

## **CHAPTER 7**

# **CONCLUSION AND SUGGESTIONS**

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*If you have a mind and shall not reason, you are  
disabled.*

*If you have the opportunities and do not use them, you  
are disabled.*

*To be disinterested is to be disabled.*

*But if you are disabled and can think;*

*If you are disabled and are dedicated;*

*If you have talent and have skills;*

*If you have the will, then where do you go?*

*Only ahead. May even reach zenith.*

*That is the direction of joy, empowerment, achievement  
and adventure.*

*So come with us.*

---Justice Jitendra N. Bhatt

The study of any law, its principles and provision is incomplete unless we assess its background and gradual course of development. The researcher's field of study revolves around the human rights of the persons with disabilities in the legal system prevailing in India. In this work also an attempt has been made to frame the historical and conceptual development of disability rights; because unless we mark out the early phases of development we cannot monitor the present situation or develop laws for the future. With this endeavour, the origin of the concept of disability has been traced.

Disability in the early periods has been mainly connected with religious beliefs and the words pronounced in the religious scriptures. Also the key reason behind disability was considered to be punishment for sins committed in the past life. Whether it be Ramayana or Mahabharata the disabled have been basically been looked down upon. The dominant social attitude towards persons with disability has been one of pity, from which springs insidious forms of discrimination - the eventual source of their exclusion and extreme isolation. The reasons behind disability have also been assessed and principally relate to genetic and medical factors, faulty dietary habits, improper birth practices, malnutrition, non-immunisation against common diseases, unhygienic living conditions, accidents, old age, wars, internal conflicts, rising crimes against human body as well as acts of the law enforcement officials. The various definitions of disability in national and international arena have also been considered which has brought forth the necessity of a new definition incorporating the human rights approach to disability and giving it the utmost importance while considering the definition of disability. So far as the definition of disability is concerned there appears to be no concurrence. By and large, disability may be denoted as a condition of the physical or mental health of an individual arising out of moral, charitable, medical, social, economic and fundamental rights deficiency, situating within the dominion of human existence. It is very inopportune that even to this day a suitable, undisputed and ubiquitous definition of the term has not developed, even when human rights and disability movement has gained impetus throughout the world. There is lack of sensitivity on the issue of disability throughout the globe predominantly due to its diverse approaches and definitions. However, current international view is of the vision that disability is the result of interaction between societal barriers and the impairment rather than a product of the limitation imposed by physical or mental deficiencies which is reflected in the definition given in Article 1 of the UN Disability Convention.. A distinction between handicap, disability and

impairment is also an area of study which has been adequately addressed. Impairment refers to a problem with a structure or organ of the body; disability is a functional limitation with regard to a particular activity; and a handicap is a difficulty experienced by a person because of the nature of the environment in which a person finds himself.

There are various models of disability beginning from moral model, charity model, social model, welfare model, economic model and finally human rights model. A look at the various models of disability has revealed the present transition from charity to human rights. In human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The doctrine of differentiation is of particular importance to persons with disabilities, some of whom may require specialised services or support in order to be materially equal to others. Differences of treatment between individuals are not discriminatory if their aim is to protect the rights of the disadvantaged groups. A rights based society gives individuals or groups their due within society as a whole. Exclusion and abuse of people with disabilities are violations of their human rights. People with disabilities are entitled to enjoy the same rights as all others. A human rights approach to disability acknowledges that people with disabilities are rights holders and that social structures and policies restricting or ignoring the rights of people with disabilities often lead to discrimination and exclusion. A human rights perspective requires society, particularly governments, to actively promote the necessary conditions for all individuals to fully realize their rights. Hence the need of the hour is to encourage the promotion of disability human rights and give utmost priority to human rights perspective to disability rights.

Due to difference in the definitional approach, the disability estimates in the country also reflect different pictures. The disability population according to the Census 2001 and that of the NSSO 2002 are different

principally due to the different definitions. These differences surely have a negative impact in assessing the true percentage of disabled population in the country. In fact the figures are not satisfactory when compared with even countries like Nepal or Pakistan. Hence the need is to shed off the medical model and take a more human rights approach; and above everything else evolve a satisfactory and complete definition of the term disability so that the true picture comes to the fore.

