

CHAPTER 2

CIVIL RIGHTS OF THE PERSONS WITH DISABILITIES UNDER THE INTERNATIONAL LEGAL FRAMEWORK.

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PROLOGUE:

Persons with disabilities have been from the very early times looked down upon as objects of pity and charity. The general populace has always looked down upon this section of the society with sympathy or contempt. Their position is further aggravated by the lack of a reasonable definition of the term disability. The human rights movement has boldly and categorically moved the concentration of policy makers from the mere provision of charitable services to vigorously protecting their basic right to dignity and self-respect. Human Rights is a universal experience because rights have been imbibed in our society over the years. It is a realisation that without Human Rights we cannot live as human beings. Human rights can be elucidated in one sentence that is, human rights are all about the rights to life, liberty, equality, dignity and security of men, women, youth and child. They comprise of all fundamental freedoms and are footed on mankind's persistence for a life in which the instinctive dignity and significance of each human being will obtain respect and protection. Since disability was in olden times seen as an individual pathology or disease, disregard of the rights of people with disabilities had not been adequately addressed by the international human rights system for a considerable length of time. But a swing to a human rights perspective is now evident at the international level. The 1970s marked a new approach to disability. The concept of human rights for disabled persons began to become more accepted internationally. In the new setting, the disabled are viewed as individuals with a broad range of capabilities and every one of them keen and able to utilise his/her potential and aptitude. Society, on the other hand,

is observed as the actual cause of the misery of people with disabilities because it continues to put numerous barriers as expressed in education, employment, architecture, transport, health and dozens of other activities. Progress in medical and surgical sciences, breakthroughs in technology, greater understanding of the causes of disability and improved methods of coping with it, increasing consciousness of civil rights and the emergence of people with disabilities displaying skills and knowledge to improve their own lives, are some of the factors which have contributed to the new thinking that the disabled deserve a dignified status in society on the same terms as the non-disabled.¹

At the nucleus of human rights model lie veneration for differences in human cultures and the appreciation that individuals are unlike on a number of issues such as gender, race, language, religion and other factor. High regard for human diversity emphasizes two vital beliefs. One, regardless of their obvious disparities all people is same in relation to their rights and dignity. And two, the equivalence of rights and dignity does not imply that all people should be treated in the same or alike means. The two thoughts may appear conflicting, but in actuality they are complimentary to each other. In concert they comprise a guide to build an equitable and just society without forcing basically dissimilar human beings to a single mould.² Acknowledgment of the natural equality of all human beings with equal entitlement of each individual to all human rights forms the heart of the human rights doctrine. In international human rights law, equality is set up upon two corresponding principles: non-discrimination and reasonable differentiation. The principle of differentiation is of special importance to persons with disabilities, some of whom may require specialised services or support in order to be substantially equal to others. Variations of treatment between

1. Priya Bansal. "Right to Employment of Disables: A Law Merely on Paper", viewed at <http://www.legalserviceindia.com/articles/dab.htm> accessed on 23.8.2007

2. Chapter 2: Approaches to Disability, *National Human Rights Commission Disability Manual*, (National Human Rights Commission, New Delhi, 2005), pp. 18-27 at p. 22

3. *Ibid* at pp.23, 24

individuals are not unfair if they are based on 'reasonable and objective justification'.³

A reference of international legal principles is incomplete without a reference to the United Nations. The United Nations since its origin in 1945 has adopted a number of international human rights standards, some in the form of binding treaties, others in the form of non-binding instruments. "*Dignity and justice for all of us*" is the theme of the 60th anniversary of the *Universal Declaration of Human Rights* as well as the International Day for Persons with Disabilities to be observed on 3rd December 2008. Dignity and justice for all persons are established universal principles. Since its inception, the United Nations has recognized that the inherent dignity and the equal and inalienable rights of all members of the human family are the foundations of freedom, justice and peace in the world. These principles, along with equality and non-discrimination, have guided the work of the United Nations for the past 60 years and are enshrined in various instruments such as the UN Charter and the Universal Declaration of Human Rights, as well as in treaties such as the International Covenants on Human Rights, and the Convention on the Rights of Persons with Disabilities. These instruments are among those which make up the international human rights framework, are complementary and reaffirm that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing.⁴ A brief description of a few of the more leading international instruments on human rights that have been adopted by the United Nations (UN) shall be taken up in this Chapter. The instruments and bodies portrayed are only a branch of the massive body of human rights model that have been shaped by the UN and regional bodies over the preceding sixty years of its existence.

4. For details visit, <http://pib.nic.in/release/release.asp?relid=43470>, accessed on 9.10.2008

As noted that the various approaches to disability human rights include Enforceable anti-discrimination legislation, Constitutional guarantees of equality, Specific Entitlement Programmes and Voluntary Human Rights Manifestos. Following this, at the national level, there has been a wave of changes in policy and law. Currently 45 nations in the world have provisions for the protection of the rights of the disabled. While some countries guarantee disability rights and equality in national constitutions; like Austria, Brazil, Canada, Finland, Fiji, Gambia, Germany, Malawi, New Zealand, South Africa, Switzerland and Uganda. Other countries have anti-discrimination legislation which prohibits discrimination on the basis of disability. These include Australia, Canada, Chile, Costa Rica, Ethiopia, Germany, Ghana, Guatemala, Hong Kong, Hungary, India, Ireland, Israel, Korea, Madagascar, Mauritius, Namibia, Nigeria, Philippines, South Africa, Spain, Sri Lanka, Sweden, the United Kingdom, the United States, Zambia and Zimbabwe. In some cases these laws are very extensive and encircle all aspects of life. In others they are specific to, for example, employment, education, housing, etc. Likewise, in some countries the anti-discrimination laws are universal, while in others they are disability-specific.⁵ In this backdrop it is pertinent to note that the study of any law with respect to its national legal system is unfinished without a learning of the international legal regime. More so in the case of a topic like human rights disability law in India because the foundation of the principal statute dealing with the human rights of the Persons with Disabilities in India owes its origin to the *Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region* adopted at Beijing in 1992. It is equally important to assess the international scenario through a reference to the various international instruments. The various United Nations initiatives shall be taken into account considering the concept of 'hard law' and 'soft law'. Since there are 45 nations throughout the globe having disability laws, it is not possible to undertake a study of each of those in this work. Hence

5. Supra note 2 at p.26

with a view to assess the worldwide situation of the rights of the persons with disabilities, study of legislations of a few countries has been undertaken in this study to understand the convergences and divergences of these laws. Thus an attempt has been to refer to the Disability Laws of Europe including the European Union, Germany and U.K.; North America including U.S.A. and Canada; Chile and Costa Rica in South America; Australia; South Africa, and Zimbabwe in Africa and Asia including China and India.

A. THE CONCEPT OF 'HARD LAW AND SOFT LAW' IN INTERNATIONAL LAW:

Prior to making a foray into the various international instruments brought out by the United Nations and other foras it is essential to understand the doctrinal difference of 'hard law' and 'soft law'. The statute of the International Court of Justice (ICJ) enumerates the sources of international law as treaties, custom, general principles of law recognized by civilized nations, judicial decisions and juristic work on international. Another source added under the modern international law is the resolutions and declarations of international organs or institutions. Whereas the first three are the law-creating processes, the others are the means for the determination of alleged rules of international laws. In the case of law creating process, the emphasis lies on the forms by which any particular rule of international law is created. This is being done by law-determining agencies, which verify an alleged rule. Those rules of international law which fall under the category of law creating processes are considered to be 'hard law' and others in the category of 'soft law' since they cannot be classified as full fledged rules of international law like custom, treaties or general principles of law. They have their set mechanism for coming into force as a full-fledged rule of law and they are binding and enforceable against a State. There is always a set

procedure for its enforceability and compliance. If any violation of the rule takes place, the consequences will ensue there from. 6

International human rights treaties are binding on State parties that have ratified the instruments. Some universal instruments, such as the Universal Declaration of Human Rights, and some specific provisions, such as the principle of non-discrimination, have become part of customary international law and are considered binding on all States, even those that have not ratified a human rights treaty that embodies norms of customary law. These are generally termed as 'hard law'. International instruments, such as declarations, resolutions, principles, guidelines and rules, are not technically legally binding. They express generally accepted principles and represent a moral and political commitment by States. They also can be used as guidelines for States in enacting legislation and formulating policies concerning persons with disabilities. These are the 'soft laws' in international law. Whilst the 'hard laws' bind the nations ratifying them, the soft law instruments lack such a power and it is upon the wishes of any particular nation to abide by the principles laid down in the soft law instruments. However once the non-binding obligations of the Declarations are legislated at the municipal level by a State, they create the binding obligations for the state.⁷ In the context of international law, the term "soft law" covers such elements as:

- Most Resolutions and Declarations of the UN General Assembly, for example, the Universal Declaration of Human Rights;
- Elements such as statements, principles, codes of conduct, codes of practice etc.; often found as part of framework treaties;

6. S.K.Verma, "International legal Regime on the Rights of the Persons with Disability: Its Relevance to National Legal System". in S. K. Verma, S.C. Srivastava (ed.), *Rights of Persons with Disabilities* (ILI Publication, New Delhi, 2002), pp.43-50 at p. 45.

7 *Ibid* at pp. 45, 46, 47

- Action plans (for example, Agenda 21);
- Other non-treaty obligations

In spite of being the largest minority groups in the world, encompassing 600 million persons, of which two out of three live in developing countries, disabled people had been rather neglected during the first three decades of the United Nations' existence. The drafters of the International Bill of Human Rights did not include disabled persons as a distinct group vulnerable to human rights violations. There are three legal instruments, which make up the International Bill of Human Rights. These are the Universal Declaration of Human Rights, passed by the General Assembly of the United Nations in 1948, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966. International human rights law has not always adequately acknowledged people with a disability as part of what the 'human', in human rights, means.⁸ If disability is raised as an issue in these documents, it is only in connection with social security and preventive health policy. Most of the efforts of the UN concerning the disabled population has been by way of a number of soft law instruments with a clear focus on disability, e.g. World Programme of Action concerning Disabled Persons (1982), The Standard Rules for the Equalization of Opportunities for Persons with Disabilities (1993), Declaration on the Rights of Disabled Persons (1975), Declaration on the Rights of Mentally Retarded Persons (1971), Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991), Proclamation of the Economic and Social Commission for Asia and the Pacific on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region (1993) and Tallinn Guidelines for Action on Human Resources Development in the Field of Disability. These soft law instruments are non-

8. Anuradha Mohit, Meera Pillai, Pratiti Rungta, "*Rights of the Disabled*", 1st Edition (National Human Rights Commission, New Delhi, 2006), at p. 17

binding in nature which means governments are not bound to consider them while formulating policy or law.

The Hard law instruments include International Covenant on Civil and Political Rights (1966) (ICCPR), together with the two Optional Protocols to the Covenant, International Covenant on Economic, Social and Cultural Rights (1966) (ICESR), International Convention on the Elimination of All Forms of Racial Discrimination (1965) (CERD), Convention on the Elimination of All Forms of Discrimination against Women (1979) (CEDAW Convention) and the Optional Protocol to the Convention (1999), Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (1984) (CAT), Convention on the Rights of the Child (1989)(CRC), and its two Optional Protocols (on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography) and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).⁹ Only recently the first hard law instrument dealing specifically with the rights of the Disabled has come into force and is called United Nations Convention on the Rights of the Persons with Disabilities (UNCRPD) adopted in 2006 and came into force in 2008. States that are parties to an international convention are legally bound to implement the provisions contained in the convention within their country. International law leaves it to the countries to adopt legislative and other measures that are consistent with their constitutional processes to give effect to the convention and to ensure that any person whose rights are violated have access to effective remedies before independent courts. There are three main methods available to implement international legal instruments in domestic law: -

9. Supra note 2 at Chapter 4: International Human Rights Law and Its Relation to National Law, pp. 39-58 at pp. 41, 42.

1. Direct incorporation of rights recognised in the international instrument into what may be termed a “bill of rights” or fundamental rights of citizens in a country.
2. Enactment of different legislative measures in the civil, criminal and administrative laws to give effect to the rights recognised in international legal instruments
3. Self-executing operation of international legal instruments in the national legal order.

In relation to economic, social and cultural rights, implementation will differ from one country to another, depending on their level of development. Yet, all countries require major programme efforts. The obligation of States Parties in the international human rights instruments to promote progressive realisation of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disability.¹⁰

B. PROTECTION OF CIVIL AND ECONOMIC RIGHTS OF THE PERSONS WITH DISABILITIES UNDER THE UNITED NATIONS FRAMEWORK:-

The United Nations was established on the principle of equality for all. The Preamble of the Charter asserts the self-esteem and significance of every human being and gives key weightage to the support of social justice. Persons with disabilities are, in reality, permitted to all the fundamental rights upheld by the Charter. In 1948, United Nations General Assembly proclaimed the Universal Declaration of Human Rights, in which Article 25 says that each person has ‘the right to security in the event of

10. *Ibid*: Supra note 7

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control'. UN's commitment to assist the disabled had evolved since it began addressing the needs of individuals injured in the World War II. In 1950, a conference was organised to discuss about the coordination among the specialised agencies to rehabilitate the disabled, in which UN Secretariat, the ILO, WHO, UNESCO, the International Refugee Organisation (IRO), and UNICEF participated and arrived at an agreement to establish international standards for the education, treatment, training and placement for disabled persons, with particular emphasis on the needs of the blind in under-developed areas. These organisations have focused on delivery of services and have been managed by non- disabled persons, with need based care and protection for persons with disabilities.¹¹

Since the birth of the United Nations after the Second World War the concern on the differently able populace may be studied under various phases. In the 1940s and 1950s the United Nations focused on promoting the rights of the persons with physical disabilities through a range of social welfare approaches.¹² The focus of the United Nations on disability issues shifted in the late 1950s from a welfare perspective to one of social welfare. A re-evaluation of policy in the 1960s led to de-institutionalisation and spurred a demand for fuller participation by disabled persons in an integrated society.¹³ Further, in direct response to initiatives from within the community of persons with disabilities in 1960s, the United Nations initiatives embraced the notion of human rights for persons with disabilities, their full participation in all areas of society through an equalization

11. Ajitha Saravanan, "Conquering disability-the ICT way", viewed at <http://www.itu.int/wsis/tunis/newsroom/highlights/16nov.html>, accessed on 7.10.2008

12. Jerome E. Bickenbach, "Disability Human Rights, Law and Policy," in Gary L. Albert, Katherine D. Seelman and Michael Bury (ed.), *Handbook of Disability Studies* (Sage Publications, 2005), pp. 565-583, at p. 573.

