Chapter 7

Conclusion and Suggestions
CHAPTER 7
CONCLUSIONS AND RECOMMENDATIONS

7.1. Introduction
This chapter integrates all the discussions made in the earlier chapters and provides an overview of the entire study. This is done by proving the appraisal of the whole study and presenting the important and significant findings of the study. In this chapter, findings about the research questions and research problem are summarised. A brief analysis of the Draft Rights of Persons with Disabilities Bill, 2012 (India) were also presented to understand how these issues have been tried to be addressed by the proposed Bill. Afterwards the contribution of this research to the disability rights literature will be presented. It will also be shown as to how this research will be useful for judges, advocates and disability rights Activists. The chapter will end with some recommendations for the further development of Disability Rights Jurisprudence in India.

This thesis is an attempt to present a picture of the Disability Equality Rights Jurisprudence in India. The research study has analysed the judgements orders etc. of the Supreme Court and High Courts, Chief Commissioner for Persons with Disabilities (CCPD) and National Human Rights Commission (NHRC) on the Right to Equality enshrined in the Constitution of India. These judgements etc have not necessarily been pronounced under the Constitution by interpreting Article 14. the purpose of including them in the research is to have an idea as to what extent they have contributed to the development of Indian Disability Rights Jurisprudence. The Constitution is the
Supreme law of the land and every law or any thing having the force of law needs to be tested in the light of the Constitutional Principles.

A number of developments have taken place during the last six decades. The number of binding or non-binding instruments of Human Rights have come into existence at the International as well as National level. Persons with Disabilities and there organisation have come before the courts and Commissions covered in the research for the enforcement of their rights. These bodies have pronounced a large number of judgements orders etc on the rights of persons with disabilities. Therefore it is a high time to study the impact of these judgements, orders etc. on the Equality Rights Jurisprudence vis a vis persons with disabilities.

Researcher has analysed the Right to Equality and Disability Rights Jurisprudence in India. For this purpose, Researcher has formulated questions on education, employment, accessibility and social security. As majority of cases have come on these areas and there are specific provisions in the PWD Act, 1995 on these issues. The researcher has consulted various Law reports, CCPD and NHRC publications and their Annual reports. To collect recent orders of the CCPD, researcher has personally visited the office of the Chief Commissioner for Persons with Disabilities.

7.2. General Findings

As discussed in Chapter 1 and 2 of this thesis, the Disability Rights Jurisprudence evolves around two interrelated principles. These are: Non- Discrimination and Reasonable accommodation. These principles are the central theme of this thesis and the entire analysis is woven around these principles.
Regarding Non-discrimination, researcher has found that the Right to Equality enshrined in the Constitution of India and interpreted by the Supreme Court, High courts and orders of CCPD and NHRC [although not specifically passed under Article 14 of the Constitution] vis a vis Persons with Disabilities has progressed in various dimensions. Although disability is not specifically mentioned as ground of non discrimination in the Constitution, the Courts and Commissions covered in the research have given relief in a number of cases where they found that a person was discriminated on the ground of his/her disability. It is worth mentioning here that most of relief have been given by the CCPD. In interpretation of rights, the CCPD has interpreted the rights in wider terms in comparison to Courts and HHRC and moulded the relief in the interests of Persons with Disabilities.

The Supreme Court of India in *Jai Shankar Prasad Vs State of Bihar*¹ held that blindness per se cannot be treated as a ground of disqualifying a person to hold a constitutional position such as the member of the Public Service commission. Further with regard to the capacity of people with Mental Disability to give valid consent, the Supreme Court held in *Suchita Srivastava v. Chandigarh Administration*² that it depends upon the level of disability. A woman with mild or moderate level of Mental Disability has been held to possess the capacity to decide the matters such as continuation of pregnancy. It was however held in some cases that the capacity to consent of a mentally disabled woman cannot be inferred easily in cases of rape.

In order to harmonise Indian Disability law with the United Nations Convention on the Rights of Persons with Disabilities, 2006 [UNCRPD], the Government of India

¹ 1993 AIR 1906. (discussed in chapter 2)
² JT 2009 (11) SC 409. (discussed in chapter 2 and 6)
appointed a Committee which submitted its report along with a Draft Rights of Persons with Disability Bill in June 2011.

The Draft Rights of Persons with Disabilities Bill, 2012 which was prepared on the basis of this draft, provides for the Full Legal Capacity to Persons with Disabilities. The Bill guarantees Non-Discrimination in matters such as Acquiring, Inheriting and Disposing off Property, Bank Loans, Admissibility of Evidence in courts, Education, Employment, Accessibility of Physical Environment as well as Information, Communication and Services, Social Security etc. The Bill also provides a wider definition of Disability. The Bill introduces the concept of Limited Guardianship in place of Plenary Guardianship. In Limited Guardianship system, decisions are taken jointly by the guardian and the persons with disabilities.

