INTRODUCTION

From the very dawn of human civilization, person with disabilities have been the part of our existence. However, feeling and concern for them were surprisingly cold. They were utterly ignored, disregarded and subject to widespread social apathy. Even the matter of granting them the barest minimum human rights has been taken up belatedly; though the concept and origin of human rights itself has had a colourful history. It is also very unfortunate that the problems of the persons with disability either in the parameter of human rights concept or in general way was never focused or spelled out properly till the end of the 2nd World War. Thereafter, the concern for human rights of persons with disabilities gained ground and still it is in the process of development and gradually has been recognised globally as well by all nations locally. Despite this, the problems of the persons with disabilities still persist, specially those who are living in a poor underdeveloped and developing countries are still suffering a lot; because of this stark reality, it has been duly lamented that to address the issue of the persons with disability as ‘human rights’, transparency in thoughts is required to create a world where everyone can live a
life with grace and dignity. Persons with disabilities requires just and equal treatment and effective enjoyment of all human rights at par with other persons. Therefore, following even a very conservative viewpoint, human rights of the persons with disabilities does not require any extra protection as a separate and specific category of rights, but is a part of the full range of human rights available to everyone. After all equal treatment or non-discrimination is a *sine qua non* to build up an edifice of any civilized legal order. Keeping this end in view the global community cannot disown the need for minimum protection of human rights of the people with disabilities.

Disability broadly means inability to do something. It can be either physical immobility or mental inability; either physically incapable of doing a particular work or mentally incapable of comprehending and expressing. These inabilities are commonly termed as disabilities and the persons of either sex having such incapability or inabilities are known to the rest of the society as disabled persons. In short the physical or mental behaviors of these persons are different from the expected normal behavior of a human being. This slight or major deviation from the standard norms of behavior set by the society is known as disability. In
India presently the number of disabled persons are according to 2001 Census, **21906769** and in West Bengal it is **1847174**.¹

The term disabled normally means a person who falls short of physical fitness. It covers all those persons who suffer from malformations, deformities and other deficiencies-physical or mental, which prevent their normal functioning. To define disability is a very difficult task as there are dozens of definitions. Various approaches have been put forward by scholars and experts to analyse disability. According to Sushma Batra², these approaches could be broadly categorized as medical/clinical, psychological, economic-vocational, minority group and socio-political.

The disablement can be temporary or it might become a permanent block in enabling the individual to become a normal person. If it is temporary, the person only requires temporarily physical / psychological / emotional support. But in case it is of permanent nature, then also the individual is not able to do certain activities expected from them as from other normal

---

¹ 'Spuran' – pub. by Commissioner of Disabilities, West Bengal 2007, p.3
² Batra Susma -Reader in Delhi School of Social Works, in the Seminar on the Rights of the Persons with Disability, 2002 organised by Indian Law Institute, New Delhi
persons. Therefore at this point of time they need special care and understanding that they are not different from others but with little help and support they can perform as the able ones in the society.

There is hardly any demarcation line between disabled and handicap persons. It becomes difficult to define the terms like disability, handicap and impairment. In this respect the definition given by World Health Organization (WHO) can be perused.

**Disability** means any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for the human being.

**Handicap** is a disadvantage for a given individual and forms an impairment or disability that limits or prevents the fulfillment of a role that is normal (depending on the sex and socio cultural factors) for the individual.

**Impairment** is any loss or abnormality of psychological, physiological or anatomical structure or function.

However, disability does not only relate to obvious conditions such as vision or hearing disability. Actually there are different

---

3 [www.who.org](http://www.who.org)
kinds of disability like eyesight, hearing, mobility and cognitive disability that appears to our normal eyes. The following are general types of disabilities which apart from being recognized by law, are accepted by society also.