13. Saurabh Jain, "Effectiveness of the Indian disability Law to enforce Human Rights of Persons with Disabilities". *AIR (Journal)* Vol. 91 (April, 2004), pp. 118-127 at p. 119.

of opportunities.¹⁴ In fact the real awareness of the problems of disabled and their human rights in international thinking came to the fore in the 1970s when United Nations took a number of initiatives which embrace the growing international concept of human rights of persons with disabilities and equalization of opportunities to them. As stated above, the disabled despite being the greatest minority group in the world were not paid much attention by the United Nations in the first three decades of its coming into being. None of the equality clauses of any of the three instruments comprising the Bill of Human Rights (Universal Declaration of Human Rights, passed by the General Assembly of the United Nations (1948), the International Covenant on Civil and Political Rights (1966) (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)) mention disability as a protected category. If Disability is raised as an issue in these documents, it is only in connection with social security and preventive health policy.

Nevertheless, the United Nations has been active in promoting the well-being and rights of persons with physical disabilities through a range of social welfare approaches and has provided assistance to governments in disability prevention and rehabilitation of disabled persons through advisory missions, workshops for the training of technical personnel and setting up rehabilitation centres.¹⁵ The 1970s marked a new approach to disability. It was in this period that the notion of human rights for disabled persons began to grow to be more accepted internationally. Two major Declarations on the disabled were adopted by the General assembly in that decade. In 1971, the General assembly adopted the *Declaration on the Rights of the Mentally Retarded Persons*.¹⁶ This was followed in 1975 by the more inclusive rights document, the

14. A.K.Sikri, Human Rights of the Disabled: World in a Slow Motion, *Journal of Constitutional and Parliamentary Studies*; Vol. 38, Number 1-4; January- December 2004, pp. 1-49 at p.14.

15. *Supra* note 2, at Chapter 1: Disability: Definitions, Estimates and Causes, pp. 9-17 at p.14.

16. General Assembly Resolution No. 2856(XXVI) of December 20, 1971.

Declaration on the Rights of the Disabled Persons.¹⁷ A brief discussion of these documents is followed in these lines.

In 1971 General assembly adopted the *Declaration on the Rights of the Mentally Retarded Persons 1971*. The Declaration calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of the rights of the disabled persons, which are enumerated as follows:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.
2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.
3. The mentally retarded person has a right to economic security and a decent standard of living. He has a right to perform productive work or to engage in any meaningful occupation to the fullest possible extent of his capabilities.
4. Whenever possible, the mentally retarded person should live with his or her own family or with foster parents and participate in community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.
5. The mentally retarded person has a right to qualified guardian when this is required to protect his personal well-being and interests.
6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.

17. General Assembly Resolution 3447 (XXX) of 9 December 1975.

7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restrictions or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and the right of appeal to higher authorities.¹⁸

Declaration on the Rights of the Disabled Persons, 1975, was adopted by the General Assembly, keeping in view “the necessity of preventing physical and mental disabilities in the most varied fields of activities and of promoting their integration as far as possible in normal life. The Declaration lays down the following principles¹⁹:

1. The disabled person²⁰ shall enjoy all the rights contained in this Declaration without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of health, birth or any other situation applying either to the disabled person himself or herself or to his or her family.
2. The disabled persons have inherent rights to respect for their human dignity and irrespective of their origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of the same age which implies the right to enjoy a decent life, as normal and full as possible.

18. Gursharan Varanandani, “Law Relating to Disable Persons and the Proposed Remedial Measures in the Context of Prospective Action Plan, Disability and Law?” In S. K. Verma, S.C. Srivastava (ed.), *Rights of Persons with Disabilities* (ILI Publication, New Delhi, 2002), pp.78-89 at pp.78, 79.

19. *Ibid* at pp. 79, 80.

20. “Disabled Person “ has been defined as any person unable to ensure himself or herself, wholly or partly, the necessities of normal individual and/or social life, as a result of deficiency either congenital or otherwise, in his physical or mental capabilities.”

3. Disabled persons have same civil and political rights as other human beings.
4. Disabled persons are entitled to the measures designed to enable them to become as self- reliant as possible.
5. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthotic appliances to medical and social rehabilitation, education, vocational training and rehabilitation aid, counseling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.
6. Disabled persons have the right to economic and social security, including the right, according to their capabilities to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions
7. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.
8. Disabled persons have a right to live with their families or with foster parents and to participate in all social, creative or recreational activities.
9. Disabled persons have a right to live with their families or with foster parents and to participate in all social, creative or recreational activities.
10. Disabled persons shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature.
11. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their personal property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

Thus the above lines clearly reveal that the declarations are a comprehensive instrument with a clear focus on the rights of 'Persons with Disabilities'. Even so these early instruments still reveal a concept of disability that falls within the medical model, according to which disabled persons are primarily seen as individuals with medical problems, reliant on social security and welfare and in need of segregated services and institutions. It was also during this time that the General Assembly clearly declared that disabled persons were covered by the "other status" category listed in the equality provisions found in the International Bill of Human Rights.²¹

The year 1981 was observed as International Year of the Disabled Persons with its central theme as "Full Participation and Equality".²² It thus set the trend of human rights in the disability arena as the Nations assumed responsibility to guarantee enjoyment of full citizenship and fundamental rights by persons with disability.²³ The principal outcome of this event was the formulation of the *World Programme of Action Concerning Disabled Persons*; adopted by the General Assembly in December 1982. The World Programme of Action was a global strategy to enhance disability prevention, rehabilitation and equalization of opportunities. The first two goals of the World Programme of Action, 1982 (WPA) were prevention and rehabilitation, which echoed a more traditional approach to disability law and policy, but the third goal, equalisation of opportunities, set the outlook for alteration at the international level. "Equalisation of Opportunities was defined as: the process through which the

21. Theresia Degener and Gerard Quinn, "A Survey of International, Comparative and Regional Disability Law Reform", for details visit http://www.dredf.org/international/degener_quinn.html, accessed on 23.12.2007.

22. "We share in 1981 a responsibility which will be historically judged by future generations. Persons with disabilities shall be treated as true citizens of their respective countries, enjoying all the rights man is heir to...If we are to live up to the principles embodied in the goals of the Year... Governments must work to equalize opportunities...in all aspects of daily life...This requires the development of new approaches towards rehabilitation which de-emphasize the institutional approach". --Mrs. Leticia Shahani, Assistant Secretary-General, Chief of the Centre for Social Development and Humanitarian Affairs, United Nations secretariat.

23. Supra note 9 at pp. 14, 15.

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.²⁴

On the heels of this was the proclamation of the *United Nations Decade of Disabled Persons, 1983- 1992*. The Decade intensified the debate on equal opportunities and non- discrimination. Recognition of the inherent equality of all human beings as well as the entitlement of each individual to all human rights forms the core of human rights.²⁵ Hence throughout the decade, the equal rights component of disability policy and law became the prime goal of the rising international disability rights movement. The social and humanistic sheen to right to development assumes significance in the context of Persons with Disabilities in equalization of opportunity and meaningful enjoyment to life. The exemplary shift i.e. development is more than development itself holds a great promise in translating the human right to development for Persons with Disabilities into practice. This trend is discernable in *Vienna Declaration*²⁶ when it says that ‘persons including person with disability is born equal and has same rights to life and welfare, education and work, living independently and active participation in all aspects of society’. Any direct discrimination or negative discriminatory treatment of Persons with Disabilities is violation of Human Rights.²⁷ Therefore, persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, social and psychological, which exclude or restrict full participation in society.²⁸ The Declaration gave a clarion call to General assembly, Economic

24. Supra note 12 at *ibid*.

25. Supra note 21

26. Supra note 9 at p.15.

27. The Vienna Declaration on Human Right, 1986

28. *Ibid*, Article 63, Article 64.

and Social Council and other states to draft standard rules on the equalization of opportunities for persons with disabilities.²⁹

Other chief influences that facilitated a standard change from the medical model to the human rights model were two thematic reports, one on human rights in the field of mental health and the other on human rights violations with consideration to disabled person; both prepared by the United Nations Commission on Human Rights. These reports were the first to identify disability as thematic issue within the human rights division of the United Nations, which in turn assisted disabled persons to be considered not only as beneficiaries of charity measures but as subjects of human rights violations. A few other noteworthy guidelines and standards were adopted during the decade, but schemes for a binding treaty on the human rights protection of disabled persons did not find majority support within the 3rd Committee of the General Assembly in either 1987 or 1989.³⁰

The next important action of the UN was in the form of *Standard Rules on the Equalization of Opportunities for Persons with Disabilities (UNSR)* which were adopted by the General Assembly on December 20, 1993³¹ with the purpose of achieving affirmative and complete inclusion of persons with disabilities in every facet of society under the leadership role of the United Nations.³² The Standard Rules set out explicit standards of law and policy for member states, standards that, if adhered to in practice, are designed to achieve equalization of opportunities and equal participation for persons with disabilities in all major areas of social life. It outlines in detail, what policies and practices serve to guarantee rights to education, work, social security and protection from

29. *Ibid*, Article 65.

30. *Supra* note 21

31. The United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities 1993 (UNSR). U.N.Doc A/ Res/48/96.

32. *Supra* note 12 at *ibid*

inhuman or degrading treatment.³³ As stated in the Preamble the purpose of UNSR is:

1. To stress that all actions in the field of disability pre-supposes adequate knowledge and experience of the conditions and special needs of the people with disabilities.
2. To emphasise that the process through which every aspect of societal organization is made accessible to all is a basic objective of socio-economic development.
3. To outline the crucial aspects of social policies in the field of disability, including as appropriate, the active encouragement of technical and economic co-operation.
4. To provide models for the political decision- making process required for the attainment of equal opportunities, bearing in mind the widely differing technical and economic levels, the fact that the process must reflect keen understanding of the cultural context within which it takes place and the crucial role of the persons with disabilities.

The UNSR recognizes four pre- conditions for equal participation by persons with disabilities in society, namely, the raised awareness in society about the rights, needs, potential and contributions of persons with disabilities, the provisions of effective medical care and rehabilitation services to people with disabilities and finally the development and supply of support services including assistive devices for persons with disabilities. This has been laid in Rules 1 to 4 of the Declaration.³⁴ Eight target areas are recognized. These include accessibility, in terms of the physical environment and information and communication, education, employment, income maintenance and social security, family life and

33. *Ibid.*

34. Parmanand Singh, "Disability, Discrimination and Equality of Opportunities: A Comparative analysis of the Legal Framework". *Journal of Indian Law Institute*, vol. 45:2 (2003), pp. 173-199, pp. 181,182

personal integrity, culture, recreation and sports and religion.³⁵ Rule 15 in particular, mandates that all states have the full responsibility to create the legal bases for all measures required to achieve the objectives of full participation and equality for persons with disabilities.³⁶ The standard rules contain a powerful message to the world. The message is that the concept of equality implies the notion of the indivisibility, interrelation and interdependence of the two sets of human rights: civil and political rights on the one hand and economic and social rights on the other hand. The rules proclaim:

“Equalization of opportunities means the process through which the various systems of society and 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 planning of societies and that all resource must be employed in such a way as to ensure that every individual has equal opportunity of participation. People with disabilities are members of society and have the right to remain within their local communities. They should receive the support they need within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services. It is hoped that the rules can become customary rules when they are applied by a great number of states with the intention of respecting a rule in international law.”³⁷

In contrast with the other non-binding international disability instruments, the UNSR have a Special Rapporteur and a panel of experts who have been given the mandate to promote and monitor the implementation of the rules. The report of the panel, consisting of ten representatives from six major international non-governmental organizations in the disability field, reflects a clear human rights orientation towards monitoring.³⁸ Thus it can be said to be the most remarkable development in terms of soft law instruments. Adopting what could be referred to as a social model of disability; they set out a number of

35. Supra note 27, Rules 5-12

36. Supra note 34

37. Supra note 12 at pp.573-574

38. Supra note 27, Introduction Para 14.

practical measures for achieving substantive equality for persons with disabilities. The areas for development listed in the Standard Rules include awareness building, education, information and research, and national monitoring and evaluation of disability programmes. The Standard Rules exemplified the shift from a charity-based approach to disability to one that is based on human rights³⁹

The United Nations Decade of Disabled Persons, 1983—2002, concurred with a phase of economic vigor right through much of the Asian and Pacific region. The ultimate years of the United Nations decade also witnessed principal breakthroughs in peace building in the region marked by considerable enhancement in conflict resolution and rapprochement between various States. It was in this warm background that the Social Development Strategy for the ESCAP Region towards the Year 2000 and beyond was adopted by the Fourth Asian and Pacific Ministerial Conference on Social Welfare and social development, held at Manila in October 1991. The Strategy has the ultimate aim of improving the quality of life of all people of the ESCAP region. With that end in view, the indispensable objectives of the Strategy are the eradication of absolute poverty, the apprehension of distributive justice and the expansion of popular participation. Within the framework of those aims and objectives, the Strategy assigns priority to the region's disadvantaged and vulnerable social groups, including persons with disabilities. Further to the priority given to the concerns of persons with disabilities in the regional Social Development Strategy, thirty-three countries attending the forty-eighth ESCAP session in April 1992 joined in backing of *Resolution 48/3* on an Asian and Pacific Decade of Disabled Persons, 1993-2002. In adopting the resolution, the Governments of the region articulated their united vow to the full participation and equality of people with disabilities. The Asian and Pacific Decade of Disabled Persons provides an opportunity for

³⁹ Supra note 21

the 56 countries and areas of the ESCAP region to consolidate the efforts initiated during the preceding UN Decade through a new emphasis on regional co-operation in support of progress at the national level. In particular, it provides a context for the intensifying of technical co-operation among developing countries, as well as between the regions's developing and developed countries, in the resolution of key issues that affect the lives of people with disabilities. To accomplish the objectives of the Asian and Pacific Decade of Disabled Persons, an agenda for action is needed that translates the World Programme of Action concerning Disabled Persons into an Agenda for the Asian and Pacific region, in response to the review and appraisal of the achievements of the United Nations Decade of Disabled persons, 1983-1992, in the Asian and Pacific region as contained in document SD/DDP/1, 1992. The present document provides a framework for the formulation of that agenda for action. The framework consists of the major policy categories under which efforts for the implementation of ESCAP resolution 48/3. These basic policy categories include: National Co-ordination; Legislation; Information; Public Awareness; Accessibility and Communication; Education; Training and Employment; Prevention of causes of disabilities; Rehabilitation services; Assistive devices; self-help organizations; and Regional co-operation. Each of the policy categories constituting the framework contains a roll of areas of concern of direct relevance to the development of policies in support of the full participation and equality of people with disabilities in Asia and the Pacific.⁴⁰ Some other major developments include - The *International Conference on Population and Development* is held in Cairo in 1994. It recognized the importance of equalizing opportunities for people 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*.

