CHAPTER – IV

LEGAL REGIME FOR THE PERSONS WITH DISABILITY IN INDIA:
AN APPRAISAL
4. Legal Regime for the Persons with Disability in India: An Appraisal

The Human rights have been created for the purpose of protecting our common identity as human beings. These rights are non-negotiable and non-alienable and above all, they are the ethical norms for the treatment of individuals. There are certain minimal rights, which have come to be recognized as basic requirements for a civilized living and for the full development of a human being. As discussed in the earlier Chapter, the development of Human Rights Law for specific groups is deemed to be a recent development. The human rights are more effective only when they are internalized rather than implemented.

The position of persons with disability is a matter of concern in South Asia and more so for India, as they form the largest minority group as far as India is concerned. As the population ages, this figure is expected to increase. According to the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)\(^1\), approximately two-thirds of the world's 600 million disabled persons live in South or South-East Asia. Nearly one third of the disabled persons live below the poverty line, and less than ten percent of youth with disabilities attend school\(^2\). The situation looks very grim when the

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\(^1\) UNESCAP is the regional development arm of the United Nations for the Asia-Pacific Region with a membership of 62 Governments: 58 of which are in the region.

statistics are studied in the light of disability and poverty. According to the United Nations Development Program (UNDP), eighty per cent of persons with disabilities live in developing countries. The World Bank estimates that 20 per cent of the world's poorest people have some kind of disability, and in some way are regarded in their own communities as the most disadvantaged. India specific data, collected during 2001 census states that there are 21.9 million or 21,906,769 disabled people in India.

The International Instruments have been passed to deal with this problem. However, such an attempt is half done and fruitless unless the Municipal Laws are modeled on the same spirit. This Chapter undertakes to study how the Municipal Law has been modeled on the basis of the international concern. An attempt to study the level of protection granted to the persons with disability under the Indian Legal System, has been made in this Chapter.

This chapter mainly deals with the study of Indian legal system in the light of rights of persons with disability. The role of Constitution of India in protecting the rights of persons with disability has been studied in detail. In addition, the different relevant legislations have been discussed. It is important to know the attitude of the Government towards the rights of the persons with disability. To understand it, an elaborate study of various Government policies has been undertaken. India also showcases a strong and vibrant judiciary. As a last part of the chapter, the contribution of the judiciary to protect the rights of the persons with disability has been discussed.
4.1. Constitution of India and the Rights of Disabled

The study of the Constitutional framework is necessary as it is the root from which all the statutes draw their existence. The disability jurisprudence in the form of statutory law came into India only after 1995. Until then the persons with disability were protected under the umbrella of the Constitution of India.

The framers of the Constitution were more inclined to lay down the general principles on which the State must progress and they provided the general goals which every Government must strive to achieve. Therefore, the research aims to study the document by keeping in mind, the intention of the framers. Therefore the researcher will not search for any specific provision for the disabled persons as a community, but will try to bring out better protection within these general principles.

Special mention needs to be made here about the Preamble. Though it does not make any specific reference to any community or persons, its objective is to ensure social, political and economic justice. The Preamble thus addresses the needs of the persons with disability to larger extent in general terms.

4.1.1. Disabled persons and Fundamental Rights

i. Right to equality

The fundamental right to equality is provided under Article 14 of the Constitution of India. The study of various decisions of Supreme Court of India

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3 Article 14, Constitution of India, Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
and different High Courts reveals that Art 14 does not only speak of formal equality where the State is under the duty to treat all persons in the same manner, but it also requires the State to provide ‘substantive equality’. This implies that only equals must be treated as equals, and unequal may not be treated so. This interpretation imposes a responsibility on the State to consider the historical and systemic disadvantaged groups while providing equal status and opportunity⁴.

This new found approach of equality has two important implications. One, it makes it mandatory on the part of the State not to discriminate against any individual or class on arbitrary or unreasonable basis. Second, it permits the State to take up affirmative action by way of special laws creating special rights and allowing ‘positive discrimination’⁵.

Articles 15 and 16 are the continuation of the mandate provided by Art 14. Here the State is permitted positive discrimination, for the upliftment of the socially and economically backward classes. This indirectly includes the persons with disability.

It is pertinent to note that the State cannot discriminate on grounds of age, sex, caste, race religion and place of birth. However, the recognition to persons with disability as a class is missing from the list. As a result, discrimination of

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⁵ Id, pg 4
persons with disability by the State would not guarantee automatic constitutional protection.

In *K. C. Vasant Kumar v. State of Karnataka*⁶, the Court tried to read into Articles 15 and 16 and tried to bring in reservation for classes other than those mentioned in the article. The Court held that physical disability, poverty and habitation, can each be the sole factor for providing reservation. Such an attempt can succeed only if rational principle of classification is adopted under Art 15(1) and Art 16(1), Art 15(4) and 16(4), as they are incapable of providing such kind of reservations.

The Supreme Court of India considered the reservation issue again in a case popularly known as the ‘Mandal Case’⁷. Petition was filed to consider the larger issue of providing reservation for Socially and Educationally Backward Classes (27% quota) and ‘Other Economically Backward Sections (10% quota). The cause of the persons with disability was impleaded by Adv. Rungta⁸. The Court upheld the reservation for socially (disability included) and educationally backward classes but rejected the reservation for economically backward classes.

While interpreting the term ‘backwardness’, Pandian J held that,

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⁶ 1985 Supp SCC 714
⁷ Indra Sawhney and Others v. Union of India and Others 1992 Supp (3) SCC 217
⁸ Advocate Rungta is blind by birth. He practices at Supreme Court and he is one of the pioneers in protection of rights of persons with disability.
The word ‘backward’ is very side bringing within its fold the social backwardness, educational backwardness, economic backwardness, political backwardness, and even physical backwardness⁹.

In addition to the above statement, the judgment also referred to Law Lexicon and held that the word ‘backward’ is defined in the Lexicon as “retarded in physical, material or intellectual development”¹⁰.

The judges also clarified the important aspect that the reservation in favor of persons with disabilities is ‘horizontal reservation’, cutting across all the categories including general/open category.

Further, it is noteworthy that despite sharp divisions on other issues realized in the Mandal Case, even dissenting judges agreed on this position and upheld the rights of persons with disabilities to be entitled to affirmative action and positive discrimination under Article 14, 15, 16 of the Constitution of India¹¹.

ii. Right to Life¹²

Article 21 of the Constitution of India has laid down certain principles regarding right to life and liberty. However, the judiciary has breathed life into

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⁹ Id
¹⁰ Id
¹¹ In Indra Sawhney case, dissenting opinion was given by Dr T.K Thommen, Kuldip Singh and R.M Sahai JJ.
¹² Art 21- Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law
the provisions through a phenomenon called judicial activism. Therefore, right to life has been expanded to several other rights and they all are held to be necessary components of life.

In *Francis Coralie v. Union Territory of Delhi*\(^{13}\), the Court held that the right to life includes right to live with human dignity. Therefore, all the necessary rights go along with it, like bare necessities of life such as adequate nutrition, clothing and shelter, facilities for reading, writing and expressing oneself in diverse forms, free movement and being part of the society without being discriminated.

On the similar line, in *Chameli Singh v. State of U P*\(^{14}\), the Court held that the right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter..... all civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights or under the Constitution of India cannot be exercised without these basic human rights.

The attempt of the judiciary has lead to unprecedented expansion of the provision of Art. 21. As a result of such an expansion, a plethora of rights have been brought under the ambit of the provision. Most important rights recognized under Art. 21 are the right to housing\(^{15}\), right to health\(^{16}\), right to

\(^{13}\) AIR 1981 SC 746

\(^{14}\) (1996) 2 SCC 549

food\textsuperscript{17}, right to clean water\textsuperscript{18} and right to education\textsuperscript{19}. At the later stage, right to education has been specifically added into part III Fundamental Rights Chapter by inserting Art. 21 A. This expansion of rights under Art 21 has indirectly secured the rights of the persons with disability.

In the year 1992, the Court through its landmark judgment, declared that all citizens have a right to education. Every child of this country has the right to free education until he completes the age of 14 years. Thereafter his right to education is subject to the limits of economic capacity . . . the effect of holding that the right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law\textsuperscript{20}. Later, the Parliament added the right to education as a separate fundamental right through an amendment\textsuperscript{21}.

Along with these important rights, Constitution of India also provides for another genus of rights under Part IV. These rights are not the same as

\textsuperscript{16} C.E.S.C. Ltd v. Subhash Chandra Bose (1992) 1 SCC 441, Consumer Education and Research Centre and Others v. Union of India and others (1995)3 SCC 42

\textsuperscript{17} People’s Union for Civil Liberties v. Union of India and Others (Civil Writ Petition No, 196 of 2001)

\textsuperscript{18} Attakoya Thangal v. Union of India 1990(1) KLT 580


\textsuperscript{21} Article 21A – Right to Education: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."
discussed above as they differ in their approach. Such genera of rights are
enshrined in the Constitution as Directive Principles of State Policy.

iii. Directive Principles of State Policy & the Rights of Disabled

Part IV of Constitution of India provides for Directive Principles of State
Policy. These rights are on a different footing as they cannot be invoked to
demand anything as a matter of entitlement. They cannot be enforced by the
Court. They are mere guidelines given to the State in carrying out its functions.
These are the lofty goals set by the Constitution for the successive governments
and they are expected to fulfill it based on the availability of resources.

Even though, they are not justiciable, they cannot be termed as less important
than Fundamental Rights. They have been used by the Court, to adjust and
expand the ambit of fundamental rights from time to time. Increasingly, the
Court is issuing instructions and directions to the Government and other
administrative authorities to remove grievances caused by the non-
implementation of the Directive Principles.

The Directive Principles also lend support to the rights of persons with
disabilities. Article 4122 specifically provides that the State should make
effective provision to secure right to work, to education and to public

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22 Art 41; Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.
assistance in cases of disablement. Article 39 A\textsuperscript{23}, envisages that equal justice and free Legal Aid should be provided to all citizens and justice should not be denied by reason of economic or 'other disabilities'. Article 45\textsuperscript{24} has created a duty towards providing early childhood care and providing education for all until age of six\textsuperscript{25}. Articles 46\textsuperscript{26} and 47\textsuperscript{27} also have the potential for raising the standards of living, education and development of persons with disabilities. The Directive Principles of State Policy thus attempt to cater to the rights of disabled to a certain extent.

\textbf{iv. Schedule VII of Indian Constitution & Rights of Disabled Persons}

The State is under an obligation to discharge the duties imposed by the Constitution. In federal setup like India, there is a need to demarcate the role of the Centre and the State. In this regard, the Constitution provides for three lists; the Union list, State list and the Concurrent.

\textsuperscript{23} Art 39A; Equal Justice and Free Legal Aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

\textsuperscript{24} Art 45; Provision for Free and Compulsory Education for Children.—The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

\textsuperscript{25} The original Art 45 was substituted by The Constitution (Eighty-Sixth Amendment) Act, 2002 on 12th December, 2002. The substituted Article is as follows;

Art 45; - The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."

\textsuperscript{26} Art 46; Promotion of Educational and Economic interests of Scheduled Castes, Scheduled Tribes and other weaker Sections: The State shall promote with social care the educational and economic interests of the weaker Sections of the people, and, in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

\textsuperscript{27} Art 47; Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
There are certain entries under these three lists, which relate to the rights of disabled, directly or indirectly. The Union List requires the State to conduct census periodically. The census is very helpful to the Authorities to understand the position of the persons with disability. Another entry no. 55 of the Union List requires the State to prevent disability by bringing in safety measures at dangerous workplace. The State is also required to include labour welfare practices at workplace including provident funds, employer’s liability, and workmen’s compensation in order to bring certain level of economic stability in case of accidents, and to protect the rights of the person and their family by attempting to provide relief to the persons with disability. This attempt is expected to be done at different levels; from establishing institutions, to providing professional and vocational program and promoting special studies or research of different areas.

The concurrent list prescribes the entries, where both State as well as Union has the obligation to perform. Under this list, the treatment of lunatics and persons with mental deficiency has been mentioned. In addition to the treatment, on a broader canvas, both State and Centre are under the duty to

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28 Entry 69 Union List, Census
29 Entry 55 Union List, ‘Regulation of labour and safety in mines and oil-fields’
30 Entry 24 Concurrent List; Welfare of labour including conditions of work, provident funds, employer’s liability, workmen’s compensation, invalidity and old age pensions and maternity benefits.
31 Entry 9 State list, ‘Relief of the disabled and unemployable’.
32 Entry 65 (a), Union list, ‘union agencies and institutions for professional, vocational or technical training...
33 Entry 65 (b), Union list, ‘union agencies and institutions for the promotion of special studies or research.
34 Entry 16 Concurrent List, ‘Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient’
provide social security\textsuperscript{35}. This provision is broadly applicable to all the persons living in India. However, same can be extended to address the needs of the persons with disabilities. Another broad provision that can address the needs of the persons with disability specifically is regarding the provision of education, and vocational and professional training\textsuperscript{36}. These entries sufficiently, if not fully, cover a number of aspects regarding disability prevention as well as relief.

4.2. Legislative Framework on Rights to Education & Employment of Disabled Persons

The Constitution of India as well as the judiciary has been making constant efforts to protect the rights of the persons with disability. However, such attempts achieved limited success, as the Constitution contains broad guidelines, and the judiciary was struggling to recognize the rights in absence of legislations. The latter part of the eighties till the last decade of 20\textsuperscript{th} century saw spurge in enactments recognizing and elevating the position of rights of the persons with disability.

\textsuperscript{35} Entry 23, Concurrent List, 'Social security and social insurance; employment and unemployment

\textsuperscript{36} Entry 25, Concurrent List: Education including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65, and 66 of the list I; Vocational and technical training of labour.
4.2.1. The Persons with Disabilities (Equal Opportunities, Protection Of Rights and Full Participation) Act, 1995\textsuperscript{37}

Among all other legislations, the PWD Act of 1995 stands out as the major and comprehensive legislation to protect the rights of the persons with disability. The Act was in response to the international pressure, as well as the promise made to the international community. This Act was part of efforts of Government of India to discharge the international obligation created by the 'Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region'\textsuperscript{38}. The Act is comprehensive in nature and mainly deals with persons with physical disability. But also includes provisions in relation to mental retardation and other forms of disability.

i. Objectives of the Act

One of the major objectives of the Act was to provide full participation and equality to the people with disability. This Act has been divided into different Chapters according to the different objectives to be achieved. The Act also creates Authorities at different levels to implement its objectives.

