CHAPTER-I

INTRODUCTION
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"Obviously, because of my disability, I need assistance. But I have always tried to overcome the limitations of my condition and lead as full a life as possible. I have traveled the world, from the Antarctic to zero gravity." STEPHEN HAWKING

When we make people 'other', we group them together as the objects of our experience, instead of regarding them as subjects of experience with whom we might identify, and we see them primarily as symbolic of something else usually, but not always, something we reject and fear and project onto them. To the non-disabled, people with disabilities and people with dangerous and incurable illnesses symbolize, among other things, imperfection, failure to control the body, and everyone's vulnerability to weakness, pain and death.\(^1\)

Hence, often the most difficult impediments to overcome are attitudes other people carry regarding people with disabilities. This persistent inherent discrimination against individuals with disabilities in society creates considerable limitations on the amount of time that is devoted to a humane understanding of the issues related to those individuals\(^2\). People with disabilities face many barriers every day, from physical obstacles to systemic barriers to institutionalized prejudices. Hence, disability is a social construct. The term 'disability', 'handicap' or, 'impairment', has always demanded a response from society. The ways in which societies have reacted to impairment always reflect in words or terminology used to address. This shows our thought process, our attitude and perceptions towards persons with disabilities.\(^3\) In the past two decades, as a result of changes in the law, in the attitudes of people with disabilities, and in society, individuals with disabilities have experienced a change in the way they are treated and the ways in which they are able to participate in society.

\(^1\) WENDELL, S. THE REJECTED BODY: FEMINIST PHILOSOPHICAL REFLECTIONS ON DISABILITY. New York, Routledge (1996)
\(^3\) Ibid, p. 3-7.
Until recently, it was socially acceptable to refer to a person with disability as lame, crippled, retarded, handicap, or even defective. The importance of language may be best understood by comparing the implications of using the term “disabled person” as opposed to "person with a disability." Earlier, the first term places the emphasis on the disability, whereas in later term places the emphasis on “the person”, it means “person-first” terminology. The use of person-first terminology linguistically reinforces that the person is more important than the disability. The general shift towards using more humane terms to describe the condition of having a disability reflects the change in the societal attitude and in public perception. Changes in commonly used terms may not seem revolutionary, but they reflect and reinforce slowly evolving social attitudes toward persons with disabilities.4

In any society, impairment is both constant as well as culturally and socially shaped. This means that social and cultural dimensions shape how impairment is perceived and how it is responded to. They also influence what will be the reaction of a person with impairment in any particular society. Hence, shared representations of the person, of community and of the world influence the identification, definition and social responses to impairments. Depending on those dimensions, impairment gives birth to certain words or terms such as to 'abnormality', 'disability' or 'handicap' or 'defective', which reflects the attitude of the society towards persons with disabilities. In the same way, a 'person with an impairment' was once viewed as a freak or monster as considered in old Greek society, or as 'crippled' or 'infirm' in old western society. Today he or she is perceived as and considered 'a disabled person' or 'a person with a disability' in contemporary Anglo-Saxon usage, or 'a handicapped person' in contemporary French usage and accordingly it treatment varies it can be social, political, medical, religious, ethical, or something else.5 People with disabilities, however, still face considerable prejudice in many facets of daily life, as evidenced by many different commonplace experiences. Prejudice attitude and social stigma are the real cause of disability. It is part of the “natural physical, social, and cultural variability of human species” and a cross-cultural phenomenon, having been present in every human culture.

5 Ibid.
During past two decades, there has been consistent progress in securing socio-economic development, promoting wider support for democratic values and strengthening collaborative relationships among governments, social institutions and civil society worldwide. However, correspondingly inequality and exclusion not only persist, but are expanding in many parts of the world, both within and across countries. Many societies both horizontally and vertically are facing negative social conditions, such as widening disparities and marginalization of certain groups or communities. To prevent the further increase of social tensions among their members, it is imperative that societies are to be equipped with strategies and tools for adequately assessing the realities and addressing existing challenges in a more proactive, constructive and holistic way, so that they may become better prepared for new challenges and more resilient in confronting them and better able to adjust to emerging imbalances and to adjust more quickly, less violently and more sustainably.

**Evolving Socio-Political Attitude towards Persons with Disabilities:**

Many eminent personalities\(^6\) were victims of disabilities. Historically, the persons with disabilities were cruelly treated\(^7\). With the advancement of science the identification\(^8\) and parameters of disabilities\(^9\), education\(^10\) and research\(^11\), treatment\(^12\), rehabilitation\(^13\) and legal protection\(^14\) were developed.

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6 Homer, Ancient Greek orator of the epic poems Iliad and Odyssey; Stephen Hawking (1942) eminent Physicist/Mathematician; Louis Braille (1809-1852) inventor of Braille; Dr. Helen Keller - American deaf-blind writer, lecturer, and activist; John Milton, (1608-1674): English Author/poet Stevie Wonder (1950), Singer-songwriter, multi-instrumentalist; Thomas Edison, great inventor, Franklin D. Roosevelt Statesman; Ludwig van Beethoven, Music composer; Sudha Chandran, Indian Classical Dance and Film star; 'Soordas', Philanthropist; Maharaja Ranjeet Singh a great warrior and administrator, See Miss Kum Kum Jhalani v The State of Rajasthan and Ors., 1981 WLN 308

7 At the onset of World War II Adolph Hitler orders widespread "mercy killing" of the sick and disabled. Code-named Aktion T4, the Nazi euthanasia program is instituted to eliminate "life unworthy of life." Between 75,000 to 250,000 people with intellectual or physical disabilities are systematically killed from 1939 to 1941.

8 In the 1860s, William Little makes the first step toward identifying cerebral palsy (CP) by describing children with stiff and/or spastic muscles in their arms and legs. That particular condition, known at the time as Little's disease (now called spastic diplegia), is one of the major disorders included in CP. Little also correctly guesses that the condition is caused by lack of oxygen during birth.

9 Edward Alanson (1782) an English surgeon, suggests a change in the way limbs are amputated, resulting in faster healing and less infection. This change has a positive impact on the quality of life for people who are amputees.; Phillipe Pinel (1800) writes Treatise on Insanity in which he
Though persons with disabilities still face enormous problems of misunderstanding and discrimination, real progress has been made and continues to occur. Changes in societal attitudes are reflected by the accepted terms used to describe people with disabilities. The change has been away from equating the person with his or her impairment to describing the person as having impairment. Public Policies are the

develops a four-part medical classification for the major mental illnesses: melancholy, dementia, mania without delirium, and mania with delirium.

10 In 1925, Samuel Orton begins his extensive study of dyslexia, hypothesizing that it could be neurological versus visual, and that it was likely connected to left-handedness. His first assumption is right. His second one, not so.

11 Jean-Marc Gaspard Itard establishes the principles and methods used today in the education of the mentally disabled through his controversial work with Victor, the "wild boy of Aveyron."(1801); Dr. Benjamin Rush, (1805) considered the father of American psychiatry, publishes Medical Inquiries and Observations, the first modern attempt to explain mental disorders.; Thomas H. Gallaudet leaves the United States for Europe in 1815 to learn how to teach the deaf. Upon his return, he founds the Connecticut Asylum for the Education and Instruction of Deaf and Dumb Persons in Hartford, Connecticut, with Thomas Hopkins Gallaudet Laurent Clerc. It is the first permanent school for the deaf in America. The opening of its doors, on April 15, 1817, marks the beginning of efforts in America to educate people with disabilities.; Louis Braille (1829) invents the raised point alphabet that makes him a household name today. His method doesn't become well-known in the United States until more than 30 years after it is first taught at the St. Louis School for the Blind in 1860.

12 Phillipe Pinel, (1793) a physician at La Bicetre, an asylum in Paris, removes the chains attached to people with mental illnesses. Some have been chained to walls for more than 30 years.

13 After seeing a group of blind men being cruelly exhibited in a Paris sideshow, Valentin Huay, (1784) known as the "father and apostle of the blind," establishes the Institution for Blind Children to help make life for the blind more "tolerable." Huay also discovered that sightless persons could read texts printed with raised letters.; The first patient is admitted to the Charlestown branch of the Massachusetts General Hospital, which is later named the McLean Asylum for the Insane. The hospital will become one of the best-known mental health facilities in the country, with services attracting such artists as Sylvia Plath, Anne Sexton, James Taylor, and Susanna Kaysen (author of Girl, Interrupted).; In 1855, the New York State Lunatic Asylum for Insane Convicts in Auburn is the first such facility designed specifically to house convicted criminals deemed to be insane. Previously, they were kept in prisons or hospitals

14 Detail from painting shows U.S. President John Adams signing the First Military Disability Law for the relief of sick and disabled seamen, July 16, 1798.; In 1907, Indiana becomes the first state to enact a eugenic sterilization law—for "confirmed idiots, imbeciles and rapists"—in state institutions. The law spreads like wildfire and is enacted in 24 other states.; The Supreme Court rules in Buck v. Bell that the compulsory sterilization of mental defectives such as Carrie S. Buck, a young Virginia woman, is constitutional under "careful" state safeguards. Perhaps unbelievably, this ruling has never been overturned. In his opinion, Justice Oliver Wendell Holmes writes: "(It) is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind...Three generations of imbeciles are enough."; In 1935, President Franklin Delano Roosevelt signs the Social Security Act, establishing a program of permanent assistance to adults with disabilities.

outcome of societal attitudes, beliefs and public perceptions. It is evident from the history of evolution of public policy relating to the disabled that over the ages the public policies on disability has been influenced by an of “Myth of having a Perfect Body”.

The myth of bodily perfection is as old as civilization and its genesis could be traced to Ancient Greece where the Olympic originated and where the bodily perfection of the Olympians also referred to as the Gods and Goddesses of the Greece was revered as a model for which mankind should strive.\(^{16}\) According to this myth, one can and should always strive to achieve perfect bodies.\(^{17}\) The changes in public policy over the ages reflect the changes in peoples’ attitude towards persons with disability. Public policy in ancient time was greatly influenced by mythological beliefs and the then social system. Social hostility towards disabled people has led to the development of segregated living or living in isolation and invisibility with notion of ‘unfortunate’ or ‘outcome of past deeds’.

Histories of disability, hence, started their journey in ancient Greece with its idealization of body shape and fitness linked to acceptance of infanticide for those born with visible impairments. The dread of impairment is reinforced by examples drawn from the Bible suggesting that it is a punishment for past sins.\(^{18}\)

The negative picture gathers further corroboration in the denunciation of newly born children with impairments as 'changelings', or inhuman beings substituted by the Devil, by a continuous line of medieval clerics from St Augustine to Martin Luther.\(^{19}\) Christianity divorces body and spirit, treating the body as essentially evil. The body is, however meant to house the spirit so that we are supposed to consider our bodies as a temple that must be sanctified. Thus, the body in Christian belief is viewed as a boundless source of shame, self-alienation and pain. According to this world-view, disease and dysfunction are not treated as natural, but as testimony to moral failure.\(^{20}\) Christianity is

\(^{19}\) ibid
the belief system which holds that God is not only perfect but also the creator of mean in his image, thereby implying that humankind epitomizes perfection. There can, however, be no denying the fact that since man is human, he/she is marked by sin, and has become fundamentally imperfect and flawed. It is, hence, the duty of mankind to strive to overcome his/her imperfection so that he/she may restore to perfection with his/her death.\textsuperscript{21} Disability is, more often than not, linked with diseases brought on by the worth of God. The punishment of evil through physical treatment takes several reforms in biblical narrative, most of them closely interlinked with physical disability. The Old Testament, for instance, candidly states that human beings are immortal; they will be blinded by God. And that blindness, leprosy and other disabling diseases are punishments for blasphemous behavior. One could say that retribution for sin is inflicted on the offspring of the sinners for many generations.\textsuperscript{22} The New Testament also continues this tradition. Ironically, some modern Churches have been active in perpetuating the linkage between evil and disability, and God’s role in the healing process. Disability is, thus, viewed as symbolizing the corruption and sinfulness of the flesh and simply perceiving the possessor of a disabled body as sinful and corrupt. In the Holy Bible it is mentioned that the sins of the parents will be visited upon their children up to the third or even further generation.

Similarly, according to the Hindu doctrine of Karma Phala, disability is believed to be linked with the retribution for the sins committed by individuals in the past. Manusmriti mentions that a disabled person reaps in this life the seeds of misdeeds that he had sown in the former life. In Hindu mythology, the portrayal of people with disabilities is overwhelmingly negative, but also exhibits a strong gender bias in terms of the perceived capacities of disabled men and women. Disabled men in the Hindu myths are in some cases powerful and capable people. However, the visually impaired king Dritarashtra and the orthopedically impaired Shakuni side with the forces of evil in the Mahabharata war. Such images of powerful but evil and cruel disabled men have been reinforced by historical figures such as Taimur Lang. In contrast, women with disabilities in Hindu mythology are simply irrelevant. A prime example comes in a story from the \textit{Karthik Poornima}, where Lord Vishnu refuses to marry the disfigured elder sister of

\textsuperscript{21} ibid., pp70-71.
Lakshmi, saying that there is no place for disabled people in heaven. The sister is instead married to a peepul tree. In Indian society, disease has been attributed to extra-biological reasons such as man’s disobedience of natural and religious laws. It has been attributed to the sins and crimes committed by a person/ persons in the present life or previous lives. The traditional Hindu myths which still play an important role in shaping social norms and values, and the “modern myth beliefs” of Indian Society which has impacts on popular culture and society. These belief systems have laid down the foundation of modern civilization. They give the impression that there is such thing as a ‘perfectly flawless body’. There is no evidence that a human being with a flawless body has ever existed. Thus, in order to arrive at the position where the demand of disabled people for justice and equalization of opportunities has been appreciated, the disabled has had to go through an arduous struggle over the long period of history.

Public Policy and Disability

The history of individuals with disabilities, their roles in society, and their own cultural attributes undoubtedly could be considered hidden history. Disability is “conspicuously absent in the histories of human civilization. The history of public policy towards persons with physical, mental and sensory impairments is also a record of changes in political power and social attitudes. Public policy may broadly be defined as the study of the social services whose object is to improve the conditions of life of the individual in the setting of family and group relations. It is concerned with the historical development of these services both statutory and voluntary, with the moral values implicit in social action, with the roles and functions of the services, with their economic aspects and with the part they play in meeting certain needs of the social process. Through social administration the scope of public policy is broadened beyond the issue of collective provision for individual well-being by touching on the inter-linkages between

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welfare and other aspects of social life. These public policies were largely determined by
social attitudes, perceptions, beliefs and the cultural dominance of a community or group
in the society. Broadly these public policies can be analyzed in the following phases:

(i) Phase of Elimination based on doctrine of ‘Survival of the Fittest’;

(ii) Phase of Care and Protection as an act of charity;

(iii) Medical rehabilitation and Vocational training;

(iv) Social assimilation.