Equality is the main theme of the Convention on the Rights of Persons with Disabilities (UNCRPD, 2006). The rights guaranteed in the Convention are based on the two principles of Disability Rights Jurisprudence which are the main theme of this research i.e. Non-Discrimination and Reasonable Accommodation. Article 1 of the Convention sets out the purpose of the Convention and it provides inter alia that the purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all Human Rights and fundamental freedoms by all Persons with Disabilities, and to promote respect for their inherent dignity.

One of the functions of CCPD is to receive and adjudicate upon the complaints regarding the violations of the rights contained in the PWD Act, 1995. Although it has no powers to implement its orders, it has been the most sought after and effective forum for persons with disabilities. Some of the reasons for this are its informal and inexpensive
procedure, practice of encouraging conciliation, experience of commissioners in
disability matters etc.

As compared to CCPD, the NHRC has more powers with respect to granting relief and
implementing its orders. It can receive complaints on the violation of Human Rights. It
has been very Active in the field of disability and has passed landmark orders and made
recommendations.

Persons with Disabilities are entitled to various rights in areas of education, employment,
access and social security on an equal basis with others. They are entitled the right to
make choices in matters concerning them. Regarding reasonable accommodation, the
Constitution of India envisages not only the formal equality but also the substantial
equality. In other words wherever necessary, special provisions can be made in favour of
those who can enjoy the right to the fullest extent only if such special provisions are
made taking into consideration the special needs of them. The Courts and Commissions
have recognised that persons with disability require some accommodations or
contextualisation to realise the Right to Equality on an equal basis.

The Supreme Court held in *Indira Sawhney v. Union of India*\(^3\) that persons with
disability can be treated as socially and educationally backward sections of the society
under Article 15 (4) and 16 (4) of the constitution. Therefore special provisions by way
of reservation in public employment and education etc can be made in their favour.

The Reasonable Accommodation in the context of Persons with Disabilities means that
the special needs of various types of disabilities should be taken into account in areas

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\(^3\) 1992 Supp (3) SCC. (discussed in chapter 2)
such as Education, Employment Transports and Buildings, Information, Communication and Services, Participation in Elections etc.

There are certain limitations due to which the Disability Equality Rights Jurisprudence has not developed to that extent as is the case with the developed legal systems such as UK and USA. There are number of reasons for this.

In majority of cases, the provisions of the PWD Act, 1995 have been applied. CCPD is a creation of the PWD Act, 1995 it self hence bound by the provision of the Act. Similarly, the cases which are coming before the Courts are also related to the application of the various provisions of the Act. These provisions are not drafted in very wide terms. For example, the definition of disability in the Act follows the medical model, hence it is not wide as the case is with USA and UK. Similarly the provisions relating to the Reasonable Accommodation are drafted in narrow terms. These provisions deal with very few areas such as accessibility of physical environment, provision of scribe, etc.

In a number of cases, the Courts have relied upon the provisions of the Constitution and gave relief to persons with disability even before the passing of the PWD Act, 1995. In recent years, the courts have started relying upon the cases from European Court of Human Rights, UK and USA. The Courts have also started interpreting the PWD Act, 1995 in the light of the UNCRPD, 2006. This is a welcome development.

In recent years, the CCPD also has been very active in giving relief. It has started liberally interpreting the provisions of the PWD Act, 1995. It has started the practice of interpreting these rights in the light of the Constitution of India and UNCRPD, 2006.
Recently the CCPD has issued notices to the government and directed the compliance of the Act in certain cases on non-compliances. The inordinate delay in revising and updating the identified posts, uniform guidelines for writing of exams are such examples. It is the result of one of such notices that the government has come up with the Uniform Guidelines for Writing all types of Exams. Recently, it asked for the reports which the government under Section 64 of the PWD Act, 1995 is bound to table in the Parliament with the action taken report thereof.

As mentioned earlier, the government has come up with the Draft Rights of Persons with Disabilities Bill, 2012. If the Bill is passed by the parliament, it will help in the further development of Disability Rights Jurisprudence in India. The National Commission proposed in the Bill would be in a better position to provide relief as compared to the existing CCPD.

The Researcher found that there is a lack of sensitivity amongst the judges and advocates about the rights of Persons with Disability. In large number of judgements although relief was given, the Courts have been adopting Charitable Approach instead of Rights based Approach while awarding relief in number of cases. Researcher however found that the CCPD is more sensitive about the Rights of Persons with Disabilities and in majority of cases, has adopted the Rights Based Approach.

It is worth mentioning here that in a number of cases, the Courts and CCPD have given relief even to those who do not come under the definition of Disability under the PWD Act, 1995 by applying the Act. These cases include inter alia One Eyed Person, Heart Patient, Colour Blind, Person having Less than 40 Percent Disability, Person having

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4 CCPD Case No. 464/1141/13-14 Dated: 11.04.2013
Medical History who requires regular treatment etc. The study also found that in a zeal to give relief to as many people as possible [which is commendable], in some cases, Courts have wrongly applied the PWD Act, 1995 which has generated new controversies. In such cases, the better course would have been to apply the Non-Discrimination Principle under Article 14 of the Constitution instead of applying the PWD Act, 1995. It is also worth noticing that in cases of some disabilities, such as Autism multiple and Mental Disability the Disability Rights Jurisprudence is yet to develop.

