CHAPTER - 7

HUMAN RIGHTS AND
PERSONS WITH DISABILITIES
Introduction:
The awareness on human rights discourse is greatly increasing among disadvantaged sections of the society across the globe. Disabled community is not an exception to it. There is an increasing demand from the sector particularly disabled community across the globe in order to promote and protect the human rights of Persons With Disabilities. Disability is no more a charity but a development and human rights issue. The disabled community is greatly influenced by the human rights ideology and philosophy with an increasing demand for redressal of human rights violation of Persons With Disabilities across the world. This chapter attempts to explain the human rights perspective and dimension of disability with special reference to international and national human rights regime and disability movement.

7.1. INTRODUCTION, NATURE AND SCOPE

Human rights: Human Rights are principles that are recognised as applying universally to all human beings without exception. A human right is a claim each person has, by virtue of being human, to those conditions and resources that are fundamental to life and dignity. They do not need to be specifically granted, nor can they be taken away. They exist for each person, regardless of the attitudes or laws that govern a society. Human rights encompass an array of political, social, economic and cultural rights. Human Rights are the first universally accepted ideology. Although most observers regard the formation of the United Nations and the promulgation of the universal Declaration of Human Rights as the beginning of the modern struggle to protect human rights, one can trace the origins back to early philosophical and legal theories of the 'natural law', a law higher than positive laws of states. According to these theories, individuals were entitled to certain immutable rights as human beings. The establishment of United Nations after the Second World War is an unambiguous manifestation of recognition of these rights as every government undertakes to promote 'Universal respect for and observance of, human rights and fundamental freedoms without distinction to race, sex, language, or religion'. Human rights govern the relation between government and the individual. They accrue to the individual, who shall be able to exercise them either alone or together with others. These rights address government, which means that every right for the individual is also an obligation on the part of the government.

The following points should be made clear straight away:

- Human rights are universal. In other words, a violation of a human right is a violation no matter where in the world it is committed. Thus a state can never excuse a violation of human rights by pleading tradition, religion, culture or such like.
- Human rights apply to all human beings without distinction - that is to say, irrespective of race, colour, gender, language, religion, political or other convictions, national or social origin, property, birth or status generally. No one may be discriminated against or impeded from the enjoyment of their rights.
- The state has a responsibility for the realisation of rights in society. This balance between rights and obligations is fundamental to human rights.

The Universal Declaration of Human Rights, adopted by the United Nations on 10th December 1948, is the first international document acknowledging universal human equality of dignity and rights. Since then, its 30 articles have been elaborated in successive declarations and conventions adopted, for example, by the Council of Europe, the UN General Assembly, other UN agencies, the OAS and other bodies.
International human rights law: To promote human rights for all of the world's citizens, countries (hereafter referred to as "States", since this is what they are called in international Human rights law) have come together, through the system of the United Nations, to articulate principles of human rights that are considered universal and inviolable. The UN has developed many human rights "instruments" to house these principles. Some instruments, such as Declarations, are not intended to be legal instruments. They signify a moral and political commitment to an idea or set of ideas. Treaties, often named "conventions", are international Law, and States that sign and ratify them must abide by them. Some conventions require immediate compliance and others use a system of "progressive realisation", meaning that States can incorporate the principles gradually.

Civil rights law: National governments, as the guarantors of the human rights recognised in international laws, have the international legal responsibility for enforcing them. This is accomplished through civil rights law, which expresses human rights in terms of the political and social order of a given society. In other words, the civil rights laws of a country should be designed to implement and enforce the human rights to which they relate. The Americans with Disabilities Act, for example, is a civil rights law that defines the means of accessibility and accommodation through which Persons With Disabilities can claim their human rights to inclusion and participation in community life, as well as to employment opportunities. Of course, not all civil rights laws are based on international human rights law. But, for those that are, civil rights law establishes:

a. Standards governing human and civil relations relevant to human rights (non-discrimination, non-violence, etc.)
b. Tools or systems necessary for people to enjoy their human rights (public education, due process, health care access, etc.)

Human rights violation: Enforcement mechanisms, usually committees, are set up to monitor international human rights laws, and States must report to these committees. The committee evaluates each State's report of its efforts to respect, protect and fulfill the law. Sometimes non-governmental organisations also submit reports to these committees to provide another opinion on how well - or how poorly - a State is doing with respect to human rights. Some treaties also provide procedures for states or individuals to file a complaint against a state alleging a violation of a treaty. Determining that an infringement has occurred is complicated (even for human rights law experts) and not a subject that will be tackled too aggressively in this Document. Generally speaking, if a State is clearly not working to conform its laws and practice to meet the obligations set forth in a convention, it is considered to be in violation of the convention. If a State establishes laws consistent with a convention, but allows persistent human rights abuses to continue, it is considered to be in violation of the convention.

Violation of human rights by a government: When a committee determines that human rights violations have occurred, it will provide guidance to the guilty government regarding changes it must make to be in conformance with the law. Enforcement is difficult and generally relies on political and moral pressure from the UN and other States, as well as from other institutions in the international community. Consequences for violations are also largely political in nature. For instance, chronic violations of human rights law often affect the willingness of other countries to offer foreign aid. Certain human rights abuses can result in changes in diplomatic relations. Interestingly, the closest scrutiny of compliance with human rights principles often does not come from the actual monitoring committee, but from organisations such as Amnesty International and Human Rights Watch. The annual and special reports of these organisations are taken very seriously by governments, NGOs and the United Nations.

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Examples of International Human Rights law: There are several sources of international human rights law. The focus here is on the two kinds of law that are most relevant to understanding the need for, and the potential impact of, an international convention on the rights of Persons With Disabilities.

International Customary Law: The most recognised example of international customary law is the Universal Declaration of Human Rights, which was adopted in 1948 by the United Nations General Assembly. At the time of its adoption, it was not an instrument of international law. It was a "declaration" which constituted a moral commitment, but had no legally binding effect on nations. Over time, however, global recognition and application of its principles transformed its legal status through a mechanism called "international customary law". Customary law usually applies to a principle, not a whole document. In the case of the Universal Declaration of Human Rights, the Declaration itself is generally considered customary law since all of its principles have achieved that status. A principle becomes customary law when it is applied widely and consistently because States feel a sense of legal obligation to that principle.

Basically, International Customary Law is a result of states' practice plus states' sense of legal obligation. This concept has some very complicated issues and questions attached to it. For example, how do you measure States' sense of legal obligation, does the sense of legal obligation compel the State to adopt certain practices, or does following a practice over time create a sense of legal obligation to that practice? For the present purposes, this is not critical material to delve into. It might be helpful to think of customary law in the same way as "common marriage law". A couple's behaviour is consistent with that of a legal marriage. They may have decided to behave this way because of an existing sense of commitment, or, they developed a sense of commitment over time as a result of the behaviour. Perhaps it is a little bit of both. In any case, after a time, they acquire the same legal rights and responsibilities of legally married couples. Once a principle achieves the status of international customary law, a State must issue a formal objection to it in order to be legally exempted from it. A State that has not formally objected is legally obligated to abide by the standard.

International Treaties (Conventions, Covenants, etc): An international treaty is a legal document that is binding on the States that sign and ratify it. Other names for a treaty include "convention" and "covenant". Since it is anticipated that the treaty on disability will be called a "convention", the term will be used in the discussion of how a treaty works. When the United Nations decides to develop a convention, the process usually follows a basic pattern of routine work and special events. In the beginning, there may be several drafts developed independently by people or groups. The Committee tasked with developing the convention decides which document will become the official working draft of the convention. From there, the process of developing the provisions and language for the convention can take several years. There should be opportunities for many groups and individuals to contribute ideas throughout the process, and, ideally, governments and civil societies should work together to achieve the best possible results. Once a convention is adopted by the United Nations, a State has several options, which include:

- **Sign**: This generally signifies political approval and the intent to seek ratification by the State's governing legislature.
- **Ratify**: This establishes a state's official consent to be bound by a convention. Through ratification, a country becomes a "States Party" (sometimes called a "member") to a convention, and must implement and enforce its principles. This means that its national laws must conform to the provisions of the convention. The process for ratification in the
United States is signature by the President, with the advice and consent of 2/3 of the Senate.

Sign and ratify with Reservations, Understandings and Declarations (RUDs): RUDs are tools used by states to create certain limits to a convention, or to make clear how a state interprets some of its aspects. Most conventions allow RUDs.

Reservations: If a provision of a convention violates a state’s domestic constitutional provisions, that state will usually file a “reservation” to the provision, so that the provision does not apply to the state. States cannot file a reservation that nullifies the main intention or spirit of the convention.

Understandings and Declarations: These are statements a State can make to clarify how it believes a particular provision should be interpreted. They do not legally exempt the State from a provision.

Accede: There will usually be a specified period of time during which states can become parties to a convention by signing and ratifying it. After this period has ended; states can typically become parties to a convention by "acceding". In the United States, accession requires the same Presidential and legislative approval process as ratification. Accession is subject to RUDs, just like ratification.

A convention becomes official law: When an international convention is developed, a decision is made regarding how many states must become "States Parties" to it before it will "enter into force". Before such time, the convention is not fully enforceable on any state, even if that state has signed and ratified it. A convention assumes the full force of international law when the pre-determined numbers of states become states parties.

Disability Rights - The missing piece of international human rights law: The Big Picture of International Human Rights, The International Bill of Rights is a trio of documents that consists of:

- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights.

The Universal Declaration of Human Rights is customary law and the two Covenants are treaties. Together, they express the core principles of human rights law. The remainder of human rights treaties addresses either specific or general problems:

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Prevention and Punishment of the Crime of Genocide
- Slavery Convention
- The Convention on the Elimination of All Forms of Discrimination Against women
- The Convention on the Rights of the Child
- The Convention on the Protection of the Rights of all Migrant Workers

These specialized treaties are developed when it is clear that the more general treaties have either failed to protect people from a particular kind of Human rights abuse, or have failed to protect the human rights of a particular population.

Disability Rights in Focus: The human rights of Persons With Disabilities are not contained in a specialized convention. Persons With Disabilities must rely on the general principles in the International Bill of Rights for legally binding international protections. More specific rights regarding Persons With Disabilities are outlined in other international documents, but these are not international law. The most commonly referenced of these non-binding documents are:

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The Standard Rules on the Equalisation of Opportunities for Persons With Disabilities (Often referred to simply as the "Standard Rules"): This document was adopted as a blueprint for States' policy-making and to provide a common frame of reference among States. The document was developed by the UN Commission on Social Development. The Standard Rules established a limited monitoring mechanism by appointing a "Special Rapporteur" who reports to the UN Commission on Social Development. The Special Rapporteur presents States with questions concerning their implementation of the Standard Rules and serves as an advisor to governments and disability organisations regarding implementation. The Standard Rules contains important guideline that serve, for many countries, as models on which to base their policies, programs and laws. Still, while The Standard Rules is an important instrument, it is not affiliated with any human rights body of the UN and it does not proclaim to be a statement of Human rights standards (although it does reference human rights in its preamble). Furthermore, it is not a legal document. Compliance by States is voluntary and global monitoring is ultimately the responsibility of one individual.

