

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

Thesis

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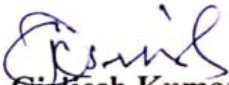
DECLARATION

I, **Girijesh Kumar Singh**, hereby declare that research work embodied in this Ph.D. thesis titled “*Legal Protection and Status of Differently Abled Persons in India: A Study of Higher Educational Institutions in Lucknow, Uttar Pradesh*” has been done by me on the basis of original research material and information taken from other research works has been duly acknowledged.

I further declare that this is an original work and has not been previously submitted in part or full for any other degree or diploma in this or any other university.

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The thesis submitted to Babasaheb Bhimrao Ambedkar University, Lucknow satisfies all the requirements as stipulated in the Doctor of Philosophy (Ph.D.) Regulation 1999 as amended in 2013 and it is fit for submission and evaluation for the award of the Degree of Doctor of Philosophy of the University.

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LIST OF ABBREVIATIONS

ADA	:	American Disability Act
AIR	:	All India Reporter
CEDAW	:	Convention on the Elimination of all forms of Discrimination against Women
DTC	:	Delhi Transport Corporation.
ECOSOC	:	Economic and Social Council.
EEOC	:	The Employment opportunity Commission.
EU	:	European Union.
ICCPR	:	International Covenant on Civil and Political Rights.
ICESCR	:	International Covenant on Economic, Social and Cultural Rights
IECYD	:	Inclusive Education of Children and Youth with Disabilities.
IEDC	:	Integrated Education for Disabled Children.
IEDSS	:	Inclusive Education for the Disabled at Secondary Stage.
ILA	:	Indian Lunacy Act.
ILO	:	International Labour Organization.
M.B.B.S	:	Bachelor of Medicine and Bachelor of Surgery.

MCD	:	Municipal Corporation of Delhi.
NCT	:	National Capital Territory.
NHFDC	:	National Handicapped Finance Development Corporation.
NPE	:	National Policy on Education.
NSSO	:	National Sample Survey Organization.
PWD	:	Persons with Disabilities(Equal Opportunity and Protection of the Rights) Act
RCI	:	Rehabilitation Council of India.
RPDA	:	The Rights of Persons with Disabilities Act
RTE Act	:	Right to Education Act.
SDR	:	Social Development Report.
SSA	:	Sarva Shiksha Abhiyan.
U.D.H.R	:	Universal Declaration of Human Rights.
UGC	:	University Grant Commission.
UNESCO	:	United Nations International Children's Emergency Fund.
UNICEF	:	United Nations International Children Emergency Fund.
WHO	:	World Health Organization.

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People with disabilities constitute the largest minority in the world encompassing one billion people,¹ of whom nearly 200 million experience severe disability. It means that 15 percent of the world's population experience some form of disability.² 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.³ 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.⁴ Majority of persons with disabilities live in extreme poverty, without education or employment opportunities and face a range of other marginalizing factors.⁵ 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

¹ Available at <http://www.worldbank./en/topic/disability/overview>(accessedon30September,2018).

² World Health Organisation, World Report on Disability, 2011.

³ Carol Christensen, 'Disabled Handicapped or Disordered: what's in a name' ? in carol christensen and Fazal Rizvi, Disability and the Dilemmas of Education and Justice 70, Open University Press, Philadelphia (1996).

⁴ G. N. Karna, 'Disability studies in India'. Retrospects and Prospects, 'Gyan Publishing House, New Delhi, p. 216 (2001).

⁵ Office of the High commissioner for Human Rights, Monitoring the Convention on the Rights of Persons with Disabilities: Guidance for Human Rights Monitors 7 United Nations:-New York, 2010, available at <http://www.ohchr.org/Documents/Publications/Disabilities-trainings.17EN.pdf>.visited on 30 September, 2018.

disabled person's impairment, rather than to an inadequate social response to that impairment.⁶

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.⁷ 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.⁸ 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.⁹

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 speak 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

⁶ Anna Lawson, *Disability and Quality law in Britain. The Role of Reasonable Adjustment*, Hart Publishing, London, P. 18 (2008)

⁷ Anita Ghai, 'Disabled women; An Excluded agenda of Indian Feminist Movement', *Hypatia*, 17(3): 49-66, 2002

⁸ B. Davar, 'From Mental Illness to Disability: Choices of Women Users/ Survivors of Psychiatry in Self and Identity Constructions', *Indian Journal of Gender Studies*, 15 (2) p. 261-290 (2008).

⁹ N. Mehrotra and M. Nayar, 'Woman with Psychological Disabilities: Shifting the Lens from Medical to Social', in Asha Hans (edited), *Disability, Gender and Trajectories of Power*, Sage Publication, New Delhi (2015)

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.¹⁰ 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

¹⁰ Syed Salma Jameel, 'Disability in the context of higher Education: Issues and Concerns in India', *Electronic Journal of Inclusive Education*, 2 (7): p. 1-21. (2011).

underprivileged on the basis of disability. Disableds 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 in air. The rights given to disabled are in the stage of sixes and seven. 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.

Statement of Problem

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.

Right to Education has been declared as fundamental rights under Article 21(A).¹¹ 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 45¹² and 46¹³ of the Persons with Disabilities(Equal Opportunity and Protection of the Rights) Act, 1995 as well as 2001 guidelines issued by the Chief

¹¹ Article 21(A) states that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

¹² Article 45 states that the appropriate Governments and the local authorities shall, within the limits of their economic capacity and development. Provide for- (a) Installation of auditory signals at red lights in the public roads for the benefit of persons with visually handicap; (b) Causing curb cuts and slopes to be made in pavements for the easy access of wheel chair users; (c) Engraving on the surface of the zebra crossing for the blind or for persons with low vision; (d) Engraving on the edges of railway platforms for the blind or for persons with low vision; (e) Devising appropriate symbols of disability; (f) Warning signals at appropriate places.

¹³ Article 46 states that the appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for- (a) Ramps in public buildings; (b) Braille symbols and auditory signals in elevators or lifts; (c) Braille symbols and auditory signals in elevators or lifts; (d) Ramps in hospitals, primary health centers and other medical care and rehabilitation institutions.

Commissioner for Persons with Disabilities in context of barrier-free University/ College campus environment.¹⁴ The instruction clearly states that where a building is of more than two story, 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 Colleges, 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, reservation, 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 Lucknow shows that basic architecture of the campuses cannot even 'accommodate' persons with

¹⁴ Instructions have been issued to various Colleges and Universities to provide physical access to disabled students.

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. The persons with disabilities are not getting due reservation in higher education. The fact proves by a study published by Centre for Disability Studies and Health Laws showed that a majority of National Law Universities do not follow the 5 per cent reservation for persons with disabilities. The mindset of National Law Universities is totally against the spirit of the Persons with Disabilities Act, 2016. Section 32 of the Persons with Disabilities Act, 2016, requires all the government Institutions of higher education and other higher education institutions receiving aid from the government to reserve not less than 5 per cent seats for persons with benchmark disabilities. It is a matter of grave concern that 10 of the National Law Universities still prescribing 3 per cent reservation for persons with disabilities. The study shows that only 9 out of 22 NLUs follow the requirement of the Act in letter and spirit. This shows the adverse condition of higher education for disabled in India.¹⁵ 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. Art 9 deals with accessibility¹⁶ and Art. 24 of the Convention on the Rights of Persons with Disability

¹⁵Shashank Pandey's survey on reservation in favour of disabled in National Law Universities in India. Published in Bar and Bench on 3 September, 2019. Available at <https://bar.app.link/osftBXHYFZ> access on 6 September, 2019.

¹⁶To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, 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. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures:

- a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- c) To provide training for stakeholders on accessibility issues facing persons with disabilities;
- d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

deals with inclusive education¹⁷. Section 40 of Rights of Persons with Disabilities Act, 2016, deals with .accessibility¹⁸. Section 41 of the Act deals with access in

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- e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
 - f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
 - g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
 - h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

¹⁷States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c. Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c) Reasonable accommodation of the individual's requirements is provided;
- d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disability.

¹⁸ The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

transport¹⁹ and Section 42 deals with ‘access to information and communication technology.’²⁰ Section 43 deals with mandatory observance of accessibility norms²¹. Section 45 discuss about time limit for converting existing premises accessible.²² Section 46 discuss about time limit for accessibility by service provider.²³ 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.²⁴ It creates a virtually inaccessible world for persons with disabilities enrolled in higher education.²⁵ That means society closed door for disabled persons and the key is thrown away by others. They are moving in dark

¹⁹ The appropriate Government shall take suitable measures to provide,— (a) facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines; (b) access to all modes of transport that conform the design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design; (c) accessible roads to address mobility necessary for persons with disabilities. (2) The appropriate Government shall develop schemes programmes to promote the personal mobility of persons with disabilities at affordable cost to provide for,— (a) incentives and concessions; (b) retrofitting of vehicles; and (c) personal mobility assistance

²⁰ The appropriate Government shall take measures to ensure that,— (i) all contents available in audio, print and electronic media are in accessible format; (ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning; (iii) electronic goods and equipment which are meant for every day use are available in universal design.

²¹ The appropriate Government shall take measures to promote development, production and distribution of universally designed consumer products and accessories for general use for persons with disabilities

²² All existing public buildings shall be made accessible in accordance with the rules formulated by the Central Government within a period not exceeding five years from the date of notification of such rules: Provided that the Central Government may grant extension of time to the States on a case to case basis for adherence to this provision depending on their state of preparedness and other related parameters. Accessibility. Access to transport. Access to information and communication technology. Consumer goods. Mandatory observance of accessibility norms. Time limit for making existing infrastructure and premises accessible and action for that purpose. (2) The appropriate Government and the local authorities shall formulate and publish an action plan based on prioritisation, for providing accessibility in all their buildings and spaces providing essential services such as all primary health centres, civil hospitals, schools, railway stations and bus stops

²³ . The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules: Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules

²⁴ AISHE, 2015, All India Survey on Higher Education, New Delhi: Ministry of Human Resource Development, Government of India, available at <http://aishe.nic.in/aishe/viewDocument.Action?documented=199>. Accessed on 18 April 2019.

²⁵ Kalpana Kannabiran and Soumya Vinayan, ‘Disability Rights in Higher Education: A Preliminary Investigation of Exclusion and Barriers in Indian Universities’, India Higher Education Report, National University of Educational planning and Administration, Routledge Publication, New Delhi, 2016

having objectless²⁶. 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?

In order to address the problem and improve the pathetic condition of disabled the first law on disability was passed in 1987, known as Mental Health Act, 1987 This Act is specially for those persons suffering from mental illness and retardation. But the Act only provides for their guardianship and institutionalization and failed to address the issues of legal capacity and rights of persons with mental abilities,²⁷ So it cannot be considered as a legislation address in discrimination against disabled.

In order to protect the social and economic rights of persons with disability, the first anti-discrimination law was passed in 1995. But majority of the provisions made by the Act come with the rider” within the limits of economic capacity. The PWD Act only addresses positive action in the public sector and does not cover private sector at all. The definition given to disability and persons with disability is extremely narrow. Now the PWD Act, 1995 has been repealed by the Rights of Persons with Disabilities Act, 2016. But the Act of 2016 is not free from flaws. The Act does not adopt United Nation Convention on the Rights of Persons with Disability in its true sense. One of the derogatory provision of the Act is that it remained untouched in the case of other laws discriminatory against persons with disabilities. This is the clear cut violation of States obligation under UNCPRD, to modify or abolish laws, regulations, customs and practices that constituted such discrimination. Again, one of the major stumbling block for disabled is identification of posts for persons with disabilities. In this context, the language of the Rights of Persons With Disabilities Act, 2016 is vague. As per the Act, identification of posts for persons with disabilities shall be applicable only in the case of specific posts that are expressly identified. The posts which are not identified are not suitable for disabled. So it can be said that identification of posts is not reasonable, just and fair. Rather it is arbitrary. The post of District Magistrate is found suitable but the post of

²⁶ Shalini Saksena and Rashmi Sharma, ‘Deconstructing Barriers to Access Higher Education: A Case Study of Students with Disabilities in University of Delhi’, *DU Journal of Undergraduate Research and Innovation*, 1(2): 316-317.

²⁷ V.B. Davar; ‘Legal Frameworks for and against People with Psychological Disabilities’, *Economic and Political Weekly*, December 29, Vol, xlvil no. 52.

Additional District Judge is not suitable. The post of District Magistrate needs extensive work and fitness as compare to the post of Additional District Judge. So, it can be said that no guidelines are available regarding identification of post. It is a grey area on which a rational and transparent policy from the government side is required. The Act is mute on the question of Special Police Station for disabled persons. In absence of Special Police Station justice is not possible for disabled. Further, the Act discuss about the Special Court and speedy trial for the benefit of disabled but it failed to craft proper mechanism regarding establishment of Special Courts and appointment of judges in the line of SC/ST Court. The Act provides reservation in the case of public employment but it is silent in the case of private sector, which generates about 90 percent of job. The Act is also silent in the case of discrimination in private sector. This is the most unfortunate moment for disabled that private sector is totally excluded. Another grey area of the Rights of Persons with Disabilities Act, 2016, is the Right to Access. The Right to Access means not only access to justice in Court of Law, but also to various other facility such as public building, housing, medical health sector educational sector, ‘institutional barriers’ such as segregation, expulsion, exclusion from key social institutions, attitudinal barriers such as prejudices, pity and disregard for persons with disabilities. In this context, it is very important to review Article 40, 41, 42 and 44 of the Rights of Persons with Disabilities Act 2016.

Section 40 discuss about ‘accessibility’. Under section 40, the Central Government shall, in consultation with the Chief-Commissioner, formulate rules for persons with disabilities, laying down the standard of accessibility for the physical environment, transportation, information and communication including appropriate technologies and systems, and other facilities²⁸. Section 41 talks about ‘access to transport’. The Government is under an obligation to provide facilities for persons with disabilities at bus stops, railway stations, airport, parking spaces. Toilets and ticket counters. One of the key is to build accessible roads to address mobility necessary for persons with disabilities.²⁹ And for this re-design of all modes of

²⁸ S. Mitra, ‘The capability approach and disability, Journal of Disability Policy Studies,16(4) PP.236-247.

²⁹ Article 41 of Rights of Persons with Disabilities Act,2016 states that the appropriate Government shall take suitable measures to provide,— (a) facilities for persons with disabilities at bus stops, railway stations and airports conforming to the accessibility standards relating to parking spaces, toilets, ticketing counters and ticketing machines; (b) access to all modes of transport that conform the

transport is necessary which is technically feasible and economically viable. Section 42 States that appropriate Government shall take measures to ensure that all contents of electronic media available in accessible format including sign language interpreter.³⁰ Section 44 deals with mandatory observance of accessibility norms. Under section 44, instruction has been given to all builders to build disabled friendly building and building plan must adhere to the rules formulated by the Central Government³¹. Section 46 discuss about time limit for making existing infrastructure and premises accessible within five years from the date of notification of such rules.³²

But what about the reality? Persons with disabilities are deprived of access to basic services such as public transport, including railway, primary health care and education. Employment opportunities are extremely limited. It is universal reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and environmental barriers that prevent disabled persons from joining the work force. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community.³³ Discrimination against disabled is still going on in the form of distinction, exclusion, restriction and denial of reasonable accommodation. It hampers the social, political, civil and economical rights of disabled. The concept of financial inclusion is looking

design standards, including retrofitting old modes of transport, wherever technically feasible and safe for persons with disabilities, economically viable and without entailing major structural changes in design; (c) accessible roads to address mobility necessary for persons with disabilities. (2) The appropriate Government shall develop schemes, programmes to promote the personal mobility of persons with disabilities at affordable cost to provide for,— (a) incentives and concessions; (b) retrofitting of vehicles; and (c) personal mobility assistance.

³⁰ Article 42 of Rights of Persons with Disabilities Act, 2016 states that The appropriate Government shall take measures to ensure that,— (i) all contents available in audio, print and electronic media are in accessible format; (ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning; (iii) electronic goods and equipment which are meant for everyday use are available in universal design.

³¹ Article 44 of Rights of Persons with Disabilities Act, 2016 states that 1) No establishment shall be granted permission to build any structure if the building plan does not adhere to the rules formulated by the Central Government under section 40. (2) No establishment shall be issued a certificate of completion or allowed to take occupation of a building unless it has adhered to the rules formulated by the Central Government.

³² Article 46 of Rights of Persons with Disabilities Act, 2016 states that The service providers whether Government or private shall provide services in accordance with the rules on accessibility formulated by the Central Government under section 40 within a period of two years from the date of notification of such rules: Provided that the Central Government in consultation with the Chief Commissioner may grant extension of time for providing certain category of services in accordance with the said rules.

³³ Dr. Rumi Ahmed, 'Rights of Persons with Disability in India,' White Falcon Publishing, Chandigarh, p.192, 2015

a dream for disabled³⁴. Again, disabled people are still fighting for rehabilitation because people with disabilities are regarded as less worthy of respect and consideration, less able to contribute and take part, and of less useful than others. This lead into stigmatization and stereotyping which in turn cause discrimination and exclusion.³⁵ Persons with disabilities often face unequal treatment by other family members.

That means person suffering from disabilities, suffering from two-fold negation. First the absence of disability as a ground of disability under Art. 15 (1) and second the baron voting right of persons suffering from any psychological or intellectual disability, better known as ‘unsoundness of mind. The persons suffering from intellectual disability has not been granted the status of personhood. The denial of right to vote has immediate and serious consequences for the right of liberty of persons of ‘unsound mind. On the other hand, the absence of disability as a ground of discrimination in the Constitution and the refusal of Supreme Court and High Courts to bring it within the meaning of discrimination under Article 15, further diminish Fundamental Rights for all persons with disabilities. The Constitutional Courts are regarded as lighthouse of the Constitution and balance wheel whose rays of liberty and justice sucks the problem. In this circumstances, it can be said that the Constitutional Courts failed to bring the word ‘discrimination as the ground of disability within Article 15 of the Indian Constitution. That means our Government and Constitutional Courts are running in the lines of ‘Able- bodied norm’. This jurisprudence, as followed by Government as well as Constitutional Courts, is totally against of Constitutional morality and Constitutionalism. Because Constitutional morality and Constitutionalism implements the rule of law and to brings about security of the individual. Improvement of law is also a key of Constitutional morality and Constitutionalism., When judges failed to deliver justice to the downtrodden part of society, Where the judiciary will stand? This is not the improvement of law. In higher education the student suffering from disabilities have little scope to survive.³⁶ In research they have very little scope to enter in the main

³⁴ Bernard Leach, “Disabled People and Equal Opportunities Movement,” *Beyond Disability Towards an Enabling Society* 89, Sage Publication, New Delhi, 1996

³⁵ Sathiya Susuman, Appunni and A. P. Deshpande, ‘Work Participation among Disabilities in India, *Journal of Social Science*, 21(2): 117-22.

³⁶ John Hanafin, Michael Shevlin, Mairin Kenny and Eileen McNeela, ‘Including Young People with Disabilities: Assessment Challenges in Higher Education’, *Higher Education*, 54(3):435-448

stream. In research seats are limited and under the present situation, it is not possible to implement the reservation policy of Government of India. In this circumstances, it is necessary to consider University as a unit in place of department. Till now, no guideline is available. So, it can be said that disabled students will never absorb in research if the present policy will persist.

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. Now, after the judgment of Supreme Court in Purswani Ashutosh (Minor) through Dr. Kamlesh Virumal Purswani vs Union of India and others³⁷, students with low vision are eligible for admission in M.B.B.S. Currently 119 provisions across various Acts passed by the Central and State Governments that continued to discriminate the people affected by leprosy. They were not regarded as complete human being. But after the judgment of Supreme Court in Pankaj Sinha vs Union of India and others³⁸, their status has been changed. The Government of India amended Section 13 of the Hindu Marriage Act, 1955 that allows dissolution of marriage on the ground of leprosy, Section 2 of the dissolution of Muslim Marriage Act, 1939, Section 27 of Special Marriage Act. The judgment is really a leap for persons suffering from leprosy.

In a recent judgment, Uttarakhand 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, Uttarakhand 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

³⁷AIR 2018 SC 3999.

³⁸AIR 2018 SC 4297.

Prabhakar Padhye,³⁹ 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 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 others,⁴⁰ 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 India⁴¹, 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 in air. Their personhood is not accepted. They are regarded as a group

³⁹ AIR 2010 SC 1576

⁴⁰ 2019(1) SCT 648(SC)

⁴¹ (2018) 2SCC 413.

having no importance. In this context, it is natural to raise a question that when the rights of disabled will be restored.

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 per cent of persons with disabilities were employed as compared to 64.6 per cent without a disability.⁴² People with disabilities are particularly vulnerable to deficiencies in health care service.⁴³ 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 CRPD, 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

⁴² US Department of Labour, "Persons with Disability: Labour Force Characteristics" available at <http://www.bls.gov/news.release/pdf/disabl.pdf>.

⁴³ World Health Organization, 2015, "Disability and Health, available at <http://www.who.int/mediacentre/factsheets/fs352/en/>.

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 was not positive.

Disability can be define as a condition or state that makes a person in capable of performing activity both physical or mental in the manner or within the range considered normal for human being. This is a definition based on comparative study of function by disabled and by non-disabled. That's why this is not a proper definition because comparison with the non-disabled persons is baseless.⁴⁴

The world Health Organization defines disability as complex phenomenon, reflecting interaction between features of a persons body and features of a society in which he or she lives.⁴⁵ In this definition only non-functioning of the vital organs of the body has been mentioned. This definition is not adequate. Disability is defined as a state of being disabled, absence of competent physical, intellectual or normal power.⁴⁶ The above mentioned definition of disability points out the inability of an individual's body. It focuses on the absence of competent physical, intellectual or normal power. These definitions are not suitable because these definitions are based on medical model.⁴⁷ These notions largely determined perpetuation of disabling ideology which construe disabled as lacking something and being unable to play a full role in society and further their marginalization.⁴⁸ In these definitions, social dimension has been over looked. Disability and society share a close relation that should be taken into consideration. Accordingly, social model of disability came into

⁴⁴ Jan Breman and K.P. Kannan, 'Introduction: Unto the last, The Long Road to Social Security: Assessing the Implementation of National Social Security Initiatives for the Working Poor in India, p-1-30, Oxford University Press, New Delhi, 2013.

⁴⁵ World Health Organisation defines the term disability as a three- fold distinction between impairment, disability and handicap.

⁴⁶ United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1985)

⁴⁷ Available at www.who.int/disabilities/world/report/2011/chapter 1.pdf/access on 18 April,2019.

⁴⁸ Jagdish Chander, 'Disability and History in India', The Disability History Association, Newsletter, 4(1), 2008.

existence as a reaction against charitable and medical model. In this model the stress has been given on adaptability of societal members towards disabled. Social model accepted that the individual itself is not responsible for the impairment. It shifts the onus on the society and opines that it is the society that makes an impaired person disabled. Social model defines disability as the loss or limitation of opportunities to take part in the normal life of the community on an equal level with other due to physical and social barriers.⁴⁹

The Preamble of the United Nations Convention on the Rights of the Persons with Disabilities 2006 describes disability as an evolving concepts that results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others.⁵⁰ The definition of disability given by UNCRPD similar to the definition given by W.H.O. Both the definitions stress on interaction between disability and the society attitudinal and environment barriers. That means it is human being who creates barriers for disabled. Before the introduction of United Nations Convention on Rights of Persons with Disabilities, disability was considered as a medical and charity issue outside the discourse on identity or social status. But the introduction of UNCRPD changed the configuration. It is true that Convention has not provided any new rights but combines socio-economic and civil-political rights depicts human rights as indivisible and universal for all persons including disabled. So, beyond any doubt, it can be said that after the introduction of UNCRPD the crux of the definition has been changed. Now the persons suffering from disabilities are regarded as customers of what society has to offer. The stress has been given on society because it is society who creates economic, social, architectural and cultural barriers to stop disabled to enjoy the full benefits of the society. But one of the weakness of the definition is that it failed to include the word dignity. The National Trust for the welfare of Persons with Autism, Cerebral Palsy, Mental Retardation And Multiple Disability Act, 1999 defines disability from the medical point of view. According to it “A person with disability means a person who is suffering from any of the condition relating to autism, cerebral palsy mental retardation or a combination of any two or more of such condition and include a person suffering from severe

⁴⁹D. Pothier and R. Devlin, *Critical Disability Theory: Essays in Philosophy, Politics, Policy and the Law*, University of British Columbia Press, Vancouver, British Columbia, 2006

⁵⁰Article 1 of United Nations Convention on Rights of Persons with Disabilities, 2006

multiple disability.⁵¹ The definition given by it is general and outdated. Because it failed to include the role of society in context of disability.

Rights of Persons with Disabilities Act, 2016, defines his the term disability as any person with long term physical intellectual or sensory impairments which on interacting with barriers hinders effective and equal growth in the society⁵². The definition given by the RPWD Act, 2016 is almost same as given by Convention on the Rights of Persons with Disabilities, 2006. The definition given by the Rights of Persons with Disabilities Act also failed to include the word dignity.

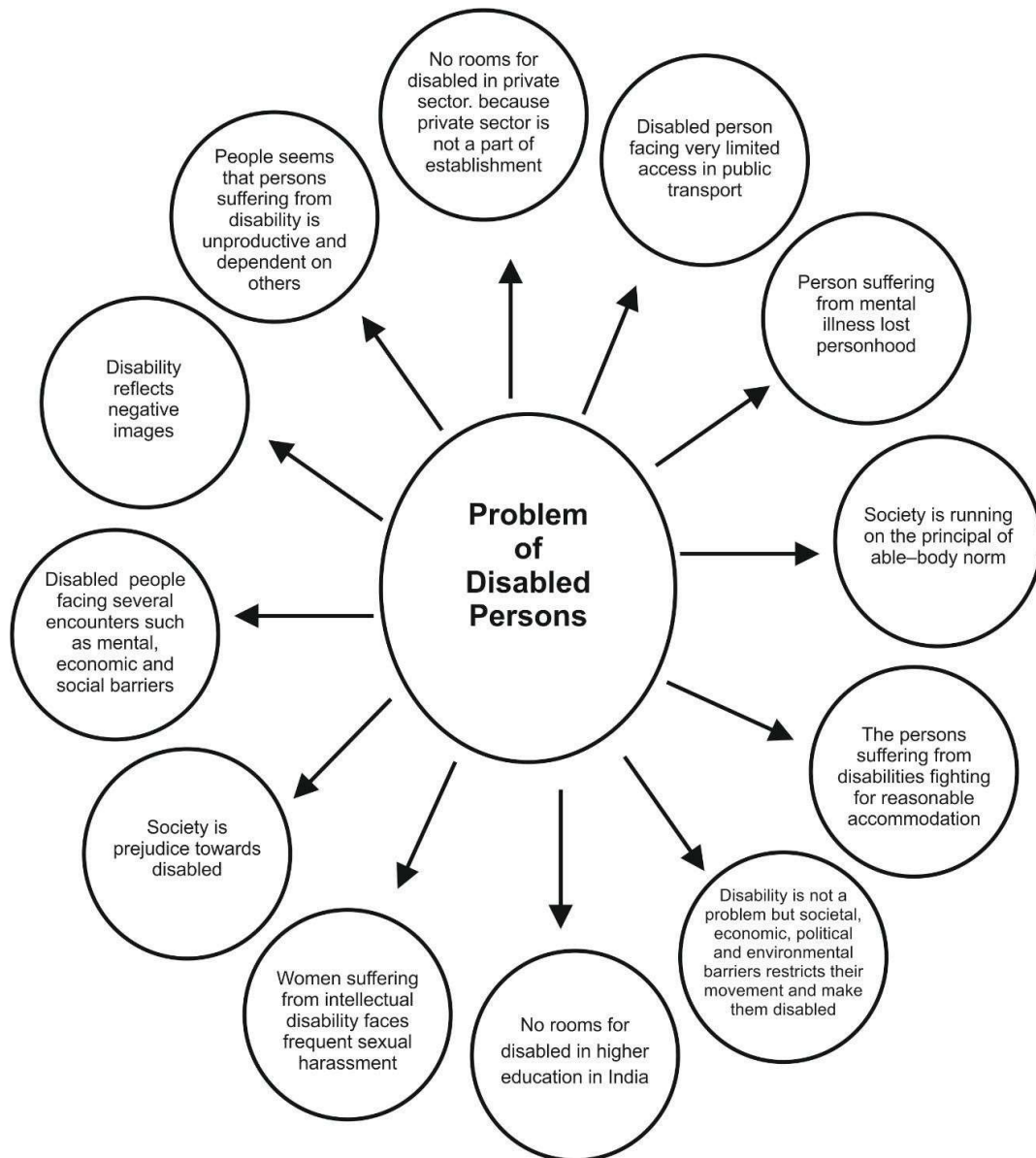
Now, it is a fact that social model employed through disability rights movements. The term like exclusion, discrimination, inequality, powerlessness and non-representation of rights and interests of disabled people became central concerns.⁵³ In essence this perspective on disability means viewing people with disabilities as subjects and not as objects. But the medical model and the social model are often presented as dichotomous. Disability is not purely social and medical, persons with disabilities can often experience problem arising from their health condition. In conclusion it can be said that disability must understood as an object, charity medical or health nor it is a matter of sensitivity and compassion; rather it is a matter of rights and power. That's why after the emergence of disability rights movement, the demand for right-based approaches and inclusion of the word dignity has grown up. But, unfortunately the word dignity has not been included in the definition of the word disability. So, a balanced approach is needed.

⁵¹ Section 2(j) of The National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

⁵² Section 2(s) of Rights of Persons with Disabilities Act, 2016.

⁵³ Amartya Sen, "Equality of What" In *Equal Freedom: Selected Tanner Lectures on Human Values*, edited by Stephen Darwall, p.195-220. University of Michigan Press, 1995.

Perception of society towards disabled



Review of Literature-

The researcher has studied and reviewed literature and various concept of research work carried out of the study. First reviewed book is “Disability Citizenship and Social Exclusion” by Sudhir Singh and A. Kachhap, 2008, Anamika, Publishers and Distributors (p) Ltd. ISBN 97881-7975-190-9. The author examined the impact of attitudinal and environmental barriers in preventing people with disabilities from equitably sharing the benefits of economic growth. The collective attitudes have resorted in making the society inaccessible to the disabled. The author has raised the voice in favour of human rights of disabled.

Next reviewed book is “Disability, Gender and State Policy” by Nilika Mehrotra, Published on 2013, Rawat Publication, ISBN 978-81-316-0587-5. The book lays the ground for examining the meanings, conceptualization and interpretations of the concept of disability through several social science debates. The author highlights on the content of the origin and historical background of the disability discuss about definition provided by International organizations like WHO, ILO and United Nations. Then, it examines the state of disability in India through official definitions, census and NSSO records. The author specially highlights the position of disabled in south Asia specifically in Indian Context. This is to explore how local symbolisms emerge from specific material realities and whether cultural reading of local ideas essentially results in the exclusion of the disabled and how and why disability is sought to be conceptualized through cultural metaphors.

Next reviewed book is “Disability Studies” by Dan Goodley, 2011, sage publication, ISBN 978-1-84787-557-0. This book discusses about a paradigm shift in context of disability as personal predicament to social pathology. The writer has focused on the socio-economic, cultural and political conditions of disabled people’s. The book raised the question of exclusion of disabled from mainstream of society.

Next reviewed book is “Rights of the Disabled” by Anuradha Mohit, Neera Pillai and Pratiti Rungta, 2006, National Human Rights Commission. This book presents a brief overview of International as well as domestic laws. Under the domestic laws, four important legislations on disability have been discussed.

Next reviewed book is “India Social Development Report 2016, Disability Rights Perspective”, edited by Kalpana Kannabirahn and Asha Hans, 2017, Oxford University Press, ISBN-13: 978-0-19-94743-1. The chapter one of the book starts with introduction written by Asha Hans and Kalpana Kannabiran. The introduction deals with the Social Development Report presents new insight in the area of disability studies, housing rights, labour displacement and financial inclusion, besides providing a social development index that includes the different editions of the SDR. The Social Development Report Organized into three parts.

Part one includes eleven essays organized around a thematic focus on-disability. Part two presents six essays on critical areas in social development. Part three presents the social development index. Part one of the book throws light on various issues related with disability. Some of the burning issues are barriers in education, disablism in higher education, disability labour and work, coercive environments, judicial custody and prisoners with disabilities, accessing rights: women with disabilities in India, women with intellectual disability and social development index.

Barriers in education highlights denial of full and equal access to children with disabilities. The absence of support means lacks of sign language teacher, lack of books in Braille Script results in entire generations of children with disabilities missing out the right to education. The presence of a negative and hostile environment in school continues in higher education.

Accessibility is an important indicator of educational realization. It is the duty of the State to ensure that persons with disabilities are able to access education, vocational training without discrimination. But unfortunately schools and universities are not accessible. That’s why 75 million students of primary school left out the school, one-third of whom are children with disabilities. In this context, it is pious duty of state to provide reasonable accommodation to persons with disabilities. The new draft National Education Policy, 2016 has recognized the need to include children with disabilities whose maximum populations are out-of-school.

Disability labour and work discuss about persons with disabilities portrays as weak, incompetent and without legal capacity. This denies them right to work and livelihood. The chapter throws light on information such as exclusion due to shifting

of work from traditional methods to machines linked with new modes of transport not accessible to workers with disabilities. The author further highlights the Coercive environments that hinders the rights of disabled. Before the introduction of Convention on the Rights of Persons with Disabilities, the disability was considered to be medical issue. The disabled were confronted with an uncaring society, non-recognition and lack of reasonable accommodation. But after the introduction of Convention, the condition has changed.

Judicial custody and prisoners with disabilities deals with disabled prisoners and their rights. The condition of disabled prisoners is quite different. The Veena Sethi⁵⁴ case is a burning example which throws light on the treatment of prisoners with mental illness and their prolonged incarceration for periods ranging from 16 to 30 year. The denial of special provisions, appropriate assistance and specialized health care needs arising from chronic illness comes within the meaning of degrading, inhuman and cruel treatment.

Accessing rights: women with disabilities in India deals with discrimination against women with disabilities. Exclusion, stigma and prejudice are routine aspects of their lives. Women with disabilities exposes multiple discrimination in the domains of culture, politics, economy and society. Even the disability laws leaves women with disabilities out of the policy framework. Women and girl with disabilities fare less well in the Indian educational arena. That means women with disabilities are missing. They are invisible and excluded from policies and programmes. For the protection of the rights of women and girl with disabilities, United Nations passed two important Conventions, namely, Convention on the Elimination of all forms of Discrimination against women(CEDAW) and the United Nations Convention on the Rights of Persons with Disabilities(UNCPRD). But till now, these two Conventions are teeth less. Further, the light has been thrown on the malfunctioning of 'Asha Kiran Homes' for persons with disabilities and mental illness. In this home girls had been sexually assaulted. Women are systematically phased out from the mainstream work force. Only 21.73 per cent women are working as compare to 78.27 males. Thus, the gender gap between male and female is more than fifty per cent The gender gap increases to 64.03 per cent for women with

⁵⁴ (1982) 2 SCC 583.

disability. Low participation of women in work force is clear cut violation of Article 11 of CEDAW and Article 27 of UNCPRD.

The most unfortunate incident is that, there is a gender disparity in the access to financial services provided by the state. For example, NHFCD offer financial assistance in the form of concessional loans on the cheap rate of interest to all persons with disability with 40 percent or more and aged above 18 years. In order to promote the interest of women with disabilities, loans are provided at a low interest of 1 percent. But the net result is alarming. Only 30 percent of disabled who accessed loans, are women. This shows the discrimination of women in Government schemes. Till now, the gender budgeting policy has not been applied for women with disabilities in government schemes. Women with disabilities are projected as incapable, unproductive, burden on the society, unfit as a homemaker or as wage earners. In this context, it can be said that women with disabilities already lost their personhood. Because they are not regarded as human being. They are regarded as object. The health issue is a major issue for women with disabilities. The government as well as other agencies are not careful about the health. Even the data collected under National Family Health Survey, excluded women with disabilities. The condition of women with intellectual disabilities is not up to the mark. In several shelter homes situated in Bihar, U.P, Rajasthan, Maharashtra and Karnataka, women with intellectual disability counters sexual harassment by staff. Apart from sexual harassment, they are beaten consistently. Forced sterilization, hysterectomies and forced abortion of women with intellectual disabilities, are forms of discrimination and abuse of human rights. The author is very vocal against these unholy practices against women with disabilities.

Disabilism in higher education throws light on higher education and status of disabled in India. In this chapter the author furnishes a valuable information regarding higher education and status of disabled in higher education in India. The higher education in India is not disabled friendly. It is not free from barriers. And the barriers resulted in a relatively higher proportion of drop-outs among student with disabilities. The abnormally low consciousness among faculty regarding disability and the absence of enabling classes are the root cause of low presence of persons with disability in higher education. The above mentioned reasons compounded by non-availability of study resources in Braille or absence of assistive technologies or

lack of Sign language teacher or attitudinal barrier. The chapter further discuss about research conducted in almost 50 Universities to examine the challenges before students suffering from disabilities in higher education in India.

Social Development Index deals with social development index that runs in cumulative manner. The author highlights the various indices of development that are commonly used to access the progress. The development indices cover 21 indicators to assess the development. Accordingly, rank has been given to different States.

Next reviewed book is “Disability Studies in India Retrospect’s and Prospects”, written by G. N. Karna, 2001, Gyan Publishing House, ISBN: 81-212-0765-7. The book is divided into eight chapters. The first chapter deals with evolution of disability studies as a separate field of academic discipline. Despite a series of studies and researches on multitudinous aspects of disability and rehabilitation policies, Disability Studies still remains a gray area in our country. But slowly and slowly the conception regarding disability have undergone changes from time to time. In ancient time disabled were regarded as crippled. The word crippled denotes social stigma. This shows miserable conditions of disabled. Now the terminology has been changed. Now the persons with disabilities Known as physically challenged. This shows a drastic change in terminology and shifts of focus from ‘institutional care’ to ‘community participation’. In this book different approaches of disability have been discussed. The medical approach is the oldest one. The problem of disabled persons is related to their physical, sensory or intellectual limitations. Psychological approach considers disability in context of psychological disorder. Rossler, Bolton and Barker are the scholars who have study disability from psychological perspective.

Economic Vocational Approach- This approach discuss about the vocational limitations of the disabled in employment. Problem of disabled people persists due to faulty policy and deficiencies on the part of Government. Jeffery Rubin, Valerie la parte are the scholars who have study disability from this point of view.

Apart from these three approaches, several others approaches have been discussed. Further, the author discussed about comparative study of disabled. In western countries the conditions of disabled was not good. They were regarded as

liability. Disabled children were discarded on the grounds of unfitness. In ancient Rome, defective infants were victims of drowning and strangulation. In Greek society disabled were abandoned to die. But on the other hand, the condition of disabled in Indian society was good. In India, dedication, love for charity and brotherhood towards disabled, existed even in feudal times.

The book highlights several barriers which came in the way of mainstreaming the disabled persons. They encounter architectural barriers, transportation problems, communication barriers and restrictions in other services. Further, the book deals with role of non-government as well as International Organizations to promote the human rights of the less fortunate entity of the world. The contents have been discussed in very lucid manner.

Next reviewed book is “Rights of Persons with Disability in India” written by Dr. Rumi Ahmed, 2015, White Falcon Publishing, ISBN-978-81-930780-5-1. The book highlights the International as well as National Perspective in very lucid manner. The thought carries forward by author is mind provoking. The author tried to highlight the historical background, right to education and role of judiciary in the protection of the rights of disabled. Further, the author discusses about the different model of disability. The author critically analyzes the existing laws for disability in India with special reference of PWD Act. An effort has been made to compare Indian disability laws with the provisions under UNCRPD.

The next book reviewed is “The Future of Disability Laws in India” written by Jayana Kothari, Oxford Publication, 2012, ISBN -978-0-19-807762-6. The book starts with debates on equality in context of disability. The Indian Constitution does not provide any guarantee from the state to prevent discrimination on the basis of disability. Really, it is unfortunate that maker of the Constitution failed to mention disability as a ground of discrimination. The author explains disabled as invisible subjects of human right law. Again, the author explains disabled as marginalise part of society. They are not getting proper education, employment, recreation, income identity or social recognition.

In the first chapter the author asks why disability has not been included in the Constitution as a ground for prohibition of discrimination? In this context, the author suggests that disability should be included in the list mention under Article 15(1).

Again, she suggests that the non-discrimination provision Article 16(2) should be read to include disability as ground for non-discrimination in public employment. Further, the author states that persons with disability can also be considered by the state as socially and educationally backward classes under Article. 15(4) and the state can make special provision for their advancement.

The author finds the definition of disability under the PWD Act is insufficient. The author calls the PWD Act as a medical model of disability. The author highlights that the Act ought to have focused on the effect of impairment, which prevent persons with disabilities from day-to-day activities. Further, the book highlights the role of private sector and government sector in the promotion of the rights of disabled.

The next book reviewed is 'Rights of Disabled women and Children In India' written by Anil Bhumali, Serials Publication 2009, ISBN, 978-81-8387-283-6. The book includes twenty-two essays written by different writers. The first Article written by Bipul Malakar and Sujoy Khata Ghosh. The title of first Article is 'Physically Challenged Persons: Marching Forward Beyond Human Rights' highlights panoramic view of the disabled. The author highlights the social barriers in context of disability which violates the human rights of disabled. Further, the author throws light on the role of NGO in mainstreaming the disabled.

The second Article written by SK Dutta and BP Dutta titled Disability and Gender Dimension, in context of Human Rights Issue in India and Australia. The Article discusses about the various definitions of disability given by leading agencies. The book describes the human Right movement which began in 1970. Then the Article throws light on Convention on the Right of Persons with Disabilities, the first human rights treaty of 21st century. In this Article the author elaborately discusses the problem of disability in India, employment, health, role of Human Right commission in the protection of the rights of disabled. The author further states about the status of disabled in Australia. In next Article the author defines disability and causes of disability and links poverty with disability. The Article throws light on employment and educational problem of disabled. The paper states about environmental barriers which limit the opportunities for disabled.

The next Article written by Anita Bagchi, discuss about the historical perspective of the problem, moves of the modern states towards the problem and national policy on education and programme of Action, 1986. The author also states about legislation enacted by the Government of India for the welfare of persons with disabilities. Further, the Article sketch out education for persons with disabilities as a need of the hour as well as tools of social justice.

The next Article titled “Employability of Disabled people of India: A Concern for Decent Life”, written by Nilanjan Biswas. The Article highlights the employment opportunities for disabled in India. The author states that the employment is one of the most important tool which can change the life of disabled people. It empowers them to lead a decent life. Further, the author critically examines policies to promote employment for disabled population.

The rest of the Article of the book deals with education of disabled, women human rights, learning disabilities in children and rehabilitation of disabled. The author highlights the various issues in very lucid manner.

The next book reviewed is ‘Rights of the Disabled (Prospective, Legal Protection and Issues), Serials Publications, 2008, edited by Awadhesh Kumar Singh in association with Ananya Institute for Development and Social Action Lucknow, ISBN NO -978-81-8387-199-0.

The book consists of 21 Articles written by different writers. The book highlights the international trends and national endeavors to protect the rights of the disabled persons, pollution and disability, economic rights, disability related legislation in India, plight of HIV/ AIDS patients in India, gender, poverty and disability, affords of government and non- government for tackling the issue of disability. All the problems have been discussed in very lucid and convenient manner.

Next reviewed book is ‘Tools of Justice’ Non Discrimination and the Indian Constitution, written by Kalpana Kannabiran, 2012, Routledge, New Delhi, ISBN No-978-415-52310-3. The three chapters of this book examines the discourse on disability in the Indian context. It is a matter of surprise for the author that Constitution of India is silent on disability as a ground of discrimination. In this

book, the author highlighted the biomedical approach that measures disability against an able-bodied norm. However, biomedical approach has been countered after the rectification of the United Nations Convention on the Rights of Persons with Disabilities in 2008. At the same time, National Policy on Disability Rights and the 11th five-year plan in India shows a similar shift in policy towards the human rights model of disability. But till now, the idea of non-discrimination is impractical. It is on paper only. The persons suffering from disabilities are still fighting for autonomy, dignity, equality and justice. Further, the book highlights the greater risk of being targeted by violence. In United States and in India, the risk is 4 to 10 times greater. One of the major concern of author is sexual violence against intellectually challenged women, who are in institutional care. Again, the book highlights the responsibility of the State, in context of care and protection of women with intellectual disability who lacks familial and community support.

The next book reviewed is ‘Human Rights and Disability Interdisciplinary Perspectives,’ edited by John Stewart Gordon Johann-Christian Poder and Holger Burchhart, Published by Routledge Taylor and Francis Group, (2007), New York, ISBN: 978-1-4724-4823-1.

The introductory part of the book is general introduction written by Alicia Ouellette. The introductory part discusses about the Convention on the Rights of Persons with Disabilities to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Introduction of CPRD marked a political and cultural shifts by and for people living with impairment. so, it can be said that introduction of CPRD was monumental because CPRD marked landmark progress in a decade long struggle for legally enforceable human rights. But CPRD failed to get back the permanent solution. Protection of human rights and ensuring equal opportunities for persons living with disabilities remains a nightmare. Employment is a measure issue for persons with disabilities. Statistical data of United States and European Union tells about the scope of the problem, Rate of employment among disabled is very low. In European Union, around 38 percent of disabled aged sixteen to thirty-four have an earned income as compare to 64 percent of non-disabled people. In USA, 17.1 percent of persons with disabilities were employed, compared to 64.6 percent of those without a disability. Without employment, there is no

importance of human rights. Further, the book highlights disability and human rights from two related disciplines, bioethics and the theology. The writer discusses about different perspective of bioethics based on the different historical and the theoretical underpinnings of bioethics and disability studies. In next chapter, Johann Christian Poder rejects traditional theological approaches to disability. The writer is not ready to accept that disability is a result of God's punishment. In order to promote the rights of disabled, the writer tries to introduce language of love in biblical text.

The book focused on an individual's capability to function, for the promotion of the Justice and human rights of the disabled. The capabilities approach endorses of values underlying human rights, equality, dignity and autonomy.

The next chapters focus more specifically on the human right to education. In this chapter Holger Burckhart and Benner Jager emphasize the importance of education for inclusion and argue that, to achieve inclusion, the society need a paradigm shift at different interacting levels. Participation cannot be dependent on an individual's ability to adapt to the norm.

Turning to justice and legal protection, the author uses two cases from the Netherlands in which young people housed in facilities for persons with intellectual disabilities were chained to a wall for years to explore the potential of human rights claims to effect practical change. Specifically, the author distinguishes the moral from the legal authority of human rights claims. The moral authority is to change hearts and minds. The persons suffering from intellectual disabilities should not be chained to the wall. On the other hand, the legal significance of human rights is the ability to enforce the right in a court of law. Further, the author argues that the promise depends on implementation. In real sense the policy will transform when aspirational ideals are transformed into actions. The State has to transform actions at micro level, where state action directly affects the lives and opportunities of persons with disabilities.

Scheme of the research work

The thesis "Legal Protection and Status of Differently Abled Persons in India: A study of Higher Educational Institutions in Lucknow, Uttar Pradesh". is divided into seven chapters. 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. Again, in this chapter the meaning of disability, problem of disabled, social and physical barriers has been discussed. Further, different Acts on disability have been discussed.

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.

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 rectified 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 altitudes 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 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 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 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 block 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 disables 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 per cent to 4 per cent. 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.

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 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, Lucknow University, Lucknow 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 one premier Central Universities and three 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.

The seventh chapter deals with conclusion and suggestions by the researcher. The study has come out with several important findings, observation and suggestions, in context of several policy and legal framework running in India. These policy and legal framework deals with various problems of disabled. But due to lack of meaningful implementation of the law, the law is remaining on paper. This is the precise reason why appropriately structured and customized strategies need to be identified for the purpose of meaningful implementation of the Law.

Hypothesis Testing

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.

Hypothesis No:1

People still regarded differently abled as useless.

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. Hence, hypothesis no 1 stands proved.

Hypothesis No: 2

Disability is largely seen as a product of cultural impediments such as beliefs and stereotypes.

This is the belief that disability is a curse and people with disabilities are hopeless. Many people believe 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. Hence, hypothesis no 2 stands proved.

Hypothesis No: 3

Judiciary is very sensitive but implementing authority is not sensitive.

It is true that in 21st century, sensitivity has changed the concept of disability. Again, 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 throw positive interpretation. A landmark judgment was Javed Abidi vs Union of India. 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 ambuilifts. Further, Supreme Court 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 divorce. 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 course. In Sheela Bharse vs Union of India, 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. Hence, hypothesis no 3 stands proved,

Hypothesis:- 4

Although laws are available but they are not well equipped to handle the problem.

The Right of Persons with Disabilities Act, 2016 is friendly for orthopedically, blind and deaf. But it is not friendly for people with intellectual disabilities, psychosocial 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 disabled cell in Colleges and 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 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. Hence, hypothesis no 4 stands proved.

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, policies, programmes, schemes related to the welfare of disabled 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 Good and Hart, 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 have 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 Protection and Status of Differently Abled Persons in India: A study of Higher Educational Institutions in Lucknow, Uttar Pradesh.

Sampling Techniques:

Universe selected for the present study was four Universities of Lucknow, 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 Lucknow, 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.

Research Gap in this area:

Many studies have been done on the PWD Act,1995, status of women with disabilities and employment among disabled. But, the focus has not been given on protection of the rights of disabled in higher education. Therefore, in this research endeavour, the researcher tries to find out the position of disabled, accessibility, reasonable accommodation, accessible roads and buildings, accessible library, scan reader software, Sign Language teacher and books in Braille Script in higher education in Lucknow, Uttar Pradesh.

2.1 Position of Disabled in Ancient India

A probe into the history of India regarding the position of the disabled in the society and the attitude of the society will help to understand the disability in proper perspective.

In India, there was a rich tradition and cultural heritage of helping the poor and the crippled. The pious responsibility for assisting such person was shared by the rulers and the community.¹ The Hindu religion emphasizes the value of compassion, charity, philanthropy and mutual aid.

The guild system also contributed to the upliftment of such practices for the downtrodden strata of society. Guild was the union of businessman. Furthermore, the joint family system was the part of society. Joint family system was running on certain values and principles.

In the joint family set up, the handicapped person were well taken care of. In conformity with this tradition, care and protection was bestowed by society on the disadvantaged people in every possible way.² The footage of such traditions are visible in Smritis Dharmashastras and activities through folk-lore's and legends, as contained in old literary works.³ In the Bhagvad Gita charity is accepted and importance has been given on the concern for needy and disabled persons.⁴ The Ramayana refers to Vishnu's appearance as a dwarf to throw the demon Bali out of the land captured by him.

¹D. Paul Chowdhry, A Handbook of Social Welfare, Atma Ram and Sons, Delhi, cited in G.N Karna 'Disability Studies in India Retrospects and prospects, Gyan publishing House, New Delhi, Page-89,(2003).

²A.L Basham, The Wonder that was India Sidgwick and Jackson, London, p-1-2, (1976).

³ P.V. Kane; History of Dharmashastra, Vol. II, Part I, Bhandarkar oriental Research Institute, page .297-98, (1974).

⁴Usha Bhatt 'Physically Handicapped in India; A Growing National problem' (1963), Popular Book Depot, the University of California (1963).

In this context, the story of Ashta Vakra, literally meaning a person suffering from multiple handicaps, is worth mention. He was a great sage and scholar of Sanskrit. Once he was invited by king Janak of Mithila, Bihar to participate in a large symposium. Other invitees were scholars and intellectuals of great eminence. Maximum number of kings laughed on Ashta Vakra. When king requested him to take part in the debate, he instantly rejected the offer by saying, "To whom shall I speak? This audience is not of scholar and intellectuals; they have already judged me by my skin. This is a head odd traders of hides and skins, who know nothing of the beauty of the soul and know how to measure intellect". After getting this remark from Ashta Vakra all the king was tendered apologies. But this is the one part of the story. The other part was not beautiful. People's attitude towards disabled was not good⁵. They were regarded as the product of sin. According to this theory, their disability is the result of punishment meted out to their sinful acts.⁶ Even our epics teach us to discriminate against disabled people by portraying them negatively and telling us their condition is because of sins committed in the past lives. In Mahabharata the character of Dhritarashtra negatively portrayed. Even when Dhritarashtra was being crowned, Vidhur, the Prime Minister objected to him becoming king.⁷ His concern was that how can a blind man sit on the throne of a king. He was suspicious that how could a blind king run the kingdom. How could important decisions be made on the battle field if the king is not taking part in war. All other ministers were not saying anything because a king with disability was unprecedented. As a result, Dhritarashtra had to step-down; his disability was taken as his inability. The case of Dhritarashtra is not a single disabled person who has been depicted in poor light. The Character of Manthra, the maid servant with a hunch back in the epic Ramayana was a women having revengeful attitude. It was the interference of Manthra that Ram and other were sent to exile.⁸ Even the characters of Shakuni, the maternal uncle in Mahabharata had a limping leg and he blamed to instigate the war. Therefore, it

⁵ V. Finkelsten, *Attitude and Disabled people: Issues for Discussion*, (1980), New York, similar views have been expressed by Kent Hodder and Stoughton in *Handicap in Social World*, p.58-63, (1981).

⁶ Dr. G.N. Karna, *United Nations and Right of the disabled persons, A studies in Indian perspective*, A.P.H. Publishing corporation, New Delhi, page.23-24, (1999).

⁷ Vinod Dixit, *Historical Foundation of Disability Discrimination in classical Hindu Law* Delhi Law Review, Vol.12 page. 15-16, (1998).

⁸ A. L. Basham; *The wonder that was India* Sedgwick and Jackson press, London, Page. 310-11, (1924).

can be well understood that any kind of deformity or disability were thought to be incarnation of something evil.⁹ It was a common belief during the time of Ramayana and Mahabharata that disability or any deformity were normally associated with something negative.¹⁰

Maurya Period

From this point of view, Maurya age was regarded as golden age in ancient India. During this age plethora of workshop were setup for the Vocational Rehabilitation of the disabled .¹¹ Kautilya, the renowned political economist of the Maurya period and author of Arthashastra¹² -Provides a panoramic overview of social security measures in the early phases of Indian history. He has cited several pension schemes in this regard, The Public poor Relief was the most notable among them. The king was regarded as the natural guardian of orphan widow, the aged and infirm. The person those who died in harness, their wives and children were to be nurtured under the care and custody of the state. Kautilya said that for empowerment and economic independence the work should awarded to women who are widowed, single, crippled. He further suggested that some of the jobs must reserved for women and disabled.¹³ When Ashoka ascended to throne he introduced elaborate Public health system for disabled and other down trodden parts of society.¹⁴ Even the blind, deaf, crippled and the idiots had to perform the ritual of 'Bandhayana' where the king were supposed to provide fooding, clothing and shelter to these in capable persons .¹⁵

⁹A.L Basham, supra note 8, p. 310-311

¹⁰G. N. Karna, supra note 1, p.92

¹¹ Usha Bhatt, 'physically Handicapped I India; A Growing National Problem (1963) Popular Book Depot, the University of California Page, 37. Also available at www. Isrj. in accessed on 20 June 2017.

¹² R. Shamasastri, Kautilya Arthasastra wesleyan Mission Press, Mysore, (1923).

¹³ National Human Rights Commission Disability Manual, National Human Rights Commission, New Delhi, Page. 34-35, (2005).

¹⁴ V. Smith, Ashoka; The Buddhist Emperor of Indian Clarendon Press, London, Page, 66,162, (1920).

¹⁵ R. C. Majumdar; Social work in Ancient and Medival India, Wadia Publication, Ist edition, page.66 as cited in G.N. Karna, United Nations and Rights of the Disabled persons, A Stud y in Indian perspective, A.P.H. Publishing Corporation, New Delhi, (1999).

Gupta Period

During the time of Gupta period especially in the Reign of Samudragupta, figure of dwarf engraved beside the throne of the emperor. This fact proves that dwarf were given a special status in the Gupta dynasty. When Fa-Hein, a Chinese pilgrim visited the city of Pataliputra in 400 A.D, some of the hospitals was there where disabled were specially treated. During this time this unfortunate class was well cared off.¹⁶ King Harsha Vardhan, used to give away everything to the needy and disabled. He also employed disabled persons in his harem as body guards and as spies.¹⁷In terms of education the condition of students with disabilities were good. The rudimentary attempts to educate students with disabilities were made in India long before such attempts were made in Europe. Specially adapted curricula and children's toys were excavated in diggings in Taxila in the periods between Smrities and the Gupta, the social attitude towards the disabled became more liberal because of Buddhist influences which emphasized the virtues of mercy, charity, truth, purity, kindness and above all non-violence. Simultaneously, the followers of Jainism also showed great compassion and regard for the disabled and adopted the same doctrine of non-violence and self-less service towards disabled. During the time of Buddhism and Jainism, vocational rehabilitation provided a more human approach to the disabled.

During the Vedic period Gurukuls or Rishikulas were the seat of learning and students were required to live with their guru. In this ancient system of education all children were taught together, whether normal or physically or intellectual disabled. It was inclusive education in the truest sense. There were no special schools catering exclusively to specific disabilities or learning disabilities. Even the disabled persons were included for yoga therapy. During the reign of Maurya dynasty, Kautilya passed an edict banning both verbal and behavioral abuse of persons with disabilities recognizing their right to property and employment.¹⁸ But the lesson taught by Vishnu Sharma to the three sons of the king who were dull witted; were exemplary. For this purpose he developed special

¹⁶ R.C. Majumdar; Social work in Ancient and Medieval India, Wadia Publication, p.66 as cited in G.N. Karna, United Nations and Rights of the Disabled Persons, A study in Indian Perspective, A.P.H Publishing Corporation, New Delhi, (1999).

¹⁷ Ramesh Chandra Dutt, A History of Civilization in Ancient India, Vistar Publication, (1972).

¹⁸ R. Shamasastri, Kautilya's Arthashastra, Wesleyan Mission, Mysore, (1923).

strategy using a collection of animal fables, which taught the princes matters related to diplomacy and values honoured universally. This resulted in “The Panchatantra”, the ancient Indian collection of animal fables from around 1000 B. C, and perhaps it is regarded as the first book on special education. So, in India we have a rich cultural heritage for inclusive education. Manu stresses in his treaties on law that, the sick and disabled may be looked on priority basis. It is the duty of the king to give special consideration to the disabled and they should not be charged any tax by the king. But Manu was not interested to give physically handicapped an equal status in the society. According to Manu, disabled were not entitle for marriage. So it can be said that during the time of Manu absolute freedom was not given to disabled.

The Muslim Period

The Position of Disabled in Muslim Period

There were hardly any instances which show that Muslim rulers had any compassion for the disabled. In this connection it may be said that very few rulers in Medieval India did anything for the under – privileged including disabled. Throwing light on the social perception of the Muslim rulers towards disabled, the noted historian professor R.C. Dutt writes that the Muslim who formed an important part of the population from the thirteenth or fourteenth century onwards were inspired by the same spirit of social service, and particularly in the fields of religion and education. To render help to our less fortunate brethren was almost an essential feature of Islam. But the Muslim ruler were mainly focus on madrasa education and promotion of Islam, they did less for the welfare of disabled.¹⁹ Apart from the concept of Diwan – i – Khairat,²⁰ an institution founded by Firoz Tughluq to support wedding with financial assistance, he also instituted a hospital for the rehabilitation of the sick and disabled . Medicines, food and drinks were supplied free to these groups. The Mughals concern for the disabled and disadvantaged may be substantiated from the fact that they had set up a special

¹⁹ R.C. Majumdar, Social Work in Ancient and Medieval India, in A.R. Wadia, History and Philosophy of Social Work in India, a souvenir volume of the TISS(Bombay)

²⁰ Cited in G.N. Karna, United Nations and the Rights of Disabled Persons: A Study in Indian Perspective A.P.H Publication, New Delhi, (1999)

department to manage charities and endowments.²¹ Sher shah was also well known for his charitable activities. But these programmes were not a systematic plan to introduce social security in those times.²² During early medieval period, social institution established for welfare continued to survive under Zakat. That means charity model was introduced in Mughal period.²³

Position of Disabled during British Period:

With the colonisation of India by the Britishers, large scale missionary activities started with official patronage. These charity institutions brought the philosophy of charity from west. Many institutions for disabled were established in different parts of the country. But Political, educational and economic institutions they created aimed primarily at consolidation of their colonial rule. Disability was never a real issue for them to bother about. Programmes initiated by missionary made no substantial impact on the disability situation. Before the arrival of British, charity models were in place. After the arrival of British charity model was replaced by medical model, which again remained predominantly charity based.²⁴ Certain shelter homes and hostels were established for destitute and handicapped children in 1880. In the same year, schools were opened for disabled as charitable undertakings. The first school for the blind was established in 1887. An institute for the deaf and mute was set up in 1888. At last attention was given on mental retarded person. The first school for the mentally challenged established in 1934. By the time of independence, nearly 100 special residential schools and training centres for disabled people were running. In 1872, disability was first time included in the census and continued until 1931.

The industrialization sweeping the west was bound to make inroads in India as well urbanization industrial growth brought about a change in the concept and place of work. During this period people with disability were perceived as non-productive member of society. In the eighteenth and nineteenth century

²¹ G. N. Karna, supra note 1

²² V.R. Bhattacharya, Some Aspects of Social Security Measures in India New Delhi, page 10, (1978).

²³ P.N. Chopra, B.N Puri and Das; A Social, Cultural and Economic History of India, Vol. I and II, Macmillan Publication, p.50-63, (1974).

²⁴ Romila Thapar; The Image of the Barbarian in Early India, Comparative Studies in Society and History, (1971) Vol.13, p.408-436. Also cited in D. Paul Chowdhury; A Handbook of Social Welfare, Atma Ram and sons, p.1(1981).

Britishers were not very careful towards these unfortunate people of the society. The reason was that in the early phase the British government was busy in putting their foot firmly on the soil of India. During this time concept of social security measures for persons with disabilities did not arise. During early phase few legislations were made by the British Government. Lunatic asylums Act 1858, which was the first act to deal with disability issues.²⁵ This act was a weak effort on part of the British Government to provide protection mechanism for disabled. There after the Lepers Act 1898 and the Lunacy Act 1912 were passed by the British Government. In 1881 the number of leprosy patient was 120,000. At the initial phase there was no support for leprosy sufferers. So leprosy sufferers remained outside institutional support and treatment.²⁶ As G.A. Hansen's discovered in 1873 that leprosy could be transmitted by contagion, brought to the fore the issue of containment and confinement of leprosy sufferers as a means of managing the disease in colonial India. H. V. Carter of Bombay IMS also advocated both the isolation of leprosy sufferers from society and segregation of sexes. He proposed the establishment of a network of asylums in India similar to that in Norway. In order to make isolation and segregation effective, legislation may be needed. Ultimately central Government passed the Lepers Act of 1898, which provided legal provision for forcible confinement of leprosy sufferers in India.

Before the 1912 Act came into effect, the various enactments controlling the care and treatment of the mentally ill of the then British India could be enumerated as follows:²⁷

- 1) The Lunacy (Supreme Courts) Act, 1858
- 2) The Lunacy (District Courts) Act, 1858
- 3) The Indian Lunatic Asylums Act, 1858
- 4) The Military Lunatics Act, 1877
- 5) The Indian Lunatic Asylums (Amendment) Act, 1886
- 6) The Indian Lunatic Asylums (Amendment) Act, 1889.

²⁵ O. Somasundaram. The Indian Lunacy act, 1912; The historic background (1987) Indian J Psychiatry page 13-14.

²⁶ O. Somasundaram, M S Kumar. Changing Pattern of Admission in a State Mental Hospital. Indian J Psychiatry page 317-21, (1984).

²⁷ L. P. Verma, S. Sharma. History of mental hospitals in Indian subcontinent, Indian J Psychiatry. page 295-300, (1984).

- 7) Chapter XXX IV of the code of criminal procedure, 1898.
- 8) Section 30 of the Prisoners Act, 1900.

The first three Acts were enacted immediately after Queen Victoria's proclamation and after that India came under the rule of British crown.²⁸ These Acts gave guidelines for establishment of mental asylums and procedure to admit mental patients. The various Acts of 1858 naturally reflected the legalistic frame for the management of the mentally ill.²⁹

After Independence:

During the time of independent, the number of Disabled people was around 100 million, which comes to about 10 per cent of the Indian population. During that time only four types of disabilities were recognized. These were visually handicapped, orthopadically handicapped, hearing impaired and mentally impaired. The figures would be much larger if some of the other categories of disabilities such as depression, schizophrenia, asthma, are taken into consideration. At that time maximum number of disables were poor and suffering from malnutrition and ignorance. Majority of the disables were illiterate, and even basic services such as clean drinking water and sanitation facilities were unavailable.³⁰ In the post impendence era, Nehru became the Prime Minister and the Nehruvian model of a welfare state was the guiding Principal in all social development programmes. So it was obvious for government to stress more on education for disabled. In order to improve the status of disabled Government of India constituted the Kothari Commission (1964-66). The Commission felt that disabled children would be constrained by two main considerations: lack of teachers and financial resources..³¹ Accordingly, recommended in favour of making education of the disabled an integration of the general education system. The main purpose of these recommendations was to meet the educational needs of disabled children.³² But unfortunately till 1974 the policy of segregation was

²⁸ Ibid

²⁹ A.K. Agarwal: Mental Health and law, Indian J Psychiatry p.65-66, (1912).

³⁰ Raminder Singh, The Handicapped Getting their due, India, (30 Nov 1998).

³¹ Yogendra Pandey, "From Special Education to Inclusive Education: An Analysis of Indian Policy, Available at: [http:// www. Icevi.org/ publications/...inclusive_education.../wa72_yogendra%20pandey](http://www.Icevi.org/publications/...inclusive_education.../wa72_yogendra%20pandey).

³² Nidhi Singal, " Education of Children with Disabilities in India", UNESCO, (2009).

going on, as many educators believed that children with physical or mental disabilities are so different that they could not participate in the activities of a common school.³³

National Educational Policy for Disabled, 1968

In 1968, the Government of India introduced the National Educational Policy. It followed the Kothari Commission's recommendations and suggested integrated educational facilities for physically and mentally disabled children. The main aim of integrated educational scheme was to provide educational opportunities for disabled children in regular schools. In 1974 the Government of India introduced the Integrated Education for Disabled Children (IEDC) Scheme to promote the integration of students with mild to moderate disabilities into regular schools.³⁴ The Scheme provided educational opportunities for disabled children in regular schools to facilitate their integration and retention in such regular school system. The main aim of Integrated Education for disabled children (IEDC) was to provide financial assistance for transport facilities, books and stationery, uniform, instructional material, assistive equipments, readers facilities for the visually handicapped, attended facility for the orthopedically handicapped, special teacher facility, hostel facility for disabled children situated on school campus, removal of architectural barriers in schools, etc. In the initial phase of the launching the Scheme, state governments were provided with fifty percent of the financial assistance to implement this program in regular schools. In order to overcome the various operational shortcomings³⁵, the IEDC Scheme was revised in 1992 and under this revised Scheme full assistance was made available to schools involved in the "integration" of students with disabilities.³⁶

³³NCERT," National Focus Group on Education of Children with Special needs NCERT, New Delhi, (2006).

³⁴ Cited in Dr. Rumi Ahmed, Rights of Persons with Disability in India, White Falcon Publishing, Chandigarh p.237, (2015).

³⁵ Some of the weakness of the IEDC Scheme included: (a) the non-availability of trained and experienced teachers, (b) lack of sensitization among regular school staff about the problems of disabled children and their educational needs, (c) the non-availability of equipment and educational materials, particularly the books written in Braille script, and (d) lack of coordination among the various departments to implement the Scheme [Umesh Sharma, "Integrated Education in India: Challenges and Prospects", (2005), 25(1) Disability Studies Quarterly Winter, available at: <http://dsq-sds-org//article/view/524/701> (visited on 25 January, 2018).

³⁶ Available at www.jagranjosh.com/articles/integrated-education-for-disabled-children-12878. Visited on 25 January, 2018.

National Policy on Education, 1986

In 1986, National Policy on Education was introduced. It was a broad document which encouraged the integration of disabled student in the main stream system.³⁷ Under its broad objectives of ‘education for equality’ proposed the following measures for the education of the disabled:

- 1) If it is feasible, the education of children with motor handicaps and other mild handicaps will be common with others.
- 2) Special school with hostels will be provided to severely disabled children.
- 3) Vocational training will be provided to the disabled.
- 4) Teachers of primary classes will be provided training to deal with the special difficulties of disabled children.
- 5) Voluntary efforts for the education of the disabled by the voluntary organizations.

Between 1987-1994, the Ministry of Human Resource Development (MHRD), in collaboration with UNICEF and the National Council of Educational Research and Training (NCERT) introduced the scheme for Integrated Education for the Disabled (PIED) with the aim to strengthen the IEDC plan.³⁸ It took a “Composite Area Approach” that turned all regular schools of a particular area into integrated schools. The scheme provided support for the development of instructional material, coordination of the project in remote, rural and difficult places. The main intention of the project was to provide inclusive education.³⁹ Under this project, disabled children, their families and non-disabled children allowed to communicate in normal setting. It was a unique platform for disabled because it aimed to develop competencies in children with disabilities. The Integrated Education for the Disabled children was changed after taking note of the outcomes and recommendations of the Integrated Education for the Disabled(PIED).

³⁷ Available at [http:// childrenindia.org. in/National-Policy-on-Education-1986.htm](http://childrenindia.org.in/National-Policy-on-Education-1986.htm) visited on January 28, 2018.

³⁸ Cited in Dr. Rumi Ahmed, Rights of Persons with Disability in India, White Falcon Publishing, Chandigarh p.240, (2015).

³⁹ Available at <http://archive.org/.../2015-17540-project-Integrated-Education-For-Disabled-pied-dj> visited on 24 January, 2018.

District Primary Education Programme, 1994

Subsequently, District Primary Education Programme (DPEP) was launched in 1994. In context of universalisation of primary education, District Primary Education Programme was a milestone⁴⁰. Under this programme large number of regular teachers were trained to impart special education inputs to children with special needs. The DPEP (District Primary Education Programme) covers all areas from identification, access to primary education, facilitation access for children with disabilities, training of teachers to total integration of disabled children,⁴¹

Sarva Shiksha Abhiyan, 2000

DPEP is a unique and bold step towards promotion of inclusive education of children with disabilities. In the year 2000, the Government of India launched Sarva Shiksha Abhiyan. Sarva Shiksha Abhiyan is a landmark step towards achieving the long cherished goal of universalization of elementary education, in partnership with States.⁴² Its main purpose was universalization of elementary education by 2010. SSA promised that all possible efforts would be made to ensure that every child with special needs, irrespective of the kind, category, and degree of disability, is provided education in appropriate environment.⁴³ The SSA had a special mandate to serve children with disabilities at the district level and also made provisions for capacity-building programmes for teachers and provision of learning materials for children. It makes a provision of Rs.1200 to be spent on every child for integration of disabled children.⁴⁴ In order to control drop out problem, it introduced 'zero rejection policy'.

But unfortunately, the idea of integrated education for disabled children introduced under SSA has not been followed in all government primary schools in India. The inclusive education is almost absent in private school. In this regard the

⁴⁰ Available at www.yourarticlelibrary.com/deep/district-primary-education-programme-pepexplain visited on January 24, 2018.

⁴¹ Yash Aggarwal, Access and retention the impact of DPEP: national overview (1998), New Educational Consultations India, p.40, (1998).

⁴² Nidhi Singal, Education of Children with Disabilities in India, paper commissioned for the EFA Global Monitoring Report 2010- Reaching the Marginalized, (UNESCO, 2009)

⁴³ A. Sarva Mukul, "Shiksha for Special Children", The Times of India, (Nov 18 2005).

⁴⁴ Cited in Jayna Kothari, "The Future of Disability Law in India, Oxford University Press New Delhi, p.70, (2012).

statement of Nidhi Singal is very important. As she writes ‘this casual integration might be a result of the fact that there tends to be only one government school in a village, there is an assumption that all children will attend it without any alternative provisions being made’.

Comprehensive Action Plan for the Inclusive Education of Children and Youth with Disabilities, 2005

After the SSA, the Government of India introduced a comprehensive Action Plan for the Inclusive Education of Children and Youth with Disabilities (IECYD) which was initiated in 2005 with the primary objective of ensuring “the inclusion of children and youth with disabilities in all mainstream educational settings, by providing them a unique learning environment that is available, accessible, affordable and appropriate to help develop their learning and abilities.”⁴⁵ It also highlighted on enrolment and retention of all children with disabilities in the mainstream education system, providing need based educational and other support in mainstream schools to children in order to develop their learning and abilities through appropriate curricula, organizational arrangements, teaching strategies, resource use and partnership with their communities, supporting higher and vocational education through proper implementation of the existing reservation quota in all educational institutions and the creation of barrier-free learning environments and disability focused research and interventions in universities and educational institutions.⁴⁶ The goal of the Action Plan is “to ensure the inclusion of children and youth with disabilities in all available general educational settings, by providing them with a learning environment that is available, accessible, affordable and appropriate.” But the IECYD failed to Convert itself into the Right to Education Act.⁴⁷

⁴⁵ Ministry of Human Resource Development: Government of India, Action Plan for Inclusive Education of Children and Youth with Disabilities (August 20, 2005)

⁴⁶ Dr. Rumi Ahmed, Rights of Persons with Disability in India, White Falcon Publishing, Chandigarh, p.240, (2015).

⁴⁷ Tanmoy Bhattacharya, “Re-examining Issue of Inclusive in Education” XLV (16) Economic and Political Weekly, p.18, (April 17, 2010).

The National Policy on Persons with Disabilities, 2006

In the year 2006, the Government of India incorporated a separate provision for education. Section II(b)⁴⁸ deals with Education for Persons with Disabilities, considering the education as the “most effective tool of social and economic empowerment”. The National Policy reiterates its commitment to provide free and compulsory education for all children with disabilities up to the age of eighteen years. The main motto of the policy is to promote inclusive education. For this purpose, various measures have been enlisted under sections 20 to 27. The National Policy, 2006, directs the States to take suitable steps to ensure “reasonable accommodation” in reference of architectural barriers and transport. In order to improve the quality of life of disabled and to change the civil society’s attitude, research has been promoted.⁴⁹

Scheme of Inclusive Education for the Disabled at Secondary Stage, 2009

In the year 2009, the Scheme of Inclusive Education for the Disabled at Secondary Stage (IEDSS) was introduced. As discussed earlier, the eight years of elementary schooling for all children including children with disabilities in the age group of 6-14 years has already been covered under SSA. The purpose of IEDSS is to empower the disabled children who have completed eight years of elementary education to continue their education at the secondary stage in an inclusive environment in regular schools. The integral parts of the scheme are as follows: (i) assessment of educational needs, (ii) development of learning material, (iii) provision of support services like special educators, (iv) provision of resource rooms, (v) training of general school teachers to improve their capacity to teach children with special needs in an inclusive environment, and (vi) making secondary schools barrier free. The scheme covers children with one or more disabilities as defined under the Persons with Disabilities Act, 1995 and the National Trust Act (1999). The scheme is centrally sponsored and is being implemented through the State Governments.

⁴⁸Section II(B) of the National Policy on Persons with Disabilities, 2006.

⁴⁹Kalpana Kannabiran, Monitoring the Human Rights of Persons with Disabilities: Laws, Policies and Programs in India (2009), 19 Disability.Rights.Promotion.International.Available.at:<http://drpi.research.yorku.ca/sites/default/files/files/IndianLawRep.pdf> (visited on January 27, 2018).

New Education Policy, 2016

The New Education Policy, 2016 recognised the need of children with disabilities, who form a large proportion of out-of-school children. The NEP stress the educational needs of disabled children and children with learning disabilities, who are facing several problems of social neglect, discrimination in home, lack of assistive technology. They are not the part of mainstream society. The main motto of NEP, 2016 in context of disabled are as follows.

- 1) The pre-school education should aim at early identification of disability to facilitate early rehabilitation and inclusion in collaboration with ASHAs and Anganwadi workers.
- 2) It is the duty of the government to collect data on gender and disability. The government has to inquire the attendance at all level. The data should be compulsorily displayed under proactive disclosures as mentioned under section 4(b) of the Right to Information Act along with 17 other points mentioned under it.
- 3) Social and access audits should be conducted in all schools to help modify infrastructure and institutional mechanism to ensure greater accountability towards disabled.
- 4) It is the duty of the government to create proper accommodation for disabled.
- 5) For the promotion and protection of the rights of disabled, sign language and Braille Script should be made compulsory for all teachers and students.

Conclusion: The New Education Policy failed to include open schooling, alternative response modes, and changes in inclusive staff policies. The basic problem still persist that education comes under the ministry of Human Resource Development but disability comes under Ministry of Social Justice and Empowerment. Both the department do not intersect.

Right to Education Act, 2009

The Right to Children to Free and Compulsory Education Act, 2009, known as Right to Education Act came into existence from 1 April 2010. The main

purpose of the RTE Act is to provide free and compulsory education to children between six to fourteen. Child suffering from disability, as defined in clause (i) of section 2⁵⁰ of the PWD Act, 1995 shall have the right to pursue free and compulsory elementary education. Section 6(7) of The Right of Children to Free and Compulsory Education Rules, 2010⁵¹ states that the appropriate government or the local authority shall endeavour to make appropriate and safe transportation arrangement to enable them to attend school and complete elementary education. Section 9 of the Rules states that a child with disability shall be entitled for free special learning and support materials.

Although RTE Act is regarded as landmark legislation, but it does little to promote inclusive education. The Act is silent on the question of facilities needed for education of children with disabilities. That's why children with disabilities are still outside the purview of the general education system, and continue to be neglected and marginalized. The absence of support required for inclusive education in real terms results in entire generations of children with disabilities missing out on the right to education⁵²

In conclusion we can say that the illiteracy rate among the disabled in India still remain high across all categories of disability, and extremely so for children with visual, multiple and mental disabilities.⁵³ The gap in primary school attendance rates between disabled and non-disabled children is 10 percent.⁵⁴

Mental Health Act, 1987:

During British rule the condition of mental ill person was very pathetic. They were outcastes from all the social and domestic affection of private life. During that time there was no provision of treatment for mentally ill persons. They were mainly put in the asylum. In 1912 Lunacy Act was passed. Treatment

⁵⁰Section 2(i) of PWD Act, 1995 defines the term disability. The Act defines seven broader categories of disabilities.

⁵¹Ministry of Human Resources Development, Govt. of India, Gazette Notification (8th April 2010). The Right of Children to Free & Compulsory Education Rules, 2010.

⁵²Joseph Gathia, "Education of Disabled Children in India", available at: <http://www.merineews.com/article/education-of-disabled-children-in-india/136123.html>, visited on January 27, 2018

⁵³ Nidhi Singal, "Education of Children with Disabilities in India", Paper Commissioned for the EFA Global Monitoring Report 2010.- Reaching the Marginalized (UNESCO, 2009)

⁵⁴ World Health Organization, World Report on Disability, 206-7 (WHO, 2011)

and care of mentally retarded and mentally ill persons was regulated by the Lunacy Act. The Act allowed that any destitute person deemed of unsound mind could be relegated to an asylum by a magistrate, as could a convict who had become violent in prison. It was argued that such mentally ill persons be treated like any other sick persons. Thus, the Indian Lunacy Act 1912 was repealed with the enactment of the Mental Health Act, 1987. After the enactment of the Act, the attitude of the society towards persons with mental illness has changed drastically. But, Mental Health Act failed to provide mechanism against disability based discrimination. It failed to address the issue of personhood.

The Mental Health Care Bill, 2013

Government of India signed United Nations Conventions on the Rights of Persons with Disabilities in September, 2007 and the Parliament of India rectify it in May, 2008. After rectifying the UNCRPD, it became necessary for the Government of India to amend all the disabilities laws in the country to make them compliant to the UNCRPD. Accordingly, the Ministry of Health and Family Welfare initiated the process of amendment of the Mental Health Act, 1987. Mental Health Care Bill introduced in Rajya Sabha in August 2013. The Parliamentary Standing Committee on Health Related Matters submitted its report with suggestions of some minor changes in November 2013. From November 2013 till now the Mental Health Care Bill, 2013 is now waiting for approval.

The Bill ensures good quality mental health services to every person without discrimination. It is the responsibility of the Government to provide sufficient quantity of psychiatrists. The bill also instructed to provide for a range of services required by persons of mental illness and to ensure the availability of psychiatrists of psychiatrists. It is the duty of the Government to ensure that no persons shall have to travel long distances to access mental health care. it is the duty of the Government to provides variety health services in all the general hospitals run or funded by Government. The Mental Health Care Bill assigned duties to the Government to address human resources requirement of mental health services within a period of ten years. Every medical officers in public health units are to be trained to provide basic and emergency mental health care. In this Bill, proper attention has been given to the human rights of PMI. They

have the rights to live with their family and live within the society. The Bill provides right to live with dignity. The Bill further provides right to equality and protection from inhuman and degrading treatment. Person with mental illness or their nominated representatives have been ensured the right to information regarding their admission, nature of illness and treatment plan. They have the right to access their medical records.

If the person with mental illness attempts suicide under the presence of severe stress, the person will be liable to be prosecuted under section 309 of Indian Penal code. The Government is bound to provide care, treatment and rehabilitation of such person. In this Bill, there is a provision of emergency admission on any bed in the Country to a period of 72 hours.

Demerits:-

Electro-convulsive therapy is a very useful method of treatment in acute and chronic psychotic conditions. But unmodified ECT has been prohibited in the Bill. That means ECT is not available at place, where anaesthetic support is not available prior. The provision of nominated representatives and advance directives has put limitation on the role of the families. The Bill shifts mental health care decision in the hands of non-experts. Mental Health Review Board, comprise of six members out of which only one is a psychiatrist and Mental Health Authorities, comprise of more than 14 members. In both these authorities, there are only two or three psychiatrists. This is a matter of great sorrow and pain.

Mental Health Bill, 2016

In order to fulfil the demands of persons suffering from mental illness put forward by UNCRPWD, Government of India passed Mental Health care Bill, 2016 in Rajya Sabha and the bill is pending in Lok Sabha. If the Bill is passed in the Lok Sabha, then it repeals the Mental Health Act, 1987. The Mental Health Care Bill 2016, is moderate and right based in nature. The new bill includes several positive developments. The new bill declares attempted suicide as decriminal and the person shall not be tried and punished. The new bill is patient centric because ample attention has been given on rights of person with mental illness. In this Bill, right to access Mental Health Centre and treatment at low cost

has been given to person with mental illness, their family members and caregivers. The Bill empowers the appropriate Government to make such provisions for range of services including outpatient and inpatient services, shelter accommodation, hospital and community based rehabilitation, free of cost medicines and old age mental health protection. The person suffering from mental illness have the right to protection from cruelty and inhuman and degrading treatment. In this Bill provision of medical insurance has been introduced. Mental health insurance scheme has remained a neglected area for long. Mental health insurance scheme will have significant impact for the persons with mental illness, family and care givers. The new Bill is crystal clear in context of duties of appropriate Government. This will make the Government responsible to plan, design and implement programs for promotion of mental health.

But the Bill on the other hand, does not take into account of family members, care givers, burden, isolation, frustration and violence. The Bill is silent on the role and contribution of family members in providing care. In this Bill punishments are too harsh and there is no provision to prove that negligence is accidental or due to practical difficulties. This harsh provision can give rise to a defensive practice and tendency to avoid care of such patients. The Bill is silent and does not instruct the State to allocate budget for proper functioning of state or district boards.

The Mental Health Act 2017

Mental Health Care Act, 2017, passed in Lok Sabha on March 27, 2017. Further, the Act was passed in Rajya Sabha on August. 2017 and got the assent of president of India on April 7th, 2017 and replaced the Mental Health Care Act, 1987. The Mental Health Care Act, 2017 is a revolutionary Act in context of protection of the rights of person with mental illness. The main moto of this Act is to provide access to treatment. The Act states that every person have the right to access mental health care services. The Act seeks to protect persons suffering from mental illness from degraded treatment.

The Act instructs the Central Government to establish Central Mental Health Authority at national level and State Government to establish state Mental

Health Authority at state level. Various professionals like psychologists, mental health nurses psychiatric social workers and every mental health institute will have to be registered with the Central or State Authority. The authority has to maintain a register of all mental health establishments, and make norms for such establishment, maintain a register of mental health professionals. Further, the responsibility cast on the government to train law enforcement agencies and mental health professionals about the provisions of the Act. The Act also highlights the process for admission, treatment and discharge of mentally ill persons

Critical Analysis of the Act

The Mental Health Care Act, 2017 ensures that the persons suffering from mental illness have a right to live life with dignity. The Governments or individuals will not discriminate any person suffering from mental illness. The Act states that ECT has not to be performed without anaesthesia and the person getting treatment shall have a right to confidentiality in context of his/her illness and treatment.

The Act empowers the persons suffering from mental illness, accessibility to mental health services. That means the mental health services be accessible, affordable and of good Quality According to this Act. It is the duty of the Government to provide mental health services in every district. The Act introduces a new concept known as the concept of advance directive. The new directive provides more autonomy to the patients in context of certain aspects of their own treatment. The new notion of advance directive has been imported from west. but there is a big gap between developed and developing nations. In developed nations, existing mental health services are very high as compare to the standard of developing nations. In India medical infrastructure at district and sub district level is inadequate. The Governments in India are not in a position to borne financial burden. The Act also accepts the right to community living, protection from degraded treatment, right to live with dignity, right to get information regarding treatment, right to confidentiality, right to access medical records. The act also ensures free and quality treatment for persons living under BPL.

But act is not free from flaws. The Act does not tell about the allocation of budget from mentally ill persons. The economic condition of Indian states are not up to the mark in this context states we largely depend upon central Government allocation. In India persons suffering from serious psychological disorder lack the ability to make bold decision and they have no relative to speak on behalf of person suffering from mental illness. The act does not cast any responsibility on the governments.

***Persons with Disabilities (Equal Opportunities,
Protection of Rights and Full Participation) Act 1995- A
Historical Development.***

The inclusion and treatment of the disabled persons on the basis of “equality” emerged as major issues in India in early 1980s, more particularly with the declaration of the year 1981 as International Year of Disabled Persons. A Working Group, set up in July 1980, came out with a draft “Disabled Persons (Security & Rehabilitation) Bill in 1981, the International Year of Disabled Persons. Since then, there was a sustained campaign for a comprehensive legislation for persons with disabilities.

In 1987, a Committee was constituted with Justice Bahrul Islam as Chairman. The Committee submitted its report in June 1988 with wide ranging recommendations concerning various aspects of rehabilitation, e. g., prevention, early intervention, education, training, employment, etc. The Committee’s recommendations became a matter of intense debate and discussion at different levels for quite long time. However, since relief and rehabilitation of the disabled is mentioned in the State List in the Constitution, the Parliament of India lacked jurisdiction in passing a comprehensive legislation at the national level.

In the meantime, India became a party to the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region, which was adopted at the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993 - 2002 convened by the UN Economic and Social Commission for Asia and Pacific at Beijing on 1st December 1992. This Proclamation emphasized on enactment of legislation aimed at equal opportunities

for persons with disabilities, including protection of their rights and removal of

discrimination. India's participation in the Proclamation made it possible for the Parliament of India to enact a comprehensive law for persons with disabilities, because Article 253 of the Constitution of India allows Parliament to enact a law even in respect of State List in order to give effect to international commitment.

Because of long and continued campaign for a comprehensive disability legislation and also because of its international commitments to implement the Proclamation on the Full Participation and Equality of People with Disabilities in the Asian and Pacific Region, India enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (Act 1 of 1996), which was passed unanimously in both houses of the Parliament on 22nd December 1995 and got the assent of the President of India on 1st January 1996. The Government notified the Act on 5th January 1996 and it has been in effect from 7th February 1996. In fact, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act) was enacted because of strong NGO movement and intense lobbying by various disability groups to safeguard the rights of persons with disabilities.⁵⁵

The PWD Act inserts various important provisions for the education of the persons with disabilities. Chapter v has been dedicated for the education of the disabled. Although the term 'reasonable accommodation' has not been used under Art. 30 and 31, which direct the State to make special provision in context of access to education for disabled children. Section 30 provided that the State shall frame comprehensive education schemes for children with disabilities that would provide transport facilities, remove architectural barriers at school, provides aid and appliances, the grant of scholarship to students with disabilities, supply of books, uniforms and other materials to children with disabilities, setting up of appropriate for a for the redressal of grievances of parents. The main purpose of Article 30 is to ensure that no child should be denied access to education due to disability. A critical perusal of the PWD Act discloses the obstruction on in the path of children with disability. Architectural barriers in school buildings have often prevented children with disability to join the educational system. So we can

⁵⁵ Rattan Singh and Mamta Mehmi, "Educational Rights of Children with Special Abilities: Some Socio-Legal Policies and Schemes" in in Awadhesh Kumar Singh, Rights of the Disabled: Perspective, Legal Protection and Issues 14 (Serials Publications: New Delhi, 2008)

say that provisions mentioned under Section 30⁵⁶ are nothing but kinds of ‘reasonable accommodation’. The various barriers can be removed if reasonable accommodation is effectively implemented. All-important clauses are preceded by the phrase “within the limits of their economic capacity and development”, consequently, any government or local authority may choose not to implement the provisions of the Act in the name of inadequate ‘economic capacity and development’. Thus, the basis purpose of the Act will be defeated and the long fight by the disabled goes is vein. It seems that it is a toothless and clawless tiger at best.⁵⁷ Further, section 31⁵⁸ states that all educational institutions including private organization, shall provide scribe to student with visual impairment. Section 39⁵⁹ provides that all government institutions and other institutions receiving aid from the government shall reserve not less than 3% seats for students with disabilities. Section 39 requires educational institutions to reserve 3 per cent of seats for persons with disabilities at all levels-from primary, secondary and university level institutions.