Phase of Elimination based on Doctrine of ‘Survival of the Fittest’: The first
phase of the social attitude, from primitive and ancient societies until the middle ages
approx. from 3000 B.C. to 1300 A.D. It was marked by the exposure and elimination of
the disadvantaged or disabled people. The norms of pre-historic society were governed by
the Darwinian principle of survival of the fittest. Most of the primitive tribes were quite
accustomed to discarding their disabled children on the grounds of physical unfitness.
Infanticide has been traditionally viewed as the intentional destruction of young infants
ranging from new-born to babies just under the discretion.\textsuperscript{26} Infanticide has also been
practiced by the great majority of the world’s societies, for reasons ranging from the need
of population control in terms of scarcity to the sheer inability of governments to prevent
parents from killing their defenseless babies. In the Western societies, infanticide was a
widely accepted practice in several societies- such as, ancient Greece, classical Rome,
Renaissance Italy and the Western Europe.\textsuperscript{27} Thinkers and social reformers like Aristotle,

\textsuperscript{26} Weir, Robert F. SELECTIVE NON- TREATMENT OF HANDICAPPED NEWBORNS:
MORAL DILEMMAS IN NEO NATAL MEDICINE , New York: OUP (1984); Newberger, Eli
H. (Ed) CHILD ABUSE Botton: Little Brown & Co.; Smith, S.M (Ed) THE MALTREATMENT
OF CHILDREN Baltimore: University Park Press. (1978)

\textsuperscript{27} In classical Rome, female infants and defective neonates, generally, were victims of drowning,
strangulation or exposure. Two fundamental reasons could be held responsible for the Romans
perpetuating these infanticide practices. The first reason, patriarchal authority, was the most
common feature in the ancient times. The second reason for infanticide among the Romans was
that of viewing it as a reasonable course of action, whenever an infant turned out to be abnormal.
Just as one would not want to preserve the life of a seriously diseased animal, so the Romans
thought it made no sense to preserve the life of a weak, sick or defective infant. These societies
practiced infanticide as part of their moral landscape and did not follow consistent legal patterns
in this regard. The Renaissance Italy had also institutionalized the process of exposure and
destruction. Defective infants and female infants, whether legitimate or not, were generally
abandoned by being turned over to a wet nurse who took the infants into the countryside and
Plato, and Martin Luther King held the disabled people in contempt and justified their removal from the society. On the contrary, there were several societies where the disabled infants were nurtured well. Thus, from prehistoric times through the ancient civilizations of Mesopotamia, Greece and Rome, the social perception towards such disadvantaged persons ranged from kindness to extreme cruelty. As reflected in the widespread practice of infanticide, a key issue during this phase was whether infants with disabilities would be allowed to survive or not.

Plato and Aristotle even justified the liquidation of disadvantaged people from the society. While envisaging his conceptions of communism, Plato minces no words in categorically denying the survival of disabled children. In his own words, “Deformed children and children of inferior parents will be put away in some mysterious places as they thought to be. Plato is credited with the view. It was not right to treat as a man who could not live in his ordinary round of duties, such a man being useless to him and to the state. Similar is the observation of Aristotle, who precisely advocates: Nothing imperfect or maimed shall be brought up. (KARAN, G. DISABILITY STUDIES IN INDIA: RETROSPECTS AND PROSPECTS. New Delhi: GYAN Publication. Mercer, C. B. (2010), pp 83-85)

Marshall gives an account of infants with a week leg, being carried on their mother’s back into adolescence among the Bushman. Likewise, Baxter and Butt observe that the Azande treasure disabled children like the sound ones”. Even in the pre-industrial Europe and America, this practice was observed in the Ainu community in societies where one’s present state is perceived as a reflection of past deeds and transgressions, the life of a disabled infant or adult is exacerbated by limited social and economic options. There were, however, some exceptions to the well-established inhuman and barbaric practice. The Blackfoot Indians patronized the ill or disabled people. Likewise, among the Andamanese and the Hushman tribes of Africa, better care and mercy was, generally, bestowed on the disabled. Even the Mongols, who were notorious for their inhumanity, had made certain provisions for the welfare of disabled individuals. Giving a fascinating account of his travel through the Mongol Empire of Kublai Khan, Marco Polo even mentions that in the city of Kin Sai there were watchmen patrolling the streets. Who, if they notice any person who from lameness or other infirmity, is unable to work, they place him in one of the hospital, of which there are several in every part of the city, founded by the ancient kings and liberally endowed, when he is cured, he is obliged to work at some trade. (KARAN, G. DISABILITY STUDIES IN INDIA: RETROSPECTS AND PROSPECTS. New Delhi: GYAN Publication. Mercer, C. B. (2010), pp86-87)
Phase of Care and Protection as an act of Charity: The medieval perception towards disability could be analyzed in positive and negative senses. On the positive side, disabled/ or disadvantaged person were occasionally visualized as innocents of God and provided with humane care either at home or in monasteries. With the spread of Christian ideals the West and Buddhist doctrines in the East, the cruel practices were gradually abandoned. In the predominantly agrarian economy of medieval Europe, infants were highly valued and infanticide was rarely practiced since many disabled persons managed to sustain themselves by working in the fields or were looked after by their neighbors. The early establishment of rehabilitative services for the disabled in non-western societies such as the Buddhist Emperor Ashoka, organised care institutions for the disabled/ disadvantaged in the third century B.C. This practice was subsequently revived in the fourth century C.E. by Buddhadasa, the ruler of Ceylon. In course of time, Hindu Raja Kali Shankar Ghosal set up an asylum for the visually disabled and other disadvantaged people in 1826 in Benares (normally known as Varanasi), and Nisruddin Haider, a Muslim opened the King’s Poorhouse for the visually disabled and disadvantaged people in Lucknow in 1831.

Hence, with the change in the socio-economic pattern, the social attitude towards persons with disabilities started changing in a positive way. The sense of ‘otherness’ or ‘disabled are aliens’, started reducing in public perception. In this pre-industrial phase, activity was agrarian, or cottage-based. While most people with impairments occupied the lower ranks of the social hierarchy, they are expected to participate in economic life. Feudal social relations focused more on subsistence than wealth generation and accumulation, so that 'disabled people were regarded as individually unfortunate and not segregated from the rest of society'. At the same time, since the ‘peasant households could not afford to consider any bodies as unproductive’ hence, individual economic performance might have forced people to change work to accommodate their impairment, instead of relying on begging and charity, or in the case of older disabled people unable to

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work, they might provide shelter to others in return for personal support. Though little evidence has been found to substantiate claims that people with impairments were readily integrated into social life in feudal societies. People with impairments were constant features of everyday life, although the high mortality rate among people with impairments greatly reduced the numbers otherwise reliant on community support. With the initial phase of rising of industrial economy and industrial capitalism in nineteenth-century, free market, wage labor, and the change to mechanized systems of production, the enforced discipline, the time-keeping and production norms - all these were a highly unfavorable change from the slower, more self-determined and flexible methods of work into which many handicapped people had been integrated. With the rise of industrial capitalism, the hegemony of 'able-bodied' normality became the yardstick for judging people with impairments as 'less than human'. These constraints on the employment of people with impairments led to the increased displacement of 'unproductive' disabled workers from the work-place. The person with impairment was at a disadvantage because of the decline of traditional, local community and family-based support systems and values, and the rising importance of geographical mobility to find employment.

Industrialized societies such as the USA, Britain and Germany during seventeenth century faced a dilemma over how to distribute goods, services and other rewards. Although the main criterion is employment status, not everyone is able or willing to work; hence a second system emerges geared to resource distribution on the basis of perceived needs. The dilemma for those administering policy has been how to determine who is a deserving case and properly part of the needs-based system. The English Poor Law of 1601 offered an early example, with its distinction between the deserving and undeserving poor, with disabled people generally categorized as 'deserving' cases. Over the next two centuries, the disabled element was refined to include the 'sick, insane, "defectives" and "aged and infirm".

34 Ibid.
35 Oliver, M. THE POLITICS OF DISABLEMENT. Basingstoke: Macmillan. (1990)
36 Mildred Blaxter (1976) reviews this interplay between economic and humanitarian factors in the development of social policies; Deborah Stone further elaborates this argument in The Disabled State (1985)
The English Poor Law of 1601 and the Poor Law Reform Act of 1834 marked a watershed in that it placed responsibility for the disabled in the hands of the parishes. During the 1800s, parishes united to establish large poorhouses and supervise application for assistance. At the item of the arrival of the First Fleet to Australian showers in 1788, the attitudes fostered by the British Poor Law still prevailed. However these measures failed to achieve their desired objectives of meeting these measures failed to achieve their desired objectives of meeting the educational and vocational requirements of disabled children.38

The credit for making the first effective venture in this direction goes to the Royal Commission in the U.K. (Instituted to examine the condition of the persons with disabilities). The Commission, in its reports submitted in 1889, noted that, apart from some charitable institutions and schools, very little was being done for the disabled children. Hence, it strongly recommended that the state should accept responsibility for the education of blind, deaf and dumb and feeble-minded or mentally retarded children. Thus no major breakthrough was achieved during this phase. Hence, throughout this period, a primary impulse behind helping the disadvantaged was the belief that offering assistance to such people would contribute to the virtue of the donor and ensure salvation of the soul. Protection and rehabilitation process of the disabled was based on charity and welfare approach of the society as well as of the state.

Phase of Medical Rehabilitation and Vocational Training: With the emergence of the Era of Renaissance the third stage of the social perception of disability begins. Though conditions of the disabled did not improve substantially during the Renaissance with the shifting of ideology from idealism to realism, major changes occurred during this period which laid the foundation for the protection and rehabilitation of the disabled when the state played a significant role. This Era of Renaissance also brought about a revolutionary change in diverse areas, particularly in the field of social, economic and spiritual awakening as well as medical advancement. Hence, this phase is characterized

by increasing concern for medical rehabilitation and social rehabilitation through imparting education and vocational training for the disabled.39

The advent of the Eighteenth century gave birth to ideas such as liberty, equality and fraternity at the international level. As a corollary to these developments taking place in the arena of international politics, social-political reformers and thinkers started concentrating their attention on the pathetic situation of the under-privileged strata of society. Consequently a number of institutions40 for the disabled and disadvantaged groups came into existence in different parts of the world. Disability or impairment considered as a personal tragedy and due to advancement of medical science41 involvement of medical profession was increased for providing medical rehabilitation to the disabled and providing them education and training for their social rehabilitation. Yet, there was no distinct social group identified as comprising disabled people, just as there were competing cosmologies surveying the bases and possible remedies for disease, illness and impairment.

Hence, there was an increased categorization of 'sick and infirm' people as a social problem marginalized by the economic system and socially dependent.42 Advancement in clinical and laboratory medicine in Britain and the Western societies in the Nineteenth century have had far-reaching implications for the social status of disabled people in the world. The institutionalized population had increased substantially through the nineteenth century. The inmate population in 'medical handicap' institutions also expanded

39Ibid at p. 85.

40 The first such institution was set up in 1780 in Switzerland by Jean Andre Varrel. In 1792, in York, Tuke, a Quaker merchant, instituted 'The Reteat' for the humane treatment of patients with mental illness. In 1798, Jenner discovered vaccination against smallpox. In the succeeding year Humphrey Davy demonstrated the anesthetic properties of nitrous oxide, thus, motivating medical scientists to work in this field. Consequently, new dimensions of medicine were sought to be explored. Kama, G. (2001), p. 86.

41 Orthopedics was probably the first medical specialization to develop. It was followed by the development of Bacteriology and pathology. The experiments of Louis Pasteur during 1860s and the discovery of X-rays by W.K. Roentgen in 1875 added a new dimension to all these innovations. Neurology could, however, be accorded the recognition as a distinct discipline only by the turn of the century, when J.M. Charcot successfully identified the causes of cerebral hemorrhage and the effects of spinal injury, thereby providing the first accurate diagnoses of Multiple Sclerosis, Poliomyelitis, paralysis and Tubas dorsalis. Thus the advances in clinical and laboratory medicine in Britain and the Western societies in the Nineteenth century has had a far-reaching implications for the social status of disabled people in the world. Karna, G. (2001), p.87.

significantly into the twentieth century. The rise of Social Darwinism offered fresh justification for 'intellectual' divisions and hierarchies based on the 'survival of the fittest'. Those categorized as 'subnormal' inspired fears of moral collapse, with resumptions of close links to sexual and criminal deviance. The growth of segregated, residential institutions was noticed during this phase. In a period of minimal social welfare provision, poorer families found it very difficult to meet the high medical costs and support required by a disabled child. Thus, it has a widening impact of the medical profession's authority on policies towards disabled people, from the broad legitimating of an individual's claim to sickness and impairment. However, giving priority in framing government policies for the social and welfare benefits of the disabled was remained a contested area and, in general. As a result an uneasy tradeoff between humanitarian and economic factors was found during this period.

By the late nineteenth century, the individual approach to disability located in medical knowledge was widely accepted in Western industrialized societies. It focused on bodily 'abnormality', disorder or deficiency and how this 'causes' functional limitation or 'disability'. Still disability was considered as an individual or personal tragedy. The State had least bothered for this marginalized section of population. The nineteenth century witnessed the increasing portrayal of disabled people as deviant, abnormal and different. Such negative cultural imagery portrayal of the disabled in the nineteenth century and as a result throughout the twentieth century, whether it be in the novel, newspaper stories, television and films disabled people continue to be portrayed as more than or less than human, rarely as ordinary people doing ordinary things.

Phase of Assimilation: The human species is a unity. The other can only be another T. In principle, there are no limits to the rights of human beings as such. The assimilation model generates more or less this discourse that there are common values, common objectives, canons of conduct, and a mean that we must strive to approach. The task consists of doing everything to rejoin this consensual and homogenizing communality. In such a model, we are on our way toward forceful integration. Each element must conform enough to assume its place in the good order of the whole.

return, the powerful denial of anything 'other' keeps us in check. The other can be annulled. In its fullest expression, this model leads to the rule of 'in-difference'.

Concerning persons with disabilities, this model seems to account for such an orientation as positive discrimination. This statement may appear orthodox, because such a measure isolates and stigmatizes. One has to be labeled as 'handicapped' to get benefit from the special measures reserved for this population. Special measures means of training or work, sheltered institutions, shelter institutions, compensation for disablement in consideration of the fact that people in difficulty due to an impairment constitute a vulnerable population for which special dispositions are required so that it can 'catch up with the rest' which sometimes leads to social isolation.

However, it has to be understood that this segregating effect is first and foremost the consequence of a will toward assimilations. This positive discrimination, which we will metaphorically and euphemistically call a detour, has as its objective a return to ordinary life or, if this is really not possible, at least a behavior and mode of life close to the average citizen's. If it were not for the attraction of these norms and common habitus, many of these efforts would not be sustained. Hence, the assimilation model is a powerful stimulant toward equality and integration. But the crucial point we need to understand that if we go too far in the direction of assimilation then we fall into what could be called 'assimilationism', we will end up rejecting the other in his or her irreducible difference, in the right to Be as he or she is. We will end up rejecting the richness of the multiple ways of being human.

Despite advancements in the fields of medical science and technology, social attitude towards disabled persons remained drastically unchanged and negative public perceptions continued till late twentieth century. Persons with disabilities were, still regarded as objects of pity and charity. The basic postulates of rehabilitation philosophy started crystallizing into more definite direction. Remarkable advances were registered in the area of rehabilitation during the Nineteenth century. Moreover, the Twentieth century consolidated the age of industrialization had brought awareness about legislation for the

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45 Ibid.
46 Ibid., pp. 16-18.
welfare of disadvantaged persons. As a result of First and Second World War the growing number of war victim-disabled population and industrial injuries provided a new direction to the international community for the protection of basic rights of the disabled especially in terms of providing compensation and rehabilitation measures. A burgeoning concern among the world community was started spreading for the social assimilation or integration of the disabled. Since, the feeling of ‘Otherness’ was reduced tremendously due to the disability rights movements started by active participation of the disabled across the world. The disabled were no longer considered as ‘aliens’ or people of the ‘other world’.