The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care: This instrument, adopted in 1991 by the UN General Assembly, sets forth principles intended to serve as a common standard for human rights practices in Mental health systems. Compliance is voluntary and it has no monitoring system. This document is often rejected by disability advocates on the basis that it reflects paternalistic attitudes and the outdated "medical model" (as opposed to a rights-based approach) that it endorses involuntary detention and forced treatment and that it was developed without sufficient consultation with people with mental disabilities. The World Network for Users and Survivors of Psychiatry has called upon the UN to revoke the MI Principles.

Convention on the rights of Persons With Disabilities: UN general assembly in 2002 agreed to have a convention on the rights of Persons With Disabilities in order to promote and protect the human rights of Persons With Disabilities across the globe. The Ad Hoc Committee has approved the text and sent to drafting committee for final drafting. The international norms and standards for the protection of human rights of Persons With Disabilities are discussed elaborately in the next section.

Source:
7.2. INTERNATIONAL HUMAN RIGHTS INSTRUMENTS FOR PERSONS WITH DISABILITIES

Introduction:
This section provides concise analytical information on international norms and standards concerning Persons With Disabilities that have been adopted under the auspices of the United Nations System or other inter-governmental bodies and organisations. It is a reference tool that contains information resources on the international and regional normative standards to promote the rights of Persons With Disabilities in society within a broad human rights framework, encompassing the full range of human rights from civil and political to economic, social and cultural rights and the different mechanisms by which these norms and standards have been adopted into local laws. Further, this Resource is a practical guide to putting into practice rights on behalf of Persons With Disabilities. It also provides an educational tool designed to assist Governments, national and international policy makers, intergovernmental organisations, international organisations, non-governmental organisations, researchers in the area of disability issues and the global Disabled community to identify effective measures to promote, protect and integrate the rights of Persons With Disabilities into all areas of national legislation, policies and programmes and to promote increased awareness of internationally accepted norms on:
1. The equalisation of opportunities for Persons With Disabilities;
2. The full and effective integration of Persons With Disabilities in social life and development; and
3. Standards to protect and promote the rights of Persons With Disabilities.

It is hoped that the section may provide a practical tool to effect the commitment of the international, national and local communities to the goals and objectives of international human rights standards pertaining to Persons With Disabilities, identify obstacles and challenges in implementing these rights and develop an agenda for the empowerment of Persons With Disabilities.

Background to International Norms and Standards Pertaining to Persons With Disabilities: The United Nations from its very inception has been concerned with the status and rights of Persons With Disabilities, and has also recognised that discrimination against Persons With Disabilities adversely affects the economic and social development of entire communities. The United Nations has sought to promote the rights of Persons With Disabilities in its very founding principles, which are based on fundamental freedoms and equality of all human beings.

A. General International Norms Pertaining to Persons With Disabilities:
[a] The Charter of the United Nations: It requires member States to respect human rights for all without any distinction to race, sex, language or religion and forms the nucleus for the protection of rights for Persons With Disabilities. Specific articles of the Charter provide the foundation on which disability rights can be built. These articles are as follows:
- Article 1 (3) states that the purpose of the United Nations is "...to achieve international co-operation in solving international problems of economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction".
- Article 13 (1) (b) states that the General Assembly "...shall initiate studies and make recommendations for the purpose of promoting international co-operation in the
Article 55 (a) states that the "...United Nations shall promote higher standards of living, full employment, and conditions of economic and social progress and development." Furthermore, article 55 (c) provides that the "...United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all."

[b] The Universal Declaration of Human Rights: This forms the fundamental normative basis on which international norms and standards concerning Persons With Disabilities have evolved. The Universal Declaration contains a number of provisions, which constitute the foundation for resolutions regarding disabilities based on the principle of equal rights. They are as follows:
- Article 1 states: "...all human beings are born free and equal in dignity and rights." Article 2 provides that "...everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex or other status"
- Articles 3 and 6 together state: "Everyone has the right to..." life, without any provisions or limitations.
- Article 7 states that "...[a] all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to protection against any discrimination and against any incitement to such discrimination."
- Furthermore, article 25 of the Declaration recognises that everyone has "...the right to security in the event of unemployment, sickness, disability, (...) or other lack of livelihood in circumstances beyond his control."

Apart from the Universal Declaration of Human Rights there are six core human rights conventions that relate to the rights of Persons With Disabilities. The ICCPR and ICESCR ratified in 1966 are the two basic human rights treaties and together with the Universal Declaration of Human Rights constitute the International Bill of Rights. The other four core human rights conventions are discussed in the following sections. While all six conventions stipulate the principle of non-discrimination, the last mentioned treaties specify the general rights enunciated in the ICCPR and ICESCR.

[c] The International Covenant on Civil and Political Rights (ICCPR) [1966]: The provisions on anti-discrimination in the ICCPR have special relevance to rights of Persons With Disabilities. These rights are as follows:
- The right to life (article 6) and the right to freedom from torture and other cruel, inhuman or degrading treatment and punishment (article 7) have special relevance to disability.
- The right to be recognised as a person before the law (article 16) too has special significance to Persons With Disabilities.
- Both articles 14 and 15 recognise the right to access to justice, including the right to the free assistance of an interpreter in court. One of the most important rights in relation to Persons With Disabilities is enunciated in article 25, which establishes that citizens are entitled to "access on general terms of equality, to public service in his country".

[d] International Covenant on Economic, Social and Cultural Rights (ICESCR) [1966]: The provisions of the ICESCR pertaining to anti-discrimination too relate to rights of Persons With Disabilities. Article 2, paragraph 2 of the Convention encourages states parties to, "undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. According to General Comment No.3 of the Committee on Economic, Social and Cultural Rights, states must take steps which are deliberate, concrete and targeted and must be taken within a reasonably
short time after the Covenant's entry into force in a particular country. General Comment No.3 also emphasises that "even in times of severe resource constraint...the vulnerable members of society can and indeed must be protected by the adoption of relatively low-cost targeted programmes." General Comment No. 5 is a definitive analysis of the States party's obligations under the ICESCR in the context of disability. It recognises that: "[t]hrough neglect, ignorance, prejudice and false assumptions, as well as through exclusion, distinction or separation, Persons With Disabilities have very often been prevented from exercising their economic, social or cultural rights on an equal basis with persons without disabilities. The effects of disability-based discrimination have been particularly severe in the fields of education, employment, housing, transport, cultural life, and access to public places and services." (para. 15) State party obligations in relation to non-state parties are enumerated thus: "[in] the absence of Government intervention there will always be instances in which the operation of the free market will produce unsatisfactory results for Persons With Disabilities, either individually or as a group, and in such circumstances it is incumbent on Governments to step in and take appropriate measures to temper, complement, compensate for, or override the results produced by market forces." (Para. 12)

States parties are encouraged to take affirmative action to: "reduce structural disadvantages and to give appropriate preferential treatment to Persons With Disabilities in order to achieve the objectives of full participation and equality within society for all Persons With Disabilities." (Para. 9) Further, states parties are, "required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability." (Para. 5) The General Comment No. 5 also states that, "it is also necessary to ensure that support services, including assistance devices are available for Persons With Disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights." (Para. 33)

[e] The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1949): The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is of special importance in preventing disability as a result of torture. In furtherance of its obligations under the Convention, states parties are to take necessary steps under Article 2 of the convention. The article reads as follows:

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior office or a public authority may not be invoked as a justification of torture.

[r] The Convention on the Elimination of All Forms of Discrimination Against women (CEDAW) (1979): The Convention on the Elimination of All Forms of Discrimination against Women covers all women, whether disabled or not. Women with disabilities face discrimination both because of their gender and disability. Moreover, certain gender specific cultural or traditional practices can cause disability among women as well as cause further harm to disabled women.

[g] The Convention on the Rights of the Child (CRC) (1989): The Convention on the Rights of the Child in article 23 focuses directly on children with disabilities. Even though no direct obligations have been placed on state parties to take measures to ensure that those children with disabilities enjoy a life of dignity, self reliance and integration with the
community, article 23, paragraph 1-4 recognises the importance of participation in the community, education, training, health care, rehabilitation, employment, and recreation opportunities for children with disabilities. The Committee on the Rights of the Child has however established that the fact that article 23 is dedicated to children with disabilities should not mean that the rights of children with disabilities are confined to that article.

[h] The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1966): The International Convention on the Elimination of All Forms of Racial Discrimination, like CEDAW is aimed at preventing double discrimination. Persons With Disabilities of particular racial or minority groups are more vulnerable to discrimination on account of both race and disability. The Convention, as noted by General Recommendation XXV of the Committee on the Elimination of All Forms of Racial Discrimination covers gender-related racial discrimination and by analogy, an inference could be drawn that it covers Persons With Disabilities of different racial or ethnic groups.

[i] The Convention of International Labour Organisation: The ILO Convention concerning Vocational Rehabilitation and Employment of Persons With Disabilities also needs to be mentioned. This special convention is currently the only existing convention concerning disabled persons. The aim of the convention is to provide effective measures at national and international level for the realisation of the goals of equality and full participation of Persons With Disabilities in social life and development. Article 2 states that: “Each Member shall, in accordance with national conditions, practice and ensure all possibilities, formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons”.

B. Specific Rights Pertaining To Persons With Disabilities: In the past few decades, the United Nations has given considerable attention to the rights of Persons With Disabilities. Increased crisis situations such as widespread hunger, wars, and ecological disasters afflicting many communities around the world have increased the numbers of Persons With Disabilities.

[a] The Declaration on the Rights of persons with Mental Retardation [1971]: Apart from general human rights conventions, the United Nations has created extensive policy on issues of disability. In 1971, the Declaration on the Rights of persons with Mental Retardation was adopted by the General Assembly. Article 1 of the Declaration on the Rights of persons with Mental Retardation proclaims that persons with mental retardation have the same rights as other human beings. In addition, Article 2 states that persons with mental retardation have the right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable them to develop their ability and maximum potentials. Also, persons with mental retardation have the right to economic security and a decent standard of living (article 3). Article 6 provides that persons with mental disabilities have a right to protection from exploitation, abuse and degrading treatment. Furthermore, the Assembly declared that there should be legal safeguards available to protect the persons with mental retardation from abuse.

[b] The Declaration on the Rights of Persons With Disabilities [1975]: Article 1 of the Declaration on the Rights of Persons With Disabilities adopted in 1975 defines a person with disabilities as "...any person unable to secure by himself, 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." In the Preamble of the Declaration, The General Assembly called for "...national and international action to ensure that it will be used as a common basis and frame of reference the International Year of Persons With Disabilities by
a General Assembly resolution 31/123 of 16 December 1976. An important United Nations Voluntary Fund on Disability was established by General Assembly Resolution 32/133 in connection with the International Year of Disabled Persons. The Fund was later renamed the Voluntary Fund for the United Nations Decade of Persons With Disabilities (1983-1992). The theme was Full Participation and Equality, defined as the right of Persons With Disabilities to participate fully in their societies, to enjoy equal living conditions, and to have an equal share in improved conditions. The resolution proclaimed that the year 1981 is devoted to the full integration of Persons With Disabilities in society; the encouragement of academic research projects to facilitate the participation of Persons With Disabilities in daily life; the education of the public in regard to the rights of Persons With Disabilities; understanding and accepting Persons With Disabilities; and encouraging Persons With Disabilities to form organisations to express their views.

