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HUMAN RIGHTS OF THE PERSONS WITH DISABILITIES A UNIVERSAL DESIGN APPROACH

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ABSTRACT

Persons with disabilities face discrimination and barriers that restrict them from participating in society on an equal basis with others every day. They are denied of their basic human rights. A disproportionate number of persons with disabilities live in developing countries, often marginalized and in extreme poverty. The Convention on the Rights of Persons with Disabilities (CRPD) is a modern human rights treaty with innovative components. It impacts on disability studies as well as human rights law. While human rights come to the rescue of disabled, there are other social challenges that remain unaddressed by these human rights. The social and human rights model form the basis of recognising the rights of the disabled. The need of the hour is to make the differently abled feel at par with the rest of the society indicating a subtle shift from a welfare-based approach to Rights based approach. Universal Design as a solution-oriented approach comes to the rescue of the differently abled and guarantees equality. It assures the implementation of schemes and

policies in an equal and organic manner. The article evaluates how laws and international instruments have addressed this social issue and what are the rights guaranteed therein.

Keywords: Disability, Differently Abled, Human Rights, Universal Design, Equality.

INTRODUCTION

THE NEED FOR A SPECIFIC TREATY FOR THE PWDS

The International instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), International Covenant for Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC) were already in place constituting of provisions for all humans thereby for protecting their human rights. Obviously, they were available for the persons with disabilities (PwDs) as well. However, there were a plethora of issues that



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needed to be separately addressed for this special class of people. This section of people has remained vulnerable for an inconsiderable period of time. They have not only been subjected to discrimination and humiliation but also have never been in a position to enjoy the fundamental aspects of life in a normal/ usual way. In the case of the differently abled, certain basic needs like accommodation, infrastructure access, communication and jobs have to be made available for them at an echelon and in the magnitude where they can properly enjoy them, their needs being appropriately accommodated. The CRC was the first convention to include a specific provision for the disabled. It states that state parties must recognize the rights of children with disabilities to enjoy full and decent lives and participate in their communities.¹

The need for a specific convention for the persons with disabilities was obvious. There were several conventions organized and actions taken in this regard by the United Nations (UN). The UN General Assembly designated the International Year of the Disabled in 1981 and

the International Decade of the Disabled Persons from 1982-91.² After several other declarations and rules on the rights of disabled persons and the mentally retarded persons, the UN approached towards adopting a more internationally binding instrument and thus the Convention on the Rights of Persons with Disabilities was born. The Convention on the Rights of Persons with Disabilities (CRPD) supersedes the previous and more general international instruments since it is the most recent, specialized and comprehensive treaty to recognize the human rights of persons with disabilities and to clarify the obligations of States to respect, protect and fulfil those rights.³

The natural notion of human rights was based on the inherent right to live with dignity. Human dignity cannot be separated from human rights.

Therefore, while the international bill of rights (combination of UDHR, ICCPR AND ICESCR) tried to preserve and promote the rights of all human beings, it did fail to some extent in cases where multiple forms of discrimination were prevalent. They were indeed those sections in the society which can be referred to as the vulnerable

¹Art. 23, United Nations Conventions on the Rights of the Child, 1990.

²*Id.* At 1.

³ OHCHR, "Monitoring the Convention on the Rights of Persons with Disabilities", *United Nations Human Rights*

(2010), available at

https://www.ohchr.org/Documents/Publications/Disabiliti es_training_17EN.pdf (February 25, 2020)



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groups due to long history of social and environmental outcast and ill-treatment, for instance, women, persons with disabilities amongst others. In such cases, it becomes important to not only preserve their pre-existing rights but also to guarantee and promote certain other rights which can ensure an end to all sorts of discrimination and prejudices against them. In order to bring them to a platform where they stand equal to others, their complexes and scarcities have to be washed away. Therefore, emerged special treaties like Convention on Elimination of Discrimination against Women and Convention on the Rights of Persons with disabilities (UNCRPD).

UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The Convention has not defined 'disability' but article 1 of the Convention goes on to state that "*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal*

basis with others."⁴ At the outset, the Convention recognises that there are several barriers on the PwDs and those barriers exist not because of any impairment of theirs but because of lack of acceptance and recognition by the laws and the society. For instance, access to infrastructure is to be made available and convenient for them. Therefore, the need is to remove these barriers from the society and give them opportunity for equal participation. Right from the social and cultural barriers to the urban and architectural barriers have to be taken into consideration for achieving the desired purpose.

Universal design concept comes to the rescue of policy makers in this regard. This approach has to be adopted right from the planning process especially in case of providing accessibility. In order to explain this, a few observations are made: When we talk about infrastructural accessibility, all buildings must comply with standards wherein the common entrances can be used by all including the persons with disabilities. It should be compatible for entrance of wheelchairs, people with no eyesight, or even parents with prams. A backward entry or an

⁴ Art. 1, The United Nations Convention on the Rights of Persons with Disabilities, 2006.



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assisted entry must be discarded. In order to feel a part of the society, they must have the opportunity to use the same way and enjoy the same facilities in their own way of course. For this, authorities, must include these standards while granting license for construction or expansion of buildings (both government and private).

Architectures should make it a part of their routine to cater to the needs of the PwDs while designing the buildings. The big budget cinemas which run in theatres for weeks must be equipped with a compatible induction loop system⁵ so that the cinema halls or theatres can have the differently abled in the same hall as of others and the ones suffering with hearing issues, could be in a position to enjoy the movie with the help of hearing aids. In the world of technology, where any information is just a click away from us, there are some who are unable to read and understand even when the screen containing all the information is right in front of them. For this reason, it is incumbent that websites have web accessibility software such as the option of 'Read the Page Aloud' and thereby ensure their right to information.

⁵ *Id.* At 4.

The above-mentioned instances are only a few ways in which the very object of the UNCRPD can be achieved in state parties especially with the approach of universal design in planning and implantation stages. The aim is to recognise the approach and utilise it in all spheres in order to integrate all sections of PwDs into the mainstream society. Moving on to the other important provisions of the Convention, article 3 of CRPD incorporates the principle emphasizing on inherent dignity, individual autonomy, freedom to make one's own choices, non-discrimination, full and effective participation and inclusion in society, respect and acceptance of persons with disabilities, equality of opportunity, accessibility and general equality.⁶

Inherent dignity refers to the worth of every person. Human dignity is the very premise on which the whole arena of human rights is built.

The persons with disabilities have to be seen in this light as well. Protecting their dignity would mean they would be able to express more freely and their experiences and opinions would be valued. Respect for the individual autonomy of persons with disabilities means that persons with disabilities can have the freedom to make their

⁶ *Supra* note 9, Art. 3.



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own decisions. They are at par with others and their reasonable life choices, are subject to minimum interference but adequate support where required.⁷ Equality and non-discrimination is the most important for these provisions to be implemented. Being fully included in society means that persons with disabilities are recognized and valued as equal participants by giving them a barrier free physical and social environment. They are seen as integral members of the society, their needs integral to the social and economic order and not treated differently by identifying them as “special”. Respect for difference means developing mutual understanding and accepting them as they are. They should not be subject to different treatment, mockery, bullying or even pity. This incorporates acceptance of disability as part of human diversity and humanity.⁸ Their rights and dignity are the same as of others.

The CRPD is a blend of civil, political and social rights. It puts a positive obligation on the states not only to protect and promote their rights but also to restraint anything that interferes with the enjoyment of their rights. Therefore, CRPD

highlights both the positive and the negative dimensions of relevant rights. An example of this is a provision in article 5 of the Convention that requires state parties to promote equality by imposing a positive duty on states to provide reasonable accommodation.⁹ The important embodiment by CRPD is the interpretation of all the existing human rights instruments in disability specific connotations. For instance, the general right to personal opinions and expressions is transformed into an obligation to provide the disabled with information and accessible ones such as sign languages, Braille and other alternative communications.¹⁰ Therefore, CRPD simply restates the existing human rights with an additional goal that the more complex lives of the disabled are paid heed to. As rightly said by Frederic Margaret, “where the able-bodies may be in a position to maximize their rights, the disabled require a much more complex social, political and economic environment so that they can enjoy rights on equal basis.”¹¹ This is exactly what CRPD stands for.