Rights of Persons with Disability in India Act,2016

The Act replaces the persons with Disabilities (Equal opportunities, protection of Rights and Full participation) Act 1995, To set forth this task a committee was set up by the Ministry of Social Justice and Empowerment under Dr. Sudha Kaul, Vice- chairperson, Indian Institute of Cerebral Palsy, Kolkata. This committee as required by the UN convention comprised of persons with different ability. The committee submitted a draft bill in 2011. Subsequently on February 7, 2014 the rights of persons with disabilities bill 2014 was introduced in Rajya Sabha and referred to standing committee on social justice and Empowerment on September 16, 2014. Ultimately Rajya Sabha passed the bill on 14/12/2016. Then it referred to Lok Sabha and Lok Sabha passed it on 20th

⁵⁶ The appropriate Governments shall by notification prepare a comprehensive education Scheme which shall make provision for transport facilities to the children with disabilities, removal of architectural barriers from schools, colleges and other institutions imparting vocational and professional training.

⁵⁷ R. S. Chauhan, “Legislative Support for Education and Economic Rehabilitation of Persons with Disabilities”, available at www.Disability.org, accessed on 18.12.2017.

⁵⁸Section 31 of the PWD Act,1995 states that ‘All educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision.

⁵⁹ Section 39 of the PWD Act,1995 provides that all government educational institutions and other educational institutions receiving aid from the government shall reserve not less than 3% seats for persons with disabilities.

December 2016. Finally, the bill received the assent of the President on the 27th December, 2016 and Act published in the Gazette of India (Extraordinary) part II section 1 dated 28/12/2016 pages 1-35.

Concluding Observation

For long, persons with disabilities were neglected and rejected. They were regarded as invisible. They were excluded from the mainstream society. The persons with disabilities denied equal access in terms of employment, education, participation and health care. However, the Indian society has been an exception to this inhuman practice. In Indian society care and protection was bestowed on the disabled people in every possible way. Charity was the soul of the ancient Indian society. As Quoted by Rigveda that charity should be provided to the disabled. Under Rishikul system non-disabled were taught with disabled. So, it can be said that inclusive education was the part of society. During the time of British India, the main aim of government was to put their foot firmly on the soil of India. So they had no concern for the welfare of the disabled and hence social security measures for persons with disabilities does not arise. Although British government passed few legislations. But these legislations were failed to provide protection mechanism for disabled. When India got independent in 1947, the government of India took certain positive steps. But till 1995, there was no specific legislation pro disabled. In 1995, the government of India passed PWD Act. In 2016, PWD Act of 1995 was repealed and a new Act on disability was introduced. The new Act was known as Rights of Persons with Disabilities Act, 2016. In the new Act emphasis has been given on education, non-discrimination, accessibility and employment. After the judgment in Unni Krishnan vs. State of Andhra Pradesh⁶⁰, Art.21-A was added to the Constitution in 2002. Thereafter, Right of Children to Free and Compulsory Education Act, 2009, was passed to provide the free and compulsory education to all children between the age of 6 to 14 years. The RTE Act, 2009, requires all schools including private unaided schools to admit 25 per cent of children belonging to weaker and disadvantaged groups. Unfortunately, disabled children are not included within the definition of children from a disadvantaged group. In order to sort out this problem, an

⁶⁰ AIR 1 SCC 645, (1993).

amendment is proposed to include children with disabilities.⁶¹ But children with disabilities are still not considered as equal and integral parts of the mainstream education system. Mainstream education is not accessible to children with disabilities. In this context, the principle of equality and inclusive education looks futile and baseless. Government is keen to maintain the status quo situation. That means Government is depriving them from the right to life because right to life includes right to education. So it can be said that till date, there has not been any development on enforcing the right to inclusive education for children with disabilities at the primary and high school level. The greatest hurdle in the path of inclusion is the overcrowded classrooms, untrained teachers, inaccessible toilets, or lack of money, but the greatest hurdle is bad attitude and lack of strong implementation policy. From ancient time till now, the disabled are ostracised from the society; sadness, pity and sympathy are always associated with disability. Still the persons with disabilities fighting for their rights. They are fighting for their recognition, personhood and identity. It is the duty of the state as well as society to expound with elocution and do not confound with confusion, in the context of disable's right.

⁶¹Section 2(a) of Right of Children to Free and Compulsory Education(Amendment) Bill, 2010.

The UNO's early approach was to promote rights of disabled persons by formulating project and creating bodies to implement these projects. These projects were not capable of broad interpretations to provide shelter to their rights. During this period charity model was in practice. Rights of Disabled was in nascent stage.

During 1945 to 1955, United Nations Organization created two principal bodies. Viz, the United Nations Secretariat and the Economic and Social Council. In the year 1946 a special body called the Social Commission was established to specifically look into the issues relating to disability. In the year 1950, in the sixth session the social commission took two report for consideration on "The Social Rehabilitation of the Handicapped"¹ and "The Social Rehabilitation of the Blind". In Geneva conference the problems of disabled were discussed. Conference was attended by the Secretariat, the International Labour Organization, the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the International Refugee Organization and the United Nations Children Fund. The outcome of the conference was an agreement on the need to establish international standards for the education, treatment, training and placement of disabled persons.

In 1952, during the eighth session, the Social Commission discussed international rehabilitation for the physically disabled. The UNO made an attempt to raise awareness on the disability issue and emphasized the need for

¹ Economic and Social Council(ECOSOC) Resolution 309E (XI), 13 July 1950 adopted "Social Rehabilitation of Physically Handicapped" pledging joint plan with specialized agencies and in consultation with other interested non-governmental organisations, for a well-coordinated programmes for the rehabilitation of the physically disabled people [G.N. Karna, United Nations and Rights of Disabled Persons: A Study in Indian Perspective(1999),A. P. H. Publishing Corporation: New Delhi,p.101-102: Economic and Social Council(ECOSOC) Resolution 1086K (XXXIX) OF 30th July 1965 on" Rehabilitation of Blind Persons" said; The time has long been passed when a handicapped child or a disabled adult should be regarded as a subject for commercial exploitation and trained for the occupation of a professional beggar or even to be considered as a mere object for charity"[cited in Prithpal Kaur, Empowerment of Physically Handicapped and Disabled Persons, Anmol Publication Pvt Ltd, New Delhi(2010).

rehabilitation programmes throughout the world.² But these initiatives were not sufficient. So the later on United Nations has changed its approach by making gradual attempts to recognize the needs of disabled persons rights under the established International instruments.

In the year 1969, the General Assembly adopted the Declaration on Social Progress and Development,³ which affirms the fundamental freedom and principles of peace articulated in the Charter of the United Nations.⁴ The Declaration was based on Art. 19 of the Charter which addresses the provision of health, social security, and social welfare services for all persons, claiming at the rehabilitation of the mentally and physically disabled so as to facilitate their integration into society, in which the handicapped will not discriminate.⁵ The Declaration suggested that governments should institute appropriate measures for the rehabilitation of mentally or physically disabled persons, so as to enable them to the fullest extent.⁶ Most of the International Instruments adopted after 1969 witnessed a gradual shift from the medical model to the social model of disability⁷

Universal Declaration of Human Rights⁸

The Universal Declaration of Human Rights, 1948, was the first International document to include rights based protections for the disabled.⁹ In context of the principle of equal rights, the imperative from of each Art of UDHR is highly instructive. Art 1 states that “All human beings are born free and equal in dignity and right”. Art 2¹⁰ state that “Everyone is entitled to all the rights and freedoms set for the in this declaration, without distinction of any kind, such as race, sex, colour, language, religion, political or other opinion. Art 7¹¹ states that All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to without any discrimination equal

²The attempt was made in the year 1956 and UNO created a fund in the name of International Social Service Review.

³Adopted by Resolution G.A. Res. 2542 (XXIV) OF 11 December, 1969.

⁴Adopted by Resolution G.A. 2452 (XXIV) OF 11 December, 1969.

⁵Article 11(c) of the Declaration on Social Progress and Development

⁶Article 19 of the Declaration on Social Progress and Development

⁷Michael Ashley Stein, “Disability Human Rights”, California Law Review p.88, (2007).

⁸Adopted by General Assembly in 1948.

⁹Articles 3, 21, 23 of UDHR.

¹⁰Article 2 of UDHR.

¹¹Article 7 of UDHR.

protection against any discrimination and against any incitement to such discrimination. Art 25 of UDHR, recognizes that everyone has the right to a standard of living, adequate for the health and wellbeing of himself and of his family “as well as” the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹²

Declaration on the Rights of the Child, 1959¹³

In 1959, the United Nations Organization ‘passed’ an exclusive resolution protecting the rights and interest of the children. The object of the Declaration was to provide special safeguards, care and appropriate legal protection before as well as after the birth of the child.¹⁴ The Declaration has only one provision directly dealing with the welfare¹⁵ of the disabled child, where it mentions that the child with the physical, mental and social handicaps shall be given special treatment, particular condition.¹⁶

International Covenant on Civil and Political Rights, 1966¹⁷

The Covenant is supported by two optional protocols. It has been developed to protect the civil and political Rights of an individual in particular and of the society in general. The covenant prohibits discrimination on the basis, such as race, colour, language, religion, social origin, property or other status. It prohibits discrimination based on political affinity, physical structure, social belonging and religion. Although the word disability is absent. However, the general meaning to the word ‘other status’¹⁸ used at the end Suggests that ‘disability’ can be added through interpretation.

¹² James D. Morgan, “Nothing about us without us: Human Rights and Global Disability Empowerment Draft”, (2006) p. 41-43, available at: [http://bork.hampshire.edu/grounds_well/storage/nothing%20Disability%20Empowerment%20\[James%20D%20Morgan\].pdf](http://bork.hampshire.edu/grounds_well/storage/nothing%20Disability%20Empowerment%20[James%20D%20Morgan].pdf) (visited on November 23, 2017)

¹³ Proclaimed by the General Assembly Resolution 1386 (XIV) of 20 November 1959.

¹⁴ Objectives of the Declaration of the Rights of the child, GARB 68 (XIV) 20th Nov, 1959.

¹⁵ Principle 5 of the Declaration of the Rights of the Child, 1959.

¹⁶ Principle 5, the Declaration of the Rights of the child.

¹⁷ The Covenant was adopted and opened for signature in the year 1966. Rectified and accessed by General Assembly Resolution 2200A (xxi) of 16 December 1966, entry into force 23 March 1976, in accordance with Art.49.

¹⁸ Art 2 of Part II International Covenant on Civil and Political Rights 1966.

***International Covenant on Economic, Social, and Cultural Rights,
1966¹⁹***

Beginning with its preamble, this Covenant refers to the need to create condition “where by every one may enjoy” the full range of human rights. Art 2 guarantees that the rights enunciated in the Covenant will be exercised by all without discrimination of any kind²⁰. Art. 6 recognizes “ the right to work, which includes the right of every one to the opportunity to again his living by work which he freely chooses and accepts”²¹. Thus, for example if a disabled person who is able to earn his living by working means he is in equal position with other. However, the special mention of disabled person entitled to the said rights, is missing. But the universal applicability of the rights and absence of exceptions shows the applicability of the said rights to disabled persons also.

***Declaration on the Rights of Mentally Retarded
Persons, 1971²²***

In 1971, the General Assembly adopted the Declaration on the Rights of Mentally Retarded Persons, which stipulates that mentally challenged person are accorded the same rights as other human beings and some special rights corresponding to their needs in medical, education and social fields. Whenever, a mentally challenged persons is unable because of the severity of his or her handicap, to exercise all his rights in a meaningful procedure adopted for that restriction or denial of rights must contain proper legal safeguards against every form of abuse.²³

The Declaration call for National and International action to ensure that it will be used, as a common basis and frame of reference for the protection of the rights of disabled person which are enumerated as follows:²⁴

¹⁹International Covenant on Economic, Social, and Cultural Rights, (adopted on 16 December 1966 entered into force 23 March 1976), GA res, 2200A(XXI),UN GAOR supp. (No.16) at 49, UN Doc, A/6316 (1966).

²⁰ Article 2 of International Covenant on Economic, Social and Cultural Rights,1966, see also Article 12.

²¹ Article 6 of International Covenant on Economic, Social and Cultural Rights, 1966.

²² Proclaimed by General Assembly Resolution 2856 (XXVI) OF 20 December 1971.

²³S.B. Sinha, “Disability Law vis-à-vis Human Rights”, (2005) 3 SCC at 2.

²⁴ James D. Morgan, “Nothing About Us: Human Rights and Global Disability Empowerment Draft”, (2006) p.41-43. The UN Declaration was inspired by article published by the International

League of Societies for the Mentally Handicapped in 1968. During fourth World Congress the

- 1) The mentally retarded person has to, the maximum degree of feasibility, the same right as other human beings.
- 2) Mentally retarded person has a right to proper medical care and physical therapy and to such education, training rehabilitation and guidance as will enabled him to develop his ability and maximum potential.
- 3) The mentally retarded person has right to economic security and decent standard of living. He has a right to person from productive work or to enjoy in any other meaningful occupational to the fullest possible extent of his capabilities.
- 4) Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to these of normal life.
- 5) The mentally retarded person has a right to qualified guardian when this is required to protect his personal well being and interest.
- 6) The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.
- 7) Whenever mentally retarded person are unable, because of the severity of their handicap, to exercise all their right in a meaningful way or if it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguard against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and right of appeal to higher authorities.

Society released their Declaration on the General and Special Rights of Mentally Retarded Persons. The main motto of Declaration was that "The Mentally Retarded Person has the same basic rights as other citizens of the same country and the same age."

In 1975, the General Assembly adopted the Declaration on the Rights of Person with Disabilities, which proclaimed the civil and political rights of person with disabilities.

Declaration on the Rights of Disabled Persons 1975²⁵

The Assembly declared that the special progress and development necessarily include welfare and rehabilitation of the physically and mentally disadvantaged group.²⁶

Further, the Declaration considered three kinds of necessities, assisting disabled person to develop their abilities in the most varied fields of activities and promoting their integrations for as possible in normal life.²⁷

The Declaration has brought the disabled and a normal person on equal level. It also seeks to ensure disabled person to enjoy decent life, as normal and full as possible.²⁸

This Declaration was adopted by the General Assembly²⁹ Keeping in view “the necessity physical and mental disabilities in the most varied field of activities and of promoting their integration as far as possible in normal life.” It has been described as Magna Carta of disabled persons of the world.³⁰

The Declaration lays down following principles: -

1. The disabled person³¹ shall enjoy all the rights contained in this declaration without distinction of the basis of race, sex, color, language, religion, political or other, opinions, national or social origin, state of health birth or any other situation applying either to the disabled person himself or herself or to his or her family.

²⁵Proclaimed by General Assembly Resolution 3447 (XXX) of 9th December, 1975.

²⁶Objectives of the Declaration on the Rights of Disabled Person, 1975.

²⁷Operative Paragraph 3 of Declaration on the Rights of Disabled Persons, 1975.

²⁸See Art. 3 of Declaration on the Rights of Disabled Persons, 1975

²⁹General Assembly Resolution 3447(XXX) of December 9, 1975.

³⁰G.N Karna, United Nations and Rights of Disabled Persons; A Study in Indian Perspective, A.P.H. Publishing Corporation; New Delhi. (1999)

³¹“Disabled Person” has been defined as any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or otherwise, in his or her physical or mental capabilities.

2. The disabled persons have inherent rights to respect for their human dignity and irrespective of origin, nature and seriousness of their handicap and disability, have the same fundamental rights as their fellow citizen of the same age which impels the right to enjoy a decent life, as normal and full as possible.
3. Disabled persons have same civil and political rights as other human being.
4. Disabled person is entitled to the measures designed to enable them to become as self-reliant as possible.
5. Disabled person has the right to medical, psychological and functional treatment, including prosthetic and orthotic appliances to medical and social rehabilitation, education vocational training on rehabilitation aid, counseling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.
6. Disabled persons are entitled to have their special need taken in to consideration at all stages of economic and social planning.
7. Disabled person has the right to economic, social security, including the right, according, to their capabilities to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.
8. Disabled persons have the right to live with their families or with, foster parents and to participate in all social, creative or recreational activities.
9. Disabled person shall be protected against all exploitation and treatment of a discriminatory, abusive or degrading nature.
10. Disabled person shall be able to avail themselves of qualified legal aid proves indispensable for the protection of their persons and property. If judicial proceeding is applied shall take their physical and mental condition fully into account.

After that in 1976, the General Assembly declared that the year 1981 will be the International Year of PWDs³² and called for a plan for action at all levels and outcomes of this was the formulation of the World programme of Action concerning PWDs, adopted by the General Assembly in December 1982.

Sundberg Declaration, 1981³³

The Declaration recognized the right of disabled to education and training as a fundamental right³⁴ and created a duty on the part of the Governments, National and International Organization to take effective measures for full participation of the disabled persons.³⁵ This right includes the right to utilize the creative, artistic and intellectual potential of a disabled to the fullest extent and the maximum use of their talent.³⁶

To make the right to education a reality, the Declaration requires the family member of the disabled person to be involved in the education, training, rehabilitation and development of capabilities of disabled persons.³⁷

World Programme of Action Concerning Disabled Persons, 1982³⁸

The United Nation Decade of Disabled Persons 1982-993 was the guiding instrument for World Programme of Action Concerning Disabled Persons. The UN General Assembly adopted the World Programme of Action Concerning Disabled Persons in 1982. The World Programme emphasized equal rights and-

³²General Assembly Resolution 31/123 of December 16, 1976.

³³The Declaration is a result of world conference on Action and Strategies for Education, Prevention and Integration.

³⁴Organized by Spain and UNESCO, held at Malaga, Spain in November 1981 in memory of Nils Ivar Sundberg, in charge of the UNESCO Programme for Special Education, 1968-81. The Conference was organized by the Spanish Government in co-operation with UNESCO and it was participated by 103 countries, 6 international and 4 regional organizations, and 17 international governmental and non-governmental organizations. The Sundberg Declaration unanimously adopted that every disabled person must be able to exercise his fundamental right to have full access to education, training, culture and information (Article 1); and governments and national and international organizations must take effective action to ensure the fullest possible participation by disabled persons. (Article 2). It also outlined various measures to be undertaken by governments and national and international organizations for effective participation and integration of disabled persons.

³⁵ Art.2 of Sundberg declaration, 1981.

³⁶ Art 8 of Sundberg declaration, 1981.

³⁷ Art 9 of Sundberg declaration, 1981.

³⁸Adopted by the General Assembly on 3rd December 1982, vide Resolution 37/52.

equal opportunities for people with disabilities. It was the guiding instrument for the United Nations Decade of Disabled Persons 1982-93.³⁹ The first two goals of WPA, prevention rehabilitation, reflected a more traditional approach to disability law and policy, the third goal, equalization of opportunities, set the path for change at the International level. Equalization of opportunities is defined as the process through which the general system of society, such as the physical and cultural environment, housing and transportation, social and health services, educational and work, opportunity, cultural and social life, including sports and recreational facilities are made accessible to all.⁴⁰

Other major events that helped to shift the paradigm from the medical to the human rights model of disability were two important reports, one on human rights in the field of mental health and other on human rights violations with regard to disabled persons; the United Nations Commission on Human Rights prepared both.⁴¹

The reports were the first to recognize disability as the main subject within the human rights division of the United Nations, which in turn helped in regarding disabled persons while one report resulted in a nonbinding International human rights instrument protecting disabled persons in institution⁴²; the outcome of the other has been rather poor. No significant follow up activities were taken under the auspices of the U.N. Commission of Human Rights.

In 1983, the International Labour Organization adopted the “Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983”. The Convention called for member states to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons.⁴³ Such a policy, as per Art. 4 was to be based on, “The principle of equal opportunity between disabled workers generally. Equality of opportunity and

³⁹ G.A. Res. 37/52 U.N. GAOR, 37 session, supp No. 51 at 185, U.N. Doc (1983).

⁴⁰ World Programme of Action Concerning Disabled Persons; report of the Secretary General, Addendum at 21 U.N. GAOR, U.N. Doc A/37/351/ Add. 1 (1982).

⁴¹ Principles, Guidelines and Guarantees for the Protection of Persons detained on grounds of Mental Illness, Health or suffering from Mental Disorder. Report by the special rapporteur, Mrs. Erica-Irene Daes, U.N. Doc. E/CN.4/ sub. 2/ 1983/ 17, Human rights and disabled persons, U.N. centre for Human rights, U.N. sales no E92 XIV. 4 (1993).

⁴² See The Protection of Persons with Mental Illness and Improvement of Mental Health care, G.A. Res 46/199, U.N. GAOR, 46th Session, supp No. 49 at 188, U.N. DOC. A/46/49 (1992).

⁴³ Art 2 of Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983

treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers”.

Convention on Vocational Rehabilitation and Employment of Disabled Persons, 1983⁴⁴

This Convention is a binding international treaty, based on the principles of equal opportunity and equal treatment.⁴⁵ It cast upon the member States to formulate, implement and periodically review the national policy on vocational rehabilitation and employment of persons with disabilities.⁴⁶ The main aim is to equalize the opportunities and services wherever possible and appropriate.⁴⁷ The backbone recommendation of this Convention is Recommendation No. 168. While implementing the Recommendation No. 168 along with its other two important instrument, Recommendation No. 99 concerning Vocational Rehabilitation of the Disabled of 1955 was also pushed for implementation.

The Recommendation proposed the main stream training and employment opportunities for people with disabilities as well as financial incentives to employer to encourage them to provide training and subsequent employment for disabled persons. The Government has to provide appropriate support to the employer in relation to the access and employability of person with disabilities.⁴⁸

Role of International Labour Organization (ILO) in Integration of Person with Disabilities⁴⁹

The training employment, conducive working conditions with dignity and recognition for labour are considered as the essential prerequisite for the

⁴⁴Convention No. 159 adopted by the ILO in 1983 at the beginning of the United Nations Decade of Disabled Persons; entry into force generally on 20 June 1985.

⁴⁵Art.4 of Convention on Vocational Rehabilitation and Employment of Disabled Persons, 1983.

⁴⁶Art. 6 of Convention on Vocational Rehabilitation and Employment of Disabled Persons, 1983.

⁴⁷Art.7. of Convention on Vocational Rehabilitation and Employment of Disabled Persons, 1983.

⁴⁸Recommendation No. 11 (b). of Convention on Vocational Rehabilitation and Employment of Disabled Persons, 1983.

⁴⁹Sadiq Ahmad Gilani Syed, “Legal Framework for Social Integration of Person with Disabilities” quoted in S. K. Verma and S. C. Srivastava, Right of Person with Disabilities (2000) [Indian Law Institute, New Delhi, pp.154-155]

integration of person with disabilities. In furtherance of the objectives of its constitution, the International Labour Organization formulates International Labour, standards in the form of Conventions and Recommendations.⁵⁰ In the area of protection of right of persons with disabilities the International Labour Organization has a long history. The International Labour Organization which was founded in 1919, as early as in 1925 adopted the worker's compensation (minimum scale) Recommendations (No, 22). Since then three other specific conventions has been adopted for the protection and integration of persons with disabilities⁵¹ i.e., the Vocational Rehabilitation Employment (Disabled Convention 1995).⁵²

The World Programme of Action Concerning Disabled Persons, 1989⁵³

In order to realize the dream of human rights of disabled persons, the World Program of Action Concerning Disabled Persons, 1989 passed. It was exclusively passed to recognize the World Programme of Action passed in the year 1982 and in furtherance of the observation of the duration from 1983-1992 as United Nations Decade of Disabled Persons⁵⁴.

The World Programme of Action Concerning Disabled Persons stressed the importance of coordination between National Disability committee and other bodies involved in the implementation of the World Programme of Action. This implementation strategy has placed special emphasis on the equalization of opportunities for disabled persons.

⁵⁰With an aim to provide guidance to the process of policy reform on issues affecting workers with disabilities, the ILO has built up its knowledge base and capability to re-evaluate and assess policies and systems. To this end, in February 1995, the ILO has launched a global network for applied disability research in the field of employment and training (GLADNET), Cited in S. K. Verma and S. C. Srivastava, Rights of Persons with Disabilities, Indian Law Institute, New Delhi pp.157(2002).

⁵¹Cited in S. K. Verma and S. C. Srivastava, Rights of Persons with Disabilities Indian Law Institute, New Delhi, pp.156-157, (2002).

⁵²Convention No.99.

⁵³General Assembly in its resolution A/RES/44/70 of 8th December 1989 adopted The World Programme of Action Concerning Disabled Person.

⁵⁴General Assembly in its Resolution 37/53 of 3rd December 1982, proclaimed the period 1983-1992 the United Nations Decade of Disabled Persons, encouraging Member States to utilize the period as one of the means to implement the World Programme of Action.

Further, the emphasis is on rehabilitation of the disabled person. The rehabilitation of disabled provides economic independence which in turn helps in recognizing other important human rights.

Tallinn Guidelines for Action on Human Resources Development in the field of Disability, 1989⁵⁵

The Tallinn Guidelines are framed with high priority to the development of human resources of disabled persons. According to the guidelines, in order to convert the dependent population of disabled into independent human resource, specific attention has to be paid to the education, training, employment, science and technology.⁵⁶

The importance of tools to achieve the final destination of creation of human resources is based on the education, training and work opportunities.⁵⁷ Tallinn Guidelines is the first document which laid emphasis on converting disabled persons into human resource pool. The changes brought by Tallinn Guidelines has enabled International community to develop acceptance of the disabled population as human resource. More importantly it has converted the idea of 'disabled contributing to the society'. The guiding philosophy behind the development of human resource is that, the process is concentrating on the human person that seeks to realize the full potential and capabilities of human being.⁵⁸

The most important feature of Tallinn Guidelines is that the disabled person is not only provided with rights, but in addition responsibilities too. Therefore, makes the disabled person a full citizen in the real sense. Now the disabled person is an agent of his own destiny rather than object of care.⁵⁹

⁵⁵The Guidelines were developed at the International meeting on Human Resources in the field of disability, convened at Tallinn Union of Soviet Socialist Republics from 14 to 22 August 1989, having considered the situation of human resource development in the field of disability, particularly in developing countries.

⁵⁶ Point 2 of Tallinn Guidelines for Action on Human Resources Development in the field of Disability, 1989.

⁵⁷ Point 3 of Tallinn Guidelines for Action on Human Resources Development in the field of Disability, 1989.

⁵⁸ Point 6 of Tallinn Guidelines for Action on Human Resources Development in the field of Disability, 1989.

⁵⁹ Point 8 of Tallinn Guidelines for Action on Human Resources Development in the field of Disability, 1989.

Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993⁶⁰

Equalization of opportunities had been the main theme of World Programme of Action. The Standard Rules in the Equalization of Opportunities for Person with Disabilities were adopted by General Assembly on December 20, 1993. Although the Standard Rules are not binding, the United Nations hopes that the Standard Rules will “become customary rules when they are applied by a great number of States.”⁶¹ As stated in the Preamble, the purpose of United Nations Standard Rules is:⁶²

- I. To stress that all actions in the field at disability presupposes adequate knowledge and experience of the conditions and special needs of the persons with disabilities.
- II. To emphasize that the process through which every aspect of societal organization of socio-economic development.
- III. To outline the crucial aspects of social policies in the field of disability, including as appropriate, the active encouragement of technical and economic co-operation.

To provide models for the political decision making process required for the attainment of equal opportunities bearing in mind the widely differing technical and economic levels, the fact that the process must reflect keen understanding of the cultural context within which it takes place and the crucial role of persons with disabilities.⁶³

The Standards Rules are firmly built on the principles and concepts enshrined in World Programme of Action, which provided the guidance for the United Nation Decade of Disabled Person⁶⁴. These rules contain fundamental principles of the international disability movement and are based on the social

⁶⁰Resolution adopted vide Res/48/96, during 85th Plenary meeting on 20th December 1993.

⁶¹United Nations Standard Rules, introduction, para 14.

⁶²Ibid

⁶³ G. N. Karna, ‘United Nations and the Rights of Disabled Persons’: A Study in Indian Perspective, A. P. H. Publishing Corporation. New Delhi (1999)

⁶⁴Parmanand Singh, ‘Disability, Discrimination and Equality of opportunities: A Comparative Analysis of the Legal Framework’ (2003), Journal of Indian Law Institute, Vol-45, New Delhi.

model of disability equality. The new disability policy framework developed by the standard rules acknowledges that an individual's ability to function in society depends on the oppress at the society to accommodate people with their differences as on the specific functional limitation that identify a person as 'disabled'.⁶⁵ These rules acknowledge that environmental barriers are a great implement to participation in society than functional limitation is barrier removal through legislation, universal design, provision for accommodation and other means, has been identified as the key to equalization of opportunities for people persons with disabilities.⁶⁶ The rules recommend to the government of the member states to take measures to eliminate the real causes of disadvantage and vulnerability and should remove all the environmental barriers that inhibit disables persons from exercising their human rights.⁶⁷

The Standard rules contain a powerful message to the world. The message is that the concept of equality implies the notion of the indivisibility, interrelation and interdependence of the two sets human right civil and political rights and the Economic Social Right on the other hand. The rules proclaim⁶⁸ that the equalization of opportunities means the process through which the various system of society environment, such as services, activities, information and documentation, are made available to all particularly to persons with disabilities. The principles of equal rights implies that the needs of each and every individual are of equal importance, that these needs must be made the basis for planning of societies and that all resources must be employed⁶⁹ in such a way as to ensure that every individual has equal opportunity of participation. Persons with disabilities are member of society and have the right to remain within their local communities. They should receive the support they need within the ordinary structures of education, health, employment and social services.⁷⁰

⁶⁵Bengt Lindqvist, "Standard Rules in the Disability Field"; A United Nations Instrument Academic Publishers Group, p.63, (1995).

⁶⁶Available at www.un.org/esa/socdev/enable/disunddp.htm.access on 22.11.17.

⁶⁷Ibid.

⁶⁸Id

⁶⁹Gerard Quinn and Theresia Degeher, The current use and future potential of United Nations human rights instruments in the context of disability, United Nations, New York (2002)

⁷⁰Standard Rules, 24-27, at 204.

The Standard Rules have six specific objectives:⁷¹

- (a) To stress that all action in the field at disability pre-supposes adequate knowledge and experience of the condition and special need of persons with disabilities;
- (b) To emphasize the processes through which every aspect of social organization is made accessible to all is basis objective of socioeconomic co-operation;
- (c) To outline crucial aspects of social policy in the field of disability, including as appropriate the active encouragement of technical and economic co-operation;
- (d) To provide model for the political decision-making process required for the attainment of equal opportunities, bearing the mind the widely differing technical economic levels, the fact that the process must reflect keen understanding of the cultural context within which it takes place and the crucial role of persons with disabilities in it;
- (e) To propose national mechanism for close collaboration among states the organs of the United Nation system, other inter government bodies and organization of persons with disabilities;
- (f) To propose an effective machinery for monitoring the process by which states

Contemporary International thinking is of the view that disability is the result of interaction between societal barriers and the impairment rather than a product of the limitation imposed by physical or mental impairment.⁷²

It can be concluded that the person with disability are also a human beings entitled to our respect and concern.

⁷¹The Preamble of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993.

⁷²Parmanand Singh, "Human Rights of Persons with Disabilities: Some Reflections" Delhi Law Review, Vol. XXII at p. 3, (2001).

Vienna Declaration and Programme of Action, 1993⁷³

In the year 1994, the Committee on Economic, Social and Cultural Rights adopted a General Comment the International Covenant on Economic, Social and Cultural Rights with respect to persons with disabilities.⁷⁴ General Comment No.5, of 1994 is the only legal U.N. document to discuss the broadly defines disability based discrimination;⁷⁵

Both de jure and de facto discrimination against person with disabilities have a long history and take various forms. They range from invidious discrimination, such as the denial of educational opportunities, to more “subtle” forms of discrimination such as segregation and isolation achieved through the imposition of physical and social barriers. For the purpose of the covenant “disability-based discrimination” may be defined as including any-distinction, exclusion, restriction or preference, or denial of reasonable accommodations based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic social or cultural rights.

⁷³ The Vienna Declaration for Human Rights reaffirmed that “all human rights and fundamental freedoms are universal, and thus unreservedly include persons with disabilities”, and placed the active participation of persons with disabilities in all aspects of civil society explicitly in a human rights context. Persons with disabilities are mentioned in para 63 and 64 of section 11 (b) of Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993. Para 63 reaffirms that persons with disabilities are entitled to all the human rights enjoyed by others. Para 64 goes on to state that: The place of disabled persons is everywhere; persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers. Be they physical, financial. Social or psychological, which exclude or restrict full participation in society. The Vienna Declaration was not directed specifically towards disability rights but it nonetheless stressed the prevalence of disabled persons. Also see Michael Ashley Stein, “Disability Human Rights”, (2007), California Law Review, p.90; Article 22 of the Vienna Declaration provides that the special attention needs to be paid to ensuring non-discrimination, and the equal employment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.

⁷⁴ Philip Alston, Disability and the International Covenant on Economic, Social and Cultural Rights, page 94-105.

⁷⁵ General Comment No. 5 (1994) persons with disabilities, U.N. DOC E/1995/22.

Copenhagen Declaration on Social Development, 1995⁷⁶

Rights of the persons with disability have been made a part of Copenhagen declaration. The Declaration has made commitments towards the Disable. One such commitment is ‘to make the social acknowledge its duty towards disabled. The Declaration attempts to wipe out the menace of disability, i.e., ‘poverty’.

The direct commitment towards the rights of the disabled is found in commitment 5. It urges to promote changes in attitudes, structures, policies, laws and practices in order to eliminate all obstacles affecting the human dignity, equality and equity of the disabled in the family and in the society. Promote full and equal participation of women with disabilities in social, economic and political life, including the formulation, implementation and follow-up of public policies and programmes.⁷⁷

Beijing Declaration and Platform for Action, 1995⁷⁸

Beijing Declaration recognizes, the right of the girl child with disabilities, and mentions additional barriers faced and need to address them.⁷⁹ The Declaration attempts to achieve non-discrimination, and equal enjoyment of all human rights and fundamental freedom⁸⁰ in accordance with the standard Rules on the Equalization of opportunities for persons with Disabilities.⁸¹

After Beijing Declaration, human rights of persons with disabilities captured attention of many international agenda, including the Millenium

⁷⁶The Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development held in Copenhagen from 6 to 12 March 1995 mentions the need to ensure access to rehabilitation, independent living services and assistive technology and of the need to promote community-based, long-term care services for those facing loss of independence. The needs and rights of children with disabilities are singled out in para 39(e). Specific mention is made of the need to broaden the range of employment opportunities for persons with disabilities in para 62(a) to (c). Also see supra no.49, Article 22.

⁷⁷Commitment 5, Para (a).

⁷⁸Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women in Beijing, China in 1995, seek to advance the goals of equality, development and peace for all women.

⁷⁹para 1 to 5 of Beijing Declaration and Platform for Action,1995.

⁸⁰Akiko Ito,” International Legal and Policy Framework on Disability”, Proceeding of the Annual Meeting (American Society of International Law) p.335, (1999).

⁸¹ Para 270 of Beijing Declaration and Platform for Action,1995.

Declaration and the Millenium Development Goals adopted at the United Nations Millenium Summit.⁸²

Biwako Millennium Framework For Action towards An Inclusive, Barrier-Free And Rights Based Society For Persons With Disabilities in Asia and the Pacific, 2002⁸³

High level Intergovernmental meeting was held on 25 to 28 October, 2002 at Otsu city, Shiga, Japan to conclude the Asian and pacific Decade of Disabled Person, (1993-2002) by the Economic and Social Commission, at its fifty eighth session, adopted resolution 58/4 of 22 may 2002 on promoting an inclusive barrier-free and right-based society for people with disabilities in the Asia Pacific region in the twenty first century by which it proclaimed the extension of the Asian and Pacific Decade of Disabled Person, 1993-2002, for another decade, 2003-2012. The Biwako Millennium Framework for Action identifies seven areas for priority action in the new decade. Each priority area contains critical issues, targets and the action required.

Consideration of a Regional Frame Work for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons with Disabilities in Asia and The Pacific

The main aim of Biwako Millennium Frame Work for Action Towards an Inclusive, Barrier Free and Rights-Based Society for Persons with Disabilities in Asia and the Pacific is to enact and enforce legislation and policies related to equal opportunities and treatment of persons with disabilities and their rights to

⁸²In order to sort out physical barriers, the conference on Human Settlements (Habitat II), through the Istanbul Declaration on Human Settlement and the Habitat Agenda, cited as an objective the design and implementation of accessible standards for persons with disabilities in 1995, the Fourth World Conference on Women, through the Beijing Declaration and Platform for Action, recognized the multiple barriers faced by women with disabilities. In December 2008, the UN General Assembly adopted a resolution, Realizing the Millennium Development Goals for persons with disabilities through the implementation of the World Programme of Action Concerning Disabilities. [Janet Lord “Disability and International cooperation and Development: A Review of Policies and Practices”, S.P. Discussion Paper No.1003. The World Bank, May 2010, available at: http://siteresources.worldbank.org/Disability/Resources/Publications-Report/Disabilityand_Intl_cooperation.pdf (visited on 22-11-17)

⁸³Biwako Millennium Framework For Action towards an Inclusive, Barrier Free and Rights based Society for Persons with Disabilities in Asia and the Pacific was adopted in fifty-eighth session of United Nations Economic and Social Council by a resolution 58/4 of 22 may 2002.

equity in education, health, information and communications, training and employment, social services and other areas such legislation and policies should include persons with all types of disabilities, women and men, and people in urban and rural areas.⁸⁴

Regional Developments

At the regional level, three laws are worth mentioning in the context of human rights of persons with disability. The African Charter of Human and People's Rights.⁸⁵ The African Charter on the Rights and Welfare of child⁸⁶ and Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights⁸⁷ have all made crystal clear provisions regarding rights of disabled persons. In European Social Charter⁸⁸ was revised in 1996, displays a departure from the one dimensional welfare approach taken in 1961 when the European Social Charter was passed. The basic rights set out in the Charter are as follows: 1). housing,⁸⁹ health,⁹⁰ education,⁹¹ labour rights, full employment, social security,⁹² social exclusion.⁹³ Art 15 of the revised European Social Charter contains a clear

⁸⁴World Programme of Action Concerning Disabled Person passed on 3rd December.

⁸⁵ Article 18 (4) of the African Charter of Human and people's Rights states that disabled persons have the right to special measures of protection. Further, Article 16 (1) of the African Charter provides that every individual shall have the right to enjoy the best attainable state of physical and mental health. Cited in Dr. Rumi Ahmed, 'Rights of Persons with Disability in India White Falcon Publishing, Chandigarh, p.127, (2015).

⁸⁶Article 13 (1) says: Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community: Article 13 (2) says: States Parties shall ensure, subject to available resources, to a disabled child and to those responsible for his care of assistance. –Article 13 (3) talks about access to public highway, building and other places in context of disabled persons.

⁸⁷ Article 6 states that Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity. It is the duty of State Parties to adopt measures that will make the right to work fully effective, especially with regard to achievement of full employment.

⁸⁸ The European Social charter, adopted is Turin on 18th October 1961 by the European Social Council. It came into force in 1965 and revised in 1996. Also available at <http://www.E/ESCAP/APDDP/4/Rev.1> access on 31st October, 2017.

⁸⁹ European Social Charter, Part II, Article 31.

⁹⁰ European Social Charter, Part II, Article 11.

⁹¹ Article 1 deals with education, labour rights and full employment.

⁹² Article 12 of Social Security.

⁹³Social exclusion, Article 30.

commitment to equal opportunities for disabled persons. “The rights of persons with disabilities to independence social integration and participation.”⁹⁴

The European disability movement within the legal framework of the European Community has moved further and more firmly towards anti-discrimination. A new Art (Art 13) was added in the European Social Charter. Art. 13⁹⁵ gives the European Community the ability to take action to combat discrimination on a number of grounds, including disability. The new provision is significant because it embraces the human rights or social model of disability and that it recognizes that disability discrimination exists. Overall the European Social Charter was the first regional initiatives to talk about the rights of the disabled persons in Europe.⁹⁶

In 1999 Inter-American Convention on the Elimination of all forms of Discrimination Against Persons with Disabilities was passed.⁹⁷ It is the first regional treaty to define disability based discrimination. Art 1 (2) states.⁹⁸

- (a) The term “discrimination against persons with disabilities” means any distinction, exclusion or restriction based on disability, record of disability, condition resulting from a previous disability or perception of a disability, whether present or past, which has the objective of impairing or nullifying

⁹⁴ Article 15 says: With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake: 1. To take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private; 2. To take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment. Cited in Dr. Rumi Ahmed, 'Rights of Persons with Disability in India White Falcon Publishing, Chandigarh, p.128, (2015).

⁹⁵ Article 13 of the European Social Charter.

⁹⁶ Article 9 of the European Social Charter provides that States should “...provide or promote as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual’s characteristics and their relation to occupational opportunity.....” Article 10 states that the Contracting Parties undertake “to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers ‘and workers’ organizations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude.” Article 15 outlines the right of persons with physical or mental disabilities to vocational training, rehabilitation and social resettlement. Article 15 (2) provides “...adequate measures for the placing of disabled persons in employment.

⁹⁷ This Convention was approved in Guatemala and entered in force in 2001. AG/RES, 1608 (XXIX-O/99).

⁹⁸ Article 1 (2) of Inter-American Convention on the Elimination of all forms of Discrimination Against Persons with Disabilities.

the recognition, enjoyment or exercise by a person with disability of his or her human rights and fundamental freedoms.

- (b) A distinction or preference adopted by the state party to promote the social integration or personal development of persons with disabilities does not constitute discrimination provided that the distinction or preference does not in itself limit the rights of persons with disabilities to equality and that individuals with disabilities are not forced to accept such distinction or preference. If, under a States internal law, a person can be declared legally incompetent, when necessary and appropriate for his or her well being, such declaration does not constitute discrimination.

Inter-American Convention on the Elimination of all forms of Discrimination Against Persons with Disabilities defines disability as “ a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities in daily life.”⁹⁹ Under the Convention, Governments are required to integrate people with disabilities into society by promoting the independence and quality of life of people with disabilities.¹⁰⁰

Disabilities Under European Union

The rights perspective to disability, which have its origin in the civil rights movements of the 1960s, is a working a revolution so that the level of ideas and also in the way established institutions and practices are coming under sustained pressure for change. From the right perspective the main problem lies in the lack of space made for human difference in society and not in the difference presented by disability itself.

The rights based perspective is fortified in the way international human rights law is being interpreted and applied. This is so whether the rights in question are civil or political on the one hand or economic, social and cultural on the other, inevitably this revolution is now lapping against the shores of EU law

⁹⁹ Article 1, para, 1 of Inter-American Convention on the Elimination of all forms of Discrimination against Persons with Disabilities, 1999.

¹⁰⁰ Marcia Rioux and Anne Carbert, “Human Rights and Disability: The International context.” (2003), Journal on Development Disabilities.

and calls into question the capacity and willingness of the Union to respond accordingly.¹⁰¹

The European Community has largely failed to provide an amicable solution to unequal treatment of disabled persons. Within the European Union the most significant events has been the amendments to the Treaty of Rome 1957, on October 1997 which took effect from May 1, 1999¹⁰² by which the member state have been enabled to pass legislations to protect the human rights of the disabled people. However, the potential provided by the treaty of Amsterdam for the advancement of disability rights within the European community is substantial. In 2000, Charter of Fundamental Rights of the European Union was passed, to reinforce the ban on all forms of discrimination and respect for the right of people with disabilities to participate in the life of the community.¹⁰³ In the same year, The European Equality Directive adopted by the European Community. The Directive guarantee equal treatment and reasonable accommodation.¹⁰⁴ That means employers shall be under the obligation to enable a person with a disability to have access to, participate in employment or to provide training for such a person.¹⁰⁵ In December 2001, the council of the European Union decided to make 2003 the European Year of People with Disabilities, and adopted in February 2003 a Resolution on “E-Accessibility”¹⁰⁶ and other Resolution on promoting the employment and social integration of people with disabilities.¹⁰⁷ The Resolution calls on member states to promote full integration and participation of people with disabilities in all aspects of society.¹⁰⁸

The system of law of European Union is unique in the sense that the protected rights are made accessible to the individual. The role played by the

¹⁰¹Gerard Quinn, *The Human Rights of People with Disability under EU Law*, The EU and Human Rights (Philip Alston) Oxford University Press, P. 281, (2003).

¹⁰²Council of Europe, *Access to Social Rights for People with Disabilities in Europe*, 2003, p.26, available at: http://www.coe.int/t/e/social_cohesion/socsp/access%20to%20social%20rights%20in%20color.pdf (visited on October 25, 2017).

¹⁰³Articles 21 and 26 of Fundamental Rights of the European Union.

¹⁰⁴Article 5 of the European Equality Directive, 2000.

¹⁰⁵Charles F. Szymanski, “The Globalization of Disability Rights Law-From the Americans with Disabilities Act to the UN Convention on the Rights of Persons with Disabilities,” (2009), *Baltic Journal of Law and Politics*, p.28, available at www.degruyter.com/dg/view/article/.contentUri?t:ac. sited on October 25, 2017

¹⁰⁶Resolution (2002/C39/03)

¹⁰⁷Resolution (2003/C175/01)

¹⁰⁸Council of Europe, *supra* note 377, p.27

European Court of Justice in developing disability jurisprudence would be of great significance.¹⁰⁹

In the most of the countries of the European Union the protection of H.R. of the disabled people in the matter of social policy rather than a matter of social legislation. In **Belgium**; The disability policy focuses on education, social integration, entry into labour market, the improvement of living conditions and greater independence for people with disability. There is no direct legislation on disability. In **Denmark**; the government accords high priority to the UNSR in the national handicap planning of activities. The government has set up Equal Opportunities Centre for Disabled Persons in 1993. In **Spain**; an action plan for disabled people was adopted in 1996 for social integration of persons with disabilities. In **France**; the disability rights laid down in two basic text namely Act of 30 June 1975 on guidance for P.W.D. and the Act of 10 July 1987 on the promotion of the employment of disabled people. In the **Greek**, Parliament has ratified WPA by Act No. 2430 of 1996 and a committee has been set up to prepare a national action plan for the P.W.D. **Ireland** the Irish government has taken step in 1993 for promoting equal opportunities for P.W.D. including the establishment for the commission on the status of the P.W.D. and Irish Council of people with disabilities. The government has also promised to pass a Disability Act. In **Italy** has issued a statement of policy under the title “Framework Law on the Core Social Interaction and Right to Disabled Person” (Law 104/92) encompassing matters relating to prevention and diagnosis, treatment and Rehabilitation, right to educational and social integration. **Luxembourg** in 1991, Disabled Worker Act 1991 adopted by the Government. In **Netherlands**; The Vocational Re integration of Disabled People Act came into force on 1 July 1998. **Portugal** has passed Law No. 35, 36 of 2 May 1996 for implementation of policies relating to rehabilitation and integration of disabled people.

The European Union made a crucial policy shift to right based approach in disability field. The present policy focuses on integration of people with disabilities. The disability policy goes beyond the provisions of social and medical

¹⁰⁹ Richard whittle, “Disability Rights After Amsterdam: The Way Forward” I Eur Hri, Rev 34-48 (2000), quoted in Parmanand Singh, “Disability Discrimination and Equality of Opportunities”, JILI, Vol. 45 at 183.

services in order to reduce functional limitations and increase independence of people with disabilities.

United States of America

The Americans with Disability Act, 1990 (ADA)¹¹⁰ state that its primary purpose is “to provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities”.¹¹¹ ADA also articulates the goal of ensuring that individuals with disability have “equality of opportunity”.¹¹²

The term “disability” means with respect to an individual:

- (a) A physical or mental impairment that substantially stop one or more of the major life activities of such individual,
- (b) A record of such an impairment,¹¹³
- (c) Being regarded as having such an impairment.¹¹⁴

If an individual cannot demonstrate that she/he meets this definition of disability, then she receives no protection of ADA. Dismissal of claim brought by a plaintiff whose conditions fails to qualify as a disabled individual under American Disability Act has led to a widespread critique of the American Disability Law.¹¹⁵

The ADA prohibits discrimination on the ground of disability in employment,¹¹⁶ housing, public accommodation,¹¹⁷ education, transport,¹¹⁸ communication,¹¹⁹ recreation, institutionalization, health services, voting etc. It requires all new public transport to be accessible to the disabled people and existing public rail system must be made accessible during the course of time.

¹¹⁰ The final version of the bill was signed into law on July 26, 1990, by President George H. W, Bush.

¹¹¹ The Americans with Disabilities 1990 (ADA) USCS 12101 (b) (i).

¹¹² Id. 42 USCS 12101 (a) (8).

¹¹³ Id. 42 USCS 12101 (a) (7).

¹¹⁴ Id. 42 USCS 12101 (a) (2).

¹¹⁵ Braigdon v. Addot, 5424 US 624 (1998 quoted in Parmanand Singh, Disability discrimination and equality of opportunity, (2003) JILI, Vol.45 p.189-190, (2003).

¹¹⁶ U.S.C/42/12111/12117/.

¹¹⁷ U.S.C/42/12181/12189/.

¹¹⁸ U.S.C/42/12131/12165/

¹¹⁹ U.S.C/47/225/

Architectural barriers in existing buildings must be removed and new construction project must be designed and built to be accessible to individuals with Disabilities.

Under the Article I¹²⁰ of the ADA no employer may discriminate against a qualified individual with a disability.¹²¹ This anti-discrimination law applied to all aspects of employment as well as pre-employment hiring process. The ADA is binding on all employer with at least 15 employees. These employers are required to provide reasonable accommodation¹²² for qualified individuals with a disability unless they can show that it would impose an undue hardship on that business.

The American Disabilities Act incorporates the same powers, remedies and procedures employed in title VII of the Civil Rights Act, 1964. An aggrieved under ADA can be a change with The Employment Opportunity Commission (EEOC) within 180 days of the alleged discriminatory Act. EEOC has no enforcement power but may allow the aggrieved individual “a right to sue” the aggrieved individual can then file a suit against the employer in a federal district court within 90 days from the issuance of the letter from Equal Employment opportunity commission.¹²³ Remedies available under American Disabilities Act include equitable relief requiring hire, reinstatement, back pay and seniority, cessation of unlawful employment practice and such affirmative action as may be appropriate.

Finally, it can be said that American Disabilities Act is a good legislation regarding disabilities and provide not only procedure and remedies but also an equitable relief. The purpose of ADA is to provide individuals a treatment to the disabled individual and afford them equal opportunities by reasonable accommodation.

¹²⁰Article I of ADA.

¹²¹42 USCS 12112 (a).

¹²²Accommodation includes use of modified work schedule, making facilities accessible to the disabled, and the acquisition of equipment and devices. As used in the Act, accommodation are action taken on the firm’s to make the workplace more hospitable to disabled workers.

¹²³Id, at S. 5 (1) 1988.

Canada

Section 15 of the Canadian Charter of rights¹²⁴ grants constitutional protection to the people with disabilities.¹²⁵ Disability is one of the forbidden grounds of discrimination in Sec 15¹²⁶ that is known as equality guarantee clause. The goal of the Canadian Constitution is to achieve a right to full inclusion and participation of the people with disabilities in a barrier free society. Discrimination is prohibited both on grounds of mental and physical disability. The right to full participation includes the right of a disabled individual to have this needs accommodated where necessary.

The Canadian Human Rights Act 1985 prescribes a number of grounds for discrimination and prohibits certain discriminatory practices.¹²⁷ Disability is one of the prescribed grounds of discrimination. Disability denotes “any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug”. The Act addresses both direct and indirect discrimination in all aspects of life including employment.¹²⁸ The Canadian Human Rights Commission is charged with making general recommendations to the employers to provide reasonable recommendations to the people with disabilities. It can be said that not only Canadian Charter of Rights and Freedom grants Constitutional protections against disability but the Canadian Human Rights Act, 1985 also provides provisions a number of grounds for discrimination and prohibits certain discriminatory practices.

¹²⁴ The Canadian Charter of Rights and Freedoms is a bill of rights entrenched in the Constitution of Canada. The Charter got the assent of Queen Elizabeth II of Canada on April 17, 1982.

¹²⁵ The Canadian Charter of Rights and Freedom, quoted in Parmanand Singh, Disability, Discrimination and Equality of Opportunity, JILI, Vol. 45, 2003 at 192.

¹²⁶ Section 15(1) of Canadian Charter of Rights and Freedoms states “Every individual is equal before and under the law and has right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

¹²⁷ Canadian Human Rights Act, 1985, Sec. 2.

¹²⁸ Id. S. 3 (1).

United Nations Convention on the Rights of the People with Disabilities, 2006¹²⁹

The United Nations Convention on the Rights of the People with Disability was adopted by the United Nations General Assembly on, 13th December 2006. This International Convention together with its Optional Protocol was opened for signature on the 30th March 2007. It was ratified by India in October 2007. It came into force from 3rd May 2008. The Convention has 144 signatories and has been ratified by 82 countries. Out of 144 Countries, eighty-one states belonged to European Union.¹³⁰

This Convention recognizes persons with disabilities as subjects having human rights and fundamental freedoms and not as objects needing mere medical care and social protection.¹³¹ The Social Model of disability bifurcates impairment and disability.¹³²

It further spells out that disability is an evolving concept and that persons with disabilities are a part of human diversity and humanity. It provides full inclusion and equal participation in all aspects of community life.¹³³ United Nations Convention on the rights of persons with disabilities is a legally binding first comprehensive international apparatus designed specifically for persons with Disabilities providing global consensus and guarding manner in which countries

¹²⁹International Convention of the Rights of Persons with Disabilities and its Optional protocol UN GAOR, 61st session, item 67(b), UN DOC. A/61/106 (13 December 2006) also Available on <http://www.un.org/esa/socdev/enable/rights/convtexte.htm>, accessed on 30 October, 2017

¹³⁰ This was the highest number of signatories for the first day of signing to a UN Convention in the history of the United Nations. The CRPD and its Optional Protocol are the first UN human rights treaties to be signed by the European Union. Under Article 44 of the CRPD and Article 12 of its Optional Protocol The European Union may act on behalf of its members in relation to the treaties to the extent of its mandate, which must be the subject of a formal declaration, deposited with the Secretary-General. [Rosemary Keyess and Phillip French, "Out of Darkness into Light?;: Introducing the Convention on the Rights of Persons with Disabilities," (2008), Human Rights Law Review.

¹³¹Office of the High Commissioner for Human Rights, Monitoring the Convention on the Rights of Persons with Disabilities. Guidance for Human Rights Monitors-Professional Training Series No.17(2010) United Nations: New York, p.13. Also available at <http://www.ohchr.org/Documents/Publications/Disabilities-training-17EN.PDF> accessed on 30 October, 2017.

¹³²The social model of disability distinguishes between impairment and disability. According to it impairment is a malfunction of the body, mind, etc, whereas a disability is a restriction in activities of a person with an impairment resulting from society's failures to socially include persons with disabilities.

¹³³Tara J. Melish, "The UN Disability Convention: Historic Process, Strong Prospects, and why the U.S. SHOULD Ratify," p.1-2, (March 2007).

should fulfil their obligations towards persons with Disabilities. The UNCRPD consists of 50 article addressing the full array of civil, political, economic, social and cultural rights.

The exclusive object of this convention is to protect, promote and ensure to persons with Disabilities the full and effective enjoyment of all human rights and fundamental freedoms on an equal basis.¹³⁴ The Convention was negotiated during eight sessions of an Ad Hoc committee of the General Assembly from 2006, making it the fastest negotiated Human Rights Treaty,¹³⁵ explicitly linking it to the realization of all human rights- civil, political, economic, social, cultural- and embedding it within the non-discrimination mandate.¹³⁶ The important feature of the Convention is that it does not define 'Disability'. The freedom has been given to the individual member states to define the concept.¹³⁷

The Convention is based on certain general principles. They extend from the principles of individual freedom and dignity,¹³⁸ to the principle of non-discrimination,¹³⁹ followed by the principle of recognition and acceptance of the Persons with disability. It urges that the society has to be sensitized to accept disability as human diversity¹⁴⁰ and allow the smooth inclusion of the disabled.

¹³⁴The Convention was adopted by the United Nations General Assembly on December 13, 2006

¹³⁵Katherine Guernsey, Marco Nicoli and Alberto Ninio, Convention on the Rights of Persons with Disabilities: Its Implementation and Relevance for the World Bank, 2007 (The World Bank, S.P Discussion Paper No.0712 (available at: <http://siteresource.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-Papers/Disability-DP/0712.PDF>, visited on 23 October, 2017

¹³⁶The UNCRPD makes explicit the interconnectedness and interdependence of all human rights. Civil and political rights of non-discrimination and participation are required to disrupt the patterns of exclusion, and economic and social rights are needed to address the legacy of marginalization including poverty and inaccessibility. The UNCRPD serves to reconceptualize and unite civil and political rights [Janet E. Lord and Rebecca Brown, "The role of Reasonable Accommodation in securing substantive equality for persons with disabilities: The UN Convention on the Rights of Persons with Disabilities" 2010, p.6,

¹³⁷Art 1 of 'purpose', Convention on the Rights of Persons with Disabilities, 2006.

¹³⁸Art 3(a) of Convention on the Rights of Persons with Disabilities, 2006.

¹³⁹Art 3(b) of Convention on the Rights of Persons with Disabilities, 2006, see also, Frederic Megret, "The Disabilities Convention: Towards a Holistic Concept of Rights" page 13, (2006).

¹⁴⁰Art 3 (a) of Convention on the Rights of Persons with Disabilities, 2006.

Disabled Women and Children: -

Disabled in the main stream of the society, allowing full and effective participation.¹⁴¹

The Convention is further based on the principles of equality of opportunity¹⁴² and accessibility.¹⁴³ The concept of equality includes protection against discrimination with in community of disabled persons eg, between man and women.¹⁴⁴

The Convention recognizes fast that the women and girls with disabilities suffer from multiple discrimination. The convention therefore provides for special treatment to ensure full and equal enjoyment of all the human rights.¹⁴⁵

The second most vulnerable group is that of the children with disabilities. The interest of disabled children too is protected under the convention is the similar lines as that of disabled women. Principle laid down is that all the policies of the Government should keep the 'best interest of disabled child' as the primary consideration.¹⁴⁶

Education Under the Convention: -

The convention has rightly focused on the right to education and reaffirms its importance is achieving non-discrimination and equal opportunity-¹⁴⁷ to all. It imposes duty on the state to ensure an inclusive education system at all levels and lifelong learning.

The education should be directed towards full development of human potential and sense of dignity and self-worth and stress on the respect for human

¹⁴¹ Art 3 (c) of Convention on the Rights of Persons with Disabilities, 2006.

¹⁴² Art 3 (e) of Convention on the Rights of Persons with Disabilities, 2006.

¹⁴³ Art 3 (f) of Convention on the Rights of Persons with Disabilities, 2006.

¹⁴⁴ Art 3 (g) of Convention on the Rights of Persons with Disabilities, 2006.

¹⁴⁵ Art 6 of Convention on the Rights of Persons with Disabilities, 2006, (Women with Disabilities).

¹⁴⁶ Art 7 of Convention on the Rights of Persons with Disabilities, 2006, (Children with Disabilities).

¹⁴⁷ As mentioned under Art 5, the State shall recognize that all persons are equal and entitled for equal protection without discrimination. The Principle of Art 5 is reiterated in the Art 24, on education, suggesting that the only way to achieve the objective of equality and non-discrimination is through education.

rights, fundamental freedom and human diversity.¹⁴⁸ It must provide on opportunity for fullest development of the talents, creativity and personality,¹⁴⁹ which enable the differently able to participate effectively in free society.¹⁵⁰

Inclusive Education-

A dream to achieve:- The Convention has understood the importance of inclusive education. The state has been given the specific task to frame the pattern of inclusive education system and the rules to framed not to make disability, the basis for exclusion from any form of primary or secondary education.¹⁵¹ The focus has been given on accessibility of an inclusive quality and free primary and secondary education.¹⁵² The state has to provide effective individualized support to create proper environment which will maximize academic and social development and which is consistent with the goal of inclusive education.¹⁵³ To make this duty more meaning full the convention provides for various duties on the part of the state. For inclusive education Art 8 provides for awareness – raising, which plays important role it is under stood that, understanding parents encourage the school management to enroll more disabled children. The full participation is possible only if, Art 9, which provides for accessibility of all building and facilities in the school are made available. This accessibility should be accompanied with Art 20, providing independent moving capacity for all persons with disability.

There is a need to shape up a system where the personality of a disabled person will develop at utmost extent. To facilitate the above objective the state is required to provide for learning in Braille; alternative script; augmentative and alternative formats of communication; and orientation and mobility skills and facilitating peer support.¹⁵⁴ New law has to be developed for those with hearing impairment.¹⁵⁵

¹⁴⁸ Art 24 (1) a of Convention on the Rights of Persons with Disabilities, 2006

¹⁴⁹ Art 24 (1) b of Convention on the rights of Persons with Disabilities, 2006

¹⁵⁰ Art 24 (2) c. of Convention on the Rights of Persons with Disabilities, 2006,

¹⁵¹ Art 24 (2) a. of Convention on the Rights of Persons with Disabilities, 2006,

¹⁵² Art 24 (2) b of Convention on the Rights of Persons with Disabilities, 2006,

¹⁵³ Art 24 (2) e of Convention on the Rights of Persons with Disabilities, 2006,

¹⁵⁴ Art 243 (a) of Convention on the Rights of Persons with Disabilities, 2006.

¹⁵⁵ Art 243 (b) of Convention on the Rights of Persons with Disabilities, 2006,

Employment of disabled persons: -

To lead a meaningful life, employment for disabled persons are must. Obviously, the Convention makes multiple attempts to provide employment facility to the persons with disability. One such peer attempt is of habilitation and Rehabilitation.¹⁵⁶ Under this provision, the state is required to make provision for attaining and maintaining independence in vocational ability.

The 'Right to Work and Employment' has been mention under Art. 27. The right to work of disabled should be treated on equal basis with others. The right to work will be inclusive in nature and accessible to the persons with disability.¹⁵⁷ The Art. deals not only with the employment, but also with work. This additional term has made the Convention a comprehensive one.¹⁵⁸ The right to employment under Art. 27 means inclusive of terms of employment like, continuance of employment, career advancement, and safe and healthy working conditions.¹⁵⁹

To ensure the right of employment the convention has imposed certain inalienable duties on the state. The state is under the duty to promote employment opportunities and career advancement for the persons with disabilities in the labour market.¹⁶⁰ This is coupled with encouragement for self-employment, entrepreneurship, development of cooperatives and starting one's own business.¹⁶¹ Art. 27 of Convention on disability also imposes direct and indirect responsibility on the state. The direct responsibility is in the form of providing employment to the persons with disability in the public sector ¹⁶². Indirectly the state is under obligation to promote the same employment in the private sector through policies and measures.¹⁶³ The UNCRPD set forth the economic, civil and political rights, including right to life, right to be protected in situation of risk.¹⁶⁴ Article 34 of

¹⁵⁶ Art 26. of Convention on the Rights of Persons with Disabilities, 2006,

¹⁵⁷ Art 27 (1) of Convention on the Rights of Persons with Disabilities, 2006,

¹⁵⁸ Art 27 has a comprehensive approach as it is not only deals with educated employ able or unemployed disabled, but also with an employed disabled. The initial provision of Art 27 deals with right to employment and the later provisions deals with right to work.

¹⁵⁹ Art 27 (1) (a) of Convention on the Rights of Persons with Disabilities, 2006,

¹⁶⁰ Art 27 (1) (e) of Convention on the Rights of Persons with Disabilities, 2006,

¹⁶¹ Art 27 (1) (g) of Convention on the Rights of Persons with Disabilities, 2006,

¹⁶² Art 27 (1) (h) of Convention on the Rights of Persons with Disabilities, 2006,

¹⁶³ Art 27 (1) (of Convention on the Rights of Persons with Disabilities, 2006, b)

¹⁶⁴ Art 29 of UNCRPD.

UNCRPD establishes a Committee on the Rights of Persons with Disabilities with authority to receive and review periodic reports submitted by States parties to the Convention.¹⁶⁵ The Convention establishes a conference of States parties to meet regularly to consider any matter with regard to implementation of the Convention.¹⁶⁶ This Convention recognizes persons with disabilities as subjects having human rights and fundamental freedoms and not as objects needing mere medical care and social protection. It further spells out that disability is an evolving concept and that persons with disabilities are a part of human diversity and humanity.

Conclusion of Convention on Disability

In conclusion we can say that Convention on disability, 2006, played a very significant role in the development of a right approach towards the concept of Human Rights, and sensitivity towards the rights of the disabled. It was binding on international community, obviously brought mass changes. According to Paul

¹⁶⁵A body of independent experts elected by States parties by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting. States parties have to give due consideration to geographical distribution, representation of different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities. Members will serve in their personal capacity and shall be of high moral standing and have recognized competence and experience in the field of human rights and disability. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State parties which have nominated them, and shall submit it to the States Parties to the present Convention. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. If a member of the Committee dies or resigns or declares that for any other cause she or can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this Article, to serve for the remainder of the term. The Committee shall establish its own rules of procedure. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee. With the approval of the General Assembly of the United Nations, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide. The primary function of the Committee will be to consider reports of States parties on the measures taken to give effect to the obligations under the Convention and on the progress made in that regard. The full Committee is comprised of eighteen independent experts. Cited in Dr. Rumi Ahmed, "Rights of Persons with Disability in India" White Falcon Publishing, Chandigarh, page 177, (2015).

¹⁶⁶Article 40 of the Convention stipulates that "that States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention".

Harpur,¹⁶⁷ “CRPD does not merely re-state existing human rights. The CRPD re-states existing rights and then creates incidental rights to ensure that existing rights are realized. Despite its bold approach and effective provision for implementation and monitoring mechanism, the Disability Convention is not the final step because it still lacks an effective enforcement mechanism.”¹⁶⁸

Concluding Observation

The United Nation Organization has been in the for front in development of international concern for disabled. The UN charter identifies fundamental obligation of member States to ensure respect for human right and fundamental freedom for all including disabled. In order to protect the rights of disabled, number of declaration and conventions have been adopted under the auspices of various inter-governmental bodies and international agencies. The adoption of International recognition of rights of persons with disabilities has created pressure groups in the form of NGOs and other associations. The UN Convention on Disability brought a landmark shift in attitudes that moves from a perception of persons with disabilities as objects of charity, medical treatment and social protection to subjects of rights. The Convention recognized that persons with disabilities hold civil, cultural, economic, political and social rights, are entitled to full protection against discrimination.

But the UNCRPD offers no protection for the religious freedom of persons with disabilities. On the other hand Article 18 of the International covenant on civil and political Rights includes the right to religious freedom very broadly.¹⁶⁹

¹⁶⁷Paul Harpur, “Embracing the New Disability Rights Paradigm: The Importance of the Convention of the Rights of Persons with Disabilities”,(2012) 27(1) Disability & Society 2.

¹⁶⁸Charles F. Szymanski, “The Globalization of Disability Rights Law – From the Americans with Disabilities Act to the UN Convention of the Rights of Persons with Disabilities, (2009) Baltic Journal of Law and Politics, available at: www.degruyter.com/dg/viewarticle.../contentUri?t:ac...2009 (visited on October 30, 2017). Cited in Dr. Rumi Ahmed, “Rights of Persons with Disability in India” White Falcon Publishing, Chandigarh, page 188 (2015)

¹⁶⁹ Article 18 states that Everyone shall have the right to freedom of thought, con science and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions

In the UNCRPD the term ‘rehabilitation’ has mostly vanished. The CRPD states that “Every human being has the inherent right to life”. But CRPD is silent on the right of children at risk of abortion because of disabilities. Their rights have been dismissed on the ground that they are not persons.

The role of International Organizations in promotion and protection of human rights has several limitations. Majority of International Provisions have been laid down in the form of declarations, resolutions, principles, guidelines and rules, which are not legally binding on the nations. So, it can be said that these International Provisions are ornamental in nature. Only convention on disability is legally binding on the member states. So, it can be said that disabled people were invisible in International Law. When Convention on Rights of Persons with Disability passed in 2006, after that rights of disabled in International Law became visible. Even the Convention regretted the lack of information provided for by the state parties in their reports. The CEDAW Committee in General Recommendation 18 on women with disabilities suggested the importance of data in assessing the position of disabled women but in Governmental and non-Governmental sources women with disabilities are missing and excluded from policies and programs. Persons suffering from mental illness are considered as non-persons, lacking recognition before law.

Constitutional Protection to The Disabled Person

The study of the Constitutional framework is necessary as it is the root from which all the statutes draw their existence. Unfortunately, the Constitution of India does not specifically mention discrimination on the ground of disability but it does contain non-discriminatory provisions that guarantee equality and equal opportunities for all citizen. That means Constitution of India has provided a space for disabled but it is too weak and based on charity and relief. On the other hand, German Constitution¹ as well as Republic of South African Constitution² includes disability as a ground of discrimination. German Constitution has clearly stated that ‘No person shall be disadvantaged on account of his or her disability and that no person shall be subjected to disability discrimination. The Question is then why the maker of the Constitution forget to mentioned disability as a ground of discrimination. This omission was carried one step further when persons with disabilities were again not considered for inclusion at the time of 42nd amendment.³ We have in India a society based on the principle of graded equality, which means elevation for some and degradation for other. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty.⁴ Despite Dr. Bhimrao Ambedkar strong concern on the lack of social and economic equality, persons with disabilities

¹Article 3(3) of Constitution of Federal Republic of Germany States that ‘No one may be disadvantaged or favoured because of his sex, his parentage, his race, his language, his home land and origin, his faith, or his religious or political opinions. No one may be disadvantaged because of handicap.

² Constitution of the Republic of South Africa, Section, 9 (3). This Section States: “the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth”.

³S. Bacquer, ‘Disability Discrimination: India and United Kingdom Compared, (2004), unpublished BCL dissertation on file with the author, cited in Jayna Kothari, ‘The Future of Disability Law, Oxford University Press, New Delhi, page no 3(2012).

⁴Dr. Ambedkar, Xth Constituent Assembly debates, 22nd January, Wednesday, 317, cited in Ashoke Kumar Thakur vs Union of India 6SCC, Page 445, (2008).

have been neglected in the Indian Constitution. The Constitution of India prohibits discrimination on the basis of 'religion, race, class sex or place of birth' under Art. 15, fails to mention disability as a prohibited ground. Out of 395 Article and 12 schedule, Article 41 of the Directive Principles of State policy, Article 243-G (Social welfare, including welfare of the handicapped and mentally retarded) and Article 243-W (Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded) mentions about the disabled persons. This shows the callous attitude of maker of Indian Constitution. The disability jurisprudence in the form of statutory law came into India only after 1995. Until then the persons with disability were protected under the umbrella of the Constitution of India.

This seems that the framers of the Constitution were more inclined to lay down the general principles on which the State must progress and they provided the general goals which every government must strive to achieve.

Special mention needs to be made here about preamble.⁵ Though it does not make any provision for any community or persons. Its objective is to ensure social, political and economic justice. Justice is the attainment of the common good as distinguished from the good of the individuals or even the majority of them.⁶ Justice is the end, as James Madison, put it. Justice is the end of Government. It is the end of civil society. It ever has been and ever will be pursued until it is obtained⁷. It can be say that Justice is genus of which social, economic and political justice are species. The concept of social justice is a dynamic device to minimise the dismal condition of disabled. The parameters laid down in the Preamble and the concepts of Welfare State are the guiding

⁵ WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a (SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC) and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; And to promote among them all FRATERNITY assuring the dignity of the individual and the (unity and integrity of the Nation); IN OUR CONSTITUENT ASSEMBLY, this Twenty-Sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OUR SELVES THIS CONSTITUTION. The Constitution of India, 1950.

⁶D. D. Basu, 'Commentary on the Constitution of India vol. 5, IV Ed, prentice Hall of India Pvt Ltd, Delhi, page 71, (2003).

⁷V. K. Krishna Iyer, 'Law justice and the Disabled, Deep and Deep Publication, New Delhi, page 42, (1982).

principles to the State which has to promote the prosperity and wellbeing of the persons with disabilities Security and protecting an effective social order through social justice, economic justice and political justice the state shall strive to minimize the inequalities in income, endeavours to eliminate inequalities in status and also provide facilities and opportunities to the disabled. The preamble thus addresses the need of the persons with disability to larger extent in general terms.⁸

Equality and Non-Discrimination

Doctrine of equality under Article 14:

Art 14 of the Indian Constitution guarantees that State shall not deny to any person equality before the law and the equal protection of laws within the territory of India.⁹ Art 14 does not only speak of formal equality where the State is under the duty to treat all persons in the same manner out it also requires the State to provide substantive equality. This implies that only equals must be treated as equals and unequal's may not be treated so. Equal treatment of unequal's is not liable to be struck down as discriminatory.¹⁰ This interpretation imposes a responsibility on the state to consider the condition of disadvantaged groups while providing equal status and opportunity.¹¹ These two approaches of equality have two important implications. One, makes it mandatory on the part of the State not to discriminate against any individual or class on arbitrary or unreasonable basis. Second, it permits the State to take up affirmative action by way of special law, special right and allowing positive discrimination. Thus, in the formal approach, 'difference' justifies 'differential treatment' even if it is unequal in effect .¹² In the case of disability, sticking strictly to such formal equality can lead to situations

⁸M.P. Jain, Constitutional Law of India, Universal Publication, at page 89(2009).

⁹ The Right Handicapped, Justice RK Abichandani, Judge, High Court of Gujarat, available at: <http://gujarathighcourt.nic.in/Articles/righthandicapped.htm> (visited on 30 October 2017) Article 14 talks about "substantive" equality and not merely a "formal" equality, implicitly recognizing that different classes of people have specific needs and require specific treatment. This substantive equality principle provides for affirmative action, special laws, policies and programs for persons with disability as they require special treatment and special rights, which are in compliance with Universal Human Rights. Article 14 states that State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁰ Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd (1996) 6SCC 642.

¹¹ Shruti Pandey, Priyanka Chirimar, Deepika D'Souza' "Disability and the law" (Human Rights Law Network, New Delhi) page 3, (June 2005).

¹²Renu Addlakha and Saptarshi Mandal, 'Disability Law in India; Paradigm shift or Evolving Discourse'. Economic and Political weekly, 44(4), page 62, (2009).

that are discriminatory and unjust. Because under the umbrella of formal equality all persons are treated equally.¹³ So, it can be said that the Principle of formal equality entails an optimistic view of individual autonomy and completely discards the condition of persons with disabilities, as they are not similarly situated.¹⁴ So, under this condition Substantive Equality is must for the promotions of the rights of the disabled because it permits special treatment in order to accommodate the interests of different wings of society. Substantive Equality also emphasizes the dignity, autonomy, and worth of every individual.¹⁵ Affirmative actions does not diminish the important of Art. 14. As held by Justice Krishna Iyer in the case of Dr. Jagdish Saran and others vs Union of India¹⁶, that important of equality is not washed off or degraded where special provisions are geared to the larger goal of the disabled.

Further, Art 15 (1) of the Indian Constitution prohibits discrimination on certain grounds. It enjoins on the government not to discriminate against any citizen of India (including disabled) on the ground of religion, race, caste, sex or place of birth.¹⁷ It allowed for affirmative actions for persons with disabilities.¹⁸ A literal perusal of Article 15(1) would suggest that the prohibited grounds mentioned in it are exhaustive and it seems that the Constitution does not leave any space for further development to add to the prohibited grounds. But one of the boost for disabled is that the Delhi High Court in Naz Foundation¹⁹ makes a radical jump in Indian Constitutional jurisprudence as it stated for the very first time that grounds analogous to the grounds mentioned in

¹³Jayana Kothari "The Future of Disability Law in India" Oxford University Press, New Delhi, 1st edition, page 7, (2012).

¹⁴P. Singh, 'Disability Discrimination and Equality of opportunities; A comprehensive Analysis of the Legal Frame work Journal of Indian Legal Institute page 173, (2003).

¹⁵Jayna Kothari "The Future of Disability Law in India" Oxford University Press, New Delhi at page 13, (2012).

¹⁶ AIR 1980 S. C.

¹⁷ Constitution of India ,1950, Article 15 (1). Article 15 (1) states 'The state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.

¹⁸Anuradha Mohit, "Human Rights for Persons with Disabilities" in C.S Mahapatra (ed.), Disability Management in India – Challenges and Commitments, 291 (NIMH) Secunderabad.

¹⁹(2009) DLT 277, decided by Delhi High Court on 2nd July, 2009.

Article 15(1) of the Constitution would also be protected grounds for discrimination.²⁰ Thus, judgment given by Delhi High Court, paves the way for the debate in India that disability should be included as a ground for non-discrimination under Article 15(1), as it is analogous to the protected grounds. The non-inclusion of disability as a ground of discrimination is also against of principal of Constitutionalism, Constitutional morality, Rule of Law and Good Governance. This will not make unequals equal.

Similarly, Art 15 (2) states that no citizen including disabled shall be subjected to any disability, liability, restriction or condition on any of the above grounds in the matter of their access to shops, public restaurants, hotels and places of public entertainment or in the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of government funds.²¹

In addition of Article 15 (1), and 15 (2), Art 15 (4) discuss about special provisions to be made in favour of socially and educationally backward classes of citizens.²² But socially and educationally backward classes has not been defined in the Constitution. The determination of the backwardness of the classes is left to the 'State' as defined in Article 12 of the Constitution.²³ And the power to determine is subject to Judicial review. The Supreme Court has held that this category is open and is not limited to caste. Caste can be one of the relevant circumstances in determining backwardness, but if a group has been classified as backward on other relevant grounds, that classification cannot be challenged as invalid.²⁴ Disability can also be considered as socially and educationally

²⁰ P. Baruah, Logic and coherence in Naz Foundation: The Arguments of non -discrimination, Privacy and Dignity; National University of Juridical Sciences Law Review, page.505.

²¹ Constitution of India, 1950 Article 15(2) Article 15(2) states 'No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or Condition with regard to

a) access to shops, public restaurants, hotels and places of public entertainment; or
b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public.

²² Constitution of India, Article 15 (4) states: Nothing in this Article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the schedule castes and the Schedule Tribes.

²³ Gauri Shankar Verma vs State of Haryana, AIR 1982 Punjab and Haryana at para 9.

²⁴ Chitralakha R vs State of Mysore, AIR 1964 SC 1823.

backward class under Article 15 (4) by the State because this group is most backward and downtrodden class of India.

Again, Art. 15(5) was added by the 93rd amendment Act of 2005 after the case of *P. A. Inamdar vs State of Maharashtra*.²⁵ Article 15(5) of the Indian Constitution lays down that nothing in Article 15 or 19(1)(g) shall prevent the State from making any special provision by law for the advancement of any socially and educationally backward class or for the SCs and STs. Such special provisions relates to admission into educational institutions including private educational institutions whether aided or unaided by the States, other than the minority educational institutions under Article 30(1) of the Constitutions. As told earlier disability can also consider as socially and educationally backward class under Article 15(5) because disabled groups are most backward in terms of education. Socially they are the lowest part of social strata. So it can be said that Article 15(5) is a good move to provide inclusive education to the disabled.

Apart from Art 15(5), Art 16(1) guarantees equality of opportunity to all citizens including disable in matter relating to employment to any office under the State.²⁶ Art 16 (1) of the Constitution, came out with the view that mere formal declaration of the right would not make unequal's equal . To enable to compete with each other on equal plane, it is necessary to take positive measures to equip the disadvantaged and the handicapped to bring them to the level of the fortunate advantaged.²⁷ Article 16 (1), no doubt would by themselves permits such positive discrimination. Accordingly, the reservation for physically handicapped person fall within clause (1) of Article 16 of the Indian Constitution as told by Justice Chelameswar in *Rajeev Kumar Gupta vs. Union of India*.

Further, Art 16(2) prohibits discrimination in the matter of employment on the grounds of religion, race, caste, sex, descent, place of birth including

²⁵AIR 2005 6 SCC 537.

²⁶ Constitution of India, Article 16 (1) states: "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State."

²⁷*Indra Sawhney vs. Union of India* AIR 1992 Supp (3) SCC 217, also see Anuradha Mohit, "Human Rights for Persons with Disabilities" (2004) in C. S. Mahapatra (ed). Disability Management in India – Challenges & Commitments, 291 (NIMH: Secunderabad).

disability.²⁸ That means disabled would not be discriminate in the field of employment.

Art 16 (4) enable the state to make provision for the reservation of posts in government jobs in favour of any backward class of citizens which , in the opinion of the state , is not adequately represented in the service of the state ²⁹. As Art 16 (4) make special provisions for backward class of citizens, which, in the opinion of the state, is not adequately represented in the services under the state. As we know disabled are most backward class of citizens. So, disability should include in the list of backward class because these citizens are not adequately represented in public employment.

Art. 17 Provides abolition of untouchability. The enforcement of any disability arising out of “untouchability” shall be an offence punishable in accordance with law. ³⁰ The principal object of Article 17 is to ban the practice of untouchability in any form. This expression refers to the social as well as physical disability.

Art. 21 of the Indian Constitution has a wide concept and dimensions which provides protection of life and personal liberty to all persons which includes the disabled. Article 21 guarantee the right to life and personal liberty.³¹ Right to life means right to live with dignity. Therefore, right to life includes right to food, water, education, medical care and shelter. At the later stage, right to education has been specifically added under Article (21A). ³² The vitality of the issue of 'Accessibility' vis-a-vis visually disabled person's right to life can be gauged clearly by the Supreme Court's judgment in State of Himachal Pradesh &

²⁸Constitution of India, Article 16 (2) states: “No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the state.

²⁹Constitution of India, Article 16 (4) states: “Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of state, is not adequately represented in the services under the state.

³⁰ Constitution of India, Article 17 states: “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

³¹ Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.

³²Right to Education: The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine.

Anr. vs. Umed Ram Sharma & Ors., where the right to life under Article 21 has been held broad enough to incorporate the right to accessibility.

Art.23 provides prohibition of trafficking of human beings (including disabled) and force labour of any kind, and the same is made punishable in accordance with law.³³ That means Article 23 is very important for disabled because Article 23 is related with trafficking and forced labour and disabled women and children are the soft target for trafficking and forced labour.

Art.24 Prohibit employment of children below the age of 14 Years to work in any factory mine or to be engaged in any hazardous employment including private and public sector. The children below the age of 14 Years includes disabled children whose nature of disablement is of any kind.³⁴

Art.25 guarantees to every citizens including disabled the right to freedom of religion. Every disabled has the freedom of conscience to practice and propagate his religion subject to proper order, morality and health. No disabled person can be compelled to pay any taxes for the promotion and maintenance of any particular religion or religious group.³⁵

Art.29 of the Constitution of India protects of minorities. No citizen (including disabled) shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on ground of religion, caste, race, language or any of them.³⁶

³³ Constitution of India, Article 23 states: “(1). Traffic in human being and beggar and other similar forms labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2). Nothing in this article shall prevent the state from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

³⁴ Constitution of India, Article 24 states: “No child below the age of fourteen Years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

³⁵ Constitution of India, Article 25 states: “Subject to public order, morality and health and to the other provisions of this Parts, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

³⁶ Constitution of India, Article 29 states: “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds any of religion, race, caste, language or any of them.

Art.32 guarantees remedies for enforcement of rights conferred in part III of the constitution. Any of disabled person can move to supreme court to enforce his fundamental right if their right infringed.³⁷

Directive principles of State policy and Rights of Disabled³⁸

Part IV of Constitution of India provides for directive principles of state policy. These rights are different because they are not enforceable by the court. They are mere guidelines given to the state in carrying out its functions. Even though, they are non-justiciable they cannot be termed as less important than fundamental rights. They have been used by the court to expand the ambit of fundamental rights from time to time. The Directive principles also lend support to the rights of persons with disabilities. It can be said that the Directive Principles of State Policy is more authentic and noticeable while bringing about social, political and economic equality for disabled.

Art.38 of Constitution of India which fall within part IV of the Indian Constitution containing the Directive of state policy (D.P.S.P.) reads as follows:

- I. The State shall strive to promote the welfare of the people by securing and protecting as it may a social order in which justice, social, economic and political, shall in from all institutions of the national life.
- II. The State shall in particular strive to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst group of people residing in different areas or engaged in different vocations.”³⁹

Art.38 of the Constitution of India requires the State to promote the welfare of the people by securing a social order in which justice social, economic and political, informs all institutions of national life and the State is required to

³⁷ Constitution of India, Article 32 states: “The right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this Part is guaranteed.

³⁸ The Directive principles are not justifiable as the fundamental rights but they nevertheless constitute important guiding principles in the operation of the State and its policies.

³⁹ Constitution of India, Article 38 states: (1). The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2). The State shall, in particular, strive to minimize the inequalities in income, and amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

make efforts to eliminate inequalities in status, facilities and opportunities amongst individuals. This has a direct bearing on the rights of the disabled or differently abled citizens. By and large in the quest for attaining political equality and social rights, a large segments of the population who are physically infirm are suffer from disabilities are lost sight of. Instead of providing an equal opportunity such person are treated as objects of pity and no meaningful provision is made for giving them an equal opportunity by providing facilities and resources to negate the effect of disability.⁴⁰

Art. 39(A) envisages that equal justice and free legal aid should be provided to all citizens and justice should not be denied by reason of economic or other disabilities.⁴¹

A careful reading of Art. 21, in the light of recent Supreme Court and High Court decisions, along with Art. 39(c)⁴² makes it amply clear that Constitution has bestowed the duty on State to uphold the rights of the disabled persons so that they may lead a dignified human life. It is the duty of State to improve the conditions for disabled persons and to consider it as an integral part of general policy and planning. Our constitutional values and emerging human rights jurisprudence the world over helped to formulate three important components for personhood, viz. dignity, creativity, and opportunity and when these are recognized, appreciated and provided for by the state. It can be truly say that this section of the society has arisen above “the visibility line of law”.⁴³ The Constitution of India provides basic framework for providing all the possible

⁴⁰Mukul Mudgal J., “The Right based approach to disability and development “Nyaya Deep, Vol. VII, pp.58-59, (Jan 2006).

⁴¹ Constitution of India, Article 39A states: “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

⁴² “Thought the expression ‘economic system’ is used in Art. 39 (c), that Article has not the object of changing the economic system generally, but is confined to only preventing concentration of wealth and means of production to the common detriment. What this clause envisages is that the State should secure the operation of the economic system in such a way as not to result in the concentration of wealth and means of production to the common detriment. Where there is already concentration of wealth and means of production which is to the common detriment, the law under Art. 39(c) would be only to break up or regulate as may be necessary the concentration of wealth and means of production.” That means disabled should have equal share in means of production.

⁴³Balraj Chauhan, “Person with Disabilities” at 602, K.D. Gaur, Criminal Law and Criminology, Deep and Deep publications, New Delhi (2005).

measures which can be taken for the proper development of disabled persons into a normal persons.

Art.41 of the Indian Constitution specifically provides, “the state shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and Disablement”⁴⁴ Under this Article the State is under obligation for securing the rights of the disabled . This have been discussed in *Sambhavana vs. University*.⁴⁵ Justice Sinha notes that the provisions of Article 41 should be implemented in consonance with the complementary principles of non - discrimination and reasonable accommodation.⁴⁶ A critical perusal of Article 41 shows that it imposes a duty on the State to provide accessibility to disabled in public transport and public building. But still the condition of accessibility is very dismal.

Art. 45 of the Constitution directs the state to provide free and compulsory education for all children including differently abled children until they attain the age of 14Years. No child can be denied admission into any education institution maintained by the state or receiving aid out of state funds on the ground of religion, race, caste or language.⁴⁷

Art.46 contains welfare and promotion of educational and economic interest of schedule castes, schedule Tribes and other weaker section. Weaker section includes disabled so because without these protection, the welfare of

⁴⁴ Constitution of India, Article 41 states: “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”.

⁴⁵ AIR 2013 SC 3825.

⁴⁶ S.B. Sinha, ‘disability law vis-à-vis Human Rights’, Supreme Court Cases Journal, (2005), page 1

⁴⁷ Constitution of India, Article 45 state: “The State shall endeavour to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years. Art 45 was substituted by the 86th amendment of the constitution, 2002 on 12th December, 2002. The substituted Article is as follows: The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

disabled is just a dream. That means it prohibit discrimination on the basis of disability in the matter of public employment and in access too.⁴⁸

Art.47of the Constitution imposes on the government a primary duty to raise the level of nutrition and standard of living of its people and make improvement in public health particularly for disabled people.⁴⁹

Art. 51A(k) of the Constitution provides that who is a parent or guardian to provide opportunities for education of his child between the age of six and fourteen years including disabled child. ⁵⁰

The Constitutional perspectives and projections are not, by themselves, self-acting. Legislative implementations in fulfillment of those directives ask for affirmative action. Therefore, any legislation for disabled must suggest dramatic, even if disturbing proposals for adoption, may be on a phased basis. The frank fact is that the legal system in our democracy is closely retarded towards the retardates and disabled towards the disabled. We have to habilitate the law, sensitize law makers, lawyers and judges, and make society and state recognize the disabled as full persons, as rightful citizens, as equal partners in the process of development. They should not be left drift-wood to float pitifully in the street or be ignored out of existence.

Schedule VII of Indian Constitution and Rights of Disabled Persons

The State is under an obligation to discharge the duties imposed by the Constitution. In Indian federal set up the constitution provides for three list, the Union list, State list and Concurrent list.

⁴⁸The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

⁴⁹ The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

⁵⁰Article 51-A(k) of the Indian Constitution, added by the Constitution (Eighty-six Amendment) Act, 2002.