According to the Act, "Rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels.

\textsuperscript{37} The Act of Parliament received the assent of the President on the 1st January, 1996 and was published as Act No.1 of 1996.

\textsuperscript{38} This Proclamation was adopted in the meeting to launch the Asian and Pacific Decade of Disabled Persons 1993-2002 convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5\textsuperscript{th} December 1992.
ii. *Applicability of the Act*

The Act covers two major actors; the obligator and the beneficiary. The obligation of protecting the rights of disabled has been put by the Act on the State, employer and the society at large. On the other hand, the beneficiary is the person who is suffering from disability. The concept of 'person with disability' has been defined with the help of different sections. The definition of 'disability', though comprehensive, suffers from practical difficulty.

Census of India 2001 document mentioned,

"Defining and measuring disability is a complex issue and it is not easy to communicate these concepts during the census process, in which only a limited amount of questioning time is possible to be spent with a household for obtaining detailed information on every individual."

Census therefore used its own version of definition of disability. Census of India defines five types of disabilities viz. seeing, speech, hearing, movement, and mental.

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39 Census of India 2001

40 Available at http://www.disabilityindia.org/djartjan06A.cfm, visited on 19th April 2010
Table 1: No. of Disable in India based on Types of Disabilities

<table>
<thead>
<tr>
<th>Types of Disabilities</th>
<th>Number of Disabled</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seeing</td>
<td>10634881</td>
<td>48.55</td>
</tr>
<tr>
<td>Speech</td>
<td>1640868</td>
<td>7.49</td>
</tr>
<tr>
<td>Hearing</td>
<td>1261722</td>
<td>5.76</td>
</tr>
<tr>
<td>Movement</td>
<td>6105477</td>
<td>27.87</td>
</tr>
<tr>
<td>Mental</td>
<td>2263821</td>
<td>10.33</td>
</tr>
<tr>
<td>Total</td>
<td>21906769</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Source: Census of India 2001

*Disability under the Act:* The definition used by the census is not applicable under PWD Act. The need of the Act is to provide a comprehensive definition covering all kinds of diseases and impairments. The word ‘disabled’ is not defined by any particular section, but is spread over a number of sections. The base definition is given under section 2(i) which mentions that "Disability" means (i) Blindness, (ii) Low vision, (iii) Leprosy-cured, (iv) Hearing impairment, (v) Loco motor disability, (vi) Mental retardation, (vii) Mental illness.

The definition only identifies the different impairments and diseases which are termed as disability. This definition could be complete only when it refers to each of the impairments given in the definition part.
Kinds of Disability: Blindness\(^{41}\) refers to total blindness, like visual acuity and angular blindness. Low vision\(^{42}\), i.e. partial blindness is also recognized as a disability. However, low vision has been defined as lack of or restricted vision even after treatment. Under the explanation of Leprosy-cured\(^{43}\), the person who has suffered from leprosy and is suffering from extreme and mere manifest external deformity is covered under the definition. The definition is also extended to the person without any external deformity, but suffering for loss of sensation, eye-lid movement, etc.

Hearing impairment\(^{44}\), just like blindness and low vision, covers total loss of hearing as well as partial loss of hearing. Loco motor disability\(^{45}\), has been provided with a broader definition and covers all kinds of disability of bones and joint muscles. The definition adds a restriction of 'substantial restriction on

\(^{41}\) S. 2 (b); "Blindness" refers to a condition where a person suffers from any of the following conditions, namely:-

(i) Total absence of sight. or

(ii) Visual acuity not exceeding 61/60 or 20/1200 (snellen) in the better eye with correcting lenses; or

(iii) Limitation of the field of vision subtending an angle of 20 degree or worse;

\(^{42}\) S. 2 (u); "Person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;

\(^{43}\) S. 2(n); "Leprosy cured person" means any person who has been cured of leprosy but is suffering from-

(i) Loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;

(ii) Manifest deformity and paresis; but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

(iii) Extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation, and the expression "leprosy cured" shall be construed accordingly;

\(^{44}\) S. 2(l); "Hearing impairment" means loss of sixty decibels or more in the better year in the conversational range of frequencies;

\(^{45}\) S. 2(o); "Loco motor disability" means disability of the bones, joints muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy,
movement' or any kind of Cerebral Palsy. Cerebral Palsy is a disease caused by the abnormal growth of person due to injuries to the brain during pre-natal, peri-natal or infant period of development.

Mental retardation and mental illness are also covered under the definition. The mental retardation refers to arrested or incomplete development of the mind. Rests of the conditions are treated as mental illness.

Above discussion refers to disablement. Any person falling under any of the explanation in the above sections will be treated as disabled. This alone does not serve as a qualification to get benefits under the Act. The applicability of the Act is restricted only to the 'persons with disability', i.e., a person holding the certificate from the medical authority, who has declared him to be suffering from not less than forty percent disability.

The other actor involved with the Act is the employer. His involvement with the Act is related to the implementation of the obligations created under the Act. The meaning of the term 'employer' is restricted to the government

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46 S. 2(e); "Cerebral palsy" means a group of non-progressive conditions of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal or infant period of development;

47 S. 2(r); "Mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterized by sub normality of intelligence;

48 S. 2 (q); "Mental illness" means any mental disorder other than mental retardation;

49 S. 2(t); "Person with disability" means a person suffering from not less than forty per cent. of any disability as certified by a medical authority;

50 S. 2 (p); "Medical Authority" means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government;

51 S. 2(j); "Employer" means,-

(i) In relation to a Government, the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department; and

(ii) In relation to an establishment, the Chief Executive Officer of that the establishment;
departments and it also covers the Chief Executive Officer of an establishment\textsuperscript{52}. The second part of the definition is deliberately restricted by defining ‘establishment’ as the State owned, controlled or aided corporations. This has led to keeping out the largest employer i.e. the ‘private sector’. This brings in the restriction as to applicability of the Act, and in turn diminishes the effectiveness of the Act. This drawback has been addressed to some extent, but is still a half hearted effort by the legislatures. Here the Act provides for incentives to the employer from private sector as well as government sector for providing the employment of not less than five percent to the persons with disability\textsuperscript{53}.

The implementation of the law has two important aspects; one is the scope of the Act, under which the discussion of definition will bring clarity. The other is, the Authorities to implement the provisions of the Act.

\textit{iii. Authorities under the Act and their functions}

The major portion of the PWD Act has been implemented by the highest Authority created under the Act called the Central Coordination Committee\textsuperscript{54}.

\textsuperscript{52} S. 2(k); "Establishment" means a Corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of 'the Companies Act, 1956 and includes Departments of a Government;

\textsuperscript{53} S. 41; The appropriate Governments and the local authorities shall, within the limits of their Economic capacity and development, provide incentives to employers both in public and private Sectors to ensure that at least five per cent of their work force is composed of persons with disabilities.

\textsuperscript{54} S. 3. (1) The Central Government shall by notification constitute a body to be known as the Central Co-ordination Committee to exercise the powers conferred on, and to perform the Functions assigned to it, under this Act.

(2) The Central Co-ordination Committee shall consist of-
The high powered Committee comprises of Chairperson, Vice-chairperson, members and member secretary. The Committee comprises of ex-officio members and other regular members who are expected to take interest in the implementation of the law. The Committee is made of representatives of various departments which has direct bearing upon the implementation of the

(a) The Minister in charge of the Department of Welfare in the Central Government, Chairperson, ex officio;

(b) The Minister of State in-charge of the Department of Welfare in the Central Government, Vice-Chairperson, ex officio;


(d) Chief Commissioner, Member, ex officio;

(e) Chairman Railway Board, Member, ex officio;

(f) Director-General of Labour, Employment and Training, Member, ex officio;

(g) Director, National Council for Educational Research and Training, Member, ex officio;

(h) Three Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members;

(i) Three persons to be nominated by the Central Government to represent the interests, which in the opinion of that Government ought to be represented, Members;

(j) Directors of the-

(i) National Institute for the Visually Handicapped, Dehra dun;

(ii) National Institute for the Mentally Handicapped, Secundrabad;

(iii) National Institute for the Orthopedically Handicapped, Calcutta;

(iv) Ali Yavar Jung National Institute for the Hearing Handicapped, Bombay, Members, ex-officio;

(k) Four members to be nominated by the Central Government by rotation to represent the States and the Union Territories in such manner as may be prescribed by the Central Government:

Provided that no appointment under this clause shall be made except on the recommendation of the State Government or, as the case may be, the Union territory;

(l) Five persons as far as practicable, being persons with disabilities, to represent non-Governmental Organizations or associations which are concerned with disabilities, to be nominated by the Central Government, one from each area of disability, Members:

Provided that while nominating persons under this clause, the Central Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes;

(m) Joint Secretary to the Government of India in the Ministry of Welfare dealing with the welfare of the handicapped, Member-Secretary, ex officio.

(3) The office of the Member of the Central Co-ordination Committee shall not disqualify its holder for being chosen as or for being a Member of either House of Parliament.
Act. These ex-officio members are supported by the representatives of the Parliament and the States. The Non-Governmental Organizations associated with the protection of rights of disabled persons are also having fair representation in the Committee.

This high powered Committee is supported by the Central Executive Committee constituted under S. 9 of the Act\textsuperscript{55}. These high powered committees set up under this Act are monitored by the appropriate Government\textsuperscript{56}. The Central or State Government can be treated as an appropriated government depending upon the parties involved in the dispute.

\textsuperscript{55} S. 9.(1) The Central Government shall constitute a Committee to be known as the Central Executive Committee to perform the functions assigned to it under this Act.

(2) The Central Executive Committee shall consist of-

(a) The Secretary to the Government of India in the Ministry of Welfare, Chairperson, ex officio;

(b) The Chief Commissioner, Member, ex officio;

(c) The Director-General for Health Services, Member, ex officio;

(d) The Director-General, Employment and Training, Member, ex officio;

(e) Six persons not below the rank of a Joint Secretary to the Government of India, to represent the Ministries or Departments of Rural Development, Education, Welfare, Personnel Public Grievances and Pension and Urban Affairs and Employment, Science and Technology, Members, ex officio;

(f) The Financial Advisor, Ministry of Welfare in the Central Government, Member, ex officio;

(g) Advisor (Tariff) Railway Board, Member, ex officio;

(h) Four members to be nominated by the Central Government, by rotation, to represent the State Governments and the Union territories in such manner as may be prescribed by the Central Government;

(i) One person to be nominated by the Central Government to represent the interest, which in the opinion of the Central Government ought to be represented, Member;

\textsuperscript{56} S. 2(a)"Appropriate Government" means,

i. in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under the Cantonment Act, 1924, the Central Government;

ii. in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government;

iii. in respect of the Central Coordination Committee and the Central Executive Committee, the Central Government;

iv. in respect of the State Coordination Committee and the State Executive Committee, the State Government;
The other two important authorities involved with the implementation of Act are the Chief Commissioner\textsuperscript{57} appointed by the Central Government, and the Commissioner\textsuperscript{58} appointed by the State Government. The Act makes provision for creating full fledged office to implement the provisions of the Act.

*Special Employment Exchange*: Looking into the object, the Act makes a provision for creating the Special Employment Exchange\textsuperscript{59}. This Special Employment Exchange is formed to provide complete information under one roof. The Exchange is involved with maintaining the information of various

\textsuperscript{57} S. 57. (1) The Central Government may, by notification appoint a Chief Commissioner for persons with disabilities for the purposes of this Act.

(2) A person shall not be qualified for appointment as the Chief Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(3) ....

(4) The Central Government shall ....(appoint) officers and other employees required to assist the Chief Commissioner ....

(5) ..... 

(6) ...... (provisions not necessary for the discussion are omitted by the researcher)

\textsuperscript{58} S. 60. (1) Every State Government may, by notification appoint a Commissioner for Persons with Disabilities, for the purpose of this Act.

(2) A person shall not be qualified for appointment as a Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(3) ....

(4) The State Government ...(appoint) officers and other employees required to assist the Commissioner

(5) ....

(6) ..... 

\textsuperscript{59} S.2 (x): "Special Employment Exchange" means any office or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, respecting - persons who seek to engage employees from amongst the persons suffering from disabilities; persons with disability who seek employment;

i. ..... 

ii. ..... 

iii. vacancies to which person with disability seeking employment may be appointed;
qualified disabled persons in the locality as well as information regarding the available reserved vacancies.

*Institution for persons with disabilities:* In the similar line, the 'Institution for Persons with Disabilities' has been created under the Act to provide care, protection, education and training to the persons with disabilities.

As mentioned above, the State Government also has to function parallel to Central Government. Accordingly the State Government is expected to form a State Coordination Committee, a Commissioner as well as other executive authorities, etc. The formation of the committee is in the similar line as that of Central Government with *mutatis mutandis.*

*Central Coordination Committee:* The major function of the Central Coordination Committee (CCC) is to act as the national focal point on disability. This being the focal point, it has to involve in continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities. The Central Coordination Committee has certain major functions like reviewing and coordinating the activities of all the Departments of Government and other Governmental and non-Governmental Organizations; developing a national policy to address issues faced by persons with disabilities as well as advising the Central Government on the formulation of policies, programmes, legislation and projects with respect to disability. It also is

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60 S. 2 (m) "Institution for persons with disabilities" means an institution for the reception, care, protection, education, training, rehabilitation or any other service of persons with disabilities;

61 See S. 3 to S. 8
required to take up the cause of persons with disabilities with the concerned Authorities; work with International Organizations and International Agencies with a view to provide for schemes and projects for the disabled in the National Plans; review in consultation with the donor agencies, their funding policies from the perspective of their impact on persons with disabilities and take such other steps to ensure barrier free environment in public places, work places, public utilities, schools and other institutions. The committee is also required to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities and to perform such other functions as may be prescribed by the Central Government.

