapters relating to the rehabilitation becomes relevant for the present

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166 Id
research. For a meaningful rehabilitation, learning of basic skills, counseling and developing of self-reliance\textsuperscript{167}.

\textit{Accessibility as a Basic Human Right:} The Standard Rules mention the importance of accessibility. Accessibility is divided into two kinds; physical accessibility and accessibility to information. Physical accessibility is a basic need for the fulfillment of the other rights like education and employment\textsuperscript{168}. Lack of accessibility has given wrong impression about the population of disabled persons. Due to lack of accessibility, mobility of the disabled is restricted. As a result, the disabled prefer to stay at home rather than explore the possibilities of an independent living.

The second level of accessibility i.e., accessibility to information becomes meaningful, if the right to education is recognized and implemented. This right of accessibility is the base for all other rights including right to education and employment. The accessibility to information helps in building the citizenry\textsuperscript{169}.

\textit{Right to Education under Standard Rules:} The International community has maintained uniform approach towards the need of 'Education in Integrated Settings'. The Standard Rules rightly discourage development of parallel educational system for disabled persons. Instead it requires the State to ensure that the education of the persons with disabilities should be integral part of the

\footnotesize{\textsuperscript{167} Id, see Rule 3 (2)  
\textsuperscript{168} Id, see Rule 5 (1)  
\textsuperscript{169} Id, see Rule 5 (9)
Educational system. Integrated educational system helps in two ways; firstly, the disabled person has an exposure to the society and develops affinity towards the society. Secondly, the society as such has an understanding and develops acceptance towards the disabled person. The State in general and the Education Department in particular should make the education of persons with disabilities, an integral part of National Educational Planning, curriculum development and school organization. The School Organization must fulfill the needs of the disabled person and accordingly make provisions for interpreter and other appropriate support services and adequate accessibility to the support services.

The Standard Rules have imposed stricter obligations on the States like India, where education is compulsory. With recognition of the right to education, the State should provide education to girls and boys with all kinds and all levels of disabilities, including the most severe. As per the recognition, the Standard Rules demand special attention regarding education, including very young children, pre-school children, and adults with disabilities.

To achieve the goal of right to education, the State should have a clear policy to that effect, which is understood and accepted at the school level and by the

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170 Id, see Rule 6 (1)
171 Id
172 Id, see Rule 6 (2)
173 Id, see Rule 6 (4)
174 Id, see Rule 6 (5)
wider community\textsuperscript{175}. To achieve the goal set; flexibility, addition and adaptation should be introduced to the curriculum. The stakeholders must be trained and quality materials should be provided.

In situations where the general school system does not adequately meet the needs of all persons with disabilities, special education may be considered. It should be aimed at preparing students for education in the general school system\textsuperscript{176}.

The Standard Rules recognize the right to education, and such recognition is followed by a designed approach. The integrated education has been kept as a basic requirement under the approach. The exceptions are kept at minimal, under unavoidable circumstances. A word of caution is added to remind the policy makers that such special schools should function to enable the child to join the main stream school.

\textit{Right to Employment:} The Standard Rules recognize the importance of economic independence for the disabled to lead an independent life. The opportunity for productive and gainful employment in the labour market will help the disabled person in achieving larger goals of leading dignified life. Therefore, the first assurance that should be granted is non-discrimination. Non-discrimination includes passing of laws and regulations which are not discriminatory and do not raise obstacles to their employment\textsuperscript{177}.

\textsuperscript{175} \textit{Id}, see Rule 6 (6) (a)

\textsuperscript{176} \textit{Id}, see Rule 8

\textsuperscript{177} \textit{Id}, see Rule 7 (1)
The recognition of right to education becomes meaningful, only if the State builds the capability of the disabled persons. Along with recognition of right to employment, it is also important to make the disabled employable. The measures like vocational training incentive-oriented quota schemes reserved or designated employment loans or grants for small business person will help the disabled in getting an initial push. The incentives to the employer or business community by providing exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disability, will encourage them to employ the disabled 178.

