

**“DISABILITY AND EDUCATIONAL INSTITUTIONS- A  
NON DOCTRINAL RESEARCH”**

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*This Dissertation is submitted in partial fulfillment of the degree  
of B.A.,LL.B.(Hons.)*



**College of Legal Studies**

**University of Petroleum and Energy Studies**

**Dehradun**

**2016**

## **DECLARATION**

**I declare that the dissertation entitled “Disability and Educational Institutions: a non-doctrinal research” is the outcome of my own work conducted under the supervision of Prof. Kavya Salim, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.**

**I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.**

**Signature & Name of Student : Shreyashi Sah**

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## **CERTIFICATE**

**This is to certify that the research work entitled “Disability and Educational Institutions: a non-doctrinal research” is the work done by Shreyashi Sah under my guidance and supervision for the partial fulfillment of the requirement of B.A., LL.B. (Hons.)/B.B.A., LL.B. (Hons) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.**

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## **ABSTRACT**

Disability is all about physical or mental impairment in an individual either from birth or gained during lifetime of an individual which leads to personal or social limitations. It is interpreted in various ways according to various models like disability from the point of view of medical model is basically subject to medical correction, from social model perspective it is basically about interaction of the disable person with the environment, his health and himself. It is because of the social construction of disability that puts limitations on it, not accepting disability as part of human diversity and thus leading these people to be subject of oppression and discrimination. Thus, adjusting disable students within educational institution is a tedious task as each criteria of disability needs to be individually assessed. Thus, concluding on certain remarkable terms disability is just a situation how well is it adjusted and accommodated in society.

Keywords- disability, impairment, accommodation, limitations, social construction, situation

## **ACKNOWLEDGEMENT**

I Shreyashi Sah owe great thanks to a lot many people without whose support and guidance this dissertation would not have been possible.

My deepest thanks goes to my mentor Miss Kavya Salim without whose support, guidance I would not have been able to collect such qualitative information for completing my project.

I would also like to extend thanksgiving to Miss Amita Dhanda (Prof. at NALSAR Hyd.) for stirring in me a beam of urge to work in the field of disability and helping me in my research work.

I express my thanks to University of Petroleum and Energy Studies.

I also extend my heartiest thanks to faculty members, family and friends.

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## **ABBREVIATION**

ABA : Applied Behavioral Analysis

ADA: Americans with Disabilities Act

ADD/ADHD: Attention Deficit/Attention-Deficit Hyperactivity Disorder

ADR:Alternative Dispute Resolution

AIM: Accessible Instructional Materials

ASD: Autism Spectrum Disorders

ASL: American Sign Language

BD: Behavioral Disorder

CAP: Corrective Action Plan

CP: Cerebral Palsy

DB:Deaf-Blind

DD Act: Developmental Disabilities Assistance and Bill of Rights Act

DS: Down Syndrome

ECE: Early Childhood Education

FBA : Functional Behavioral Assessment

HI: Hearing Impaired

Ind: India

## Chapter 1: INTRODUCTION

Disability is all about physical or mental impairment in an individual either from birth or gained during lifetime of an individual which leads to personal or social limitations.<sup>1</sup> It is interpreted in various ways according to various models like disability from the point of view of medical model is basically subject to medical correction, from social model perspective it is basically about interaction of the disable person with the environment, his health and himself. It is because of the social construction of disability that puts limitations on it, not accepting disability as part of human diversity and thus leading these people to be subject of oppression and discrimination. Thus, adjusting disable students within educational institution is a tedious task as each criteria of disability needs to be individually assessed.<sup>2</sup>

Thus, concluding on certain remarkable terms disability is just a situation how well is it adjusted and accommodated in society.<sup>3</sup>

There is a distinction between the concepts “impairment” and “disability”. The distinction in definitions has progressively come around with the development of the social model of disability.

Impairment is the physical or mental restriction a person has, so the morally realistic absence of or loss of role in a body part which enables an individual dysfunctional like depression, addiction, substance abuse etc.<sup>4</sup>

Disability, on the additional sense, is the restraint to a person with an impairment produced by culture’s attitudes, bodily setting, official and legal barriers. If a kid cannot go to school as the steps are too great, the books are not obtainable in Braille, the teacher and other pupils will not admit the child, or the conveyance to school is difficult, then that is called a disability.

Impairments can be therapeutically classified, or preserved, or providing mechanical aids for; disabilities cannot. To most public with a disability, the deficiency is not the key problem; nonetheless disability is.<sup>5</sup>

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<sup>1</sup> “Azad, Y. A. (1996). Integration of disabled in common schools: A survey-study of IEDC in the country. New Delhi: National Council of Educational Research and Training.”

<sup>2</sup> Alur, M. (2001). Inclusion in the Indian Context. *Humanscape*, 8(6), 1-8.

<sup>3</sup> Ministry of Law and Justice (2009). *The Right of Children to Free and Compulsory Act*, 2009, New Delhi

<sup>4</sup> “Visions on Mainstreaming Disability in Development Strengths, Weaknesses, Opportunities, Constraints” <http://www.lightfortheworld.nl/docs/policies-and-papers/disability-mainstreaming.pdf?sfvrsn=8> last visited on 24.7.13

<sup>5</sup> Alkire, S., 2002, *Valuing Freedoms: Sen's Capability Approach and Poverty Reduction*, New York: Oxford University Press.”



### **Statement of Research Problem**

The researcher has focused her research on what in actual connotation is the meaning of disability, its various classifications, problems faced by each category of disability, suggested solutions, legislation present in the country, international binding instruments and lacunas with respect to its implementation.

### **Research Questions**

- What all kind of adjustments is made available by the educational institutions to the disabled?
- How effective is the implementation of existing laws?
- What is the ideology and perspective the “able” society views disability?

### **Objectives of Study**

- To study the different laws relating to the disabled
- To classify various forms of disability and suggest adjustments for the same
- To bring forth the paradigm shift in the approach of disability
- To compare international legislations (U.S., U.K.) with the Indian legislation
- To highlight the lacunas with respect to lack of effective implementation of the regulations in the country

### **Hypotheses**

1. Adjustment with respect to adjust the differently abled in the mainstream education is only with respect to making physical arrangement i.e. removing infrastructural barriers.
2. The government of India has taken many steps towards the upliftment and benefit of the differently abled persons; however, the steps in the form of legislations, policies and schemes are not enough in the actual implementation and fulfillment of the aim.

### **Research Methodology**

This research is in the form of non-doctrinal study, which is facilitated through comparative analysis and interview schedules devolving upon the analytical deductions fulfilling the aim of the research.

## Review of Literature

### 1) **Ajit Modal, Jayant Mete, Education of Children with Disabilities in India, Concern and Policy Perspective, Kalyani Law Journal, Nov. 2012**

In this article the author has tried to enunciate the actual scenario of elementary standard of education and percentage of disable population in India, supported by the various legislation, constitutional safeguards and law reports of the two subsequent commissions established after independence. In a nutshell the perspective the article proposes is comprehensive change with respect to pattern of education i.e. concept of inclusive and integrated education.

### 2) **Dr. Nidhi Singhal, Education of Disable Children- Reaching the Marginalized, United Nation Cultural, Scientific and Educational Report, 2009**

In this article the author has tried to grab the attention through current educational standards, policy review, historical trends, provision of aids, appliances, accommodation practices etc. to provide a basic overview of the current trend of disability in India. The author has also tried to focus upon the dual approach of education i.e. provision of inclusive and integrated form of education in the society.

### 3) **Amita Danda, Constructing the New Paradigm of Universal Legal Capacity with Support, 2008**

In this article the author has tried to explain the shift of the perspective through which we perceive disability i.e. shift from medical model to social model explaining the term “differently abled” and explaining shift in the ideology of people at large about how we view disability as a defect to it as an opportunity to excel in other areas of life wherein “the disable is well able”.

#### 1.1) **Definition of Disability**

The most proper and appropriate definition of disability is according to the United Nation Convention for Right of Persons with Disability, 2007<sup>6</sup> herein stated “the Convention accepts a social model of disability, and describes disability as counting those who need long-term bodily, intellectual, academic or sensory deficiencies which in contact with innumerable barricades may hamper their full and operative involvement in society on an different basis with others those who have long-standing bodily, emotional, intellectual or

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<sup>6</sup>“O'Reilly, A. (2003) A UN Convention on the Rights of Persons with Disabilities: The Next Steps Paper presented at the General Assembly Meeting of Rehabilitation International Arab Region, 8–9 March 2003, Kingdom of Bahrain”

sensory impairments which in contact with numerous fences may hamper their full and actual contribution in society on an equivalent base with others".<sup>7</sup>

In a nutshell the definition of disability as per the U.N. Standard Rules on the Equalization of Opportunities for People with Disabilities, the Disability Discrimination Act (U.K.), and the Americans with Disabilities Act (U.S.) are as follows-

"a bodily or mental feature branded or professed as an impairment or dysfunction in the residue of this entry, we will mention to such features as impairments, deprived of presumptuous the impartiality or rationality of that tag some individual or communal restraint related with that damage. The organization of a bodily or cerebral difference as an deficiency may be numerical, founded on the regular in some orientation groups; organic, based on a philosophy of human working; or normative, founded on a view of human prosperous"<sup>8</sup>

In the Indian context, Persons with Disability Act 1995,<sup>9</sup> defines disability as "a being suffering since not fewer than 40% of any disability as specialized by a medical authority".

In India there has been different connotations of disability supporting two different models namely medical model and social model founded on many standards while determining irregularity or pathologic circumstances of persons, but in the nonappearance a data relating to the social model in the context of our country they are in common parlance named as disabled, handicapped, crippled, bodily challenged are cast-off interchangeably. But throwing light on the present scenario then there has a paradigm shift in understanding disability from earlier medical interpretation of disability to a human rights based approach.<sup>10</sup>

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<sup>8</sup>"Ministry of Law and Justice (2009). The Right of Children to Free and Compulsory Act, 2009, New Delhi"

<sup>9</sup>"Ministry of Social Justice and Empowerment of India. Annual Report (2000-2001), New Delhi: GOI".

<sup>10</sup>"Rioux, M.H. and Mohit, A. (2005). Human Rights Disability and Law: National Human Rights Commission"

## 1.2) Classification of disability

There are various kinds of disability, but for facilitation of the current research four categories namely- visual impairment, physical disability, hearing impairment and psychiatric disability are taken into consideration.<sup>11</sup>

Visual weakening is the damage of vision to such an extent as to succeed as an extraprovision need through a note-worthy restraint of visual competence that cannot be modified by conservative means, such as refractive alteration, medicine, or operation.<sup>12</sup>

Physical disability restricts the bodily purpose of limbs, fine bones, or gross motor ability is a bodily incapacity.<sup>13</sup>

Hearing damage mentions to circumstances in which persons are completely or partly unable to sign or observe at least some incidences of sound which can classically be caught by greatest public.<sup>14</sup>

Psychiatric/learning incapacity is clear as a collection of disorders branded by problems in knowledge rudimentary academic services (currently or by history) that are not reliable with the being's sequential age, instructive chances, or intelligent aptitudes. Rudimentary theoretical services mention to precise and easy reading, writing, and arithmetic. Manifold bases of info are to be used to assess knowledge, one of which must be separately managed, socially suitable, and psychometrically sound consistent measure of theoretical attainment.<sup>15</sup> It has various forms namely-

Dyslexia is defined as problems in correctness or eloquence of interpretation that are not reliable with the being's sequential age, instructive chances, or intelligent abilities. Manifold bases of data are to be secondhand to measure reading, one of which must be separately managed, culturally suitable, and psychometrically sound consistent measure of interpretation and reading-related aptitudes.<sup>16</sup>

Dyscalculia is distinct as problems in manufacture or understanding of quantities, numerical ciphers, or basic arithmetic processes that are not reliable with the

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<sup>11</sup>"Mishra, A. (2000). "India: Special Education", in C.R. Reynolds, and F.E. Janzen (eds), Encyclopaedia of Special Education: A Reference for the Education of the Handicapped and other Exceptional Children and Adults, 2e. USA: John Wiley and Sons"

<sup>12</sup>"Mishra, V. K. (2004). Eminent Disabled People of the World. New Delhi"

<sup>13</sup>"Mohapatra, C. S. (2004). Disability Management in India: Challenges & Commitments. New Delhi: National Institute for the Mentally Handicapped (NIMH) and the Indian Institute of Public Administration."

<sup>14</sup>"Mohit, A. (2003). "Human Rights Model and Access", International Journal of Human Rights"

<sup>15</sup>"Mohite, P. (1994). Working with Disabled Children: Curriculum and Assessment. Independent Study. Baroda: The Maharaja Sayaji Rao University of Baroda". -

<sup>16</sup>"National Council of Educational Research and Training (NCERT) (1998). Sixth All-India Educational Survey. New Delhi: NCERT"

being's sequential age, educational chances, or intelligent abilities. Manifold sources of info are to be used to assess arithmetical, mathematics, and arithmetic-related aptitudes, one of which must be an separately managed, culturally suitable, and psychometrically sound consistent measure of these services.<sup>17</sup>

### **Different Connotation or Interpretation Attached to it**

Jurists have continuously lived among persons who might not see, walk, or hear; who had insufficient flexibility, information or toughness, or long-lasting illnesses of a amount of sorts. And yet nonconcrete attention in these circumstances was rambling and rare until the preceding hundred or so years. Some of these circumstances were cited in prayers of life's poverties or dilemmas; some were the vehicle for examinations into the joining between human abilities and human information. But the behavior of disability as a subject of ethical care is relatively original.

The lack of thought to “disability” or “impairment” in overall may have a modest account: there were no such ideas to be current to incomplete 19th century practical rational put changes in human determination and form into classes of carelessness and innovation. Once such groups were recognized, it became likely to talk, and simplify, about “the disabled,” and philosophers have done so for many purposes. The increasing fundamental philosophy of the second half of the last century, engrossed with removing or reducing unjustified problems, tended to treat incapacity as a main basis of those glitches, to be spoken with medical change or government return. Rather later, social philosophers instigated to see disability as a source both of presiding and power, and of gathering identity, similar to race or sex in these respects.

In some ways, disability looks much like sex or race as a ethical topic. It worries the tagging of people on the basis of realistic or attendant features. It raises awkward vergerequests about the degree to which the association is based on natural balance or is casually built. And yet the strong ethical interest in some of the structures on which the disability classification is based appears to accord them a sense that many would deny to the sole features of sex or race.

Reflecting, for instance, the inquiry of in what way well-being is affected by the features on which the disability sorting is based. There is slight interest now in the query of whether, in a world without percipience, blacks or women would do better or worse on various metrics of well-being than whites or men. In contrast, there is substantial interest in this question when the subject is people with disabilities. Some philosophers and disability academics claim that the answer is no dissimilar than in the case of race or sex: to the extent that disability decreases well-being, it is because of the stigma and taste it

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<sup>17</sup>“NCERT (2000). Assessment of Needs for Inclusive Education: Report of the First Regional Workshop for SAARC Countries. New Delhi”

evokes. In contrast, other philosophers claim that disability is basically different from race and gender in that it necessarily reduces well-being: even in a utopian world of non-discrimination, people with blindness, deafness or paraplegia would be worse off than their able-bodied counterparts. This is but one instances of the numerous ways that disability generates logical debate about some of our most familiar ethical, political, and epistemological concepts.

To write in a nutshell disability as per my personal interpretation is about providing easy accessibility to the disable people to make them at par with the able society given some modifications in their lifestyle so that they can outperform according to their best potential. It can be basically categorized into four categories as mentioned above namely- mental disability, physical disability, hearing and visual impairment. Now with respect to higher educational institutions the following assumptions are directly carved out-

a) **Mental disability** which comes within the ambit of mental retardation wherein the students manage to get education only till the level of school and do not reach higher secondary institutions thus they have assumed to be put out of the ambit of accommodation as per my research schedule.<sup>18</sup>

b) **Visual Disability**- this form of disability can be adjusted well but is limited in scope of accommodation as per the availability of braille paper,<sup>19</sup> proper infrastructure to elaborate with wide spaces, tactile paving, students and staff sensitive towards them, thus the conclusion formed that they can be incorporated in the main stream education subject to facilities provided to them.<sup>20</sup>

c) **Physical Disability** targeting the orthopedic conditions of the people it is divided into two sub categories lower body and upper body. With respect to lower limbs which is the hardest form of disability wherein the person is immobile, it is difficult to accommodate him but not impossible as the infrastructure should be proper which University of Petroleum and Energy studies is well equipped with respect to construction of buildings and the provision of wheelchairs. To describe this, the campus did have a student (name undisclosed) who easily managed to gather a b. tech degree and placement as well from the college itself. Thus it is gathered that the university does have the potential to accommodate more no. of such students as it does provide-

- Ramps leading to classrooms, foodcourt, washrooms i.e. easy access to every sector

- Infrastructure is well equipped for them

<sup>18</sup>“Barclay, L., 2003, What kind of liberal is Martha Nussbaum?”, SATS: Nordic Journal of Philosophy, 4(3):5–24”

<sup>19</sup> “Basu, K., 1987, Achievements, Capabilities, and the Concept of Well-being,”, Social Choice and Welfare, 4: 69–76”

<sup>20</sup> “Anderson, E., 1999, What is the Point of Equality? Ethics, 109(2): 287–337”

d) Hearing Impairment- This kind of disability is also easy to be accommodated in educational institutions given the adjustments and provision of hearing aids and other like apparatus provided to them for effective communication.<sup>21</sup>

### **Modern Forms of Disability**

a) Educational Disability like dyslexia, people who have reading and writing difficulty, now these type of disability can be easily accommodated given a little extra attention on student because they have merely reading and writing difficulty but not in comprehension. While surveying I found that University of Petroleum and Energy studies had enrolled a student named Deepak who was dyslexic, he was slow in writing but had excellent presentation skills and on the recommendation of Miss Veena Krishnan (psychologist present in the college) the student was given extra time for writing examination and so he did outperform others.<sup>22</sup>

b) Mutiple forms of Disability- The very best examples of such kind of persons suffering from this kind of disability are Helen Keller, Stephen Hawkins. They are mentioned below with the various significant kind of achievements they have made in the field of disability-

Hellen Keller- Hellen Adams Keller (June 27, 1880 – June 1, 1968) was an American creator, radical supplicant, and teacher. She was the main deafblind individual to obtain a four year guarantee in liberal arts degree. The explanation of how Keller's instructor, Anne Sullivan, got finished the privacy forced by a close surface absence of dialect, permitting the young lady to bloom as she figured out how to convey, has turned out to be generally known through the emotional portrayals of the play and film *The Miracle Worker*. Her origin in West Tusculum, Alabama, is currently a museum and patrons a yearly "Helen Keller Day". Her birthday on June 27 is remembered as Helen Keller Day in the U.S. condition of Pennsylvania and was approved at the government level by presidential declaration by President Jimmy Carter in 1980, the 100th commemoration of her introduction to the world. A productive creator, Keller was all around voyaged and blunt in her feelings. An individual from the Socialist Party of America and the Industrial Workers of the World, she battled for ladies' suffrage, work rights, communism, and other comparable causes. She was enlisted into the Alabama Women's Hall of Fame in 1971 and was one of twelve inaugural inductees to the Alabama Writers Hall of Fame on June 8, 2015.