_Central Executive Committee:_ As the major decision making and policy making is done by the CCC, for the other part of bringing these policies and decision into action, a Central Executive Committee (CEC) is established and is responsible to carry out the decisions of the CCC. In addition to this the CEC also performs such other functions as may be delegated to it by the CCC. To perform the duties and chalk out the future plan of action, the Committee has to meet once in three months and function as per the rules made by the Central Government. In addition to the above functions, the CEC is also empowered

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62 S. 10. (1) The Central Executive Committee shall be the executive body of the Central Coordination Committee and shall be responsible for carrying out the decisions of the Central Coordination Committee.

(2) Without prejudice to the provisions of sub-section (1), the Central Executive Committee shall also perform such other functions as may be delegated to it by the Central Coordination Committee.

63 See S. 11.
to associate itself with any person whose assistance or advice is necessary to perform its functions under the Act.\textsuperscript{64}

The Act has been drafted to create two independent Authorities to function in different spheres and implement the rights created by the Act. On the similar line, another Authority resembling CCC is created, called the State Coordination Committee (SCC), but with a far more restricted geographical area of operation.

\textit{State Coordination Committee}\textsuperscript{65}: The major functions of the SCC are similar to the CCC. The major differences are found in the focal point of the Committee. The SCC is having the individual State as its focal point. Even though as per the letter of law the functions look similar, they are not so in practice. The federal set up in Republic of India has resulted in creating Union of States. This resulted in division of the functions of the State and Central Government. So CCC will be operating on the functions found in the Central list, whereas SCC will discharge the same regarding the functions enumerated in the State List. The function of the State Coordination Committee shall be to serve as the State focal point on disability matters and to facilitate the continuous evolution of comprehensive policy towards solving the problems faced by persons with disabilities. The Committee also has to review and coordinate the activities of all the Departments of Government and non-Governmental Organizations which are dealing with matters relating to persons with disabilities as well as

\textsuperscript{64} S. 12

\textsuperscript{65} See S. 13 to S.18
develop a State Policy to address issues faced by persons with disabilities; advise the State Government on the formulation of policies; review, in consultation with the donor agencies, their funding from the perspective of their impact on persons with disabilities as well as take such other steps to ensure barrier free environment in pupil’s places, work places, public utilities, schools and other institutions. The Committee has to monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities as well as perform such other functions as may be prescribed by the State Government.

The duties and the functions of the State Executive Committee are similar to the CEC.

The major dissimilarity is relating to the coordinating committees is relation to the controlling authority. The CCC will be functioning under the directions of the Central Government, where as the SCC will be bound by both Central as well as State Government.

As required by the present study now, the Act will be analyzed in the light of right to education and employment of disabled.

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66 S. 18
67 S.s 20, 21, 22
68 S. 23
iv. Right to Education under the Act

The PWD Act has given due importance to the education of the child with disability. The approach is consistent with the other Chapters where in the attempt has been made to include different departments in providing holistic support to the right to education of the child with disability.

Chapter V of the Act deals with the right to education\(^ {69} \). Initial thrust is given in explaining the role of the appropriate Government and Local Authorities in fulfilling the basic right to education. The importance of the Chapter lies in making education, the basic right to every child with disability till he attains the ages of eighteen years\(^ {70} \). The major shift in the approach to right to education has been to promote the integration of students with disabilities in the normal schools\(^ {71} \). This provision makes study of the child with disability in the normal school a rule, and creating a special school an exception.

The setting up of special school is done in collaboration with Government and Private Sector, and only for the children in need of special education. Further, the distribution of the schools is done in such a way that children with disabilities living in any part of the country have access to such schools\(^ {72} \). The

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\(^ {69} \) Chapter V is divided into 6 Sections, providing different approach in realizing the right to education of children with disabilities.

\(^ {70} \) See S. 26(a).

\(^ {71} \) See S. 26(b).

\(^ {72} \) See S. 26(c)
setting of these special schools should be equipped with facilities for vocational training.  

Chapter V also considers the prevailing problem of illiteracy. It provides for making schemes for persons who have not completed their education. Any person with disability having completed the age of sixteen will be provided with the special part-time classes by imparting non-formal education and utilizing the available manpower in rural areas after giving them appropriate orientation. The provision is extended to imparting education through Open Schools and Open Universities and conducting interactive classes through electronic and other media. The sections conclude with a provision for providing every child with disability, free of cost special books and equipments needed for his education.

To make the access to education meaningful, the Act addresses the need to invest in research and development of new assistive e-devices, teaching aids, special teaching materials or such other items as are necessary to give the child with disability, equal opportunities in education. Along with the assistive devices, the need also includes the task to provide trained personnel to address the specific requirements of the different disabilities. The Act creates obligation on the Appropriate Government to set up adequate number of

73 See S. 26 (d)
74 See S. 27 (a) and (b)
75 See S. 27 (d) and (e)
76 See S. 27 (f)
77 See S. 28
Teachers' Training Institutions and assist the national institutes and other voluntary organizations to develop trained manpower\textsuperscript{78}.

The unhappy error in the drafting of this Chapter is relating to the 'reservation policy'. No sections under the Chapter provide for reservation for admission in schools. At the same time, two sections under the Chapter relating to 'Employment', deal with the same. S. 33 deals with the reservation of posts in any institutions in favour of persons with disability and S. 39 provides for reservation of seats in any educational institutions in favour of persons with disabilities.

\textit{Formulation of Education Scheme:} The Act also makes a mandatory provision for preparing and implementing comprehensive education scheme. Such education scheme is required to address all the needs of the children with disability, such as,\textsuperscript{79} provision of transport facilities to the children with disabilities, or alternative financial incentives to parents or guardians to enable the children with disabilities to attend schools, the removal of architectural barriers from schools, colleges or other institutions imparting vocational and professional training. It also requires the supply of books, uniforms and other materials to children with disabilities, and the grant of scholarships.

There has to be an appropriate Fora set up for the redressal of grievances of parent regarding the placement of their children with disabilities. It requires suitable modification in the examination system to eliminate purely

\textsuperscript{78} See S. 29.

\textsuperscript{79} See S. 30.
mathematical questions for the benefit of blind students and students with low vision; restructuring of curriculum for the benefit of children with disabilities and specifically restructuring the curriculum for benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum as well as special amanuensis to blind students and students with low vision\textsuperscript{80}.

\textit{v. Right to Employment under the Act}

Right to employment of persons with disability is dealt under Chapter VI of the Act. The provisions pertain to various aspects of right to employment. The Chapter provides for reservation in governmental sector. In addition, S. 47 under the Chapter of ‘non-discrimination’ provides for right against discrimination. Right to employment is also provided under private sector through sec. 41. State has been asked to take affirmative action to provide opportunities for self employment\textsuperscript{81}. In addition to facilities mentioned above, the law works out ‘unemployment allowance’ for persons with disability\textsuperscript{82}. 

\textit{Identifying Posts for Disabled:} The Act mandates the identifying of posts for persons with disability. Such identified posts are required to be reviewed within every three years\textsuperscript{83}. This general direction takes up the garb of mandatory requirement when the Act directs the appropriate Government to compulsorily appoint persons with disability for not less than three percent of total work

\textsuperscript{80} See S. 3.
\textsuperscript{81} S. 43.
\textsuperscript{82} S. 68.
\textsuperscript{83} S. 32.
force. The Act itself provides for reservation within reservation by providing one percent each for blind, hearing impaired and loco motor disability\textsuperscript{84}.

The Act takes up a serious view of the reservation by including 'carry forward rule'. If any vacancy has not been filled due to non availability of the suitable candidates or for any other sufficient reason, such unfilled vacancy will be carried forward in the succeeding recruitment year. In case of continuation of non availability, the employer shall make appointment by interchange among the three available categories. If the situation still persists, then the person belonging to general category can be appointed\textsuperscript{85}. The information regarding such reservation and compliance should be provided to the appropriate Government at regular intervals\textsuperscript{86}. In addition to furnishing this information, the employer should make these documents available for inspection to the authorized person\textsuperscript{87}.

\textit{Improving Employability of Disabled}: Along with the steps to provide employment, the Act also provides for improving the employability of the persons with disability. To improve employability, the appropriate Government

\textsuperscript{84} S. 33; Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent, for persons or class of persons with disability of which one per cent. Each shall be reserved for persons suffering from-

(i) Blindness or low vision;

(ii) Hearing impairment;

(iii) Loco motor disability or cerebral palsy, in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this Section.

\textsuperscript{85} See S. 36.

\textsuperscript{86} See S. 34

\textsuperscript{87} See S. 35 and 37
is under the duty to formulate and implement the Schemes which may also address the issues like training and welfare of persons with disabilities; relaxation of upper age limit; regulating the employment; health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed; as well as deciding the manner in which, and the person by whom the cost of operating the schemes is to be defrayed. It also calls for constituting the Authority responsible for the administration of the Scheme.

Reasonable accommodation: It is a principle endorsed by the Act. As a result, the Act proposes various steps to prevent discrimination against employees with disability in a government undertaking through measures like non-termination or reduction of rank for acquiring disability during service and no denial of promotion only on the ground of disability. If a person is not suitable for job due to disability, then he must be accommodated through a suitable job without reduction in pay scale or service benefits. Supernumerary post must be created in case he cannot be accommodated in similar suitable post. This post is to be maintained till the job is provided or till he retires, whichever is earlier.

Along with the Schemes addressing the above requirements, it also mentions that all the Government educational institutions and other educational institutions receiving aid from the Government shall reserve not less than three

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88 See S. 38
89 See S. 47
per cent seat for persons with disabilities\textsuperscript{90}. Understanding the plight of the community, the legislature has also introduced three percent reservation in all the poverty alleviation schemes\textsuperscript{91}.

4.2.2. The Mental Health Act, 1987\textsuperscript{92}

The history of mental health legislations in India clearly demonstrates that though this need has long been recognized, legislative attempts to address it have not been satisfactory. The Lunatic Asylums Act, 1858 was the first enactment solely governing persons with mental disabilities. It was replaced by the Indian Lunacy Act, 1912. This stayed in force for three decades after independence. Then the present Act dealing with mental health came into force.

This Act has been passed with a definite intent to consolidate the existing provisions relating to treatment and care for mentally ill persons and has been amended in accordance with the international obligations. The major step taken under the Act is to make better provisions with respect to property of the mentally ill persons and matters connected\textsuperscript{93}.

The scope and the objective of the Act is all together different from the other legislations. Even though the Act deals with the persons with disability, it is restricted only to the persons suffering from mental illness. Along with this

\textsuperscript{90} See S. 39
\textsuperscript{91} See S. 40
\textsuperscript{92} The Act bearing No. 14 of 1987, passed on 22nd May, 1987
\textsuperscript{93} See the Preamble of the Act
restriction, the major restriction comes in the form of objectives of the Act. The major objective of the Act is to construct, maintain and regulate the psychiatric hospitals and nursing homes\textsuperscript{94}.

The other incidental objective is to provide protection to the properties belonging to the mentally ill persons. It becomes a very important requirement on two fronts. One task is to provide financial stability to the mentally ill persons. This becomes necessary as the property of a disabled is prone to be under threat of misappropriation, putting such mentally ill person under economic distress. Second task is to provide medical care. Even existence of property may not ensure proper treatment to the curable mental illness. This Act ensures prevention of such misappropriation and proper usage of the profits from the property towards treatment of the mentally ill person.

\textit{i. Management of Person and Property}\textsuperscript{95}

The property belonging to the mentally ill person needs to be protected. Here at this stage the District Court can intervene on an application under S. 50 of the Act\textsuperscript{96}. The locus to make application lies with the relatives, public curator appointed under the Indian Succession Act, 1925 (39 of 1925), Advocate-

\textsuperscript{94} See Chapter III of the Act, which deals with Psychiatric Hospitals and Psychiatric Nursing Homes. The Chapter provides for establishment or maintenance of psychiatric hospitals and psychiatric nursing homes, licensing, procedure for obtaining and renewal of license, prescribing conditions for hospitals and nursing homes, revocation of license for not fulfilling conditions, inspection etc.

\textsuperscript{95} The researcher is of the opinion that the study of protection to the property to the mentally ill person falls within the scope of the present study. The right to employment and right to property are the means to a common end; ‘financial stability’. The researcher has briefly touched upon the protection granted to the properties belonging to the mentally ill persons.

\textsuperscript{96} The chance of taking suo moto action has been ruled out expressly under Sub S. 1 of S. 50 of the Act, wherein it is clearly mentioned that District Court shall investigate on receipt of the application.
General of the State, or any person appointed as guardian under the Guardians and Wards Act 1890.

On receipt of the application, the District Court issues notice to the mentally ill person or to his next friend. Notice will also be sent to all the stake holders for example the relatives. The Court can also take assistance of two or more assessors while dealing with inquisition.

The inquisition under S. 50 is to find an answer to two basic questions;

i. Whether the alleged mentally ill person is in fact mentally ill or not?

ii. Where such person is mentally ill, whether he is incapable of taking care of himself and managing his property, or incapable of managing his property only? 

Based on the findings on these questions the Court will have a follow up action. If both answers are in affirmative, then the Court will appoint a caretaker. Otherwise the Court will exercise restraint and respect his right to enjoy the property.

The appointment under the Act is in two different capacities. Once the appointment is sought to take care of person, the appointee will be known as guardian and his duty to take care extends to dependents of the mentally ill.

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97 See S. 51, The Mental Health Act 1987,
98 As a caretaker of the person, a guardian shall be appointed under S. 53 and similarly to take care of property the appointment shall be made under S. 54.
person. If appointment is to take care of the property then he will be known as manager. His duty includes taking care of the property and paying allowance to the guardian if appointed, and taking care of the expenses of the mentally ill person.

The thorough study of the Act reveals that the manager, who is appointed to take care of the property, will be under the surveillance of the Court. Every action of the manager has to be approved by the Court. In addition to playing the role of a supervisor, the Court can also play a proactive role and pass any order concerning any matter connected with property of mentally ill person.

The appointment of manager and guardian is sought by authority under the Act. The activity is supervised by the District Court. Therefore, both the authorities are empowered to remove the manager or guardian. The law empowers both the authorities to act suo moto.

The cost of maintenance of mentally ill person detained in psychiatric hospital or nursing home is discussed under two different headings. The cost of indigent mentally ill person will be borne by the Government. In case of a mentally ill person having an estate or whose relatives are legally bound to

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99 See S. 58, Mental Health Act 1987
100 Id.
101 Id, S. 65.
102 Id, See Chapter VII - Liability to Meet Cost of Maintenance of Mentally challenged Persons Detained In Psychiatric Hospital or Psychiatric Nursing Home.
103 See S. 78.
maintain him, the duty to maintain lies on the relative and not on the
government.  

