

**Legal Protection and Status of Differently
Abled Persons in India: A Study of Higher
Educational Institutions in Lucknow,
Uttar Pradesh**

**Abstract of
Thesis**

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Introduction

People with disabilities constitute the largest minority in the world encompassing one billion people, of whom nearly 200 million experience severe disability. It means that 15 percent of the world's population experience some form of disability. Persons with disabilities are disproportionately poor, unemployed, and have higher rates of mortality than the general population. They do not enjoy the civic, political, cultural and economic rights with full potential. These people are restricted inarguable to perform an activity or function considered normal for a human being due to physical, mental or psychological impairment. These people have been generally excluded from economic, social and public sphere of life and experienced discrimination, prejudice and neglect in every walk of life. Due to sensitivity and attitudinal barriers, people with disabilities have been isolated from the mainstream of society. Persons with disabilities have been customarily denied their right to self-assertion, identity and development. Majority of persons with disabilities live in extreme poverty, without education or employment opportunities and face a range of other marginalizing factors. This stigma and marginalization converted disabled people as invisible subjects of human rights law. This invisibility has arisen from the separation of disabled people from society's mainstream- a separation caused by their inability to access main stream facility due to physical and social barriers. Even if their exclusion and humiliation are noticed, lawyers, policy makers, and others have frequently failed to recognize such marginalization as involving any

form of violation of human rights. Too often, has been attributed to the disabled person's impairment, rather than to an inadequate social response to that impairment.

The latest census of 2011 estimates that 2.21 percent of the Indian population have disabilities. Out of the total population of disabled people, 44 percent are women with disabilities. Women with disability exposes multiple discriminations at home as well as outside. Women becomes soft target as they are often dependent physically, socially and emotionally on. Women with disabilities live invisibly on the bottom of society with exclusion stigma and prejudice as routine aspects of their lives. That means the condition of women with disabilities are worse. They are twice as prone to divorce, separation and violence as non disabled women. Women with disabilities especially with intellectual disabilities are more prone to sexual violence. Majority of them remain mute because they failed to realize that they are victims or are they failed to communicate the act of violence. That's why they are considered as non persons, lacking recognition before the law. Women with intellectual disabilities are rendered invisible because of a lack of voice.

In this context, it can be said that women with intellectual disabilities are voiceless because complaints against them cannot be recorded in a proper manner as the woman is not able to speaks properly. That's why in majority cases police officer refuse to register a case. Though, Justice Verma Committee recommended the help of interpreters or special educators at the time of recording the complaint by the police and also during trial but in reality, the practice is not going on. Here, it is important to sort out the problems of the disabled women in accessing the legal system and navigating through the trial process.

Constitution of India guarantees right to equality and prohibits discrimination on various grounds, but excludes discrimination on the ground of disability. In Indian Constitution disabled are mentioned in the most negative sense in entry 9 of the State list. Entry 9 of the State list talks about relief to the disabled and unemployed. That means Constituent Assembly was aware of the initial policy which treated persons with disabilities mere object of charity.

Further, the language of Art. 326 is derogatory. Art. 326 denies suffrage to persons with mental disabilities.

That means till the present, the whole world followed and recognized the theory of survival of fittest and this defective proposition prompts a great majority of people to champion this practice of discrimination against the disabled persons. And in the case of discrimination against disabled, the emphasis is on medical cure and the social, economic, and political aspects of disability become secondary. The disabled people are thus stigmatized as second class citizens and as inferior human beings by social norm. Segregation in mainstream education, employment, problem in public transport and absence from labour market, become markers of the disabled identity. Frankly speaking, much of the society is designed without regard for the needs of the disabled individuals. A persons using wheelchair cannot have access to work place. nor he or she can travel in bus and in trains because buses and trains are not equipped with stairs or wheelchair lifters. Such type of people can neither go for shopping nor participate in recreational activities. So, it can be said that the persons suffering from disabilities facing identity crisis. They are fighting for recognition. On the other side, the Government as well as Judiciary is not only acting as mute spectator but behaving like a person suffering from split personality. At one stage the Government is enacting the special legislation for disabled but on other side, standing as mute spectator. It is the duty of the Government to expound the truth and to uplift the status of disabled. It seems that Government and Judiciary confound with confusion That shows there is a clear cut differences between ideology and practice. In this context, a natural question strikes in the mind that Government and judiciary are ears and eyes of the nation, when they failed to translate the rights of disabled into reality, what will the disabled community do? Constitutional mandate is very shorter and slighter to protect the rights of disabled. Constitution on India failed to mention disability as a ground of discrimination. It is the duty of Government to preserve the heterogeneous character of society in which every segments of society have to flow on equal basis where no class would be underprivileged on the basis of disability. Disable's are not getting their dues. Disability is subject to institutionalized injustice. They are structurally reduced to poverty and inhuman living standards.