To make a right to employment of the disabled a reality, the State has to take few initial measures. The important measure to be undertaken is to make the workplaces disabled friendly and easily accessible. Necessary changes in the tools should be brought in by using technology, and such changes should help the disabled to gain and maintain employment. More importantly, to make a disabled person employable, he should be provided with appropriate training and placement 179.

The major problem with employment of disabled lies with the negative attitude of the disabled. The society tends to ignore the ability of a disabled person and

178 Id, see Rule 7 (2)
179 Id, see Rule 7 (3)
looks at them with contempt. Therefore, the State must campaign to overcome such negative attitudes and prejudices\textsuperscript{180}.

As a rule, the employment of the disabled person should be provided at the open labour market. Any special treatment would tend to further increase the negative attitude of the society. However, as an exception, if the needs of the disabled cannot be met at the open market, they should be met via small units of sheltered or supported employment.

\textit{ix. The Salamanca Statement on Principles, Policy and Practice in Special needs Education, 1994}\textsuperscript{181}

This Statement is made in conformity with the Universal Declaration of Human Rights, 1948 and the pledge issued by the World Community at the 1990 World Conference on Education for All. The object of the Statement is to ensure the right to education for all, regardless of individual differences. This Statement was later supported by an advanced attempt of the UNESCO, through United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities. It urges the States to ensure that the education of persons with disabilities should be an integral part of the education system\textsuperscript{182}.

The main objective of the World Conference was to reaffirm the world's commitment to education for all, recognizing the necessity and urgency of

\textsuperscript{180} Id, see Rule 7 (4)

\textsuperscript{181} Adopted by the World Conference on Special Needs Education: Access and Equality, Salamanca, Spain, 7-10 June 1994.

\textsuperscript{182} See the objectives of the Salamanca Statement on Principles, Policy and Practice in Special needs Education, 1994
providing education for children, youth and adults with special educational needs within the regular education system. In addition, to discuss and endorse the Framework for Action on Special Needs Education in the regard, the Governments and organizations were to be guided by the spirit of its provisions and recommendations\textsuperscript{183}.

*Principles under the Statement:* The Principles under the Salamanca Statement proclaim that every child has a fundamental right to education, and therefore an opportunity should be provided to achieve and maintain the acceptable level of learning. The Statement recognizes the unique characteristics, interests, abilities and learning needs of the every child and proclaims the need to design an educational system which fulfills the needs of such wide diversity.

The most important provision of the proclamation is that the regular schools should be open to the children with special needs of learning. Moreover, the regular school should meet the needs of special learning. This change in the policy and creating regular schools with this inclusive orientation is the most effective means of combating discriminatory attitudes and creating hospitable community. Building an inclusive society and achieving education for all, will improve the efficiency and will ultimately improve the cost-effectiveness of the entire education system\textsuperscript{184}.

*Role of Governments under the Statement:* Under the same Statement, the International Community has urged the Governments to give highest priority

\textsuperscript{183} Id, Statement 1
\textsuperscript{184} Id, Statement 2
and budgetary allocation to improve the education systems. The improvement should be in the line of enabling the institutions to include all children regardless of individual differences or difficulties. It also urges to make ‘principle inclusive education’ and enrollment of all children in regular schools, the part of the policy of the State. Further, it suggests, the development of international cooperation for creating awareness of the principle of inclusive education and exchange of personal experiences in implementing the same.

Even though the protection and implementation of right to education is the duty of the State, it is difficult for the State to discharge the duty in isolation. Therefore the participation and facilitation of parents, communities and organization of persons with disabilities is required. The Governments should put in more efforts in developing early identification and intervention strategies as well as vocational aspects of the inclusive education185.

**Pledge of the UNESCO under the Statement:** Under the Statement, UNESCO has undertaken the obligation to ensure that special needs education shall form part of every discussion on “education for all” in various forums. The approach of the organization is to sensitize the teaching community and mobilize the funds to achieve the objectives of the Statement. As a part of sensitization, the UNESCO marshals the support of teacher’s organizations on matters relating to enhancing teacher education on special educational needs. In addition, stimulate the academic community to strengthen research, networking and to

185 *Id, Statement 3*
establish regional centers of information and documentation; as well as to serve as an information-disseminating agency of the specific results and progress achieved at country level in pursuance of this Statement.

