

## DISABILITY CARE AND INDIAN INFRASTRUCTURE

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### I. INTRODUCTION

#### *A. An Insight into the Malaise of Disability*

Disability is often described as lack of normal functioning of physical, mental or psychological processes. It is also defined as the learning difficulties or difficulties in adjusting socially, which interferes in a person's normal growth and development. Disability rates are significantly higher among groups with lower educational attainment in the underdeveloped countries. The World Bank estimates that 20 percent of the world's poorest people are disabled, and tend to be regarded in their own communities as the most disadvantaged.

The persons with disabilities have outstanding abilities. In recent times the abilities of these people have been recognised and encouraged to help integrate them into main stream of the society. Many preconceived notions of disability are culpable for the misery of physical disabled. Introspection to directly linked traditional societal attitude towards the disabled unfolds that they are judged by their outer appearance and treated accordingly with pity, sympathy and charity.<sup>1</sup> They are often neglected, ignored, ridiculed inculcating a sense of social insecurity among them at both physical and emotional front.

There is a dire need to realize the rights of the persons with special needs and to facilitate their inclusion in the mainstream of the society.

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<sup>1</sup>*Infra* note 14, at 100.

### ***B. Research objective***

Disability is undoubtedly one of the biggest problems faced by the country. The disabled suffer various kinds of social, economic and political setbacks in the society. There have been various initiatives by the government through legislations to remove all discrimination against them by identifying and promoting their rights. This article aims at analyzing various legal provisions and Schemes implemented by the government; and estimating the quality of infrastructure in the country to understand and promote their interests. The research question of the article is to determine the effectiveness of the infrastructure of our country in the process of identification and promotion of the rights of the differently abled section of the society.

### ***C. Scheme of the Article***

With an aim of facilitating the understanding of the article, the researcher has divided the article into various sections. The first section provides an insight into the malaise of the disability in the society. The second section provides a conceptual framework to understand the meaning of the term disability. The critical appraisal of the various initiatives of government is discussed in the third section. The next section discusses the shift in the understanding of disability from welfare based approach to rights based approach and the concluding section summarises the article by providing suggestions.

## **II. UNDERSTANDING ‘DISABILITY’**

### ***A. Meaning of the Term***

Disability, a multifaceted term encompassing a plethora of complex phenomena of malfunctioning or dysfunction of features of a person’s

body, is defined by WHO<sup>2</sup> as ‘an umbrella term covering impairments, activity limitations, and participation restrictions, where an impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations’. The Directorate of welfare of Disabled and Senior Citizens defines disability as ‘lack of normal functioning of physical, mental or psychological processes.’<sup>3</sup> It is also described as learning difficulties or difficulties in adjusting socially which interfaces with a person’s normal growth and development.

In defining disability, it is difficult to accommodate the expectations of all the disabled groups. There are innumerable types of disabilities and as many reasons for the same, which makes the process of its specification and categorization an arduous task. Some people are born with disability, whereas others become disabled at a later period in life; some disabilities exhibit themselves periodically, whereas others are constant and life- long; some disabilities can be cured, whereas others still baffle the experts, some include total or partial impairment of senses and physical and intellectual capacity while defining disability.<sup>4</sup>

The meaning of the term is widely comprehended through three sources- medical, social and legal. These sources facilitate the understanding of the subject, which is otherwise complex and controversial. The medical model is concerned with viewing disability as the problem of a person directly caused by disease, trauma or other health condition which requires constant medical treatment. This model uses the definition provided by the World Health Organisation of disability outlining the relationship between

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<sup>2</sup>[www.who.int/topic/disability](http://www.who.int/topic/disability).accessed on 16th November, 2009.

<sup>3</sup>The Persons with Disabilities (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995, No. 1, Acts of Parliament, 1995.

<sup>4</sup>DR. BHUPINDER ZUTSHI, DISABILITY STATUS: A CASE STUDY OF DELHI METROPOLITAN REGION (Ford Foundation).

impairment, disability and handicap.<sup>5</sup> It focuses on functional difficulties meaning loss or abnormality of the psychological, physiological or anatomical structure or function.<sup>6</sup> In the medical model, medical care is viewed as the main issue, and at the political level, the principal response is that of modifying or reforming health care policy.