Union list	State list	Concurrent list
Entry 55	Entry 9	Entry 16
Entry 65(a)		Entry 23
Entry 69		Entry 24
		Entry 25

There are certain entries under these three list, which relate to the rights of disabled, directly or indirectly. The Union list requires the state to conduct census periodically. The census is very helpful to the authorities to understand the position of the persons with disability⁵¹ in context of education, economic status, employment.

Another entry no. 55 of the Union list requires the state to prevent disability by bringing in safety measures at dangerous work place.⁵²

The State is also required to include labour welfare practices at work place including provident funds, employer's liability, workmen's compensation⁵³, minimum wages and bonus. Again, the State is under obligation to make law for the betterment of labour including disabled labour engaged in manufacturing beedis and cigars. Entry IX list II in the seven schedule reads "relief of the disabled and unemployable". Combining the "disabled" with the "unemployable" and "relief" reveals the prevailing social attitude towards people with disability.⁵⁴ Entry 16 Concurrent List, lunacy and mental deficiency, including places for the reception or treatment of lunatic and mental deficient⁵⁵In order to bring certain level of economic stability in case of accidents, and to protect the rights of the person and their family by attempting to provide relief to the persons with disability.⁵⁶In addition to the treatment, on a broader canvas, both State and

⁵¹Entry 69 Union list deals with census.

⁵²Entry 55 Union list regulation of labour and safety in mines and oil fields is closely connected with and incidental to the main topics enumerated in entries 53 and 54, list 1.

⁵³Entry 24 concurrent list, welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation, old age pensions and maternity benefit.

⁵⁴Sathya Narayan, "A wornout Manifesto for the Disabled in India", in Liberty, Equality and Justice: Struggles for a New Social Order, Eastern Book Company (2003).

⁵⁵The Concurrent list prescribes the entries, where both State as well as Union has the obligation to perform. Under this list the lunatics and persons with mental deficiency has been mentioned.

⁵⁶Entry 65(a) Union list, Union agencies and institution for professional, vocational or technical training for disabled.

Centre are under the duty to provide social security⁵⁷. Although this provision is applicable to all the persons of India but same can be extended to fulfill the needs of the persons with disabilities. Another important provision that can fulfill the needs of the persons with disability regarding the provision of educational and vocational training.⁵⁸

Art 253 provides that Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. International agreement armed the Government of India with legislative power to enact the law even on subject in the State list.⁵⁹

Art.300(A) provides that no person owing property can be deprived of his/her property except by authority of law. Any unauthorized deprivation of property can be challenged by suit and for relief by way of damages.⁶⁰

Art 326 provides that every person including the differently able on attainment of 18 Years of age becomes eligible for inclusion of his/her name in the general electoral roll. This has been referred to as universal adult suffrage in the Constitutional language.⁶¹

⁵⁷ Entry 23, Concurrent list, 'social security and social insurance,' employment and unemployment. The term 'social security' broadly includes insurance against industrial accidents, sickness.

⁵⁸Entry 25, Concurrent list: Education including technical education, medical education and universities, subject to the provision of entries 63,64,65 and 66 of list 1; vocational and technical training of labour.

⁵⁹Article 253 of the Constitution of India says that "Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or Convention with any other country or countries or any decision made at any International conference, association or other body". Article 249 also empowers Parliament to legislate in the matter of State list if the council of State has declared by resolution supported by not less than two -thirds of the members present and voting that it is necessary in national interest. "Lunacy and mental deficiency comes under Entry 16 of the concurrent list, schedule VII of the Constitution. Therefore, the Mental Health Act,1987 is a valid enactment of the Parliament, and any State law will be invalid to the extent of its inconsistency with the central law under Article 254 of the constitution.

⁶⁰ Article 300 A of Indian Constitution states that No person shall be deprived of his property save by authority of law.

⁶¹ Article 326 of the Indian Constitution states: The elections to the house of the people and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on

In addition to the constitutional guarantees some other laws are also protected the right of Disabled persons. But the person can be disqualified on the ground of unsoundness of mind or mental disability. That means the persons with unsoundness of mind have no right to vote. This is really very regressive and derogatory. The most brutal and callous part is that relying on the provision under Article 326 of the Constitution, the Representation of people's Act 1950 disqualifies a person from being registered in an electoral roll if he/ she is of unsound mind.⁶² In the opinion of Kalpana Kannabiran⁶³, there is clearly discernible disjuncture between the treatment of persons with disabilities other than mental disability on the one hand, where the focus is on affirmative action, and persons with mental disability on the other, where protections and special measures tend to take the form of custody and negation ranging from mild to severe methods. The denial of suffrage to persons with mental disabilities under Article 326 of the Constitution is one specific example that betrays a basic inequality between legal protections provided.

Provisions for Disabled in Higher Education during the Five Year Plans in India

During the Ninth Five-year plan, UGC introduced Higher Education for Persons with Special Needs (HEPSN). The main object of this programme was to provide special education as well as infrastructure to disabled persons. The infrastructure includes designed of class rooms, laboratories and toilets in a way easily access to disabled students.

Again, the main objectives of the Higher Education for persons with Special Needs are to provide equal educational opportunities to disabled persons in higher education institutions. Further, the programme includes awareness among the functionaries of higher education about the specific educational needs

the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as voter at any such election.

⁶² Section 16(1)(b) of the Representation of people's Act 1950; this Act in fact goes further and under section 16(2) provides that the name of a person who becomes so disqualified after registration shall forthwith be struck off the electoral roll in which it is included.

⁶³ Kalpana Kannabiran, Monitoring the Human Rights of Persons with Disabilities: Laws Policies and Programs in India Disability Rights Promotion International, Canada (2009) page.5; the denial of suffrage to persons with mental disabilities under Article 326 of the Indian Constitution is discriminatory and against the very principle of equality before law mentioned in UNCRPD.

of persons with disabilities as well as establishment of special units for disabled students in Universities/Colleges. HEPSN also discussed about providing assistive equipment to augment educational services for disabled students.

During Tenth Five Year plan the Government of India came up with the provisions for students with disabilities in higher education through a unique scheme named Higher Education for Persons with Special Needs. The tenth five-year plan introduced incentives in the form of scholarship, both domestic and overseas to the students with disabilities.

The Eleventh Five Year plan has proposed various innovative schemes in the field of higher education for the welfare of disabled students. The main theme of the Eleventh Five Year plan was to provide barrier free environment to the disabled. For this purpose, eleventh five-year plan proposed for setting up a new National Institute of Universal design. A commitment has been given in parliament that higher education would be made disabled friendly by 2020. The Eleventh Five Year plan propose for setting up of an 'Equal Opportunity Cell' in all universities to bring all schemes relating to disabled under one umbrella for effective implementation.

The University Grant Commission has decided to grant one lakh rupee to University from General Development Assistance Scheme. The institutes will utilize the fund in providing access to the physically handicapped. It is the duty of University to provide Braille and talking books for the visually impaired and Sign language interpreters for hearing impaired students.

The Twelve Plan of UGC on Inclusion of Disabled in Higher Education:

UGC introduced three important programmes during XII plan period.

1. Teacher Preparation in Special Education.
2. Higher Education for Persons with Special Needs.
3. Special Equipment to Disabled.

- 1) The Teacher Preparation in Special Education means preparation of teacher for special education, so that they could teach children with disabilities in both special and inclusive modes.
- 2) Higher Education for Persons with Special Needs (HEPSN) scheme is specially design to create an environment in higher education institutions including Universities to upgrade learning experiences of differently able persons. Further, the programme includes constructing facilities, purchase of equipment to enrich learning improvement of accessibility and establishment of Enabling Units for disabled. For the purpose of improvement of mobility and independent functioning, the responsibility has been given to higher institutions to create special facilities such as ramps, rails, special toilets. For the purpose, the UGC will make a onetime grant of Rs. 10 lakhs per University.
- 3) Students suffering from disabilities require special aids and appliances for their daily functioning. For this purpose, various schemes have been introduced by Ministry of Social Justice and Empowerment. Apart of schemes of Ministry of Social Justice, the UGC will provide one time grant of Rs. 8 lakhs per university.

Other Statutory Provisions for Disabled Persons

Educational Law:

From ancient till now children with disability remained marginalized and excluded from the mainstream education and it still remains a significant concern.⁶⁴ Majority of the people have negative attitudes towards disability. This

⁶⁴ Global estimates for the number of children (0-14 years) living with disabilities range between 93 million and 150 million [World Health Organization (2011): *World Report on Disability* (Geneva: WHO) 205]; As per 2006 report of the UNESCO, of the 77 million children who are not in school at least 25 million of them have a disability [Inclusion International: "The Implication of the Convention on the Rights of Persons with Disabilities (CRPD) for *Education for All*" (London: Inclusion International) 3 <Available at: Inclusion international: http://ii.gmalik.com/pdfs/Implications_CRPD_dr2_X.pdf(accessed on 02 November, 2017)>]. Less than 10 percent of disabled children in Africa attend primary school [UNESCO (2007): *EFA Global Monitoring Report* (Paris: UNESCO) 74]; The proportion of disabled children receiving any from of education is as low as 1 – 3 percent in some developing countries [UN(2007): "From Exclusion to Equality: Realizing the Rights of Persons with Disabilities" <Available at: <http://www.un.org/disabilities/>

is one of the major stumbling blocs for the disabled.⁶⁵ Further, gender based discrimination of the disabled girl child bloc their path to education.⁶⁶ The right to education is not only Fundamental right but Fundamental duty of the persons which is envisaged in part – III of the Constitution of India and part – IV A of the Constitution respectively. Art. 29 of the Constitution guarantees the admission of every citizen into any educational institution maintained by state or receiving aid out of state funds irrespective of grounds of religion, race, caste, language, or any of them,⁶⁷ In India 86th Amendment⁶⁸ was passed in the year 2002, after the enactment of 86th amendment “The Right to Education” become fundamental right for all children of six to fourteen years under Article 21A. This is regarded as life line for disabled children as the Constitution directs the state to provide free and compulsory education for all children including the disabled up to the age of 14 Years for admission to college, university and professional courses. The disabled persons shall not be subjected to any kind of disentitlement if they are otherwise fit and eligible to pursue higher courses of study.⁶⁹ The Constitutional

documents/toolaction/ipuhb.pdf (accessed on 02nd Nov, 2017)>] Cited in Dr. Rumi Ahmed, ‘Rights of Persons With Disability In India’ White Falcon Publishing Page 229-230., (2015).

⁶⁵ Negative attitudes to disability can be found at all levels: parents, community members, schools and teachers, government officials and even disabled children themselves. Fear, taboo, shame, lack of knowledge, misinformation and socio-economic values about human life, respect and dignity all encourage negative attitudes towards disability. The impact of such attitudes is evident in the home, school, community and at the level of national policy-making in terms of planning, budgeting and programming. At the household level, disabled children and their families often develop low self-esteem, hiding away and shunning social interaction, which can lead directly to their exclusion from education [Save the Children (2002): *Schools for All: Including Disabled Children in Education* (London: Save the Children) 27]

⁶⁶ An per analysis of 51 countries data, 50.6% of males with disability have completed primary school, compared with 61.3% of males without disability. Females with disability report 41.7% primary school completion compared with 52.9% of females without disability [*World Report on Disability*, p.206]. In developing countries, it is estimated that literacy rates for disabled women are 1%, compared with about 3% for disabled people as a whole [UN General Assembly (19 February 2007): “The Right to Education of Persons with Disabilities: Report of the Special Rapporteur on the Right to Education”]; In case of India, the proportion of disabled females (age 5-18 years) enrolled in either ordinary or special schools were invariably lower than that of their male counterpart. Regarding reason for non-enrolment in special school, 32% identified disability itself as the main reason, another 15% were not aware of special schools and for another 14% parents were not interested [Central Statistics Office (2011): *Disability in India – A Statistical profile* (Central Statistics Office: Ministry of Statistics & Programme Implementation, Government of India) ; There is a higher rate of blindness among women in India: 54 per cent of blind people are women and 46 per cent are men. Yet there are fewer schools for blind and visually-impaired girls (Save the Children, p.34).

⁶⁷ Article 29(2) of the Indian Constitution states that: No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

⁶⁸ Article 21A was inserted in part III of Constitution.

⁶⁹ The Right of Children to free and Compulsory Education Act, 2009 popularly known as the Right to Education(RTE) Act came into force in India from 1 April 2010.

mandates of Article 21A guaranteeing the right to free primary education and Article 14 guaranteeing the right to equality, this seems that there would be a Constitutional mandates for inclusive education for disabled children. This presumption of inclusive education or integration is necessary to counter the historic myth by which segregation has connoted inferior status to disabled children, and secondly, such a presumption is necessary to put an onus on the state to rectify the educational environment. Such an onus puts the responsibility on the state to create the specific condition. On the other hand; Article 14 itself demands inclusive education, when general principles of equality applied.

Family Law:

The laws relating to marriage are uniform to disabled and non-disabled class. There is no bar in respect of a disabled person having relation with non-disabled person provided both are of marriageable age and do not suffer from mental illness⁷⁰. Sec. 5 of Hindu Marriage Act 1956 prescribes condition for marriage. Under this section some conditions are prescribed which permit and prohibit the marriages⁷¹. The Hindu Adoption and Maintenance Act 1956, the Guardian Wardship Act also do not prohibit disabled persons. Marriage has to be performed with free consent of two parties of the opposite sex. The rights and duties of disabled and non-disabled are governed by specific provisions contained in Hindu Marriage Act, the Christian Marriage Act, Parsi Marriage and Divorce Act⁷², the Special Marriage Act⁷³ and Divorce Act.

Succession Law:

The disabled persons are not deprived of succession or inheritance to property. The physical inability or physical deformity would not disentitle a person from inheriting ancestral property. In fact, the disabled person can also dispose of his property by writing a will provided he understands the importance and consequence of the will at the time of making the same. A will is valid if it is written by sound mind. Even a blind person or those who are deaf and dumb can

⁷⁰ Section 5(ii) of Hindu Marriage Act, 1956.

⁷¹ Section 5 of Hindu Marriage Act, 1956.

⁷² Section 13 of Divorce Act. Referred in C L Narayan, D Shikha, 'Indian Legal system and mental health), Indian J Psychiatry, (2013)

⁷³Section 4 (a) of the Special Act, 1954.

write the Will if they understand the contents of the same. A disabled person who is of sound mind are competent according to the subject matter of law and not declared incompetent by the court having jurisdiction over it is able to success his property. If a person who is not able to know the nature and consequence of the object, court appoint the guardian for his or her property to ensuring or for security of person. Personal law like Hindu law and Muslim law, Indian Succession Act, Christian Succession Act not deprived the disabled person from succession his or her property.

Labour law:

The labour laws are made to create a harmonious relation between employee and employer. The law applies uniformly to disabled and non-disabled. A worker or employer who meet with some accident during among the course of his employment can ask for such compensation provided in Workmen Compensation Act and are entitled for treatment under the Employees Insurance Act. The service rule of the government provides that employees who become disabled should be adjusted in post where his disability will not prevent him for rendering work.

Provision relating to persons with disabilities in labour law

The disabled person has been a matter of concern for society. With the passage of time, these people have attained a prestigious place in society. Numerous attempts have been made to improve their plight. These endeavors can be notice in various programmes and schemes which are being run all around. The condition of disabled person has improved through various enactments and law. Apart from constitutional provision, other legal measures which are oriented towards these persons, some of the important provisions have been laid down in Workmen's Compensation Act, 1923 and Employees State Insurance Act, 1948.

These Acts incorporate numerous provision which is directed toward taking care of disabled person and providing them opportunity to overcome those problems arising due to this sorry state of their affairs. Various provisions contained in this act for the benefit of disabled are given below in brief.

Significant Provision relating to “Disability” in the Workmen’s Compensation Act, 1923⁷⁴

The main object of the Workmen’s Compensation Act, 1923, is to protect and promote rights and interest of disabled persons during the course of employment. The Workmen’s Compensation Act, 1923 is a classic example of Compensatory Jurisprudence, because it imposes an obligation upon employers to pay compensation to workers for accident resulting into death or disablement in the course of employment. In this Act, there is a provision in the case of temporary as well as permanent disablement and also for partial or total disablement.

The Workmen’s compensation Act 1923 does not define the word “disablement”. It defines “partial disablement” and “total disablement”.

Partial disablement

The Act, defines partial disablement as “where the disablement is of temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time; provided that every injury specified in part II of Schedule I shall deemed to result in permanent partial disablement”.⁷⁵ Partial disablement further divided in two categories. (i) Permanent partial disablement, and (ii) Temporary partial disablement.⁷⁶ This distinction has been made in clause (ii) of section 4(1) (c).⁷⁷ In the case of disablement of a temporary nature, the loss of earning capacity, which is spoken of, is in any employment in which the workman has engaged at the time of the accident resulting in the disablement. In case of disablement of permanent nature the reduction of earning capacity is considered with regard to every employment in which the workman was capable

⁷⁴ The Act was passed in 1923 to redress the problem of labour. The Act makes the employer liable to pay Compensation for injury sustained by the Workmen due to accident arising out of and in the course of his employment.

⁷⁵ Section 2 (i) g of the Workmen’s Compensation Act, 1923.

⁷⁶ Bengal Chamber of Commerce vs Md Hussain, 1969 Lab IC 971 at 972.

⁷⁷ Clause (ii) of section 4 (1) (c) of the Workmen’s Compensation Act, 1923.

of undertaking at the time of the accident .Loss of earning capacity has to be determined by taking into account the diminution or destruction of physical capacity as disclosed by medical evidence.⁷⁸

Total Disablement

Section (2)(i) defines “total disablement” as Such disablement, whether of a temporary nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement.⁷⁹

Provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to 100 percent. If a carpenter’s left hand above elbow is amputated as a result of personal injury suffered in the course of employment. It is total disablement because a carpenter cannot work with one hand .⁸⁰

The aforesaid definition speaks of “incapacity for all work” and not “incapacity to work. The use of the proposition “for” instead of the word “of” makes it amply clear that it is incapacity to get employment which is relevant and not the physical incapacity to undertake any work. It is because of his apparent physical defects caused by an injury, no one will employ a workman, however, efficient he may be. In fact, he has lost the power to earn wages as if was paralyzed in every limb.⁸¹

Employer Liability for Compensation to Persons Disabled during Employment under The Workmen’s Compensation Act, 1923

Section 3 of the Workmen’s Compensation Act,1923, inter alia, provides for employer’s liability for compensation in case of personal injuries. The injury

⁷⁸ This has been held by the Bombay High Court in Sadashiv Krishna VS M/S Time trader-1992 ILLJ 877, (Bom). Also see Raghuraj Singh VS Eastern Railway (1967) Allahabad, LLJ 62, Lipton (India) Ltd VS Gokul Chandra Mondal (1982) LLJ 255.

⁷⁹ Section 2 (L) (i) of the Workmen’s compensation Act, 1923 as amended by Act, 64 of 1962.

⁸⁰Pratap Narain Singh Deo vs. Shrinivas AIR 1976 SC 232.

⁸¹S.C. Srivastava, “Rights of Persons Disabled during Employment in Indian Industries”, PP .51-67 in S.K. Verma & S.C. Srivastava (ed.), Rights of Persons with Dis abilities, Indian Law Institute, New Delhi, pp.53,(2002)

‘total’ or ‘partial’ disablement must exceed three days.⁸² Notice of the accident must have given to the employer after the occurrence of the accident.⁸³ If the notice is not given, no claim for compensation is entertained in the Act, Claim for compensation can be preferred before the commissioner within two years of the occurrence of the accident. However, the delay can be condoned if there is sufficient cause.⁸⁴ The employer shall not be liable:

- i. When the injury does not result in disablement for period exceeding 3 days.
- ii. When the injury no resulting in death, is due to any of the following reason.
 - a) The Workman was at the time of accident, under the influence of drink or drugs, or
 - b) The Workmen Willfully disobeyed an order expressly given or a rule expressly framed for the purpose of securing safety of workers, or
 - c) The workmen, willfully disregards or removes any safety guards or safety devices which he knew to have been provided for the safety of workmen.⁸⁵

The Workmen’s Compensation Act. Applies to all persons who are employed otherwise than for the purpose of the employer, trade or business who is-

- i. A railway servant as defined in [clause (34) of section 2 of the Railway Act, 1989 (24 of 1989)] not permanently in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or⁸⁶

(a) a master, seaman or other member of the crew of a ship,

⁸² Section 3(1) a of the Workmen’s Compensation Act, 1923.

⁸³ Section 10 of the Workmen’s Compensation Act, 1923.

⁸⁴ Section 10: Limitation Act, in such cases cannot be taken into a rigid rule.

⁸⁵ S.C Srivastava, “Rights of Persons Disabled During Employment In Indian Industries”, pp.51-67 in S.K.V ERMA AND S. C. Srivastava (ed), “Rights of Persons with Disabilities”, pp.55, (2002).

⁸⁶ Substituted by Act, 30 of 1995, Section 2 (1) n.

(b) a caption of other member of the crew of an aircraft,

a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle, a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, or motor vehicle or company, as the case may be, is registered in India; or Employed in any such capacity as is specified in Schedule II

The Central Government or State Government may add to Schedule II any class of persons employed in any occupation, which it is satisfied, is a hazardous occupation, and the provision of this Act shall there upon apply by the Central Government.

Compensation in case of permanent total disablement-

Where permanent total disablement results from the injury, the injury workmen shall be entitled to an amount equal to sixty percent of the monthly wages of the injured workmen multiplied by the relevant factor or an amount of ninety thousand rupees whichever is more. Under Explanation II where the monthly wages of a workmen exceeds four thousand rupees, his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be four thousand rupees only.⁸⁷

Compensation in case of permanent partial disablement

Permanent partial disablement may be caused either by injury specifically mentioned in Part II of Schedule I or injury not mentioned their in. Section 4 (1) (cc) Provides that⁸⁸

- i.* In the case of an injury not specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified there in as being the percentage of the loss of earning capacity by that injury, and

⁸⁷Explanation 1 to section 4(1)c, Workmen's Compensation Act, 1923.

⁸⁸ Section 4(1)(cc) of the Workmen's Compensation Act, 1923

- ii. In the case of an injury not mentioned in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner)⁸⁹ permanently caused by the injury. Where more injuries than one are caused by the same accident, the amount of compensation payable shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement has resulted from the injuries there to.

The percentage of the loss of earning capacity stated against the injuries in part II of schedule I is the minimum to be presumed and the applicant is entitled to prove that the loss of earning capacity was more than the minimum so prescribed⁹⁰. In case of injuries not mentioned in part II of schedule I and of the occupational diseases listed in schedule III, The commissioner has to decide the percentage of loss of the earning capacity and not about his physical capacity.⁹¹

Compensation in Temporary Disablement

Under Section 4(1) (d)⁹² in the case of temporary disablement, whether total or partial, results from the injury an injured workman is entitled to a half monthly payment of the sum equivalent to twenty five percent of monthly wages of the workman ,to be paid in accordance with the provision of subsection (2). The payment becomes due on the sixteenth day:

- i. From the date of the disablement where such disablement lasts for a period of twenty-eight days or more, or
- ii. After the expiry of a waiting period of three days from the date of the disablement where such disablement lasts for a period of less than twenty-eight days; and there after half-monthly during the disablement or during a period of five years, which ever period is shorter.

⁸⁹ Explanation II to section 4(1)c, Workmen's Compensation Act, 1923.

⁹⁰ Samir U Parikh vs. Sikander Zahiruddin, (1984) 2 LLJ 90 AT (Bom)

⁹¹ Agent East India Railway VS Maurice Celcial Ryan AIR 1937 Cal 526', Sarat Chatterjee and Co. vs. Md Khalid, 1979 Lab IC, 4019 (Cal)

⁹² Section 4 (1)(d) of the Workmen's Compensation Act, 1923

The above mentioned provisions are subject to fulfill two conditions: (I) all advance payment or allowance by way of compensation made by the employer to the workman are to be deducted from any lump sum or half-monthly payments⁹³ (II) the half-monthly payments shall not exceed half the amount of such wages which the payment or allowance which the workman is earning after the accident⁹⁴. However any payment or allowance, which the workman has received from the employer towards his medical treatment, shall not be deemed to be a payment or allowance proviso⁹⁵.

Section 4 (3)⁹⁶ provides that on the ceasing of disablement before the date on which any half month a sum proportionate to the duration of the disablement in that half month.

Relevant Provisions about disabled contained in the Employees State Insurance Act, 1948⁹⁷

The Employees State Insurance Act, 1948 like the Workmen's Compensation Act makes three classifications, namely;

- a) Permanent Partial disablement,
- b) Permanent total disablement and
- c) Temporary disablement

Permanent Partial Disablement

Section 2 (15 A)⁹⁸ of the Act defines permanent partial disablement to mean:

⁹³Provisio (a) to section 4 (2) of the Workmen's Compensation Act, 1923

⁹⁴Provisio (b) to section 4 (2) of Workmen's Compensation Act, 1923

⁹⁵Explanation to section 4 (2)

⁹⁶Section 4 (3) of workmen's Compensation Act, 1923

⁹⁷The Employees State Insurance Act, 1948 aims at bringing about social and economic justice to the weaker class including disabled.

⁹⁸Section 2 (15 A) of the Employees State Insurance Act

Such disablement of a permanent nature as reduces the earning capacity of an employee in every employment which he was capable of undertaking at the accident resulting in the disablement:

Provided that every injury specified in Part II of the Second Schedule shall be deemed to result in permanent partial disablement.⁹⁹

Permanent Total Disablement

Section 2 (15B)¹⁰⁰ of the Act defines permanent total disablement to mean:

Such disability of a permanent nature as incapacitates an employee for all work, which he was capable of performing at the time of the accident resulting in such disablement .¹⁰¹

Provided that the permanent total disablement shall be deemed to result from every injury specified in the Part I of the second Schedule or from any combination of injury specified in Part II there of where the aggregate percentage of the loss of earning capacity, as specified in the said Part II against those injuries, amounts to one hundred percent or more,”

Temporary Disablement

Section 2 (21)¹⁰² of the Act defines temporary disablement to mean:

A condition resulting from an employment injury which requires medical treatment and renders an employee, as a result of such injury, temporarily incapable of doing the work which he was doing prior to or at the time of injury.

⁹⁹ The “permanent partial disability” has further been defined to include incapacitating the performance of a persons work altogether in the case of Ramkrishna vs . Employee’s State Insurance Corporation(2001 A.c.j,51 Kerala 119)

¹⁰⁰ Section 2 (15 B) of the Employees State Insurance Act

¹⁰¹ In a landmark case named Kali Das vs. S.K. Mondal, the Calcutta High Court decided that loss of earning capacity is to be determined by taking into account the extent of physical capacity, AIR 1957 Cal 660

¹⁰² Section 2 (21) of the Employees State Insurance Act, 198

Disablement Benefit under The Employees State Insurance Act, 1948

An insured person is entitled to disablement benefit if he:

- a) Suffers employment injury and
- b) Such employment injury causes
 - i. Temporary disablement not less than three days (excluding the day of accident) or
 - ii. Permanent disablement whether total or partial; and
 - iii. Fulfills the other eligibility conditions specified in the Regulation of Employees State Insurance Act

The expression “employment injury” is defined in the Act as a “personal injury” caused to an employee, (i) by accident arising out and in the course of employment, (ii) by occupational disease existing act of and in the course of employment, being (iii) such employment is an insurable employment, (iv) it is immaterial whether the accident arising out of and in the course of employment occurs within or outside the territorial limit of India”.¹⁰³ Its meaning has been settled by a number of judgements on the issue.¹⁰⁴

Presumption as to accident arising in the course of Employment

The Phrase “arising out of and in the course of employment” has been given an extended meaning on the basis of certain presumptions provided in the Act. For the purpose of this an accident arising in the course of an insured person’s employment shall be presumed in the absence of evidence to the contrary, also to have arisen out of that employment.¹⁰⁵

¹⁰³ Section 51-A of the Employees State Insurance Act, 1948. Also see Smt. Runukabai Gedam VS Manager, Nagpur Times, 1984 Lab LC, 943.

¹⁰⁴ Trustees port of Bombay VS Yamuna Bai AIR 1952 Bom, Also see Jayaram Motor Service vs. Pitchammal AIR 1982 L.L.J326 (Mad)

¹⁰⁵ Section 51-B of the Employees State Insurance Act, 1948

Accident happening while acting Breach of Regulation.

An accident shall be deemed to arise out of and in the course of an insured person's employment notwithstanding that he is at the time of the accident was acting in contravention of the provisions of any law applicable to him or any orders given by or behalf of his employer or that he is acting without instruction from his employer, if –

- (a) The accident would have been deemed to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be, and
- (b) The act is done for the purpose of and in connection with the employer's trade or business.

Accident happening while travelling in Employer's Transport

An accident, happening while an insured person is, with the express or implied permission of his employer, traveling as a passenger by any vehicle to from his place of work, shall notwithstanding that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment, if-

- a) The accident would have been deemed so to have arisen had he been under such obligation; and
- b) At the time of accident, the vehicle.
 - i. Is being operated by or on behalf of his employer or some other person by whom it is provided in pursuance of arrangements made with his employer, and
 - ii. Is being operated in the ordinary course of public transport service.

In this Section “vehicle includes a vessel and an aircraft¹⁰⁶. The aforesaid presumptions are of great benefit to the insured persons and will save them from the rigorous burden of prove on the accident as an employment injury. The person

¹⁰⁶ Section 51-C of the Employees State Insurance Act, 1948

challenging have to rebut these presumptions. These presumptions are not available under Workmen's Compensation Act, 1923. ILO recommendations in 1964 suggests that 51-C should be adopted with modification that it is not necessary that the transport is provided by employer¹⁰⁷.

This Section, therefore, obviates the need for an examination of the question whether it is the duty of the employee to go to his workplace and return from there by any particular means of transport if the two conditions mentioned in clause (b) thereof are satisfied. This provision in the employees State Insurance Act is a beneficial one and obviously serve social justice

Accident happening while meeting emergency

An accident happening to an insured person in or about any premises at which he is for the time being employed for the purpose of his employer trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succor or protect persons who are, thought to be possibly injured or imperiled, or to avert or minimize serious damage to property.¹⁰⁸

Rate of Disablement Benefit

Unlike Workmen's State Insurance Act, 1923 the disablement benefits under the Employees State Insurance Act, 1948 are made by way of periodical payments at such rates and for such period and subject to such conditions may be prescribed by the central government. Further, a person who sustains temporary disablement for not less than three days (excluding the day of accident) is also entitled to periodical payment at prescribed rates and conditions. Moreover, the person who sustains permanent disablement whether total or partial shall be entitled to periodical payment subject to conditions prescribed by the Central Government.

¹⁰⁷Government of India, 62nd Report of the Law Commission of India, 1974, p. 56

¹⁰⁸Section 51-D of the Employees State Insurance Act, 1948.

Determination of question of Disablement

Section 54¹⁰⁹ lays down that the disablement question shall be determined by the Medical Board. The following are the disablement questions:

- a) Whether the relevant accident has resulted in permanent disablement; or
- b) Whether the extent of loss of earning capacity can be assessed provisionally or finally;
- c) Whether the assessment of the proportion of the loss of earning capacity is provisional or final; or
- d) In case of provisional assessment as to the period for which such assessment shall hold good.

Section 54-A¹¹⁰ provides that when a Medical Board makes a provisional assessment in respect of any disablement question it shall again be referred to the Medical Board not later than the end of the period for which the provisional assessment has been made. If the insured person or the corporation is dissatisfied with the decision of the Medical Board, the injured person or the Corporation may prefer an appeal to the Medical Appeal Tribunal with further rights of appeal to the employees State Insurance Court. The aggrieved party may also directly appeal to the Employees State Insurance Court.

Income Tax Law

The income tax Act, 1961: The Act makes provision for the deduction of some fixed amount while computing the total income of totally blind or physically handicapped resident persons.

A salaried or self-employed person or any other individual who is suffering from physical disability not less than 40% as specified under section 80

(u) can claim income tax deduction.¹¹¹ The tax payer will be covered under

¹⁰⁹Section 54 of the Employees State Insurance Act, 1948.

¹¹⁰Section 54-A of the Employees State Insurance Act, 1948.

¹¹¹Section 80 DD of Income tax Act, 1961, parent or relative upon whom the person with Disability is dependent is allowed deduction of rupees forty thousand for maintenance, which include mental treatment of person with Disability.

section 80 (u) of income tax act 1961 if he or she suffers 40% or more of one or more physical disability any of the following ;

- 1) Blindness
- 2) Low vision
- 3) Leprosy-cured
- 4) Hearing impairment
- 5) Locomotor disability
- 6) Mental retardation
- 7) Mental illness

Deductions are also allowed to persons making donations to registered trust and societies doing work for the handicapped.¹¹²

Quantum of tax deduction

A fixed tax deduction of Rs 75,000 is available for the tax payer with disability. A higher tax deduction of Rs 1,25,000 can be claimed under section 80 (u) if the tax payer has severe disability means having any of the above disability of 80% or above.¹¹³

Indian Contract Law

Indian Contract Act 1872 Section 11¹¹⁴ say that who are competent to contract – Every person is competent to contract who is of the age of majority according to the law which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

In this section the word “who is of sound mind and is not disqualified from contracting by any law to which he is subject” word clarify that the disqualified

¹¹²Section 80 G and 80 GGA of the Income tax Act, 1961.

¹¹³Section 80 (U) of the Income tax Act, 1961.

¹¹⁴ Section 11 of the Indian Contract Act, 1872 States that Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

from contract according to subject is that the person mentally and physically disabled who know the nature and consequences of contract are competent to it.

Sec. 12¹¹⁵ says that what is sound mind for the purpose of contracting.

A person is said to be of sound mind for the purpose of making a contract, if at the same time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of sound mind, but occasionally of unsound mind, may make a contract when he is of sound mind.

Meaning there by a temporarily mentally disabled person is also competent for contract at the time when he is of sound mind but a permanently mentally disabled persons is debarred from making contract.

Specific acts for disabled persons

In addition to Constitutional guarantees and Act, other legislation such as the Mental Health Act.1987, The Rehabilitation Council of India (RCI) Act 1992 and the National Trust for Welfare of persons with Autism, cerebral palsy, Mental Retardation and Multiple Disabilities Act 1999, have bearing on protection and development of person with disabilities. Because India is a signatory to the “Proclamation and Equality of people with Disabilities in the Asian and the Pacific Region” which was adopted at the meeting to launch the Asian and Pacific Decade of Person with Disabilities (PWDs) 1993-2003 convened by the Economic and Social Commission for Asian and Pacific at Beijing on 1st December 1992. To implement the Proclamation, the Person with Disabilities (Equal opportunities, Protection of Rights and full Participation) Act, 1995 was enacted with effect from 1st Jan. 1996.

¹¹⁵ A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Person with disabilities (Equal opportunities, protection of rights and full participation) Act, 1995¹¹⁶

In India, the “Person with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act 1995 was enacted pursuant to the aforesaid international obligations¹¹⁷. The Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is a combination of service oriented and right-based legislation.¹¹⁸

In so far as providing protection to the disabled/differently abled persons are concerned, the Indian Parliament has kept pace with the United States, where the Americans with Disabilities Act, 1990 was enacted and with the U.K. where the Disability Discrimination Act, 1995 was enacted.

The Persons with Disability Act simply requires the appropriate government to “endeavour”, “ensure”, and “promote” equality for the people with disabilities. The government is also expected to frame schemes for the rehabilitation of the of the disabled people. And above all the promised affirmative or equalizing measures are subject to the economic capacity and development of the Indian state.¹¹⁹

With the object of ensuring equal opportunities to the persons with disabilities and to protect their rights and to enable them to have full participation in life. The Person with Disabilities (Equal Opportunities of Rights and full Participation) Act, 1995 was passed by the Parliament and it received assent of the President of India on 1st January, 1996. This law is a significant step in the direction to ensure equal opportunities for people with disabilities and their full participation in the nation building. This Act contains 74 sections which have

¹¹⁶ Ministry of Social Justice and Empowerment passed, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, in 1995. It received the assent of the President on the 1st January, 1996 and was published as Act, No. 1 of 1996. Now the Act repealed by the Rights of Persons with Disabilities Act, 2016.

¹¹⁷ This Proclamation was adopted in the meeting to lunch the Asian and Pacific Decade of Disabled Person 1993-2002. Convened by the Economic and Social Commission for Asia and Pacific held at Beijing on 1st to 5th December 1992.

¹¹⁸ Rattan Singh and Mamta Mehmi, “Educational Rights of children with Special Abilities: some socio-legal policies and schemes” in Awadhesh Kumar Singh, Rights of Disabled: Perspective, Legal Protection and Issues, Serials Publication, New Delhi (2008).

¹¹⁹ Available at <http://www.Preserveartides.com/201101233658/complete-information-on-the-rights-of-a-disabled-person-in-India>. Html accessed on 5th August, 2017.

been grouped under 15 chapters. The Act provides for both preventive and promotional aspects of rehabilitation like education (Ss. 26 to 31),¹²⁰ employment, vocational training and reservation (Ss. 32 to 40),¹²¹ (Section 41),¹²² research and

¹²⁰ Section 26 of the PWD Act, provides the guarantee of the right to free education. Section 26 states “The appropriate Government and the local authorities shall

- ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;
- endeavour to promote the integration of students with disabilities in the normal schools;
- promote setting up of special school in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of country have access to such schools;
- endeavour to equip the special schools for children with disabilities with vocational training facilities.

Section 27 States “The appropriate Governments and the local authorities shall by notification make schemes for

- conduction part-time classes in respect of children with disabilities who having completed education up to class fifth and could not continue their studies on a whole-time basis;
- conducting special part-time classes for providing functional literacy for children in the age of group of sixteen and above;
- imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation;
- imparting education through open schools or open universities;
- conducting class and discussions through interactive electronic or other media;
- providing every child with disability free of cost special books and equipment’s needed for his education.

Section 28 states “The appropriate Government shall initiate or cause to be initiated research by official and non-governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

Section 29 states “The appropriate Government shall set up adequate member of teacher’s training institutions and assist the national institutes and other voluntary organizations to develop teacher’s training programmes specializing in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities.

Section 30 states “Without prejudice to the foregoing provisions, the appropriate Government shall by notification prepare a comprehensive education scheme which shall make provision for

- transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools;
- the removal of architectural barriers from schools, colleges or other institutions imparting vocational and professional training;
- the supply of books, uniforms and other materials to children with disabilities attending school;
- the grant of scholarship to students with disabilities;
- setting up of appropriate for a for the redressed of grievances of parents regarding the placement of their children with disabilities;
- suitable modification in the examination in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;
- restructuring of curriculum for the benefit of children with disabilities;
- restructuring the curriculum for the benefit of children with hearing impairment t o facilitate them to take only one language as part of their curriculum.

Section 31: All educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision.

¹²¹ Section 32: Appropriate Governments shall-

- Identify posts, in the establishments, which can be reserved for the persons with disability;

manpower development (Ss. 48 and 49), creation of barrier free environment (Ss. 44 to 47),¹²³ insurance scheme for disabled employees (S. 67),¹²⁴ Unemployment

-
- at periodical intervals not exceeding three years, review the list of posts identified and update the list taking into consideration the developments in technology.

Section 33: Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent shall be reserved for persons suffering from-

- blindness or low vision
- hearing impairment
- locomotor disability or cerebral palsy, in the posts identified for each disability Provided, that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

Section 35: Any person authorised by the special Employment Exchange in writing shall have access to any relevant record or document in the possession of any establishment and may enter at any reasonable time and premises where he believes such record or document to be, and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any information.

Section 36: Where in any recruitment year any vacancy under section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability: Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.

Section 37: Every employer shall maintain such record in relation to the person with disability employed in his establishment in such form and in such manner as may be prescribed by the appropriate government. Section 38 The appropriate Government and local authorities shall by notification formulate schemes for ensuring employment of persons with disabilities, and such schemes may provide:

- the training and welfare of persons with disabilities;
- the relaxation of upper age limit;
- regulating the employment.

Section 39 All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seats for persons with disabilities.

Section 40: The appropriate Governments and local authorities shall reserve not less than three per cent in all poverty alleviation schemes for the benefit of persons with disabilities.

¹²²Section 41: The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide incentives to employers both in public and private sectors to ensure that at least five per cent of their work force is composed of persons with disabilities.

¹²³Establishments in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to -

- adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to such persons;
- adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently.

Section 45: The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for-

- installation of auditory signals at red lights in the public roads for the benefit of persons with visual handicap
- causing curb cuts and slopes to be made in pavements for the easy access of wheel chair users
- engraving on the surface of the zebra crossing for the blind or for persons with low vision

allowance for the disabled (S. 68),¹²⁵ and establishment of home for persons with severe disability (S.56).¹²⁶ Therefore, literally speaking, this Act encompasses all the aspects of rehabilitation including prevention as well as social security issue. Under this Act, it is the legal right of person with disability to get rehabilitated and in achieving this objective it is the duty of the state (Government) to provide

-
- engraving on the edges of railway platforms for the blind or for persons with low vision
 - devising appropriate symbols of disability
 - warning signals at appropriate places.

Section 46: The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for-

- ramps in public building
- adaptation of toilets for wheel chair users
- Braille symbols and auditory signals in elevators or lifts
- Ramps in hospitals, primary health centres and other medical care and rehabilitation institutions.

Section 47: Non-discrimination in government employment-

- 1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a super-numeracy post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

- 2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate government may, having regard to the type of work carried on in any establishment, by notification and subject to such condition, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

¹²⁴ Section 67: The appropriate Government shall by notification frame an insurance scheme for the benefit of its employees with disabilities. (2) Notwithstanding anything contained in this section, the appropriate Government may instead of framing an insurance scheme frame an alternative security scheme for its employees with disabilities.

¹²⁵ Section 68: The appropriate Governments shall within the limits of their economic capacity and development shall by notification frame a scheme for payment of an unemployment allowance to persons with disabilities registered with the Special Employment Exchange for more than two years and who could not be placed in any gainful occupation.

¹²⁶ Section 56: (1) No establishment shall directly or indirectly discriminate against any person with disability in any matter relating to employment including but not limited to recruitment, promotion and other related issues arising in the course of or through the length of employment in any establishment; (2) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during service, such employee may if required by the nature of disability, be shifted to another post with the same pay scale and service benefits. Provided further that if it is not possible to adjust the employee against any post, then such employee may be kept on a supernumerary post until a suitable post is available or the age of superannuation whichever is earlier; (4) Every establishment shall facilitate reasonable accommodation of persons with disabilities by taking adequate measures to guarantee that persons with disabilities are not disadvantaged in any manner at any stage of employment; (5) Any person with disability, if eligible for any post which is sought to be filled, shall have the right to appear for selection and hold the post if selected; (6) An establishment shall not ordinarily post and transfer a person with disability in a place other than his or her native place or within the vicinity of such place unless such transfer becomes necessary due to exigencies of the job and expertise possessed by the person with disabilities; (7) The appropriate governments may frame such rules and regulation as may be necessary from time to time for the purposes of achieving the objectives outlined above; (8) Every establishment undertaking an exercise of retrenchment or declaring its staff surplus shall as far as possible not include persons with disabilities in such exercise or process. In the event of persons with disabilities being included in such exercise or process, enhanced benefits shall be payable to them.

barrier free environment which provides equal opportunity to their fullest potential.¹²⁷

The Act has created some positive changes such as creation of central co-ordination committee (S. 3)¹²⁸ and central executive committee (Sec. 9)¹²⁹ to serve as national focal point on disability matters to facilitate the continuous evolution of a comprehensive policy towards solving the problem faced by person with disabilities. It is the duty of the co-ordination committee to review and co-ordinate the activities of all the Department of Government and Non-Governmental Organizations which are dealing with matter relating to Person with Disabilities and to develop a national policy to address issue faced by person with disabilities also to advise the central government on the formulation of policies, programmes, legislation and projects with respect to disability. It has also been provided under Section 7¹³⁰ of the Act that the committee shall meet at least once in every six months. The central executive committee shall be the executive body of the central co-ordination committee and shall be responsible for carrying out the decision of the central co-ordination committee.¹³¹ The Central Executive Committee shall meet at least once in three months similarly at state level state co-ordination committee and state executive committee have been constituted for the effective implementation of legal rights created under this Act in favour of person with disabilities.¹³² These committee have also been empowered to take such other step to ensure barrier free environment in public places, work places, public utilities, schools and other institutions.

¹²⁷Balraj Chauhan, "Persons with Disability", quoted from Criminal Law and Criminology, by K.D. Gaur at 602.

¹²⁸ Consisting of the secretary, Ministry of Social Justice and Empowerment, Government of India, who is the chairperson of the committee; the Chief Commissioner, the Director-General for the Health Service, the Director-General of Employment and Training, six Joint Secretaries to Government, the Financial Advisor of the ministry of Finance, the Advisor of the railway Board, four state representatives (by rotation), one member representing the interests of the group, and five disabled persons (including women with disabilities).

¹²⁹ The executive Committee is responsible for carrying out the decisions of the Central Coordination Committee. It may also perform such functions as may be assigned to it by the Central Coordination Committee. It holds a meeting at least once every three months and observes procedural rules as may be prescribed by the central government. The Executive Committee may associate with such persons whose assistance and advice it may need to obtain in the performance of its functions.

¹³⁰ Section 7 of person with disabilities (Equal opportunities, protection of rights and full participation) Act, 1995.

¹³¹ Section 10.

¹³² Sections 13 and 19.

The Act provides provisions for the appointment of chief commissioner for person with disabilities and of Commissioner at state level.¹³³

Chief Commissioner may of his own or on the application of an aggrieved person look into the complaints with respect to deprivation of rights of person with disabilities.¹³⁴ Similarly, the Commissioner with in the state will look into the complains with the respect to matters relating to deprivation of rights of person with disabilities.¹³⁵

The Chief Commissioner shall for the purposes of discharging their function have the power of a civil court in respect of:¹³⁶

- a) Summoning and enforcing the attendance of witness,
- b) Requiring the discovery and production of any document,
- c) Requisitioning any public record or copy thereof from any court or office,
- d) Receiving evidence on affidavits, and,
- e) Issuing commissions for the examination witnesses or documents

It shall be the duty of the Chief Commissioner and commissioner to prepare annual report for each financial year giving a full account of his activities during previous financial year and forward a copy to the Central Government or State Government, respectively.¹³⁷

There are numerous disabilities friendly schemes envisaged under the Act which will be accomplished within the limits of economic capacity and development of the State. For example, measures to be taken by the government, for adaptation of rail compartments, buses, vessels, aircraft to make them

¹³³Section 57 and 60.

¹³⁴The Chief Commissioner of the center and Commissioners for persons with disabilities in the States are responsible for monitoring the implementation of the provision under the Act, and overseeing utilization of the budget allocated to each commissioner. The commissioners are authorized to take up complaints relating to deprivation of rights of the person with disabilities or regarding the non-implementation of laws, rules, administrative order etc., relating to persons with disabilities. Also cited in Dr. Rumi Ahmed 'Rights of Persons with Disability in India' White Falcon Publishing, Chandigarh, p. 258, (2005).

¹³⁵Section 62.

¹³⁶Section 63.

¹³⁷Section 64-65.

accessible to wheel chair users, handicapped people will be subject to economic capacity and development of the State.¹³⁸ Similarly, the ramps in public building, adoption of toilets to wheelchair users, Braille symbols and auditory signals in elevators and lifts, ramps in hospitals etc. Shall be subject to economic resources. The arguments of economic constraints will always be available with the government for denying reasonable accommodation to the people with disabilities.¹³⁹

The person with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 treats disability as a civil right rather than a health and welfare issue and recognizes the need to integrate person with disabilities with the mainstream of society by some normative action considering that even by conservative estimates the number of Persons with Disabilities in the country now increases over 90 million in 2011. The Act, defines seven broader categories of disabilities under section 2(i) of the Act. Let us now examine the seven disabilities as defined under the PWD Act-

- i. Blindness ¹⁴⁰
- ii. Low vision ¹⁴¹
- iii. Leprosy cured ¹⁴²
- iv. Hearing impairment ¹⁴³

¹³⁸Section 66-68.

¹³⁹Parmanand Singh, "Disability, Discrimination and Equality of Opportunities", JILI, Vol. 45 at 195 (2003).

¹⁴⁰Section 2(b): "blindness" refers to a condition where a person suffers from any of the following conditions, namely:-

- Total absence of sight; or
- Visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or
- Limitation of the field of vision subtending an angle of 20 degree or worse.

¹⁴¹ Section 2(u): "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device.

¹⁴² Section 2 (n) defines leprosy cured person means any person who has been cured of leprosy but is suffering from-

- Loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;
- Manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;
- Extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation "leprosy cured" shall be construed accordingly.

- v. Locomotor disability¹⁴⁴
- vi. Mental retardation ¹⁴⁵
- vii. Mental illness ¹⁴⁶

Further for operational and practical purposes, section 2 (t)¹⁴⁷ States that person with disability means a person suffering from not less than 40% of any disability as certified by a medical authority.

The definition of disability has now shifted throughout the world from medical problem to a social disability. The Indian Legislature has not yet accepted this change and disability as defined in Section 2 (i)¹⁴⁸ of the Act still accepts the problem only as a medical disability.

The Act intends to provide for the responsibility of the state towards the prevention and Early Detection,¹⁴⁹ Education,¹⁵⁰ Employment,¹⁵¹ Affirmative Action,¹⁵² Non-Discrimination,¹⁵³ Research and Manpower Development,¹⁵⁴ Recognition of Institutions for Persons with Disabilities, ¹⁵⁵ Institution for Persons with Severe Disabilities,¹⁵⁶ The Chief Commissioner and Commissioners

¹⁴³ Section 2 (l):- “hearing impairment” means loss of sixty decibels or more in the better ear in the conversational range of frequencies.

¹⁴⁴ Section 2 (o) :- “locomotor disability” means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy.

¹⁴⁵ Section 2(r) :- “ mental retardation” means a condition of arrested or incomplete development of mind of a person which is specially characterised by subnormality of intelligence.

¹⁴⁶ Section 2(q) :- “mental illness” means any mental disorder other than mental retardation.

¹⁴⁷ Section 2 (t) of the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

¹⁴⁸ Under Section 2(i) “disability” means –

- Blindness;
- Low vision;
- Leprosy- cured;
- Hearing impairment;
- Locomotor disability;
- Mental retardation;
- Mental illness.

¹⁴⁹ The fourth chapter deals with protection and Early detection of disabilities.

¹⁵⁰ Chapter five deals with Education of disabled.

¹⁵¹ Chapter six deals with Employment of Disabled.

¹⁵² Chapter seven deals with Affirmative Action for Betterment of Disabled.

¹⁵³ Chapter eight deals with non-discrimination.

¹⁵⁴ Chapter nine deals with Research and Manpower Development.

¹⁵⁵ Chapter ten deals with Recognition of Institutions for Persons with Disabilities.

¹⁵⁶ Chapter eleven deals with Institution for Persons with Severe Disabilities.

for Persons with Disabilities,¹⁵⁷ Social Security¹⁵⁸ of person with disabilities; to create a barrier free environment for persons with disabilities; to remove any discrimination against person with disabilities in the sharing of development benefits vis-à-vis nondisabled persons etc. It also established a simple expensive and speedy mechanism for the redress of grievances. For example in India State Commission have been set up and there also exists a National Commission for Persons with Disabilities in Delhi.¹⁵⁹

The observation made by the Hon'ble Supreme Court in *Consumer Education and Research Centre v. Union of India*,¹⁶⁰ are relevant and read as under:

“The Constitutional concern of social justice as an elastic continuous process is to accord Justice to all sections of the society providing facilities and opportunities to remove handicaps and disabilities with which the poor, etc. are Languishing and to secure dignity of their persons the Constitution, therefore, mandates the state to accord justice to all members of the society in all facets of human activity”

Since the enactment of Disability Act, the Court have been construing the act in a beneficial manner and several landmark judgements on the issue of disability have been rendered. The mandate of section 47 of the Act has been adequately expressed by Hon'ble Supreme Court in the judgment of *Kunal Singh vs. Union of India II*,¹⁶¹ as follows:

“Chapter VI of the Act deals with employment relating to person with disabilities, who are yet to secure employment Sec.47 which falls in Chapter VIII deals with an employee, who is already in service and acquires a disability during his service and acquires a disability during his service. It must be borne in mind that section 2 of the Act has given distinct and different definition of “disability” and “Person with Disability”. It is well settled that in the same enactment if two distinct definitions are given defining a word/expression they must be understood

¹⁵⁷ Chapter twelve deals with the appointment of the Chief Commissioner and Commissioners for Persons with Disabilities.

¹⁵⁸ Chapter thirteen deals with Social Security programmes for Disabled.

¹⁵⁹ S.B. Sinha, “Disability Law vis-à-vis Human Rights”, (2005) 3 SCC (J) at 4.

¹⁶⁰ (1995) 3 SCC 42.

¹⁶¹ (2003) 4 SCC 524.

accordingly in terms of the definitions. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee acquiring disability, if not protected would not suffer himself but possibly all those who depend on the very frame and content of Section 47 clearly indicate its mandatory nature. The very opening part of this Section reads “no establishment shall dispense with or reduce in rank an employee who require a disability during his service”. The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from Sub-section (2) of section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service”.

“The argument of the learned counsel for the respondent on the basis of the definition given in section 2(t) of the Act that benefit of Section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because the appellant was an employee, who has acquired “disability” within the meaning of Section 2(i) of the Act and not a person with disability”.

Section 33 provides¹⁶²

Every government shall appoint in every establishment such percentage or vacancies not less than three percent, for persons or class of person with disability of which one percent each for persons with blindness or low vision, hearing impairment and locomotor disability or cerebral palsy in the post identified for each disability. The State with in its economic capacity and development shall also provide incentive to employers both in public and private sectors to “ensure that at least five percent of their workforce is composed of persons with disabilities”.¹⁶³

Then, no promotion shall be denied to a person merely on the ground of disability and no disabled employee shall be remove or reduced in rank who acquired a disability during his or her service.¹⁶⁴

However, three percent reservation will cover only a microscopic minority among the disabled persons from the Well-to-do families who have acquired prior accomplishment due to congenial home environment. The reservation provision applies only to the identified jobs that account for one-third of all categories of jobs. Thus, in actual practice, three percent becomes one percent of the total vacancies. The Act does not cover employees in private sector. The position is gloomy even in educational field. As the disabled persons can hardly reach the level of higher education, the reservation of three percent in government and government aided educational institutions is of no avail.

Person suffering from HIV/AIDS also suffers from disability not included in the definition under the Act. In South Africa, the Constitutional Court in *Minister of Health v. Treatment Action Campaign*,¹⁶⁵ invoking the right of access to public health care services embodied in the South African Constitution held that the state was constitutionally obliged to take reasonable legislature and other

¹⁶²Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 provides for a reservation of 3 percent in the vacancies in identified posts (1 percent each for persons with blindness or low vision, hearing impairment, and locomotor disability or cerebral palsy) in Government establishments including the Public Sector Undertakings.

¹⁶³*Id.* –S. 41.

¹⁶⁴*Puskar Singh v. University of Delhi*, DLT 90 (2001).

¹⁶⁵12 BHRC 1.

measures with in its available resources to achieve the progressive realization of such a right. People were therefore entitled to use of Nevirepine – a potentially lifesaving drug that reduced the risk of mother to child transmission of HIV.

In *Bragdon v. Addott*,¹⁶⁶ the United State Supreme Court construed asymptomatic HIV infection as a disability if it affected the major life activity of reproduction.

Fortunately, similar access to health care for the PWDs in India can be provided under Art. 21 – the fundamental right to life of the Constitution. In *M.C. Mehta v. Union of India*,¹⁶⁷ the Supreme Court observed that the right to life under Art. 21 also encompassed the ‘right to good health’. The court therefore has a ready precenent to provide PWDs recourse in case they are prevented in any manner from accessing health and medical care services owing to their disability.

Section 72¹⁶⁸ of the Act is instructive and reads as follows:

“Act to be in addition to and not in derogation of any other law. The provisions of this Act, or rules made there under shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or instructions issued there under, enacted or issued for the benefit of persons with disabilities.”

The enactment of Persons with Disabilities, Equal Opportunities and Protection of Right Acts of 1995 is landmark legislation and an expression of India’s commitment to social justice.

The Person with Disabilities Act of 1995 promises ‘equal opportunities’ and ‘protection of rights’ to the disabled but it fails to protect the rights and interest of disabled.¹⁶⁹ The Act provides the “incentive policy” for private sector

¹⁶⁶141 L. Ed. 2d 524.

¹⁶⁷(1994) 6 SCC 9.

¹⁶⁸Section 72 States that The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons with disabilities.

¹⁶⁹Section 47 of the Act talks about non-discrimination only in the case of government employment and that too mainly to address the discrimination faced by persons acquiring disability during service.

but the incentive policy has not been worked out ¹⁷⁰despite the provisions enshrined in the Act for barrier free environment in the building, lifts and other places, the architects and builders have paid scant regard for making reasonable accommodation for disabled persons. The buildings, rail compartments, buses, vessels public toilets are not accessible to wheel chair users. The road crossing, Zebra crossings etc. do not have audio signals to inform the hearing and visually impaired person. The transfer system is not at all disabled friendly. A disabled person is still being considered to be an object of pity and charity. Paucity of funds remains the standard answer for inaction of the authorities in implementing the provisions of the Act.

Indian disability law does not offer any hope of constituting a shift from charity and welfarism to civil rights and social integration of people with disabilities. The Act suffers from some major flaws. The Act fails to realized the wide range life experiences and physical and mental states.¹⁷¹The Act provides for employment to only three categories, viz., blind or low vision, hearing impairment and locomotor disability or cerebral palsy but fails to provide employment to mental illness or mental disability. The Act mentions about identification of job's that can be reserved for persons with disabilities , and this remains a major flaws¹⁷².The implementation process of different provisions of PWD Act ,are very

¹⁷⁰ A scheme of incentives to employers in the private sector for providing employment to persons with disabilities has been launched with effect from 1st April 2008. Under the Scheme, called "Scheme of Incentives to Employers in the Private Sector for Providing Employment to Persons with disabilities", the Government of India provides the employer's contribution for Employees Provident Fund (EPF) and Employees State Insurance (ESI) for 3 years, for employees with disabilities employed in the private sector on or after 01/04/2008, with a monthly salary up to Rs. 25000. The interpretation of the PWD Act by the Bombay High Court in the case of Shree Satish Prabhakar Padya and others vs. Dalco Engineering Private Ltd, found that non-discrimination in employment would also extend to the private sector since the term 'establishment' in section 2(k) has been defined in such a manner that it would cover private establishments as well. However, the Supreme Court later reversed this decision, in the case of Dalco Engineering Private Ltd, VS Shree Satish Prabhakar Padhye [Civil Appeal No.1886 of 2007], and held that the PWD Act would not be applicable to private establishment[Cited in Jayana Kothari, The Future of Disability Law in India, Oxford University Press, New Delhi,p.95 (2012).

¹⁷¹Jayana Kothari, "The UN Convention on Rights of Persons With Disability: An Engine for Law Reform in India" XLV, Economic and Political Weekly, p.70 (2010).

¹⁷²In view of the difficulties arising out of the non-identification of job's and non-compliance of the provision of the Section 32 of the Act, the Supreme Court in a landmark judgement in the case of Government of India VS Ravi Prakash Gupta [7 SCC 626 (2010)] held that identification of posts was nota mandatory for reservation to be done.

slow.¹⁷³ Majority of the provisions inserted in the Act in support of persons with disabilities fails to get the desired result due to limits of economic capacity.¹⁷⁴ Unlike German, American and United Kingdoms, it does not cover employment in private sector. There is no enforcement of the right of the disabled person through any disability tribunal or special disability court to provide relief to individual against disability discrimination. There is no provision in the Act for imposing sanctions or fine for non-compliance of the provision of the Act. It is not mandatory for the government to remove structural and environmental barriers for the integration of the disabled person. The definition of disability is still based on medical approach¹⁷⁵ out rightly rejected by UNSR (United Nations Standard Rule).

The Persons with Disabilities Act of 1995 provides the legal basis of the rights based inclusive society where in the central and state governments are required to play a lead role in making the rights meaningful. In conclusion we can say that Act has not been enacted with a strong anti-discrimination and human rights concern.¹⁷⁶ It is merely a social welfare legislation and is not enough to guarantee people with disabilities equal rights for participation in society as fully equal citizens.¹⁷⁷ There for, we can say that Act has failed to insert any general provision on equality and non-discrimination.¹⁷⁸

Apart from the person with Disabilities Act there are other legislations, which provides for rehabilitation of the person with disabilities. They are Mental Health Act, 1987, Rehabilitation Council of India Act, 1992 and the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

¹⁷³ Despite being on the statute book for more than 16 years, the Act is still not understood well by lawyers, judges, academics, students, and the civil society groups. [Jayana Kothari, *The Future of Disability Law in India*], xvii, Oxford University Press, New Delhi (2012).

¹⁷⁴ The issue of economic capacity was in fact raised in the case of Javed Abidi VS Union of India and others.

¹⁷⁵ Anuradha Mohit, Meera Pillai and Pratiti Rungta, *Rights of the Disabled*, National Human Rights Commission, New Delhi, p.10, (2006).

¹⁷⁶ Jayana Kothari, "The UN Convention on Rights of Persons with Disabilities: An Engine for Law Reform in India", XLV, *Economic and Political Weekly* (2010).

¹⁷⁷ Id.

¹⁷⁸ Chapter VIII of the Act focus on non-discrimination; but it only speaks about nondiscrimination in transport and employment.

The Mental Health Act, 1987¹⁷⁹

Before the enactment of Mental Health Act, 1987 the treatment and care of mentally retarded and mentally ill persons was regulated by the Lunacy Act, 1912. The Act was very harsh. It allowed that any person deemed of unsound mind could be put in asylum by a magistrate. However, with the changing attitude of the society and the advancement of medical science, it was realized that like other diseases mental illness are curable when diagnosed at an early stage. In order to replaced all the barriers of Indian Lunacy Act, Mental Health Act, 1987, was passed.

This Act was enacted to regulate admission to psychiatric hospitals or psychiatric nursing homes of mentally ill-persons who do not have sufficient understanding to seek treatment on a voluntary¹⁸⁰ basis, and to protect the rights of such persons while being detained, to protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others to protect citizens from being detained in psychiatric hospital or psychiatric nursing homes without sufficient cause, to regulate responsibility for maintenance changes of mentally ill persons who are admitted to psychiatric hospital or psychiatric nursing homes, to provide facilities for establishing guardianship or custody of mentally ill persons who are incapable of managing their own affairs to provide for the establishment of central authority and state authorities for mental health service to regulate the powers of the government for establishing, licensing and controlling psychiatric nursing homes for mentally ill persons and to promote for legal aid to mentally ill person at state expense in certain cases.¹⁸¹

The attitude of the society towards persons affected with mental illness has changed considerably and it is now realized that no stigma should be attached to such illness, as it is curable, particularly, when diagnosed at an early stage, thus the mentally ill person is to be treated like any other sick persons and the

¹⁷⁹The Lunatic Asylums Act, 1858 was the first enactment that government governing persons with mental disabilities. This Act was replaced by Indian Lunacy Act, 1912. It was in force for three decades after independence. Then the mental Health Act, 1987 came into force in April 1993. The Mental Health Act is a Civil rights legislation that focuses on regulating standards in mental health institutions. Available at WWW.disabilityindia.org accessed on 18/11/2017.

¹⁸⁰Amita Dhanda, Legal order and Mental disorder, Sage Publication, page 61, (2000).

¹⁸¹Pratima Murthy, "The Mental Health Act 1987: Quo Vadimus Indian Journal of Medical Ethics, page 152, (Sep 2010).

environment around them should be made as normal as possible. This Act is to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make the better provisions with respect to their property and affairs and for matters connected there with or incidental there.

Conclusion:- The Mental Health Act cannot be considered as a legislation because it fails to provide mechanism against disability based discrimination.¹⁸² It failed to address the issues of legal capacity and rights of persons with mental disabilities. Further, it failed to redress the rehabilitation issue.

The Mental Health Care Bill, 2013

Government of India signed United Nations Conventions on the Rights of Persons with Disabilities in September, 2007 and the Parliament of India rectified it in May, 2008. After rectifying the UNCRPD, it became necessary for the Government of India to amend all the disabilities laws in the country to make them compliant to the UNCRPD. Accordingly, the Ministry of Health and Family Welfare initiated the process of amendment of the MHA, 1987. Mental Health Care Bill introduced in Rajya Sabha in August, 2013. The Parliamentary Standing Committee on Health Related Matters submitted its report with suggestions of some minor changes in November, 2013. From November, 2013 till now the Mental Health Care Bill, 2013 is now waiting for approval.

The Bill ensures good Quality mental health services to every person without discrimination. It is the responsibility of the Government to provide sufficient Quantity of Psychiatrists. The Bill also instructed to provide for a range of services required by persons of mental illness and to ensure the availability of psychiatrists. It is the duty of the Government to ensure that no persons shall have to travel long distances to access mental health care. It is the duty of the Government to provide variety of health services in all the general hospitals run or funded by the Government.

The Mental Health Care Bill assigned duties to the Government to address human resources requirement of mental health services within a period of ten

¹⁸²Jayana Kothari, *The Future of Disability Law in India*, Oxford University Press, New Delhi at 46 (2012).

years. Every medical officers in public health units are to be trained to provide basic and emergency mental health care. In this Bill, proper attention has been given to the human rights of, PMI. They have the right to live with their family and not segregated from society. The Bill provides right to live with dignity. The Bill further provides right to equality and protection from in human and degrading treatment person with mental illness or their nominated representatives have been ensured the right to information regarding their admission, nature of illness and treatment plan. They have the right to access their medical records. Under this Act, the Government is bound to provide care, treatment and rehabilitation of such persons. In this Bill, there is provision of emergency admission on any bed in the country up to a period of 72 hours.

But Bill has certain limitations, under this Bill. Electro-Convulsive Therapy is a very useful method of treatment in acute and chronic psychotic condition. But unmodified ECT has been prohibited in the Bill. That means ECT is not available at place, where anaesthetic support is not available. The provision of nominated representatives and advance directives has put limitation on the role of the families. The Bill shifts mental health care decision in the hands of non-experts. Mental Health Review Board, comprise of six members out of which only one is a Psychiatrist and Mental Health Authorities, comprise of more than 14 members, only two or three persons are Psychiatrists.

Mental Health Bill, 2016

In order to fulfill the demands, put forward by UNCRPWD, Government of India introduced Mental Health Care Bill, 2016, in Rajya Sabha. Now the Bill is pending in Lok Sabha. The Mental Health Care Bill, 2016, is moderate and rights based in nature. The new Bill includes several positives developments. The new Bill declares attempted suicide as decriminalize and the person shall not be tried and punished. The new Bill is patient centric because ample attention has been given on rights of persons with mental illness. In this Bill right to access MHC and treatment at low cost has been given to person with mental illness, their family members and care givers. Now the appropriate Government will make such provisions for range of services including outpatient and inpatient services, shattered accommodation, supported accommodation, hospital and community

based rehabilitation, free cost of medicines, and old age mental health. The person suffering from mental illness have the right to protection from cruel, inhuman and degrading treatment. In this Bill provision of medical insurance has been introduced. Mental health insurance has remained a neglected area for long. Mental health insurance scheme will have significant impact for the persons with mental illness, family and caregivers. The how Bill is crystal clear in context of duties of appropriate Government. This will make the Government responsible to plan, design and implement programs for promotion of mental health.

But the Bill on the other hand, does not take into account of family members, caregivers, burden, isolation, frustration and violence. The Bill is silent on the role and contribution of family members in providing care. In this Bill punishments are too harsh and there is no provision to prove that negligence is accidental or due to practical difficulties. This harsh provision can give rise to a defensive practice and tendency to a void care of such patients. The Bill is silent and does not instruct the State to allocate budget for proper functioning of State or district boards.

Rehabilitation Council of India Act, 1992¹⁸³

The Rehabilitation Council of India Act was passed by Parliament in 1992 and it came into force in 1993. This is an Act to provide for the constitution of the Rehabilitation Council of India for:

1. Regulating the training of rehabilitation professionals, and
2. Maintenance of a Central Rehabilitation Register

The Act is divided into three chapters. The second chapter deals with the Constitution of the Rehabilitation Council and related matters,¹⁸⁴ while first chapter gives definitions of the terms used in the Act.¹⁸⁵ It is important to note

¹⁸³A Rehabilitation Council of India was set up the Government of India in 1986, initially as a society to regulate and standardize training policies and programmes in the field of rehabilitation of persons with disabilities. The 1992 Act of the parliament enhanced the status of the Council to a statutory body [Anuradha Mohit, Meera Pillai and PratitiRungta, Rights of the Disabled, 24 (National Human Rights Commission: New Delhi, 2006)]

¹⁸⁴ Chapter II: Contains Constitution and incorporation of Rehabilitation council of India. Section 3 to 10 of RCI deals with it.

¹⁸⁵Chapter I: contains short title, extent and definition. Section 1 and 2 of RCI deals with it.

that the Act defines and uses the term ‘handicapped’ rather than ‘disability’, chapter III of the Act lays down the functions of the Rehabilitation Council of India.

Chapter III of the Act lays down the functions of the Rehabilitation Council of India. The functions of the Council are two fold –(a) regulation of the training of rehabilitation professionals and (b) registration of professional with the Council.¹⁸⁶

Under Rehabilitation Council of India Act, handicapped means: (I) visually handicapped (II) hearing handicapped (III) suffering from locomotore disability; or (IV) suffering from mental retardation.¹⁸⁷ Under the RCI Act “Hearing handicapped” means deafness with hearing impairment of seventy decibels and above, in the better or total loss of hearing in both ears.¹⁸⁸ “Locomotor disability” means the person’s inability to execute different activities associated with moving and such inability resulting from affliction of either bones, joints, muscles or nerves.¹⁸⁹ “Mental retardation” means a condition of arrested or incomplete development of mind of a person who is specially characterized by sub-normality of intelligence.¹⁹⁰ “Visually handicapped” means a person who suffers from any of the following conditions, namely: (a) total absence of sight; (b) visual acuity not exceeding 6/60 or 20/20 in the better eye with the correcting lenses; or (c) limitation of the field of vision subtending and angle of degree or worse.¹⁹¹

As this Act attempts to cover all levels of service providers in both urban and rural areas, across the length and breadth of the country which is not practicable. It tends to violate the right of persons with disability being in contravention with specific clauses of the persons with disabilities Act:

The Council recognizes qualifications granted by any university or any institution in India as qualifications for rehabilitation professionals. The Council has also power to recognize qualification granted by institutions outside India.

¹⁸⁶ Chapter III: contains Functions of the Council. Section 11 to 30 of RCI deals with it.

¹⁸⁷Section 2(c) of the RCI Act.

¹⁸⁸Section 2(d) of the RCI Act

¹⁸⁹Section 2(e) of the RCI Act.

¹⁹⁰Section 2(h) of the RCI Act

¹⁹¹Section 2 (o) of the RCI Act

The council may prescribe the minimum standards of education required for granting recognized rehabilitation qualifications by universities or institutions in India.

The Act also provides registration of rehabilitation professionals. One those people who are registered are allowed to engage in the area of rehabilitation of the handicapped persons. Name of registered person may be removed from the Register to be maintained under section 23¹⁹² on the grounds of professional misconduct.

Registration of Professionals

Only those rehabilitation professionals could register who underwent a course run under the auspices of the Rehabilitation Council of India Person not registered with the council were expressly barred from functioning as rehabilitation professionals¹⁹³. The Rehabilitation Council of India in its effort to churn out rehabilitation professionals have set minimum standards of education training and experience¹⁹⁴. But professionals who are in the field for more than 20 years but do not possess the minimum qualifications are not being registered with a denial of opportunity to work for rehabilitation of persons with disabilities. Fortunately, this issue has now received the attention of the Council and Bridge Courses and other mechanisms are being need to enable such persons to get registered.¹⁹⁵

The Rehabilitation Council of India Act, 1992 requires special educators to be registered with the Act but teachers in the normal schools are required to be registered under the National Council of Teacher Education (NCTE) Act. It, therefore, means that children with disability could not be taught by regular teachers in normal schools because these teachers are not registered with the NCTE. This works against the interest of 'Inclusive education' which could come to a stop.

¹⁹² Section 23 of the RCI Act

¹⁹³ Section 13(2) of the RCI Act, 1992

¹⁹⁴ Section 13(1) of the RCI Act, 1992

¹⁹⁵ The Bridge course, according to the scheme, floated by the council was aimed to give a onetime opportunity to all those who had been serving people with disabilities to acquire the eligibility to register themselves with the council by taking up a bridge course of one-month duration.

As of today, Rehabilitation Council of India is duplicating services and has not established linkages with the existing educational infrastructure in India. For example, the National Council of Teacher Education Act, the AICTE Act, Councils for other para-medical courses with the help of Universities could do the same work related to standardization of training and registration of professionals.

It is humbly submitted the role of the Rehabilitation Council of India should be changed. It could be a networking and liaising body, liaising and networking with the concerned Ministry including the Human Rights Department, Ministry and Department of Education. It should not be a training body. Alternatives to Central Registry should be worked out at the State and District levels. Special Educators should be allowed to register with the Department of Education, Ministry of Human Rights and other professionals with their respective parent bodies.

Section 13 (3)¹⁹⁶ related to punitive action against non-registered professionals should be removed.

It stipulates: “Any person who acts in contravention of any provision of subsection (2) shall be punished with imprisonment for one year or with fine which may extend to one thousand rupees or with both.

The National Trust for Persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disability Act, 1999¹⁹⁷

The National Trust for Person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act 1999 was enacted by the Parliament in December 1999. The Trust Act has a very progressive objective, namely to enable persons with disability to live as independently and as fully as possible within and close to the community to which they belong. The idea is not to push people out of the society and keep them in residential institutions such as what has happened in West, but it encourages them to live with their family.

¹⁹⁶ Section 13 (3) of the Rehabilitation Council of India Act

¹⁹⁷ The National Trust for the welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, got the assent of the President on the 30th December 1999. An Act to provide for the Constitution of a body at the National level for the welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities and for matters connected therewith or incidental thereto.

The next objective is to evolve procedures for appointment of guardians and trustees for persons with disability requiring such protection.

The National Trust Act is divided into nine Chapters: Chapter I (preliminary),¹⁹⁸ Chapter II (The National Trust),¹⁹⁹ Chapter III (Objects of the Trust),²⁰⁰ Chapter IV (Powers and Duties),²⁰¹ Chapter V (Procedure For Registration),²⁰² Chapter VI (Local level Committee),²⁰³ Chapter VII (Accountability and Monitoring),²⁰⁴ Chapter VIII (Finance, Accounts and Audit)²⁰⁵ and Chapter IX (Miscellaneous).²⁰⁶ This is not the occasion to examine all the provisions of the Act in detail here and therefore only the salient features of the Act will be highlighted here.

Section 3²⁰⁷ of the Act provides for the creation of National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability. The head office of the Trust shall be at New Delhi and the Board may, with the previous approval of the central government, establish offices at other places in India. The Act also provides for the constitution of Board which will exercise all powers and to all acts and things which may be exercised or done by the Trust. The Board is responsible for the general superintendence, direction and management of the affairs and business of the Trust. The Board shall consist of a

¹⁹⁸Chapter I contains short title, extent and definition. Section 1 and 2 deals with it.

¹⁹⁹Chapter II contains Constitution of the National Trust having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued. Article 3 to 9 deals with it.

²⁰⁰Chapter III contains objects of the trust. The objects of the trust shall be to enable and empower persons with disability to live as independently and as fully as possible within and as close to the community, to strengthen facilities to provide support to persons with disability to live within their own families. The objects has been mentioned under section 10 (a) to 10 (h).

²⁰¹Chapter IV contains Power and Duties of the Board. The Board shall receive from the central Government a one-time contribution of rupees one hundred crores for a corpus, receive bequests of movable property from any person for the benefit of the persons with disability. The powers and duties has been mentioned under section 11 (1) to (11) 3.

²⁰²Chapter V contains Procedure and Registration. Section 12 (1) says any association of person with disability, or any association of parents of persons with disability or a voluntary organisation whose main object is promotion of welfare of persons with disability may make an application for registration to the Board.

²⁰³Chapter VI contains Constitution of Local Level committee section 13 (2) says that a local level committee shall consist of an officer of the civil service of the union or of the state, not below the rank of a district. Magistrate or District commissioner of a district.

²⁰⁴Chapter VII contains Accountability and Monitoring. Section 18 (3), 19 and 20 deals with it.

²⁰⁵Chapter VIII contains Finance, Accounts and Audit. Section 21 to 27 deals with it.

²⁰⁶Chapter IX contains Miscellaneous. Section 28 to 36 deals with it.

²⁰⁷Section 3 of The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999.

chairperson and members who are to be appointed by the central government for a term of three years from the date of their appointment or until there in successor shall have been duly appointed whichever is longer.

The objects of the Trust are as follows-

- a) To enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong;
- b) To strengthen facilities to provide support to persons with disability to live within their own families;
- c) To extend support to registered of organizations to provide need based services during the period of crisis in the family of persons with disability;
- d) To deal with problem of persons with disability who do not have family support;
- e) To promote measures for the care and protection of persons with disability in the event of death of their parent or guardian;
- f) To evolve procedure for the appointment of guardians and trustees for persons with disability requiring such protection;
- g) To facilitate the realization of equal opportunities, protection of rights and full participation of persons with disabilities; and
- h) To do any other Act which is incidental to the aforesaid objects.

Section 11²⁰⁸ of the Act lays down the power and duties of the Board. It runs follows:

- (1) The Board shall-

²⁰⁸ Section 11 of The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999

- a) Receive from the Central Government a onetime contribution of rupees one hundred crores for a corpus, the income shall be utilized to provide for adequate standard of living for persons with disability;
- b) Receive bequest of movable property from any person for the benefit of the persons with the disability in general and for furtherance of the objectives of the Trust in particular;

Provided that it shall be obligatory on the part of the Board to make arrangement for adequate standard of living for the beneficiary named in the bequest, if any, and utilize the property bequeathed for any other purpose for which the bequest has been made;

Provided further that the Board shall not be under any obligation to utilize the entire amount mentioned in the bequest for the exclusive benefit of the persons with disability named as beneficiary in the bequest;

- c) Receive from the Central Government such sums as may be considered necessary in each financial year assistance to registered organizations for carrying out any approved programme.
- (2) For the purpose of sub-section (1), the expression 'approved programmes' means-
- a) Any programme which promotes independent living in the community for persons with disability by-
 - i. Creating a conducive environment in the community;
 - ii. Counseling and training of family members of persons with disability;
 - iii. Setting up of adult training units, individual and group homes;
 - b) Any programme which promotes respite care, foster family care or day care service for persons with disability;
 - c) Setting up of residential hostels and residential homes for persons with disability;

- d) Development of self-help groups of persons with disability to pursue the realization of their rights;
 - e) Setting up of local level committee to grant approval for guardianship; and
 - f) Such other programmes which promote the objectives of the Trust.
- (3) While utilizing funds for the purposes of clause © of sub-section (2) preference shall be given to women with disability and to senior citizens with disability.

Explanation- For the purposes of this – sub-section, the expression,

- (a) “persons with severe disability” shall have the same meaning as is assigned to it under sub-section (4) of section 56²⁰⁹ of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;
- (b) “section citizen” means persons who is above the age of sixty-five years or more.

Section 12²¹⁰ of the Act sets forth the procedure for registration of any association of parents of persons with disability or voluntary organization whose main object is promotion of welfare of persons with disability.

Section 13²¹¹ provides for the establishment of local level committees. Section 14²¹² provides for the appointment of guardians. A parent of a person with

²⁰⁹Sub- section 4 of section 56 states “person with severe disability “mean a person with eighty per cent or more of one or more disabilities.

²¹⁰ Section 12(1) Any association of persons with disability, or any association of parents of persons with disability or a voluntary organisation whose main object is promotion of persons with disability may make an application for registration to the board

12(2) An application for registration shall be made in such form and manner and at such place as the board may by regulation provide and shall contain such particulars and accompanied with such documents and such fees as may be provided in the regulations.

12(3) On receipt of application for registration, the board may make such enquiries as it thinks fit in respect of genuineness of the application and correctness of any particulars thereon.

12(4) Upon receipt of such application the Board shall either grant registration to the applicant or reject such application for reasons to be recorded in writing:

Provided that where registration has been refused to the applicant, the said applicant may again make an application for registration after removing defects, if any, in its previous application.

²¹¹ 13(1) The Board shall constitute a local level committee for such area as may be specified by it from time to time.

13(2) A local level committee shall consist of ---

disability or his relative may make an application to the local level committee for appointment of any person of his choice to act as guardian of person with disability. Application for appointment of guardian may also be made by any registered association/organization. But no such application shall be entertained by the local level committee unless the consent of the guardian of the disabled person is also obtained. Every person appointed as a guardian under Section 14 is required by Section 16²¹³ to furnish within the six months an inventory of immovable property belonging to the disabled persons and all assets and other movable property received on behalf of the person with disability together with a statement of all claims due to and all debts and liabilities due by such person with disability. Section 17²¹⁴ deals with removal of guardian.

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- (a) An officer of the civil service of the Union or of the State, not below the rank of a District Magistrate or a District Commissioner of a district;
 - (b) A representative of a registered organisation; and
 - (c) A person with disability as defined in clause (1) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995.

13 (3) A local level committee shall continue to work for a period of three years from the date of its constitution or till such time it is reconstituted by the Board.

13(4) A local level committee shall meet at least once in every three months or at such interval as may be necessary.

²¹² 14 (1) A parent of a person with disability or his relative may make an application to the local level committee for appointment of any person of his choice to act as a guardian of the persons with disability.

14 (2) Any registered organisation may make an application in the prescribed form to the local level committee for appointment of a guardian for a person with disability:

Provided that no such application shall be entertained by the local level committee, unless the consent of the guardian of the disabled person is also obtained.

14 (3) While considering the application for appointment of a guardian, the local level committee shall consider---

- (a) whether the person with disability needs a guardian;
- (b) the purposes for which the guardianship is required for person with disability.

14 (4) The local level committee shall receive, process and decide application received under sub - sections (1) and (2), in such manner as may be determined by regulation:

Provided that while making recommendation for the appointment of a guardian, the local level committee shall provide for the obligations which are to be fulfilled by the guardian.

14 (5) The local level committee shall send to the Board the particulars of the applications received by it and orders passed thereon at such interval as may be determined by regulations.

²¹³ 16.(1) Every person appointed as a guardian under section 14 shall, within a period of six months from the date of his appointment, deliver to the authority which, appointed him, an inventory of immovable property belonging to the person with disability and all assets and other movable property received on behalf of the person with disability, together with a statement of all claims due to and all debts and liabilities due by such person with disability.

16 (2) Every guardian shall also furnish to the said appointing authority within a period of three months at the close of every financial year, an account of the property and assets in his charge, the sums received and disbursed on account of the person with disability and the balance remaining with him.

²¹⁴ 17. (1) Whenever a parent or a relative of a person with disability or a registered organisation finds that the guardian is-

- a) Abusing or neglecting a person with disability; or

And the last objective of the National Trust Act is realization of equal opportunities, protection of right and full participation of persons with disability.

The National Trust Act, 1999 has now started to become operational. The Board who manage the Trust was appointed in October, 2000. On an academic examination of the statute there are some question on which intervention of the courts can be anticipated. The connotation of multiple disability and registered organization could be disputed. The section lays down that no member of the Board shall be a beneficiary of the Trust during the period of holding office. Will this embargo extend to benefits which were obtained when the person was not a member but continue during the membership period? What will be the position of programmes approved during a membership period through the benefits of the same ensued to a member subsequently? Another area of controversy could be the provisos 11 (1) (b).²¹⁵ The section allows bequests to be made to the Trust for the benefit of a particular person, with disability. At the same time the provisos lay down that no donor can insist on the exclusive utilization of the bequest for the beneficiary named by him.

Thus, we do have the well-intended statutory enactment but still have a long way to go in giving practical effect to the undoubtedly beneficial legislative intent. Indeed, the Disability legislation in India is progressive but has to be given practical and meaningful effect. It is also necessary to sensitize the citizens of this country to the rights and aspirations of the disabled. The disabled are not to be

b) Misappropriating or neglecting the property,

It may in accordance with the prescribed procedure apply to the committee for the removal of such guardian.

17 (2) Upon receiving such application the committee may, if it is satisfied that there is a ground for removal and for reasons to be recorded in writing, remove such guardian and appoint a new guardian in his place or if such a guardian is not available make such other arrangements as may be necessary for the care and protection of person with disability.

17 (3) Any person removed under sub-section (2) shall be bound to deliver the change of all property of the person with disability to the new guardian, and to account for all moneys received or disbursed by him.

Explanation. For the purposes of this Chapter, the expression “relative” includes any person related to the person with disability by blood, marriage or adoption.

²¹⁵ 11(1)(b) states about receive bequest of movable property from any person for the benefit of the persons with disability in general and for furtherance of the objectives of the Trust in particular:

Provided that it shall be obligatory on the part of the Board to make arrangement for adequate standard of living for the beneficiary named in the bequest, if any, and to utilise the property bequeathed for any other purpose for which the bequest has been made:

Provided further that the Board shall not be under any obligation to utilise the entire amount mentioned in the bequest for the exclusive benefit of the persons with disability named as beneficiary in the bequest.

treated as a burden to be carried, but must be given dignity to them and should be treated as equals by ensuring that opportunities are provided to them by giving facilities to overcome the disadvantages suffered by them. A disabled person is as much entitled to go to a stadium to witness a match or go to an auditorium to see film like any other citizen of India and the frustration, humiliation and the disappointment caused to a disabled person when access to public places is not available. Thus we should strive for a world without stairs or prejudice, where Braille and sign language become known as a written or spoken words. A world where disabled have easy access to public places and utilities and are able to enjoy their lives in a meaningful way. This is the ideal we should strive for. In conclusion, we can say that The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 is a good move on the part of Government of India but one of the major flaws of the Act is that it does not recognized mental illness is disability.²¹⁶

The active involvement of persons with disabilities in the ongoing elaboration of the rights of the disabled has proved to be an excellent example as to how the principle of full participation can be put into practice and how it can contribute to the development of truly inclusive societies, in which all voices will heard and persons with disabilities can help to get a better world.

The efforts to ensure quality to the disabled have to be multipronged. The media is a key partners in the process of empowering person with disabilities, in addressing discrimination, prejudice and ignorance, and in ending stereotypical portrayals of persons with disabilities.

The Rights of Persons with Disabilities Act, 2016²¹⁷

The Act replaces the persons with Disabilities (Equal opportunities, protection of Rights and Full participation) Act 1995, To set forth this task a

²¹⁶Harshit Sinha, "UN Convention: Rights of Persons with Disabilities in context Mental Illness in India", January 2009, available at http://gmhmovement.org/binarydata/393_harshit_sinha_unconvention_paperjan09.pdf(access on 20 November, 2017): The National Trust has been framed for the benefit of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability. It promote guardianship and family support to special persons.

²¹⁷The Rights of Persons with Disabilities Act, 2016 received the assent of the President on the 27th December, 2016 and Act published in the Gazette of India (Extraordinary) Part II Section 1 dated 28-12-2016 Pages 1-35.

committee was set up by the Ministry of Social Justice and Empowerment under Dr. Sudha Kaul, Vice- chairperson, Indian Institute of Cerebral Palsy, Kolkata. This committee as required by the UN convention comprised of persons with different ability. The committee submitted a draft bill in 2011. Subsequently on February 7, 2014 the rights of persons with disabilities bill 2014 was introduced in Rajya Sabha and referred to standing committee on social justice and Empowerment on September 16, 2014. Ultimately Rajya Sabha passed the bill on 14/12/2016. Then it referred to Lok Sabha and Lok Sabha passed it on 20th December 2016. Finally the bill received the assent of the President on the 27th December, 2016 and Act published in the Gazette of India (Extraordinary) part II section 1 dated 28/12/2016 pages 1-35. The new Disability Law gives effect to the principles of the United Nations Convention on the Rights of Persons with Disabilities.²¹⁸ In this Act, 'Disabled Persons' have been categorized as: (1) Person with Disability²¹⁹, (2) Person with Benchmark Disability²²⁰, and (3) Persons with Disability needs high support.²²¹ The Act includes the 21 types of disability, such as autism²²² Chronic Neurological condition²²³, low vision²²⁴, blindness²²⁵, cerebral palsy²²⁶, hemophilia,²²⁷ hearing impairment²²⁸, leprosy cured person,²²⁹

²¹⁸Ratified by India in October 2007.

²¹⁹Section 2(s) of the Rights of Persons with Disabilities Act 2016.

²²⁰Section 2(r) of the Act.

²²¹Section 2(t) of the Act

²²² The term Autism has been defined under Schedule I Part (b) as spectrum disorder means a neuro-developmental condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships and relate to others, and is frequently associated with unusual or stereotypical rituals or behaviours.

²²³Chronic neurological condition has been discussed under Schedule IV Part (a)

²²⁴ The term low-vision has been defined under Schedule I Part (b) as visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200(Snellen) in the better eye with best possible corrections; or

Limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree.

²²⁵The term blindness has been defined under Schedule I Part (b) as total absence of sight; or

Visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or

Limitation of the field of vision subtending an angle of less than 10 degree.

²²⁶The term Cerebral Palsy has been defined under Schedule I Part I(b) as a group of non - progressive neurological condition affecting body movements and muscle coordination, caused by damage to one or more specific areas of the brain, usually occurring before, during or shortly after birth.

²²⁷ The term haemophilia has been defined under Schedule IV Part b(i) as an inheritable disease, usually affecting only male but transmitted by women to their male children, characterised by loss or impairment of the normal clotting ability of blood so that a minor would may result in fatal bleeding.