So far as the international legal regime is concerned, the role of the United Nations and the legislations of Europe including the European Union, U.K. and Germany; North America including U.S.A. and Canada; Costa Rica in South America; Australia including New Zealand; South Africa and Zimbabwe in Africa and Asia including China and India has been assessed. So far as the United Nations is concerned, it has taken some very positive steps to assure rights of this section of the population. Apart from the Universal Declaration of Human Rights, there are a number of binding and non-binding instruments. The core United Nations Human Rights Conventions that are binding on States that have ratified them are:

- International Covenant on Civil and Political Rights, 1966;
- International Covenant on Economic, Social and Cultural Rights, 1966;
- Convention on the Elimination of All Forms of Racial Discrimination, 1965;
- Convention on the Elimination of all Forms of Discrimination against Women , 1979;
- Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment , 1984;
- Convention on the Rights of the Child, 1989;

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

There are also some international and regional human rights conventions that protect the rights of persons with disabilities specifically, or have provisions concerning persons with disabilities. These include: ILO Convention concerning Vocational Rehabilitation and Employment (Disabled Persons); Convention on the Rights of the Child (Article 23) amongst others. Besides international conventions, there are a number of declarations, guidelines and Acts emanating from the UN, which deal specifically with a range of issues relating to disability. It is to be noted that 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. Several disability-specific non-binding international instruments have been adopted at the international level. The instruments include:

- Declaration of the Rights of Mentally Retarded Persons, 1971
- Declaration on the Rights of Disabled Persons, 1975;
- World Programme of Action concerning Disabled Persons, 1982;
- Principles for the Protection of Persons with Mental illness and the Improvement of Mental Health Care, 1991
- Standard rules on the Equalization of Opportunities for Persons with Disabilities, 1993;
- ILO Recommendation concerning Vocational Rehabilitation and Employment (Disabled persons), 1983 amongst others.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) 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. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. It marks an exemplary change in attitudes and approaches to persons with disabilities. The Convention is projected as a human rights instrument with an explicit, social development dimension. It espouses an extensive classification of persons with disabilities and reaffirms that all persons with all forms of disabilities ought to enjoy all human rights and fundamental freedoms. It elucidates and qualifies how all types of rights concern to persons with disabilities and classifies areas where adaptations have to be made for persons with disabilities to successfully implement their rights and areas where their rights have been desecrated, and where protection of rights must be toughened. Its impact on disabled peoples' lives holds a great deal of promise. Given the fact that other treaties that solely protect the disabled persons like—the World Programme of Action, Standard Rules, Beijing Declaration on the Rights of Disabled Persons, Declaration on the Rights of Mentally Retarded Persons and Principles for the Protection of Persons with Mental Illnesses—one may well wonder why there is need for a new Convention. It is important because of two reasons. Firstly, none of the treaties that deal specifically with the rights of the disabled are legally binding. Secondly, the very existence of specific groups that are especially vulnerable, calls for a single set of binding norms whose enforcement can be monitored. The rights guaranteed under the UNCRPD are comprehensive and deal with all aspects of the life of persons with disability. If implemented in its right spirit, there will, indeed, be far reaching changes in the lives of persons with disabilities. India's nod to UN Convention on the Rights of Persons with Disabilities means that the State has to spare sizeable resources for the disabled people whose share has so far been conditional to funds' availability. Though the process for this is yet to begin, India stands to gain by setting aside decent

allocations for the disabled for their mainstreaming means enhancing productivity through harnessing thus far untapped potential.

Taking clue from the United Nations Declarations and other documents as well as the Conventions and Recommendations adopted by the International Labour Organisation, various countries all over the world have set up legal framework for protecting the welfare of persons with disabilities. International norms concerning disability are useful for setting common standards for disability legislation. Those standards also need to be appropriately reflected in policies and programmes that reach persons with disabilities and can effect positive changes in their lives. An overview of the laws prevailing in U.K., Germany, U.S.A., Canada, Costa Rica, Guatemala, Australia, New Zealand, South Africa , Zimbabwe, China and India brings to the light that the most comprehensive legal approach to preventing and protecting against disability based discrimination seems to be the enactment of civil rights legislation. However it can be concluded that modern disability discrimination laws in most cases resort to the principles of desegregation, de-institutionalisation and reasonable accommodation which collectively aim at abolishing structural as well as open discrimination. Today there is no universal definition of disability discrimination and no general concept of what equalisation of opportunities for disabled persons actually necessitates. Although all the anti discrimination laws intend to institute equal opportunities for disabled persons, they do not recognize and forbid accessibility, segregation or the denial of independent living as forms of discrimination. It is to be kept in mind that anti discrimination law is not the only way to equality for persons with disabilities, but the right based approach is one of the most outstanding legal methods being used by many states around the world.