⁷ *Id.* At 8.

⁸ *Id.* at 1.

⁹ *Supra* note 9, art. 5.

¹⁰ *Supra* note 9, art. 21.

¹¹ *Id.* At 1.



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The CRPD also recognizes the need of spreading awareness in order to build a positive society for the PwDs. It is incumbent that we accept that the persons with disabilities are very much fit and worthy of forming a part of the mainstream society and live like a normal human being. In fact, for a long time now, it's the society that has proven to be unfit for them by forming stereotypes, prejudices and other social stigma. These myths and exclusion have resulted in the PwDs being confined or rather isolated in their four-walled houses, or special institutions. Needless to say that such an exclusion does not only go on to interfere with their rights and dignity but also adds to their mental and physical ailments. Feeling useless for the society, burden for their family, they are heaped with depressing and vulnerable thoughts. In order to end all this, article 8 of the CRPD must be adhered to.

Immediate and appropriate measures enshrined under the Article are:¹²

- a) raising awareness throughout the society and to foster respect for the rights and dignity of PwDs,

- b) to fight against stereotypes, prejudices and adverse practices in all areas of life that can harm the PwDs and
- c) to enlighten the society by making them aware of the capabilities, achievements and contributions of PwDs in the very society they live in.

Such awareness can be brought by reformative policies, regular workshops and campaigns at both social and organizational levels, forming special task forces, or through the way of electronic and print media. The task does not end with just spreading the awareness. The authorities and the task forces must analyse and assess whether the awareness programmes are actually leading to positive changes in the society, and if not, what should be the road ahead?

As previously stated, the PwDs have the right to enjoy all spheres of life just like any other human being and therefore, CRPD under article 12 provides for 'Equal Recognition before the Law.'¹³ The article recognises for them to enjoy legal capacity on an equal basis with others. Along with the right, it also goes on to provide certain safeguards for the PwDs so that their right

¹² Supra note 9, Art. 8.

¹³ Supra note 9, Art. 12.



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remains free from abuse, interference or any undue influence. Under article 12(3) States are under an obligation to make them capable of exercising this right and simultaneously have the safeguards in place. This clause as interpreted by the UNCRPD committee is the application of universal legal capacity wherein access to support is to be provided for exercise of legal capacity. The committee in its interpretation of article 12 has also clarified that a person's disability especially mental disability that interferes with ones' decision making skills cannot be a ground for denying his legal capacity under article 12 as it would be a violation of one of the core human rights.¹⁴ However, in case any violation occurs, under the Optional Protocol to the UNCRPD, individuals or groups of individuals have been provided the right to take a complaint to the Committee on the Rights of Persons with Disabilities (CRPD Committee) when one or more of their CRPD rights has been breached¹⁵. Individuals can even allege "grave or systematic violations by a State Party of rights set

forth in the Convention".¹⁶ However, in case any violation occurs, under the Optional Protocol to the UNCRPD, individuals or groups of individuals have been provided the right to take a complaint to the Committee on the Rights of Persons with Disabilities (CRPD Committee) when one or more of their CRPD rights has been breached¹⁷. Individuals can even allege "grave or systematic violations by a State Party of rights set forth in the Convention".¹⁸

The Convention is definitely the most important development in the area of disability laws globally. It emphasizes states to enact domestic laws in accordance with the provisions of the Convention and ensure that people with mental or physical disabilities can be granted equality of status. The Convention lists down both positive as well as negative rights. For instance, it prohibits any kind of abuse, violence or discrimination on one hand, while providing for the right to special forms of education, community living and others. The combination

¹⁴ OHCHR, Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities (A/HRC/10/48, 26 January 2009), available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf> (last visited on October 19,

2020).