[c] The World Programme of Action Concerning Disabled [1982]: One of the most important outcomes of the International Year of Persons With Disabilities was the formulation of the World Programme of Action Concerning Disabled Persons, which was adopted by the General Assembly in 1982. The World Programme represents the first world wide international long-term policy in relation to Persons With Disabilities. The Programme proposed three actions:
1. Prevention of mental, physical and sensory impairments;
2. Rehabilitation to assist Persons With Disabilities to reach their optimum mental, physical, and social capacities;
3. Equalisation of opportunities for Persons With Disabilities in areas including housing, transportation, education, social and medical well being and recreation.

The World Programme of Action Concerning Persons With Disabilities consists of three chapters:
1. Objectives, Background and Concepts;
2. An overview of the current situation of Persons With Disabilities and
3. Proposals for the implementation of the Programme.

The purpose of the World Programme is to promote effective measures for prevention of disability, rehabilitation and the realisation of the goals of Full Participation of Persons With Disabilities in social life and development and of Equality. The Programme adds a human rights dimension by recognising the Equalisation of Opportunities as an important objective for achieving full participation by Persons With Disabilities in all areas of life.

The Programme marks a shift towards a rights based model and an explicit recognition of the right of all persons to equal opportunity. In paragraph 12, the WPA defines "equalisation of opportunities" as, "the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work opportunities, cultural and social life, including sports and recreational facilities, are made accessible to all". The General Assembly adopted the resolution Implementation of the World Programme of Action Concerning Persons With Disabilities the year following the adoption of the World Programme.


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[e] The Tallinn Guidelines [1989]: The Guidelines provide a framework for the education and employment of Persons With Disabilities within government ministries and on all levels of national policy-making. The aim of the Tallinn Guidelines is to promote the human resources development of Persons With Disabilities. Guideline 6 states that human resource development "...is a process centred on the human person that seeks to realise the full potential and capabilities of human beings." Guideline 9 provides that "...the abilities of Persons With Disabilities and their families should be strengthened through community-based supplementary services provided by Governments and non-governmental organisations." The Guidelines outline a series of strategies for promoting the human resource development of Persons With Disabilities. These strategies include the promotion of education, training and employment for Persons With Disabilities, as well as community awareness. In particular, guideline 33 provides that "...Persons With Disabilities have the right to be trained for and to work on equal terms in the regular labour force." Guideline 23 states that "...education at the primary, secondary and higher levels should be available to Persons With Disabilities within the regular educational system and in regular school settings, as well as in vocational training programmes." Guideline 28 provides that "...in addition to being offered formal skills training and education, Persons With Disabilities should be offered training in social and self-help skills to prepare them for independent living." The thrust of the guidelines is that Persons With Disabilities are "...agents of their own destiny rather than objects of care..." (guideline 8).

[f] The Principles for the Protection of Persons with Mental Illness [1991]: In 1991, the General Assembly adopted the Principles for the Protection of Persons with Mental Illness for the Improvement of Mental Health Care. The Principles define the basic rights and fundamental freedoms of Persons With Disabilities and was considered a new development in the field of treatment of mental health. The Principles represent minimum United Nations standards for protecting the fundamental freedoms and legal rights of those with mental illness. They are intended to be used by Governments, special agencies, national and regional organisations, international organisations, and non-governmental organisations as a guide.

Principle 1 (2) provides that "...all persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person." Other rights of persons with mental illnesses, which are included in the Principles concern the protection of minors, determination of mental illness, medical examination, confidentiality, consent to treatment, and rights and conditions in mental health facilities. Principle 23 requires States to implement these Principles through appropriate legislative, judicial, administrative, educational and other measures. According to principle 24, the Principles apply to all persons who are admitted to a mental health facility. The major outcomes of the last decade were the designation of December 3rd as the annual International Day of Persons With Disabilities (General Assembly Resolution 48/98 of 20 December 1993) and the subsequent adoption of The Standard Rules on the Equalisation of Opportunities for Persons With Disabilities.

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The Standard Rules on the Equalisation of Opportunities for Persons With Disabilities [1993]: The Standard Rules consist of four major sections:

1. Preconditions for equal participation;
2. Target areas for equal participation;
3. Implementation measures; and
4. Monitoring mechanisms.

The Rules summarise the message of the World Programme of Action concerning Persons With Disabilities and are designed to provide Governments with policy guidelines and options, which can be incorporated into national legislation. The long-term strategy presents a framework for collaborative action at the national, regional and international levels to achieve the aim expressed by the Assembly in resolution 48/99 of a society for all by the year 2010. The Strategy outlines a sequence of suggested actions by interested Governments for the period 1995-2010, together with associated targets, time-frames for action and an ancillary set of support measures at the regional and international levels to realize that aim. Although The Standard Rules on the Equalisation of Opportunities for Persons With Disabilities are not legally binding and do not have the full force of law, they have been adopted by a large number of States and imply a strong moral and political commitment on behalf of States to take action for the equalisation of opportunities for Persons With Disabilities. The Standard Rules is, in fact, the first universal instrument to refer specifically to Persons With Disabilities, as well as to contain an extremely broad statement of the rights to equal opportunities. The first chapter of the Rules, Preconditions for Equal Participation, consists of four preconditions for equal participation: these are awareness raising (Rule 1), medical care (rule 2), rehabilitation (rule 3) and support services (rule 4).

Rule 1 provides that "States should take action to raise awareness in society about Persons With Disabilities, their rights, their needs, and their potential and their contribution." An important component of awareness rising is to focus the education campaign on children as a means of shaping a positive attitude towards Persons With Disabilities among future generations (rule 1 (9)).

Rule 2 provides that States should ensure the provision of effective medical care to Persons With Disabilities.

Also, rule 3 states that in order to assist Persons With Disabilities"...to reach and sustain their optimum level of independence and functioning," States should ensure the provision of rehabilitation services to Persons With Disabilities.

Rule 4 provides further that States should ensure the development and supply of support services, including assistive devices for Persons With Disabilities, to assist them to increase their level of independence in their daily living and to exercise their rights. Together, these two Rules aim to ensure that Persons With Disabilities are able to achieve a level of functioning that allows them to interact with general society.

The second chapter of the Standard Rules deals with Target Areas for Equal Participation (rules 5 to 12). The selected target areas include accessibility, education, employment, income maintenance and social security, family life and personal integrity, culture, recreation and sports, and religion. The notion of accessibility involves the creation of a physical environment, which is appropriate for Persons With Disabilities. Rule 5 asks States to introduce (a) programmes of action to make the physical environment more accessible and (b) undertake measures to provide access to information and communication.

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Rule 6 of the Standard Rules stipulates that States are requested to "...recognise the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings." They should ensure that the education of Persons With Disabilities is an integral part of the educational system." Rule 6 (8) provides that in countries where the general school system does "...not yet adequately meet the needs of all Persons With Disabilities, special education may be considered."

To attain independence, appropriate employment for Persons With Disabilities is essential. As stated in Rule 7 of the Standard Rules, "States should recognise the principle that Persons With Disabilities must be empowered to exercise their human rights, particularly in the field of employment." One of the key aspects in social policy reform in recent years has been the recognition that Persons With Disabilities have been excluded from access to employment in the public and private sector for reasons unrelated to their ability to do the job. Rule 7 (1) provides that employment laws "...must not discriminate against Persons With Disabilities and must not raise obstacles to their employment." The Standard Rules also encourage States to actively support the integration of Persons With Disabilities into open employment (7 (2)); design and adapt workplaces and premises so that they become accessible to Persons With Disabilities (7 (3) (a)); support the use of new technologies and the production of assistive devices, tools and equipment (7 (3) (b)); and provide appropriate training and placement and ongoing support such as personal assistance and interpreter services (7 (3) (c)).

Rule 8 concerns income maintenance and social security. The Preamble to Rule 8 provides that States are responsible for the provision of social security and income maintenance for Persons With Disabilities. Rule 8 (3) encourages States to also provide income support and social security protection to individuals who are involved in caring for a disabled person. However, pursuant to Rules 8 (4) and (5), social security systems should include incentives to restore the income-earning capacity of Persons With Disabilities and incentives for Persons With Disabilities to seek employment. Thus, social security programmes should be structured to encourage people to seek and secure employment and should not be provided as a substitute for employment.

Rule 9 (2) encourages States to promote the full participation of Persons With Disabilities in family life. In particular, Persons With Disabilities must not be denied the opportunity to express their sexual identity and experience parenthood.

Rules 10 - 12 require States to ensure that Persons With Disabilities have equal opportunities to participate in cultural activities, recreation and sports, and religious life. True equalisation of opportunities means that Persons With Disabilities are ensured equal participation in all areas of life, including cultural, recreational, sports, and religious life.

Chapter III of the Standard Rules stipulates the various implementation measures for States to follow. States are responsible for:
A. Collecting and disseminating information on the living conditions of Persons With Disabilities (rule 13);
B. Ensuring that disability aspects are included in all relevant policy-making and national planning (rule 14);
C. Creating the legal basis for measures to achieve the objectives of full participation and equality for Persons With Disabilities (rule 15);
D. Financing national programmes and measures to create equal opportunities for Persons With Disabilities (rule 16);
E. Establishing and strengthening national co-coordinating committees to serve as a national focal point on disability matters (rule 17);

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F. Recognising the right of the organisations of Persons With Disabilities to represent Persons With Disabilities at national, regional and local levels (Rule 18);

G. Ensuring the adequate training of personnel involved in the planning and provision of programmes and services concerning Persons With Disabilities (rule 19);

H. Continually monitoring and evaluating the implementation of national programmes and services concerning the equalisation of opportunities for Persons With Disabilities (rule 20);

I. Co-operate in and take measures for the improvement of the living conditions of Persons With Disabilities in developing countries (rule 21) and

J. Participate actively in international co-operation concerning policies for the equalisation of opportunities for Persons With Disabilities (rule 22).

The final chapter of the Standard Rules (chapter 4) describes a monitoring mechanism designed to further the effective implementation of the Rules. Paragraph 2 of Chapter 4 provides that the Rules are to be monitored within the framework of the sessions of the Commission for Social Development. In addition, a Special Rapporteur is to be appointed to monitor the implementation of the Rules. The Special Rapporteur, assisted by the Secretariat, shall prepare reports for submission to the Commission for Social Development (paragraph 8) and provide advisory services on the implementation and monitoring of the Rules (paragraph 6).