7.3. Specific Findings

Having analysed the general findings on Disability Equality Rights Jurisprudence the findings about the specific Research Questions i.e. the Education, Employment, Accessibility and Social Security are analysed here.

7.3.1. Education

Article 45 of the Constitution of India directs the state to provide free and compulsory education upto 14 years of age. The 93rd Constitutional Amendment has included free and compulsory education in the chapter of Fundamental Rights. The Parliament has passed the Right to Education Act, 2009 giving effect to this right. The Supreme Court in its various judgements such as Unnikrishnan case decided in 1993 have treated the Right to Education as part of Right to Life under Article 21 of the Indian Constitution.

The PWD Act, 1995 provides for the various rights to persons with disabilities. These include free and compulsory education upto 18 years of age, promoting integrated education and setting up special schools, adaptation in curriculum, provision of scholarship and cost of transportation, provision of scribe etc.
The cases which have come before the Courts, CCPD and NHRC are on wide variety of subjects such as right to be admitted in the courses of choice, facility of scribe, use of computer and extra time, reservation of seats, accommodations with respect to questions in exam etc.

In a number of cases the aforesaid judicial and quasi judicial bodies have held that the right to education is available to Persons with Disabilities on an equal basis with others. As far as possible, they should have the right to take admission in the courses of their choice. In *Anka Toppo v. AIIMS*\(^5\) the NHRC permitted a medical student who became blind during his study to appear in exams.

To encourage the education of persons with disabilities, instructions should be issued by the authorities even in those cases where there is no need for reservation or where reservation cannot be made such as distance education courses and scholarships etc. In such cases, the advertisement should clearly mention that Persons with Disabilities can also apply. In educational institution, there should be adequate facilities, accessible campus and teachers trained in special education.

It has been consistently held that the special circumstances of the person in question needs to be taken into account by educational institutions. For example considering the prevailing socio-economic conditions of persons with disabilities, the schools have been directed to admit of overage children. Similarly, the facility of scribe and use of computer has been directed to those who have difficulty in writing. The condition and qualifications of scribe should not be unreasonable such as having less marks than the candidate in the previous grade, having less than 60 percent marks, bar to engage relatives as scribe,

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\(^5\) No. 1754/30/2000-2001 available at: NHRC.nic.in/ disparchive.asp. (discussed in chapter 3)
restriction with respect to the age limit of scribe, having criminal provision in the declaration given by candidate and scribe etc. Those who avail the facility of scribe should be allowed extra time to complete exam. Recently, pursuant to the CCPD order, the Government of India has come up with comprehensive guidelines to be followed by all the bodies conducting examinations. These bodies include educational institutions as well as employment related organisations. For students with Visual disability, there should be alternative questions in place of questions based on diagrams and figures and there should be descriptive explanations of graphs. These accommodations especially provision of scribe and extra time are applicable even to the private institutions.

Regarding the admission to educational institutions, the Courts and Commissions covered in the research have held a number of times that the every type of educational institutions should follow the mandate of the PWD Act, 1995. The technological advances should be taken into account while deciding the eligibility of a Person with Disability to take admission in courses. For example if with the use of corrective lenses the vision can be restored to satisfactory level, the person should not be denied admission into the medical courses.

India is in the process of amending the PWD Act, 1995 so as to harmonise it with the Convention on the Rights of Persons with Disabilities 2006. The Committee appointed by the government of India for this purpose has submitted the Draft of a New comprehensive legislation. On the basis of this draft, the Government of India has come up with the Draft Rights of Persons with Disabilities Bill, 2012. Both the drafts dealt with the education of Persons with Disabilities extensively incorporating the provisions of the Convention.
The Draft Rights of Persons with Disabilities Bill, 2012 deals with the education of Persons with Disabilities in broader terms as compared to the existing PWD Act, 1995. The Bill provides inter alia that all educational institutions shall provide inclusive education and admit the students with disabilities without discrimination and provide them the opportunities of sports, recreation etc. building, campus in facilities etc shall be made accessible. The Bill also mandates to provide Reasonable Accommodation and individualised support wherever required. The Bill also mandates to establish adequate number of Teacher Training institutes to train the teachers to teach various students of various kinds of disabilities and also established adequate number of resources centres to support educational institutions. The Bill also mandates to provide the books and other learning materials in accessible format. The Bill also incorporates provisions dealing with the adult education of Persons with Disabilities.

The Article 24 of the Convention deals with various aspects of the education of persons with disabilities. The Article provides that with a view to realising the right to education without discrimination on the basis of equal opportunity, the state parties shall ensure inclusive education system at all levels and life long learning and provide Reasonable Accommodation of the individual’s requirements.

7.3.2. Employment

The Constitution of India, in Article 16 provides for the equality of opportunity in public employment without any discrimination. The Clause 4 of this Article provides that special measures can be taken in favour of socially and Educationally Backward citizens of the country. The Supreme Court has held that Persons with Disabilities come under the category of socially and Educationally Backward citizen.
The PWD Act, 1995 makes various provisions regarding employment of persons with disabilities. These include, identification and reservation of seats, carry forward the backlog vacancy, setting up of special employment exchanges, Non-Discrimination in employment and promotion on account of acquiring disability etc. The Courts and CCPD have decided upon the wide variety of areas such as Non-Discrimination in employment, identification and reservation of seats, promotion and transfer etc.

