CHAPTER-III

METHOD OF STUDY
In contrast to clinical or therapeutic perspectives, disability studies refer generally to the examination of disability as a social-legal phenomenon. Disability Studies focuses on how disability is defined and represented in society. Disability is a social construct that finds its meaning within a social-legal context.

Disability Studies is a multi-disciplinary and interdisciplinary area of academic inquiry. The field is informed by scholarship from such different disciplines as history, sociology, literature, political science, law, policy studies, economics, cultural studies, anthropology, geography, philosophy, theology, gender studies, communications and media studies, architecture, and the arts. Disability Studies includes a diverse group of people. People who are physically and mentally challenged have vastly different experiences and perspectives. Yet they share in common society's definition of them as disabled, with consequences for how they are viewed and treated by the majority which is presumed to be non-disabled.

To study disability from socio-legal perspective is fundamentally a challenging task. Because, it has to be addressed from both question of fact and question of law. Unless relevant facts are collected, it becomes practically difficult to answer several legal problems of the disabled. Similarly, unless the legal provisions are analyzed and interpreted properly the question of law relating to disability rights cannot be answered. In recent times most studies on disability are quantitative. But in quantitative research one can only measure those variables that can be quantified in terms of numerical. But in qualitative research one can penetrate those in accessible areas and draw inferences from the facts.

In empirical research, sometimes it is difficult to select between quantitative and qualitative research design. Proficiency and understanding with respect to a defined research method often triggers a researcher to select a methodology or research design. However, the success of the research depends upon the set objectives of the research and the selection of appropriate measure by which the researcher can validate the projected hypothesis.
Qualitative research embraces the view that as far as peoples' perceptions are concerned, there is no one single truth. In other words, different people in different places at different times, interpret things differently. This philosophical viewpoint serves to challenge the validity of socially oriented data that is collected using quantitative methods. It demands an alternative set of methods for exploring peoples' perceptions, one that is contextually and culturally related. It therefore, seeks to find the answer to questions about the meaning and individual interpretation of life. It is used to answer open questions relating to peoples' attitudes and beliefs, in a given contextual setting.

On the question whether quantitative research is superior regardless of the research questions asked, is not supported by the literature, yet it is argue that qualitative approaches are better for investigating subjective meanings within a socio-legal context, understanding attitudes and beliefs and unraveling the dynamic constructs of cultural, social and legal practices. Quantitative methods on the other hand, have their strengths in identifying universalities and making statistical or probabilistic generalizations, or in determining the correlation between two measurable phenomena. Superiority is therefore dependent on an appropriate relationship between the research questions and the methodology.

 Measure

Keeping these observations in mind, the research preferred to adopt qualitative research format and more specifically the Legislative Program Evaluation method to evaluate the legislative responses to towards the basis rights of the person with disabilities.

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Legislative Program Evaluation Method: The underlying logic of the "Legislative Program Evaluation" is that good evaluation does not merely gather accurate evidence and draw valid conclusions, but produces results that are used to make a difference. In United States, most State legislatures depend heavily on the Legislative Program Evaluation to ensure the effectiveness of the legislative instruments that they make. In India, unfortunately, our legislatures seldom demonstrate their interest for legal auditing of their responses and activities.

The primary objectives of the 'Legislative Program Evaluation' to provide useful information to the Legislature for legislative decision-making and hold state government accountable for its performance by:

- measuring the performance of state agencies by measuring outputs, outcomes, compliance and impact in relation to the purpose for which they were created;
- determining whether there is still a need for an agency or program;
- measuring the impact of agencies on citizens of the state; and
- reporting findings and recommendations to the Legislature in a concise and timely manner.

In this context, the researcher is optimistic that the outcome of the present research would provide necessary inputs to the state legislatures while addressing the socio-legal issues of the persons with disabilities.

Evaluation of Judicial Response: To study the judicial response towards the basis rights of the disabled, the researcher preferred to adopt both inductive and deductive method (Classical method based on the Doctrine of Precedent).

Research Problems of the Study:

Identifying the problems relevant to the study is always a challenge for the researcher not because of lack of issues that could be investigated but due to pursuing a goal formulating socially relevant and researchable problem that is unique and facilitating to build a research study. Formulation of research problem is the foundation of a ny
research process which will help in formulating the objectives, hypothesis, and overall research design.

Disability is a social construct and this social construct has a profound impact on individuals with disabilities. The biggest challenge for the disabled across the world is not only their physical or mental impairment but the discriminatory attitude of the society. They have been socially classified as outsiders throughout the history with differing socio-culture constructing radically different classifications of disability as outsiders. Negative attitude, limited physical access, restricted access to communication and resources, lack of opportunities to participate equally in every sphere of social, political and cultural life are the general features associated with people with disability. Since ages they have been treated as subject of charity social welfare and protection. Their physical or mental impairment is considered as God’s wish or consequence of past life’s wrong deeds. Thus, the biggest battle for the people with disabilities is to fight against centuries of biased assumptions, harmful stereotypes, and irrational fears. As a result today a large number of world’s population remain “Invisible” and isolated or outcasts.