The social model of disability views the issue of disability as a socially created problem and a matter of full integration of individual into society. In this model, disability is not an attribute of an individual, but rather a complex collection of conditions, many of which are created by the social environment. Hence, the management of the problem requires social action and is the collective responsibility of society at large to make the environmental modifications necessary for the full participation of people with disabilities in all areas of social life. It considers a person with 'impairment' to be 'disabled' when he is excluded from the mainstream activities of the society.

The third model, or the legal model, incorporates the legal aspects and aims at realising the rights of the disabled people. It is a comprehensive aspect which helps the disabled people and their families in understanding their rights and the responsibilities of state towards their realisation. It aims at making special provisions at every level for the people with certain disabilities which impairs their ordinary livelihood. It empowers them by providing social, political and economic benefits by the government.

Among the other prevalent models, economic model is of paramount significance as it focuses on the development of the differently able individuals economically. It defines disability by a person's inability to participate in work and assesses the degree to which impairment affects an individual's productivity and the economic consequences

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<sup>5</sup>*Supra* note 1.

<sup>6</sup>1 WEST'S ENCYCLOPEDIA OF AMERICAN LAWS (2<sup>nd</sup> ed. 1997).

for the individual, employer and the state.<sup>7</sup> The economic model is used primarily by policy makers to assess distribution of benefits to those who are unable to participate fully in work.

### ***B. Definition of 'Disability'***

The landmark piece of legislation formulated in the year 1995 to alter the condition of the persons with disability, *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995*, in its clause (i) includes the following in the meaning of disability-

1. blindness
2. low vision
3. leprosy- cured
4. hearing impairment
5. locomotor disability
6. mental retardation
7. mental illness

A person with disability is defined in clause (t) of the Act to be a person suffering from not less than forty percent of any of the above disabilities as certified by a Medical Board which includes State Level, District Level and Taluk Level Medical Boards.

The scope of disability has also been laid down in various landmark judgments. In the case of *Rasala Gopal v. Andhra Bank and others*<sup>8</sup> it was held that “*it is only when the disability or deficiency is to such an extent as would differentiate the person from other with ordinary faculties, that he can be treated as physically disabled. If every minute deficiency as to functioning of the sense organs is to be treated as a physical disability, a situation would arise wherein the exception would eat away the rule.*” In the case of *Smt. Chuneela Kumari v. Karunashanker*,<sup>9</sup> it was held that disability is a force which has the tendency to reduce or impair functional capacity of a person. In

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<sup>7</sup><http://www.who.int/topics/disabilities/en/> accessed on 18<sup>th</sup> December, 2009.

<sup>8</sup>(2003) I.I.L.L.J. 916 AP(India).

<sup>9</sup>A.I.R. 1988 MP 232(India).

*Quebec v. Montreal (City)*<sup>10</sup> it was held that in the context of human rights law “*handicap*” - and other similar terms - must be analysed in terms of the collective impact of the limitation or complaint and its social construct. It was noted that such terms cannot be defined solely on the basis of biomedical criteria. A Court must also determine whether the individual experiences “*the loss or limitation of opportunities to take part in the life of the community on an equal level with others*”

*The United Nations Convention on the Rights of Persons with Disabilities (the Disability Convention)*,<sup>11</sup> in its Article 1 sets out the definition of disabled people as “*those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others and the definition of ‘discrimination on the basis of disability’ which defines discrimination as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*”<sup>12</sup>

The definition of disability set forth in the *Americans with Disabilities Act* of 1990 (ADA) includes-

- (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (b) a record of such impairment; or
- (c) being regarded as having such impairment.

*The Building Act 1991* of New Zealand defines a person with a disability as “*any person who suffers from physical or mental disability to such a degree that he or she is seriously limited in the*

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<sup>10</sup>(2000) 1 S.C.C 27(India).

<sup>11</sup>[www.un.org/disability](http://www.un.org/disability) accessed on 26th October, 2009.

<sup>12</sup>[www.un.org/esa/socdev/enable/rights/comp-element2.htm](http://www.un.org/esa/socdev/enable/rights/comp-element2.htm) accessed on 5th November, 2009.

*extent to which he or she can engage in the activities, pursuits and processes of everyday life.”*

### III. CRITICAL APPRAISAL OF SCHEMES ON DISABILITY

There have been smorgasbords of schemes and Acts launched by the government for the enhancement of the deplorable condition of the disabled in the country. The government has undertaken the rechristening of the term from ‘disabled people’ to ‘differently abled’ or ‘specially abled’ people. It facilitates the process of adopting a different approach towards this section of society which requires ‘rights based’ rather than ‘welfare based’ approach. Previously all the approaches adopted by the government were based on the appraisal of welfare of the differently abled people, however recently there has been a shift with the realisation of the amalgamation of the rights of these people in the mainstream of the society. This section provides a critical understanding of the numerous schemes launched by the government.