Infact, majority of litigations are based issues related to employment. A person cannot be denied job only on account of his/her disability. The Supreme Court held in *Amita v. Union of India*\(^6\) that where a Person with Disability satisfies the qualification stated in the advertisement, he/she have the right to apply to the post and his application cannot be rejected on the ground of his/her disability.

One category of cases is the identification of posts. It has been consistently held that the list of identified posts should be updated regularly. The Supreme Court in *Government of India & Anr v. Ravi Prakash Gupta & Anr*\(^7\) held that If there is delay in identifying posts, reservation should be provided retrospectively i.e. from when the PWD Act, 1995 came into existence. The list of identified posts should be interpreted liberally. If the nomenclature of the post in question is different from that of the list but the nature of work is similar, the Persons with Disabilities should be appointed to that post.

Regarding reservation, it has been held in a number of cases that proper roster should be maintained. While calculating the number of posts to be reserved, the total number of posts lying vacant from the coming into force of the Act should be taken into

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\(^7\) 2011 AIR SCW 416. (discussed in chapter 4)
consideration. The CCPD has taken Suo motu cognizance of various advertisements issued by various organisations and directed to modify them clearly stating the number of posts to be reserved for persons with disabilities. It has been held that reservation is applicable in every organisation which is the instrumentality of state whether or not it receive any fund from the government unless it is specifically exempted under the Act.

In cases where the posts reserved are already filled in, the advertisement should mention that Persons with Disabilities can also apply i.e. they also have the right to apply to open post. The Persons who are high up in merit should not be appointed to the reserved posts. The Delhi High Court in *Sambhavana v. Delhi University*\(^8\) has gone to the extent of ordering the stopping of filling of vacancies till the backlog is cleared.

There are number of pronouncements in the area of Reasonable Accommodation. These include inter alia facility of scribe and extra time, question papers in bold print for the benefit of persons with low vision, various facilities to the persons with Hearing Disability during interview such as provision of sign language interpreter, overhead projector etc. in a landmark case of *Nand Kumar Narayanrao Ghodmare v. State of Maharashtra and Others*\(^9\) it was held that a person with Colour Blindness has the right to be shifted to the post where perfect vision is not required.

In order to compensate the extra cost of transportation, the CCPD in *Laxmikant Vijayvargiya v. Bharat Heavy Electrical Limited and Anr*\(^10\) held that Employees with Disabilities are entitled to extra conveyance allowance to compensate extra cost incurred in modifying the vehicles etc. The CCPD has held that other cost such as

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\(^8\) WP No. 16258 of 2006 (Del HC). (discussed in chapter 4)
\(^9\) (1995) 6 SCC 720. (discussed in chapter 4)
hiring driver in cases where they cannot drive due to their disability such as Blindness etc should also be compensated. Further, such employees cannot be denied the petrol reimbursement on the ground that they do not hold the valid driving licence and as a result, hire the services of drivers.

It has been consistently held that a person cannot be removed or given lower post or denied promotion on acquiring disability. In no case, his/her salary can be reduced. As far as possible, he/she should be shifted to the alternative post whose functions he/she can perform or a supernumerary post should be created. It is immaterial whether or not he/she acquired disability while performing duty. If he/she is in service, the above protection is available even if he/she suffers injury at home, in the way or anywhere. It is also immaterial whether or not he/she was at fault and thus suffer injury.

In the case of Bhagwan Dass & Anr. v. Punjab State Electricity Board the Supreme Court held that it is the duty of the employer to inform the employee who acquire disability about his rights especially where he is a class IV uneducated employee. The Supreme Court however in Union of India v. Devender Kumar Pant held that promotion can be denied if the disability of an employee puts at risk his/her or co-workers’ life or the safety of equipments.

Regarding the transfer and posting, it has been held that as far as possible, Persons with Disabilities should be posted near to their native places and their disability and should be considered while transferring and posting them. This protection is also available to the parents/guardians of the persons with disabilities. In cases where a child with

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11 2008 AIR SCW534. (discussed in chapter 4)
disability is undergoing medical treatment and the medical facility is not available to the place where his/her parents/guardians are transferred, they should not be transferred.

As compared to the provisions of the advanced legal systems of the world such as UK and USA and the provision of Disability Convention, these provision does not cover a number of issues which are necessary to promote and protect the employment interests of persons with disabilities. For example, there is no “Non –discrimination” clause in Indian law to expressly prohibit discrimination on the ground of disability. Similarly the concept of “Reasonable Accommodation” is not fully incorporated in Indian law.

