CHAPTER - 1

GROWTH AND DEVELOPMENT OF HUMAN RIGHTS OF PERSONS WITH DISABILITIES AT GLOBAL LEVEL

According to Theresia Degener, disabled people are the largest minority in the world encompassing more than 500 million persons, of which 2/3 live in developing countries. The World Health Organization estimates that there are 600 million disabled people in the world which amounts to about 10% of the world population. In fact, in most countries up to 80% of persons with disabilities of working age are unemployed. Almost everywhere in world, it is found that there is a sizable gap between the working conditions of the employed disabled persons with those persons without disability. Moreover, persons with disabilities often are dependent upon begging, or similar sorts of livelihood, not through any meaningful employment. For a very long time disabled persons have been confronted with different kinds of disregard and maltreatment. Legal systems have excluded disabled persons as non-persons.

1 Degener, Theresia and Yolan Koster, Dreese Human Rights and Disabled Persons: Essays and Relevant Human Rights Instruments, Martinus Nijhoff, Oxford University Press, 1995, p.4
2 www.disabilityworld.org
During German National-Socialism the most cruel and far reaching policy was eliminating the disabled through sterilization and killing programmes, but it’s ideology and goal were neither new nor exceptional. Degener also said that modern disability policies are based on the assumption that disabled people are not real citizens and are labeled as non-productive members of society. Disabled persons were and often still are excluded from the mainstream of society, often locked in large institutions called nursing homes, deprived of all that non-disabled people demand like life, liberty, social and political life, work, education, privacy and others. Disability policy has been based on welfare and charity concepts and has not allowed disabled persons to escape the object status and become self-determined subjects.

As it is evident that disability is caused either through inheritance, from birth or due to some accident and the most affected among the accidental victims are the war victims. In the international field the consciousness regarding human rights of the individual can be traced back to the Virginia Declaration of

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3 Supra n 2
rights 1776 or Bill of Rights\textsuperscript{5} in 1689 or French Declaration of the Rights of Man 1789. But the concern for the disabled community came into the minds of all the nations after witnessing the horror and damage caused by wars and revolution specially the 1\textsuperscript{st} World war when it suffered from various kinds of disability. Therefore, in this respect the first concern shown for the disabled persons was by the League of Nations which was formed just after the First World War and thereafter, concern for them began to take shape through institutional safe guards with the patronage of the United Nations.

\textit{League of Nations}

It can be mentioned in this connection that both the League of Nations and the United Nations were destined to achieve international peace by any means because the ideas of war and

\footnote{\textsuperscript{5}Agarwal, Dr. H.O. ‘International Law and Human Rights’; Central Publications, 2003, p. 670. 
The Virginia Declaration of Rights affirmed that all men are by nature equally free and independent and have certain inherent rights. The Bill of Rights of U.K. was officially entitled as an Act for Declaring the Rights and Liberties of the Subject and for setting the Succession of the Crown. It was enacted by Charles II on the occasion of the accession of William of Orange and Mary Stuart to the throne of England. The French Declaration of the Rights of Man and of Citizen of 1989 led other European Countries to include the provisions in their laws for the protection of human rights.}
conflict cropped up in the minds of individuals and there is an inter-relationship between respect for human rights and world peace. At the Paris Peace Conference held at the end of the First World War the American President Woodrow Wilson had observed: “Nothing is more likely to peril the peace of the world than the treatment which might be meted out to minorities”\(^6\). This was also agreed by the noted historian of the League of Nations, F.P. Walters. In his own words, “The real purpose of the Minorities Treaties was not to protect the interests of particular groups, but also to give stability to the political settlements established by the Treaties of Peace.\(^7\)

After the First World War, the League of Nations formally came into existence on 20 January 1920 as an international organization. According to Dr. Karna,\(^8\) “it represented the first experiment in the history of mankind to provide a mechanism for peaceful multilateral consultations between all the nations of the world, not only in respect of political disputes but also for fruitful exchanges in various technical fields, including the prevention and control of disease.”

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\(^6\) *Supra* n 5  
\(^7\) *Ibid*  
\(^8\) United Nations and Rights of the Disabled Persons, A study in Indian perspective; A.P.H. Publishing Corporation, New Delhi; ed -1; 1999, p. 84
The Covenant 19 of the Nations contained reference to several specific economic and social problems like

a) Just treatment of non-self governing peoples;
b) Supervision of traffic in women and children;
c) Supervision of traffic in dangerous drugs;
d) Supervision of the arms trade;
e) Freedom of communications and transit;
f) Equitable treatment of international trade for all states;
g) The prevention and control of disease.

The League had no specific provisions for the protection of human rights as such. However, Article 23(f) states that: the obligation of every state “to endeavour to take steps in matters of international concern for the prevention and control of disease”. Moreover Article 25 manifested League’s concern for the improvement of health and prevention of diseases.