#### *A. Legislative framework*

The grievous conditions of this section of the society dependent on others due to the difference in their physical or mental status were being recognised. In the year 1987 the first initiative in this direction was undertaken with the enactment of the ‘*The Mental Health Act of 1987*’ with an aim to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.<sup>13</sup> It provides for establishment of psychiatrist hospital and nursing homes with license and also appoints inspectors for the purpose of inspection of the same. It replaced the *Indian Lunacy Act* of 1912 as it was realised that with the rapid advance of medical science and the understanding of the

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<sup>13</sup>The Mental Health Act, 1987, No. 14, Acts of Parliament, Preamble (1987).

nature of malady, it had become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach.

*The Rehabilitation Council of India Act, 1992* was passed to provide for the constitution of Rehabilitation Council of India for regulating the training of rehabilitation professionals and the maintenance of a Central Rehabilitation Register and for matters connected therewith or incidental thereto. It provides a definition for the term 'handicapped' as including visually handicapped, hearing handicapped, suffering from locomotor disability or suffering from mental retardation. It also provides for training of rehabilitation professionals which includes audiologists, psychologists, special teachers for training handicapped and rehabilitation therapists.

In the subsequent year a *National Policy for Persons with Disability, 1993* laid down the National Policy Statement which "recognises that persons with Disabilities are valuable human resource for the country and seeks to create an environment that provides to them equal opportunities, protection of their rights and full participation in society". The areas identified for the purpose of this policy framework were prevention, rehabilitation and counselling for disability. It provided for education, employment and security of the persons with disability by providing a barrier-free environment. It recognised the immeasurable stigma faced by women with disability and contained special provisions of providing short duration stay homes for women with disabilities, hostels for working disabled women, and homes for aged disabled women and financial aid in order to hire services to look after their children. It provides social protection by –

- i. A system of regular review of the policies of tax relief granted to the persons with disabilities so that necessary income tax and other tax relief remain available to persons with disabilities.



- ii. Encouraging State Governments and Union Territories Administrations to rationalize the amount of pension and unemployment allowance for persons with disabilities.
- iii. Life Insurance Corporation of India has been providing insurance cover to persons with specific type of disabilities. There is a need to encourage all insurance agencies to cover persons with disabilities without exception.

It also aims at facilitating research in this field by determining the socio- economic aspect, developing social indicators and promoting research in the fields of genetic studies and adaptive technologies. It makes the Ministry of Social Justice and Empowerment more responsible to coordinate all matters relating to the implementation of the Policy. It recognises the crucial role to be played by Panchayati Raj Institutions in the implementation of the National Policy to address local level issues and draw up suitable programmes, which will be integrated with the district and State plans. These institutions will include disability related components in their projects.

It was in the year 1995 that the landmark initiative was undertaken in this field by the unprecedented efforts of the legislative assembly with the passing of *Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995*. It defines various types of disabilities which facilitate the process of identification. It provides for institution of coordinating and executive committees at central and state levels for the purpose of developing a national policy to address issues faced by persons with disabilities; advise the Government on the formulation of policies, programmes, legislation and projects with respect to disability; take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the disabled in the national plans and other programmes and policies evolved by the international agencies, take such other steps to ensure barrier free environment in

Public places, work places, public utilities, schools and other institutions. It also identifies the thrust areas such as health, education and employment for the persons with disability and provides for legislative framework for the upliftment of the same. Thus, it provided for an overhaul in the entire approach undertaken by the various government agencies and lays down policy bases for building the entire edifice of the governmental framework.

The people with disability often suffer from discrimination regarding inheritance in the family. Due to their disability to protect their rights they are discriminated even at the family level. People with physical and mental impairment were considered incapable of holding and owning any kind of property which became a cause of their impoverishment in the society due to the discrimination faced at the family level. There has been an insignificant effort towards recognising the inheritance rights of the disabled. It was in the year 1928 that *The Hindu Inheritance (Removal of Disabilities) Act* was enacted with an aim to amend the Hindu law relating to exclusion from inheritance of certain classes of heir, and to remove certain doubts.<sup>14</sup> The Act contains three Sections wherein Section 2 states that

*“notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in the joint family property by reason only of disease, deformity or physical or mental defects.”*

Thus, the Act ensured that every person including the persons suffering from mental or physical inabilities with an exception of the person suffering from mental infirmity from birth are to be protected under the inheritance laws. The Act was subsequently interpreted in various cases. In the case of *Pakkiriswami Mudaliar*

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<sup>14</sup>The Hindu Inheritance (Removal of Disabilities) Act, 1928, Acts of Parliament, Preamble (1928).