The Draft Rights of Persons with Disabilities Bill, 2012 which aims at harmonising Indian disability law with the UNCRPD, 2006 is very elaborate with regard to the employment of persons with disabilities. The Bill mandates the formulation of schemes and programmes to facilitate and support employment of Persons with Disabilities especially for their vocational training and self-employment. The Appropriate governments are mandated to institute mechanism for provision of loans at concessional rates and for marketing of their products. The Bill provides for the Non- Discrimination and Reasonable Accommodation in all matters of employment. Every establishment is mandated by the Bill to formulate the equal opportunity policy. The Bill devises new formula of reservation and provides for the 5% reservation in government employment. The Bill also provides for the incentives and disincentives in order to ensure 5% employment of Persons with Disabilities in the private sector.

7.3.3. Accessibility

Article 15 (1) (2) of the Constitution of India provides for the access to public places without discrimination. For sometimes, the view is gaining ground that this Article is
also applicable to the cases of accessibility issues concerning persons with disabilities. The NHRC also supports this view.

The PWD Act, 1995 provides for the physical accessibility to persons with disabilities. These include public transport, roads, building etc. It may be noted here that the Act does not provide for the accessibility of information and communication. Moreover, the above provision are not of binding nature. State is to implement them subject to its economic capacity and development.

The judgements, orders etc are mainly related to the accessibility of physical environment although a few orders have also been passed on the accessibility of information and communication.

In a number of cases, the directions were issued to make the transport system and buildings accessible to persons with disabilities. These include inter alia directions regarding accessible rail compartments, low floor busses, facility of ambu-lifting of wheel chairs, concession in booking rail ticket online, building of ramps and lifts in buildings, wide doorways and passages so that wheel chair users can move freely, making religious places and historical monuments accessible etc. A person with Locomotor Disability should not be transferred to the inaccessible place.

The CCPD took the suo motu cognizance of a news paper report and issued directions\textsuperscript{13} to the cabinet secretary advising him to issue directives to all the Ministries/Departments to make all Government websites accessible to Persons with Disabilities within a defined time frame.

\textsuperscript{13} Case.No.9/1104/12-13. Dated: 22nd January, 2013 (discussed in chapter 5), CCPD
In *Disabled Rights Group v. Chief Election Commissioner & Anr*\(^{14}\) the Supreme Court directed to make the electoral process accessible to various types of disabilities. These include inter alia building of ramps, writing the names of the candidates in Braille on voting machines etc.

The Draft Rights of Persons with Disabilities Bill 2012 is wider in scope as compared to the 1995 Act. The Bill is on similar lines with the Convention provisions. This Bill unlike the 1995 Act, apart from dealing with the accessibility of Physical Environment, makes provisions relating to the accessibility of Information and Communication also.

The Bill ensures the right to Persons with Disabilities on an equal basis with others to the physical environment, transportation, information and communications, including appropriate technologies, systems and other facilities and services open or provided to the public. Where no modification is possible, human assistance shall be provided to persons with disabilities. With regard to the access of services, the Bill provides that Government and establishment shall ensure that all services and facilities provided by them are available to Persons with Disabilities on an equal basis with others and in such mode or format which is responsive to their needs.

With regard to the consumer goods and services, the Bill mandates to take measures to promote development, production and distribution of universally designed consumer products and accessory for general use. The Bill also provides for the training of service animals and right to use them by persons with disabilities. Unlike the PWD Act, 1995, the Bill provides for the time limit for making existing infrastructure and premises accessible.

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\(^{14}\) CWP No. 182/2004. (discussed in chapter 4)
Article 9 of the Convention deals with the issue of accessibility in very wide terms. The Article mandates the states parties to ensure access on an equal basis with others, to the physical environment, transportation, information and communications, including Information and Communications Technologies and systems, and other facilities and services open or provided to the public so that Persons with Disabilities can live independently and participate fully in all aspects of life.

7.3.4. Social Security

Article 41 of the Constitution of India provides for the assistance in case of various conditions including disability.

The PWD Act, 1995, provides for some of the matters of social security for persons with disabilities. These include their rehabilitation, framing of insurance scheme by the government for its employees with disabilities, unemployment allowance etc. These provisions however are not binding on the government. It can implement them subject to economic capacity and development.

The Cases which have come before the Courts and Commissions covered in the research are mainly related to providing dignified living conditions in homes for mentally disabled and Leprosy Cured people, insurance and compensation, Non- Discrimination with respect to insurance cover and amount of premium, right of mentally disabled girl to give birth to a child and the duty of state to provide social security, disability pension, preferential allotment of land and houses, and relief to disabled hawkers etc.

It has been held that the conditions in homes and shelters etc for mentally disabled and Leprosy Cured persons should be humane and they have the right to live a reasonably dignified life.
A woman with mild or moderate Mental Retardation has the right to give birth to the child and it is the duty of the state to provide the woman and the child the means of sustainance if required.

A person belonging to armed forces is entitled to disability pension if he acquires disability during service. It is immaterial whether or not he acquires disability during the course of his duty or while on leave.

While awarding compensation on account of disability, the particular circumstances of the person in question should be taken into consideration. In *Mohan Soni V. Ram Avtar Tomar and Ors*\(^\text{15}\) the Supreme Court held that the amount of compensation would be different for a rickshaw puller or agricultural labourer as compared to a person doing desk work. In former case, loss of limb might amount to the total loss of future income while in latter case the person is still in a position to earn a living by performing various types of work.