<sup>21</sup> "Brighouse, H. and I. Robeyns (eds.), 2010, *Measuring Justice: Primary Goods and Capabilities*, Cambridge: Cambridge University Press"

<sup>22</sup> "Chakraborty, A., 1996, *On the Possibility of a Weighting System for Functionings*, *Indian Economic Review*, 31: 241–50"

Stephen Hawkins- Stephen William Hawking is an English hypothetical physicist, cosmologist, creator and Director of Research at the Center for Theoretical Cosmology inside of the University of Cambridge. His logical works incorporate a coordinated effort with Roger Penrose on gravitational peculiarity hypotheses in the structure of general relativity, and the hypothetical forecast that dark gaps emanate radiation, frequently called Hawking radiation. Peddling was the first to set forward a hypothesis of cosmology clarified by a union of the general hypothesis of relativity and quantum mechanics. He is an energetic supporter of the numerous universes translation of quantum mechanics. He is a Honorary Fellow of the Royal Society of Arts, a lifetime individual from the Pontifical Academy of Sciences, and a beneficiary of the Presidential Medal of Freedom, the most elevated non military personnel grant in the United States. Peddling was the Lucasian Professor of Mathematics at the University of Cambridge somewhere around 1979 and 2009 and has made business progress with works of famous science in which he talks about his own hypotheses and cosmology as a rule; his book A Brief History of Time showed up on the British Sunday Times hit list for a record-breaking 237 weeks. Selling has an uncommon early-onset, moderate advancing type of amyotrophic parallel sclerosis (ALS), ordinarily known as engine neurone ailment in the UK, that has continuously deadened him over the decades. He now imparts utilizing a solitary cheek muscle connected to a discourse creating gadget. Peddling wedded twice and has three kids.

Apart from Congenital forms of disability there are forms of Acquired forms of disability-

- c) Any accidental impairment that leaves an individual disable for example brain injury, injury in legs etc. that makes a person permanently disable to perform his functions.<sup>23</sup>
- d) Acid Attack victims as they do remain mobile but the stigma attached and the problems of facing the society they feel has evolved as a new form of disability.
- e) Neurological diseases like cancer that leave the person immobile and renderless to perform his functions.

To write in a nutshell disability as per my personal interpretation is about providing easy accessibility to the disable people to make them at par with the able society given some modifications in their lifestyle so that they can outperform according to their best potential. It can be basically categorized into four categories as mentioned above namely- mental disability, physical disability, hearing and visual impairment. Now with respect to higher educational institutions the following assumptions are directly carved out-

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<sup>23</sup> "Claassen R., 2011, Making Capability Lists: Philosophy versus Democracy , Political Studies, forthcoming"



## Historical Perspective

The journey of highlighting and spotlighting people with disability especially in the area of education as a vehicle for addition and authorization has come a long way finished a rock on roll path and the exertion of smoothening the path has absorbed efforts of a lot of international organizations.<sup>24</sup>

World Commitment on Education as a Right as proclaimed in UDHR(1948) reaffirmed by World Declaration on Education for All (1990). The UN General Assembly's Declaration of 1981 as the International Year of Disabled Persons, proclamation of 1983-1992 as the Decade of the Disabled by United Nation. It was followed by the UNESCAP Decade of Disabled Persons from 1993-2002 and subsequently the World Conference on Special Needs Education in Salamanca in June 1994.<sup>25</sup>

Over 100 Governments have signed and ratified the UN Convention on the Rights of Persons with Disabilities. Clause (g) of the Article 9 of the UNCRPD directs“the state parties shall take suitable measures to endorse access for persons with incapacities to new data and communications technologies and systems, including the internet.”Further clause (h) directs the state bodies to “promote the project, growth, manufacture and delivery of available information and communications technologies and systems at an early stage, so that these skills and systems become available at least cost.” These clauses clearly depict the importance of internet and Information Communication Technology (ICT) and the difference these technologies could bring into the life of persons with disability and they also show that persons with disabilities can equally participate in society and make substantial contributions if the barriers are removed and appropriate facilities are provided to them.The countries that have signed and ratified the UNCRPD are under the obligation, to improve convenience to the internet for peoples with disabilities. The Convention also states that international collaboration and conversation of capitals and information should be done to make things better. Through transmission of skills the problem of convenience could be solved with abundantcomfort.<sup>26</sup>

The majority of the legislations in India related to peoples with disabilities are founded on the medical model of disability. This model believe that curing or at least managing disability revolves around classifying the disability from a scientificviewpoint and sidelines the other factors which are helpful for persons with disabilities. While the United Nations Convention on the Rights of People with Disability is based on the social

<sup>24</sup>“NCERT (2000).National Curriculum Framework for School Education (NCFSE). New Delhi: NCERT”

<sup>25</sup> “Cohen, G.A., 2008, Rescuing Justice and Equality, Cambridge Mass.: Harvard University Press”

<sup>26</sup> “Comim, F., M. Qizilbash and S. Alkire (eds.), 2008, The Capability Approach. Concepts, Measures and Applications, Cambridge: Cambridge University Press”

model and gives more emphasis on the rights of people with disability. "It defines disability as a developing idea and believes that incapacity consequences from the communication of injuries with numerous barriers which delay full and active influence in society on an equivalent basis with others".<sup>27</sup>

a) Rehabilitation Council of India Act 1992- states that Children with Special Needs must be taught by a skilled teacher.<sup>28</sup>

b) Plan of Action (1992) suggested a pragmatic principle for children with special needs.<sup>29</sup>

c) Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act 1995 gives educational entitlement for all Children with Special Needs upto 18 years of age.<sup>30</sup>

d) National Policy on Education (NPE) in 1986 brought important issue of parity at center stage.<sup>31</sup>

e) Project for Integrated Education for the Disabled (PIED) 1987 to fulfill the provision for disabled children in NPE (1986). It was a joint version of MHRD and UNICEF.<sup>32</sup>

f) National Trust Act 1999 provides services and support to severely disabled children<sup>33</sup>.

g) The 86th Constitutional Amendment of 2007 provides free and compulsory education to children upto 14 yrs.<sup>34</sup>

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<sup>27</sup> "Crocker, D. A., 2008, Ethics of Global Development: Agency, Capability and Deliberative Democracy, Cambridge: Cambridge University Press."

<sup>28</sup> "National Sample Survey Organisation (NSSO) (1991), A Report on Disabled Persons. New Delhi: NSSO."

<sup>29</sup> "National Sample Survey 58th round (July to December 2002 (2003). National Sample Survey Organisation, Ministry of Statistics and Programme Implementation, Government of India."

<sup>30</sup> "NSSO (2002). "Disabled Persons in India". Website of the Office of Chief Commissioner of Persons with Disabilities in India, <http://www.ccdisabilities.nic.in/disability%20india.htm>. Accessed on October 1, 2003."

<sup>31</sup> "Paranjpe, S., (1996). "Achievement of Normal and Hearing Handicapped Pupils at the End of the Primary Cycle", Disabilities and Impairments - , 19(2): 73-86."

<sup>32</sup> "Rehabilitation Council of India (2000). Status of Disability in India (2000). New Delhi: Rehabilitation Council of India."

<sup>33</sup> "Rehabilitation Council of India (2001). Status of Disability in India (2001): Rehabilitation Council of India."

<sup>34</sup> "SarvaShikshaAbhiyan 2001". Department of School Education and Literacy, MHRD, Government of India. Retrieved 26 October 2013"

- h) National Action Plan for Inclusion in Education of Children and Persons with Disability (MHRD, 2005)
- i) National Policy for Persons with Disability 2006
- j) National Building Code of 2005 (Annexure D- Special requirement for planning of public building meant for use of physically challenged.)
- k) RTE Act, 2009 introduced by 86th Amendment in Constitution which introduced Art. 21A making education for children aged between 6 to 14 a fundamental right.
- l) Sugamya Bharat (Accessible India Campaign) which makes educational institution accessible with respect to physical impairment of disable people.

### **1.5) Current Scenario**

The Disability Act was passed in the year 1995 which mandates that all forms of infrastructure should be made barrier free for persons with disability. India has also ratified UN Convention on the Right of Persons with Disability in the year 2007 wherein accessibility has been recognized as a basic human right.<sup>35</sup> India has also recently launched Sugamya Bharat (Accessible India Campaign) to promote accessibility in the countries targeting 48 countries. Presently India aims at providing inclusive accommodation to people with disabilities i.e. disability access should be integrated into the regular standards so that equal treatment is provided to all people irrespective of their ability. The concept of “smart cities” initiated by the government also aims for large scale construction happening over the country both rural and urban areas but the problem lies with the implementation part wherein disability laws and policies have little or no impact as building standards don’t take into account the requirement of users with disabilities as provisions of law are ignored while designing public infrastructure. The National Building Code of 2005 (Annexure D) specifically gives provision for “Specific Requirement for planning of Public Buildings meant for use of Physically Challenged” and this annexure is referred by planners and designers only when designing special schools.<sup>36</sup>

Hence taking into account the recent promulgations by the government it does give an overview of the fact that steps are being taken to make our country more accessible to the

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<sup>35</sup> Renaissance Group (1999). <http://www.uni.edu/coe/inclusion> and <http://www.rushservices.com/inclusion>.

<sup>36</sup>“Rioux, M.H. and Mohit, A. (2005). Human Rights Disability and Law: National Human Rights Commission.”  
New Delhi.

differently abled population but lack of proper and effective implementation is the need of the hour so that the efforts of the government do not go in vain.<sup>37</sup>

### **Changes after ratification of UNCRPD**

The most crucial change in the history of disability laws in India has been enactment of Persons with Disability Act, 1995 by the Ministry of Social Justice and Empowerment post ratification of United Nations Convention on the Rights of Persons with Disabilities (CRPD). This was a straight consequence of support by the incapacity sector. Other disability laws, like Mental Health Act, Rehabilitation Council of India Act and National Trust Act are also being studied. The Indian Judiciary has also provided judgement resting on the outline of CRPD, one of the most well-known of them is the case *Suchita Srivastava & anr. v. Chandigarh Administration*<sup>38</sup> 2009 wherein Supreme Court allowed a lady with intelligent impairment to continue with her pregnancy, taking into explanation her wishes, and thus, upheld individual independence and liberty of options (Articles 3 and 23 of CRPD).<sup>39</sup>

The Eleventh Five Year Plan (2007 - 12) has made a specific mention of CRPD in the section on Disability. It states that "India being a signatory to CRPD, it is now obligatory upon us to incorporate the essence of the Convention in our planning, implementation, monitoring and review processes." Two of the major initiatives proposed in the Plan, i.e. setting up of the Indian Sign Language Research and Training Centre and the Universal Design Institute have been recently announced. These should have a far reaching impact on improving accessibility for persons with disabilities in the years to come.

The Department of Information and Technology has formulated guidelines for all official websites to be compliant to international Web Accessibility Standards which is useful and disable friendly and is a new emerging feature to access and accommodate disability.

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<sup>37</sup>"Rohindekar, S.R. and Usha, M.N. (1988). Educational and Vocational Needs of Physically Handicapped Children. Bangalore: Institute for Social and Economic Change."

<sup>38</sup>"Available at <http://indiankanoon.org>, Last visited on 19<sup>th</sup> Oct. 2015"

<sup>39</sup>"UNCRPD, available at <http://www.ilo.org>, Last Visited on 19<sup>th</sup> Nov. 2015"

## **Chapter 2: Accommodation in educational institutions for Differently Abled**

Physical and virtual surroundings provided by the university to differently abled must be intended so that they can be used by everyone. In this sense, certain conveniences must be careful in the subsequent areas in a nutshell namely horizontal movement that is free of problems, nearby systems as replacements to stairs to allow for perpendicular movement, best dimension equipment with colors that difference with the environment and ergonomic design, removal procedures adapted to people with disabilities, best dimension signs that are easy to comprehend and that show difference between figure and background, accessible workplaces and workstations that do not hamper the contribution or the presence of employees and clients with disabilities, nearby bathrooms, accessible web page, intranet and IT tools, following the criteria established by the WAI (Web Accessibility Initiative) to this end, training customer care staff to suitably treat clients with disabilities.<sup>40</sup>

### **2.1) Approach of Integrated education**

Accommodation means preventing or removing existing environmental/social barriers for individualization of needs of disable people, to promote inclusive education for persons with disability with the able society.<sup>41</sup> Accommodation with reference to entrance examinations to accommodate various disabilities means inventing assistive technologies and programs which can eliminate the disability in an individual to perform his work without delay or difficulty but it is a difficult task as there can be no prescriptive or generalized or specific mechanism or similar pattern of entrance exams to accommodate the whole diversity of disability, hence each kind of disability needs to be individually assessed as every area of disability is different from itself.<sup>42</sup>

To accommodate students with disabilities to enable them for participate in various entrance examinations, the existing standardized pattern of examination needs to be altered to make environment for students with disability more favorable to help them achieve academic success.

Before discussing about the pattern of accommodation in examinations to be followed for students with disability initially I would like to aware about the problems for such low participation rates of students with disability in post secondary institutions. They are-

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<sup>40</sup> "Deneulin, S. (ed.), 2009, The Human Development and Capabilities Approach, London: Earthscan"

<sup>41</sup> "Drèze, J. and A. Sen, 2002, India: Development and Participation, 2nd ed., Oxford: Oxford University Press"

<sup>42</sup> "The nature and effectiveness of students with learning disabilities, available at <http://www.jstor.org/stable> , (Visited on 23rd July 2013)"

a) Institutions place burden of success on the shoulders of students or the teachers/staff assisting them, even in some case these students have to pay additional fees for special accommodation adjustment made for them by the university.<sup>43</sup>

b) There is a weak link between availability of service and academic performance ,as per an investigation 10% Canadian universities and colleges have no learning disability services, as per report of 1997 only 23 colleges or universities in United States of America had internet sites that specifically advertised a program for students with learning disabilities.<sup>44</sup>

c) Many colleges just claim for support services specially designed for students with disability but in reality they offer just study skill enhancement program that is directed towards the whole college.

d) There is a problem of Equal Education Access i.e. as to what constitutes equality so that special modification programs designed for disable students does not infringe Right to Equality for the other able students.

e) The approach to be adopted to accommodate students with disability is confusing as the first approach talks about – changing the student to enable him adjust in the environment by improving his academic skill through teaching compensatory strategy whereas the second approach talks about changing of educational environment for student to succeed despite his disability like making alterations in examination pattern, course pattern, infrastructural facilities to enable them adjust in the prevailing environment with modifications.

f) Each area of disability is so diverse and different that making separate accommodation for each of them is cumbersome and its implementation is also difficult.<sup>45</sup>

g) Stringent legal provisions is to make accessible accommodation for students with disabilities is lacking in India unlike Sec 504 “E” of Rehabilitation Act that has made accessibility to post secondary education for persons with disability mandatory. This act has also paved way for Virginians for with Disabilities Act in 1985 and the 1990 Americans with Disabilities Act.<sup>46</sup>

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<sup>43</sup> “The nature and effectiveness of students with learning disabilities, available at <http://www.jstor.org/stable> , (Visited on 23rd July 2013)”

<sup>44</sup> “Dworkin, R., 1981, “What is Equality? Part 2: Equality of Resources,” *Philosophy and Public Affairs*, 10: 283–345”

<sup>45</sup>“ Fukuda-Parr, S. and S. Kumar (eds.), 2009, *Handbook of Human Development: Concepts, Measures and Policies*, Delhi: Oxford University Press”

<sup>46</sup> “Fleurbaey, M., 2002, “Development, Capabilities and Freedom,” *Studies in Comparative International Development*, 37: 71–7”

## 2.2) Problems with respect to accommodation and solutions to it

A) Modification in entrance examination for persons with visual impairment and physical abilities<sup>47</sup>

The reason for keeping accommodation patterns of visually impaired and physically disable people together is that they face problem common to both i.e. problem of lack of mobility/freedom to move, even though the design of the infrastructure should be different for both. The Rehabilitation Act of 1973 gives provisions to either to remove or modify the architectural barriers for accommodation for persons with disabilities. According to the report of Chronchile of Higher Education, state vocational rehabilitation agencies should provide financial support to modify/build infrastructural facilities to accommodate visual and physically disable persons in society.<sup>48</sup>

The examination pattern to accommodate students with virtual impairment are-

- a) The instructor should keep his extraneous noise to minimum while reading the question paper while conducting examination orally.
- b) If student is able to write/type answers in the examination, extra time should be allowed to him.
- c) In case of written examinations pattern of question papers should be printed in Braille writing system or in large prints for students with partial visual impairment.
- d) The design of the examination hall should be equipped with tactile paving system which is a system of textured ground surface indicators that enable persons with visual impairment to move freely. This can provide an easy access to students for going into the examination hall.<sup>49</sup>

The examination pattern to accommodate students with physical disabilities are-

- a) The design of the examination hall should be such that student does not have any difficulty for sitting during the examination, the tables should be placed on such a level high enough to fit legs underneath and low enough to enable him write his answers well, also the hall should have wide doorways, lifts, ramps.<sup>50</sup>

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<sup>47</sup>"Fukuda-Parr, S. 2003, "The human development paradigm: operationalizing Sen's ideas on development", *Feminist Economics*, 9(2/3): 301-317"

<sup>48</sup>"Freeman, S., 2006, Book review—*Frontiers of Justice: The capabilities approach versus contractarianism*. *Texas Law Review* 85(2): 385-430"

<sup>49</sup>"Kaufman, A., 2006a, "Capabilities and Freedom," *Journal of Political Philosophy*, 14(3): 289-300"

<sup>50</sup>"What Goods Do to (and for) People: Duality and Ambiguity in Sen's Capabilities Approach? in A. Kaufman (ed.), *Capabilities Equality: Basic Issues and Problems*, New York: Routledge, pp. 117-129"

b) If students are suffering with multiple/severe disability and not able to write, then there should be a provision of oral examinations for them and answers should be recorded and to be evaluated.

c) If the disability is of such a nature that the student is not able to move, examinations should be conducted on the internet on the specific website of the institution under surveillance of the college officials.

### **Modification in entrance examination for persons with hearing impairment**

The perception of society for persons with hearing impairment is that it is not that severe kind of disability and the person can be easily accommodated in the society but the reality is that they have problems in communication and social interaction which is fundamental in growth of education. Hence to reproduce speech and make them understand the content of education is a difficult task.<sup>51</sup>

The first language invented for persons with hearing impairment is American Sign Language (Amelson). It is completely formatted in a passive voice form, constructed in short declarative sentences which has no use of gender or verb. The problem of accommodating students with hearing disability is that when they graduate from secondary school they are able to write in fourth/fifth grade level and thus need remedial courses in basic English to adjust according to the academic standard of the post secondary institutions.