40. For details on UN Instruments visit. <http://www.un.org/documents/ga/res/48/a48r096.htm>, accessed on 2.10.2008.

A meeting held at Bangkok in June 1995 examined the progress made since the introduction of the decade and adopted 73 targets and 78 recommendations concerning the implementation of the Agenda for Action, including the gender dimensions of implementation. Of the 12 policy areas under the Agenda for Action, ESCAP has focused its efforts on areas that were not covered by the mandates of other United Nations instruments and bodies. The policy areas include national co-ordination, legislation, information (in particular, disability statistics), accessibility, assistive devices and self-help organizations of disabled persons. A comparative advantage of the ESCAP disability programme was the development of active inter-divisional collaboration, including the ESCAP Human Settlements Section in the Promotion of non-handicapping environments, the Rural Development Section in poverty alleviation among rural disabled persons, the General Transport Coordination and Communications Section and the Tourism Unit in the promotion of accessible public transport and the promotion of barrier-free tourism.⁴¹

The United Nations Commission on Human Rights also passed two significant resolutions in 1998 and 2000. The resolutions recognized that national governments are responsible for the protection of the rights of people with disabilities and that the U.N. has an important role in promoting development in this area. *Resolution 1998/31* of the Commission on Human Rights recognizes that inequality and discrimination related to disability are violations of human rights. *Resolution 2000/51* called for an examination of measures to strengthen the protection of human rights of people with disabilities. The UN General Assembly in its *Resolution 56/ 168, 2001* recognises that governments, UN Bodies and NGOs have not been successful in promoting full and effective participation of the opportunities for the 'persons with disabilities' in economic, social, cultural and political life. Expressing deep concern "about the

⁴¹ Gautam Banerjee, *Disability and the Law*, Commercial Law Publishers (2005), pp. 124, 125.

disadvantages faced by 600 million disabled persons around the world” the General Assembly passed a resolution to establish an ad hoc Committee to consider proposal for a comprehensive and integral international convention taking into account the recommendations of the Commission for Human Rights and the Commission for Social Development. This resolution is a clear example of attention to disability rights at the international level. The Ad Hoc Committee has held several sessions for governments to consider a disability rights treaty and a working group prepared a draft text of disability rights treaty which recognized disability as a human rights issue of international concern by creating legally binding human rights obligations specific to the needs and situation of people with disabilities.⁴²

In addition to the above in 1983, the ILO provided guidelines for employment opportunities for the disabled people in the form of *Vocational Rehabilitation and Employment (Disabled persons) Convention, 1983*.⁴³ The Convention for its application defines the term ‘disabled person’ in Article 1(1) as, “ an 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”. The Convention also lays down the principles of vocational rehabilitation and employment policies for disabled persons. In addition to this there are a few other non-binding instruments, which are: Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991); Tallinn Guidelines for Action on Human Resources Development in the Field of Disability; Sundberg Declaration on Actions and Strategies for Education, Prevention and Integration adopted by the UNESCO World Conference on Actions and Strategies for Education, Prevention and Integration Malaga (Spain), 2-7 November, 1981 amongst others.

42. For details on UN Resolutions, visit [http:// www.un.org](http://www.un.org).

43. ILO Vocational and Rehabilitation and Employment (Disabled Persons) Convention No. 159 (1983)

So far as the hard law developments are concerned, disability was a forgotten category when the International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966) were drafted, these treaties are currently interpreted in a way that supports the human rights approach to disability. General Comment⁴⁴ No. 18 to the International Covenant on Civil and Political Rights (1966), which deals with the right to equality,⁴⁵ clearly rejects the concept of formal equality in the human rights context. The Comment affirms that equal treatment does not always mean identical treatment, and that States have a duty to take steps to eliminate conditions that perpetuate discrimination. The Committee on Economic, Social and Cultural Rights went even further and adopted a General Comment on how to interpret and implement International Covenant on Economic, Social and Cultural Rights (1966) with respect to persons with disabilities. General Comment No. 5, which the Committee adopted in 1994, was the only legal United Nations document that broadly defines 'disability based discrimination' as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.⁴⁶ Here the Committee makes an analysis of disability as a human rights issue and makes a clear demand for anti-discrimination legislation. The Committee states: "The Covenant does not refer explicitly to 'persons with disabilities'. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and since the

44. General Comments are authoritative statements of the committee of its understanding of rights enshrined in the International Covenant on Economic, Social and Cultural rights. General comments, adopted by most human rights treaty bodies may be used to guide States in the implementation of international human rights norms, and to measure the level of compliance of state parties with regard to their specific rights contained in human rights conventions—United Nations enable website <http://www.un.org/esa/socdev/enable>, cited in *Halsbury's Laws of India*, Vol. 23, pp.400, 401.

45. See International Covenant on Civil and Political Rights (1966), Article 25.

46. *Supra* note 21.

Covenant's provisions apply fully to all members of society, 'persons with disabilities' are clearly entitled to the full range of rights recognized in the Covenant. Moreover, the requirement contained in Article 2 of the Covenant that the rights enunciated will be exercised without discrimination of any kind based on certain specified grounds or other status clearly applies to cover persons with disabilities".⁴⁷

The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD) was created to deal with particular groups or categories of persons who are at risk of discrimination. Convention on the Elimination of all Forms of Discriminations against Women (CEDAW), 1979 is a human rights treaty with focus on women in general and marginalized and vulnerable women in particular. This treaty also recognizes that disability combined with gender stereotype causes multiple disadvantages and recommends the State amongst others, to include information on women with disabilities in

To illustrate the relevance of various provisions of ICECSR, a few articles are examined below:
Article 6 stipulates 'the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses and accepts'. Thus, when there is a denial of job opportunity on the ground of disability, the aforesaid article is clearly infringed.
Article 7 refers to the "right of everyone to the enjoyment of just and favourable conditions of work which ensures adequate remuneration". The just and favourable conditions of work have been interpreted and *Article 7* refers to the "right of everyone to the enjoyment of just and favourable conditions of work which ensures adequate remuneration". The just and favourable conditions of work have been interpreted and translated into the domestic labour standards by several governments. The concept of reasonable accommodation and barrier free work environment is in fact premised on the notion set out in Article 7 of "providing or modifying devices, services or facilities or changing practices or procedures in order to afford participation on equal terms." Examples of "reasonable accommodation" includes installation of a wheel-chair ramp and elevators for people with mobility impairments, introduction of part time work schedules for workers with severe impairment conditions, availability of readers for visual impairment, and sign translation for people with hearing impairments.
Article 11 recognizes that everyone has the "right to an adequate standard of living for himself and his family, including adequate food, clothing and housing." Available statistics show that word over this Article is grossly violated in the case of 'persons with disabilities'. High correlation between disability and poverty, and disproportionate number of disabled children in orphanages, visible presence of maimed, blinded and mentally ill persons amongst beggars are some examples.
Article 15 recognizes the "right of everyone to take part in cultural life." This right is as relevant for 'persons with disabilities' as it could be for any other group. Connectivity and accessibility of places of cultural activities is thus critical for the effective integration of the 'persons with disabilities'.

their periodic reports with respect to their exercise of several rights contained in the Convention.⁴⁸ The Committee on the Elimination of Discrimination Against Women has adopted General recommendations that ask State Parties to include specific information on the status of disabled women, and has addressed the issue of disability in other thematic recommendations.⁴⁹ These treaties generally serve two purposes. First, they establish the principle of non-discrimination with respect to the enjoyment of all human rights for the categories of persons covered. Secondly, they add specificity to the general International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights rights, tailoring those more directly to the circumstances of the groups covered. Then, the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, 1984 which highlights the plight of millions of people with disabilities who are subjected to inhuman and degrading treatment in the institutions meant for their care and development, and calls upon the Member states to prevent such torture. Also, the Convention on the Rights of the Child (CRC), 1989 emphasise the rights of the disabled child to effective access and reception of education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development including his or her cultural and spiritual development. Unlike the other international human rights instruments, the CRC contains two provisions relating to disability. Article 2 expressly prohibits any discrimination in respect of the enjoyment of Convention rights on the ground of disability. Most importantly, the Convention includes a specific provision on the rights of children with disabilities (Article 23).⁵⁰

48. *Supra* note 9 at p. 16

49. *Supra* note 21

50. "The evolution of the international law on disability", viewed at <http://www.indlaw.com/ActionAid/?Guid=FD45006F-B2BC-4BCD-A672-5DB54948609D>, accessed on 1.9.2008.

While arguing for the Disability Convention, the Asia and Pacific Forum of National Institutions for Human Rights emphasized that “a coherent and integrated human rights approach to disability cannot be developed under the present treaty system” and an exclusive convention would give “status, authority and visibility” to disability in the human rights area which cannot be achieved through the process of reform of existing instruments and monitoring mechanisms. Adding a new treaty would also complement existing international standards for the rights of the disadvantaged. Favouring thematic treaty on disability rights, Gerard Quinn states, “It would make much more sense to encapsulate the relevant human rights standards in a single legal instrument. It would clarify state parties’ obligations and it would give disability NGOs a clear target---one that is dedicated to disability rights in a holistic sense. This, in turn, could potentially enable international law to accelerate positive developments within states”.⁵¹ Consequently the much awaited and historic convention marking the paradigm shift took place when The Convention on the Rights of Persons with Disabilities and its Optional Protocol was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. The Convention has come into force from 3rd May 2008 with 20 countries ratifying this. India too is a signatory excluding the Optional Protocol and thus committed to follow the convention. Jamaica was the first nation to ratify the Convention and Ecuador the 20th. It is the first broad human rights treaty of the 21st century and the first human rights convention to be open for signature by regional integration organizations. The Convention is projected as a human rights instrument with an explicit, social development facet. It espouses a broad classification of persons with disabilities and reaffirms that all persons with all types of disabilities should gain from all human rights and fundamental freedoms. It elucidates and qualifies how all kinds of rights relate to persons with disabilities and categorizes areas where adjustments have to be made for persons with

51. Supra note 11 at pp. 17,18

disabilities to proficiently implement their rights and areas where their rights have been dishonoured, and where protection of rights must be toughened.⁵²

The new Convention comprises of fifty articles. *Article 1* of the Convention says, “*The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.*” The Convention, in Article 1, further does not limit to only the seven disabilities (Blindness, Low vision, Leprosy-cured, Hearing impairment, Loco motor disability, Mental retardation and Mental illness) that have been mentioned in the Persons with Disabilities Act but has opened up a wider definition as - “People with disabilities who have long-term impairments, for example, physical, psycho-social, intellectual and who cannot get involved in society because of different reasons, such as attitudes, language, stairs, and laws, which prevent people with disabilities from being included in society.”⁵³ *Article 3* of the Convention has stipulated the underlying principles of this convention as:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;

52. Supra note 42

53. C. Mahesh, “A Paradigm Shift From ‘Charity’ to ‘Rights and Dignity’ - A write-up based on the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)”, viewed at <http://accessability.co.in/community/about721.html> accessed on 1.10.2008.

- (h) Respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities.

Some of the major provisions are:

1. Prohibition by State parties of all discrimination on the basis of disability, and take all appropriate steps to ensure that reasonable accommodation is provided.⁵⁴
2. State parties are to guarantee that persons with disabilities enjoy their inherent right to life on an equal basis with others. They would ensure the equal rights and advancement of women and girls with disabilities and also protect children with disabilities. In addition, they shall adopt appropriate measures to raise awareness throughout society, to foster respect for the rights and dignity of persons with disabilities and to combat stereotypes, prejudices and harmful practices relating to them. Similarly, on the fundamental issue of accessibility, the Convention requires State parties to identify and eliminate obstacles and barriers, and ensure that persons with disabilities can access their transportation, public facilities and services, information and communications.⁵⁵
3. Countries must also guarantee freedom from torture, cruel, inhuman or degrading treatment or punishment, and prohibit medical or scientific experiments without the consent of the person concerned and protect the physical and mental integrity of persons with disabilities.⁵⁶
4. State parties are also obliged to ensure the equal rights of all persons with disabilities to live independently in the community, with choices equal to others, and shall take effective measures to facilitate full enjoyment by

54. Article 5.

55. Articles 6-10

56. Articles 15 and 16

persons with disabilities of this right, and their full inclusion and participation in the community.⁵⁷

5. Children with disabilities would have equal rights, would not be separated from their parents against their will, except in their best interests, and would in no case be separated from their parents on the basis of a disability of either the child or the parents. The same article also talks about the elimination of discrimination relating to marriage, family and personal relations. Persons with disabilities should be able to choose their own living arrangements, and have rights to protection against involuntary institutionalisation.⁵⁸
6. *Article 24* enjoins State-Parties to ensure that there is an inclusive education system at all levels and life long learning directed towards full development of their personality, talents, creativity, mental and physical abilities to their fullest potential.
7. According to the Convention, persons with disabilities have the rights to the highest attainable standard of health without discrimination on the basis of disability. They would receive the same range, quality and standard of free or affordable health services as provided to other persons and not be subjected to discrimination in the provision of health.⁵⁹
8. State parties have been enjoined to take necessary steps to prohibit discrimination in matters regarding work and employment. This protraction against all forms of discrimination, apart from the ideal situation of attitudinal change in society, can also be achieved through the use of anti-discriminatory legislations.⁶⁰
9. States Parties have been asked to take steps to safeguard and promote that realization of the right to an adequate standard of living and social protection, including ensuring “access by persons with disabilities and

57. Article 19

58. Article 23

59. Article 25

60. Article 27

their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care”.⁶¹

10. States must set up national focal points governments in order to monitor implementation of the Convention's precepts. States must also set up independent monitoring mechanisms, which usually take the form of an independent national human rights institution.⁶²

It can thus be seen that the rights assured under the UNCRPD are wide-ranging and deal with all facets of the life of persons with disability. If executed in its true spirit, there will, undeniably, be extensive transformation in the lives of not just persons with disabilities but as well in the lives of other citizens of the country. Hence apart from creating awareness on the issue there is also a need to build up proper strategies to review existing laws, policies, programmes and monitoring mechanisms of Govt. Non-Government Organisations and other agencies. Further, this Convention by proposition is not restricted to only Govt. establishments. The Convention states that private businesses and organizations that are open to the public parties have to take enterprise to “eliminate barriers that people with disabilities face in buildings, the outdoors, transport, information, communication and services”. It is no longer enough to be content with providing a few “good willed” services such as a “wheelchair” or a “hearing aid” or “disability pension”. It is going to be whether the laws, policies, programmes and schemes are in line and reinforce the principles of the Convention that focus on Dignity, Ability to choose, Independence, Non-discrimination, Participation, Full inclusion, Respect for difference, Acceptance of disability as part of everyday life, Equality of opportunity, Accessibility, Equality of men and women and Respect for children. By signing and ratifying this Convention, it is now legally binding on India and

61. Article 28

62. Article 33

other countries of the UN to create and promote an atmosphere where persons with disabilities are competent to put into effect their civil, political, social and cultural rights fairly and without bias.⁶³

Thus the UN has recognized the status and problems being faced by the persons with disabilities around the world and has reminded the nations from time to time to give priority to their all round development by formulating the decadal and yearly plans. The World Programme Action has been prolonged with the support of the UN and it is aimed at achieving a society for all by the year 2010. Further the UN designated December 3 as the “International Day of the Disabled Persons”. But the greatest achievement has been by way of the *Convention on the Rights of Persons with Disabilities*. The Convention is dreams come true for the innumerable persons with disabilities, the NGOs working for them and the disability rights activists. But since it has just come into force it would be too early to comment on its efficacy or drawbacks. But the success of the Convention undoubtedly lies on the member states that have ratified it and assured to usher changes in their domestic laws accordingly.