With the rise of industrialization, industrial accidents and occupational hazards began to make physical disability a growing social concern.\(^{209}\) The trade union movement and worker’s rights group began to push compensation for workers who suffered disability on job. World War I further accelerated the movement by giving more attention to physical disability. However, the movement was not focused on integrating the disabled into the mainstream society and the disabled continued to be socially classified as irrelevant for most of the twentieth century.\(^{210}\) Especially since 1970s the growing social and political movements of disabled persons world-wide have tremendous influence the study and analysis of disability and rehabilitation process. Thus, there has been a radical shift in social attitude and the issues of disability has metamorphosed from purely individual –centered medical approach to a human rights and socio-political issue.

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


\(^{210}\) Ibid
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 also a tremendous impact on the social standing and civil rights of persons with disabilities. These social classifications, social reactions, and legal classifications are interrelated and serve to reinforce the definitions for and social roles of disability.

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. With the influence of International legal commitments a paradigm shift has been seen in the way of looking at disability related issues and problems in India, from charity to welfare based, to rights based approach where persons with disabilities are no more treated as object of charity, protection and treatment rather treated as subjects having equal access and a right to full and effective enjoyment of all human rights.

In this context the researcher has taken following “research problems” which are basically highlighting the current issues relating to the rights of the persons with disabilities in India.

1. What are the causes of relatively Invisibility of persons with disabilities in mainstream society?

2. Why disability is considered as an individualized issue and medicalised till today in India?

3. What is the magnitude of the problem of disability in the developed and in the developing countries?

212 BOWMAN, P. T. UNDERSTANDING DISABILITY; INCLUSION, ACCESS, DIVERSITY AND CIVIL RIGHTS. USA: Praeger.(2008)
4. What interventionist measures have been taken at the global level for the protection and promotion of basic rights of persons with disabilities?

5. What are the socio-cultural and legal factors that leading to marginalization of persons with disabilities?

6. How do the disabled shares the citizenship rights at par with others in the society?

7. How has the disability movement across the globe influenced the policy formulation in India?

8. What are the factors leading to lack of understanding of fundamental issues of persons with disabilities?

9. What are the factors leading to lack of legal support system for persons with disabilities?

10. What is the factors still causing discrimination against persons with disabilities in India?

Objectives of the Study

Objectives are very important in an empirical research because through these the researcher tries to find out the answers to the questions through the application of scientific procedure. Through framing objectives the researcher finds out the truth which is hidden and which has not been discovered as yet. An objective of the study also lays down the foundation of testing the hypothesis. After introducing the issue of disability and drawl of review of literature, the researcher has set the following objectives:

1. To critically analyze the concept, development and scope of Rights of Persons with disabilities.

2. To draw an issue based review of literature to identify the issues and research problems.

3. To critically examine the disability laws of different countries across the globe like UK, USA, EU and China.
4. To empirically evaluate the Legislative Responses towards the protection of basic rights of Persons with Disabilities.

5. To evaluate judicial responses towards the basic rights of persons with disabilities.

6. To draw a critical analogy of the research and propose necessary suggestions and present the future implications of the Study.

7. To critically analyze the concept of equality and non-discrimination in the context of disability.

8. To critically examine how lack of right to accessibility i.e. physical accessibility, societal accessibility, institutional accessibility leads to violation of fundamental rights that is right to freedom of persons with disabilities.

9. To critically examine the role of national law and judiciary in pursuit of equality and non-discrimination for persons with disabilities in India.

10. To critically examine the role and functions of government machineries and the law enforcing agencies in the implementation of the PWD Act, 1995 and other policy measures.

11. To critically examine the efficacy of the policy measures to provide equal employment opportunity to persons with disabilities in public as well as in private sector establishments and financial assistance for shelf employment to ensure independent living.

12. To examine the ways and means to stimulate political will and public sensitization to implement the principle of Reasonable Accommodation in the domain of ensuring equal opportunities of education, employment and accessibility to persons with disabilities.

13. To examine how judicial attitude to the question of disability is influenced by mediatisation of disability instead of instead of being based on capability in India.

14. To critically examine the paradigm shift in social as well as legal approach towards issues of persons with disabilities India with the influence of international legal developments.
15. To critically examine the efficacy of existing disability laws in India in the line with the UN’s Convention on Rights of Persons with Disabilities (CRPD).

Projected Hypotheses

The analysis of research issues and problems leads the researcher to formulate the following projected hypothesis for empirical testing.

1. The National Legal instruments are yet to match with the International Standardizations to ensure protection and promotion of basic rights of persons with disabilities.

2. The Judicial Responses towards the protection of basic rights of persons with disabilities has significantly positive in the domain of education, employment and accessibility than other rights.

3. Lack of stringent anti-discrimination provisions and right-based approach of the PWD Act, 1995 leads to *de jure* and *de facto* discrimination against persons with disabilities in India.

4. Principle of Reasonable Accommodation needs to be incorporated with the legislative measures to ensure equality of opportunities in education, employment and accessibility for persons with disabilities.