As a second part of the approach, the UNESCO has pledged to mobilize funds through the creation of Medium Term Plan. It is to enable them to conduct programme for inclusive schools and community support programmes. In turn, it would enable the organization to launch the pilot projects that highlight new approaches for dissemination of techniques and to develop indicators concerning the need for and provision of special needs education\textsuperscript{186}.

\textit{Policy Framework}: The Salamanca Framework came up with an Action Plan at National Level which includes Legislation at the national level, recognizing the principle of equality of opportunity for children, youth and adults with disabilities in primary, secondary and tertiary education carried out, in so far as possible, in integrated settings\textsuperscript{187}.

The Salamanca had an inquisitive additional approach as a part of protection of right to education and demanded a parallel and complementary legislative measure to be adopted in the fields of health, social welfare, vocational training and employment in order to support and give full effect to educational legislation. In addition to the above, a demand was made to change the educational policy at all levels from the national to the local and to include a

\textsuperscript{186} \textit{Id}. Statement 4

\textsuperscript{187}See Chapter II, Guidelines for Action at the National Level, 'Policy and Organization', The Salamanca Statement and Framework for Action on Special Needs Education, 1994, at p17
stipulation that a child with a disability should attend the neighbourhood school.

According to the Action Plan, 'Mainstreaming the children with disabilities', should be an integral part of national plans for achieving education for all. Even in those exceptional cases where children are placed in special schools due to multiple disabilities, the education need not be entirely segregated. Part-time attendance at regular schools should be encouraged. Necessary provision should also be made for ensuring inclusion of youth and adults with special needs in secondary and higher education as well as in training programmes. The framework gives special attention to the need of ensuring equality of access and opportunity for girls and women with disabilities\textsuperscript{188}.

In addition to the need of National Policy on integrated approach to the right to education of all, the emphasis was laid on the need to empower the disabled persons by providing all the facilities needed for learning, including national sign language. To make the right a reality, the State needs to develop the community-based rehabilitation which will be supporting this cost-effective education and training for the people with special educational needs\textsuperscript{189}.

\textit{Coordination Framework:} According to the Statement, the task of providing education needs higher level of understanding and coordination between the educational authorities and those responsible for health, employment and social services. This coordination has to be brought at all the levels to bring about

\textsuperscript{188} \textit{Id}, see Chapter II, at p 18

\textsuperscript{189} \textit{Id}
convergence and complimentary approach. The coordination should further extend to semi-public agencies and non-governmental organizations and finally to gain community support in meeting special educational needs. 

**Priority Framework:** The framework has developed area of priorities. These are, the crucial and formative period of a child, which includes early childhood education. The success of the inclusive school depends considerably on early identification, assessment and stimulation of every young child with special educational needs. It states that early childhood care and education programmes for children aged up to 6 years ought to be developed to promote physical, intellectual and social development and school readiness. Programmes at this level should also recognize the principle of inclusion and develop a comprehensive way of combining pre-school activities with early childhood health care.

The second priority has been given to the girls with disabilities as they are doubly disadvantaged. A special effort is required to provide training and education for girls with special educational needs. In addition to gaining access to school, girls with disabilities should have access to information and guidance as well as to models which could help them to make realistic choices and preparation for their future role as adult women.

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190 *Id*  
191 *Id*, at p 41  
192 *Id*
The third priority given was to the young people with special educational needs to help them make an effective transition from school to adult working life. Schools should assist them to become economically active and provide them with the skills needed in every day life\textsuperscript{193}.

Another important area of priority is the continuing education of persons with disabilities. Special attention needs to be given in the design and implementation of adult and continuing education programmes. Persons with disabilities should be given priority access to such programmes. Special courses should also be designed to suit the needs and conditions of different groups of adults with disabilities\textsuperscript{194}.