The examination pattern of accommodation suggested for persons with hearing disabilities are-

a) The pattern of the question paper should be set according to standard of language used by students with hearing impairments like for example- the construction of sentence should not contain gender/verbs/tenses.

b) With the help of education auxiliary aids, interpreters(examiners) can effectively deliver oral forms of questions, the speed of speech should be at a very slow pace with distinct formation of words used with facial expression to enable lip reading and gather full attention of the student.

c) To make questions/notes clear to student and enable him to understand the content, there should be use of different words or questions should be repeated as per requirement.

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<sup>51</sup>“Robert J Alexander, Physically Disabled Students in College Classrooms, The Journal of General Education, Vol. 31, No. 3 (FALL 1979), pp. 195-204”



- d) The sitting of the student should be such that he/she is placed in the best position to see the instructor/examiner and the design of the examination hall should be equipped with adequate lightening, with direct lights behind the student.<sup>52</sup>
- e) If the student is partially hearing impaired, the student should be placed in the examination hall in a way that the better ear is towards the instructor/examiner.
- f) There should be use of visual aids with written outline in Amelson language, so that student can see visual aid and the instructor/examiner simultaneously for a better understanding of the content of questions.

### **Modification in entrance exams for persons with learning disabilities**

As mentioned above there are many kinds of learning disabilities like dyslexia, dyscalculacia, dysgraxia. Initially it is important to discuss the reasons as to why students with learning disability have such low participation or reporting rates in post secondary institutions- along with other problems as mentioned above students with psychiatric disability have reading comprehension problems, learning difficulties, unrealistic/optimistic views of their own disabilities

The pattern of accommodation as suggested by Strichart and Mangrum for persons with learning disabilities is quite good and reasons for growth of such accommodation pattern as suggested by them has happened due to increased knowledge among students about their rights and increased desire to go to colleges, colleges have also become active and expanded recruiting effort beyond the traditional market due to increased use of computer and compensatory technology for giving admission to more students with learning disabilities, awareness brought by advocacy and other legal entities about legal ramification of status of students with disabilities and the most important reason is that students have become aware of the job opportunities that accompany post secondary education.

The examination and study pattern to be followed for students with learning disabilities in post secondary education is that-

- a) admission test for colleges should be conducted under modified conditions
- b) use of additional reviews, modified standards, separate examination procedure
- c) a different course enrollment pattern to place least burden on the area of weakness for students with reading and writing difficulties to minimize academic impact on disability like use of taped text to eliminate need to read, use of scribes to eliminate need to write,

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<sup>52</sup>“Wikipedia, Tactile paving, available at ([http://en.wikipedia.org/wiki/Tactile\\_paving](http://en.wikipedia.org/wiki/Tactile_paving))”

use of proofreading programs assisted by readers (live person substituted for audio equipment) and note takers.

d) use of extended or unlimited time for giving examinations (one of the most simple method of examination to be implemented)

e) changing pattern of question papers like multiple choice questions and short answer test; use of essays instead of objective examinations

f) providing personal proctor during examinations while taking alone examinations to reduce distraction in group setting examinations

g) use of oral or taped examinations

h) acceptance of taped rather than standard test

i) grading of these special pattern of tests should be done differently as done in standardized pattern of test

Hence all these mechanism can make entry into colleges for students with learning disabilities and their learning process in colleges easier by eliminating their weak academic skills. But such assistive technologies and programs does not eliminate need to perform cognitive activities that drive academic skill, for example even through use of taped text student still needs to comprehend content whereas through use of scribes students still need to plan and phrase the content.

Another accommodation pattern as followed by Hurst and Smerdson institutions for students with learning disabilities is use of textbooks prerecorded on audio tapes that reduce the burden to extract information from printed texts.<sup>53</sup>

Assistive technologies suggested by Raskind is the use of variety of computer programs, such as word processors with spell checkers, proofreading programs, outlining programs, speech sensitive programs, personal data managers, and databases. He also suggests variety of other specialized technologies such as optical character recognition systems hooked to speech synthesizers that machine-read textbooks, and variable speech control tape recorders that allow students to slow down lectures and glean more information from them.

Assistive technology being used at Howard Community College is Omni 300 reading machine which incorporates text to speech software that reads text clearly, displays it on screen and enables students with learning difficulties to read and write.<sup>54</sup>

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<sup>53</sup> "Kelly, E., 2010, Equal Opportunity, Unequal Capability, in Brighthouse and Robeyns (eds.), pp. 61–80"

Hence all these kind of special arrangements for students with learning disabilities can increase their participation in taking entrance examination for post-secondary institutions and help them achieve good scores to enable them achieve ranks which are at par with the able students.<sup>55</sup>

### **Modification in Website of College to make it disable friendly**

Everyone has the potential to do wonders in life, all one needs is a helping hand- be it a person with disability or without disability. “Internet technologies have the possible to give persons with disabilities the means to live on a more reasonable basis within the international community in a way that before was not conceivable.”

Internet is for everyone. Accessibility to web is as important as accessibility to the physical environment. Everything on the web should be designed in such a manner that it should accommodate its each and every user with or without disability. Providing proper access to internet is vital to enable persons with disabilities to live independently and participate fully in all aspects of life.

Talking from historical perspective and taking reference to America Though the Indian government has signed and ratified the UNCRPD but the willingness to comply with the standards and norms of the convention is not visible. In a survey done by Ministry of Personnel through the National Informatics Centre in the month of June (2013), it was revealed that only 2 out of the 200 government websites are disabled-friendly. “The websites of only two ministries - ministry of external affairs and ministry of social justice and empowerment - were compliant to Guidelines for Indian Government Websites (GIGW), which is essential for making websites accessible to the disabled.

It is really shameful that the top government websites like the National Portal of India (<http://www.india.gov.in>), Ministry of Tourism (<http://www.tourism.gov.in>), Department of Administrative Reforms and Public Grievances (<http://darpg.nic.in>) are inaccessible to persons with disabilities. Such an attitude of the government is unacceptable. It is ironic that a country which aspires to be world’s IT hub can’t design its websites as per the set standards. As per the global standards all the disabled friendly websites should comply with the Web Content (WCAG), which the Indian sites fail to. It is even more shameful that some of the sites made tall claims of being disabled friendly, but when the same was tested they failed miserably.<sup>56</sup>

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<sup>54</sup> “Kuklys, W., 2005, Amartya Sen's Capability Approach: Theoretical Insights and Empirical Applications, Berlin: Springer”

<sup>55</sup> “Nussbaum, M., 1988, Nature, Functioning and Capability: Aristotle on Political Distribution, Oxford Studies in Ancient Philosophy, 6, suppl. vol.: 145–84”

<sup>56</sup> “Human functioning and social justice in defense of Aristotelian essentialism. Political Theory, 20(2): 202–246.”

The issue of inaccessibility of websites, especially those of various government departments came up in 2009 and the National Centre for Promotion of Employment for Disabled People (NCPEDP) along with most of the NGOs in the disability sector took up the matter in a big way. “The media outcry that followed made the Prime Minister's Office to intervene. Subsequently, the National Information Centre (NIC) issued guidelines to make all websites in the public domain accessible and disabled friendly.” But the efforts of the government are too little and too late. The NIC has directed that all government websites should conform to the international accessibility standards, the World Wide Web Consortium (W3C) and the Web Content Accessibility Guidelines (WCAG) 2.0. If the government does not make its own websites disabled friendly than there will not be any scope for it to obligate the private individuals and organizations to make their website disabled friendly.

If things remain the same, doing childlike things like booking a cinema ticket, shopping online, filing tax returns, applying for a passport, or booking railway tickets, will remain a distant dream for people with disabilities.

As American society is considered to be one of the most litigious societies in the world, a few cases related to web accessibility have also been filed in the US courts, though their number might not be too high, but they have succeeded in bringing the issue to the limelight. The courts have given mixed verdicts- in favor and against the disabled community but a couple of verdicts have proved to be a source of morale boost for the disabled community.<sup>57</sup>

National Federation of the Blind v. Target Corporation was a class action lawsuit that was filed on February 7, 2006 in California state court, and was subsequently moved to federal court. The plaintiff, National Federation of the Blind (NFB), sued Target Corporation, a national retail chain, claiming that blind people were unable to access much of the information on the defendant's website, and also faced difficulty in purchasing goods from its website independently.

Target claimed that its physical stores were accessible to the blinds and it was sufficient enough to comply with the disability norms prevailing in the country. The court ruled that a retailer must design its website in a manner that it is accessible to the people with disabilities and if it fails to do so it violates their right to “enjoyment of goods, services, facilities and privileges”. Until this ruling, profitable websites were not careful a “place of accommodation” and were expected to not fall under the Americans with Disabilities Act.

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<sup>57</sup> “Women and Human Development: The Capabilities Approach, Cambridge: Cambridge University Press.”

On the basis of the judgment given by the court Target Corp. agreed to make necessary changes to their website to make it accessible to the blind. On February 9th, 2010 The National Federation of the Blind (NFB), awarded the Gold Level NFB-NVA Certification to Target.com to appreciate their efforts in web accessibility.<sup>58</sup>

Similar argument was raised in the case between National Association of the Deaf (NAD) and Netflix Inc. NAD sued Netflix, seeking to require it to add captions to its online videos, without which deaf had difficulty using the website. “Netflix argued that its site is not a “place of public accommodation”, but a federal district court in Massachusetts denied the move to dismiss, holding that the ADA does apply to website-only businesses. After the court’s verdict Netflix agreed to work with plaintiff to devise a reasonable and workable way to achieve 100% captioning in Netflix’s on-demand streaming content within two years.”<sup>59</sup>

The awareness among the people in America is appreciable. Such legal actions help in bringing the much required change in the attitude of the people and also help them in understanding their responsibilities.

#### Problems dealing with Web Accessibility

Making a website disable friendly is not a hair splitting task. Proper efforts from the web designers could make sites accessible to people with disabilities. Here are some simple ways through which websites could be made more accessible. Though this is not an exhaustive list but covers the major features which make a website disable friendly. They are given on the basis of the various disabilities-

#### Colorblindness

There are different types of colorblindness. The very common ones are red-green color blindness and blue-yellow color blindness, but it is essential that people with all forms of color blindness should be accommodated. It is true that colors may beautify a website but if these colors are not selected properly they can create problem for colorblind people. The use of excessive colors may confuse them and the site could end up appearing something entirely different from what the designer wanted it to appear. It might also happen that the text might become entirely indistinguishable from the background or that different elements of the page might appear merged with the rest of the page. To avoid all these misinterpretations and confusions the web designer should select colors diligently.<sup>60</sup>

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<sup>58</sup> “Capabilities as Fundamental Entitlements: Sen and Social Justice,” *Feminist Economics*, 9(2/3): 33–59. 2006”

<sup>59</sup> “Frontiers of Justice: Disability, Nationality, Species Membership, Cambridge, MA: Harvard University Press 2002”

<sup>60</sup> “O’Neill, O., 1996, *Towards Justice and Virtue*, Cambridge: Cambridge University Press.”

One of the common practices followed by the designers is that to show a link, they print it in a different color but many colorblind people may fail to notice it. So it is always better to underline the hyperlink to avoid any confusion. Where very important information is to be given black text and white background should be used. Such a color scheme is easily readable by everyone.

### Poor eyesight

There are many people who find it difficult to see or read things even with the aid of glasses. For accommodating them it is suitable that the text should not be too small. In addition to that the web developers should also keep this thing in mind that now a lot of net browsing is done through devices with small screens like mobile phones, tablets etc.<sup>61</sup> and with these devices reading very small text becomes difficult for everyone be it a person with or without disability. Another thing that helps people with poor eyesight is that- the color of the text and background should be contrast.. For instance reading grey words on white background becomes extremely difficult for people with weak eyesight. Even the browsing experience of persons with normal eye site becomes uncomfortable because of such color scheme. Web designers should also give an option to the surfers to alter the size of the font of the text as per their convenience.

### Blindness

Blind people do web browsing with the help of software known as “screen readers”. This software reads aloud everything that appears on the screen. But browsing using screen readers is a tedious task. It goes through the entire web page and reads it line by line, in the exact order in which the words appear. If it encounters a picture with no description tag, it will just say something like "image", and moves on. It leaves them with no other option to listen to everything, whether it is relevant for them or not and consumes a lot of time.

As screen readers cannot read pictures it is always better to add description tags to the images. Such description tags are called "ALT" tags in HTML parlance.

Some web designers think that an image is worth a million words. They add a lot of pictures to their webpage; they even present the navigating elements like links via images. Use of images for navigating elements like links should be avoided. It is preferable to use text for showing links. But if a designer is very adamant at using images for links, he should avoid the use of a single image for more than one link and use a single image for a single link.

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<sup>61</sup> “Pierik, R. and I. Robeyns, 2007, “Resources versus Capabilities: Social Endowments in Egalitarian Theory,” *Political Studies*, 55(1): 133–52”

On some sites before filling a form it is required to enter a set of numbers and letters, shown in an image. This is known as a CAPTCHA test, designed to make sure that the form is filled by a human being and not a spam "bot" (computer program). This is done to weed out the spam sent by such bots, since it is very obvious that sites want the feedback of human beings and not of deceiving computer programs. As CAPTCHA TEST is an essential practice which cannot be avoided, the designers should provide a link to an audio file which the visitor can play to read the string of letters and numbers.

As mentioned earlier the screen readers read the entire information given on the web page and blind net surfer might have to wait for the relevant information. To avoid this problem the webpage developers can put a link like "skip to main content" to give an option to the blind people to move directly to the main content, or even simpler, the main content on the web page could be kept at the beginning and there will not be any need for an additional link.

Many commercial screen readers come with advance features which make the reading experience simpler and pleasant. For instance, they may read out all the section headings first and give the reader the option to skip the unwanted information. For making the readers to avail the benefit of this feature the web designers should make sure that webpage is properly divided into apt headings.

Many times Flash objects create a lot of problems. It should be accessed whether use of Flash is really necessary, if it's not, its use should be avoided and simple text or image should be used instead.

#### Deafness

Usually deaf people don't face much difficulty while browsing the web. To make the web more inclusive for deaf people, web designers should add captions to the videos and audios. This could make their browsing experience more comfortable and productive.

Through these simple steps the problems faced by persons with disabilities can be overcome. If the web designers continuously do their bit in making web more inclusive, persons with disabilities will be able to enjoy the full potential of web.

#### Accessibility and other concerns

Accessibility is not the sole barrier faced by persons with disabilities, so in addition to accessibility, the community should make efforts to remove other barriers faced by persons with disability while accessing internet, so that they can benefit from the internet and also add to its value. The other barriers are-

#### Affordability

Many persons with disability have limited resources like low income, underdeveloped infrastructure, limited education facilities etc. This problem of shortage of resources exists both in developed and developing countries and obviously these affordability concerns are on the higher side in the developing countries and accessing internet is much expensive there.<sup>62</sup>

#### Cultural Barrier

In many orthodox societies persons with disability are perceived with pity and considered incapable of doing things efficiently. People become skeptical and timid when it comes to exposing people with disabilities to something new and unfamiliar. This overprotective attitude hinders the growth of persons with disabilities and confines them.

#### Availability

In some underdeveloped and remote areas even the availability for the most basic things is insufficient, and the accessibility to internet is considered a distinct dream. Under such conditions satisfying the rudimentary needs become the top priority and things like internet availability slides down the priority ladder.<sup>63</sup>

#### Lack of Awareness

Many communities are unaware of the benefits of internet to the persons with disabilities. For them investing manpower and resources in internet accessibility for persons with disabilities might not be of any worth.

Accessibility is not exclusive to all the other barriers faced by the persons with disability. In fact all the barriers are interrelated. For making persons with disabilities avail full benefit of the internet all these problems have to be addressed. For instance, without creating awareness making internet accessible at affordable prices will not be of any benefit.<sup>64</sup>

Thus here are a few suggestions of how to make internet more accessible to the disable students accessing college websites

For better access to internet more emphasis should be given on universal design. Universal designing refers to the designing of the products and services in such a manner that they accommodate wider section of population. It includes designing new products and services in a more inclusive manner from their original model and retrofitting the existing ones to make them more accessible. Adding more accessibility features to a

<sup>62</sup> "Phillips, A. 2004, Defending Equality of Outcome", *Journal of Political Philosophy*, 12(1): 1–19"

<sup>63</sup> "Pogge, T., 2002, Can the Capability Approach be Justified?" *Philosophical Topics*, 30(2): 167–228"

<sup>64</sup> "Qizilbash, M., 2008, Amartya Sen's capability view: insightful sketch or distorted picture?, in: Comim, Qizilbash and Alkire (eds.), pp. 53–81."



product or service does not only benefit people with disability but also helps the community at large. For instance products like speech recognition were initially designed for public with limited hand actions; similarly scanner was intended as a part a text reading tool coupled with mixture for blind people. Now these devices have develop mass market products and are extensively used by both people with and without disabilities.

While developing technical standards and rules, consider using impartial criteria to control whether there is an impact on persons with disabilities. Comprise disability representatives on employed committees where there may be an influence or possible advantage.<sup>65</sup>

While designing any new software or hardware, the accessibility features should be evaluated and its impact on persons with disability should be taken into account.

There should be ongoing consultation with disability experts and representatives from disability organizations so that continuous growth could be maintained in the realm of internet accessibility.

Organizations should endeavor to follow the guidelines, mentioned above in the paper to make web more accessible, in their meetings, conferences and seminars. For example captioning all the audios and videos, using appropriate font color and size while giving presentations.

The state, disability organizations and NGOs should organize awareness programs and train persons with disability, so that they can access the web easily.

For making internet accessible and more inclusive, the internet Society, international bodies, regulators, companies, governments, the technical community and civil society all have to work hand in hand. The legislatures and policy makers should design such policies that make internet more accessible and user friendly. Mere designing policies is not sufficient, there proper implementation is very important. For proper implementation, the governments should conduct surveys to check whether the laws are properly adhered or not.<sup>66</sup>

Every organization should strive to build a more accessible environment which includes internet accessibility as well. It should be ensured that accessibility is embedded in every

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<sup>65</sup> "Rawls, J., 1971, A Theory of Justice, Cambridge, MA: Harvard University Press."

<sup>66</sup> "Richardson, H.S., 2006, Rawlsian Social Contract and the Severely Disabled, Journal of Ethics, 10: 419–62."

organization's mission and proper reviewing should be done to check whether the accessibility standards are adhered at each and every level of the organization.<sup>67</sup>

Adherence to the UNCRPD could make internet more accessible and also set universal global standards for accessibility. As per UNCRPD access to information and communications technologies and systems is one of the vital elements that can enable persons with disabilities to participate more fully in all aspects of life. Therefore the convention lays down guidelines to all the state parties to do the same.<sup>68</sup>

Disability movement is driven by the ideology "Nothing about us without us". One of the major reasons for the present day bad accessibility standards is that all the policies were designed by persons without disability. Thus the policy makers should involve persons with disability while making exclusive policies only them and also in the policies for everyone. Their experiences could prove really valuable in making any decision. Even disability organizations could also be included for their valuable contribution.