²²⁸ The term Hearing impairment has been defined under Schedule I Part (c) as deaf having 70 DB hearing loss in speech frequencies in both ears;

intellectual disability,²³⁰ mental illness²³¹, locomotor disability,²³² muscular dystrophy,²³³ multiple sclerosis,²³⁴ specific learning disabilities,²³⁵ speech and language disability,²³⁶ Acid attack victim,²³⁷ Dwarfism,²³⁸ sickle cell disease,²³⁹ thalassemia,²⁴⁰ Parkinson's disease²⁴¹ and multiple disability.²⁴²

“Hard of hearing” means person having 60 DB to 70 DB hearing loss in speech frequencies in both ears.

²²⁹ The term “leprosy cured person” has been defined under Schedule I Part (a) as a person who has been cured of leprosy but is suffering from—
Loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity;

Manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity;

Extreme physical deformity as well as advanced age which prevents him/her from undertaking any gainful occupation, and the expression “leprosy cured” shall be construed accordingly.

²³⁰ The term “Intellectual disability”, has been defined under Schedule II as a condition characterised by significant Limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills,

²³¹ The term “mental illness” has been defined under Schedule III as a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub normality of intelligence.

²³² The term Locomotor disability has been defined under Schedule I as a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both.

²³³ The term “muscular dystrophy” has been defined under Schedule I Part (d) as a group of hereditary genetic muscle disease that weakens the muscles that move the human body and persons with multiple dystrophy have incorrect and missing information in their genes, which prevents them from making the proteins they need for healthy muscles. It is characterised by progressive skeletal muscle weakness, defects in muscle proteins, and the death of muscle cells and tissue.

²³⁴ The term “multiple sclerosis” has been defined under Schedule IV Part (a) (i) as an inflammatory, nervous system disease in which the myelin sheaths around the axons of nerve cells of the brain and spinal cord are damaged, leading to demyelination and affecting the ability of nerve cells in the brain and spinal cord to communicate with each other.

²³⁵ The term “specific learning disabilities” has been defined under Schedule II Part (a) as a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia.

²³⁶ The term “Speech and Language disability” has been defined under Schedule I Part(d) as a permanent disability arising out of conditions such as laryngectomy or aphasia affecting one or more components of speech and language due to organic or neurological causes.

²³⁷ The term “acid attack victims” has been defined under Schedule I Part (e) as a person disfigured due to violent assaults by throwing of acid or similar corrosive substance.

²³⁸ The term “dwarfism” has been defined under Schedule I Part (c) as a medical or genetic condition resulting in an adult height of 4 feet 10 inches (147 centimetres) or less.

²³⁹ The term “sickle cell disease” has been defined under Schedule IV Part (b) (iii) as a haemolytic disorder characterised by chronic anemia, painful events, and various complications due to associated tissue and organ damage; “hemolytic” refers to the destruction of the cell membrane of red blood cells resulting in the release of haemoglobin.

²⁴⁰ The term “thalassemia” has been defined under Schedule IV Part (b) (ii) as a group of inherited disorders characterised by reduced or absent amounts of haemoglobin.

In this Act responsibility has been cast upon the appropriate governments to take effective measures to ensure that the persons with disabilities enjoy their rights equally with others, and the Government will have the power to add more types of disabilities.

Merits of the Act

Reservation

1. Reservation has been given to persons with benchmark disabilities and those with high support needs in higher education, government jobs, allocation of land, poverty alleviation schemes.²⁴³

Special Provisions for Persons with Benchmark Disabilities

1. The Act stress on the fact that children between 6 to 18 years, with a benchmark disability, have the right to free education in government funded as well as government recognized institutions. They will get inclusive education. All government and government aided institutions of higher education are required to reserve at least 5% of seats for persons with benchmark disabilities. For admission in higher education institutions, they will be allowed relaxation in the upper age limit by five years.²⁴⁴
2. The Act provides that 5% of government owned or controlled establishment shall be reserved for persons with benchmark disabilities. 1% of this must be reserved for persons with²⁴⁵
 - a) blindness and low vision;
 - b) hearing and speech impairment;
 - c) locomotor disability;

²⁴¹ The term “Parkinson’s disease” has been defined under Schedule IV Part (a) (ii) as a progressive disease of the nervous system marked by tremor, muscular rigidity, and slow, imprecise movement, chiefly affecting middle-aged and elderly people associated with degeneration of the basal ganglia of the brain and a deficiency of the neurotransmitter dopamine.

²⁴² The term “Multiple Disability” has been defined under Schedule V as a condition in which a person may have combination of hearing and visual impairments causing severe communication, developmental, and educational problems.

²⁴³ Section 34 and section 38 of The Rights of Persons with Disabilities Act, 2016.

²⁴⁴ Section 32 of The Rights of Persons with Disabilities Act, 2016.

²⁴⁵ Section 34 of the Act.

- d) autism, intellectual disability and mental illness;
- e) multiple disabilities.

The government may exempt any establishments from this provision.

Incentives to employers in private sector

1. In this Act the central, state and local governments shall provide incentives to the private sector to ensure that at least 5 % of their work force is composed of persons with benchmark disability.²⁴⁶

Provision for guardianship

1. The Act provides for grant of guardian ship by District court. If a District court determines that a mentally ill person is unable to take care of himself, it may assign limited guardianship for such a person. A limited guardian will take joint decisions with the mentally ill person. In extraordinary situations, where limited guardianship cannot be awarded, the district court can award plenary guardianship where the guardian takes legally binding decision for the mentally ill person.²⁴⁷

Chief Commissioner and State Commissioner for Persons with Disabilities

1. The Act provides for setting up National and state commissioner for persons with disabilities, which will have statutory powers besides establishing a dedicated National Fund for persons with disabilities.²⁴⁸

Offences and Penalties

1. The Act prescribes for punishment for violation of the provision of the Act, or any rule or regulation made under it, shall be punishable with

²⁴⁶Section 35 of the Rights of Persons with Disabilities Act, 2016 States about incentives to employers in private sector.

²⁴⁷ Section 14 of the Act.

²⁴⁸ Section 86,87 and 88 of the Act.

imprisonment from six months to five years and a fine from Rs. 50,000 to 5 lakhs²⁴⁹.

Special Court

1. The State government shall notify a session court to be a special court, in each district to try offences under the Act. This shall be done with the concurrence of the chief justices of the relevant high courts.²⁵⁰

Responsibility of the private sector

After the enactment of the Disability Act, private employers shall be required to:

- 1) Every private establishment shall notify an Equal Opportunity Policy. Such policy shall display on the employer's website, failing which, the same shall be displayed at appropriate places of the establishment premises. A copy of the policy shall also be registered with the chief Commissioner or the State Commissioner.²⁵¹ The Equal opportunity policy contain details of the facilities and amenities providing to the disabled employees in order to empower them.²⁵²
- 2) Private establishments having more than 20 employees are bound to appoint a liaison officer who shall oversee the recruitment of disabled persons.²⁵³
- 3) Private employers are required to identify posts in the establishment that would be suitable for disabled persons.²⁵⁴ Further, the central, State and Local governments shall provide incentives to the private sector to ensure that at least 5% of their work force is composed of persons with benchmark disability.²⁵⁵

²⁴⁹ Section 89 of the Act.

²⁵⁰ Section 84 of the Act

²⁵¹ Section 21 (2) of the Act.

²⁵² Rule 8 (4) of the RPW Rules, 2017.

²⁵³ Rule 8 (3) (e) of the Rights of Person with Disability Rules, 2017.

²⁵⁴ Rule 8 (3) (b) of the RPD Rules, 2017.

²⁵⁵ Section 35 of the RPD Act, 2016.

- 4) The head of the establishment shall ensure that no disabled person is discriminated because of his/her disability.²⁵⁶
- 5) Private establishments shall take efforts to provide additional facilities to the disabled such as training facilities, barrier free²⁵⁷ accessibility and formulate special provision in case of transfer and special leave.²⁵⁸
- 6) All establishment will need to ensure that building structure, physical environment, transport and communication technology are in accessible norms formulated by the government.²⁵⁹
- 7) If any establishment wants to acquire occupation of any building then they have to produce the building is accessible as per the norms formulated by the central government.²⁶⁰
- 8) Every private establishment having 20 or more employees shall maintain records²⁶¹ containing details of the disabled person who are employed in the establishment.²⁶²

Certification of Specified Disabilities

In old law, there was no provision for universal acceptance of disable certificate. However, new Act provides that such certificates will be valid across the country.²⁶³

Definition of the disability has been widening in the new Act as compared to the old one. Under the new Act the list of disabilities increased from 7 to 21.

²⁵⁶ Rule 3 (1) of the Rights of Persons with Disabilities Rules, 2017.

²⁵⁷ Section 3 (3) of the Rights of Persons with Disability Act, 2016.

²⁵⁸ Section 2 (c) of the Rights of Persons with Disability Act defines 'barrier' as any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society.

²⁵⁹ Rule 8 (3) sub-clauses (c) and (d) of the Rights of the Person with Disabilities Rules, 2017.

²⁶⁰ Rule 15 (1) of the Rights of Persons with Disabilities Rules, 2017.

²⁶¹ Section 44 (1) of the Rights of Persons with Disability Act, 2016.

²⁶² Section 44 (2) of the Act.

²⁶³ Section 58 (3) of the Rights of Persons with Disabilities Act, 2016 States about Certification of Specified Disabilities.

This is great boom forward in delivering social justice to the persons with disability.²⁶⁴

Establishment

In the new Act scope of the word establishment is widen by adding word “private establishment”.²⁶⁵

Social Security

The Act say that “appropriate Governments shall , within the limit of their economic capacity and developments, formulate necessary schemes and programmes to safeguard and promote the rights of persons with disabilities for adequate standard of living, to enable them to live independently or in the community”. This is a grass root change in the Government policy as the old law only mentioned reservation in jobs and employment.²⁶⁶

Demerits:

The Act is regressive and retrograde and does not adopt United Nations convention on the Rights of persons with Disability, 2016 in its true spirit. Section II of the bill provided that its provisions shall be in addition to, and not in derogation of the provisions of any other law in force, which effectively meant that all laws which actively discriminated against persons with disabilities remained untouched. This violated the state’s obligation under the U.N. convention to take all appropriate measures, including legislation, to modify or abolish laws, regulations, customs and practices that constituted such discrimination. In this Act, the right of Equality is curtailed under section 3 (3) because it allows the Government to discriminate on the basis of achieving a legitimate aim. ²⁶⁷

²⁶⁴Clause (zc) of section 2 of the Rights of Persons with Disabilities Act 2016 States about the different kinds of disability.

²⁶⁵Section 2 (i) and 2 (k) of the Rights of Persons with Disabilities Act, 2016 defines the term establishment.

²⁶⁶Section 24 of the Rights of Persons with Disabilities Act, 2016 States about social security.

²⁶⁷Section 3(3) of the Rights of Persons with Disabilities Act, 2016 States that ‘No persons with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieved a legitimate aim’.

In section 3(2), which says the appropriate government shall take special measures to protect the rights of women and children with disability and also take steps to utilize the capacity of persons with disability by providing an appropriate environment. This is limited to protection of the rights and not empowerment.²⁶⁸

Another loophole of the Act is that this new Act provides that reservation for persons with disabilities shall be only for the specific posts that are expressly identified by the concerned authority, Thus, even if persons is able to do the work required for a particular post, he will be ineligible unless it is specifically reserved. This is highly controversial and violates UNCRPD.²⁶⁹

The Act is silent on the question of special police station for disabled persons. Without special police station it would not be possible for disabled to get the justice.

The person with mental illness needs special care and attention but this Act failed to provide proper care. Although it recognized mental illness as disability.

The Act talks about the formation of special courts and speedy trial for the benefit of disabled but it failed to provide proper mechanism regarding formation of special courts and appointment of judges.²⁷⁰

Legal Capacity

“The appropriate Government shall ensure that the persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law”, but on the other hand it talks about the provision of guardianship for certain kinds of disabled people under section 14.²⁷¹

²⁶⁸Section 3(2) of the Rights of Persons with Disabilities Act, 2016 States ‘The appropriate Governments shall take steps to utilize the capacity of persons with disabilities by providing appropriate environment’.

²⁶⁹Section 33 of the Rights of Persons with Disabilities Act, 2016 States about the identification of posts for reservation

²⁷⁰Section 84 of the Rights of Persons with disabilities Act 2016 States about Special Court.

²⁷¹Section 13 of the Rights of Persons with Disabilities Act, 2016 States about the legal capacity.

Non –discrimination in employment

The new Act of 2016 defines discrimination which was missing in the previous legislation. But the clauses on non-discrimination in employment mandatory only in governments establishments.²⁷²

Conclusion

Disabilities Act 2016 is a land mark in context of creating better environment for the differently able person will be go a long way in enhancing the quality of live of such person and ensure that they will get all rights and liberties.

Concluding observation

The conclusion that can be derived from the analysis of Indian Constitution and legal provisions are that Indian Constitution does not mention disability as a ground of discrimination. This is the most unfortunate and darkest side that Constitution maker failed to include the word disability. It is true that some of the space have been given by Constitution of India to the disabled but these space are based on charity and relief.

It is also noteworthy that the Indian disability laws have adopted many equalizing measures to stop disability discrimination. But one of the major flaw of Indian disability laws are that these are basically charity and welfare oriented.²⁷³ They lack vision of social integration. In the PWD Act mental illness was not included as a ground of disability. In the Act of 2016, mental illness included as a ground of disability but mental retardation has been forgotten. As a result, mentally ill people are still deprived from their rights. The person suffering from mental illness is regarded as a waste materials of dustbin. Mental Health Act, 1987, is failed to sort out the problem. The Mental Health Care Bill is still pending. In absence of right centric Act, who will look after them. It seems that care and protection of the rights of persons with disabilities continue to be guided by the medical model, rather than human rights model.

²⁷²Section 20 of the Rights of Persons with Disabilities Act, 2016 States about the non - discrimination in employment.

²⁷³Kishor Bhanushali, “Changing Face of Disability Movement; From Charity to Empowerment”, P. 6, available at; <http://ssrn.com/abstract=965999> (accessed on January 23, 2018).

Although women constitute almost 50 per cent of the population, women and girl with disabilities remain invisible. Around 80 per cent of women with disabilities have no independent means of livelihood. They have no independent means. Women and girl with disabilities are three more susceptible to physical and sexual abuse. It is noteworthy to state that we are living in a society where males are still dominant. In this circumstances it is almost impossible to married a disabled girl and if they to get married, later on be deserted by their husbands. It happens because societies have felt that girl with disabilities are incapable of bearing and rearing child.²⁷⁴ This is a matter of grave concern that after 70 years of independent and in presence of Art 15(3),²⁷⁵ the conditions of disable women still unchanged.

In the Act of 2016, Section 11 deals with ‘accessibility in voting’. In this section direction has been given to the Election Commission and the state Election Commissions to ensure the disabled friendly polling stations. But what about the reality still maximum number of booths are nondisabled friendly. Now the Election Commission thinking for alternative solution. The Election Commission is ready to introduce Ballot Voting system for all disabled voters. Is this a solution of the problem? This is not a solution but this is a mockery of the disabled rights.

Here, it is important to note that human rights of disabled cannot be fight for and achieved in a vacuum. In this context, one of the important suggestion of researcher is that disability word must be included as a ground of discrimination. This will make the ‘disability right’ a reality.

²⁷⁴ Article of Human Rights Watch (2014), India: Women with Disabilities Locked Away and Abused, Available at <https://www.hrw.org/news/2014/12/03/india-women-disabilities-locked-away-and-abused>, accessed on 28 August 2018.

²⁷⁵Article 15(3) states that nothing in this article shall prevent the State from making an y special provision for women and children.

The persons suffering from disabilities have fought for recognition and personhood from ancient time till now. Although the dimension of thinking and sensitivity has been changed in the 21st century. Now the disabled's moving from charity to rights. But still the path of progress for disabled is not like bed of roses. It is matter of great sorrow and pain that PWD Act, 1995, and the Rights of Persons with Disabilities Act, 2016, have been partially implemented. Till now, the persons suffering from disabilities are fighting against attitudinal barrier, accessibility social security and justice. In every democratic setup, rule of law is the cornerstone and rule of law is hanging in and around justice. If justice is not easily accessible to disabled that means rule of law has no meaning. For betterment of life of disabled, support of all segments of society is required. As Quoted by Hon'ble Justice Venkata Chaliah "The task of protection and promotion of human rights is a complex one and requires the co-operation of all section of the society.

The above mentioned statement is true in context of interpretation of different provisions of the PWD Act, 1995 and the Rights of Persons with Disabilities ACT, 2016. In order to protect the Human rights of disabled, the government of India passed the PWD Act, 1995 and now the Rights of Persons with Disabilities Act, 2016 and in order to remove ambiguities of the PWD Act and the Rights of Persons with Disabilities Act, 2016, Judiciary has played an active role and making the PWD Act and Act of 2016 effective.¹ Through positive interpretation of the different provisions under the PWD Act and Act of 2016, Judiciary has provided specific relieves to persons with disabilities. The Judgments of S.C has boldly and categorically shifted the attention of policy

¹Dr. Rumi Ahmed, "Rights of Persons with Disability in India", White Falcon Publishing, Chandigarh, pp.267, (2015).

makers from the mere provision of charitable services to vigorously protecting their basic right to dignity and self-respect.

Judiciary is the third pillar of democracy in India. Judiciary in India plays a pivotal role to establish social Justice to persons with disabilities. The Judiciary in India under its ambit of policy for bringing about Social Justice for persons with disabilities. Indian judiciary not only exploded the myth that people with mental and physical impairments were unequal in capacity. In this regard judiciary acted as champion. Judiciary played a pivotal role in sensitizing the issues and the problems related to persons with disabilities. Judiciary has been forth coming in setting aside discriminatory rules, even in the absence of formal recognition of disability-based discrimination. On several occasion, Supreme Court noted the appalling conditions of the mentally ill persons detained in the jails of various States and observed that admission of non-criminal mentally ill persons in jails is illegal and unconstitutional. In recent times, the Indian judiciary has emerged as the protector of rights of disabled and its responses towards violation of disabled rights have been optimistic. Now, it can be said that judicial activism in the field of disabled rights is beginning to reach a new height.² A scanning of numerous rulings of the Supreme Court of India reveals the issues of Education, employment, reservation with regard to people with disabilities, are vibrant.

Cases decided by Supreme Court

Cases on mental illness:

Mental illness: The word mental illness has been defined under Section 2(q) of PWD Act, 1995 as any mental disorder other than mental retardation. No special provision has been made in the PWD Act, 1995 for the upgradation of the person suffering from mental illness. They were not given reservation under the Act.

²Subhash Chandra Singh, 'Rights of Persons with Disabilities', A Human Rights Approach, (ed), Rights of the Disabled: Perspective, Legal Protection and Issues, Serials Publications, New Delhi, pp. 310 (2008).

Mental illness" The word mental illness has been defined under clause(zc) of Section 2 of Rights of persons with Disabilities Act,2016 as a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence. After the enactment of the Rights of Persons with Disabilities Act,2016,1% reservation has been given to person suffering from mental illness.

In a number of cases the Supreme Court of India has recognised the rights of persons suffering from mental illness. Persons suffering from mental illness were not regarded as person. They were regarded as invisible.

***Sheela Barse vs. Union of India*³**

In this case, a letter from Sheela Barse addressed to the honourable Chief Justice of India in context of deplorable condition of mentally ill and insane women kept in presidency Jail, Calcutta, was considered as writ petition. The case is landmark because the crux of the case is to provide proper shelter to non-criminal mentally ill persons who have been put in the jail on the basis of mental illness. The moot question is to compensate those persons whose Constitutional rights have been violated.

Critical Appraisal of Judgment

In this case Judgment delivered by Hon'ble Chief Justice M. N. Venkata Chaliah and Justice S. Mohan, The Supreme Court observed that admission of non-criminal mentally ill persons to jails is illegal and unconstitutional. The court directed the High Court of Judicature at Calcutta to appoint a committee comprising a psychiatrist, a social worker and a law person to evaluate the condition of existing mentally ill in jail. The committee will recommend discharge of those persons found fit and ensure their return to their homes. On the other hand, the Judicial Magistrate will send reports quarterly to the High Court setting

³ AIR 1993 4 SCC 204.

out the number of persons screened and sent to places of safe custody and action taken by the Judicial Magistrate Theron. The Supreme Court directed the Government of West Bengal to take immediate action and issue instructions in context of implementation of the directions. Further, Supreme Court ordered immediate upgradation of mental hospitals and setting up of psychiatric services in all district hospitals including filling up the posts of psychiatrist. The Health Secretary of the State of West Bengal will send quarterly report to this Court in the form of an affidavit. The Supreme Court vehemently criticized the wide spread practices of housing women and children with mental illness in jail for safe custody. The line of argument adopted by the Supreme Court is rational and reasonable. The Supreme Court declared it unfortunate and shameful because of disrespect of basic human rights of women and children suffering from mental illness. In the eyes of Supreme Court the practice is totally against the conscience of mankind. Therefore, the Supreme Court placed responsibility on the State Government to move them to safe place.

Chandan Kumar Banik vs. State of West Bengal⁴

In this case a PIL was filed in Supreme Court. PIL was based on press publication with a photograph showing mentally ill patients chained in a State Hospital in west Bengal. The Supreme Court was shocked by the inhuman condition of the mentally ill patients in a mental hospital at Mankundu in Hooghli district. Further, the Court expressed displeasure about the fact that a hospital has been left in charge of S.D.O, who is not authentic person. There is a need to appoint a suitable person who have proper knowledge of mentally ill person.

Critical Appraisal of Judgment

The case was decided by Justice Ranganath Mishra, Justice P.B. Sawant and Justice K. Ramaswamy. The Supreme Court took this opportunity to defend the rights of persons with mental illness. In order to protect the rights of persons with mental illness, Supreme Court appointed a committee to inspect the mental hospital located at Arakkundu in the district of Hooghli. As per the guidelines of

⁴⁴(1995) Supp 4 SCC 505.

Supreme Court, the committee examined various factors like the administration, the condition of hospital, the facility to the patients, scope of treatment, diet and staff in the hospital. The committee traced several deficiencies. The committee recommended for separate washroom for women and proper diet for patients. The Court remarked with anguish that state failed to provide justice to these downtrodden part of society. Despite a plethora of rules, regulations and Acts, the condition of disabled in mental hospital remain unchanged. Accordingly, it rescued the mentally challenged inmates of the hospital who were kept in chains by the hospital authorities. The Supreme Court deprecated and discontinued the practice of tying up with the iron chain of patients who were unruly or not physically controllable and ordered drug treatment for these patients. The administration of hospital was also removed and replaced by a competent doctor with requisite administrative ability and powers. The Supreme Court gave directions to remove other deficiencies in the care to ensure that the patients now detained in the Mental Hospital would receive appropriate attention in all respects in a humane manner.

***In Re: Death of 25 chained inmates in Asylum fire in Tamil Nadu vs State of Tamil Nadu.*⁵**

The case is popularly known as Erawadi case. In this case. The Supreme Court took *suo moto* action on the basis of submission note of the Registrar (Judicial) to a news item published in all leading national dailies about a gruesome tragedy in which more than 25 mentally challenged patients housed in a mental asylum at Ervadi in Ramanathapuram district were charred to death. The patients could not escape the blaze as they had been chained to poles or beds. On these facts the Court took stern view and directed the State Government to file status report in this case, the court took strong reservations towards the apathy of government in respect of their care and proper looking towards Persons with Disabilities. After considering the factual report Dr. Abhishek Manu Singhvi, learned counsel was appointed as Amicus Curie to locate the dismal condition of mentally ill person in several mental asylums.

⁵ AIR 2002 SC 979.

Critical Appraisal of Judgment

The case was decided by Justice M. Shah, Justice B. Agarwal and Justice Pasayat. In this case, the Supreme Court took the opportunity to defend the rights of the mentally ill persons to lead a life with dignity. The Court adopted a very generous approach and said that there is slackness on the part of the concerned authorities to implement the laws enacted by the Parliament. In the Court's view it is clear cut violation of Article 3, 4 and 6 of Mental Health Act, 1987. In order to protect the rights of persons with mental illness, the Court directed all state and Union Territory to conduct a district –wise survey of all registered/unregistered bodies, purporting to offer psychiatric health care. All such bodies should be granted licence. The process of survey must be completed within 2 months and Chief Secretary of each state must file a comprehensive compliance report in which the state must disclose that no mentally challenged person is chained in any part of the state. The Chief Secretary or Additional Chief Secretary shall be the nodal agency to coordinate the implementation of the Mental Health Act, 1987, PWD Act, 1995 and the National Trust for welfare of persons with Autism, cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. The Central and the State shall undertake a comprehensive awareness campaign with a special focus to educate people as to provisions of law relating to mental health and rights of mentally challenged persons.

Suchita Srivastava vs Chandigarh Administration⁶

This case was related with reproductive rights of a women with mental retardation residing at a government run welfare institution in Chandigarh. She became victim of an alleged rape by an in- house staff. She wanted to keep the baby and carry on the pregnancy to full term. The Chandigarh Administration filed a petition in the high court seeking approval for termination of her pregnancy under the medical termination of pregnancy Act, 1971 on the ground that she in addition to being mentally retarded, hence without any guardian she was not able of carrying on with the pregnancy and would not be able to look after a child. The Divisional bench of Punjab and Haryana High court permitted such termination

⁶ AIR 2009, S.C 1110.

holding the same to be in the best interest of the women. Aggrieved from the order of the High court appellant approached the Supreme court through an amicus. One of the main issues before the Supreme court was regarding the legal capacity of a women with mental retardation to decide on her pregnancy.

Critical Appraisal of Judgment

The case was decided by Chief Justice K. G. Balakrishnan, Justice P. Sathasivam and Justice B. S. Chauhan. In this case, the Supreme Court recognised the identity of women suffering from intellectual disability. Supreme Court deeply scrutinized the Section 3(4)(a), 3(2)(i) and 3(4)(b) of MTP Act,1971, United Nations Declaration on the Rights of Mentally Retarded Persons,1971, Section 2(i),2(q) and 2(r) of Persons with Disabilities(Equal Opportunities, Protection of Rights and Full Participation) Act,1995, The National Trust for welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act,1999, which provided that where pregnancy is a result of rape and termination of the same is contemplated the consent of the pregnant women is mandatory. The Court also taken into consideration the exception to this provision which provided that in case of a pregnant women who is ‘mentally ill, pregnancy can be terminate with the approval of the women’s guardian. The Supreme Court reached on a conclusion on the basis of various reasons including doctrine of “parens patriae that termination of pregnancy is not in the” best interest of” victim. The Supreme Court said the state could claim that it is the guardian of the pregnant victim since she is an orphan and has been placed in government run welfare institution. However, the state’s claim to guardianship cannot be mechanically expanded in order to make decisions about the termination of her pregnancy. An ossification test has revealed that the physical age of the victim is around 19-20 years. This conclusively shows that she is not a minor. Furthermore, her condition has been described as that of mild mental retardation which is clearly different from the condition of a ‘mentally ill person’ as contemplated by section 3(4) (a) of the Medical Termination of pregnancy Act. It is apparent from the definition of the expression ‘Mentally ill person’ that the same is different from that of ‘mental retardation’. A similar distinction can also be found in the persons with disabilities Act, 1995. This legislation treats ‘mental illness’ and

‘mental retardation’ as two different forms of disability. The same definition of ‘mental retardation’ has also been incorporated in section 2 (g) of the National Trust for welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. These legislative provisions clearly show that persons, who are in a condition of ‘mental retardation’ should ordinarily be treated differently from those who are found to be ‘mentally ill’. While a guardian can make decisions on behalf of a ‘mentally ill person’ as per section 3(4) (a) of the medical Termination of pregnancy Act, the same cannot be done on behalf of a person who is in a condition of ‘mental retardation. On these reasoning the court concluded that state must respect the personal autonomy of a mentally retarded women with regard to decisions about terminating a pregnancy. The court further held that for continuance of pregnancy, no express consent is required while for termination of the same her consent is a precondition under the provision of Medical termination of pregnancy Act. The court refrained from diluting this requirement as it would amount to an arbitrary and unreasonable restriction on the reproductive rights of the victim women. Accordingly, the Supreme Court struck down the order of Punjab and Haryana High Court to terminate the pregnancy of a mentally retarded women against her will.

Reena Banerjee vs. Government of NCT⁷

In this case pitiable and pathetic condition of Asha Kiran Home was highlighted. Asha Kiran Home comprises of six institutions within a complex of four buildings for mentally retarded children and adults. The appellants highlighted the issues such as inadequate medical treatment, medical services and access to doctors, skewed ratio of staff to look after the inmates, overcrowding, poor distribution and consumption of dietary, clothing, bedding and also about the abuses of various kinds to the mentally challenged persons residing in the Home. The High Court, therefore, directed the parties to convene a joint meeting and submit a proposal about the reforms in Asha Kiran. The Government of Delhi, accordingly, submitted a report about the action already taken and proposed as per the report, to be taken. The existing Administrator has been terminated and Dr. V. N. Agarwal, former Medical Superintendent of Dr. Ambedkar Hospital, appointed

⁷(2017) 2 SCC 94

as administrator. The Government has approved formation of a strong governing council comprising of eminent citizens and experts. The Governing council will be fully empowered to take decisions for improvement of the Asha Kiran Home in every manner and can take all action for the welfare and up keep of residents; their protection against any forms of assault.

The proposal had been made for the appointment of 94 house aunties After the appointment, Proper training will be imparted by the panel of experts. On the basis of above mention proposals High Court disposed of the matter by expressing a hope that the Authorities concerned will implement the proposed action. But Authorities have never fulfilled their Commitments made before the High Court Accordingly, the appellants filed an appeal in Supreme Court under article 136. There was an imminent need to drastically improve the condition of Asha Kiran. The State Government have filled affidavit in the Supreme Court on 19th April 2014, disclosing the factual information about the action taken. Then State Government filed additional affidavit in August 2015, giving information about the action taken for improving the condition. Meantime, the court issued notice to all the state and union Territories and directed them to file their response about the ground reality of the Homes run by the State Governments and Union territories. In response to the notice given by the Supreme Court, 18 affidavits have been filed by different States/Union territories giving details about the position.

Critical Appraisal of Judgment

The case was decided by Chief Justice T. S. Thakur and Justice A. M. Khanwilkar. In this case the Supreme Court examined Section 10,12,22,38 and 19 of the PWD Act,1995 and Section 3,4,5,10 and 23 of Mental Health Act, 1987. Accordingly, the Supreme Court ordered that the Union of India and other competent State and Union authorities be identified and then respond to allegations that they were failing to meet their obligation under the Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Secretary of the Union of India of Health and Social Welfare shall be personally responsible for monitoring and overseeing the progress made by the central authority for Mental Health Service and compliance of the directions. The

Government disclosed that the House Auntes and staff of Asha Kiran will get sensitized to every aspect of care to be provided to the residents. The neighbouring Government hospitals are being attached to Asha Kiran for providing ongoing medical care. The team of psychiatrists, paediatricians, gynaecologists' and general physicians from these hospitals will visit regularly for the care of the residents. Inspection Committee constituted under section 35 of J.J. Act, 2000. For proper care and prevention of any untoward incident, CCTV system is being installed at important places. Ms. Sreerupa Mitra Chaudhary was appointed as the chairperson. The State Government disclosed that Asha Kiran has become the first Government institution in the welfare sector in Delhi, to be awarded ISO 9001:2008 for quality management in September 2014.

All the affidavits filed in this proceeding be made available to the Central Authority for Mental Health Services. The affidavit of the concerned State be additionally forwarded to the respective State Authority for Mental Health Services. The Central Authority for Mental Health Services shall inspect and evaluate the conditions of the psychiatric hospital and psychiatric nursing home and the State shall look after their own.

Posts not Identified Adequately under section 32 of the PWD Act

Section 32 of the PWD Act, 1995, discuss about identification of posts and periodical review of the posts identified. For the upgradation of the status of disabled, identification of posts plays an important role. It instructs that appropriate Governments shall - (a) Identify posts, in the establishments, which can be reserved for the persons with disability; (b) At periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the developments in technology.

***Amrita vs. Union of India*⁸**

In this case, the petitioner who was a visually impaired person applied for the post of a probationary officer as advertised by the Indian overseas bank. The petitioner had the requisite qualifications. While filling up the application, the

⁸ 2005(13) SCC 721.

petitioner stated that she was visually impaired so that the Board could make adequate arrangement of a scribe for her during the entrance test as is normally done. Unfortunately, her application was returned by the Bank stating that they do not recruit blind candidates for the post of probationary officer. The petitioner challenged this rejection order in the Supreme Court under Article 32 of the Constitution.

Critical Appraisal of Judgment

The case was decided by Justice Y. K. Sabharwal, Justice D. M. Dharmadhikari and Justice Tarun Chatterjee. The substance or crux of the argument was that whether rejection of candidature under general category to the visually disabled person to the post of probationary officer is violative of fundamental rights enshrined under Art 14, 16, 19 (g) and 21 of the Constitution. The Supreme Court critically examined Article 14, 16, 16(1), 19(g), 32 and 21 of the Indian Constitution and Sections 32, 33, 38, 42 and 47 of PWD Act, 1995. The Supreme Court held that rejecting the candidature of the blind candidate for the post of Probationary, is clear cut violation of Article 14, 16, 19 and 21. The Court held that the petitioner was in the first instance denied equal opportunity as given to other applicants from appearing in the entrance examination on the ground of disability, which was not mentioned as a condition in the advertisement. Second, since the petitioner was similarly situated with other general candidates and the petitioner had not asked for any advantage for being a visually impaired candidate, it cannot be understood why she was not permitted to sit and write the examination for the post of probationary officer in the Bank and, therefore, the order of the Board denying her permission to write the examination on the ground of disability cannot be sustained.

The court, relying on Article 16 hold that it guarantees equal opportunity to all persons and that all applicants must be given an equal opportunity with other who Qualify for the same post. The selection test must not be arbitrary and technical Qualifications and standards should be prescribed where necessary. The Court further told that we are pained and distressed at this apathy being shown

towards unfortunate disabled. Finally, the petition was disposed by granting permission to the petitioner to appear for the examination.

Section 33 of the PWD Act, 1995

Section 33 of the PWD Act, 1995, instructs that every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from- (i) Blindness or low vision; (ii) Hearing impairment; (iii) Loco motor disability or Cerebral Palsy, in the posts identified for each disability: Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section. Section 33 discuss about reservation to persons suffering from disabilities.

In National Federation of Blind vs. Union Public Service Commission and Other⁹

In 1986, the Standing Committee of Ministry of Social Justice identified 416 posts for blind and partially blind. But the decisions were not executed for seven years. After seven years, National Federation of Blind filed a petition under Article 32 of the Constitution of India. Article 21, of the Constitution of India, 1950 was taken recourse by the petitioner. It was sought that writ of Mandamus be issued directing the Union of Indian and the Union Public Service Commission to permit them to compete for the Indian Administrative Service and the Allied services and to provide facility of writing Civil Service Examination either in Braille-Script or with the help of a scribe.

Critical Appraisal of Judgment

The case was decided by Justice Kuldeep Singh and Justice N. M. Kasliwal. The Division Bench of Supreme Court took this opportunity to defend

⁹ AIR 1993 SCR 556.

the rights of persons suffering from visually impairment. The Supreme Court critically examined the touchstone of Art.32 and instructed to Government of India and Union Public Service Commission to allow the blind and partially blind students to compete and write the civil service examination. Further, the Court permitted the visually impaired to write the examination in Braille Script or with the help of a scribe.

Govt. of India through Secretary vs. Ravi Prakash Gupta¹⁰

In this case the petitioner ***Ravi Prakash Gupta***, a totally blind person, and qualified for UPSC Civil Services examination in 2006. However, he was not given the IAS cadre despite ranking 5th in the merit list for the visually disabled and there being more than five vacancies in his category. He filed petition in the Central Administrative Tribunal (CAT), which dismissed the same and subsequently he approached Delhi High Court challenging the order of the CAT and praying for the implementation of Section 33 of the Persons with Disabilities Act. The Delhi High Court directed the respondents to offer the petitioner an appointment to the said post by issuing appropriate appointment letter within six weeks; and also directed that the petitioner be given seniority along with his batch mates who took the examinations in the year 2006 and that his pay be fixed on that basis. Additionally, the Court awarded costs of Rs. 25,000 to the petitioner payable by respondent. The Government of India being aggrieved by the order of the High Court, approached the Supreme Court through a Special Leave Petition.

Critical Appraisal of Judgment

The case was decided by Justice Altmas Kabir and Justice Cyriac Joseph. The Division Bench of Supreme Court took the opportunity to uphold the rights of visually impaired. The Supreme Court closely examined Section 33 and did not find any merit in the contention of the Government of India that Section 33 of the Persons with Disabilities Act, 1995 could only be implemented after identification of posts suitable for such appointment under Section 32. Supreme Court observed that the Legislature did not intend that Section 32 be used as a tool to deny the

¹⁰ (2010) 7 SCC 626

benefits of Section 33 to persons with disabilities and that it could not allow implementation of the Act to be deferred indefinitely by bureaucratic inaction. It concluded that reservation under Section 33 is not dependent upon identification under Section 32. The Court did not find reason to interfere with the order of the Delhi High Court and directed the petitioners to implement the impugned order within eight weeks. The Court considered that non-implementation of the provisions of Section 33 is a violation of right to equality and right to life. This is a very important and landmark judgment considering the fact that non-identification of posts can do longer be any ground for non-implementation of reservation provision under the Act.

Syed Bashir-ud-din Qadri vs. Nazir Ahmed Shah¹¹

The Appellant, a person with cerebral palsy, was selected for the post of Rehber-e-taleem (teaching guide) but not appointed to the post due to his disability. He challenged the action of the Government in the High Court of Jammu and Kashmir by way of writ petition. High Court ordered in his favours. Pursuant to the orders of the High Court, the Director School Education, Kashmir, Constituted a committee to determine whether the Appellant could be appointed to the said post. The committee in its report stated that appellant could read and take well and would be able to teach, but he could not write. Thereafter, it was recommended that the appellant be appointed as Rehbar-e-Taleem and in accordance there with, the appellant was appointed.

Subsequently thereto, another candidate for said post challenged the said action of the Director of School Education, Kashmir, appointing the appellant as Rehbar-e-Taleem. The appellant was examined by the doctors of Neurology department of Sher-e-Kashmir Institute of Medical Science Srinagar whose report found that the appellant had cerebral palsy with significant speech and writing difficulties, which would make it difficult for him to perform his duties as a teacher. Based on this report, once again a committee was constituted to examine the working capacity of the appellant in the school. The said committee found that the appellant was well versed with subject he taught and did justice with his

¹¹ (2010) 3 SCC 603

teaching prowess. However, the High Court disposed of the writ petition by quashing the appellant's appointment and directed the Director of School Education, Kashmir to identify another suitable job for the appellant.

Critical Appraisal of Judgement

The appellant thereafter approached the Supreme Court challenging the order of the Jammu and Kashmir High Court on the grounds that the order was in violation of sec 22 of Jammu and Kashmir Persons with Disabilities Act, 1998 which required the government to reserve 3% posts in every establishment for person with disabilities among which locomotor or cerebral palsy was also identified. The case was decided by Justice Altmas Kabir and Justice Cyriac Joseph. The Division Bench tested on the touch stone of Art.22 of Jammu and Kashmir Persons with Disabilities Act and said that the disengagement of the appellant as Rehbar-e-Taleem, goes against the grain of the 1998 Act. The High Court dealt with the matter mechanically, without mentioning the spirit of the 1998 Act. Therefore, his tenure as a Rehbar-e-Taleem ought to have been continued without being pitch forked into a controversy which was uncalled for. The impugned order of the High Court and that of the Chief Education Officer, disengaging the appellant from functioning as Rehbar-e-Taleem, are hereby set aside.

National Federation of the Blind vs. Union of India¹²

National Federation of the Blind is an apex organization and a society registered under the Societies Registration Act, 1860, working for the protection of the rights of the visually challenged. In the year 2006, National federation of the Blind, filed a writ petition before the High Court, seeking implementation of section 33 of the Act. Delhi High Court directed the Union Government to setup a Special Committee to work out the backlog of vacancies for the disabled in all departments including Public sector undertakings and Government companies from the date that the Act came into force.

¹² (2013) 10 SCC 772.

Critical Appraisal of Judgment

Being aggrieved of the order, Government of India filed a SLP in Supreme Court. The Government of India submitted that the impugned judgment of Delhi High Court is against of the provisions of the Act. The Government of India further pointed out that the order of High Court in context of computation of both identified as well as unidentified posts, on the basis of total strength of the cadre is erroneous. The instruction of High Court to work out backlog vacancies for disabled persons on the total cadre in different establishments within one month is impractical. Supreme Court after hearing the arguments of learned counsel, upheld the order of Delhi High court and directed the Government to compute the number of vacancies available in all the establishments and identified the posts for disabled persons within a period of three months. Accordingly, SLP dismissed with costs.

***Rajeev Kumar Gupta vs. Union of India*¹³**

In this case, Rajeev Kumar Gupta and seven other disabled persons serving as engineers in Prasar Bharti made the grievance that the higher level group A and B posts in the engineering cadre were filled only by promotion. Although these posts were identified as suitable for disabled, the Government was denying them, which is defeating the intent and purpose of reservation provided to the persons with disabilities. The petitioners challenged the Office Memorandum dated 29.12.2005 of Government of India, which prohibited reservation in promotion for disabled persons in Group A and B posts.

Critical Appraisal of Judgment

The case was decided by Justice by Justice Chelmeswar and Justice Abhay Manohar Sapre. The Division Bench took this opportunity to defend the rights of disabled. The bone of contention before Supreme Court was legality of denial by the impugned order of Government of India. In the Supreme Court, the Government of India reiterated its stand that reservation in promotion for disabled persons is impermissible quoting the Indra Sawhney judgment of 1992. But the

¹³(2017) 4 SCC 579

Supreme Court rejected the reasoning of Central Government and opined that the object of the 1995 Act is to ensure social integration of persons with disabilities through 3% reservation in employment. The Court held the Government Memorandum as an illegal and said 3% reservation must be provided irrespective of whether recruitment is direct or by promotion. The Court opined that low numbers of persons with disabilities (much below 3%) in Government employment long after the PWD Act, 1995, barriers to their entry must, therefore, be scrutinized by rigorous standards within the legal framework of the 1995 Act.

Cases based on Section 39 of the PWD Act, 1995, Section 32 and 40 of the Rights of Persons with Disabilities Act, 2016.

Section 39 of the PWD Act provides that all Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent seat for persons with disabilities. Some of the landmark judgments have been covered elaborately.

Section 32 of the Rights of Persons with Disabilities Act, 2016 states that Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities. The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education.

Section 40 of the Rights of Persons with Disabilities Act, 2016 states that the Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

All Kerala Parents Association vs. State of Kerala¹⁴

In this case, the Division Bench of Kerala High court ordered that section 39 of persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 occurs in chapter VI dealing with the employment, the expression ‘seats’ in Section 39 would really mean post and the question of reservation of seats for appointment in educational institutions would not arise under 39. The Judgment of Kerala High Court erroneously placed in Chapter VI under ‘Employment and therefore, created some doubts.

Critical Appraisal of Judgment.

The matter was taken in appeal against the decisions of the Kerala high court in Romy Chaco vs. Ramesh Babu and other. The case was decided by Justice G. Pattanaik and Justice Ruma Pal. The Supreme Court came down very strongly against the Kerala High court’s interpretation of section 39 and Justice Ruma Pal and Justice Pattnaik held that; section 39 unequivocally deals with the question of reservation of seats for persons with disabilities in education institutions of the government as well as institutions receiving aid from the government. The language is clear and unambiguous, which itself indicates the legislative intent. It is well settled that when the language of any statutory provisions is clear, it is not necessary to look for any extrinsic aid to find out the meaning of the statute in as much as the language used by the legislature is the indication of the legislative intent. We fail to understand as to how and on what principles of construction the high court has given a construction to the provisions of sec. 39 not only by doing violence to the language of 5.39, but also rewriting the provisions of sec. 39. If sec. 39 as has been construed by the high court ,would be interpreted to mean the government it relates to employment merely because the provision occurs in chapter VI dealing with employment, then the ‘educational institutions’ would have to interpreted to mean the government post and the question of receiving aid from the government would not arise at all Natural and ordinary meaning of words should not be departed from unless it can be shown that legal context in which the words are used requires a different meaning. We

¹⁴ 2003(2) WLN 692

have, therefore, no hesitation to come to the conclusion that the high court was wholly in error in construing sec. 39 of the Act to mean it relates to reservation in government employment and not in relation to admission of students with disabilities in the government institutions as well as educational institutions receiving aid from the government. Further, reservation in government employment is provided under sec. 3 of the Act. We, therefore, set aside the impugned judgment of the Kerala High court and hold that sec. 39 deals with the reservation of seats for persons with disabilities in government educational institutions as well as educational institutions receiving aid from the government.

Disabled Rights Group vs. Union of India¹⁵

Critical Appraisal of Judgment

In this case, Public Interest Litigation was filed for benefit of persons suffering from disability. The case was decided by Justice A. K. Sikri and Justice Ashok Bhushan. In this case, three important issues have been raised for the benefit of persons suffering from 'disability' as given in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act) 1995 and Rights of Persons with Disabilities Act, 2016. The first issue discusses about the non-implementation of 3% reservation in educational institutions as provided under section 39 of the Disabilities Act, 1995 and section 32 of the Disabilities Act, 2016. Second issue raised in this petition, is to provide proper access to orthopaedic disabled persons so that they were able to freely move in the educational institution and access the facilities. Third issue pertains to pedagogy that is making adequate provisions and facilities of teaching for disabled persons, depending upon the nature of their disability, to enable them to continue their study smoothly.

Regarding 3% reservation in education institution, the language of section 39 of the Disabilities Act, 1995 and section 32 of the Rights of Persons with Disabilities Act, 2016, is crystal clear. "Section 39 provides that all Government educational institutions and other educational institutions receiving aid from the

¹⁵(2018) 2 SCC 397.

Government, shall reserve not less than three per cent seat for persons with disabilities." As per this provision, all Government educational institutions as well as other educational institutions which are receiving aid from the Government are supposed to reserve seats for the benefit of persons with disabilities. Thus, 3% of the seats is the minimum reservation and it can be more than 3%. First time, this provision had come up for discussion before the Supreme Court in All Kerala Parents Association of the Hearing Impaired vs State of Kerala¹⁶ The Court hold that Section 39 deals with the provision of reservation of seats for persons with disabilities in government educational institutions as well as educational institutions getting aid from government. The Rights of Persons with Disabilities Act, 2016 makes more exhaustive provisions insofar as providing of educational facilities to the persons with disabilities is concerned. Regarding accessibility, Section 40 mandates the Central Government to frame Rules and laying down the standards of accessibility for physical environment, transportation system, information & communication system and other facilities & services to be provided to the public in urban and rural areas. Apart from Section 39 of PWD Act, 1995, and Section 32 and 40 of the Rights of Persons with Disabilities Act, 2016, Supreme Court taken into account Rule 15 which states about accessible standards for public buildings. In order to provide access to disabled students, it is the duty of the Government to provide ramps, lifts. Adjustment in furniture, bathroom modifications in educational institutions, Braille symbols at appropriate places in buildings, examination modifications, use of scribe and question paper in accessible format. Further, in order to provide accessibility to students with disabilities, Supreme Court instructed UGC to constitute a committee. The committee shall undertake a comprehensive study in context of accessibility and pedagogy. The committee would also suggest the models for implementation of these suggestions. The exercise shall be completed by June 30, 2018.

Therefore, it is not only essential to provide necessary education but to see that such education is imparted to them in conducive manner. This is only possible if there is proper accessibility to the building, where the educational

¹⁶ 2003(2) WLN 692

institution is housed. The court said that not making adequate provisions to facilitate proper education to persons with disabilities, amounts to discrimination. But what about the reality. Majority of the buildings of colleges and universities are non-accessible. Bath rooms and hostels are totally non-disabled friendly. There is no provision of ramps and lifts in colleges and universities. Majority of the books, magazines and journals are not available in Braille Script. Screen reader software is not available. Maximum colleges and universities having no Sign Language teacher. In this circumstances a natural question naturally rises up in mind that when the Government will wake up from sleep. Till now, the students suffering from disabilities are waiting from justice.

Cases based on section 43 of the PWD Act –Schemes for preferential allotment of land for certain purposes.

Section 43 of the PWD Act deals with affirmative action for the upliftment of the status of disabled. In this context the instruction has been given to concerning Governments. It states that the appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concession] rates for House, Setting up business, Setting up of special recreation centers, Establishment of special schools, Establishment of research centers, Establishment of factories by entrepreneurs with disabilities.

Salil Chaturvedi & Prajwala vs. Union of India¹⁷

In this case, the petitioner filed a Public Interest Litigation in Supreme Court. The case was decided by Chief Justice K.G. Balakrishnan, Justice P. Sathe and Justice J.M. Panchal. It came to the notice of the Supreme Court that while some states had partially implemented the provision under Section 43 but no State came forward with the specific plea that schemes had been formulated and reservation had already been made in favour of disabled persons.

¹⁷(2009) 4 SCC 978.

Critical Appraisal of Judgment

The Court, accordingly, directed that whenever the State governments or local authorities allot land, preferential treatment shall be given to disabled persons and they shall be allotted land at a concessional rate. The Court also directed that while the percentage of reservation may be left to the discretion of the State governments/local authorities; but the total percentage of disabled persons was required to be taken into account while deciding that percentage. Additionally, the Court allowed liberties to them who felt that the State governments/local authorities were not extending the benefits to the persons who are entitled to get such benefits under Section 43 of the Act to file complaints with the appropriate authorities as envisaged under the provisions of the Act.

Cases based on section 44,45 and 46 of the PWD Act - Non-discrimination in transport

Section 44 of the PWD Act 1995, discuss about non-discrimination in public transport. It states that establishments in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to adapt rail compartments, buses. Vessels and aircrafts in such a way as to permit easy access to such persons; adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently. Supreme Court decided several cases on this issue and paved the way for disabled. Some of the landmark cases have been given below.

Section 45 states that establishments in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to adapt rail compartments, buses. Vessels and aircrafts in such a way as to permit easy access to such persons and adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently.

Section 46 states that the appropriate Governments and the local authorities shall, within the limits of their economic capacity and development,

provide for ramps in public buildings, Braille symbols and auditory signals in elevators or lifts, ramps in hospitals, primary health centres and other medical care and rehabilitation institutions.

***Jeeja Ghosh and Other vs. Union of India and Others*¹⁸**

Ms. Jeeja Ghosh is a prominent social activist involved in disability rights. She is a patient of cerebral palsy. She is a Board member of the National Trust, an organization of the Government of India. Once Ms. Ghosh was invited to an International conference, which was going to be held in Goa, from 19th to 23rd Feb Ghosh was invited as one of 15 international individuals to review an Indo-German project. Organizer purchased plane tickets for Ms. Jeeja Ghosh in the morning of 19th February when she seated on the flight, Ms. Jeeja Ghosh off the plane due to her disability. She filed a PIL, in which she mentioned that shock and trauma of this event caused sleeping disorder. It also deprived the conference organizer to hear her thoughts and experiences. The unfortunate incident Infringed her fundamental rights under Article 14 and 21 of the Indian Constitution. She had also submitted a complaint to the Ministry of Social Justice and Empowerment as well as to the Commissioner for Persons with Disabilities and the Chief Commissioner for Persons with Disabilities. Both had issue show cause notices to Spice Jet. In the meantime Spice Jet had sent a letter in which apologizing for the incident. It was just as sprinkling salt on their wounds.

It is claimed that such behaviour of airlines crew is outrageous and illegal. Staff of Spice Jet clearly violated Rule 133A of Aircraft Rules, 1937.

In this backdrop, the petitioners seek the following relief:

- a) Issue a writ in the nature of Mandamus to the Spice Jet, directing them to follow civil Aviation Rules.
- b) She later demanded issue of writ or order in the interest of justice.

¹⁸ (2016) 7 SCC 761

Critical Appraisal of Judgment

The case was decided by Justice A.K. Sikri and Justice R.K. Agarwal. The Division Bench took this opportunity to restore the dignity of the persons suffering from disabilities. The bench after considering the various arguments from the parties, decided that the petitioner Jeeja Ghosh was not given appropriate, fair and caring treatment while she was required with due sensitivity, and the manner in which she was de-boarded from the aircraft shows total lack of sensitivity on the part of the officials of the airlines. The bench also observed that the rights granted to the disabled persons are based on principle of human dignity, which is treated as a significant facet of right to life and liberty. The airline staff acted in callous manner and in violation of Rules, 1937 and CAR, 2008 guidelines. In the eyes of Court the incident was most unfortunate and clear cut violation of Art.14,19.32 and 21 of Constitution of India as well as Biwako Millennium for Action towards an Inclusive, Barrier free and Rights based Society for Persons with Disabilities in Asia and the Pacific, 2002. Accordingly, Supreme Court awarded 10 lakhs to Jeeja Ghosh as damages for mental and physical trauma experienced by her through hands of Spice Jet. The Apex Court issued the guidelines with regard to ‘carriage’ by persons with disabilities with reduced mobility and observed that people with disabilities have right to live with dignity.

Javed Abidi vs. Union of India¹⁹

The case was decided by Justice K. Venkataswami and Justice G.B. Pattanaik. The moot Question before Supreme Court was that whether facility of grant of concession in air travel to person suffering from locomotor disability required. The Petitioner filed a petition under Article 32 of the Constitution before the Supreme Court of India. In this petition, petitioner asked the Court to direct the Union Government and the State Government to implement the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Petitioner prayed for directions to the Indian Airlines to provide 50 % concession to all disabled persons as other wise to provide such

¹⁹ AIR1999 S.C 532.

concession only to visually impaired persons would be discriminatory. He also prayed for directions to the Indian Airlines to immediately provide for ambulifts and aislechair.

Critical Appraisal of Judgment

In regard to the Question of concession of 50 % on air –tickets, the court took the view that bearing in mind the discomfort and harassment a person suffering from locomotor disability would face while travelling by train particularly too far off places, it was necessary to direct the Indian Airlines to grant the same concession which the Airlines was giving to those suffering from blindness to those suffering from locomotor disability to the extent of 80 % and above for travelling by air within the country. It would of course be necessary for such person with locomotor disability to furnish requisite medical certificate from the Chief District Medical Officer.

In taking this view, the Court rejected the Contention that Indian Airlines was not in feasible economic condition to give such concession, or that the concession to blind persons was being given prior to the above persons with disabilities Act coming into force or that it would result in discrimination with other disabled persons. Such direction was given, according to the court, keeping in view the broad objectives and true spirit of the persons with Disabilities Act to create barrier free environment and make special provisions for the integration of persons with disability into the social mainstream. Supreme Court, while delivering the Judgment, Stressed on the fact that the Providing Concession, aisle chair and ambulifts are the social responsibility of the Airlines. It was a landmark case in which Supreme Court took strong recognition of the rights of persons with disabilities to have accessible public facility.

Rajiv Raturi vs. Union of India and Others²⁰

In this case, a petition was filed on behalf of disabled for proper and adequate access to public places. It is submitted in the petition that prime concern of visually impaired persons is safe access to footpaths, roads and public

²⁰(2018) 2 SCC 413.

transport. Further, the petition discusses about the installation of auditory signals at every red light and zebra crossing, guiding blocks in zebra crossing to guide visually impaired persons, warning blocks along the edges of the pavement or footpaths to denote difference between the roads and the pathway, specially designated parking areas highlands in the middle of main roads for visually impaired persons. Again, the petitioner highlights the callous approach of various States and Union Territories. The Supreme Court critically examined Sections 44,45 and 46 of PWD Act, 1995 and sections 2(i), 2(k), 2(v), 2(w), 2(zd), 2(b), 16,25(1)(b) and 40 of Rights of Persons with Disabilities Act,2016, the Supreme Court passed a slew of directions to the Central and the State Governments to ensure that public infrastructure and facilities are accessible to persons with disabilities. The Court directed that the governments come up with detailed reports and plans to make public buildings, airports, railway stations, public transport carriers accessible within three months. Accordingly, government filed its status report before the court in which central government said that several government buildings further, railway stations and airports had also been made accessible. The Court directed that accessibility audits of government buildings be completed by February 2018 and retrofitting of these building be completed in August 2018, December 2018, June 2019 and December 2019 respectively. The Supreme Court clearly stated that non-implementation of provisions means violation of Art.19(1)(c).

Disabled Rights Group vs. Chief Election Commissioner ²¹

In this case, a letter written by a disabled Rights group, an NGO to Supreme Court termed as Public Interest Litigation. The grievances expressed in the letter related to the absence of facilities to PWD to exercise their franchise in the elections. The petitioners referred to the need for;

- a) Wooden ramps at polling Stations to enable disabled persons to have an easy access

²¹ 2004(4) SCALE 675

- b) The numbers in the Electronic voting machine being written in Braille to enable Visually handicapped voters to feel the numbers and press an appropriate button to cast the vote
- c) Separate Queues and special arrangements for PWD at Polling Stations; and
- d) The Polling Station Personnel to be courteous and render necessary assistance to enable persons with disability to exercise their franchise.

Critical Appraisal of Judgment

The case was decided by Chief Justice Khare, Justice S. B. Sinha and Justice S. H. Kapadia. Supreme Court issued instruction to the Election Commission regarding facility for disabled at Polling Stations. In response of the instruction issued by Supreme Court, the Election Commission stated that it has issued instructions to Chief Electoral officers of all States and Union Territories, to provide ramps to enable physically handicapped persons to use their wheelchairs to go into the polling stations, to have separate Queues for physically handicapped and to sensitize poll personnel about the special needs of the disabled. Regarding printing of serial numbers in Braille, the Election Commission stated that it will evolve an appropriate and satisfactory Solution in consultation with the Ministry of Social Welfare and Empowerment, representatives of NGO working for the welfare of visually impaired and technical Experts from the ECIL and BEL. Again it is pointed out that even the existing EVMs, have been designed keeping in view the needs of the visually handicapped and hearing impaired electors.

Further, the Court directed the Chief Secretaries of respective States in coordination with Electoral Officers of those States, to make available wooden ramp facilities at polling Stations situated in cities and urban areas. It is also stated that new EVS Containing Braille numbers by the side of the ballot buttons must be introduced to assist the VH. This was the cardinal case because in this case the electoral rights of the disabled have been discussed.

Cases under Article 47 of the PWD Act.

Section 47 of the PWD Act states that no establishment shall dispense with or reduce in rank, an employee who acquires a disability during his service. Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits. Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. The Act further states that no promotion shall be denied to a person merely on the ground of his disability, provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

Narendra Kumar Chandla vs. State of Haryana and Other²²

In this case, the appellant was working as a Sub Station Attendant. Meantime, the appellant suffered from Sarcoma and operated for Sarcoma. Unfortunately, due to Sarcoma, his right arm was amputated. But the doctor recommended that he can assume his normal duties. As per the advice of doctors, the respondent joined as a Carrier Attendant. The petitioner was aggrieved on account of being reduced in rank on acquiring disability during service. Side by side, he was deprived of his right to promoting to the next higher grade forever. Accordingly, the appellant filed a writ petition in High Court. But his writ petition was dismissed. Again, a special leave petition filed under Article 136 in the Supreme Court of India

Critical Appraisal of Judgment.

The case was decided by Justice K. Ramaswamy and Justice B.L. Hansaria. The Division Bench took the opportunity to uphold the rights of persons acquires disability during service. Supreme Court minutely examined Section 47 of the PWD Act and said that language of Section 47 is crystal clear. Section 47

²² AIR 1994 SCR 657.

of the Act states that no establishment shall dispense with or reduce in rank, on employee who acquires a disability during his service. Provided that if any employee after acquiring disability is not suitable for the post he was holding could be shifted to some other post with the same pay scale and service benefit. Moreover, if it is not possible to adjust the employee against any post he may be left on supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier. No promotion shall be denied to a person merely on ground of disability. To great extent, Supreme Court removed the injustice and protected the livelihood of persons who acquired disability during service. The Supreme Court has set its face against termination of persons acquires disability during service.

***Kunal Singh vs. Union of India and Anr.*²³**

The appellant in this case was a Constable in the Special Service Bureau (SSB) and suffered an injury in his left leg when he was on duty. He was invalidated from service by respondents. He filed a writ petition in the high court challenging the validity and correctness of the said order on the ground that it is arbitrary and that he could have been assigned with alternative duty which he could discharge keeping in view the extent of his disability. However, the High Court dismissed his petition holding that he had been permanently invalidated on the basis of the medical opinion and as such there was no scope for him to continue any further in service of any kind in SSB. The petitioner then went to Supreme Court and filed an appeal based on section 47 of the Act.

Critical Appraisal of Judgment

The case was decided by Justice Shivraj V. Patil and Justice H. K. Sema. The Apex Court vehemently criticised the approach taken by the Government of India and said that It must be remembered that person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly

²³ (2003) 4 SCC 524

all those who depend on him also suffer. The very frame and contents of section 47 clearly indicate its mandatory nature. In construing a provision of social beneficial enactment that too dealing and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. In Court's view the language of Section 47 is plain and certain in casting statutory obligation on the employer to protect an employee acquiring disability during service. The Supreme Court also observed that the Act is a special legislation, and the *doctrine of generalia specialibus nonderogant* would apply. It thus ruled that Rule 38 of the Central Civil Service(Pension) Rules 1972 (on the basis of which it was argued before the Supreme Court that the appellant was getting invalidity pension) cannot override section 47 of the Act. In fact, the Supreme Court cited section 72 of the PWD Act in this regard. The provisions of this Act, or the rules made there under shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued there under, enacted or issued for the benefits of persons with disabilities.

The Supreme Court held that the appellant has acquired disability during his service and if found not suitable for the post he was holding, he could be shifted to some other post with same pay-scale and service benefits; if it was not possible to adjust him against any post, he could be kept on supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Accordingly, Supreme Court directed the respondents to give relief in terms of section 47 of the Act.

Union of India vs. Devendra Kumar Pant²⁴

In this case, the first respondent was appointed as a Lab Assistant in the Research Designs and Standards Organisation (RDSO), Ministry of Railways, in the year 1972. He was promoted as Junior Research Assistant in 1977 and Senior Research Assistant in 1983. Thereafter, the first respondent was selected for next higher post of Chief Research Assistant. On 30.06.1997 he was promoted to the said post with the condition that his promotion will be effective from the date of

²⁴ AIR 2010 SC 1253.

submission of fitness certificate in B1 medical category. The respondent filed a suit before the Central Administrative Tribunal, Lucknow Bench, praying that promotion order be Quashed to the extent it required him to produce fit certificate in B1 medical category. Central Administrative Tribunal dismissed the application as being devoid of any merit. The Tribunal held that medical standard prescribed in office order was based on recommendations of a committee, therefore it did not suffer from any impurity. The respondent filed writ petition in Allahabad High Court challenging the order of the Tribunal. Respondent raised a new concern based on section 47 (2) of the PWD Act, 1995 which states that “no promotion shall be denied to a person merely on the ground of his disability”. The High Court held that RDSO is not exempted from provision of section 47 of the Act, therefore, the respondent could not be denied promotion. The order of High Court is challenged by the employer in Supreme Court.

Critical Appraisal of Judgment

The case was decided by Justice R.V. Raveendran and Justice P. Sathasivam. The Supreme Court tested on the touchstone of Section 47 and held that promotion to a higher post cannot be claimed automatically based on Section 47 of the Act. While examining the case of a colour blind person, which according to the Court neither amounted to blindness nor low vision as defined under the Act and was, therefore, not a disability under the Act, the Supreme Court pointed out that Section 47 (2) does not provide that even where the disability came in the way of performance of higher duties and functions associated with the promotional post, promotion shall not be denied. The Court found that Section 47 (2) authorise an employer to stipulate minimum standards for promotion keeping in view safety, security and efficiency, and if the employee were unable to meet the higher minimum standards on account of any disability or failure to posses the minimum standards, in such a case, Section 47 would not be attracted. Accordingly, Supreme Court rejected the claim of respondent.

Dalco Engineering Pvt. Ltd. vs. Shree Satish Prabhakar Padhye .²⁵

In this case, the appellant Dalco Engineering Private Limited was a private Limited Company under Companies Act, 1956. Mr. S. P. Padhye was working in Dalco as a Telephone Operator for over twenty years. The respondent terminated from service by the Dalco from 31st December 2000 on the grounds that he had developed 85 per cent impairment in hearing ability. The respondent complained to the Chief Commissioner for Persons with Disabilities stating that when he joined Dalco, he was fully fit. He developed hearing impairment during the course of employment. Therefore, he prayed that Dalco should have continued his employment. Chief Commissioner passed an order on 12 October 2001 instructed Dalco to re-employ the respondent to discharge any suitable work. But, unfortunately the suggestion was rejected by Dalco. The respondent, therefore, filed a writ petition in Mumbai High Court. Mumbai High Court was of the view that a company incorporated under the Companies Act would be included within the scope of the Act and it accordingly issued order directing the private company under Section 47 of the Act to reinstate a terminated employee, who acquired disability during the service and to shift the employee to a suitable post, with the same pay scale and service benefits as also with back-wages from the date of his termination.

Critical Appraisal of Judgment

Being aggrieved by this order of the Mumbai High Court, the employer approached the Supreme Court. The case was decided by Justice R.V. Raveendran, Justice R.M. Lodha and Justice C. K. Prasad. The moot question before Supreme Court was that whether private sector comes under the purview of establishment or not. After the close and critical examination of the provision of the Act, the Supreme Court found that the Legislature had not intended the said provision to be made applicable to private employers and observed that despite the fact that a socio-economic legislation ought to be interpreted liberally, the interpretation could not be carried to levels unintended by the Legislature. The Supreme Court, accordingly, concluded that private sector employers were not

²⁵ (2010) 4 S.C.R 15.

‘establishments’ within the meaning of section 2(k) of the Act (as interpreted by Mumbai High Court to be so) and hence, it said that Section 47 would not be applicable to them. Beyond any doubt, the case is very landmark. Supreme Court excluded private sector from the list of establishment. But in context of disabled, the case was most unfortunate. Because the judgment closed the door of private sector for disabled. It can be said that the judgment ruptured the existence of persons suffering from disability. Again, the judgment is totally against of the principle of Constitutional morality, Constitutionalism and Rule of Law. In this circumstances, it is important to note that Government as well as Judiciary are stressing on inclusive development for society but judgment is totally against of this.

Bhagwan Dass vs. Punjab State Electricity Board²⁶

The case highlights a situation where an employee acquiring disability during service was not aware about the beneficial provision under Section 47. The employee lost his eyesight while in service and was retired from service. Under the compulsion, he made a formal request for retirement and a suitable job for his wife in his place. Accordingly, he was retired from service in 1999 despite a circular of the Board that an employee acquiring a disability during service could not be retired from service. Subsequently, the employee became aware about the provision that he entitled to protection under Section 47 of the Act and, accordingly, made repeated requests to the respondent for re-joining service; but his request was not considered. He filed a writ petition in Punjab and Haryana High Court. The central question which came before High Court was non-implementation of Section 47 of PWD Act. But, unfortunately the High Court of Punjab & Haryana dismissed his petition. Later on, he filed a special leave petition before the Supreme Court. The Supreme Court made the following observation:

²⁶ AIR 2008 SC 990.

Critical Appraisal of Judgment

The case was decided by Justice G. P. Mathur and Justice Aftab Alam. The division Bench took this moment to restore the right of the disabled persons to live a dignified life. Supreme Court after deep rooted study of the provision and critical analysis of the judgment of High Court said that It was for the officers of the respondent to explain the correct legal position to him and his entitlement to protection under Section 47 of the Act. However, that instead of doing so, the officers picked-up a line of request for retirement in his letter and took it out of context. In light thereof and in view of the express provision of section 47 of the *Act*, it was held that the action of the Board in terminating the appellant's service was illegal and against the soul of the Act.

The Supreme Court held that the appellant could continue in service till the date of his superannuation and that he would be entitled to all service benefits. The respondent was directed to reinstate him and further to adjust the terminal amounts paid to him against the salary payable to him and that the balance if any was to be recovered from him in easy monthly instalments from future salary. The Supreme Court observed that it is the duty of executive and legislative to recognize the personhood and provides the ample opportunity to survive because from ancient time till now these unfortunate person forced to survive on edges. Supreme Court strongly criticised the callous and insensitive approach of Government and said that these section of society has arisen above the invisible line.

Dileep Kumar Singh vs. Union of India²⁷

On 1st Jan, 1998, the respondent was enlisted in the CRPF as Assistant commandant. On the 19th October 2001, he sustained serious injuries in his spinal cord and legs while he was on duty.

After the injury, he was provided with specialized treatment in various hospitals, but nothing worked out. At last, a medical board in its report declared him permanently incapacitated and recommended that he be relieved from service

²⁷ AIR 2015 SC 1420.

on medical grounds. On 27th October, 2004, a show cause notice was served on the respondent along with a copy of the report of the medical board with a direction to submit his representation. Instead of representing against the said show cause notice, the respondent filed a writ petition in Allahabad High Court against the said show cause notice. An interim order was passed on 19th January, 2005, in which appellants were directed not to pass any order pursuant to the report given by the medical board against the respondent on 1st July, 2011. Then the respondent was relieved from service and given invalidation pension as admissible under Rule 38 of the CCSC (pension) Rules of 1972. The respondent filled a second writ petition challenging the aforesaid order.

On 8th Jan, 2014, the Allahabad High Court held on that a notification dated 10th September, 2002 issued under section 47 in which H.C made it clear that the exemption provision would only apply to promotion and not to continuing the respondent in service. As a consequence, the order dated 1st July, 2011, was set aside and the Union was directed to treat the petitioner in service and to adjust him against any suitable post or against a supernumerary post until a suitable post is available or until he attains the age of superannuation, whichever is earlier.

Critical Appraisal of Judgment

In response of the Judgment of Allahabad High Court rejoinder affidavit filed by the appellants in S. C. The case was decided by Chief Justice of India T.S. Thakur and Justice Rohinton Fali Nariman. In the rejoinder affidavit it was clearly mentioned that central Para Military forces perform a critical role in maintaining internal security and guarding of national borders. The job requirements are “technical” in nature requiring a high level of physical fitness. CRPF is exempted from the provisions of section 47 of the Act. Further, the respondent does not come within the purview of standing order 7/99 and has been declared 100% permanently incapacitated for further service. His case dealt with procedure laid down in section 8 of CRPF medical manual. There is difference between ‘not fit for normal active duty and 100 per cent permanent incapacitation for further service. However, it is respectfully submitted that the full bench decision of Allahabad High Court in the case of Union of India vs. Mohd. Yasin Ansari has

held that a person in the armed forces even with lower degree of disability cannot be retained in services. The Supreme Court observed that plea of the disabled officers mentioned being vague, for no particulars are given as to the extent of their disability. On the other hand, the Union has made it clear that standing order no.7/99 will not apply because of nature of disability and job requirements demand a high level of fitness and ability. Accordingly, the judgment of the Allahabad High Court set aside. This judgment of Supreme Court is totally against of the principal of reasonable accommodation. The judgment of Supreme Court should be justified on the basis of fairness and integration. But recent judgment of Supreme Court is failed to integrate disabled in the mainstream of society. They are totally excluded. Therefore, it is the pious duty of Court to ensures truly egalitarian society, where no class would be under privileged on the basis of disability. But this judgment failed to execute the concept of egalitarian society.

***Pankaj Sinha vs. Union of India and Other*²⁸**

In this case a writ petition filed under Article 32 of the constitution in context of dismal and pathetic condition of the people suffering from leprosy. The petitioner attempt to obtain directions to be issued to the Union and States to manage regular National survey for deciding new cases linking to discovery rate of leprosy and to produce and submit the reports of National sample survey on leprosy supervised in 2010-2011 and further to conduct regular and maintainable gigantic awareness campaigns for the general public to eliminate the fear attached with leprosy and motivate and in courage the people tormented by the said disease to head a life of equality and dignity. The petitioner turned attention of the court to the fact that although leprosy as a disease proven to be curable and manageable with MDT, get millions of people and their family members still suffer from leprosy and the social, economic and cultural stigma attached to the leprosy. Further, the people affected by leprosy suffer additional discrimination in the form of denial of access to health services, education and livelihood options. The petitioner also submitted that Governments should ensure the frequent a availability of MDT for treatment of leprosy. The writ petition sought a

²⁸ 2019 (1) SCJ 531

mandamus in context of discrimination of children studying in schools as well as their families. The petition discusses about the availability of MCR footwear free of cost to the leprosy affected persons in the country. It is important to note that during the pendency of the writ petition, another writ petition was filed in 2017, seeking the relief that number of legislations be declared as unconstitutional being violative of Articles 14, 19(1)(d), 19(1)(g), and 21 of the Constitution of India. Meantime, Law Commission submitted its 256th report in which Commission said leprosy Act, is against the spirit of the Resolution passed by U.N.O and therefore required immediate repeal in consultation with the states.

A Critical Appraisal of Judgment

The case was decided by chief justice of India Dipak Mishra, justice A.M Khanwilkar and justice. Dr. D. Y. Chandrachud. The case highlights the alarming situation in which millions of destitute persons suffering from leprosy are forced to run from pillar to post, to seek a just, fair and dignified life at the hands of the State instrumentalities. But State failed to ameliorate the pathetic conditions of persons suffering from leprosy. The Supreme Court took the opportunity to protect the rights of the persons suffering from leprosy to lead a life with dignity. The Court held that it is pious duty of State to look after the welfare of persons suffering from leprosy. Further, the Court opined that it is matter of grave concern that government turned blind eyes and ears towards them. The state cannot take the plea of unsound financial conditions. Accordingly, the Supreme Court strongly recommended to the Union and States to organise National surveys in order to detect the new cases and to publish and to bring the reports of the national sample survey of leprosy conducted in 2010-11. Supreme Court took the opportunity to command Union of India along with the States Government to organise massive awareness campaign to increase public awareness about the symptoms and the fact that is perfectly curable by the MDT. It is the responsibility of the Union and the States to ensure the availability of MDT drugs in all primary health centre and PHC. Further Supreme Court instructed the Union and the States Governments to ensure that both private and public schools do not discriminate against children coming from leprosy affected families. The persons suffering from leprosy must be issued BPL cards so that they can avail the

benefits under different schemes The Supreme Court instructed to provide MCR footwear free of cost. Again, the Supreme Court declared Section 13 of the Hindu Marriage Act, 1955 that allows dissolution of marriage on the ground of leprosy, Section 2 of the dissolution of Muslim Marriage Act, 1939, Section 27 of Special Marriage Act as unconstitutional The judgment is really a good indicator for persons suffering from leprosy. After the judgment, the persons suffering from leprosy now moving towards a new world in which dignified life is possible.

***Purswani Ashutosh (Minor) through Dr. Kamlesh Virumal
Purswani vs. Union of India and Others²⁹***

The moot question arises in this writ petition under Article 32 of the Constitution of India is, whether a person with low vision, within the meaning of section 2(r) of the Rights of Persons with Disabilities Act, 2016, can be denied the benefit of reservation for admission to the M.B.B.S course. In this case, the petitioner suffering from low vision appeared in the NEET (UG) examination for the 2018-19 session as a disabled candidate. He ranked 419 in the physically handicapped category. Clause (ZC) of the Rights of Persons with Disabilities Act, 2016, defines the term as a condition where a person suffers from visual acuity not exceeding v 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or (ii) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree. In this context, the language of Art. 32 of Rights of Persons with Disabilities Act, 2016, is quite clear. Art. 32 states All Government institutions of higher education and other higher education institutions receiving aid from the Government shall reserve not less than five per cent. seats for persons with benchmark disabilities. The persons with benchmark disabilities shall be given an upper age relaxation of five years for admission in institutions of higher education. But the candidature of the appellant had been rejected on the ground of low vision. The MCI submitted that an Expert committee formed by MCI had opined that persons with visual impairment of 40 percent or more could not be admitted to the undergraduate medical course.

²⁹ AIR 2018 SC 4297

Being aggrieved by the refusal of the concerned respondents to provide the benefit of reservation to the petitioner, the petitioner filed a writ in Supreme Court under Article 32 of the constitution of India citing discrimination and arbitrariness. In order to sort out the problem, the Court called for expert opinion from a team of experts consisting of three senior members second of the ophthalmic department on the following points: -

1. Whether low vision is within the benchmark of the Rights of Persons with Disabilities Act, 2016.
2. Whether petitioner is fit to undertake the MBBS course.

In context of first question the answer of committee was positive but the answer was negative in context of second questions. The committee of experts told that petitioner is not fit to undertake MBBS course as per the MCI guidelines. But the committee of experts did not disclose the exact reason for forming the opinion that the petitioner was not fit for the MBBS course.

Critical Appraisal of Judgement

The Division Bench (Arun Mishra and Indira Banerjee, JJ.) took the opportunity to uphold the rights of the disabled. The courts hold that the petitioner cannot denied admission to be MBBS course if his qualifies as per his merit in the category of persons that disability. Therefore, the petitioner shall be given admission in the current academic years 2018-19. The case highlights the dismal condition of disabled including visually impaired. They have write to seek a fair human and dignified treatment at the hands of States instrumentalities but they are running with empty hands. They are still regarded as invisible in society.

Pramod vs. Union of India and Other³⁰

In this case, the appellants were not given admission in M.B.B.S under physically handicapped category due to recommendation given by the Medical Council of India. Although the MCI adopted the provision of the Rights of Persons with Disabilities Act 2016 but the regulations framed by the MCI was

³⁰AIR 2018 SC 1919

totally different. As per the regulations framed by MCI, visually impaired students were not suitable for M.B.B.S course. In against of regulations framed by MCI, an appeal was filed in Punjab and Haryana High Court. But High Court upheld the regulations framed by MCI and the candidature of the appellants were rejected. An appeal was filed in Supreme Court in against of judgment given by Punjab and Haryana High Court. The Supreme Court cited the case of Purswani Ashutoush vs union of India in which it was held that 'statutory provisions have to prevail over the recommendations made by the Committee.

Critical Appraisal of Judgment

The Division Bench of Supreme Court (Vinit Saran and Arun Mishra J J) took this opportunity to upheld the rights of person suffering from visual impairment. The Supreme Court has rejected as fallacious the contention of Medical Council of India that section 32 of the Disabilities Act providing for reservation in higher education institutions for persons with benchmark disabilities and not to technical institution. Taking not of section 32 which makes it mandatory for all government institution of higher education receiving aid from the government to reserve not less than 5 per cent seats for persons with benchmark disabilities. The Medical Education Resolution framed under section 33 of the MCI, 1956 have statutory force and are binding on the MCI. Therefore, section 32 of the Rights of Persons with Disabilities Act must read with Section 33 of Medical Education Regulations, 1956. Finally, Supreme Court instructed that the disabled students, who had been denied admissions this year despite being meritorious, should be admitted in the M.B.B.S course next year.

V. Surendra Mohan vs. Secretary, Tamil Nadu Public Service Commission³¹

Tamil Nadu Public Service Commission notified 162 posts of Civil Judge (Junior Division) in which percentage of disability had been fixed as 40 % to 50 % for partially blind and partially deaf for selection. The High Court as well as Tamil Nadu Government Communicated its approval.

³¹ 2019(1) SCALE 621

The appellant submitted online application in response to the notification of 162 posts of Civil Judge (Junior Division). In the disability column, the appellant had mentioned. “More than 40%”. The disability certificate was mentioning his disability as 70%. The appellant qualified for main examination but he was not called for viva-voce text. Therefore, the appellant filed a writ petition in the High Court of Madras High Court permitted the appellant to sit in the viva-voce. When final result was declared his name was not there. Again, he filed a writ petition in Madras High Court. The writ petition was heard by the Division Bench. The Division Bench upheld the order of the Tamil Nadu Public Service Commission in which percentage of disability had been fixed as 40 to 50%. Appellant having 70% disability was not eligible.

Aggrieved by the order of Division Bench of Madras High Court, appellant filed a writ petition in Supreme Court. Supreme Court tested the order of Tamil Nadu State of stipulating 50% disability limit in hearing or visual impairment for post of judicial officer on the touchstone of Art 32 and 33 of PWD Act, 1995 and ultimately upheld the order of Tamil Nadu Public Service Commission. Supreme Court cited that a judicial officer in a state has to possess reasonable capacity of hearing and sight in order to hear cases, write Judgments and therefore fixing a limit of 50% disability in hearing impairment and visual impairment is not wrong. It is well within the power of the Government to prescribe eligibility as per the nature of the job.

Critical Appraisal of Judgement

The Division Bench of Supreme Court comprising Justice Ashok Bhushan and Justice K. M. Joseph denied relief to appellant. This Judgment of Supreme Court is totally against the spirit of PWD Act, 1995 and Rights of Persons with Disabilities Act, 2016. At one stage Supreme Court in *Rajiv Raturi vs. Union of India*, set deadlines to make public places accessible to visually disabled. The court observed that persons with visual impairments need a higher number of compensative facilities in order to fetch their daily needs without suffering the indignity. The Supreme Court ordered that it is essential to arrange such facilities so that blind persons are ensured level playing field.

But after one-year Supreme Court changed its attitude towards visually handicapped persons when it told that limitation on disability is fair, logical and reasonable. In this circumstances, what happens to their dignity and how could they contribute in the progress of the nation. This case is a black patch on the mouth of disabled. This judgment is not based on Constitutional morality and Constitutionalism. Constitutional morality based on the principal of greatest benefit not to the maximum number but greatest benefit to least developed community. Constitutionalism talks about balance and harmony to protect the individual rights. It is crystal clear that Constitutional morality and Constitutionalism clearly entails about the protection of the rights of an individual. To secure justice for disabled, it is the duty of the Court to interpret the provisions in liberal manner. Because Courts are regarded as temples of justice. Courts in a democracy do not belong to judges but belong to people. In this context, the judgment is not only arbitrary but also against Article 14 and 21. Supreme Court is regarded as custodian of the Constitution. So, it is the duty of the Supreme Court to protect the disabled's right from bias action of executive and legislative. In this context, Supreme Court failed to deliver justice to visually impaired. In this context, the approach and mind-set of the Courts are crystal clear. On numerous occasions the courts have need that mere declaration of the rights in ornamental way would not make unequal equal. If you want to make disabled able, it is necessary to take positive actions. So that they could compete with each other on equal basis. Accordingly, the Supreme Court ordered appropriate Government to turned the dream of disabled into reality, to provide for ramps in public buildings, railways, adaptation of toilets for wheel chair users, Braille books, software, Braille symbols and auditory signals in elevators, or lift, ramps in hospitals and Primary Health Centres.

After the enactment of the Rights of Persons with Disabilities Act,2016, Supreme Court continued to protect the civil and economical rights of the disabled. Supreme Court submitted that there is a clear cut distinction between provision of the Act and implementation. Accordingly, Supreme Court issued notice to the State Governments and Central Government regarding installation of auditory signals at every red light, zebra crossing, insert guiding blocks to guide

visually impaired persons and warning blocks along the edges of pavement. Further, Supreme Court said that non-implementation of the instructions means violation of the Act as well as 19(1)(c) of the Constitution. Due to extra-ordinary effort of Supreme Court, leprosy has been omitted from the grounds of divorce. Section 13 of the Hindu Marriage Act, 1955, Section 2 of the Dissolution of Muslim Marriage Act, 1939, Section 27 of the Special Marriage Act, 1954, Section 18 of the Hindu Adoption and Maintenance Act, 1960, Section 2 of the Jammu and Kashmir Dissolution of Muslim Marriage Act, 1999, has been declared unconstitutional by the Supreme Court. In several cases Supreme Court instructed the Government of India as well as State Governments to admit visually impaired students to M.B.B.S course. Supreme Court held that visually impaired have a right to seek a fair, humane and dignified treatment at the hands of state instrumentalities. On numerous occasions Supreme Court shown anger over callous and untenable approach of the Government. Supreme Court strucked down several obstructions which came in the path of disabled. The rights oriented approach taken by the Supreme Court led to the evolution of impressive legal framework. But the deep rooted observation of the cases came before the Supreme Court reveals that the Courts are yet to evolve a jurisprudence of disability rights. One of the burning example of this is the judgment given by Supreme Court in V. Surendra Mohan vs State of Tamil Nadu. In this case, Supreme Court denied relief to a visually impaired person suffering from 51% disability. At one stage Supreme Court set down deadlines to make public places accessible for visually impaired. On the other hand, Supreme Court deviating from its ideology. Si it can be said that judgment of Supreme Court in V. Surendra Mohan vs Secretary, Tamil Nadu Public Service Commission and others is totally against Preamble of the Indian Constitution, which provides Social, Political and Economic Justice. In modern sense Justice means aid. In this context, the aforesaid judgment is totally against the concept of Justice mentioned in Preamble because Supreme Court failed to provide aid to visually impaired persons. Further, it can be said that Supreme Court is moving in the line of Rawls, who have written 'Theory of Justice, in which he said that in sphere of Justice, disabled have no place.

Cases on disability decided by different High Courts of India

Cases based on section 47 of the PWD Act

M.V. Ramana Rao vs. A.P.S.R.T.C.³²

The case was decided by Justice R. Subhash Reddy. In this case, the petitioner, a driver employed in the respondent corporation, was discharged from service on the grounds of hearing impairment called ‘tinnitus’, which according to the respondent was not a disability covered under the provisions of the Act.

Critical Appraisal of Judgment

However, the Court held that the petitioner was entitled to benefits of the Act under Section 47 and the respondent was directed to provide a suitable alternative post for the petitioner, protecting his pay scale and service benefits. The High Court touched down the spirit of Section 47 and detected the truth. The Court observed that Art.47 of the Act protects an employee, who acquires disability during his service.

Kumar Bharat Prasand Narain Singh vs. Airports Authority of India³³

In this case, the petitioner was working as a co-pilot, suffered a heart attack while on duty and declared unfit to fly. He was given a lower post with lower pay-scale.

Critical Appraisal of Judgment

In against of demotion, the petitioner filed a writ petition in Delhi High Court in which petitioner has prayed that he should be absorbed in the pay scale of a co-pilot. The petitioner strongly contented that a fellow officer named Mr. K. P. S. Nair with a similar medical disability, has been offered the post equivalent to co-pilot and his salary and other benefits have been protected. Art.14 has, therefore, violated. Further, petitioner claimed the benefit of Section 47 of the

³² 2003 (4) ALT 150 (AP HC)

³³ 2005 (120) DLT 545 (Del HC)

PWD Act, 1995. The case was decided by Justice Vikramaditya Sen. The High Court found that persons with a heart ailment could be extended the benefits of the law within the boundary of Section 47 and directed the respondent to place the petitioner on the pay-scale of a co-pilot.

***Rasale Gopal vs. Andhra Bank*³⁴**

The case was decided by Justice L. Narasimha Reddy. In this case, the issue of certification of disability was questioned in Andhra Pradesh High Court. The petitioner, having born with one functional eye from birth, applied for a job in the Andhra Bank under visually impaired quota but his candidature was rejected.

Critical Appraisal of Judgment

Accordingly, he filed a writ petition in High Court. The petitioner challenged Section 2(b) of the Persons with disability as illegal, arbitrary and against of Article 14 and 16 of the Constitution of India. The second submission made by him was that he was not considered as a candidate without disability. The Court said it is the mandate of PWD Act under which a person is bound to produce a certificate of 40% or more than, otherwise candidates will be considered as candidates without disability. The Court further directed that under the jurisprudence of social security a person cannot be discriminated on the basis of partial disability and the candidate has to be treated as candidate without disability.

***Omvati Kalshan vs. Delhi Development Authority*³⁵**

In this case, the petitioner was working in Delhi Development Authority as a receptionist. While she was working, she certified visually impaired and found it difficult to work due to deteriorating eye sight. Therefore, she was offered a post at a lower grade and she was placed on a separate seniority list that did not have any ground for promotion. She was also denied conveyance allowance.

³⁴ 2003 IILLJ 916 (AP HC).

³⁵ 2005 (125) DLT 57 (Del HC)

Critical Appraisal of Judgment

Against the order of DDA, the petitioner filed a writ petition in Delhi High Court. The case was decided by Justice S. Ravindra Bhat. The petitioner has raised eyebrow on the decision of the DDA and termed it as arbitrary and against of Art.14 of the Indian Constitution. The Delhi High Court found that the respondent's action of demoting the petitioner and placing her on a separate seniority list was contrary to the provisions of Section 47 of the Act and directed it to treat the petitioner as eligible to the next higher grade, subject to her being otherwise qualified.

O.P. Sharma vs. Delhi Transport Corporation³⁶

In this case, the petitioner was working as a conductor with DTC. While he was working, he got a paralytic attack which led to severe impairment of his leg. Thereafter, he was retired prematurely from its service on ground of medical unfitness. The petitioner has raised eyebrow on the decision of the DTC and termed it as arbitrary. Because DTC denied alternative employment.

Critical Appraisal of Judgment

Accordingly, he filed a writ petition in Delhi High Court in which six instances have been given of conductors who were permitted to work as TTCS after being declared unfit. The case was decided by Justice S. Ravindra Bhat, Delhi High Court found the impugned order as arbitrary and directed the DTC to reinstate the petitioner and assign him suitable duties in accordance with Section. The Court further directed the DTC to ensure grant of annual increment and promotion. The Court observed that it is the duty of the state to protect the interest of downtrodden part of society, otherwise their existence will be in danger.

³⁶ 2005 (125)DLT 742 (Del HC)

Dilbag Singh vs. Delhi Transport Corporation³⁷

The case was decided by Justice S. Ravindra Bhat. In this case, the Court upheld the appeal of the petitioner in retaining him in jobs despite having less than 40 percent of disability. The petitioner was working as a bus driver with DTC, suffered injuries while on duty and was given forced retirement on medical grounds by the respondents. The petitioner approached the Chief Commissioner of Disabilities, but petitioner's complaint had been rejected by the Commissioner of Disabilities on the ground that the petitioner's disability was less than 40%. The order of the Commissioner was challenged before the High Court.