Recently, the Delhi High Court in *Vikas Gupta v. Union of India and Anr*\(^\text{16}\) has held that Persons with Disabilities are entitled to the same amount of insurance coverage as available to other people. No extra amount of premium can be charged from them only on account of disability.

The Supreme Court and various High Courts have directed that the schemes should be framed for the preferential allotment of land and houses on concessional rates to persons with disabilities. In a number of cases, blind hawkers and PCO owners have

\(^{15}\) Civil Appeal No. 237 of 2012 (Arising out of SLP (Civil) No. 9850 of 2010) Decided On: 10.01.2012. (discussed in chapter 6)

\(^{16}\) Decided on 15\(^{th}\) February, 2012, Delhi High Court. (discussed in chapter 2 and 6)
been given relief against eviction. The Courts have directed the authorities to frame special schemes to protect them from eviction.

The Draft Rights of Persons with Disabilities Bill, 2012 recommends provisions similar to the UNCRPD, 2006. The Bill mandates the governments to promulgate necessary schemes and programmes to safeguard and promote Right of Persons with Disabilities to adequate standard of living and living conditions to enable them to live independently and in the community. These schemes shall include inter alia disability pension, unemployment allowance, care giver allowance, provision of aids and appliances, diagnostic services corrective surgery, and comprehensive insurance schemes etc. The Bill also provides for the pre-natal, peri-natal and post natal care of mother with disabilities and their children. The Bill also mandates to undertake services and programmes of rehabilitation particularly in the area of health, education and employment.

Article 28 of the UNCRPD, 2006 recognises the right of Persons with Disabilities to and adequate standard of living for themselves and their families, including adequate food, clothing and housing.

7.4. Contribution

This research is an attempt to analyse Disability Equality Rights Jurisprudence in India. It has also attempted to point out the areas which are yet to be developed since there are very few pronouncements on these areas. Reasonable Accommodation is one of such area. Accommodation in work environment, education and services are such areas which require more attention by the Courts and Commissions. Another contribution of this study is to prepare a ground for further research in this area i.e. education, employment, accessibility and social security requires further research.
This research is also useful to lawyers, judges and the officials of quasi judicial bodies and disability rights Activists. The findings of the research will help them in knowing about various rights available to Persons with Disabilities as pronounced by the judicial and quasi judicial bodies covered in the research. For lawyers and disability rights Activists, the research will help them in arguing cases involving the infringement of rights of persons with disabilities. For judges and officials of quasi judicial bodies, it will help in knowing the present status of these rights in India and further development of the disability rights jurisprudence.

The research will also help the policy makers and administrators to adopt rights based approach while formulating and implementing the polices and programmes for Persons with Disabilities. On the basis of the findings of the research, they will be in a better position to formulate policies keeping in mind the rights available to persons with disabilities. It will also help them in implementing these policies in the right spirit.

7.5. Recommendations

7.5.1. Amendments to Law

On the basis of the research study the following recommendation for amending the law are suggested.

7.5.1.1. Adding Non- Discrimination Clause

As suggested by the NHRC and proposed by the Draft Rights of Persons with Disabilities Bill, 2012 the Non- Discrimination clause should be added in the disability legislation stating that any discrimination on the ground of disability is prohibited. Further more, by a Constitutional Amendment, the non discrimination clause should be added mandating that discrimination on the ground of disability is prohibited in the
same manner as discrimination on the ground of religion, race, sex, etc is prohibited by the Constitution of India.

7.5.1.2. Definition of Disability

The definition of disability should be broad in order to accommodate other disabilities who need protection of disability laws and policies. The Right Based Approach should be adopted while defining instead the Medical Approach which is adopted in the present PWD Act, 1995. The researcher is of the view that the American approach to define disability [discussed in Chapter 1] with some modification is most suited to Indian conditions. Under the American Law, restriction in major life Activity comes under the definition. Some types of impairments such as blindness, hard of hearing etc are considered as disability without any proof of the restriction of major life Activity. These impairments come under the category of Per Se disability. According to the researcher, certain benefits such as reservation in employment etc can be restricted to those who come under the American Per Se disability whereas other benefits such as Reasonable Accommodation etc can be given to everyone who comes under the definition of disability.

7.5.1.3. Wider Definition of Rights

The rights contained in the PWD Act, 1995 needs to be broadly defined. The UNCRPD, 2006 can be of great help in this connection. It defines various rights extensively. The researcher feels that more cases of Reasonable Accommodation need to be included. The British Code of Practice can be of great help in this matter. Similarly, the accessibility of information and communication on the line of UNCRPD, 2006 should also be added in the Act in order to widen the scope of accessibility.
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7.5.1.4. Amendment with Respect to CCPD

CCPD should be given more powers on the lines of National Human Rights Commission with regard to the execution of their directives. The USA and UK law may also be consulted in this matter. In USA and UK, the Equal Opportunity Commission and Equality and Human Rights Commission respectively have the power to file cases in courts on behalf of the People with Disabilities if there directives are not followed by the authorities. The researcher is of the opinion that such powers should also be given to the CCPD and State Commissions. As pointed out in Chapter 2, the powers of NHRC with regard to the implementation of their directives and moulding relief in favour of People with Disabilities are much wider in scope as compared to CCPD.

