CHAPTER – 7
CONCLUSION AND SUGGESTIONS

The detail discourse on research studies made in six preceding chapters definitely lead to some conclusions out of which some obvious suggestions can also be made. Though the research work to some extent pertains to the State of West Bengal, but for the sake of wider and fruitful analysis, the study did not overlook the broad historical, international and national perspective for the emergence of the group of rights for the persons with disabilities to show how the disable persons in India in general and the state of West Bengal in particular has benefited considerably.

Against this backdrop, research study has taken note to the fact that historically disabled persons in India were subject to gross social negligence and disableness was considered as fateful event and is universally discrediting. They were considered as unproductive, parasite and mere objects and not subjects in the society.

Coming next to the international scenario of human rights movement it can be said that rather than initial phases,
contemporary human rights movements and documents have definitely given the persons with disabilities an opportunity to consolidate their rights and claims in more articulated manner.

The conclusion that can be derived from the analysis of Indian Constitutional provisions and the appraisal of the role of Indian Judiciary for the protection and enforcement of the rights of persons with disabilities is that Indian Constitution, unlike the German Constitution does not contain any provisions in the chapter of Fundamental Rights regarding the persons with disabilities. German Constitution has clearly stated that –

‘No person shall be disadvantaged on account of his or her disability and that no person shall be subjected to disability discrimination’

Unfortunately, there is no such provision in the Indian Constitution. It is true that Constitution of India has provided a space though it is too weak and charity and relief oriented. On the other hand, Indian Judiciary has also to a great extent expanded its space provided by the Preamble and Directive Principles. This has helped to formulate many
components on ‘disability equality’ akin to contemporary human rights standards. However, it is needless to mention here that the action of Judiciary has its inherent limitations also.

It is also a notable fact that the Indian disability laws have adopted many alternatives and equalizing measures to diffuse disability discrimination. In these legislations one may find number of disability schemes. However, the Indian disability laws still remains in a very nascent stage. These are still predominantly charity and welfare oriented. They lack vision of social integration. Taking medical welfare approach these Acts over looks social relations and social empowerment aspects of the persons with disabilities. The major drawbacks of these Acts which are provisionally surfaced in the course of analysis may be reiterated here. The Mental Health Act 1987 may be taken at the first instance. As has been discussed earlier this comprehensive legislation was the first of its kind to have been exclusively made for mentally disabled persons; but it fails to consolidate other enactments having provisions relating to persons with disabilities like Indian Lunacy Act 1912,
Criminal Procedure Code 1973 and others. Here again it is worthy to mention Rehabilitation Council of India Act 1992 also requires immediate and necessary changes as has been discussed in Chapter IV of this research paper. Therefore, a thorough study of the Indian Constitution and the two Acts has aptly proved that there is lack of awareness not only among the masses but also with the legislature in respect of the rights of the disabled persons. This is very much evident from the Constitutional framework of our country. Only the Directive Principles mentions about the disabled persons; though it has been projected that all the fundamental rights available to the citizens of India are also available to the disabled persons. But the question is then why the disabled persons are treated as second class citizens in our country. Lack of awareness and insincerity towards their needs has made them more unprotected in the society. Thereafter, the passing of the Persons with Disabilities Act (Equal Opportunities, Protection of Rights and Full Participation) Act came into force in 1995 clearly supports the fact that the intention of the legislature was to enact a law that would cover all aspects of disabilities. But the two major issues i.e. education and employment could have been handled by
legislature with due care. Here shortcomings that arrest the attention of the researches are:
Firstly, the Office of the Chief Commissioner for Persons of disabilities is not empowered to utilize the judicial power conferred on them under Persons with Disabilities Act 1995.
Secondly, State Governments does not take initiatives to involve private sector by giving them incentive to employ persons with disability, which would assume importance in view of lack of availability of jobs in the Government sector.
Thirdly, the situation of women with disabilities among persons with disabilities is further marginalized, but no attention is given on employment needs of such women.
Fourthly, vocational rehabilitation centers do not get employment notifications on time, which needs to be specially emphasized.
Fifthly, there is no regular training programme in each Ministry and Department on issues related to reservation for persons with disabilities.
Apart from this enactment, the implementation of the National Trust Act 1999 is also subjected to severe criticism. The objective of this piece of legislation was to protect the persons from autism, cerebral palsy, mental retardation and other
multiple disabilities and is not covered under the Persons with Disabilities Act 1995; but unfortunately the National Trust Board is alleged on the ground of unfair disbursement of funds and improper monitoring of its activities.