Critical Appraisal of Judgment

The High Court in construing the scope of Section 47 of the Persons with Disabilities Act observed that the provision did not use the term 'person with disability' but used the words 'an employee who acquires a disability'. The Court held that the issue of 'less than 40 percent disability was of no relevance for the purpose of Section 47. The order of the Chief Commissioner was accordingly quashed and the petitioner was ordered to be reinstated to a suitable post of equivalent rank with arrears and continuity of salary and increments. Additionally, costs were awarded to the petitioner.

Municipal Corporation of Greater Mumbai vs. Srirang Anandrao Jadhav³⁸

The case was decided by Justice Dr. D. Y. Chandrachud. In this case, a person acquired disability while he was working as bus driver. He was certified to be only 12% disabled. Accordingly, he was declared unfit for work and informed not to report for work. Aggrieved by the decision, the Respondent moved to the labour Court. The Labour Court came to the conclusion that the termination of the services of the Respondent was illegal under Section 47 of the PWD Act, 1995. Therefore, the Labour Court instructed to reinstate the Respondent in a suitable post with the same grade and scale of pay. The decision of the Labour Court

³⁷ 2005 (123) DLT 318 (Del HC).

³⁸ 2010 II CLR 601 (Bom HC).

challenged in revision before Industrial Court. The Industrial Court affirmed the judgment of Labour Court and dismissed the revision.

Critical Appraisal of Judgment

After the rejection of the revision, the petitioner filed a petition in Mumbai High Court. The High Court observed that it is not necessary for a person employed and acquired disability during employment to prove more than 40 per cent disability. The Court observed that for the persons already employed, acquired disability during employment there was no necessity for getting any certificate from the medical authority as mentioned under 2(t) or 2(p) of the Act because provision did not use the term 'person with disability' but used the words 'an employee who acquires a disability.

Ranjit Kumar Rajak State Bank of India³⁹

In this case, the petitioner underwent a renal transplant in 2004. Later on, he applied for the post of a probationary officer in the state Bank of India. Finally, he was selected for the post of probationary officer and sent for medical examination. On the basis of medical report his candidature was rejected.

Critical Appraisal of Judgment

The petitioner approached Mumbai High Court. The case was decided by Justice Ferdino Rebello and Justice R.S. Mohite. The moot Question before Mumbai High Court was that can a person who is fully Qualified for a post and fit to discharge his duty, be denied employment on the basis of medical report because of the financial burden that would cast on the employer. The Division Bench of the Bombay High Court incorporated the right to reasonable accommodation. The Court said a duty is cast on the State to provide reasonable accommodation in the matter of employment. Consequently, the Court directed the Bank that the petitioner be offered appointment.

(2009) 5 Bom CR 227.

P. Thangamarimuthu vs. Tamil Nadu State Transport Corporation⁴⁰

In this case, the petitioner was appointed as conductor in the Tamil Nadu State Transport Corporation, met with an accident while on duty. The petitioner got serious injury, resulting in amputation of both legs. Thereafter, Medical Board Certified him medically unfit to the job of conductor. Accordingly, the petitioner was discharged from service. The petitioner filed a writ petition in Madras High Court. The Madras High Court held that right to employment is protected under Section 47 of the PWD Act, 1995 as well as under Art. 21 of the Indian Constitution. As the PWD Act, 1995 is a beneficial legislation, doctrine of *generalia specialibus nonderogant* would apply and the Government order of discharge cannot override the provisions of Section 47 of the Act because Section 47 clearly states that an employee who is found unsuitable for the post he was holding due to disability acquired during his service could be shifted to some other suitable post with the same pay scale and service benefits. The Court Quashed the order and directed to corporation to employ the petitioner in any suitable post with continuity of service with all other monetary and service benefits.

Cases based on Section 30

Section 30 of the PWD Act cast a responsibility on Central Government. It states that without prejudice to the foregoing provisions, the appropriate Governments shall by notification prepare a comprehensive education scheme which shall make Provision for transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools. The removal of architectural barriers from schools, colleges or other institution, imparting vocational and professional training, the supply of books, uniforms and other materials to children with disabilities attending school, the grant of scholarship to students with disabilities, Setting up of appropriate forum for the redressal of grievances of parent, regarding the placement of their children with disabilities, suitable modification in the examination system to eliminate purely mathematical questions for the benefit

⁴⁰(2006) IILLJ 208

of blind students and students with low vision, restructuring of curriculum for the benefit of children with disabilities, restructuring the curriculum for benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum.

Social Jurist, a Lawyers' Group vs. Union of India⁴¹

In this case, a petition was filed in Delhi High Court seeking directions to the government, to frame an education scheme in accordance with Section 30 with provisions for transport facilities, removal of architectural barriers in the school, supply of books, uniform and other material, scholarship grants, setting up of appropriate forum for a for the redressal of grievances of parents regarding the placement of their children, suitable modification in the examination system, to eliminate purely mathematical questions for the benefit of blind/low vision students, and restructuring the curriculum for the benefit of children with hearing impairment to facilitate them to take only one language as part of their curriculum

Critical Appraisal of Judgment

The case was decided by Chief Justice B.C. Patel and Justice B.D. Ahmed. In context of this appeal, the High Court issued notices to the Union of India as well as the Delhi Government. After that Union Government framed an education policy, providing every child with disabilities, free of cost special books and equipment needed for education, special provisions for transport facilities, removal of architectural barriers. The Supreme Court tested on the touch stone of Art 30 and observed that Right to Education is just a dream for children suffering from disabilities. Till now, majority of buildings of school and university continue to remain inaccessible in India.

⁴¹ AIR 2004 Delhi 278.

Dhawal S. Chotai vs. Union of India⁴²

Critical Appraisal of Judgment

In this case, a petition was filed by a person who suffering from Cerebral Palsy. It affected the proper functioning of bones, muscles and joints. That's why the petitioner wanted three hours extra time to write the C.A examination on account of his disability. But authority refused to grant three hours extra time. The case was decided by Justice H. Gokhale and Justice D. Deshpande. The Bombay High Court, while making a positive interpretation of the Section 30 of the PWD Act, allowed the petitioner with cerebral palsy to write the examinations for the Chartered Accountants Course with three extra hours. The Court said it is a part of Right to life and Right to life means right to have decent life, which includes right to get education. The Court also directed the institute to extend all cooperation to the petitioner, in continuing with the examination for the three extra hours. While deciding the case, the Division Bench of Bombay High Court applied the principal of reasonable accommodation.

Cases based on section 39

Binita Senapati vs. State of Assam and Ors.⁴³

Critical Appraisal of Judgment

In this case, the petitioner was orthopaedic handicapped having 45% of disability. She applied for the admission to the M.B.B.S course in Medical Colleges of the State of Assam but failed to get admission in a medical college because government had provided only 1% reservation of seats for orthopaedic handicapped. Aggrieved by the rules for admission to the Medical Colleges of Assam, she challenged the admission rules on the ground that section 39 of the PWD Act requires reservation of 3% for disabled people in educational institutions. The case was decided by Justice J. Sharma. The Gauhati High Court observed that "The Persons with Disabilities (Equal Opportunities, Protection of

⁴² AIR 2003 Bom 316.

⁴³ AIR 2000 Gau 1

Rights and Full Participation) Act, 1995 of Government of India has already been introduced by Government of Assam from 07.02.1996. Therefore, it has become obligatory on the part of employer to provide 3% reservation to the disabled as per Section 33 of the Act. Further, the Court opined that as the MBBS course is suitable for orthopaedic handicapped persons. So, the candidates with locomotor disabilities would be entitled for 3% reservation and thus the petitioner is entitled to such admission.

***Employment Opportunities for Persons with Disabilities under
Article 32 and 33 of the Act.***

Ashok M. Shrimali vs. State Bank of India⁴⁴

Critical Appraisal of Judgment

In this case, the petitioner was blind and he sought his accommodation as a bank officer in a suitable position. On the other hand, the respondent bank stated that posts beyond level II are not suitable for visually impaired persons. Accordingly, the petitioner filed a writ petition in Mumbai High Court. The Bombay High Court observed that there was no Constitutional protection when the Central Government fails to discharge a statutory obligation by not identifying posts suitable for persons with disabilities as required under Section 32 of the Disabilities Act. Therefore, the Court directed the Central Government to carry out identification of posts in favour of persons with disability as contained in Section 32 and make reservation of posts in favour of such persons as required by Section 33 of the Persons with Disabilities Act, 1995 within a period of six months from the date of order. Again, the Court granted freedom to petitioner to move the court after the process of identification and reservations of posts is completed and the respondents were directed to appoint the petitioner to a post consistent with his qualifications and results in appropriate examinations.

⁴⁴2001 (Supp) Bom CR 132.

Ravi Kumar Arora vs. Union of India and Another⁴⁵

The case highlights the insensitive attitude of bureaucrat and problem of identification of the posts for disabled. It brought to the forefront the just of the problem of the identification of posts for persons with disabilities in the field of employment. Although the language of Section 32 and 33 of the PWD Act is crystal clear in context of reservation for disabled in employment but till now, identification of posts is considered as major stumbling block in the path of development of disabled. In this case, Ravi Kumar Arora, a non-gazetted employee, qualified the UPSC Civil Services mains examination in 2000 but failed to get through the interview. In 2001, he successfully qualified the UPSC examination and was waiting for final call. However, he appeared again in 2002 in the preliminary examination to improve his rank. In the meantime, he was declared medically unfit on the basis of his 'sub-standard vision'. Aggrieved by the medical report, he filed a petition in Delhi High Court. The case was decided by Justice Sanjay Kishan Kaul. Delhi High Court passed an interim order. Armed with an interim Court order allowing him to write examination, he wrote the mains in 2002 again. However, he met with surprise when he heard that he had not been appointed for the second time not because failed to qualified but because suitable posts for candidates with visual disabilities had not been identified. Finally, the Court ordered his appointment with full retrospective benefits based on the 2001 Civil Services Examination. The respondent was also asked to pay him Rs. 20.000 as cost of the proceedings.

National Federation for the Blind vs. State of Maharashtra⁴⁶

Critical Appraisal of Judgment

In this case, the Petitioner filed a writ petition in Bombay High Court to turned the attention of the Court towards the non-implementation of the provisions of the PWD Act in Government and semi Government institutions for visually impaired. The petitioner raised the issue of reservation under Section 33 of the PWD Act because Maharashtra State Electricity Board, Thane Municipal

⁴⁵ 2004 (111) DLT 126.

⁴⁶ 2005 (1) Bom CR 740

Corporation and CIDCO sought relaxation in respect of appointments of blind persons. Their argument was that the large number of posts are technical in nature and unsuitable for physically handicapped persons. Thus, the approach of the authorities is not commensurate with the requirement and mandate of the Act. Accordingly, the Bombay High Court directed the re-constitution of the Committee (to be chaired by a person who is closely connected to one of the leading disability institutions or by a person with a disability) for the purposes of identification of posts in various government and semi-government organizations for the disabled. It was again directed that the Committee shall not limit the identification of the post only to the lower categories but also to prepare a reservation at every stage where there is recruitment to be effected.

Union of India through G.M. Northern Railway vs. Jagmohan Singh⁴⁷

Critical Appraisal of Judgment

In this case, the petitioner, an orthopaedically disabled person having 55 per cent disability, was appointed as a lower division clerk and after regular promotions reached the rank of Office Superintendent. His next promotion was to be in the post of Chief Office Superintendent; but the same was denied to him on the grounds that reservation in promotion is not permissible. The argument of Railway was that Section 33 is applicable to the vacancies only at induction level and not in promotions. The petitioner filed a petition in Central Administrative Tribunal. The Tribunal ordered that the petitioner was entitled to a promotion against a reserved post for the disabled. The Railways challenged the order of the Tribunal before Delhi High Court. The case was decided by Justice A. Sikri and Justice V. Sanghi. The central question before the Court was that whether reservation in promotion is available for the disabled under Section 33 of the PWD Act. The Court held that the policy framed by the Railways, was arbitrary and against the spirit of PWD Act. Accordingly, the Court upheld the judgement of the Tribunal. The Court strongly criticised the approach of the government and

⁴⁷ 2008 (3) SLJ 80, Delhi High Court.

held that the object and intention of the legislature in framing Section 43 of the Act cannot be defeated by non-framing of the scheme.

National Federation of the Blind vs. State of Uttar Pradesh⁴⁸,

Critical Appraisal of Judgment

In this case the Lucknow Development Authority had passed an order stating that persons with disabilities should only benefit from preferential allotment and not entitled to concessional allotment. The order was challenged in the Allahabad High Court as being contrary to the spirit laid down in Section 43 of the Disabilities Act. The case was decided by Justice S. H. A. Raza and Justice R.D. Mathur. The moot question before the Court was that whether the Lucknow Development Authority while providing preference for allotment of plots and house to blinds and other handicapped persons, should also accord concession in rates of the land. It was argued that the State government had not framed a scheme specially for the purposes of the Disabilities Act and hence the Lucknow Development Authority was unable to award concession. But the argument was rejected by the Court on the basis of Distributive Justice and Social Justice. The Court held that the State government and the local authorities could not take the benefit of its own inaction; and ordered the development authorities that since concessional allotment schemes are already being forwarded to various other groups of individuals, it should be extended to serve the purposes of the PWD Act.

Cases based on Social Security and Miscellaneous Provisions

Section 66 of PWD Act, 1995, discuss about social security for the persons suffering from disabilities. The Act states that the appropriate Governments and the local authorities shall within the limits of their economic capacity and development undertake or cause to be undertaken rehabilitation of all persons with disabilities. The Act further states that for purposes of sub-section (1), the appropriate Governments and local authorities shall grant financial assistance to non-governmental organizations. The appropriate Governments and local

⁴⁸ AIR 2000 All 258.

authorities while formulating rehabilitation policies shall consult the non-governmental organizations working for the cause of persons with disabilities.

***Jayesh Kumar vs. Dean, B. J. Medical College*⁴⁹**

In this case, Jayesh Kumar selected in the reserved category of disabled students. But he denied admission to B. J. Medical College on the ground that Expert Committee did not find him suitable for the course. In the course of Examination, the Expert Committee had left the column 'Nature of disability' blank, which, in the opinion of the court as backbone. It was found that petitioner, having 42% disability was not fit but person, having 55% disability found fit by Expert Committee. The Division Bench of Gujrat High Court found that the Expert Committee adopted a very casual and unreliable approach and directed the state Government to admit the petitioner.

***Ram Chandra Tandi vs. State*⁵⁰**

The case highlights the pathetic situation in which the teeming millions of our unfortunate disabled brethren are made to run from pillar to post, despite their handicaps to seek a fair, humane and compassionate treatment at the hands of the state instrumentalities for enforcement of the solemn mandates of the Constitution. Hence it falls on the trusted shoulders of the judiciary to protect the basic rights of the disabled person and to help them enjoy all the rights as are available to any of the other human beings.

Brings to focus the pachyderm approach and lackadaisical attitude of the government to the needs and requirements of the helpless and voiceless section of the younger population viz., deaf and dumb students who have been denied the facility to continue their education in the local 'Physically Handicapped School'. These boys are students of the deaf and dumb. Section of Physically Handicapped School at Bargarh. The State of Orissa had refuse to accord recognition and to provide grant in aid to this section. The said school was started in 1991 with three section viz. (i). blind, (ii) physically handicapped and (iii) deaf and dumb, with

⁴⁹ AIR 2002 Gujrat High Court 239.

⁵⁰ AIR 1994 Orissa 228

active help and assistance from Janta Sangharsh Samiti; are recognized voluntary organization. The Director of Social Welfare had intimated the collector that recognition was granted by the state to the mentally retarded and blind sections and that the deaf and dumb section alone was directed to be closed. The spacious plea put forward by the state was that since a voluntary organization had taken up the job of running the school, it alone was duty bound to see its smooth continuance and as such the state had no obligation to provide financial assistance. Further two other schools for the hearing impaired were already there in Sambalpur district at Surla under the Education Department and at Jhankuda in padampur run by Gopabandhu Welfare Organisation.

The State had however failed to consider every crucial factor that 40 children who had maintaining their livelihood through begging had been brought to this school and that their development had been remarkable – they had competed with normal children on the Republic Day in 1992 and had been awarded 4 shields and a cup, “a unique feature which has happened nowhere in the country”. The begging children had created new National records due to proper guidance. Further the number of students has also increased from 40 in 1991-92 to 62 in 1992-1993. Moreover, the others two schools already established were unable to cater to needs of the children of this area because of the physical distance, viz. as they were situated at a distance of 150 km. and 60 km away from their place of residence.

It was against this arbitrary and total lack of concern and appreciation of the needs of the deaf and dumb boys admitted in the physically handicapped school at Bargarh, by the executive that the guardian of 31 deaf and dumb boys have resorted to judicial intervention alleging that the state functionaries have turned “blind” to their problems and plight.

A Critical Appraisal of judgment

The Division Bench (A. Pasayat S.K. Mohanty, JJ.) took the opportunity to uphold the rights of the disabled children to lead a dignified human life guaranteed to all citizens of India under Art. 21 through education and categorically held that the state has a paramount duty to look after the welfare of

children and more so in case of handicapped children and directed the state to grant recognition and to provide financial assistance to the said section. The court adopted a very humane approach and remarked with anguish:

It is unfortunate that their “Achievement” cannot reach the ears of those who matter. They cannot be dumb that way. They cannot speak but the results produced by them speak eloquently for them. It shall be inhumane to again leave them back at the place from where they were brought, that is the streets where they were begging. They deserved to be rehabilitated.

It was heartening to read further that though justice is blind, the judges are not and that they could hear the unspoken words of misery of the deaf and dumb boys who need protection. “If the court fails to wipe out tears from the eyes of those who deserve it, it would be handicapped.”⁵¹

Again, the donning the role of the messiah of the disabled, it chose to assert:

We are perplexed and pained that the state has taken the absolutely untenable stand of financial instability and financial austerity. If we cannot provide financial assistance to 62 helpless deaf and dumb children these are unnecessarily financial extravagancies. After nearly half a century of independence, it does not by it the state to take plea of unsound financial conditions to deny meager amounts needed for a few deaf and dumb children.⁵²

Thus, the court totally sensitive to the need of the disabled and disadvantaged section of society, chose to bring the care under the ambit of Art. 21 although the case can be easily encompassed by clause (e) and (f) of Art.39 forming part of these Directive Principle of State Policy, perhaps following the “doctrine of integrated scheme” and the “theory of elasticity”.⁵³

No doubt the court in the instance case has given the lead in the right direction through judicial law making in the rights sense and showed that the

⁵¹Supra note 1, para 6.

⁵²Supra note 1, para 5.

⁵³Gopalan vs. State of Punjab, AIR 1967 SC 1643; Kerala Education Bill AIR 1958.

disabled person too have a right to dignified human being and that the state has a pious duty.⁵⁴

Thus, from the above discussion, it is clear that it is essential for the Legislature and Executive to realize the urgency for tackling this problem of the disabled persons and take quick steps to ameliorate the pathetic conditions in which these unfortunate persons have been forced to exist. Our constitutional values and the emerging human rights jurisprudence the world over have helped formulate three important components for personhood, viz., dignity, creativity and opportunity and when these are recognized, appreciated and provided for by the state, we can then verily say that this section of the society has arisen above “the visibility line of law”.

It is in this light that the decision of Orissa High Court in compelling the government to recognize the section for the deaf and dumb in physically handicapped school, deserve appreciation and praise. By this single stroke of judgment, it has been amply proved that the disability in law and judiciary to tackle this problem of the handicapped has now been removed.

Concluding Observation

The persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act) and the Rights of the Persons with Disabilities Act, 2016 led to a judicial activism in disability rights. The PWD Act was the first legislation, whose objective was to provide full participation and Equality to the people with Disabilities. But PWD Act was not drafted properly. Many of the provisions made by the Act in support of persons with disabilities come with the rider “within the limits of economic capacity”. In this context, judiciary played a very important role. The judiciary through positive interpretation of the various provisions of the Act, delivered landmark judgements which mostly went in favour of the persons with disability. A close perusal of the judicial case laws mentioned above, shows that judiciary opened new path and rays of hope for disabled. The Supreme Court and High Courts have enlarged the scope of the Act. There are several instances where judiciary has provided

⁵⁴Kerala Education Bill, AIR 1958.

specific relieves to persons with disabilities through various landmark principles like reasonable accommodation, social security etc. At that juncture, Indian Court were influenced by the shift to a right based perspective on disabilities. In various cases Court tried to extend the equitable principle of preferential treatment to person with disability to bring them in the main stream. It is trustworthy to mention that Supreme Court and High Courts of India compelled the authorities to start the implementation of the provisions of any legislation. In several judgments, the Supreme Court and High Courts have taken serious note of the callousness shown by the Central Government, State Governments and Union territories in implementing the provisions of PWD Act, 1995 and the Rights of Persons with Disability Act, 2016. The appalling conditions of the mentally ill persons was deplored by the Supreme Court and the matter came in notice of Government. In this context, the approach and mind-set of the Courts are crystal clear. On numerous occasions the courts have need that mere declaration of the rights in ornamental way would not make unequal equal. If you want to make disabled able, it is necessary to take positive actions. So that they could compete with each other on equal basis. Accordingly, the Supreme Court ordered appropriate Government to turned the dream of disabled into reality, to provide for ramps in public buildings, railways, adaptation of toilets for wheel chair users, Braille books, software, Braille symbols and auditory signals in elevators, or lift, ramps in hospitals and Primary Health Centres.

After the enactment of the Rights of Persons with Disabilities Act, 2016, Supreme Court continued to protect the civil and economical rights of the disabled. Supreme Court submitted that there is a clear cut distinction between provision of the Act and implementation. Accordingly, Supreme Court issued notice to the State Governments and Central Government regarding installation of auditory signals at every red light, zebra crossing, insert guiding blocks to guide visually impaired persons and warning blocks along the edges of pavement. Further, Supreme Court said that non-implementation of the instructions means violation of the Act as well as 19(1)(c) of the Constitution. Due to extra-ordinary effort of Supreme Court, leprosy has been omitted from the grounds of divorce. Section 13 of the Hindu Marriage Act, 1955, Section 2 of the Dissolution of

Muslim Marriage Act, 1939, Section 27 of the Special Marriage Act, 1954, Section 18 of the Hindu Adoption and Maintenance Act, 1960, Section 2 of the Jammu and Kashmir Dissolution of Muslim Marriage Act, 1999, has been declared unconstitutional by the Supreme Court. In several cases Supreme Court instructed the Government of India as well as State Governments to admit visually impaired students to M.B.B.S course. Supreme Court held that visually impaired have a right to seek a fair, humane and dignified treatment at the hands of state instrumentalities. On numerous occasions Supreme Court shown anger over callous and untenable approach of the Government. Supreme Court strucked down several obstructions which came in the path of disabled. The rights oriented approach taken by the Supreme Court led to the evolution of impressive legal framework. But the deep rooted observation of the cases came before the Supreme Court reveals that the Courts are yet to evolve a jurisprudence of disability rights. One of the burning example of this is the judgment given by Supreme Court in *V. Surendra Mohan vs State of Tamil Nadu*. In this case Supreme Court denied relief to a visually impaired person suffering from 51% disability. At one stage Supreme Court set down deadlines to make public places accessible for visually impaired. On the other hand, Supreme Court deviating from its ideology.

It can be say that the Indian Courts have considered and laid down certain guidelines with regard to the betterment in Government sector but failed to include private sector in the list of establishment. In the case of *Dalco Engineering Pvt. Ltd vs Shree Satish Prabhakar Padhye*⁵⁵ Supreme Court missed out an opportunity to broaden the scope of the PWD Act to include private establishments as well. It means that person employed in the private sector and if acquire disability in the course of employment, will remove from the service. This is the gross violation of the rights of disabled as well as UNCRPD. But it can be say that with few exception majority of the judgements of the judiciary have gone in favour of the persons with disabilities.

It is recommended that private sector must be included in the list of establishment.

⁵⁵ (2010) 4 S.C.R 15

Chapter - 6 ***Findings and Data Analysis on Legal Protection and Status of Differently Abled Persons in Higher Educational Institutions in Lucknow***

Empirical study

The chapter presents the results of the empirical study based on questionnaire on 'Status of Disabled in Higher Education in Uttar Pradesh. For this purpose researcher has picked four universities of Lucknow, Uttar Pradesh, namely, Baba Saheb Bhimrao Ambedkar University Lucknow, Shakuntala Mishra University, Lucknow, Lucknow University, Lucknow, Ram Manohar Lohia National Law University, Lucknow, which are funded by different sources like Centre, State along with a special University which is meant for physically challenged persons.

For the purpose of empirical study the researcher has prepared questionnaire, consisting of 21 questions covers all the aspect of disabilities. Higher education for disabled is running on paper. Students suffering from disabilities faces several barriers in knowledge technology and infrastructure, reproducing and deploying segregation within institutional spaces. These barriers are responsible for exclusion of disabled students. The researcher presents in this chapter the findings that built on 268 samples based on questionnaire, to find out the challenges students with disabilities faces in Universities of Lucknow, Uttar Pradesh. Out of four Universities, one of the University is Central University and remaining three universities are State University.

The result of the present study are represented with the help of table, pie chart, column chart and discussion related to the secondary literature and explained. The research highlights the dismal and pathetic condition of disabled in higher education. They are not getting proper trained teacher, books and journals in Braille Script, sign language teacher and due representation in private sector.

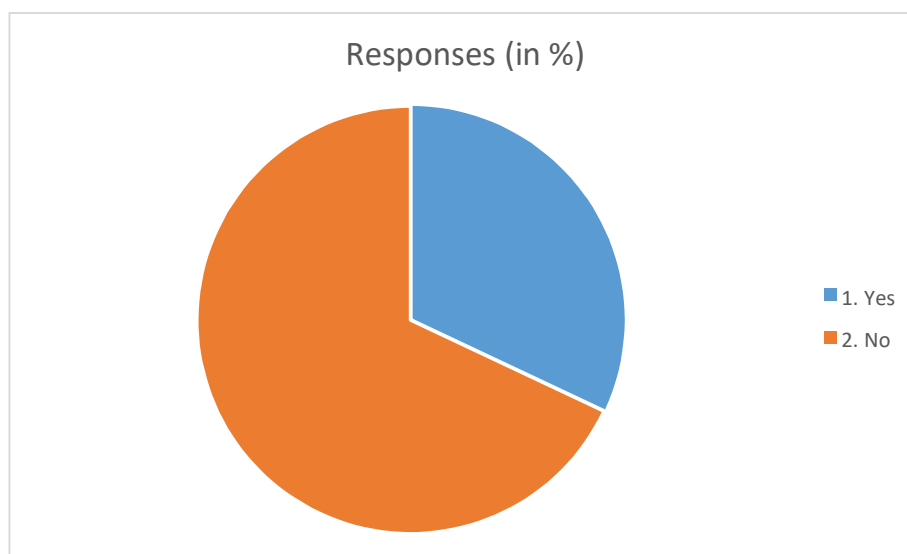
*Findings and Data Analysis On Legal Protection and Status of Differently
Able Persons in Higher Educational Institutions in Lucknow*

This is a matter of grave concern that persons suffering from disabilities are fighting for recognition and personhood. Till the date, persons suffering from disabilities are fighting for suitable means of public transport. The State failed to sort out the pathetic condition of public transport. Majority of the buildings of University including hostel are non-disabled friendly. This shows the callous approach of Government towards disabled.

Table 1.01

Does Attitude towards Disabled at Home is Discriminatory

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	87	32%
2.	No	181	68%
3.	Not Sure	00	0%



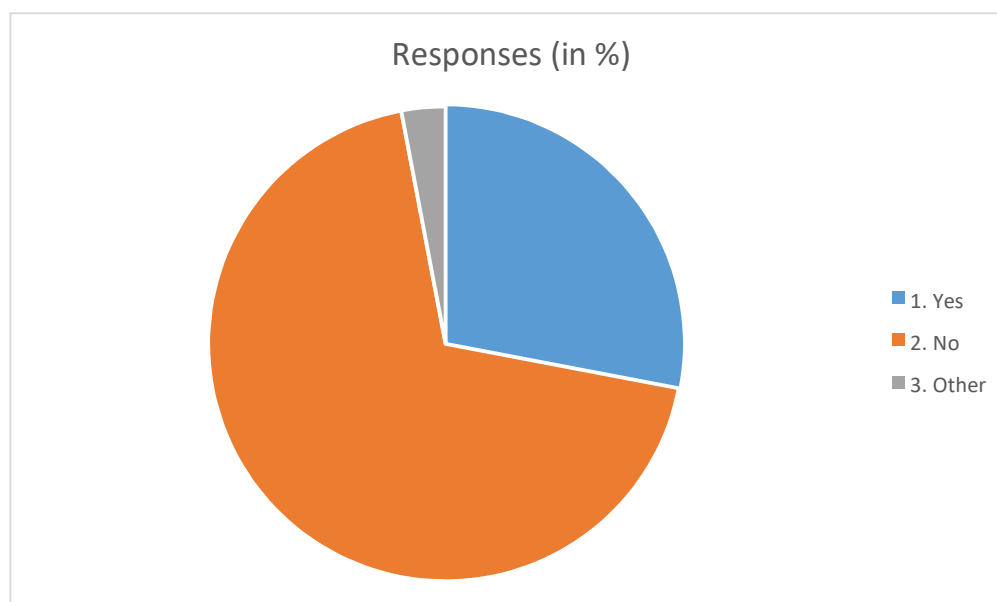
Analysis:

The above empirical data represents about the opinion of the respondents on the discrimination towards disabled at domestic level. The majority of the respondents expressed their opinion as “No” That means the majority of the respondents are having unanimous thinking that there is not any discrimination with disabled persons at domestic level. It is highly appreciable. But on the other hand, one third of the respondents are having their opinion that discrimination is going on with disabled at home. Their responses cannot be neglected to the general outcome. This is a matter of grave concern. In this context, the language of section 3 of the rights of persons with disabilities act is crystal clear. Section 3 of the Act discuss about protection mechanism against discrimination. It states that no person with disability shall be discriminated on the ground of disability. Therefore, it is the duty of the Government to take necessary steps to protect disabled from discrimination and ensure reasonable accommodation. The result shows that provision of the Act is partially neglected.

Table 1.02

Is poverty a Cause of Disability?

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	75	28%
2.	No	186	69%
3.	Other	07	3%



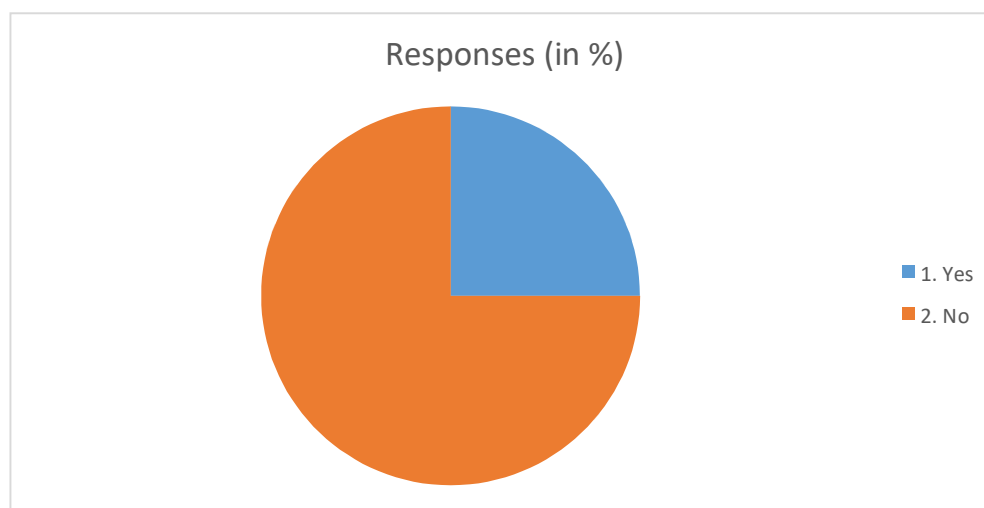
Analysis:

The above mentioned empirical data represents about poverty as a cause of disability. It is clear from above table that majority of the respondents are not agree with the fact that poverty is a cause disability. That means they unanimously thought that poverty is not a cause of disability. But at the same time some of the respondents think that poverty is a cause disability. So, it should be seriously taken by the law makers of our country to prevent the disability by doing the necessary arrangement towards the people living below poverty line of our nation. On the other hand, some of the respondents answered "OTHER". These respondents think that accident and disease as the root cause of disability.

Table 1.03

Does public transport affordable for disabled

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	66	25%
2.	No	202	75%
3.	Not Sure	00	0%



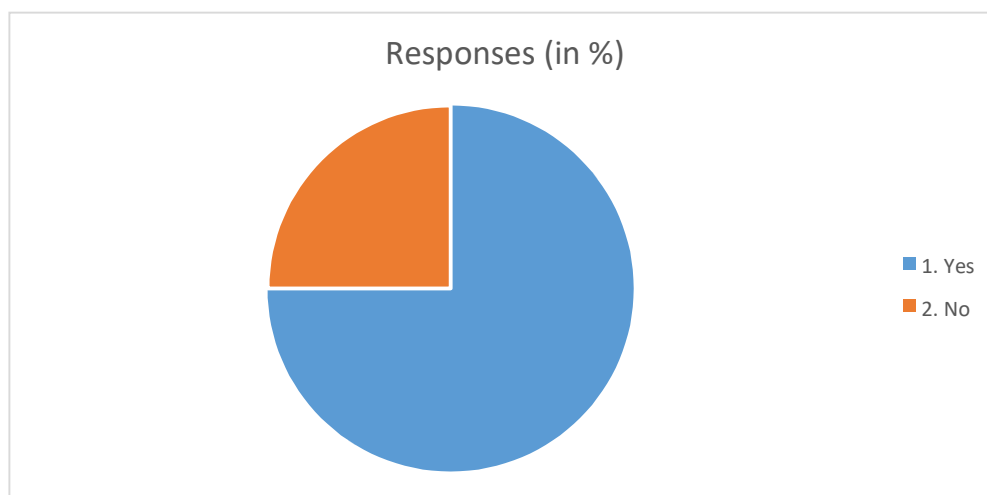
Analysis:

The above mentioned empirical data represents the opinion of the respondents about the affordability of public transport for the disabled. From the above data it is evident that majority of the respondents are agree with the fact that the public transport is not affordable for the disabled at all. It shows the dismal and pathetic condition of the public transport for the disabled. Till now, maximum means of public transport is unsuitable in terms of design and facility. Overall, the above mentioned table highlights the alarming situation in which millions of unfortunate disabled persons run from pillar to post in order to seek a affordable means of transport. The State failed to ameliorate the pathetic conditions of public transport. In this regard the State cannot take the plea of unsound financial conditions. In this context the language of the section 40 and 41 the rights of persons with disabilities act says that the central government after consultation with commission frame rules for persons with disabilities setting down the standard of accessibility in terms of transportation and section 41 discuss about facilities for PWD in bus stop, railway stations and airports. The result shows that provision of the Act is highly neglected.

Table 1.04

Does any Government institution provide facility of tri-cycle for disabled

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	200	75%
2.	No	68	25%
3.	Other	00	0%



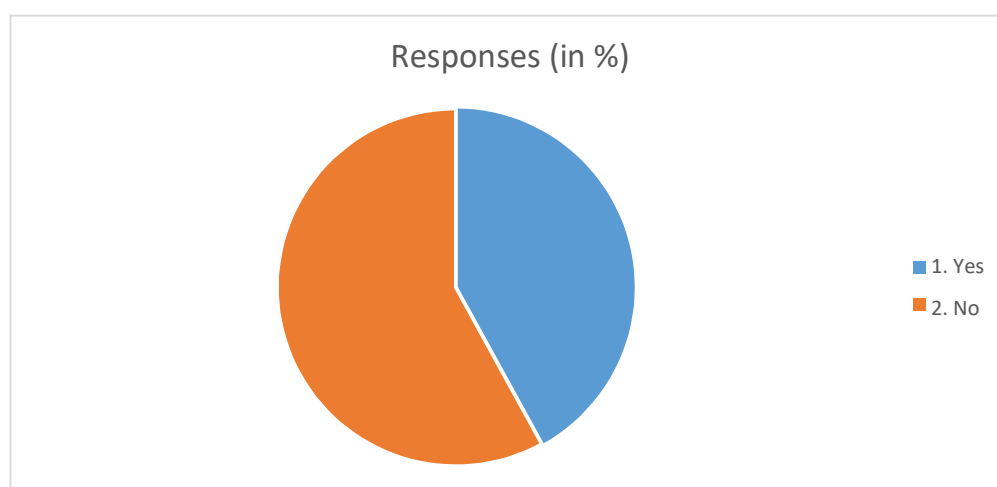
Analysis:

The above chart represents about the opinion of people regarding facility of tri-cycle given by the government institutions for the movement of the disabled. It is evident from the above pie chart that majority of the respondents having the positive opinion about the facility of tri-cycle in the government institutions for the movement of the disabled. This is highly appreciable. But on the other hand, one fourth of the respondents are not agree with the fact. This indicates that the provision of the act for disabled is not followed fully by the government institutions. This is a matter of serious concern.

Table 1.05

Does the building of university movable for disabled

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	113	42%
2.	No	155	58%
3.	Other	00	0%



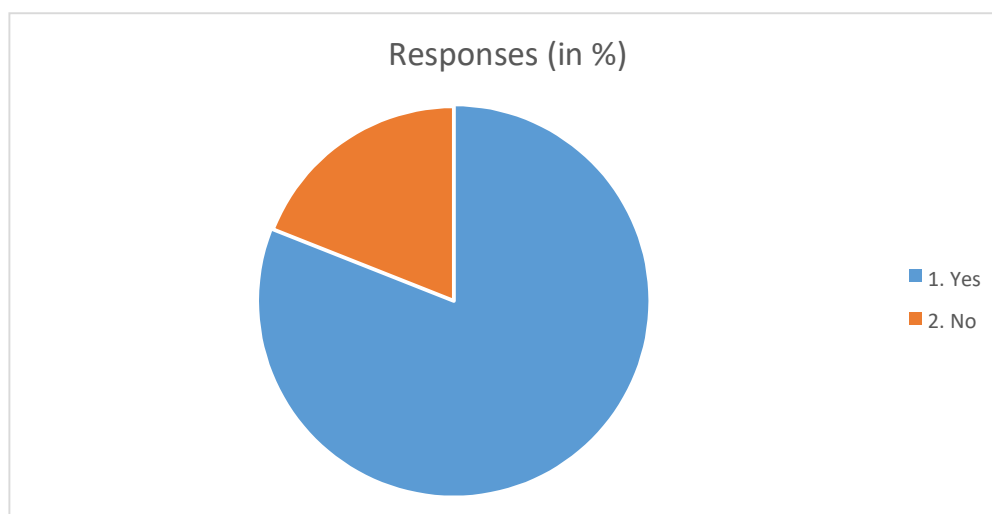
Analysis:

The above data represent about the accessible nature of the university building for disabled. it is evident from the table that majority of the respondents answer negatively. it indicates that majority of the respondents think that University building is not accessible for disabled. In the backdrop of the above mentioned data, it is unequivocally clear that the buildings of the university is beyond the reach of the students suffering from disabilities. it is unfortunate that till now, maximum buildings of University are not accessible for disabled. It means that government has given less focus on the issue at the time of construction of the university building. It is a matter of great sorrow. In this context, the provisions of the act in the crystal clear. Section 44 and 45 of the Act instructs the Government that public building shall be made accessible in accordance with the rules formulated by the Central Government within a period not exceeding five years from the date of notification of such rules. The result shows that provision of the Act is highly neglected.

Table 1.06

Does any non-government institution work in interest of disabled

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	216	81%
2.	No	52	19%
3.	Not Sure	00	0%



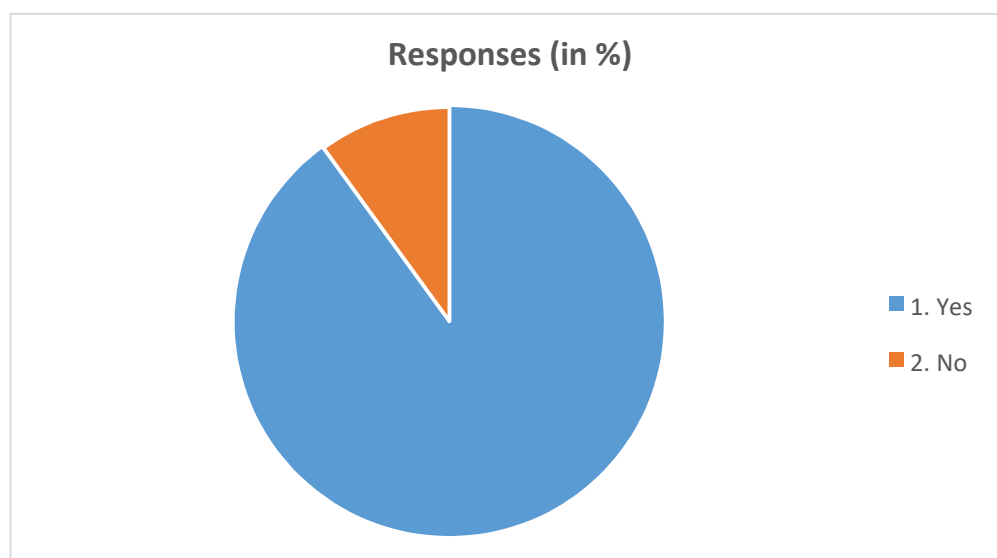
Analysis:

The above data represent the role of non- government organisation in protection of the interest of disabled. It is evident from the above data that majority of the respondents having the view that non-government organisations are working in the protection of the interest of disabled. it is matter of great appreciation that the non- government organisation working for the protection of the interest of the disabled persons. On the other hand, around nineteen per cent respondents answered "NO". That means they are not aware. Their responses cannot be negated. This is a matter of grave concern. In this context, the provision of the Act is crystal clear, Section 2(z) of the Act discuss about non-government organisation.

Table 1.07

Does disabled get reservation is higher education

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	241	90%
2.	No	27	10%
3.	Other	00	0%



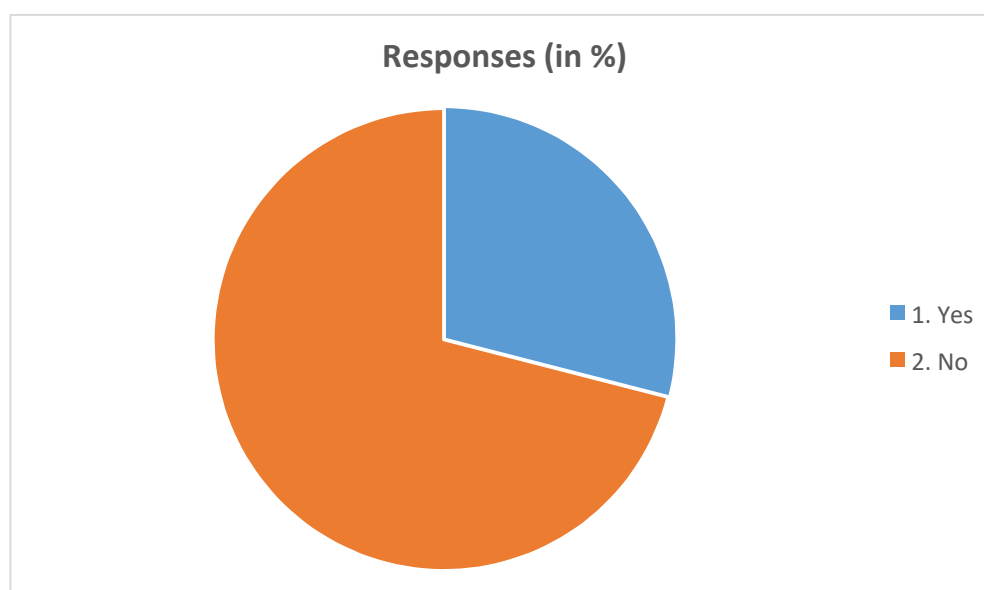
Analysis:

The above empirical data represents about the reservation in higher education for disabled. It is evident from the above data that 90% of the respondent answered negatively. That means majority of the respondents are having an unanimously thinking that the person suffering from disability are getting proper reservation in higher education. The fact is highly appreciable. Only some of the respondents have their view that disabled are not getting proper reservation in higher education. So their response can be neglected to the general outcome. In this context, the provision of the Act is sufficient. Section 32 of the Act discuss about reservation in higher educational institutions. The Act instructs all the Government institutions of higher education and other higher education institutions receiving aid from the Government to reserve not less than five per cent seats for persons with benchmark disabilities. The result shows that provision of the Act is almost complied with.

Table 1.08

Does magazine and books in Braille Script for visually impaired available in university

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	79	29%
2.	No	189	71%
3.	Other	00	0%



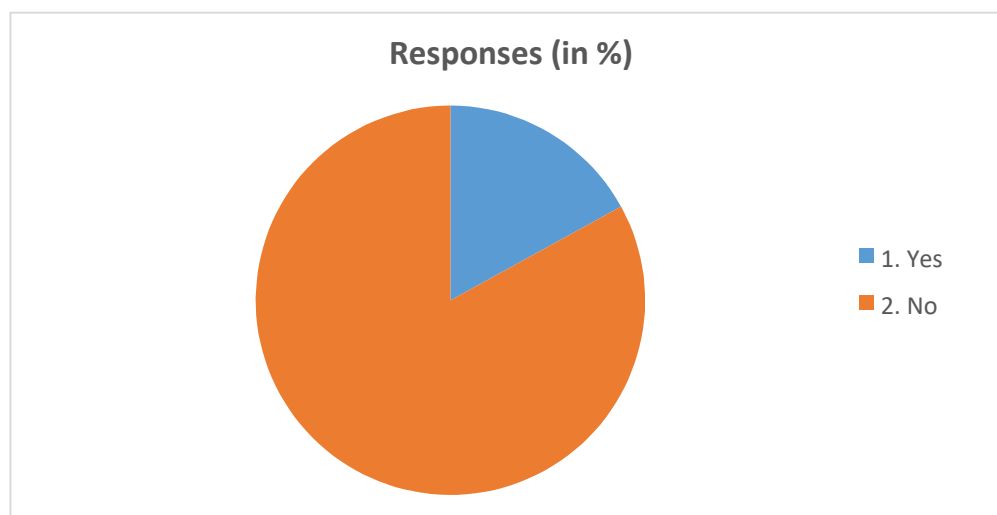
Analysis:

The above data represents about availability of magazine and books in Braille Script for visually impaired in university. The above table shows that majority of the faculties answered negatively. From the above table it is evident that the majority of the respondents are agreed with the fact that magazines and books in Braille Script are not available in university properly. It is a matter of grave concern that till now, visually impaired students are fighting for magazine and books in Braille Script. It also indicates that government has given less importance to this issue. In this context, the provision of the Act is clear. Section 17(f) and 16(5) instructs the Government to provide books and magazine in Braille Script. Here, it is important to note that the State cannot take the plea of unsound financial conditions. The result shows that provision of the Act is highly neglected.

Table 1.09

**Does disabled cell for protection and security of disabled available in
university**

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	45	17%
2.	No	223	83%
3.	Not Sure	00	0%



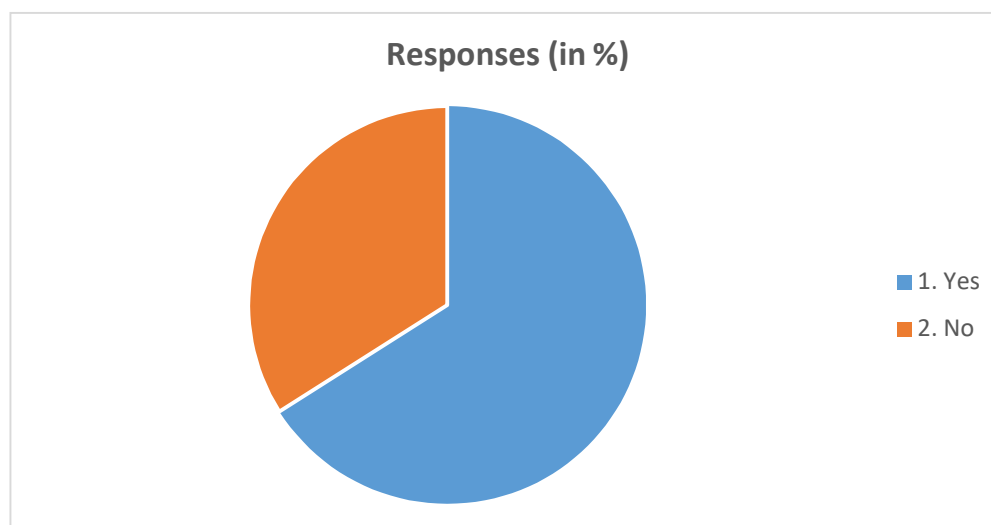
Analysis:

The above empirical data represents about the availability of the Disabled Cell in the universities. It is evident from the table that most of the respondents answered negatively. That means most of the respondents are having unanimous thinking that Disabled Cell is not available in maximum number of university. Although, University Grant Commission instructed the Government to establish Disability Cell. It indicates that establishment of Disability Cell is not a reality but is a dream. Disabled's are still struggling for Disability Cell. SC, ST and OBC Cell are running successfully in the country but Government turned blind eyes and deaf ears towards it. In this context, the provision of the Act is sufficient. Sections 21,22,23 and 24 deals with establishment of Disability Cell in every college and university. But the net result is zero. This is a matter of serious concern. The result shows that provision of the Act is highly neglected.

Table 1.10

Does people aware about scholarship for disabled education

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	177	66%
2.	No	91	34%
3.	Other	00	0%



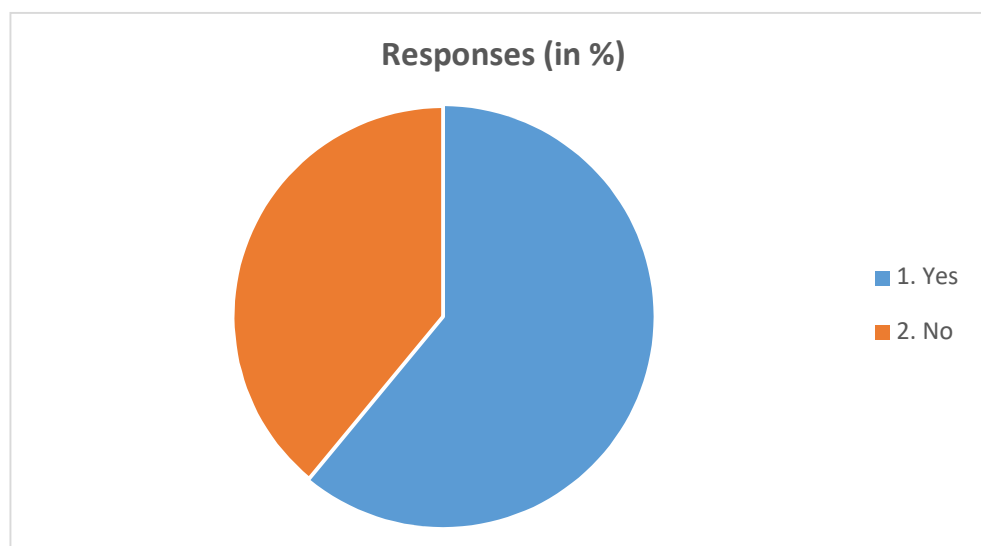
Analysis:

The above data represents about the opinion of the respondents about their awareness regarding the scholarship for disabled in higher education. From the above data it looks that about two third of the respondents are aware about the scholarship for disabled in higher education. It is a matter of great appreciation that majority of the respondents are aware. But on the other hand, one third of the respondents are not aware about the matter. This is a matter of serious concern that around thirty four per cent respondents need to sensitize. In this regard, the provision of the Act is crystal clear. Section 16(3) discuss about the provision. Again, Section 39 of the Act instructs the Government to conduct awareness campaign in order to sensitize the people. The result shows that provision of the Act is highly neglected.

Table 1.11

Do you aware about law for the protection and security of disabled

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	163	61%
2.	No	105	39%
3.	Not Sure	00	0%



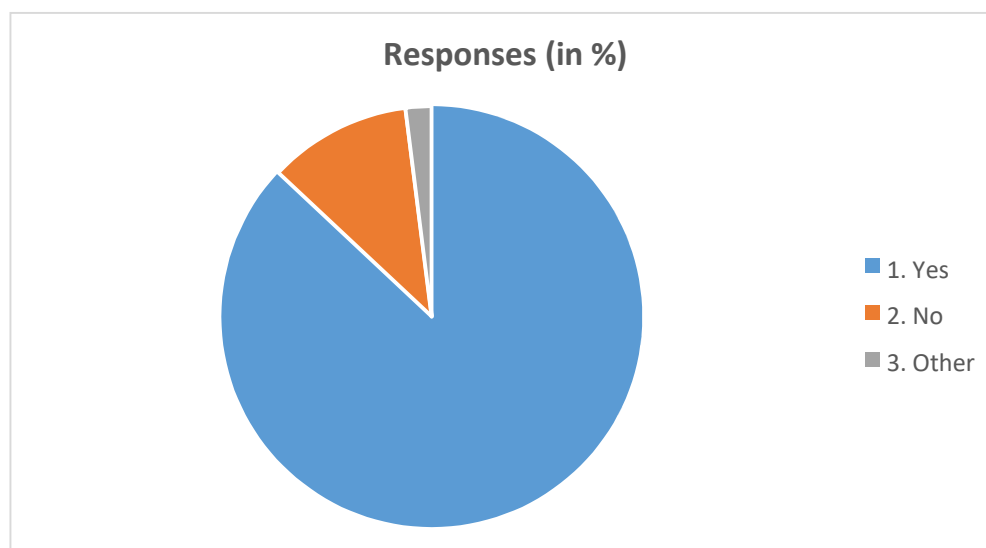
Analysis:

The above empirical data reflects awareness of the respondents of about the laws for the protection and security of disabled. About 60% of the respondents have their opinion that they know about the laws that have been made for the protection and security of disabled. At the same time 39% of the respondents do not aware about the laws that have been made for the protection and security of the disabled. Their responses cannot negated because the issue is very serious. In this regard, the provision of the Act is sufficient. Section 24 of the Act discuss about protection and security of disabled. But the result is not satisfactory. The unawareness of thirty-nine per cent respondents creates a big blot in the path of development of disabled. Although, Section 39 instructs the Government to aware the people. But still the rate of awareness is not up to the mark. The result shows that provision of the Act is highly neglected.

Table 1.12

Do you know that there is a provision of reservation in higher education for disabled

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	233	87%
2.	No	30	11%
3.	Other	05	2%



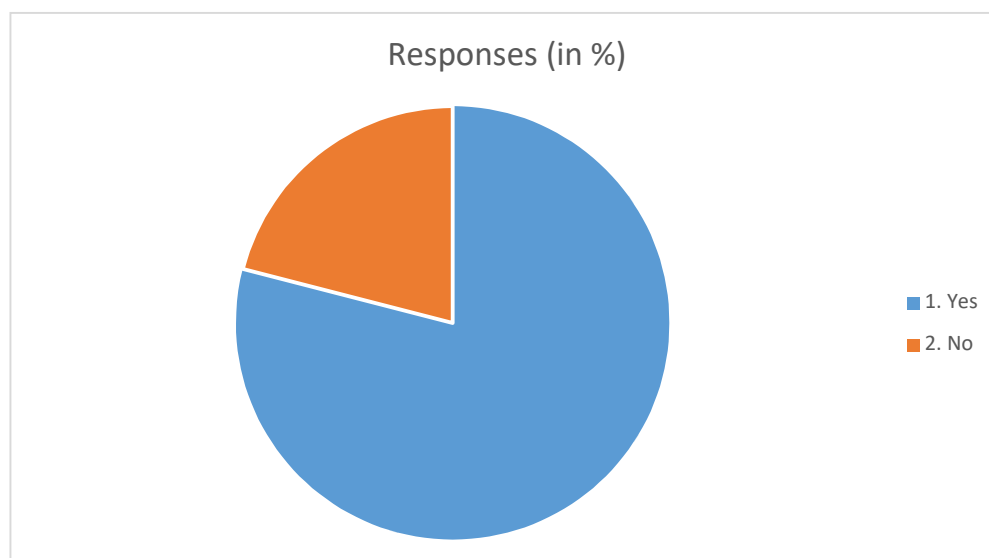
Analysis:

The above data represents about the Awareness of the people regarding the provision of reservation in higher education for disabled. It is evident from the table that a majority of respondents answered "YES". That means majority of the respondents are having thinking that disabled's are getting reservation in higher education. This is a matter of great appreciation that majority of the people are aware on this issue. On the other hand, around eleven per cent respondents answered "NO". Although, they are small in number but their responses cannot be negated. Around two per cent respondents answered "OTHER". These respondents are sure about reservation in higher education but not sure about reservation in Ph.D. In this regard, the provision of the Act is sufficient. Section 34 of the Act discuss about five per cent reservation in higher education. The result shows that provision of the Act is partially neglected.

Table 1.13

Does disabled get reservation at the time of appointment in every universities

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	212	79%
2.	No	56	21%
3.	Not Sure	00	0%



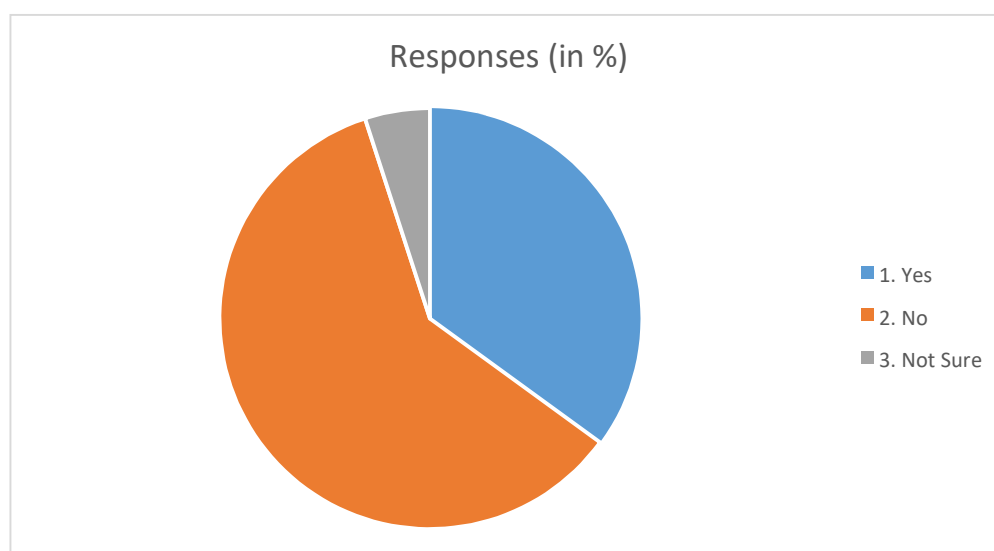
Analysis:

The above table shows the opinion of the respondents on the reservation given by the university to disabled at the time of appointment. It is clear from the above mentioned table that majority of the respondents are having unanimous thinking that disabled's are getting reservation at the time of appointment in the university. It is a matter of great satisfaction that majority of the respondents are aware. On the other hand, around twenty one per cent respondents answered negatively. That means these respondents are not agree with the fact. This is a matter of great concern. In context of reservation to disabled at the time of appointment, the provision of the Act is crystal clear. Section 34 of the Act states that it is the duty of the Government to appoint not less than four per cent of the total number of vacancies in the cadre strength. The result shows that provision of the Act is partially neglected.

Table 1.14

Does any category left which comes under the category of disability or there is a need of amendment in the list of category mentioned in Rights of Persons with Disabilities Act, 2016

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	93	35%
2.	No	160	60%
3.	Not Sure	15	5%



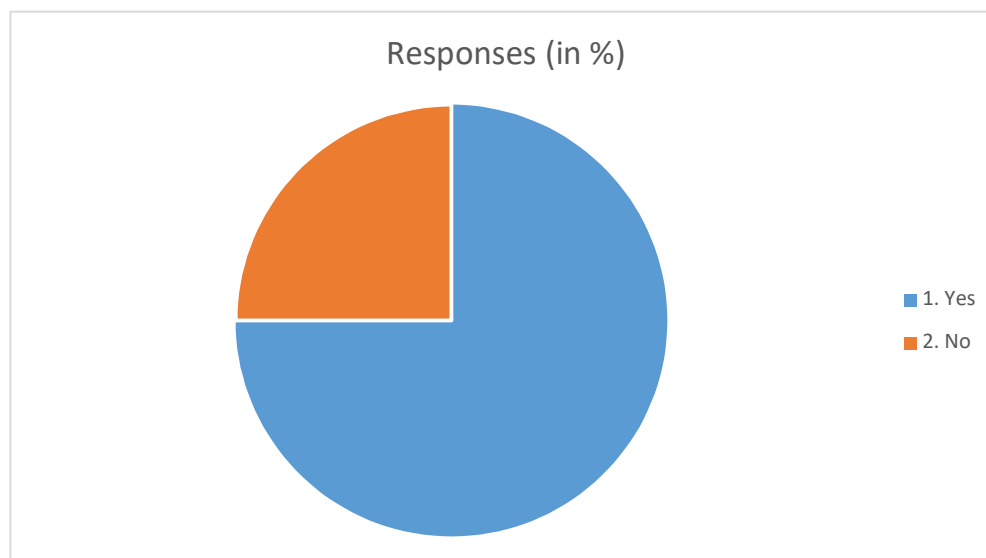
Analysis:

The above mentioned empirical data represents about the opinion of the respondents on the need of amendment in the list of category mentioned in the rights of persons with disability act 2016. It is clear from the table that thirty five per cent respondents answered positively. That means these respondent want some modification in the list of disability mentioned under Section 2(zc). On the other hand, sixty per cent respondents do not want any change in the list of disability. They want to maintain status quo. On the other hand, some of the respondent want to include cancer patient, heart patient and transgender in the list of disability.

Table 1.15

Does disabled need any Special Act like SC/ST Act

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	202	75%
2.	No	66	25%
3.	Other	00	0%



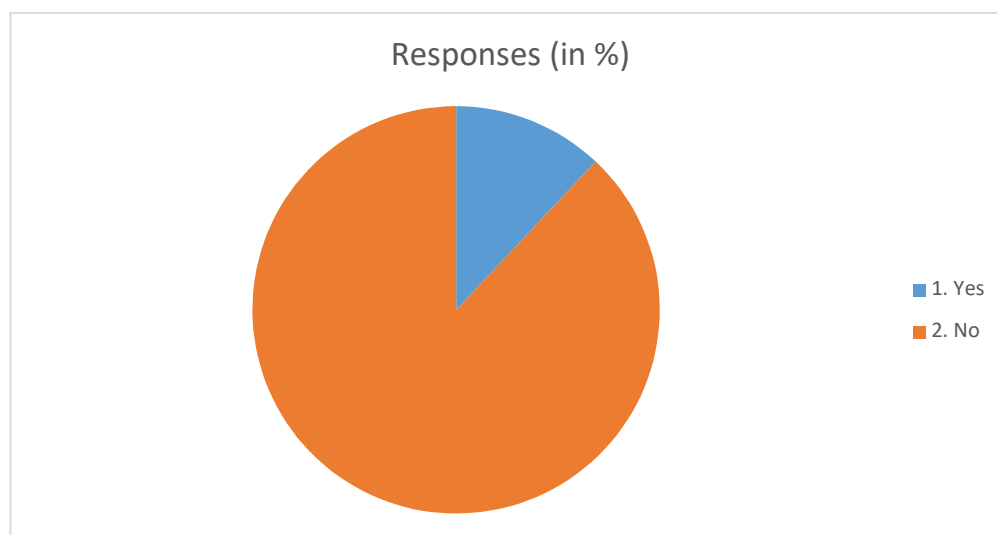
Analysis:

The above mentioned data represents about Special Act for disabled in the line of SC/ST Act. It is evident from the table that maximum number of respondents answered "YES". It indicates that maximum number of respondents are having unanimous thinking that Special Act is essential for disabled, because Special Act will protect disabled from atrocity. On the other hand, twenty five per cent respondents answered "NO". That means these respondents do not think that Special Act is essential for disabled. They think that the Rights of Persons with Disabilities Act is sufficient.

Table 1.16

Does private sector provide due representation to disabled in employment

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	33	12%
2.	No	235	88%
3.	Not Sure	00	0%



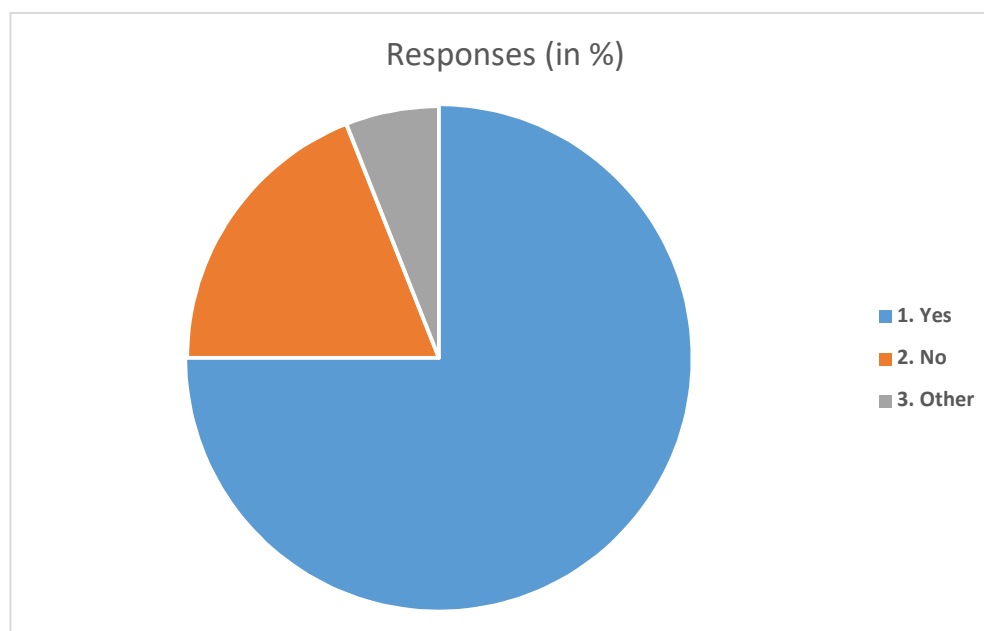
Analysis:

The above table represents about the opinion of respondents towards the role of disabled private Sector in employment of disabled. From the above data It is clear that most of the respondents answered “NO”. That means they have the opinion that private sector does not provide due representation to disabled in employment. Although, private sector generates maximum number of jobs but the share of disabled is less than one per cent. It indicates that door of the private sector is totally closed for disabled. Section 35 of the Act discuss about role of private sector in employment of disabled. Section 35 provides incentives to employers in private sector that have at least five per cent of their work force composed of persons with benchmark disability. The result shows that the provision of the Act is highly neglected. This is not good for the development of our nation. The government should implement a proper plan for employment of disabled in Private Sector.

Table 1.17

Does the approach of judiciary is affirmative towards disabled

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	200	75%
2.	No	50	19%
3.	Other	18	6%



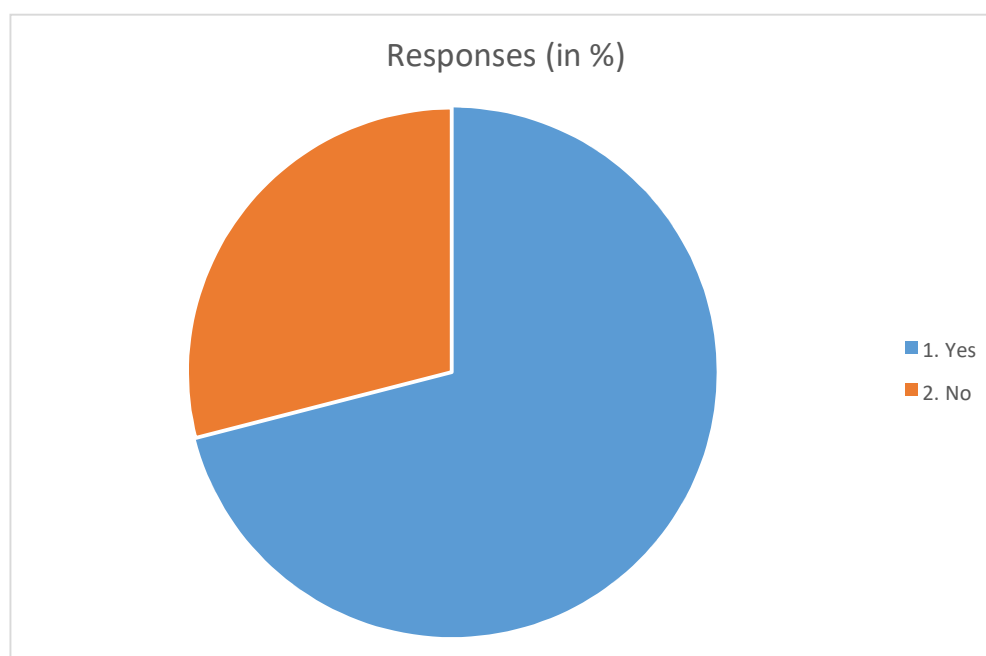
Analysis:

The above table represents about the opinion of the respondents on the approach of Judiciary towards disabled. It is evident from the table that the most of the respondents answered “YES”. That means they are agree with the fact that the approach of the Judiciary is very much positive towards disabled. It is a matter of great appreciation. On the other hand, some of the respondents answered "NO". It indicates that these respondents are not agree with the fact. Again, some of the respondents answered "OTHER". These respondents partially agree and partially disagree. They think that judiciary is not fully positive. In some of the cases, judiciary turned blind eyes towards disabled.

Table 1.18

Does the implementation of law related with protection and security of disabled is week

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	190	71%
2.	No	78	29%
3.	Not Sure	00	0%



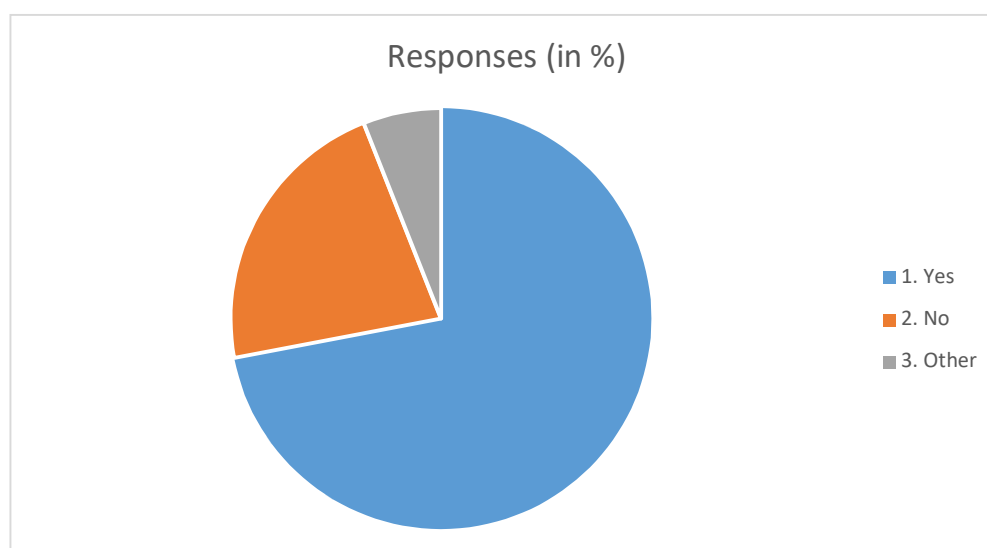
Analysis:

The above empirical data is intended to get the opinion of the respondents on the implementation of the law related to the protection and security of disabled. The opinion of most of the respondents are “YES” That means they firmly accept that there are not any proper implementation of the law for the protection and security of disabled in our nation . This indicates the weakness of our government in giving strong support to disabled by implementing the law for their security and protection. This is a matter of serious concern that till now, the execution of the law is not proper. This highlights the pathetic and dismal condition of unfortunate disabled. The authorities should take the issue and to take necessary steps to implement the law in fair and just manner.

Table 1.19

Does the attitude of teachers towards disabled in university, is affirmative

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	193	72%
2.	No	60	22%
3.	Other	15	6%



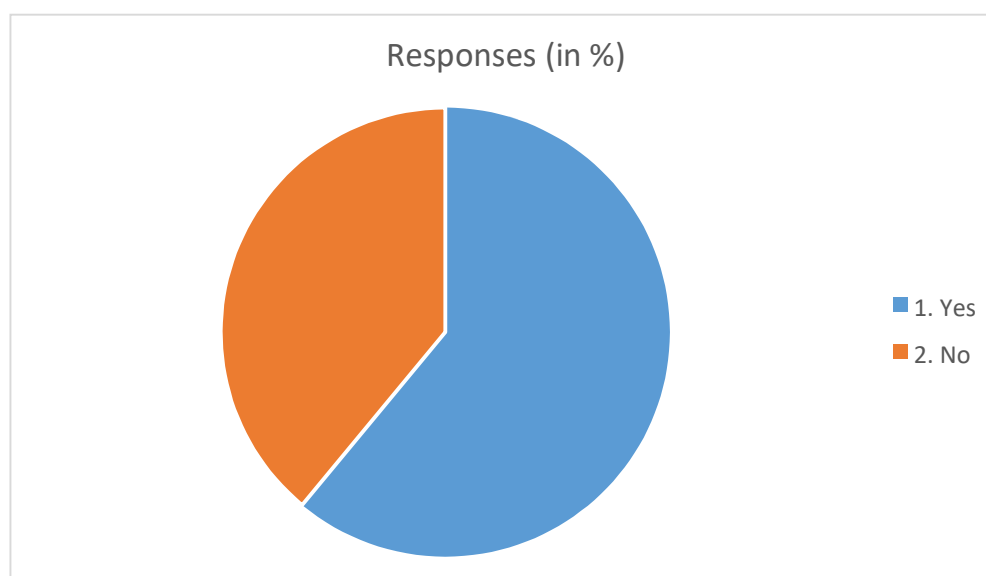
Analysis:

The above mentioned empirical data represents about the opinion of the respondents on the attitude of teachers towards disabled in the university. The opinion of majority of the respondents are "YES". That means they are agree with the fact that the approach of the teachers are affirmative toward disabled in the university. This is very much appreciable as this will make the university environment progressive. But on the other hand, twenty two per cent respondents answered "NO". It indicates that these respondents are not agree with the fact that attitude of teachers towards disabled is affirmative. Teacher had no training about special needs of disabled. Again, six percent respondents answered "OTHER". These respondents are having opinion that attitude of the teachers are not always positive.

Table 1.20

Does the Central Government and States Governments are trying for the security of disabled women

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	163	61%
2.	No	105	39%
3.	Not Sure	00	0%



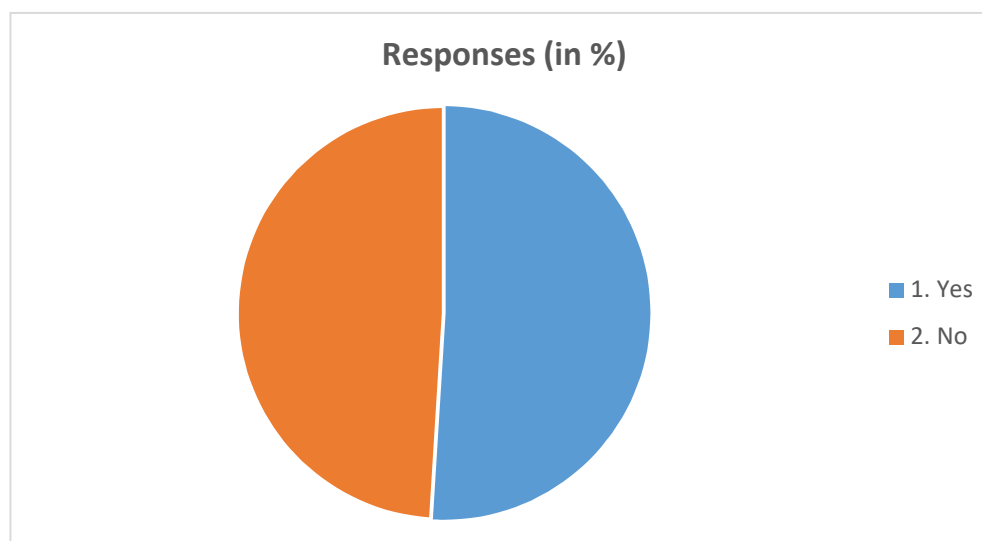
Analysis:

Analysis: The above mentioned table represents about Central and State Government attempt to provide security to disabled women. It is evident from the above mentioned empirical data that majority of the respondents answered positively. It means that maximum number of respondents are having unanimous thinking that Central and State Governments are taking proper measures to protect the disabled women. It is a matter of joy that majority of the respondents are aware about government attempts towards security of disabled women. But on the other hand, thirty nine per cent respondents answered negatively. It indicates that these respondents are not aware. The data proves that atrocity is going on against disabled women. Disabled women live invisibly on the fringes of society. They are facing sexual harassment, exclusion and stigma as regular part of their lives. This is a matter of great sorrow. In this regard, the provision of the Act is sufficient. Section 4(1) of the Act discuss about protection mechanism. The result shows that provision of the Act is partially neglected.

Table 1.21

Does special provisions are there for disabled women and children

S. No.	Option of the answer	Number of Respondents	Responses (in %)
1.	Yes	136	51%
2.	No	132	49%
3.	Not Sure	00	0%



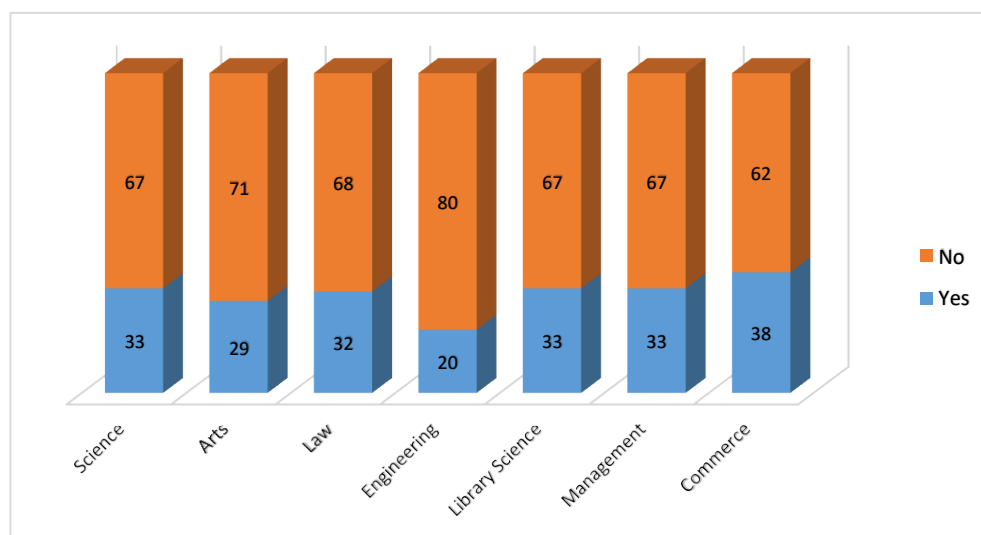
Analysis:

The above empirical data represents about the special provision for disabled women and children. From the above data it is evident that fifty one per cent respondents answered positively. That means majority of the respondents are well aware about special provision for disabled women and children. It is a matter of great pleasure. But at the same time about half of the respondents are not agree with the fact and they have their opinion that the special provision to the disabled children and women has not been given in the Act. This is a matter of grave concern that forty-nine per cent respondents are not agree with the fact. It indicates that large number of respondents are not aware. In this regard, the provision of the Act is sufficient. Section 4(1) and 4(2) of the Act deals with special provision for disabled women and children. The result shows that this provision of the Act is highly neglected.

Table 2.01

Does attitude towards disabled at home is discriminatory

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	33	67	0
2.	Arts	17	29	71	0
3.	Law	176	32	68	0
4.	Engineering	5	20	80	0
5.	Library Science	6	33	67	0
6.	Management	6	33	67	0
7.	Commerce	13	38	62	0

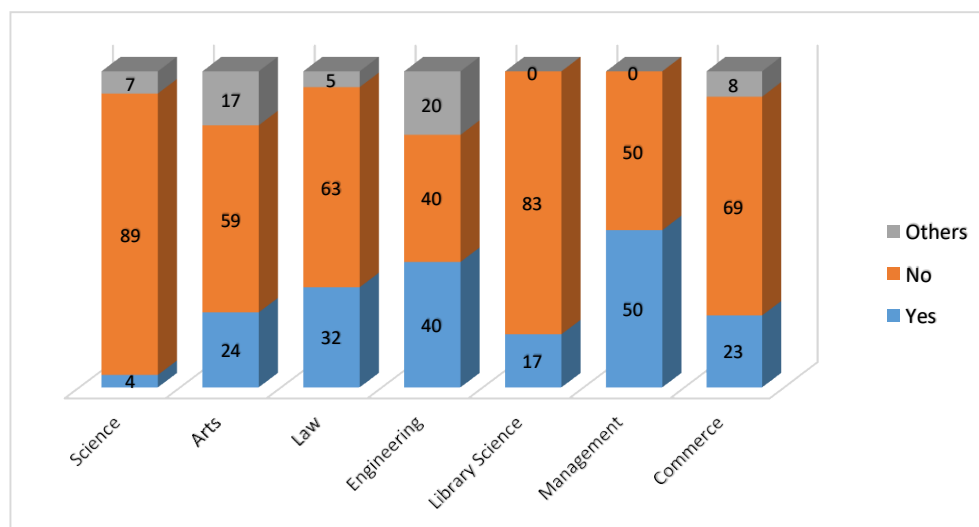


Analysis:

The above table represents the discrimination of disabled at home. As majority of the person answered as 'NO' that means majority think that there are not any discrimination against the disabled at home but on the other hand some of respondents accept that discrimination is going on against disabled at home. This is a matter of grave concern for us. Their responses cannot be minimised. That means disabled is not fully safe even at home. In this regard, the provision of the Rights of Persons with Disabilities Act, 2016 is crystal clear. Section 3 of the Act discuss about protection mechanism against discrimination. Section 3 puts responsibility on the shoulder of the government to provide discrimination free environment to disabled. But the outcome is not satisfactory. The result shows that this provision of the Act is partially neglected. It can be said that outcome is putting question mark on the existence of down trodden groups.

Table 2.02
Is poverty a cause of disability

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	4	89	7
2.	Arts	17	24	59	17
3.	Law	176	32	63	5
4.	Engineering	5	40	40	20
5.	Library Science	6	17	83	0
6.	Management	6	50	50	0
7.	Commerce	13	23	69	8



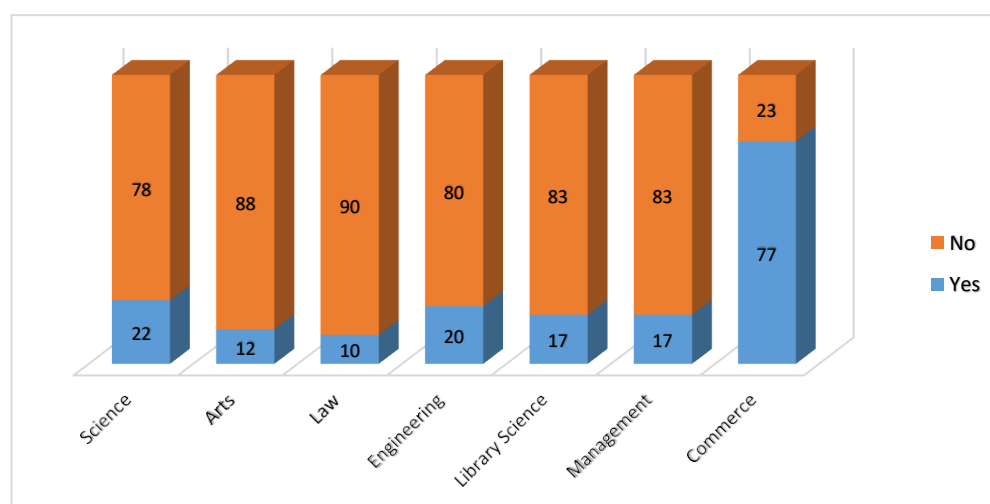
Analysis:

The above table represents poverty as a cause of disability. From the above table it is clear that most of the respondents have the thought that poverty is not a proper cause of disability. But at the same time some of them accept poverty is a cause of disability. Further, some of the respondents answered other. It indicates that some of the respondents are not agree about poverty as a cause of disability. These respondents think that disease and accident are the root cause of disability.

Table 2.03

Does public transport affordable for disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	22	78	0
2.	Arts	17	12	88	0
3.	Law	176	10	90	0
4.	Engineering	5	20	80	0
5.	Library Science	6	17	83	0
6.	Management	6	17	83	0
7.	Commerce	13	77	23	0



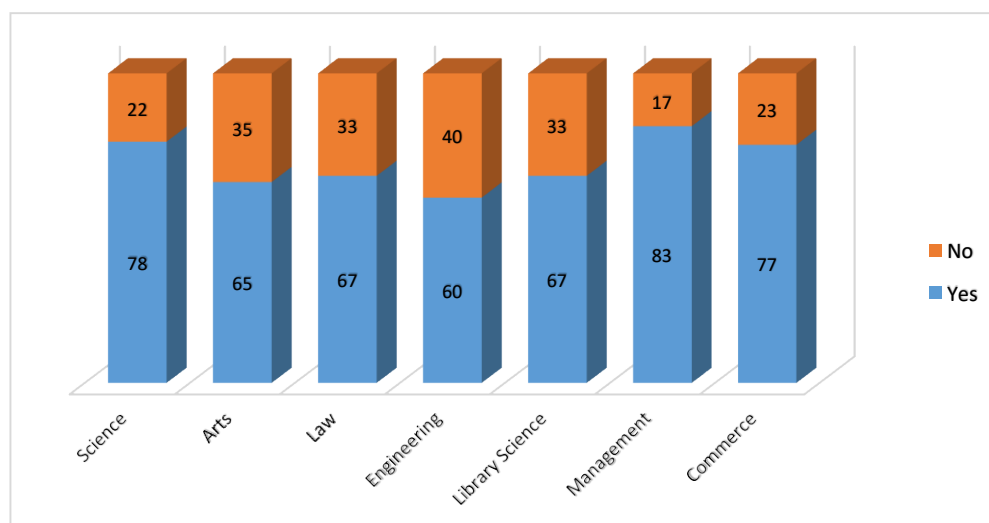
Analysis:

The above empirical data represents about the affordability of public transport for disabled. From the above table it is evident that most of the respondents answered yes. That means beyond any doubt, public transport is not affordable for disabled. It forecasts the dismal and pathetic condition of public transport for disabled. In this context, the language of Section 40 and 41 of the Rights of Persons with Disabilities Act, 2016, is crystal clear. Section 40 of the Act says that the Central Government after consultation with Commissioner frame rules for persons with disabilities setting down the standard of accessibility in terms of transportation and Section 41 discuss about facilities for PWD in bus stop, railway stations and airports. The above mentioned data proves that disabled are still fighting for affordable public transport. The result shows that this provision of the Act is highly neglected.

Table 2.04

Does any Government institution provide facility of tri-cycle for transport or movement for disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	78	22	0
2.	Arts	17	65	35	0
3.	Law	176	67	33	0
4.	Engineering	5	60	40	0
5.	Library Science	6	67	33	0
6.	Management	6	83	17	0
7.	Commerce	13	77	23	0



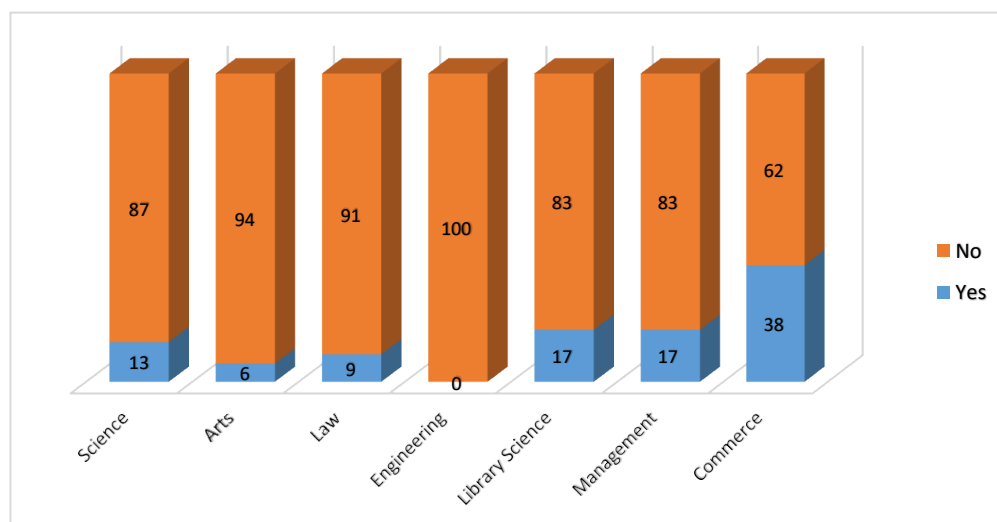
Analysis:

The above table represents the opinion of the people on the facility of tri-cycle given by the government institutions for the movement of disabled. It is evident from the above table that majority of the respondents are unanimously thinking that government institutions provide facility of tri-cycle for the movement of disabled. It is highly appreciable. On the other hand, some of respondents have the view that the government institutions do not provide the facility of tri-cycle properly. In this context, the provision of Section 24(f) is crystal clear. It states that the appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes including aids and appliances. Therefore, it can be said that the provision of the act is partially neglected.