Thus it reveals that for the first time, attempt was made broadly to deal with health related problems including disability. In this context, Dr. G. N. Karna has pertinently observes that the League represented the emergence of both ‘a radical and a conservative trend’ in the evolution of international organizations. The League was radical on two grounds. Firstly,
it was radical in the ideas and ideals of several philosophers, who wanted a universal organization for promoting peace and cooperation among nations, were incorporated into state policy for the first time in the history of mankind. Secondly, it endeavored to encompass, within a single organization, the means of dealing with a vast domain of humanitarian problems on which global action can be taken.\(^9\)

The global scenario was so much influenced by this development that after the establishment of the League, the East European countries made a number of conventions on health related matters. The League’s concern for the health related issues gave rise to the Red Cross Organization. Despite this the fact remains that the health related matters did not deal essentially with the problem of disability because the League lacked adequate financial resources and implementation machinery.\(^{10}\)

After the end of World War II, the disaster caused to mankind and international relations between nations collapsed. The birth of the United Nations with aims and objectives of maintaining

\(^9\) *Supra* n. 8, p. 81
\(^{10}\) *Ibid*
democracy, peace, equality, security and further developments in international laws and conventions was certainly welcomed by all and became meaningful. Third World countries had been badly affected with the number of disabilities and sincere efforts were made by every nation to eradicate them. But the developed world to a great extent succeeded in controlling these physical shortcomings mainly by their prosperity and resources that they possess. The Third World countries, however still have problem which is further aggravated by the events like communal tensions and violence. In most cases injuries assume alarming magnitude. Various national governments have enacted laws to overcome disabilities which are multidimensional in nature like full, partial, temporary and permanent disabilities caused by poverty, mal-nourishment, environmental pollution, wars, landmines, bombings, terrorism and torture.  

The disaster caused by the Second World War was far reaching and disastrous than the first one mainly due to the use of atom bombs. During World War II, American atom bombs dropped in Hiroshima and Nagasaki disabled a member of citizens of Japan.

The after-effects of atomic rays produced disabled children from generation to generation. Thereafter, during cold war nuclear powers- particularly the United States and the Soviet Unions took adventurous role in Korea, Vietnam and Afghanistan wars. At least three million Vietnamese died and thousands became disabled in different parts of the world. Similarly, the Russian participation in Afghanistan affairs caused severe disabilities among Afghans and Russian Soldiers, Less resources and poverty also aggravated the situations, especially in developing countries like India.

Around the world, it is estimated that more than 10% of the population can be classified as disabled. However, the numbers given by different countries vary. In 1987, 32 million people of the United States were considered disabled, accounting for 13.5% of the total population. A survey in the United Kingdom indicated in 1988 that 6.5 million people representing 14% of the population could be disabled. In the Morocco, 10% of the populations suffer from physical disability, whereas in China nearly 52 million, constituting 5% of the whole population were considered disabled according to a sampling survey carried out in 1988.
It is well known that some chronic diseases significantly contribute to the increase in the number of disabled people. For instance, diabetes is the commonest cause of blindness in people under the age of 65 in the UK. Similar in Europe and the United States, where the total annual economic cost of diabetes in 1997 was estimated to be US $98 billion of which US $54 billion for indirect costs for disability and mortality. In Morocco and developing countries in general, the lack of medical care and scientific knowledge makes the situation even worse.\(^\text{12}\)

Road accidents constitute another source of physical disability in the highly populated countries. In Morocco, more than 80000 accidents occur every year of which 9% lead to some kind of disability. There is urgency to find ways of overcoming this problem and their consequences. Drivers, road conditions, traffic signals contribute to such disaster. Efficient preventive measures need to be taken immediately.

Last but not least, in spite of the many major achievements of modern medicine, the number of congenital disabilities is still, high especially in developing countries. Improvement of

\(^{12}\) \textit{Supra} n. 8, p.11
medical care and consciousness among people should be combined to reduce handicaps at birth.\textsuperscript{13}

As pointed out earlier, after the establishment of the United Nations, human rights movement expanded in multidimensional forms. According to Prof. (Ms.) S. K. Verma\textsuperscript{14} the then Director of Indian Law Institute, the whole movement on human rights in its present form had started from the international sphere including the rights of the disabled.