Rule 15 of Chapter III deals explicitly with legislation. It provides: "States have a responsibility to create the legal basis for measures to achieve the objectives of full participation and equality for Persons With Disabilities." Apart from specific United Nations resolutions on disability, two major studies have influenced disability rights in the last two decades. The first was a report entitled Principles, Guidelines and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill-Health or Suffering from Mental Disorder (1986), prepared by Erica Irene A. Daes who was appointed Special Rapporteur by the Sub-Commission on Prevention of Discrimination and protection of Minorities. In 1993, Leandro Despouy a Special Rapporteur appointed by the Sub-Commission prepared a report entitled Human Rights and Persons With Disabilities (1993). This report examines human rights abuses in the area of disability and looks at certain human rights abuses as causes of disability.

Within the United Nations Secretariat, a number of offices also assist in co-ordinating national and international efforts in the field of disability. The offices include the Division of Human Rights (DHR), the Department of International Economic and Social Affairs (DESA), the Department of Public Information (DPI), the Division of Narcotic Drugs (DND) and the United Nations Conference on Trade and Development (UNCTD). Other organisations and programmes of the United Nations have also adopted approaches related to development that are of significance to the World Programme of Action concerning Persons With Disabilities, inter alia;

1. The United Nations Children's Fund (UNICEF) and its efforts to strengthen family and community resources to assist children with disabilities in their natural environments
2. The Office of the United Nations High Commissioner for Refugees (UNHCR) and its work for disabled refugees
3. The Office of the United Nations Disaster Relief Co-coordinator (UNDRC) has advanced specific measures of disaster preparedness and prevention for those already disabled and of the prevention of permanent disability as a result of injury or treatment received at the time of disaster
4. The United Nations Centre for Human Settlements (HABITAT) with its concerns about physical barriers and general access to the physical environment.

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The specialised agencies of the United Nations involved in promoting, supporting and carrying out field activities have an important advisory role to perform. The work of these agencies includes disability prevention, nutrition, and hygiene, education of children and adults, vocational training and job placement.

[h] UN Convention on the Rights of Persons With Disabilities: UN General Assembly resolution No. 56/168 dated 19th of December 2001 established, an ad hoc committee to consider proposals for a comprehensive and integral, international convention to promote and protect the rights and dignity of Persons With Disabilities based on the holistic approach in the work done in the fields of social development, human rights and non discrimination and taking into account the recommendations of the commission on human rights and the commission for social development. The working committee and the ad hoc committee have met many times and drafted the draft convention. A series of meetings are taking place to look into the draft convention. States parties, UN organisations, human rights organisations and nongovernmental organisations and Persons With Disabilities organisations are closely looking into the implications of the proposed convention and suggesting appropriate changes. The disability sector across the globe highly appreciates the efforts of UN for a comprehensive, integral and international convention to promote and protect the rights and dignity of Persons With Disabilities. They feel that it is a progressive, comprehensive, integral and effective international convention, which imposes obligation on the part of the state to promote and protect rights and dignity of Persons With Disabilities. The provisions of the approved draft convention are as follows: The purpose of this convention is to ensure full, effective and equal enjoyment of all human rights and fundamental freedom by Persons With Disabilities. The fundamental principles are dignity, non-discrimination, full inclusion, respect for difference and acceptance and equality of opportunities. It makes states parties obligatory to promote and protect the rights and dignity of Persons With Disabilities. The other provisions are as follows: Promotion of positive attitudes towards Persons With Disabilities, statistics and data collection, equality and non discrimination, right to life, equality before the law, liberty and security, freedom from torture, inhuman or degrading treatment or punishment, freedom from violence and abuse, freedom of expression and access to information, respect for privacy, independent living with inclusion, special rights of children with disabilities, right to education, participation in political and public life, accessibility, right to health and rehabilitation, right to work and livelihoods, social security and adequate standard of life and participation in cultural life. The convention establishes a monitoring mechanism to monitor the progress and violation of human rights of Persons With Disabilities across the globe. Certainly the convention is progressive in nature and has got comprehensive provisions.

Source:
2. www.worldencJe./ei/escapstats/presentationunds.htm - 13k -
5. www.ncd.gov

7. HUMAN RIGHTS AND PERSONS WITH DISABILITIES
7.3. LEGAL RIGHTS OF PERSONS WITH DISABILITIES IN INDIA

Introduction:
Man, the Animal, Needs Laws for His Own Good - Immanuel Kant. He justifies this statement by writing 'For the laws of nature (as justice, equity, modesty, mercy, and, in some, doing to others as we would be done to) by themselves, without the terror of some power, to cause them to be observed, are contrary to our natural passions; that carry us to partiality, pride, revenge and the like.' He further elaborated 'During the time men live without a common power to keep them all in awe, they are in that conditions called war; and such a war, as if of every man, against every man .... [with] no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short.' His words find an echo in the underneath dialogue between John Adams and Thomas Jefferson Oct 9, 1978, when the former said 'I have long been settled in my own opinion, that neither Philosophy, nor Religion, nor Morality, nor Wisdom, nor interest, will ever govern nations or Parties, against their Vanity, their Pride, their Resentment or Revenge, or their Avarice or Ambition. Nothing but Force and Power and Strength can restrain them.'

Laws are necessary for mankind and thus also for the section of the people comprising the disabled. This nation currently embraces important social policy goals of allowing Persons With Disabilities to participate as fully as possible in society without having to face negative bias or stereotypes. For too long, many individuals with disabilities have had to confront unfair presumptions about their abilities to succeed in education and employment. The new laws are designed to prohibit discrimination against individuals with disabilities. But due to lack of implementation, the laws and acts have not made much difference in the quality of life of Persons With Disabilities in India.

The salient features of the Persons With Disabilities [PWD] Act 1995 seek to provide for education, employment, affirmative action, full participation, non-discrimination, and research and person-power development. In the recent time the judiciary has also become pro-active in ensuring implementation of the laws for human rights protection. However social equity and full participation remain a distant dream. India's independent judicial system began under the British, and its Concepts and procedures resemble those of Anglo Saxon countries.

The Supreme Court consisting of a Chief Justice and 25 other Justices, all appointed by the President of India on the advice of the Prime Minister, is the ultimate interpreter of the constitution and the laws of the land. And its affirmative actions are having a slow but positive impact on quality of life of Persons With Disabilities in India. The success in Javed Abidi Vs. Union of India (1999) 3 SSC 467 is one such example as also the directive to Election Commission to make polling booths accessible. This nation currently embraces important social policy goals of allowing Persons With Disabilities to participate as fully as possible in society without having to face negative bias or stereotypes. But due to lack of implementation, the laws and acts have not made much difference in the quality of life of Persons With Disabilities in India.

Pre-Independence Initiatives: Judicial Procedures Under the Designs Act, 1911, which deals with the law relating to the protection of designs, any person having jurisdiction in respect of the property of a Person With Disability (who is incapable of making any statement or doing anything required to be done under this Act) may be appointed by the Court under
section 74, to make such statement or do such thing-in the name and on behalf of the person subject to the disability. The disability may be lunacy or other disability.

**Marriage and Family Laws:** So far as laws of India relating to marriage are concerned the various laws enacted by the Government for the various communities apply equally to the Persons With Disabilities along with those who are non-disabled. In most of these Acts it has been provided that the following circumstances will disable a person from undertaking marriage.
1. Where either party is an idiot or lunatic.
2. Where one party is unable to give a valid consent due to unsoundness of mind or is suffering from mental disorder of such kind and extent as to be unfit for marriage or procreation of children.
3. Where the parties are within the degree of prohibited relationship or are sapindas of each other unless permitted by custom or usage.
4. Where either party has a spouse living.

The rights and duties of the parties to a marriage whether in respect of disabled or non-disabled persons are governed by the specific provisions contained in the Hindu Marriage Act, 1995 (for Hindus) the Christian Marriage Act, 1872 (for Christians) the Parsi Marriage and Divorce Act, 1935 (for Parsis), the Special Marriage Act, 1954 (for spouses of differing religions), the Foreign Marriage Act, 1959 (for marriage outside India). The Child Marriage Restraint Act, 1929, as amended in 1978, to prevent solemnisation of child marriage also applies to the disabled. A Person With Disability cannot act as a guardian of a minor under the Guardian and Wards Act, 1890 if his disability is to such a degree that he cannot act as a guardian of a minor. Similar is the position under the Hindu Minority and Guardianship Act, 1956 as also under the Muslim Law.

**Succession Laws:** In the Indian Succession Act, 1925, which applies in the case of, inter state and testamentary succession there is no provision, which deprives the disabled from inheriting ancestral property. The position with regard to Parsis and the Muslims is the same. In fact a Person With Disability can also dispose his property by writing a 'will' provided he understands the import and consequence of writing a will at the time that a will is written. For example, a person of unsound mind can write their wills if they understand the import and consequence of writing a Will. In the Indian Succession Act, 1925, which applies in the case of, inter state and testamentary succession there is no provision, which deprives the disabled from inheriting ancestral property.

**Constitutional Provisions:** The Preamble of the Constitution reads as follows: “We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens: Justice, social, economic and political; liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all, Fraternity assuring the dignity of the individual and the unity and integrity of the Nation; in our constituent assembly this twenty-sixth of November, 1949, do hereby adopt, enact and give to ourselves this Constitution”.

The Constitution of India is the basic law of the country. Any law inconsistent with or in derogation of the provisions of the constitution is void. It is based on the ideals of justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation. The Constitution of India applies uniformly to all Citizens of India whether or not they are disabled (physically or mentally) or non-disabled and

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irrespective of religion, caste, gender, creed, etc. The only requirement is that the people to whom the Constitution will apply need to have Indian Citizenship.

The basic principles embodied in the Constitution are Sovereignty, Socialism, Secularism, Fundamental Rights, Directive Principles of State Policy, Judicial independence, Federalism and Cabinet Government. Under the Constitution the people are the ultimate sovereigns. They choose periodically the persons who should represent them. As a result, the Governments at the Centre, State and local areas derive their authority from the people and those who wield the executive power of the Government are responsible to the Legislature and through them to the people. Thus, in the affairs of the State it is the will of the people that prevails ultimately.

The Constitution of India applies uniformly to all Citizens of India whether or not they are disabled (physically or mentally) or non-disabled and irrespective of religion, caste, gender, creed etc. as long as they are Indian citizens. The Constitution secures to the citizens including the disabled - justice, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and for the promotion of fraternity just as it does for other citizens who are not disabled. Under the Constitution the Persons With Disabilities have been guaranteed the following fundamental rights (under following Articles):

[a] Right to Equality:

Article 14: Equality before law -- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth -- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -- (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children. (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 16: Equality of opportunity in matters of public employment -- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

Article 17: Abolition of Untouchability -- "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Article 18: Abolition of titles -- (1) No title, not being a military or academic distinction, shall be conferred by the State.

[b] Right to Freedom:

Article 19: Protection of certain rights regarding freedom of speech, etc. -- (1) All citizens shall have the right -- (a) to freedom of speech and expression; (b) to assemble

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peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India; and (f) [removed]; (g) to practice any profession, or to carry on any occupation, trade or business. 

Nothing in sub-clause (a)... (b)... (c)... (d)... (e)... (g)... of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India....

Article 20: Protection in respect of conviction for offences -- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (2) No person shall be prosecuted and punished for the same offence more than once. (3) No person shall be accused of any offence shall be compelled to be a witness against himself.