Disability is the part of the human diversity. It should be understood that people with disabilities are no less than others and if the barriers are removed they can contribute to the fullest of their potential.<sup>69</sup>

#### Problems with Evaluation

Persons with disability require special accommodation for the purpose of examination labeled as non standard examination not comparable to the test scores of regular examination. This forms the basis of discrimination and results in civil rights violation of students with disability taking such examinations.<sup>70</sup>

The testing arrangements arranged by ETS and LSAT have categorised disability into four categories namely- visual impairment, learning disabilities, hearing impairment and physical disabilities and have made separate examination accommodation for each disability, but the scores are flagged as non-standard as testing conditions are not the same as standard examination. Hence the authorities do not average these scores or rank it by percentile. This prevents the students from taking advantage of unneeded accommodation.

Americans with Disability Act (ADA) have increased the rights of students with disabilities and the awareness about these rights. The reason for the enactment of this act

<sup>67</sup> "The Social Background of Capabilities for Freedoms, *Journal of Human Development*, 8(3): 389–414.2007"

<sup>68</sup> "Robeyns, I., 2003, Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities, *Feminist Economics*, 9(2/3): 61–92."

<sup>69</sup> "The Capability Approach: A Theoretical Survey, *Journal of Human Development*, 6(1): 93–114."

<sup>70</sup> "Kristan S Mayer, Flagging Nonstandard Test Scores in Admissions to Institutions of Higher Education, *Stanford Law Review*, Vol. 50, No. 2 (Jan., 1998), pp. 469-522"

was that despite the existence of Rehabilitation Act, discrimination existed for students with disability in the field of education. Some provisions of ADA are listed below- Title I gives provision for Equal Opportunity for Persons with Disability, Title III of Sec 309 of ADA states obligation of private testing and course preparation service. Another provision which the act brings with reference to education is that admission test must be administered to ensure test score should reflect the disabled student's aptitude/achievement rather than his impairment. Also the testing procedure should ensure and review the production of valid and complete documentation of person's disability and hence the scores should be evaluated according to the potential of the individual.<sup>71</sup>

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<sup>71</sup> "The Capability Approach in Practice," *Journal of Political Philosophy*, 14(3): 351–76."

## **Chapter 3: LEGISLATION**

### **3.1) Indian Laws and International Agreements governing disability laws**

In a nutshell here are the various legislations enacted for upliftment of the differently abled-

#### Rehabilitation Council of India Act 1992

It states that Children with Special Needs should be taught by a trained teacher. The Rehabilitation Council of India(RCI) was set up as a listed society in 1986. On September,1992 the RCI Act was passed by Parliament and it became a Statutory Body on 22 June 1993. The Act was amended by Parliament in 2000 to make it more elaborate. The mandate given to RCI is to standardize and monitor services given to persons with disability, to standardize syllabi and to maintain a Central Rehabilitation Register of all qualified experts and employees working in the field of Rehabilitation and Special Education. The Act also prescribes disciplinary action against definite persons delivering facilities to persons with disability. The Rehabilitation Council of India (RCI) was set up as a listed society in 1986. On September, 1992 the RCI Act was enacted by Parliament and it became a Statutory Body on 22 June 1993. The Act was edited by Parliament in 2000 to make it more broad-based. The knowledge given to RCI is to regulate and display services given to persons with disability, to regularize syllabi and to continue a Central Rehabilitation Register of all accomplished specialists and personnel occupied in the field of Rehabilitation and Special Education. The Act also prescribes disciplinary action against definite persons providing facilities to persons with disability.<sup>72</sup>

The Rehabilitation Council of India (RCI) is the apex government body, set up under an Act of Parliament, to provide training programmes and choices beleaguered at disabled, disadvantaged, and special education requirement groups. It is the only statutory council in India that is compulsory to support the Central Rehabilitation Register which mainly leaflets details of all competent specialists who purpose and deliver occupied out and educational programmes for the directed societies. In the year 2000, the Rehabilitation Council of India (Amendment) Act, 2000, was habituated and notified subsequently by the Government of India. The amendment carried definitions and discussions provided within the earlier Rehabilitation Council of India Act, 1992, under the realm of a superior act, namely, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

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<sup>72</sup> "Justice as fairness and the capability approach, in: Kaushik Basu and Ravi Kanbur (eds.), Arguments for a Better World. Essays for Amartya Sen's 75th Birthday, Oxford University Press, pp. 397–413"

As per RCI, the succeeding categories of professionals can put on for RCI's accreditation process. They are

- a) Prosthetists and Orthotists
- b) Audiologists and Language Therapists
- c) Clinical Psychologists
- d) Rehabilitation Therapists, Administrators
- e) Rehabilitation Workshop Directors
- f) Rehabilitation Psychologists
- g) Rehabilitation Social Workers
- h) Rehabilitation Practitioners in Mental Retardation
- i) Speech Pathologists
- j) Special Teachers for Educating and Training the Handicapped
- k) Vocational Counsellors, Employment Officers and Placement Officers
- l) Multi-purpose Restoration Therapists, Technicians
- m) Orientation and Mobility Specialists
- n) Community Based Rehabilitation Professionals
- o) Hearing and Ear Mould Technicians

#### Rehabilitation Engineers and Technicians

The council has reportedly registered around 12,000 such professionals across India.<sup>73</sup>

Plan of Action (1992) suggested a pragmatic principle for children with special needs

The NPE was followed by POA (1992). The POA was supported by the performing of the RCI Act, 1992. Practice displayed that there was no machinery in the country to homogenize and monitor the training of special educators and other rehabilitation professionals in the country. Therefore, in 1992, Parliament of India enacted the RCI Act,

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<sup>73</sup> "Schokkaert, E., 2007, Capabilities and Satisfaction with Life, Journal of Human Development, 8(3): 415–30."

then amended in 2000, to establish a statutory mechanism for nursing and regulating courses for the training of sixteen categories of professionals required in the field of special education and rehabilitation of persons with disability. Training of special educators and resource teachers that can offer support services to children with disabilities in regular schools is the responsibility of RCI. The POA suggested a applied principle for children with special needs. It assumed that a child with disability who can be refined in a general school should be educated in a general school only and not in a special school. Even those children who are initially admitted to special schools for training in plus curriculum skills should be moved to general schools once they attain daily living skills, communication skills and basic academic skills.<sup>74</sup>

Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act 1995 gives educational entitlement for all Children with Special Needs upto 18 years of age.

The most breakthrough legislation in the history of special education in India is the Persons with Disabilities (Equal opportunities, protection of rights & full participation) Act, 1995. This complete Act covers seven disabilities namely blindness, low vision, hearing impaired, loco motor impaired, mental retardation, leprosy cured and mental illness. The provisions related to accessibility are contained in Persons with Disability Act. Though this act has a set of supportive policies for people with disabilities, yet does not include non-negotiable rights. In India people with disability don't have the power to claim accessibility features as a matter of right. It is very ignominious that availability of accessibility is something that is subject to either formulation of schemes by government, or depends on the, 'economic capacity and development' of the State. The current legislation in India is not in tune with human rights obligations, in spite of the fact that India is a signatory to the UNCRPD its legislations are far behind from the global standards. India even lags far behind in the realm of technical advancement. For example with the technical advances that are available today it should be possible for people with visual impairments to access ATM's. Still there are no legislations in India that aim at the adoption of such technologies. Many laws formed during the colonial rule have yet to be updated. Such acts show the lackadaisical attitude of the government and the lack of political will to bring a difference.<sup>75</sup>

In 1992, India accepted the Statement on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region. As a party of this statement, India's Ministry of Law, Justice and Company Affairs proposed an act to protection the privileges of Persons with Disabilities (PWD). On the 1st of January 1996 the

<sup>74</sup> "Sen, A., 1980, Equality of What? in McMurrin (ed.), Tanner Lectures on Human Values, Cambridge: Cambridge University Press."

<sup>75</sup> "Rights and Capabilities, in Resources, Values and Development, Cambridge, MA: Harvard University Press, pp. 307-324"

Government of India approved the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995. The following is a summary of the provisions in this law that relates to children below the age of 18.<sup>76</sup>

In this act disability is enunciated as blindness, low vision, leprosy-cured, hearing impairment, loco-motor disability, mental retardation and mental illness. The act resonances for the initial of two central committees and two state committees: The central coordination committee and the central executive committee; the state coordination committee and the state executive committee. The coordination committees are answerable for defensive the rights of the PWD by therapy the correct bodies about variations that need to be complete in policy and programmes with admiration to the rights of PWDs. These committees are the central and state respectively major points on disability matters. The individual executive committees are answerable for carrying out the selections of the larger organization committee.<sup>77</sup>

The act calls for the government to take the vital steps to protection the deterrence of disabilities. In contract with this program, the government must shadow all the children at least once a year to control risk factors that clue to disability and effort to protect the child from such factors. It is also vital for the state to take measure to reduction risks to prenatal and post natal mothers and child.

Chapter V (Section 26) of the Act, which manages instructing, references that the appropriate Governments and the nearby powers might:

- Ensure that each tyke with a handicap has entry to free instruction in a suitable situation till he accomplishes the age of eighteen years.<sup>78</sup>
- Endeavor to advance the reconciliation of understudies with handicaps in the ordinary schools
- Promote setting up of extraordinary schools in governments and private segment for those needing custom curriculum, in such way that youngsters with incapacities living in any part of the nation have accomplishment to such schools
- Endeavor to prepare the uncommon schools for kids with inabilities with

The government is likewise responsible for creation the general environment non-unfair towards PWD by changing and adding to railroads, transports, street signals asphalt

<sup>76</sup> "Well-being, Agency and Freedom: The Dewey Lectures 1984, *Journal of Philosophy*, 82(4): 169–221"

<sup>77</sup> "The Standard of Living, in Sen, Muellbauer, Kanbur, Hart, and Williams, *The Standard of Living: The Tanner Lectures on Human Values*, Cambridge: Cambridge University Press."

<sup>78</sup> "Inequality Re-examined, Oxford: Clarendon Press"

slants, cautioning signals, building slopes, Braille signs and sound-related signs, and so on. The demonstration additionally conveys for non-segregation of PWD in utilize that can be taken up by them, in government and non-government workplaces. Associations that guide individuals with incapacities are required to be enlisted by the legislature and the administration is likewise required to set up various organizations to give to the necessities of individuals with extreme handicaps.<sup>79</sup>

The demonstration requires the arrangement of a boss chief who will hear grumblings or supplications made with respect to the hardship of privileges of PWD. It is likewise the administrations' monetary obligation to deal with any PWD who can not accommodate themselves or does not have family procurement framework to do as such through unemployment stipends. Under this demonstration there are additionally punishments doled out to individuals without handicaps who use offices implied for PWD.

In October 2007, India endorsed the United Nations Convention for Rights of Persons with Disability. From that point forward supporters of PWD rights have been requiring arevision of the PWD demonstration so it better adjusts to the procurements of the tradition.<sup>80</sup>

#### Disability Act of 2014

Bill replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Rather than seven insufficiencies indicated in the Act, the Bill covers 19 circumstances.

Persons with no less than 40% of an inability are allowed to beyond any doubt advantages, for example, reservations in instruction and business, inclination in government plans, and so forth. The Bill presents a few rights and rights to incapacitated persons. These incorporate debilitated cordial access to every single open building, clinics, methods of transport, surveying stations, and so on. In the event of rationally sick persons, locale courts might recompense two sorts of guardianship. A restricted watchman brings choices together with the rationally sick individual. A full watchman takes choices for the benefit of the rationally sick individual, without alluding him.

Violation of any facility of the Act is punishable with imprisonment up to six months, and/or fine of Rs 10,000. Following violations carry a higher penalty.

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<sup>79</sup> "Capability and Well-being, in Nussbaum and Sen (eds.), *The Quality of Life*, Oxford: Clarendon Press, pp. 30–53"

<sup>80</sup> "Rationality and Freedom, Cambridge, MA: Harvard University Press 2007"



### **Key Issues and Analysis**

The Bill is being conveyed into accomplish obligations under a universal arrangement. The request is whether it is suitable for Parliament to execute lawful and money related commitments on states and districts with respect to inability, which is a State List subject. The Financial Memorandum does not give any estimation of the money related assets required to meet obligations under the Bill. Given the across the board obligations, (for example, making all surveying corners available to the crippled), numerous demonstrations of exclusion or commission could be comprehended as criminal offenses.

In "phenomenal circumstances" region courts might choose entire watchmen for rationally sick persons. The Bill does not set down qualities for such determination, in a reliable way, crosswise over different courts. The Bill overrides the Mental Health Act, 1987 however the securities against abuse of forces by watchmen are lower.

The Bill is erratic with different laws at times. These incorporate circumstances for completion of pregnancy and the base punishment for outraging the modesty of a woman.

National Policy on Education(NPE) in 1986 bought fundamental issue of equality at center stage.

The NPE brought the vital issue of balance the all important focal point the arrangement plainly concentrates on the requirements of the youngsters with handicaps. "The target ought to be to absorb the physically andmentally incapacitated with the overall population as equivalent accomplices, to get ready themfor ordinary development and to empower them to face existence with boldness and certainty. National Policy on Education(NPE) in 1986 purchased crucial issue of fairness at focal point of the audience.

The National Policy on Education is a boundless archive that safe houses all parts of instruction from rudimentary to college level and smooth grown-up training. The resulting segment means that all elements of the methodology that straight manages youngsters ages 0-18. The 1992 rehash NPE states that objective of instruction is to spare in place India's long putative estimations of secularism, communism, majority rules system and expert morals. Training is essential to the inside and out development of a man. The 1992 NPE guarantees works to build up a typical educational system through 10+2+3 structure. The arrangement acknowledges the +2 as a major aspect of school instruction. With the Constitutional Amendment of 1976, training has been situated on the simultaneous rundown, which extends the focal government a bigger part in the execution of instruction.

Perceiving the impact of ahead of schedule years to the development of a kid the guideline brands space for right on time youth consideration and instruction through the coordinated youngster improvement administrations program. Concerning rudimentary training the guideline makes three imperative responsibilities:

universal access and enrolment

universal maintenance of youngsters up to age 14

much required change in the nature of training that takes into consideration kids to accomplish a specific level of learning.

Training will embrace a youngster focused strategy, subsequently providing food on an individual level to the requirements of the tyke. Whipping is to be solidly prohibited from the educating framework. According to Process Blackboard there ought to be one educator for every class, and all crucial gear and showing materials must be accommodated by the system.

Non-formal training (NFE) arrangement of focuses and offices will be extended. It will be raised to the level of formal instruction offices with extraordinarily prepared instructors from the group so kids going out of NFE can enter the formal framework. Educational modules in schools with be aides by both national center and additionally needs in the nearby environment.

As per the Policy the highest need will be set on taking care of the issue of dropouts, and guaranteeing maintenance at the school level. This effort will be included by NFE. The approach states "it might be shielded that free and necessary instruction of satisfactory quality is given to all youngsters up to 14 years old before we enter the twenty-first century.

With a specific end goal to enhance the quality advanced education, sheets of optional instruction will be conceded autonomy. The arrangement exhibited non-specific professional courses in advanced education to enhance singular employability and meet the labor need of India's developing economy. Kids who have "extraordinary ability" have been accepted the odds to improve their bent through NarvodayaVidyalayas.

Thus, to make the instruction plan work the strategy traces four vital steps:

- a) giving the instructors a superior arrangement and more obligation
- b) enhanced understudy administrations and faithfulness to specific standards of conduct
- c) better offices for guideline
- d) setting guidelines for execution assessment at the national and state level.

Venture for Integrated Education for the Disabled (PIED) 1987 to satisfy the procurement for incapacitated kids in NPE (1986). It was a joint rendition of MHRD and UNICEF. The following measures will be taken in such manner:

- Wherever it is conceivable, the instruction of kids with engine handicaps and other mellow impedes will be basic with that of others
- Special schools with inns will be given, quite far at region home office, for the extremely debilitated youngsters
- Adequate game plans will be made to give professional preparing to the debilitated
- Teachers' preparation projects will be reoriented, specifically for educators of essential classes, to manage the exceptional issues of the handicapped children and
- Voluntary exertion for the training of the debilitated will be cheered in each conceivable way

Project for Integrated Education for the Disabled (PIED) 1987

To fulfill the provision for disabled children in NPE (1986). It was a joint version of MHRD and UNICEF.

In 1987, to fulfil the provisions for disabled children in the NPE (1986), the government launched the Project for Integrated Education for the Disabled (PIED). It was a joint venture of MHRD and UNICEF. It states 'wherever possible, the education of children with motor handicaps and other mild handicaps will be in mutual with that of others.

National Trust Act 1999 provides services and support to severely disabled children.

Another landmark legislation is the National Trust Act. In 1999, the Indian Parliament passed an Act entitled "National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability. This Act looks to ensure and advance the privileges of persons who, inside of the inability sector, have been significantly more ignored than others. Despite the fact that the National Trust Act of 1999 does not specifically manage the training of youngsters with unique needs, one of its push territories is to advance programed, which encourage connection and distinction by creating barrier free circumstance, creating practical abilities of the crippled and promoting self-help bunches.

National Trust Act 1999 gives administrations and backing to seriously handicapped kids. The National Trust For Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability. The Central government constituted a body by the name of the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities which should be a body corporate by the name

previously stated, having ceaseless progression and a typical seal, with control, subject to the procurement of this Act, to gain, hold and discard property, both mobile and steadfast, and both versatile and undaunted, and contact, and might, by the said name, beyond any doubt or be sued. They would likewise practice general superintendence, course and association of the undertakings and business of the Trust might vest in a Board which might practice all forces and do all demonstrations and things which might be practiced or done by the Trust. The head office of the Trust might be at New Delhi and the Board might, with the first endorsement of the Central Government, build up workplaces at different spots in India.

The Board should comprise of –

a director to be named by the Central Government from amongst, the persons having mastery and involvement in the field of a mental imbalance, cerebral paralysis, mental hindrance and different handicap;

ii. nine persons to be selected as per such strategy as might be endorsed from amongst the enrolled association out of which three individuals each should be from intentional association, relationship of persons with extreme introvertedness, cerebral paralysis, mental impediment and different inability and from relationship of persons with handicap, individuals:

Given that underlying arrangement under this condition might be made by the Central Government by assignment;

iii. eight persons not be underneath the rank of joint Secretary to the Government of India selected by the Govt. speak to the Ministries or Departments of Social Justice and Empowerment, Women and Child Development, Health and Family Welfare, Finance, Labor, Education, Urban Affairs and Employment and Rural Employment and Poverty Alleviation, Members, ex-officio;

iv. three persons to be assigned by the Board speaking to the relationship of exchange, business and industry occupied with magnanimous exercises, individuals;

v. the Chief Executive Officer, who should be of the rank of Joint Secretary to the Government of India, Member Secretary, ex-officio;

The Board might connect with itself, in such way and for such reason as might be controlled by regulation, any individual whose help or guidance it might seek for completing for whatever other the objects of the Trust:

Given that such individual might have a privilege to join in the examination important to that reason however should not have right to vote at a meeting of the Board and should not be a part for some other reason:

Give assist that the most extreme number of persons so related should not surpass eight thus far as could reasonably be expected the individual so related might fit in with the enlisted association or from the expert.