\textit{x. Convention on the Rights of Persons with Disabilities, 2006}\textsuperscript{195}

The Convention is the latest and the most significant step by the international community towards ensuring the human rights comprehensively to the persons with disability. The Convention was drafted with an intention to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities\textsuperscript{196}. The important feature

\textsuperscript{193} Id

\textsuperscript{194} Id

\textsuperscript{195} The Convention was adopted by the United Nations General Assembly on December 13, 2006 and was opened for signature on March 30, 2007. Government of India signed it on March 31, 2007 and ratified it on October 2, 2007. This Convention has come into force since May 2008.

\textsuperscript{196} See, Art 1 ‘Purpose’, Convention on the Rights of Persons with Disabilities, 2006
of the Convention is that it does not define ‘Disability’. The freedom has been given to the individual member States to define the concept\textsuperscript{197}.

The Convention is based on certain general principles. They extend from the principles of individual freedom and dignity\textsuperscript{198}, to the principle of non-discrimination\textsuperscript{199}, followed by the principle of recognition and acceptance of the persons with disability. It urges that the society has to be sensitized to accept disability as human diversity\textsuperscript{200} and allow the smooth inclusion of the disabled in the main fold of the society, allowing full and effective participation\textsuperscript{201}.

The Convention is further based on the principles of equality of opportunity\textsuperscript{202} and accessibility\textsuperscript{203}. The concept of equality includes protection against discrimination with in community of disabled persons, eg, between man and woman\textsuperscript{204}. The most important principles imposing positive duty upon the State, is to evolve the capacities of the children with disabilities and respect for the rights of children with disabilities to preserve their identities\textsuperscript{205}.

\textsuperscript{197} This freedom has the inherent danger of resulting in to discrimination. States unwilling to protect the needs of the persons with disability would definitely provide for a narrow definition. This disparity is highlighted in the subsequent Chapter.

\textsuperscript{198} Supra note 187, See Art 3 (a), General Principles.

\textsuperscript{199} Id, see Art 3 (b)

\textsuperscript{200} See Art 3 (d)

\textsuperscript{201} See Art 3 (c)

\textsuperscript{202} See Art 3 (e)

\textsuperscript{203} See Art 3 (f)

\textsuperscript{204} See Art 3 (g)

\textsuperscript{205} See Art 3 (h)
**Disabled Women and Children:** The Convention recognizes the fact that the women and girls with disabilities suffer from multiple discrimination. The women all over are faced with social disability. Their vulnerability naturally increases manifold if physical disability is added to it. The Convention therefore provides for special treatment to ensure full and equal enjoyment of all the human rights\(^{206}\).

The second most vulnerable group is that of the children. The interest of children too is protected under the Convention in the similar lines as that of disabled women. Principle laid down is that all the polices of the Government should keep the ‘best interest of the child’ as the primary consideration\(^{207}\).

**Education under the Convention:** The Convention has rightly focused on the right to education and reaffirms its importance in achieving non-discrimination and equal opportunity\(^{208}\) to all. It imposes duty on the State to ensure an inclusive education system at all levels and lifelong learning.

The education should be directed towards full development of human potential and sense of dignity and self-worth and strengthening respect for human rights, fundamental freedoms and human diversity\(^{209}\). It must provide an opportunity

\(^{206}\) See Art 6, Women with Disabilities

\(^{207}\) See Art 7, Children with Disabilities

\(^{208}\) As mentioned under Article 5, the State shall recognize that all persons are equal and entitled for equal protection without discrimination. This principle of Art 5 is reiterated in the Art 24, on education, suggesting that the only way to achieve the objective of equality and non-discrimination is through education.

\(^{209}\) See Art 24(1)(a)
for fullest development of the talents, creativity and personality\textsuperscript{210}, which enable the disabled to participate effectively in free society\textsuperscript{211}.