Article 21: Protection of life and personal liberty -- No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 22: Protection against arrest and detention in certain cases -- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate. (3) Nothing in clauses (1) and (2) shall apply -- (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention. (4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless -- (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention;... (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order. (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts, which such authority considers to be against the public interest to disclose....

[c] Right against Exploitation:

Article 23: Prohibition of traffic in human beings and forced labor -- (1) Traffic in human beings and beggar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes....

Article 24: Prohibition of employment of children in factories, etc. -- No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

[d] Right to Freedom of Religion:
Article 25: Freedom of conscience and free profession, practice and propagation of religion -- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus....

[e] Cultural and Educational Rights:
Article 29: Protection of interests of minorities -- (1) Any section of the citizens residing in the territory of India or any part there of having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them....

[f] Right to constitutional remedy:
Article 34: Restriction on rights conferred by this Part while martial law is in force in any area --...Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area....

[g] Fundamental duties:
Article 51-A: Fundamental duties -- It shall be the duty of every citizen of India (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; (b) to cherish and follow the noble ideals which inspired our national struggle for freedom; (c) to uphold and protect the sovereignty, unity and integrity of India; (d) to defend the country and render national service when called upon to do so; (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practice, derogatory to the dignity of women; (f) to value and preserve the rich heritage of our composite culture; (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; (h) to develop the scientific temper, humanism and the spirit of inquiry and reform; (i) to safeguard public property and to abjure violence; (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Educational Laws: The right to education is available to all citizens including the disabled. Article 29(2) of the Constitution provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language, or any of them. Article 45 of the Constitution directs the State to provide free and compulsory education for all children (including the disabled) until they attain the age of 14 years. No child can be denied admission into any education institution maintained by the State or receiving aid out of State funds on grounds mainly of religion, race, caste, language or any of them.

Directive principles for state policies:
Article 41: Right to work, to education and to public assistance in certain cases -- "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of

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unemployment, old age, sickness and disablement, and in other cases of undeserved want.” (Emphasis supplied)

Article 39A: Equal justice and free legal aid -- “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” (Emphasis supplied)

Article 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections - “The State shall promote with special care of the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

Health Laws: Article 47 of the Constitution imposes on the Government a primary duty to raise the level of nutrition and the standard of living of its people and the improvement of public health and in particular to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes. The health laws of India are particularly relevant from the point of view of the disabled. Some of the Acts, which make provision for the health of the citizens including disabled, may be seen in the Mental Health Act, 1987.

Post Independence Initiatives: Succession Laws
Under the Hindu Succession Act, 1956, which applies to Hindus, it has been specifically provided that physical disability or physical deformity would not deny any person from inheriting ancestral property.

A. The Persons With Disabilities (PWD) (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995: The meeting to launch Asian and Pacific Decade of the Persons With Disabilities 1993-2002 convened by the economic and Social Commissioner for Asia and Pacific held at Beijing adopted the proclamation on the full participation and equality of peoples with disabilities in the region. To implement the proclamation, an Act this Equal Opportunity Act, 1995 came into enforcement on February 7, 1996. This is an important landmark and is a significant step in the direction to ensure equal opportunities for Persons With Disabilities and their full participation in the nation building. The Act provides for both preventive and promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and person-power development, creation of barrier-free environment, rehabilitation of Persons With Disability, unemployment allowance for the disabled, special insurance scheme for the disabled employees and establishment of homes for persons with severe disability etc Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act-1995 was enacted by the Parliament of Republic of India. The Act entrusts the government with the task of making public life more comfortable for Persons With Disabilities using economic resources available. A Person With Disability is entitled to privileges under Indian law. The individual must however, suffer at least forty percent of the disability to be eligible for these benefits. The degree of disability must be determined and certified by a medical authority. This aims at wider dissemination of the rights conferred upon by the Act.
Main Provisions of the Act:

[a] Prevention and early detection of disabilities:
- Surveys, investigations and research shall be conducted to ascertain the cause of occurrence of disabilities.
- Various measures shall be taken to prevent disabilities. Staff at the Primary health Centre shall be taken to prevent disabilities. Staff at the Primary Health centre shall be trained to assist in this work.
- All the Children shall be screened once in a year for identifying 'at-risk' cases.
- Awareness campaigns shall be launched and sponsored to disseminate information.
- Measures shall be taken for pre-natal, peri-natal, and postnatal care of the mother and child.

[b] Education:
- Every Child with disability shall have the rights to free education till the age of 18 years in integrated schools or special schools.
- Appropriate transportation, removal of architectural barriers and restructuring of modifications in the examination system shall be ensured for the benefit of children with disabilities.
- Children with disabilities shall have the right to free books, scholarships, uniform and other learning material.
- Special Schools for children with disabilities shall be equipped with vocational training facilities.
- Non-formal education shall be promoted for children with disabilities.
- Teachers’ Training Institutions shall be established to develop requisite person-power.
- Parents may move to appropriate authority for the redressal of grievances regarding the placement of their children with disabilities.

[c] Employment: 3% of vacancies in government employment shall be reserved for Persons With Disabilities, 1% each for persons suffering from Blindness or Low Vision, Hearing Impairment, Locomotor Disabilities & Cerebral Palsy. Suitable Scheme shall be formulated for
- The training and welfare of Persons With Disabilities
- The relaxation of upper age limit
- Regulating the employment
- Health and Safety measures and creation of a non-handicapping Environment in places where Persons With Disabilities are employed
- Government Educational Institutes and other Educational Institutes receiving grant from Government shall reserve at least 3% seats for Persons With Disabilities.
- No employee can be sacked or demoted if they become disabled during service, although they can be denied because of impairment

[d] Affirmative Action:
- Aids and Appliances shall be made available to Persons With Disabilities.
- Allotment of land shall be made at concessional rates to the Persons With Disabilities for House, Business, Special Recreational Centres, Special Schools, Research Schools, and Factories by Entrepreneurs with Disability.

[e] Non-Discrimination:
- Public building, rail compartments, buses, ships and aircrafts will be designed to give easy access to Persons With Disabilities

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in all public places and in waiting rooms, toilets shall be wheelchair accessible. Braille and sound symbols are also to be provided in lifts. All the places of public utility shall be made barrier-free by providing ramps.

[f] Research and person-power Development:
- Research in the following areas shall be sponsored and promoted:
  - Prevention of disability
  - Rehabilitation including CBR
  - Development of Assistive Devices.
  - Job Identification
  - On site Modifications of Offices and Factories
- Financial assistance shall be made available to the universities, other institutions of higher learning, professional bodies and non-government research-units or institutions, for undertaking research for special education, rehabilitation and person-power development.

[g] Social Security:
- Financial assistance to non-government organisation for rehabilitation of Persons With Disabilities.
- Insurance coverage for the benefit of the government employees with disabilities
- Unemployment allowance to Persons With Disabilities registered with the special employment exchange for more than a year and who could not be placed in any gainful occupation.

[h] Grievance Redressal: In case of violation of rights as prescribed in that act Persons With Disabilities may move an application to:
- Chief Commissioner for Persons With Disabilities in the Centre
- Commissioner for Persons With Disabilities in the State

B. The Mental Health Act, 1987: Under the Mental Health Act, 1987 persons with psychiatric disabilities are entitled to the following rights:
1. A right to be admitted, treated and taken care of in Psychiatric hospital or Psychiatric nursing home or convalescent home established or maintained by the Government or any other person for the treatment and care of persons with psychiatric disabilities (other than general hospitals or nursing homes of the government).
2. Even mentally ill prisoners and minors have a right to treatment in Psychiatric hospitals or Psychiatric nursing homes of the government. Under the Mental Health Act, 1987 persons with psychiatric disabilities are entitled to not only be admitted, treated and taken care of in Psychiatric hospital or Psychiatric nursing home or convalescent home established or maintained by the Government or any other person for the treatment and care of persons with psychiatric disabilities (other than general hospitals or nursing homes of the government) but also to live with dignity. The police have an obligation to take into protective custody a wandering or neglected person with psychiatric disability and inform his relative and have to produce such person before the local magistrate for grant of reception orders.
3. Minors who are under the age of 16 years, those persons who are addicted to alcohol or other drugs which lead to behavioural changes and those convicted of any offence are entitled to admission, treatment and care in separate Psychiatric hospitals or nursing homes established or maintained by the Government.
4. Persons with psychiatric disabilities have the right to have regulated, directed and co-ordinated mental health services from the government, which through the Central Authority and the State authorities set up under the Act, have the responsibility of such

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regulation and issue of licenses for establishing and maintaining Psychiatric hospitals and nursing homes.

5. Treatment at Government hospitals and nursing homes mentioned above can be had either as inpatient or as outpatients.

6. Persons with psychiatric disabilities can seek voluntary admission in such hospitals or nursing homes and minors can seek admission through their guardians. Admission can be sought for by relatives of persons with psychiatric disabilities on behalf of the later. Applications can also be made to the local magistrate for grant of reception orders.

7. Persons with psychiatric disabilities have the right to be discharged when cured and entitled to 'leave' in accordance with the provisions in the Act.

8. Where persons with psychiatric disabilities own properties including land, which they cannot themselves, manage, the District Court upon application has to protect and secure the management of such properties by the entrusting the same to a Court of Wards, by appointing guardians of such persons with psychiatric disabilities or appointment of managers of such property.

9. The costs of maintenance of persons with psychiatric disabilities detained as inpatient in any Government concerned unless such costs have been agreed by the state concerned or to be borne by the relative or other person on behalf of the person with psychiatric disability and no provision for such maintenance has been made by the order of the District Court. Such costs can also be borne out of the estate of the person with psychiatric disability.

10. Persons with psychiatric disabilities undergoing treatment shall not be subjected to any indignity (whether physical or mental) or cruelty. Nor can such person with psychiatric disability be used for purposes of research except for his diagnosis or treatment with his consent.

11. Persons with psychiatric disabilities who are entitled to any pay, pension, gratuity or any allowance from the government (such as Government servants who become mentally ill during their tenure) are not to be denied such payments. The person who is in-charge of such person with psychiatric disability or his dependants will receive such payments after the Magistrate has certified the same.

12. A person with psychiatric disability shall be entitled to the services of a legal practitioner by order of the Magistrate of District Court if he has no means to engage a legal practitioner or his circumstances so warrant in respect of proceedings under the Act.

C. The Rehabilitation Council of India Act, 1992:

1. To have the right to be served by trained and qualified Rehabilitation professionals whose names are borne on the Register maintained by the Council.

2. To have the guarantee of maintenance of minimum standards of education required for recognition of rehabilitation qualification by Universities or institutions in India.

3. To have the guarantee of maintenance of standards of professional conduct and etiquette by rehabilitation professionals against the penalty of disciplinary action and removal from the Register of the Council.

4. To have the guarantee of regulation of the profession of rehabilitation professionals by a statutory council under the control of the Central Government and within the bounds prescribed by the statute.

It is another landmark Act, which provides Persons With Disabilities to have the right to be served by trained and qualified Rehabilitation professionals whose names are borne on the Register, maintained by the Council.