Table 2.05

Does the building of university movable for disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	13	87	0
2.	Arts	17	6	94	0
3.	Law	176	9	91	0
4.	Engineering	5	0	100	0
5.	Library Science	6	17	83	0
6.	Management	6	17	83	0
7.	Commerce	13	38	62	0



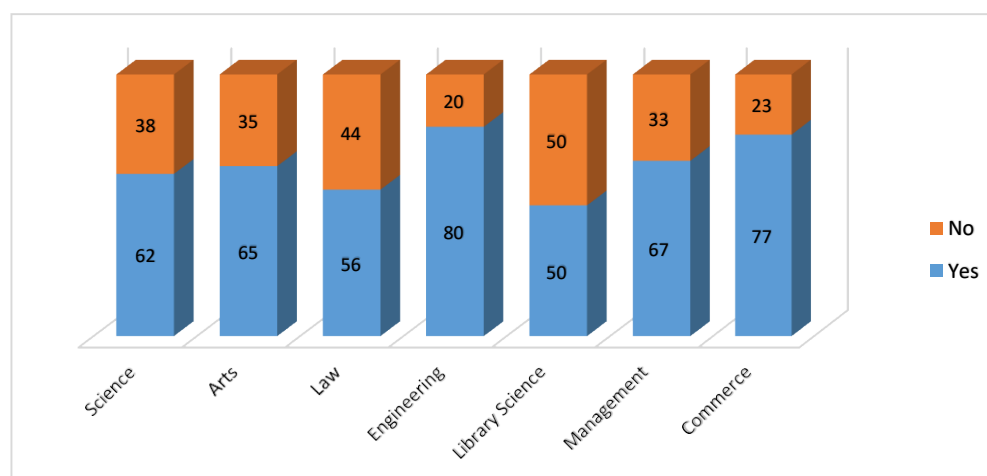
Analysis:

The above empirical data represents about accessible nature of building of university for disabled. It is evident from the table that majority of the respondents answered no. It indicates that majority of the respondents are having unanimous thinking that university buildings are not accessible for disabled. It is unfortunate to note that till now, maximum buildings of university are not accessible for disabled. It also indicates that government has given less attention on buildings of university. It is a matter of great sorrow. In this context, the provisions of the Act are crystal clear. Section 44 and 45 of the Act discuss about accessibility norms. Therefore, it can be said that provision of the Act is highly neglected.

Table 2.06

Does any Non-Government institution work in interest of disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	62	38	0
2.	Arts	17	65	35	0
3.	Law	176	56	44	0
4.	Engineering	5	80	20	0
5.	Library Science	6	50	50	0
6.	Management	6	67	33	0
7.	Commerce	13	77	23	0



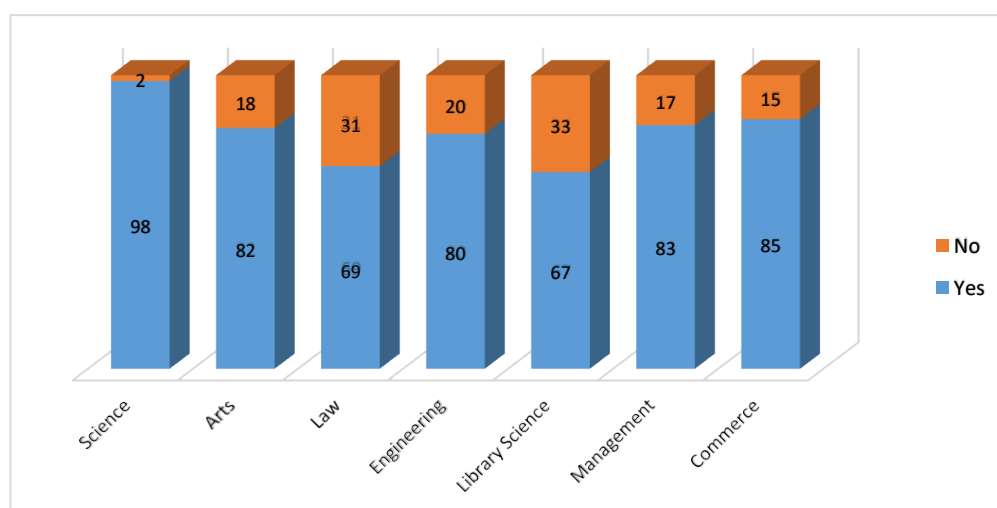
Analysis:

The above table represents the role of non-government institutions in protection of interest of disabled. It is evident from the above table that the majority of the respondents think that non-government institutions are working for the protection of the interest of disabled. It is a matter of great appreciation that majority of the respondents are aware about the role of non-government organisations in protection of interest of disabled. But on the other hand, some of the respondents have the negative view on this matter. It is a matter of great concern that some of the respondents are not aware. Because awareness of the people is must for the development of the persons suffering from disabilities. In this context, the provision of the Act is crystal clear. Section 2(z) of the Act discuss about the non-government organisation.

Table 2.07

Does disabled get reservation in higher education

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	98	2	0
2.	Arts	17	82	18	0
3.	Law	176	69	31	0
4.	Engineering	5	80	20	0
5.	Library Science	6	67	33	0
6.	Management	6	83	17	0
7.	Commerce	13	85	15	0



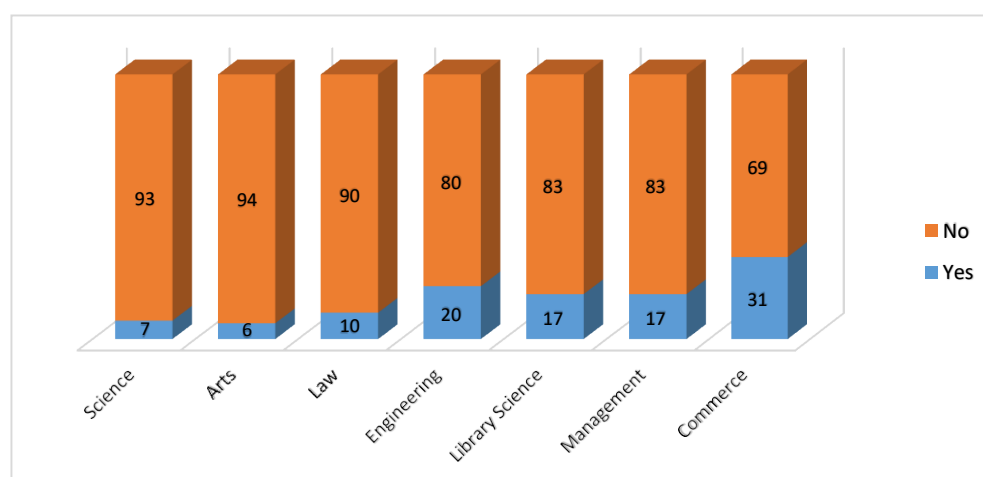
Analysis:

The above table represents about availability of reservation in higher education for disabled. It is evident from the above table that majority of the respondents think that the persons suffering from disability are getting reservation in higher education. It is highly appreciable but at the same time it is also a matter to be think as some of the respondents said that they are not getting proper reservation in higher education. In this context, the provision of the Act is crystal clear. Section 33 of the Act discuss about reservation in higher education. It instructs the Government to provide five per cent reservation in higher education institutions. But the outcome is not very satisfactory. Particularly, it is near about impossible to install the provision of reservation in M.Phil and Ph.D. The result shows that this provision of the Act is partially neglected.

Table 2.08

**Does magazine and books in Brail Script for visually impaired available in
university**

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	7	93	0
2.	Arts	17	6	94	0
3.	Law	176	10	90	0
4.	Engineering	5	20	80	0
5.	Library Science	6	17	83	0
6.	Management	6	17	83	0
7.	Commerce	13	31	69	0



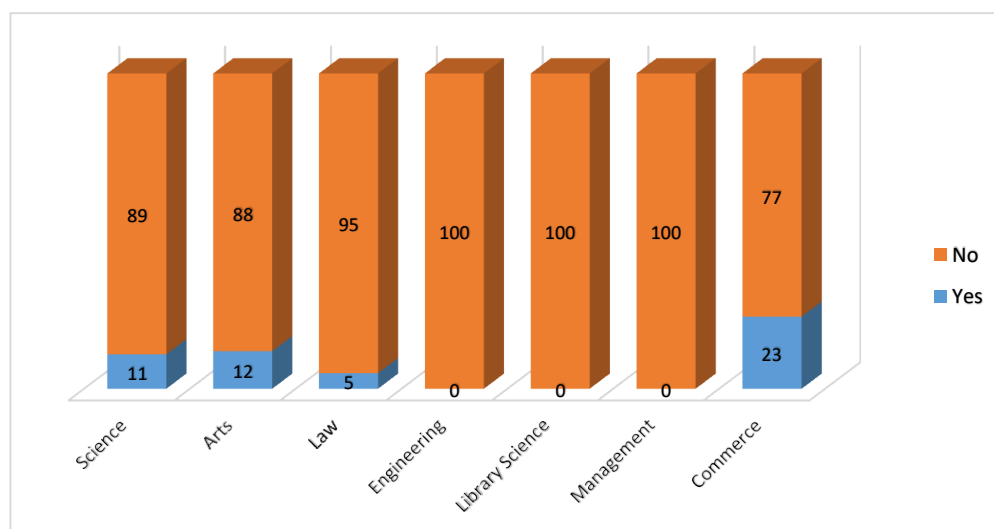
Analysis:

The above table represents the availability of magazine and books in Braille Script for visually impaired in Universities. It is evident from the above table that most of the respondents accept that magazines and books in Braille script are not available in University properly. It is a matter of great sorrow that till now, students suffering from visually impairment are fighting for their recognition and personhood. They are invisible. It deflects that government has given less focus on this issue. In this context, the provision of the Act is crystal clear. Section 16(5) and 17(f) of the Act discuss about reasonable accommodation and promotion of Braille. But the result of the empirical study is just opposite.

Table 2.09

**Does disabled cell for protection and security of disabled available in
university**

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	11	89	0
2.	Arts	17	12	88	0
3.	Law	176	5	95	0
4.	Engineering	5	0	100	0
5.	Library Science	6	0	100	0
6.	Management	6	0	100	0
7.	Commerce	13	23	77	0



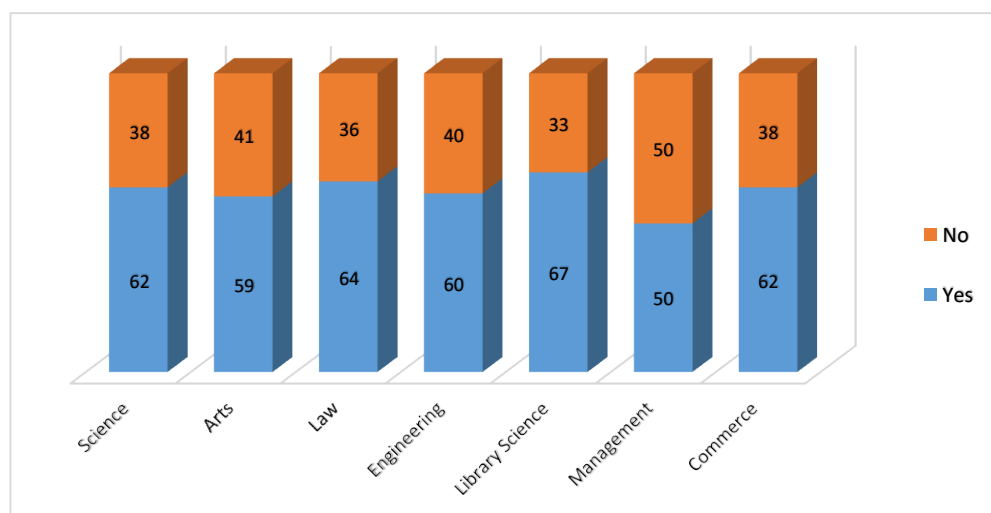
Analysis:

The above table represents the availability of disabled cell in university. From the above empirical data it is evident that most of the respondents are having unanimously thinking about the non-availability of disabled cell in the universities. Most of the respondents agree on the fact that disabled cell is not available in almost all the universities. It is most unfortunate that disabled cells are not available in maximum universities. Disabled students are still fighting for the disabled cell. It also indicates that government turned blind eyes to this issue. In this context, the provision of the Act is sufficient. Section 21,22 and 23 of the Act discuss about this. The result shows that this provision of the Act is highly neglected.

Table 2.10

Does people aware about the scholarship for disabled education

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	62	38	0
2.	Arts	17	59	41	0
3.	Law	176	64	36	0
4.	Engineering	5	60	40	0
5.	Library Science	6	67	33	0
6.	Management	6	50	50	0
7.	Commerce	13	62	38	0



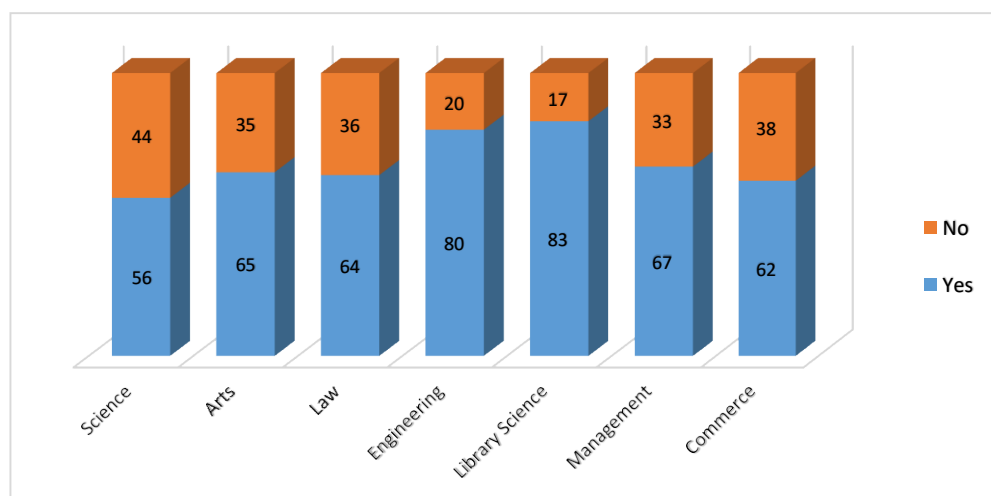
Analysis:

The above table represents about awareness of the people regarding scholarship for the disabled's education. From the above empirical data it is evident that majority of the respondents are unanimous thinking about awareness of the people regarding scholarship for disabled's education. That means majority of the respondents are aware about scholarship for disabled's education. It is a matter of great appreciation. Further, some of the respondents answered no. They are not aware about scholarship for disabled's education. It is a serious issue. Because till now, society is not fully sensitized. When society will not sensitize drastic changes will not come on forefront.

Table 2.11

Do you aware about the laws for the protection and security of disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	56	44	0
2.	Arts	17	65	35	0
3.	Law	176	64	36	0
4.	Engineering	5	80	20	0
5.	Library Science	6	83	17	0
6.	Management	6	67	33	0
7.	Commerce	13	62	38	0



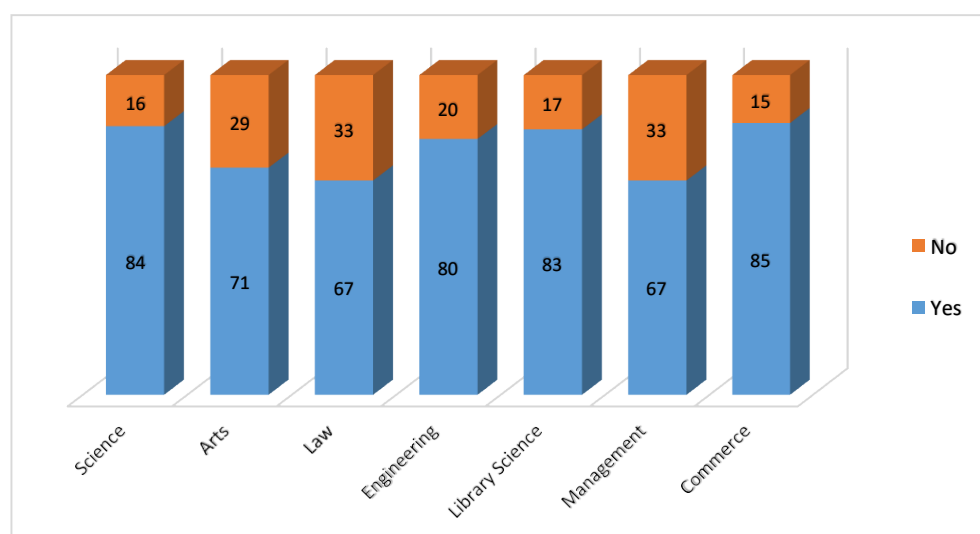
Analysis:

The above table represents about awareness of the people regarding law for the protection and security for disabled. It is evident from the table that the majority of the respondents are aware of the law for protection and security of disabled. It is highly appreciable that the majority of the respondents are aware about law for the protection and security of disabled. But on the other hand, large number of respondents answered negatively. That means these respondents are not aware about law for the protection and security for disabled. It is a matter of grave concern. In this context, the language of Section 24 is crystal clear. It imposes responsibility on the shoulder of government to provide protection and security to disabled. The result shows that this provision of the Act is highly neglected.

Table 2.12

Do you know that there is a provision of reservation in higher education for disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	84	16	0
2.	Arts	17	71	29	0
3.	Law	176	67	33	0
4.	Engineering	5	80	20	0
5.	Library Science	6	83	17	0
6.	Management	6	67	33	0
7.	Commerce	13	85	15	0



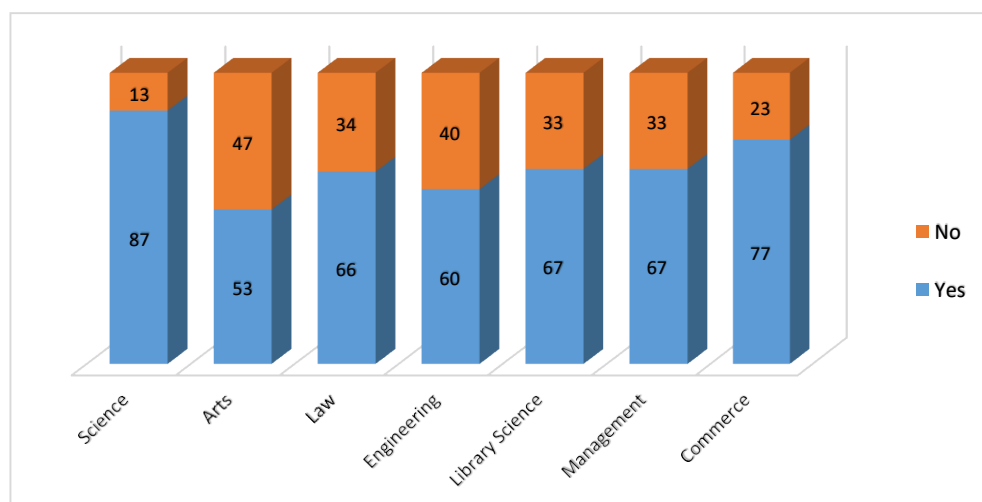
Analysis:

The above empirical data represents about provision of reservation in higher education for disabled. It is clear from the table that majority of the respondents answered positively. It is a matter of great appreciation that majority of the respondents are well verse about reservation in higher education for disabled. But on the other hand, some of the respondents answered negatively. The reason behind negative response is lack of awareness. Till now, the rate of awareness is not satisfactory. It is a matter of grave concern. In this context, the language of the Act is crystal clear. Section 32 of the Rights of Persons with Disabilities Act, 2016 puts a responsibility on the shoulder of Government. Section 32 states that it is the duty of Government institutions and other institutions receiving aid from Government to reserve not less than five per cent seats for persons with disabilities and five years age relaxation. The result shows that this provision of the Act is partially neglected.

Table 2.13

Does disabled get reservation at the time of appointment in every university

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	87	13	0
2.	Arts	17	53	47	0
3.	Law	176	66	34	0
4.	Engineering	5	60	40	0
5.	Library Science	6	67	33	0
6.	Management	6	67	33	0
7.	Commerce	13	77	23	0



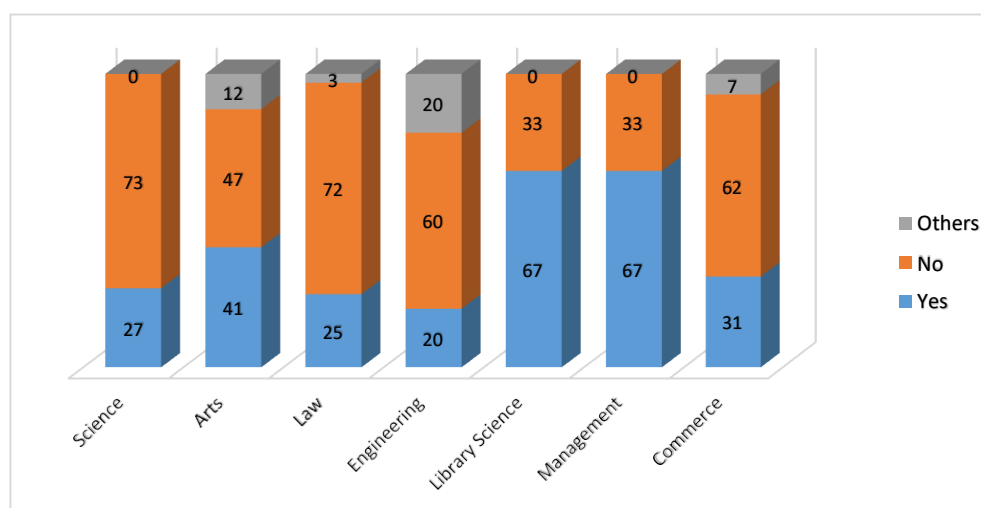
Analysis:

The above data represents the arrangement made by every university for the reservation of disabled at the time of appointments. From the data it is clear that majority of the respondents are agreed with the fact that disabled are getting reservation at the time of appointment in every university. The fact is highly appreciable. But at the same time some of the respondents are not agree to the fact and so the university administration should be more focused on the issue. In this context, the provision of the Act is clear. Section 34 of the Act states that it is the duty of the Government to reserve not less than four per cent of seats for disabled in the cadre strength. The result shows that provision of this Act is neglected.

Table 2.14

Does any category left which comes under the category of disability or there is a need of amendment in the list of category mentioned in Rights of Persons with Disabilities Act,2016.

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	27	73	0
2.	Arts	17	41	47	12
3.	Law	176	25	72	3
4.	Engineering	5	20	60	20
5.	Library Science	6	67	33	0
6.	Management	6	67	33	0
7.	Commerce	13	31	62	7



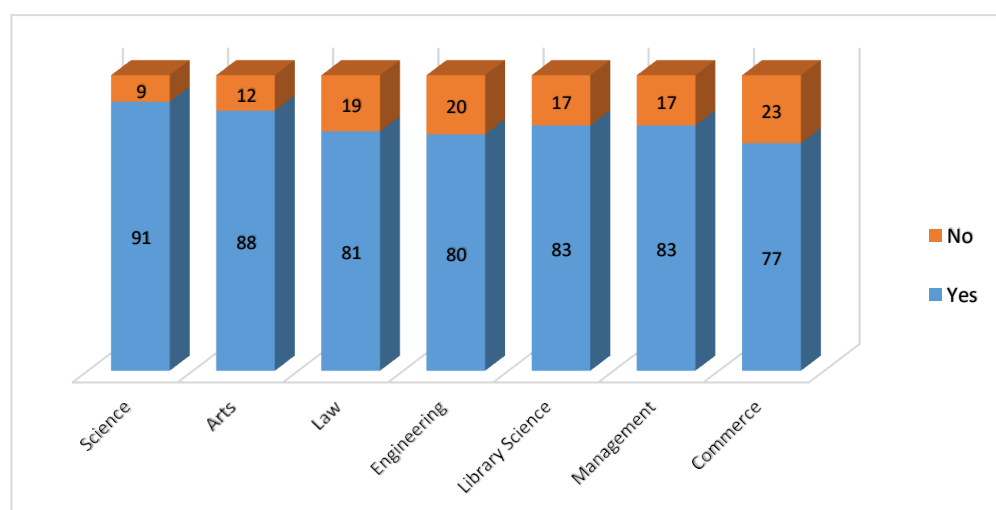
Analysis:

The above table represents about the need of amendment in the list of disability mentioned in the rights of the persons with disability Act,2016. It is evident from the above table that most of the respondents answer "NO" that indicates that most of the respondents do not want any amendment. In few cases more than 50% respondents answered 'YES' that means they want to make some changes in Section 2(zc) of Rights of the Persons with Disability Act, 2016 .Further, some of the respondents answered "OTHER'. They want heart and cancer patients to be included in the list of disability.

Table 2.15

Does disabled need any Special Act like SC/ST Act

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	91	9	0
2.	Arts	17	88	12	0
3.	Law	176	81	19	0
4.	Engineering	5	80	20	0
5.	Library Science	6	83	17	0
6.	Management	6	83	17	0
7.	Commerce	13	77	23	0



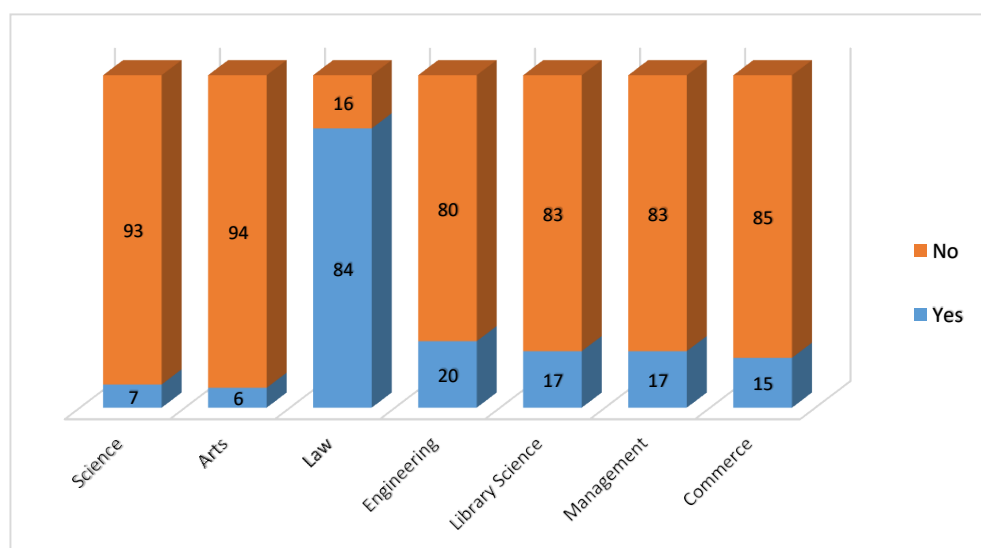
Analysis:

The above table represents about Special Acts for disabled in the lines of SC/ST Act. It is evident from the table that majority of the respondents answered yes. It indicates that majority of the respondents prefer a special Act in the lines of SC/ST Act. That means majority of the respondents are having unanimous thinking that special Act is the need of the time. In absence of special in the lines of SC/ST Act, it would be quite difficult to stop atrocity against disabled. On the other hand, some of the respondents answered no. In their opinion the Rights of Persons with Disabilities Act is sufficient.

Table 2.16

Does private sector provides due representation to disabled in employment

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	7	93	0
2.	Arts	17	6	94	0
3.	Law	176	84	16	0
4.	Engineering	5	20	80	0
5.	Library Science	6	17	83	0
6.	Management	6	17	83	0
7.	Commerce	13	15	85	0



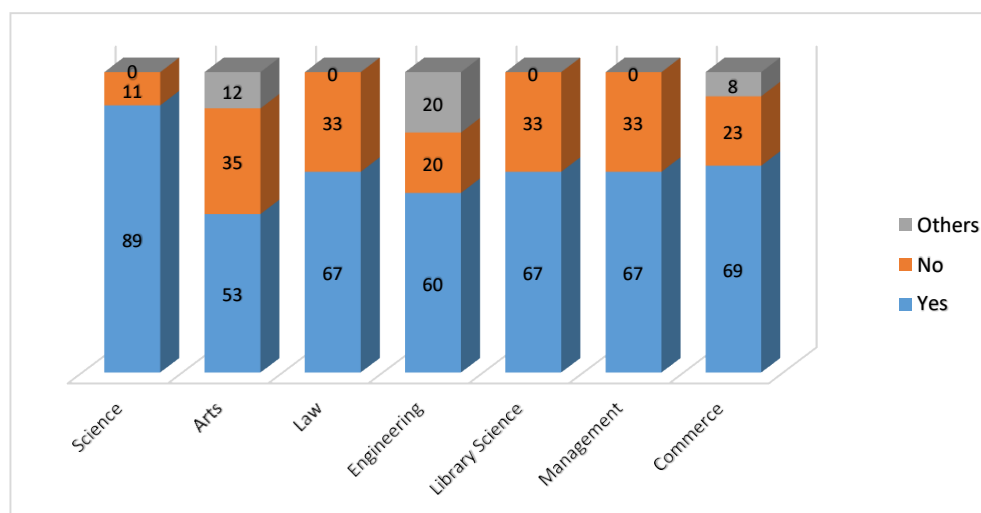
Analysis:

The above empirical data represents about the role of private sector in employment of disabled. It is crystal clear from the table that majority of the respondents answered "NO" except the respondents from Law department, where 84 per cent of the respondents answered "YES". That means, majority of the respondents are having unanimous thinking that there is no role of private sector in employment of disabled. Still, the entry of disabled is near about impossible in private sector. They have been totally excluded from the sphere of private sector. It also indicates that Government and Judiciary have given less attention on employment of disabled in private sector. Although the Act offers net of tax concession for private sector in the case of employment of disabled. In this context, Section 35 of the Act discuss about incentives to employers in private sector. But the net result is alarming. This is not a matter of satisfaction. The result shows that this provision of the Act is totally neglected.

Table 2.17

Does the approach of judiciary is affirmative towards disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	89	11	0
2.	Arts	17	53	35	12
3.	Law	176	67	33	0
4.	Engineering	5	60	20	20
5.	Library Science	6	67	33	0
6.	Management	6	67	33	0
7.	Commerce	13	69	23	8



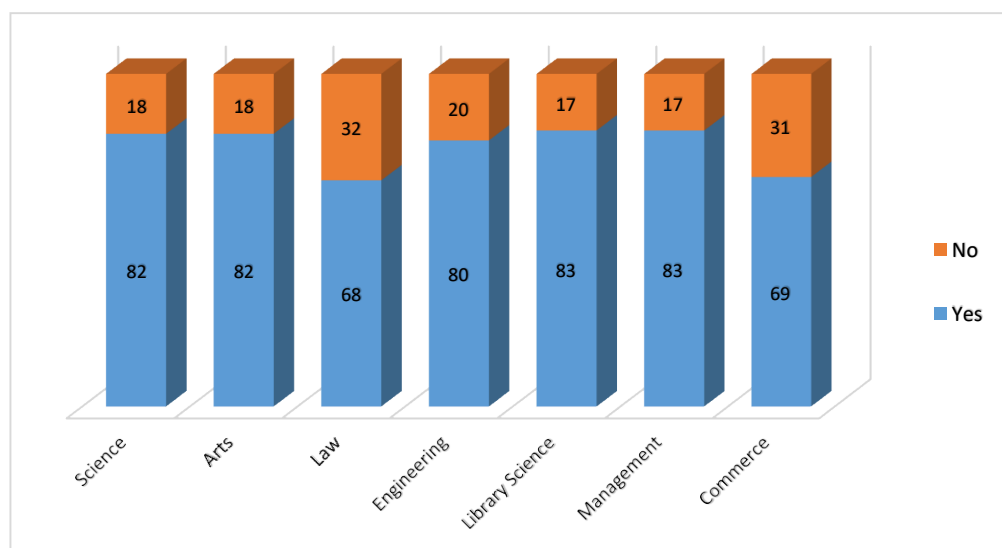
Analysis:

The above table represents the approach of judiciary towards disabled. It is evident from table that majority of respondents answered "YES". That means majority having unanimous thinking that approach of judiciary is positive towards disabled. This is a matter of great appreciation. Some of the respondents are not agreed with the fact that approach of Judiciary is positive towards disabled. On the other hand, some of the respondents answered "OTHER". They feel that sometimes the attitude of judiciary towards disabled is negative. The burning example of this is the case of V. Surendra Mohan vs State of Tamil Nadu.

Table 2.18

**Does the implementation of law related with protection and security of
disabled is weak**

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	82	18	0
2.	Arts	17	82	18	0
3.	Law	176	68	32	0
4.	Engineering	5	80	20	0
5.	Library Science	6	83	17	0
6.	Management	6	83	17	0
7.	Commerce	13	69	31	0



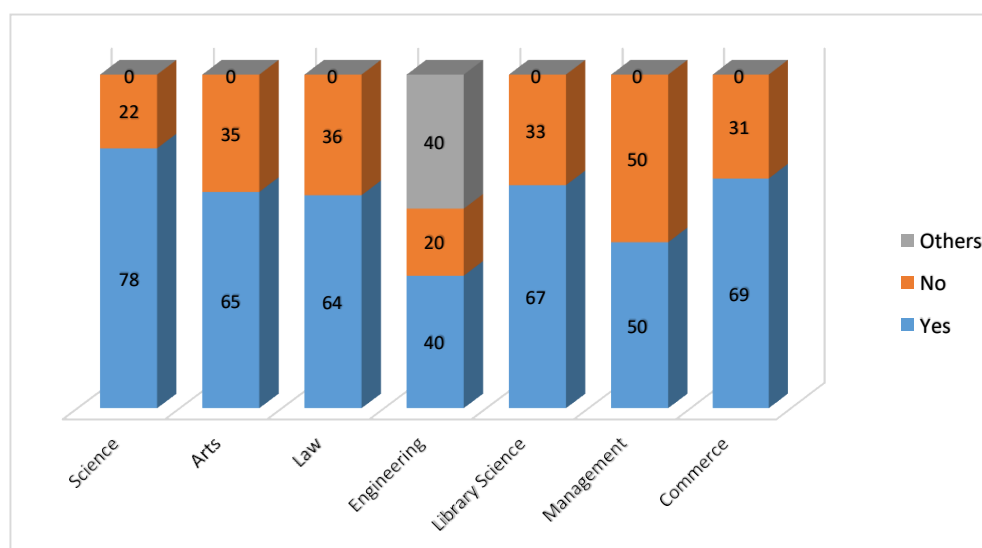
Analysis:

The above table represents about implementation of law for the protection and security of disabled. It is evident from the table that majority of the respondents answered "YES". It indicates that majority of the respondents thinks that implementation of law for the protection and security of disabled, is weak. It is a matter of grave concern. It proves that government has not given proper focus to this issue.

Table 2.19

Does the attitude of teachers in university is affirmative

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	78	22	0
2.	Arts	17	65	35	0
3.	Law	176	64	36	0
4.	Engineering	5	40	20	40
5.	Library Science	6	67	33	0
6.	Management	6	50	50	0
7.	Commerce	13	69	31	0



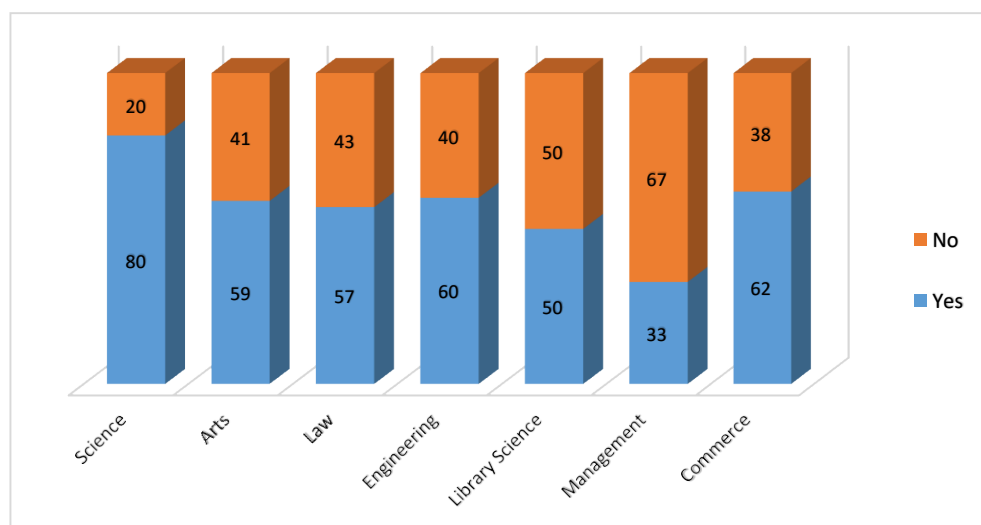
Analysis:

The above empirical data represents about attitude of teachers towards disabled in university. It is evident from the table that majority of the respondents answered positively. It indicates that majority of the respondents agree with the fact that attitude of teacher towards disabled is affirmative. On the other hand, some of the respondents answered negatively. It means that some of the respondents have no faith in attitude of teachers towards disabled. This is a matter of concern.

Table 2.20

**Does the Central Government and State Government are trying for the
security of disabled women**

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	80	20	0
2.	Arts	17	59	41	0
3.	Law	176	57	43	0
4.	Engineering	5	60	40	0
5.	Library Science	6	50	50	0
6.	Management	6	33	67	0
7.	Commerce	13	62	38	0



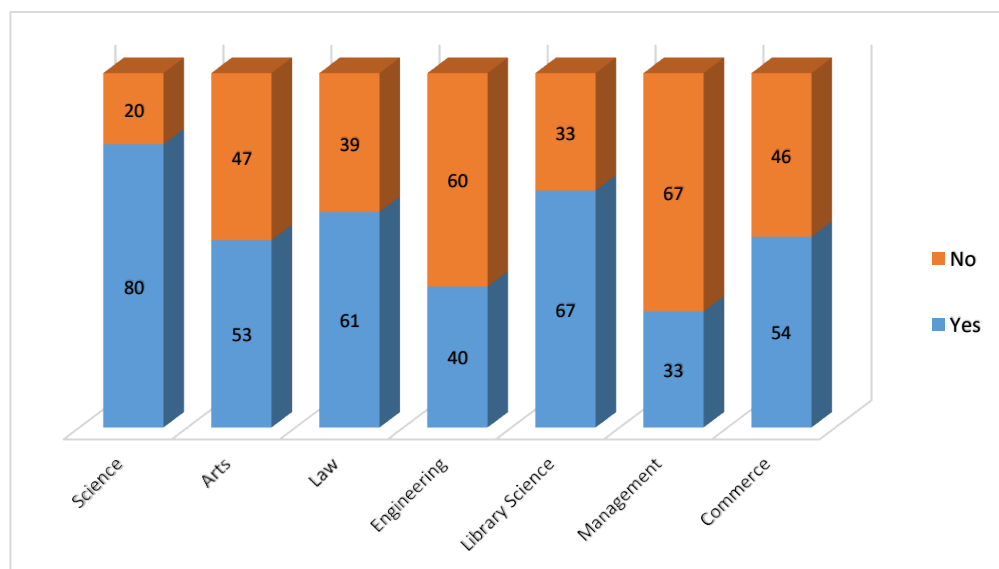
Analysis:

The above table represents about the central and state government attention towards the security of disabled women. It is evident from the table that maximum respondents answered "YES". That means they are agreed with the fact that both central and state government are taking measures to protect the rights of disabled women. But at the same time a huge number of the respondents are not recognising the government's effort to protect the rights of disabled women. It indicates that discrimination is going on against disabled women. In this context, the provision of Section 4,6,7 and 24 and are crystal clear. But the net result is alarming. That means the disabled women's are still fighting for citizenship and recognition and Government is standing as a mute spectator. This is a matter of grave concern.

Table 2.21

Does Special Provisions are there for disabled women and children

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Science	45	80	20	0
2.	Arts	17	53	47	0
3.	Law	176	61	39	0
4.	Engineering	5	40	60	0
5.	Library Science	6	67	33	0
6.	Management	6	33	67	0
7.	Commerce	13	54	46	0



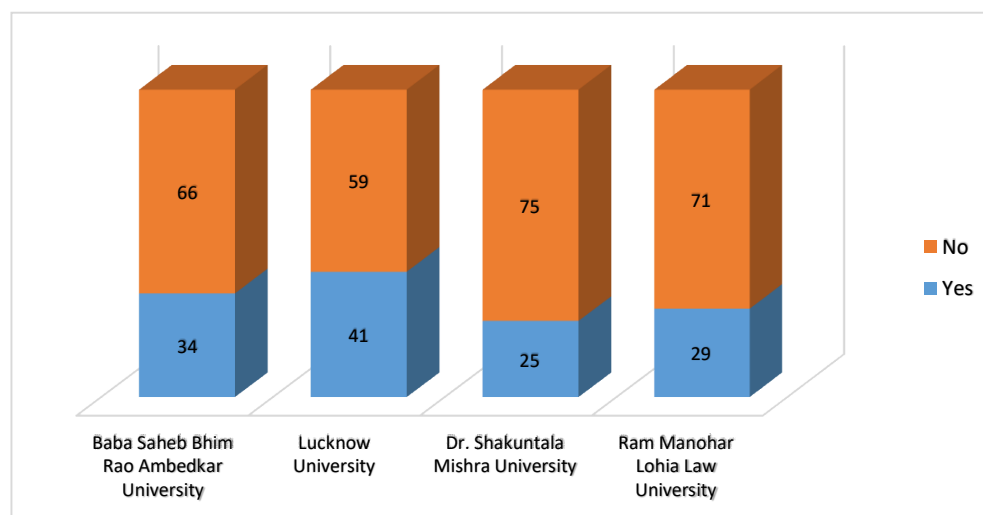
Analysis:

The above table is all about the opinion of the respondents regarding special provision for disabled women and children in higher education. From the above table, it is evident that the majority of the respondents of the different department answered "YES". That means they are aware about the special provisions in favour of disabled women and children. It is a matter of great satisfaction. But on the same time some of the respondents of different department are not aware about the special provision for disabled women and children. Here, it is remarkable to note that majority of the respondents of engineering and management answered negatively. That means they are not aware about special provision for disabled women and children. Their responses cannot be negated. It is a matter of grave concern. The result shows that this provision of the Act is highly neglected.

Table 3.01

Does Attitude towards Disabled at Home is Discriminatory

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	34	66	0
2.	Lucknow University	37	41	59	0
3.	Dr.Shakuntala Mishra University	51	25	75	0
4.	Ram Manohar Lohia Law University	28	29	71	0



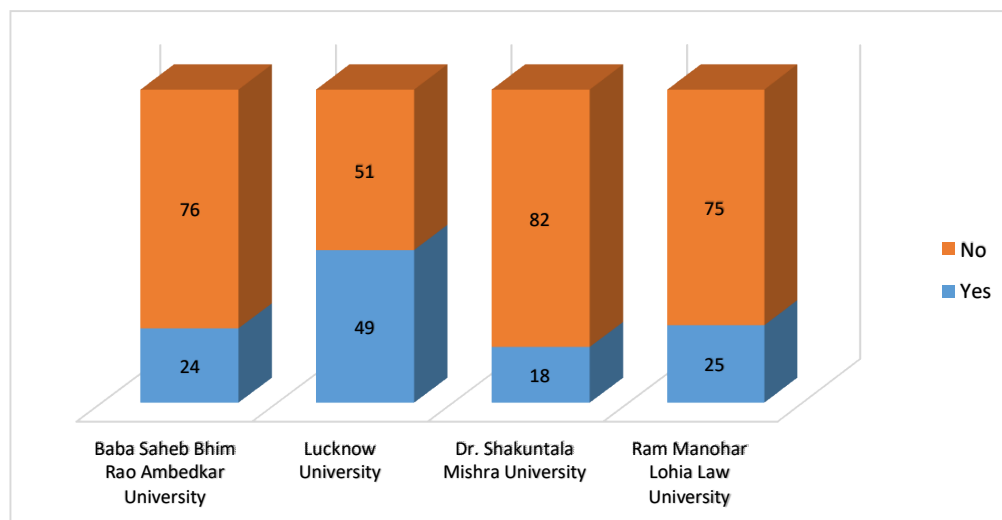
Analysis:

The above table represents about the discrimination of disabled at home. From the above empirical data it is evident that majority of the respondents answered "NO". That means majority of the respondents think that there is no discrimination against disabled at home. But on the other hand, some of the respondents from different universities answered "YES". It means these respondents are having unanimous thinking that discrimination against disabled is going on. They are not even secure at home. Therefore, the responses of these respondents cannot be negated to the general outcome that there is no discrimination with disabled at domestic level. It indicates that till now, they are not getting full proof security. In this context, the intention of Section 3 is crystal clear. It deals with protection mechanism against discrimination. Therefore, it can be said that provision of the Act is partially neglected.

Table 3.02

Is poverty a Cause of Disability?

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	24	76	0
2.	Lucknow University	37	49	51	0
3.	Dr.Shakuntala Mishra University	51	18	82	0
4.	Ram Manohar Lohia Law University	28	25	75	0



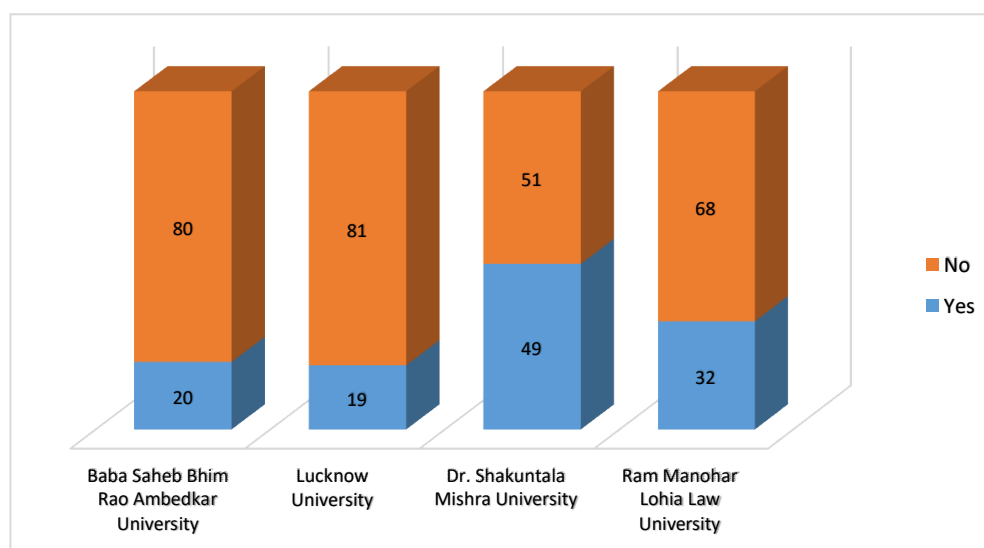
Analysis:

The above table represents about poverty as a cause of disability. From the above empirical data it is evident that majority of faculties are having unanimous thinking that poverty is not a cause of disability. On the other hand, some of the respondents answered positively. They think that poverty is a cause of disability.

Table 3.03

Does public transport affordable for disabled

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	20	80	0
2.	Lucknow University	37	19	81	0
3.	Dr.Shakuntala Mishra University	51	49	51	0
4.	Ram Manohar Lohia Law University	28	32	68	0



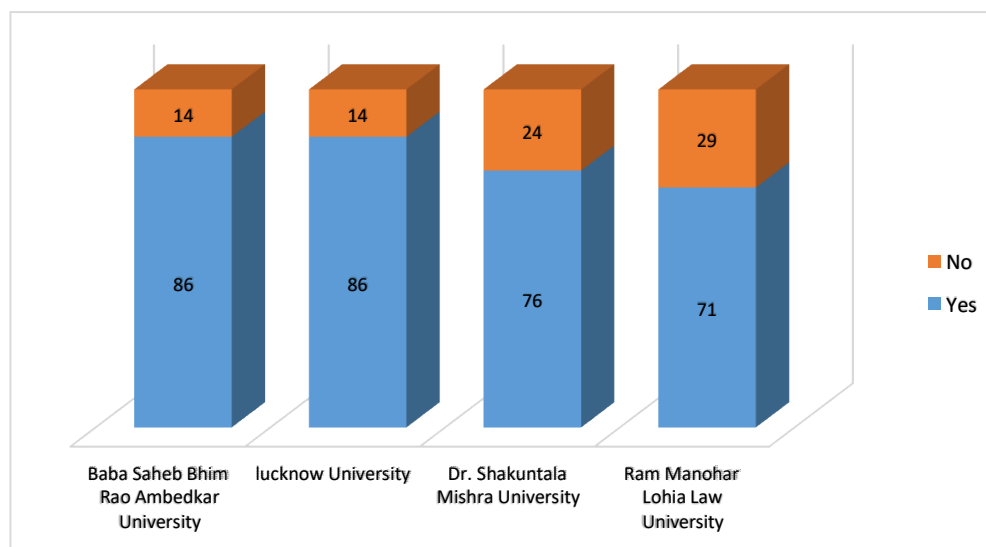
Analysis:

The above table represents about affordability of public transport for disabled. It is evident from the table that majority of the faculties are having thinking that public transport is not affordable for disabled. It shows the dismal and pathetic condition of public transport in context of disabled. This is a matter of grave concern that till now, the public transport is not disable friendly. It also indicates that government has given less focus on public transport. In this context, the provision of the Act is crystal clear. Section 40 of the Act states that Central Government after consultation with Commissioner frame rules for persons with disabilities setting down the standard of accessibility in context of public transport. Section 41 of the Act deals with accessibility at railway stations, bus stations and airports. The result shows that this provision of the Act is highly neglected.

Table 3.04

Does any Government institution provide facility of tri-cycle for disabled

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	86	14	0
2.	Lucknow University	37	86	14	0
3.	Dr.Shakuntala Mishra University	51	76	24	0
4.	Ram Manohar Lohia Law University	28	71	29	0



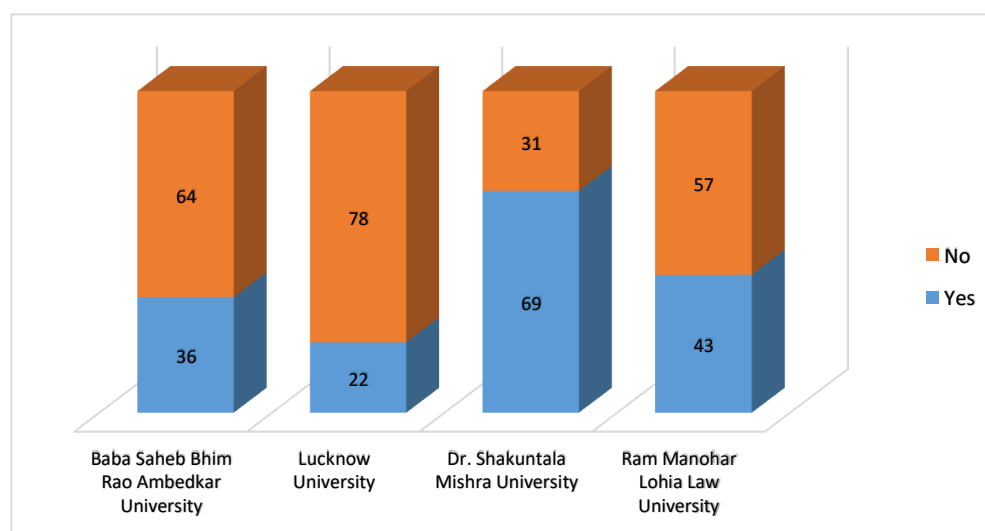
Analysis:

The above table represents about government institution provides facility of tri-cycle for transport or movement of disabled. From the above empirical data it is evident that majority of the faculties are having unanimous thinking that government institution provides tri-cycle for transport or movement of disabled. It is a matter of great satisfaction that maximum number of respondents are aware about role of government institution in distribution of tri-cycle to disabled. On the other hand, some of the respondents answered "NO". That means some of the respondents are not aware. This is not a good sign.

Table 3.05

Does the building of university movable for disabled

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	36	64	0
2.	Lucknow University	37	22	78	0
3.	Dr.Shakuntala Mishra University	51	69	31	0
4.	Ram Manohar Lohia Law University	28	43	57	0



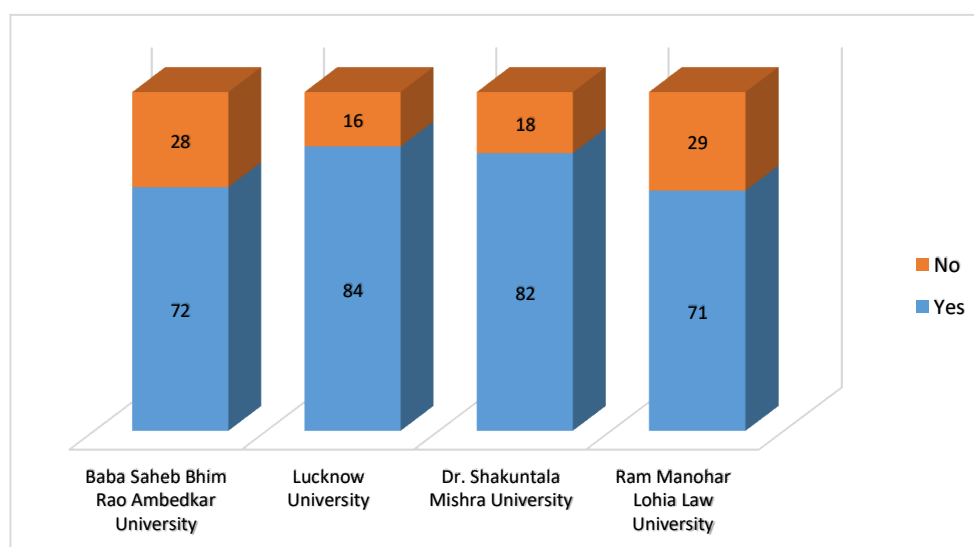
Analysis:

The above table represents about affordability of building of university for disabled. From the above empirical data it is evident that majority of the faculties are having thinking that building of university is not affordable for disabled. But respondents belonging to Dr.Shakuntala Mishra University recorded sixty nine per cent responses to affirm that building of university is affordable for disabled. It is remarkable to discuss that Dr.Shakuntala Mishra University is a Special University designed for disabled. So it is obvious that infrastructure in Dr.Shakuntala Mishra University is disabled friendly. But the ground reality of three other universities are quite different. So their responses can be negated to the general outcome that building of universities are not affordable for disabled. This is a matter of grave concern that till now, disable's are fighting for affordable building of university. In this context, the provision of the Act is crystal clear. Section 35 of the Rights of Persons with Disabilities Act, 2016 states that all public buildings including buildings of university shall be made accessible as per the rules framed by the Central Government within a period not exceeding five years from the date of notification. Therefore, it can be said that provision of the Act is highly neglected.

Table 3.06

Does any non-government institution work in interest of disabled

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	72	28	0
2.	Lucknow University	37	84	16	0
3.	Dr.Shakuntala Mishra University	51	82	18	0
4.	Ram Manohar Lohia Law University	28	71	29	0



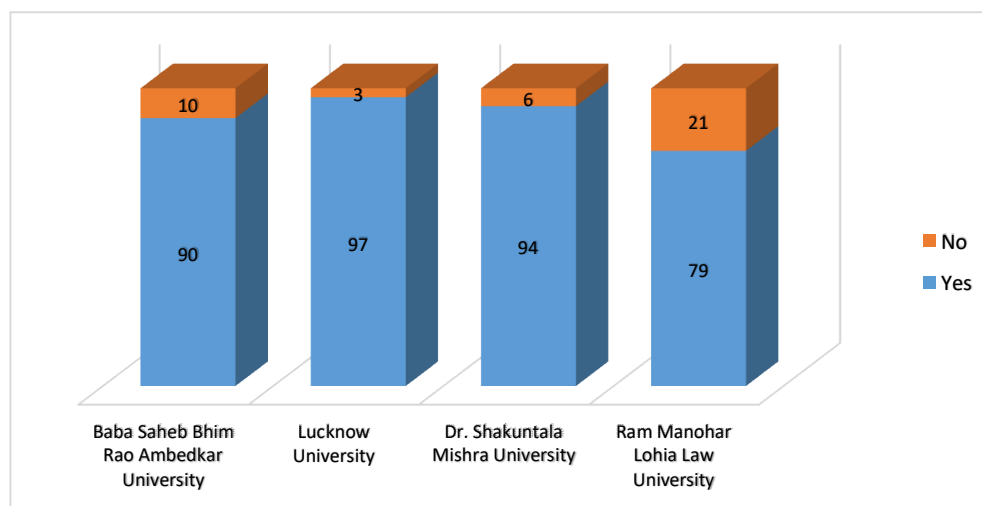
Analysis:

The above table represents about the role of non-government institutions in welfare of disabled. From the above empirical data it is evident that majority of the respondents think that non-government institutions are working for the welfare of disabled. It is a matter of great satisfaction that majority of the respondents are aware of the fact. But on the other hand, some of the respondents are not aware of the fact. It is a matter to worry that even in 21st century, some of the respondents are not aware about the role of non-government institution in welfare of disabled. There is a clear cut provision about non-government organisation in the Act. Therefore, it can be said that still large section of people need to sensitize and this is a great obstruction in the path of inclusive development.

Table 3.07

Does disabled get reservation in higher education

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	90	10	0
2.	Lucknow University	37	97	3	0
3.	Dr.Shakuntala Mishra University	51	94	6	0
4.	Ram Manohar Lohia Law University	28	79	21	0



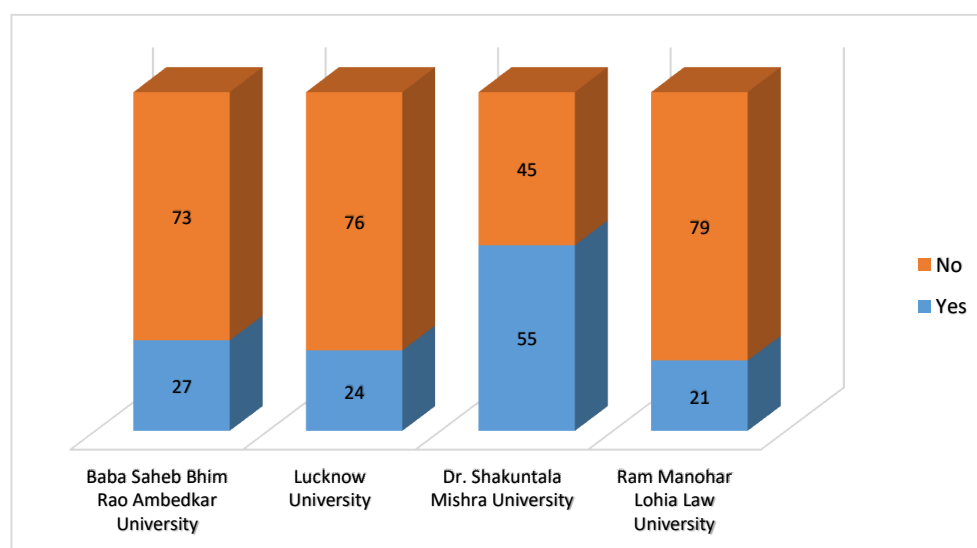
Analysis:

The above table represents about reservation in higher education for disabled. It is evident from the empirical data that majority of the respondents answered “YES”. That means majority of the respondents are having unanimous thinking that persons suffering from disability getting reservation in higher education. It is a matter of great satisfaction that majority of the respondents are aware about reservation in higher education for disabled. On the other hand, few of the respondents are not aware. But the population of these respondents are very less, so their responses can be negated. In this context, the provision of the Act is crystal clear. Section 32 and 34 states about reservation mechanism. Section 32(1) states about five per cent reservation in higher education and other higher education institutions and Section 34 states about four per cent reservation in Government establishments. The result shows that provision of the Act is almost complied with.

Table 3.08

Does magazine and books in Braille Script for visually impaired available in university

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	27	73	0
2.	Lucknow University	37	24	76	0
3.	Dr.Shakuntala Mishra University	51	55	45	0
4.	Ram Manohar Lohia Law University	28	21	79	0



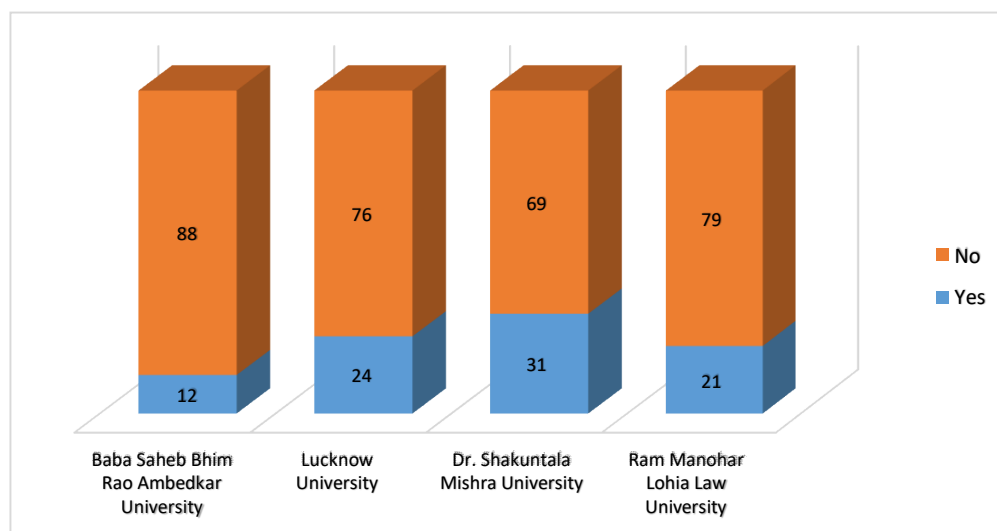
Analysis:

The above empirical data represents about availability of magazine and books in Braille Script for visually impaired students in university. It is evident from the data that majority of the respondents except respondents from Dr.Shakuntala Mishra University answered negatively. That means majority of the respondents are having unanimous thinking that magazine and books in Braille Script for visually impaired is not available in maximum universities. It is a matter of great sorrow. Till now, visually impaired students fighting for recognition and citizenship. It also indicates that government has given less attention to this issue. But on the other hand, respondents from Dr.Shakuntala Mishra University are getting better treatment in terms of availability of magazine and books in Braille Script. This is a matter of great satisfaction. But the overall result shows that this provision of the Act is highly neglected.

Table 3.09

**Does disabled cell for protection and security of disabled available in
university**

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	12	88	0
2.	Lucknow University	37	24	76	0
3.	Dr.Shakuntala Mishra University	51	31	69	0
4.	Ram Manohar Lohia Law University	28	21	79	0



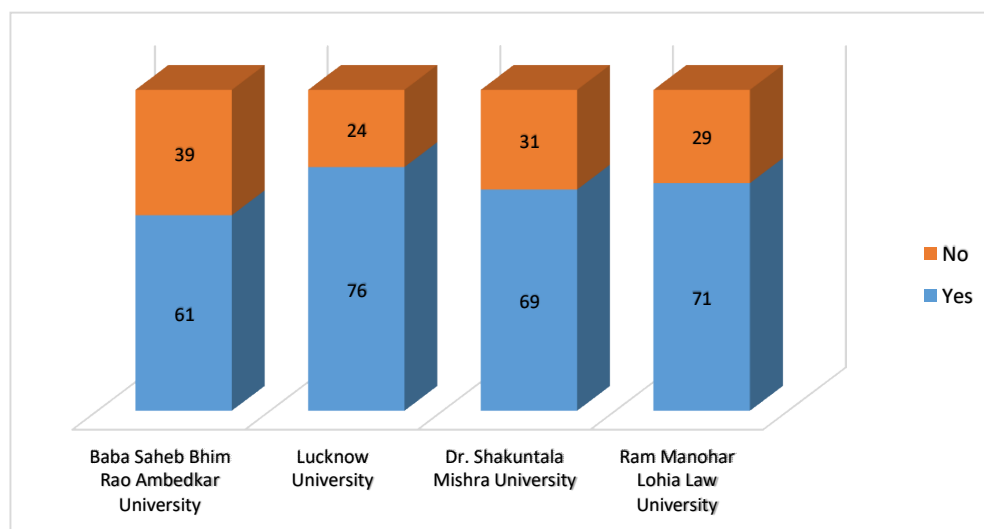
Analysis:

The above table discuss about availability of disabled cell in university for protection and security of disabled. From the above empirical data, it is evident that majority of the respondents are having unanimous thinking about non-availability of disabled cell in university. Majority of the respondents agree on the fact that disabled cell is not available in almost all the universities. It is most unfortunate that disabled cell is not available in maximum universities. Disabled students are still fighting for disabled cell. Although University Grant Commission recommended for disabled cell during ninth plan period. But the disabled students are still fighting for minimum protection. It also indicates that government turned blind eyes to this issue. The result shows that this provision of the Act is totally neglected.

Table 3.10

Does people aware about scholarship for disabled education

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	61	39	0
2.	Lucknow University	37	76	24	0
3.	Dr.Shakuntala Mishra University	51	69	31	0
4.	Ram Manohar Lohia Law University	28	71	29	0



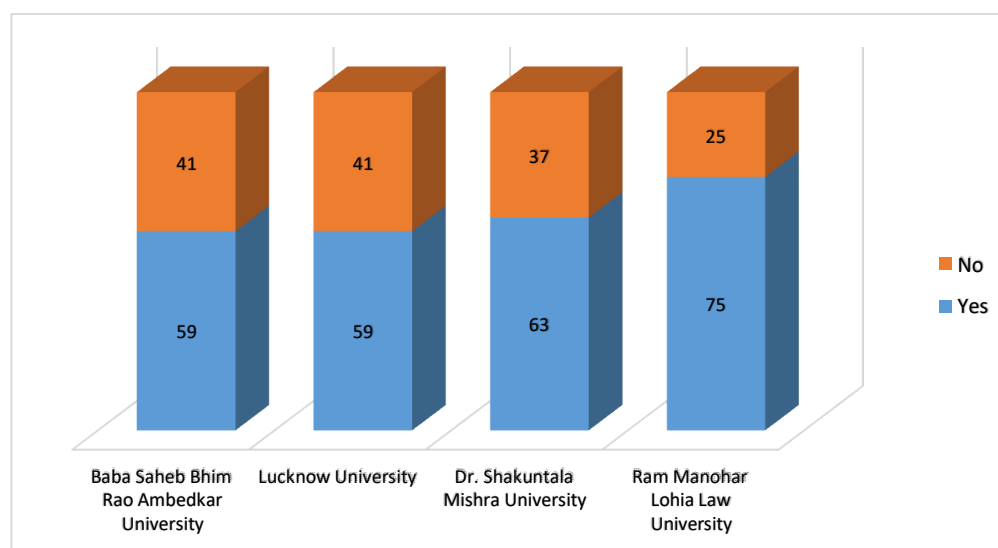
Analysis:

The above table represents about awareness of the people regarding scholarship for disabled education. From the above empirical data, it is clear that majority of the respondents answered "YES". That means majority of the respondents are well aware about scholarship for disabled education. This is a matter of great satisfaction. But on the other hand, some of the respondents are not aware. It is a matter of great concern that still some of the respondents are not sensitized on disabled issue. This cannot be negated. Therefore, the result shows that this provision of the Act is partially neglected.

Table 3.11

Do you aware about law for the protection and security of disabled

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	59	41	0
2.	Lucknow University	37	59	41	0
3.	Dr.Shakuntala Mishra University	51	63	37	0
4.	Ram Manohar Lohia Law University	28	75	25	0



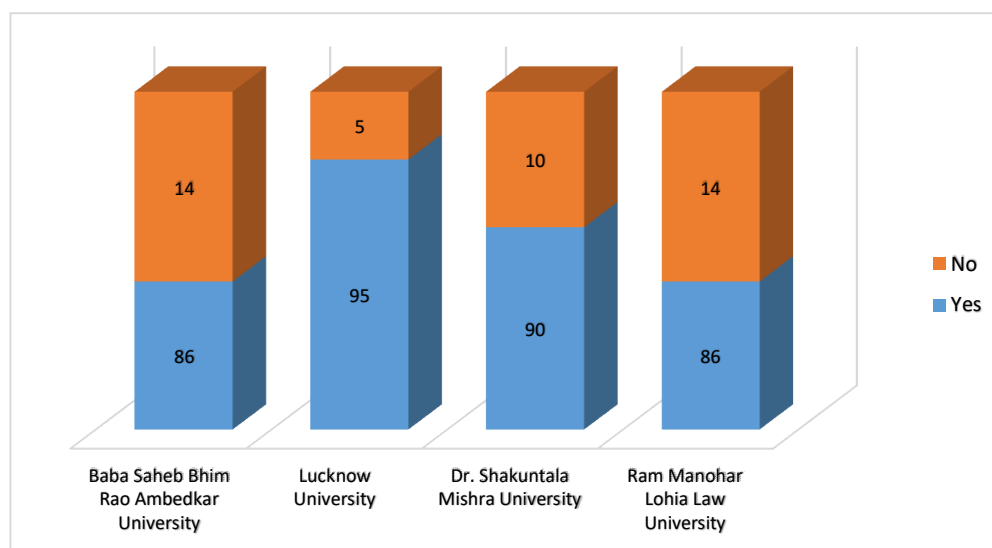
Analysis:

The above empirical data discuss about awareness of the people regarding law for the protection and security of disabled. It is evident from the table that majority of the respondents answered "YES". It data indicates that maximum respondents are aware about law for the protection and security of disabled. It is a matter of great satisfaction that majority of the respondents are aware about law for the protection and security of disabled. But on the other hand, few of the respondents are not aware about law for the protection and security of disabled. It is a matter of serious concern that till now, some of the respondents are not sensitize about law related with protection and security of disabled. And lack of sensitization is a major hurdle in the path of progress of disabled. Again, the high rate of unawareness among research scholar is a matter of grave concern. The result shows that provision of the Act is partially neglected.

Table 3.12

Do you know that there is aprovision of reservation in higher education for disabled

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	86	14	0
2.	Lucknow University	37	95	5	0
3.	Dr.Shakuntala Mishra University	51	90	10	0
4.	Ram Manohar Lohia Law University	28	86	14	0



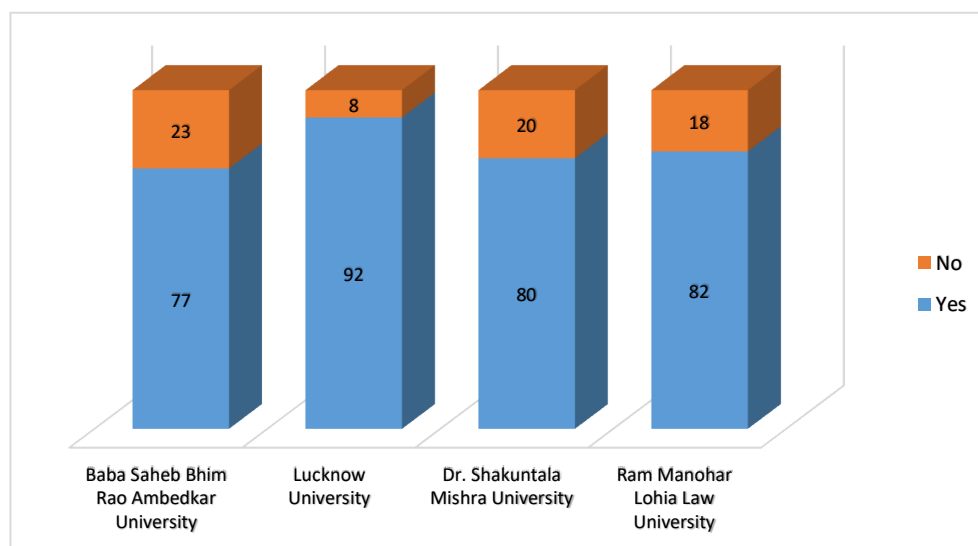
Analysis:

The above empirical data represents about the provision of reservation in higher education for disabled. It is crystal clear from the data that majority of the respondents answered "YES". It is really a proud moment that majority of the respondents are well aware about reservation in higher education for disabled. But on the other hand, some of the respondents answered "NO". The reason behind negative answer is lack of awareness. Till now, the rate of awareness is not up to the mark. It is a matter of grave concern. In this context, the language of the Act is crystal clear. Section 32 of the Rights of Persons with Disabilities Act, 2016 puts a responsibility on the shoulder of Government. Section 32 discuss about the duty of Government institutions and other institutions receiving aid from Government to reserve not less than five per cent seats for persons with disabilities and five years age relaxation. The result shows that this provision of the Act is partially neglected.

Table 3.13

Does disabled get reservation at the time of appointment in every universities

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	77	23	0
2.	Lucknow University	37	92	8	0
3.	Dr.Shakuntala Mishra University	51	80	20	0
4.	Ram Manohar Lohia Law University	28	82	18	0



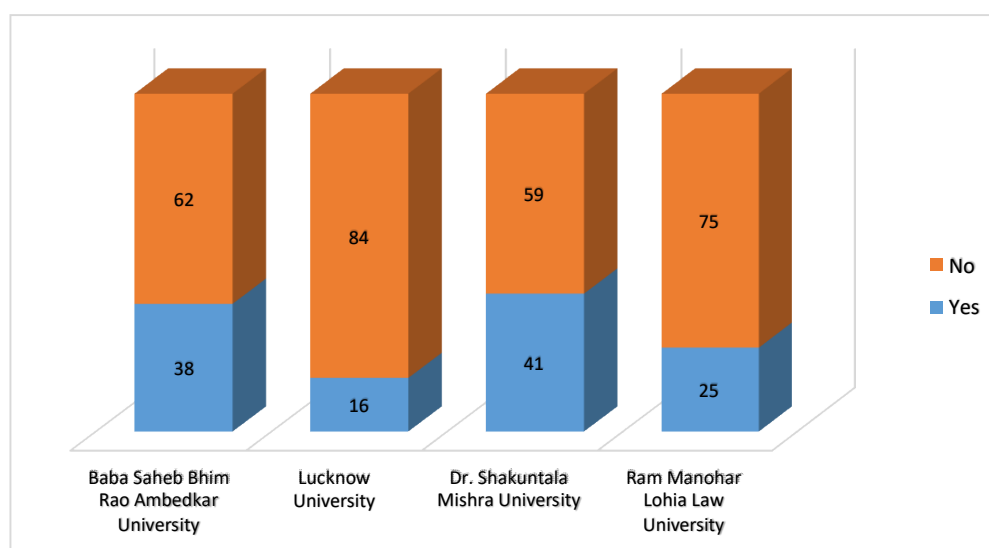
Analysis:

The above empirical data tells about the reservation at the time of appointment in every universities. The empirical data indicates that majority of the respondents are having unanimous thinking that disable's are getting reservation at the time of appointment in every universities. It is a matter of great moment that majority of the respondents are agree on the fact that disabled's are getting reservation at every stage of appointment in every universities. But on the other hand, some of the respondents are not aware. Particularly, the rate of unawareness among research scholar is exceptionally high. The fact cannot be negated. In this context the language of the Act is crystal clear. Section 34 of the Rights of Persons with Disabilities Act, 2016 provides that it is the duty of the Government to reserve not less than four per cent of the total number of vacancies in the cadre strength. Therefore, the result shows that this provision of the Act is partially neglected.

Table 3.14

**Does any category left which comes under the category of disability or there
is a need of amendment in the list of category mentioned in Rights of Persons
with Disabilities Act,2016**

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	38	62	0
2.	Lucknow University	37	16	84	0
3.	Dr.Shakuntala Mishra University	51	41	59	0
4.	Ram Manohar Lohia Law University	28	25	75	0



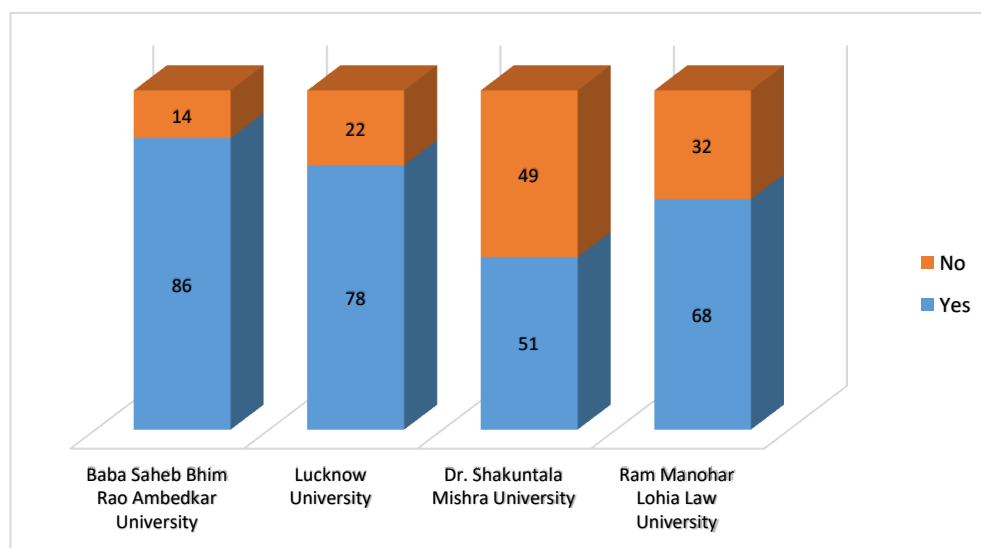
Analysis:

The above empirical data indicating towards the omission of any category from the list of disabled which must included in the list of disabled. It is clear from the data that maximum respondents answered "NO". That means they want to maintain status quo. They do not want any change in the list of disability. They consider it as exhaustive. Further, some of the respondents answered "YES". That means some of the respondents want some change in the list of disability.

Table 3.15

Does disabled need any Special Act like SC/ST Act

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba SahebBhim Rao Ambedkar University	152	86	14	0
2.	Lucknow University	37	78	22	0
3.	Dr.Shakuntala Mishra University	51	51	49	0
4.	Ram Manohar Lohia Law University	28	68	32	0

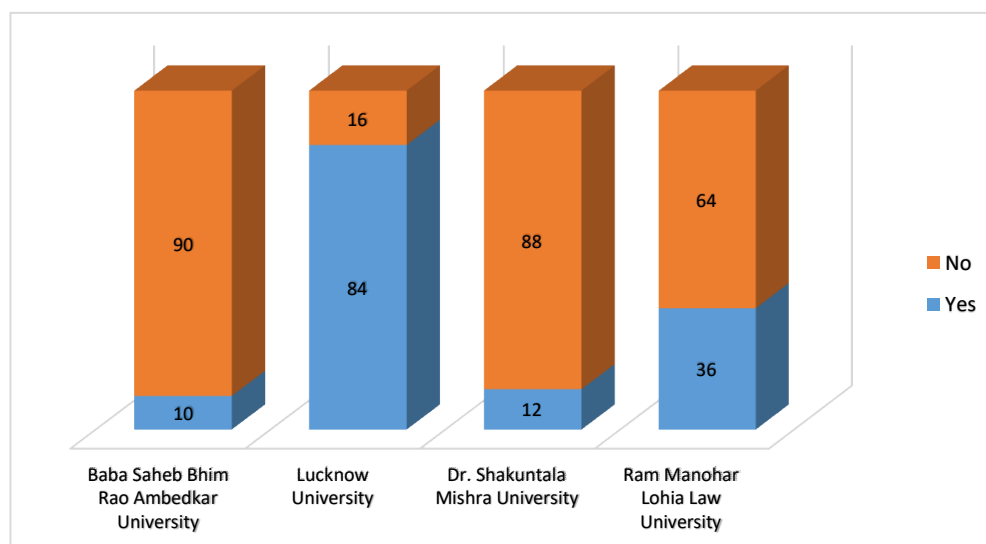


Analysis:

The above mentioned empirical data discuss about Special Acts for disabled in the lines of SC/ST Act. It is clear from the table that majority of the respondents answered "YES". It communicate that majority of the respondents prefer a Special Act in the lines of SC/ST Act. That means majority of the respondents are having unanimous thinking that special Act is the need of the time. In absence of Special Act like SC/ST Act, it is not possible to stop atrocity against disabled. The Special Act will brought far reaching changes for disabled. On the other hand, some of the respondents answered "NO". In their view the Rights of Persons with Disabilities Act is sufficient.

Table 3.16
**Does private sector provide due representation to
disabled in employment**

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	10	90	0
2.	Lucknow University	37	84	16	0
3.	Dr.Shakuntala Mishra University	51	12	88	0
4.	Ram Manohar Lohia Law University	28	36	64	0



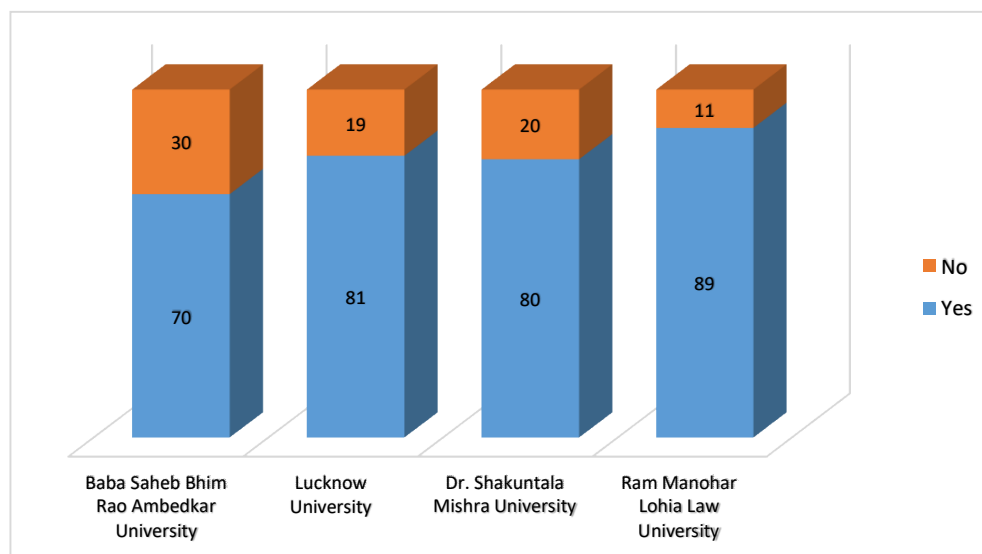
Analysis:

The above table tells about the role of private sector in employment of disabled. It is evident from the table that maximum respondents answered "NO". The meaning is crystal clear. Majority of the respondents are having unanimous thinking that there is no role of private sector in employment of disabled. That means still, the scope of employment is very limited for disabled in private sector. They have been totally excluded from the sphere of private sector. It also indicates that Government and Judiciary have given less focus on employment of disabled in private sector. Although, Section 35 of the Act offers tax rebate and incentives for private sector in the case of employment of disabled. But the net result is not up to mark. This is not a matter of satisfaction. The result shows that this provision of the Act is totally neglected.

Table 3.17

Does the approach of judiciary is affirmative towards disabled

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	70	30	0
2.	Lucknow University	37	81	19	0
3.	Dr.Shakuntala Mishra University	51	80	20	0
4.	Ram Manohar Lohia Law University	28	89	11	0



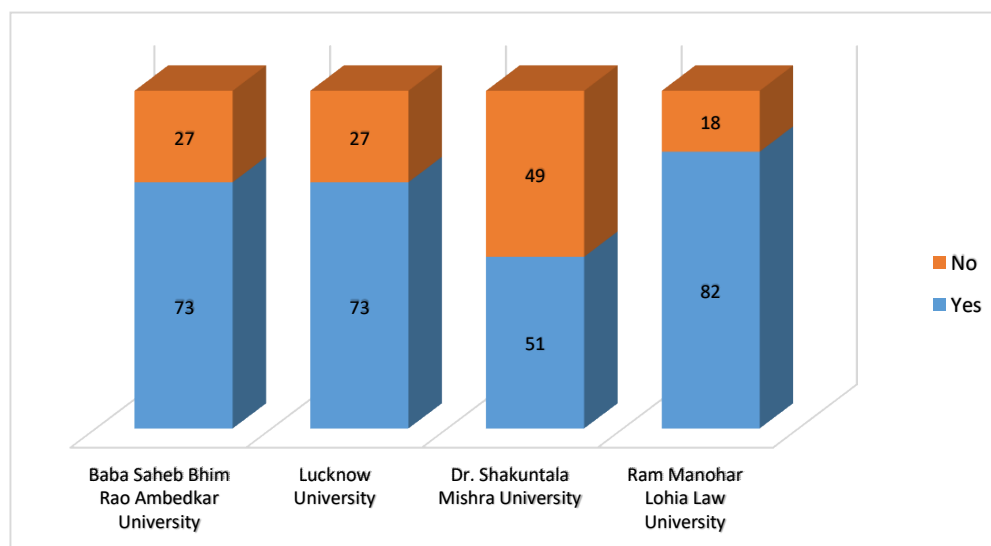
Analysis:

The above empirical data sketch out the approach of judiciary towards disabled. It is clear from the data that majority of the respondents answered "YES". That means majority of the respondents are having unanimous thinking that approach of judiciary is positive towards disabled. This is a matter of great satisfaction. But on the other hand, few of the respondents answered "NO". It communicate that some of the respondents are not agree with the fact that approach of Judiciary is positive towards disabled. In the opinion of some of the respondents, Indian Judiciary is still functioning on the principal of charity model. Till now, the disability jurisprudence is not developed.

Table 3.18

**Does the implementation of law related with protection and security of
disabled is weak**

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	73	27	0
2.	Lucknow University	37	73	27	0
3.	Dr.Shakuntala Mishra University	51	51	49	0
4.	Ram Manohar Lohia Law University	28	82	18	0



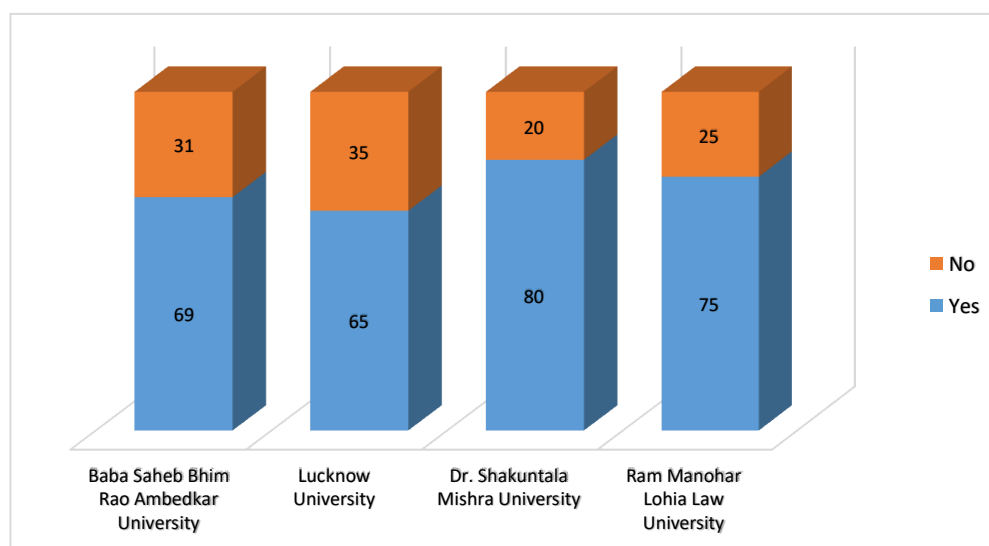
Analysis:

In the above mentioned table the question of implementation of law for the protection and security of disabled has been raised. It is clear from empirical data that majority of the respondents answered "YES". It indicates that majority of the respondents think that implementation of law for the protection and security of disabled, is weak. For the protection of the rights of disabled, various Acts are in existence. But the level of sensitivity among government officials are very low. It is a matter of grave concern. It proves that government has not given proper focus to this issue. The life of disabled is still hanging in and around implementation of different provisions of the Act.

Table 3.19

Does the attitude of teachers towards disabled in university, is affirmative

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	69	31	0
2.	Lucknow University	37	65	35	0
3.	Dr.Shakuntala Mishra University	51	80	20	0
4.	Ram Manohar Lohia Law University	28	75	25	0



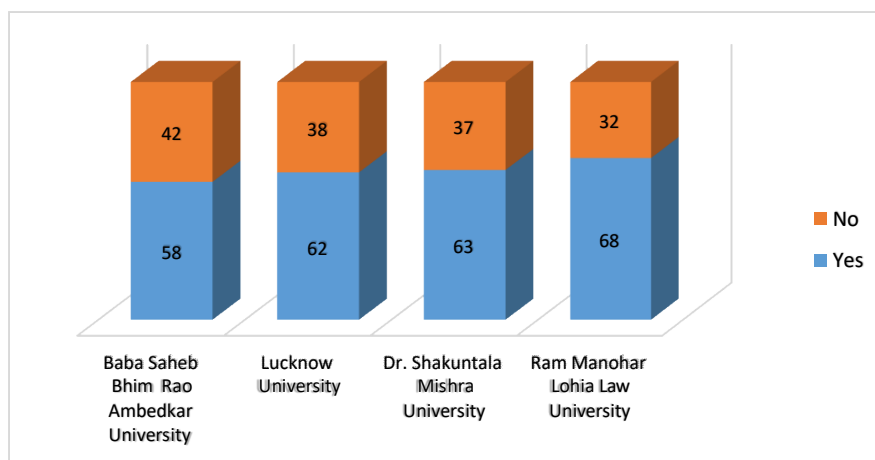
Analysis:

The above empirical data discuss about attitude of teachers towards disabled in university. Whether the attitude of teachers are positive or not. It is clear from the data that majority of the respondents answered "YES". It communicate that majority of the respondents agree with the fact that attitude of teacher towards disabled is affirmative. On the other hand, some of the respondents answered "NO". In this context, the meaning is clear .That means pattern of teaching, pattern of evaluation and understanding of psychology of disabled students are not always acceptable. But by and large, the role of teacher is very positive. The result shows that the provision of the Act is partially neglected.