Coming to India, though the principal anti-discrimination legislation is the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, the constitutional provisions and the other three major Acts dealing with the disabled whether physical or mental as well as their rehabilitation and support viz. *The Mental Health Act, 1987*; *Rehabilitation Council of India Act, 1992* and *The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999* has also been considered. The Constitution of India is premised on the principle of social justice and human rights. The Preamble, the Directive Principles of State Policy and the Fundamental Rights enshrined in the Constitution stand testimony to the commitment of the State to its people. These provisions envisage a very positive role for the State in the upliftment of the status of disadvantaged groups. For example, Article 41 enjoins that, "The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement." Further, in view of the provisions contained in Article 36 and 37, it is apparent that Article 41 is a mandate both to the Legislature and the Courts. Though, Article 41 does not confer a justiciable right, the Supreme Court has, by its own interpretation, bearing in mind the socio-economic goal, held that the Courts should so interpret a statute as will advance the objective underlying Article 41.

Among the major laws is the *Mental Health Act, 1987*. The emphasis of this legislation is on the appointments or qualifications of authorities, admission and discharge of mentally ill from specialized institutions, removal and role of medical officers, magistrates or police officers, liability to meet the cost of maintenance of mentally ill persons, and penalties and punishments, etc. However, there are serious doubts as to the effectiveness of this legislation for ensuring the protection of the person, property and privacy

of communication of mentally ill. It leaves sufficient space for the misuse of power by the police, medical officer or magistrate. The percentage of involuntary admissions is often found to be very high and the provisions of Section 19 which permits admission under certain special circumstances by a relative or a friend are being widely abused. The fundamental weakness of the Act is that it perceives institutional care as the only arrangement for the care and protection of persons with mental illness. So far as the *Rehabilitation Council of India Act, 1992* is concerned The Rehabilitation Council of India was set up by the Government of India in 1986, initially as a society to regulate and standardise training policies and programmes in the field of rehabilitation of persons with disabilities. The urgent need for minimum standards was felt as the majority of persons engaged in education, vocational training and counselling of persons with disabilities were not professionally qualified. Poor academic and training standards adversely affect the chances of disabled succeeding in the world of work. Therefore, an Act of Parliament in 1992 enhanced the status of the Council to a statutory body. In essence, the Council and its Act, aims to regulate the quality of training of Rehabilitation Professionals and to maintain a Central Rehabilitation Registration Register of the professionals so trained. However, both the Council and the Act didn't find favour with the voluntary sector, due to arbitrariness in formulation and implementation, delay in implementation of the clauses of the Act, inclusion of the clause of disciplinary action against those who failed to comply with the dictates of the Act and inadequate definition of the term Rehabilitation professional. *The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999* was enacted for the protection of certain groups among the disabled who are more vulnerable than others, and hence a specific enactment for their property and well-being was felt necessary. The enactment of the National Trust Act was meant to fulfill a common demand of

families that seek State provision for their severely disabled wards. The specific objectives of the Act are:

- To enable and empower persons with disabilities to live as independently and as fully as possible within and as close to the community to which they belong;
- To promote measures for the care and protection of persons with disabilities in the event of death of their parent or guardian; and
- To extend support to registered organisations to provide need based services during the period of crisis in the family of disabled covered under this Act.

The issue of appointing a guardian under the tenets of this law is governed by the constitution of a local level committee (LLC), consisting of an officer of the State, a representative of an NGO and a (any) person with a disability. The LLC is vested with the authority to decide upon applications for legal guardianship. The Act provides for the manner in which legal guardians are to be appointed. The Act also lays down duties of the legal guardian who has to furnish periodic returns to the LLC about the assets of the ward and their disposal in his hands. Similarly, the Committee too is required to maintain inventory and annual accounts of the property and assets, claims and liabilities submitted by the legal guardians to it. The overall supervision of this Act is vested with a National Trust Board appointed through a democratic process by the registered organisations of the parents and others providing services to this segment of the disabled population. The government has contributed Rupees one billion to the trust fund. The interest earned is used in supporting mandated activities. Throughout the Act, as one weaves through the clauses and sub clauses, there appears to be no involvement of the person with the disability, even notionally.