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D. The National Trust For Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities Act, 1999: The Central Government has the obligation to set up, in accordance with this Act and for the purpose of the benefit of the disabled, the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities at New Delhi. This recent legislation was created by the Central legislation on the advice of the government. Government has to ensure that objects of the Act for which it is set up have to be fulfilled. Government has responsibility to look after persons with autism, cerebral palsy, mental retardation and multiple disabilities, which is enshrined in the Section 10 of the Act.

1. It is the obligation of the Board of Trustees of the National Trust to make arrangements for adequate standard of living of any beneficiary named in any bequest received by it, and to provide financial assistance to registered organisations for carrying out any approved programme for the benefit of the disabled.

2. Persons With Disabilities have the right to be placed under guardian appointed by the Local Level Committees in accordance with the provisions of the Act. The guardians so appointed will have the obligation to be responsible for the person and property of their disabled wards and be accountable for the same.

3. A Person With Disability has the right to have his guardian removed where he is being abusive or neglecting the former or is misappropriating or neglecting the property of the disabled person.

4. Where the Board of trustees is unable to perform or has persistently made default in the performance of duties imposed on it, a registered organisation for the disabled can complain to the central Government to have the Board of Trustees superseded and/or reconstituted.

5. The National Trust shall be bound by the provisions of this Act as to its accountability, monitoring finance, accounts and audit.

E. National policy on disability 2005: Government of India is in the process of enacting a comprehensive, progressive and integral national policy on Persons With Disabilities in order to promote and protect the human rights of Persons With Disabilities across the country. The basic and fundamental principles of this policy are; non-discrimination, equality, equalisation of opportunities, protection of rights and full participation. The draft policy was prepared and uploaded on the website for the comments of disability sector. There was a strong protest by the sector for not involving disability sector in the process of drafting the policy. A national meeting was convened on September 22 2005, at New Delhi in order to seek the suggestions and comments. The participants across the country have given their feedback, but the approved policy does not figure them. This policy includes prevention, rehabilitation, inclusion, education, livelihoods, social security, non-discrimination, access and other important provisions. It is a landmark in the history of disability sector in India.

Source:
3. Dr. Shruthi Mahapatra [2004], "Laws and the disabled in India" [A hand-book for disability workers and activists, Bhubaneswar, Orissa.

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7.4. DISABILITY MOVEMENT

Introduction:
According to the U.S. Census, there are more than 500 million Persons With Disabilities in the world. Historically, the condition of having a disability has been viewed as tragic. Through ignorance and fear, Persons With Disabilities were typically labelled as beggars or indigents. The word “handicap” itself is said to have been derived from “cap in hand,” an activity familiarly associated with panhandling.

By the 19th century, it was common for Persons With Disabilities to be institutionalised, and they were looked upon as patients or clients who needed curing. This practice had the effect of excluding Persons With Disabilities from the larger society and implied that something was inherently and permanently wrong with them. It provided no room for integration, and perpetuated myths of inequality. The Persons With Disabilities’ organisations think that the crippling negative attitudes are the root causes to the problems of Persons With Disabilities across the globe. These attitudes limit the role Persons With Disabilities, which they can play in society. Ultimately, Persons With Disabilities began to form their own organisations to represent themselves. They revised society’s definitions of them as "sick" and as being punished by God. They redefined themselves as citizens with rights - the same rights as all other human beings - to medical and social services, education, transportation, employment, housing and family life. The first Disabled People’s Organisations [DPOs] were blind uni-disability groups, and some deaf groups, and then cross-disability organisations were formed in many countries. The organizing process began in the 1950s in some countries. By 1980 there were at least uni-disability organisations in some 50 countries. (Driedger, 1987) Uni-disability, international organisations such as the International Federation of the Blind and the World Federation of the Deaf, were founded in the 1950s and 1960s. By 1980, a cross-disability international organisation was conceived in Winnipeg – Disabled People’s International [DPI]. Since 1980, particularly through DPI’s Leadership Training Program, new cross-disability local and national organisations have sprung up in an additional 50 countries. The philosophy of these organisations is one of "self-representation" and a “rights” orientation. They also believe that all disabilities united into one organisation provide a stronger voice for change than each disability group speaking out separately. What, then, is the role of DPOs?

In the first half of the twentieth century, as thousands of World War I [WWI] soldiers returned home, the first vocational rehabilitation acts were passed in the 1920s to provide services to WWI veterans with newly acquired disabilities. But perhaps the biggest changes within the disabled rights movement came with the civil rights movements of the 1960s. As Afro Americans, women and other social minorities gained political consciousness, so did Persons With Disabilities. In the early 1970s, Persons With Disabilities lobbied Congress to put civil rights language for Persons With Disabilities into the 1972 Rehabilitation Act. The Act was vetoed by President Nixon. After a group of Persons With Disabilities marched to Washington, a revised 1973 Rehabilitation Act was passed. For the first time in history, the civil rights of Persons With Disabilities were protected by law. Parallel to the disabled rights movement was a movement in the 1970s to provide access to educational services for children and youth with disabilities.

The Education for All Handicapped Children Act (P.L. -94-142) was passed in 1975 to ensure equal access to public education for students with disabilities. The Act, renamed the Individuals with Disabilities Education Act (IDEA) in 1990, called for a free and appropriate public education for every child with a disability, to be delivered in the least restrictive
environment. Idea promoted the concept of inclusion, requiring that students with disabilities be educated in general education settings alongside students without disabilities to the maximum extent appropriate.

Despite changes in rehabilitation and education law, Persons With Disabilities did not achieve broad civil rights until the enactment of the Americans with Disabilities Act (ADA) in 1990. This landmark federal anti-discrimination law ensured equal access to employment opportunities and public accommodations for Persons With Disabilities. With this act, Congress identified the full participation, inclusion and integration of Persons With Disabilities into society as a national goal.

The Disability Movement and Its History:
What is important in the disability experience is knowing that "one is not alone". There are thousands of Persons With Disabilities thinking similar thoughts, having similar experiences, and getting angry. "We are not alone". "We have a history". Joe Shapiro's recently published work, No Pity: Persons With Disabilities Forging a New Civil Rights Movement (1993) are an attempt to share knowledge about the disability experience, now and in the past. He describes events in the disability movement over the last twenty years, but it is not a true history of the movement. While it is a good introduction, Shapiro makes few serious errors pertaining to historical perspective of disability movement in is book.

However, a good amount of the Shapiro book provides good information on disability and the problems faced by Persons With Disabilities. Until a work comes along with a true historical perspective, Shapiro's is the best history available for some knowledge of the achievements (and defeats) of the disability movement. There are other sources to turn to as well. A work of limited historical use, but which was one of the earliest attempts to present the story of disability in the US is John Lenihan's "Disabled Americans: A History in Performance", November and December 1976, January 1977. It mainly discusses income support policies and super-crips, but it is a start. Paul Longmore, who is a historian, published "Uncovering the Hidden History of Persons With Disabilities," in Reviews in American History, 1987, pages 355-64, which is a call for writing the history of the disability movement. In the article he reviews three works worth reading: Hugh Gregory Gallagher's FDR's Splendid Deception (1985), Harlan Lane's When the Mind Hears: A History of the Deaf (1984), and Peter L. Tyor and Leland V. Bell's Caring for the Retarded in America: A History (1984). Other specialized histories can also be found. For example, Ronald Wiegerink and John Pelosi edited Developmental Disabilities (1979) which is a summary history up to the late 1970s of the national movement on behalf of persons with developmental disabilities; R.C. Scheerenberger's "A History of Mental Retardation" (two volumes, 1983 and 1987) does the same for persons labelled mentally retarded; an excellent work by J. David Smith, "Minds Made Feeble" (1985) presents the devastating impact which the Eugenics Movement had upon Persons With Disabilities.

Justice," Washington Monthly, June 1976, pages 51-58, is an early account of the disabled rights movement. Diane Driedger's, The Last Civil Rights Movement (1989) traces the history of the DPI. Since disabled US citizens did not qualify for the assistance available to participate in the DPI's world congresses and most could not afford nor could raise the funds to do so, virtually all US groups and individuals are left out of the story. She also assumes that disability groups arose only after 1945. But she does include the little known losing fight of the DPI against the World Health Organisation's patronizing and incorrect definition of disability. Edward Berkowitz presents a history of income maintenance programs (workers' compensation and SSDI) and the attempted corrective response (vocational rehabilitation and independent living) in Disabled Policy (1987). Robert Bogdan, Freak Show (1988) is a history for the years 1840-1940 of "freak shows."

Some of the Persons With Disabilities in the shows not only had no other way of making a living and actually preferred it to alternatives. Frank Bowe's autobiographical account of some of the major accomplishments of the disability movement during the 1970s and 1980s, Changing the Rules (1986) presents interesting insights into events, which Shapiro, for example, largely misses. Two other works by Frank Bowe, Handicapping America (1978) and Rehabilitating America (1980) discuss the problems faced by Persons With Disabilities and attempts to resolve them. In order to understand the disability movement a person has to understand the disability experience. Irving Kenneth Zola's Missing Pieces (1982) contributes a great deal to the intellectual framework needed to understand Persons With Disabilities and their experiences. Zola originated the idea that disability is a socially constructed concept. Sonny Kleinfield's The Hidden Minority (1979) is a sometimes insightful, but too often paternalistic, book discussing disability issues as found in the lives of a number of Persons With Disabilities.

A work, which covers most topics of concern to Persons With Disabilities, is Myron Eisenberg, Cynthia Griggins, and Richard Duval (editors), Persons With Disabilities as Second-Class Citizens (1982). It includes topics such as transportation, access, sex, employment, health care, attitudes, and advocacy. A description of the implementation struggles of the civil rights laws for Persons With Disabilities before the ADA can be found in Stephen Percy's Disability, Civil Rights, and Public Policy (1989). A history of the passage of the ADA and an interpretation of the law is found in Implementing the Americans with Disabilities Act edited by Lawrence Gostin and Henry Beyer (1993). A brief work, which explains the ADA and how to comply in an inexpensive manner, is Mary Johnson's (editor), Persons With Disabilities Explain It All for You (1992).

Two books which discuss the way that disability magnifies the effects of sexism on women and the way that disability changes relations of disabled women with men and with other women are M.J. Deegan and N.A. Brooks (editors), Women and Disability: The Double Handicap (1985) and Michelle Fine and Adrienne Accb (editors), Women with Disabilities (1988). The book edited by Marsha Saxton and Florence Howe, With Wings: An Anthology of Literature by and About Women with Disabilities (1987) contains expressions by women with disabilities about their life and about disability. The classic description of the basis of independent living is Gerben De Jong, "Defining and Implementing the Independent Living Concept" in Independent Living for people with physical disabilities edited by Nancy M. Crewe, Irving Kenneth Zola, and others (1983, chapter 1). It is a description of the origins of the independent living movement and its relationship to the movements for civil rights, consumerism, self-help, and self-care.