*v.Krishnaswami Mudaliar*<sup>15</sup> it was held that “from the terms of the statute itself, it is clear that the only disqualification out of the many that the textual Hindu law had prescribed, which had been preserved by the statute is the disqualification arising from congenital lunacy or idiocy and that all the other disqualifications have been wiped out. Prohibition laid down by the Hindu law texts debarring persons of unsound mind from claiming a share is removed by the Act. Any right means all right which includes a right to claim partition. The Act placed a coparcener of unsound mind in the same position as that of a sane coparcener.”

In the case of *Vedvyas Rao v. Narayan Rao*<sup>16</sup> it was held that “the Act in question is a social legislation intended to remove certain social disabilities imposed by the customary Hindu Law. It calls for a benevolent construction. In our judgment, 'the Act' placed a coparcener of unsound mind in the same position as that of a sane coparcener.”

The disqualification regarding inheritance by physically or mentally disabled people were later extinguished with the passing of Hindu Succession Act of 1956. It removed all kinds of restrictions imposed upon persons with disability in inheriting property as prevalent under the customary Shastric law.

Thus, the plethora of legislations devised by the legislators has the sole aim of making the availability and realization of the rights of disabled people a reality.

### ***B. Schemes implemented by government***

For the purpose of specific implementation and realisation of the aims of the aforementioned Acts by the government, various schemes have been employed which are discussed below-

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<sup>15</sup>A.I.R. 1937 Mad 36(India).

<sup>16</sup>A.I.R. 1962 Kant 18(India).

a) **Educational schemes**

Education is the most effective vehicle of social and economic empowerment. In keeping with the spirit of the Article 21A of the Constitution guaranteeing education as a fundamental right and Section 26 of the Persons with Disabilities Act, 1995, free and compulsory education is to be provided to all children with disabilities up to the minimum age of 18 years. According to the Census, 2001, fifty-one percent persons with disabilities are illiterate which necessitates for mainstreaming of the persons with disabilities in the general education system through inclusive education. Recently the Central Board for Secondary Education (“CBSE”) has taken a huge step towards offering equal opportunities to all children seeking an education, including those with “*special needs*.” The Board has reminded its schools that admission cannot be denied to differently abled students. A circular of the Board to all the schools notified “*it is being reiterated that any school which fails to provide attention to a child with special needs or makes a pretext of denying admission to any category of differently abled children will be liable to stringent action, even of disaffiliation.*”<sup>17</sup> It also devises individual evaluation programme for such kids.

There are special provisions for establishing schools for visual and hearing impaired as they require entirely different approach towards learning. Such institutions provide free education along with providing clothing and medical facilities. To encourage enrolment and to continue the studies of the PWDs these institutions extend scholarships and monetary incentives. The government also provides for special training for the teachers to teach such kids.

Sarva Shiksha Abhiyan (“SSA”) launched by the Government has the goal of eight years of elementary schooling for all children including children with disabilities in the age group of 6-14 years by 2010. Children with disabilities in the age group of 15-18 years are

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<sup>17</sup>Admit Special kids or face action: CBSE, TOI, Feb. 4, 2010.

provided free education under Integrated Education for Disabled Children (“**IEDC**”) Scheme. Under SSA, a continuum of educational options, learning aids and tools, mobility assistance, support services etc. are being made available to students with disabilities. This includes education through an open learning system and open schools, alternative schooling, distance education, special schools, wherever necessary home based education, itinerant teacher model, remedial teaching, part time classes, Community Based Rehabilitation (“**CBR**”) and vocational education. There is concerted effort on the part of the Government to improve identification of children with disabilities through regular surveys, their enrolment in appropriate schools and their continuation till they successfully complete their education. The Government endeavours to provide right kind of learning material and books to the children with disabilities, suitably trained and sensitized teachers and schools which are accessible and disabled friendly.