Till now, the rights of disabled hanging doldrums situation. In this context, the moot question is that how the rights of disabled will restore? Can it restore through constitutional morality and constitutionalism. Because constitutional morality clearly entails about the protection of the right of an individual It talks about reasonable, just and fair. Constitutionalism implements the rule of law. It brings about social security for downtrodden parts of the society.

The rule of law means the protection of the rights of downtrodden and ignorant. These principals are not general in nature but backed by Constitutional mandate Unfortunately, in presence of these principal discrimination against disability is going on. Till now, abolition of all form of discrimination remains an unrealized Constitutional rights The problem of disabled has never entered the mainstream legal consciousness in the country. The persons suffering from disability struggling against the extreme stigmatize, exploitative and degrading form of treatment by a Government and civil society.

Statement of problem

Right to Education has been declared as fundamental rights under Article 21(A). But in education sector, persons with disabilities encounters several negative and hostile environment. Even this experience of a negative and hostile environment continues in higher education. Although instructions has been given under section 45 and 46 of the Persons with Disabilities (Equal Opportunity and Protection of the Rights) Act,1995 as well as 2001 guidelines issued by the Chief Commissioner for Persons with Disabilities in context of barrier-free University campus environment. The instruction clearly states that where a building is of more than two storey's, lifts are must. The path must be straight and barrier-free. There is a provisions of ramps and special fitting/adjustable furniture to facilitate mobility and comfort. After the passing of the Rights of Persons with Disabilities Act, 2016, further instructions have been given regarding accessibility for Universities and other higher education institutions, including pedagogical measures such as reasonable accommodation, aids and appliances for lecture, teaching materials, laboratories, libraries, classrooms and hostels. But what about the reality. In reality the picture is quite different.

Indian higher education system is the third largest in the world. It is one of the largest higher education system in terms of size and number of colleges. But, disabled students in India faces various challenges in higher education in context of physical access to buildings, curriculum adaptation, accommodation, teaching and negative attitudes. High rate of drop-out among disabled is a major problem. The low awareness among faculty regarding disability along with the lack of accessible classrooms, are the real cause of drop-out among persons with disabilities. Till now, majority of faculty are not aware of institutional mechanism, legal framework. Majority of faculty members are rigid in changing the course content, methods of evaluation and assessment. Again, faculty have no formal training regarding teaching methods. So, it can be said that the current teaching methods are discriminatory in context of disability, Evaluation and assessment method shows complete lack of planning and coordination to understand the needs of students with disabilities, Besides, non-availability of study materials in Braille, absence of assistive technology and lack of Sign language teacher further compounded their problem. Again, students with disabilities confronts with hostel accommodation, disabled friendly washroom, attitudinal barriers and lack of Equal Opportunity Cell. These are major hurdles in the path of higher education. Transportation is a major issue for student with disability in higher education. A close and critical perusal of four premier educational institutions of U.P shows that basic architecture of the campuses cannot even 'accommodate' persons with disabilities. In this context. Installation of lifts and ramps are secondary. Road of the Universities are not fully disabled friendly because road covers no visual sign. Intra campus transport system is not in circulation to provide access to persons with disabilities. Pressure has been applying on higher educational institutions to improve accessibility for disabled person, after India became the signatory to United Nations Convention on Rights of Persons with Disabilities and introduction of 'The Rights of Persons with Disabilities Act, 2016 in domestic parlance. The UNCRPD 2006 is consider as a landmark in the field of disability rights movement.