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The medical model of disability is analyzed and rejected by De Jong. Gareth Williams, "The Movement for Independent Living: An Evaluation and Critique," Social Science and Medicine, 1983, pages 1003-10, criticizes the independent living model as set forth by De Jong as too readily accepting a "free market" perspective. In order to understand the role which the disability movement must play in the current debate over health care reform, there is Sara Watson, "An Alliance at Risk: The Disability Movement and Health Care Reform," in The American Prospect, Winter 1993, pages 60-67. Persons With Disabilities must also participate in the contemporary discussions of issues in the disability movement. To keep current with them Mainstream, the Disability Rag, The Mouth, and three academic journals on disability issues and policy: Disability and Society which comes out of England (and just changed its name), the Disability Studies Quarterly which Irving Zola edits and publishes from Brandeis University, [editorial note: now edited by David Pfeiffer at the University of Hawaii at Manoa] and the Journal of Disability Policy Studies which Kay Schriener edits out of the University of Arkansas needs to be read.

A Chronology of Disability Movement:

a. Beginning of Disability Movement after World War II: After World War II, people lost their houses and jobs, thus, civil movements such as more demanding rice were staged across the nation. Among them were disabled people's movement, which started as a movement to protect the livelihood of Persons With Disabilities. Tuberculosis patients at the National Sanatorium formed a patient's organisation in order to make their demands for better treatment and faster rehabilitation to society. In 1948, the national organisation was created which was called the Japanese Patients' Federation. Around 1949, recovered tuberculosis patients in Kumamoto, Fukuoka and other regions began their actions to establish after-care centres. This movement spread into Hyogo, Okayama and Tokyo. This was beginning of Zencolo (National Organisation of Sheltered Workshops).

b. Formation of Disability-Specific Organisations: Right after the war, blind people and deaf people formed their own nationwide organisations. This is because they have a long history of special education for them since the Meiji Era. The first organisation created after the war was the Japan Federation of the Blind (1948). In this year, Helen Keller visited Japan, and a move for the enactment of a welfare law for the blind arose. However, as the law for the welfare of persons with physical disabilities was favoured by the majority, this did not come true. Helen Keller's visit, however, made a great impact upon the post-war disabled people's movement. One such example is the setting up of the employment promotion week for Persons With Disabilities. Next was the rebuilding of the All Japan Federation of the Deaf (1949). The Federation started to demand the amendment of discrimination clause in the civil law. Since 1958, these two federations have organized the Japan Association of Disabled Veterans and the Japanese Federation of Organisations of persons with Physical Disabilities. Along with orthopaedic disabled people's movement, with the assistance of Mutual Aid Association of the Railway Workers, the National Railways Federation of Disabled Workers Organisations was established, and staged protest against the cut-down of pension benefits. The Mutual Aid Association started to publish a newsletter called "Rehabilitation" in 1953. At the time, the word Rehabilitation sounded quite refreshing.

In 1947, graduates from Komei School for Children with physical disabilities in Tokyo published a magazine "Shinonome". In order to put into practice the ideology founded in the Shinonome some of the participants in the magazine formed Green Grass Organisation (Aoishiba-no-kai) and organized a protest against the controlled life in the institutions, and launched a larger social movement by bringing up issues on mercy killing of children with disabilities and mercy killing in general. In the field of mental retardation, the Japanese Association for the Protection of persons with Mental Retardation (an association of

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...institutions) was re-founded in 1949. Also, in 1952, parents with children with mental retardation formed the Japanese Parents Association for persons with Mental Retardation. This is the first organisation created by parents with children with disabilities in Japan. The association now has 1995 chapters with 410,000 members; this is the biggest parents organisation. In 1950s, groups of parents of children with physical disabilities began to locally organize their activities, and in 1961 the National Federation of Organisations of Parents of Children with physical disabilities was formed. This Federation and the Japanese Parents Association for persons with Mental Retardation are major parents organisations in Japan. These two parents organisations were putting all their efforts to build institutions and special schools for their children, which were extremely lacking in number at that time.

c. Campaign for Compulsory Special School System: Since 1902, a campaign for compulsory education for blind children as well as deaf children had been launched. After the war, this demand was put in motion and put into effect by the School Education Law of 1947. As for children with physical disabilities and children with mental retardation, the School Education Law reads: “Special schools shall be established”. However, there was no enforceable date, and it took thirty-one long years to put into effect. In order to resolve encompassing issues such as compulsory special education, improvement in social security, increase in welfare pension, the enactment of Physically Handicapped Persons Employment Promotion Law and the Law for the Welfare of the Mentally Retarded, disability related organisations began to jointly organize national conferences and meetings. In this context, the Physically Handicapped Persons Employment Promotion Law and the Law for the Welfare of the Mentally Retarded was finally enacted in 1961. In 1979, compulsory special education for persons with orthopaedic disabilities was finally put into effect. However, the delay of the implementation made this compulsory education face a campaign against special schools and refusal of entering special schools as the concept of integration of education for children with disabilities began to be accepted.

d. Pollution and Disability Movement: From 1950s to 1960, Japan enjoyed technological revolution, modernization and rapid economic growth. At the same time pollutants discharged by large industries caused many disabling conditions among citizens and this became major social issue. In 1955, arsenic milk poisoning in Morinaga milk and in 1956 in Minamata disease due to mercury poisoning drew public attention. This was followed by gital-IItai disease in Toyama prefecture caused by discharged water by mining companies and asthma due to air pollution from Yokkaichi oil refining industries and so forth, which caused disabling conditions among many citizens. During the same period, chemical poisoning took place and produced many victims. Thalidomide babies caused by sleeping pills and Sumon disease were brought forth and both victims took issues to the court in 1963 and 1971 respectively. Moreover, premature babys moumaku-sho and daitai-yontokin-koshukushou were recognised as medical malpractice and brought to the court in 1972 and 1973. Against these victims, in order to win their demands the disabled victims, their families and concerned people formed organisations such as Association to Protect Morinaga Milk Poisoning Babies, Citizens Assembly to Eliminate Pollution and Support the Minamata Disease Law Suit, Parents Organisation for Congenitary Abnormal Children (Parents Association to Open-up Children Future), and National Sumon Association.

e. Formation of Disability-Specific Parents Organisations: As mentioned earlier, in 1950s, parents of children with mental retardation and parents of children with orthopaedic disability formed associations. In 1960s various parents organisations for children with officially unrecognised disabilities sprang up. This was due to insufficient laws and government policies to respond to the needs of specific laws and government policies to respond to the needs of special disability and also the parent’s recognition of the importance
of organizing themselves to share their own problems. The following organisations were formed and began taking actions: Parents Association for Children with Speech Impairment (1962), Organisation to Protect Children with Hear Disease, Japan Muscular Dystrophy Association, Parents Association for Congenital Abnormal Children, National Association of Sisters and Brothers who have Mental and Physical disabilities Siblings (1963), National Association to Protect Children with Severe Mental and Physical Disabilities (1964), National Federation of Families, Organisations with Mental Illness (1965), Parents Association for Children with autism (1967). About the same time, the Central Association to Protect Children from Polio, Japan Friends Association for Person with Rheumatism (1960), All Japan Association for persons with Visual Impairment (1967), and National Organisation to Protect Persons with Nephritis and Kidney Diseases (1970) and so forth were formed.

As such, many disability-specific parents association were born spontaneously. Through their experience they began to realize that they were all in the same boat, and set up a coalition to lead their movement more effectively. In order to form a coalition among nationwide associations for children with mental and physical disabilities, in 1965 the National Association for the Welfare of Children with mental and physical disabilities was set up within the National Social Welfare Association. In addition, parents organisations formed the National Coalition of Parents Association for Children with mental and physical disabilities in 1966, and it started the National Welfare Foundation for Children with mental and physical disabilities to provide counselling consultation and training regardless of disability.

f. A Shift from Institutional Care to Community Care: The objective of the parents associations movement in the first half of 1960s was to build many institutions because these institutions had a long waiting list. As such, services for children living home were totally neglected. In 1964, the 13th Paralympic Games were held in Tokyo, and also in the following year held in Tokyo was the 3rd Pan-Pacific Rehabilitation Conference. These two events brought a big shift in the direction of the social welfare policies in Japan, which till then had centred on the institutional care. 1965 saw the beginning of a new trend in the parent's movement; that is to organize groups of homebound children and created non-residential community based facilities for these children. This new movement within a short period of time spread across the nation. A movement to integrate children with disabilities into regular kindergartens and child care centres also started. Parents association began to demand the improvement in community based services, and responding to the request the government in 1966 initiated to support community activities of persons with physical disabilities, the supply of technical aids, the creation of training programs for social adaptation, the creation of social welfare centres for persons with physical disabilities, and so forth. Also initiated was a campaign called "Making the Town Accessible for Wheelchair Users", by Persons With Disabilities themselves forming a coalition with volunteers and citizens. In 1970, Persons With Disabilities from an institution for severely Persons With Disabilities in Sendai City ventured out into town with their own wheelchairs. They were disappointed to know that they could not move around because of curbs on every corner of the sidewalk. This experience triggered a new campaign and resulted in "Citizens Assembly to Build a Welfare-conscious Town". This campaign to check accessibility of society began to spread over other cities and towns, and stimulated the publication of wheelchair access guides in local town and inadequate consideration for Persons With Disabilities in urban planning was pointed out as a result. These local campaigns were at first organized by wheelchair users and their supporters as to expand the living environment of wheelchair uses. However, in a national meeting of the National Wheelchair Citizen's Assembly held in Sendai city, not only wheelchair users' but also other problems of Persons With Disabilities were brought up in terms of accessible environment. From this time on, the campaign engulfed other Persons With Disabilities and was expanded to one of citizen's campaigns. Through this campaign

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people realized that Persons With Disabilities and other citizens could share one goal, support each other, and strengthen the understanding between them. From this time on, a slogan “Living Together with Disabled persons” has been stressed by volunteers and workers of the institutions for Persons With Disabilities.

g. A movement to protect rights and living: A main purpose of the movements organized by Persons With Disabilities and their parents was to make requests to politicians or the government administration. In the later parts of 1960s when teachers’ unions, citizens groups, and labor unions demanded various rights, Persons With Disabilities movement likewise shifted to a campaign to demand their rights such as the right to education, right to enjoy living, and right to work. In 1968, during the 17th National Congress of the Deaf, a slogan, “Protection of living and rights” was approved. Earlier than this, in 1966, at the 15th Educational Study Meeting of the Japan Teacher’s Union, a proposal was presented to create a nationwide private organisation regarding the education for children with disabilities. This organisation should be organized not only by teachers engaged in parents of children with disabilities education but also take in parents, workers at institutions, physicians, and other citizens. As a result, in the following year the National Study Group on Issues of Persons With Disabilities was organized. This study group defined the development and living of children with disabilities as the issue of rights, and placed it as the principle of its movement. With this group being a focal point, in 1967, National Assembly to Protect the Living and Rights of Persons With Disabilities was held, and the National Conference to Support the Life and Rights of Persons With Disabilities was formed. This is considered epoch-making in that this overcame the difference of disabilities and demands of the many organisations involved. Meanwhile, as mentioned earlier, in 1957 persons with cerebral palsy organized a group called Aoi-shiba-no-kai (Green Grass Association), and at about this year, they began human rights as well as so-called accusation campaigns.