***b) Employment schemes***

Economic rehabilitation of Persons with disabilities comprises of both wage employments in organized sector and self-employment. Supporting structure of services by way of vocational rehabilitation centres and vocational training centres is developed to ensure that disabled persons in both urban and rural areas have increased opportunities for productive and gainful employment.

The Government provides for 3% reservation in employment in the establishments of Government of India and Public Sector Undertakings (“**PSUs**”) against identified posts. The status of reservation for Government in various Ministries/ Departments against identified posts in Group A, B, C & D is 3.07%, 4.41%, 3.76% and 3.18% respectively. In PSUs, the reservation status in Group A, B, C & D is 2.78%, 8.54%, 5.04% and 6.75%, respectively. Government ensures reservation in identified posts in the Government sector including public sector undertakings in accordance with the provisions of the PWD Act, 1995. Vocational

rehabilitation and training Centres engaged in developing appropriate skills amongst persons with disabilities keeping in view their potential and abilities are encouraged to expand their services. Considering rapid growth of employment opportunities in service sector, persons with disabilities are encouraged to undertake skill training suitable to the market requirement. Self employment schemes are also promoted.

*c) Social security schemes*

The various social schemes launched with the purpose of securing a socially secured environment for the disabled are-

1. Disabled person who is poor and not able to maintain himself with food clothing and shelter and could not meet other basic needs is given monthly maintenance allowance.
2. Identity cards are given or issued to disabled persons to enable them to avail the benefits extended to them under various governmental schemes, the details of which can be obtained in the office of the District Disabled Welfare Officer attached to the Deputy Director, Women and Child Development Department at the District level.
3. There is insurance scheme for mentally retarded person under which for the parents / guardians of persons with mental retardation whose annual income is Rs.12,000/- or less per year the Directorate of Disabled Welfare contributes the annual premium to Life Insurance of Corporation of India towards a specially designed group Insurance policy. Under this policy, after the demise of the parents / guardians of the mentally retarded person, the nominee will get a one- time lump sum amount of Rs.20, 000/- for the maintenance of the mentally retarded persons.

*d) Rehabilitation scheme*

Medical, educational and social rehabilitation programmes is developed with the assistance of medical and rehabilitation

professionals and with the participation of persons with disabilities and their families, legal guardians and communities. Convergence of Government programmes is ensured and the following specific measures are taken:

1. State level centres for providing composite rehabilitation services including human resource development, research and long term specialized rehabilitation is set up.
2. Community based Rehabilitation programmes is encouraged. Self help groups of persons with disabilities and their family member are to be effectively involved in the process of rehabilitation.
3. Setting up of mental health care homes for severely mental ill persons is encouraged under district level Panchayati Raj institution with the involvement of NGOs. Alternatively, family support groups are encouraged to setup Custodial Care Institutions for persons with mental disabilities without community and / or family support.

*e) Miscellaneous schemes*

1. The government has directed all the public places and public buildings to be disabled- friendly and any tender for such construction is not passed in the absence of such provision.
2. Travelling concessions upto 75% are provided wherein the PWDs and his/her attendant by railways and 50% concession is provided in air fare.
3. Income tax rebate or Rs. 50,000 to 75,000 is provided to the parents or guardians of the persons with disability for medical expenses.
4. Deduction under Section 80D in respect of maintenance, including medical treatment of a dependent who is a person with severe disability is raised from the present limit of Rs 75, 000 to 1 Lakh in the Union Budget 2009- 10.
5. Various NGOs have been assigned the task of organising picnics and outings for such kids with their parents in order to enhance social mobility.

***f) Critical Evaluation of the Schemes***

The Acts and Schemes undoubtedly present a bright picture of the disabled in the country. However, due to the faulty implementation most of the above Schemes fail to accomplish its objectives. The various technical snags in their implementation are provided below<sup>18</sup>-

1. The Tenth Five Year Plan advocated the introduction of a 'Composite Plan for the Disabled' in the budget of all the concerned Ministries/Departments for this purpose. However, none of the Annual Reports of various Central Ministries mentioned about the Composite Plan, as envisaged by the Tenth Plan.
2. Though the plans/policies/schemes are meant to reach all categories of disabled people, especially those who are most in need, special focus is needed to include girls/women with disabilities, persons in rural/tribal/slum areas or in economically backward regions and families living in regions affected by terrorism or by natural calamities. However, a large population in the country is denied of the special attention. Moreover, women with disabilities continue to have minimum access to medical facilities & legal aid, and to educational & livelihood opportunities.
3. The Scheme of Assistance to Disabled Persons for Purchase/Fitting of Aids and Appliances ("A.D.I.P") provides grant-in-aid to voluntary organisations, Red Cross Societies, National Institutes and to ALIMCO for the purchase, fabrication and distribution of aids and appliances, usually through camps. However, it does not reach adequately.