The researcher suggest that the CCPD should also be given all powers on the similar lines of other Commission such as National Commission for Women, Minorities Commission and NHRC.

Amendment to the Protection of Human Rights Act, 1993

In view of the above, the section 2 (d) of the Protection of Human Right Act, 1993 should be amended and United Nations Convention on the Rights or Persons with Disabilities (UNCRPD) should be added along with International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Right (ICESCR). Further, the Chief Commissioner for Persons with Disabilities should be made the ex-officio the member to the National Human Rights Commission. This will help in widening the scope of human rights definition and giving more focus to the Disability Rights in NHRC.
Having suggested some general amendments, researcher will now suggest the following amendments in the of education, employment, accessibility and social security relating to the research questions of the thesis.

7.5.1.5. Amendments with respect to Education

1. Specific provisions should be made for the individualised treatment of Persons with Disabilities considering their special needs. This, with the broadening the definition of disability as mentioned above will benefit a large number of persons with disabilities.

The individualised treatment should include the Reasonable Accommodation in the education system such as availability of study material in accessible formats, facility of sign language interpreter, accessibility of physical environment as well as of information and communication. The individualised treatment provision should be made applicable even to the private institutions. Provision should be made to provide the private institutions with the financial and other assistance wherever necessary for this purpose.

2. It should be made mandatory to make the parents of the children with disabilities the members of the school management committees. It will help in better coordination between the child, parents and school.

3. Children with disabilities should have the right and facilities to participate in the sports, recreational and other Activities on an equal basis with others. This will help in the all round development of children with disabilities.

4. Provisions should be made to provide the facility of learning the topics relevant to the disability in question such as Braille, Sign Language, Mobility skills etc.
The UK, USA and other countries have amended their disability legislation and incorporated the fairly advanced principles of disability rights jurisprudence. For example the Equality Act, 2010 (UK) makes very elaborate provisions regarding the education of persons with disabilities. This Act prohibits direct discrimination e.g. denying admission on the ground of disability, indirect discrimination e.g. providing application form in the format which is not accessible to some categories of disability, disability based discrimination e.g. putting restrictions on some categories of disability to go out during Break, harassment.

Individuals with Disability Act, 1990 (USA) provides for the special education services in cases where disability results in the students needing additional or different services to participate in school. Rehabilitation Act, 1973 (USA) and Americans with Disabilities Act, 1990 also make provisions regarding the education of persons with disabilities.

The striking feature of the above mentioned UK and US disability legislations is that they provide for the individualised treatment i.e. accommodation to be made considering the peculiar circumstance of the student with disability. As mentioned in chapter 1 of this thesis that these legislations define disability in broader terms as compare to Indian law. As a result a large number of students are benefited by these legislations.

7.5.1.6. Amendments with respect to Employment

1. Provision should be made to bar the employer to ask about the disability of a person while employing him/her and to keep all the medical information confidential. Employer should be allowed to ask only those questions which are related to the nature of employment in question.
2. Specific provision should be made with regard to the Non-Discrimination “direct or indirect” in any matter relating to employment such as job application procedure, recruitment, promotion, compensation, training, career advancement and other conditions.

3. With respect to reasonable accommodation, every establishment should be mandated to take adequate measures to guarantee that Persons with Disabilities are provided with the individualised accommodations and not be disadvantage in any manner at any stage of employment. These accommodations may include the provision of necessary aids, equipments and personal assistance, health care facilities, necessary physical changes in buildings, flexible work timings etc.

4. Provision should be made to provide the grievance redressal mechanism in every establishment. In such mechanisms, there should be adequate representation of persons with disabilities.

5. The above provisions should be made applicable to private establishments also. To encourage the employment of Persons with Disabilities in these establishments, various forms of incentives such as exemptions in taxes, financial assistance for procuring assistive devices, modification in the physical environment etc should be provided.

The UK and US disability laws are very broad in scope. These laws prohibit discrimination on the ground of disability. These legislations also provide that the employer can not ask about the disability of a person while employing him/her and all the medical information is confidential. Only those questions can be asked which are related to the nature of employment in question.
The provisions relating to the Reasonable Accommodation are very broad in these legislations. They are on similar lines as contained in the UNCRPD, 2006. Title one of Americans with disabilities Act, 1990 (ADA) prohibits private employers, state and local governments, and employment agencies and labour unions from discriminating against qualified individuals with disabilities in job application procedure, hiring, firing, advancement, compensation, job training and other terms, conditions and privileges of employment.

Similarly the Equality Act, 2010 (UK) is wider in scope as compared to its predecessor i.e. Disability Discrimination Act, 1995.