The Chairperson or a Member might hold office for a term of three years from the date of his arrangement or until his successor should have been appropriately named, whichever is longer:

Given that no individual might hold office as the Chairperson or other Member after he has accomplished the age of sixty-five years.

The states of administration of the Chairperson and different Members should be, for example, might be endorsed.

An easygoing opportunity in the Board might be filled as per the procurements of area 3 and a man selected should hold office just for the rest of the term for which the part, in whose spot he was designated, would have held that office.

Before selecting any individual as the Chairperson or a Member, the Central Government might fulfill itself that the individual does not and won't, have any such monetary or other enthusiasm as is liable to influence preferentially his capacity thusly part.

No Member of the Board should be a recipient of the Trust amid the period such Member holds office.

The Board should meet in any event once in three months at such time and place as might be dictated by the Board by regulations and might watch such standards of technique in the exchange of business at a meeting as might be recommended.

The Chairperson, if for any reason can't go to the meeting of the Board, b any Member chose by the Members present from amongst themselves at the meeting, might direct at the meeting.

All inquiry which come up before any meeting of the Board should be chosen by a larger part of votes of the Members present and voting, and in the occasion of a uniformity of votes, the Chairperson, or in his nonattendance, the individual displaying might have a second or making choice.

The Chairperson might leave his office by composing under his hand tended to the Central Government given that the Chairperson might proceed in office until the arrangement of his successor is made by the Central Government.

A Member might leave from office by composing under his hand tended to the Chairperson.

No individual might be a part in the event that he is, or ended up, of unsound personality or is so announced by a skillful court, is, or has been, sentenced an offense, which in the assessment of the Central Government, includes moral turpitude; or is, or whenever has been, mediated as an indebted.

The 86th Constitutional Amendment of 2007 gives free and mandatory instruction to youngster's upto 6 to 14 yrs.

National Action Plan for Inclusion in Education of Children and Persons with Disability (MHRD, 2005)

National Policy for Persons with Disability 2006

The Government of India detailed the National Policy for Persons with Disabilities in February 2006 which manages Physical, Educational and Economic Rehabilitation of persons with incapacities. Likewise the arrangement additionally endless supply of ladies and kids with incapacities, obstruction free environment, standardized savings, research and so on.

The National Policy perceives that Persons with Disabilities are profitable human asset for the nation and looks to make a domain that gives them parallel open doors, insurance of their rights and full cooperation in the public arena.

Avoidance of Disabilities - Since handicap, in countless, is preventable, the arrangement lays a solid accentuation on anticipation of incapacities. It calls for system for anticipation of infections, which bring about inability and the formation of mindfulness with respect to measures to be taken for counteractive action of incapacities amid the time of pregnancy and from that point to be escalated and their scope extended.

Restoration Measures - Rehabilitation measures can be ordered into three unmistakable gatherings:

Physical restoration, which incorporates early recognition and intercession, advising and medicinal mediations and procurement of helps and machines. It will likewise incorporate the advancement of restoration experts.

Instructive restoration including professional training and

Financial restoration for a noble life in the public arena.

National Building Code Of 2005 (Annexure D- Special requirement for planning of public building meant for use of physically challenged.)

The National Building Code of India (NBC), a comprehensive building Code, is a national instrument providing guidelines for regulating the building construction

activities across the country. It serves as a Model Code for adoption by all agencies involved in building construction works be they Public Works Departments, other government construction departments, local bodies or private construction agencies. The Code mainly contains administrative regulations, development control rules and general building requirements; fire safety requirements; stipulations regarding materials, structural design and construction (including safety); and building and plumbing services.

The Code was first published in 1970 at the instance of Planning Commission and then revised in 1983. Thereafter three major amendments were issued, two in 1987 and the third in 1997.

Considering a progression of further advancements in the field of building development incorporating the lessons learnt in the result of number of common cataclysms such as destroying quakes and super tornados saw by the nation, a Project for far reaching modification of NBC was taken up under the aegis of National Building Code Sectional Committee, CED 46 of BIS and its 18 master Panels; including upwards of 400 specialists. As a zenith of the Project, the changed NBC has now been brought out as National Building Code of India 2005 (NBC 2005).

The far reaching NBC 2005 contains 11 Parts some of which are further partitioned into Sections totalling 26 sections (see Annex 1). The notable elements of the updated NBC (see Annex 2) incorporate, aside from different changes made, the progressions uncommonly concerning further upgrading our reaction to meet the difficulties postured by common cataclysms and mirroring the best in class and contemporary pertinent global practices.

RTE Act, 2009 introduced by 86th Amendment in Constitution which introduced Art. 21A making education for children aged between 6 to 14 a fundamental right.

Sugamya Bharat (Accessible India Campaign) which makes educational institution accessible with respect to physical impairment of disable people.

Accessible India Campaign : Creation of Accessible Environment for PwDs

1. For Persons with Disabilities (PwDs) universal accessibility is critical for enabling them to gain access for equal opportunity and live independently and participate fully in all aspects of life in an inclusive society. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 under sections 44, 45 and 46 categorically provides for non-discrimination in transport, non-discrimination on the road and non-discrimination in built environment respectively. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory, under Article 9 casts obligations on the Governments for ensuring to PwDs accessibility to

- (a) Information
- (b) Transportation
- (c) Physical Environment
- (d) Communication Technology
- (e) Accessibility to Services as well as emergency services

The Department hosted the Second Session of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) Working Group on Asian and Pacific Decade of Persons with Disabilities during 2-3 March, 2015 at New Delhi in association with the UNESCAP Secretariat. This Working Group has been constituted by UNESCAP Secretariat to monitor implementation of the Incheon Strategy “Make the Right Real” for Persons with Disabilities. Goal No. ‘3’ of Incheon Strategy concerns “Enhance access to the physical environment, public transportation, knowledge, information and communication”.

It is the vision of the Government to have an inclusive society in which equal opportunities and access is provided for the growth and development of PwDs to lead productive, safe and dignified lives. In furtherance of the vision of the Department, it is imperative to launch a Nation-wide Awareness Campaign towards achieving universal accessibility for all citizens including PwDs in creating an enabling and barrier-free environment. In this direction, Department of Empowerment of Persons with Disabilities (DEPwD), Ministry of Social Justice & Empowerment has conceptualized the “Accessible India Campaign (Sugamya Bharat Abhiyan)” as a nation-wide flagship campaign for achieving universal accessibility that will enable persons with disabilities to gain access for equal opportunity and live independently and participate fully in all aspects of life in an inclusive society. The campaign targets at enhancing the accessibility of built environment, transport system and Information & communication eco-System.

A multi-pronged strategy will be adopted for the campaign with key components as (a) leadership endorsements of the campaign, (b) mass awareness, (c) capacity building through workshops, (d) interventions (legal frame-work, technology solutions, resource generation, etc. and (e) leverage corporate sector efforts in a Public-Private Partnership.

Department of Empowerment of Persons with Disabilities will sign MOU with State to support spreading awareness about accessibility and help create accessible buildings, accessible transport and accessible websites etc.



### Action Plan for 2015-16

It conducts zonal mindfulness workshops for sharpening of every single key partner, for example, government officers, experts, for example, engineers/modelers/land designers/understudies and others. It makes and spread of handouts/instructive booklets and recordings on the issue of openness. It additionally Creates of an entryway alongwith portable application for making a crowd sourcing stage to thoroughly acquire data about out of reach spots, handling data for endorsing recommendations for making of inclines, open toilets and available slopes and so on., and channelizing CSR assets for making of available structures and transportation. To add to a versatile application(mobile-App) in English, Hindi and every single Regional dialect for finding close-by available spots the nation over

With the effective dispatch of the Accessible India Campaign, India will join whatever is left of the world, as a comprehensive society with all inclusive openness, watching over its residents, availability rights and free living. Physical openness related activities will start availability to training, job and job, which will unleash profitability of 6% populace and their financial commitment in country building.

Both centered about the system and significance of "double approach" to instruction and a comprehensive and incorporated way to deal with training wherein "in an unexpected way abled" understudies are not separated and are furnished instruction with ordinary understudies.

This double approach proceeded for next 20 years and was reaffirmed in the National Policy of Education (MHRD, 1986) where, Sec. IV gives procurement for "Training with Equality".

Venture Integrated Education of the Disabled Children dispatched in 1987 in support with UNICEF in 10 states and union regions inside of nation.

National Action Plan for Inclusion in Education of Children and Persons with Disability (MHRD, 2005)

The Human Resource Development minister Arjun Singh had introduced the Action Plan, which had set the division buzzing with expectation, in Parliament on 21 March 2005. From that point forward, the ministry has been collaborating and counseling with specialists, N.G.Os, disability rights groups, parents groups, government bodies and so on. For this it has sorted out three Zonal Consultation, in Mumbai, Chennai and Kolkata, and arrangements to soon hold a national interview.

In a letter to National Center for Promotion of Employment of Disabled People (N.C.P.E.D.P.), Keshav Desiraju, Joint Secretary Secondary Education, said: "The

criticism has given us something to think about and distinguished issues that should be investigated and took a shot at as we move towards a more comprehensive instruction framework for kids and youthful persons with inability. The following stride for us is to organize arrangement exercises, and working out rules for the states. In light of structure of the draft arrangement, distinctive divisions in the service will now be taking a shot at arrangements for their part."

Enumerating the reexamined Action Plan, the starting note by the Ministry says: "The accompanying structure of the Action Plan and rundown of exercises has been produced as an aftereffect of the underlying conferences. The arrangement covers the incorporation in instruction of kids and youthful persons with incapacities. The distinctive segments to be secured in the arrangement are 1) Early Childhood Care and Education 2) Elementary Education 3) Secondary Education 4) Higher and Technical Education 5) Vocational Education.

The distinctive offices at the Central level are currently adding to their work arranges. Parts and obligations regarding executing offices and their accomplices, the parts of NGOs, folks gatherings are likewise being drafted. Observing rules, achievement markers and so on are likewise being surveyed. The part of exceptional schools, unique instructors and other bolster experts are being surveyed inside of the evolving situation.

The Ministry has looked for further proposals on the amended Action Plan saying: "While acknowledging general remarks on the exercises recorded, the Ministry would particularly welcome particular recommendations on the ranges that should be organized, great comprehensive practices that are going on around the nation and any points of interest that have been disregarded. The arrangement should be seen as a work in advancement and your proposals will offer the Ministry some assistance with developing a system for the incorporation of learners with incapacities in standard instructive settings in the nation."

#### National Policy for Persons with Disability 2006

The National Policy perceives that Persons with Disabilities are profitable HR for the nation and looks to make a domain that gives them measure up to circumstances, insurance of their rights and full support in the public arena. It is in consonance with the fundamental standards of fairness, opportunity, equity and pride of all people that are revered in the Constitution of India and verifiably command a comprehensive society for all, incorporating persons with incapacities. The National Policy perceives the way that a dominant part of persons with incapacities can lead a superior personal satisfaction on the off chance that they have break even with circumstances and viable access to recovery measures.

National Building Code Of 2005 (Annexure D- Special requirement for planning of public building meant for use of physically challenged.)

The National Building Code of India (NBC), an extensive construction standard, is a national instrument giving rules to controlling the building development exercises the nation over. It serves as a Model Code for appropriation by all organizations included in building development works be they Public Works Departments, other government development divisions, neighborhood bodies or private development offices. The Code mostly contains authoritative regulations, improvement control standards and general building prerequisites; fire security necessities; stipulations with respect to materials, basic configuration and development (counting wellbeing); and building and pipes administrations

RTE Act, 2009 introduced by 86th Amendment in Constitution which introduced Art. 21A making education for children aged between 6 to 14 a fundamental right.

The RTE Act, 2009: After a frequent request of creation of the education a fundamental right from all corners, the government made the 86th Amendment of the Constitution of India (2002). The 86th Amendment introduced new Article 21A, making the right to education of children from 6 to 14 years of age a fundamental right. Article 51A (K) was added to Part IV-A of the Constitution as a fundamental duty of parents to provide chances for education to their children aged between 6 and 14. The Right of Children to Free and Compulsory Education Act, 2009, commonly known as RTE Act, 2009 was finally passed by the parliament on the 26th August, 2009 (notified on February 16, 2010 to come into effect from April 1, 2010). This act puts the accountability of safeguarding enrolment, attendance and completion on the government. The RTE Act tries to protect the rights of the children belonging to the deprived groups and the fragile sections, protect them from any kind of discrimination and confirm their completion of elementary education. As per Amendment in the RTE Act (2010), children with disabilities have been comprised in the definition of child fitting to disadvantaged group in the Section 2(d) of the RTE Act. The landmark step mentioned in this Act that Section 12(1)(C) mandates for private unaided and specified category schools to admit at least 25% of its central level class from children from fragile and deprived groups

Sugamya Bharat (Accessible India Campaign) which makes educational institution accessible with respect to physical impairment of disabled people.

Project Integrated Education of the Disabled Children launched in 1987 in corroboration with UNICEF in 10 states and union territories within country.

Sarva Shiksha Abhiyan extends the historic “dual approach” by propagating a “multi optional delivery system”. It is aimed at adopting a zero rejection policy wherein no child is left out of education system.

It was followed by the publication of two government reports

- a) Sargeant Report (1994), written prior to independence (Central Advisory Board of Education)
- b) Kothari Commission Report (Education Commission Report, 1996)

### **Concept of Universal design**

According to the report of Centre on Post-Secondary Education and Disability, Washington, there should be a concept of universal design that can anticipate and addresses the need of variety of learners(able and disable) and create a more inclusive learning environment for students with disability to study with the able students and compete with them. According to the Centre it should be the duty of the instructor to anticipate and tolerate differences among students to create a classroom that gives appropriate space to each student for his mental, psychological and intellectual growth, promote interaction and communicate high expectation to learners.

### **Rights of Persons with Disability Bill of 2014 and changes suggested**

The Bill replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In place of seven disabilities specified in the Act, the Bill covers 19 conditions. Persons with at least 40% of a disability are allowed to convinced benefits such as reservations in education and employment, preference in government schemes, etc. The Bill confers numerous rights and powers to disabled persons. These contain disabled friendly access to all public buildings, hospitals, modes of transport, polling stations, etc. In case of mentally ill persons, district courts may award two types of guardianship. A limited guardian takes decisions jointly with the mentally ill person. A plenary guardian takes decisions on behalf of the mentally ill person, without referring him. Violation of any provision of the Act is punishable with imprisonment up to six months, and/or fine of Rs 10,000. Succeeding violations carry a higher penalty.

The Bill is being accepted in to fulfill responsibilities under an international treaty. The query is whether it is apt for Parliament to implement legal and financial duties on states and municipalities with respect to disability, which is a State List subject. The Financial Memorandum does not afford any approximation of the financial resources important to meet commitments under the Bill.

The Bill states that abuse of any provision in the Act will attract imprisonment and/or fine. Expected the extensive obligations (such as making all polling booths accessible to the disabled), many acts of lapse or commission could be referred as criminal offences.

In “astonishing situations” district courts may employ complete guardians for mentally ill persons. The Bill does not lay down standards for such determination, in a trustworthy manner, across various courts. The Bill predominates the Mental Health Act, 1987 but the defenses against misuse of powers by guardians are lesser. The Bill is variable with other laws in some cases. These include circumstances for concluding of condition and the minimum penalty for annoying the humility.

## **Chapter 4: New Paradigm Shift in the way we perceive disability**

Classical Greek thought most especially Aristotle had elevated notions of citizenship ‘a citizen was one who could rule and be ruled’. However, this citizenship was not extended to all members of the polity. Women and slaves were significant exclusions. Citizenship acquired a more universal character as excluded populations queried their exclusion and through persistent advocacy obtained a dismantling of legal regimes which had ordered their exclusion. The legal legitimization of social exclusion foregrounds the socially constructed nature of legal norms. It also shows that persons are deemed legally competent or incompetent not because they are naturally so but because the ruling elite of the times so perceived them.

The law it could be said was doing no more than articulating the prejudice of the times, even when it was claiming to act for the benefit of the excluded populations. Looking back from the vantage point of 21st century, it is easy to refer to the exclusion of women, indigenous people or slaves as prejudicial and discriminatory. It is more difficult to accept the explanation of prejudicial exclusion when the populations excluded are those whom current opinion considers naturally deficient. The very fact that claims of natural deficiency have masked social prejudice down the centuries should be a reason to view current contentions of natural deficiency with skepticism. It is with this context perspective that the legal capacity of persons with disabilities is being examined in this article.

Interest of any community cannot be sidelined. But in a society driven by the ideology of “survival of the fittest”, the decisions and policies are made as per the whims of the so-called fittest or dominating section of the society. In the past persons with disabilities were perceived an insignificant part of the society and when people starting thinking about them, they were considered as a liability towards the society. An approach which focused on their abilities and qualities never existed. To bring a difference an approach was needed to be developed which considered people with disability as assets of the society and that aimed at removing the various barriers which impedes their ability to perform.

In the earliest model disability was recognized through the medical model. The Medical Model of Disability focused on the individual's disability and incapability and ways to reduce those limitations through adaptive technology so that persons with disabilities can adapt themselves with the society. This model believe that curing or at least managing disability revolves around identifying the disability from a clinical perspective and sidelines the other factors which are helpful for persons with disabilities. After the medical model, the charity/tragedy model came into being.

The Tragedy/Charity Model depicted people with disabilities as victims of circumstance, deserving of pity. In spite of the fact this approach raised considerable funds for services and equipment which the government failed to provide, many people with disabilities found the negative victim-image thoroughly offensive. "People with disabilities were seen as tragic victims, it followed that they needed care, were incapable of looking after themselves on their own affairs, and needed charity in order to survive. This model was condemned by its critics as dis-enabling, and the cause of much discrimination."

After the charity model, the social model evolved. The social model brought a drastic change in the mindset of the people and changed their approach towards disability. This model identified systemic barriers, negative attitudes and exclusion by society (purposely or inadvertently). It brought to notice one very important thing that society is the main contributory factor in disabling people. While physical, intellectual, sensory, or psychological variations may cause individual functional limitation, these can never lead to disability unless society fails to take responsibility and include people regardless of their individual differences. Through this model the disabled approach of the society which gives birth and nurtures disability was brought to light. Though through the social model a major change was brought but it did not reach to the masses. It is very shameful that till date the medical and charity model are the most used ones by the people without disability to define, explain and understand disability.

"For persons with disabilities, accessibility means being able to use a product or service as effectively as a person without a disability."

To ensure proper accessibility to the persons with disability Article 9, which talks about accessibility was added to the United Nations Convention for the Rights of Persons with Disabilities (UNCRPD). Through Article 9, UNCRDP directs the state parties to take proper measures to ensure persons with disabilities get equal access "to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas", as proper accessibility to all these resources along with others is very important for ensuring full participation and an independent life of people with disabilities.

For ensuring accessibility inclusive design principles have to be developed for designing products and services so that they could be used by a wider section of the population. With the help assistive technologies filling the gap of inaccessibility will not be a herculean task.

Along with the designing inclusive physical environment, development of an inclusive mindset is also very vital. Though there is a drastic and appreciable change in the

approach towards disability, but unfortunately this change is confined to a limited section of the society.