Apart from the above mentioned laws there are a host of minor laws which contain some provisions relating to disability. These Acts have also been reviewed and include *inter alia Workmen's Compensation Act, 1923* and the *State Employees Insurance Act, 1948* amongst the labour welfare

legislations, *Motor Vehicles Act, 1988*, and a host of laws which mention provisions concerning disablement or disability like the *Indian Penal Code, The Contract Act, 1872, The Evidence Act, 1872, The Government Savings Banks Act, 1873, Prisoners Act, 1900, etc.*

Coming to the principal legislation i.e. *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, India enacted this comprehensive legislation in 1995 as its commitment of being a signatory to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and the Pacific region, which was espoused at the meeting to launch the Asian and Pacific Decade of the Persons with Disabilities (1993-2002) convened by the Economic and Social Commission for Asia and Pacific at Beijing on 1<sup>st</sup> December, 1992. The Act considers disability as a civil right rather than a health and welfare topic, and identifies the requirement to incorporate persons with disabilities with the mainstream of society by some normative action. The main purpose of this Act is to define the responsibilities of the Government at National as well as at State level with regard to the services for disabled persons. The Act ensures full life to disabled individuals so as to make full contribution in accordance with disability conditions. Amid other things the Act proposes to provide for the liability of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities; to create a barrier free environment for persons with disabilities; to remove any discrimination against persons with disabilities in the sharing of development benefits with reference to non-disabled person etc. However, it has been criticized for it suffering from indistinct terminology and lacks teeth for its full implementation with lack of adequate and proper monitoring mechanism. Since its initiation this has met with very little success even in matters as basic as ensuring a barrier-free environment and generating employment. As a matter of

fact, particularly viewed with respect to the UNCRPD, the very first change that needs to be made to the definition. The caveat in the PWD Act that reforms should only be undertaken within the limits of a state's economic capacity nullifies the Act's potential for change; the Act does not provide for special provisions for women and children in consonance with the Convention. Further, the provisions of access to justice, liberty and security etc. do not find much mention in the PWD Act, which deals more with the procedural aspects of disability legislation- with rather elaborate details of the committees to be set up. Hence there are a lot of areas where the Act needs to be revamped. Not only have the inherent defects of the Act but also the Act's incompatibility with the Disability Convention mitigated its effects.

The National Policy for Persons with Disability, pronounced in February 2006, attempts to elucidate the framework under which the state, civil society and private sector must function in order to make sure a dignified life for persons with disability and support for their caregivers. The policy makes out the need to restore the earlier emphasis on medical rehabilitation with an emphasis on social rehabilitation. Community Based Rehabilitation (CBR) is seen as an effectual means of rehabilitation, and the policy states that CBR will be encouraged. Like any policy statement, this one too delineates the track that intervention for persons with disability must take. But there is no clear roadmap, or even list of priorities, on how this is to be executed. A closer look reveals that the Policy is in nothing but the imitation of the Persons with Disabilities Act, 1995 and hence requires a complete revamp.

As mentioned above the provisions of the Persons with Disabilities Act, 1995 have not been fully executed till date. Repeatedly the Court's intrusion has been wanted in this field. There have been incidents of people with disabilities and/or their care- and service-providers approaching

various Courts to comprehend these specifications. The conventionally inherited legal system is very pricey, time-consuming and more complex. Therefore, it is said that the underprivileged and vulnerable class has started to look upon such a system as an enemy, instead of a friend. A perusal of the various case laws show that the courts have resorted to individual remedies of the problems brought before them, basically rooted on sympathy rather than entitlements. *Suo moto* action is also negligible. The Courts though have enunciated very notable judgements concerning employment and social security; but it seems to be disinclined towards education and barrier-free environment. The decision given in *Indian Bank's Association's case* is simply magnificent. Simply speaking the judiciary in spite of some landmark judgement seems to be in a slow-moving stage where it requires steady nudging to rise from its sleep.