\textit{Inclusive Education – An Achievable Dream:} The Convention has understood the importance of inclusive education. The State has been given the specific task of creating inclusive education system. The rules to be framed have to be such as not to make disability, the basis for exclusion from any form of primary or secondary education\textsuperscript{212}. The task is mentioned more specifically as ‘accessibility of an inclusive, quality and free primary and secondary education’\textsuperscript{213}. The accessibility of education should be accompanied with reasonable accommodation of individual’s requirements\textsuperscript{214} and the general support for an effective education of the disabled person\textsuperscript{215}. The State has to provide effective individualized support measures to create proper environment which will maximize academic and social development and which is consistent with the goal of inclusive education\textsuperscript{216}. This thrust upon inclusive education makes easy, the induction of a person with disability into active social life.

\textsuperscript{210} See Art 24(1)(b)  
\textsuperscript{211} See Art 24(1)(c)  
\textsuperscript{212} See Art 24 (2)(a)  
\textsuperscript{213} Art 24(2) (b): ‘Education’ - To make this duty more meaningful the Convention provides for various duties on the part of the State. For inclusive education, Art 8 provides for awareness-raising, which plays a important role as it is understood that, understanding parents encourage the school management to enroll more disabled children. The full participation is possible only if, Art 9, which provides for accessibility of all buildings and facilities in the schools are made available. This accessibility should be accompanied with Art 20 (Personal mobility), providing independent moving capacity for all persons with disability.  
\textsuperscript{214} See Art 24(2)(c)  
\textsuperscript{215} See Art 24(2)(d)  
\textsuperscript{216} See Art 24(2)(e)
Holistic education: The purpose of education has been explained differently in different situations. In case of the education of disabled person, there is a need to create a system where the personality of a disabled person will develop fully. The system should be such as will enable the disabled person to learn life and social development skills. This in turn facilitates the full and equal participation in education and enables them to fully participate as the members of the community\textsuperscript{217}.

To facilitate the above objective, the State is required to provide for learning in Braille; alternative script; augmentative and alternative modes, means and formats of communication; and orientation and mobility skills and facilitating peer support and mentoring\textsuperscript{218}. New language has to be developed for those with hearing impairment. This communication should get recognition as a language and in turn the community should get a linguistic identity\textsuperscript{219}.

Employment of disabled persons: To lead a meaningful life, a person has to possess an employability qualification. The earlier discussion provides for this qualification in the form of education. But this employability should also be recognized by the society and full opportunity should be provided in the labour market.

The Convention makes multiple attempts to provide employment facility to the persons with disability. One such attempt is of Habilitation and

\textsuperscript{217} See Art 24(3)  
\textsuperscript{218} See Art 24(3)(a)  
\textsuperscript{219} See, Art 24(3)(b)
Rehabilitation\textsuperscript{220}. Under this provision, the State is required to make provision for attaining and maintaining maximum independence in vocational ability.

A more specific attempt has been made under Article 27, under the heading 'Work and Employment'. The right to work of disabled should be treated on equal basis with others. Such recognition will lead to providing of opportunity to work. This opportunity is to work in freely chosen avocation; providing a work environment, which will be inclusive in nature and accessible to the persons with disability. This opportunity also includes the providing of safeguard and promoting the realization of the right to work of persons with disability\textsuperscript{221}.

The Article deals not only with the employment, but also with work. This additional term has provided the Convention a comprehensive look\textsuperscript{222}. The Convention provides for right to employment, which is inclusive of terms of employment like, continuance of employment, career advancement, and safe and healthy working conditions\textsuperscript{223}.

To ensure the right of employment the Convention has imposed certain inalienable duties on the State. The State is under the duty to promote employment opportunities and career advancement for the persons with

\textsuperscript{220} See Art 26

\textsuperscript{221} See Art 27(1)

\textsuperscript{222} Article 27 has a comprehensive approach, as it not only deals with educated, employable or unemployed disabled, but also with an employed disabled. The initial provisions of Art 27 deals with right to employment. The later provisions deal with right to work, which includes rights under labour law.