¹⁵ Short Guide to Using the Optional Protocol to the UN CRPD, European Network On Independent Living, available at: <https://enil.eu/news/short-guide-to-using-the-optional-protocol-to-the-un-crpd/> (February 26, 2020).

¹⁶ *Supra* note 9, art. 6.

¹⁷ *Id.* At 20.

¹⁸ *Id.* At 21.



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of both positive and negative rights is an empowering mechanism for the persons with disabilities.

The Convention does not only guarantee them protection of their rights but also provides for recognition as fragments of a human society thereby restoring their dignity. This is what makes the Convention special. The section of the society which has remained hidden and ignored globally has been brought into light by the UNCRPD. Having discussed a few important provisions of the UNCRPD on the pretext of bringing the PwDs at par with the other members of the society, it becomes appropriate to say that the long prevailing social challenges can be faced with the internationally binding provisions of the CRPD if implemented without any gaps by the state parties. In the upcoming section of the article, we shall look into some other rights that the UNCRPD has to offer and how they have helped in changing the status of the differently abled from being at a mere welfare centred position to now at a Rights centred echelon.

DISABLED AS VULNERABLE GROUPS OF A SOCIETY

The persons with disabilities being one of the most vulnerable groups have unfortunately been

treated as an alien section of the society for too long. Even when the reforms began, the approach seemed more of a charity based since they were mere medical subjects in need of special care and attention but eventually the realization struck the international community that they were to be treated like a part of the mainstream society, their welfare and needs be prioritized and their rights be restored. In light of this, came up the social model and the human rights model on disability.

i. SOCIAL CHALLENGES AND HUMAN RIGHTS MODEL

The Convention on the Rights of People with disabilities enshrines the social and human rights model of disability. The topic remains a big social issue and challenge as the disabled have been treated separately from the society. This separation was caused by their inability to access facilities and break barriers. They have faced exclusion and humiliation since ages. Therefore, social and medical response to disability is of paramount importance. They cannot be treated as mere patients or medical objects. So, the paradigm had to shift from the medical model to that of social model of disability. These social challenges gave rise to specific human rights instruments as well as domestic legislations. The



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social model of disability therefore got rid of the earlier notions that disabled fit best in the medical model and that justified their exclusion from the society.

The social model puts an emphasis on the dignity of the individual and their right to equality. It requires a change in the social outlook in order to end all prejudice and discrimination.¹⁹ The CRPD is built on the social model of disability. It does not talk about providing facilities or arrangements to the disabled in segregation. Instead, it talks about their effective participation in the society be it access to friendly environment or effective transport and infrastructure or inclusive education and other opportunities.²⁰ It talks about a duty cast on the state and even individuals towards breaking all the barriers and following the principle of inclusion. The social model enables the full enjoyment of their human rights with effective safeguards, state and individualized support and public awareness.

The human rights approach to disability is part of the human rights movement that has developed over the latter half of the 20th century. The role of international human rights to fight discrimination

against the disabled has already been discussed in the previous chapter. It is however important to mention that like racism or sexism, disability is also a consequence of discrimination and infringement of human rights.²¹ In human rights law, principles of non-discrimination and reasonable differentiation are the premise to the doctrine of equality. The principle of reasonable differentiation is of particular importance to persons with disabilities.

The differently-abled may require certain specialised services or support to receive and exercise their rights and this is what makes them materially equal to others. Therefore, recognition of difference is important here to allow recognition of rights. The Human Rights Model is very much based on the social model requiring every person to participate fully in social institutions and avail fully of the services offered to a country's public, regardless of ability.²² In the introduction to the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993, the principle of 'equal rights' is described as implying "that the needs of each and every individual are of equal importance, that those needs must be made the basis for the

¹⁹ *Id.* At 1.