In 1969, the United Nations General Assembly adopted the Declaration on Social Progress and Development, which started the movement relating to the rights of persons with disability. Pursuant to this, two very significant declarations were adopted by the General Assembly, specifically on the mentally disabled and physically handicapped persons: the Declaration on the Rights of Mentally Retarded Persons, 1971 and the Declaration on the Rights of Disabled Persons, 1975.\textsuperscript{15}

\textsuperscript{13} Promoting The Rights Of People With Disabilities Towards A New United Nations Convention: An International Workshop for National Human Rights Institutions from the Commonwealth and Asia Pacific Region, 26-29 May 2003, New Delhi, India
\textsuperscript{15} Supra n.8
The Declaration on Social Progress and Development, while proclaiming the right to live with dignity for all people and human beings, equally on the stressed need and importance to assure disadvantaged or marginal sectors of the population, the equal opportunities for social and economic development. Further, it states that social progress and development should aim at the protection of the physically or mentally disadvantaged. In Art 11(c) it suggest that governments should take appropriate measures for the rehabilitation of mentally or physically disabled persons Art.19, wants to enable them to the fullest possible extent to be useful members of society. However, these measures to be more effective should include the provision for treatment and technical appliances, education, vocational and social support, training and selective placement and other assistance as and when required, and the making of an environment in which the handicapped are not discriminated because of their disabilities.

The Declaration on the Rights of Mentally Retarded Persons (1971): The Declaration proclaims that a mentally retarded person should have the same rights as other human beings. It also accepts the necessity of assisting such persons to develop
their abilities to the fullest in various fields of activities and of promoting their integration in normal life. A mentally retarded person has the right to proper medical care and physical therapy just like other able persons and to such education, training, rehabilitation and guidance which will enable him to develop his ability and potential. Such a person should have the basic human right to economic security and to a decent standard of living, opportunity to perform productive work or to engage in any other meaningful occupation to the maximum extent of his/her capabilities. He has a right to protection against exploitation, abuse and maltreatment.16

The Declaration on the Rights of Disabled Persons, 1975, for the first time defines the term “disabled persons” to mean “any person unable to ensure by himself or herself, wholly or partly the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.” Like the Declaration on Mentally Retarded Persons, it also emphasizes that disabled persons have the basic right to respect for their human dignity

and the right to enjoy a standard life, as normal as possible\textsuperscript{17}. They are entitled to claim measures which will enable them to be self dependant. According to this instrument their needs which are very special must be taken into consideration at all stages of economic and social planning. They should be protected against all exploitation, regulations and treatment of discriminatory, abusive or degrading nature. Legal aid should be made available to them for the protection of their person and property. Subsequently, the United Nations General Assembly also declared in 1981 as the ‘International Year of the Disabled Persons’. The resolutions adopted by the General Assembly in this respect are as stated below:

1. To promote the goals “full participation” of disabled persons in the social life and development of the societies in which they live, “equality”, meaning living conditions equal to those of other citizens in their society, and an equal share in social and economic development.

2. Problems of disabled persons should be thought of in their entirety and all aspects of their development. It is estimated that there are some 450 million disabled persons

\textsuperscript{17} Supra n 16
in the world today, the vast majority of whom live in developing countries, a great part of the activities should aim at improving conditions for disabled persons in these countries. More scope should be given to policies and programmes in this field on national, regional and international levels. Such projects should be integral parts of national development strategies.

3. Large number or disabled persons are victims of war and other forms of violence, the Year could be used as an occasion for continued co-operation among nations for world peace.

4. An important objective of the Year should be to increase public awareness of what disability is. The Year should promote recognition of the fact that there is a distinction between an impairment which is a quality of the individual, a disability which is a functional restriction due to that impairment and handicaps which are the social consequences of the disability.

5. Disabled persons should not be considered as a special group with needs different from the rest of the society but as ordinary citizens with special difficulties. Action to improve conditions for disabled persons should form a part
of general policy. It should be part of national reform programmes and regular programmes for international co-operation.

6. The activities carried out during the Year should focus on primary health care, rehabilitation and prevention, in view of the importance of that type of activity.

7. In accordance with the paragraph 12 of General Assembly resolution, containing the Declaration on the Rights of Disabled Persons, organizations of disabled persons may be usefully consulted in all matters regarding their rights. An important objective of the Year is to encourage disabled persons to organize themselves so as to be able to express their views effectively and secure their right.

8. The Year should contribute to the realization of the above mentioned principles through programmes and policies on the local, national, regional and international levels.

The Declaration on the Right to Development 1986: In this declaration through Article 2 it has been stated that States have the right and the duty to formulate appropriate national developmental policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in
development and the fair distribution of the benefits resulting thereof. Article 3 declares that States have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development. Though this declaration does not say anything specific on the rights of disabled person, but the right to development is the precondition of liberty, progress, justice and creativity. Being a core right from which all the rights stem, it naturally covers the rights of disabled persons\textsuperscript{18}. This position has been further clarified in the Vienna Declaration and Programme of Action adopted on June 25, 1993 by the World Conference on Human Rights. Like the Declaration on the Right to Development, it also states that the human person is the central subject of development\textsuperscript{19}.

Article 22 of the Vienna Declaration provides that the Special attention needs to be paid to non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.