4.2.3. The Rehabilitation Council of India Act 1992

This Act was enacted for the constitution of the Rehabilitation Council of
India. It is solely created to regulate the training of rehabilitation
professionals. The Act addresses the other part of the rehabilitation task, i.e.
the training of the trainers. As a part of the applicability, the Act also deals with
the definition of the persons with disability.

This Act is made to streamline the training of trainers by creating the national
authority. This Council is in the fashion of body corporate, having perpetual
succession and a common seal, with power to acquire, hold and dispose of
property, both movable and immovable, and to contract and sell by the said
name, and sue and be sued.

The Council is made to represent the cross section of the Government of India,
to ensure that the members are chosen from different department who play an
important role in training of rehabilitation experts. The Chairman shall be the

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104 See S. 79.
105 No. 34 of 1992 (1st September, 1992)
106 The Preamble of the Act is read as, ‘An Act to provide for the Constitution of Rehabilitation
Council of India for regulating the training of rehabilitation professionals and the maintenance of a
Central Rehabilitation Register and for matters connected therewith or incidental thereto’.
107 The word used to describe the persons with disability is ‘handicapped’. ‘Person with disability’ and
‘Handicapped’ has been frequently used interchangeably.
108 S. 3(1), provides for Constitution of an Authority. This Authority is created in the line of other
authorities like, Bar Council of India under Advocates Act, Medical Council of India under Medical
Council Act, etc.
109 See S. 7 (2).
person with social work background, for which proper representation is ensured from Social Welfare, Health and Finance Department. As the role of the Council is to train the professionals, the membership is ensured from University Grants Commission and the Directorate General of Indian Council of Medical Research. To bring in representation from States, two members from Ministry or Department of the States or the Union Territories are appointed by rotation in alphabetical order. Medical practitioners and rehabilitation professionals working as volunteers are also appointed as a part of the Council. Finally, four members of Parliament are appointed to have parliamentary representation and social workers to have a representation of people working on field10.

This Council functions by creating Executive Committees11. They are required to execute any special or general work allotted to them. The main function of the Council is to recognize the Universities and other institutions to grant qualifications for rehabilitation professionals. If any qualification is not recognized, then the Council shall be the sole authority to recognize and recommend the amendment of the schedule to add this new qualification12.

The Council enjoys monopoly over granting practicing certificate to the rehabilitation professionals. In addition to this work, the Council may also

10 See S. 3(3) clauses (a) to (h).
11 See S. 7.
12 See S. 11.
enter into negotiation with any foreign country to recognize their qualification in reciprocity, and issue notice to that effect\textsuperscript{113}.

\textit{i. Training of the Professionals}

Chapter III of the Act deals with functions of the Council. Training of the professional is one of the important functions. Council is under duty to train different professionals which include,

(i) Audiologists and speech therapists,

(ii) Clinical psychologists,

(iii) Hearing aid and ear mould technicians,

(iv) Rehabilitation engineers and technicians,

(v) Special teachers for educating and training the handicapped,

(vi) Vocational counselors, employment officers and placement officers dealing with the handicapped,

(vii) Multi-purpose rehabilitation therapists, technicians; or

(viii) Such other category of professionals as the Central Government may, in consultation with the Council, notify from time to time.\textsuperscript{114}

\textsuperscript{113} See S. 12.

\textsuperscript{114} As discussed under S. 2(1) (n) “Rehabilitation Professionals”
Council is also authorized to prescribe the minimum standards of education required for granting recognized rehabilitation qualification by Universities or institutions in India\textsuperscript{115}. This Act brings in uniformity in qualification and compulsory registration to bring in improvement in the quality of rehabilitation professionals. Registration becomes the sole criteria to hold office as rehabilitation professional in any governmental or any institution maintained by a local or other authority. This also provides a permission to have independent practice as rehabilitation professional and to give evidence in the Court in any matter relating to the disabled. To bring in adherence to the Act, it prescribes punishment to the person violating these provisions, which may extend up to one year imprisonment or fine or both\textsuperscript{116}.

Along with these steps to improve the quality of rehabilitation professionals, the Act also provides for improvement of imparting of education to such aspiring professionals by employing inspectors and visitors\textsuperscript{117} to inspect the quality of education imparted in various Universities\textsuperscript{118}. The inspectors and visitors shall not interfere with the functioning of the University, but they send the report to the council to take appropriate action\textsuperscript{119}. The report submitted will be sent to Central Government and they may ask for clarification regarding the report. On the basis of response the appropriate action is required to be taken by the Central Government.

\textsuperscript{115} See S. 18.
\textsuperscript{116} See S. 13
\textsuperscript{117} Inspectors are appointed under S. 15 and Visitors are appointed under S. 16
\textsuperscript{118} See S. 15
\textsuperscript{119} See S. 15 (2) and 16 (2)
**ii. Rehabilitation as a Profession**

The role of the Council extends beyond the controlling of the training of the professionals. It is authorized to prescribe standards of professional conduct and etiquette and a code of ethics for rehabilitation professionals\(^{120}\). The standard contents of the ethics include violations such as infamous conduct or professional misconduct\(^ {121}\). The Council becomes more powerful due to enjoyment of the power to remove names permanently or temporarily from the Registry. However this action can be taken only after following the principles of natural justice.

Making the rights of the persons with disability meaningful mainly depends upon the effective implementation of the RCI Act and effective functioning of the Rehabilitation Council. The effective training and high standard of professionalism will bring in more efficient persons. This increased efficiency will lead to improved economic status, which automatically solves majority of the problems.

**4.2.4. The Income Tax Act, 1961**

To provide further incentive to the working class of persons with disability, the Income Tax Act, 1961 has been suitably amended to provide some important exemptions. The special provision is created under the Act in favour of persons with disability and for their parents/ legal guardians.

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\(^{120}\) See S. 21(1)

\(^{121}\) See S. 21(2)
Under the Income Tax Act, the exemption of forty thousand rupees is allowed from the income of the person with disability\(^{122}\). In addition, parent or relative upon whom the person with disability is dependent is allowed similar exemption, which includes the expenses for medical treatment of person with disability\(^{123}\).

Along with these direct provisions, the Income Tax Act also creates some indirect provision which benefits the community of persons with disability, in which deductions are allowed to persons making donations to registered trusts and societies doing work for the handicapped\(^{124}\).

4.2.5. The All India Service (Special Disability Leave) Regulations, 1957

These rules regulate the leave entitlement for the persons with disability working under All India Services. These rules have been enacted in pursuance of the obligation imposed on the Central Government.\(^{125}\) The rules have been framed with an entirely different objective. It does not include a person with disability who joins All India Service, but it covers only those persons who suffer from disability during their service\(^{126}\).

\(^{122}\) See S. 80 U, Income Tax Act 1961

\(^{123}\) See S. 80 DD.

\(^{124}\) See S.s 80G and 80GGA, Income Tax Act, 1961

\(^{125}\) Rule 16 (1) of the All India Services (Leave) Rules, 1955 had made it mandatory to frame Special Disability Leave Rules.

\(^{126}\) Read Rule 3 of the All India Service (Special Disability Leave) Regulations, 1957.
The provisions are drafted in such a way that a leave is available only to the person who suffer from disability which has direct relation with the office that he holds\textsuperscript{127}. This narrow applicability of the provision makes it unusable. This limited approach needs to be amended, and a broad rule should be laid down looking at the special needs of the disabled. There is a need to change the outlook of the society. This is not the undue advantage given to this particular community, but these are the basic needs. If fulfilled, the community also can contribute to the growth of the nation.

4.2.6. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999\textsuperscript{128}

This Act came into force with entirely different objective. Its aim is to provide for the constitution of a body at the national level for the welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities\textsuperscript{129}. Along with the Trust, the Act also provides for procedure for appointment of the guardian for the disabled person. The Act is specially passed to cover severe disabilities\textsuperscript{130}, and it addresses the needs of the severely disabled persons.

\textsuperscript{127} This provision says that special disability leave may be granted to a member of the service who suffers a disability as a result of risk of office or special risk of office'.

\textsuperscript{128} Act No. 44 OF 1999 [30th December, 1999.]

\textsuperscript{129} See Preamble, The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999

\textsuperscript{130} The Act only addresses the needs of person suffering from autism, cerebral palsy, mental retardation and multiple disabilities.
Here the object is to provide empowerment through the Trust established under the Act to lead life independently and more importantly within the community. This could be achieved if support to the person with disability is extended. To have a deeper reach in the country the Trust can associate with other registered organization and strengthen those organizations. The role of the Trust gets a serious turn in two cases, where the person with disability does not have family support, or has lost his/her parents. Here the Trust extends all types of help to such person with disability. In accordance with the object of the PWD Act, this Trust tries to facilitate the realization of equal opportunities, protection of rights and full participation of persons with disability131.

4.2.7. Employee’s State Insurance Act, 1948

The Employee State Insurance Act, [ESIC] 1948, is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity, employment injury and disablement. The Act in fact tries to attain the goal of socio-economic justice where the State tries to make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. But the benefits of this Act extend to employees, whether working inside the factory or establishment or elsewhere, or they are directly employed by the principal employee or through an intermediate agency, if the employment is incidental or in connection with the factory or establishment.

131 See S. 10.
The Act contains schemes for social security of the employees, the discussion whereof becomes necessary to understand the level of protection granted under the Act.

i. Scheme under the Act

Employees covered under the Scheme are entitled to medical facilities for self and dependants. They are also entitled to cash benefits in the event of specified contingencies resulting in loss of wages or earning capacity. Where death of an insured employee occurs due to employment injury or occupational disease, the dependants are entitled to family pension.

1. Medical benefit (S.28 (1))

Full medical facilities for self and dependants are admissible from day one of entering insurable employment.

2. Sickness benefit [cash] (S.46 (1)(a))

Sickness benefit is payable to an insured person in cash, in the event of sickness resulting in absence from work.

3. Extended sickness benefit [cash] (S. 46)

Extended sickness benefit is payable to insured persons for the period of certified sickness in case of specified long-term diseases that need prolonged treatment and absence from work on medical advice.

4. Enhanced sickness benefit [cash] (S. 46)
This cash benefit is payable to insured persons in the productive age group for undergoing sterilization operation, viz., vasectomy/tubectomy.

5. Maternity benefit [cash] (S. 46 (1) (b) and S.50)

Maternity benefit is payable to insured women in case of confinement or miscarriage or sickness related thereto.

6. Dependants benefits [cash] (S. 46 (1)(d) and S.52 A)

Dependants benefit [family pension] is payable to dependants of a deceased insured person where death occurs due to employment or occupational disease.

7. Other benefits

   a. Funeral expenses

   On the death of an insured person, subject to a maximum of a Rs. 2,500 expenses are payable at the local office for the funeral.

   b. Medical bonus

   Rs. 250 is paid to an insured woman or in respect of the wife of an insured person in case she does not avail hospital facilities of the scheme for child delivery.

8. Disablement benefit [cash] (S. 46(1)(c) and S.51)

The Act deals with relevant area of present study. Again, the applicability is to the limited area of disablement due to accident at work. The good part
of the provision is that it has holistic approach towards the challenge faced by the person with disability.

Disablement benefit is payable to the insured employees suffering from physical disablement due to employment injury or occupation disease. The conditions for applicability of the provisions are that the insured person should be an employee on the date of the accident. The temporary disablement benefit at 70% of the wages is payable till temporary disablement lasts and is duly certified by authorized insurance Medical Officer. In case of permanent disablement, the cash benefit is payable for life. Amount payable is worked out on the basis of earning capacity determined by a Medical Board and the benefit is payable within one month of submission of the complete Claim Papers.\(^{132}\)

Other benefits for persons with disability

a. *Vocational rehabilitation:* It is available in case the insured disabled person is less than 45 years of age with 40% or more disablement.

b. Free supply of physical aids and appliances such as crutches, wheelchairs, spectacles and other such physical aids are available.

c. Preventive health care services such as immunization, family welfare services, HIV/AIDS detection, treatment etc.

\(^{132}\) See S. 51.
4.2.8. The Right of Children to Free and Compulsory Education Act, 2009\textsuperscript{133}

This is an ambitious Act passed by the Parliament, where the State is under the duty to provide free and compulsory education to children. The Act successfully addresses the different needs of certain groups, which have been identified. However, it is sad to note, that a child with disability has been completely ignored by the Act.

The Act classifies children into three categories. First are the children belonging to general category. As usual this category is not defined. If a child does not belong to any of the other two categories then he will be considered to belong to general category.

Secondly, the child belonging to disadvantaged group, which means a child belonging to SC, ST, socially and educationally backward section; child belonging to the group having a disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factors, as may be specified by the appropriate Government\textsuperscript{134}.

Thirdly, a child belonging to the weaker section, means a child belonging to such parents whose annual income is lower than minimum limit specified by the appropriate Government\textsuperscript{135}.

\textsuperscript{133} Act No 35 of 2009, 26\textsuperscript{th} August 2009.

\textsuperscript{134} See S. 2 (d)

\textsuperscript{135} See S. 2 (e)
The term disabled does not find a mention in the Act, this insensitive approach is unpardonable as the Parliament is committed to international obligation, and more than that, its commitment to people of India is unabridged. The definition of disadvantaged group is not exhaustive. It is left open for appropriate Government to add different groups. However, this may protect the rights of children with disability, but it will not absolve the Parliament from the accusation of insensitivity.

The right provided under this Act is in conflict with the right provided under PWD Act. Free and compulsory education is to be provided from six years up to age of fourteen years. However the age for free education prescribed under PWD Act is up to eighteen years. To overcome this disparity a proviso has been added to section 2 limiting the applicability of this general legislation.

Central Government has been given the task of preparing the national curriculum. This task does not specify any additional duty of considering the needs of the child with disability.

The appropriate Government is under the duty to ensure free and compulsory education for every child. To ensure the same, the appropriate Government has to undertake different steps like, providing infrastructure, avoiding discrimination on any grounds against child belonging to disadvantaged group.