D. DEVELOPMENTS AROUND THE GLOBE:

As per the UN Convention, a need subsists for more inclusive legislation to guarantee the rights of disabled persons in all aspects - political, civil, economic, social and cultural rights - on an equivalent basis with persons without disabilities. Legislation at country level is essential in encouraging the rights of persons with disabilities. While the significance and increasing position of international law in upholding the rights of persons with disabilities is recognised by the international community, domestic legislation remains one of

63. Supra note 53

the most effective means of facilitating social change and improving the status of disabled persons.⁶⁴ The United Nations is at present building up monitoring system to encourage and assist member states in their efforts to implement the recommended measures in conformity with the rules. The states though have the ultimate responsibility to take steps in consonance with the standard rules.⁶⁵ In the lines to follow we shall discuss the legal developments at the regional level and ascertain how far the norms set up by the UN have been implemented and also what solution has been provided to the unequal treatment of disabled people. It is not feasible to go into the detailed legal framework or policy of each of the countries securing the civil rights of the persons with disabilities throughout the world. However an attempt shall be made to assess the legal framework in each of the continents, namely Europe (The European Union including Hungary, Sweden, Spain and Ireland; United Kingdom and Germany), North America (U.S.A., Canada), South America (Chile and Costa Rica), Africa (South Africa and Zimbabwe), Australia (Australia and New Zealand) and Asia (China and India). A reference to some other anti discriminatory laws may also be made as and when relevant.

(a) Europe

(i) European Union

In most of the countries of the European Union the protection of human rights of the disabled people is a matter of social policy rather than a matter of social legislation. Most countries in Europe already have disabled-friendly laws and people with disabilities are entitled to help and assistance to mitigate their problem. The general goal is to overcome, as much as possible, the

64. For details on the UNCRPD visit <http://www.indlaw.com/ActionAid/?Guid=F7DCF339-E339-4F83-B9E5-0380E90A0623>, accessed on 12.9.2008 .

65. Supra note 34 at p. 183

disability's effects and to enable the disabled to participate in all areas of society, especially in the labour market and in community life. The most outstanding event has been the amendments to the Treaty of Rome 1957 on October 1997, which took effect from May 1, 1999 as a result of which the member states have been enabled to pass legislations for the protection of the persons with disability. The system of law of the European Union is inimitable, as the protected rights are made accessible to the individuals.⁶⁶ Of the several countries making up the Union, only four nations have civil anti discrimination legislations to their credit. The four nations are Ireland, Sweden Hungary and Spain. A brief description of the prevailing laws is as under.

In Belgium, there is no direct legislation on disability. However, the disability policy focuses on education, social integration, and entry into labour work, the improvement of living conditions and greater independence for people with disabilities.⁶⁷ In Denmark, the government accords high priority to the United Nations Standard Rules in the national handicap planning of activities.⁶⁸ In Austria, the Federal Ministry for Labour, Health and Social Affairs defends the welfare of disabled people and implements the constitutional pledge to the people with disabilities. In July 1997, Article 7 of Austria's Federal Constitution was extended to incorporate the prohibition of discrimination on ground of disability. Article 7 of the constitution also includes a national commitment to ensure that people who are disabled are taken care of in the same way as non-disabled people.⁶⁹ In France, the disability rights have been laid down in two basic texts, namely Act of 30 June 1975---- on guidance for people with disabilities and the Act of 10 July 1987--- on the promotion of the employment of disabled people. The theory underlying the French policy is main concern for assimilation of the

66. *Ibid.*

67. *Ibid* at p. 184.

68. *Ibid*

69. *Ibid*

disabled people into an ordinary environment.⁷⁰ The Greek Parliament has endorsed the World Programme Action by Act No. 2430 of 1996 and a Committee has been set up to organize a national action plan for the people with disabilities.⁷¹ Italy has issued a declaration of policy under the title “*Framework Law on the Care, Social Integration and Rights of the Disabled People*” (Law 104/92) encircling subjects relating to prevention and diagnosis, treatment and rehabilitation, right to educational, vocational and social integration of the people with disabilities.⁷² In Luxembourg, the Minister for Disabled people synchronizes disability policies in the field of education, employment and social integration of the people with disabilities. *Disabled Workers Act* of 12 November 1991 seeks integration of disabled people in the labour market.⁷³ In Netherlands, *The Vocational (Re) Integration of the Disabled People Act* came into effect on July 1, 1998 and aims vocational rehabilitation of people with a disability and also takes care of social integration of disabled people. Portugal has passed Law no. 35.96 of May 1996 for execution of policies concerning the rehabilitation and integration of people with disabilities. In Finland, the National Council on Disability published a national disability programme in 1996 on empowerment of disabled people in the fields of education, employment and social integration.⁷⁴

In Spain, the officially recognized disability policy is expressed in law and in guidelines adopted by the Government. The prominence - in descending scale - is on: individual support, rehabilitation, prevention, accessibility measures and anti-discrimination law. The rights of persons with disabilities are protected by a combination of special and general legislation. The judicial mechanism available to protect the rights of persons with disabilities is due process (legal remedy through courts). Administrative and other non-judicial

70. *Ibid*

71. *Ibid* at pp. 184, 185

72. *Ibid* at p. 185

73. *Ibid*

74. *Ibid*

bodies include: an Ombudsman, a Governmental body (administrative) and a special arbitration/conciliation body. The main Legislations include *Law on the Social Integration of the Disabled (LISMI)* enacted in 1982 and “*Law of Equal Opportunities, Non- Discrimination, and Universal Access for Persons of Disability*”, 2003. LISMI is typical as it deals with the prevention, diagnosis and assessment of disability, the establishment of a system of benefits in cash and kind, medical and vocational rehabilitation, community services, integration at work, etc. The only anti-discrimination provision in the Act states that any discriminatory disability-based provision found in labour regulations, collective agreements, individual contracts or unilateral decisions shall be null and void. Further, an action plan for disabled people was adopted in 1996 for social integration of people with disabilities. The latter when basically describing its sphere of application refers to telecommunications and information society, public spaces with outline planning permission, infrastructures and building, transport, property and services for the public use, and relations with public authorities, and as a supplementary source for employment.⁷⁵ Spain has ratified the UN Convention on Disability on 3rd December 2007. Hence it can be hoped that the country will surely make the required changes in its domestic legislation to match up with the Convention.

Ensuring that people with disabilities have power and influence over their everyday lives has long been the prime goal of Swedish disability policy. A national action plan on disability policy, “From Patient to Citizen,” adopted in 2000, has shifted the emphasis in Swedish policies targeting disabled people. Before, government action in this area largely centered on social issues and welfare matters. In pursuit of this goal, the focus has now shifted to democracy and human rights. Therefore, Swedish disability policy is now concentrating on

75. *Supra* note 21

- identifying and removing obstacles to full participation and full equality in society,
- preventing and fighting discrimination,
- promoting equality between disabled girls and boys, women and men.

Sweden has four laws prohibiting discrimination, one of the grounds cited being disability. The first, the *Prohibition of Discrimination in Working Life of People with Disability Act*, was adopted in 1999. This was followed in 2002 by the *Act on Equal Treatment of Students at Universities* and in 2003 by the *Prohibition of Discrimination Act*, which applies among other things to trading in goods and services. In 2006, a law was added prohibiting the discrimination of children with disabilities, etc, at preschool and school. Sweden does not have a law specifically establishing the rights of all people with disabilities. Instead, certain laws contain clauses that apply specifically to disabled people, including the *Planning and Building Act and the Social Services Act*. Also, the *Act concerning Support and Service for Persons with Certain Functional Impairments (LSS)* was introduced in 1994. This is a rights law supplementing other legislation. Its aim is to give people with extensive disabilities greater opportunities for leading an independent life and to assure them of equal living conditions and full participation in community life. Support may take the form of personal assistance in everyday life, counselling, housing with special services, or relief provision for the parents of children with disabilities.⁷⁶ A Disability Ombudsman has been appointed to appraise the measures adopted by the government to realize the United Nations Standard Rules. The Disability Ombudsman can attend to complaints of disabled people, but has no power to take action before the court. The policies for vocational rehabilitation, employment, accessibility and social integration of disabled people have also been adopted.⁷⁷

76. For details on Swedish disability Policy, visit http://www.sweden.se/templates/cs/FactSheet_____17674.aspx accessed on 2.10.2008.

77. Supra note 34 at p. 185.

The disability movement in *Ireland* began in the 1990s. In Ireland, the government has undertaken a number of enterprises since 1993 for upholding equal opportunities for people with disabilities together with the establishment of the *Commission on the Status of the People with Disabilities and Irish Council of People with Disabilities*. Its main focus was on people with disabilities as people and equal citizens in a changing Irish society. It was made up of representatives from the government, advocates, people with disabilities and their family members. The *Employment Equality Act* was enacted in 1998 to provide for equality in matters of employment to persons with disabilities.⁷⁸ In 2004, the *National Disability Strategy* was launched. It builds on existing policy and legislation, including the policy of mainstreaming public services for people with disabilities. Many important pieces of legislation have been developed along the way, including the *Equal Status Act of 2000* and the *Equality Act of 2004*, which amends the former as well as the *Employment Equality Act, 1998*. *Education of Persons with Special Educational Needs Act (EPSEN)* was also enacted in 2004. So far as UN Convention on Rights for People with Disabilities is concerned the Irish officials played a key role in drafting the Convention but the Government has yet to say when it will ratify it. But the disability rights activists and the organizations working have raised a very strong voice favouring the quick ratification of the Convention.⁷⁹

Hungary is one of the leading pioneers that have made substantial efforts in order to ensure equal opportunities and to eliminate the discrimination against persons with disabilities on the one hand, and to ensure equal treatment, including positive actions, on the other. As regards the legal framework, Hungary in adopted the *Act on the Rights of People with Disabilities* in 1998. The Act was adopted in order to ease the disadvantages of persons living with disability, to lay

78. *Ibid.*

79. Visit <http://www.dredf.org> for detailed laws on disability

the foundations for their equality of opportunity and to shape the attitude of the society. The aim of this Act is to:

- define the rights of persons living with disability
- define the instruments for the exercise of these rights
- regulate the complex rehabilitation to be provided for persons living with disability,
- ensure equality of opportunity, independent living and active participation in the life of society for persons living with disability.⁸⁰

In this Act person living with disability means anyone who is to a significant extent or entirely not in possession of sensory – particularly sight, hearing – locomotor or intellectual functions, or who is substantially restricted in communication and is thereby placed at a permanent disadvantage regarding active participation in the life of society. The Act touches upon a number of issues including rights entitled by persons living with disability; target areas for the equalisation of opportunities which touch upon Health care, Education, training, Employment, Place of residence and Culture and sport. Rehabilitation and disability support also find place in the Act. Chapter VI provides for National Disability Affairs Council to assist the Government in carrying out its tasks related to disability affairs. It is interesting to note that the Hungarian Act is one whose aims and basic principles fully correspond with the United Nations Convention. Rights ensured to people with disabilities are also quite similar to the ones foreseen by the Convention. The implementation of the Act has been facilitated by subsequent, multi-annual National Programmes on Disability Affairs. The most recent one being adopted in 2006. Hungary has not only ratified the UN Convention on Disability Rights but also the Optional Protocol. Thus at this juncture it is beyond doubt that Hungary will lag behind in any way in the protection of the human rights of the especially able.

80. Chapter I, *Act on the Rights of People with Disabilities, 1998*.

As a result it can be seen that majority of the European Union nations put emphasis on equality on matters of employment but very few countries have an all-pervasive disability specific legislation. The Acts concentrate on one area while segregating the rest. In fact the Hungarian Law is the most explicit and wide ranging both in terms of content as well as application. However a general feature of shifting towards the human rights approach to disability rights is worth noticing. With the Disability Convention in place and the European Commission having accepted to be a party to it as well as individual nations too consenting to ratify the Convention, it is anticipated that the nations shall take all steps necessary to bring changes to their existing legal structure and accommodate the rights of the persons with disabilities. It is also worth mentioning that the European nations have chose to keep themselves away from ratifying the Optional protocol to the Convention.⁸¹

(ii) United Kingdom

Disability discrimination, or the second-class treatment of individuals living with physical, mental and/or emotional disabilities, is both unsuitable and in various circumstances unlawful in the United Kingdom. A variety of legislation makes discrimination against individuals with disabilities prohibited in the United Kingdom.⁸² The *Disabled Persons (Employment) Act, 1944* was the earliest legislation, which dealt with the protection of the disabled workers through which a method of statutory job quota prevailed upon employers of twenty or more employees. However, today the most comprehensive legislation in the U.K. dealing with the rights of the disabled is the *Disability Discrimination Act, 1995* (amended in 2001 and 2005). The Act defines disabled person as a “person who has (or has had) a disability” and a person has a disability “if he has

81. Supra note 42

82. Supra 34 at p. 185

a physical or mental impairment which has substantial and long term adverse effect on his ability to carry out day to day activities".⁸³ Discrimination means "for a reason which relates to the disabled person's disability" the employer "treats or would treat others to whom that reason does not or would not apply". However, the employer can take the plea of justification where it can be shown that the less favourable treatment of disabled person is a reason that "is both material to the circumstances of a particular case and substantial".⁸⁴ The Act prohibits disability related discrimination in terms of employment and contract work or by trade unions, employer's associations and trade or professional organizations.⁸⁵ The Act makes it illegal for employers to discriminate against disabled persons in recruitment and selection, in terms of employment and in employment opportunities in general.⁸⁶ The employment provisions of the Act are enforceable by litigation in the industrial tribunal system. The tribunal can make award of unlimited compensation to a successful complainant. The tribunal can also make recommendations to prevent future discrimination.⁸⁷ The quota system has been repealed⁸⁸ and the Act is applicable to all employers with 20 or more employees. This enactment enjoins employers to ensure a whole range of non-discriminatory rights, such as adjustment as to premises, assignment of duties, reasonable allowance for rehabilitation, treatment, etc.⁸⁹ The failure to make such adjustments results in discrimination, or "less favourable treatment of a disabled employee, for which the employer is statutorily denied the right to claim justification, in an action brought about by the employee"⁹⁰. The House of Lords,

83. *Disability Discrimination Act, 1995*, Ss. 1-2, Schedules 1-2, cited in *Supra* note 34 at pp. 185-187.

84. *Disability Discrimination Act, 1995*, S. 5

85. *Ibid*, Ss. 4-12 and 13-15.