Art 9 deals with accessibility and Art. 24 of the Convention deals with inclusive education. Section 40 of Rights of Persons with Disabilities Act, 2016, deals with accessibility. Section 41 of the Act deals with access in transport and

Section 42 deals with ‘access to information and communication technology. Section 43 deals with mandatory observance of accessibility norms. Section 45 discuss about time limit for converting existing premises accessible. Section 46 discuss about time limit for accessibility by service provider. But the net result is not very satisfactory. So, it can be said that University system in India reproduces cultures of phonocentric citizenship and segregationist policy that places large sections of disabled into confined and controlled spaces. This is a deep injustice against disabled community. They are excluded from the mainstream educational system. It creates a virtually inaccessible world for persons with disabilities enrolled in higher education. That means society closed door for disabled persons and the key is thrown away by others. They are moving in dark having objectless. In this context, one question is very much relevant that ‘what is the measure of ability? Is it depended on specialized training or being able bodied norm?

Living on the brink of profound exclusion, persons with disabilities require the support of social protection and social security measures to lead a dignified life. Poverty, low level of literacy, barriers in the environment, socio-cultural, economic, physical, limited access of social protection and social security services restricting the contribution of persons with disabilities in the development process. Due to these barriers and introduction of Able body norm, students with disabilities are not consider suitable for various posts. From independent till now, the low vision students were discriminated in the field of Medical Science. In a recent judgment, Uttrakhand High Court raised the issue of the status of railway platform, airport, railway compartment, parking place, non-availability of lifts and ramps. The Court said that majority of railway platforms, railway compartments, are non-disabled friendly. Again, Uttrakhand High Court ordered that it is the duty of the Government to provides lift, ramp and separate parking place for disabled. A close and critical perusal of judgment of Supreme Court and High Courts shows that Supreme Court and High Courts have done a very good job but certain exceptions are there. In the case of Dalco Engineering Pvt Ltd vs Shree Satish Prabhakar Padhye¹, Supreme Court failed to include private sector under establishment. On the other hand, maximum job generates in India by private sector and private sector have no responsibility in context of

¹(2010) 4 S.C.R 15.

disabled. Now, one thing is very rational that in absence of private sector how the disabled will empowered. This is a clear cut violation of the rights of disabled and failure of judiciary to preserve the heterogeneous character of society in which every segments of society has to flow on equal basis. In this context, a natural question hanging in air that how the rights of disabled will protected. The answer is Constitutionalism, Constitutional morality and Rule of Law. Because one of the important mandate of Constitutionalism and Constitutional morality is to interpret ate the provisions of Constitution in order to protect the rights of disabled. Naturally, this is a very common question to raise that how the patches of Constitutionalism and Constitutional morality will imbibed. In this context, no guidelines have been given.

In a recent judgment named V. Surendra Mohan vs Secretary, Tamil Nadu Public Service Commission and others², Supreme Court held that person having 50 percent or more disability is not suitable for the post of Judicial Magistrate. Supreme Court observed that Judicial Officer has to possess reasonable capacity of hearing and sight. That's why the post is not suitable for the person having 50 percent or more disability. The judgment went against the spirit of the Rights of Persons with Disabilities Act, 2016. The judgment is very contradictory. At one stage, Supreme Court in Rajiv Raturi vs Union of India³, set out deadlines to make public places accessible to visually impaired. Supreme Court held that persons with visual impairment need a higher number of compensative facilities in order to fetch their daily needs without rupturing the dignity. But in the case of V. Surendra Mohan Supreme Court held that limitation on disability is fair, logical, just and reasonable. In this context, it can be said that judgment is a slap on the face of visually impaired. The judgment is totally against of principal of Constitutional morality, Constitutionalism, Rule of Law and Good Governance. Because Constitutional morality. Constitutionalism, Rule of Law and Good Governance clearly entails about the protection of the rights of an individual. Till now, the human rights of disabled hanging are hanging in air. Their personhood is not accepted. They are regarded as a group having no importance. In this context, it is natural to raise a question that when the rights of disabled will restored.

² 2019 (1) SCALE 621.

³ (2018) 2 SCC 413.