The most important contribution of this Declaration and the Plan of Action was to shift the necessity from the welfare of the disabled or charity towards them to the rights of the disabled and, in particular, their right not to be discriminated and their right to be treated as competent, individuals, their right to care in the community, in the family and their entitlement to services which will enable them to function as efficient individuals to the maximum extent possible. There is a notable switchover towards demanding the right of the disabled to independent living, social support and use of adequate assistance depending upon their disability.

At the regional level, the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region was adopted at Beijing in 1992 is also a relevant instrument worthy to mention. This inspired to launch the Asian and Pacific Decade of Disabled Persons in 1993-2002.\textsuperscript{20}

\textbf{UNITED NATION CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES 2006}

The Convention on the Rights of Persons with Disabilities (CRPD) adopted on 13\textsuperscript{th} December 2006 by the UN General

\textsuperscript{20} National Human Rights Commission Annual Report, Disability-a Paradigm Shift: from Welfare to Human Rights, 2003-04
Assembly is a fundamental instrument aimed to protect human rights of persons with disabilities. The Government of India ratified the Convention on 1st October 2007.\(^{21}\) The important provisions of the Constitution may be summarized as hereunder. Convention categorically states that countries that join in the Convention are to engage themselves to develop and carry out policies, laws and administrative measures for securing the rights recognized in the Convention and abolish laws, regulations, customs and practices that constitute discrimination (Article 4).

It has been stated that participating countries are to guarantee that persons with disabilities enjoy their inherent right to life on an equal basis with others (Article 10), ensure the equal rights and advancement of woman and girls with disabilities (Article 6) and protect children with disabilities (Article 7). At the same time convention states that the children with disabilities shall have equal rights, shall not be separated from the parents against their will, except when the authorities determine that this is in the child’s best interests, and, in no case shall, be separated from the parents on the basis of a disability of either the child or the parents (Article 23).

\(^{21}\) www.disibilityworld.org
Convention also states that countries are to recognize that all persons are equal before law, to prohibit discrimination on the basis of disability and guarantee to persons with disabilities equal legal protection (Article 5).

The Convention also imposes obligation to parties of the Convention by saying that countries are to ensure the equal right of the persons with disabilities to own and inherit property, to control financial affairs and to have equal access to bank loans, credit and mortgages (Article 12). They are to be ensured access to justice on an equal basis with others, (Article 13) and parties to the Convention will make sure that persons with disabilities enjoy the right to liberty and security, and are not deprived of their liberty, unlawfully or arbitrarily (Article 14).

Countries must guarantee freedom from torture, cruelty, inhuman or degrading treatment or punishment and prohibit medical or scientific experiments without the consent of the person concerned (Article 15), and protect the physical and mental integrity of persons with disabilities. Laws and administrative measures must guarantee freedom from exploitation, violence and abuse. In case of abuse, States shall
promote the physical and psychological recovery, rehabilitation and reintegration of the victim and investigate the abuse (Article 16).

Persons with disabilities are not to be subjected to arbitrary or illegal interference with their privacy, family, home, correspondence or communication. The privacy of their personal, health and rehabilitation information is to be protected on and equal basis with others (Article 22).

On the fundamental issue of accessibility (Article 9), the Convention requires countries to identify and eliminate obstacles and barriers and ensure that persons with disabilities can access their environment, transportation, public facilities and services, and information and communications.

Persons with disabilities must be able to live independently, to be included in the community to choose where and with whom to live and to have access to in-home, residential and community support services (Article 19). Personal mobility and the greatest possible independence are to be fostered by facilitating affordable personal mobility, training in mobility skills and
access to mobility aids, devices, assistive technologies and live assistance (Article 20).

Countries are to promote the right to an adequate standard of living and social protection, including public housing, services and assistance for disability-related needs, and assistance with disability-related expenses in case of poverty (Article 28). Countries are to promote access to information by providing information intended for the general public in accessible formats and technologies, by facilitating the use of Braille, sign language and other forms of communication and by encouraging the media and internet providers to make online information available in accessible formats (Article 21). Discrimination relating to marriage, family and personal relations shall be eliminated. Persons with disabilities shall have the equal opportunity to experience parenthood, to marry and to establish a family, to decide on the number and spacing of children, to have access to reproductive and family planning education and means and to enjoy equal rights and responsibilities regarding guardianship, wardship, trusteeship and adoption of children (Article 23).
States are to ensure equal access to education, vocational training, adult education and lifelong learning. Education is to employ the appropriate materials, educational techniques and forms of communication. Pupils with support needs are to receive support measures and pupils who are blind, deaf and deaf-blind are to receive their education in the most appropriate modes of communication from teachers who are fluent in sign language and Braille. Education of persons with disabilities must foster their participation in society, their sense of dignity and self worth and the development of their potential, personality, creativity and abilities (Article 24).