5. The Legislative Programme of Evaluation of PWD Act 1995 would show moderate affirmations from the respondents with respect to the effective implementation of the Act in the State of Orissa.

Structure of the Legislative Program Evaluation Instrument

**QUESTIONNAIRE ONE VALUATION OF LEGISLATIVE RESPONSE TOWARDS THE PROTECTION OF BASIC RIGHTS OF PERSONS WITH DISABILITIES IN THE STATE OF ODISHA (QELRPBRPWDO)** is a multi-part evaluation instrument to measure respondent’s perception towards several aspects of basic rights of the Persons with Disability under the PwD Act, 1995 especially in the State of Odisha. The instrument (QELRPBRPWDO) has been designed to cover aspects like:
i) Applicability of the Act
ii) Coordinating and Executive Bodies
iii) Education
iv) Employment
v) Affirmative Action
vi) Non discrimination
vii) Research and Manpower Development
Viii) Recognition of Institutions for Persons with Disabilities
Ix) Institution for Persons with Severe Disabilities
X) Social Security
Xi) Rights and Entitlements
Xii) Right to Life, Liberty and Justice

Total 30 questions have been administered by the researcher to the 3 sample groups such as:

a) **Beneficiary** – Implies Persons with disabilities

b) **Legislatures**- Includes Member of the Parliament, State Legislative Assembly and elected members of the Panchayat and Local Self Government

c) **Authorities**- Includes Officers who are connected with protection of Rights of the person with disabilities

**Administration of Instrument**

The QELRPBRPWDO was administered to the sample groups individually. The researcher read out and explained the items to those samples that are illiterate or suffering from visual and audio impairments.

It was interesting to note that most of the legislatures took special interest to give their responses. Many suggested that evaluation of this kind should be undertaken periodically.
However, the Authorities were bit reserved and cautious while indicating their response. Most Authorities preferred to respond the items at their residential office.

Sample Structure

For the purpose of the study the researcher administered the evaluation instrument to 300 samples across three (03) groups coming from the State of Odisha. The sample structure is as follows

1. Beneficiary-100
2. Legislature-100
3. Authorities-100
4. Total-300

Collection of Samples Cases

Besides, primary data, the research also relied upon secondary data from the court of law. The researcher carefully selected 150 cases both from the Supreme Court of India and the High courts to analyze the Judicial approaches towards the protection of basic rights of the Person with disabilities under PWD Act. The case study analysis was carried out following inductive and deductive method of analogy.

Other Secondary Data Sources.

The present research mostly depends upon the secondary data sources that includes

a) Authoritative Books, Journals, Commentaries
b) Law Reporters and Periodicals
c) E- Repositories, Legal Case data bases

Data Processing and inferences

After data collection the researcher structured the data and the inferences were drawn on the basis simple percentile analysis. Since the researcher follows qualitative
research method, inferences and implications were drawn from legal and interdisciplinary perspective.

**Derivation of Chapters**

The derivation of the chapters for the present research are indicated below

Chapter-I- Introduction: The researcher introduces the definition, scope and conceptual development of Disability both from national and international perspective.

Chapter-II- Review of Literature: Analyses some of the important socio-legal issues relating to the protection of rights of the disables

Chapter-III- Method of Study: The researcher enumerates the research measure or method adopted to conduct the present study and design or the research plan of the present study.

Chapter-IV- Legislative Frameworks for the Protection of Rights of Persons with Disabilities in India and a brief Overview of the Legislative Measures in USA, UK and China: In this segment the researcher critically analysis the PWD Act, 1995 and other allied Acts in protecting and promoting Rights of Persons with Disabilities and tries to draw a comparative analysis of the legal frameworks relating to the Protection of Basic Rights of Persons with Disabilities through giving an overview of legislative measures of some of the developed countries like USA and UK and China as an Asian Subcontinent country.

Chapter-V- Judicial Response towards Protection of Rights of Persons with Disabilities: In this segment the judicial approach of the Indian judiciary towards the Protection of Basic Rights of Persons with Disabilities have been legally analyzed.

Chapter-VI- Findings of the Empirical Study: An Empirical Evaluation of Legislative Response towards the Protection of Basic Rights of Persons with Disabilities under PWD Act, 1995 was carried out to measure the effectiveness of the law.

Chapter-VII-In this chapter the researcher draws a critical discussion to validate Projected Hypothesis and presents the Implication of Research.

Chapter-VIII- Considering the legal defects and lacunas the researcher proposes come of the innovative suggestions and finally draws conclusion.
Horizon of the Research

Though the title of the research covers the National situation yet the horizon of the research limits to the State Odisha. Besides it is necessary to clear one thing that this instrument was not administered to persons who are mentally challenged. So far as legal parameters are concerned the researcher primarily relies on national legal instruments and at places international findings were cited as matter of reference and supportive corroboration.

Limitation and Degrees of Difficulty of the Study

There exist one degree of difficulty which was experienced by the researcher before the administration of survey instrument. The beneficiary initially refused to open up. However, since the researcher herself belongs to physically challenged group it facilitated to draw the confidence of the PWD respondents.