86. *Ibid*. Ss. 17, 18 and 4 (1), (2)

87. *Ibid* S.8

88. *Ibid* S. 32

89. *Ibid* S. 6

90. *Collins v. Royal National Theatre Board Ltd*, 2004 (2) All ER 851; *Meike v. Nottinghamshire County Council* 2004 (4) All ER 97

in its decision reported as *Relaxation Group v. Rhys Harper*⁹¹ observed that the Act, like other enactments, which ensured gender equality, was meant to foster non-discriminatory practices:

“Discrimination can take a variety of forms but all involve treating the person less favourably than others. Ensuring that all employees in similar positions have the same contractual rights is only a start. Employment is just as much about opportunities as about rights.”
(Emphasis supplied)

A service provider is required to take reasonable steps to change a practice, policy or procedure which makes it impossible or unreasonably difficult for disabled people to make use of its services and provide an auxiliary aid or service if it would enable (or make it easier for) disabled people to make use of its services. In addition, where a physical feature makes it impossible or unreasonably difficult for disabled people to make use of services, a service provider has to take reasonable steps to remove the feature; or alter it so that it no longer has that effect; or provide a reasonable means of avoiding it and provide a reasonable alternative method of making the service available. The Act also prohibits discrimination against disabled persons in respect of provision of goods, services and facilities and in relation to disposal and management of premises.⁹² Educational institutions have been placed under a duty to encourage access for and the integration of the disabled pupils and students at all levels of education.⁹³ The Act demands new accessibility standards for disabled users of taxis, public service vehicles and railways.⁹⁴

Although the Act meets many objectives of the United Nations Standard Rules it makes no direct reference to the rules. But perhaps the most unfortunate part of the Act lies on its reflection of the medical model, which has

91. 2003 (4) All ER 1113

92. *Supra* note 84, Ss. 19-24

93. *Ibid* Ss. 29-31

94. *Ibid* Ss. 33-49

become obsolete, instead of the social model recognized not only by the United Nations Standard Rules but also by disability rights activists. Particularly after the coming into being of the Disability Convention the English Act needs to be thoroughly reviewed.

In the UK, an amendment by the *Special Educational Needs and Disability Act 2001* was introduced to amend Part 4 of the *Education Act 1996*. The *Special Educational Needs and Disability Act 2001* amends and extends the DDA, and the *Mental Health Act of 1983* protects the rights of individuals with learning disabilities and/or mental health concerns. The Act has prohibited discrimination in relation to school admissions, exclusions, and the education or associated services provided to pupils, further and higher education admissions, exclusions, and student services. Divided into three parts, the Act has 43 sections and 9 schedules. The Act has been enacted with a view to make “provisions against discrimination, on grounds of disability, in schools and other educational establishments; and for connected purposes”. The Act broadly deals with special educational needs and disability discrimination in education with emphasis on mainstream education. It lays down that the responsible bodies for schools and further and higher education institutions must make reasonable adjustments to ensure that disabled pupils or students (or prospective pupils or students) are not placed at a substantial disadvantage in comparison with their non-disabled peers. Responsible bodies for further and higher education are also required to provide auxiliary aids or services and have a duty to make adjustments to physical features. It also provides procedures for enforcement and provision of remedies for discrimination.⁹⁵ This is in fact one of the exemplary laws dealing specifically with the educational rights of the disabled throughout the world, which in every circumstance must be encouraged and upheld to farther the educational rights of the disabled.

95. *Special Educational Needs and Disability Act, 2001*

The United Kingdom was one of the first countries in the world to sign the United Nations Convention on the Rights of Persons with Disabilities, in March of 2007, an international treaty that protects the international rights of individuals with disabilities. However in the UK 'disabled people' is the term used rather than people with disabilities. Hence they prefer to call it the UN Convention on Disability Rights. The United Kingdom also worked expansively to draft this document, and the Convention itself is now recognised as the one international document to include universal principles for the rights of individuals with disabilities. Government departments and the devolved administrations are currently checking to see whether legislation, policies, practices and procedures are consistent with the convention's obligations. The UK Government does not usually sign or ratify optional protocols to UN human rights treaties because it does not consider them to be sufficiently compelling need to accept individual petition to the UN. Also, the practical value to the individual citizen is unclear. The position on the optional protocol, which was not signed by the UK, will be kept under review as part of the work being done to enable the UK to ratify the Convention.⁹⁶

(iii) Germany

During the Second World War, millions of soldiers and civilians were disabled. Their disability rendered them unfit for employment. As a result the German Government took numerous initiatives to pass disability laws. Preceding to the union of the two Germanys as well as the period following, several wide-ranging legislations were passed to protect the disabled persons. The German Constitution, called Basic Law (*Grundgesetz*) in Article 3 clause (3)

96. For details on UN Convention and UK, visit <http://www.officefordisability.gov.uk/working/unfaqsdetails.asp#q5>, accessed on 11.10.2008.

provides that “no person shall be disadvantaged on account of his or her disability.”⁹⁷ The German Parliament or “Bundestag” initiated a major alteration to its comprehensive disability law, *Schwerbehindertengesetz* or *Schwbg*, in 1986. *Schwbg* has been principally enacted to eliminate employment discrimination and prejudices against the disabled and to encourage their employment prospects. The law defines a disabled person as an individual who suffers from a functional disability or *Behinderung*, which affects that person’s capacity for social integration, as a consequence of the effects of an irregular physical, mental or psychological condition. According to *Schwbg* any public or private business, which has a minimum of 16 positions for employees, is required to fill 6 percent of those places with disabled persons. The employers are not only bound by 6 percent quota but also by the course of action prescribed by the statute for terminating a disabled worker. Failure to comply with the quota obligations entails a civil penalty of DM 200 per month, since 1990, for every job not filled by a disabled person and in case of serious breach, criminal fine up to DM 5000 might be imposed. The proceeds of this penalty are spent on disabled employment policies. Further, to qualify under the quota law as a disabled person (*Schwerbehinderter*), disability is measured at 50 percent or more whatever the actual effect upon life activities; and the disability must have duration of at least six months and limits functional freedom of ability by at least 20 percent. A disabled person who is unable to find or retain employment, without assistance or whose disability is measured at 30 percent or more is also treated as disabled (*Gleichgestellte*). Disputes concerning a person’s disability are heard by a social court rather than a labour court. The law also provides adequate safeguards against wrongful dismissal.⁹⁸

Though the law is all encompassing, but the major defect is in the methodology of determining disability. The determination of disability has been

97. The Amendment to Basic Law, introduced in 1994, cited in Supra note 65 at p.187.

98. *Ibid* at p.188

entrusted to administrative personnel instead of medicos. Secondly, the law involves a lot of statistics. It treats disabled people as a class to be statistically assisted and they do not receive any individualized treatment or relief. Thirdly, non-compliance of law simply punishes the offender with monetary punishment, and affluent often escape the quota requirement by paying a paltry sum of DM 200 each month for violation of the law.⁹⁹

(b) North America:

(i) United States of America

The equal opportunities model has grown in status and authority at the international level and in the United Nations system. The United Nations Standard rules of 1993 undoubtedly provided the key moral imperative for change on a worldwide basis, but there equally can be no doubt that the enactment of the *American with Disabilities Act, 1990* showed that change was both possible and practicable.¹⁰⁰ The history of U.S. disability discrimination law shows that states often begin initiating anti discrimination provisions for disabled persons in social welfare legislations. This is the legal area where disability law tends to be first developed. The U.S.A. first prohibited certain forms of discrimination against disabled people in the *Rehabilitation Act of 1973*. The 1988 amendment to the Fair Housing Act, which prohibits discrimination in housing matters, was first step towards including disability as ground of discrimination in general U.S. civil rights legislation. The final step was taken with the 1990 adoption of the Americans with Disabilities Act.¹⁰¹ IDEA or the *Individuals with Disabilities Education Improvement Act* was enacted in 2004, which specifically dealt with special education to eligible children with disabilities.

99. *Ibid* at p.189

100. *Supra* note 21

101. *Ibid*.

The Americans with Disabilities Act, 1990 (ADA) is a civil rights law that deals with prohibition of discrimination solely on the basis of disability in employment, public services and accommodations. Its primary purpose is “to provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities”.¹⁰² “Disability” implies with respect to any individual who (1) has a physical or mental impairment that substantially limits one or more life activities; or (2) has a record of such impairment; or (3) is regarded as having such an impairment.¹⁰³ If an individual is unable to meet the definitional requirement of disability, that individual receives no protection under the Act.¹⁰⁴ In addition the disabled person must be qualified for the programme, service or job. The ADA prohibits discrimination on the ground of disability in employment, housing, public accommodation, education, transport, communications, recreation, institutionalization, health services, voting etc. It requires all new public transport to be accessible to the disabled people and existing public rail system must be made accessible during the course of time. Architectural barriers in existing buildings must be designed and built to be accessible to individuals with disabilities. Under title I, no employer may discriminate against a person with disability as a result of such disability.¹⁰⁵ Other individuals who are protected in certain circumstances include 1) those, such as parents, who have an association with an individual known to have a disability, and 2) those who are forced or subjected to reprisal for assisting people with disabilities in asserting their rights under the ADA. The Act is binding on all employers with 15 employees. These employers are required to provide reasonable accommodation for qualified individuals with a disability unless they

102. *The Americans with Disabilities Act, 1990*, 42 U.S.C. S. 12101(b) (i)

103. *Ibid.*, 42 U.S.C. S. 12101 (a) (8)

104. *Supra* note 94, 42 U.S.C. S. 12112 (a)

105. *Ibid.*, S. 12112 (b) (5) (A).

can show that it would impose an undue hardship on that business.¹⁰⁶ Thus, while the employment provisions of the ADA apply to employers of fifteen employees or more, its public accommodations provisions apply to all sizes of business, regardless of number of employees. State and local governments are covered regardless of size. The Act incorporates similar powers procedures and remedies employed in title VII of the *Civil Rights Act, 1964*. Any person aggrieved can file a charge with the Equal Employment Opportunity Commission within 180 days of the alleged discriminatory act. EEOC has no enforcement powers may permit the aggrieved person to sue. In such a case the individual can then file a suit within 90 days from the date of issuance of letter from the Commission.¹⁰⁷ The act provides remedies in the form of equitable relief requiring hire, reinstatement, back pay, seniority and, cessation of unlawful employment practice and such affirmative action as may be appropriate.¹⁰⁸ Any person who proves intentional discrimination is entitled to compensatory and punitive damages ranging between U.S. \$ 50,000 to 3, 00,000 depending upon the number of employees.

Prior to 2000, several claimants attempted to force the U.S. Supreme Court to rule on whether the ADA was constitutional. Before 1998, virtually all of the cases that were not settled out of court ended at the Circuit Court Level, with the U.S. Supreme Court “decided not to decide” ADA cases. Between 1998 and 2001, however, the Supreme Court chose to grant certiorari in an unprecedented number of cases, which some observers believe have only further complicated and confused American Disability Policy. There were only eight major cases heard by the Court in the eleven years after the ADA was enacted, and none before 1998.¹⁰⁹ In *Pennsylvania Department of Corrections v.*

106. *Ibid* S. 2000 e-5 (f) (l) (1988), cited in Supra note 64 at p.191.

107. *Ibid* S. 2000 e-5 (g) (1991)

108. 524 U.S. 206 (1998)

109. Jacqueline Vaughn Switzer, “*Disabled Rights—American Disability policy and the Fight for Equality*”, (Georgetown University Press, Washington D.C., 2003), p. 135

*Yeskey*¹¹⁰ state officials challenged whether Title II of the ADA is applicable to state prison systems and the Supreme Court agreed that prisons were not exempt. Most filed cases reached the U.S. Circuit Courts of Appeal dealt with whether Congress had the authority to waive individual state's sovereign immunity when the law was enacted. One of these cases, *Alsbrook v. City of Maumelle Arkansas*¹¹¹ was granted certiorari and was scheduled for oral arguments in April 2000 but was dismissed in March that year because the parties reached a settlement. At the same time, the Supreme Court granted certiorari in *Garrett v. University of Alabama at Birmingham Board of Trustees*.¹¹²

One of the initial Title III cases in the Supreme Court that helped define the rights of a person with a disability was *Bragdon v. Abbott*¹¹³, in which a dentist refused, outside a hospital setting, to fill the cavity of a person who was HIV- positive. The dentist argued that he would be at undue risk of contracting a life threatening illness if the patient were not treated in a hospital setting and that he had the right not to treat her at all because she was not defined as a person with a disability. The patient however argued that she was entitled to the ADA's protection even though she was asymptomatic because HIV interfered with the major life activity of reproduction. In this test case of Title III protections, the courts concluded that Abbott was an individual with a disability and therefore was entitled to injunctive relief.¹¹⁴ Regarding accessibility, in *People of New York ex rel. Spitzer v. County of Delaware*¹¹⁵, the court ruled that a country that had failed to provide accessible polling places for citizens with disabilities was required to do so.

110. 184 F. 3d 999 (8th Cir. 1999).

111. 193 F.3d 1214 (11th Cir. 1999).

112. 524 U.S. 624 (1998)

113. Supra note 107 at p. 139.

114. Supra note 109.

115. 115. 82 F. Supp. 2d 12 (N.D.N.Y. 2000)

Although held as model legislation, the Act does not directly provide for free, appropriate, public education. There is also no funding to implement services, nor does it specify evaluation and placement procedure. It also does not specify procedural safeguards related to special education. Moreover, considering the employment scenario, if a business does not have requisite number of employees, it would not come under the safe arms of the ADA. The Act also excludes persons with psychosis or personality disorders from its ambit. The Act deals with individuals and does not treat the disabled as a class.

The Individuals with Disabilities Education Improvement Act 2004 have met the flaw of the ADA in not including education of the disabled. The Act aims at providing federal financial assistance to State and local education agencies to guarantee special education and related services to eligible children with disabilities. The Act protects children between 3 to 21 years who are determined by a multidisciplinary team to be eligible within one or more of 13 specific disability categories and who need special education and related service. Categories include autism, deafness, deaf-blindness, hearing impairments, mental retardation, multiple disabilities, orthopedic impairments, other health impairments, serious emotional disturbance, specific learning disabilities, speech or language impairments, traumatic brain injury, and visual impairments.¹¹⁶

It is quite astounding that America which has propagated itself to be a visionary on all global matters has chosen to keep itself away from the United Nations Convention on the Protection of Rights of the Persons with Disabilities. The UN Convention on the Rights of Persons with Disabilities provides the opportunity for tides of change across the globe. U.S. officials have indicated that domestic laws, especially the ADA, are stronger than those of the Convention. Despite all the advancements under the ADA, there is still so much inequality left to combat in America itself. The disability rights activists opine

¹¹⁶ Supra note 21

that the U.S. must sign and ratify the treaty and take a lead role in translating broad commitments into national action and to live up to their status as a world leader in the global fight for disability rights.¹¹⁷

Canada

Taking cue from the experience of U.S.A. that every individual is equal before law and has a right to the equal protection and equal benefit of law without discrimination and in particular without discrimination based on race, nationality or ethnicity, region, colour, religion, sex, age or mental or physical disability. Section 15 of the Canadian Charter of Rights and Freedoms incorporated these principles and came into effect in 1985.¹¹⁸ Disability is one of the grounds of discrimination in Section 15's equality clause. The Canadian Constitution also aims to secure a right to full inclusion and participation of the people with disabilities, in a barrier free society and prohibits discrimination due to mental or physical deficits. The Canadian Supreme Court, in *Eaton v. Brant County Board of Education*¹¹⁹ has offered important protection to disabled children. The Canadian *Human Rights Act, 1985* also lays down various grounds of discrimination and prohibits certain discriminatory practices.¹²⁰ Section 3(1) also prescribes disability as one of the grounds of discrimination. Disability has been referred to as "any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or drug."¹²¹ The Act attends direct as well as indirect discrimination encompassing every aspect of life including employment and also prescribes what employment policies and practices would amount to be discriminatory.¹²²

117. Supra note 79.

118. Justice Jitendra N. Bhatt, *Handicapism—Disabling Images or Images Disabling?* *Supreme Court Cases (Journal)*, vol.8, (2003), pp. 1-13 at p. 11.