Table 3.20

**Does the Central Government and States Governments are trying for the
security of disabled women**

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	58	42	0
2.	Lucknow University	37	62	38	0
3.	Dr.Shakuntala Mishra University	51	63	37	0
4.	Ram Manohar Lohia Law University	28	68	32	0



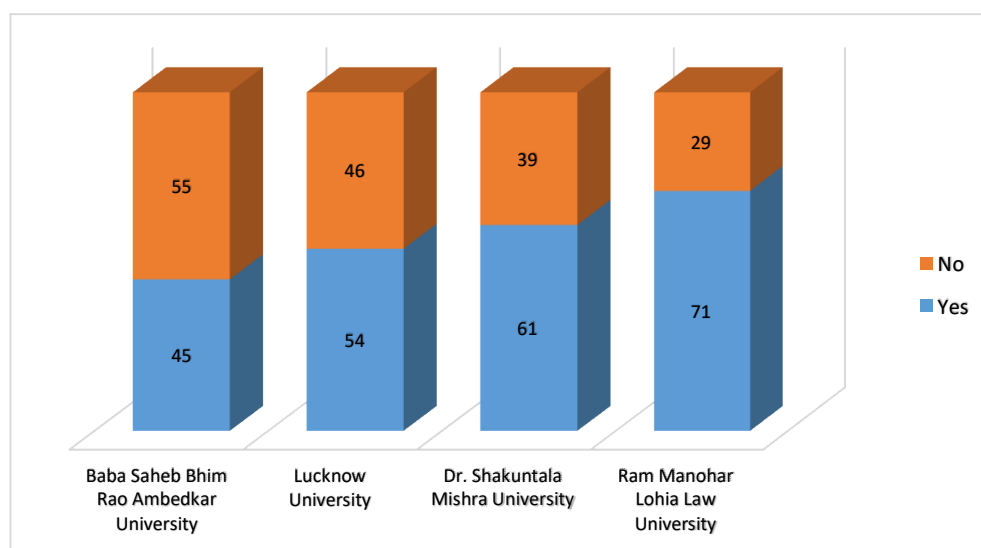
Analysis:

In the above mentioned table a important question has been discussed. The above table discuss about Central Government and State Governments attempt to provide security to disabled women. It is clear from data that majority of the respondents answered "YES". The intention is crystal clear. Majority of the respondents are aware and recognises the attempt of the government to provide security to disabled women. It is a matter of great satisfaction that majority of the respondents are aware about government initiatives towards security of disabled women. But on the other hand the condition is not the same. About one-third of the respondents answered negatively. It is deeply painful that large section of respondents having no faith in the credential of government in context of security of disabled women. Because the condition of disabled women has not changed. Till now, disabled women's are regarded as unproductive and unfertile. It is a matter of great sorrow that rate of literacy is extremely low among women with disabilities. Women with disabilities is invisible. They are facing multifold discrimination including sexual harassment. They are fighting for their identity and recognition. They are more vulnerable to violence and abuse. In this context, the language of Section 4,6,7 and 24 of the Act are crystal clear. Section 24(3)(d) discuss about the support to women with disability for livelihood. The result shows that this provision of the Act is highly neglected.

Table 3.21

Does special provisions are there for disabled women and children

S. No.	Name of University	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Baba Saheb Bhim Rao Ambedkar University	152	45	55	0
2.	Lucknow University	37	54	46	0
3.	Dr.Shakuntala Mishra University	51	61	39	0
4.	Ram Manohar Lohia Law University	28	71	29	0



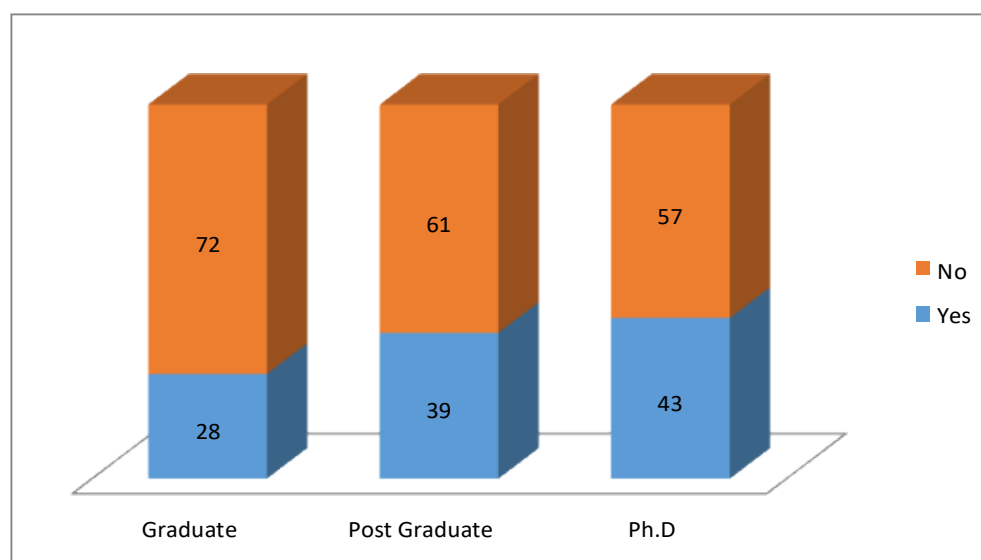
Analysis:

The above mentioned empirical data represents about special provisions for disabled women and children. It is crystal clear from the table that majority of the respondents from Lucknow University, Dr.Shakuntala Mishra University and Ram Manohar Lohia National Law University answered "Yes" but majority of the respondents from Baba Saheb Bhimrao Ambedkar University answered "NO". It is a matter of grave concern that fifty-five per cent respondents from Baba Saheb Bhimrao Ambedkar University answered negatively. That means some of the respondents are having unanimous thinking that there is no special provisions for disabled women and children. Their responses cannot be neglected. In this context the language of Section 24 is crystal clear. It discuss about the special provisions for disabled women and children. But the result is not up to mark. This is a matter of grave concern. The result shows that this provision of the Act is highly neglected.

Table 4.01

Does Attitude towards Disabled at Home is Discriminatory

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	28	72	0
2.	Post Graduate	99	39	61	0
3.	Ph.D	21	43	57	0



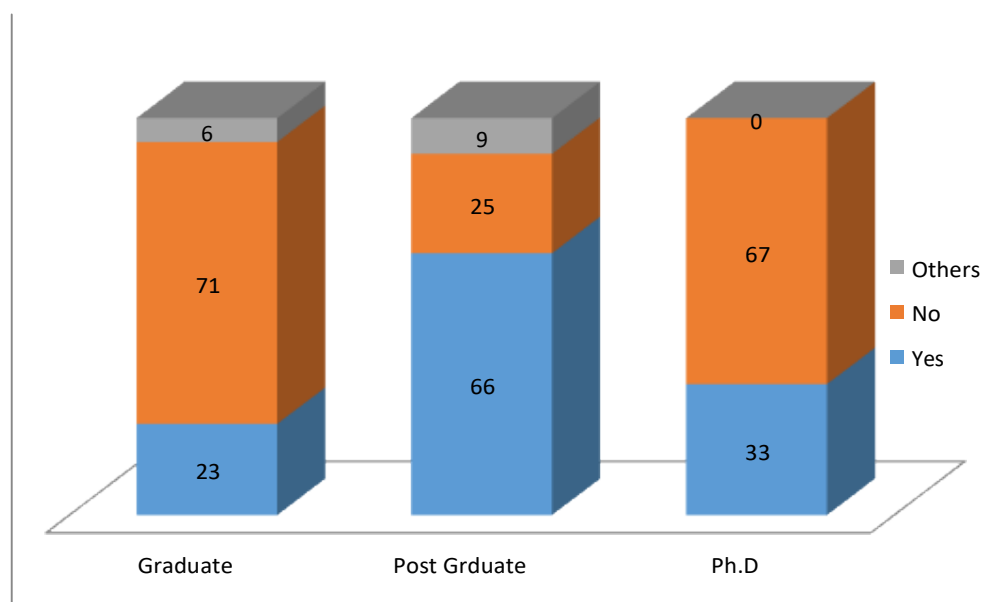
Analysis:

The above table represents about the discrimination of disabled at home. As majority of the respondents answered as 'NO' that means majority of the respondents think that there is not any discrimination against the disabled at home. It is highly appreciable that majority of the respondents answered negatively. But on the other hand, some of respondents accept that discrimination is going on against disabled at home. This is a matter of grave concern. Their responses cannot be negated to the general outcome that there is no discrimination against disabled at home. In this context, the language of Section 3 of Rights of Persons with Disabilities Act is crystal clear. Section 3 of the Act discuss about anti-discrimination measures. Therefore, it can be said that provision of the Act is partially neglected.

Table 4.02

Is poverty a cause of disability

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	23	71	6
2.	Post Graduate	99	66	25	9
3.	Ph..D	21	33	67	0

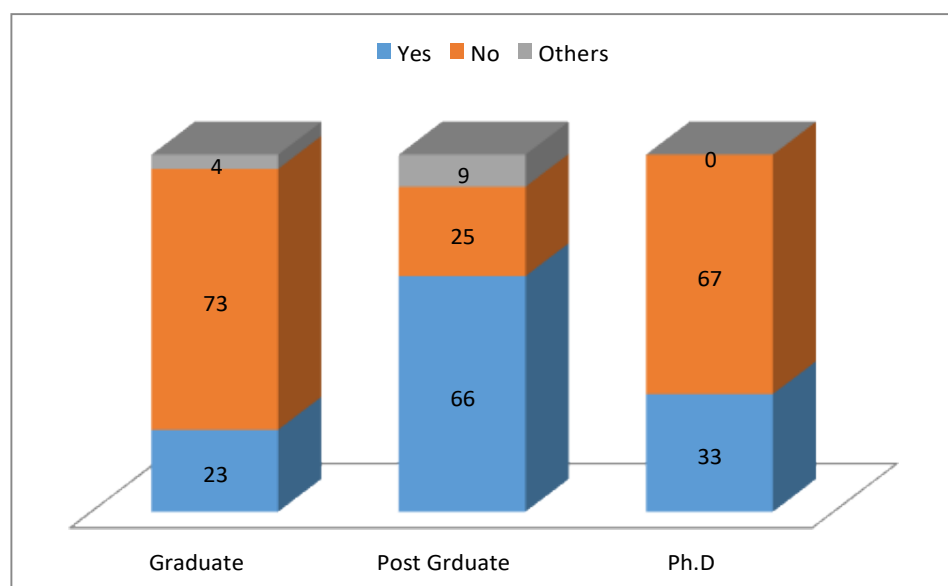


Analysis:

From the above empirical data it is evident that, apart from post graduate respondents, majority of the respondents from graduate and Ph..D having unanimous thinking that poverty is not a cause of disability. Respondents belonging to post graduate faculty recorded response to affirm that poverty is the cause of disability. But on the other hand, some of the respondents answered 'other'. In their opinion, disease and accident are the root cause of disability.

Table 4.03
Does public transport affordable for disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	23	73	4
2.	Post Graduate	99	66	25	9
3.	Ph.D	21	33	67	0

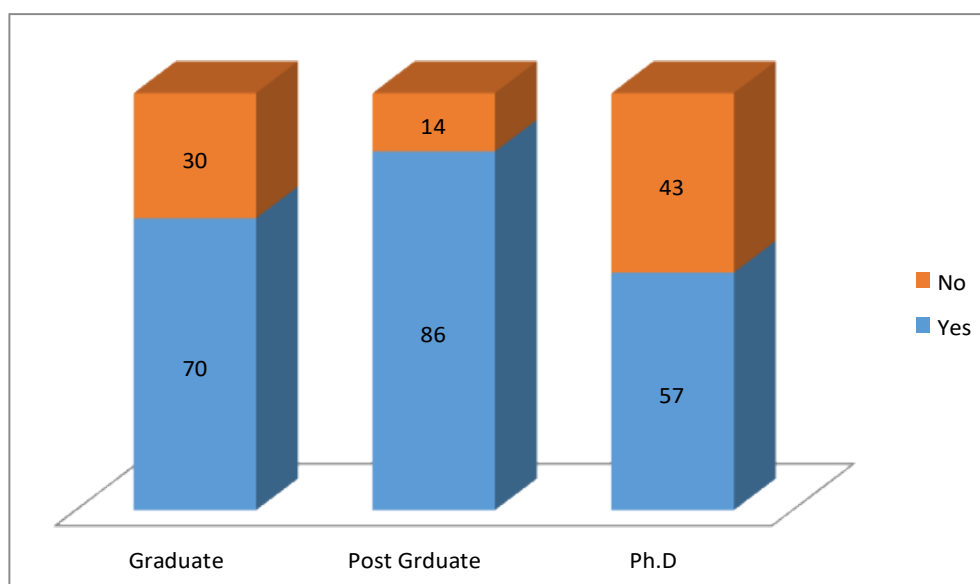


Analysis:

The above table represents the affordability of public transport for disabled. From the above table it is evident that most of the respondents answered negatively. That means beyond any doubt, public transport is not affordable for disabled. It shows the dismal and pathetic condition of public transport for disabled. On the other hand, majority of the respondents from post graduate answered positively. In this context, the language of Section 40 and 41 of the Rights of Persons with Disabilities Act, 2016, is crystal clear. Section 40 of the Act says that the Central Government after consultation with Commissioner frame rules for persons with disabilities setting down the standard of accessibility in terms of transportation and Section 41 discuss about facilities for PWD in bus stop, railway stations and airports. Therefore, it can be said that provision of the Act is highly neglected.

Table 4.04
Does any Government institution provide facility of tri-cycle for disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	70	30	0
2.	Post Graduate	99	86	14	0
3.	Ph.D	21	57	43	0

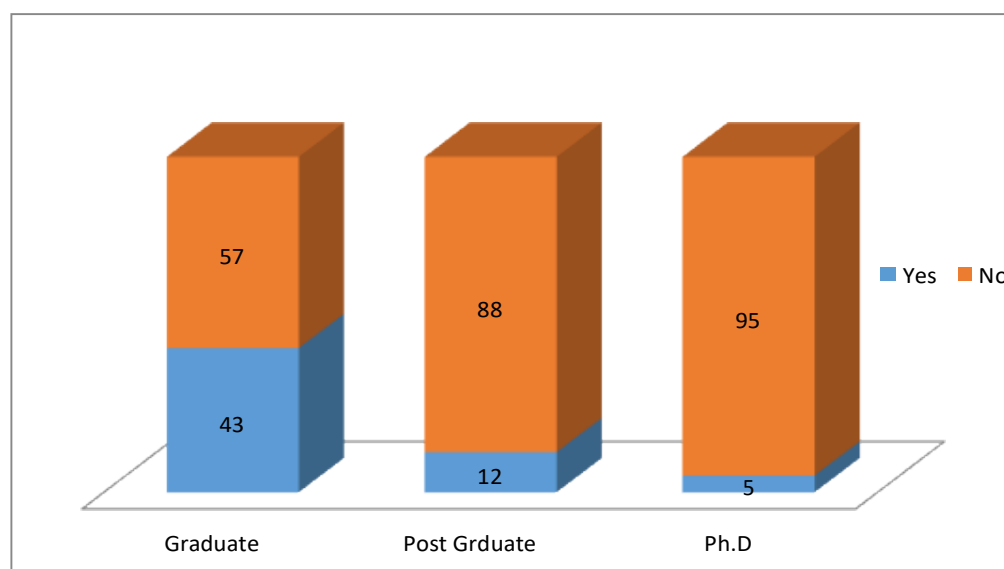


Analysis:

The above table represents about the role of government institution in providing facility of tri-cycle for transport or movement of disabled. It is evident from the table that majority of the respondents answered yes. Majority of the respondents unanimously think that government institution provides facility of tri-cycle for transport or movement of disabled. It is highly appreciable that majority of the respondents are aware about the role of government institution in providing tri-cycle to disabled. On the other hand, some of the respondents are not aware. Particularly the negative responses among Ph.D scholars are high. This is a matter of pain that large section of people still need to sensitize.

Table 4.05
Does the building of university movable for disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	43	57	0
2.	Post graduate	99	12	88	0
3.	Ph.D	21	5	95	0

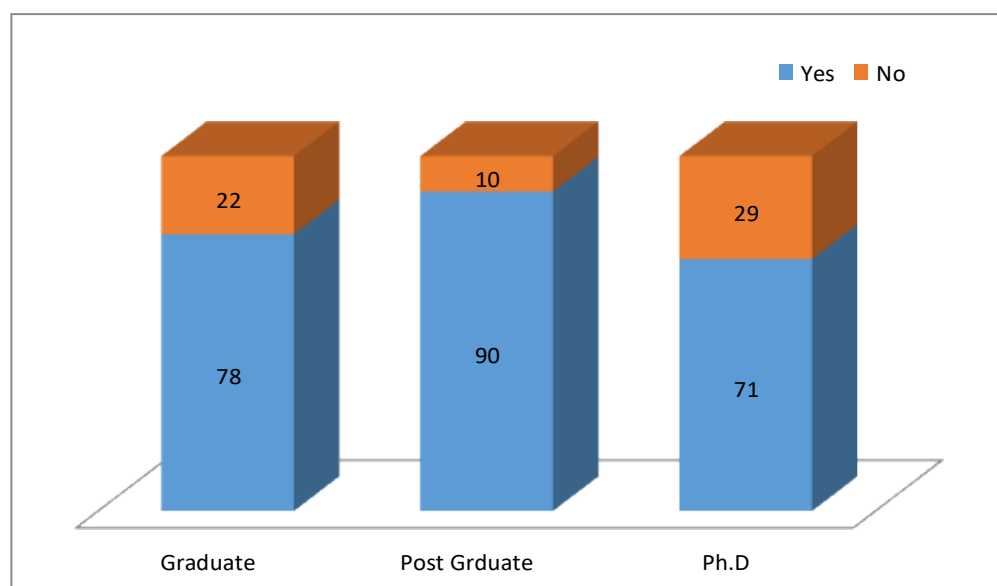


Analysis:

The above table represents about accessible nature of building of university is for disabled. It is evident from the table that majority of the respondents answered negatively. It indicates that majority of the respondents think that university building is not accessible for disabled. It is unfortunate to note that till now, maximum buildings of university are not accessible for disabled. It also indicates that government has given less focus on buildings of university. It is a matter of great sorrow. In this context, the provisions of the Act is crystal clear. It indicates that provision of the Act is highly neglected.

Table 4.06
Does any non-government institution work in interest of disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	78	22	0
2.	Post Graduate	99	90	10	0
3.	Ph.D	21	71	29	0

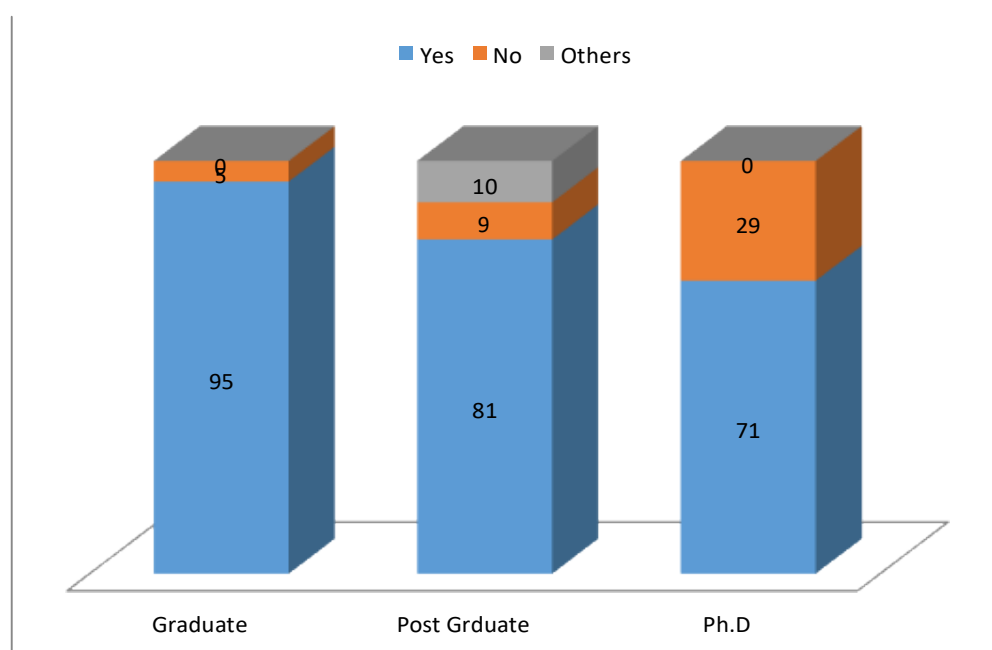


Analysis:

The above table represents about the role of non-government institution in protection of interest of disabled. It is evident from table that majority of the respondents answered yes. It indicates that majority of the respondents having the view that non-government institution working for the protection of the interest of disabled. The fact is highly appreciable that majority of the respondents are aware about role of non-government institution in protection of the interest of disabled. On the other hand, some of the respondents are not aware. It is a matter of concern. The result shows that provision of the Act is almost complied with.

Table 4.07
Does disabled get reservation in higher education

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	95	5	0
2.	Post Graduate	99	81	9	10
3.	Ph..D	21	71	29	0

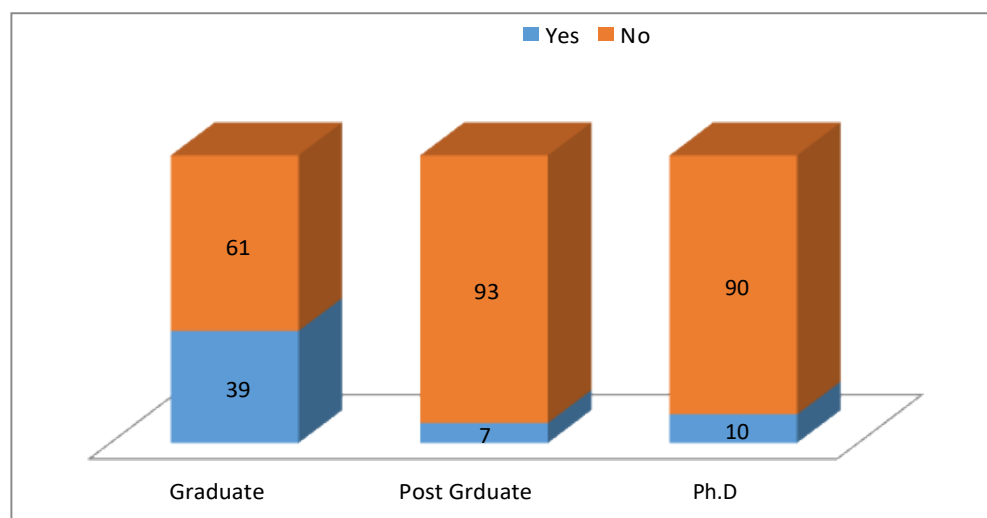


Analysis:

The above table represents about reservation in higher education for disabled. It is evident from the table that majority of the respondents answered yes. That means majority of the respondents having unanimous thinking that persons suffering from disability getting reservation in higher education. It is highly appreciable that majority of the respondents are aware about reservation in higher education for disabled. On the other hand, around fifteen per cent of respondents answered no. Some of the respondents from post graduate answered other. That means they are not sure about proper implementation of reservation in M.Phil and Ph.D. But the number of these respondents are very less. So, their views can be negated. Therefore, it can be said that the provision of the Act is almost complied with.

Table 4.08
Does magazine and books in Braille Script for visually impaired available in university

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	39	61	0
2.	Post graduate	99	7	93	0
3.	Ph.D	21	10	90	0



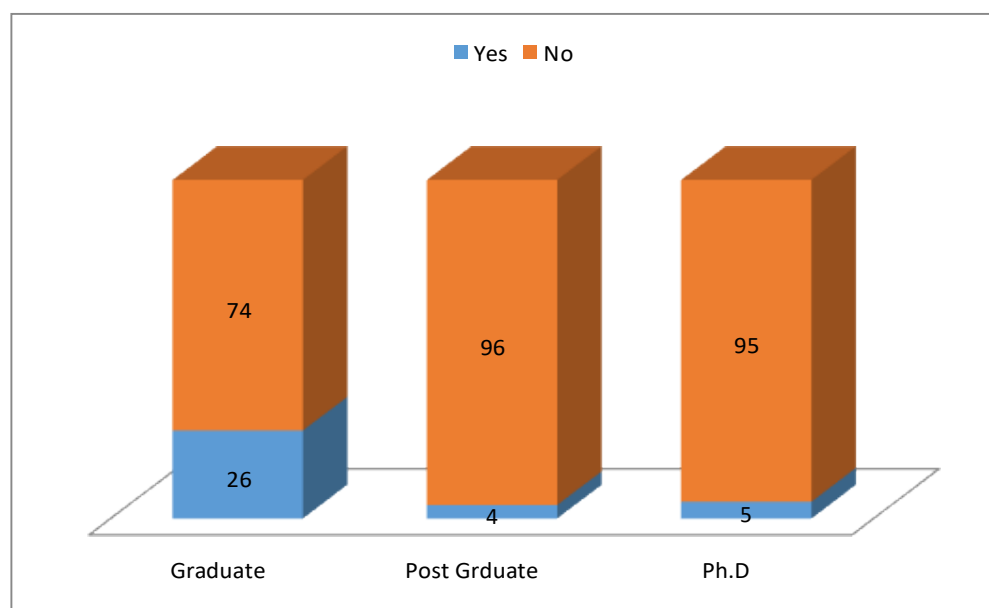
Analysis:

The above table represents about availability of magazine and books in Braille Script for visually impaired students in university. It is evident from the table that maximum number of respondents answered negatively. That means majority of the respondents having unanimous thinking that magazine and books in Braille Script for visually impaired is not available in maximum universities. It is a matter of great concern. Till now, visually impaired students fighting for recognition and personhood. It also indicates that government has given less importance to this issue. The result shows that this provision of the Act is highly neglected.

Table 4.09

**Does disabled cell for protection and security of disabled available in
university**

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	26	74	0
2.	Post Graduate	99	4	96	0
3.	Ph..D	21	5	95	0



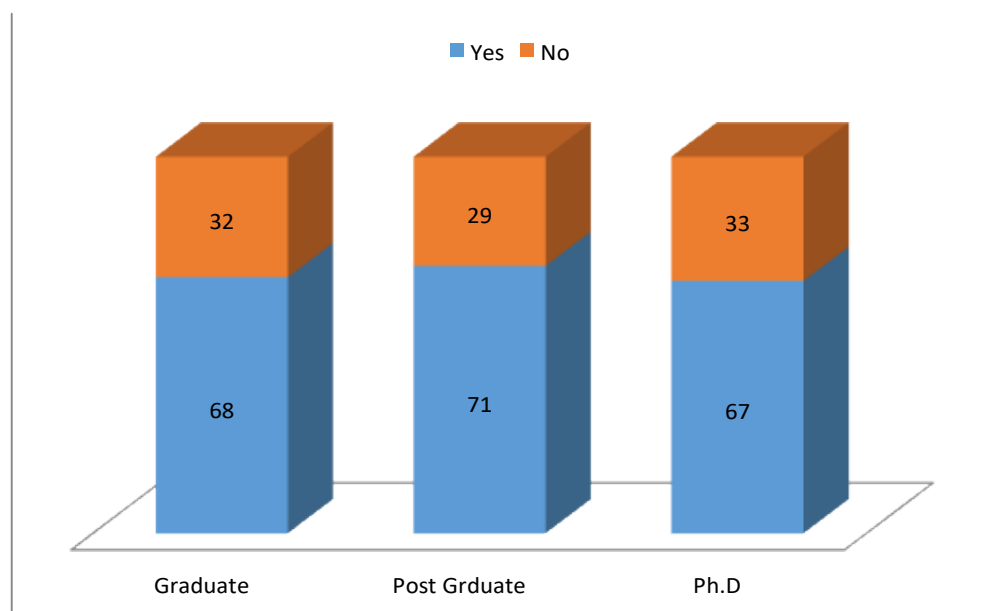
Analysis:

The above table represents about availability of disabled cell in university for protection and security of disabled. From above empirical data, it is evident that majority of the respondents having unanimous thinking about non-availability of disabled cell in university. Majority of the respondents agree on the fact that disabled cell is not available in almost all the universities. It is most unfortunate that disabled cell is not available in maximum universities. Disabled students are still fighting for disabled cell. Although University Grant Commission recommended for disabled cell during ninth plan period. But the disabled students are still fighting for minimum protection. It also indicates that government turned blind eyes to this issue. The result shows that this provision of the Act is totally neglected.

Table 4.10

Does people aware about scholarship for disabled's education

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	68	32	0
2.	Post Graduate	99	71	29	0
3.	Ph..D	21	67	33	0



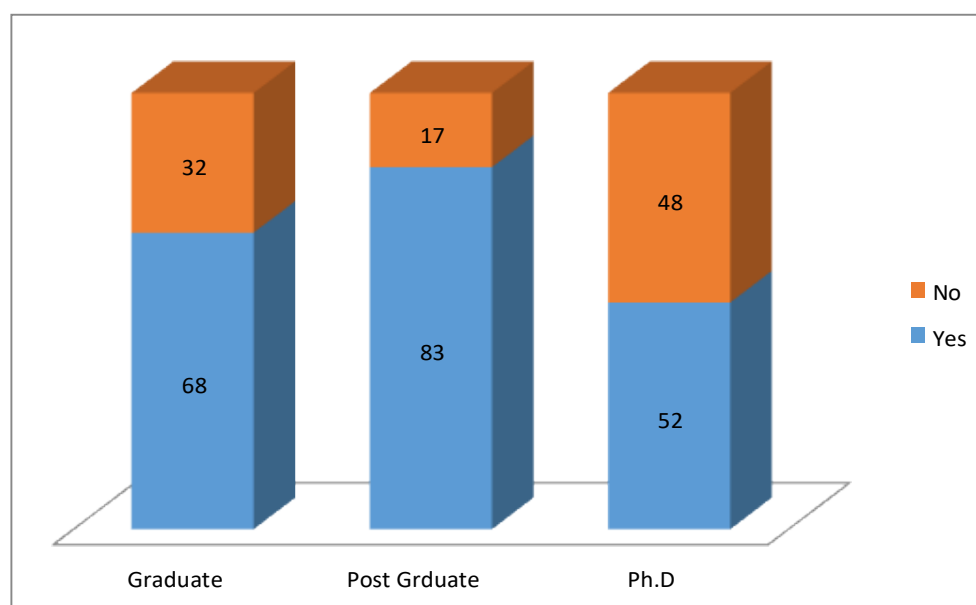
Analysis:

The above table represents about awareness of the people regarding scholarship for disabled education. From the above empirical data, it is evident that majority of the respondents answered positively. That means majority of the respondents are well aware about scholarship for disabled education. This is a matter of great appreciation. But on the other hand, some of the respondents are not aware. This is a matter of great concern that still some sort of respondents need to be sensitized about disabled's issue. This cannot be negated. The result shows that this provision of the Act is partially neglected.

Table 4.11

Do you aware about law for the protection and security of disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	68	32	0
2.	Post graduate	99	83	17	0
3.	Ph.D	21	52	48	0



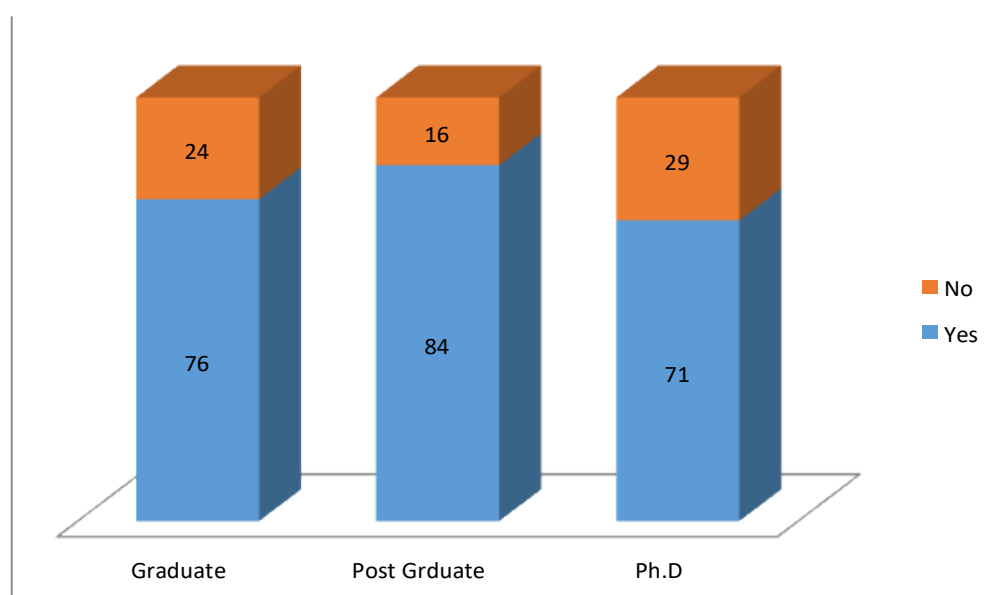
Analysis:

The above table represents about awareness of the people regarding law for the protection and security of disabled. It is evident from the table that majority of the respondents answered positively. It indicates that majority of the respondents are aware about law for the protection and security of disabled. It is highly appreciable that majority of the respondents are aware about law for the protection and security of disabled. But on the other hand, some of the respondents are not aware about law for the protection and security of disabled. It is a matter of great sorrow that till now, some of the respondents need to be sensitized about law related with protection and security of disabled. And lack of sensitization is a major stumble in the path of development of disabled. Further, the high rate of unawareness among research scholar is a matter of grave concern. The result shows that provision of the Act is partially neglected.

Table 4.12

Do you know that there is a provision of reservation in higher education for disabled

S. No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	76	24	0
2.	Post Graduate	99	84	16	0
3.	Ph..D	21	71	29	0



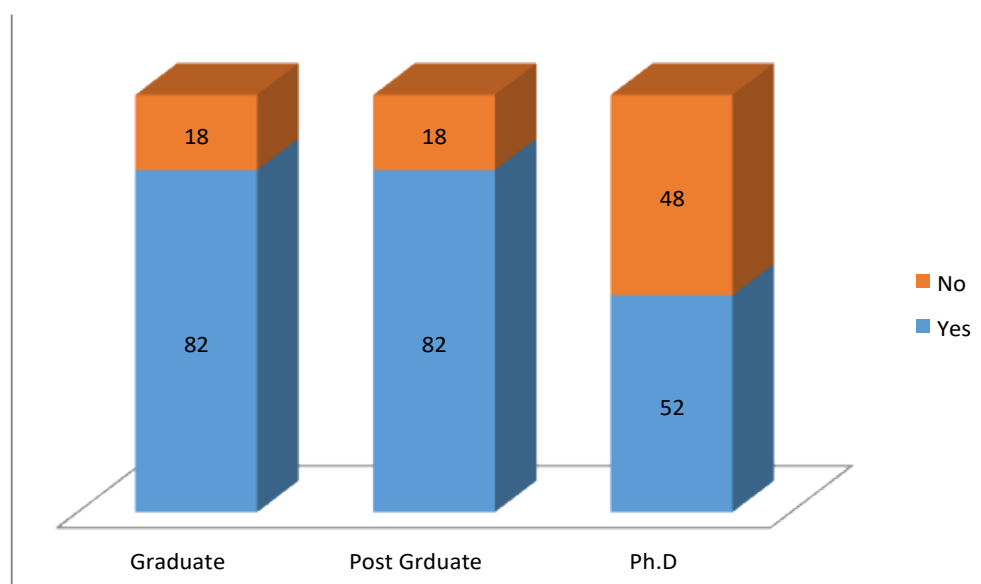
Analysis:

The above table represents about provision of reservation in higher education for disabled. It is evident from the table that majority of the respondents answered positively. It is highly appreciable that majority of the respondents are well aware about reservation in higher education for disabled. But on the other hand, some of the respondents answered no. The reason behind negative response is lack of awareness. Till now, the rate of awareness is not up to the mark. It is a matter of grave concern. In this context, the language of the Act is crystal clear. Section 32 of the Rights of Persons with Disabilities Act, 2016 puts a responsibility on the shoulder of Government. Section 32 states that it is the duty of Government institutions and other institutions receiving aid from Government to reserve not less than five per cent seats for persons with disabilities and five years age relaxation. The result shows that this provision of the Act is partially neglected.

Table 4.13

Does disabled get reservation at the time of appointment in every universities

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	82	18	0
2.	Post Graduate	99	82	18	0
3.	Ph..D	21	52	48	0



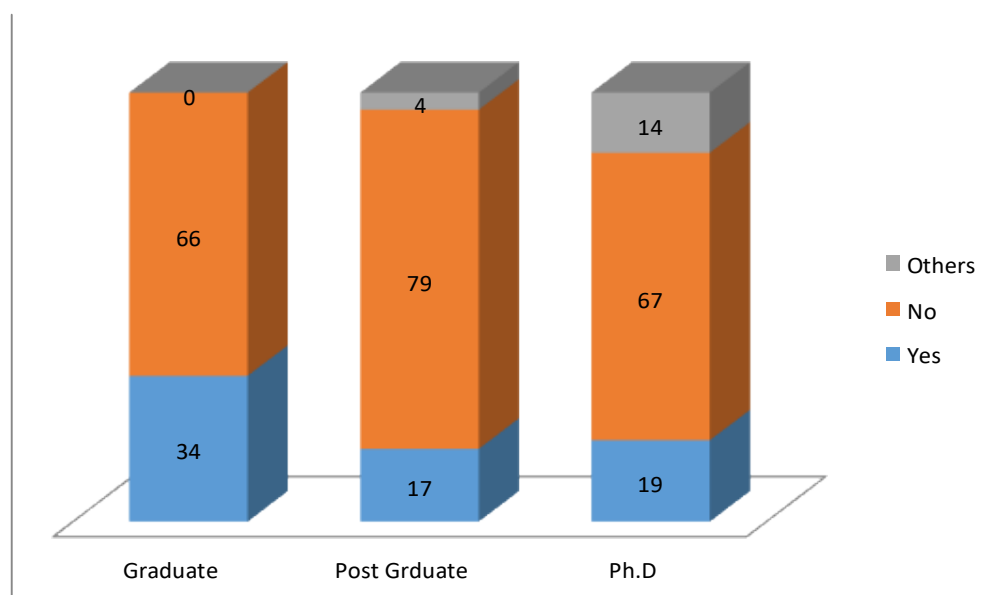
Analysis:

From the above empirical data it is evident that majority of the respondents are having unanimous thinking that disabled's are getting reservation at the time of appointment in every universities. It is a matter of great appreciation that majority of the respondents are accepting that disabled's are getting reservation at every stage of appointment in every universities. But on the other hand, some of the respondents are not aware. Particularly, the rate of unawareness among research scholar is extremely high. The fact cannot be negated. In this context the language of the Act is crystal clear. Section 34 of the Rights of Persons with Disabilities Act, 2015 states that it is the duty of the Government to reserve not less than four per cent of the total number of vacancies in the cadre strength. The result shows that this provision of the Act is partially neglected.

Table 4.14

Does any category left which comes under the category of disability or there is a need of amendment in the list of category mentioned in Rights of Persons with Disabilities Act, 2016.

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	34	66	0
2.	Post Graduate	99	17	79	4
3.	Ph..D	21	19	67	14



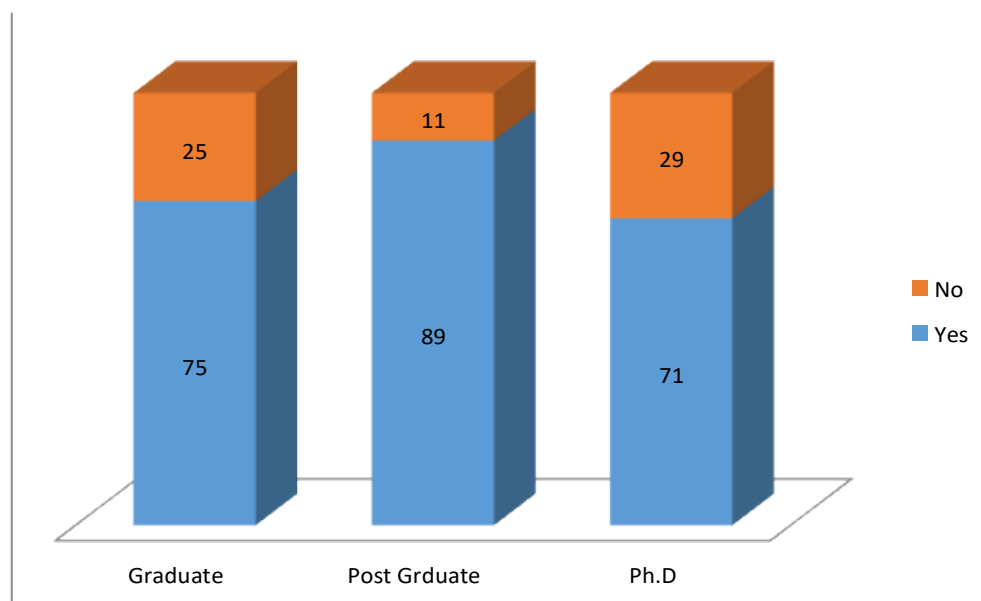
Analysis:

The above table represents about the omission of any category from the list of disabled which must included in the list of disabled. It is evident from the table that majority of the respondents answered no. That means they do not want any change in the list of disability. They consider it as exhaustive. On the other hand, some of the respondent answered yes. That means some of the respondents want some change in the list of disability. Some of the respondents answered other, because these respondents want to include heart patient, cancer patient and transgender in the list of disability.

Table 4.15

Does disabled need any Special Act like SC/ST Act

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	75	25	0
2.	Post Graduate	99	89	11	0
3.	Ph..D	21	71	29	0



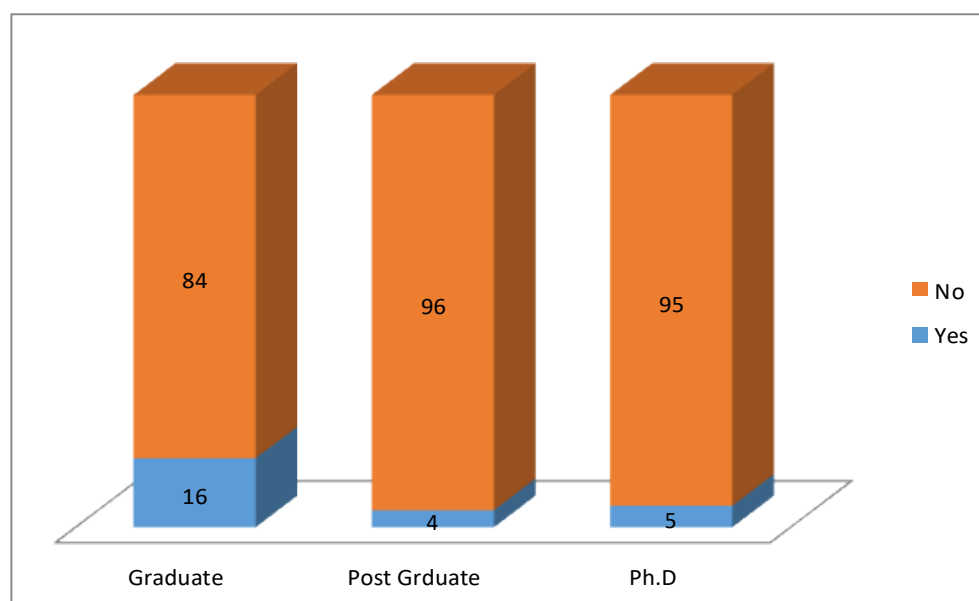
Analysis:

The above table represents about special Acts for disabled in the lines of SC/ST Act. It is evident from the table that majority of the respondents answered yes. It indicates that majority of the respondents prefer a special Act in the lines of SC/ST Act. That means majority of the respondents are having unanimous thinking that special Act is the need of the time. In absence of Special Act like SC/ST Act, it would be quite difficult to stop atrocity against disabled. On the other hand, some of the respondents answered no. In their opinion the Rights of Persons with Disabilities Act is sufficient.

Table 4.16

Does private sector provides due representation to disabled in employment

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	16	84	0
2.	Post Graduate	99	4	96	0
3.	Ph..D	21	5	95	0



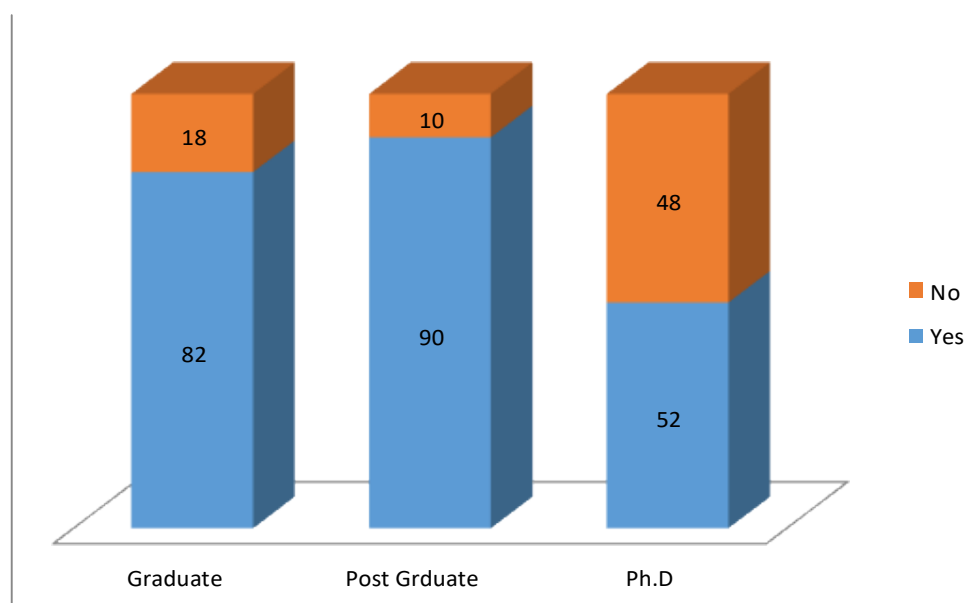
Analysis:

The above table represents about the role of private sector in employment of disabled. It is evident from the table that majority of the respondents answered no. That means, majority of the respondents are having unanimous thinking that there is no role of private sector in employment of disabled. Still, the scope of employment is very limited for disabled in private sector. They have been totally excluded from the domain of private sector. It also indicates that Government and Judiciary have given less focus on employment of disabled in private sector. Although the Act offers tax rebate for private sector in the case of employment of disabled. But the net result is alarming. This is not a matter of satisfaction. Therefore, it can be said that the provision of the Act is totally neglected.

Table 4.17

Does the approach of judiciary is affirmative towards disabled

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	82	18	0
2.	Post Graduate	99	90	10	0
3.	Ph..D	21	52	48	0



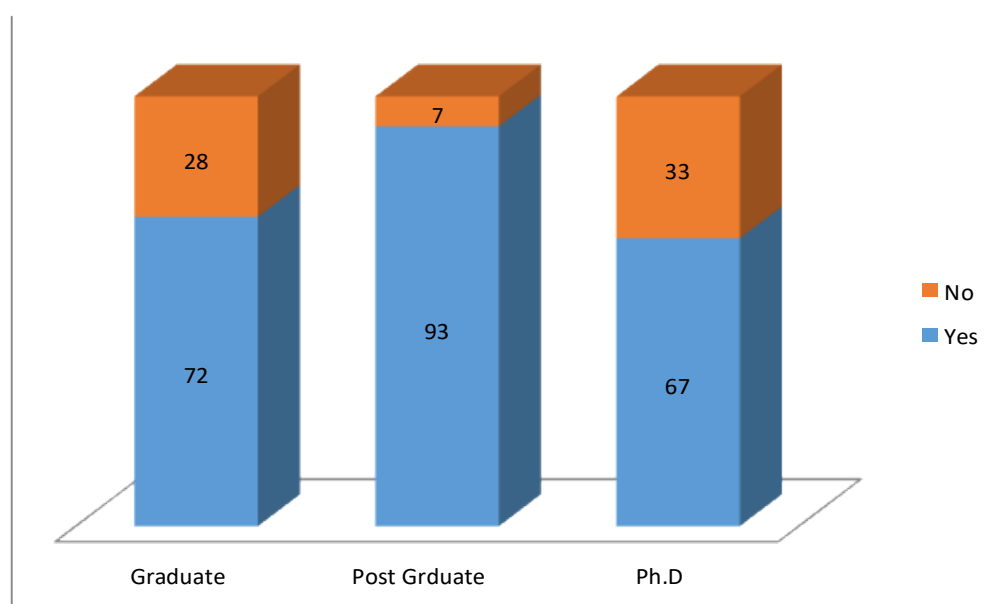
Analysis:

The above table represents about approach of judiciary towards disabled. It is evident from the table that majority of the respondents answered yes. That means majority of the respondents are having unanimous thinking that approach of judiciary is positive towards disabled. This is a matter of great satisfaction. But on the other hand, some of the respondents answered no. It indicates that some of the respondents are not agree with the fact that approach of Judiciary is always positive towards disabled. In their opinion, Indian Judiciary is still guided by charity model. Further, it is a matter of great concern that forty-eight per cent respondents from Ph..D section answered negatively. That means in context of the protection of the rights of disabled, they have no faith in the credential of Judiciary.

Table 4.18

Does the implementation of law related with protection and security of disabled is weak

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	72	28	0
2.	Post Graduate	99	93	7	0
3.	Ph..D	21	67	33	0



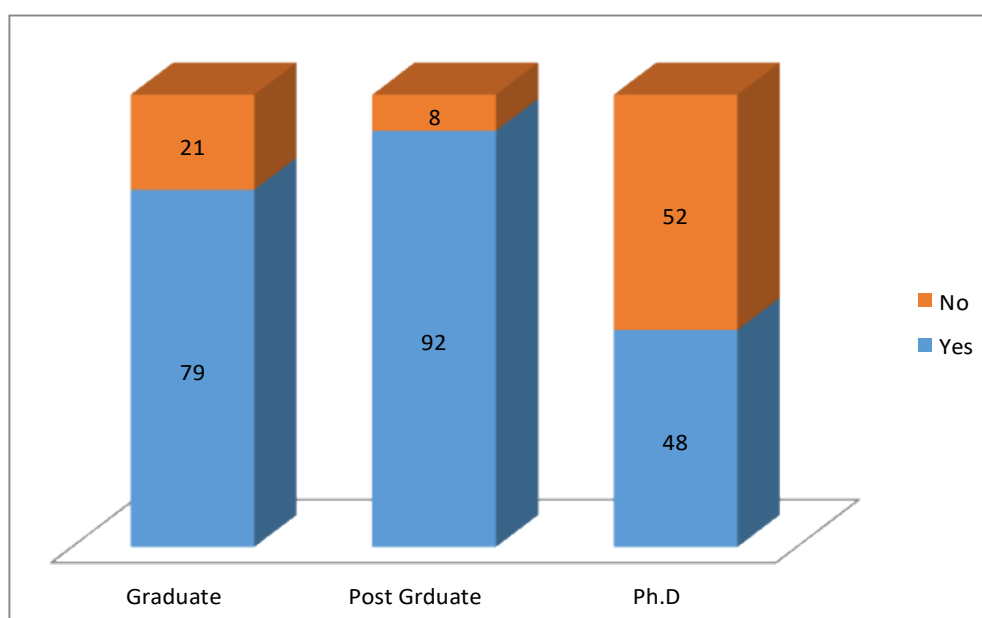
Analysis:

The above table represents about implementation of law for the protection and security of disabled. It is evident from empirical data that majority of the respondents answered yes. It indicates that majority of the respondents think that implementation of law for the protection and security of disabled, is weak. It is a matter of great sorrow. It proves that government has not given proper attention to this issue.

Table 4.19

Does the attitude of teachers towards disabled in university, is affirmative

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	79	21	0
2.	Post Graduate	99	92	8	0
3.	Ph..D	21	48	52	0



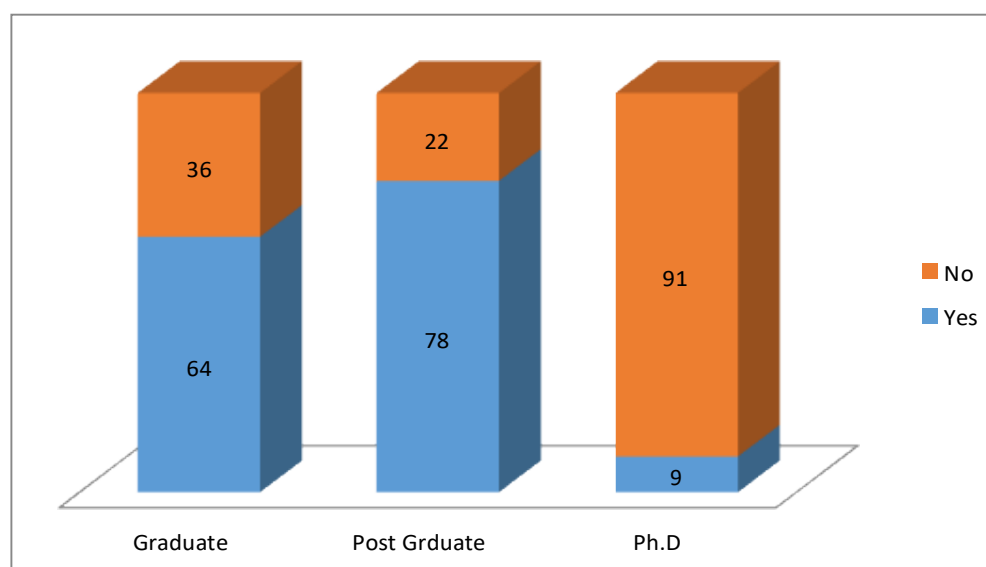
Analysis:

The above table represents about attitude of teachers towards disabled in university. Whether the attitude of teachers are affirmative or not. It is evident from the table that majority of the respondents answered yes. It indicates that majority of the respondents agree with the fact that attitude of teacher towards disabled is affirmative. On the other hand, some of the respondents answered negatively. That means in context of attitude of teacher towards disabled, they have no faith in credential of teacher. This is a matter of grave concern.

Table 4.20

**Does the Central Government and States Governments are trying for the
security of disabled women**

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	64	36	0
2.	Post Graduate	99	78	22	0
3.	Ph..D	21	9	91	0



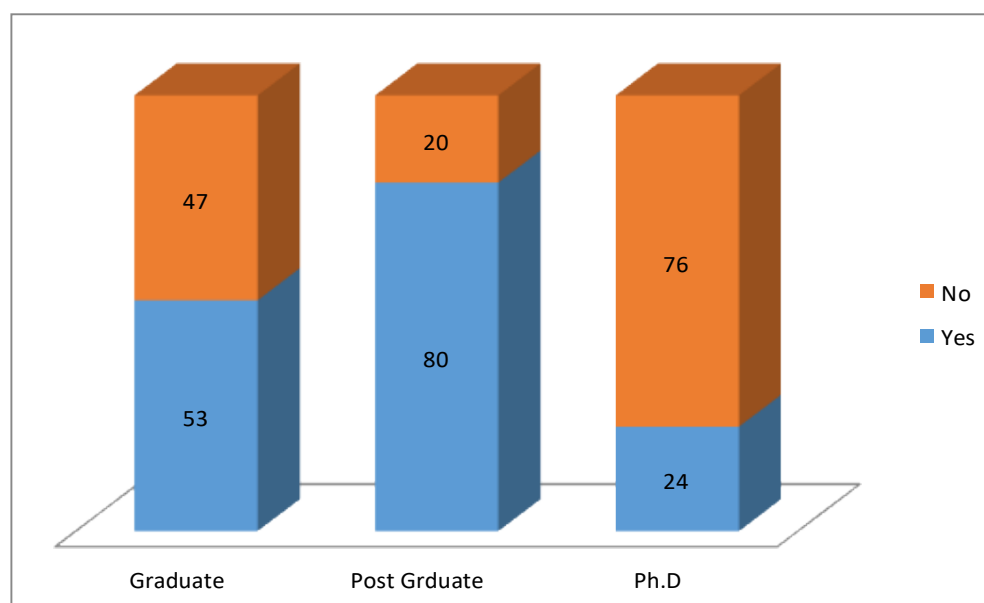
Analysis:

The above table represents about Central Government and State Governments attempt to provide security to disabled women. It is evident from table that majority of the respondents answered yes. That means maximum number of respondents are aware and recognises the attempt of the government to provide security to disabled women. It is a matter of great satisfaction that majority of the respondents are aware about government initiatives towards security of disabled women. But on the other hand, the condition is different. About thirty-six per cent respondents from graduate section and ninety-one per cent respondents from Ph..D section answered no. It is extremely painful that large section of respondents from graduate and Ph..D having no faith in the credential of government in context of security of disabled women. Till now, disabled women's are regarded as unproductive and unfertile. Women with disabilities is invisible. They are facing multifold discrimination including sexual harassment. They are fighting for their identity and recognition. They are more vulnerable to violence and abuse. In this context, the language of Section 24 of the Act is crystal clear. Section 24(3)(d) states about the support to women with disability for livelihood. The result shows that this provision of the Act is highly neglected.

Table 4.21

Does special provisions are there for disabled women and children

S.No.	Subject	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Graduate	148	53	47	0
2.	Post Graduate	99	80	20	0
3.	Ph..D	21	24	76	0



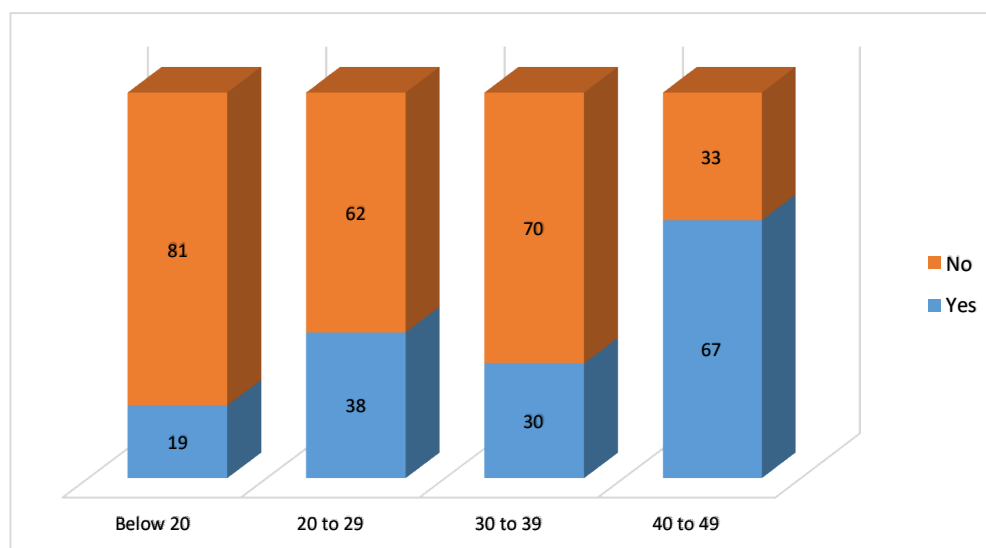
Analysis:

The above table represents about special provisions for disabled women and children. It is evident from the table that majority of the respondents from graduate and post graduate section answered yes but majority of the respondents from Ph..D section answered no. It is a matter of great sorrow that forty-seven per cent respondents from graduate section and seventy-six per cent respondents from Ph..D section answered negatively. That means some of the respondents are having unanimous thinking that there is no special provisions for disabled women and children. Their responses cannot be negated. In this context the language of Section 24 is crystal clear. It discusses about the special provisions for disabled women and children. But the result is not up to mark. This is a matter of grave concern. The result shows that this provision of the Act is highly neglected.

Table 5.01

Does Attitude towards Disabled at Home is Discriminatory

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	19	81	0
2.	20 to 29	171	38	62	0
3.	30 to 39	20	30	70	0
4.	40 to 49	3	67	33	0



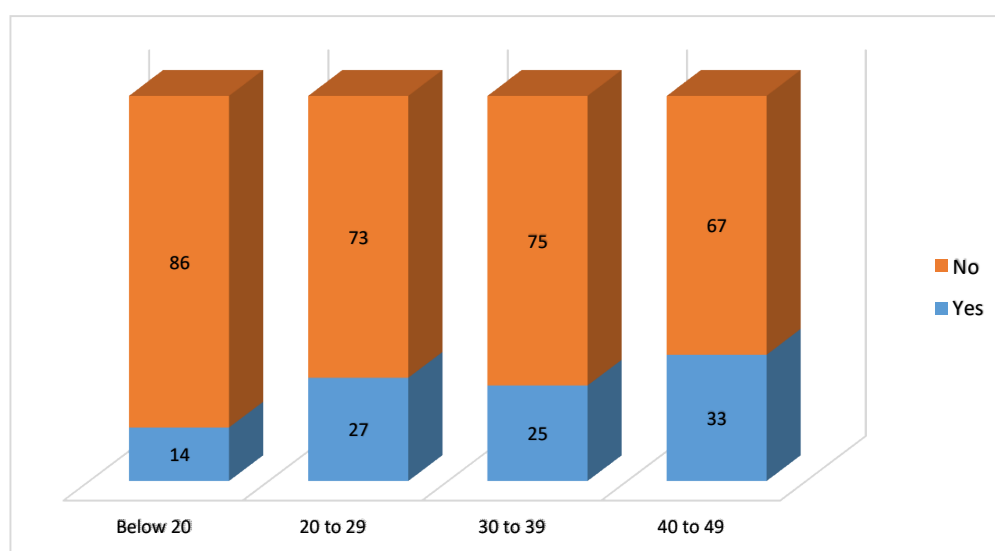
Analysis:

The above empirical data represents about discrimination against disabled at home. From the above table it is evident that apart from faculty belongs to age group 40 to 49, all other faculties are having unanimous thinking that there is no discrimination with disabled at domestic level. On the other hand, sixty seven per cent respondents of age group 40 to 49 are having unanimous thinking that discrimination against disabled is going on at domestic level. That means even family members are bias against disabled. This is a matter of grave concern. Within the family they are unfit as a home maker. In this regard, the provision of the Act is crystal clear. Section 3 of the Act discuss about protection mechanism against discrimination. Therefore, the result shows that provision of the Act is partially neglected.

Table 5.02

Is poverty a cause of disability

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	14	86	0
2.	20 to 29	171	27	73	0
3.	30 to 39	20	25	75	0
4.	40 to 49	3	33	67	0



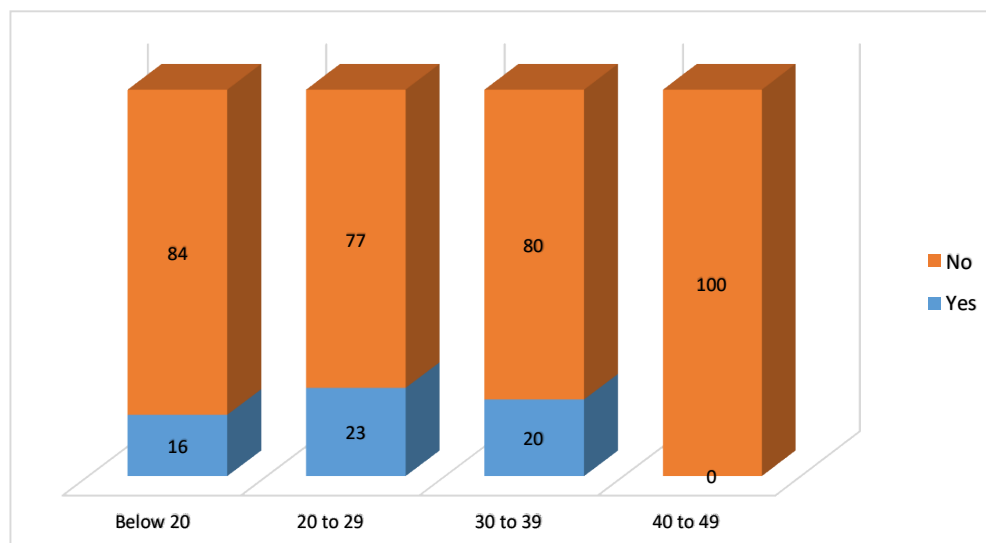
Analysis:

The above empirical data represents the opinion of the respondents on poverty as a cause of disability. It is evident from the table that majority of the respondents are having unanimous thinking that poverty is not a cause of disability. But on the other hand, some of the respondents answered "YES". That means few of the respondents think that poverty is a cause of disability. The result shows that poverty is a cause of disability.

Table 5.03

Does public transport affordable for disabled

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	16	84	0
2.	20 to 29	171	23	77	0
3.	30 to 39	20	20	80	0
4.	40 to 49	3	0	100	0



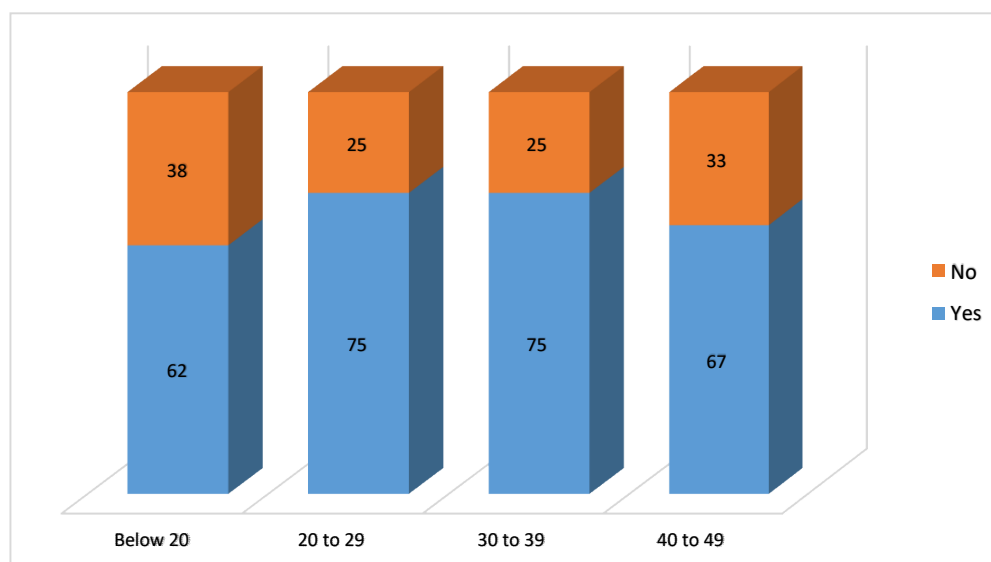
Analysis:

The above table represents about the affordability of public transport for disabled. From the above table it is clear that most of the respondents accept that public transport is not affordable for disabled. Responses are very discouraging in context of public transport for disabled. Beyond any doubt, it shows the dismal and pathetic condition of public transport for disabled. Without efficient public transportation, the disabled will remain excluded from mainstream. Without accessible public transport, access to higher education is baseless. Till now, buses, trains and aeroplanes are not accessible. Majority of buses are not fitted with ramps. Entry point of train compartment is not suitable for disabled. Hydraulic ramps are not available on platform. In this context, the provision of the Act is sufficient. Section 40 and 41 of the Act deals with accessible format of public transport. Therefore, the result shows that provision of the Act is highly neglected.

Table 5.04

Does any government institution provide facility of tri-cycle for transport or movement of disabled

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	62	38	0
2.	20 to 29	171	75	25	0
3.	30 to 39	20	75	25	0
4.	40 to 49	3	67	33	0



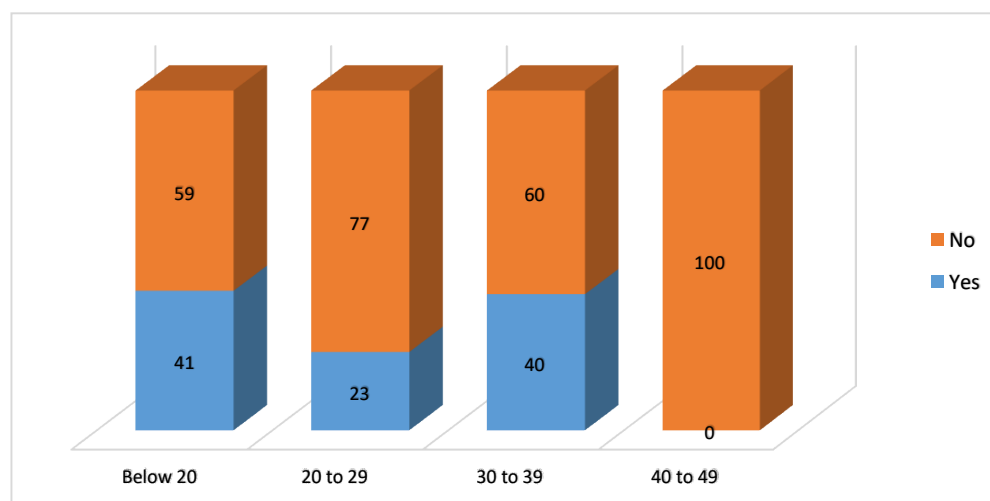
Analysis:

The above table represents about the role of government institution in providing facility of tri-cycle for transport or movement for disabled. As majority of the respondents answered "YES". That means majority of the respondents are having unanimous thinking that government institution provides tri-cycle for transport or movement of disabled. It is a matter of great appreciation that majority of the respondents are aware about role of government institution in providing tri-cycle to disabled. But on the other hand, around thirty per cent respondents are not sensitized. It is a matter of grave concern. Because lack of sensitization is a great hurdle in the path of development of disabled.

Table 5.05

Does the building of University movable for disabled.

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	41	59	0
2.	20 to 29	171	23	77	0
3.	30 to 39	20	40	60	0
4.	40 to 49	3	0	100	0



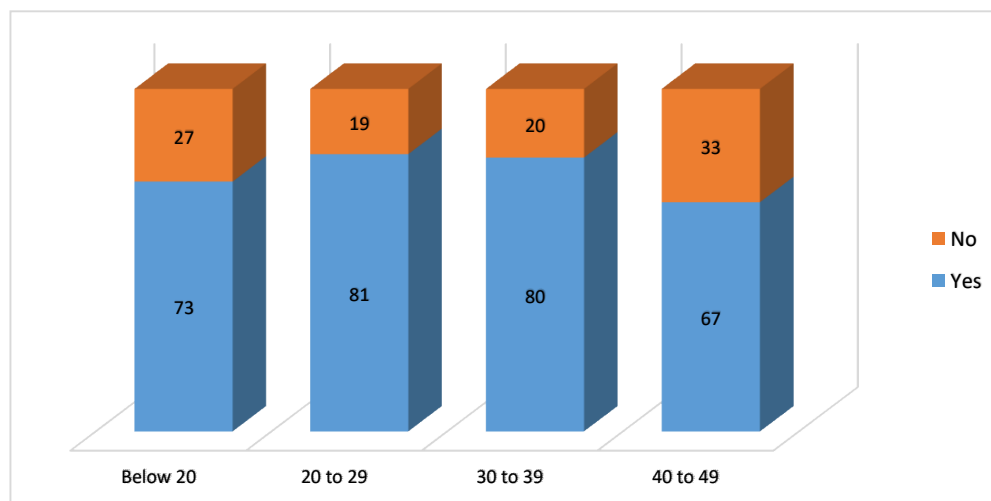
Analysis:

The above empirical data represents about the affordability of building of University for disabled. It is evident from the table that majority of the respondents are having unanimous thinking that building of University is not affordable for disabled. It is a matter of serious concern that majority of the faculties answered negatively. That means majority of the buildings of Universities are not disabled friendly because buildings are not fitted with lifts or ramps. Toilets of the building are not suitable for wheel chair users. Frankly speaking, much of the University buildings designed without regard for the needs of the disabled. In this context, the provision of the Act is clear. Section 45 of the Act discuss about the accessible norms of University building. The result shows deviation from the provision of the Act.

Table 5.06

Does any non-government institution work in interest of disabled

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	73	27	0
2.	20 to 29	171	81	19	0
3.	30 to 39	20	80	20	0
4.	40 to 49	3	67	33	0



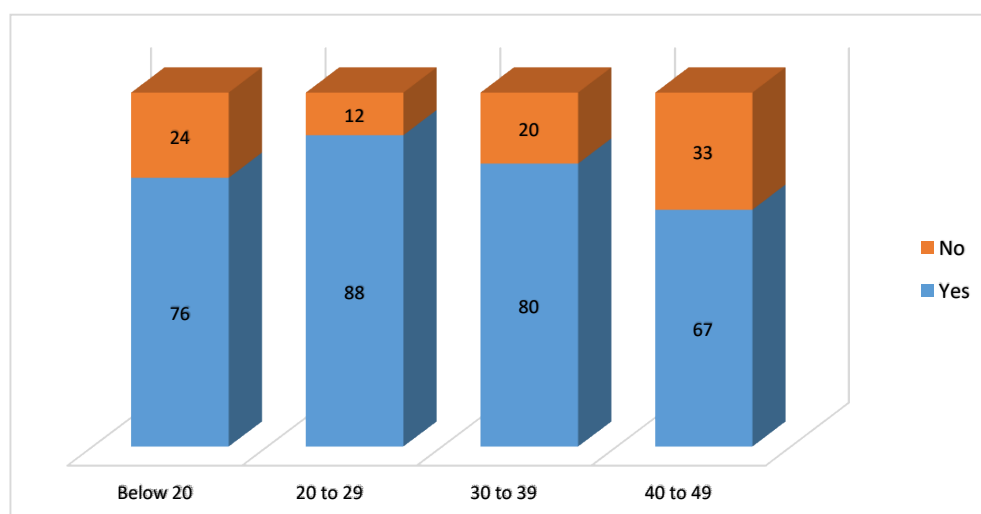
Analysis:

The above table represents about the role of non-government institution in protection of interest of disabled. It is evident from table that majority of the respondents answered positively. It is a matter of great appreciation that majority of the respondents are aware of the fact. But on the other hand, around twenty five per cent respondents are not aware. It is a matter of serious concern that one-fourth of the respondents need to be sensitize. In this regard, the provision of the Act is clear. Section 2(z) of the Act discuss about non- government organisation. The result shows that provision of the Act is partially neglected.

Table 5.07

Does disabled get reservation in higher education

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	76	24	0
2.	20 to 29	171	88	12	0
3.	30 to 39	20	80	20	0
4.	40 to 49	3	67	33	0



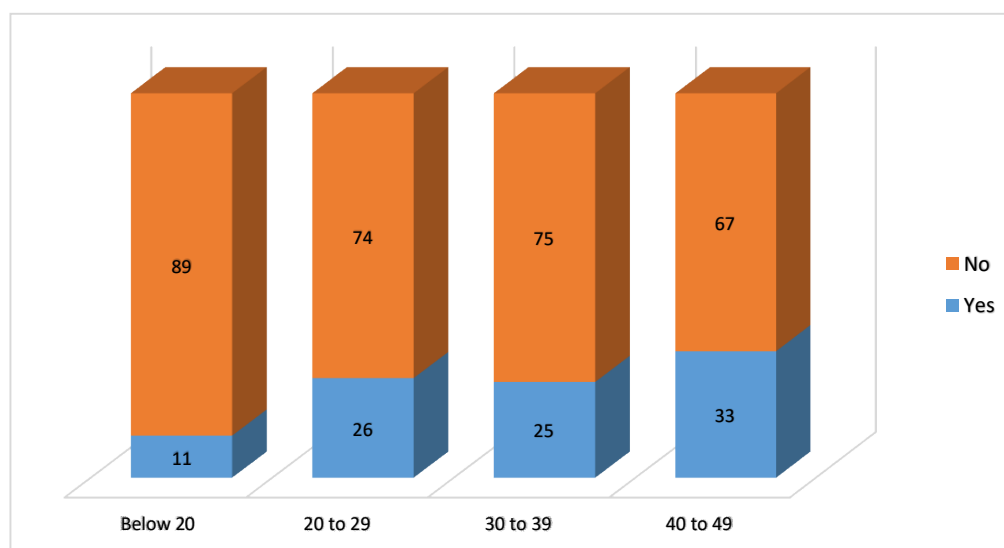
Analysis:

The above empirical data represents about reservation in higher education for disabled. It is clear from the table that majority of the respondents answered positively. That means majority of the respondents having unanimous thinking that persons suffering from disability getting reservation in higher education. It is a matter of great moment that majority of the respondents are aware about reservation in higher education for disabled. In this context, the provision of the Act is crystal clear. Section 33 of the Act discuss about five per cent reservation for disabled in higher education. The result shows that provision of the Act is almost complied with.

Table 5.08

**Does magazine and books in Braille Script for visually impaired available in
university**

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	11	89	0
2.	20 to 29	171	26	74	0
3.	30 to 39	20	25	75	0
4.	40 to 49	3	33	67	0



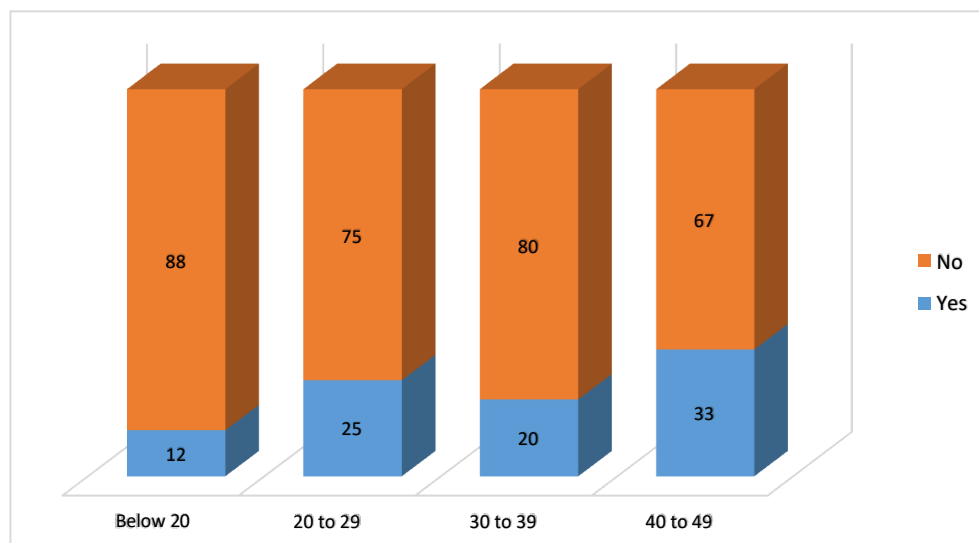
Analysis:

The above empirical data represents about availability of magazine and books in Braille Script for visually impaired students in university. It is evident from the data that majority of respondents answered "NO". That means majority of the respondents having unanimous thinking that magazine and books in Braille Script for visually impaired is not available in maximum universities. It is a matter of serious concern. Till now, visually impaired students are fighting for recognition and personhood. It also indicates that government has given less focus to this issue. In this context, the provision of the Act under social security is sufficient. The result shows that this provision of the Act is highly neglected.

Table 5.09

**Does Disabled Cell for protection and security of disabled available in
university**

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	12	88	0
2.	20 to 29	171	25	75	0
3.	30 to 39	20	20	80	0
4.	40 to 49	3	33	67	0



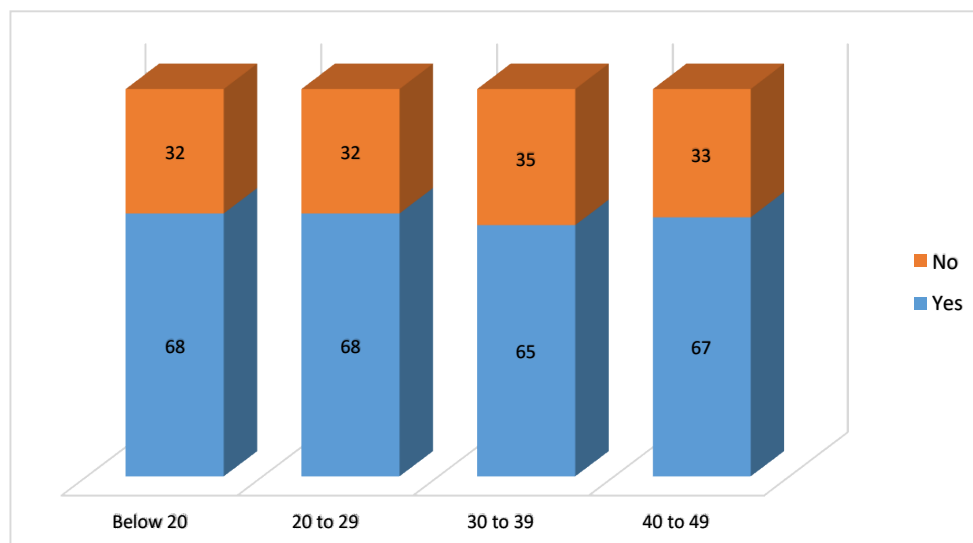
Analysis:

The above empirical data discuss about disabled cell for protection and security of disabled available in university. From above table, it is vibrant that majority of the respondents having unanimous thinking about non-availability of disabled cell in university. It means that maximum number of respondents agree on the fact that disabled cell is not available in almost all the universities. It is a matter of great sorrow that disabled cell is not available in maximum universities. Disabled students are still struggling for disabled cell. Although University Grant Commission suggested for Disabled Cell during Ninth Plan period. But the disabled students are still fighting for security and protection through Disabled Cell. It also indicates that government turned blind eyes to this issue. The result shows that this provision of the Act is totally neglected.

Table 5.10

Does people aware about scholarship for disabled education

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	68	32	0
2.	20 to 29	171	68	32	0
3.	30 to 39	20	65	35	0
4.	40 to 49	3	67	33	0



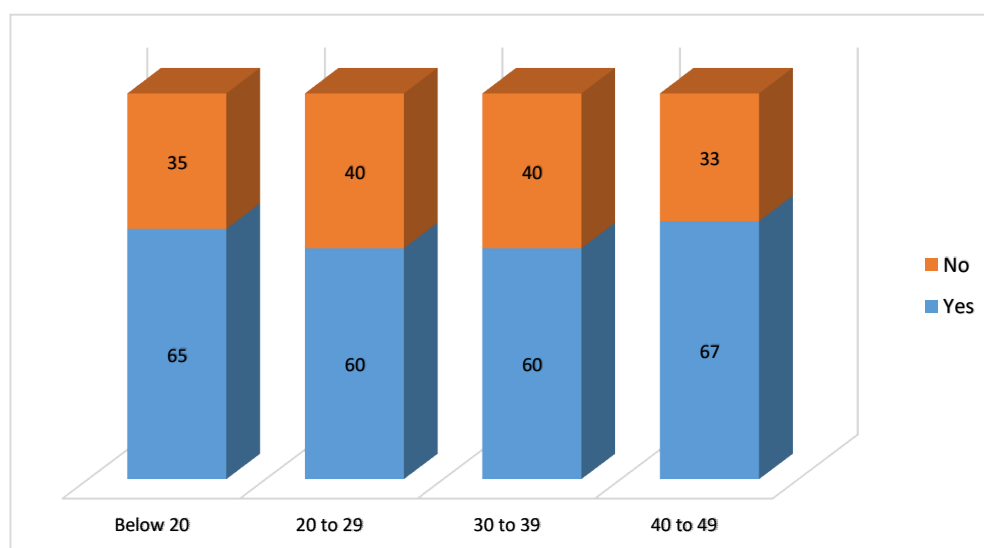
Analysis:

The above empirical data represents about awareness of the people regarding scholarship for disabled education. From the above table, it is evident that majority of the respondents answered "YES". That means majority of the respondents are well aware about scholarship for disabled education. This is a matter of great satisfaction. But on the other hand, few of the respondents are not aware. This is a matter of serious concern that still some sort of respondents need to sensitize about disable's issue. Their responses cannot be negated. The result shows that this provision of the Act is partially neglected.

Table 5.11

Do you aware about law for the protection and security of disabled

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	65	35	0
2.	20 to 29	171	60	40	0
3.	30 to 39	20	60	40	0
4.	40 to 49	3	67	33	0



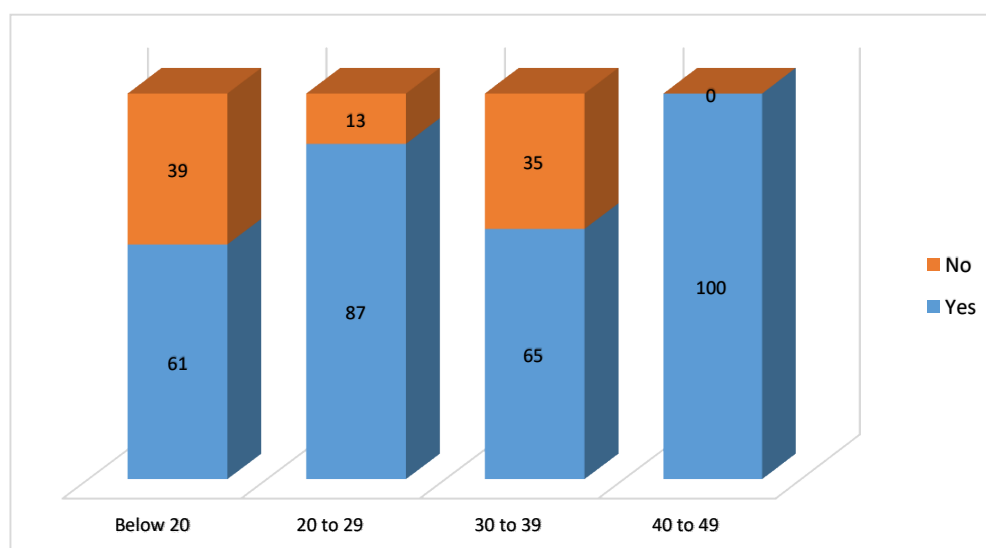
Analysis:

The above empirical data represents about awareness of the people regarding law for the protection and security of disabled. It is vibrant from the data that majority of the respondents answered "YES". It indicates that majority of the respondents are aware about law for the protection and security of disabled. It is a matter of great satisfaction and joy that majority of the respondents are aware about law for the protection and security of disabled. But on the other hand, around thirty eight per cent of the respondents are not aware about law for the protection and security of disabled. It is a matter of great concern that till now, some of the respondents are not sensitized about law related with protection and security of disabled. And lack of sensitization is a major obstruction in the path of development of disabled. The result shows that provision of the Act is partially neglected.

Table 5.12

Do you know that there is a provision of reservation in higher education for disabled

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	61	39	0
2.	20 to 29	171	87	13	0
3.	30 to 39	20	65	35	0
4.	40 to 49	3	100	0	0



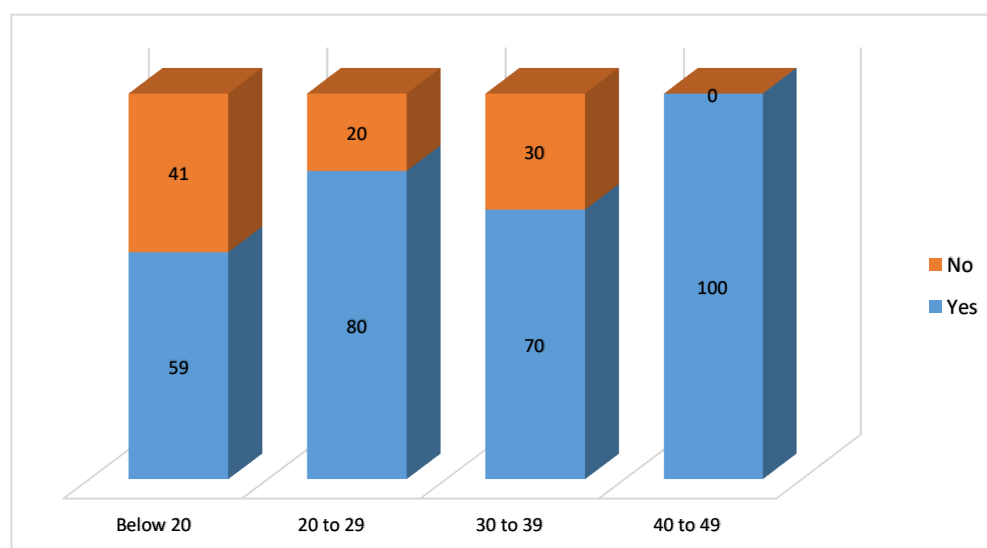
Analysis:

The above empirical data discuss about provision of reservation in higher education for disabled. It is vibrant from the data that maximum respondents answered "YES". It is a matter of great appreciation that maximum respondents are well aware about reservation in higher education for disabled. But on the other hand, some of the respondents answered negatively. The reason behind negative response is lack of awareness. Till now, the rate of awareness is not satisfactory. It is a matter of serious concern. In this context, the provision of the Act is crystal clear. Section 32 of the Rights of Persons with Disabilities Act, 2016 casts a responsibility on the shoulder of Government. Section 32 states that it is the magnum opus of Government institutions and other institutions receiving aid from Government to reserve not less than five per cent seats for persons with disabilities and five years age relaxation. The result shows that this provision of the Act is partially neglected.