²⁰ *Supra* note 9, Art. 9.

²¹ *Id.* At 3.

²² *Id.* at 1.



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planning of societies and that all resources must be employed in such a way as to ensure that every individual has equal opportunities for participation”.²³

It is known that the persons with disabilities were regarded as objects with certain impairments, deprived and unfortunate section of the society and mere patients in need of medical attention. With the advent of recognition of their inclusion in the society, the world saw a huge paradigm shift from the medical model of disability to the social model. The social model recognized their rights, granted them social benefits and came up with other welfare measures. The human rights approach towards them was developed by the social model. However, it was not enough. The social model still showed certain tints of sympathy towards this vulnerable group. It was still about ‘granting’ or making available of certain benefits, adequate support or other welfare measures. The Human Rights Model overcomes this shortcoming of social model. The human rights model assures that it is their right by all means to get access to the benefits prevalent in the society. The exercising of their rights is paramount and if for that, support from

other sections of the society is required, it would be provided. Therefore, the obligations of the states and individuals co-exist with the rights of the disabled. The human rights model is more anti discriminatory as compared to the social model as it not only concentrates on equality and social integration but also on other civil, political, economic and cultural rights.

In light of all this, we can analyse that the human rights model becomes the most appropriate when it comes to the implementation of the provisions of Convention on Disability as well as other domestic legislative frameworks. It works in accordance with other human rights instruments such as the UDHR, ICCPR, ICESCR and CRC. The awareness programmes and anti-discriminatory policies can be accurately designed based on the human rights model. The Universal design method also sustains for a longer time if human rights, planning and implementation are brought together on the same platform for everyone in all spheres of life. Human Rights model give a boost to Universal Design by recognizing and promoting the concept of support from the other sections of the society which they become both moralized and

²³ UN General Assembly, *Standard rules on the equalization of opportunities for persons with disabilities*,

GA Res 48/96, GAOR, UN Doc A/Res/48/96 (December 20, 1993).



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obligated to under the Rights-Duties-Claim-Privileges relationship. Human Rights model always works in association with the Social model and Universal design is an inter-connection between the two since it achieves both sensitization of society and full realization of the rights of the PwDs.

ii. RIGHT TO BE DIFFERENT BUT EQUAL

It is studied that human dignity is something extremely natural and on that is built the natural notion of human rights wherein every human being is endowed with the rights by virtue of being a human. And therefore, just because somebody is born a little different, or develops some disability at a later stage of life, it nowhere infers that the human dignity is lost for him. They are the same human beings with the same set of rights that they must get by virtue of being human beings and citizens of their states. On this note, the Convention mentions some important rights of the persons with disabilities. They are briefly discussed:

Right to Equality: CRPD underlines the need to recognize that persons with disabilities should enjoy the same legal rights as everyone else.²⁴ They have the right to recognition everywhere as persons before the law and enjoy legal capacity on an equal basis with others in all aspects of life.²⁵

Right against Non-Discrimination: State governments must pass laws that promote equality and end all forms of discrimination, direct and indirect, against persons with disabilities.²⁶ They should not be treated as a different class of people or objects of sympathy.

It specifically talks about women with disabilities²⁷ and children with disabilities²⁸ as they are more vulnerable to different types of discrimination. States must ensure full enjoyment of their rights.

Accessibility²⁹ is a major concern as there must be proper modes of transport, infrastructure, communications so that they can live

²⁴ *Supra* note 9, art. 4.

²⁵ *Supra* note 9, art. 12.

²⁶ *Id.* at 29.

²⁷ *Supra* note 9, art. 6.

²⁸ *Supra* note 9, art. 7.

²⁹ *Supra* note 9, art. 9.



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independently³⁰, have freedom of movement³¹ and participate fully in all aspects of life.

The inherent right to life³² and physical and mental integrity³³ are provided under of the Convention.