119. (1997) D.L.R. 385 (S.C.C.), cited in Supra note 34 at p. 192.

120. *Human Rights Act, 1985*, S. 2.

121. *Ibid* S. 25

122. *Ibid* Ss. 7, 10, 12 & 44.

Hence, the Act covers discrimination in the provision of goods, services, facilities, or accommodations that are available to the general public, including transportation. It also prohibits discrimination in the provision of commercial premises or housing. The Act not only protects persons who presently have a disability but also persons who were disabled in the past. In addition, discrimination committed by a business, non-business organization, government department, public agency, institution (e.g. educational institution) or individual is prohibited.¹²³ Canada has signed the UN Convention on 30th March 2007 and has pledged to take all necessary steps to put the provisions of the Convention into effect in their domestic laws as effectively as possible.

(c) South America

(i) Costa Rica

Persons with disabilities living in Costa Rica have a series of legally binding instruments at the international, regional, and national levels, which recognize and serve as a basis for the protection of their human rights. Costa Rica has traditionally ratified international human rights instruments. In addition to the fundamental UN Conventions on human rights, Costa Rica has ratified the *International Labor Organization's Discrimination (Employment and Occupation) Convention, 1958* and the *Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983*. Despite the country's relative good respect for human rights and our democratic system, disabled people still do not enjoy equal rights and participation in all aspects of society. Among the factors that prevent disabled people from full citizenship are negative attitudes

123. Supra note 21

against disability. These negative images lead to the discrimination of all disabled people, in particular, in the labour market.¹²⁴

Some early legislation specifically related to disability rights protection includes: the *National Institute for the Protection of the Blind Act, Law 2171*, dated 21 October 1957; the *National Institute of Rehabilitation Act, Law 3695*, dated 14 June 1966; and *Law 5347* that created the CNREE, dated 3 September 1973. The most important legislation is the *Equal Opportunities Law for People with Disabilities, 1996*. The law is based on international documents such as the *Standard Rules on the Equalization of Opportunities of Disabled People, 1993*, the *Inter American Convention of Human Rights, 2001*, the *United Nations Convention on the Rights of the Child, 1989*. Its philosophy consists of the principles of non-discrimination and equalization of opportunities, defined as the process of adapting the environment, services, information, activities as well as attitudes to the needs of all people. In its Article 4, the law establishes as the obligations of the State: "To include in all policies, programs and services of state authorities the principles of equalization of opportunities and access, and to eliminate attitudes and actions that promote discrimination or prevent the access to programs and services to disabled people. This implies that all government institutions and regulations have to undergo revision and change, if deemed necessary."¹²⁵

The *Equal Opportunities for Persons with Disabilities Act (Law 7600)*, which came into force on 29 May 1996 identifies a disability as: "Any physical, mental or sensory impairment that substantially limits one or more essential activities of an individual." The law covers the areas of health services, education, access to public buildings and spaces, housing, the media and

124. For details on Costa Rica -2004 IDRM (International Disability Rights Monitor) Country Report, Publications - - IDRM, at <http://www.ideanet.org/content.cfm?id=5358> accessed on 10.10.2008

125. *Ibid*

transportation, employment, commerce and the role of organizations of disabled people. The new law entails changes in 13 existing laws in the area of health, education, trade, family, and others that contained discriminatory aspects.¹²⁶

Though the Act has ushered in a lot of positive changes in the lives of the disabled but there does not yet exist a control and monitoring system for the effective implementation of the law. Hence areas like inclusive education, employment and accessibility have not been able to accomplish the desired outcomes. Though Costa Rica has been one of the signatories to the UN Disability Convention yet it has still not ratified the Convention itself or the Optional Protocol. It is probable that through the ratification the negative areas can be successfully dealt with.

Guatemala

The Political Constitution of Guatemala uses the term “*minusválidos*”, when directly quoting that term may be translated as “handicapped.” Guatemala has made very little effort to reliably identify people with disabilities. Although disability rights are guaranteed by a number of international treaties and Conventions including the *United Nations Standard Rules on the Equalization of Opportunities for People with Disabilities, 1993* and the *Convention on the Rights of the Child, 1989*. Guatemala ratified the *Vocational Rehabilitation and Employment (Disabled Persons) Convention (Convention 159) of the International Labor Organization (ILO)* on 5 April 1994. On 8 August 2002, Guatemala ratified the *Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities*, and it deposited the instrument on 28 January 2003. Guatemala has also ratified the *Protocol of San Salvador*, which focuses on economic, social, and cultural rights

¹²⁶. *Ibid*

and has a specific chapter on disability rights. Even if the government of Guatemala supports and signs all international instruments protecting human rights, it has not yet moved towards effective enforcement.¹²⁷

Guatemala also has a number of national legal instruments to protect the rights of people with disabilities. *Section 53* of the *Political Constitution of the Republic* provides that “the state guarantees the protection of the handicapped and of individuals with physical, psychiatric, or sensory limitations.” It also declares that it is in the national interest to provide health and social care to people with disabilities as is the promotion of policies and services that enable rehabilitation and social integration. The most comprehensive legislation on the area is *Legislative Decree 135-96*, also known as the *Protection of Persons with Disabilities Act, 1996*. Other national legislation includes the *Social Insurance Act* and the *Comprehensive Protection of Children and Youth Act* which includes a specific chapter on children and youth with disabilities. The latter serves as a basis for Guatemala's public policy on the protection of children and youth. *Section 3* of *Protection of Persons with Disabilities Act, 1996* defines a disability as “any congenital or acquired physical, mental or sensory impairment substantially limiting the execution of one or more of the activities considered normal for an individual.” The Act expands on the guarantees of the Constitution and provides the disability community with guarantees for exercising their economic, social, and cultural rights. The *Protection of Persons with Disabilities Act* covers areas such as health, education, employment, accessibility to the physical environment and transportation, access to information and communication, culture, and sports. The United Nations Standard Rules on the

127. For details on Guatemala -2004 IDRM (International Disability Rights Monitor) Country Report, Publications - - IDRM, visit <http://www.ideanet.org/content.cfm?id=5B5D73>, accessed on 12.10.2008.

Equalization of Opportunities for Persons with Disabilities served as a model in the drafting of the decree.¹²⁸

However it is unfortunate that the Act does not contain any penalties for non-compliance. There have been several initiatives to amend it in order to bridge this legal gap, but none have been successful so far. Furthermore, the Act does not yet have regulations, which are essential to enforcing the law. Although the law came into force ten years back, regulation drafting and adoption are still in process. Overall, few people are aware of the contents of this law, and there is little to no compliance. Rather than adhering to a rights-based approach, the government's institutional stand toward the disability community has been very traditional, characterized by welfare assistance programs and a charitable approach. The various programs undertaken by ministries and presidential secretariats have been designed following this model. There are still serious violations of the human rights of people with disabilities, mainly related to marginalization, exclusion, and discrimination. Human rights protection and advocacy institutions that do not focus on disability rights provide inadequate support to this sector of the population. The creation of offices specifically devoted to protecting disability rights illustrates the challenges facing general human rights organizations.

The national legislation contains barriers that limit or hinder the opportunities of people with disabilities to participate in different activities on an equal footing with the rest of the society. One major barrier is found in *Section 13* of the *Civil Code*, which provides that any individual who is congenitally blind or deaf or acquired his or her disability during childhood can be declared legally incapable, which means they are deprived of exercising their civil and legal rights. Many people with psychiatric disabilities and individuals with severe

128. *Ibid*

mental/intellectual disabilities are placed in institutions after having been abandoned and institutionalized on the basis of a court decision. They are declared legally incapable and are often subjected to medical treatment, and in some cases to psychiatric therapy, having no right to refuse treatment. Additionally, some of these institutions—particularly mental health institutions—do not offer adequate physical and sanitary conditions nor do they have enough qualified staff to provide proper and decent care. , there are serious limitations in the practical ability of people with disabilities to exercise their civil rights. *Legislative Decree 135-96* mandates access for people with disabilities to information and communication. Nevertheless, there is neither a national information system nor a specific communication network available to people with disabilities. Alternative information formats, such as Braille materials, tape-recorded texts, electronic formats, sign language interpretation, and captioning on television, among others, are virtually non-existent. Education for people with disabilities is predominantly provided in a private segregated educational system. Because there are no penalties for non-compliance the actual employment situation for persons with disabilities is precarious. Moreover, there are no effective job opportunity programs or vocational trainings for people with disabilities. There is a shortage of programs that provide housing for people with disabilities. Most people live in isolation, with their families or with their caregivers.¹²⁹

Though Guatemala was one of the signatories to the UN Disability Convention, it has neither ratified the Convention nor the Optional Protocol. The country must take immediate efforts to ratify the same as it is one of the potent ways to address the defects of the existing legislative machinery and a hope for the disabled people.

129. *Ibid*

(d) Australia:

(i) Australia

The impact of international human rights developments on disability and human rights in Australia began as in many other countries, with the 1981 International Year for people with disabilities. In the early 1980s those States which already had anti-discrimination legislation, covering grounds such as race and sex discrimination, added coverage of disability. Other later State and Territory discrimination laws followed suit. 1981 also saw the passage of the federal *Human Rights Commission Act*. The new Commission's jurisdiction was defined by reference to a number of international instruments - including the *Declaration on the Rights of Disabled Persons, 1975* and the *Declaration on the Rights of Mentally Retarded Persons 1971*. This Act, and the *Human Rights and Equal Opportunity Commission Act* which followed in 1986, incorporated the rights listed in these Declarations into federal law - but only very indirectly and incompletely. These laws only applied to actions of the federal government, not to matters within State government administration or the private sector (except in the employment area). Also, they did not create any enforceable rights or duties - only a power for the Commission to investigate complaints, seek to resolve them by conciliation, and report to Parliament on matters that could not be resolved. Some of the content of international declarations on disability was given more definite legal form in the *Disability Services Acts*, which were passed later in the 1980s. These set standards for how specific services for people with disabilities should operate - including provisions for dealing with complaints of abuse and for participation in how services operate. However, these laws did not create any

enforceable right for people who require support, assistance or other services to enable them to receive it.¹³⁰

The principal legislation relating to discrimination on the ground of disability, in Australia is known as the *Disability Discrimination Act, 1992*. The objects of the Act include, to eliminate, as far as possible, discrimination amongst persons on the grounds of disability in the areas of work, accommodation, education, access to premises, clubs and sport and the provision of goods, facilities, services and land. It also seeks to ensure equality of the persons with disability and recognize that the persons with disabilities have the same fundamental rights as the rest of the people.¹³¹ The Act has been divided into seven parts and the parts into divisions. Part 1 deals with the preliminary matters.¹³² Part 2 concerns with the various measures for disability discrimination. It deals with Discrimination in work,¹³³ discrimination in other areas,¹³⁴ discrimination involving harassment,¹³⁵ offences¹³⁶ and exemptions.¹³⁷

In *Hurst v State of Queensland*¹³⁸ question arose regarding “requirement or condition” that hearing impaired child be taught in English rather than Auslan, a native Australian sign language and whether ability to “cope” without Auslan assistance meant that child was “able to comply” with “requirement or condition”, pursuant to s 6(c) of the *Disability Discrimination Act 1992*. Issue arose as to whether child would suffer “serious disadvantage” without Auslan assistance and whether suffering “serious disadvantage” meant child could

130. Dr Sev Ozdowski, “Disability discrimination legislation in Australia from an international human rights perspective: History, achievements and prospects”, viewed at www.hreoc.gov.au/disability_rights/speeches/2002/history02.htm - 42 -, accessed on 9.8.2008.

131. The Disability Discrimination Act, 1992, Objects

132. *Ibid*, Ss. 1-14

133. *Ibid*, Ss. 15-21

134. *Ibid*, Ss. 22-34

135. *Ibid*, Ss. 35-40

136. *Ibid*, Ss. 41-44

137. *Ibid*, Ss. 45-58

138. [2006] FCAFC 100

not comply with “requirement or condition”. The judge held that an ability to “cope” without Auslan assistance meant that child was “able to comply” with “requirement or condition”; and the evidence showed that child would suffer serious disadvantage without Auslan assistance, and therefore child “not able to comply” with “requirement or condition”, pursuant to s 6(c) of the *Disability Discrimination Act 1992*. Hence the child be imparted education not in English, but Auslan.

Part 3 revolves around the Action Plans.¹³⁹ Part 4 lays down the methods of inquiries and civil proceedings.¹⁴⁰ Part 5 deals with other offences.¹⁴¹ Part 6 lays down about the appointment, qualifications, and remuneration etc. of the Disability Discrimination Commissioner.¹⁴² The miscellaneous provisions are laid in Part 7.¹⁴³

The Act defines disability to include past, present and even imputed disability, and even disability, which may arise in future. HIV individuals are also included. Thus the Act prohibits both direct and indirect discrimination on the ground of disability. But the record of achievements from 1993 on can be summed up as encouraging, but uneven and incomplete. In addition to being a barrier to employment, physical access continues to be a constant and pervasive barrier for people with disabilities in many aspects of their life. To make a significant impact on access and opportunity, the numbers of buildings made accessible need to be not in the dozens or even hundreds each year, but in the hundreds of thousands. There are some question marks on the efficacy of the provisions of the Act and their applicability by the disabled in telecommunications, banking services, education as well as transport. Further

139. *Supra* note 131, Ss. 59-65

140. *Ibid.*, Ss. 66-106F

141. *Ibid.*, Ss. 107-112

142. *Ibid.*, Ss. 113-120

143. *Ibid.*, Ss. 121-132

setting of standards is only provided for in some of the areas covered by the legislation. Unfortunately, very less has been achieved for some sections of the disability community so far than for others using the Disability Discrimination Act. In particular, people with intellectual or psychiatric disabilities have not had the same clear benefits as people with physical or sensory disabilities.¹⁴⁴ Finally, Australia participated as one of the original signatories in March 2007 but they have not yet ratified the UN Disability Convention. Ratification of the treaty by Australia will confirm the Governments commitment to the realisation of full human rights for people with a disability.