Hence to sum up the legislative lacunas it can be said that first, unlike western developed countries, Indian disability laws do not cover the issue of employment in private sector. Secondly, disability legislations do not encourage any form of judicial mechanism like disability tribunal as special court for speedy disposal of case involving persons with disabilities. Thirdly, still in the disability laws, there is no provision for imposing sanction as fire for non-compliance of the provisions in the Acts. Fourthly, in disability laws it is also not mandatory for the government to take measure for the removal of structural rigidity for the interest of persons with disabilities.

So far the executive action and governmental mechanism are concerned in concluding suggestion, it may be said that since, Indian economy being a planned economy beginning from its first plan, persons with disabilities who are also residing in the state of West Bengal have derived some scattered benefits. They have also to some extent benefitted
from national schemes and policies adopted for this purpose. Different ministries setup at the central and state level have also taken care of their needs and aspirations. But despite all these efforts simultaneously, it has also been observed that such governmental plans, mechanism activities or monitoring lack proper coordination. Even the minimum resource which is allotted for them are not being utilized efficiently. Also there is problem of mindset and bureaucratic hangover. Even the National Human Rights Commission which is envisaged in the Human Rights Act, 1993 as an alternate body of the government, despite its primary focus on human rights atrocities, so far has not been able to perform in an articulated manner. In this regard two incidents can be referred here where the Commission took positive steps. In the first case the Commission intervened on the basis of newspaper reports from the State of Maharashtra that mentally ill women were being forcefully sterilized. Their uterus has been removed with only the consent of their parents, with no regard to their reproductive and health rights. Noting that the case raised serious questions of medical ethics and rights of disabled women, the view of the Medical Council of India was called for. The
case was able to create a repurcration on to a certain extent among the masses. In the second incident the Commission acted upon a complaint received on the deplorable condition of mentally ill persons at a Dargah in Tamilnadu, who had been left there by the families in the hope of getting well by faith. A Committee was constituted to investigate the situation and the recommendations complied by the Committee were forwarded to the government of the state for implementation. These recommendations included the proper assistance and medical supervision of the patients at the Dargah by the Department of Psychiatry, Madurai Medical College. It also strongly cautioned against the Dargah accepting patients for years together and suggested the setting up of a proper admission and discharge system with the necessary procedures to provide complete care to the patients.\(^1\) As has been discussed earlier there are anomalies in the personal family laws governing marriage and divorce. “Unsoundness of mind” is a highly abused ground for seeking the annulment of marriage. Husbands looking for an easy way out have mostly exploited these

provisions. A government doctor from Agra, who issued false certificates to such men for a price was investigated by the National Human Rights Commission and the National Commission of Women. This does not merely infringe on the social rights of the mentally ill (if the person is indeed so) but also leads to the infringement of the marital rights of women in general.

Therefore, it can be concluded that the National Human Rights Commission, as a platform for redressal of grievance for human right violations could have played an active role for the interests of the persons with disabilities; but unfortunately it still remains merely a statutory institution of the state without having any remarkable performance. Leaving apart, few held workshops or seminars till date, have not provided any specific plans or programmes and also have not brought any issues in its agenda for providing an effective protection mechanism to persons with disabilities.

Here it is also observed that in order to bring persons with disabilities in West Bengal above the visibility line of law and also to empower them, voluntary organizations like NGO's are playing really a laudable role. These are trying to
de-beaurocratise the line of social empowerments of the persons with disabilities in West Bengal to make the public become concern rather than the Government. But unfortunately, the activities of these NGO’s are also not free from criticism. During the research study it has come to the knowledge of the researcher that the funds received or raised by them are not properly utilized; even the parents having disabled children are forming NGO’s and raising funds and thereafter neglecting their own disabled siblings to look after the activities of the NGO’s. On the other hand, serious fund crunch sometimes affect the efficiency of the NGO’s to a great extent. But on the whole, it can be said that NGO’s compensate to a considerable extent in the areas where weak protection mechanism is provided by the government in state of West Bengal.

Thus, in course of overall summing up observation it can be said that the abilities and potentials of the differently able persons have not yet been properly explored in India. Policy adopted by the governments or the efforts taken by the NGOs’ have remained individualized rather than generalized; even mere legislations or judicial
pronouncements cannot bring radical change. Attitude of the society needs change. The outlook of the state should be such that independent of administrative grace, legislative philanthropy and judicial generosity, the personhood of the persons with disabilities should grow autonomously. Empowerment is very much necessary for them in today’s competing and changing scenario. It should be understood that they are good human resource which, if properly utilized, can add force to the progress and development of our nation at large.