After the World War II with the formation of United Nations, awareness on human rights issues of persons with disabilities rose and brought a new dimension in understanding and conceptualizing disability. The idea that disabled do have the equal rights at par with other people in the society and the state should take the responsibility for protecting and promoting the rights of the disabled, was emerged during the 1960s and 70s western developed countries. Although medicalization in the field of disability was still persist in the society but due to global disability movements, with the impact of contemporary civil rights movements, the awareness amongst the disabled population relating to their rights increased and this also contributed tremendously to bring a new dimension in understanding the fundamental issues of the persons with disabilities. Consequently, the ‘personal tragedy’ view of disability achieved ideology has been shifted to ‘a social phenomena’ and the process of assimilation has been started.47

The economic and political upheavals of the 1960s and 1970s, coupled with the welfare cutbacks of the 1980s, helped fuel the politicization of disability and the emergence of the disabled people's movement in the western countries and gradually spread across the globe. From the late 1960s, the orthodox thoughts and practices became the target of campaigns by the disabled group activists across Europe and North America. Disabled people, particularly those forced to live in residential institutions, took the lead in calling for policy changes and attitude changes. Their demands highlighted the importance of much greater support for 'independent living' in the community and

protection of their civil rights. Disabled activists and organizations of disabled people were united in condemning their status as 'second class citizens'. They drew attention to the impact of social and environmental barriers, such as inaccessible buildings and transport, discriminatory attitudes and negative cultural stereotypes, in 'disabling' people with impairments. The frameworks of social support provided by state, private and voluntary bodies. Disability groups and activists across the world started movement to bring the issues of the disabled under the purview of human rights. Social inclusion and integration of persons with disability into the mainstream society became the policy approach. Legal measures have been framed at the national and international level to promote acceptance of the range of disabilities to create a more inclusive view of humankind. The human rights approach to disability is part of the human rights movement that has developed over the latter half of the 20th century. The increasing international attention to human rights issues has lead to a number of significant international human rights commitments in the areas of disability. Hence, the role of the state became crucial in protecting and promoting the rights of the disabled.

**Concept and Definition Disability**

Disabled people do not form a homogenous group. For example, the mentally retarded, the visually, hearing and speech impaired, those with restricted mobility or with so-called "medical disabilities" all encounter different barriers, of different kinds, which have to be overcome in different ways.

The term "disability" summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature.

The term "handicap" means the loss or limitation of opportunities to take part in the life of the community on an equal level with others. It describes the encounter between the person with a disability and the environment. The purpose of this term is to emphasize the focus on the shortcomings in the environment and in many organized activities in society, for example, information, communication and education, which prevent persons with disabilities from participating on equal terms.
During the 1970s there was a strong reaction among representatives of
organizations of persons with disabilities and professionals in the field of disability
against the terminology of the time. The terms "disability" and "handicap" were often
used in an unclear and confusing way, which gave poor guidance for policy making and
for political action. The terminology reflected a medical and diagnostic approach, which
ignored the imperfections and deficiencies of the surrounding society.

In 1980, the World Health Organization adopted an International classification of
impairments, disabilities and handicaps\textsuperscript{48}, which suggested a more precise and at the
same time relativistic approach.

The International Classification of Impairments, Disabilities, and Handicaps\textsuperscript{49}
make a clear distinction between "impairment", "disability" and "handicap". It has been
extensively used in areas such as rehabilitation, education, statistics, policy, legislation,
demography, sociology, economics and anthropology. Some users have expressed
concern that the Classification, in its definition of the term "handicap", may still be

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\textsuperscript{48} The World Health Organization, in its International Classification of Impairments, Disabilities
and Handicaps, makes a distinction between impairment, disability and handicap. These three
concepts are defined by it as follows:

\begin{enumerate}
\item [(a)] Impairment is "any loss or abnormality of psychological, physiological, or anatomical
structure or function". Impairments are disturbances at the level of the organ which includes
defects in or loss of a limb, organ or other body structure, as well as defects in or loss of a mental
function. Examples of impairments include blindness, deafness, loss of sight in an eye, paralysis
of a limb, amputation of a limb; mental retardation, partial sight, loss of speech, autism.
\item [(b)] Disability is a "restriction or lack (resulting from an impairment) of ability to perform an
activity in the manner or within the range considered normal for a human being". It describes a
functional limitation or activity restriction caused by impairment. Disabilities are descriptions of
disturbances in function at the level of the person. Examples of disabilities include difficulty
seeing, speaking or hearing; difficulty moving or climbing stairs; difficulty grasping, reaching,
bathing, eating, toileting.
\item [(c)] A handicap is a "disadvantage for a given individual, resulting from an impairment or
disability that limits or prevents the fulfillment of a role that is normal (depending on age, sex and
social and cultural factors) for that individual". The term is also a classification of "circumstances
in which disabled people are likely to find themselves". Handicap describes the social and
economic roles of impaired or disabled persons that place them at a disadvantage compared to
other persons. These disadvantages are brought about through the interaction of the person with
specific environments and cultures. Examples of handicaps include being bedridden or confined
to home; being unable to use public transport; being socially isolated.
Handicaps are "concerned with the disadvantages experienced by the individual as a result of
impairments and disabilities; thus, handicaps reflect interaction with and adaptation to the
individuals' surroundings." --Disabled leader of a non-governmental organization
\end{enumerate}

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\textsuperscript{49} World Health Organization, International Classification of Impairments, Disabilities, and
considered too medical and too centered on the individual, and may not adequately clarify the interaction between societal conditions or expectations and the abilities of the individual. Those concerns, and others expressed by users during the 12 years since its publication, will be addressed in forthcoming revisions of the Classification. As a result of experience gained in the implementation of the World Programme of Action and of the general discussion that took place during the United Nations Decade of Disabled Persons, there was a deepening of knowledge and extension of understanding concerning disability issues and the terminology used. Current terminology recognizes the necessity of addressing both the individual needs such as rehabilitation and technical aids and the shortcomings of the society that creates various obstacles for participation.

Models of Disability

The Disability as an issue has been perceived and analyzed from different paradigms. In the following segment some of the models of disability have been assessed with a view to estimate the position of the persons with disability

The Individual or the Medical Model: By the late nineteenth century, the individual approach to disability located in medical knowledge was widely accepted in Western industrialized societies. It focused on bodily 'abnormality', disorder or deficiency and how this 'causes' functional limitation or 'disability'. The foundations are laid by professional diagnosis, treatment and the measurement of recovery, although the distinctive character of 'chronic' conditions highlights rehabilitation rather than 'cure'. The measurement of the level of handicap was based on a series of questions about an individual's ability to undertake key personal activities such as toileting, eating and drinking, and doing up zips and buttons. The medical model of disability is a sociopolitical model by which illness or disability, being the result of a physical condition intrinsic to the individual's own body, may reduce the individual's quality of life, and cause clear disadvantages to the individual. The medical model focuses more on curing or managing illness or identifying the illness or disability from an in-depth clinical perspective. By extension, the medical model also believes that a "compassionate" or just society invests resources in health care and related services in an attempt to cure disabilities medically, to expand functionality and/or improve functioning, and to allow disabled persons a more "normal" life. The medical profession's responsibility and
potential in this area is seen as central. The WHO definition of disability (1980) defined disability using the terms such as impairments, handicap and disability, based on ‘Medical Model of disability’ The medical model of disability focuses on the individual's limitations and ways to reduce those impairments or using adaptive technology to adapt them to society. Current definitions of disability accept biomedical assistance but focus more on factors causing environmental and social exclusion. Uncritical reliance on the medical model produces unwanted consequences.

Looking beyond Individual Solutions and the Social Model: The social model of disability is a reaction to the medical model of disability which in itself is a functional analysis of the body as machine to be fixed in order to conform to normative values. The social model of disability identifies systemic barriers, negative attitudes and exclusion by society that mean society is the main contributory factor in disabling people. While physical, sensory, intellectual, or psychological variations may cause individual functional limitation or impairments, these do not have to lead to disability unless society fails to take account of and include people regardless of their individual differences. The origins of the approach can be traced to the 1960s; the specific term emerged from the United Kingdom in the 1980s.

A fundamental aspect of the social model concerns equality. The struggle for equality is often compared to the struggles of other socially marginalized groups. Equal rights are said to give empowerment and the “ability” to make decisions and the opportunity to live life to the fullest. The social model of disability focuses on changes required in society. These might be in terms of attitudes for example a more positive attitude toward certain mental traits or behaviors, or not underestimating the potential quality of life of those with impairments; Social support, for example help dealing with barriers; resources, aids or positive discrimination to overcome them; for example providing a buddy to explain work culture for an employee with autism; Information, for example using suitable formats; Physical structures, for example buildings with sloped access and elevators, or providing employment, Flexible work hours and disabled friendly work environment. The social model of disability asserts that “disability is a social construct as it is the outcome of social arrangements which work to restrict the activities

of people with impairments by placing social barriers in their way”. A disability, according to the social perspective, is the result of how a physical or mental characteristic affects functioning in an environment and the expectations for functioning.52

The social model also relates to economics. It proposes that people can be disabled by a lack of resources to meet their needs. It addresses issues such as the underestimation of the potential of people to contribute to society and add economic value to society, if given equal rights and equally suitable facilities and opportunities as others. Hence, the social perspective makes it possible to see disability as the effect of an environment hostile to some bodies and not others, requiring advances in social justice rather than in medicine.53

In 1983, the disabled academic Mike Oliver coined the phrase “social model of disability” in reference to these ideological developments. Oliver focused on the idea of an individual model versus a social model, derived from the distinction originally made between impairment and disability by the UPIAS.54

Bio-psychological Model: Disability is no longer about the consequences of disease, but about health, functioning and disability. This is a major change. Functioning and disability are considered and analyzed as the two sides (positive and negative) of health. They are defined as an interaction between a health condition and contextual factors. This model is presented as integrating the medical model and the social model into what is called a bio-psychosocial model. The current WHO definition of disability (2001) e.g. the International Classification of Functioning, Disability and Health (ICF) defines disability as an umbrella term for impairments, activity limitations and participation restrictions. Disability is the interaction between individuals with a health condition and personal and environmental factors e.g. negative attitudes, inaccessible transportation and public buildings, and limited social supports. The altered language and words used show a marked change in emphasis from talking in terms of disease or

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53 Ibid.
impairment, to talking in terms of levels of health and functioning. This change is consistent with widespread acceptance of the 'social model of disability'.

It is combination of the different dimensions of health: biological, individual and social. It not only describes deficiencies, but also aims at being a universal description of human functioning and participation. In other words, it claims to provide a universal and transcultural model and language that go beyond cultural and social specificities and can be applied in any country.

**Human Rights Model:** Recently, a paradigm shift has been brought in the way disability is understood through the global disability rights movement. A more inclusive approach has been brought through bringing human rights perspectives in disability which states that every person is entitled to get equal opportunity to develop and express his or her own individual talent. This paradigm compels societies to acknowledge the value of all persons based on inherent human worth, rather than basing value on an individual’s measured functional ability to contribute to society.

Recognition of the inherent dignity and of equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace in the world. All human beings are born free and equal in dignity and rights. This model views that the disabled individuals are first and foremost human beings, with the same basic human needs as the rest of humanity. Physiological needs of food, cloth, shelter, sex and those needs that contribute to self fulfillment, safety, security, love a sense of belonging, self-esteem, opportunity for new experiences, personal growth the creativity or mastery. The rights-based model of disability focuses more on the inherent dignity of the human beings and provides that disability is the result of lack of responsiveness by the State and civil society to the difference that disability represents. A right based approach

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55 Ibid.
57 Article 1 of UDHR, 1948.
integrates the norms, standards and principles of the international human rights system into the plans, policies and process of development. In other words, the human rights approach signifies legal reasoning. The task involves in findings authoritative principles to underpin, by a deductive method, the imposition of an obligation upon some agency capable of fulfilling the demand. Hence, the phenomenon of disability is no longer a personal tragedy rather it is a human rights issue. Under this perspective a person is recognized by law as possessing rights and duties, as someone who enjoys specific legal protection but the extent of this protection is co-terminus with economic, social and political conditions.60

This approach regards legal measures as constituting the fundamental framework by which mechanism for equality of opportunity can be ensured. Seeing people with disabilities as subjects rather than objects entails giving them access to the full benefits of basic freedoms that most people take for granted and doing so in a way that is respectful and accommodating of their difference. It means abandoning the tendency to perceive people with disabilities as problems and viewing them instead in terms of their rights.61 Applying a disability paradigm highlights the effect of social exclusion, and points out the need of ensuring that the human rights of all socially marginalized groups are protected. It places the individual centre stage in all decisions affecting him/her and, most importantly, locates the main “problem” outside the person and in society. The “problem” or the “cause” of disability under this model stems from a lack of responsiveness by the State and civil society to the difference that disability represents. It follows that the State has a responsibility to control socially created obstacles in order to ensure full respect for the dignity and equal rights of persons with disabilities.

**Economic and Vocational Model:** Economic defines disability in terms of reduced ability to work, the related loss of productivity and economic effects on the individual, employer and society in general. This model is directly related to the charity/tragedy model.62 The economic vocational framework evolved by these scholars

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is oriented towards the establishment of an economy based on manual labour rather than the delivery of services. Hence, vocational rehabilitation or income maintenance programs are prescribed as the principal solution to the problems faced by the disabled people. These policies play a role in condemning the disabled men and women to a life of perpetual dependency or to a secondary labour market, thus, providing low pay, mundane work and limited opportunities for all-around development. Like the medical/clinical approach, the economic-vocational approach suggests that the modification of the person rather than changing the environment and the work site or changes in the perception of employees in the most desirable means of fulfilling the social and economic needs of the disadvantaged strata of society. In recent years, the economic-vocational approach has been adopted by various national and international agencies in order to provide rehabilitation to disabled people. But there is a lack of uniformity in their identification of disability. There are criteria pursued in this regard—benefit determination and selective placement. So far as the criteria of benefit determination are concerned, it stresses primarily on the causative factor of disability. It evaluates disability in terms of percentage basis. On the other hand, the selective placement criterion is focused more on the effects of disability. Thus, both these criteria are centered on the causes and effects of disability.

The International Labour Organization (ILO) is the ardent exponent of the economic-vocational approach. The ILO, interalia, international Labour Vocational Rehabilitation and Employment (Disabled Persons) Convention 1983 (N o. 159) and Recommendation 1983 (N o. 168) defines the term disabled, as in individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment. Hence, the economic-vocational approach is more included to modify the physical capabilities and vocational skill of the disabled persons rather than the environment and the worksite. As a result of this orientation, significant energy has been diverted from the effort to combat prejudice and discrimination against disabled people in employment to providing a

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63 The scholars who have followed economic-vocational approach in their writings; include Edward D. Berkowitz, (1979),
limited choice of Livelihood Avenue with an objective of making them productive member of the society.

**Systems Analysis Model:** This model advocates that the planning, management and evaluation of services for the disabled individuals and their families must address the changing developmental needs of such disadvantaged. Such a system could be developed only by evolving the rotational politics of their families and societal contexts at various stages of the person's life period. The systems analysis perspective is evolved around two fundamental assumptions; first it seeks to adopt systems perspective that is through developmental/ ecological perspectives to analyze the phenomena of disability as the disabled individuals cannot live in a social vacuum; all have existence in a society with its specific system of sub-cultures, and social system where disability is defined according to prevailing public policy towards the disadvantaged. As a result this manifests the 'valued' the people with disabilities are accorded in the community. Secondly, it is also based on a developmental of life cycle perspective. In course of time the disabled individuals, their families and social milieu changes accordingly. Thus, the systems analysis perspective propounds that any assessment of the competencies of disabled person or such disadvantaged groups requires to be interpreted in the light of the culture- or -sub-culture in which the individual is nurture. The way a person with disability interacts with his/her family members or vis-a-vis, the way the family of a person with disability interacts with in the micro-system of the socio-cultural environment, forms the attitude of the society towards persons with disabilities. Hence, it is essential to understand the interactions between these various social components in the context of disability in order to understand disability and the issues relating to disability.