Under Article 25, persons with disabilities have the right to the highest attainable standard of health without discrimination on the basis of disability. They are to receive the same range, quality and standard of free or affordable health services, as provided to other persons and to receive those health services needed because of their disabilities and not to be discriminated against in the provision of health insurance.

To enable persons with disabilities to attain maximum independence and full physical, mental, social and vocational ability, countries are to provide comprehensive treatment and
rehabilitation services in the areas of health, employment and education (Article 26).

Under article 27, persons with disabilities have equal rights to work and gain a living. Countries are to prohibit discrimination in job-related matters, promote self-employment, entrepreneurship and starting one’s own business, employ persons with disabilities in the public sector, promote their employment in the private sector and ensure that reasonable accommodation is provided in the workplace.

Countries are to ensure equal participation in political and public life, including the right to vote, to stand for elections and to hold office at all levels of Government (Article 29).

Countries are also to promote participation in cultural life, recreation, leisure and sport by ensuring, among other things, provision of television programmes, films, theatre and cultural material in accessible formats, by making theatres, museums, cinemas and libraries, accessible and by guaranteeing that persons with disabilities have the opportunity to develop and
utilize their creative potential not only for their own benefit, but also for the enrichment of society (Article 30).

Articles 34 to 40 deal with Committee on the Rights of Persons with Disabilities (Article 34), reports by States parties (Article 35), consideration of reports (Article 36), cooperation between States parties and the Committee (Article 37), relationship of the Committee with other bodies (Article 38), report of the Committee (Article 39) and Conference of States parties (Article 40).

The Convention covers many aspects on disability issues and is the outstanding Convention in recent times, which exclusively deals with disabled persons. It not only upholds the rights and the needs of the persons with disabilities but also gives utmost importance on the role of National Human Rights Institution in promoting and protecting the physically challenged persons (Article 33). Mere incorporation of various rights in the Convention however cannot be meaningful if it is not properly implemented and monitored. As India is a signatory to this Convention therefore, the existing legislations in India on disability issues to be immediately amended in the light of the Convention of 2006. A comparative study of the UN
Convention 2006 with the PWD Act 1995 of India has been done in the subsequent chapter to highlight the issues in this respect.

International Day of Disabled Persons (3rd December)
As the rights of the persons with disabilities is not regional or local demand, but is a claim which has been recognized internationally\(^22\), therefore, the celebration of International Day of Disabled Persons also aims to the disability movement and to consolidate the rights of the persons with disabilities worldwide.

International Day of Disabled Persons, 3rd December, mainly aims for promoting the rights of an understanding of disability issues and mobilizing support for the dignity, rights and well-being of persons with disabilities. It also seeks to increase awareness to be derived from the life\(^{23}\). The Day provides opportunities for participation by all interested whether it be

\(^22\) Under most of the UN Human Rights treaties and within the regional framework as well, there is provision made for one State party to lodge a complaint against another State party alleging that it has failed to comply with its obligations under the relevant treaty. But this is in theory, in practice, inter-State complaints are extremely rare.

governmental, non-governmental and the private sector- to focus upon innovative measures to successfully implement international norms and standards related to persons with disabilities.

The theme of the Day is based on the goal of full and equal enjoyment of human rights and participation in society by persons with disabilities, as established by the World Programme of Action concerning disabled persons.

Apart from the international level the concern for the persons with disabilities simultaneously has started to gain ground at the municipal level also. In this respect some highly developed countries and developing countries like USA, Australia, U.K., Japan and China have taken significant steps and still playing a leading role.

**USA**
There are about 70 million disabled in the USA. The Rehabilitation Act of 1973 proclaimed that “no handicapped individual shall be excluded from any programme or activity receiving Federal financial assistance”. It also established a
Board to govern the Architectural Barriers Act of 1968 which stipulated that public facilities built after 1968 with federal money must be accessible to the disabled. The Education of All Handicapped Children Act of 1975 grants disabled children the right to free public education. The Rehabilitation Act also made effective through Regulations signed in 1976. These regulations provide that employers doing work with the government may not refuse to hire the persons with disabilities and to provide accommodation. Provisions are also there that all new buildings are made accessible to the persons with disabilities through ramps, elevators and other appurtenances. It has also been mandated that the universities should make all their programmes available to the persons with disabilities; hospitals to establish special techniques to treat the persons with disabilities; and public schools to open their doors to the persons with disabilities. Accessibility and barrier free environment was included in Governmental policies.

The Centre for Independent Living, Berkeley, California, provides model facilities for the disabled. It offers practically every facility and service which a handicapped person needs – counseling, housing, car and van modification shop, screening

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of attendants for immobile people, computer programming course, paraplegia service, job placement, financial assistance, etc. Such centres have also come up in another 20 States. The approach towards the persons with disability has always been based on understanding of the needs of these people.