\textsuperscript{223} See Art 27(1)(a)
disabilities in the labour market\textsuperscript{224}. This is coupled with the encouragement for self-employment, entrepreneurship, development of cooperatives and starting one's own business\textsuperscript{225}. The Article also imposes direct and indirect responsibility on the State. The direct responsibility is in the form of providing employment to the persons with disability in the public sector\textsuperscript{226}. In addition, indirectly the State is required to promote the same employment in the private sector through policies and measures, such as incentives, etc\textsuperscript{227}.

\textit{Work environment}: This terminology is exclusively used to address the need of protection to the employed person with disability. Here the article directs the State to protect the rights of persons with disabilities on an equal basis with others, provide for equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment and the redress of grievance\textsuperscript{228}.

The specific Conventions have brought changes in leap and bounds as far as rights of disabled persons are concerned. The changes in the rights of persons with disability were also achieved due to the contribution and cooperation from different Organs of the United Nations Organization.

\textbf{2.2.5. Organs of U N concerned with Rights of Disabled}

\textsuperscript{224} See Art 27(1)(e)
\textsuperscript{225} See Art 27(1)(f)
\textsuperscript{226} See Art 27(1)(g)
\textsuperscript{227} See Art 27(1)(h)
\textsuperscript{228} See Art 27(1)(b)
i. United Nations Educational, Scientific and Cultural Organization (UNESCO)

UNESCO is the main laboratory of ideas and mediator in attempting to achieve universal agreements on emerging ethical issues. The Organization serves as a via media for the dissemination and sharing of information and knowledge. It works to create the conditions leading to fruitful dialogue between States. It is established to promote international co-operation between its Member States\textsuperscript{229} and Associate Members\textsuperscript{230} in the fields of education, science, culture, and communication. It has gained more importance due to the need of global vision of sustainable development based upon observance of human rights, mutual respect and the alleviation of poverty.

The above objectives could be achieved through various Declarations, Conventions, Statements and framework of the UNESCO. Its contribution in protecting and promoting the rights of the persons with disability is remarkable. In the earlier years, the main thrust of the organization was on the area of education of disabled children. In the later stage, the attention was shifted to other important areas of disability, like discrimination based on genome, sustainable development, early detection and prevention of disability, etc.

The UNESCO is an organ which is established to meet the challenge of universal education. The contribution of UNESCO in providing education to

\textsuperscript{229} The total number of Member States of UNESCO is 191 as of July 2006
\textsuperscript{230} The total number of Associate Member States of UNESCO is 6 as of July 2006
the disabled is remarkable. It functions with supporting bodies in implementing
the Resolutions’ or Declarations. This is a unique organ, which came into
existence before UNO. It has different supporting bodies to protect the right to
education at different levels. The different organs face different challenges like,
achieving ‘universal education’ or ‘life long education’ etc. It being the only
organ dealing with the right to education, the study of the Organization
becomes necessary. Therefore, the following study deals with brief
introduction of UNESCO and its supportive organs.

Establishment of UNESCO: In the year 1942, the European countries
confronting Nazi Germany and its allied forces met in the United Kingdom for
the Conference of Allied Ministers of Education (CAME). Even though the
Second World War was at its peak and it was far from over, yet these European
countries were looking for ways and means to reconstruct their systems of
education, once peace was restored. This project gained momentum and soon
took on new governments and universal note including that of the United
States.

This initial step of CAME resulted into a resolution of holding a United
Nations Conference for the establishment of an Educational and Cultural
Organization (ECO/CONF). As per the Resolution, the Conference was
convened in London from 1st to 16th November 1945. During the conference,
the delegates decided to create an Organization that would embody a genuine
culture of peace. The idea was to establish the “intellectual and moral solidarity
of mankind” and in so doing, prevent the outbreak of another World War.
At the end of the Conference, thirty-seven countries founded the United Nations Educational, Scientific and Cultural Organization. The Constitution of UNESCO came into force after ratification by twenty countries²³¹.

**UNESCO and Rights of the Person with Disability:** The Organization attempts to provide Universal Education. To achieve the objective, the Organization has made numerous attempts through the following supporting bodies. The attempts of the UNESCO can be classified in the form of Conventions recognizing the right to education and Declarations recognizing the need for the appreciation of certain kinds of rights and Statements of the persons with disability. The approach of UNESCO has got new vitality through the framework that has been developed during the different stages of meetings at different levels.