**Minority Group Model:** The concept of minority group has also been applied to describe the status of disabled people and framing legal measures and policy to ensure equality and non-discrimination to PwDs with an objective of mainstreaming the disabled. It is obvious that there are lots of commonalities between the disabled and other minority groups- such as the women, old, black, poor as well as other vulnerable sections of society share so many commonalities in that they all are treated and reacted to as a category of population. They all are of lower socio-economic status, politically powerless to the point of being oppressed, negatively stereotyped and discriminated. The term minority group with regard to disability signifies the issue that people with individuals
have not yet consolidated as a group for individuals for defensive action or for protecting their rights.\textsuperscript{65} Non-acceptance, stigma and stereotypes, attitude, social deprivation, prejudice, non-participation, span of control and differential status is making disability a minority group.

To limit the study of disability to any one approach would amount to limiting its nature and scope. In fact, the phenomena of disability cannot be properly understood, unless some sort of human rights/socio-political integrated approach is evolved.

\textbf{Emergence of Disability Rights as Human Rights Issue}

The issue of disability rights is not so much about the enjoyment of specific rights as it is about ensuring the equal effective enjoyment of all human rights, without discrimination, by people with disabilities. The non-discrimination principle helps make human rights in general relevant in the specific context of disability, just as it does in the contexts of age, sex and children. Non-discrimination, and the equal effective enjoyment of all human rights by people with disabilities, is therefore the dominant issues of disability throughout the world. The process of ensuring that people with disabilities enjoy their human rights is still slow and uneven. But it is taking place, in all economic and social systems. It is inspired by the values that underpin human rights: the inestimable dignity of each and every human being, the concept of autonomy or self-determination that demands that the person be placed at the centre of all decisions affecting him/her, the inherent equality of all regardless of difference, and the ethic of solidarity that requires society to sustain the freedom of the person with appropriate social supports. The shift to the human rights perspective has been authoritatively endorsed at the level of the United Nations over the past two decades.

Human rights are international issues, practiced at the local level. Around the globe governments are increasingly viewing the rights of their citizens in a manner consistent with international human rights codes, and international human rights initiatives are beginning to address disability within a human rights context.\textsuperscript{66} The human

\textsuperscript{65} ibid., p. 50.

rights model includes disability within a paradigm of rights that has been emerging since the United Nations Universal Declaration of Human Rights of 1948. This declaration recognized that all people have certain civil, political, economic, social, cultural, and development rights, despite differences between individuals. From this perspective, a rights model of disability perceives variation in human characteristics associated with disability, whether in cognitive, sensory, or motor ability, as inherent to the human condition. Thus, a rights-based approach presumes that society is obliged to provide whatever mechanisms are necessary for individuals to realize their right and this may involve the provision of supports, services, and aids to enable social and economic integration, self determination, and the enjoyment of legal and social rights, in case of persons with disabilities. Underlying principle is that all people have the right to participate and to exercise self-determination as equals in society.

The Universal Declaration of Human Rights was the first major step in the creation of a United Nations human rights system. In 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both legally binding human rights treaties, were adopted to define the rights articulated in the Declaration. Subsequently, additional treaties seek to protect and promote the rights of specific vulnerable groups: the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

Hence, a more inclusive approach has been adopted to include human rights paradigm in disability, which maintains as a moral imperative that every person is entitled to the means necessary to develop and express his or her own individual talent. This paradigm compels societies to acknowledge the value of all persons based on inherent human worth, rather than basing value on an individual's measured functional ability to contribute to society. Disability is a universal variation rather than an aberration. Disability-based human rights necessarily invoke both civil and political ("first-generation") rights, as well as economic, social, and cultural ("second-generation") rights.
As the first generation rights largely occupy the focus of human rights practitioners and advocates. These rights are understood as promoting equal treatment among individuals, and include prohibitions against State interference. Sometimes these rights are thought of as “negative rights.” Examples of first-generation rights are the rights to life, movement, thought, expression, association, religion, and political participation. Second-generation rights are traditionally the province of development agencies. These rights are understood as providing equal opportunity, and are often thought of as “positive rights.” Second-generation rights generally focus on standards of living, including issues such as the availability of housing and education.

International Legal Instrument on Rights of Persons with Disabilities

Persons with disabilities suffer from discrimination based on society’s prejudice and ignorance. In addition, they often do not enjoy the same opportunities as other people because of the lack of access to essential services. International human rights law determines that every person has: a) The right of equality before law b) The right to non discrimination c) The right to equal opportunity d) The right to independent living e) The right to full integration f) The right to security.

In response to the human rights crisis faced by people with disabilities, the UN has initiated a number of agreements, statements, world conferences, and other meetings.

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67 Isaiah Berlin, *Two Concepts of Liberty, in* Four Essays on Liberty 118, 122 (1958) (declaiming that authentic liberty is simply the absence of “the deliberate interference of other human beings within the area in which I could otherwise act”).

68 *International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), Art. 6, para. 1, U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) (“Every human being has the inherent right to life.”); ICCPR, Art. 9, para. 1 (“Everyone has the right to liberty and security of person.”); ICCPR, Art. 12, para. 1 (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”); ICCPR, Art. 18, (“Everyone shall have the right to freedom of thought, conscience and religion.”).


70 It is significant that development agencies have only more recently embraced first-generation rights. Human rights scholars have long criticized these entities for neglecting human rights to focus exclusively on subsistence issues, meaning food and clean water. *See, e.g.*, Philip Alston, *The Fortieth Anniversary of the Universal Declaration of Human Rights, in* Human Rights in a Pluralist World 1, 11-12 (J. Berting et al. eds., 1990).
focused on disability rights. States are gradually advancing toward a human rights perspective on disability, and 39 countries have instituted non-discrimination or equal opportunity legislation in the context of disability.\footnote{Marcia Rioux, A. C. Human Rights and Disability: The International Context. 2. JOURNAL ON DEVELOPMENTAL DISABILITIES, (2003). 1-13.} International instruments such as The World Programme of Action concerning Disabled Persons, The Standard Rules on the Equalization of Opportunities for Persons with Disabilities, and related UN resolution only play significant role as guidelines for states, but they also create obligations that require governments to reform their policies and practices to realize human rights for all citizens.

Over the course of the United Nations' first half century, persons with disabilities have become increasingly proactive in asserting strength and confidence in their own abilities to lead self-reliant and independent lives. The following brief history highlights efforts by the United Nations which have supported their efforts. The United Nations was founded on the principle of equality for all. The Preamble to the United Nations Charter affirms the dignity and worth of every human being and gives primary importance to the promotion of social justice. Persons with disabilities are, de facto, entitled to all the fundamental human rights upheld by the Charter and other human rights instruments. The General Assembly established the foundation for the promotion and protection of human rights in 1948, when it proclaimed the Universal Declaration of Human Rights. Article 25 of the Declaration states that each person has “the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

Further anti-discrimination principles were established by such human rights instruments as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which came into force in 1966. Together they form the most comprehensive international code of legally binding provisions in the area of human rights. The two Covenants develop and supplement the provisions of the Universal Declaration, and the three instruments together make up what has come to be known as the International Bill of Human Rights.
Further, a specific focus on disability rights at the UN level has been maintained by a Special Rapporteur on disability, first appointed in 1984 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities and mandated by the United Nations Commission for Social Development. As Special Rapporteur, Leandro Despouy chronicled widespread human rights abuses in the area of disability in a comprehensive report, Human Rights and Disabled Persons, published in 1992. He recommended disability as a human rights concern and called for greater involvement of the UN treaty monitoring bodies in addressing disability rights violations.72

The United Nations and Persons with Disabilities

During its first decade (1945-55) of work in the field of disability, the United Nations promoted a welfare perspective of disability. Concern for the disabled was expressed in the establishment of mechanisms and the development of programmes suitable for dealing with disability issues. Beginning with the promotion of the rights of people with physical disabilities, such as the blind, it concentrated on disability prevention and rehabilitation. The United Nations Secretariat, the Economic and Social Council and its subsidiary organ, the Social Commission, were the principal bodies dealing with disability issues.

In 1946, the Social Commission, a subsidiary body to the organization, was entrusted with social questions. At its first session it established the Temporary Social Welfare Committee. At its sixth session the Social Commission, 1950 considered two reports: “The social rehabilitation of the handicapped” and “The social rehabilitation of the blind”. Persons with disabilities and rehabilitation were discussed at the Geneva Conference, 26 February - 3 March, attended by the United Nations Secretariat, the International Labour Organization (ILO), the World Health Organization (WHO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Refugee Organization (IRO) and the United Nations International Children Emergency Fund (UNICEF), later renamed the United Nations Children’s Fund. The Commission agreed on the need to establish international standards for the education,

treatment, training and placement of persons with disabilities, with particular attention to be given to blind persons in underdeveloped areas. The Economic and Social Council also recommended that States consider measures to help persons with disabilities.

A conference was convened in Geneva from 26 February to 3 March 1950 to discuss coordination among the specialized agencies in the field of rehabilitation of the disabled. It was attended by the United Nations Secretariat, the ILO, WHO, UNESCO, the International Refugee Organization (IRO), and UNICEF. It led to agreement on the need to establish international standards for the education, treatment, training and placement of disabled persons, with particular emphasis on the needs of the blind in underdeveloped areas.

The focus of the United Nations on disability issues shifted in the late 1950s from a welfare perspective to one of social welfare. A revaluation of policy in the 1960s led to de-institutionalization and spurred a demand for fuller participation by persons with disabilities in an integrated society. Operational activities in the field of disability changed through implementation of various United Nations programmes on prevention and rehabilitation. Technical advice was offered to Governments through advisory missions, personnel training workshops, and the establishment or improvement of demonstration centers. Information was exchanged through study groups, as well as teaching fellowships and scholarships. A public information campaign was launched by the United Nations through regular distribution of publications in the newly emerging field of disability policy. The first of a set of works entitled Rehabilitation of the Handicapped was published in the Social Welfare Information series. This special issue outlined the international programme for the rehabilitation of persons with disabilities and highlighted programmes, books and films on rehabilitation. In 1956, the International Social Service Review was founded, one of whose objectives was to raise awareness of disability issues and emphasize rehabilitation programmes around the world.

While early United Nations activities supported the rights of persons with disabilities to receive welfare and public services, initially little attention was paid to societal obstacles that might be created by those goals. Starting in the late 1960s, attitudes began shifting towards a new social model for dealing with disability. The Declaration on

Social Progress and Development, adopted on 11 December 1969, affirmed the fundamental freedoms and principles set forth in the Charter of the United Nations and emphasized the need to protect the rights and welfare of persons with disabilities.

The Social Commission 1960 began to develop monitoring mechanisms for the various United Nations rehabilitation programmes, specialized agencies, governmental and non-governmental organizations. A study and a survey were conducted on the administrative and legislative aspects of rehabilitation programmes and on facilities for training personnel in rehabilitation. An increased awareness was developing regarding the importance of new rehabilitation strategies.

In 1969, the General Assembly adopted the Declaration on Social Progress and Development and affirmed, inter alia, the fundamental freedoms and principles of peace articulated in the Charter of the United Nations. Article 19 addressed the provision of health, social security, and social welfare services for all persons, aiming at the rehabilitation of persons with intellectual and physical disabilities to facilitate their integration into society.

The 1970s marked a new approach to disability.74 The concept of human rights for disabled persons began to become more accepted internationally. Two major declarations on the disabled were adopted by the General Assembly in the new decade. The Declaration on the Rights of Mentally Retarded Persons of 20 December 1971 provided a framework for protecting rights through national and international action. The Declaration stated that mentally retarded persons had, to the degree feasible, the same rights as other human beings, including a right to proper medical care and education, to economic security, to a qualified guardian, as required, to protection from exploitation and to access to legal procedures. The Declaration stated that, if possible, mentally retarded persons should live with their families or with foster parents and should participate in various aspects of community life. Essentially, the Declaration paved the way for future comprehensive sets of principles, which would eventually seek to integrate persons with disabilities into society.

Hence, the two resolutions adopted in the 1970s deserve special mention because they are the first signs of a shift from a “caring” to a “rights-based” approach. In 1971 the General Assembly adopted a resolution entitled “Declaration on the Rights of Mentally Retarded Persons”. Significantly, this resolution begins by stating that such persons enjoy the same human rights as all other human beings under article 1. It then itemizes rights that are of special importance to them including education, training and rehabilitation. The resolution is conscious of the need to protect the interests of such persons and to appoint a qualified guardian where necessary.

The General Assembly adopted another milestone resolution in 1975 entitled “Declaration on the Rights of Disabled Persons”. The Declaration asserts that persons with disabilities have the same civil and political rights as other human beings. Furthermore, such persons are “entitled to the measures designed to enable them to become as self-reliant as possible”. The Declaration identifies a number of economic and social rights that are of obvious importance for the development of capacities and social integration. Other noteworthy passages refer to the right of disabled persons to have their special needs taken into consideration at all stages of economic and social planning, the right to protection against exploitation and treatment of an abusive or degrading nature and the right of organizations of persons with disabilities to be “usefully consulted in all matters regarding the rights of disabled persons”.

In 1972, the Administrative Committee on Coordination considered recommendations of a report on an ad hoc meeting on rehabilitation of persons with disabilities. One recommendation stated that rehabilitation services should be integrated with basic medical, educational and vocational development programs.

From 26-28 November, 1973 the ad hoc Inter-Agency Meeting on Rehabilitation of the Disabled was held in Geneva, attended by representatives of the United Nations. UNDP, the Office of the United Nations High Commissioner for Refugees (UNHCR), UNICEF, ILO, UNESCO, WHO, the Council of World Organizations Interested in the

75 Ibid.
76 Paragraph 5 of Declaration on Rights of Disabled Persons, 1975.
78 Paragraph 8 of Declaration on Rights of Disabled Persons, 1975.
Handicapped, and the International Social Security Association. A strengthening of coordination and planning in the field of rehabilitation of the persons with disabilities was proposed. It was also suggested that the United Nations increase recruitment of persons with disabilities within the Organization. At its twenty-fourth session the Commission for Social Development, 1975 recommended elimination of physical and architectural barriers that prevent the full social integration of persons with disabilities. On 6 May the Economic and Social Council adopted resolution 1921 (LVIII), dealing with disability prevention and rehabilitation of persons with disabilities. In December 1975 the General Assembly adopted the Declaration on the Rights of Disabled Persons, which states that all persons with disabilities are entitled to the rights stipulated, without respect to race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation.

In 1976, the General Assembly recommended that all Member States take into account the recommendations outlined in the Declaration on the Rights of Disabled Persons when formulating policies, plans and programmes. It also proclaimed 1981 as the International Year for Disabled Persons, stressing that the Year should be devoted to fully integrating persons with disabilities into society and encouraging relevant study and research projects to educate the public on the rights of persons with disabilities. A trust fund for Member States' contributions to the International Year is established by the Secretary-General. The Secretary-General established the intergovernmental Advisory Committee for the International Year of Disabled Persons in 1978.