Their liberty and security shall not be deprived of at any cost.³⁴

The vulnerable sections of the society such as the persons with disabilities are considered weak and objects of mockery for ages. This amounts to ill-treatment by the hands of others. Therefore, special provisions penalising anyone who subjects them to cruel or degrading treatment³⁵ or exploits and abuses³⁶ them is provided under the Convention.

Promoting freedom of speech and expression for them would include providing them access to all forms of communication in the modes that they can understand the best, for instance sign languages.³⁷

Their right to privacy³⁸ must be respected and there should not be unnecessary intrusion in their lives even on account of providing them support or assistance. They have a right to have their personal lives, enter into marriages and have a family.³⁹

Irrespective of whatever hurdles come in the way, the right to education is very important for their overall development. Inclusive and accessible education should be focused on. All sorts of assistance and reasonable accommodation must be provided.⁴⁰

Their medical conditions remain a priority at all phases. The right to health is secured including in the area of sexual and reproductive health, providing health and other insurances and primarily minimize and prevent further disabilities.⁴¹

Right to work and employment⁴² and enjoy standard of living is also guaranteed under the Convention. This includes social protection,

³⁰ *Supra* note 9, art. 19.

³¹ *Supra* note 9, art. 18.

³² *Supra* note 9, art. 10.

³³ *Supra* note 9, art. 17.

³⁴ *Supra* note 9, art. 14.

³⁵ *Supra* note 9, art. 15.

³⁶ *Supra* note 9, art. 16.

³⁷ *Supra* note 9, art. 21.

³⁸ *Supra* note 9, art. 22.

³⁹ *Supra* note 9, art. 23.

⁴⁰ *Supra* note 9, art. 24.

⁴¹ *Supra* note 9, art. 25.

⁴² *Supra* note 9, art. 27.



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providing of affordable services and adequate training, counselling, financial assistance.⁴³

The CRPD came with the potential to radically bring a change towards the treatment of the disabled people all around the world. The states are now under an obligation to ensure that the aim of this international instrument is realized. A combination of laws and sensitization of society can lead to end of all forms of discrimination against the disabled. The role of state governments therefore becomes two-fold. First, to enforce and monitor that the laws are implemented stringently and second, to raise awareness, organize conferences and work alongside non-governmental organizations (NGO's) in order to make their social integration easy. It can be assessed that the Convention rather than considering disability as an issue of medicine or charity, considers it as a human rights issue. It recognizes not only their rights but also several difficulties in exercising of those rights such as access to buildings and transports, access to information and health. Therefore, it contains provisions that can help them overcome these difficulties in order to fully exercise their rights. These include, making accessible

platforms for getting into a building or a public transport, making them learn relevant modes of communication like sign languages or Braille system. Promoting of human rights and taking away the social disadvantages is what makes the Convention a wholesome one.

CONCLUSION

The need and enforcement of the rights of the PwDs has in recent years taken into view the social and the human rights model together in order to provide for holistic rights and benefits for the differently-abled. The approach towards the persons with disabilities saw a huge paradigm shift from the medical model to that of social and eventually human rights model. They began to be seen not as mere patients or people with certain impairments but in the social model the focus has been to make them inclusive and provide them with social welfare measures and benefits. It is however suggested that in the present era, the demand is to give more weightage to the human rights model as it is more anti-discriminatory, does not depend on presence or absence of impairment and is not a just a welfare based approach but also a strong right based approach.

⁴³ *Supra* note 9, art. 28.