Legal and human rights protection of disabled is a matter of International concern. The concept of human rights of disabled became the corner stone when General Assembly adopted U.D.H.R on December 10th 1948. It laid down some provisions for the protection of the rights of disabled. The rights enshrined in declaration embodied in the two separate Covenants known as International Covenant on Economic Social and Cultural Rights 1966, and International Covenant on Civil and Political Rights, 1966. There after several disabled friendly non-binding International instrument have been adopted. But, the condition of disabled remain unchanged. In order to change the condition of disabled at grass root level, Convention on the Rights of Persons with Disabilities and its optional protocol was adopted on 13th December, 2006. The Convention marks a landmark change in attitudes and approaches to persons with disabilities. The Convention on Rights of Disability enhances the human rights approach to disability and recognizes the rights of people with disabilities equally in almost every aspect of life. Adoption of the CRPD marked and seeded a political and cultural shift for the people living with impairment, indicating an express recognition that suffering from physical or mental impairment does not mean that person loses human dignity or access to opportunity. But Convention is not the final step towards the protection of disability rights as it still lacks an effective enforcement mechanism. Ensuring human rights and equal opportunities remains an enduring challenge. In Europe and India, people with disabilities are three times more likely to be unemployed than their non-disabled counterparts. In America in 2015, 17.1 percent of persons with disabilities were employed as compared to 64.6 percent without a disability. People with disabilities are particularly vulnerable to deficiencies in health care service. So, it can be said that translation of the promise of the CRPD into practice is a dream. The whole world is still running on the basis of capability model. After the CPRD, United Nations set out agenda 2030 for inclusive and sustainable development: leaving no one behind. In this regard, the mainstreaming of disability is a cornerstone. The main object of agenda 2030 is to brought changes normative as well as operational frame works to ensure the equal rights and full participation of persons with disabilities in society and development process. To get the desire result of agenda 2030 in context of inclusive society, good governance, institution and mechanism, international community initiated the first phase of implementation of agenda 2030 in march

2016. March 2016 programme was based on Sendai Framework held at Japan in 2015. In this framework disability included in global disaster risk reduction but the outcome of Sendai and march 2016 programme were not positive.

Hypothesis

The following hypothesis have been constructed based on the Review of literature and the observation of the researcher.

1. People still regarded differently abled persons as useless.
2. Disability is largely seen as a product of cultural impediments such as beliefs and stereotypes.
3. Judiciary is very sensitive but implementing authority is not sensitive.
4. Although laws are available but they are not well equipped to handle the problem.

Objective of the study

1. To know the position of disabled.
2. To identify the reasons who are responsible for dismal position of disabled persons.
3. To analyze the role of judiciary.
4. To suggest measures to improve the condition of disabled persons and prescribe methods of monitoring and evaluation.
5. To know why disabled persons do not enjoy equitable access to economic and social capital resources.
6. To analyze the law related with disabled persons.
7. To study the existing acts, polices, programmes, schemes related to the welfare of disable which could effect the lives of people with disabilities.
8. To study the reach of these schemes and to analyze their impact with respect to the actual needs of person with disabilities.

Research Methodology

The present study has applied doctrinal as well as empirical methods. The researcher has mainly focus on the method of doctrinal, empirical analytical and observational simultaneously. In addition to descriptive, explanatory method are

also applied in accordance with the need of the study. At the same time international and national provisions and judicial pronouncement, have been critically analyzed to substantiate the logical and rational behind the different provision relating to the disabled persons and their problems.

All the primary as well as secondary documentary sources have been utilized. The researcher has used various books journal, judicial decisions of Supreme Court and High Courts of India and other significant decision both Indian and foreign courts. Constitutional norms, law journal, internet, national measure, government publication, earlier researches, report and articles have been taken as an important research tools. The present research study has definitely enrich the existing knowledge about the disabled persons rights and their problems and has also discover some unexplored aspects regarding problems of disabled.

The second part of study adopted Non- Doctrinal Research or Empirical Legal Research as called by Goodhart, wherein the researcher collected data primarily from the students of four Universities. The primary data has been collected through questionnaires. The results of the present study has been depicted in the chapter VI.

Methods of data collection: For the empirical research, questionnaires method has been used to collect data. A semi structured questionnaire has been prepared by the researcher based on the objectives of the study. The selected participants filled the questionnaire and returned back to the researcher. The questionnaire deals with questions related to 'Legal Status And Protection to the Differently Abled Person in India: A Socio-legal Study with Special Reference to Higher Educational Institutions of U.P.