The 1980s marked an irreversible shift from the “caring” to the “rights” model. The year 1981 was proclaimed the International Year of the Disabled (IYDP) by the United Nations General Assembly with the slogan “Full participation and equality”. The decade from 1983 to 1992 was proclaimed the International Decade of Disabled Persons. The General Assembly adopted a landmark resolution in 1982 entitled the “World Programme of Action concerning Disabled Persons” (WPA). The overall aims of the WPA are threefold: (i) prevention, (ii) rehabilitation and (iii) equalization of opportunities. The first two aims are the traditional ones found in the “caring” model. The
presence of the third in the WPA is evidence of the slow but sure shift towards a rights-based model.

The WPA defines "equalization 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.83 The WPA states that the achievement of "equality of opportunity" necessitates measures that go beyond the traditionally rehabilitative measures. Experience shows that it is largely the environment which determines the effect of impairment or a disability on a person's daily life.84 Thus, achieving "equality of opportunity" means tackling structural exclusion in the sense mentioned earlier. The WPA also emphasizes the equality of the able-bodied and persons with disabilities in terms of obligations as well as rights.85

The International Year of Disabled Persons, 1981, was celebrated with numerous programmes, research projects, policy innovations and recommendations. Many conferences and symposiums were held during the Year, including the First Founding Congress of Disabled People International, held in Singapore from 30 November to 6 December. The Trust Fund for the International Year, established in 1977, collected over $510,000 in contributions from member States.

In 1982, the General Assembly took a major step towards ensuring effective follow-up to the International Year by adopting, on 3 December 1982, the World Programme of Action concerning Disabled Persons. The Programme restructured disability policy into three distinct areas: prevention; rehabilitation; and equalization of opportunities. Implementation of the Programme of Action, using multi-sectoral and multidisciplinary approaches, was addressed by the General Assembly on 3 December 1982 and 22 November 1983. In a broad sense, implementation would entail long-term strategies integrated into national policies for socio-economic development, preventive activities that would include development and use of technology for the prevention of disablement, and legislation eliminating discrimination regarding access to facilities, social security, education and employment. At the international level, Governments were

83 Paragraph 12 of World Program of Action, 1982.
84 Paragraph 21 of World Program of Action, 1982.
85 Paragraph 26 of World Program of Action, 1982.
requested to cooperate with each other, the United Nations and non-governmental organizations. Together, the Programme and the International Year had launched a new era one that would seek to define “handicapped” as the relationship between persons with disabilities and their environment. It was imperative that the barriers created by society to full participation by persons with disabilities be removed.

During 1980s, numerous efforts, both substantive and promotional, were taken nationally and internationally to improve the situation of persons with disabilities with the goal of increased integration in society and improvements in physical and psychological adjustment of persons with disabilities within their communities. Programmes were launched focusing on rehabilitation and disability prevention. National committees representing 141 countries and territories were established to improve the following areas: social and economic condition of persons with disabilities, development and implementation of programs, research, policy and decision-making, legislation, decentralization from the national to local levels, and assistance to developing countries.

In the year 1981, experts in the field of disability meet at several symposiums and conferences such as: i) International Symposium on Disabled Persons, 27 September - 4 October in Tripoli, Libyan Arab Jamahiriya ii) World Symposium of Experts on Technical Cooperation Among Developing Countries and Technical Assistance in Disability Prevention and Rehabilitation of Disabled Persons, 12 - 23 October in Vienna, Austria and iii) World Conference on Actions and Strategies on Education, Disability Prevention, and Integration of Disabled Persons, Toremolinos, Spain (held in cooperation with UNESCO). Efforts are made to improve accessibility for persons with disabilities at the United Nations Headquarters in New York and the United Nations Offices in Geneva and Vienna. The United Nations Public Information units prepare photo display material, film, and television and radio productions on the subject. UNICEF expands immunization to over 5 million children to decrease the potential for disability-causing disease.

In May, 1981 the Commission on Human Settlements endorsed a policy encouraging the United Nations and Member States to eliminate barriers in human settlement areas that would hinder or impede “full participation”. From 30 November to 6

December, 1981 international non-governmental organizations participated in the International Year by attending the First Founding Congress of Disabled Peoples International (DPI), in Singapore.

The proclamation in December 1982 of the United Nations Decade of Disabled Persons (1983-1992) prompted a flurry of activity designed to improve the situation and status of the disabled. Emphasis was placed on raising new financial resources, improving education and employment opportunities for the disabled, and increasing their participation in the life of their communities and country. The Sub-Commission on Prevention of Discrimination and Protection of Minorities had included disabled persons in international human rights discourse since its establishment. In 1984, it appointed Leandro Despouy of Argentina as Special Rapporteur to study the connection between human rights violations, violations of fundamental human freedoms and disability. He was to report biannually to the Sub-Commission on the particular human rights situation of disabled persons. His final report in which he recommended the establishment of an international ombudsman was submitted in 1991.

The General Assembly endorsed a continued focus on the objectives of the World Programme of Action with regard to equalization of opportunities for the disabled. The Trust Fund for the International Year of Disabled Persons was to be used to support innovative projects in new and emerging areas regarding disabled persons. With $1.1 million dispersed for 51 projects throughout the world between 1980 and 1985, there was much increased visibility and support for promotional activities, organizations concerned with disability, data collection, research and training. At this juncture, the United Nations also took itself to task; with the General Assembly noting that persons with disabilities would enjoy the same rights to employment as all other qualified citizens and that the United Nations itself would declare employment opportunities open to all persons, regardless of sex, religion, ethnic origin or disability.88

In August 1987, a mid-decade review of the United Nations Decade of Disabled persons was conducted at a global meeting of experts in Stockholm, Sweden. The meeting recommended the importance of recognizing the rights of persons with disabilities after the Decade. Since the pace of progress during the first five years had not

been as fast as initially expected, the experts agreed that the disability issues should be further addressed within a wider interdisciplinary context - namely, a comprehensive well-coordinated information and evaluation campaign; establishment of a data base on disability; and creation of technical cooperation programmes.

"The International Year of Disabled Persons, 1981, was a milestone in the long history of the struggle of people with disabilities against discrimination and segregation, and for equal rights. The World Programme of Action concerning Disabled Persons, the fruit of collective work by Governments and organizations, recognized disabled persons first and foremost as citizens vested with all the rights and obligations that this implied. The problems of disabled persons could not be isolated. Their solution depended on the recognition of the rights and needs of disabled persons, on the political commitment to resolve the problems, on the formulation and implementation of effective and integrated strategies" Margaret Joan Anstee, Director-General of the United Nations Office in Vienna and Head of Centre for Social and Humanitarian Affairs at the opening session of the global meeting of experts, Stockholm, Sweden, 17-22 August 1987.89

Publication in 1989 of the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability encouraged recognition of disabled persons as agents of their own destiny rather than as dependent objects of Governments. With independence and full integration as goals, the Guidelines encouraged educating disabled persons within the regular school system, in particular, and promoting the teaching of skills to render the disabled economically viable. The Guidelines suggest that training of the disabled should include independent socialization and self-help skills to prepare them for independent living. International development agencies and intergovernmental and regional organizations were encouraged to work together in training the disabled for optimum human resource development.90

On 17 December 1991, the General Assembly adopted the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. The twenty-five principles define fundamental freedoms and basic rights. They deal with, inter alia, the right to life in the community, the determination of mental illness,

provisions for admission to treatment facilities, and the conditions of mental health facilities. They serve as a guide to Governments, specialized agencies and regional and international organizations, helping them facilitate investigation into problems affecting the application of fundamental freedoms and basic human rights for persons with mental illness.

On 16 December 1992, the General Assembly appealed to Governments to observe 3 December of each year as International Day of Disabled Persons. The Assembly further summarized the goals of the United Nations regarding disability and asked the Secretary-General to move from consciousness-raising to action, placing the Organization in a catalytic leadership role which would place disability issues on the agendas of future world conferences. In the same year, the Economic and Social Council endorsed the proclamation of 1993-2002 as Asian and Pacific Decade of Disabled Persons, a decision taken by the Economic and Social Commission of Asia and the Pacific, in order effectively to implement the World Programme of Action in the Asian and Pacific region.91

On 20 December 1993 the General Assembly adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. The Rules serve as an instrument by which policy makers can form technical and human rights cooperation within and among States, and between international organizations and governmental agencies. The Rules include a monitoring mechanism to support their implementation. They call for the appointment of a Special Rapporteur who would establish a direct dialogue between Member States, local non-governmental organizations and other intergovernmental bodies in order to implement the Standard Rules. In 1994, Mr. Bengt Lindqvist (Sweden) was appointed Special Rapporteur on Disability of the Commission for Social Development by the Secretary-General. The World Conference on Human Rights, 1993 reconsidered universally recognized human rights instruments in light of contemporary issues and adopted the Vienna Declaration and Programme of Action. The Conference recognized that all human rights and fundamental freedoms are universal, and thus should unreservedly include persons with disabilities.92

The International Conference on Population and Development, 1994 was held in Cairo. It recognized the importance of equalizing opportunities for persons with disabilities. The World Summit for Social Development was held in Copenhagen in March 1995. It adopted the Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development. From 4-15 September, the Fourth World Conference on Women, held in Beijing, focused on gender-related issues in the overall development scheme. Concerns relating to disability were raised in the Beijing Declaration and The Platform for Action, which recognized that women face barriers to full equality and advancement due to factors such as their disability. As part of the programme for the International Day of Disabled Persons, a United Nations inter-agency meeting was held on 7 December 1995 during which various agencies working with persons with disabilities presented their current projects. The meeting was held by the Department for Policy Coordination and Sustainable Development in collaboration with the Department for Public Information of the United Nations Secretariat.93

The Preparatory Committee for the United Nations Conference on Human Settlements, held in Istanbul, Turkey, in June 1996, issued a draft statement of principles and commitments and a global plan of action, which paid particular attention to persons with disabilities who might benefit from affirmative governmental action.

In December, 2001 Mexico proposes in the General Assembly to establish an Ad Hoc Committee to consider proposals for a comprehensive and integral international convention to protect and protect the rights and dignity of persons with disabilities.

In the World Summit for Social Development, 199594 it has been affirmed that social integration was one of the key goals of social development and that the aim of social integration was to create a “society for all”. In the Programme of Action of the World Summit for Social Development95 it was further noted that the failure of social integration would lead to social fragmentation and polarization; widening disparities and

93 ibid
inequalities; and strains on individuals, families, communities and institutions as a result of the rapid pace of social change, and economic transformation. Following the adoption by the Summit of the Copenhagen Declaration on Social Development, and the Programme of Action of the Summit, significant policy commitments were made to advancing social development goals. The UN Millennium Declaration, adopted at the Millennium Summit on 8 September 2000, assigned especial significance to social inclusion and other objectives and goals set out in the Copenhagen Declaration and subsumed social integration within a synthesis that included peace, security, development and human rights. Further, following the 2005 World Summit, achieving full and productive employment as well as decent work for all was added as a new target under Goal 1. Social integration and social inclusion are also beginning to be priorities within many local- and regional-level initiatives.


On 30 March, 2007 the Convention and Optional Protocol opened for signature at UN Headquarters in New York. States or regional integration organizations may now sign the Convention and Optional Protocol at any time at UN Headquarters in New York. The Convention on the Rights of Persons with Disabilities and its Optional Protocol entered into force on 3 May 2008, one month after the required 20th country ratified the treaty. The first Conference of States Parties to the Convention is held at UNHQ in New York from 31 October to 3 November.

The second session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities was held from 2-4 September at UNHQ in New York. On 3rd December, 2009, Singer-songwriter Stevie Wonder is designated UN Messenger of Peace on the International Day of Persons with Disabilities.

The Third Session of the Committee on the Rights of Persons with Disabilities was held from 22-26 February. The Third Conference of States Parties to the Convention was held from 1-3 September 2010 at UN Headquarters in New York. On 23 December, 2010 the European Union (EU) ratified the CRPD, becoming the first intergovernmental organization to join a United Nations human rights treaty.

The Fifth Session of the Committee on the Rights of Persons with Disabilities took place from 11 to 15 April 2011. The Committee adopted its first concluding observations in relation to Tunisia and also a list of issues relating to its dialogue with Spain.

The first ever World Report on Disability, produced jointly by the World Health Organization and the World Bank, reviews evidence about the global situation of persons with disabilities, and offers directions for policy and practice to address exclusion. The report will be launched at UN Headquarters on 9 June 2012.

On 23 September 2013, the United Nations General Assembly is holding a High-Level Meeting on Disability and Development (HLMDD) on Monday 23 September 2013 with the overarching theme of “The way forward: a disability inclusive development agenda towards 2015 and beyond”. The meeting will take place on the Monday before the start of the general debate of the sixty-eighth session at the UN Headquarters in New York. The HLMDD is also taking place in advance of the Special Event on the Millennium Development Goals (MDGs) on 25 September which will take stock of the progress made to-date on achieving the MDGs. The timing of the HLMDD is strategic. It is taking place five years after the entry into force of the UN Convention on the Rights of Persons with Disabilities (CRPD), two years after release of the first World Report on Disability, and two years away from MDG 2015 target and commencement of the post-2015 agenda and new development priorities. Disability was not referred to in the MDGs. However, in recent years there has been growing recognition that disability needs to be included in the framework of the next set of development goals.99

Determination of Standard Rules

Guided by the deliberations in the General Assembly, the Economic and Social Council, at its first regular session of 1990, finally agreed to concentrate on the elaboration of an international instrument of a different kind. By its resolution 1990/26 of 24 May 1990, the Council authorized the Commission for Social Development to consider, at its thirty second session, the establishment of an ad hoc open ended working group of government experts, funded by voluntary contributions, to elaborate standard rules on the equalization of opportunities for disabled children, youth and adults, in close collaboration with the specialized agencies, other intergovernmental bodies and nongovernmental organizations, especially organizations of disabled persons. The Council also requested the Commission to finalize the text of those rules for consideration in 1993 and for submission to the General Assembly at its forty eighth sessions. The subsequent discussions in the Third Committee of the General Assembly at the forty fifth session showed that there was wide support for the new initiative to elaborate standard rules on the equalization of opportunities for persons with disabilities. At the 32nd session of the Commission for Social Development, the initiative for standard rules received the support of a large number of representatives and discussions led to the adoption of resolution 32/2 of 20 February 1991, in which the Commission decided to establish an ad hoc open ended working group in accordance with Economic and Social Council resolution 1990.

Issue of Equality: Equality is also central to the system of basic freedoms postulated by human rights law. Its core premise is that all persons not only possess inestimable inherent self-worth but are also inherently equal in terms of self-worth, regardless of their difference. In other words, it means that a genuinely equal society is one that has a positive approach to and positively accommodates human difference. Valuing human difference is the aim of the “social construct” approach and is also validated by the human rights perspective. Equality can be formal or substantial equality. For instance a formal anti-discrimination law, for instance, may proscribe disability discrimination but fail to move beyond the “equality as neutrality” philosophy.