Changing peoples' attitudes to disability is fundamental to achieving greater accessibility. The traditional view of disability is through the medical model that attempts to “fix” or rehabilitate a person to society's norms. The social model of disability aims to dismantle barriers so that a person with a disability can fully participate in the community. This more contemporary model emphasizes on a person's abilities rather than disabilities and encourages a person's independence by decreasing environmental barriers. Persons with disabilities face as many different barriers as there are types and degrees of disabilities. Through removing barriers, persons with disabilities will be better able to use and contribute to the richness of the Internet by participating independently in the communities of their choice.

### **The Legal Incapacity of Persons with Disabilities**

The interplay between social prejudice and natural deficiency continues in relation to the legal capacity of persons with disabilities. In the early laws on legal capacity, incapacity was attributed to all persons with disabilities. Subsequently legal disqualifications continued to subsist for persons with intellectual disabilities and persons living with mental illness (or persons with psychosocial disabilities). Even as the legal disqualifications subsisting against other persons with disabilities were lifted the social prejudice continued. That this social prejudice necessitated other support initiatives to enable persons with disabilities to exercise their legal capacity was a matter which was beyond the purview of the law.

The legal attribution of incapacity has been made on the basis of a status test; a functional test or an outcome test. A status test globally applies to any group and hence is necessarily over inclusive. A functional test is an effort at linking competence to the function to be performed, the discriminatory content of this test arises from the fact that the question of functional competence is not raised in relation to the society at large but only asked in relation to specific excluded groups. Thus if intellectual disability is the threshold condition, all persons with intellectual disability would be tested for competence and the end result of the test would depend upon the extent of importance accorded to the threshold condition or the functional requirements. The outcome test decides upon competence on the strength of the decisions reached by the alleged incompetent person. A natural consequence of this test is that socially unacceptable or unpopular decisions become the basis of arriving at a decision of incompetence. The far reaching impact of decisions on legal competence caused global attribution of incapacity to be questioned. On a normative plane this meant that status tests started to be replaced



by functional tests. On an implementation plane there was greater engagement with identification and measurement. The tools of measurement were improved in order to ensure more accurate identification. The concern with identification and measurement primarily revolved around guarding against wrongful identification and inaccurate measurement. Even as studies detailing the unintended side effects of incompetence labeling were undertaken the concept of legal incompetence was not questioned.

Various psychologists and therapeutic jurists elaborated upon how an attribution of incompetence breeds incompetence like a self fulfilling prophecy . In the wake of these studies, it became important to ask should the law continue with the paradigm of selective capacity. Would persons with disabilities or for that matter all persons benefit more from the total ouster of the concept of incompetence? Would the paradigm of universal legal capacity be more equitable to all persons whether with or without disability? These questions assumed special significance in the wake of the General Assembly of the United Nations establishing an ad-hoc committee to negotiate the drafting of a Convention on the Rights of Persons with Disabilities( hereinafter CRPD.

### **Construction of Legal Capacity in the CRPD**

I have in an earlier piece recounted in detail the negotiations surrounding the article on legal capacity. Those negotiations can be summarily described according to the following stages. The first stage encapsulates the negotiations in the working group and the discussions surrounding the working group report. In this stage, even as the legal capacity of all persons with disabilities was asserted the use of substitution or guardianship in the rarest of rare cases with fair process safeguards was conceded. The second stage incorporates the negotiations as described in the chair's draft. In this stage, the chair provided two alternatives to the ad-hoc committee whilst one option allowed for substitution the other only made provision for universal capacity with support. Thus, in this stage substitution and support were presented as parallel models. The third stage includes the negotiations on the chair's draft. In this stage substitution was absorbed within the model of support by the manner in which the question of safeguards was addressed.

Subsequent to a clause by clause reading of article 12, it can be stated that legal capacity has been provided as follows in the Convention. Clause 1 of article 12 recognizes that all persons with disabilities are persons before the law. This clause makes persons with disabilities subjects of the law and bearers of rights and duties. Clause 2 recognizes that all persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. This clause recognized that persons with disabilities had the right to make their own decisions on all matters be they matters surrounding personal relationships,

economic interaction or health. Insofar as persons with disabilities had foregrounded the human need for support. Clause 3 of article 12 requires state parties to take appropriate measures to provide access by persons with disabilities to the support they may require to exercise their legal capacity. Clause 4 of article 12 describes safeguards that would need to be put in place to prevent any misuse of the provided support . And clause 5 recognizes the capacity of persons with disabilities to manage their property and other financial affairs.

In an earlier analysis, I have pointed to the periscope like text of article 12 (4). This text on safeguards includes within it both kinds of safeguards: those which are appropriate for a support model of legal capacity and those which may be required for a substitution model . Upon a cloistered reading of article 12 (4), it can be argued, that article 12 permits the continuance of the institution of guardianship or the process of substitution. Such an interpretation cannot be supported when the Convention is read as a whole guided by its general principles and in recognition of the fact that all the other rights recognized by the CRPD be it education, work, health or rehabilitation become meaningless for persons with disabilities without personal participation of the person with disabilities. The question then becomes should there be harmonious reading of the text at the cost of the spirit of the convention? And can such a reading be termed harmonious? Should the CRPD address the deficits of persons with disabilities or should it nurture their potential? Should it homogenize all persons with disabilities or celebrate and recognize the difference of persons with disabilities? Should the convention be read by the dictates of practical constraints and be guided by what is presently possible? Or should it be aspirational and begin the process of constructing the world as it should be?

Insofar as the preamble of the CRPD has explicitly recognized the social model of disability and has celebrated the difference of disability the Convention has provided its answer. This answer has been further strengthened by the General Principles adopted in the Convention which have recognized equality and non discrimination along with independence and autonomy as General Principles which guide how the CRPD should be read. After all can a Convention which lays down full and effective participation and inclusion in society as a general principle allow for the exclusion of some persons with disabilities from social discourse? Such a course of action would not demonstrate “respect for difference and acceptance of persons with disabilities as part of human diversity and humanity” required by clause (d) of the General Principles.

In fulfillment of the right to education persons with disabilities are to be accorded opportunity “for the development of their personality, talents and creativity as well as their mental and physical abilities to their fullest potential”. Such potential obviously cannot be realized unless persons with disabilities are an integral part of the exercise. Similarly the promise of promoting employment opportunities and career advancement for persons with disabilities aims to ensure the work participation of persons with

disabilities, and this promise requires that the particular needs of individual persons with disabilities be accommodated not ousted. In health there is commitment to informed consent and in rehabilitation there is the entitlement of maximum independence. The CRPD has been negotiated upon, agreed adopted and enforced because it was recognized that present legal regimes compromise the rights of persons with disabilities; hence any reading of the Convention which is deferential of the existing constraints would defeat the purpose of adopting the CRPD. It may be pertinent to ask whether these choices are mutually exclusive. Do we necessarily have to choose one or the other? Is it not possible to have both? To answer this question it is important to ask both how guardianship is provided and why is it provided? In the how it is to be understood that a guardian is appointed to take over the affairs of a person only after a person is pronounced incompetent. Thus the assistance of guardianship is available only subsequent to the supported person being declared incompetent. Whilst elaborating upon the why of guardianship, it is commonly contended that guardianship is support, assistance, to a person to negotiate the world. Insofar as plenary guardianship is premised on incapacity it cannot subsist along with the support model. However the why of guardianship the need to provide maximal assistance or high support can be included within the support model provided it is done recognizing that all persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Maximal support which is provided along with a presumption of capacity has to operate along with the person with disability and not in exclusion of him or her. Thus the motivation for providing guardianship can be addressed within the support model provided that the present method of providing such support is jettisoned. A smaller box cannot hold a larger one but a larger box can take a smaller one within its folds. Thus whilst the model of support can be constructed on a support continuum and thus allow for both maximum and minimum support; a model of substitution is based on exclusion hence cannot include within itself the ethic of support. To usher in the paradigm of full legal capacity with support, it is necessary to oust incapacity. I seek the exclusion of incapacity in the law for the following reasons. It is contended that the law does not attribute incapacity upon all persons with disabilities. It is only those persons with disabilities who are unable to perform particular legal functions that are termed incapable by the law. What needs to be however noted is that disability is a threshold condition for the enquiry of functional incapacity. The necessary consequence of this threshold requirement is that the law allows for the legal capacity of all persons with disabilities to be questioned. It is well possible that subsequent to such investigation a number of persons with disabilities may be found to be legally capable. This finding of capacity in no way lessens the discrimination and trauma experienced by the person with disability who even the law considers capable. Thus, the inclusion of incapacity in the law may be selective in the substance of the law but it is all encompassing in the procedure of the law. Since this procedure of launching incapacity proceedings extends to all persons with disabilities, it is incorrect to state that the

provision of incapacity in the law shall be only applicable to the limited number of persons with disabilities who lack capacity. Persons with disabilities are socially stereotyped as incompetent and incapable of managing their own affairs. This social stereotype is one more reason why the legal attribution of incapacity will be all enveloping and not restricted to few persons with disabilities. If the social stereotype of incapacity has to be foundationally challenged it is important that the law recognizes that all persons with disabilities have legal capacity on an equal basis with others in all aspects of life. Any qualified statement on the legal capacity of persons with disabilities lacks the power to challenge the social stereotype.

The paradigm of legal incapacity has been constructed by privileging certain faculties of the mind. Thus, cognitive faculties have been accorded a determinative role in decision making by the law. Scholars working on human intelligence have demonstrated that cognitive faculties are only one of the many dimensions of human intelligence. In not recognizing the other intelligences of the human mind, the law artificially produces incapacity. For the diversity of the human mind to obtain due recognition, it is necessary to oust the paradigm of legal incapacity.

A quoted justification for the legal paradigm of incapacity is to provide protection from fraud, exploitation and abuse. This protection is provided by denying the freedom to act to the protected person. Insofar as humans grow and evolve by incurring risk the paradigm of legal incapacity denies the dignity of risk to persons with disabilities. It prevents them from both making mistakes and learning from them and thereby disallows persons with disabilities to learn from trial and error, a mode of learning which is open to the rest of humanity.

The liberal discourse of human rights is premised on autonomy and independence of all human beings. Legal incapacity is thus attributed only on those human beings who fall short of this standard of autonomy and independence. Insofar as persons with disabilities are forthright seekers of support, they do not meet the human rights standard of autonomy and independence. Feminist discourse has demonstrated the mythical basis of the human claims of independence. Humans are needy animals but their neediness has been camouflaged by the patriarchal organization of society . Thus the interdependence openly accepted by persons with disabilities is covertly relied upon by all humans. The denial of legal capacity to persons with disabilities on the justification that only they are dependent on other humans happens because the lived situation of other humans is inaccurately described. Thus the singling out of persons with disabilities on the basis of their supposed dependence is unjust and discriminatory.

It is also contended that incapacity is not being attributed to all persons with disabilities but only some of them and fair procedure shall be followed to ensure that such attribution is not wrongfully made. The efficacy of these fair process safeguards be they of hearing,

legal representation, judicial review, reasoned decisions or multi-disciplinary panels to either prevent wrongful attribution or to reduce the trauma of a charge of incapacity is highly questionable

The inadequacies of the substitute decision making model have been extensively documented in studies on guardianship in several East European Countries including Hungary . These studies demonstrate how guardianship results in the civil death of the ward and how the fulfillment of the most basic needs of the person with disabilities depends upon the whim and caprice of the guardian. The extent to which absence of self determination impacts upon the quality of life has been researched and reported.

The Centre for Health Promotion at the University of Toronto in a study published in 1997 defined quality of life as the degree to which a person enjoys the important possibilities of his or her life . The Quality of Life was constructed on the basis of the categories of “being” which referred to aspects of the person; “ belonging” which dealt with how people fit with other people and places and “ becoming” that included aspects of daily activities that promote personal growth, development and adaptation to life. The categories were defined on the basis of the same characteristics that make life good for non disabled people. Thus “ being” encompassed physical, psychological and spiritual being; “ belonging” included physical, social and community belonging and “ becoming” incorporated practical, leisure and growth becoming.

The QOL team surveyed a stratified sample of 504 men and women with developmental disabilities in 23 randomly selected areas of Ontario in 1995. People with higher QOL were associated with: living in community settings; having verbal skills; having higher functional abilities; not seeing a psychiatrist or taking psychotropic medications and not having complex medical needs. The non verbal people with higher QOL were associated with having an occupational activity of some kind; not having marked behaviour problems; having leisure activities in the community; having community access; being more independent; making their own decisions; having opportunities to choose between alternative courses of action and having practical and emotional support from people.

The authors of the study contended that the quality of life approach mandated a change in both service and policy. Service should be so designed that they provide the type of support which improved the life of individuals; whilst policy should reflect those choices that improve the lives of individuals and adds quality to their lives.

The QOL study and the investigations on the institution of guardianship show the discriminatory effect of the incapacity label and point to the need to move out of the paradigm of substituted decision making. A resolve to adopt the supported decision making model is a necessary first step, but is not in itself sufficient to put in place the

paradigm of support. It is therefore appropriate to reflect upon the essential components of this paradigm.

### Constructing the Support Paradigm

The paradigm of support is being created around the requirements of the individual person with disabilities. The support may be little or large depending upon these requirements. As already stated, the concept of support is being preferred over substitution because support permits for the capability development of the person with disabilities. The adoption of different scales of support allows that as capabilities develop the support required by a person with disabilities may either lessen or change in shape and form. What is necessary to understand is that a capability developing support model devotes its attention to the appropriateness and not the quantum of the support provided. Even as both the minimum and the maximum scale of support would be incorporated within a support model, it would be incorrect to see both kinds of support in the same way. The support model is decentering the substitution model because the substitution model totally excludes persons with disabilities from social discourse. In the substitution model the decentering of persons with disabilities is camouflaged by best interest contentions but that such decentering is happening has to be acknowledged in an open and explicit manner. In the support model the person with disabilities cannot be decentered by law, it is therefore necessary to ensure that the support model does not operate in such a way that it results in the covert exclusion of persons with disabilities. In order to achieve this purpose it may be necessary to link the institution of safeguards with the quantum of support. The rigor of the regime of safeguards would depend upon the quantum of support provided; thus larger the extent of support more rigorous the regime of safeguards. Such a link between support and safeguards would also be in accord with Article 12 (4) of the CRPD which enumerates the safeguards to be observed to prevent the abuse of support. Some of these safeguards would need to be observed whilst providing all manner of support. For example, all support would need to be provided respecting the will and preference of the person with disabilities and without exercising undue influence or in conflict of interest. Maximal support however should be subject to regular review and be only provided at that scale till it is so needed by the person with disabilities-- in that sense it should be for the shortest time possible.

The CRPD guarantees a range of rights to persons with disabilities. Each of these rights would require different kinds of support. Thus the kind of support a person with disabilities may require to make a health care decision would not be similar to the kind of assistance needed to manage business and property which would not be like the kind of help required for enjoying the right to culture, leisure and sports. The creation of the support paradigm would therefore require creating a network of persons with different skills and expertise. Other than the expertise advantage such a network by spreading the

provision of support would keep the person with disabilities free from the influence of or the dependence on any one support person.

The concept of support has been grounded in the fact of human interdependence and if all human beings are in need of each other then all of us are both recipients and providers of support. It is this fact of mutual need which allows the support paradigm to be based on respect. The support paradigm has thus to be not only concerned with the rights of the recipients of support it has as much to be engaged with the entitlements of providers of support. The ethic of providing support requires that the provider should neither “ride roughshod over the preferences of the support persons” nor “become an appendage of the supported person” . Support is about helping people to grow and if growth is not happening that the relationship is not a supporting one.

### Existing Models of Support

The support paradigm received endorsement in the CRPD negotiations because explorations around this paradigm had started to happen in different parts of the world. These experiments started to happen because persons with disabilities and their advocates realized that relationships could be the bridge which helped surmount the barriers of the mind and obtain inclusion of persons with disabilities in the community. It was also realized (in Aristotelian fashion) that for persons with disabilities to be citizens they should be both contributors to and recipients from the community. Persons with disabilities needed support to be able to make their contribution to society. It was recognized that there could be two kinds of contributions to society, one: the contribution of doing and the other the contribution of being. Insofar as modern societies in general and western societies in particular valued doing more than being consequently the contribution of persons with disabilities often remained unrecognized. In order to ensure that this contribution received due acknowledgement, it was necessary that persons with disabilities participated in social life and were in close interaction with other members of society. This belief that persons with disabilities should determine their own lives and could do so with support prompted the setting up of different kinds of support networks and services. Some of these initiatives are being described in what follows, in order to concretize the concept of support and support networks.

### Support circles clusters and networks

A support circle cluster or network was a relationship based strategy to support persons with disabilities to have a good life. These supportive relationships were established between a circle of friends and the person with disabilities and to signify the centrality of the person with disabilities in the relationship he or she is referred to as the focus person. These support groups may vary in terms of composition, emphasis and roles. Thus some groups may include both formal (paid) support people and informal friends; others may

expressly exclude those who are paid to provide support or services. Some groups may only act at a critical time in the focused person's life such as the person leaving an institution to live in the community, whilst others may stay in constant interaction and keep developing their roles according to the various demands in the focused person's life. The support groups are reported to be of varied sizes, whilst the most common consisted of 5 to 8 members, there are reports of clusters or networks of 30 to 50 friends with an inner core of the most involved persons. Support groups that represent a variety of ages, skills and interests are reported to be the most useful as such a group can most effectively address the different needs of the focus person and be available to the focus person through the length of his or her life. Whilst the literature on support networks acknowledges the value of informally developing friendships, it recommends the employment of some formal facilitation to set up a support circle or cluster or network around a person with disabilities.

Support circles and cluster of friends have been used to make person centered planning and thereby shift the focus from the system to the individual. Such like planning is reported to be concerned with the everyday activities of the focus person draws upon connections within the community rather than the service system and the plan is to be made by the focus person along with a group of people who know the person well and care about him or her.

Circle of friends is a tool to gather a supportive community around the person with disability. There are four concentric circles. The circle of intimacy is at the core. The second circle is the circle of friendship which is constituted by close relatives and good friends. The third circle is the circle of participation which includes people and organizations that are connected to the focus person. And the fourth circle is the circle of exchange which includes those persons who provide paid services to the focus person. These four concentric circles assist the person with disabilities in the range of life decisions that he or she has to make. This model is intent with providing persons with disabilities a range of support and recognizes that the nature of the support would need to alter depending upon the nature of the decision. Thus the kind of assistance that may be needed for buying or selling a property would be different from the sort of support that would be required to make a health care decision just as the kind of involvement that one may seek from an associate in the club would be different from the manner of commitment one would seek from a close friend.

#### Microboards

Microboards are another kind of support model. These Boards are constituted by a committed group of family and friends who join a person with disability to form a non profit society which can be registered and operate as a legally incorporated entity. Microboards put in place principles that would guide the operation of the board and also



specify the functions that shall be performed by the board members. For example, the Vela Microboard Association has adopted the following principles and functions as their building blocks.