**UNESCO and the Supporting Bodies:**

*a) International Bureau of Education (IBE)*

The International Bureau of Education (IBE) is a UNESCO Institute responsible for all matters concerning education including the development of curricula, teaching methods and strategies, and promoting access to education. IBE established in Geneva in 1925 as a private organization, became the first intergovernmental organization in the field of education in 1929. In 1969, it became an integral part of UNESCO but continues to function from its headquarters in Geneva.

²³¹ India is one of the twenty countries to ratify the UNESCO Constitution
IBE's main functions are to observe world data on education, maintain an International Educational Information Center, disseminate information about education, promote dialogue in all matters related to education, and to strengthen the capacity through training workshops and exchanges.

IBE acts as an information-exchange center on educational matters, covering educational policies and systems throughout the world, as well as a center for comparative studies in education. Its work is divided into three main areas; research and study, documentation and information including publications, and political dialogue.

The IBE is currently focusing on the adaptation of educational content to the challenges of the 21st century, especially building capacity in the area of curriculum change. Its four main functions are the study of educational methods, promoting dialogue on educational policy, contributing to capacity building and the dissemination of information on education.

b) International Institute for Educational Planning (IIEP)

The International Institute for Educational Planning functions with statutory institutional autonomy and under the guidance of its Governing Board. The IIEP promotes training and research in educational planning, policy and administration in relation to economic and social development, and provides training by organizing residential and distance training courses, seminars, workshops and individually tailored programmes for senior civil servants, educational planning for managers or experts attached to
institutions responsible for the promotion of social and economic development. It also conducts and promotes research into new concepts and methods of educational policy analysis, planning and management likely to further economic and social development and endeavors to disseminate, by various means, existing knowledge and experience gained in this domain.

c) The UNESCO Institute for Education (UIE)/ UNESCO Institute for Lifelong Learning (UIL))

The UNESCO Institute for Education was founded in 1952. It is an international non-profit research, training, information, documentation and publishing centre of UNESCO. Very recently in the year 2006, a decision taken by UNESCO’s Executive Board confirmed the change in UIE's legal status, transforming it from a foundation under German law into a full-fledged UNESCO Institute. To depict the exact objectives of the organization, along with the change in the legal status, the name was also changed to the UNESCO Institute for Lifelong Learning (UIL).

UIL focuses on adult and continuing education, adult literacy and non-formal basic education in the perspective of lifelong learning. It works in close collaboration with its Paris headquarters and its seven educational sister institutes, as well as with other national and international partners.

The Institute carries out research on educational policy developments worldwide and supports structural and institutional improvements within the framework of UNESCO’s programme “Lifelong Learning for All”. In
the pursuit of these objectives UIL issues a series of publications, offers fellowship programmes and organizes training seminars and expert meetings.

Key aspects of the Institute's work include adult education in the context of democracy and active citizenship, improved quality of life for economically deprived and marginalized people, gender issues, ethnic and linguistic minorities, environmental protection, health education etc.

d) The UNESCO Institute for Statistics (UIS)

The UNESCO Institute for Statistics is a semi-autonomous body. Its mandate is to support statistical activities of UNESCO in areas of Education, Science & Technology, Culture & Communications. This body of UNESCO was formally established in November 1999, through the Statutes and financial arrangements agreed by UNESCO General Conference. UIS operates through its own Governing Board, but it relies on UNESCO for the regular budget allocation and other logistical support through special account. Presently it is located in Montreal.