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and take the further vital step of requiring "reasonable accommodation" of the difference of disability. This kind of "equality" is plainly hollow. Creating special schools for children with disabilities to ensure equal opportunity of education is based on the principle of formal equality. Though it will ensure education for children with disability at par with normal children but at the same time it will create segregation instead of inclusion of children with disabilities in the mainstream. As the people with disabilities are not similarly situated as compare to the able-bodied, formal equality will not be sufficient to address the issue of disability discrimination.\textsuperscript{101} The notion of formal equality entails an optimistic view of individual autonomy and rationality whereas completely ignores social disparities and their impact on free competition.\textsuperscript{102} Hence, a second interpretation of equality is "equality of opportunity", equality of resources or equality of results through implementing principle of reasonable accommodation is most appropriate to ensure equality for PwDs in true sense. This is called "substantial equality" which acknowledges the difference and presumes that people of having equal need and ability should be given equal opportunities. Unequal can't be treated equally. For instance Equality of opportunity entails tackling structural exclusion in such areas as transport, social amenities, public services and communications. No meaningful change is conceivable unless the social and economic processes of civil society are structured more inclusively and opened up to persons with disabilities on a genuinely equal basis. Equality of opportunity entails ensuring that persons with disabilities are trained to the very best of their abilities to take up socially responsible and productive roles in civil society. This entails putting the education system on genuinely equal basis and supplementing it where necessary. An important point is that the process of inclusion is both an end and a means. Another interpretation of equality focuses on "equality of results", which is usually taken to mean that each person by virtue of his/her inherent equal worth and dignity and is entitled to certain minimum rights regardless of his/her contribution or capacity to contribute. This approach has not, however, dominated thinking about disability. People with disabilities want to be accepted on their merits and given the material support they need to exercise their rights.

\textsuperscript{101} KOTHARI, J. THE UN CONVENTION ON RIGHTS OF PERSONS WITH DISABILITIES: AN ENGINE FOR LAW REFORM IN INDIA. (2010). pp. 65-72.  
The term “equalization of opportunities” means the process through which the various systems of society and the environment, such as services, activities, information and documentation, are made available to all, particularly to persons with disabilities. The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation. Equalization of opportunities was defined in the 1982 World Programme of Action concerning Disabled Persons the reads “Equalization of opportunities means 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”. Persons with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services. As persons with disabilities achieve equal rights, they should also have equal obligations. As those rights are being achieved, societies should raise their expectations of persons with disabilities. As part of the process of equal opportunities, provision should be made to assist persons with disabilities to assume their full responsibility as members of society.

The Standard Rules on the Equalization of Opportunities for Persons with Disabilities have been developed on the basis of the experience gained during the United Nations Decade of Disabled Persons (1983-1992). The International Bill of Human Rights, comprising the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the World Programme of Action concerning Disabled Persons, constitute the political and moral foundation for the Rules. Although the Rules are not compulsory, they can

103 Proclaimed by the General Assembly in its resolution 37/53.
104 Resolution 217 A (III).
105 See resolution 2200 A (XXI).
106 International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, Resolution 44/25.
107 Resolution 34/180.
become international customary rules when they are applied by a great number of States with the intention of respecting a rule in international law. They imply a strong moral and political commitment on behalf of States to take action for the equalization of opportunities for persons with disabilities. Important principles for responsibility, action and cooperation are indicated. Areas of decisive importance for the quality of life and for the achievement of full participation and equality are pointed out. The Rules offer an instrument for policy making and action to persons with disabilities and their organizations. They provide a basis for technical and economic cooperation among States, the United Nations and other international organizations. The purpose of the Rules is to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and obligations as others. In all societies of the world there are still obstacles preventing persons with disabilities from exercising their rights and freedoms and making it difficult for them to participate fully in the activities of their societies. It is the responsibility of States to take appropriate action to remove such obstacles. Persons with disabilities and their organizations should play an active role as partners in this process. The equalization of opportunities for persons with disabilities is an essential contribution in the general and worldwide effort to mobilize human resources. Special attention may need to be directed towards groups such as women, children, the elderly, the poor, migrant workers, persons with dual or multiple disabilities, indigenous people and ethnic minorities. In addition, there are a large number of refugees with disabilities who have special needs requiring attention.

**Issue of Prevention:** The term “prevention” means action aimed at preventing the occurrence of physical, intellectual, psychiatric or sensory impairments (primary prevention) or at preventing impairments from causing a permanent functional limitation or disability (secondary prevention). Prevention may include many different types of action, such as primary health care, prenatal and postnatal care, education in nutrition, immunization campaigns against communicable diseases, measures to control endemic diseases, safety regulations, programmes for the prevention of accidents in different environments, including adaptation of workplaces to prevent occupational disabilities and diseases, and prevention of disability resulting from pollution of the environment or armed conflict.
**Issue of Rehabilitation:** The term “rehabilitation” refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric and/or social functional levels, thus providing them with the tools to change their lives towards a higher level of independence. Rehabilitation may include measures to provide and/or restore functions, or compensate for the loss or absence of a function or for a functional limitation. The rehabilitation process does not involve initial medical care. It includes a wide range of measures and activities from more basic and general rehabilitation to goal oriented activities, for instance vocational rehabilitation.

**Issue of Poverty and Disability and the UN Millennium Development Goals**

“Disabled people are also more likely than other people to live in grinding poverty. More than 1.3 billion people worldwide struggle to exist on less than $1 a day, and the disabled in their countries live at the bottom of the pile.”

According a World Bank publication, while people with disabilities make up one in ten people worldwide, they may constitute up to one in every five of the world’s poorest people. While the links between disability and poverty are complex and nuanced, there is a strong consensus that people with disabilities and households with disabled members are often significantly poorer, with fewer resources and more brittle support in networks, than non-disabled individuals and households with no disabled members.

The global focus on poverty highlighted by the MDGs is of particular concern to persons with disabilities. A growing body of research now shows that the most pressing issue faced by millions of persons with disabilities worldwide is not their disability but rather poverty. Much of this poverty is the direct and indirect result of exclusion and marginalization of persons with disabilities due to stigma and prejudice about disability. This stigma and prejudice, in turn, is often the result of a lack of knowledge and awareness about people with disability which exists at all level from the family to the

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108 In September 2000, the United Nations brought together in New York 189 UN Member States, including 147 Heads of State or Government, for the United Nations Millennium Summit. The purpose of the Summit was to discuss the pressing issue of global poverty.


community to decision makers at the highest level and includes all those who simply have not understood that persons with disabilities need the same opportunities and rights available to all other members of society. Such stigma and prejudice leads to social marginalization and lack of equal access to educational, employment and social support mechanisms that result in profound poverty for millions of persons with disabilities. The interconnection between disability and poverty has been described by many as a “feedback loop” with “disability being both a cause and a consequence of poverty”. The MDGs address poverty through tackling problems such as improving education, health, employment, gender equity and access to food, water and sanitation, trade and technology. These issues are no less relevant to persons with disabilities than to all other members of society. In fact, in some instances, persons with disabilities may be at increased risk of becoming and remaining poor. Lack of access to information and resources, social marginalization and increased risk of violence places persons with disabilities at increased risk of exposure to HIV/AIDS and decreases the likelihood that they will receive treatment or social or economic support should they become infected.

Thus, all the MDGs have relevance to persons with disabilities and there is great need to ensure that all MDG Targets and Indicators identify, monitor and evaluate policies and programming for persons with disabilities, both as members of the general population and as a distinct vulnerable population. However, nowhere in the MDGs are persons with disabilities or disabled populations mentioned. Although it has been argued by some that the commitment of the United Nations to the rights of persons with disability and their inclusion in all MDG activities are implied in the MDGs, this implicit inclusion seems to rarely lead to their inclusion in either general or targeted MDG efforts.

Due to non-inclusion of PwDs in the Millennium Development Goals the persons with disabilities and their families fell increasingly further behind their fellow citizens.

113 DIFD 2000.
114 The United Nations Secretariat convened the Inter-Agency and Expert Group on MDG Indicators (IAEG) to develop and then maintain operational oversight over a comprehensive set of unifying objectives for the global community. The IAEG in turn identified 8 key unifying Goals. Goal 1. Eradicate extreme poverty and hunger; Goal 2. Achieve universal primary education; Goal 3. Promote gender equality and empower women; Goal 4. Reduce child mortality; Goal 5. Improve maternal health; Goal 6. Combat HIV/AIDS, malaria and other diseases; Goal 7. Ensure environmental sustainability; Goal 8. Develop a global partnership for development.
who are benefiting from policies and programs linked to the MDGs. The “social model” is a newer approach to disability, which has arisen as a response to the growing global Disability Rights Movement has fostered a rethinking of these earlier models, through an increasing understanding that the constraints faced by persons with disabilities reflect social, cultural and economic barriers, and are not inherently part of living with a disability. This social model has broadened in recent years to include the concept of a Human Rights model which includes the right to health care, education and social participation.” The culmination of this new approach led in 2006 to the landmark UN Convention on the Rights of Persons with Disabilities which in turn, has significant implications for the implementation and revision of the MDGs.

**Issue of Social Inclusion:** The notion of inclusion leaves room for an effort toward adjustment, acceptability, acceptance and social participation. The notion of integration presupposes conformity and alignment, which are always experienced as domination, or even oppression, by the group that defines the norms, or by the majority over the minority. Being included represents a situation in which you are a part, in an organic way, without necessarily being forced to conduct yourself according to a rigid norm. Otherwise, inclusion can prove to be weak, a synonym for simply being present, being admitted, and being tolerated. There are also strong instrumental reasons for promoting social integration and inclusion. Deep disparities, based on unequal distribution of wealth and/or differences in people’s backgrounds, reduce social mobility and ultimately exert a negative impact on growth, productivity and well-being of society as a whole. Promoting social integration and inclusion will create a society that is safer. Greater stability implies greater justice is an essential principle for sustainable economic growth and development.

The socio-political approach regards disability as a product of interactions between individual and environment. The human rights approach visualizes disability as

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117 STEIN, M, PSTEIN, D. WEISS, R. LANG HEALTH CARE AND THE UN DISABILITY RIGHTS CONVENTION.(2009)
120 Ibid.
having stemmed primarily from the failure of a structured social environment rather than from the inability of disabled persons to adjust to the norms and expectations of the society. Exclusion in contemporary societies designates several phenomena: radical exclusion from society; segregation within a society; discrimination, also within, as concerns access to social goods and spaces; and disaffiliation and withdrawal from social exchange. Being fully recognised as an equal, a partner, or a participant, with the same dignity and of the same quality as any other, is called integration rather than inclusion.\footnote{RENU ADDLEKHA, S. B. DISABILITY AND SOCIETY. New Delhi: Oriental Black Swan. (2009)}

One can be supported without being recognised. One can be received without being incorporated. Negative attitudes, limited physical access, restricted access to communication and or resources, and to the rights and privileges of a social group- are the major barriers which interfere with the disabled individuals to actualize his/ her desired roles. Thus, disability is basically determined by public policy.\footnote{KARAN, G. DISABILITY STUDIES IN INDIA: RETROSPECTS AND PROSPECTS. NewDelhi: GYAN Publication. (2001)} Failures of inclusion or integration may be experienced by disabled people translate into loss of, or difficult access to, a place in society, a permanent move to the sidelines. The exclusion of disabled persons which can be seen in public policy and attitude, through time and across civilizations has assumed, and still assumes, extremely diverse forms within the host society. From radical forms of exclusion such as extermination or abandonment, there is a continuum of exclusion from society to diverse forms of exclusion within society, through segregation, marginalization or discrimination.\footnote{RENU ADDLAKHA, S. M. DISABILITY LAW IN INDIA: PARADIGM SHIFT OR EVOLVING DISCOURSE. (2009). pp. 62-68.} In the contemporary society we find a continuous form of exclusion that is moderate in nature such as segregation or separate living. Integrating the person with disabilities into the mainstream society through legislative measures based on positive discrimination are not fulfilling the objective of “inclusion” of person with disabilities in true sense because these measures normally creates another kind of “exclusion”. For instance “special schools” for children with disabilities or “institutional living” for persons with intellectual disabilities creates “segregation” or a kind of “social exclusion”. One has to label as “handicapped” or “disabled” to benefit from the special measures reserved for people with disabilities. Thus, it creates a feeling of “otherness” who is lesser human being because of his/her
impairments. On the other hand if the policy measures based on the principle of inclusion then instead of imparting education in separate or special school the children with disabilities should impart education in normal school equipped with trained teachers, and aids and appliances.

Hence, the social model approach though breaks the traditional causal link between impairment and disability and focuses more on the ways society restricts opportunities to engage in mainstream economic and social activities and renders people with impairments more or less dependent, still it has been criticized on the ground that the social construct model of disability not only used to set people apart but also to keep people apart. Hence, there is need to follow an integrated approach based on the “social construct” model of disability and the human rights perspective of disability to ensure genuinely an inclusive society that value difference and respect the dignity and equality of all human beings regardless of differences. In this regard, the disability rights movement is very much in tune with a deeper and broader movement to create genuinely inclusive societies for all. It has been described as the “next generation” civil rights movement.

**Issue of Autonomy:** The value of autonomy is based on the presumption of a capacity for self-directed action and behavior. Thus, it rests on the implicit image of a “moral free” person, an image that has long been deeply contested. There are two main problems with this ideal image in the context of disability. One is the prejudice social attitude and the presumption that the PwDs are “incapable” or “incompetent” especially intellectual disability with a lack of capacity for moral freedom. The other problem is that society often fails to take seriously the autonomy of persons with disabilities who enjoy full legal competence. Their life choices are not perceived to be as worthy of social support as those of the non-disabled. The ways in which members of a society classify and react to disability have a profound impact on the lives of persons with disabilities. The ways in which a society chooses to legally define disability have a tremendous impact on the social standing and civil rights of persons with disabilities. These social

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125 Ibid.
classifications, social reactions, and legal classifications are interrelated and serve to reinforce the definitions for and social roles of disability.\(^{126}\) Even when a society is not intentionally discriminating against individuals with disabilities, the members of that society may be marginalizing people with disabilities through their social reactions towards persons with disabilities.\(^{127}\) These social reactions include ignoring, stereotyping, misidentification, and discomfort. Hence, the problem of disability lies not only in the impairment of function and its effects on us individually, but also, more importantly, in the area of our relationship with 'normal' people. Prejudice attitude and low expectations have led to neglect of the material conditions that people with disabilities need to take control of their lives and live as they wish. For the most part, societies have not done enough to enable those with disabilities who have a clear capacity for moral freedom to exercise their right of self-determination.

**Issue of Social Reactions:** The social perspective of disability asserts that "disability is the outcome of social arrangements which work to restrict the activities of people with impairments by placing social barriers in their way".\(^{128}\) A disability, according to the social perspective, is the result of how a physical or mental characteristic affects functioning in an environment and the expectations for functioning. The social perspective views disability more as a result of external factors imposed upon a person than the biological functions of a person. Social reactions means the way society reacts towards persons with disabilities. Social reactions reflect the societal attitude and determine the role disabled people in the society. These social reactions such as ignoring, labeling, pretending, misidentification, discomfort, notion of incapability or incompetency due to having an imperfect body image, creates disability because the problem of the disabled lies not only in the impairment of function but also lies in the relationship with 'normal' people". Thus, disability is made most difficult by "society's myths, fears, and stereotypes."\(^{129}\)


\(^{127}\) Ibid.


The most basic social reaction to disability may be to pretend that it is not there. Pretending disability does not exist also means pretending that people with disabilities do not exist. Ignoring disability occurs in all aspects of society, from daily interactions to history texts. Schools have to be barrier free and well-equipped with all the infrastructural facilities, aids and appliances to fulfill the needs of disabled children so that inclusive education can be possible. If schools will ignore the fundamental requirements such as accessible school building, toilet facility, and talking books for visually impaired children, hearing aids for hearing impaired students then inclusive education won't be achieved. Similarly if basic accommodation facilities are not provided to ensure barrier free accessible communication then this ignorance will be a contributing factor for creating disability. Another Social reaction to disability is misidentification, an odd by-product of the increase in legal rights of people with disability. Some people see having a disability as a means of personal gain, whether for advantage, for convenience, or to gain sympathy. So in a way this also created negative social attitude towards persons with disabilities. Discomfort is another very common social reaction to disability. People who do not have disabilities often feel uncertain how to act when encountering someone with a disability, though spending time around persons with disabilities can reduce these feelings of uncertainty. Even person with a disability also experience the feeling of discomfort while interacting with able-bodies which causes exclusion of person with disabilities in the mainstream society, because the focus is exclusively on the presence of a disability rather than the presence of someone with a disability.