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It is important that even before one begins discussing about the rights of the differently-abled, one acknowledges that any form of disability should not be seen as an inability to possess rights. Once it is established that the rights of the differently-abled are in place, the effort should be to seek its full realization. While doing so, it must be noted that these are not mere welfare measures or a charity-based approach. The combination of Social Model on Disability and Human Rights Model on Disability are sought to make it a Rights based approach. The first step is obviously to have rights based and anti-discriminatory policies in place, in accordance with the international human rights instruments, especially the UNCRPD. It does not focus on mere legislative frameworks. It is true that laws and policies should be holistic and stringent. But alongside, measures to meet the needs of the PwDs must be taken in all planning pertaining to infrastructural designing and construction, imparting of education, availability of jobs, accessibility of information and other social and cultural spheres of life. The process should be participatory by granting the PwDs a platform to address their needs and accordingly cater to them while forming policies. Policies should be made in a coordinated, harmonized and

inter-sectorial way. The crux of the policy should be to mainstream disability in all social and legal areas and must be inclusive. They must reflect the spirit of universal design. It cannot be ignored that in spite of policies in place, a lot of infrastructures do not remain disability friendly, many organizations do not accept disabled candidates, several other enjoyment of life that remain devoid of.

The state governments therefore need to include mandatory provisions, for instance granting licence to only those architectural designs which have applied the concept of Universal design (*can be used and enjoyed by everyone including the PwDs*). Granting of incentives (*tax or fiscal benefits for instance*) to organizations to fill up the reserved posts of the PwDs can be a welcomed step. Educational courses must be designed and bracketed based on mental ability as a factor right from elementary to professional degrees.

A coordination among different sectors such as medical, research and education units would be required in this regard. Special task forces must be constituted to monitor the status of the PwDs in the educational institutions, workplaces, or for assessing the accessibility of buildings. Since



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Internet is one of the largest medium of information in the modern era, a worldwide initiative must be taken to authorise websites to include disability friendly options on their pages so that it can be equally accessed by the differently-abled as well. In developing countries like India, special attention needs to be given to Medical facilities. Right to Health is one of the most important human rights internationally recognized expressly by UDHR and ICESCR. The role of governments is two-fold here: First, to look into cases that mostly lead to disability, for instance pregnancy complications especially in rural areas.

The 2011 population census data indicates that 69% of the total population of persons with disabilities in India reside in rural areas.⁴⁴ Also, acquired disability mostly occur due to accidents especially road accidents that are highly prevalent in India. Second, the PwDs are in constant need of medical help and therefore, adequate medication and transportation in order to reach medical units become extremely important. At last, it is so far evident that the implantation gaps are very much responsible for

non-realization of the rights of the PwDs. Therefore, periodical quality assessment, benchmarking the progress, substantiating the goals, setting up achievable missions and regular awareness must be done at all levels in order to fill up the implementation gaps.

It is important to look into the social environment because discrimination in its true sense will come to an end only when the society is determined to do so. For this, legislation is not enough. article 8 of CRPD provides for raising awareness in the society to put an end to stereotypes, prejudices and cultivate respect for the rights and dignity of the PwDs.

The CRPD has conclusively played an important role towards promoting their rights and encouraging state parties to adopt domestic legislations in order to achieve the same. In the Indian context, a critical examination of insufficiencies of the PWD Act, 1995 that led to the enactment of the 2016 Act establishes that incorporating a more appropriate definition of disability and increased emphasis on the rights of

⁴⁴ Martand Jha, "India Has a Long Road Ahead to Combat Challenges Faced by Persons with Disabilities", *The Wire*, December 3, 2017, available at

<https://thewire.in/health/persons-with-disabilities-challenges-india> (last visited on October 18, 2020).



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the persons with disabilities was a more welcomed step as per the international standards.

India's constitutional position with respect to disability has not been of much relevance. In the era, when all efforts are being made globally to put an end to all forms of discrimination against the disabled, the question arises whether article 15 of the Indian Constitution should be amended to include disability as a prohibitory ground for discrimination? This question can be posed for many countries who do not have such specific provisions especially the developing countries where the position of the PwDs still remain in a dormant stage. In order to combat this, merely being a signatory or ratifying UNCRPD would not be enough. Suggested measures must be initiated with the help of ministerial bodies, inter sectoral co-operation and aid of international agencies, if required. www.journal.lexassisto.com | lexassistolawjournal@gmail.com