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<sup>18</sup>*Disabled people in India: The other side of the story*, [www.ncpedp.org/policy/policies02.htm](http://www.ncpedp.org/policy/policies02.htm).



4. The monthly newsletter of NHRC showed its negligible involvement in safeguarding the human rights of disabled people, as compared to other vulnerable groups in the country.
5. The Annual Report of Ministry of Human Resource Development (2003-2004) did not mention disabled children under Sarva Shiksha Abhiyan, which is a matter of huge concern.
6. Out of nearly 300 universities in the country, not even 30 colleges/universities seem to have benefits for disabled students.
7. Children with severe disabilities, girls in particular, coming from financially backward families or living in remote areas have till today no access to any form of education. Children with speech/hearing impairment face a major setback due to verbal methods of teaching and lack of knowledge in sign language.
8. No status regarding percentage of disabled persons employed in Government services under the scheme regarding 3% reservation in the government employment is provided in the past four years.
9. The National Handicapped Finance and Development Corporation (N.H.F.D.C.) in 1997. The corporation provides loans to disabled people at low rates of interest. A study conducted by N.C.P.E.D.P. in 2003 revealed that the schemes of N.H.F.D.C. had not reached disabled persons through its State Channelizing Agencies (SCAs) in 13 out of 35 States / Union Territories.
10. Public transport is completely inadequate for people with disabilities.
11. Systematic initiatives to include access features in railways are not included for the estimated 60 million disabled citizens of the country, their families, and the aged and ill people.

#### **IV. A SHIFT TO RIGHT BASED APPROACH**

The malady of persons with disability in our country is not a recent phenomenon and has affected our society for a long time. However,

there has been a shift in the understanding of the term and there has a significant and welcome change from ‘welfare’ approach to ‘rights based’ approach. There is an enhanced awareness pertaining to the various rights of the people with special needs. This section of society needs special welfare schemes, and the aim is to provide framework which can facilitate the empowering of such people so as to bring them in the mainstream of the society. It also helps in providing them a right to life with dignity as mentioned in the multifarious Article 21 of our Constitution. People with disabilities emerged with a hope to assert their rights with this shift in the approach of the government as befitting platform.<sup>19</sup>

The aim is to enhance the quality of life, and promote and protect the rights and dignity of people with disabilities through local, national and global efforts. Additionally, to increase awareness about disability issues, improve disability data, scale up public health programmes and community-based initiatives that promote health and rehabilitation and make assistive devices available to persons with disabilities.<sup>20</sup> The requirement now is Community based Rehabilitation or CBR, which focuses on enhancing the quality of life for people with disabilities and their families, meeting basic needs and ensuring inclusion and participation. CBR is a multi-sectoral approach and has 5 major components: health, education, livelihood, social and empowerment. CBR was developed in the 1980s, to give people with disabilities access to rehabilitation in their own communities using predominantly local resources. A 2004 joint ILO, UNESCO and WHO paper repositioned CBR as a strategy for rehabilitation, equalization of opportunity, poverty reduction and social inclusion of people with disabilities.

The goals of CBR are to ensure the benefits of the Convention on Rights of Persons with Disabilities reach the majority by:

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<sup>19</sup>PRANAM KUMAR ROUT, RIGHTS OF PHYSICALLY CHALLENGED - A LEGAL DIMENSION 101 (Nyaya Deep).

<sup>20</sup>[www.who.int/disability](http://www.who.int/disability).

1. supporting people with disabilities to maximize their physical and mental abilities, to access regular services and opportunities, and to become active contributors to the community and society at large;
2. activating communities to promote and protect the human rights of people with disabilities for example by removing barriers to participation;
3. facilitating capacity building, empowerment and community mobilization of people with disabilities and their families.

CBR is implemented in more than 90 countries through the combined efforts of people with disabilities, their families, communities, and relevant governmental and non-governmental organizations working in disability and development. Involvement and participation of people with disabilities and their families is at the heart of CBR.