The Veterans' Administration Research Centre for Prosthetics in New York is the key designer for aids for the disabled.25 A series of legislations were enacted by the 95th Congress to assist the disabled persons. The major legislations benefiting the handicapped include:

1) Rehabilitation, Comprehensive Services and Disabilities Amendment Act of 1978,
2) Housing and Community Development Amendments Act of 1977,
3) Education of the Handicapped Amendments Act of 1977,
4) Comprehensive Employment and Training Acts (Amendments) 1977 and
5) Social Security Act (Amendments) 1977.26

26 United Nation: Department of Economics and Social Affairs; Comparative Study on legislation, Organization and Administration of Rehabilitation Services for the Disabled; prepared jointly by UNO, ILO and WHO, New York; 1976.
These Amendments provided for comprehensive services for independent living for the handicapped and for supporting such centres; federal housing assistance programme; discretionary assistance for education of the handicapped; assistance to unemployed persons to develop job skills and work potential, expansion of public service employment opportunities and job counseling and increasing social security, like and Disability Insurance Fund. The general view of the U.S. government is that the disabled persons should not be prohibited from these services where their disability is not a bar. For example, if the limbs of a person are paralyzed then he should not be deprived of doing computer work. Therefore, the plans and policies taken up by the Government are always based on the necessity and requirements of the persons with disabilities.

The trend in USA shows that government is always sincere now is to provide education to disabled children in regular schools so as to enable them to grow intellectually and emotionally. For the implementation of the Convention of 2006 USA government has taken utmost care to provide inclusive education with great importance.\(^{27}\)

‘Close Captioned’ Television now enables the deaf in USA to hear and enjoy the medium. Presently many colleges and universities are breaking down physical and technical barriers to education and enrolling disabled children in large numbers. Vocational Rehabilitation Centres offer a full range of services to make the disabled comfortable in the work places. Another idea that was much in demand since early seventies was mobile homes. Many states in America adopted this for the disabled persons as there is no tension of fending on accommodation at any place and it is cheap also. It’s so designed that persons with disability would not find any discomfort in living there.\footnote{28}

The attitude of both the government and society towards the disabled is very much different from what we see in India.

AUSTRALIA

The consciousness for the disabled persons in this state is not an old concept but has developed recently. The children born in Australia with cleft lip and cleft palate are given financial help for orthopaedic and associated treatment. A few beds are earmarked for the mentally and intellectually handicapped people in health care centres. The Yoorlla Society has

\footnote{28 Housing & Home services for the disabled guidelines and experience in independent living - Gini Lourie, Oxford University Press, ed- 1st 1990, p.30-35}
introduced many devices to enable those with serious physical handicaps to work efficiently\textsuperscript{29}.

The Commonwealth Department of Social Security is concerned with invalid people, invalid pensions, handicapped child allowance, financial assistance to organizations providing services such as sheltered workshops, therapy centres and others.\textsuperscript{30} The health, education, employment and youth Departments also provide a wide range of services to the disabled.

There is no obligation at present for industries in Australia to employ disabled people. However, in several States it is illegal to discriminate against a person or a prospective employee on grounds of disability. Voluntary organizations provide 15 basic types of service from accommodation and library services to medical facilities and active centres.\textsuperscript{31} As Australia has much to do for the persons with disability it should adopt the provisions of the Convention of 2006 as a guideline and enact new law or

\textsuperscript{29} \url{www.history.diresa.org.au}
\textsuperscript{30} Le Gay Brereton B. Basic abilities, Spastics Centre, New South Wales, Australia 1972, p-10;
\textsuperscript{31} \url{www.disabilityworld.org}
thoroughly modify existing laws so that all facilities and support services provided can be availed by them.

Apart from a federal state since India is also a commonwealth nation and the Indian legislations are influenced by British laws, it becomes very important to make a brief survey of the laws of United Kingdom to get a comparative overview as regard to the legal status of the persons with disabilities both in India and U.K.

**UNITED KINGDOM**

The Disability Discrimination Act (the “Act”) is the main statutory protection for people with disabilities in the UK. It is a complex piece of social legislation. The Act has brought some considerable changes to the UK disability discrimination law in general. On 1<sup>st</sup> October 2004, the Disability Discrimination Act 1995 (Amendment) Regulations 2003 (the “2003 Regulations”) came into force, which implemented amendments to the Act required by the European Framework Directive. At the same time the final provisions of the Act relating to physical adjustments to premises for providers of goods and services was