Finally coming to the scenario of the human rights of the persons with disabilities in North Bengal, the situation is very disappointing. Only 30.15% of the disabled population surveyed knows about the Persons with Disabilities Act. 79.37% of the respondents do not know about the rights guaranteed by this principal anti discrimination law of the nation. 62.70% do not know about the reservations available. Majority of them do not receive any allowance, have been discriminated in their day to day lives and do not know about the Disability Commissioner or have sought his help in any way. The Non-Governmental organizations working in this area have received very little funds which are at most times inadequate and neither the majority of them have received any other special benefit under the Act. 54.76% of the Ngo workers questioned have revealed that their institution has not received the necessary cooperation from the Disability Commissioner. Alongside majority of the common people and government employees too do not know about the Persons with Disabilities Act, the Special employment exchange or the Disability

Commissioner. It thus becomes amply clear that a lot needs to be done to improve the conditions of the disabled in this part of the country.

A glance of the above lines brings into view that individuals with disabilities are the most disadvantaged groups in society and still encounter daily discriminations in every facet of life; and disability must be considered as a natural part of life which does not in any way diminish the right of individuals to live independently, make choices, contribute to society, and pursue meaningful careers. In view of the present study and findings derived from this work, it may thus be safely concluded that:

- I. There is no unanimous definition of Disability that focuses on the social model rather than the charity model and hence there is lack of sensitivity on the issue of disability throughout the world principally due to its different approaches and definitions.
- II. India as such has not laid any specifications regarding collection of disability population data nor has it differentiated between disability, handicap and impairment.
- III. Laws of almost all the countries reviewed brings to light that none of the countries have included provisions for social awakening and most of them vouch for a system of segregation of people with disabilities in institutions.
- IV. The Constitution of India does not specifically lay down any beneficial provision for the persons with disabilities as for women and children.

- V. The *Mental Health Act* puts grave question marks on the efficacy of the Act for ensuring the protection of the person, property and privacy of communication of the mentally ill. As a matter of fact, the Act leaves enough liberty for the misuse of power by the police, medical officer and magistrate. The percentage of involuntary admissions is often found to be very high and the provisions of Section 19 which permits admission under certain special circumstances by a relative or a friend are being widely abused. The primary flaw of the Act relates to the fact that it perceives institutional care as the lone arrangement for the concern and security of the mentally disabled.
- VI. The *Rehabilitation Council of India Act* too suffers from serious drawbacks, chiefly that it not only disempowers anybody not registered with it for carrying out any work with or for the disabled, but also forbids any individual from teaching, training or providing recreation, leisure etc. until and unless the registration proviso is fulfilled. As mentioned earlier also the Act's defects revolve around uncertainty in formulation and execution; delay in execution of the clauses of the Act; addition of the clause of disciplinary action against those who were unsuccessful in complying with the dictates of the Act; and unsatisfactory definition of the expression Rehabilitation professional.
- VII. The *National Trust Act* suffers from the primary defect of absence of participation of the persons with disability. Secondly, there are question marks regarding the extent of the applicability of the restrictions imposed under Section 4(5). Thirdly, the provisos to section 11(1) (b) permits bequests to be made to the Trust for the advantage of a particular person with disability. Simultaneously the provisos lay down that no donor can persist on the exclusive utilization of the bequest for the

beneficiary named by him. This is a very conflicting condition. Fourthly, the Act has a 'protector' kind of image, distant from person-centred plan.

VIII. The National Policy for the Disabled framed in 2006 echoes the provisions of the Persons with Disabilities Act, 1995 instead of making efforts to remedy the defects of the Act which surfaced in ten years of its implementation since 1996.

IX. The main criticisms effected against the *Persons with Disabilities Act, 1995* is its suffering from indistinct terminology and lacks teeth for its full implementation with lack of adequate and proper monitoring mechanism. The key defects can be summed up as:

- a) The definitions view disability strictly from the medical and/or psychometric viewpoint. This results in strengthening a medical model of intrusion rather than the much-needed community-based rehabilitation. Though Mental Illness has been included as one of the seven disabilities, the Act as a whole shows very little understanding of the nature of the disability and current developments in the field. It appears that the recognition is more by default rather than intent. The very definition of Mental Illness (MI) is more by elimination rather than explanation. For example, by stating that mental illness is other than mental retardation, one wonders whether one should apply the definitional criteria to all mental disorders including epilepsy and disabilities such as dyslexia.
- b) The definition of a 'person with disability' under the Act has been criticized for its imprecise nature. Section 2 (t) requires that a medical authority needs to certify that a person suffers not less

than forty percent disability. Particularly for mental health problems such as cerebral palsy or autism, such a determination becomes difficult in the absence of any guidelines. Moreover the assessment of disability in terms of percentage is also not a very hailing process, as it is very difficult to know how to rate a person as a 'person with disability' or 'a person with severe disabilities'.