Sampling Techniques: Universe selected for the present study was four Universities of U.P. The researcher has visited the four Universities of U.P and collected the data through questionnaire. Thus, the primary information has been collected by questionnaire method. The questionnaire covers various details such as accessibility, discrimination in home, attitude of teacher, scholarship, disability cell, availability of books in Braille. The study focuses on status of PWD in higher educational institution in U.P.

Tools of data collection: For the empirical legal research, the researcher used semi-structured questionnaire to collect the data. The questionnaire consists of 21 questions related with different segments of persons with disability.

Data Analysis: For the doctrinal research the available decisions of Supreme Courts and High Courts, the pros and cons of the Rights of Persons with Disabilities Act,2016, Rehabilitation Council of India Act,1992, Mental Health Act,2017, Trust Act,1999, journals, books, Constitution of India, International Conventions, Declarations have been discussed at length and results have been achieved. For the non-doctrinal research the data collected through semi-structured questionnaire. The required tools have been developed and descriptive, statistics like table, percentage, pie chart and bar graphs have been used.

Chapter I Introduction

The first chapter is the introduction of the research work. The first chapter highlights the conceptual framework from different sphere. In this chapter, review of literature is put forth. Hypothesis is constructed in which four assumptions have been made. The selection of research problem and significance of research have been briefly mentioned in this chapter.

Chapter II Historical Position of Differently Abled Persons in India

The second chapter deals with condition of disabled in India from ancient time till now. Chapter enumerates the duty of the king and the role of Guild in the protection of the rights of disabled. In Indian society the condition of disabled was much better. The chapter deals with Muslim and British period. Further, during the period of Muslim and Britishers, the condition of disabled was pathetic and dismal. It also deals with the National Policy on Education Sarva Shiksha Abhiyan, policy on inclusive education and Rights to Education Act, 2009.

Chapter III Global Perspective And Guidelines

The third chapter deals with Global Perspective and Guidelines. It deals with international agreements and regulatory principles relating to the protection of the rights of disabled, such as Universal Declaration of Human Rights, United Nations charter, Declaration on the Rights of the Child, International Covenant on

Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Declaration on the Rights of Mentally Retarded Persons, Declaration on the Rights of Disabled Persons, Sundberg Declaration, World Programme of Action Concerning Disabled Persons, International Labour Organization, Standard Rules on the Equalization of Opportunities for Persons with Disabilities, Copenhagen Declaration on Social Development, Beijing Declaration and Platform for Action, United Nations Convention on the Rights of the People with Disabilities.

The International legal mechanism for the protection of disabled rights outline various means. The United Nations and other International Organizations declared that persons with disabilities have the same right and same opportunities as per other citizens. They have the right to an equal share in the improvements in living conditions resulting from economic and social development. The word handicap has been defined as a function of the relationship between persons with disability and their environment.

At the initial phase different Declaration, Covenants and Rules were passed by United Nations Organization. These Instruments were not legally binding. In order to sort out this weakness, UNO passed Convention on the Rights of Persons with Disability in 2006. It is legally binding on the state parties. The UNCRPD is the first Convention on disability adopted by UNO. India ratified it in 2007. The Convention introduced a policy which is cross- disability and cross-sectoral. So it can be said that Convention makes a paradigm shift in attitudes and approaches to persons with disabilities. Now the disability is not considered as object of charity, medical diagnosis and treatment as well as social protection. Now disability viewed as human rights issues. Now, it is a jus cogens principle of International Law. Further, the chapter deals with Regional developments. In this segment, the focus has been given on African Charter, European Social Charter, Disabilities under European Union. the Americans with Disabilities Act, Canadian Charter of Rights and Canadian Human Rights Act.