Keeping in view that the study of persons with disabilities in West Bengal cannot be compartmentalized from the rest of India and on the basis above concluding observations following suggestions can be made:

1. Constitutional Amendment

Equality and non-discrimination as stated in Article 5 of the United Nations Convention of 2006 for persons with disabilities is already provided in our Indian Constitution in Articles 14 to 18 (‘Right to equality’). But these Articles prohibiting discrimination seems to be for the able persons because discrimination is prohibited on the grounds of religion, race,
caste, sex, place of birth, equality of opportunity or abolition of untouchability. But discrimination against persons with disabilities is not mentioned under the Fundamental Right chapter, which needs to be immediately incorporated to bring it at par the U.N. Convention 2006.

Our Constitution guarantees under Article 23 and 24 rights of the citizens against exploitation. In these Articles rights of the disabled person against exploitation should also be guaranteed because they are the most vulnerable group without any spokespersons to claim for their rights and is therefore subject to inhuman treatment in the society.

UN Convention 2006 also provides for the freedom for information (‘Article 21’) and right to privacy (‘Article 22’). This right should be guaranteed in our Constitution for the persons with disabilities, because only access to correct information will make them able to avail their support services. Similarly persons with disabilities shall not be subject to arbitrary or unlawful interference with his or her privacy, family, home or other types of communication or to unlawful attacks on his or her honour and reputation. This rights regarding privacy of the persons with disabilities needs to be
incorporated under Right to Life (‘Article 21’) of our Constitution.

2. Incorporation of penal measures in the existing legislation to protect the persons with disabilities for any infringement of their rights.

This is the most important omission in the Persons with Disability Act 1995 that it speaks of the justified rights of the disabled like education or employment but do not provide for any penal measures for not abiding by the provisions. Therefore if the provision for 3% reservation in schools colleges or any courses is not followed then the Authorities can go scott free. Only the fear of penalty, either in the form of compensation or imprisonment can make these provisions successfully implemented. Therefore, since the Act is silent on the penal measures no steps can be taken by the Commissioner’s Office under the persons with disabilities Act 1995 in this regard as it is a quasi judicial body.

3. Inclusion of more groups of persons with disabilities in the existing legislations

Section 2(i) only mentions seven categories of disabilities namely visually handicapped, hearing impaired, locomotor
disability, leprosy cured, mental illness, mental retardation, cerebral palsy.

But this classification is not exhaustive because there are several other groups of disabled persons who are not yet covered by the Act. For example dwarf, patients suffering from incurable disease, dumb persons, unac are to name a few. It may be mentioned here that dwarfism has not yet been thought of as a disability. Medical science is of opinion that physical development is related to mental maturity also. Therefore, these persons also needs to be included in the PWD Act 1995. As for the unacs earlier research work reveals that in the Mughal period, Emperor Akbar kept them in his palace and used them as spy to collect secret information regarding his administration. Today this unacs are able to form a community, for themselves and presently are allowed to stand in the Assembly elections. Therefore, as human being and as citizens of India there must be enough endeavour to bring them into the mainstream of the society.

There should be legislative measures embodying the various special rights recognised by the State and the society crystallized in the form of a single Act of Rights for the Disabled. There should be provision for compensation schemes
to suit the needs of different types of disablement arising from different causes, namely, congenital defects, accidents, hazards due to industrial pollution, lack of immunization from serious diseases and malnutrition and the like.


Since women and children with disabilities are subject to multiple discrimination it becomes necessary to include women and children provisions in the existing legislations that will speak for them. Education of children must be, a social responsibility encompassing governments, families, communities and non-governmental organisations alike; there should be commitment and participation of all.

The most common form of discrimination seen in case of disabled women is that they are forced to go through hysterectomy i.e. an operation by which they cannot become pregnant anymore. A denial of motherhood is infringement of fundamental right of a woman. According the 2001 census 40% women are among the total disabled population in the country. Therefore since U. N. Convention 2006 has the provision for women and India being a signatory to the Convention, should have separate provisions for disabled women and children in
the existing enactment. In all actions, plans, programmes or policies of the Government the interest of the women and children with disabilities shall be of primary consideration. The Government should also take all appropriate measures to ensure the full development, advancement and empowerment of women with disabilities.

In this respect following steps can be taken firstly, prevention of child marriage as it leads to early motherhood and in turn leads to the birth of disabled children; secondly, the early detection is extremely necessary because it is commonly seen that in rural areas pregnancy and child birth take place at home and not at hospitals. So even if there is symptom of any disability in the new born, it cannot be easily detected. Thirdly, the disabled women themselves should make a self help group to speak out and claim for their rights.