136 See S. 3 (1)
138 See S. 7 (6) The Right of Children to Free and Compulsory Education Act, 2009
or weaker section, providing training facility to teachers, etc.,\textsuperscript{139} However, this duty which has been imposed on the appropriate Government, does not make any specific mention about addressing the needs of child with disability.

The Act imposes duty on all the schools to make a provision for admission to the extent of twenty-five percent of the strength of the class, children belonging to weaker section and disadvantaged groups\textsuperscript{140}.

\textbf{4.2.9. Blind and other Physically Handicapped Persons (Rehabilitation, Employment and Welfare) Bill, 2002}\textsuperscript{141}

The Bill has been framed to provide for the rehabilitation, reservation of jobs and other welfare measures for the blind and other physically handicapped persons in the country.\textsuperscript{142} Many persons with disability are talented. However due to disability they are not in a position to get into jobs and have stable financial position\textsuperscript{143}.

The Bill is designed to provide basic financial stability to the persons with disability by providing reservation in jobs. For this purpose, the Bill proposes to establish National Council for the Blind and Handicapped.

\textsuperscript{139} See S. 8
\textsuperscript{140} See S. 12 (c)
\textsuperscript{141} Bill No. VIII of 2002
\textsuperscript{142} See Preamble of the Bill
\textsuperscript{143} Statements of Objects and Reasons.
i. National Council for the Blind and Handicapped

The Council is required to have persons from different areas of work, including the Union Minister for Social Welfare as its Chairman, and Union Ministers of Health and Family Welfare, Labour Welfare, Finance and Deputy Chairman of the Planning Commission as its members. This Commission is formed with a specific object to evolve a national policy for the rehabilitation of blind and other handicapped persons; start a new programme, services and pilot projects for the rehabilitation of handicapped and blind persons and review and suggest amendments to the existing laws or suggest new legislation for the welfare of blind and other handicapped persons; review the facilities available to the blind and other handicapped persons from time to time.

ii. Registering Authority

The Bill also provides for a Registering Authority. Its duty is to register all the blind and the persons with other disabilities residing within the defined area.

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\(^{144}\) S. 3 (2) of the Bill: The National Council shall consist of the following members, namely:--

(i) The Union Ministers of Health and Family Welfare, Labour, Welfare, Finance and Deputy Chairman of the Planning Commission;

(ii) A representative of the Central Social Welfare Board;

(iii) A representative from each of the State Governments and Union territories;

(iv) Two representatives of the blind and handicapped persons;

(v) Two representatives representing the associations or voluntary organizations engaged in the welfare of blind and other handicapped persons;

(vi) Four members of Parliament, two from each House to be nominated by the Speaker of the House of the People and Chairman of the Council of States.

(3) The Union Minister of Welfare shall be the Chairman of the National Council.

\(^{145}\) See Section 3(4) of the Bill

\(^{146}\) See S. 3 1
This list has to be circulated among the employers\textsuperscript{147} and they shall employ such registered persons with disability. It is mandatory that every employer shall provide not less than six percent of reservation\textsuperscript{148}.

Once the person with disability is registered he is eligible for a job. In lieu of job, he is entitled to unemployment compensation\textsuperscript{149}. In case of violation of any provisions of the Bill by any employer, the punishment is fine of Rs 10000.\textsuperscript{150}

\textit{iii. Other rights under the Bill}

The Bill provides for the free of cost medical, surgical and other kinds of treatment to the registered person with disability. Such treatment of buying of equipments must reduce the adverse effects of the disablement and restore the functional abilities to the blind and person with disability\textsuperscript{151}. The other welfare measures for the person with disability include the reservation of five percent of all housing units constructed by it; providing training and other facilities to enable them to participate in sports, social and cultural activities; providing training for gainful employment in the institutions to be set up for the purpose and providing free passage for travel by road, inland navigation or by air. It also includes providing all aids, appliances, equipments and other articles used

\textsuperscript{147} See S. 2 (d): "employer" means any person who employs fifty or more persons to do any work in an establishment for remuneration;

\textsuperscript{148} See S. 4.

\textsuperscript{149} See S. 10: 'The appropriate Government shall give financial assistance of rupees three hundred per month to every unemployed blind or physically handicapped person whose name appears in the register maintained under Section 6 of this Act till such time he is given an employment.'

\textsuperscript{150} See S. 11.

\textsuperscript{151} See S. 14.
in the treatment, training and employment, or in their economic resettlement; providing interest free loans and other financial assistance for self employment and undertaking measures for the prevention of blindness and disability as may be found necessary\textsuperscript{152}. Among the three organs of the State the approach of the legislature has been studied. The Study further moves on to consider the government’s approach towards the disability. To understand the same the chapter considers the policy approach of the State.

4.3. Policy Framework on Right to Education & Employment of Persons with Disability

The basic purpose of the State’s obligation to provide for facilities is to make every life meaningful and every person capable of living with human dignity. Education and employment are the two basic facilities that are required to guarantee a life with human dignity. Though, the Government has framed a number of Policies and Schemes in this regard, the concentration is more on education. Therefore, rightly this part of the research focuses more on the policy framework of the government on education.

Such a focus may be justified in one sense, as without education no person can understand either the world around him or his place in it.\textsuperscript{153} As a result it should be imparted with love and affection and by providing the necessary

\textsuperscript{152} See S. 15

infrastructure\textsuperscript{154}. Therefore, the task of the Government in the welfare era is not only to impart education but to do it in conducive atmosphere.

This was the vision of the framers of Constitution which the State has to try to achieve through constant endeavor. The Constitution has not made specific mention of right of persons with disability. The rights of the disabled have to be read into the Constitution as a whole. The endeavor of the State to achieve the fulfillment of rights of disabled, dates back beyond the Constitution, to the pre-independence era and much before that.

\textbf{4.3.1. Education of disabled in ancient India}

Education system in India is age old. It was developed to provide holistic education to the pupil. However, the education system developed in the ancient history was inhabited by the diseases like caste, gender, colour, economic discrimination, etc. In such an era of discrimination, there was a ray of hope for the education of children with learning disability. Around 1000 BC, a special teaching method was adopted by a teacher by name Vishnusarma, to teach three children of a king who suffered from learning disability. This system then came to be adopted in most of the learning activities in the ancient India. Even though the education in ancient India was not universal, it had its own share of universalization. There are a few instances in the long standing history, but too rare to consider ancient education system as disabled friendly. But there are

\textsuperscript{154} Social Jurist, a Lawyer's Group v. Government of N.C.T of Delhi, CWP NO 4400 of 2003
claims by different authors that the ancient gurkul system\textsuperscript{155} saw all children, whether normal, gifted or physically or mentally disabled, as worthy of the benefits of education, each according to her or his abilities\textsuperscript{156}.

4.3.2. Pre-Independence Era: Education Policy of 1835

It is understood that India had a sustainable education system in the earlier era until beginning of 19\textsuperscript{th} century. This ancient system was gradually replaced by the English education system. This was the main source of equalization. The products of this system were the architect of freedom struggle and new independent democratic India. The main proponent of this new education system was Lord Macaulay.

It was the need for producing trained persons to be used in the administration, which prompted the introduction of the new system. The purpose being a restricted one, there was no scope for the right to education of children with disability in the Education Policy of 1835.

4.3.3. Post Independence Era

In the post independence era, education seems to be ignored till 1964. It was in 1964 that the first commission on education was formed called as Kothari Commission.

\textsuperscript{155} In ancient Indian education system, a child was expected to live with the guru and follow brahmacarya to amass knowledge. This system expected the child to be under the care and guardianship of the Guru.

\textsuperscript{156} Pramila Balasundaram, 'Inclusive Education – The Road Ahead', available at http://el.doccentre.info/eldoc/n00_/01jul01HUS3.pdf visited on 20.04.2010
i. **Kothari Commission 1964**\(^{157}\)

In view of the important role of education in the national development and in building up a truly democratic society, the Government considered it necessary to survey and examine the entire field of education in order to realize a well balanced, integrated and adequate system of national education capable of making a powerful contribution to all aspects of the national life. To achieve these objectives speedily, the Government of India in October 1964, set up an Education Commission\(^ {158}\).

The Commission identified the important objectives of the education all of which related to education with productivity, democratization and social integration. In furtherance of the above objectives, the Commission laid stress on work experience during education and vocationisation. Regarding the social integration, the important suggestion made was to start common school system and development of appropriate language policy for the education system.

All the above objectives can be extended as the much needed recognitions of the needs of the disabled. However, this attempt becomes futile when we reach the objectives of the education in the light of democratization\(^ {159}\). The Commission had completely ignored the specific recognition of the micro, invisible minority of the disabled persons. It spoke about equal opportunities

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\(^{157}\) The Commission was formed under the Chairmanship of Dr. D. S. Kothari, Chairman. University Grants Commission. The Commission consisted of sixteen members; eleven were Indians and five foreign experts.

\(^{158}\) Resolution of July 14, 1964.

\(^{159}\) 'Education and Democracy' is the third object drafted by the Commission, and the third entry in the objective speaks about 'Non discrimination'.
irrespective of economic status, caste, religion, sex or place of residence, but the word ‘disability’ is sorely missing in the Commission’s Report. It was the time when India had already become signatory to the International Conventions\textsuperscript{160} creating an obligation to provide education and employment to the persons with disability.

In the later part of the report, the concentration was more on economic hindrances while addressing the needs of equalization of educational opportunity. The Commission made passing remarks on two ignored and harassed groups; women and persons with disability. Regarding the disabled child, the Commission proposed the development of a comparatively small but effective programme for the education of the handicapped children.

However, the unwillingness of the Commission to spend more on the education of disabled children is projected from the fact that it mentioned the need for developing a comparatively small program to educate the handicapped children. This shows that the whole concentration of the Commission has been on addressing the needs of the other groups. From the priorities set out in the report, it appears that the State will not provide any facility to the disabled till it has surplus finance at its disposal. This step motherly attitude has caused irreparable damage to the psyche of the persons with disability. The Commission set the goal of achieving 60% to 80% literacy in subsequent 20 years. It can be concluded that the Commission has made a limited attempt to

\textsuperscript{160} Government of India had not signed any Convention on Human Rights till 1969. In that year for the first time Convention on Elimination of All Forms of Racial Discrimination
provide an education policy which could address the needs of all sections of the society.

**ii. Integrated Education for Disabled Children (IEDC), 1974**

The above study suggests the indifferent attitude of the State towards the needs of the disabled. This attitude however underwent a substantial change in the year 1974, when the Ministry of Welfare of Central Government launched a flagship program by name Integrated Education of Disabled Children (IEDC).

The program was launched with the objective to facilitate admission to as many children with disabilities as in need in the integrated set up, so that the infrastructure and resources already in existence would be made available to these children too. It also aims to adopt suitable and appropriate teaching methods for effective teaching learning experiences and thereby reduce the dropout rate and to establish a linkage between the special schools and the integrated schools in the area of continuing education and functional education in the mainstream.

Even though the Central Government prepared the scheme for the same, the onus of implementation of the scheme was shifted upon the State Governments and Union Territory Administrations. However, the Union of India would provide 50% assistance to the implementation of the scheme. The Education Department was given the responsibility of the implementation.
a) Procedure for Implementation

An Administrative Cell was to be set up by the implementing organisation under an officer. The officer shall be in the rank of at least the Deputy Director who has to implement, monitor and evaluate the programme. The officer should possess special qualifications to work in this field. In absence of such qualifications, he would be trained by the National Council of Educational Research and Training (NCERT) or other designated organizations. This Cell has to also identify the areas and the institutions for implementing the scheme.

The Administrative Cell of the State Education Department consist of a Deputy Director, a Coordinator (Psychologist), Special Educator, Stenographer and Lower Division Clerk.

According to the program, the administrative machinery would process action for the assessment of the children with disabilities in all the blocks where the initial identification survey has been conducted. In those blocks where other agencies have already conducted the surveys, the information so collected will be utilized with any needed augmentation.

b) Responsibilities of the Administrative Cell

The Cell has to identify the blocks/districts for all the children with disabilities, where the scheme is yet to be implemented and select and provide orientation

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161 Available at http://www.rehabcouncil.nic.in/projects/iecd-Introduction.htm visited on April 28th 2010

162 Id
to all school teachers in the area for preparing them to conduct surveys and identifying the children with disabilities in the area and in the mainstream schools. It has to supplement these efforts by arranging for publicity through mass media, arrange equipments, learning materials and staff needed in the education of the children with disabilities. The scheme has to be monitored and evaluated at the State level and it has to be ensured that information regarding the scheme is widely known.

The scheme was launched with many expectations. However, it did not yield the desired results. After studying the shortcomings, the Government revised the scheme and re-launched it in the year 1992.

**iii. Integrated Education for Disabled Children (IEDC), 1992**

Under the revised scheme, 100 percent assistance was assured to the schools involved in the "integration" of students with disabilities. Various non-government organizations are now fully funded to implement the program.

According to the most recent estimates, the IEDC is being implemented in 26 States and Union Territories, serving more than 53,000 students enrolled in 14,905 schools\(^ {163} \). In this regard, Kerala has shown remarkable success. The IEDC program has been implemented in 4,487 schools in this State with 12,961 children being served\(^ {164} \).

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\(^{164}\) *Id*
Objective: This centrally sponsored scheme\textsuperscript{165} of Integrated Education for the Disabled Children (IEDC) was implemented\textsuperscript{166} with specific objective of providing educational opportunities for the disabled children in common schools; facilitating their retention in the school system and the integration of special schools children in common schools.

It is one of the most comprehensive schemes provided by the State. It is designed to provide educational facilities for children with disabilities that can be integrated in general schools.

The scope of the scheme includes pre-school training for the disabled children and counseling for the parents and special training for the hearing handicapped children; mobility and orientation training for the visually handicapped; daily living and communication skills training required by children with other disabilities; parent counseling and training in home management of these children. It is extended up to senior secondary school level and includes vocational courses equivalent to the senior secondary stage. One important challenge is to avoid double benefits, which a person can draw under different schemes. Therefore, the scheme explicitly mentions that a disabled child in receipt of any scholarship/assistance under some other scheme relating to

\textsuperscript{165} In this centrally sponsored scheme, the Central Government will assist the States/Union Territories in implementation by providing assistance for all the items covered. The scheme will be on 100 per cent basis, but assistance for the programme would be conditional on provision of professionally qualified staff.