Chapter IV National Perspective And Legal Framework

Chapter Four deals with the critical analysis of the Constitutional framework on disability. The chapter enumerates different provisions of the

Constitution and its relation with disability. The chapter highlights the German Constitution as well as Republic of South African Constitution which includes disability as a ground of discrimination. But Indian Constitution does not specifically mention discrimination as a ground of disability. But after the Naz foundation case as decided by Delhi High Court in 2009, the condition has been changed. Now the debate has been started in India that disability should be included as a ground for non-discrimination. Further, the chapter deals with Schedule VII of Indian Constitution and rights of disabled persons. Negative attitudes towards disabled regarded as major stumbling bloc in the path of disabled to enjoy education. That's why percentage of education among disabled is very low. The rate of drop out among disabled is very high. In 2002, 86th amendment was passed and right to education became Fundamental Right but disabled's are not in the list of beneficiary under RTE 2009. Till now, the persons with disabilities are struggling for inclusive education and free education under BPL quota.

The chapter further discuss about the provisions relating to disability in the Workmen's Compensation Act, 1923 and Employees State Insurance Act,1948. Employer has to provide compensation in the case of disability during the course of employment. Further, the chapter deals with the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation)Act,1995. The chapter critically examines the various provisions of the PWD Act. The last portion of the chapter deals with Rights of Persons with Disabilities Act,2016. The new Act passed to give effect to the United Nations Convention on the Rights of Persons with Disabilities. The new Act includes twenty one types of disability. The quantum of reservation has been increased from 3 percent to 4 percent. The new Act provides more stringent provision in context of punishment. The new Act introduces the provision of guardianship for the persons suffering from mental illness. The new Act puts State Government under responsibility to notify a Session Court to be a Special Court in each district for the purpose of providing speedy trial.

Chapter V Judicial Trend to Appreciate the Problem of Differently Abled

The fifth chapter deals with judicial response towards the rights of disabled. This chapter deals with the judicial decisions relating to the rights of disabled. The Indian judiciary have been instrumental in passing significant pronouncement and brought new changes in the disabled rights. The judiciary has provided impetus to the Human Rights approach for the protection of the disabled rights. There are numerous cases where positive directions have been given by the court. The judiciary in India brought Social Justice for persons with disabilities. The Supreme Court and High Courts played a catalyst role in sensitizing the problems related to persons with disabilities. The Supreme Court as well as different High Courts of India are proactive in matters related to disabled rights and issued a number of guidelines in context of mental illness, reproductive rights and reservation in higher education.

Chapter VI Empirical Study

Chapter six deals with the findings of the empirical study based on Questionnaire on Status of Disabled in Higher Education in U.P for the purpose of empirical research. The researcher has picked four Universities of Uttar Pradesh, namely, Baba Saheb Bhimrao Ambedkar University, Lucknow campus, Baba Saheb Bhimrao Ambedkar University, Amethi campus, Shakuntala Mishra University, Lucknow, Banaras Hindu University, Varanasi and Ram Manohar Lohia National Law University, Lucknow. The empirical study is not limited to the disabled but it is open for non-disabled also. The empirical research has focused on education, accessibility, employment, attitudes of the people, Disabled Cell, attitude of teachers and scholarship. For the purpose of empirical study, a questionnaire consist of 21 Questions has prepared. 268 Samples have been collected from four universities. Out of 268 respondents, 213 are non- disabled and 55 are disabled. Empirical study of two premier Central Universities and two State Universities has shown that the basic architecture of the Campuses cannot even 'accommodate' persons with disabilities, ramps and lifts are secondary issues. Maximum structures inside university are inaccessible in terms of inadequate and ill-equipped hostels, long roads, no signage, no provision of intra

campus transport for persons with disabilities to navigate over hundred acres campus. Maximum official buildings are situated on first or second floor and accessible only through stairs. Lack of books in Braille script, Sign language teachers and Disabled Cell tied to spatiality which are at the core of the experience of students and teachers with disabilities, are reduced completely to the rhetoric assurance to accessible campus.