Functions of UIS, vary from collection and dissemination of cross-nationally comparable data on education, science & technology, culture & communications, including methodological, technical and conceptual statistical development and establishment and maintenance of international classifications. Further, analysis and interpretation of international data (often in partnership with others) and statistical capacity building within
countries for users and producers of data are also part of the functions of the UIS.

ii. **International Labour Organization**

The International Labour Organization (ILO) is the only organ in the United Nations Organization which has been extended from the League of Nations. This organ mainly addresses the needs of the labourers in the industrial world. While all the ILO standards apply to persons with disabilities either explicitly or implicitly, four instruments have been introduced to deal specifically with disability-related concerns in vocational training and employment\(^\text{232}\).

iii. **World Health Organization**

Through the World Health Organization's Programme of Health for All by the year 2000 and the related primary health care approach, the member States of the World Health Organization have already committed themselves to preventing diseases and impairments leading to disabilities. The concept of primary health care as elaborated by the International Conference on Primary Health Care held at Alma-Ata in 1978 and the application of this concept to the health aspects of disability are described in the World Health Organization's policy on this subject, approved by the World Health Assembly in 1978.

\(^{232}\) 'Employment of People with Disabilities – The Impact of Legislation, Asia and Pacific,' Report of a Project Consultation, Bangkok, 17 Jan 2003, organized by ILO in Focus-Program on Skills, Knowledge and Employability in the Frame work of a Project Funded by Ireland Aid.
The United Nations Organization has been in the forefront in development of international concern for disabled. The drafting of the Convention on the Rights of Persons with Disabilities on the basic principles of inherent dignity, individual autonomy including the freedom to make one’s own choices and independence of persons has been the latest attempt by the United Nations Organization. The Convention has been ratified by over 100 countries and the UN is hopeful of bringing it into action in the year 2008.

The International Human Rights Law has developed in the form of series of Conventions to provide benefit for groups with special needs. The evolution of law has reached its pinnacle from merely recognizing the needs of the disabled, to the declaration of rights of disabled and finally the enforcement of the rights of disabled in the form of Conventions.

This evolution of International recognition of rights of persons with disabilities has created pressure groups in the form of NGO’s and other associations. Empowered by the International Conventions, these pressure groups were able to sensitize the national legislature and lobbied to implement legislations protecting the rights of disabled. These Conventions also created pressure groups in the form of International Community and United Nations Monitoring Authorities. These attempts have also helped in implementing internationally recognized rights. The State has also developed many indigenous policies to protect the rights of the disabled and provide effective participation and inclusion in the society. The attempts of the State and the empowering of the organizations are a result of the international concerns.
The sensitization of the people at the helm of affairs started yielding results as the different international organs recognized and extended the help to fulfill the needs and interests of the disabled persons. Following are the examples of the some of the important pledges of the International Organs:

- The International Civil Aviation Organization (ICAO), which has approved recommendations to contracting States concerning facilities of movement and provision of facilities for disabled passengers;

- The Executive Committee of the Universal Postal Union (UPU), which has adopted a recommendation inviting all national postal administrations to improve access to their facilities for disabled persons;

- The concept adopted by the United Nations Children's Fund (UNICEF) of basic services for all children and the strategy adopted by it in 1980 to emphasize strengthening family and community resources to assist disabled children in their natural environments;

- The Office of the United Nations High Commissioner for Refugees (UNHCR), with its programme for disabled refugees;

- The United Nations Relief and Works Agency for Palestine Refugees in the near East (UNRWA), which is concerned, among other things, with the prevention of impairments among Palestine refugees and the lowering of social and physical barriers which confront disabled members of the refugee population;
The concepts of specific measures of disaster preparedness and prevention for those already disabled, and the prevention of permanent disability as a result of injury or treatment received at the time of a disaster, advanced by the Office of the United Nations Disaster Relief Coordinator (UNDRO);

The United Nations Centre for Human Settlements (UNCHS), with its concern about physical barriers and general access to the physical environment;

The United Nations Industrial Development Organization (UNIDO), whose activities cover the production of drugs essential for the prevention of disability as well as of technical devices for the disabled.

It can be concluded from the above references that the International Instruments have played a very significant role in the development of a right approach towards the concept of Human Rights, and sensitivity towards the rights of the disabled, specifically. After studying the position of the rights of disabled with reference to the international scenario, the further study will be aimed at a comparative study of the prevailing norms governing the disabled in USA, UK and Indonesia.