\textsuperscript{166} The implementation shall be done through the State Governments/UT Administrations/Autonomous Organizations of stature having experience in the field of education and/or rehabilitation of the disabled. As the scheme has to be implemented in schools, the Education Department is roped in as the implementing agency. The State Governments can also take assistance of voluntary organizations for this purpose as may be feasible.
disability from State/Central Government will not be eligible for any of the benefits under this scheme unless he/she is willing to forego the other sources of assistance\(^{167}\).

**Facilities for Disabled Children under the Scheme:** The scheme has made a rule as far as possible to provide facilities in kind only. It includes actual expenses on books and stationary up to Rs. 400 per annum; actual expenses on uniform up to Rs. 200 per annum; transport allowance up to Rs. 50 per month. However, the same is not payable to hostel inmates. It also includes reader allowance of Rs. 50 per month in case of blind children after Class V; escort allowance for severely handicapped with lower extremity disability at the rate of Rs. 75 per month; the actual cost of equipment subject to a maximum of Rs. 2000 per student for a period of five years and in the case of severely orthopedically handicapped children, it may be necessary to allow one attendant for 10 children in a school. The attendant may be given the standard scale of pay prescribed for Class IV employees in the State/UT concerned.

Disabled children residing in school hostels within the same institution where they are studying may also be paid boarding and lodging charges as admissible under the State Government rules/schemes. In absence of such scheme, the disabled children whose parental income does not exceed Rs. 5,000 per month may be paid actual boarding and lodging charges subject to a maximum of Rs. 200 per month. Severely orthopedically handicapped children residing in

\(^{167}\) See, 'Scope' under the Scheme of Integrated Education for the Disabled Children 1992
school hostels may need the assistance of a helper or an ayah. A special pay of Rs. 50 per month is admissible to any employee of the hostel willing to extend such help to children in addition to his/her duties\textsuperscript{168}.

*Training of Special Teachers*: In addition to the direct benefits to the children with disability, the scheme also concentrates on the training of special teachers. The Regional Colleges of Education (RCEs) and Regional Training Centers are being run by the National Institute for the Handicapped. In addition Special Education Departments in the Universities and selected Colleges are given training in special Education. The State Government may send required number of teachers under each category of disability to the Regional Colleges of Education/District Institutions of Education and Training (DIETs), National Institutes for the Handicapped and the University Grants Commission under intimation to the NCERT. Since the appointment of fully trained, full-time resource teachers is an essential input for the successful implementation of the Scheme, the State-Government/UT Administration must ensure appointment of such teachers on priority basis\textsuperscript{169}.

This comprehensive scheme also provided for involvement of Non-Governmental Organizations for its implementation. It also required the institutions to provide barrier free access etc.

*iv. National Educational Policy, 1986*

\textsuperscript{168} *Id.*, See 'Facilities for Disabled'

\textsuperscript{169} *Id.*, See 'Training of Special Teachers'
After independence, the Constitution and Government of India gave importance to education. However, the attempts were not uni-directional as they lacked a formal government policy. The initial failure of realizing the dream of education for all can be attributed to the failure to have educational policy. This drawback was rectified in the year 1986 by announcing National Educational Policy.

The policy clearly mentions its objectives and tasks in a separate Chapter, ‘The essence and role of education’\textsuperscript{170}. The essence is that education is essentially for all\textsuperscript{171}. This essence is very important for the disadvantaged communities. The need for education for all has also been explained, because education is fundamental to our overall development, material and spiritual\textsuperscript{172}.

The basic changes which the education under the Indian system must embrace, were listed to include sensitivities and perceptions to improve cohesion, development of scientific temper, independence of mind and spirit which helps in building socialism, secularism and democracy. Education is a unique investment to develop manpower for different levels of the economy in the future\textsuperscript{173}.

The policy has dedicated a special Chapter for the disadvantaged groups. It lays special emphasis on the removal of disparities and equalizing educational

\textsuperscript{170} National Educational Policy, 1992, Part II ‘The Essence and Role of Education’

\textsuperscript{171} Id

\textsuperscript{172} National Educational Policy, 1986, Part II, ‘The Essence and Role of Education’ point 2.1

\textsuperscript{173} Id, point 2.4
opportunity by attending to the specific needs of those who have been denied equality so far\textsuperscript{174}.

The main objective of the Chapter is to achieve equality by providing equal opportunity for education. It recognized many communities which need special mention and special efforts to provide education to them. It includes women, Schedule castes, Schedule tribes and other educationally backward sections and areas. This last general terminology includes minorities\textsuperscript{175} and handicapped\textsuperscript{176}.

This Chapter has stated special objectives along with Chapter II which provides for the essence and role of education. The special objectives however should not overrule the general objectives of the policy. So these special objectives are in addition to the general objectives and not a substitute for them. Therefore the education provided to the children with disability cannot be devoid of the general objectives.

The objective of education for handicapped is to integrate them with the general community as equal partners, prepare them for normal growth, and enable them to face life with courage and confidence.

\textit{Measures to be undertaken}: Whenever it is feasible, the education of children with motor handicaps and other mild handicaps will be common with that of others.

\textsuperscript{174} \textit{Id}, Part IV Education for Equality.

\textsuperscript{175} The word 'Minority' has many connotations. It includes linguistic, religious groups, etc. As the Subtopic refers to the Constitutional provisions, it can be concluded that the word 'minority' has the same meaning as in the Constitution of India.

\textsuperscript{176} Presently the word 'handicapped' is not used extensively, and different names have been suggested. But the Policy makes use of this objectionable nomenclature, which needs to be amended.
1. Special schools with hostels will be provided as far as possible at district headquarters for the severely handicapped children.

2. Adequate arrangements will be made to give vocational training to the disabled.

3. Teachers training programmes will be reoriented in particular for teachers of primary classes, to deal with the special difficulties of the handicapped children and

4. Voluntary efforts for the education of the disabled will be encouraged in every possible manner.

The Education Policy of 1986 had a fresh look at the education system and proposed for the reorganization. Here the special emphasis was laid on the development of young child. Considering the holistic development of the child, the Policy has developed Early Childhood Care and Education Policy (ECCE). This stage addresses the needs of children going for pre-primary education, which mainly deals with nutrition, health and social, mental, physical, moral and emotional development of the child.

**Elementary Education Stage:** There is a special thrust on 'universal access and environment', 'universal retention' up to 14 years of age and substantial improvement in the quality of education. These thrust areas can be

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177 *Supra Note* 173. Part V, Reorganization of Education at Different Stages.

178 The new thrust areas were not part of the original Education Policy of 1986. This was inserted in the year 1992, when the Policy was reviewed and revised by the High-powered Committee. It can be interpreted in the light of special objectives of education for handicapped and it can be held that, universal access and universal retention includes access and retention of children with disability. It
interpreted as the special provision framed to include the children with disability. However, sadly the universal approach for these thrust areas was missing from the rest of the Chapter\textsuperscript{179}. The ‘resolve’ declared by the policy also fails to make a mention of the needs of the education of children with disability.

Secondary Education Stage: It provides a gloomier picture for children with disability. The policy makes a mention of importance of education in the streams of science, arts and vocational training. It makes a reference to make efforts for inclusive education of girls, SCs and STs\textsuperscript{180}. But same consideration has not been extended to the children with disability.

The major step towards achieving the dream of universal education was preparation of the education policy. Though it has not totally ignored the children with disability, it has definitely not considered them seriously. Only one paragraph has been dedicated for the children with disability and their mention is conspicuously absent in the rest of the document. Policy should have been subjected to subsequent changes based on The Persons with Disabilities (Equal Opportunities, Protection Of Rights and Full Participation) Act, 1995. This lip service by the State will not address the needs of the children with disability.

\textsuperscript{179} See, ‘School Facilities’ under the same Chapter. It was inserted through revision in 1992.

\textsuperscript{180} See, ‘Secondary Education’, para 5.13 at p15
v. **Sarva Shiksha Abhiyan (SSA)**

Sarva Shiksha Abhiyan was one of the later attempts by the State to provide universal elementary education by community ownership of the school system. The framework is an holistic attempt to universalize the primary education. This approach attempts to rope in all the existing institutions and channalize the energy towards the above objective. The institutions include Panchayati Raj Institutions, School Management Committees, Village and Urban Slum Level Education Committees, Parents' Teachers' Associations, Mother Teacher Associations, Tribal Autonomous Councils and other grass root level structures in the management of elementary schools.

**Objectives:** The main aim of the Sarva Shiksha Abhiyan is to provide useful and relevant elementary education for all the children in the 6 to 14 age group, by 2010. The other subsidiary aims include the bridging of social, regional and gender gaps with active participation of the community and the management of schools.

This framework has adopted major schemes to achieve the objective of universal education, which includes institutional reforms and sustainable financing. This has ensured the continuity of the scheme. SSA has concentrated

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181 It is the flagship program introduced in the year 2002 by the NDA Government.
182 See, point 1.0 of Sarva Shiksha Abhiyan framework, available at [http://ssa.nic.in/ssa-framework](http://ssa.nic.in/ssa-framework) visited on 19.10.2010
183 *Id*
184 *Id*, point 1.2
185 *Id*
on Institutional Capacity Building through capacity building of NIEPA (National Institute of Educational Planning and Administration), NCERT (National Council of Educational Research and Training), NCTE (National Council for Teacher Education), SCERT (State Council of Education Research and Training), SIEMAT (State Institutes of Education Management and Training), DIET (District Institute of Education Training).

Community ownership and community based monitoring with full transparency and accountability to community was other thrust area. The realization of dream of universal education depends on the community sensitization and cooperation. This attempt is specifically made to include one of the major stakeholders in the education. These thrust areas will address the much needed improvement in the mainstream educational administration.

*Priorities in the Scheme:* The SSA framework became more specific with special mention of the need of priority to education of girls with special emphasis on those belonging to the scheduled castes and scheduled tribes and minorities. Further, the focus was on Special Groups, for the inclusion of urban deprived children, disadvantaged groups and the children with special needs in the educational process.

The SSA framework is in addition to the existing plans and schemes of the State. The incentive schemes like distribution of scholarships and uniforms continue to be funded under the State Plan. SSA would not take over the expenses but it would be funding many aspects of universal education.
The framework has also laid special emphasis on the education of the needy groups\textsuperscript{186}. It speaks of the interventions for the children with special needs. However, the framework provides a multiple intervention in the form of need to provide education to the children with special needs and early intervention to avoid any form of disability.

*Zero Rejection:* SSA has adopted ‘zero rejection’ policy irrespective of the kind of disability. This will ensure that no child is left out of the education system. The main approach of the SSA is to provide integrated and inclusive education to all children with special needs in general schools. Further the policy of integration and inclusiveness extends to education through open learning system and open schools, non formal and alternative schooling, distance education and learning, special schools, wherever necessary, home based education, itinerant teacher model, remedial teaching, part time classes, Community Based Rehabilitation (CBR) and vocational education and cooperative programmes\textsuperscript{187}.

The SSA has a concerted drive to detect children with special needs at an early age in collaboration with PHCs (Primary Health Centers), ICDS (Integrated Child Development Services), ECCE (Early Childhood Care and Education) Centers. The Centre also has to carry out functional and formal assessment of each identified child and recommend the most appropriate placement for every

\textsuperscript{186} Read the Sarva Shiksha Abhiyan, para 5, ‘Coverage of Special Focus Groups’. This special coverage emphasized on the need of education for girl children, children belonging to SC/ST groups and also the children with special needs. It provides a complete approach to the needs of the special group children, and to avoid repetition, the SSA has also made reference to the early policies, frameworks and schemes.

\textsuperscript{187} Id, at 5.2 ‘Interventions for Children with Special Needs’
child with special needs. Inspite of such an assessment, as far as possible every child with special needs should be placed in regular schools with needed support services.

Under the framework, the supportive devices for the children with special needs should be provided through convergence with the Ministry of Social Justice and Empowerment, State Welfare Departments, National Institutions or NGOs. In addition, support services should also be provided. Further, the SSA encourages research for designing and developing new assistive devices, teaching aids, special teaching material and other items necessary to give a child with disability, equal opportunities in education.

Training for Effective Implementation: This inclusive education will be meaningful only if the teachers involved are trained and sensitized. This training should be recurrent at block/cluster levels and integrated with the ongoing in-service teacher training schedules in SSA. In addition, the SSA has laid down various precautionary conditions to make the inclusive education successful.

188 Id, see ‘Early Detection and Identification’
189 Id, see, ‘Educational Placement’
190 Id, see, ‘Aids and Appliances’
191 Support services like physical access, resource rooms at cluster level, special equipment, reading material, special educational techniques, remedial teaching, curricular adaptation or adapted teaching strategies could be provided.
192 The SSA lays down a need for proper teacher training. It makes all training modules at SCERT (State Council of Educational Research and Training), DIET (District Institute of Education Training) and BRC (Block Resource Center) level and states that it should include a suitable component on education of children with special needs.
193 For example, SSA provides for ‘Resource support’ which could be given by teachers working in special schools. Where necessary, specially trained resource teachers should be appointed.
The SSA has also addressed the needs of parental training and community mobilization. Parents of children with disabilities should receive counseling and training and strong advocacy, and the awareness programmes should form a part of the strategy to educate every child with special needs. It contemplates a component on disability to be included in all the modules for parents, VEC and the community.

*Disabled Friendly Environment*: Further, the framework requires the removal of architectural barriers in schools for easy access. Efforts need to be taken to provide disable-friendly facilities in schools and educational institutions. Development of innovative designs for schools to provide an enabling environment for children with special needs should also be a part of the programme. Further the framework makes special reference for the special emphasis on education of girls with disabilities.

The framework mentions the need for the convergence of all the existing and future polices and schemes. Therefore, it mentions that all activities, interventions and approaches in the area of education for children with special needs will be implemented in convergence with existing scheme like Assistance to Disabled Persons for purchase/fittings of Aids/Appliances particularly for teaching special skills to children with special needs. Wherever this option is not feasible, long term training of regular teachers should be undertaken. The resource support will be used for strengthening of special schools. Wherever necessary, special schools may be strengthened to obtain their resource support, in convergence with departments and agencies working in that area. In addition the teachers are required to prepare Individualized Educational Plan (IEP). It has to be prepared by the teacher for every child with special needs, in consultation with parents and experts. Its implementation should be monitored from time to time. The programme should test the effectiveness of various strategies and models by measuring the learning achievement of children with special needs periodically, after developing indicators.