Chapter VII Conclusion and Suggestions

The seventh chapter deals with conclusion and suggestions by the researcher. The study has come out with several important findings, observation and suggestions. While dealing with the hypothesis researcher found that

1. Disabled people are abused and segregated from the mainstream. They are politically alienated, economically backward and socially ostracized. Disabled women in particular frequently married to much older men and rates of divorce and abandonment have been found to be high. Women with disabilities are subject to significant domestic abuse. It can be said that the scope of violence increases against women with intellectual disabilities. So it is a fact that people with disability seen as discredited individuals. People with disabilities are assumed to be less worthy of respect and consideration, less able to contribute, and of less value than other. Even the family member and household heads have negative attitude toward people with disabilities. Most of the population view disability as embarrassment for family. The present study reveals that around 40 percent of disabled reported use of objectionable language, being laughed at and physical abuse. This shows the uselessness of disabled.
2. This is the belief that disability is a curse and people with disabilities are hopeless. Many people believes that persons with disabilities are not only inferior but unproductive. Women with mental illness burnt to death. Persons with disabilities in India have largely seen as a culture of charity and welfare. The theory of karma is one of key aspects which has maintained negative perceptions about disability. In India disability is largely seen as a product of cultural impediments such as beliefs and

stereotype. Even the persons with disabilities facing discriminatory attitudes in home. The negative attitude discriminates people with disabilities but produce barriers in all domains leading to stigmatization and stereotyping which results in discrimination and exclusion People with disabilities are marginalized in education and employment. Society considered disabled as less fortunate and burden because the persons suffering from disabilities lost their freedom and independence. Disabled people are seen to have dependent, incompetent and asexual. The stereotype belief tends to create the social distance between disabled and non-disabled community. This distance is regularly expressed by the non-acceptance of the disabled in social functions, religious services educational programmes, marital relationships leading to social and economic isolation. This may often result in non-social and even anti social attitude on the part of disabled. Thus, the perceptions of the non-disabled community devalue and limit the potential of persons with disabilities.

3. It is true that 21st century sensitivity has changed the concept of disability. Due to impact of disabled rights movement, now the outlook of people has been changed. Before 1960, disabled were guided by medical model. They were regarded as an object. But, after 1960 the model of disability has changed. Now, the model of disability moving from charity to human rights. But, the acknowledgement or acceptance of these rights was not easy. Supreme Court and High Courts have played a very significant role in promotion of human rights of the disabled. The PWD Act,1996, was not free from ambiguities. Even the Rights of Persons with Disabilities Act, 2016, has its own limitation. However, the judiciary has played an important role in removing such ambiguities. In a number of cases judiciary has provided specific relief to persons with disabilities through positive interpretation. A landmark judgment was *Javed Abidi vs Union of India*⁴. In this case, Supreme Court directed the Union Government to provide concession to locomotor disability to the extent of 80 per cent as well as to provide aisle chair and ambulifts. Further, Supreme Court

⁴ AIR 1999 S.C 532.

directed Chief Secretaries of the State along with Chief Election Commissioner to ensure wooden ramps and friendly voting machine for disabled. Recently Supreme Court amended 119 provision across various Acts passed by the central and State Governments that continue to discriminate against people affected by leprosy. Now leprosy is not a ground of divorce⁵. Again, Supreme Court in a landmark judgment ordered the Gujrat Government to admit a girl with disability to its MBBS course, after the admission process for medical courses ended as well as a person suffering from low vision to pursue MBBS course⁶. In *Sheela Bharse vs Union of India*⁷, the S.C held that mentally ill non-criminal persons cannot be kept in jail.

But on the other hand, implementing authority is not very sensitive. Four percent reservation has been given to disabled in government sector. But it is hardly one percent, because of bifurcation of posts. Several Ministry do not provide any information on the implementation status of reservation for disabled in government job.

4. The Right of Persons With Disabilities Act, 2016 is not friendly for people with intellectual disabilities, psychological disabilities, cerebral palsy, leprosy and autism. The Government of India shall provide incentive to employer in private sector to ensure five per cent (work force) within the limit of their economic capacity and development. But this is optional on the part of private sector. The right of persons with Disabilities, offered no mechanism to force the employers in private sector. That's why private sector generates only 0.24 percent employment for disabled. In RPWD Act, there is no provision of disability cell in Universities. Section 16 and 17 of the RPWD Act. deals with inclusive education for disabled. The Act provides various measures to provide inclusive education. But till now, the Government is silent to various measures mentioned under section 16 and 17. Responsibility of the government has not been fixed. That's why inclusive education is mere dream for disabled. Mental Health Act is not a complete document for the persons suffering from mental illness and

⁵ 2019 (1) SCJ 531.