The most frequent social reaction to disability is feeling of 'pity'. Many people assume that an individual with a disability is in a perpetual state of mourning for what he or she cannot do as a result of the disability. The person with the disability is reduced by such reactions to an object of sympathy that is seen as unable to be a meaningful participant in society or to lead a fulfilling life. Pity "makes disability salient and defining" by placing a person with a disability in "a position of presumed need".

130 ibid p.18.
131 VASH, C.L., & CREWE, N.M. PSYCHOLOGY OF DISABILITY. New York: Springer.(2004)
Turning a person with a disability into a “hero” is another common social reaction. This reaction is interesting on the surface as it appears to be positive, but it is actually a different type of negative reaction. To make a person with a disability as “a hero” or as an inspiration serves to distance the person with the disability from “normal” people. Being viewed as a hero may be better than being viewed as a defective wretch, but both these perceptions marginalizes the persons with disabilities.

A disability is always there and living with it is not a heroic act. It is simply one way of living. Discounting the importance of a disability in a person's life also serves to marginalize persons with disabilities. As a social reaction dismissing the impact of disability is not uncommon. People generally do not accept that the social exclusion of individuals with disabilities is comparable to social exclusion based on race, gender, religion, or national origin. Hence, social reactions towards persons with disabilities create, define and classify disability.

**Issue of Protection of Civil Rights:** Civil rights serve to protect and promote the values of human dignity and autonomy. They imply and help to preserve a clear-cut division between public power and civil society or the private sphere. They also imply a civil society in which people are free to make their own life choices and carry them into effect. So while protecting people against the abuse of power, civil rights also open up space in civil society for personal fulfillment. They play vital role in ensuring respect for person and protection against abuse of power. These rights protect the individual’s physical and mental integrity. Awareness to ensure protection of civil rights of persons with disabilities was spread across the world in the late Nineteenth century by the Disability Rights Movement activists, with the raise of other civil rights movements such as women rights movement, racial discrimination movement, etc. Right to liberty, right to freedom from torture and inhuman treatment, freedom of association are some important

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135 ibid


civil rights need to be protected to ensure personal development by negating State power. But in case of people with disabilities they have been denied these rights, due to the stereotyped societal attitude and lack of awareness amongst PwDs. The right to freedom from torture and violence or degrading treatment may be violated where people with disabilities are being forced live an institutionalized living. Similarly inaccessible transport, inaccessible built environment, and inaccessible communication environment violates right to liberty, freedom of movement and to live a life of own choice. Some categories of persons with disabilities seem not to enjoy full freedom of association. Still, in most part of the world legal incapacity exists with respect to participation in legal proceedings and the giving of evidence. These rules seem to be premised on outdated notions of incapacity that fail to do justice to the actual capacities of persons with disabilities. Equality norms in constitutions and other legislation often fail to cater adequately for the difference of disability.

**Issue of Accessibility:** The issue of access is wide and would include overcoming ‘environmental barriers’ such as inaccessible private and public building schools, colleges, offices and transport, institutional barriers such as segregation, exclusion, institutionalization including attitudinal barriers such as prejudices, pity and disregard for persons with disabilities. The positive duty to frame schemes for aids and appliances, allotment of land at concessional rates, access to public buildings, public transport fall within the frameworks of reasonable accommodation to ensure equality for persons with disabilities. The duty to provide reasonable accommodation should be legally enforceable and there should be a corresponding right of disabled persons against state to require positive action to remove barriers that obstruct their full participation in daily life.139

**Issue of Solidarity:** The value of solidarity is based on an acknowledgement that mutual ties and obligations exist between people by virtue of their shared membership of a political community. Freedom does not exist in a vacuum. It must be made tangible and this often means buttressing the system of basic freedoms by substantive social and

138 Ibid., p.24.
The main purpose of solidarity should be full participation of persons with disabilities in all mainstream processes of society. Hence, people with disabilities are entitled to social support regardless of the utility of their potential, and contribution to society. The dignity of all persons merits such support irrespective of their “use value” to others.

**Issue of Political Inclusion:** Political rights enable individuals to exercise democratic control over State power and public policy. Human rights are not merely about protecting people against the abuse of power - they are also about giving people access to power. Human rights doctrine envisages an active citizenry that participates in the political life of the polity. Political rights are very important to influence public power. There is a link between human rights and democracy, a link which can be understood in two ways. First, human rights may be viewed as the prime achievement of democratic polity. The greater the say people have in shaping their common destiny through access to political power, the more they tend to respect rights. Second, human rights may be perceived as the bedrock on which democratic societies are built and function, helping to forestall any slide towards despotism. Freedom of expression plays a vital role to bring a change in the political marketplace. It enables new ideas to replace old ones and advances the ideal of democratic accountability. Although freedom of association can be defended from the perspective of individual self-fulfillment, it also plays a vital role in keeping the door open for democratic change. The right to stand for office and the right to vote are also of obvious importance in shaping the common destiny of the polity and ensuring that one’s perspective is not ignored. Hence, to become politically active the disabled organizations and the disabled groups across the world raising voice for their inclusion in active politics.

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Disability in India

Disability is an important public health problem especially in developing countries like India. The problem will increase in future because of increase in trend of non-communicable diseases and change in age structure with an increase in life expectancy. The issues are different in developed and developing countries, and rehabilitation measures should be targeted according the needs of the disabled with community participation. In India, a majority of the disabled resides in rural areas where accessibility, availability, and utilization of rehabilitation services and its cost-effectiveness are the major issues to be considered. Research on disability burden, appropriate intervention strategies and their implementation to the present context in India is a big challenge.

In India, disability based on medical model, is the outcome of socio-cultural impediments such as belief and stereotyped social stigmas as well as structural impediments such as poverty, illiteracy, unemployment, lack of accessibility, lack of education, the disability rights movements still struggling for getting recognition and protection of their basic human rights, focusing more on prevention and rehabilitation models.

The 1st International forum for Universal Declaration of Human Rights proclaimed by the United Nations General Assembly is a landmark, for Article 25 of the Declaration states that each person has, “the right to security in the event of unemployment, sickness, disability, widowhood, old age, and other lack of livelihood in the circumstances beyond his control. In the year 1971, the General Assembly stipulated that mentally retarded persons be accorded the same rights as other human beings, as well as special rights corresponding to their needs in the medical, educational and social fields. India being a signatory to the ‘full participation and equality of people with disabilities in the Asian and Pacific Regions’ proclamation and with a view to implement the same, the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 was enacted, which came into force on 1st January, 1996. Concrete empowerment is envisaged in the Constitution guaranteeing equality of status and opportunity to its citizens and other progressive directives (Article 39A, Article 41). The National Policy for Persons with Disabilities, 2006 was also adopted in furtherance of these international commitments, which are a two way process aimed at realizing
economic, social and cultural rights for persons with disabilities. The government is in the process of evolving a framework for the implementation of the UN Disability Convention. The XI Plan document recognizes the need to integrate India’s commitment towards the International Policy Framework consequent on ratification of the Disability Rights Convention on 01 October 2007.\textsuperscript{142}

The Census 2001 Report around 21.91 million Person with disabilities at about 2.13\% of the population constitutes persons with disabilities. The Census categorized disabilities as ‘seeing’, ‘speech’, ‘in hearing’, ‘in movement’, and ‘mental disability’. As per NSSO in 2002 there were 18.5 million people with disabilities in India. The difference between the Census and NSSO report is due to lack of a comprehensive legal definition of disability.\textsuperscript{143} However, some sources claim that the magnitude in actuality is more with at least 5 per cent of population suffering from one disability or other and the official statistics accounting for only the most severe ones. By and large, people with disability are further disabled through unequal treatment and denial of basic rights by the broader society. The voiceless disabled people are inseparable part of India’s growing population of marginal, weaker and vulnerable sections of society. The roles and responsibilities of the Government of India are clearly identified in laws but there is a need to study the gap between the law and the practice.

**Protection of Basic Rights of Persons with Disabilities: Issues in India**

Concerns with regards to the rights of the disabled became visible in public domain in India during 1990s when a cluster of legislations were enacted by the Parliament such as Rehabilitation Council of India Act 1992, National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999. Earlier the Indian Lunacy Act, 1929 was replaced by the Mental Health Act 1987 this came into force in 1993.\textsuperscript{144} The passing of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act, 1995 is the most

\textsuperscript{142}KANNIBIRAN, K. M  \textit{MONITORING THE HUMAN RIGHTS OF PERSONS WITH DISABILITIES: LAW, POLICIES AND PROGRAMS IN INDIA}. York University, Canada: Disability Rights Promotion International (D.R.P.I.).(2009)


\textsuperscript{144}RENU ADDLAKHA, S. M. \textit{DISABILITY LAW IN INDIA: PARADIGM SHIFT OR EVOLVING DISCOURSE.} (2009) pp. 62-68.
remarkable achievement in the history of disability rights movement in India, after India's participation in the Asian Pacific of Disabled Persons 1993-2002.\textsuperscript{145} The PWD Act enacted in 1995 was a legislative attempt to protect the rights of persons with disabilities. This was not done on the platform of the right to equality.\textsuperscript{146} The Constitution of India while protecting equality under Article 14, 15, and 16, does not include disability as one of the categories for non-discrimination. The only mention of protection of persons with disabilities and sickness was made in the Directive Principles of State Policy in Chapter-IV of the Constitution of India. The enactment of the PWD Act is remarkable because for the first time in India since 1995, social and economic rights of persons with disabilities have been addressed by any statute specifically made for persons with disabilities. Hence, it was India’s first anti discrimination law or an equality law.\textsuperscript{147}

The fundamental right to life enshrined in the Indian Constitution provides the guarantee life with liberty and dignity to all persons resident in India. The right of persons with disabilities to respect, dignity and freedom is part of this generic right to life. However, the recognition of disability as part of a larger terrain of human diversity is something that has not yet entered official discourse on disability rights. Article 21 of the Constitution of India protects the Right to Life and Personal Liberty, which are inclusive of the principles of inherent dignity and individual autonomy for all persons resident in India. This, together with Article 14, the Right to Equality before law provide the conditioning environment for specific laws and policies that uphold fundamental rights for different classes of individuals. Disabled are also not a homogenous group. There are different types of disabilities, with different requirements. Each once problems, needs and help required are different from the other. The protection of persons with disabilities is a fundamental issue for both International Human Rights and Fundamental Right under the Constitution of India as the necessity of considering the needs and concerns of persons with disability is a generally accepted principle. In spite of several international and national pronouncements the rights of the disabled has remained on paper. Given the magnitude of the problem it is important that disabled persons receive political attention.

\textsuperscript{145} KOTHARI, J. \textit{THE FUTURE OF DISABILITY LAW IN INDIA}. Oxford University Press.(2012)
It is important to note that all the targets and policies of achieving social and economy equality will not be possible to meet if the concerns of the disabled are not addressed. There is need for policy level changes backed by adequate budgetary allocation.

**Lack of Political Will:** For the estimated 70 million disabled people in India, the government's failure to table the Rights of Persons with Disabilities Bill in Parliament in the winter session was another act of cruel neglect and one that their representative organizations are gearing up to tackle. For the four years that it took for the bill to be drafted, disability rights' advocacy groups and activists kept the pressure up. The approval of the draft bill by the union cabinet on 12 December 2013 raised their hopes only to be dashed. With general elections looming ahead and the uncertainty of how much legislative business will be conducted at the next session, these activists fear that their efforts would simply be washed away. Protests and agitations were held to demand that the bill should be taken up in the February session even as the disabled bitterly pointed out that politicians do not seem to count them as a valued vote bank.

The disabled in India are "invisible", not to politicians alone; society at large disregards the disabled. Since they do not easily fit into the socio-cultural expectations of what "normal" men and women should be like, the disabled are either to be pitied and dealt with charitably or shunned and ignored. To a certain extent, this attitude was challenged by the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which was considered landmark legislation at the time. However, while this Act did go a small distance in ensuring greater acceptance of the rights of the disabled to employment, not only its implementation but also its scope left much to be desired. It relies too much on the state's initiative in framing schemes for the disabled while emphasizing their vulnerabilities rather than on enhancing their capabilities. It also leans heavily towards the medical approach, emphasizing the physical disabilities and tending to view welfare measures as the solution. It is a familiar experience that most government schemes aimed at a particular section of society suffer from lack of coordination and dovetailing of the efforts of the various agencies at work. Another area that needs attention is the one to do with the socio-economic vulnerabilities of the parents/guardians/caregivers of the disabled.
A number of crucial areas are also out of the 1995 Act's ambit, like the problems faced by disabled women, disabled persons' accessibility to cultural activities and sports, their preschool and higher education, the rights of the mentally ill (here too the women have special vulnerabilities) and many other nuanced rights that are taken for granted by the non-disabled. Disability rights' groups wanted a comprehensive legislation that would be in keeping with the United Nations Convention on the Rights of Persons with Disabilities which India has ratified and which stresses fundamental rights. Also, this new legislation would have to be hinged on the non-negotiable rights approach rather than doling out concessions. The Ministry of Social Justice and Empowerment's proposal to amend the 1995 Act came under fire and thus work began on drafting the new bill. The 1995 Act however helped to bring the rights and problems of the disabled into public and media discourse and also helped different rights groups to band together on a common platform to a large extent. It must also be noted here that this law suffers from the usual problem of implementation which depends again to a great extent on a sensitive bureaucracy and committed politicians.

The Rights of Persons with Disabilities Bill 2012 has won the thumbs up on most counts since it has tried to do away with the shortcomings in the 1995 Act. However, there are a few aspects like that of inclusive education of the disabled and their employment in certain identified posts that have been flagged by some disability rights advocates as areas that need to be reworked. These and related issues need to be discussed widely once the bill is tabled in Parliament. Will the government ensure that the hopes and aspirations of the disabled are not dashed and the efforts of all those who have worked on the bill do not go in vain.

**Identifying the Persons with Disabilities:** Systematic research into prevalence and determinants of disability has been scanty from India although it is an important public health problem. Disability is the best example of the iceberg phenomenon of disease. This is because of difficulty in identifying the mild and moderate degrees of physical and mental disability which are unrecognized by the health care delivery system and the survey team members. 148

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148 Kumar SG, Das A. Are the Disability Data in India Appropriate? 22. NATL MED J. INDIA, p 278 (2009)
During 2011 Census 9 codes i.e. Seeing- 1, Hearing-2, Speech-3, Movement-4, Mental Retardation-5, Mental Illness-6, Any other-8 and Multiple Disability-9. But, there are several other factors that require further estimations for the best interest of the persons with disability like skill, competency, treatment, rehabilitation. Except Census India and NSS we do not have any structured and organised mechanism to survey the various aspects of disables. Since Census India is conducted every 10 years the findings gets obsolete for the policy makers by the time they design policy for the disables.