### Principles

1. Vela Microboard members must have a personal relationship with the person for whom the board is created.
2. All people are assumed to have the capacity for self-determination and this capacity will be acknowledged and respected and demonstrated in all the dealings of the microboard.
3. All decisions made by a Microboard will demonstrate regard for the person's safety, comfort, and dignity.
4. The more complex a person's needs are, the more important it is that the services are customized and individualized to support those needs.
5. All microboard members will conduct their board business in the spirit of mutual respect, cooperation, and collaboration.
6. All services developed and/or contracted are based on the person's needs, not availability of services.
7. Vela Microboards will only negotiate contracts with people and/or agencies able to demonstrate a concrete ability to provide services as identified by the microboard. These services will be person centred and customised to meet the individual's needs.
8. The staff that work for or with the person through their microboard, are not "attached" to the buildings in which the person lives, works, volunteers, or recreates. They work for the person, not an agency or business.

### Functions

1. To get to know the person and establish a personal relationship (friendship) with the person.
2. To act as sponsors to the community ensuring the person participates in community activities with Microboard members (i.e. family functions, social events, etc.) This is done in ways that are natural for each of the people involved, not as prescribed through written expectations.
3. To ensure the person has the opportunity to both receive and give from and to their community as well as with other individuals in their networks. Once the above three functions have developed, the following functions are to occur:

4. Complete a person centred planning process that will be used as part of the development of a proposal for supports.
5. Incorporate as a non-profit society.
6. Identify and request funds for services.
7. Identify and negotiate services.
8. Maintain and/or monitor services.
9. To honour legal requirements of the British Columbia Societies Act, a minimum of five board members must sit on the microboard.
10. To respect the intimacy of the Microboard process, no more than seven or eight members are recommended for any board .

The difference between this model and the Support Circles Model is that in this model all members of the microboard participate in the making of all decisions. Also this mechanism is primarily put in place to help persons with disabilities to execute their more formal life decisions.

#### Self directive support model

Another effort at providing support has been undertaken through the self directive support model. This model operates on the philosophy that risk is an acceptable and necessary part of life and persons with disabilities should have the freedom to determine the risk and protection regime of their lives. It is to that end that persons with disabilities spell out their self -determination preferences in a customized document. This customized document spells out the various decisions that a persons with disabilities needs to make and what is the kind of involvement that he or she desires in the making of that decision. The document also clearly states who shall make the final decision on the issue. The idea is that a person with disability has the freedom to delegate the making of a final decision to another if he or she is so inclined as also to insist that certain decisions shall only be made by the person with disabilities.

#### Advance Directives

In the twilight zone between universal capacity with support and the incapacity model is the legal instrument of advance directives. By these directives a person with disabilities or any person can provide for how major life decisions and especially treatment decisions are to be reached in his or her life at any event when he or she is unable to take such a decision. This instrument has been primarily utilized for making decisions in advance on treatment, though is not confined to it. In the commonly available format both positive and negatives directives are incorporated that is the instrument informs what the director

wants done and what he or she prohibits and thereby both the preferences and the aversions of the director stand recorded. A person or an institution may be named to execute the will of the director.

#### Adult Protection and Decision Making Act

It has often been feared that despite all the empowering rhetoric if provision of protection and support is only guaranteed to persons with disabilities then support could like substitution infantilize persons with disabilities. It is further pointed out that persons with disabilities do not have a monopoly on vulnerability. Persons with disabilities may be susceptible to exploitation due to their impairment, but gullibility or simplicity is not unique to persons with disabilities, such vulnerabilities also subsist in a number of non disabled adults. If support and protection is only made available to persons with disabilities then others who are in need of such protection stand discriminated and the law of protection is under inclusive. If all persons with disabilities are provided protection, whether or not they are in need of it then the law of protection stereotypes disability and is over inclusive. In order to address these two pitfalls, the State of Ontario in Canada has mooted the Decision Making Support and Protection to Adults Act 2003 . This Act allows for the appointment of an associate who can help the adult to obtain the information required to make a decision; explain the information obtained; assist in sorting out choices and communicate the wishes of the adult. The statute very clearly lays out what the associate can do and what he or she cannot do. Thus the associate has been expressly prohibited from making decisions for the adult; act without his or her knowledge; obtain information without the knowledge of the adult and talk about the adult without his or her express permission. In this model, the inextricable connection between disability and support has been severed and support has been made available for all those who desire it. This universalization of support is also a strategy to ensure that no stigma attaches to the receiving of support.

The above described models have been created by social entrepreneurs who believed in their cause. They have also been largely created by a community for its own consumption. Each of the models is in someway relying upon the creation of relationships of trust. This manner of creating support is not suitable for those persons with disabilities who have lost all contact with family, friends and community due to long stay residence in institutions. Hence the manner in which support models would need to be created for persons with disabilities who have for long lived in institutions would be in the first place different from persons with disabilities living in the community. There would be need to create a cadre of professional support persons along with programs for capability development for persons with disabilities . The construction of support may again have to vary when other social parameters such as gender, age or ethnicity intersect with disability.

### Support for Citizenship

The need for sustainable social networks for all has been strongly advocated by Ted Kuntz of Planned Lifetime Advocacy Network (PLAN) in a study entitled “connecting to citizenship” wherein he contends that “isolation and loneliness lead to poverty, poor health and diminished citizenship, result in less support for the activities and challenges of daily life, and prevent the realization of a good life. Thus, isolation and loneliness are formidable handicaps in their own right and often their impact outweighs the disability”.

The study moves on to examine the reason behind the isolation of persons with disabilities and contends that one of the reasons that persons with disabilities have difficulties in forming relationships is the widespread assumption that persons with disabilities do not contribute whilst reciprocity is fundamental to genuine enduring relationships. Without reciprocity Kuntz’s holds that relationships will either not be genuine or will not endure or will be charitable. He therefore seeks social policies and programmes that would change the assumption that persons with disabilities do not contribute and social support for the development of relationships of persons with disabilities. To this end, he suggests the creation of a national “No One Alone Fund” to address loneliness and isolation and lists out a series of activities to end isolation which could be supported by the fund.

Kuntz’s also points out that income tax statutes recognize the additional medical, therapeutic and direct care costs associated with disability. However the additional costs associated with developing relationships and overcoming attitudinal barriers are not recognized. He therefore seeks the recognition of such expenses and requires that necessary tax rebate be provided for them.

### Paid Support Services

Kuntz contends that persons with disabilities will be seen as citizens only if they are accorded the opportunity to contribute and provision for support needs to be made to enable the contribution. He seeks an improvement in the paying capacity of persons with disabilities if the support is to assist and not diminish the person seeking support. The connection between paying capacity and support is borne out by the fact that travel and leisure services catering to the needs of persons with disabilities start to be floated in countries where social support for such services exist.

### Final Recommendation

This article has recounted how the paradigm of selective capacity has been discriminatory to persons with disabilities and why it needs to be replaced by the paradigm of universal legal capacity with support. An acceptance of this contention is required in order to proceed further on creating suitable models of support. It would be possible to develop

multiple models of support only if the needless quibble between support and substitution is halted and the universal human need of support admitted.

Such a movement is also required in order to allow some of the controversies around support to be addressed. Illustratively should government schemes bar the employment of family members as the support person of the person with disabilities? The statutory bar is possibly arising from the legal suspicion of heirs as guardians of persons with disabilities. Heirs were barred because it was believed that anyone gains from the death of a person with disabilities should not have his or her custody. However this paternalistic logic was challenged when a woman with disabilities along with her father moved the British Columbia Human Rights Tribunal contending that the Ministry of Health was discriminating against them in its policy prohibiting the hiring of direct family members through the Choice in Supports for Independent Living (CSIL) program .

The petitioner contended that she wanted the family member appointed as he understood her needs and knew how to address them better than anyone else and the statutory embargo prevented her from hiring the best person. The Tribunal ruled in favour of the person with disabilities and required the Ministry to develop criteria which allowed hiring of family members on a case by case basis.

Other questions surrounding conflict of interest, the duration of the support arrangement would arise once persons with disabilities move out of the shadow of the substitute decision-makers to take their own place as persons before the law. The jurisprudence which develops with their opinions being actively voiced would need to be heard as first principle articulations and not muffled by the precedents of best interest .

The Convention on the Rights of Persons with Disabilities by constructing the paradigm of universal legal capacity with support augurs an era of rights for persons with disabilities. The philosophy of inclusion and human interdependence would not just enhance the participation of persons with disabilities; but would hopefully raise human tolerance of all difference and admit to the universal human need for support. Thus the CRPD would not just recognize the human rights of persons with disabilities but enrich the human rights of all.

## **Chapter 5: STATISTICS AND FINDINGS**

The methodology of data collection was through filling up of questionnaire randomly from the students and teachers. Students were attended on a general basis while faculty were interviewed and attended personally.

### **Method of data collection was through questions and answers**

#### Sample of the Questionnaire for Reference

1. Name-
2. Course-
3. Age-
4. Place-
5. Occupation-
6. Are you suffering from any kind of disability?-
7. If yes, name the type of disability-
8. Is there any disable student studying in university or school?-
9. No. of disable students currently studying-
10. Facility (if any) provided by the institution (both for mental and physical form of disability)-
11. What do you think about the facility provided-
  - a.) Satisfactory
  - b.) Dissatisfactory
  - c.) Bad
  - d.) Good
- 12) Whether there is any provision for inclusive education for them or not?-
- 13) Eligibility of staff taking care of them-
- 14) Apart from the traditional form of disability, is there any new kind of disability to be focused upon? If yes, name the facility to be provided-

- 15) Are you aware about any legislation covering disability in India? If yes, what-
- 16) Do you think awareness camp or programs should be conducted in this regard?-
- 17) Would you like to be part of any help or support group?-
- 18) Any further suggestion or recommendation in this regard-
- 19) What is your perception about disability?
- 20) Was filling this form made a difference to your thought regarding disability?
- 21) Any further suggestion or recommendation in this regard?

### **Interpretation of Data Analysis**

Exact No. of Form distributed – 70

No. of Forms Received- 40

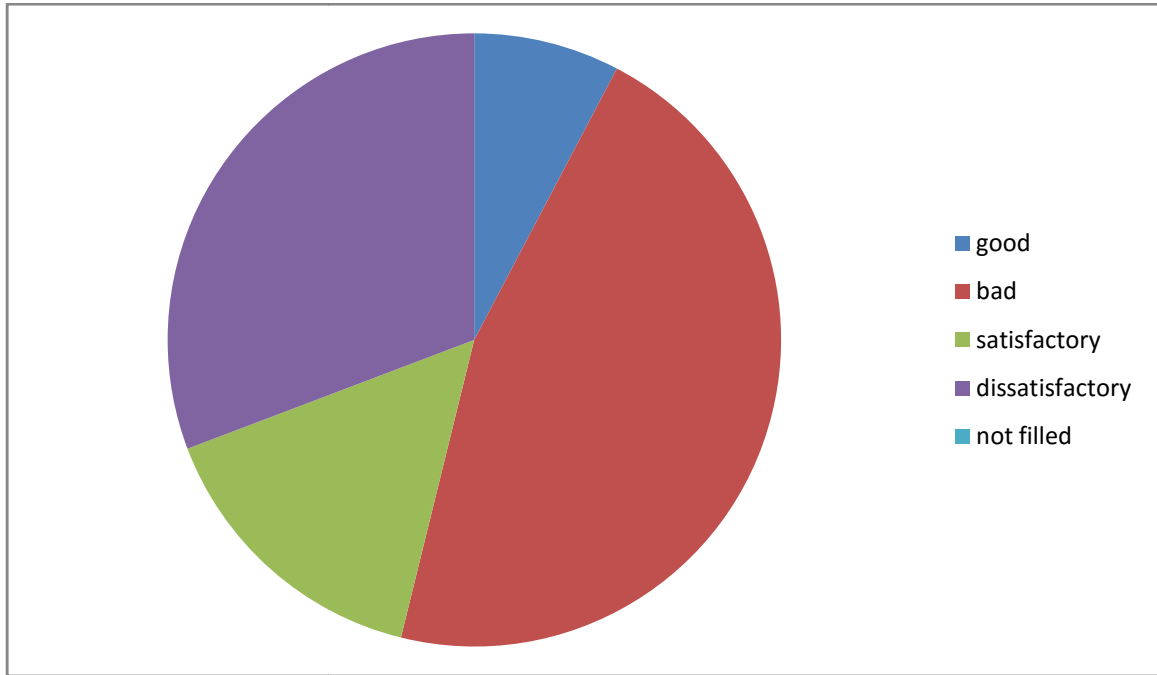
No of Form Found Misplaced-15

Forms left Unanswered – 15

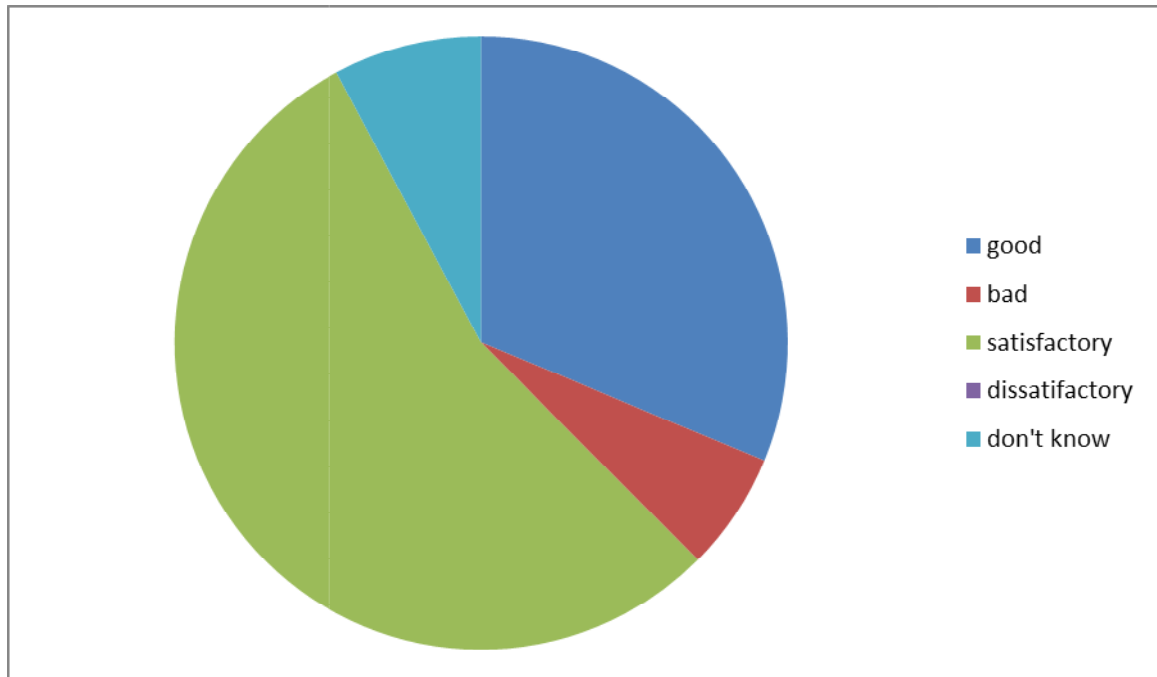
Analysis of Data- Tabular or Descriptive form depending on the nature of question