- c) Although prevention and early detection are important components of the medical model, measures taken for these are insufficient.
- d) In India, education for the disabled is not part of mainstream learning, but it is imparted through isolated institutions which operate on a service and charity mode. Here again, only a few schools have resource rooms and employ special education teachers to assist retain children with special needs in their system. Despondently, these services are found in very few cities. There are almost no special schools or special educational services in rural India. Efforts at incorporating children with disabilities into mainstream schools have been even less successful. There is also a contradiction of the provisions of Section 39 which deals with reservations in educational institutions, being put under the head employment.
- e) **The** Act provides for employment to only those people who come under loco motor, hearing impaired and visually impaired acknowledged categories of disability. The persons with mental illness and mental disability are specifically left out of it irrespective of the degree and severity of their illness. This classification of assigning one pr cent of reservation to each of

these categories is not desirable and the categories have also limited the scope of the application of this section.

- f) Though the Act recognises seven disabilities, the representation allowed in the coordinating committee and executive committee at the central and state levels are restricted to only five members. So unless each disability is represented individually, the chances of MI being dropped by the wayside cannot be ruled out in the absence of representation granted to it in the Committees.
- g) It has very weak anti-discrimination provisions calling for quotas in most cases.
- h) Another significant defect of the Act is that majority of the provisions are subject to the expression “only within the limits of economic capacity and development” of the State and thus are rather easy to evade.
- i) Total lack of efforts on the part of the Government to spread awareness on the provisions of the Act. Most of the disability rights movement has remained confined to the urban sector and failed to mobilize the masses who are neglected.
- j) The role of the Commissioner/ Commissioners has been far from satisfactory.

XI. The dormant nature of the judiciary has also added to the existing woes of this vulnerable section. The Court are reluctant to take *suo moto* actions and in most cases act only when prodded on a particular issue. The judiciary is the least proactive when it comes to dealing with disability issues. Further litigation is expensive and a case usually drags on for years making it difficult for a disabled person to enforce his rights even more.

Thus from the above lines it is amply clear that the persons with disabilities are not objects of charity or pity, but they are very much ‘normal’

like any other human being. It is absolutely that it is the environment around the disabled person that plays a vital role to facilitate his or her mainstreaming and integration into the society. Removing physical, psychological and social barriers and obsolete ethos are gradual steps towards their normalization. A disabled person may be surrounded by invisible glass walls and ceilings which often prevent his or her access to the various societal positions. This process of including the disabled with the non-disabled is incomplete without the necessary laws and their respective rights and obligations. In fact in the present century any law existing without including the human rights perspective is incomplete and invalid. But unfortunately, the existing laws fail to meet the demands of this 'invisible minority' and hence great challenges lies before the State to frame laws in accordance with these changing needs and requirements of the Persons with disabilities. Thus the need is to let the disabled suffering from any kind of disability whether mental or physical get full justice and understand their human rights of the disabled and nourish, flourish and enrich them so as to obey and implement normalization, equalisation, inclusion and rehabilitation in normal social life.

Further, given that a law is a mechanism of social change, the device to protect life, its hands are long and sure enough to protect the exploited from the exploiters. Its hands work according to public policy. Legislation however perfect is pointless without enforcement. Laws are a means to an end in them. Hence their success depends upon both people's respect for them and implementation. Persons with disabilities on their part must come forward to protect their interests and assert their rights individually or through various action groups and welfare organizations; so that the laws far from remaining a dead letter in a statute book are transformed into a living organism. Following suggestions are humbly placed for consideration in this regard:

- i) An all pervasive definition of 'disability' has to be framed based on the social model and in conformity with the provision of the United Nations Convention on the Rights of the Persons with Disabilities, 2006.
- ii) The State must make an effort at the earliest to abandon its outlook of morality and charity and deliberate on the human rights model. The legislative policies and schemes must move from the medical to the human rights model. All together the different nuances of the human rights model must be assume in every viable mode.
- iii) The human rights approach to disability policy must be adopted across the world irrespective of political or cultural precincts.
- iv) Public consciousness must be augmented so that their outlook towards this sector alters. The enterprise here should be together of the society and the state as well as all voluntary organisations operational in this area.
- v) Adoption of the first UN Convention on the Rights of the Persons with Disabilities must not be put at rest on papers but be put into practice as soon as possible.
- vi) The Constitution must be amended by bringing forth specific fundamental rights securing disability entitlements.
- vii) *The Mental Health Act, 1987* must be amended incorporating the following suggestions:

- Inclusion of provisions for educating society about mental illness and treating it at par with physical illness;
- Suitable check on the working of licensing authorities, delimit the powers of the licencing authority and appointment of a doctor preferably a psychiatrist as inspecting officer;
- Sufficient provisions for long-term treatment and expenses thereof;
- Provisions for post discharge care and rehabilitation; penalties for those requesting unnecessary detention of mentally ill;
- Privacy of patients and stress on treatment of illness rather than the ill;
- Avoiding institutionalization and treatment to be based on socialization;
- Provisions for foster homes and half-way homes for those patients whose family members are unwilling to take them back or where the patient has no family; and
- Separate arrangements for elderly, destitute, women and psychopaths, along with children and addicts in places of treatment.

viii) *The Rehabilitation Council of India Act, 1992* must be also amended with these provisions:

- The role of RCI should be changed. From a mere training body it should be a networking and liaison body.
- Alternatives to Central Registry should be worked out at the state and District levels.
- Clause 13(3) related to penal actions must be removed.

- A stringent definition of the term ‘Rehabilitation professional’, alongwith an equally strict eye on educational entry level and quantum of relevant disability course content.
- Introduction of a clause dealing with persons working in the disability sector before the RCI Act was formulated. The clause should specify at least graduate-level educational qualifications along with a predetermined number of years of experience in the service sector for the registration/licencing of persons already working with the disabled before the coming into force of the Act.

ix) So far as *the National Trust Act, 1999* is concerned the need is to evolve a system that emerges from a person centred plan to a planning process for persons with disabilities. The person centred planning process is a process of planning for and supporting an individual that honours the individual’s preferences, choices and abilities and it assumes that all people have preferences, regardless of their level of disability. Decision-making by the individual is the key to this effort. Naturally, appointing a guardian to take decisions can defeat this process. Hence the National Trust should address the development of this process. At the same time there is a need to sensitize parents about the process for self determination and assisted decision making. Also universal legal capacity of a person with disability needs to be recognized. Along with the defects inherent in the Act also needs to be adequately addressed so that the purpose of the legislation is not defeated.

x) Each of the Chapters of the Persons with Disabilities Act need some change. In fact it is strongly suggested that the changes suggested

by the Amendment Committee of 2006 must be taken up as early as possible. Along with the following suggestions with respect to the Persons with Disabilities Act, 1995 may be considered:

- The definitions of disability, person with disability are revised along with the definitions of mental illness, cerebral palsy, low vision and mental retardation as well as introduction of the definitions of learning disability, dyslexia, person with severe disability, disabled person's organizations and non-governmental organizations.
- Minimize Government representation from the Central and State Coordination Committees and Central and State Executive Committees and increase the representatives of disabled persons organizations and non-governmental organizations. Constitute District Executive Committees along with the State Executive Committee.
- Instead of a single section five new sections must be introduced which shall explicitly deal with the issues of--- Undertaking surveys, investigation and research concerning the reasons behind the occurrence of disabilities; promoting various methods to prevent disabilities including health issues and public awareness; screening of children at least once a year mentioning specifically the various medical tests to be undertaken to detect at-risk cases; proper training for primary health centre staff to be provided by a specific institution/recognized institutions to be set-up/recognised for the particular purpose of prevention and early detection of disability and devise specific measures for what actions are to be taken for pre-natal, perinatal and post-natal care of mother and child.

- Strike out the expression 'within the limits of their economic capacity and development'.
- Impose civil and criminal liability on the person responsible for causing disability by either refusing to take a step which would lead to disability or causing something which would result in disability.
- Inclusion of provisions laying down guidelines for evaluation and assessment of various disabilities and grant of Disability Certificates.
- Special educational needs to be specifically defined.
- Appointment of a specific educational authority to look into the educational needs of the persons with disabilities.
- Provisions for education of children with disabilities in mainstream school without any discrimination and punishment for violation of this non-discriminatory provision.
- Section 39 must be removed from the 'Employment Chapter' and placed under the Education Chapter.
- Reservations for admission to educational institutions, specifically to technical and professional institutions amounting up to 4% and must be distributed evenly amongst all the categories of disability and such reservations must exist in government aided as well as private educational institutions.
- Inclusion of provisions for a specific curriculum for the education of the persons with disability.
- Measures to devise specific schemes for introduction of specific programmes in open schools and open universities, for the education and training of the persons with disability.
- Inclusion of disability education as an integral part of teacher's training programmes.