Another aspect of the rights based approach is capacity building which provides for medical care and rehabilitation services for people with disabilities. There is a lack of training for health professionals, in the provision of appropriate medical care and rehabilitation services for people with disabilities. There is a pressing need to develop the capacities of a variety of trained health professionals and training institutions in this area. Most schools of public health, medical schools and other institutions involved in training health professionals around the world do not include disability and rehabilitation in their curricula. Nor are disability issues included in the curricula of other technical or professional schools, such as those training architects, urban planners, and engineers.<sup>21</sup>

Right to empowerment through participation is one of the essential requisites. Every citizen of this country, without any exception, has an inherent right to vote under the system of adult suffrage. Thus, a disabled person cannot be excluded from doing the same. Disabled persons have the same civil and political rights as other human beings. The news caption “*poll panel offers no hope to disabled*” reflects how the right to vote of physically disable is being

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<sup>21</sup>*Supra* note 15.

neglected.<sup>22</sup> This issue has been contended in various cases like *Disabled Rights Group v. Chief Election Commissioner*<sup>23</sup> and *State v. Radhamal*,<sup>24</sup> where various directions were issued for making the entire polling procedure disabled friendly by providing for wooden ramps and special Electronic Voting Machines at the polling booths. However, there has been a dearth of willingness on part of the Election Commission and government to implement the order in providing the facilities. Government should take initiatives to implement the political rights of the disabled as far as practical with special attention to right to vote.<sup>25</sup>

With the realization of the rights of the people with disability there is a giant leap in the movement for the removal of all kinds of discrimination against this section of society though large scale inclusion in the mainstream.

## V. CONCLUSION

Right to life is a fundamental and supreme right which assures a plethora of rights such as right to liberty, privacy, family life and other analogous rights which constitute a life with dignity. Every individual has the inherent right to get respect towards his/her human dignity which in turn is a mandate for the government of every country. Any person cannot be debarred from exercising these rights owing to his/ her mental or physical disabilities. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible. The discrimination, sympathy factor and disparity in socio- economic

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<sup>22</sup>The Times of India, Sept. 27 2004, *supra* note 14.

<sup>23</sup>2004 S.C.C. OnLine AP 717(India).

<sup>24</sup>A.I.R. 1960 Bom 526(India).

<sup>25</sup>*Supra* note 14.

structure are denigration to right to life with dignity of disabled persons.

It is one of the foremost obligations of the government to develop such infrastructure which facilitates the inclusion of the persons with certain impediments in the socio, economic, political sphere of the country. As per the survey conducted by NSSO in 2001 there are 2.19 crore people with disabilities in India who constitute 2.13 per cent of the total population. Seventy-five per cent of persons with disabilities live in rural areas, 49 per cent of disabled population is literate and only 34 per cent are employed.<sup>26</sup> The trace of violation of right to life can be very well noticed from the instances where the parents of kids with disability are compelled to take away the lives of their children due to the paltry efforts of government initiatives towards providing appropriate medical and economic benefits. Disability is the cause as well as an effect of poverty wherein such people are forced to live in abject poverty due to the lack of infrastructure. This section of society is often marginalised and excluded from the society due to the social stigma and also due to the lack of provisions for their free social mobility. The various schemes launched by the government often fail to achieve their object due to their inability to reach to the people who actually need them. The implementation of such schemes is required to be pervasive with special emphasis in the rural areas which are the worst victim of this malaise. The benefits should permeate deep in the society till the lowest strata as people in such areas suffer from worst kind of discrimination and exclusion.

In order to have an equitable society there is a dire need to protect and promote the basic requirements of this deprived section of society as well. The areas to be focused upon to this effect are health, education, livelihood, social empowerment. Health includes promotion, prevention, medical care, rehabilitation and assistive advices. Education at every level starting from primary to higher is

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<sup>26</sup>Directorate of Welfare of Disabled and Senior Citizens.

to be promoted. Livelihood includes skill development, self employment and social protection. The social sphere includes relationships, personal assistance, leisure and sports and access to justice. Communication, social mobilisation and political participation form the part of empowerment.

The differently-abled people constitute a significant section of our society and as such it is necessary to encourage their participation in every walk of life. The disesteemed human resource is a great loss for our national development. Hence, the productivity and potentiality of such people are to be recognised and valued by preserving, protecting and promoting their rights so that instead of considered a burden they are enabled to participate in the activities of the society. There is a need of drastic action at this juncture to eradicate the issues related to the rights of persons with disability in the society.