h. Securing the right to work: Among the services for Persons With Disabilities the most delayed was the issue of employment. As the policies and services for employment of Persons With Disabilities advanced in European countries and the United States, DPOs in Japan kept demanding a mandated employment quota system. However, the government postponed its action, and finally in 1960 the Physically Handicapped Persons Employment Promotion Law was enacted. However, the law only covered part of persons with physical disabilities, the employment quota was set low, and the quota was not mandated by the law. In other words, the law was more or less insignificant. For this reason, right after the law was enacted, DPOs demanded amendments in the law. It was in 1976 when the law was finally amended to impose responsibility for employing Persons With Disabilities, set a quota at 1.5% and collect levy when a company does not comply with the quota. Even in this amendment, the coverage of the law was limited to persons with physical disabilities; thus, the campaign went on to ask for a law for the employment of persons with all types of disabilities. In 1982, it was amended to be called the law on the employment of disabled persons. Persons With Disabilities organisations also asked for the establishment of protected employment system, however, at this moment, its chance is minimum. Because there is no protected employment system in Japan, parents of Persons With Disabilities aimed at making small community workshops for their children. Up to now, about 1,600 workshops have been built with over 250,000 Persons With Disabilities working there. These small workshops receive a small amount of grants from national or local government; however, the management is very difficult. Lately, due to the down turn of manufacturing industry, orders from these industries have declined a great deal, thus workshops are having very hard time to maintain their business. To improve the situation, most of DPOs including the Federation of Sheltered Workshops in Japan voice the need to assist these small-scale community workshops.
i. Toward the Independence of Persons With Disabilities: The impact of the International Year of Persons With Disabilities of 1981 upon the government, mass media, and the general population raised enormously the awareness toward Persons With Disabilities. Especially, because of this occasion, various disability organisations, which used to go against each other began to overcome the difference of disabilities, their beliefs, and opinions and formed, although a loose coalition, the Japan Council for International Year of Disabled Persons. Details regarding this council are mentioned in the following part. In 1982, some organisations, which belonged to the JCIYDP, invited American leaders of independent living movement and held the Japan-USA Seminars on Independent Living of Persons With Disabilities.

These seminars made a great impact upon severely Persons With Disabilities in Japan who had been seeking independence and full participation and equality. After the seminars, they started their own independent living movement in their localities. At the same time, the development of group homes for Persons With Disabilities including persons with mental retardation by Persons With Disabilities themselves and their families was seen. The development of both community workshops and group homes is the most important issue of Persons With Disabilities who live in the community. Another important issue facing Persons With Disabilities was to establish income maintenance as disabled person's right to live. Since 1960s persons with cerebral palsy and with polio who were not engaged in any gainful employment organized the National Coalition to Establish Income Maintenance, and began their activities. The JCIYDP was involved in this issue as its first priority and finally in 1981 the National Pension Law was amended and basic disability pension was included as part of the pension scheme. The amount of the pension benefit is not enough to maintain daily living, however, it is quite significant in that it is included in the contributory pension scheme. Another important move was the establishment of the DPI in 1981 at the First World Congress in Singapore. In 1968, DPI Japan was finally established and it intends to coordinate with the 16th World Congress of Rehabilitation International to make sure that Persons With Disabilities perspective is fully reflected.

j. Japan Council for International Year of Disabled Persons: In 1980, the year before the International year of Disabled Persons, the Japan Council for International year of Persons With Disabilities (JCIYDP) was born. At the beginning, the number of member organisations was 57 and almost all of the organisations nationwide participated in it. Later on, the number increased to 100 and presently, it has 91 member organisations. The JCIYDP is a coalition to coordinate activities among private organisations within and outside of Japan in order to achieve full participation and equality of Persons With Disabilities. In 1981, the JCIYDP hosted a national congress to make a long term plan of action. Since then, it held a national conference every year to pursue the full implementation of the action plan. Among other activities are issuing the IYDP Newsletter, and hosting welfare movie festivals and welfare book fairs on a regular basis. Since its inception, the Council accomplished its aims and objectives to a greater extent. They include:

- the amendments of the Law for the Welfare of the Physically Handicapped;
- improving income maintenance of Persons With Disabilities through the amendment of the National Pension Law; and
- the total of amendment of the employment promotion law.

The present issues to be resolved are to amend the Mental Health Law, and to expand the scope of officially recognised disabilities up to the internationally accepted one. The JCIYDP has chosen the many important, essential and priority items as the plan of action for the second half of the United Nations Decade of Disabled Persons.

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k. Cooperation among the four major organisations for Persons With Disability: In 1981, the UN International Year of Disabled Persons, the four organisations, namely, Japanese Federation of Organisations of Disabled Persons, Japan Council on Disability (JD), National Council of Social Welfare of Japan, and Japanese Society for Rehabilitation of Persons With Disabilities (JSRD), co-hosted the National Assembly on Disability to mark the end-year of UN Decade of Disabled Persons. Together they carried on the movement to appeal to the national government and to political parties. In December 1992, the final year of the UN Decade of Disabled Persons, they carried out National Caravan Campaign throughout Japan and held the National Assembly on Disability, which consummated the final year of the Decade to promote measures for people with disability. The four organisations shared the same awareness that a great number of problems still remained as far as the measures for people with disability in the Asian and Pacific region were concerned.

As for the plans after the termination of the UN Decade of Disabled Persons, they appealed to the national government for the need to continue promotion of measures for Persons With Disability. On the occasion of UN ESCAP Meeting, which was held in Beijing, the Decade for Persons With Disabilities in the Asian and Pacific Region was adopted as a joint proposal by Japan and China. In 1993, the starting year of the Decade, the First Assembly of the Regional NGO Network for the Promotion of the Asian and Pacific Decade of Persons With Disabilities (RNN) was held in Okinawa. In April 1994, Promotional Council of the New Decade was founded by the four organisations in order to promote new measures for Persons With Disabilities. The purpose of the Promotional Council is, on the one hand, to actively promote new long-term plan of measures for the disabled in Japan, and, on the other hand, to strengthen solidarity among NGOs and aim at realization of full participation and equality to suit situations of the respective countries in the Asian and Pacific region. Major activities of the Promotional Council aim at promoting and trigger disability movement across the world.

It can be observed that there is a great need to build on the leadership skills and qualities in order to promote and trigger disability movement across the world.

Source:

Conclusion.
In this chapter the research attempts to state that disability is a clear case of human rights issue. The basis for considering disability as a human rights issue is derived from the international, global and Indian trend of disability sector. The following points uphold that disability is a human rights issue. The basis includes: blatant Discrimination, sheer exclusion, and profound denial of basic human rights, ruthless injustice, overt exploitation and denial of opportunities. The key issues faced by Persons With Disabilities put forth the theory of disability and human rights. In this context, the human rights discourse, international human rights regime, UN instruments of human rights, International covenants, treaties, declarations and standard rules have been discussed. Except a few international human rights instruments, all others do not have specific expression on disability and they negate the concept of discrimination on “any” grounds. This “any” grounds is assumed that disability can also one of the grounds where discrimination is is outwardly rejected.

7. HUMAN RIGHTS AND PERSONS WITH DISABILITIES
Global scenario vis-à-vis the ground realities: The data collected during the research reveal that 93% of the respondents strongly feel that disability is not just a rehabilitation issue but a human rights and development issue. Focussed group discussions, case studies and schedule out comes clearly point out that 100% of Persons With Disabilities and families, 100% of communities and 95% pioneers strongly feel that disability is a clear case of human rights and a development issue rather than mere a rehabilitation issue. 92% of the respondents strongly feel that accessing the services is their right but not charity since they are also equal citizens of this country and fundamentally human beings. The primary data brings out the fact that the CBR project implemented for 10 years has made them aware of their rights and taught them to look at disability as a human rights issue. There are many cases of violation of human rights but self-advocacy and sensitive communities have addressed the issues and made justice to Persons With Disabilities.

Even a large number of international and national human rights instruments exist but only 36% of the respondents are aware of this regime. Only 66% of the respondents of Persons With Disabilities and families and 65% of communities are aware of existence of specific laws for Persons With Disabilities in India. If this is the case in a region where a CBR programme was implemented for ten years, one can imagine the condition of an unreached area. 89% respondents strongly feel that there is a sheer ignorance among state implementing officials, judiciary, advocates, police and other law and order agencies about the existence of specific legislations for the development of Persons With Disabilities in the country. Every time each individuals with disabilities have to knock the doors of judiciary and sensitisate state machinery to access their basic rights and entitlements.

98% respondents with and without disabilities strongly feel that there is a greater need to amend the existing general laws and legislations particularly legislations which are antidiscrimination in order to promote and protect the human rights of Persons With Disabilities since they do not explicitly express about Persons With Disabilities. 85% respondents strongly feel that there is a greater need to sensitise and generate awareness among judiciary, law and order agencies about fundamental principles and values of international and national human rights regime to discourage discrimination against Persons With Disabilities in all aspects of life and recognise the fundamental equality of Persons With Disabilities before the law of the land. 78% respondents strongly feel that state should ensure appropriate measures during the trial of Persons With Disabilities by listening and hearing them by providing appropriate and required assistance to express their views without any fear and prejudices.

99% of the respondents of Persons With Disabilities and families strongly feel that self-advocacy and disability movement could effectively address the issues of Persons With Disabilities with the active support of communities. 71% of communities strongly feel that self-advocacy is necessary to tackle the issues. 94% of the respondents feel that disability movement is well placed in India but the fragmentation, selfishness, vested interest, internal conflicts, lack of unity among uni-disability self advocacy groups, lack of coordination among various cross-disability groups and narrow objectives and vision demands makes the lobby very poor and less effective.

Majority of the respondents with and without disabilities strongly feel that Self Help and Advocacy Groups [SHAGs] of Persons With Disabilities and their families at village level can potentially and significantly contribute to the success of the larger disability movement at national and international levels. This was clearly demonstrated by a large number of SHAGs both with in and out side the universe through self and people centred advocacy at village,
hobli, and block and district levels, concerning the issues of Persons With Disabilities. 89% respondents with and without disabilities strongly feel that there should be a vibrant mass based organisation of persons with all disabilities at the national level grounded and supported with the support of village, panchayat, block, district and state level in order to influence the state and policy making bodies to ensure pro-disabled and inclusive policies which facilities the holistic development of Persons With Disabilities.

100% Persons With Disabilities, families and communities and 55% pioneers strongly feel that the decision of the individual with disabilities should be final in the process of rehabilitation and development. However they feel that decision should be informed and freedom of choice should lie with the individual. 68% pioneers, 71% communities, 98% respondents with disabilities and families strongly feel that politicisation of disability issue with active participation of Persons With Disabilities in state politics and political institutions would bring drastic changes in the sector. 74% of the respondents strongly feel that a coordinated, concerted, collaborative, inclusive, and serious effort with a comprehensive approach is required to address the issues of Persons With Disabilities.