**Data taken regarding status of facilities provided by the Institution**

**Students Perception**



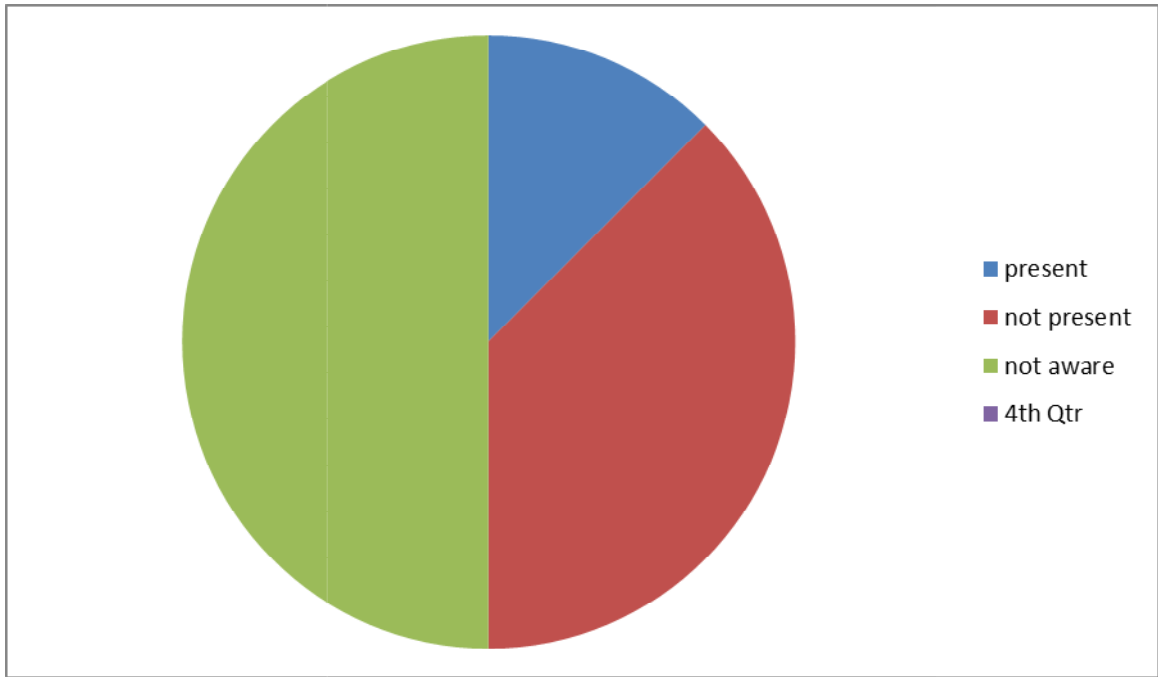
**Teachers Perception**



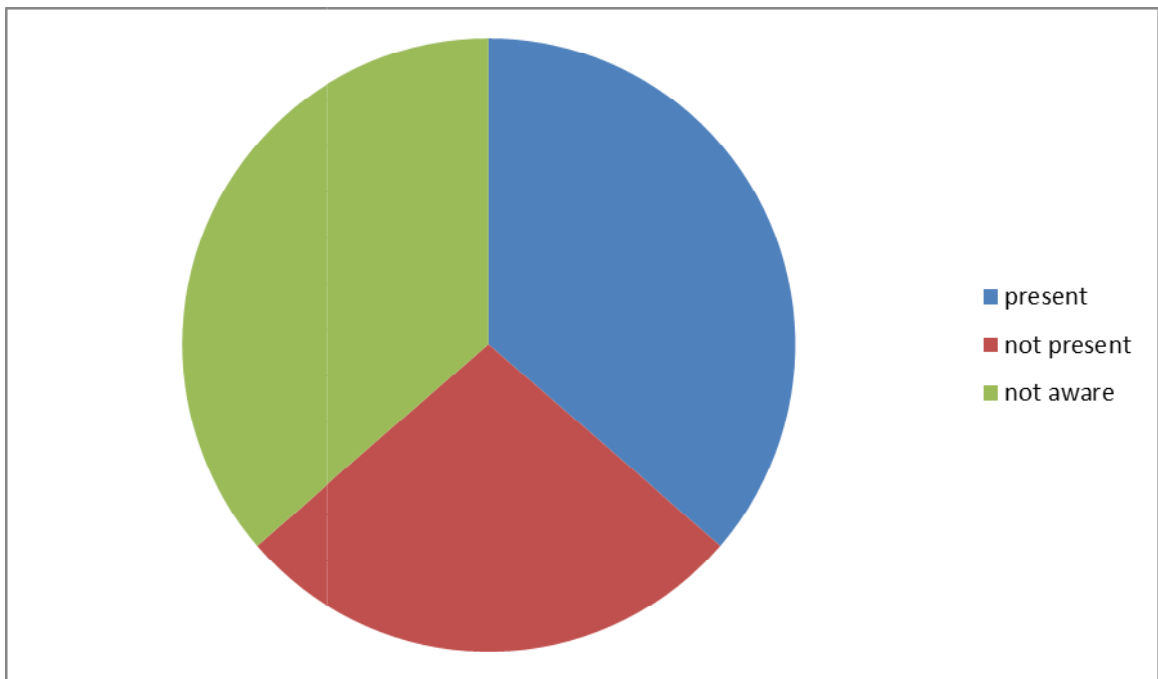


**Provision regarding presence of inclusive education- present or not**

**Students**



**Teachers**



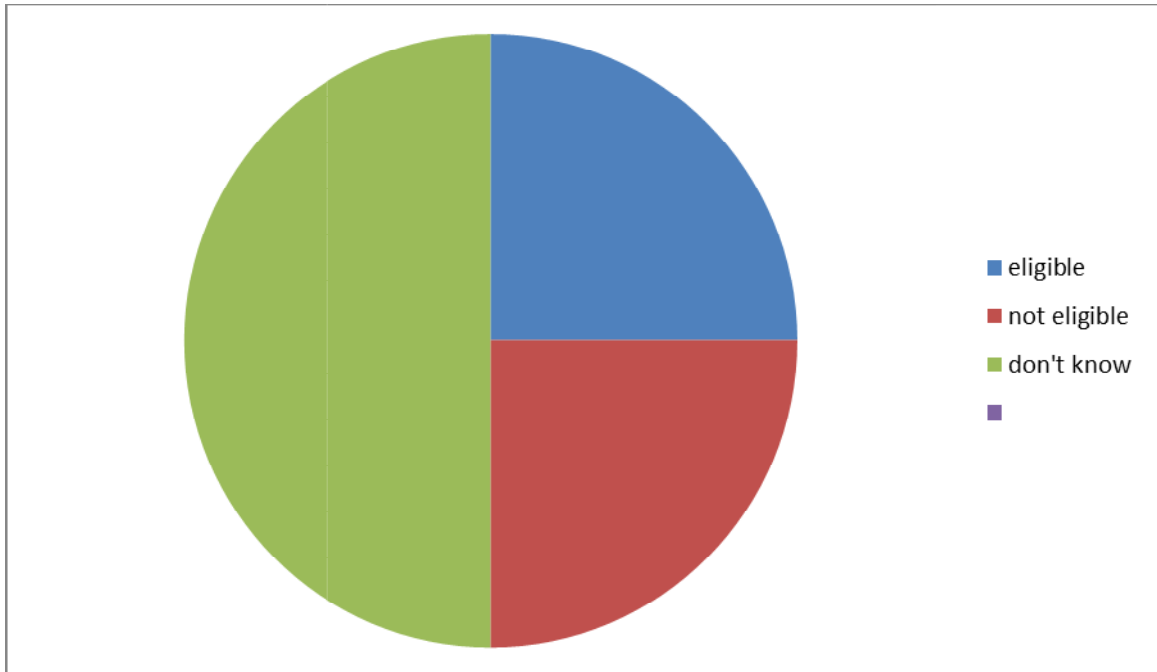
**Facility Provided by the Institution**

Students- extra medical care (almost a majority amount of students are unaware of facilities provided)

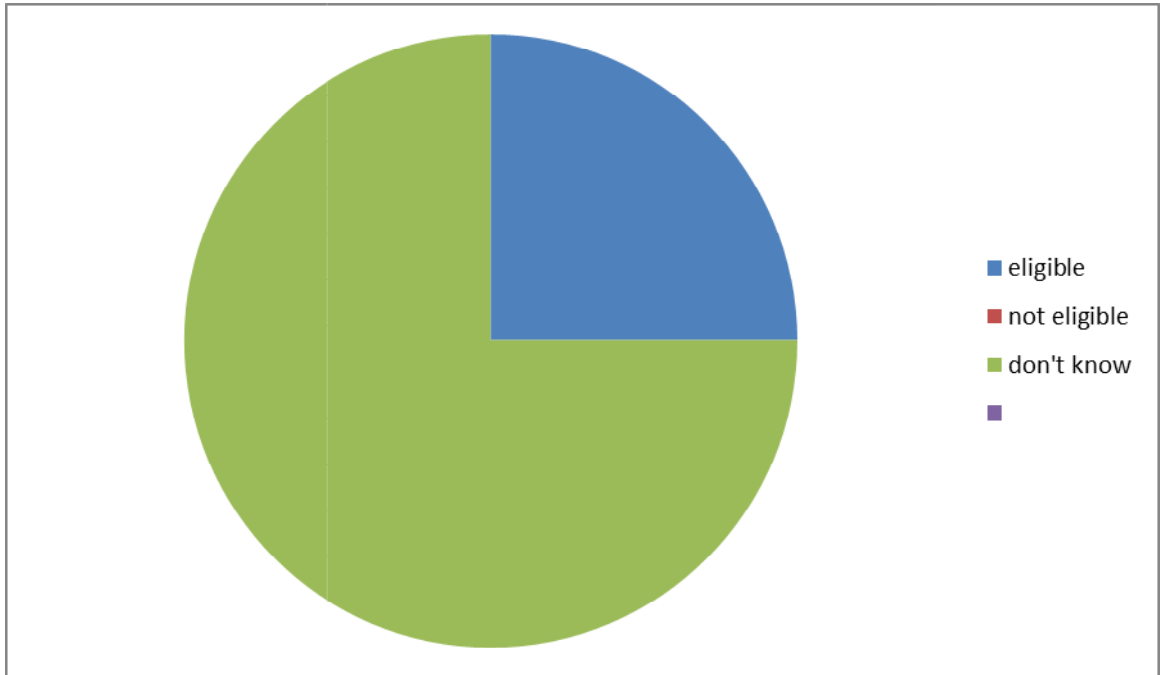
Teachers- specially designed washrooms, lifts, wheelchairs, provision of counsellors/psychologists, ramps, infirmary, sliding entrance for wheelchairs

**Eligibility of staff taking care of disable students**

Rating of Eligibility

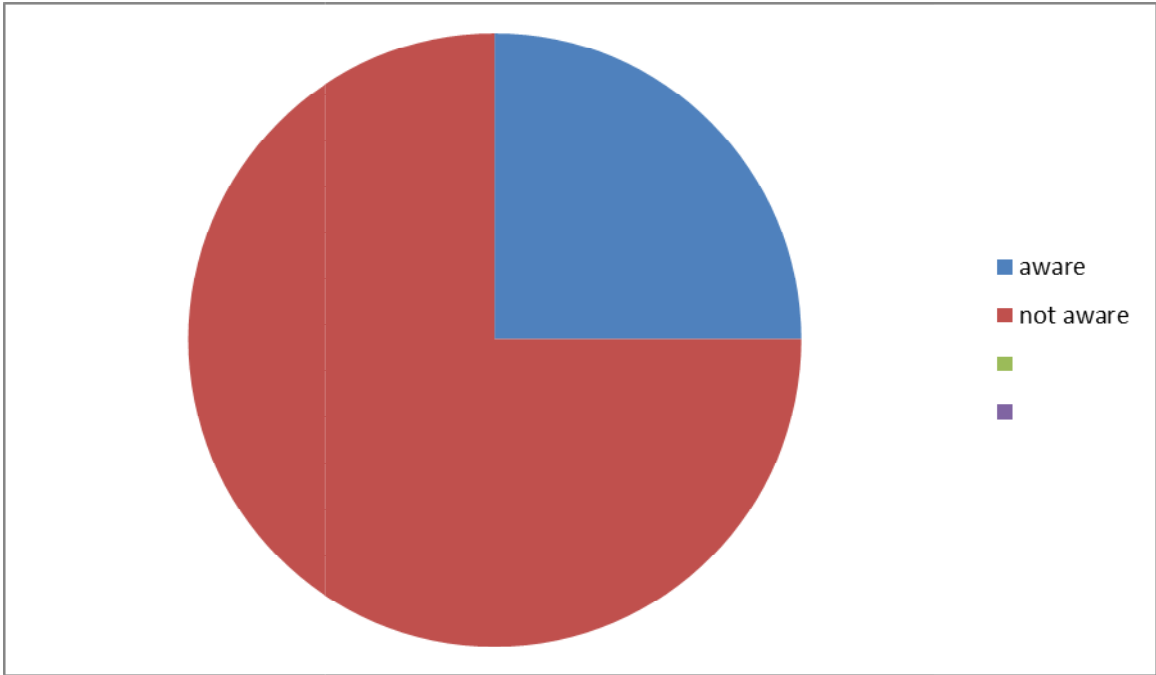
**Students**

### Teachers

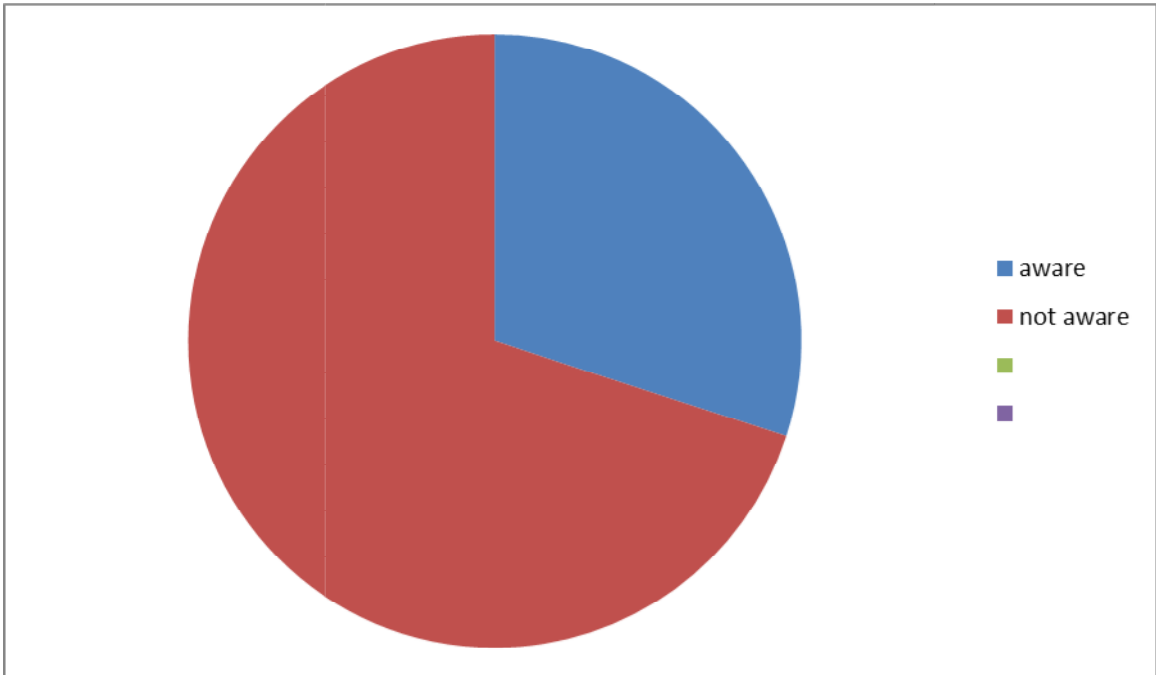


**Awareness about any legislation in India: Aware or not**

**Students**



**Teachers**



Whether camps or awareness programs should be conducted and Willingness to participate in the same

All the categories i.e. students, teachers and administrative staff agreed that there should be awareness programs and they are willing to participate

### **Suggestion**

#### Students

College should work upon disability issues by identifying disable students through a regular inspection and taking care of them.

Staff should be appointed to take care of students and should be liberal in the mandatory attendance provisions and extra help from students is required.

The privilege given to disabled people is appropriate but the courage to disabled people with respect to benefits is not satisfactory.

Disability is of many kinds and there are cases in which they can ease permanently and everyone has a right to life with full facilities available thus proper assistance should be given.

A committee should be constituted of various interest groups and develop an effective mechanism.

#### **Teachers**

To make our society is good in behavioral aspects, we should have provisions for the physically disabled persons in various fields.

Disability should be taken care by the university as well as students and all logistic support should be provided to the sufferer.

One must not create hindrances for the differently abled.

Duration of examination should be extended for them.

Have a small program for awareness

Perception about Disability

#### **Students**

They are merely differently able people.

It is nothing but a motivation to live life with high confidence accompanied with hurdles.

Disable should not be treated as as exceptional they should be involved in each activity they should not be inferior to anybody.

It may happen to anybody anytime or by birth. The society needs to be empathetic but not sympathetic towards them.

Disability is a notion where person does not conduct his activities normally. Where physical disability becomes evident but mental disability is difficult to locate

### **Teachers**

Need to be supported in giving as much equal opportunity as possible

Disability should not be taken in a negative sense, rather society should adopt a proactive and supportive towards specially abled.

Any defect physical or mental which stops the person to perform work in a natural way.

Disability shall be firstly tried to be overcome and also we shall make disabled people feel more confident by conducting awareness programs.

Was filling this form made a difference to your thought?

It did make a difference to their thoughts as the questionnaire proved to be a platform to express and it created a little change which is substantial who have to be handled with sensitivity.

## **Conclusion and Recommendation**

The conclusion that is to what extent is the campus disable friendly, the answer to it is that both the Bidholi and the Kandoli campus of the University of Petroleum and Energy Studies is disable friendly with reference to-

### **Provision of Infrastructure**

The spaces in the building are wide enough, equipped with ramps, lifts, disable friendly washrooms. Thus any category of disable student studying with the university can have access to all the areas comfortably.

### **Additional Facilities**

Providing additional facilities to disable like more time for examination, inclusion in mainstream education are well within the ambit of the facilities provided by the university.

But the problem lies with the part of “sensitization” about how much are the people conscious about the way they respond to the whole issue of disability. As an instance during the distribution of questionnaire majority were willing to fill it in the law department but with reference to the MBA department people were not only hesitant but also resistant of the whole idea claiming that disability is not something of their accord. Hence a lot of questionnaire were left unanswered and many not filled or questionnaires displaced. Thus this shows the whole attitude of how the society perceives disability and drawing an analogy to the fact that that if the survey would have been regarding revolving around any e-commerce websites then people would have willingly filled it up.

Thus sensitization of the people especially in educational institutions like ours is very necessary because it forms part of humanity and learning process as a whole which the university shall aim at as part of my recommendation.

The second problem is with reference to how far are people willing to accommodate persons of disability in the mainstream education as it is not only the infrastructure or the facilities that makes disability accommodated in society but also the mindset and attitude of the people that helps disable people to intrude into the mainstream society and perform to the best of their ability.

### **Source of Inspiration or Demotivation**

The third aspect is with respect to whether they are a source of inspiration or demotivation, for instance if we see a disabled person or a disfigured fact what is the first

thought that comes to our mind, i.e. do they inspire us or do they make us feel pity at them. Thus accommodation also well forms part of how we perceive disability.

### **Stigma Attached to Disability**

The fourth aspect with respect to the stigma attached to disability i.e. having a very negative attitude towards it and the best instance of it was the reluctance and ignorance of people filling the questionnaire as a majority of them either hadn't even thought about disability or many did not even care about it. Hence it forms a duty of the well able society how much we put in our efforts to make the differently abled well able to be adjusted and accommodated in society.

As per the topic of my dissertation, the conclusion which I formed is that there are many modified examination patterns existing for various categories of disability but the area which still needs to be reconsidered is that "are these modifications in entrance examination actually serving the needs of students with disability or it is just the idea of the able society which is deliberately being enforced on the disabled people in the name of accommodation". Hence the need of the hour is that disability should be accepted as a part of diversity of our society and their ideas and views should be given preference. Here is an example of a case which describes the reality existing wherein modification arrangements made are just for the sake of pity and nothing else. The case of "Rothman vs Emory University" is that an epileptic student was admitted to Emory law school, initially he was refused, as he wanted extra time to complete his examination. With great difficulty the college authority agreed to give extra time to complete the examination but the student was allowed to sit entire class, hence on the day of examination after the class completed the examination within the prescribed time, the professor allowed other students to stay in the examination hall and discuss answers which caused great difficulty to Rothman who was still busy completing his examination paper. Thus it is actually essential to change the perspective of how people take the issue of disability in society and help them to accommodate themselves in the existing society and not create further problems for them.

As part of my recommendation I would like to bring forth is to set up of a registered organization to lay down a mechanism to facilitate modification in entrance exam.

There has to be Organization registered under the Government of India consisting of group of professionals who have expertise and in depth knowledge about the impact of disability on educational assessment, medical professional (doctors, psychologists, psychiatrists) who can medically review cases of disability, specialist teachers who can prepare special pattern of question papers as suggested below and alternate formats on study material without hindering colleges' academic standards and group of lawyers to handle complaint cases. The pattern to be followed by the organization to work are-



- 1) This organization shall have a website on the internet that should be disable friendly.<sup>81</sup>
- 2) Indian colleges (government/private) willing to give admission to disable people has to be registered on this website.
- 3) After registration, the organization will provide a disability officer in each college who will look after the admission process(examination pattern, individualized accommodation facilities after admission) of the disable people according to Rule Book of the organization.
- 4) All the complaint cases(i.e. infringement of provisions of the Rule book)by the colleges will be reported by the disability officer of each colleges to the organization, hence organization will further take care of query through its team of lawyers. This organization will play an important role in spreading awareness by providing information to students, graduates, teachers, guidance counselors and parents on disability issue on education).<sup>82</sup>

Also with respect to the university there are a lot of listed NGOs like Cheshire Home, Raphael Home, Lathika Roy Foundation etc, for conducting of seminars and bringing their students to our campus which will inturn generate sensitization amongst staff and students as “sensitization is a long term process”.<sup>83</sup>

Hence to end in an intellectual note that “ It is not about Disability but Stigma Attached to it that Blocks the Development of Disable people”. Thus development has to be initiated and directed in this direction for their accommodation and thus if it is met I can proudly and openly challenge that even disable students if provided themselves with right accommodation can become as efficient lawyers as we are.

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<sup>81</sup> “Debate: Capabilities versus Opportunities for Wellbeing,” Journal of Political Philosophy, 13: 359–71”

<sup>82</sup>Disability Access Route to Education, available at <http://www.accesscollege.ie/dare/index.php>,(Visited on 17th August 2013)

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