5. Simplification of the process of Certification

The definition section that is section 2(t) of the PWD Act 1995 states that “Person with disability” means a person suffering from not less than 40% of any disability as certified by a medical authority. The percentage previously was 25% which was amended and raised to 40%. The primary demand of these persons is to avail the disability certificate. But to get the
certificate is the most tiring exercise. The PWD Rules 1996 provides for the procedure of obtaining Disability Certificate. It appeared to the researcher that issuance of certificate is shifted to the shoulder of the Medical Board. It is seen that such Medical Board are formed under the PWD Rules No.4 and sits for once or twice in a year or sometimes in a month mostly on the whims and discretion of the Board members. To avail the certificate the persons with disability has to go through unnecessary harassments and are supposed to keep track of the hospital schedule. On the basis of the certificate the Office of the Commissioner of Disability has to issue an Identity Card. This tiresome process needs to be simplified so that more persons with disabilities are able to avail the benefit of these Cards.

Here it is to be suggested that the medical examination conducted and thereafter certificates given by the National Institutes like that of Orthopaedically Handicapped or Visually Handicapped must be accepted by both government and private sectors and certification of the government hospital or welfare board in these cases must not be mandatory. National Institutes are in no way incapable of determining the degree of disability and certificates issued
by them should not be underestimated at any cost. As has been stated earlier the proceedings of the Medical Boards relating to the certification is also questionable because most often this certificate is obtained by pressure. Therefore the Medical Board issuing such certificate must minutely examine the person with disability or if Disability Certificates are issued by National Institutes must be accepted by both public and private sectors. A person with genuine disability should not be allowed to any sort of harassment.

6. Accessibility
This is the most justified demand of the persons with disabilities and the existing laws should have an exclusive chapter on accessibility.

Access and non-discrimination are two distinct area and justice can hardly be done to both. Non-discrimination is principle of natural justice as embodied in our Constitution but the law on access for persons with disabilities, on the other hand, should be wider in its scope Sections 44 to 46 of the PWD Act 1995 deals with access. While access to public transport road, public building and toilets has to some extent been made available to the persons with disabilities yet many forms of accessibility are still a distant dream. For example there is no mention of
interpreters for the deaf or provision for braille books in schools, colleges or places of employment. Other forms of assistance has been overlooked. Access, in its wider connotation also includes barrier free environment. The Ministry of Urban Development and Poverty Alleviation devised the Model Building bye-laws. Yet, these byelaws, building plans should be approved with due compliance to the prescribed norms of accessibility. The model building bye-laws must be incorporated into the local municipal byelaws. Since the Municipal Corporation comes under the purview of individual states, the respective state governments should take due initiatives if centre level implementation becomes impossible.

The concept of access is not limited to ramps and wheelchairs alone. Even quota in employment is not filled up due to inadequate education and skill for persons with disability which is on account of “access” related problems. Access to inclusive education of persons with disabilities at primary and secondary level should be made mandatory by the state governments. In the cases of Javed Abidi vs. Union of India (1999) I SCC 467; AIR 1999 SC 512 and Disabled Rights Group vs. Chief Election Commissioner & Anr. Write Petition (Civil) NQ 187 of 2004 the verdict of the courts was
that accessibility is a basic right of every individual specially for persons with disabilities whether it be boarding aeroplanes or approaching a polling booth.

7. Raising of Awareness

Finally in addition to what has been said earlier it can also be suggested that there should be effort to raise awareness in the entire society, including the family of the persons with disabilities. To make the society conscious what is suggested is dissemination of proper information. In this respect the following two steps can be taken; firstly government servants at various levels should be sensitized about laws related to person with disabilities; secondly there is a need to eliminate prejudices about person with disabilities through mass awareness programmes. Similarly functionaries like NGO’s or NHRC and pro-active social workers should focus their attention more on disability issues. Sensitizing teachers about special needs of children with disabilities in education must be made as the attitude of teachers towards disabled students is very disappointing. Since communication is a problem for persons with hearing impairment, there is a need to train officials in sign languages especially who are working with them. In this way every strata of the society should be sensitive
towards the rights of the persons with disabilities so that an effective protection mechanism can be ensured to them.

In the view of the researchers if these measures are appropriately taken at the central level and duly adapted in the states especially in West Bengal, then the persons with disabilities residing here would undoubtedly be benefitted also.

Thus here it deserves to be suggested that if the “disabled” persons are ensured favourable circumstances-personal, social, economic to unfold their full potential and provided with proper encouragement and identification of their distinct peculiar capabilities and a conducive atmosphere for their growth and development, they may well become capable of harnessing their hidden creative talents as any of the other so-called able persons.