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32 [www.bcodp.org.uk](http://www.bcodp.org.uk)
implemented. To accompany these changes the Disability Rights Commission is introducing revised Codes of Practice on Employment and Occupation and Trade Organisations came into force. Furthermore, consultation is taking place on an important new Disability Discrimination Bill. Since 1974, there has been a Minister with special responsibility for disabled in the United Kingdom. The Chronically Sick and Disabled Persons Act of 1973 make it obligatory for the local authorities to arrange social services for disabled people living in their areas.\textsuperscript{33} The Act also ensures for disabled people access to public buildings. Free medical and dental treatment, disablement resettlement service to place employable disabled people in suitable work, financial assistance, social work services for severely disabled people, artificial limb service, special facilities for hearing and supply of new behind the ear aid, etc. are some of the other facilities available to disabled persons. In addition to the provision of wheelchairs and other aids, the National Health Service provides electrical apparatus known as POSSUM which enables disabled persons to operate 11 electrical devices such as

\textsuperscript{33} Mehta D.S., Handbook of the Disabled in India, APH pub; 1\textsuperscript{st} ed., 1996. p.21
alarm bells, radio and television, telephone, heating, and intercom.  

The Disabled Persons Employment Acts of 1944 and 1956 provide for the maintenance of Disabled Persons Register, reserved quota for registered disabled, marking of certain kinds of work, sheltered employment which has been highlighted in the Convention of 2006 i.e. staying accommodation at place of work, courses for employment and rehabilitation, vocational training, etc. The Disabled Persons Employment Corporations Ltd. (now Re employ Ltd.) provides sheltered employment to severely disabled people. Under the Training Opportunities Scheme, 500 different courses are organized. The Central Council for the Disabled coordinates the work of voluntary organizations and provides services such as holiday opportunities, assistance in legal and parliamentary matters, housing, and publication of guide-books. Another central body is the British Council for the Rehabilitation of the Disabled

35 www.opsi.gov.uk
which organizes conferences, training, seminars on subjects pertaining to the persons with disabilities.\textsuperscript{36}

In Britain, the proportion of "disabled" people is said to have risen from 7.1 percent in 1987 to 15 percent in 1994 and to 18 percent in 2002. The figure in the United States rose from 12 percent in 1991 to 18 percent in 2001. But in some African countries, disabled persons only make up 1 percent of the national population.

Apart from highly developed Western countries, a brief survey is made hereunder of two other Asian countries like Japan and China in order to understand how far the third world countries in general and India in particular are lagging behind in protecting the rights of the persons with disabilities.

\textbf{JAPAN}

According to an estimate, the number of disabled people in Japan in 1980 was around 3.5 million (2.1 million physically handicapped and 1.4 million mentally retarded and mentally ill

\textsuperscript{36} Supra n. 32
persons). If lighter disabilities are included, the number will be over five million.

In 1980, Japan earmarked about 3% of the total national budget for various programmes for the disabled. In 1970, Fundamental Law ‘Counter-Measures for Mentally and Physically Handicapped Person’ was enacted. This resulted in rapid and far-reaching growth in government measures for the disabled.37

Welfare officers for physically and mentally handicapped persons provide consultancy and guidance services in respect of training, pension, tax relief, vocational activities, diagnosis, and treatment to the disabled. Disabled persons are given a handbook with a certificate which enables them to receive various kinds of assistance under the law for Welfare of Physically Handicapped, 1949.

The physically challenged persons receive medical treatment benefits to alleviate or eliminate their disabilities. Prosthetic appliances - safety canes, hearing aids, artificial legs and hands,

37 It has been stated in the judgment of 27 March 1998, Kyoto District Court, 45 SHOMU GEPO 1259 judgment of 15 October 1999, Osaka High Court, 1718 HANREI JIHO 30 (stating that '[general] comments of the Human Rights Committee do not legally bind the interpretation of the ICCPR and the ICESCR by Japanese courts')
wheelchairs, etc. are distributed and repaired. For severely handicapped persons, special bath tubs, special toilet basins, and Japanese typewriters for the blind are given or lent. The mobile service conducts medical examination and consultation of disabled persons.\textsuperscript{38}

About 400 centres provide rehabilitation and employment facilities to the physically handicapped. For the mentally handicapped, there are over 500 centres and sheltered workshops. The National Rehabilitation Centre for the Physically Handicapped functions as the core for the country’s rehabilitation activities.

Other schemes which benefits disabled persons in Japan are National Employment Pension Plan, National Pension Plan, Welfare Pension Plan, Disability Pension, allowance for child support, tax exemption or reduction schemes, postal concessions, concessional housing loans and houses, special education schemes and special schools; on-the-job training programme and fixation of ratio of jobs in public enterprises for handicapped persons under the Physically Handicapped Persons

\textsuperscript{38} www.science-links.jp
Employment Promotion Law as amended in 1976. This undoubtedly proves that Japan unlike India has given more importance on the social security measures of the persons with disability. In 1993, the Japanese government acknowledged the existence of four barriers to the independence and social participation of disabled persons: legal, physical, informational and cultural, and people's attitude. In 1995, the "Government Action Plan for Persons with Disabilities: A Seven-Year Strategy to Achieve Normalization," included numerical policy targets and was made public. Subsequently, a legislation promoting barrier-free access in transportation was passed in May 2002. Significant progress was made in the amendment of the law enabling access improving technology systems. Inspite of these positive developments, however, the removal of barriers in the legal system and in the people's minds has not improved very much.