⁶ *Pramod vs Union of India and others* (AIR 2018 SC 1919).

⁷ (1993) 4 SCC 204.

mental retardation because it failed to provide mechanism against discrimination. It failed to address the issue of legal capacity and rehabilitation issue. As per the provisions laid down in the Rehabilitation Council of India Act, 1992, Special Educators to be registered with the Act but teachers in the normal schools are required to be registered under NCTE Act. That means children with disability could not be taught by regular teachers in normal schools. This is totally against the interest of 'inclusive education'. The national Trust for welfare of persons with Autism, cerebral palsy Mental Retardation and multiple Disabilities Act, 1999 does not include welfare of person suffering from mental illness. Further, learning disability has not been included in the list of disability. They have no right to vote under Article 326 of the Constitution of India.

Suggestions

1. Maximum Universities of India are not disabled friendly. Students with disabilities of ten encounter physical barriers, such as lack of ramps, elevator in multi-storey's buildings, heavy doors, in accessible washrooms and transportation. It is important to note that Government of India dreaming about smart city and realizing the dream of smart cities. Even the smartness is introducing in Universities. But the reality is quite contrary. Till now, not even 1 percent of India's 789 universities are disabled friendly. It is recommended that government should take suitable steps to made the public transport accessible for disabled.
2. The Rights of Persons with Disabilities Act, 2016, discuss about five percent reservation for persons with bench mark disabilities in higher education, accessibility, access to transport, access to information and communication technology, but silent to Enabling Units in Universities. Disabled Cells are specially designed spaces that are meant to offer support to persons with disabilities in counseling, facilitate admission fulfillment of Quotas. It is submitted that government should instruct all the universities and colleges to introduce Disabled Cell.
3. From earlier till now, students with disabilities continue to face negative attitudes and stereotypes in higher education system in India. Negative attitudes of other students, faculty, non-teaching staff, administrative staff

affects inclusion in higher education. The stress, however, is upon the student to fit the system rather than the system to mold to meet the educational needs of disabled student. People with Mental health issues may also be perceived to lack the capacity to make decision in their own. It is submitted that government should frame stern law to stop negative attitudes and stereotypes against disabled.

4. The low awareness among faculty regarding disability along with the lack of enabling class environment is the main hurdle in the path of development for disabled. Majority of the faculty members are not aware of institutional mechanism and are also rigid, in changing the course content methods of evaluation and teaching methodology, still, majority of faculty members are not getting training regarding teaching methods. Large number of faculty follows trial and error method. This method is completely against the concept of reasonable accommodation. Evaluation and assessment method exposes complete lack of planning and coordination to address the needs of the students with disabilities. Conventional method of evaluation and assessment are not suitable for disabled. In order to provide reasonable accommodation to the students suffering from disabilities, stress should be given on oral examination, discussion and dialogues
5. Till now, students suffering from visually impairment are fighting for availability of study resources in Braille script. Their problems are further compounded by non- availability of screen reader soft ware. It is recommended that government should provide study resources in Braille script.
6. The person suffering from hearing impairment cannot telephone and when they watch television, largely dependent on hearing people. Because they could not understand this language. They need sign language to communicate. But in India, the numbers of sign language teachers are very less. In higher education more than 99 percent teachers are not aware about sign language. That's why the number of deaf students are exceptionally low in higher education. It's a kind of suppression that began in their family and this suppression continues for whole.

7. Majority of higher educational institutions and its buildings running on without ramps, Braille symbols and auditory signals in elevators on lights. Side by side, majority of the roads having no auditory signals and Braille symbols. In this circumstances, it can be said that survival of disabled student is impossible. Yet, we are not talking about universal design. So, it can be said that higher education is still unbearable for students with disabilities in India. It is recommended that Government should improve the accessibility by making the infrastructure and architecture more disabled friendly. The government should take rational and judicious measures to make means of transport accessible for disabled.
8. The present form of world wide web is not disabled friendly. Because, the use of the world wide web requires the functioning of the eyes and ears. The use of Internet through browse involves type and click on the mouse. That's why the students suffering from visually impairment and hearing impairment, are not capable of being performed. It is submitted that government should take appropriate measures to convert web content into accessible format for disabled.