**Eyesight Disability:** A person is considered to have an eyesight disability or blind if he doesn’t have normal vision even if he wear eyeglasses or contact lenses. Visual impairment may be caused by several eye diseases like age problem, cataracts, retina detachments and others. There are vision impairments that can be cured medically through the help of modern medical science, but there also are those impairments that can’t be treated medically after accidents or inherited disorders of eyesight.

**Hearing Disability:** This disability means those people who are completely deaf or, have partial hearing in one or both ears. However, this problem can be cured with the use of a hearing aid. People who have hearing disability can still be communicated through sign language.

**Mobility Disability:** Mobility refers to movement like individual having upper limb immobility, or coordination problem. Mobility impairment affects movement which means inability like walking, movement of objects by hand and such

---

4 www.nutritionfoundationofindia.org/archives.asp
5 ibid
other inabilities. Some use special equipment such as wheelchair or electronic strollers to be able to move around.

**Cognitive Disability:** Cognition means thinking. It includes variety of functions including our abilities to learn and get information and use language to express thoughts. Those people who have dyslexia, a brain-based learning inability are said to have Cognitive Disability. Mental retardation, mental illness are different forms of brain related disabilities\(^6\).

But in India the Person’s with Disabilities Act 1995 has defined seven categories of disability like – \(^7\)

i. Visually Handicapped
ii. Hearing Impaired
iii. Locomotor Disability
iv. Leprosy Cured
v. Mental Illness
vi. Mental Retardation
vii. Cerebral Palsy

Apart from these seven groups any other form of disability is not recognized under Indian Laws.

---

\(^6\) *Supra* p.5, n.4
\(^7\) Section 2(i) of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation)Act, 1995
Therefore this research work is strictly based on the legal strategy and protection mechanism available to these categories of persons with disabilities with special reference to the State of West Bengal. In this respect the researcher has applied both analytical method and empirical approach to reach her conclusion. The analytical method of the research work however is confined to the role played by the Indian legislature, executive and judiciary for combating the problems of the persons with disabilities.

In the light of such broadly stated theoretical underpinnings so far developed in the course of evolution of human rights literature and in the literature of social and other sciences, in the context of the problems of persons with disabilities the research work also intends to proceed for further analysis of the problem in the context of Indian society in general and the society in the State of West Bengal in particular.

As indicated earlier, India is not free from the problems of persons with disabilities, rather as a part of the mainstream global society it has some unique characteristic related to this problem. According to 2001 census total population of disabled
persons in India counts to 2106769 and in West Bengal it is 1847174. Mere figure of the disabled people in India presents a grim picture suggesting the problem as deplorable and devastating one. Therefore, in order to go deep into the problem in a significant way, the study proceeds with interdisciplinary approach touching few relevant interdisciplinary domain of social sciences. It is also to be noted that the persons with disabilities and guardians of such persons are prime sufferers and have the first hand knowledge of the problem related to disability. Therefore, no study can be complete without knowing their views. For this purpose the persons with disabilities and guardians of such persons were interviewed asking them specially structured and designed question to get uniform answer for reaching out the conclusion. Lastly, the concern for the persons with disabilities in Indian Society in general and in the society of West Bengal in particular did not surface in one fine morning. To a great extent, international response and human rights standards already set for such people has created an imperative to adopt and incorporate such norms in Indian legal system. Therefore, it would be a great mistake if we overlook Indian past history and global scenario in order to make out any conclusion in this subject. With this end in view
two initial chapters of this study are devoted for this purpose. Finally research is concluded taken following pertinent observation made contextually by Hon’ble Justice Dr. A. S. Anand\(^8\), however in a different way of analysis and fact findings.

"Law alone cannot help the disabled – Laws can not come to the aid of physically and mentally handicapped persons unless there is a definite change in the mindset of the people who are expected to implement them. The plight of physically and mentally challenged persons in the country had not improved despite several enactments for the purpose, because the disability policy has remained individualized than generalized, legislation can not radically change the fabric of society in a short span of time. Attitude of the society has to change"

---