- Insertion of specific learning disabilities to be taken special care of, in imparting education.
- Section 31 to be specifically amended so that aids and appliances are to be provided for educational purposes not only to blind students or those with low vision. But specific devices to be given free of cost to each and every person with disability to assist him/her to attain the highest levels of education.
- Residential/ non-residential girl's Special School to be set up, at least one in every district.
- Increasing the percentage of reservation to a minimum of four per cent and not limiting it to only three categories as laid down in Section 33 but also extending to persons with autism, mental retardation and cerebral palsy.
- The quantum of reservation of person with disabilities should be according to working population; and the persons with disabilities barred from the quota reservation should be given priority in availing other benefits such as establishments of industry, research institution and rehabilitation centres.
- Insertion of a section specifically dealing with self-employment. Accordingly, training must be provided to persons with disabilities to begin as well as manage their own businesses. Low interest loans must also be provided so that they can set up their own businesses.
- Provision for incentives for employers for employment of persons with disability requires to be well defined.
- Amendment of Section 42 to include the repair and maintenance of aids and appliances.
- Criterion for preferential allotment of land must be categorically laid down.

- Chapter should be renamed as 'Barrier-free Environment.'
- Sections 44, 45 and 46 to be placed under the above-named Chapter.
- Section 47 to be moved in Chapter VI relating to 'Employment'.
- Insertion of freely accessible airports and bus terminus for persons with disabilities.
- Specific standards to be laid down for research and manpower development.
- District Executive Committee to be entrusted the responsibility to look into the application of this provision and the standard to be maintained in relation thereto.
- Insertion of provision laying down general requirement to be complied by the institutions to register themselves as an institution for persons with disability.
- Provision to include the activities to be taken up therein.
- Inclusion of penalty provision if any institution swerves from the conditions under which they were granted the certificate of registration.
- Specific requisites including medical facilities to be available for person residing in such institutions.
- Inclusion of residential facilities for spouse and person in care of severely disabled person.
- Special concessions to be made available to persons with severe disabilities, particularly in availing treatment.
- Abolish the Office of the Chief Commissioner and Disability Commissioner in the States and instead either establish a Commission for Welfare of Persons with Disabilities akin to the Women's Commission or Minorities Commission or a Disability

Tribunal to meet the requirements of the Act with regard to the functions performed by the Commissioner in the present Act.

- In case of retaining the office of the Commissioner:
  - Define the powers of the Chief Commissioner/ Commissioners in exactitude.
  - Lay down the conditions of eligibility of the Chief Commissioner/ Commissioners.
  - Access audits by Commissioners' offices.
  - Review of human resource and financial capacity of Central and State Commissioners' offices is also needed, and guidelines on minimum staffing levels introduced.
  - Insurance schemes for employees in the private sector as well.
  - Unemployment allowance to be paid to every unemployed person with disabilities who has registered himself/herself with the Special Employment Exchange leaving repealing the provision of two years unemployment.
  - Contributory pension scheme.
  - Provision for free legal aid to every person with disability.
  - Specific concessions to be available to the persons with disabilities.
  - Specific schemes for public awareness to be introduced.
- x i) Take appropriate measures to incorporate necessary changes through amendments in each of the Acts dealing with Disability Rights in consonance with the UNCRPD.
- x ii) The judiciary must also take a more proactive part in protecting and interpreting the rights of the persons with disabilities and take steps for *suo moto* actions.

- xiii) Make specific provisions for enhancing the human rights approach to disability rights in the rural areas.

In view of the findings of this study, the suggestions that are made by the researcher if accepted and implemented by the appropriate authorities, it is hoped that, these shall bring forward the durable solution of the maximum problems regarding the protection of human rights of the persons with disabilities in India. If accepted the suggestions will assist in making disability laws successful in every part of the country including the people of North Bengal as well as assist it in making them 'model law' for others to follow.