The different tests used to justify discrimination are replaced by a single “Objective Justification” tests which means that the employer must show that its conduct was a proportionate means of achieving a legitimate aim.

The direct discrimination or harassment based on “Perceived” disability is made unlawful e.g. the employer may be liable even if the effect of impairment on normal day to day activity not substantial. The direct discrimination or harassment based on association (e.g. where a friend of a disabled person is harassed) is made unlawful.

7.5.1.7. Amendments with Respect to Accessibility

1. All Persons with Disabilities should be guaranteed the right on an equal basis with others to the physical environment, transportation, information and communication etc.

2. Clear cut guidelines and standards should be formulated and time frame should be provided to implement them.
3. Provision should be made to ensure that communication with persons with hearing, vision, or speech impairments are as effective as communications with others.

4. The accessibility of Information and Communication as provided in the UNCRPD, 2006 should be incorporated in Indian law. It should be made mandatory for all websites to follow standards of accessibility.

5. Provision should be made to make all the services and facilities available to Persons with Disabilities in such mode or format which is responsive to their needs. The services covered should include all public services whether offered by the public authorities or the private sector. Provision should be made to make it mandatory within a time frame to remove all types of barriers in the enjoyment of these services.

6. Provision should be made to make it mandatory for the manufacturers of electronic goods and equipments of every day use to follow the principles of universal design.

In contrast to the Indian law, the Americans with disabilities Act (ADA) is very specific in this matter. The Act requires the states and local governments to follow specific architectural standards in the new construction and alteration of their buildings. They also must relocate programs or otherwise provide access in inaccessible older buildings, and communicate effectively with people who have hearing, vision, or speech disabilities. When streets and roads are newly built or altered by a municipality, they must have ramps wherever there are curbs or other barriers to entry from a pedestrian walkway. Likewise, when new sidewalks or walkways are built or altered, they must contain curb ramps or sloped areas wherever they intersect with streets or roads.

In addition to structural requirements, the State and local Governments must ensure effective communication with individuals with disabilities. Where necessary to ensure
that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids, such as listening headsets, television captioning, large print materials, etc.

The Disability Discrimination Act, 1995 “DDA” (UK) and the recently passed Equality Act, 2010 (UK) which is an improvement upon the DDA is almost on similar lines. One of the striking features of the Equality Act is that it extensively deals with Right of access to goods, facilities and services. According to it, it is unlawful:

- to refuse to serve a disabled person for a reason which relates to their disability
- to offer a sub-standard service to disabled people
- to provide / offer a service on different terms
- to fail to comply with the duty to make reasonable adjustments, in circumstances in which the failure makes it impossible or unreasonably difficult for a disabled person to use a service.

There are three broad types of “reasonable adjustments” which the service provider has to consider:

1. Changes to practices, policies and procedures to ensure that they do not make it impossible or unreasonably difficult for a disabled person to access the goods, service or facility.
2. Provision of ‘auxiliary aids and services’ to provide additional help or assistance to enable a disabled person to make use of a service or facility.
3. Addressing physical features of premises where services are provided:
   - By removing a physical feature
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- By altering it so that it no longer is inaccessible
- By providing a reasonable means of avoiding a feature
- By providing a reasonable alternative means of service (for example, serving someone at the door of a shop where it is not accessible and it is not feasible to make it accessible).

7.5.1.8. Amendments with Respect to Social Security

1. The law should guarantee the right to social security. This right should include
   - Dignified standard of living.
   - Wherever necessary, economic support for pursuing every kind of education and vocational training, starting or carrying out small business and other self employment Activities, buying assistive devices etc.

2. In cases where the Persons with Disabilities can not be employed in gainful employment, provision of adequate compensation, insurance coverage or pension benefits should be made available to them.

In USA, the Social Security Administration, a Federal administrative agency, provides monthly cash benefits to people who are unable to work for a year or more because of a disability. The individuals who qualify as disabled under the Social Security Act may be entitled to either disability insurance benefits or Supplemental Security Income.

7.5.2. Placing Reliance on UNCRPD, 2006 and Foreign Judgements

In recent years, the Courts in India have started to refer the UNCRPD, 2006 and foreign in their judgements. According to the Supreme Court, any Human Rights treaty signed and ratified by India can be read into the Fundamental Rights, courts and other quasi judicial bodies should place more reliance on the UNCRPD, 2006 and foreign judgements.
7.5.3. Sensitising Judges and Advocates

The should be made to sensitise advocates, judiciary and other quasi judicial bodies about the rights of persons with disabilities. Workshops, seminars, symposiums etc should be organised from time to time. The study of UNCRPD, 2006 and other disability rights instruments should be made the part of their training.

7.5.4. Role of Disability Rights Activists

The study found that the cases which have come for adjudication or of which Suo motu cognisance have been taken are of limited range. The disability rights Activists should file wide variety of cases. The researcher feels that the jurisprudence on Reasonable Accommodation is yet to be developed to the fullest extent. Apart from Reasonable Accommodation, the cases related to the other rights contained in the UNCRPD, 2006 may also be brought before the courts and commissions. It will help in the further development of Disability Rights Jurisprudence in India.