(ii) New Zealand

The Human Rights Act, 1993, seeks to empower people with disabilities by providing legal defence against discrimination on the ground of disability in New Zealand. The Act gives a very comprehensive definition of disability to include physical disability or impairment, physical illness, psychiatric illness, intellectual or psychological disability or impairment, any loss or abnormality of psychological, physiological or anatomical structure or function, reliance on guide dog, wheelchair or other remedial means etc.¹⁴⁵ The provisions pertaining to employment prohibit discrimination against disabled people in all aspects of employment process taking into account hiring, training, compensation and benefits. The Act also requires an employer reasonably to accommodate a qualified individual with a disability to perform a job.¹⁴⁶ The Employment Services Workbridge Programme assists the employers for providing reasonable accommodation to the disabled workers. The *Human Rights Act* applies in only in case of open employment. But those disabled persons who fail to qualify for a job in open employment is enabled to seek job in the labour market. For such

144. Supra note 130.

145. *Human Rights Act, 1993*, S. 21.

146. Supra note 34 at p. 193.

individuals, the *Disabled Persons Employment Act, 1960* provides for sheltered workshops where disabled people are employed.¹⁴⁷

So far as the United Nations Disability Convention is concerned, New Zealand has been a leader in negotiations on the Convention. The country was the spirit behind modelling and evolving the Convention text through participation of the disabled people. New Zealand has been one of the signatories to the Convention on 30th March, 2007. Subsequently on 1st July 2008, *The Disability (United Nations Convention on the Rights of Persons with Disabilities) Bill* was introduced to Parliament with a view to removes inconsistencies within current legislation that will enable New Zealand to ratify the Convention. Amendments are also proposed to the *Human Rights Act 1993* to clarify its obligation to accommodate the needs of disabled people. Thus New Zealand has proved itself to be global leader in ascertainment of disability rights.¹⁴⁸

(b) Asia

(i) India

India is a party to five out of seven core United Nations human rights conventions, namely, *International Covenant on Civil and political Rights, 1966*; *international Covenant on Economic, Social and Cultural Rights 1966*; *Convention on the Elimination on All Forms of Racial Discrimination 1965*; *Convention on the Elimination of All Forms of Discrimination Against Women 1979* and the *Convention on the Rights of the Child 1989*. India has also ratified the *United Nations Convention for the Protection of the Rights of the Persons with Disabilities, 2006* in October 2007. Under the Constitution of India 1950,

147. *Ibid* at p. 194.

148. For details on New Zealand's Approach towards Disability Convention, visit New Zealand Government's Official website at <http://www.beehive.govt.nz/release/disability+issues+bill+to+enable+un+convention+rati+ficatio+n>, accessed on 10.10.2008.

some provisions for the protection of the disabled have been laid down. In addition to the Constitutional guarantees, India has four principal Acts on the area. In 1987, the Mental Health Act of India was passed. Three more legislations covering diverse aspects of the lives of the persons suffering with disabilities came to be passed after the Beijing conference. The four Acts on the Statute book governing the law on the subject are:

1. *The Mental Health Act of India, 1987*
2. *The Rehabilitation Council of India Act, 1993.*
3. *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*
4. *The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 .*

Besides there are a few other legislations which contain provisions for protection and empowerment of various sections of disabled such as the *Juvenile Justice (Care and Protection of Children) Act, 2000*, which facilitate, among others, integration of persons with disabilities into mainstream of society; The Income tax Act, 1961 which speaks of certain exemptions to the disabled lot. Moreover there are legislations under the labour laws such as the *Workmen's Compensation Act, 1923*, the *Employees' State Insurance Act, 1948* and the *Public Liability Insurance Act, 1991*, which protects and promotes the rights of persons disabled during the course of employment. ¹⁴⁹

The United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the World Program of Action both successfully moved the focal point of disability legislation all over the world, including India from aiding the disabled person to adapting with their surroundings to permit equal participation in the society. The UN Convention on

149. Supra note 34 at p. 160

Disability is an inclusive policy promising the same rights to people with disabilities. After India ratifying it, it is clear that its domestic legislation is lacking and needs to be amended. It may be by and large recognized that persons with intellectual and psychological impediments are most helpless and discriminated both outside as well as within the families. *Mental Health Act, 1987* was passed with a rationale to afford protection to their rights and lays down criterion for admission in the psychiatric hospitals and nursing homes and for the protection of his person, property and its management. However, the accomplishment of this Act has been poor and enforcement mechanism is weak with the effect that conditions of persons suffering from this type of disability are still distant from satisfactory.¹⁵⁰ With regard to the Disability Convention there are serious doubts as to the usefulness of this legislation for securing the protection of the person, property and privacy of communication of mentally ill. It gives ample opportunity for the abuse of power by the police, medical officer or magistrate. The proportion of involuntary admissions is in most cases very high and the condition laid in *Section 19* which permits admission under certain exceptional circumstances by a relative or a friend are being commonly misused. The basic limitation of the Act is that it perceives institutional care as the sole technique for the care and security of persons with mental illness.¹⁵¹

In the year 1986, the Rehabilitation Council of India was set up by the Government of India as a society to regulate and homogenize training policies and programmes in the field of rehabilitation of the persons with disabilities. By passing of *The Rehabilitation Council of India Act in 1993*, the status of this Council was raised to that of a statutory body. However, the Act's conceptualization and arbitrariness in formulation and implementation have proved to be major setbacks. In addition, disciplinary action against failure to comply with the RCI norms and inadequate definition of the term rehabilitation

150. Supra note 8 at p. 18

151. Supra note 10

professionals has added to the woes. The RCI Act disempowers any person not in its rolls for from carrying out any work with/for the disable. It forbids any person from teaching, training, or providing recreation, leisure etc until and unless the stipulation of registration is satisfied. This departs against the very spirit and standard of the UN Convention whose endeavour is the betterment of the disabled as contrasting to the directive of rehabilitators. It is a situation that seeks to isolate the person with a disability, in breach with the principles of the Convention.¹⁵²

Similarly, *National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999* deals with the constitution of a national body for the welfare of persons covered under this Act.¹⁵³ The Act aims at consolidation of the body at the national level for the benefit of persons with autism, cerebral palsy, mental retardation and multiple disabilities and connected and incidental matters thereto. The Act is an acknowledgement of a broad range of competencies among individuals with autism, cerebral palsy, mental retardation and multiple disabilities and is an positive action in favour of these persons by setting up a National Trust to shore up programmes which promote individuals, facilitating guardianship where necessary and address the concerns of those who do not have family support and to strengthen families and protect the interest of such persons.¹⁵⁴ This Act too has defects in its implementation part.

However the most important Act in relation to the protection of the rights of the disabled in India is *The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*. In order to implement the proclamation on the full participation and equality of people with disabilities in the Asian and Pacific region, the Parliament enacted the aforesaid Act. The Act provides for the protection of the rights of the persons of disabilities

152. *Ibid*

153. *Supra* note 8 at p. 19.

154. *Ibid* at p. 20.

as well as for making enabling provisions to equate persons with disabilities, to compete on equal terms with non- disabled people.¹⁵⁵ Though there have been a number of programmes, schemes and services for disabled people in India but prior to this Act there was no separate law to uphold the interests of the disabled.¹⁵⁶ The Act provides for preventive as well as promotional aspects of rehabilitation like education, employment and vocational training, reservation, research and manpower development, creation of barrier- free environment, rehabilitation for persons with disabilities, unemployment allowance for type disabled, special insurance scheme for the employees and establishment of homes for persons with disability, etc.¹⁵⁷ This important piece of legislation too has failed to live up to its expectations. There has been huge debate on the definition of disability as provided in the Act. The PWD act has firm provisions as to what counts as disability; however, the Convention includes all long-term physical, mental, intellectual or sensory impairments, which may hinder their full and effective participation in society. The Act lacks in a number of areas when considered in the backdrop of the Convention. The Convention speaks of use of maximum possible resources as against the Act's stipulation of 'within the economic capacity and development of the State'. In addition no separate provisions have been made for the betterment of women and children, which is one of the key features of the Convention. Again, there are neither guidelines nor deadlines for the authorities concerned to comply with the Act. Further, the prevention an early intervention has not received serious and systematic attempt. The implementation of this Act has been particularly very weak which has left this legislation as mere policy document than a law. India has not signed the Optional Protocol to the Convention and has even indicated its reluctance to do so

155. Santosh Rungta, "Rights of Persons with Disability- An Overview", in S. K. Verma, S.C. Srivastava (ed.), *Rights of Persons with Disabilities* (ILI Publication, New Delhi, 2002), pp. 142-147 at p. 142.

156. *Supra* note 8 at p. 21.

157. Lakshman Prasad. "Human Rights of Disabled", in S. K. Verma, S.C. Srivastava (ed.), *Rights of Persons with Disabilities* (ILI Publication, New Delhi, 2002) pp. 148-153 at p. 149.

in the future. Signing the Optional Protocol would signify that the domestic situation of the disabled would become the accountability of the international community. There is a varied response to the pronouncement of the Indian Government. While some have expressed contentment with the assurance of the Government of India to remedy any grievances within, others point out that such a practice would have been useful in the case of non-implementation of the Convention.¹⁵⁸

(ii) China

China is the largest developing country in the world. However, people with disabilities remain a vulnerable group and many still encounter specific difficulties in a society whose economy is experiencing a tremendous market-oriented transition. Much remains to be done in order to ensure the full realization of "Equality, Participation and Sharing" for people with disabilities. Before early 1980s, discriminatory terms such as "*can fei*," which means "the handicapped and useless", were used to refer to individuals with disabilities. However, general social attitudes regarding disability have undergone a gradual but fundamental change since late 1980s, thanks to the active advocacy of the disability community and governmental support for disability initiatives.¹⁵⁹

China is a State Party to some 20 international human rights treaties. It joined a few of countries launching the Asian and Pacific Decade of Disabled Persons, and also supported the actions of its extension, namely the second Decade. China supports actively the UN Standard Rules on Equalization of Opportunities for Persons with Disabilities and the ongoing UN efforts to draft an international convention on the rights of people with disabilities. It has ratified ILO Convention 159 Concerning Vocational Training and Employment (Disabled

158. Supra note 79

159. Eric Zhang, "The Protection of Rights of People with Disabilities in China". For full Article visit http://www.disabilityworld.org/01_07/china.shtml accessed on 10.10.2008.

Persons). The Constitution (enacted in 1982 and amended in 1988, 1993, 1999 and 2004) provides a general principle on protection of people with disabilities. In addition, more than 30 national laws contain specific provisions concerning people with disabilities and the protection of their rights, including the Election Law, the Civil Law, the Civil Procedure Law, the Criminal Law, the Criminal Procedure Law, the Law of Education, the Law on Higher Education, the Labor Law, the Marriage Law, the Law on the Protection of Rights of Women, the Law on the Protection on Rights of Elderly People, the Law on Inheritance, the Adoption Law, the Insurance Law, and so on.¹⁶⁰

The Law on the Protection of Disabled Persons (adopted in 1990 and enacted in 1991) is of significant importance to the protection of the rights of people with disabilities. It contains 54 articles and 9 chapters that address rehabilitation, education, employment, cultural life, welfare, access, legal liability, etc. It specifically deals with “the lawful rights and interests of, and developing undertakings for, disabled persons, and ensuring their equal full participation in social life and their share of the material and cultural wealth of society.”¹⁶¹ Separate definitions of disabled person and disabled persons have been provided. The Act defines a ‘disabled person’ as one “who suffers from abnormalities or loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and has lost wholly or in part the ability to perform an activity in the way considered normal.” Hence ‘Disabled Persons’ refers to those with visual, hearing, speech or physical disabilities, mental retardation, mental disorder, multiple disabilities and/or other disabilities.¹⁶² The Act also provides for rehabilitation, education, employment, cultural life, welfare, environment and legal liability of the persons with disability. The Law has some unique features. For example, Article 46 of Chapter

160. *Ibid*

161. Law of the People’s Republic of China on the Protection of Disabled Persons, 1990, Article 1.

162. *Ibid*, Article 2

7 deals with environment and establishes that "the State and society shall gradually create a sound environment to improve the conditions for disabled persons to participate in social life"¹⁶³ and sets requirements for an accessible physical environment, i.e., accessible public roads and buildings. Accessible information and communication, such as Braille and sign language, and the right to mobility (transportation) are discussed separately in Article 38, on Cultural life, and Article 44, on Welfare. Chapter 7 also refers to Articles 47 and 48 to promote a culture and ethic of respect for people with disabilities and concludes by declaring the third Sunday of each May as the National Day for Assisting Disabled Persons.¹⁶⁴ The Act though encompasses almost every aspect of development of the person/ persons with disability and in spite of the general prohibition on discrimination against disabled persons, it does not specify that means or how society is organized. A textual analysis of the statute reflects the traditional medical model of disability, i.e. institutionalization and segregation, forms the framework of the Act. The law also conveys a rather limited concept of equality as Article 29¹⁶⁵ is the only detailed anti-discrimination provision in the entire Act. The medical model underpinnings of the law are also evident in some provisions on the obligations of the disabled persons.¹⁶⁶ China too is a signatory to the UN Disability Convention and it is expected that the existing drawbacks in the legislation will be sufficiently addressed.

(f) Africa

163. *Ibid* Article 45.

164. *Ibid*

165. "Article 29—' Concentrated Employment'- The state and society shall set up welfare enterprises for disabled persons, work- rehabilitation centres, tuina- massage hospitals and other enterprises and institutions of welfare nature as a way of providing concentrative employment for disabled persons." It means that employment prospects are provided in special welfare enterprises and institutions. Within these special institutions, prejudice against disabled persons concerning recruitment, employment, promotion, the awarding of professional or technological titles, payment, welfare, and other aspects of employment is barred.

166. *Supra* note 21

(i) *South Africa*

The period since the elections in 1994, various changes have been implemented at the policy as well as legislative level including the level of service delivery and government accountability. During this period various disability policies and legislations too surfaced. In November 1997, the South African government adopted the *White Paper on an Integrated National Disability Strategy*, known as INDS, which is premised on the social model of disability. The INDS provides government and society as a whole with guiding principles that will advance non-discriminatory development planning, programme implementation, and service delivery. The INDS is not yet legislation. The government departments are, however, required to devise their disability policies and strategies in line with the provisions of the INDS. Apart from the INDS, the government has passed legislation that is designed at enforcing the rights of the persons with disabilities. The major legislations/ policies with disability components include:¹⁶⁷

- The Employment Equity Act, 1998
- Skills Development Act, 1998
- Promotion of Equality and Prevention of Unfair Discrimination Act, 2000
- The Labour Relations Act, 1998
- White Paper 6 on Special Needs Education
- AgriBEE Broad-Based Black Economic Empowerment Framework for Agriculture

The *Employment Equity Act, 1998* (EEA) has two principal purposes, namely:-

¹⁶⁷. *Ibid*

- To execute affirmative measures to eradicate discrimination in employment
- To provide guidelines for companies to encourage occupational impartiality by encouraging the equitable representation of employees in terms of race and gender, as well as of disabled people.¹⁶⁸

The EEA Act protects disabled people from inequitable discrimination on the grounds of their disability and entitles them to positive action measures. Disabled people have been defined as “people who have a long- term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment.” Although equal employment opportunities are anticipated to enable disabled people to take part in the economy. But unfortunately, it is estimated that as many as 99% of South Africans with disabilities are not employed meaningfully.¹⁶⁹

The Skills Development Act, 1998 has been enacted with a view to execute structures and processes with a view to alter skills development in South Africa. One of the purposes of the aforesaid Act is to perk up the employment prospects of persons previously disadvantaged by unfair discrimination, and to level out those disadvantages through training and education. In this regard, people with disabilities in particular, among other disadvantaged groups, shall be targeted. The Act also offers diverse forms of assistance to the persons with disabilities.¹⁷⁰

168. Andrew K Dube, “The role and effectiveness of disability legislation in South Africa”; Edited by Eleanor Stanley, March 2005, p.16. For full article, view [www. disabilitykar.net/docs/legislation-sa-ex.doc](http://www.disabilitykar.net/docs/legislation-sa-ex.doc). Accessed on 12.1.2008.