**Employment Opportunities:** While Article 41 of the Constitution of India acknowledges the importance of assuring the rights of those with disabilities, there was no specific legislation that enforced these principles until 1995. The persons with disability (PWD) Act, hereafter referred to as Act was passed in 1995; Under this act a person is considered to be disabled, if the person suffers ‘from not less than 40% of any disability as certified by a medical authority’ where disability may be blindness, low vision, leprosy-cured, hearing impairment, locomotors disability, mental retardation, or mental illness. The Act is the most important piece of legislation regarding the employment of PWDs. The Act gave statutory recognition to the policy of 3% reservation in government employment for those with vision, hearing and locomotor disabilities, which had been in place since the seventh five year plan (1985/86- 1989/90). Prior to the PWD Act, reservation only applied to selected groups of positions ‘C’ and ‘D’ positions. The PWD Act extended the reservation to Group ‘A’ and ‘B’. The reservation applies to persons with vision, hearing or locomotor disabilities each allowed 1%. Reservation applies only to vacancies in jobs which can be performed without loss of productivity, i.e. jobs which are identified as being suitable to each type of disability. As per the PWD Act, the Government is to identify posts which can be reserved for PWDs and review this list of identified posts at regular intervals, at least every three years. Government agencies without appropriate jobs are exempted from reservation. However, employment for PWD in private sector still continues as a problem and specifically in the rural area needs to be properly addressed.

**Lack of Inclusive Education:** Inclusive education is a constitutional mandates guaranteed by right to free primary education\(^\text{149}\), right to equality\(^\text{150}\) and right to life\(^\text{151}\). In

\(^{149}\) Article 21A ,Constitution of India
spite of the constitutional provision of free and compulsory education to all the children below the age of fourteen, the government has not yet included the clause of education of disabled children explicitly in the ‘Education for all’ program. The majority of children with high support needs, particularly children with intellectual impairment, multiple impairments and autism are not getting education of any kind. Only a few schools have special provisions like resource rooms, special aids and special teachers. This is restricted only to big cities. Since there are no special schools or special education services in rural India, children with special needs either have to make do with the regular schools in the village or go without education. Pre-vocational and vocational training is provided only in specialized institutions and in select cities.152

Lack of Accessibility: A barrier-free environment for the person with disability implies to prevent and remove all barriers in order to promote equal opportunity and participation by residents and visitors with disabilities. Barriers may include: physical barriers, such as stairs, uneven pavement or narrow pathways; architectural barriers; information or communication barriers, such as a publication that is not available in large print; attitudinal barriers, such as assuming that a person with a disability cannot perform a certain task; technological barriers, such as traffic signals that change too quickly or meeting rooms without assistive listening systems for people with hearing impaired. In spite of international conventions and domestic legislations access is an issue of concern in India. Public transport, toilets, hospitals, government offices, public spaces like parks, educational institutions, places of worship are still in accessible to people. Still whatever interventions are made are restricted to the physical access. The areas like education, teaching aids, books in Braille and interpreters for the hearing and speech impaired are still not available to large sections of the disabled.

Prejudice and Stigma against Mental illness and Mentally Retired Persons:
People with mental illness are considered as “non-persons”, lacking recognition before the law, on a ny life dimension. The macro-environment within which the mental healthcare system works is that of custodial law. We do not have a national policy for

150 Article 14, Constitution of India
151 Article 21, Constitution of India
mental health. The mental hospitals, an over determined mode of mental healthcare provision in the Country, have been instituted and regulated by the Mental Health Act (MHA), 1987 regarded as an Act to protect the “rights” of People with mental illness. The very definition of mental illness in the PWD Act is by elimination rather than explanation since mental illness is defined as any mental disorder other than mental retardation. Mental Retardation is now increasingly referred to as ‘intellectual disability’ but there is no reference to this term anywhere in the PWD Act. There is no mention about dyslexia, dysgraphia or other learning disabilities in the PWD Act.

**Women with disabilities:** Disabled women are the most vulnerable in Indian society. This vulnerability exists across class and caste. They suffer because of the triple jeopardy. They suffer because they are women, on the account of being disabled and most of the times because of poverty. They are the worst victims of social exclusion. Stigma and discrimination attached to disability deprives these women from enjoying their social and cultural rights. Sexual Violence and abuse are serious problems for persons with disabilities, especially for women with disabilities, who are at greater risk than non-disabled persons. They are not considered as a priority group in any kind of research, state policies and programs, mass movements, and rehabilitation programs. They are further isolated from social and political participation due to the stigma and discrimination attached to disability.

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155 ibid
Lack of education, employment, and social exclusion deprives the disabled girl child from access to information, opportunities for social and political participation, skill development and economic empowerment. The civil society has a great challenge ahead regarding the empowerment of the disabled girl. Article 15 of the Constitution of India prohibits the State from discriminating on the basis of sex. The Article however contains a proviso stating that nothing in this Article should prevent the State from making special provisions for women. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. The National Policy sought the development of special programmes for education, vocational training, employment and other rehabilitation services to women with disabilities. It advocates that rehabilitation women and girls with disabilities be encouraged by ensuring that they are 25% of the beneficiaries in all rehabilitation projects. Inspite of these entire effort still the situation of disabled women/girls are vulnerable in India. Disabled women who are single mostly live alone and are exposed to exploitation of various kinds. Same is the condition of disabled women who live in institutions. They are susceptible to sexual exploitation by employers, managers in institutions etc.

Violence, Exploitation and Inhuman Treatment: Freedom from torture and from inhuman or degrading treatment provides a shield of immunity. These rights protect the individual’s physical and mental integrity and nurture his/her capacity for self-reflection and goal-directed behavior. India is a signatory of the UN Convention against Torture (CAT). Article 21 of the Constitution of India reflects Article 7 of the ICCPR and guarantees to every person the right to life and liberty, and which includes

161 CAT was adopted by the United Nations General Assembly on 10 December 1984 and, following ratification by the 20th state party, it came into force on 26 June 1987. Retrieved on dated. 03.03.2014.
within its ambit the right to freedom against any form of torture or cruel, inhuman or degrading punishment. Recognizing the special and particular needs of persons with disabilities, a number of statutory provisions have also been enacted to give specific rights to persons suffering from disabilities against any form of torture. Section 81 of the Mental Health Act of 1987 lays down that no mentally ill person shall be subjected during treatment any indignity (whether physical or mental) or cruelty. Despite this, violence, exploitation and inhuman treatment against people with disabilities are high in society. There is a lack of protection of people with disabilities from neglect, abuse, and harassment in families and communities. There are several cases where people have been chained, locked up, beaten, harassed, abused by family members, neighbors and people in the community. It mostly happens due to the absence of required support services for the families having members with severe disabilities. The context and nature of the violence and abuse experienced by persons with disabilities within their homes often makes it difficult for the government to obtain conclusive records of the same.

Sexual and Reproductive Health Care: Sexual and reproductive rights are fundamental human rights. They embrace human rights that are already recognized in international, regional and national legal frameworks, standards and agreements. They include the right to autonomy and self-determination - the right of everyone to make free and informed decisions and have full control over their body, sexuality, health, relationships, and if, when and with whom to partner, marry and have children, without any form of discrimination, stigma, coercion or violence. This includes the right of everyone to enjoy and express their sexuality, be free from interference in making personal decisions about sexuality and reproductive matters, and to access sexual and reproductive health information, education, services and support. It also includes the right to be free from torture and from cruel, inhumane or degrading treatment or punishment; and to be free from violence, abuse, exploitation and neglect.

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164 Ibid.
However, women and girls with disabilities throughout the world have failed to be afforded, or benefit from, these provisions in international, regional and national legal frameworks, standards and agreements. Instead, systemic prejudice and discrimination against them continues to result in multiple and extreme violations of their sexual and reproductive rights, through practices such as forced and/or coerced sterilisation, forced contraception and/or limited or no contraceptive choices, a focus on menstrual and sexual suppression, poorly managed pregnancy and birth, forced or coerced abortion, termination of parental rights, denial of forced marriage, and other forms of torture and violence, including gender-based violence. They also experience systemic exclusion from sexual and reproductive health care services. These practices and violations are framed within traditional social attitudes and entrenched disability-based and gender-based stereotypes that continue to characterize disability as a personal tragedy, a burden and/or a matter for medical rehabilitation.

Women and girls with disabilities are at particular risk of forced and coerced sterilizations performed under the auspices of legitimate medical care or the consent of others in their name. Forced sterilization of women and girls with disabilities is a practice that remains rife throughout the world, and represents grave violations of multiple human rights. It is an act of violence, a form of social control, and a clear

166 ‘Forced/involuntary sterilization’ refers to the performance of a procedure which results in sterilization in the absence of the free and informed consent of the individual who undergoes the procedure, including instances in which sterilization has been authorized by a third party, without that individual’s consent. This is considered to have occurred if the procedure is carried out in circumstances other than where there is a serious threat to life. Coerced sterilization occurs when financial or other incentives, misinformation, misrepresentation, undue influences, pressure, and/or intimidation tactics are used to compel an individual to undergo the procedure. Coercion includes conditions of duress such as fatigue or stress. Undue influences include situations in which the person concerned perceives there may be an unpleasant consequence associated with refusal of consent. Any sterilization of a child, unless performed as a life-saving measure, is considered a forced sterilization.
and documented violation of the right to be free from torture. Despite the evolution of normative frameworks concerning both the human rights of women and of persons with disabilities, the impact of the combined effects of both gender and disability have not gained sufficient attention and violence remains at shockingly high rates when these multiple identities collide. Violence against women with disabilities occurs in various spheres including the home, the community, perpetrated and/or condoned by the State and private institutions.

Political Rights: Persons with disabilities in India have no voice in the democratic process. Even they have strong voice they are not been listened to. A lack of participation in the political debate resulted in policy being formed without the active involvement of disabled people likely to be effected by its outcome. It leads to alienation from democratic processes and cynicism about the possibility of achieving justice through law. As a result passivity and dependency is created which is cause of the invisibility of person with disabilities in the society. Though the appropriate policies are in place to ensure that persons with physical disabilities can participate in political life, the situation on the ground demonstrates that the difficulty lies in enforcement of these policies. While in 2005 the Election Commission directed the Chief Secretaries of all States/Union Territories to construct permanent ramps in each public building containing a polling station to ensure that persons with physical disabilities could exercise their right to vote, the Disabled Rights Group, along with other NGOs, alleged that these instructions had not been carried out in all areas. Though the appropriate policies are in place to ensure that persons with physical disabilities can participate in political life, the situation on the ground demonstrates that the difficulty lies in enforcement of these policies. While in


171 ibid
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**Health**: Persons with disabilities do not have accessible, affordable and good quality health care in India. Most medical professionals are ill informed about disability and do not provide correct information, diagnosis and treatment. Misleading persons with disabilities and their families is quite rampant. Hospitals, clinics, primary health centres are often inaccessible for persons with disabilities. Only about 6% people with disabilities have access to rehabilitation programmes in the country. The flagship health programme, ‘National Rural Health Mission’ does not include access to health for persons with disabilities. Most persons with disabilities are denied health insurance. Many persons with disabilities have been denied medical treatment in hospitals citing reasons like inaccessibility, not having adequate human resources or suitable equipments.

**Access to Justice**: Persons with disabilities have often been denied access to fair and equal treatment before courts, tribunals, law enforcement officials, prison systems,

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175 Ibid., p.10.
and other bodies that make up the justice system in the country, because they have faced barriers both physical and attitudinal. Additionally, persons with disabilities have been discriminated against in terms of attaining positions as lawyers, judges, and other officials in the justice system. Such barriers not only limit the ability of persons with disabilities to use the justice system, but also limit their ability to contribute to the administration of justice to society and to the community as a whole. Article 39A of the Constitution of India mandates that the State shall secure the operation of the legal system promotes justice on the basis of equal opportunity and shall in particular provide free legal aid by suitable legislation or schemes or in any other way to ensure the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. In furtherance of this constitutional commitment the Legal Services Authority Act of 1986 under Section 12 (d) provides entitles free legal aid to persons with disabilities and persons with mental illness. Further the Mental Health Act of 1987 under Section 91 makes provision for a right to legal representation and legal aid for persons with mental illness in proceedings under the Act. In 2010 the National Legal Services Authority through the National Legal Services Authority (Legal Services to the Mentally 111 Persons and Persons with Mental Disabilities) Scheme, 2010, has put into place a mechanism to provide legal aid to persons with psychosocial and intellectual disability. Still then, justice is neither accessible nor affordable for persons with disabilities in India. Inaccessible courts, procedural difficulties, lack of use of assistive devices in the process of inquiry/ investigation and evidence recording, are some of the factors which are the causes of inaccessible justice for persons with disabilities in India.

**Legal Capacity:** Plethora of civil laws in the country, including the Constitution of India deprives persons with “unsound” mind of their rights and legal status. People with certain disabilities cannot open, a bank account, take loans, enter into Contract, be married, own properties, decide on having children, choose the kind of medical treatment they want, etc. People of “unsound” mind are not allowed to represent themselves, give evidence or bear witness before a Court of law. Such a person accused of a crime remain in prison for inordinately long periods of time without having access to justice.\(^{176}\) Legal

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incapacity still exists with respect to participation in legal proceedings and the giving of evidence in the country which need to be changed in consonance with International legal standards, because lack of legal recognition makes people with disabilities more vulnerable. Legal recognition ensures dignity and autonomy to persons with disabilities, hence, appropriate legal measures need to incorporate to ensure recognition of legal capacity of persons with disabilities.

**Highly Medical Centric Policies:** In India the common perception of disability is based on the medical model which viewed a person's disability as inherent, excluding from participating in the mainstream society. Under this frame work persons with disabilities believed to be incapable of performing social functions because of medical conditions, and always need protection, and can lead live independently. It is presumed that integration of PWDs require changing the person with disabilities not changing the aspects of surroundings that is society or environmental factors. As a consequence most of the policies on disability in India are not right-based. The solution to a person's disability is cure, treatment and rehabilitation. For a person to avail the rights and protection under the Act, he/she must be certified by a medical authority that she/he is having at least 40% of disability. Thus, the construction of disabled without capability reflects the highly medicalisation of disability law in India.

**Summary:** During ancient times, persons with disabilities were seen as sin or punishment by God for wrong thing done in last life. This perception has changed over a period of time and persons with disabilities were looked at with pity and charity. But, today they have proved themselves as normal citizens. It has been proved that disability lies in the social system and not within persons with disabilities themselves. They need their rights and equal opportunities instead of pity and charity. Disability movement worldwide and within India has a greater role to play in this transformation. This needs to strengthen further. Disability movement in India has succeeded in changing the approach towards disability from moral model to charity model but limited has been achieved in the direction of human rights model. Collective efforts on the part of person with disabilities, their advocates, voluntary organizations, government and society at large are required to create real world where abilities and disabilities are not seen on the basis of physical or
mental impairment but disability is seen as diverse abilities. The State must realize that disability is not a disease rather a condition and the legislatures should formulate policies not in charitable or moral model rather in entitlement model.

Creating a society for all is a moral obligation one that must reflect the commitments to upholding fundamental human rights and principles of equality and equity. The significance of the concept of social integration and inclusion has been increasingly recognized in recent years. The ongoing global financial and economic crisis, especially, by threatening the progress achieved so far in social development and further aggravating social tensions in many societies, has made a growing number of policymakers aware of the importance of social integration and inclusion. The necessity for timely interventions has been felt more than ever in the current environment. Therefore, moving beyond the concept and devising concrete and practical strategies to promote social integration and inclusion are of the utmost importance in order to ensure that the lives of the many that are disadvantaged in society those traditionally excluded or marginalized, especially those living with disabilities are protected and further improved. Such policies and strategies need to be based on high-quality and regularly updated information including systemic analysis of the actual impact. In the context, the present doctoral research aims to critically examine the rights of the persons with disabilities and introduce the legal issues in the perspective of inclusion in India.