The Basic Law for Persons with Disabilities, enacted in 1993 did not include provisions for the protection of rights and prohibition of discrimination. No law on such rights has been

39 Supra n. 37
legislated since then. Government policies to enable persons with disabilities lead an independent life have, therefore seen little progress and hence cases of serious human rights violations against disabled persons continue to arise.\textsuperscript{41}

Meanwhile, organization such as the Japan Federation of Organizations of Physically Disabled Persons and the Japan National Assembly of Disabled People’s International (DPI) continued discussions to pursue the enactment of the Japan Disabilities Act (JDA), which would prohibit discrimination against disabled persons and in turn materialize the sole object of the Convention of 2006.\textsuperscript{42}

Presently in Japan the researcher finds that an anti-discrimination law needs to be enacted to clarify what actions or situations should be prohibited as discrimination against the disabled persons. The ongoing discussions on the welfare system reform emphasize the autonomy of the disabled persons, which makes the coordination between the client’s will and policy or decision-making a critical issue. A stricter application

\textsuperscript{41} www.disabilityworld.org
of the guardianship system will also be required. Further there need to be explicit provisions on education, employment, independent living and housing environment, income security, provisions for appropriate medical care, and access to information as provided in the Convention of 2006. There is also an urgent need for a legal remedy mechanism in case of violation of rights in order to provide an effective protective mechanism to persons with disabilities.

**CHINA**

Presently there are an estimated 83 million disabled people in China, an increased of 31 million, or 50 percent, since 1987. The dramatic increase is the result of disabling diseases taking on China's rapidly aging population, and more work-place injuries and car accidents. 43

The basic objective of the programme for the disabled in China is 'full integration'. The disabled who can work are encouraged to work in normal environment. This outlook of the government is very much absent in India. But for severely disabled persons, work is given under sheltered conditions. This concept of

43 www.cdpb.org.en
‘accommodation at workplace’ is also enshrined in the Convention of 2006. The same principle is followed in respect of education of disabled children in schools. Special schools have been set up where the blind can learn Braille and the deaf the sign language.\textsuperscript{44}

Welfare factories manufacturing wide range of articles get preferential treatment in the allocation of materials, in production, marketing and payment of taxes. In these factories 35 per cent of the workers employed are disabled. Profits are used for expanding production and improving the living and working conditions of handicapped workers. This broad minded attitude of the owners of these production units is almost unthinkable in India.

There are over 1,000 such factories scattered throughout China. At Shanghai, in a bicycle accessory factory, more than half of the 500 workers are either blind or deaf. In these factories, machines have been modified for operation; production schedules are changed to cater to the special requirements of 50:50 mix of disabled and able-bodied workers. The items

\textsuperscript{44} www.humanright.china.org
manufactured by such factories include metal ware, rubber goods, watch straps, electronic components, bakelite, plastic fittings, textiles, vehicle accessories, etc. The Chinese government has also laid down certain guidelines for the collective enterprises run by communes in rural areas for engaging the disabled and making them responsible for certain agricultural tasks or jobs.  

These facts suggest that legal strategy and protection mechanism adopted in China may not be enough to cater the needs of the disabled persons, but the attitude and outlook of the government and the society undoubtedly has helped in the proper rehabilitation of the persons with disabilities in this state.

It is clearly evident from the brief survey of some highly developed Western and Asian countries, where finance is not a problem and since they have got a rich and develop economy, prosperity, security and protection mechanism adopted for the persons with disabilities has become reality rather than myth. But in case of developing, poor country like India full facilities for the able persons has become a distant dream. The poor resources of a country really affects the under privileged

45 Supra n. 43
community like the persons with disabilities as the government itself finds it difficult to cover even the able persons under various developmental schemes and programmes. Therefore it also becomes difficult to think exclusively for the persons with disabilities. In our country, persons with disabilities are often treated as ‘objects’ and not as ‘subjects.’ Last but not the least, it is well evident that if the measures taken in these countries are compared to that of India it really disappoints us. It is high time that we should constructively begin to think of this community who are rightly called ‘differently able.’

Discussion on the growth and development of human rights of persons with disabilities at international level shows that over a long span of time human rights to protect disabled persons emerged and grew. It was not a sudden development. Similarly in Indian society the issue of protection of human rights of persons with disabilities did not emerged on suddenly. It had a dark background. Therefore, we need to study the outlook of the Indian society from ancient times in order to understand the present development and nature of protection of human rights of persons with disabilities which has been endeavoured by the researcher in the next chapter.