169. *Ibid* at p. 17

170. *Ibid*

Promotion of Equality and Prevention of Unfair Discrimination Act 2000 is one of the most important pieces of legislations for disabled people in South Africa. The significance of the legislation lies in its recognition of the ways in which discrimination is conspicuous in society and the necessity to put into place concrete mechanisms to address discrimination and promote equality. The Act deals with prevention, prohibition and elimination of unfair discrimination, hate speech and harassment, and states that neither the State nor any person may unfairly discriminate against any person on the ground of disability.¹⁷¹

The *Labour Relations Act, 1998* deals with the regulation of unfair treatment in the workplace with a provision on unfair labour practices. The Act specifically lists the kinds of treatments that shall be regarded as 'unfair' and also defines four such kinds of treatments.¹⁷²

White Paper 6 on Special Needs Education evolved from the requirement for changes to be made to the provision of education and training to make it responsive and sensitive to the wide range of learning needs. This was in consonance with the fact that learners with disability experienced great difficulty in gaining access to education. *White Paper 6* sketches out what an inclusive education and training system is, provides the outline for setting up such an education and training system, details a funding strategy and lists the vital steps to be taken for establishing such a system in South Africa.¹⁷³

AgriBEE or Broad- Based Black Economic Empowerment Framework for Agriculture implies economic empowerment of all black people,

171. *Ibid* at p. 23

172. *Ibid* at pp. 25-26

173. *Ibid* at p. 31

including women, workers, youth, disabled people, and people living in rural areas, through diverse but integrated social or economic strategies.¹⁷⁴

Though the positive policy environment in South Africa presents unique opportunities for disabled people to address their various rights. The present legislations in the form of *The Employment Equity Act, 1998*, *Skills Development Act, 1998*, *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000* and others, have helped create a fresh sense of awareness of the demands of the disabled people. Sadly, with the exception of a few policies the execution of these policies has had a trivial impact on the lives of the majority of the disabled population of the country. Troubles associated with, amongst others, lack of budgetary allocations, ignorance of civil servants charged with the responsibility of implementing these policies, and bureaucratic bottlenecks have been recognized as some of the key reasons of 'policy evaporation' in South Africa.¹⁷⁵ Fortunately, South Africa has not only signed the UN Disability Convention but also its Optional Protocol. Therefore the present lacunae in the domestic framework will be adequately addressed as well as cooperation of the international community will also assist this nation to achieve high standards for the differently able.

(ii) Zimbabwe

The Zimbabwean legislation guaranteeing the rights of the persons with disabilities is *The Disabled Persons Act, 1992*. It was enacted "to make provision for the welfare and rehabilitation of disabled persons; to provide for the appointment and functions of a Director for Disabled Persons' Affairs and the establishment and functions of a National Disability Board; and to provide for matters connected with or incidental to the foregoing". The Act consists of ten sections. Apart from the appointment and functions of Director for Disabled

174. *Ibid* at p. 26

175. *Ibid* at p. 39

Persons' Affairs ¹⁷⁶and the establishment and functions of a National Disability Board,¹⁷⁷ the Act also prohibits denial of access to public premises, services and amenities to disabled persons.¹⁷⁸ Equality in employment has also been provided.¹⁷⁹“Disabled person” has been defined as a person with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to physical, cultural or social barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society.¹⁸⁰

The Act though concerns itself with the disabled persons, but the sure misses are provisions for special education and training of disabled people. Further, it has been provided that disability may be legitimate excuse for employment discrimination, and the denial of any public service or amenity seems to be excused if it is “motivated by a genuine concern for safety of disabled people.”¹⁸¹These factors have surely proved to be blots of the Act and made its entire accomplishment unfeasible. Since Zimbabwe has not yet ratified the UN Convention, hence the expectation of remedying the defects is almost improbable if not impossible. Hence the Zimbabwean Government must take initiatives to be member of the Convention and provide better facilities to their disabled populace.

D. COMPARATIVE ANALYSIS OF THE VARIOUS LEGAL SYSTEMS.

Disability anti-discrimination laws around the world take various approaches. Disabled persons may be protected against discrimination in

176. *The Disabled Persons Act, 1992*, S. 3

177. *Ibid* , Ss. 4 -7

178. *Ibid* S. 8

179. *Ibid* , S. 9

180. *Ibid* , S. 2

181. *Supra* note 21

constitutional, criminal, civil, or social law. However, the most comprehensive legal approach to preventing and protecting against disability based discrimination seems to be the enactment of civil rights legislation.¹⁸² Taking a look at the various legislations discussed above, it can be deduced that the legislations have some common features and some differences. The areas where most of the countries meet are:

(1) Majority of the countries (Hungary, Spain, Sweden, UK, USA, Costa Rica, Guatemala, India, China, South Africa, Zimbabwe, Australia and Australia) provide a definition of the terms “disability” and “persons with Disability” or “people with disability”.

(2) These laws make some provisions for their enforcement as well. Thus, the Australian *Disability Discrimination Act* establishes the Human Rights and Equal Opportunity Commission and a Disability Discrimination Commission. The Canadian *Human Rights Act* is enforced by a Human Rights Commission and a Human Rights Tribunal. In the U.K., a Disability Rights Commission is the watchdog of the *Disability Discrimination Act*.

(3) A significant number of acts entrust representatives of disability organisations with the monitoring of the law. For instance, the *Law of the People's Republic of China on the Protection of Disabled Persons* establishes the China Disabled Persons' Federation, which has the responsibility to represent and protect the rights and interests of disabled persons in China. The Hungarian discrimination act establishes a National Disability Affairs Council in which disability organisations must be represented. The Indian law establishes a rather elaborate multi-

182. Theresia Degener, “Disability as a Subject of International Human Rights Law and Comparative Discrimination Law”. in Stanley S. Here, Larry Ogalthorpe Gostin, Harold Hongju Koh (ed.), “ *The Human Rights of Persons with Intellectual Disabilities: Different but Equal*”. (Oxford University Press, 2003), pp. 151-184 at pp. 160, 161; Supra note 21

sectoral planning and monitoring mechanism: a Central Coordination Committee is headed by the Chief Commissioner for Persons with Disabilities, and several State Coordination Committees manage disability matters at the state level. The law also requires a certain number of seats in each committee to be filled by disabled persons.¹⁸³

(4) Majority of the laws is based on a structural equality concept. Therefore this includes the commitment that society has to change in order to guarantee true equal opportunity for persons with disabilities. The key phrase in this respect is reasonable accommodations or reasonable adjustments, which have to be undertaken by the employer, service provider, government, or any other entity under anti-discrimination obligations. The following countries have included such a provision in their anti-discrimination laws, even though it does not always apply to all areas covered by the discrimination prohibition: Australia, Canada, Hungary, Ireland, New Zealand, Sweden, UK, the U.S.A., and Zimbabwe.¹⁸⁴

(3) The presence of affirmative action provisions are found in most of the nations relying on the structural equality concept underlying a discrimination law, as they indicate the understanding that positive actions may have to be taken in order to achieve true equality. Most of them have affirmative action provisions in their laws, most of them relating to quota schemes. (Canada (*Human Rights Act*), India, South Africa (*Employment Equity Act*, but specifically excluding quotas), Spain, the U.S.A.).¹⁸⁵

183. *Ibid*

184. *Ibid* at p. 163

185. *Ibid*

(4) Most anti-discrimination laws focus on the area of employment discrimination. (UK, U.S.A., India, China, Australia, South Africa, Hungary, Spain, Sweden, Canada, Germany, Costa Rica, New Zealand). However, it should also be recalled that employment rights fall into the realm of economic, social and cultural human rights. But it is all the more remarkable to assess that some of the disability discrimination statutes examined here explicitly guarantee non-discrimination with respect to civil and political rights for persons with disabilities. Others do not mention civil and political rights explicitly, but may still cover them through anti-discrimination provisions directed at ensuring accessibility to public premises, services and accommodations.¹⁸⁶

(5) A look at the definitions reveal that the majority of these definitions define discrimination as unfavorable treatment on the basis of disability (Australia, Canada, Germany, Guatemala, Ireland, New Zealand, South Africa, Sweden, U.K.); whereas a minority of the statutes define discrimination as unjustified differentiation. Some laws distinguish between direct and indirect forms of discrimination, (Australia, New Zealand, South Africa, Sweden) with the latter commonly defined as the general application of requirements or conditions with which disabled persons usually have more difficulty complying.¹⁸⁷

(6) A few of the Acts have provisions requiring access to public places, buildings, transportation, etc., but the fact of inaccessibility is not defined as a discriminatory practice. (China, Costa Rica, Guatemala). In the effect, accessibility seems to be

^{186.} *Ibid*

^{187.} *Ibid*

granted as a welfare service where access is not formulated as an individual right.¹⁸⁸

(7) Some of the discrimination laws characterize acts of harassment and victimization as prohibited forms of discrimination. (Australia, Canada, Sweden and U.K.)

(8) Some discrimination laws also address the issue of exploitation or abuse of persons with disabilities. (Costa Rica, U.K.)

(9) While few anti-discrimination laws actually support the principle of segregated education for students with disabilities, only a minority of the Acts contain a clear statement that separate education is inherently unequal and a classic form of disability discrimination. (Canada, Hungary, and USA).¹⁸⁹

(10) In addition to protecting persons who presently have a disability, some laws also protect persons who were disabled in the past (Australia, Canada, New Zealand, the U.K. and the U.S.A.), may be disabled in the future (Australia, Sweden) or who are regarded as being disabled (Australia, New Zealand, and the U.S.A.).

(11) Majority of the Acts came to be enforced after the UN Standard Rules came into being in 1993 (Costa Rica, Germany, Hungary, India, Ireland, South Africa, Sweden and UK).

(12) Almost all of them pledge to the various human rights instruments of the UN and those at the regional level.

(13) Almost all the laws have shown a shift from the medical model to the human rights model.

However apart from the points of concurrence, there are divergences in the following areas:

188. *Ibid* at p. 163

189. *Ibid*

- (1) There is no universal definition of disability-based discrimination and no concept of what equalisation of opportunities for disabled person truly entails.
- (2) Despite the fact that most of the laws hope to establish equal opportunities for disabled persons, they do not identify and prohibit inaccessibility, segregation, or the denial independent living as forms of discrimination.
- (3) Some countries have chosen to distance themselves from the UN Disability Convention making it difficult, to a certain extent to view disability issues from a common point of view and taking collective measures to address the problem.
- (4) The concept of inclusive education has not been adopted except for a few countries; international law too lags behind to implement this facet of disability discrimination.

A SUM UP :

Regardless of being one of the principal minority groups encompassing approximately 10% of the world population; regrettably disabled people have been unobserved during the first three decades of the United Nations' existence. The International Bill of Human rights did not include disabled persons as a vulnerable group requiring protection against human rights violations. None of the equality clauses mentions disability as a protected category. The 1970s marked a new approach to disability. 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 on the Rights of Disabled Persons*, adopted by the General Assembly on 9 December 1975, encouraged national and international protection of the rights of the disabled. Recognition was given to the fact that disabled persons were entitled to the same political and civil rights as others, including measures necessary to enable them to become self-sufficient. Though heavily reliant on the medical model these two declarations sowed the seeds of disability movement.

Subsequently after declaring 1981 as *The International Year of the Disabled*, the developments gave some impetus to the disability rights movement. But the most remarkable of them was the *Standard Rules for Equalisation of Opportunities* in 1993. But unfortunately the exclusive developments in this field were restricted to soft law instruments. For many years, disability related organisations and UN members have discussed and lobbied for the possibility of a convention specific to disabled people. Although existing human rights laws seem to provide equal rights for the disabled 10 per cent of the world population, the reality, in practice, is that these instruments have failed to protect the human rights and fundamental freedoms guaranteed to disabled people. Early initiatives did not receive too much attention, and it was not until April 2000 that the UN Commission on Human Rights invited the UN High Commissioner for Human Rights to examine measures to strengthen the protection and monitoring of the human rights of 'persons with disabilities' in its resolution 2000/51. The General Assembly then established an Ad Hoc Committee (hereafter the Committee) in its resolution 56/168, in December 2001, on a "Comprehensive and Integral International Convention on Protection and Promotion of the Rights of Dignity of Persons with Disabilities" to consider proposals for a convention to protect and promote the rights of disabled people. Discussions at its first meeting included the underlying principles and a human rights based approach was preferred for this new convention. The greatest boost to the human rights approach as well as

securing of domestic laws for the protection of persons with disabilities came around only recently with the adoption of the *United Nations Convention for the Protection of Rights of the Persons with Disabilities* in 2006 and which has very recently come into force in 2008. The convention requires states to establish a 'framework', including one or more independent mechanisms as appropriate, to promote, protect and monitor implementation of the Convention.

Though the above discussion on international approach to disability law surely brings to the fore that in international disability law is classified as a human rights issue, nevertheless there are a lot of issues, which remain to be addressed. Since the Disability Convention has just come into being its efficacy or applicability in national legislative schemes will take a reasonable time. So it is necessary that matters like treatment of disability issues should not only be taken a strict human rights issue but as subjects for normal rehabilitation and equal opportunities. Segregation of people with disabilities in institutions is one of the worst forms of discrimination; hence deinstitutionalization will surely help in the efforts towards normalization and rehabilitation. Further a look at the laws in the various countries reveals that they had and even now have an impression that they cannot enjoy the same rights as the normal people. This thinking needs to be changed and it needs to be propagated that discrimination on the basis of disability is unlawful. Though there a lot of convergences, but the aim of international law should be turn the world into a global village where citizens can move freely without the complexities of legal procedures. More so in case of disabled persons this approach of universality should be adopted and encouraged. It is unfortunate that at this hour a number of countries have stayed away from being a part of the historic Convention.

Promotion and enforcement of human rights must respect the concept of universality: the fundamental premise of the *Universal Declaration of Human Rights* that all human beings are equal in dignity and rights, without

division of any kind. The protection of the human rights of people with disabilities is an instantaneous and critical concern worldwide. Increasing the participation of people with disabilities in their societies benefits everyone and is key to achieving equality and justice. Hence each and every nation should come forward to be a part of the Disability Convention, give their invaluable comments on the working of the provisions of the Convention as well as its optional protocol and make the differently able feel all the more special by recognizing their capacities and encouraging their spirits.