(ADIP), Integrated Education of the Disabled Children (IEDC) and in coordination with the Ministry of Social Justice and Empowerment, State Department of Welfare, National Institutions and NGOs.

Expenditure up to Rs. 1200 per disabled child could be incurred in a financial year to meet the special learning needs of such children. The ceiling on expenditure per disabled child will apply at the district level.

The government launched the Sarva Shiksha Abhiyan (SSA) program to achieve universal primary education by 2007, but the results were mixed. The attempt of the Central Government has failed due to various reasons. One of the main reasons being the poor school infrastructure. Only 42 percent of schools had common toilets, and not all schools had drinking water facilities. Boys outnumbered girls in enrollment, with the poorer BIMARU\textsuperscript{195} States showing the lowest enrollment for girls. There were low Scheduled Caste (20.84 percent) and Scheduled Tribe (9.71 percent) enrollments in government-run schools. Surveys by the National Institute for Education Planning and Administration (NIEPA) show that about 42 percent of children drop out of school before reaching Grade V. The average pupil–teacher ratio was 39 to 1. Almost forty-four thousand schools were getting services of part-time teachers rather than regular appointees\textsuperscript{196}.

\textsuperscript{195}BIMARU means Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh. The significance of the name is in its Hindi meaning which is “sick states”.

vi. Midday Meals Scheme\textsuperscript{197}

The Midday Meals Scheme has been wholly devised to provide nutritional support to the school-going child. The scheme has two objectives of providing nutritious food, at least once in a day and also to create an atmosphere which arrests the drop out rate. The nutritional value has been kept up to minimum of 300 calories. The scheme has been implemented without exceptions. It is provided to all the government and private schools. This scheme is imparted as a part of Sarva Shiksha Abhiyan. However, it was first implemented under the directions from the Supreme Court of India\textsuperscript{198}.

The scheme does not make any special reference to the child with disability. Such an absence of mention becomes irrelevant as the scheme is universally applicable and there is no mention of any special groups including girl child, SC/ST or other backward classes.

The working of the scheme seems to be successful in most parts of the country. However, there is a scope for improvement. There are few success stories which can be emulated in the rest of India\textsuperscript{199} and some failures which need to

\textsuperscript{197} It was launched as a part of National Programme of Nutritional Support to Primary Education, 2004. The scheme got various names in different States, like 'Fresh Meals Scheme' in Karnataka, or 'Mid Day Meal Scheme' at National level.

\textsuperscript{198} People's Union for Civil Liberties v. Union of India W P (Civil) No 196 of 2001

\textsuperscript{199} The success story is of private-public partnership and social business (term used successfully by Grameen Bank of Bangladesh, founded and managed by Prof. Dr. Mohammud Yunis, Nobel Laureate for Economics, 2004). Dharwad taluk in Karnataka, is an example of such partnership. ISKON, a religious organization has taken up Midday Meal Scheme on behalf of state and it has been implemented successfully.
be avoided\textsuperscript{200} to avoid the fear of compromising with this scheme owing to cultural or traditional blindfold.

\textit{vii. National Knowledge Commission}\textsuperscript{201}

The National Knowledge Commission was a high level advisory body to the Prime Minister established under the Chairmanship of Mr. Sam Pitroda\textsuperscript{202}. It has made special observations on various fronts.

One such important recommendation is that school education must be provided to all through the concept of universal schooling\textsuperscript{203}. This necessarily also requires that children of the disadvantaged, landless and minority communities must also be integrated along with children with disabilities or special needs. There should be no distinction made in terms of the type of schooling provided within the government system for children from different social, economic and

\textsuperscript{200} The failures include, overburdening of the teacher in doing this additional job and supervising it. The complaints as to unhygienic conditions of cooking are also heard frequently. Barring these few untoward incidents the schemes has achieved the object successfully.

\textsuperscript{201} Knowledge Commission was established on 13\textsuperscript{th} June, 2005. It is a high level advisory body to the Prime Minister of India. The National Knowledge Commission has been given a mandate to guide policy and direct reforms, focusing on certain key areas such as education, science and technology, agriculture, industry, e-governance, etc. Easy access to knowledge, creation and preservation of knowledge systems, dissemination of knowledge and better knowledge services are the core concerns of the Commission.

\textsuperscript{202} The terms of Reference of National Knowledge Commission also reflect its overarching aim to

- Build excellence in the educational system to meet the knowledge challenges of the 21st century and increase India’s competitive advantage in the fields of knowledge.
- Promote creation of knowledge in Science & Technology laboratories.
- Improve the management of institutions engaged in Intellectual Property Rights.
- Promote knowledge applications in Agriculture and Industry.
- Promote the use of knowledge capabilities in making government an effective,

In order to transform India into a vibrant

\textsuperscript{203} See, “Towards a Knowledge Society; Three Years of the National Knowledge Commission”, by National Knowledge Commission, Chanakyapuri, New Delhi, at 19
cultural backgrounds. With regard to the school education NKC agreed to make a broader set of recommendations.

Access to Education\textsuperscript{204}: National Knowledge Commission has given special consideration to the access to education for all. The Commission has made a series of recommendations for the vulnerable groups, including access to education by children from backward regions, remote locations and difficult terrains, girl students, Muslim children, children from Schedule Tribe and Scheduled Caste, child victims of migration, children of labour and finally it has also addressed the needs of the physically disadvantaged children.

Higher Education\textsuperscript{205}: The Commission has addressed the need for inclusive higher education. It advocated social inclusion through the creation of more opportunities. It suggested for ‘Need-Blind Admissions’ policy. This would make it unlawful for educational institutions to take into account any financial factor while deciding about the admission of the students.

This policy basically addresses the need of the economically backward students but it can be extended to fulfill the needs of the children with disabilities. However, the plain reading of the recommendations shows the lack of concern of the National Knowledge Commission regarding the needs of the children with disability.

\textsuperscript{204} \textit{Id, at 42}
\textsuperscript{205} \textit{Id, at 59}
Eleventh Five-Year Plan

The eleventh five-year plan was passed with the main objective of providing universal education. The recommendations were for the upliftment of the SC/ST/Minorities/Girls and other disadvantages groups. The recommendations were divided into different categories.

**Recommendations covering all sectors:** The policy of the State is to provide universal education, however at the same time education policy has to be sensitive towards cultural and linguistic diversity of the Indian society. One of the important recommendations was to provide increased access to all the institutions irrespective of whether they are minority institutions or non-minority. All minority institutions were required to provide for reservations for SCs, STs and OBCs.

State had passed many policies and schemes for the benefit of the needy groups. However, the information has not reached the public at large. Therefore, the Committee has recommended for the establishment of 'Equal Opportunity Cell'. This Cell would be responsible for publicity through brochures and pamphlets and also to educate people in the target group. Along with this each University has to establish special cell for SC/ST/OBC/Disadvantaged groups.

**Recommendations for Disabled Children:** To meet the needs of the children with disability, there is a need to develop the concept of inclusive education which should become the idea of every school located in the villages taking
care of SC/ST/OBC/Handicapped. Further, there is need for expansion of the Integrated Education for Disabled Children (IEDC) Scheme to cover other sectors or to have separate schemes for other sectors. As per the IEDC scheme, Rs.3000/- per child per annum has been allotted. This sum appears to be too less, and therefore the Committee has recommended for the enhancement.

One of the major problems with education of the disabled child is the nature of disability. Each kind of disability has different needs. The major task focused on by the five year plan is to define the disabilities and grade them. The approach towards universal education should be twofold. Firstly, the neighborhood schools should be made disabled friendly, and a policy of Inclusive System of Education should be imbibed. Secondly, a comprehensive scheme of establishing hostels at district level for the mentally retarded children studying at secondary level should be conceived and implemented. Further, every University should have a Disability Coordinator to look into the facilities provided, complaints etc. so that the institutional bias and discrimination are eliminated.

Further, this inclusive policy will be fruitful only if the teachers and teacher trainers are given special training especially in managing the children with disabilities. These teachers and teacher trainers should develop a better relationship with community, NGO and Government. To achieve this objective there is a need for National Council for Teacher Education (NCTE) to actively involve in the finalization of a revised curriculum framework for teacher training, which will concentrate on training children with disability.
The plan envisages that disabled friendly facilities should be provided in all educational institutions within a period of 3-5 years. It also states that there should be substantial increases in the funds allocation to make the infrastructure in Universities and other institutes disabled friendly. It requires the UGC to start a Disability Cell which should be extended to all the Universities. There should be an anti-discriminatory authority/Ombudsman, and institutionalized system for checks and balances and corrections required in the system.

These were the major recommendations made by the Committee for the Eleventh Five Year Plan. When the final draft for the plan was ready the recommendations were made part of the plan and the pledge was taken for the implementation of the same.

4.4. Judicial Response to the Rights of Disabled Persons

India boasts of being the most powerful judiciary in the world. By no means is it a small achievement in comparison with the other developed or developing countries. This powerful judiciary has always duly considered the need for the implementation of socio-economic rights.

4.4.1. Ensuring the Constitutional Rights to Disabled

In the initial decades after independence in 1947, the Supreme Court endorsed the distinction between Fundamental Rights and Directive Principles due to the
economic incapacity of the State\textsuperscript{206}. By the 1970s, the Court (nudged by the executive) shifted toward the view that one of the basic features of the Constitution was harmony and balance between the directive principles and fundamental rights\textsuperscript{207}. The judges began incorporating various rights like the right to health, food, education, shelter and so forth, into the fundamental rights to Equality (Article 14) and Life and Liberty (Article 21).

In the later part the Court has been consistent in holding that the right to education, employment and health is a fundamental right and that the Government cannot have any excuses in discharging their obligation in respect to the same.

In 1992, a minority opinion of Justice K. Ramaswamy in a three judge panel (which included the Chief Justice) argued: “The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers’ best, physically as well as mentally, in productivity... In the light of Articles 22 to 25 of the Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights and in the

\textsuperscript{206} Rao, Justice K. Subba. 1970. “Human Rights” SCC (Jour) 1(56); State of Madras v. Champakam Dorairajan, 1951

\textsuperscript{207} Minerva Mills v. Union of India, 6 SCC 325 (1980)
light of socio-economic justice assured in our Constitution, right to health is a fundamental human right to workmen\textsuperscript{208}.

Important component of right to health is right to food. While dealing with rotting food grains coupled with starvation deaths. Court directed the government to make food available to aged, infirm, disabled etc. and to implement Antyodaya Anna Yozana (AAY)\textsuperscript{209}

With the help of the concept of right to life with dignity, the judges expanded the ambit of health to include physical, social, and mental well-being and aimed at the policy goals of a healthy environment, nutrition, and socio-economic justice. Due to expansion of the base of the right to life, the success rate of the individual over the State in terms of winning litigations has increased. This provided a clear upper hand to human rights against the meek cover of economic incapacity. This statement can be substantiated by the fact that the members of the public have won the litigation 73 percent of the time\textsuperscript{210}.

The role of the judiciary has extended to whipping the government to protect the general human rights of the citizens. The Judiciary also directed the government to comply with the existing rules on medicines, to follow its guidelines on the manufacture and procurement of oral polio vaccine, to follow new rules issued by the government in line with WHO guidelines, and to pass legislation mandating severe punishment to those involved in the manufacture

\textsuperscript{208} CESC v. Subhash Chandra Bose and Others (AIR 1992 SC 573)

\textsuperscript{209} People’s Union for Civil Liberties v. Union of India W P (Civil) No 196 of 2001

\textsuperscript{210} Supra note 197
of spurious drugs\textsuperscript{211}. A few cases deal with poor access to medicines by the vulnerable groups. Only three High Court cases dealt with drug policies, of which only one dealt with the culpability of the chemist in selling spurious drugs. One reason for the low caseload on access to medicines could be that generic medicines in India are relatively inexpensive. However, with the International instrument in the form of Trade Related Aspects of Intellectual Property Rights (TRIPS) adopted by India in 2005, we may see an increase in litigation on access to medicines in the next decade\textsuperscript{212}.

From access to medicines the Court also dealt with cases of access to hospitals and medical treatment. The Court issued guidelines to hospitals on providing medical facilities to accident victims, banned strikes by doctors in tertiary referral hospitals because it would infringe the right to medical treatment, and quashed a notification appointing doctors on contract saying that the right to life demanded proper treatment, which could be ensured only through fair selection and regularized appointments\textsuperscript{213}.

The Court also made impact in the areas of improving general health of the Indians. This influence made the State to adopt new policies on health-related issues such as a ban on smoking in public places in Kerala, a switch to clean

\textsuperscript{211} \textit{Id,} See PUCL v. Union of India and Others (Del HC, PIL, 1996–2003)

\textsuperscript{212} \textit{Ibid}

\textsuperscript{213} Chander Prakash v. Ministry of Health, Nirman Bhavan. AIR 2002 Delhi 188; Court on Its Own Motion v. All India Institute of Medical Sciences (Del HC, 2001–2); Junior Doctor Association v. State of Jharkhand and Others (Jhar HC, 2003–4)
fuels in Delhi and Mumbai, and oversight of the pesticide content in soft drinks such as Pepsi and Coke\textsuperscript{214}.

4.4.2. Judicial Interpretation of Disability Legislations

The Judiciary has interpreted the various legislations on disability in the light of protection of the rights of disabled. The right in question in the present research is the Right to Education and the Right to Employment.

\textit{i. Right to Education of Disabled}

Section 26 of the PWD Act makes provision for the free education of the children with disability. A rule framed by the Delhi Government provided free education to blind child whose family has low income. This free education was to be provided up to 10\textsuperscript{th} standard. The rules came to be questioned by the Delhi High Court\textsuperscript{215}. The Court held that the rules are against S. 26 of PWD Act on three counts. First, the section provides for free education up to 18 years, and under ordinary circumstances, the child will be studying in 12\textsuperscript{th} standard. Second, the income of the parents is not a criterion for a child with disability. Therefore this additional criteria laid by the State is unwarranted. Third, restricting the benefits only to the residents of Delhi is wrong as this scheme is funded by the Central Government.

\textsuperscript{214} K. Ramakrishnan and Another v. State of Kerala and Others AIR 1999 Ker 385; Smoke Affected Residents Forum v. Municipal Corporation of Greater Mumbai and Others Writ Petition No. 1762 of 1999 dd. 10-04-2002, Karnataka Lorry Malikara Okkuta (R), by its General Secretary and Others v. The State of Karnataka, by its Chief Secretary and Others (Kar HC); M. C.Mehta v. Union of India and Others (SC, Writ Petition (C) No. 13029 of 1985); Santhosh Mittal v. State of Rajasthan and Others Civil Writ Petition No 3105/2003

\textsuperscript{215} National Federation of the Blind v. Government of NCT of Delhi and Others C W P 6456 of 2002, High Court of Delhi
In another case\textsuperscript{216}, S. 27 of the Act came for consideration. S. 27 provides for making schemes for the benefits of the persons with disability. In the present case, a person suffering from cerebral palsy was attempting the exam for Charted Accountant. Request for grant of extra time was made as the disorder affects the normal functioning of bones, muscles and joints. The authority agreed for one hour extra time. When the same request was made to the Bombay University, it had approved and extra three hours were provided, while writing B.Com exams. The Court held that the authority being State, under sec. 27 it is the duty of the State to make schemes for the benefit of the persons with disability and direct them to provide extra time of three hours.

Chapter V provides for all the facilities except reservation for the persons with disabilities. Two sections under Chapter VI (which deals with employment) provides for reservation. S. 33 states that 3\% of posts should be reserved for persons with disability, and S. 39 states that 3\% seats in educational institution should be reserved for persons with disability. While interpreting the same, the Court\textsuperscript{217} held that the language of S. 39 indicates that it refers to reservation for admissions to educational institutions and not for employment in educational institution. Further the Court held that reservation for employment is already dealt under S. 33; therefore, even though the section falls under the Chapter relating to employment, it speaks of right to education.

\textsuperscript{216} Dhawal S. Chotai v. Union of India AIR 2003 Bom 316
\textsuperscript{217} All Kerala Parents Association of the Hearing Impaired v. State of Kerala C.A No 6120 of 2001; Supreme Court of India. Deputy Secretary, Department of Health v. Soachita Biswas, C A No 4604 of 2000, Supreme Court of India.
In yet another case\textsuperscript{218}, a question relating to reservation in Medical College arose due to an order issued by Medical Council of India. The Council stated that, only person with loco motor disability and of only lower limbs is eligible for reservation for medical education. Court rejected the contention and held that the law does not make any such distinction between disabilities. Therefore, rules relating to granting of disability certificate cannot be changed and any person holding that certificate cannot be denied admission while seats were available. Court also held that the reservation for persons with disability qualifies under 'horizontal reservation', as a result it does not violate 50% bar on reservation. If a person having disability belongs to the general category, his reservation is adjusted from the seats available under the general category. If a person having disability belongs to SC/ST, then his seat will be adjusted from the seats available in the reserved category\textsuperscript{219}.

Further, there was an important question raised before the Court under different petitions. They were; whether S. 39 is mandatory or merely directory? The Court held that the bare reading of the section itself does not leave any ambiguity as to the nature of the section. S. 39 is a mandatory provision.\textsuperscript{220} In the same line, State of Tamil Nadu agreed to give reservation of three seats instead of 3% of seats. The State contended that reservation cannot cross 50%, and the State has already provided for 69% of reservation. Therefore sec. 39

\textsuperscript{218} Dr Raman Khanna and Others v. University Delhi and Others C W No 2670 of 2003 with C W No 4345of 2003, reported in 106 (2003) DLT 97

\textsuperscript{219} Indra Swhaney v. Union of India, 1992 Supp (3) SCC 217, reiterated in id

\textsuperscript{220} Javed Abidi v. Union of India (1999) 1 SCC 467
cannot be implemented. The Court held that the reservation under PWD Act is horizontal reservation and not vertical. By providing additional reservation of 3%, the 50% mark will not be breached. Unlike right to employment, the case laws on right to education are limited and mostly they are general in nature rather than individualistic. However, the relevant issues raised before the judiciary, have been dealt with efficiently. The spirit of the Act has been implemented successfully.

**ii. Right to Employment**

In comparison with the right to education, the cases filed under the right to employment under the PWD Act, are numerous. Therefore the law relating to right to employment is much developed as compared to the case law on right to education.

The litigations on right to employment date back beyond the passing of PWD Act. As a result this could create a mass of case law to impact the framing of the PWD Act on the judicial mind. Before the passing of the Act, the judiciary had given a compassionate hearing to the rights of the disabled. However, the right to employment was always weighed against different tests like suitability, disability interfering with discharge of duty, etc.

When reservation in civil service was demanded, the Court agreed to recognize the reservation of 2% but with a rider that it should not interfere with the functioning of the State. The Court went on to make a statement that the State

221 Educational Department and Others v. Master J. Rajkumar W A No 595 of 2003
is large enough to accommodate the persons with disability in suitable posts. This gives an indication that the Court had a serious doubt regarding the capability of the persons with disability, but it recognized the right to work with a rider that the State should identify suitable jobs²²².

In *National Federation of Blind v. Union Public Service Commission*²²³, Court came up with a landmark judgment. Final operative part of the judgment dealt with the right of persons with disability relating to right to compete at Civil Service Exams. However, during the judgment the Court came up with sensitive observations, which has laid foundation for future understanding and acceptance as to the ability of the persons with disability. The case was argued by Advocate S. K. Rungta who himself is blind. Looking at his performance, the Court unanimously held that 'visually handicapped persons can perform the jobs entrusted to them with equal efficiency'. This observation made way for implementation of the Committee Report which had identified 420 jobs suitable for persons with disability. Further the Court directed the UPSC to conduct exam in Braille-script also.

In absence of S. 47 of PWD Act²²⁴ in the year 1994, the question of discrimination was raised before the Supreme Court of India²²⁵. An employee's right hand was amputated due to cancer. It rendered him unfit for the job of attendant at the sub-station. The Electricity Department (for which he was

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²²³ (1993) 2 SCC 411
²²⁴ Non discrimination against the employee with disability
²²⁵ Narendra Kumar Chandia v. State of Haryana (1994) 4 SCC 460
working), constituted a Medical Board to decide on his suitability. The Board held that he is not suitable for any job which the department can offer. The Court held that the person could be accommodated as office staff, and that the department should relax the educational qualification for the post of LDC (Lower Division Clerk) and as the payment for the said post is lower than the present salary drawn, his salary is to be protected and arrears should be paid.

The Court has done justice to the claimant in the absence of any guidelines as well as PWD Act. The Courts recognition of right to life with dignity and right to work shows the humanistic approach adopted\textsuperscript{226}.

When a person's candidature for agricultural officer was rejected owing to color blindness, the Court held that color blindness is a kind of disability. If such disability is not causing hindrance in discharge of duty, it should not be considered as ground for refusal\textsuperscript{227}.

After passing of PWD Act a landmark judgment came in the year 1999. The Court made reference to various sections of the Act and held that the PWD Act has actually strengthened the hands of judiciary, which was relying on Art 21 to grant the relief. Before passing of the Act, in most of the cases the Court maintained that the disability leads to demotion or reduction in earning. The important observation made by the Court was that the Commissioner appointed


\textsuperscript{227} Nandkumar Narayanrao Ghodmare v. State of Maharasatra and Others (1995) 6 SCC 720
under PWD Act is empowered to hear the matter of illegal dismissal. The Court further added that the parties have an option to approach either the Commissioner under the Act, or the High Court under Art 226. The existence of alternate remedy is not always a sufficient reason for refusing a party quick relief by filing a Writ or Order\textsuperscript{228}.

The lethargic approach by the State after passing of the Act was reprimanded by the Court. In \textit{Ravi Kumar Arora v. Union of India and another}\textsuperscript{229}, the Court was disappointed by the slow, lethargic and bureaucratic approach to the Act, which actually brought the benefits under the Act to nil. The Court directed that identification of posts suitable for disabled is a mandatory function prescribed under S. 32, and the failure to do so would lead to injustice. So a qualified candidate (i.e. passed in UPSC Exam) who is not provided with the post due to the failure to identify the post as required by S. 32, is entitled to back wages.

Oil and Natural Gas Corporation gives preferential treatment to persons with disability while allotting Petrol-Diesel Retail outlets. A case was filed contending that disability by birth should have preference over disability acquired due to accident. Court rejected the argument and held that such a distinction is not contemplated by the Act\textsuperscript{230}.

When PWD Act was passed, a matter came before the Court, the cause of action for which arose in the year 1994. The petitioner claimed benefits under

\textsuperscript{228} \textit{Baljeet Singh v. D T C} 83 (2000) DLT 286


\textsuperscript{230} \textit{Shaji Kumar v. Bharat Petroleum Corporation}, 2004 (1) KLT 961
S. 47 and asked for reinstatement. The respondent contended that the benefits cannot be granted under the Act as the person had retired from the job in the year 1994 when he had no existing rights. The Court referred to S. 38 which provides for securing social order and promotion of welfare of the people and held that the petitioner is entitled for the benefits under the Act. Further it held that the Act being a social welfare measure and specifically relating to weaker section of the society, it is the duty of the Court to give full effect to it. 231.

Even though the Act was passed, the response of the State was very slow and the duties and work mentioned under Act were not fulfilled. The Court therefore reprimanded the State for the same, and directed them to identify the posts for reservation. The Court also exhibited its sensitivity by addressing persons with disability as ‘physically challenged’ 232.

The State is under the duty to identify the jobs which are suitable for the persons with disability. In another case 233, two persons with disability were appointed as Physical Education Teacher (PET). Later, a show cause notice was sent to them regarding removal from the job, as it was not an identified job. The State felt that the PE cannot be given by the persons with disability and the appointment to the post was a mistake. The Court held that the identification of jobs was not done properly. PE can be given by the persons with orthopedic disability and the Court dismissed the petition.

231 105 (2003) D L T 113
232 Ashok M. Shirmali v. State Bank of India and Others 2001(supp) Bom C.R. 132
Further in another case\textsuperscript{234}, the Court had to decide on conflict between Rule 38 of Central Civil Services Pension Rules, 1972, which provide for disability pension in case a person who acquires a disability during service and sec 47 of PWD Act which states that the person cannot be removed from the job merely because of his disability acquired while in job. He can be shifted to a more suitable job or kept for supernumerary post till an arrangement for suitable job is made, or till he reaches superannuation age, whichever is earlier. The Court applied the principle of \textit{generalia specialibus non derogant} and held that the general rules of CCS Pension Rules cannot overrule the special law, and ordered for reinstatement. On the similar line, Delhi Transport Corporation had formulated a Scheme for the benefit of employees acquiring disability during work. This scheme was formulated under the directions of the Supreme Court\textsuperscript{235}. In the present case, the petitioner accepted the benefits under the scheme and later demanded reinstatement under S. 47 of the PWD Act. The Court held that the payment of compensation under the Scheme will not absolve the defendant from the duty imposed under PWD Act. Therefore, the petitioner is entitled for reinstatement according to S. 47\textsuperscript{236}.

However, in another case\textsuperscript{237} S. 47 was to be interpreted against another social welfare provision adopted by the State of Andhra Pradesh. The provision

\begin{itemize}
\item \textsuperscript{234} Kunal Singh v. Union of India (2003) 4 SCC 524
\item \textsuperscript{235} Anand Bihari and Others v. Rajasthan State Road Transport Corporation and Another AIR 1991 SC 1003
\item \textsuperscript{236} Kunwar Pal Singh v. Delhi Corporation and Others C A No 1864 of 2000; Shri Dharmbir Swaroop v. Delhi Transport Corporation C W P No 5503 of 1999
\item \textsuperscript{237} General Administration Department, Hyderabad v. D. Gopaiah 2001 (6) ALT 553 (F.B)
\end{itemize}
mentioned that, if an employee suffers from 100% disability and adopts voluntary retirement, then the Department will provide alternate employment on compassionate ground to the family member of the person with disability. Similar provisions were passed by different States and the same was questioned. The Court held that such an appointment on compassionate grounds does not satisfy the requirements under Article 16 of Constitution of India. However, the Court gave a contrary view in *Yoginder Pal Singh v. Union of India*\(^\text{238}\) and in *Kunal Singh v. Union of India*\(^\text{239}\) where it held that when S. 47 of PWD Act provides for sufficient protection to the person with disability, adopting other social welfare provisions is not necessary.

By referring to all the above judgments finally the Court held that the law cannot be said to be dormant in such circumstances. It has a wide vision and long arms to enter and extricate injustice and pave the way for social justice\(^\text{240}\). The Court decided in favor of the provision of the State of Andhra Pradesh, declaring them as valid.

The need of affirmative action and acceptance of persons with disability as a normal person was highlighted by the Court in *Life Insurance Corporation of India v. Chief Commissioner for Disabilities and another*\(^\text{241}\). In this case, the appointment of a candidate was cancelled due to medical certificate which showed that the candidate was suffering from progressive disability. The Court

\(^{238}\) AIR 1987 SC 1015

\(^{239}\) 2003 Lab.IC 1133

\(^{240}\) Uppala Venkat v. South Central Railway and Others (2003) III LLJ 1092 AP

\(^{241}\) 2003 (67) DRJ 136
admonished the State (here it is LIC) by stating that disability is not the physical inability but loss of opportunity. Court also quoted Nelson Mandela who had said, ‘all countries today need to apply affirmative action to ensure that the disabled are equal to all of us’. Court ordered the appointment of the petitioner, with costs.

The study of the position of rights of persons with disability has been carried out elaborately. The study reveals that there is increase in sensitization and awareness at Government level. Therefore, there is a gradual increase in the number of legislations. Along with the increase in number, one can see the change in the attitude of the Government towards the rights of persons with disability. During the drafting of the Constitution, the framers felt that the disabled are unemployable and there is a need to provide charity to them. However, now we can witness the change from the charity based approach to right based approach towards empowering persons with disability. The legislatures have now accepted that persons with disability can contribute towards economic strengthening.

However, the present study reveals only half the realization. The law to protect the rights of disabled is in place. But is it being put into practice? As a part of the task there is a need to look into this question. Therefore, the further study is directed towards checking the ground reality and assessing the impact of these legislations on the life of disabled in particular, and the change in the attitude of the society in general.