Table 5.13

Does Disabled get reservation at the time of appointment in every universities

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	59	41	0
2.	20 to 29	171	80	20	0
3.	30 to 39	20	70	30	0
4.	40 to 49	3	100	0	0



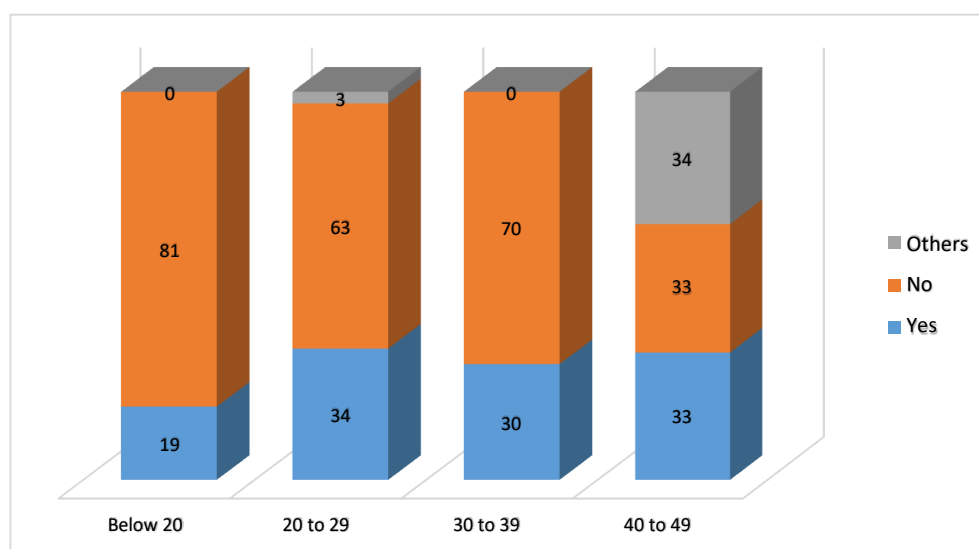
Analysis:

The above table discuss about reservation for disabled at the time of appointment in every universities From the above table it is evident that majority of the respondents are having unanimous thinking that disabled's are getting reservation at the time of appointment in every universities. It is a matter of great pleasure that maximum respondents are accepting that disabled's are getting reservation at every stage of appointment in every universities. But on the other hand, around twenty three per cent respondents are not aware. Particularly, the rate of unawareness among the age group below twenty is extremely high. Their responses cannot be negated. In this context the language of the Act is crystal clear. Section 34 of the Rights of Persons with Disabilities Act, 2015 states that it is the duty of the Government to reserve not less than four per cent of the total number of vacancies in the cadre strength. The result shows that this provision of the Act is partially neglected. It seems that it is not a journey from darkness to enlightenment. Still the darkness prevail in and around of disabled.

Table 5.14

Does any category left which comes under the category of disability or there is a need of amendment in the list of category mentioned in Rights of Persons with Disabilities Act, 2016.

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	19	81	0
2.	20 to 29	171	34	63	3
3.	30 to 39	20	30	70	0
4.	40 to 49	3	33	33	34



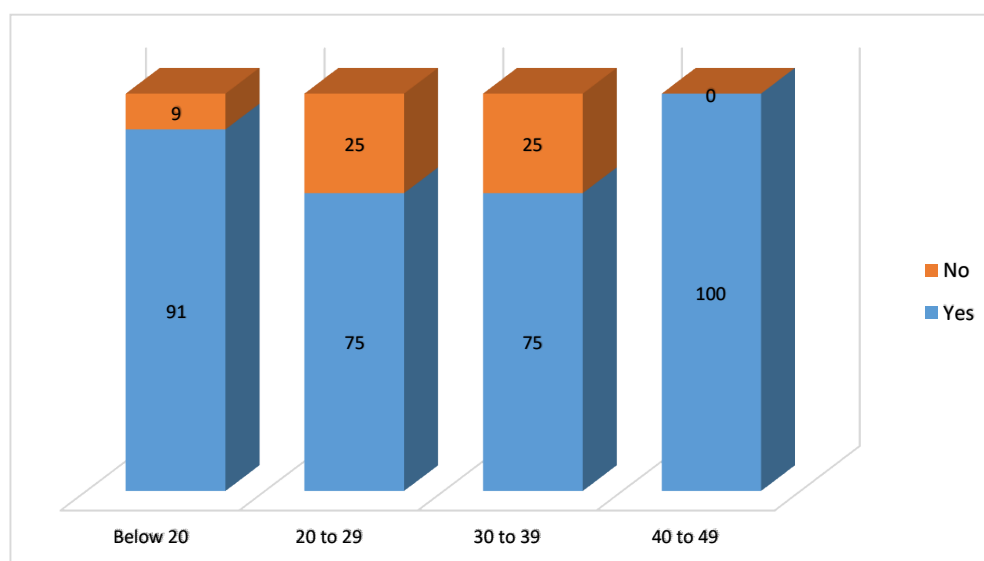
Analysis:

The above empirical data discuss about the omission of any category from the list of disabled which must included in the list of disabled. It is vibrant from the data that majority of the respondents answered negatively. That means they do not want any change in the list of disability. They consider it as exhaustive. On the other hand, around one-fourth of the respondents answered "YES". That means these respondents want some change in the list of disability. Some of the respondents answered "OTHER". In the opinion of these respondents, heart patient, cancer patient and transgender must be included in the list of disability.

Table 5.15

Does disabled need any Special Act like SC/ST Act

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	91	9	0
2.	20 to 29	171	75	25	0
3.	30 to 39	20	75	25	0
4.	40 to 49	3	100	0	0



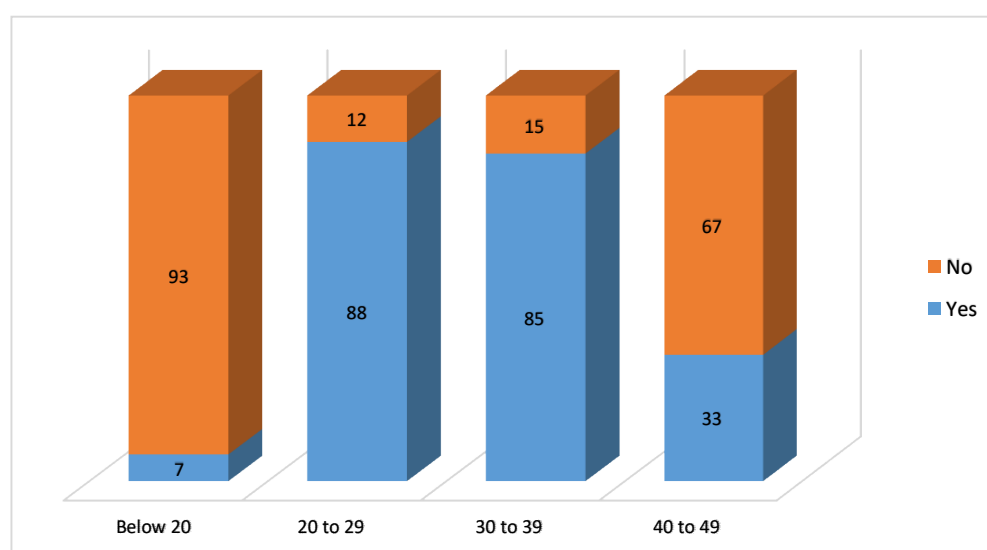
Analysis:

The above empirical data represents about Special Acts for disabled in the lines of SC/ST Act. It is clear from the data that maximum respondents answered "YES". It indicates that maximum respondents prefer a Special Act in the lines of SC/ST Act. That means majority of the respondents are having unanimous thinking that Special Act is the need of the time. In absence of special like SC/ST Act, it would be quite difficult to stop atrocity against disabled. On the other hand, some of the respondents answered "NO". In their opinion the Rights of Persons with Disabilities Act, 2016 is sufficient to sort out the problems of disabled.

Table 5.16

Does private sector provide due representation to disabled in employment

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	7	93	0
2.	20 to 29	171	88	12	0
3.	30 to 39	20	85	15	0
4.	40 to 49	3	33	67	0



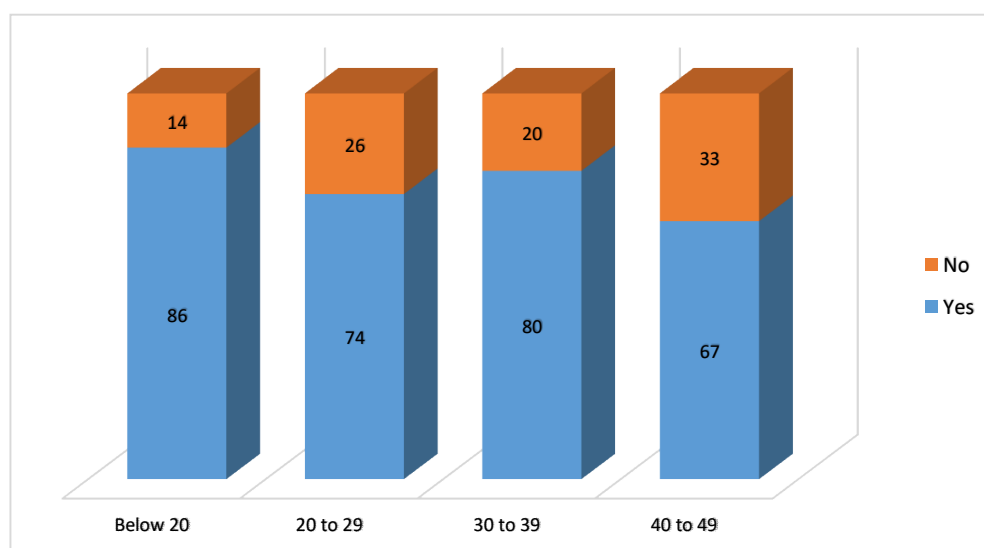
Analysis:

The above empirical data discuss about the role of private sector in employment of disabled. It is vibrant from the data that maximum respondents answered "NO". It indicates that maximum respondents are having unanimous thinking that there is no role of private sector in employment of disabled. Employment opportunities are extremely limited for disabled in private sector. They have been totally excluded from the domain of private sector not because their disability comes in the way of their functioning rather it is social and environmental barriers that prevent him to join private sector. It also indicates that Government and Judiciary have given less attention on employment of disabled in private sector. In this regard, the provision of Section 35 is sufficient. The Act offers tax rebate and incentives for private sector in the case of employment of disabled. But the net result is alarming, Till now, the number of disabled employee is around 0.33 percent in private sector. This is not a matter of satisfaction. The result shows that this provision of the Act is totally neglected.

Table 5.17

Does the approach of judiciary is affirmative towards disabled

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	86	14	0
2.	20 to 29	171	74	26	0
3.	30 to 39	20	80	20	0
4.	40 to 49	3	67	33	0



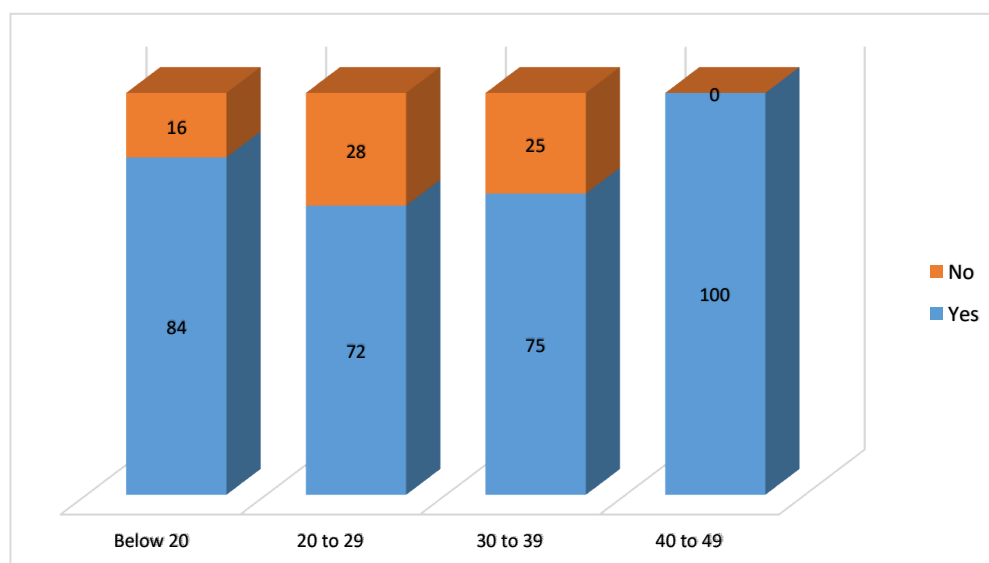
Analysis:

The above empirical data discuss about approach of judiciary towards disabled. It is clear from the data that maximum respondents answered "YES". It indicates that maximum respondents are having unanimous thinking that approach of judiciary is affirmative towards disabled. This is a matter of great appreciation. But on the other hand, around twenty three per cent respondents answered "NO". It means that few of the respondents are not agree with the fact that approach of Judiciary is positive towards disabled. In their opinion Indian Judiciary is still guided by charity model. That's why Judiciary failed to include private sector under the definition of the term, 'establishment. It ruptures the fabric of Constitutionalism and Constitutional morality. In this context, it can be said that they have no faith in the credential of Judiciary.

Table 5.18

**Does the implementation of law related with protection and security
of disabled is weak**

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	84	16	0
2.	20 to 29	171	72	28	0
3.	30 to 39	20	75	25	0
4.	40 to 49	3	100	0	0



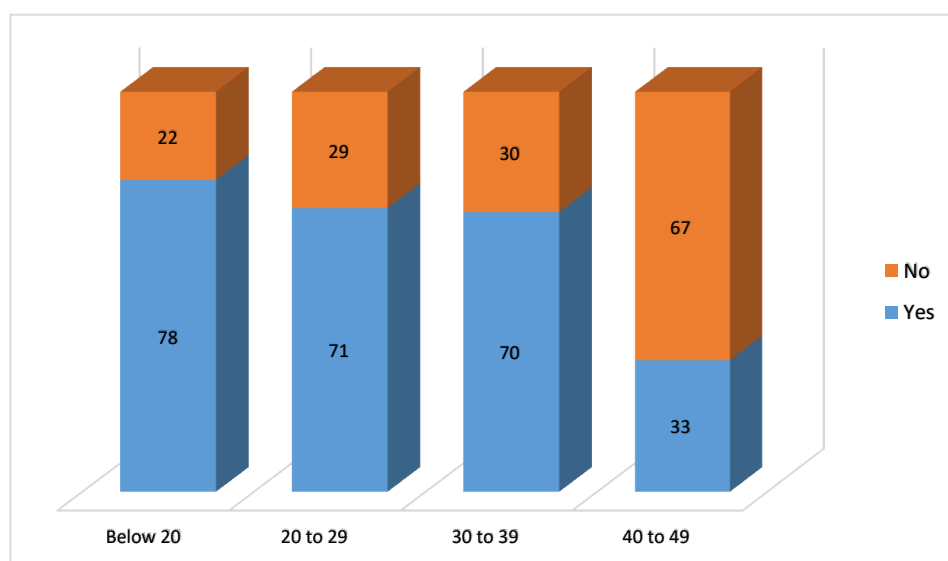
Analysis:

The above empirical data discuss about implementation of law for the protection and security of disabled. It is clear from the table that majority of the respondents are having unanimous thinking that implementation of law for the protection and security of disabled is weak. It is a matter of grave concern. It proves that government has not given proper care to this issue.

Table 5.19

Does the attitude of teachers in university is affirmative

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	78	22	0
2.	20 to 29	171	71	29	0
3.	30 to 39	20	70	30	0
4.	40 to 49	3	33	67	0



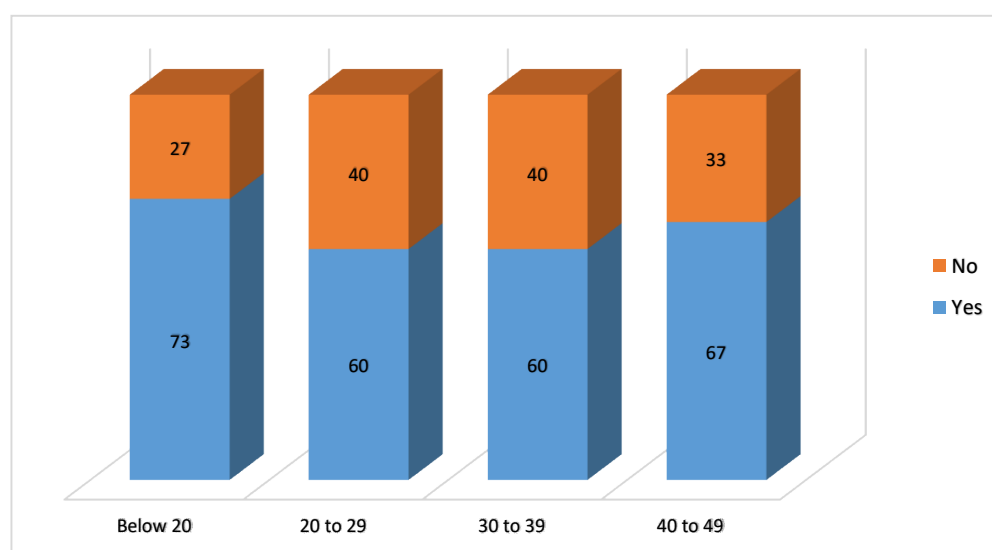
Analysis:

The above empirical data discuss about attitude of teachers towards disabled in university. It is vibrant from the data that majority of the respondents answered "YES". It indicates that majority of the respondents agree with the fact that attitude of teacher towards disabled is affirmative. On the other hand, few of the respondents answered "NO". That means in context of attitude of teacher towards disabled, they have no faith in credential of teacher. The rate of awareness is low among faculty in context of the need of students with disabilities. Majority of the teachers follow trial and error methods, which is discriminatory in nature. This education system accelerates exclusion of student with disabilities. This is a matter of grave concern.

Table 5.20

**Does the Central Government and State Governments are trying for the
security of disabled women**

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	73	27	0
2.	20 to 29	171	60	40	0
3.	30 to 39	20	60	40	0
4.	40 to 49	3	67	33	0



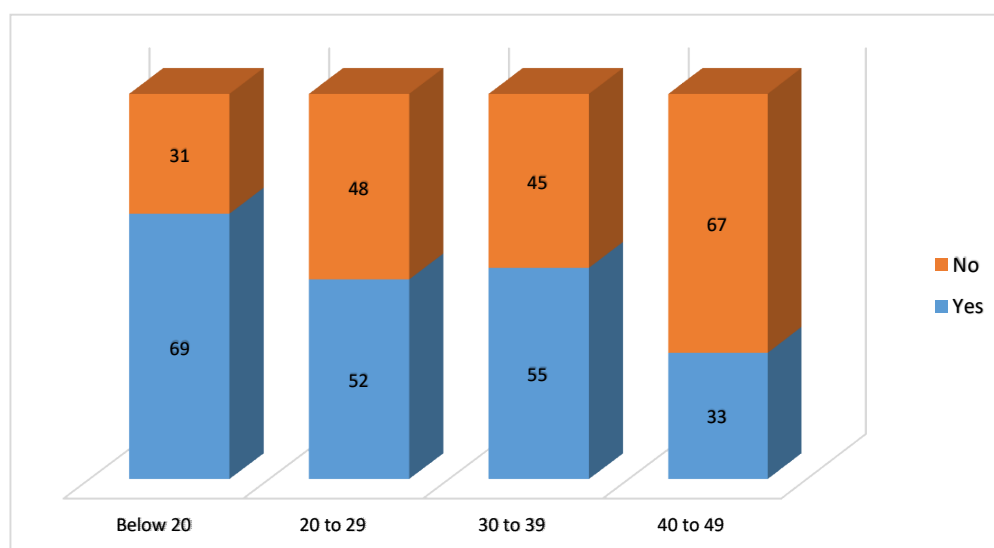
Analysis:

The above empirical data discuss about Central Government and State Governments attempt to provide security to disabled women. It is clear from data that majority of the respondents answered "YES". That means majority of the respondents are aware and agree on the fact that the government providing security to disabled women. It is a matter of great momentum that maximum faculties are aware about government initiatives towards security of disabled women. But on the other hand the condition is quite different. About thirty-five per cent respondents from different age group section answered "NO". It is a matter of serious concern that large section of respondents from different age group having no faith in the credential of government in context of security of disabled women. Till now, disabled women's are regarded as unproductive and burden on the society. Women with disabilities is unfit as a homemaker. They are excluded from policies and programmes They are facing different types of violence including sexual harassment. They are fighting for personhood and recognition. In this context, the language of Section 24 of the Act is crystal clear. Section 24(3)(d) discuss about the support to women with disability for livelihood. The result shows that this provision of the Act is highly neglected.

Table 5.21

Does Special Provisions are there for disabled women and children

S. No.	Age Group	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Below 20	74	69	31	0
2.	20 to 29	171	52	48	0
3.	30 to 39	20	55	45	0
4.	40 to 49	3	33	67	0



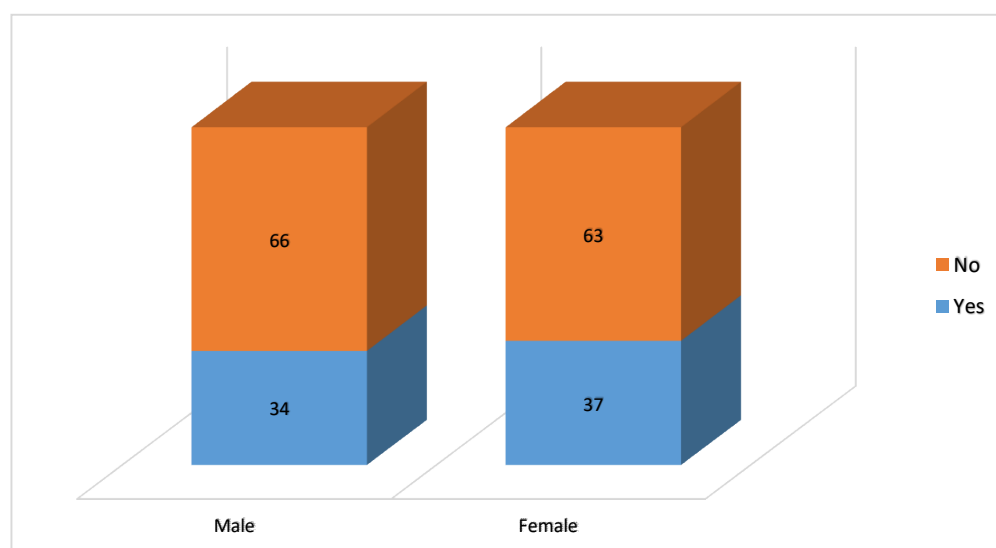
Analysis:

The above empirical data discuss about special provisions for disabled women and children. It is clear from the data that maximum number of respondents from below 20 age group, 20 to 29 age group and 30 to 39 age group answered "YES" but majority of the respondents from 40 to 49 age group answered "NO". It is a matter of serious concern that sixty seven per cent respondents from 40 to 49 age group section, forty eight per cent respondents from 20 to 29 age group section and forty five per cent respondents from 30 to 39 age group section answered negatively. That means some of the respondents are having unanimous thinking that there is no special provisions for disabled women and children. Their responses cannot be negated. In this context, the language of Section 24 is crystal clear. It states about the special provisions for disabled women and children. But the result is not satisfactory Till now, the women with disabilities and children is fighting for life with dignity. This is a matter of grave concern. The result shows that this provision of the Act is highly neglected.

Table 6.01

Does attitude towards disabled at home is discriminatory

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	34	66	0
2.	Female	54	37	63	0



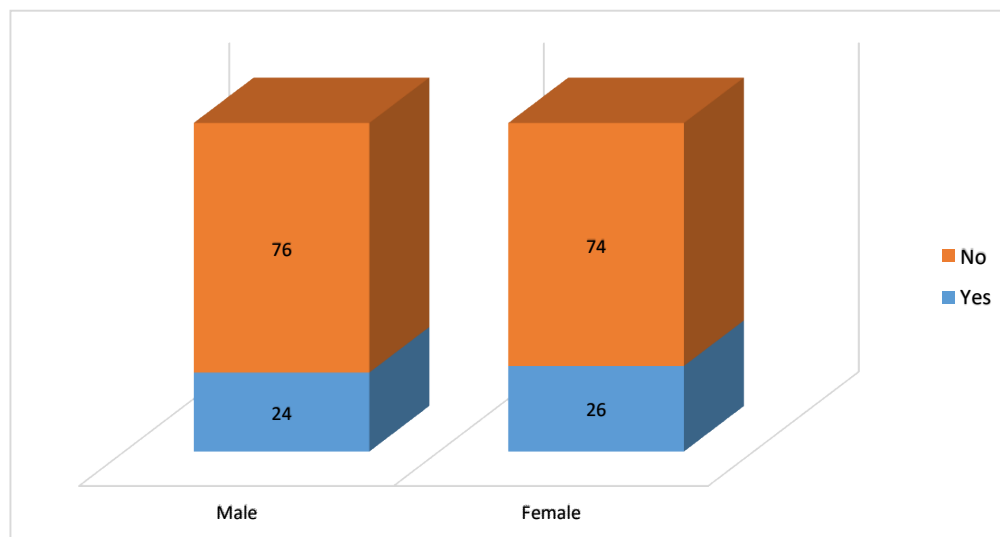
Analysis:

The above table represents about discrimination against disabled at home. From the above table it is clear that majority of the respondents answered "NO". That means majority of the respondents are having unanimous thinking that discrimination is not going on against disabled at home. This is a great moment of pleasure. On the other hand, around thirty five per cent respondents answered "YES". It indicates that some of the respondents are not agree with the fact that discrimination is not going on against disabled at home. Their responses cannot be negated. These respondents think that disable's are not safe even at home. This is a matter of grave concern. In this regard, the provision of the Act is crystal clear. Section 3 of the Act deals with protection mechanism. against discrimination. The outcome shows that provision of the Act is partially neglected.

Table 6.02

Is poverty a cause of disability

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	24	76	0
2.	Female	54	26	74	0



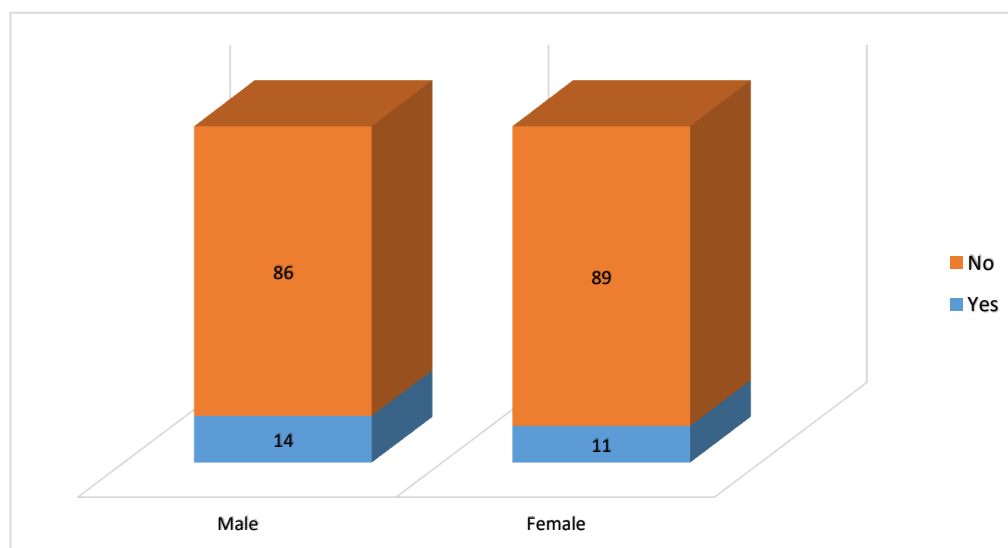
Analysis:

The above mentioned empirical data discuss about poverty as a cause of disability. It is vibrant from data that majority of the respondents answered "NO". It is evident from the table that maximum number of respondents are having unanimous thinking that poverty is not a cause of disability. But on the other hand, around twenty five per cent respondents answered positively. That means they are agree to accept poverty as a cause of disability.

Table 6.03

Does public transport affordable for disabled

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	14	86	0
2.	Female	54	11	89	0



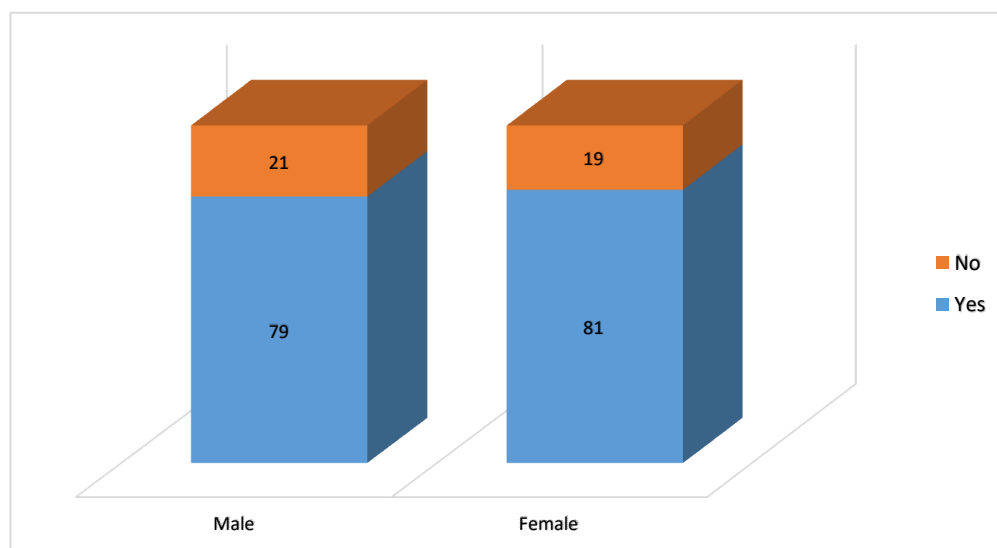
Analysis:

The above empirical data represents about affordability of public transport for disabled. It is clear from the data that majority of the respondents are having unanimous thinking that public transport is not affordable for disabled. The above mentioned data forecasts the dismal and pathetic condition of public transport in context of disabled. This is a matter of grave concern that till now the public transport is completely non-accessible and out of reach of the disabled. It means that government has given less attention on public transport. In this context, the provision of the Act is crystal clear. Section 40 of the Act states that Central Government after consultation with Commissioner frame rules for persons with disabilities setting down the standard of accessibility in context of public transport. Section 41 of the Act deals with accessibility at railway stations, bus stations and airports. The result shows that this provision of the Act is highly neglected.

Table 6.04

**Does any Government institution provides facility of tri-cycle for transport
or movement for disabled**

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	79	21	0
2.	Female	54	81	19	0



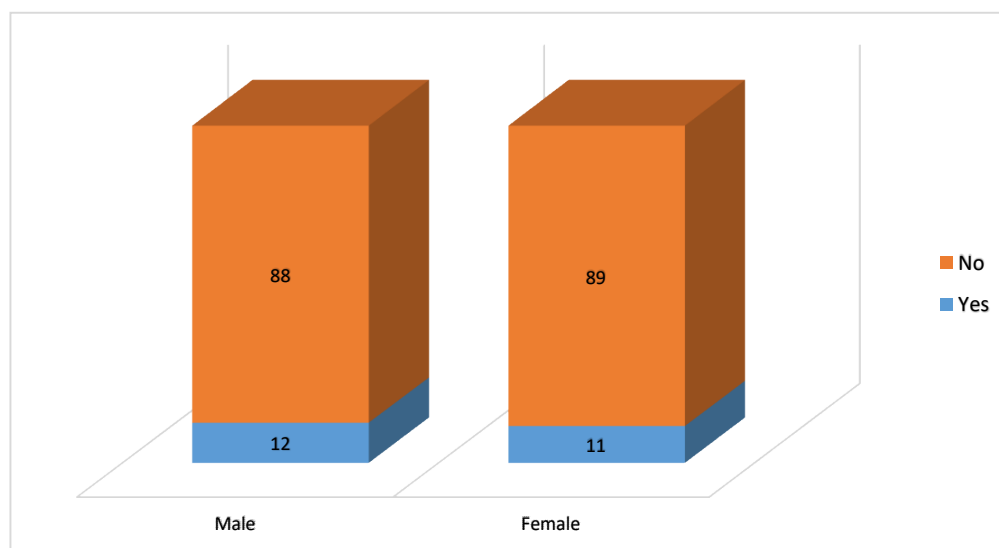
Analysis:

The above empirical data discuss about role of government institution in providing facility of tri-cycle for transport or movement of disabled. From the above mentioned table it is clear that maximum number of respondents are having unanimous thinking that government institution provides tri-cycle for transport or movement of disabled. It is a matter of great pleasure that maximum number of respondents are aware about role of government institution in distribution of tri-cycle to disabled. On the other hand, some of the respondents answered "NO". That means few of the respondents are not aware. This is not a sign of satisfaction.

Table 6.05

Does the building of university movable for disabled

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	12	88	0
2.	Female	54	11	89	0



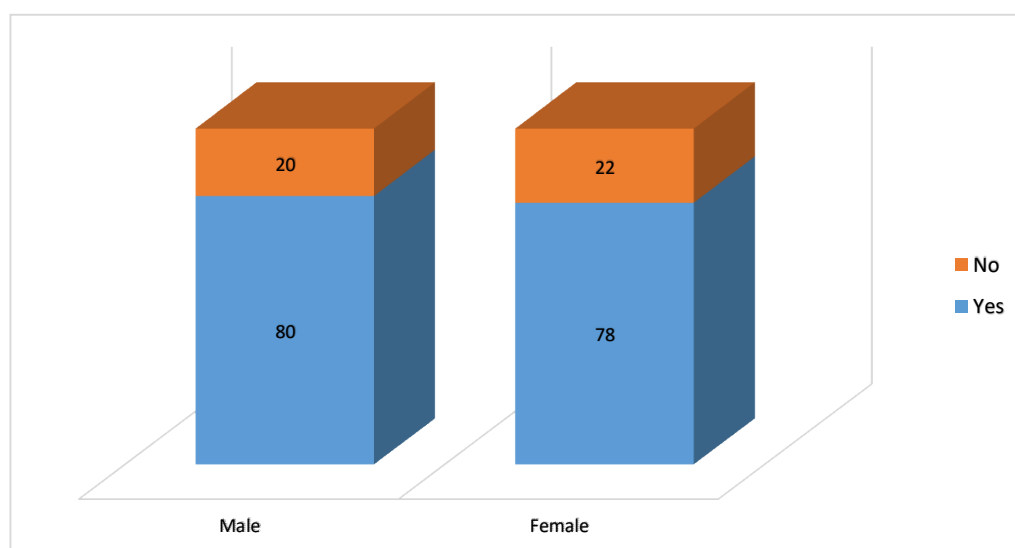
Analysis:

The above empirical data represents about affordability of building of University for disabled. From the above table it is clear that majority of the respondents are having thinking that building of University is not affordable for disabled. The above mentioned data throws light on condition of building of university. Buildings of university are not free from flaws. The ground reality is very horrible. Maximum buildings of university are not fitted with ramps and lifts. This is a matter of serious concern that till now disabled's are fighting for affordable building of University. In this context, the provision of the Act is crystal clear. Section 44 of the Rights of Persons with Disabilities Act, 2016 states that all public buildings including buildings of university shall be made accessible as per the rules framed by the Central Government within a period not exceeding five years from the date of notification of such rules. The result shows that this provision of the Act is highly neglected.

Table 6.06

Does any Non-Government institution work in interest of disabled

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	80	20	0
2.	Female	54	78	22	0



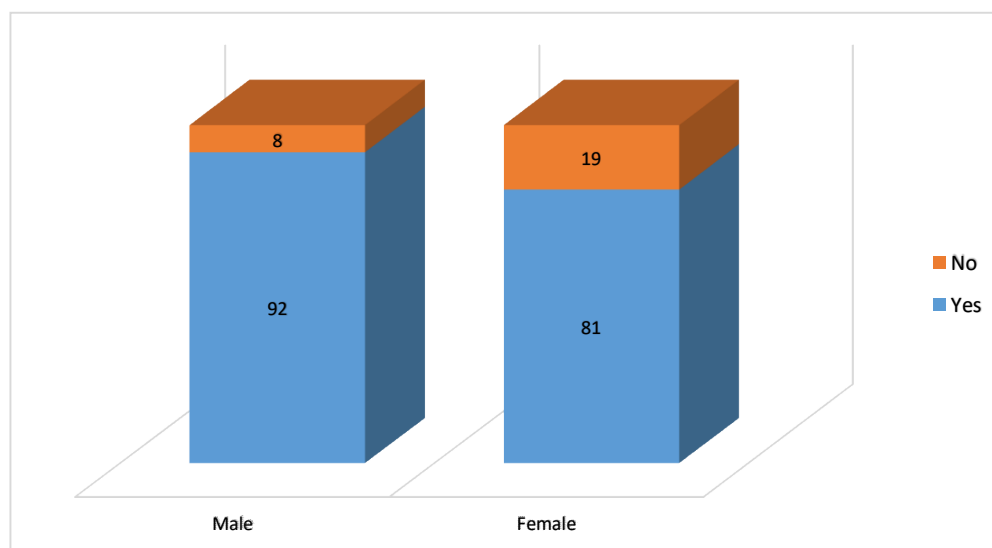
Analysis:

The above empirical data discuss about the role of non-government institutions in welfare of disabled. From the above mentioned table it is clear that maximum number of the respondents think that non-government institutions are working for the welfare of disabled. It is a matter of great pleasure that majority of the respondents are aware of the fact. But on the other hand, some of the respondents are not aware of the fact. It is a matter to worry that even in 21st century some of the respondents are not aware about the role of non-government institution in welfare of disabled. The above statement shows that still large section of people need to sensitize.

Table 6.07

Does disabled get reservation in higher education

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	92	8	0
2.	Female	54	81	19	0



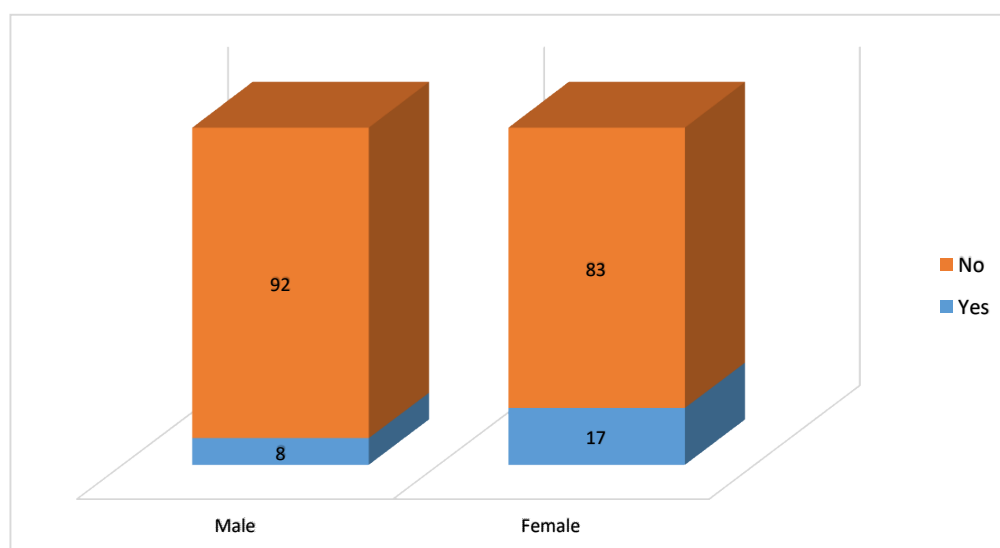
Analysis:

The above mentioned empirical data represents about reservation in higher education for disabled. It is clear from the table that maximum number of the respondents answered "YES". That means majority of the respondents are having unanimous thinking that persons suffering from disability getting reservation in higher education. It is a matter of great pleasure that maximum number of the respondents are aware about reservation in higher education for disabled. On the other hand, around thirteen per cent of the respondents are not aware. But the population of these respondents are very less so their responses can be negated. In this context, the provision of the Act is crystal clear. Section 32 and 34 states about reservation mechanism. Section 32(1) states about five per cent reservation in higher education and other higher education institutions and Section 34 states about four per cent reservation in Government establishments. The result shows that provision of the Act is almost complied with.

Table 6.08

**Does magazine and books in brail script for visually impaired available in
university**

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	8	92	0
2.	Female	54	17	83	0



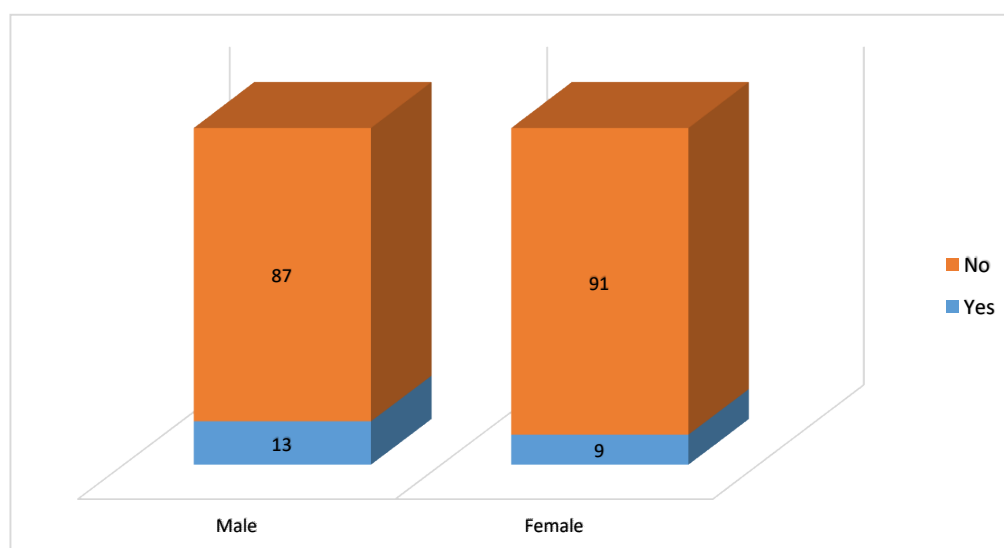
Analysis:

The above table represents about availability of magazine and books in Braille Script for visually impaired students in university. It is clear from the data that maximum number of the respondents answered negatively. That means majority of the respondents are having unanimous thinking that magazine and books in Braille Script for visually impaired is not available in maximum universities. It is a matter of great sorrow. Till now, visually impaired students are fighting for visibility and recognition. It also indicates that government has given less attention to this issue. This is a matter of grave concern. The result shows that this provision of the Act is highly neglected.

Table 6.09

**Does disabled cell for protection and security of disabled available in
university**

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	13	87	0
2.	Female	54	9	91	0



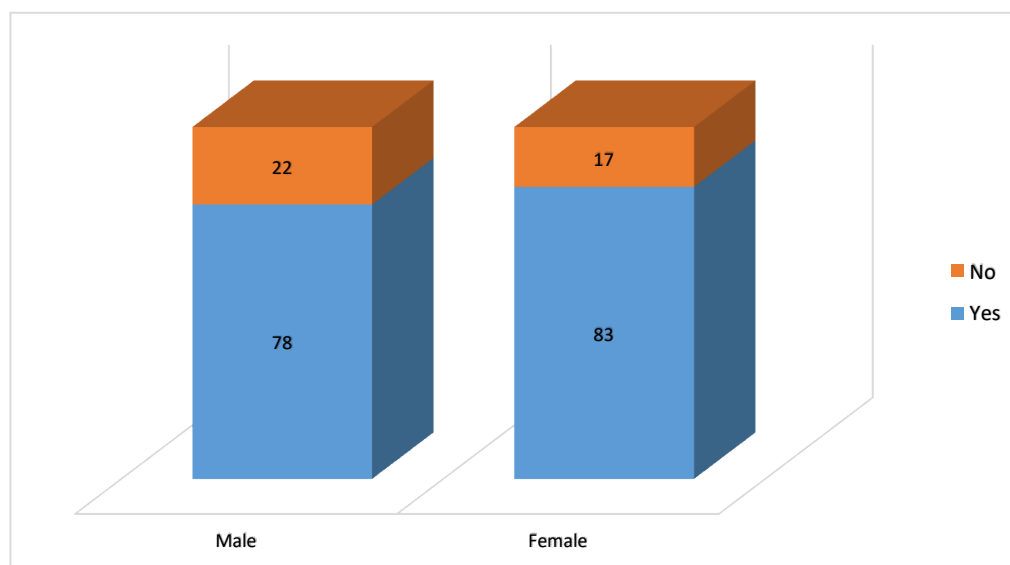
Analysis:

The above table discuss about availability of disabled cell in university for protection and security of disabled. From the above mentioned empirical data, it is clear that maximum number of the respondents are having unanimous thinking about non-availability of disabled cell in university. Majority of the respondents think that disabled cell is not available in almost all the universities. It is a matter of serious concern that till now, disabled cell is not available in maximum universities. disabled cell is special designed spaces that is to provide guidelines and support to students with disabilities in university campus, but disabled students are still struggling for disabled cell. Higher Education for persons with special needs programme introduced by University Grant Commission under the Ninth Five Year Plan and instructed the Government to establish 'disabled cell' . But the disabled students are searching space for minimum protection. It also indicates that government turned blind eyes to this issue. The result shows that this provision of the Act is totally neglected.

Table 6.10

Does people aware about the scholarship for disabled education

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	78	22	0
2.	Female	54	83	17	0



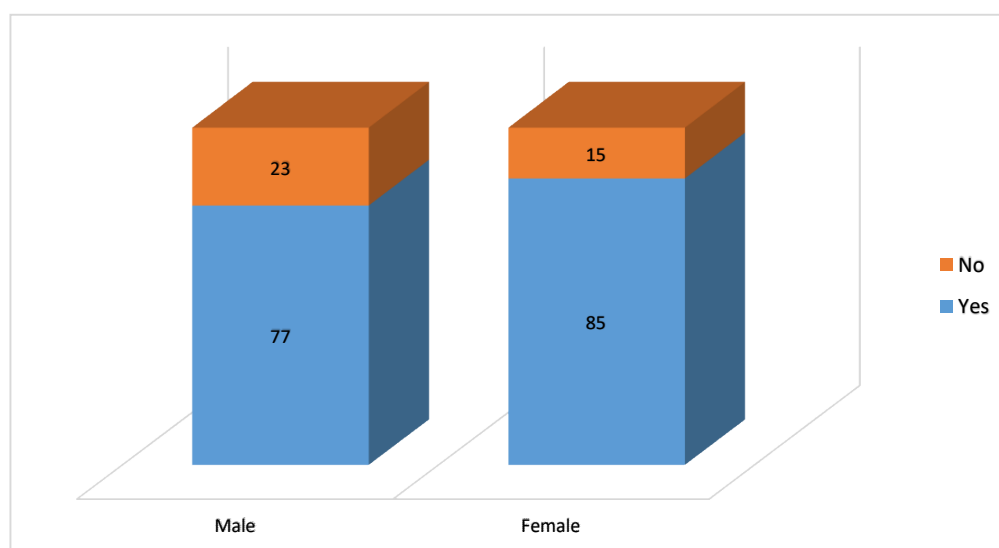
Analysis:

The above mentioned empirical data discuss about awareness of the people regarding scholarship for disabled education. From the above table, it is evident that maximum number of the faculties answered "YES". In this context, it can be said that majority of the respondents are well aware about scholarship for disabled education. This is a matter of great pleasure. But on the other hand, twenty per cent of the respondents are not aware. It is a matter of serious concern that still some of the respondents are not sensitized on disabled's issue. Awareness is very important in order to uplift the status of disabled. So, their responses cannot be negated. The result shows that this provision of the Act is partially neglected.

Table 6.11

Do you aware about the law for the protection and security of disabled

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	77	23	0
2.	Female	54	85	15	0



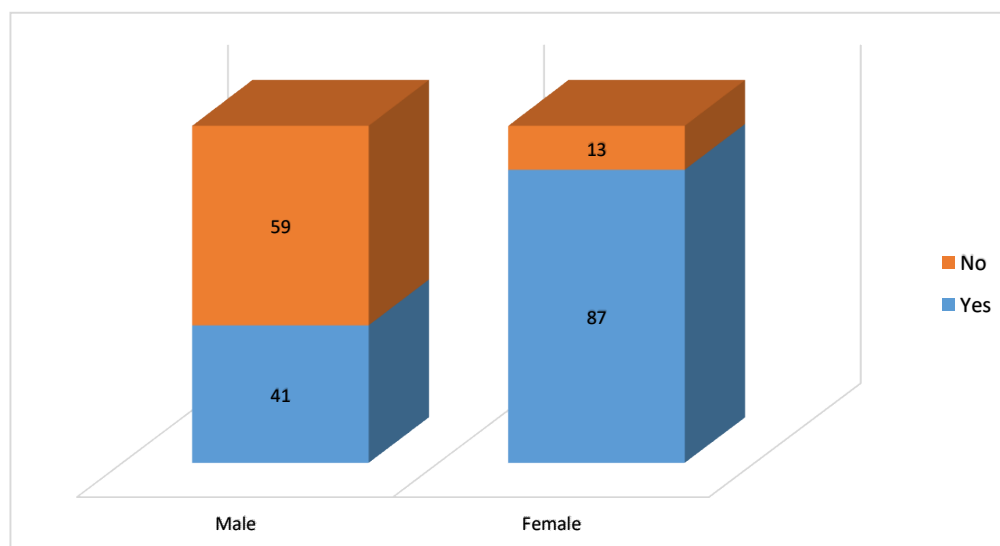
Analysis:

The above mentioned table represents about awareness of the people regarding law for the protection and security of disabled. The question is intended to test the awareness of the people regarding law for the protection and security of disabled. It is vibrant from the data that maximum number of the respondents answered "YES". That means the above mentioned empirical data indicates that majority of the respondents are aware about law for the protection and security of disabled. It is a matter of great pleasure that majority of the respondents are aware about law for the protection and security of disabled. But on the other hand, some of the respondents are not aware about law for the protection and security of disabled. Raising the level of awareness is very important segment in order to include disabled in the mainstream of society. No doubt, it is a matter of serious concern that till now, some of the respondents are not sensitized about law related with protection and security of disabled. And lack of sensitization is a major obstacle in the path of development of disabled. The result shows that provision of the Act is partially neglected.

Table 6.12

Do you Know that there is a provision of reservation in higher education for disabled

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	41	59	0
2.	Female	54	87	13	0



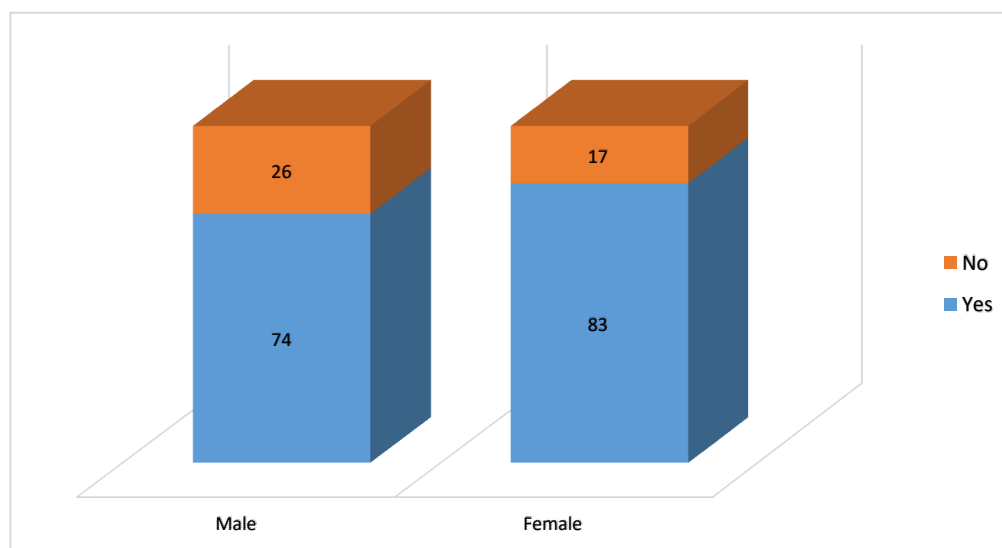
Analysis:

The above table discuss about about the provision of reservation in higher education for disabled. It is clear from the table that maximum number of the respondents from female section answered "YES" and maximum number of respondents from male section answered "NO" It is a sign of good gesture that majority of the respondents from female section are well aware about reservation in higher education for disabled. But on the other hand, it is a matter of serious concern that around fifty nine per cent respondents from male section are not aware about reservation in higher education for disabled. The above mentioned empirical data shows that females are more aware than male counterpart. Overall, the rate of awareness is not up to the mark. In this context, the provision of the Act is crystal clear. Section 32 of the Rights of Persons with Disabilities Act, 2016 casts a responsibility on the shoulder of Government. Section 32 states about the duty of Government institutions and other institutions receiving aid from Government to reserve not less than five per cent seats for persons with disabilities and five years age relaxation. The result shows that this provision of the Act is partially neglected.

Table 6.13

Does disabled get reservation at the time of appointment in every university

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	74	26	0
2.	Female	54	83	17	0



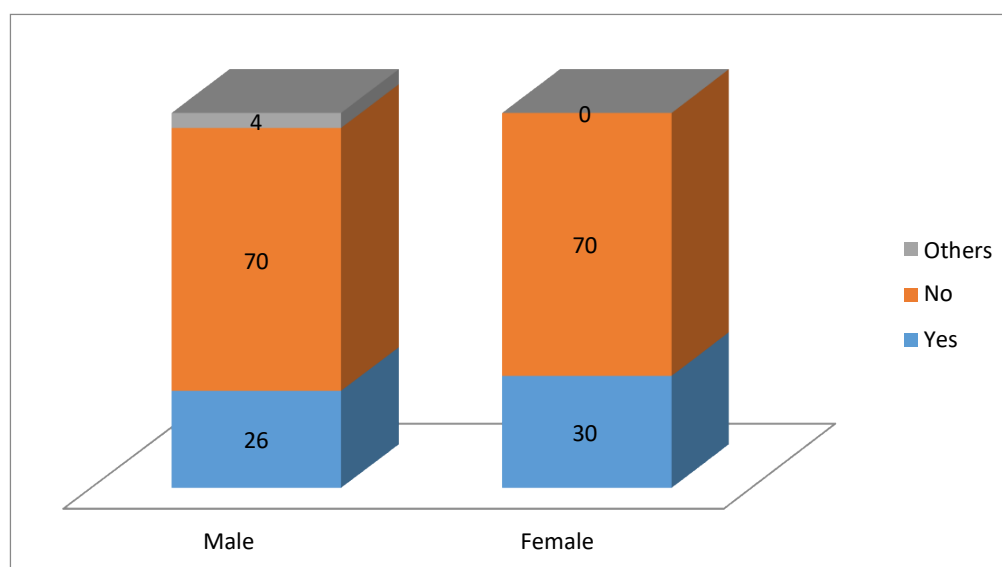
Analysis:

The above table represents about the reservation at the time of appointment in every universities. The above mentioned table indicates that maximum number of the respondents are having unanimous thinking that disabled's are getting reservation at the time of appointment in every universities. A clear cut message comes out from the above mentioned data that majority of the respondents are agree on the fact that disabled's are getting reservation at every stage of appointment in every universities. But on the other hand, around twenty-two per cent of the respondents are not aware. Their responses cannot be negated. In this context the provision of the Act is sufficient. Section 34 of the Rights of Persons with Disabilities Act, 2016 states that it is the duty of the Government to reserve not less than four per cent of the total number of vacancies in the cadre strength. Therefore, the result shows that this provision of the Act is partially neglected.

Table 6.14

Does any category left which comes under the category of disability or there is a need of amendment in the list of category mentioned in Rights of Persons with Disabilities Act, 2016.

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	26	70	4
2.	Female	54	30	70	0



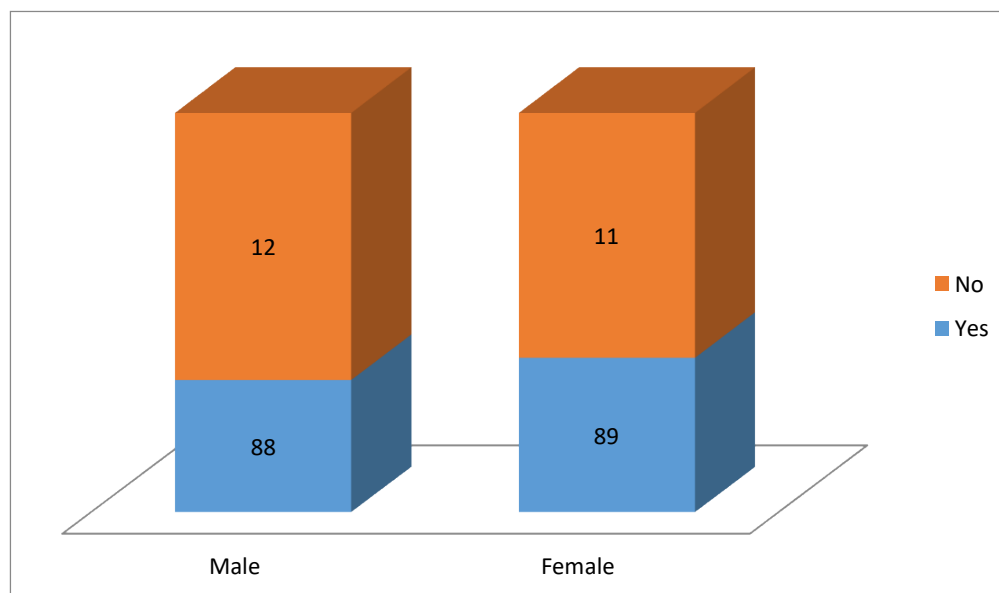
Analysis:

The above mentioned table discuss about the omission of any category from the list of disabled which must included in the list of disability. It is vibrant from the table that majority of the respondents answered "NO". It indicates that majority of the respondents want to maintain status quo. They do not want any change in the list of disability. They consider it as exhaustive. Further, around twenty eight per cent of the respondents answered "YES". It is clear that some of the respondents want some change in the list of disability.

Table 6.15

Does disabled need any Special Act like SC/ST Act

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	88	12	0
2.	Female	54	89	11	0



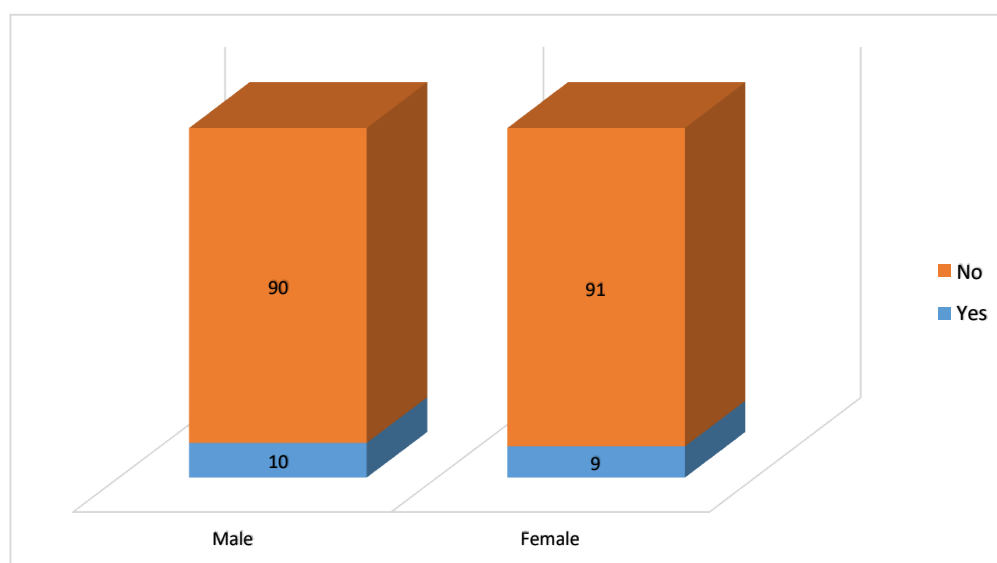
Analysis:

The above mentioned table represents about about Special Acts for disabled in the lines of SC/ST Act. It is clear from the data that maximum number of the respondents answered "YES". The data proves that maximum number of the respondents prefer a Special Act in the lines of SC/ST Act. It indicates that maximum number of the respondents are having unanimous thinking that Special Act is the need of the time. In absence of Special Act like SC/ST Act, it is not possible to accelerate the pace of development among disabled. The Special Act will ensure landmark change for disabled. On the other hand, around twelve per cent of the respondents answered "NO". In their view the Rights of Persons with Disabilities Act is exhaustive.

Table 6.16

Does private sector provide due representation to disabled in employment

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	10	90	0
2.	Female	54	9	91	0



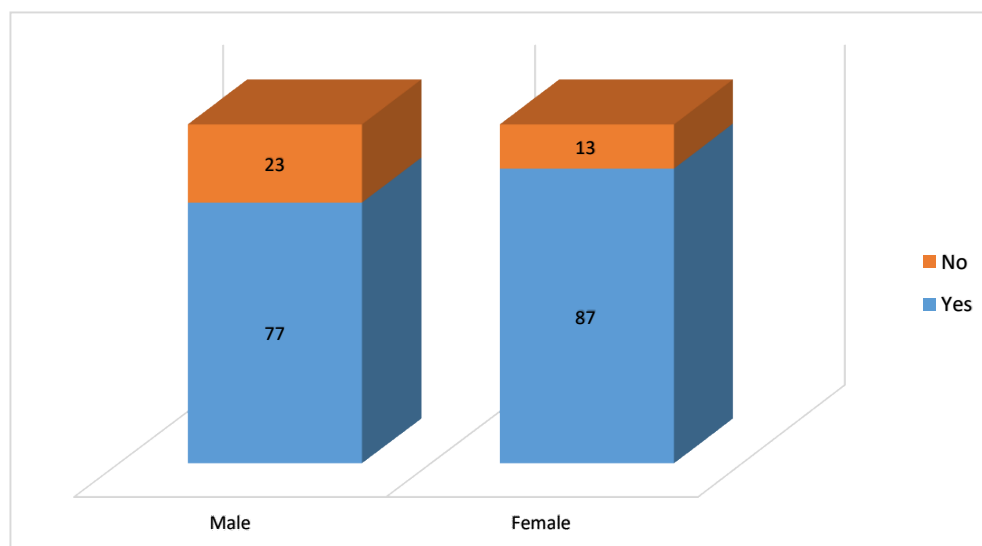
Analysis:

The above mentioned empirical data represents about the role of private sector in employment of disabled. It is clear from the data that majority of the respondents answered "NO". That means majority of the respondents are having unanimous thinking that there is no role of private sector in employment of disabled. Here, it is important to note that the scope of employment is very limited for disabled in private sector. They have been totally excluded from the sphere of private sector. It also indicates that Government and Judiciary have given less attention on employment of disabled in private sector. Although, Section 35 of the Act offers tax rebate and incentives to private sector in the case of employment of disabled. But the net result is not up to the mark. Majority of the private employers think that persons with disabilities are unproductive. Therefore, the doors of private sector has been totally closed for disabled This is a matter of serious concern. Therefore, it can be said that this provision of the Act is totally neglected.

Table 6.17

Does the approach of judiciary is affirmative towards disabled

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	77	23	0
2.	Female	54	87	13	0



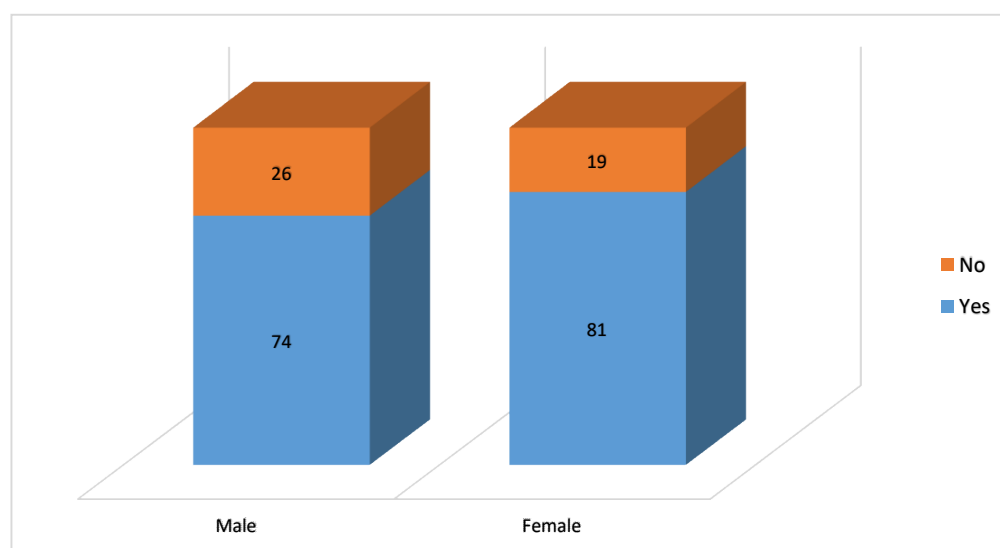
Analysis:

The above mentioned table represents about the approach of judiciary towards disabled. It is evident from the table that maximum number of the respondents answered "YES". It indicates that maximum number of the respondents are having unanimous thinking that approach of judiciary is affirmative towards disabled. This is a matter of utmost pleasure. But on the other hand, around eighteen per cent of the respondents answered "NO". The meaning is clear. some of the faculties are not agree with the fact that approach of Judiciary is positive towards disabled. In their opinion Indian Judiciary is still functioning on the principal of charity model. Till now, the disability jurisprudence is not developed. Indian judiciary failed to include private sector under the term 'establishment'. That means disability is not a ground of protection in private sector. This is a matter of serious concern.

Table 6.18

**Does the implementation of law related with protection and security of
disabled is weak**

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	74	26	0
2.	Female	54	81	19	0



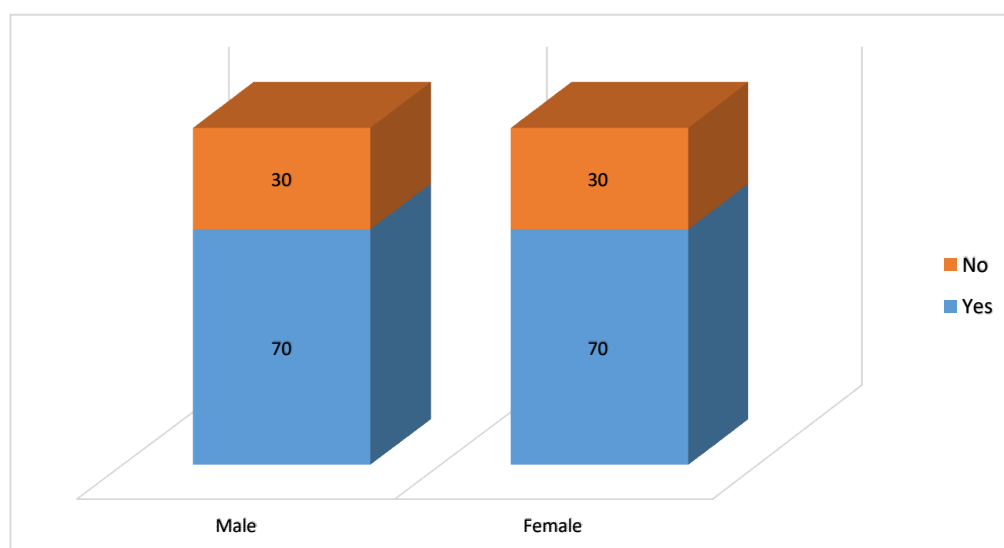
Analysis:

In the above mentioned empirical data the question of implementation of law for the protection and security of disabled has been coined. The fact is clear after perusal of the views given by the maximum number of the respondents . It points out that maximum number of the respondents think that implementation of law for the protection and security of disabled, is weak. In order to protect the rights of disabled, various Acts are in existence. But the level of awareness among government officials are very low. It is a matter of serious concern. It is vibrant from above mentioned data that government has not given proper attention to this issue. The life of disabled is still in doldrums. They are hanging in air with empty hand. Disabled women's are systematically thrown out from the mainstream workforce. They are facing gender disparity in the access to financial services provided by the State. And till now, disabled women's are the soft target in terms of sexual offence.

Table 6.19

Does the attitude of teachers in university is affirmative

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	70	30	0
2.	Female	54	70	30	0

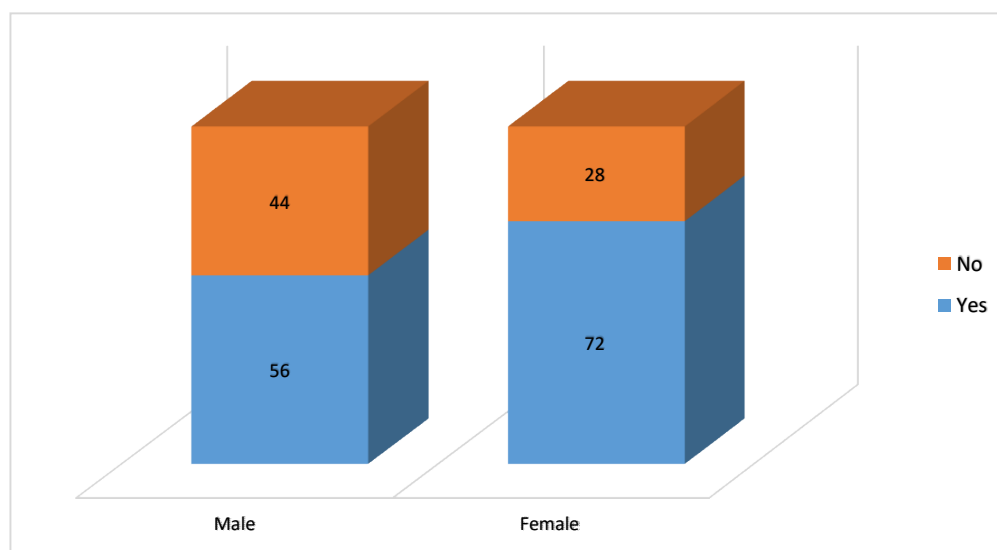


Analysis:

The above mentioned data throws light on attitude of teachers towards disabled in university. It is evident from the table that maximum number of the respondents answered positively. Beyond any doubt, it is clear from the above mentioned table that maximum number of the respondents agree with the fact that attitude of teachers towards disabled is positive. On the other hand, around thirty per cent of the respondents answered negatively. That means the present system of teaching, pattern of evaluation and understanding of psychology of disabled students are not always acceptable. But by and large, the role of teachers are very affirmative. The result shows that the provision of the Act is partially neglected.

Table 6.20
**Does the Central Government and State Government are trying for the
security of disabled women**

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	56	44	0
2.	Female	54	72	28	0



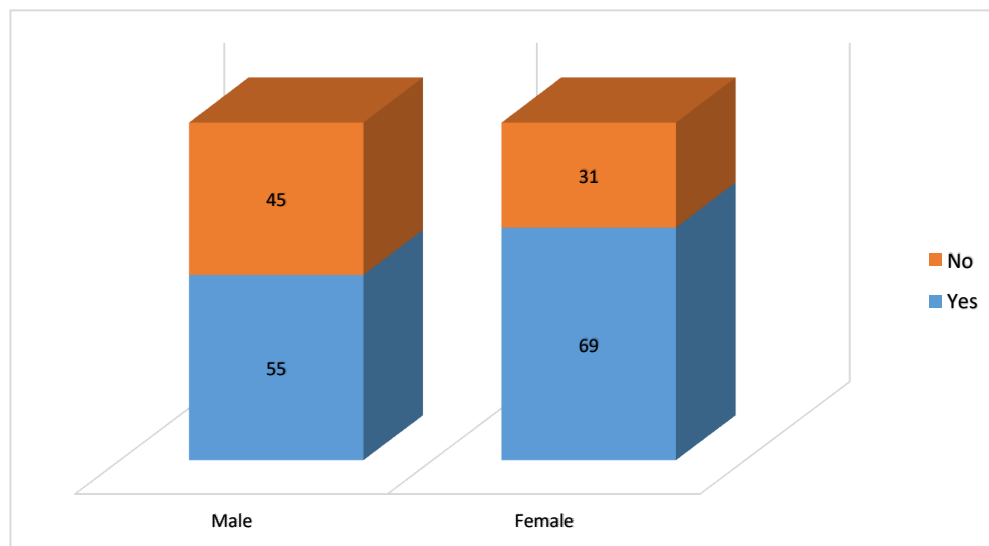
Analysis:

In the above mentioned empirical data an important question has been coined. The above data represents about Central Government and State Governments attempt to provide security to disabled women. It is evident from table that maximum number of the respondents answered positively. It is explicit that majority of the respondents are aware and recognises the attempt of the government to provide security to disabled women. It is a matter of great pleasure that maximum number of the respondents are aware about government initiatives towards security of disabled women. But on the other hand, the condition is different. About thirty six per cent of the respondents answered negatively. It is a matter of serious concern that large number of respondents having no faith in the credential of government in context of security of disabled women. Because the status of disabled women has not changed. Till now, disabled women's are regarded as incapable of productive work and burden on the society. They are excluded from policies and programme. It is a matter of grave concern that rate of literacy is extremely low among women with disabilities. Women with disabilities is invisible. They are prone to multifold discrimination including sexual harassment. They are fighting for visibility and dignity. They become more vulnerable to violence and abuse. In this context, the provision of Section 24 of the Act is sufficient. Section 24(3)(d) discuss about the support to women with disability for livelihood. The result shows that this provision of the Act is highly neglected.

Table 6.21

Does Special Provisions are there for disabled women and children

S. No.	Gender	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Male	214	55	45	0
2.	Female	54	69	31	0



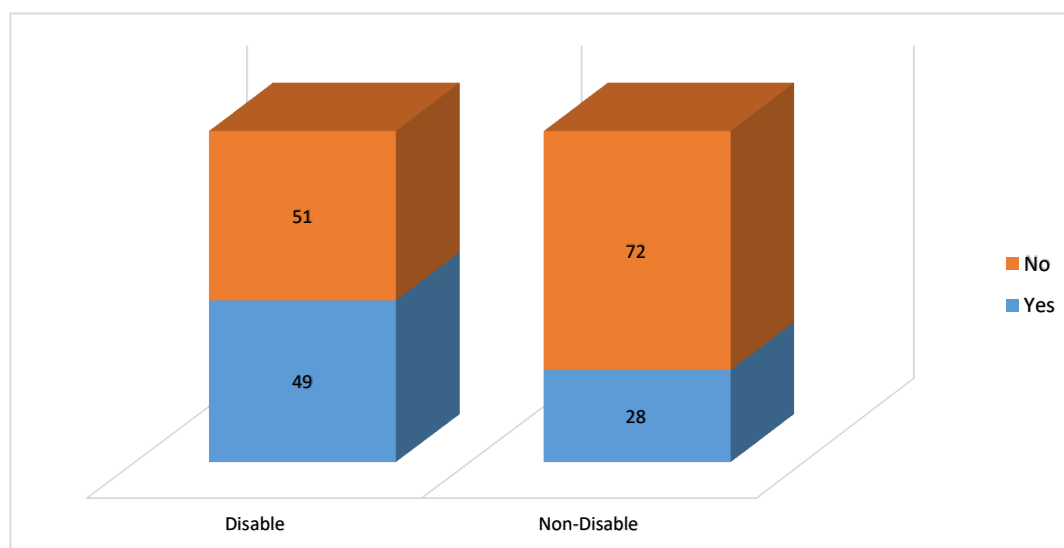
Analysis:

The above table discuss about special provisions for disabled women and children. It is evident from the empirical data that maximum number of the respondents from male and female section answered positively. But on the other hand, around thirty-eight per cent respondents answered negatively. It is a matter of serious concern that large number of respondents having unanimous thinking that there are no special provisions for disabled women and children. Their responses cannot be negated. In this context, the provision of Section 24 is sufficient. It states about the special provisions for disabled women and children. But the result is just contrary of the provision. This is a matter of serious concern. The result shows that this provision of the Act is highly neglected.

Table 7.01

Does Attitude towards Disabled at Home is Discriminatory

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	49	51	0
2.	Non-Disable	213	28	72	0



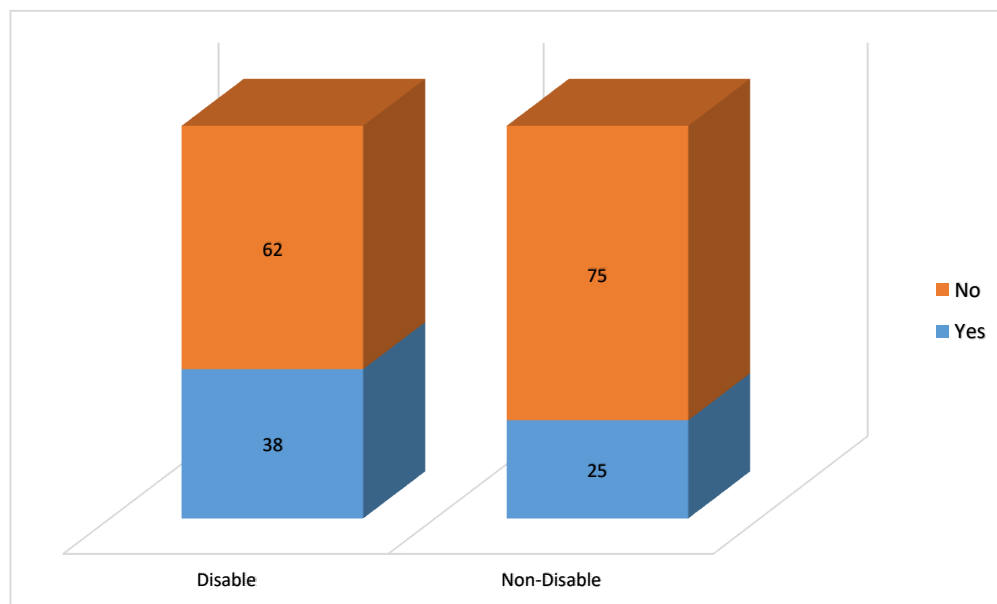
Analysis:

From the above empirical data it is evident that maximum number of respondents from disabled and non-disabled section are having unanimous thinking that there is no discrimination with disabled persons at domestic level. Respondents belonging to disabled section recorded forty nine per cent responses to affirm that there is discrimination with disabled persons at home. So their responses cannot be negated to the general outcome that there is no discrimination with disabled at domestic level. It is a matter of serious concern that maximum number of respondents from disabled section agree on the fact that disabled's are still facing discrimination at home. So, it can be said that even home is not a safe place for disabled. In this regard, the provision of the Act is sufficient. Section 3 of the Act discuss about protection mechanism against discrimination. The result shows that the provision of the Act is highly neglected.

Table 7.02

Is poverty a cause of disability

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	38	62	0
2.	Non-Disable	213	25	75	0



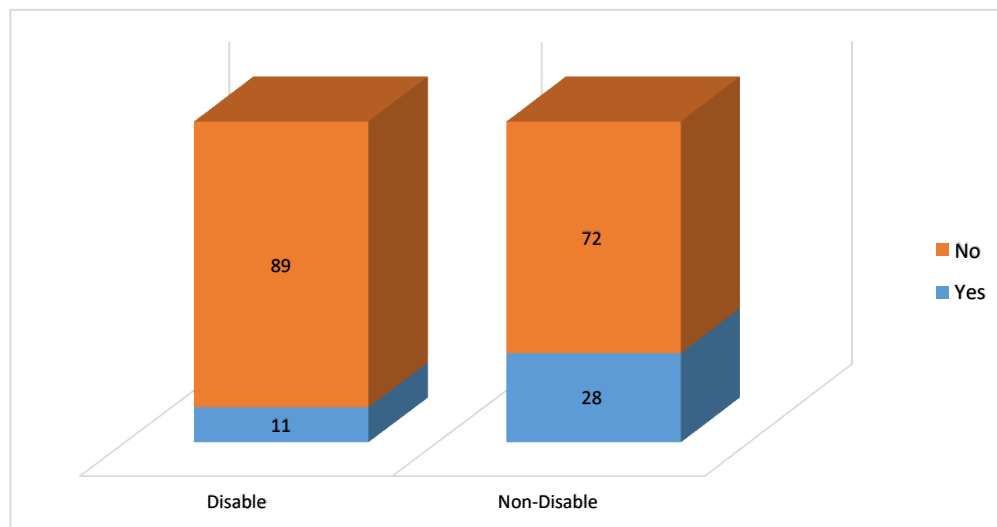
Analysis:

The above mentioned table represents about poverty as a cause of poverty. It is evident from the research data that majority of the faculties are having unanimous thinking that poverty is not a cause of disability. But on the other hand, around thirty one per cent respondents are not agree with the fact. In their opinion, poverty is a cause of disability. In conclusion, it can be said that disability is not a sole cause of disability. There may be some other causes too.

Table 7.03

Does public transport affordable for disabled

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	11	89	0
2.	Non-Disable	213	28	72	0



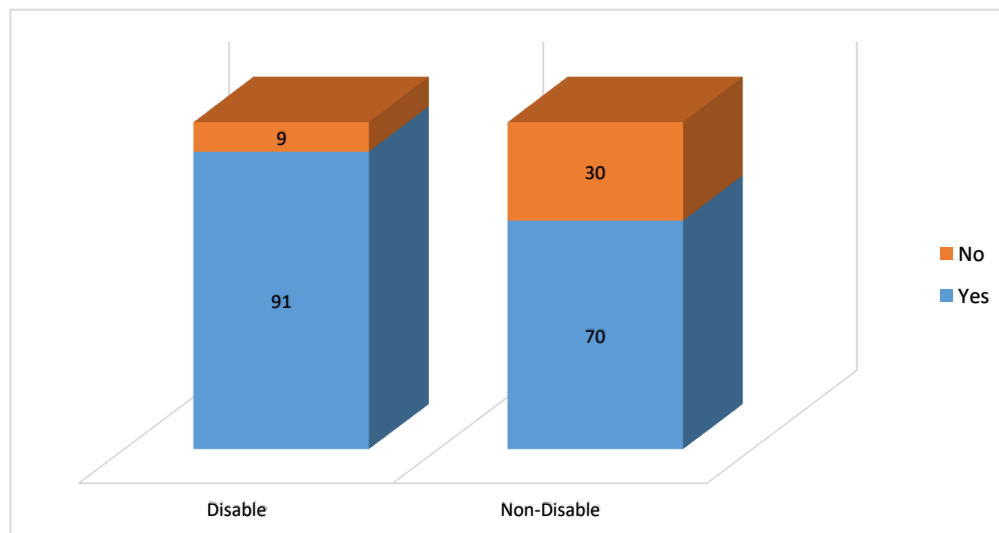
Analysis:

The above mentioned empirical data represents about affordability of public transport for disabled. The question intended to test the awareness of the people regarding affordability of public transport for disabled. Maximum number of respondents are having unanimous thinking that public transport is not affordable for disabled. It is a matter of serious concern that till now, public transport is not suitable and safe for disabled. It is not possible for wheel chair user to get into the bus, train or taxi. They are still fighting for safe and suitable means of public transport. On the other hand, the provision of the Act is sufficient. Section 40 and 41 specially deals with suitability of public transport for disabled. It casts a responsibility on the shoulder of the government to make the public transport affordable for disabled. Therefore, it can be said that the provision of the Act is highly neglected.

Table 7.04

Does any Government institution provide facility of tri-cycle for disabled

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	91	9	0
2.	Non-Disable	213	70	30	0



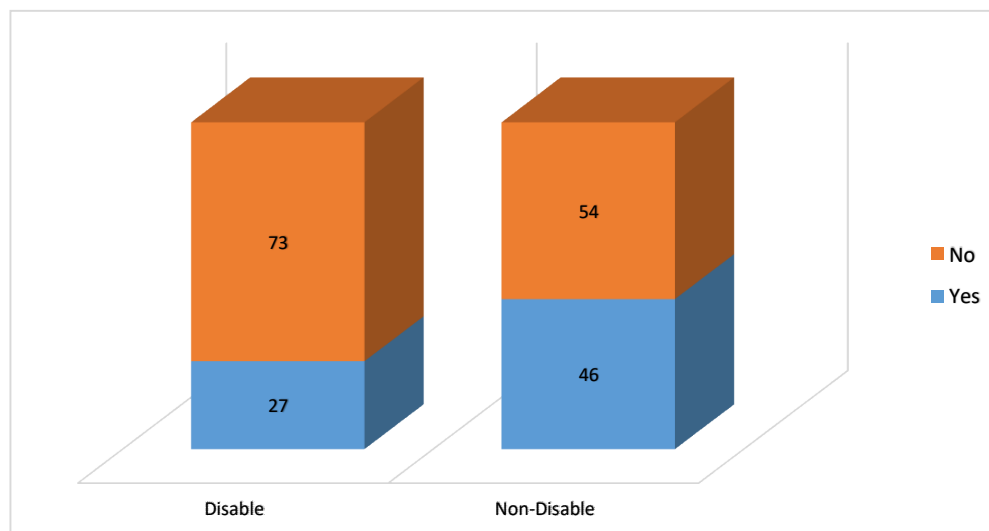
Analysis:

From the above table it is clear that majority of the respondents are having unanimous thinking that government institution providing facility of tri-cycle for transport or movement of disabled. It is a matter of great appreciation that majority of the respondents are aware about the role of government institution in distribution of tri-cycle for movement of disabled. But on the other hand, around twenty per cent respondents answered negatively. That means these respondents are not aware. This is a matter of serious concern. Still some of the respondents need to sensitize.

Table 7.05

Does the building of university movabal for disabled

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	27	73	0
2.	Non-Disable	213	46	54	0



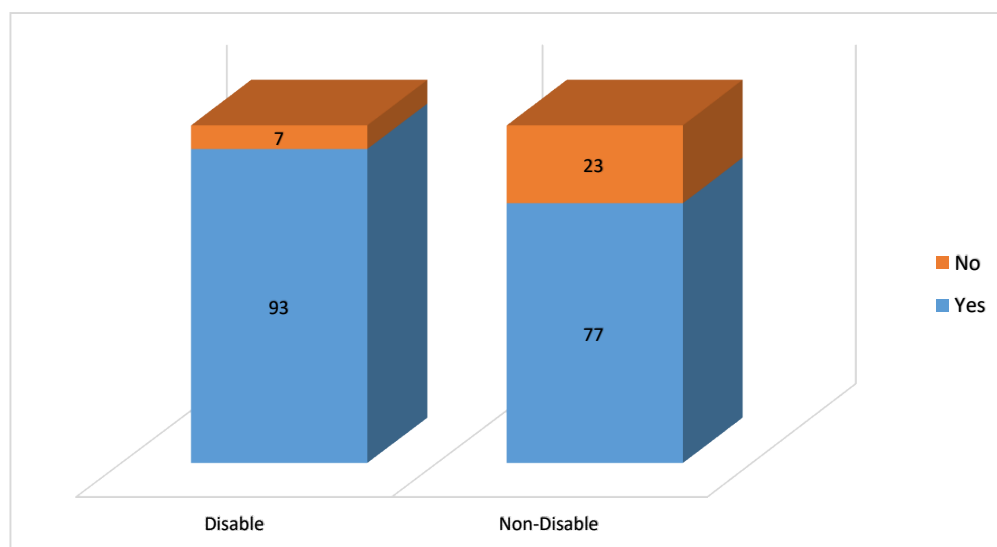
Analysis:

The above mentioned empirical data tells about the nature of building of university in context of disabled. Whether the building of university is movabal for disabled. In this context, maximum number of respondents from disabled and non-disabled section answered negatively. That means majority of the respondents are not agree on the fact that buildings of the universities are movabal for disabled. This is a matter of serious concern that till now, majority of building of universities are non-disabled friendly. Further, there is a big difference in opinion given by disabled and non-disabled respondents. Around seventy three per cent respondents from disabled section agree on the fact that buildings of universities are not movabal but on the other hand, around fifty four per cent respondents from non-disabled section agree on the fact. It shows that disabled respondents are more sensitive and aware than non-disabled respondents. In this context, the provision of the act is sufficient. Section 2(ze) discuss about universal design. Again, Section 44 states that it shall be the duty of the Government to deny permission to build any structure if the plan of the building not adhere to the rules initiated by Central Government. Section 45 of the Act instructs the government to made all public buildings accessible. The result shows that the provision of the Act is highly neglected.

Table 7.06

Does any non-government institution work in interest of disabled

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	93	7	0
2.	Non-Disable	213	77	23	0



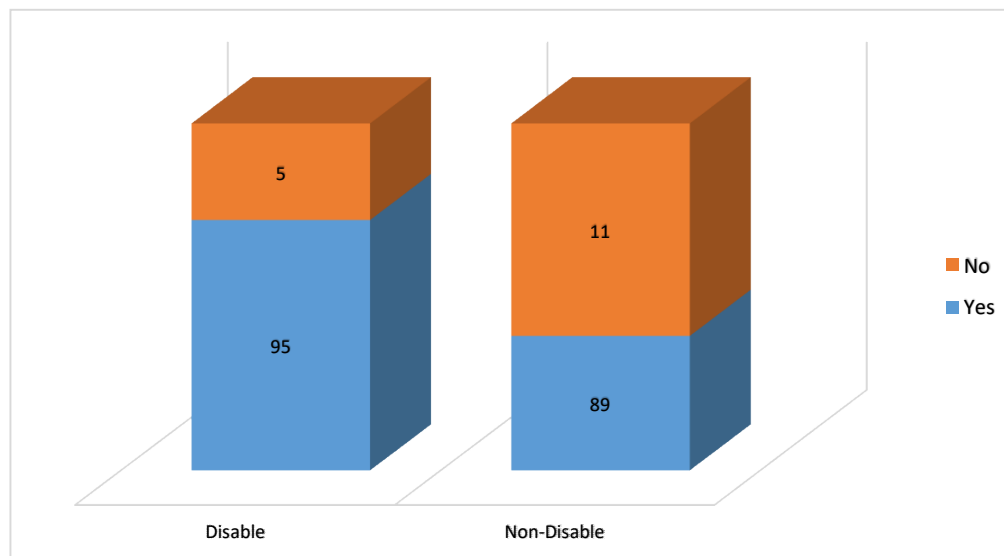
Analysis:

The above mentioned empirical data states about role of non-government institution in protection of interest of disabled. It is clear from the table that majority of the respondents answered positively. It indicates that majority of the respondents think that non-government institutions are working for the protection of interest of disabled. It is a matter of great appreciation that maximum number of respondents are aware about role of non-government institution in protection of the interest of disabled. On the other hand, around fifteen per cent respondents are not recognises the role of non-government institution in protection of the interest of disabled. This shows that some of the respondents need to sensitize.

Table 7.07

Does disabled get reservation in higher education

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	95	5	0
2.	Non-Disable	213	89	11	0



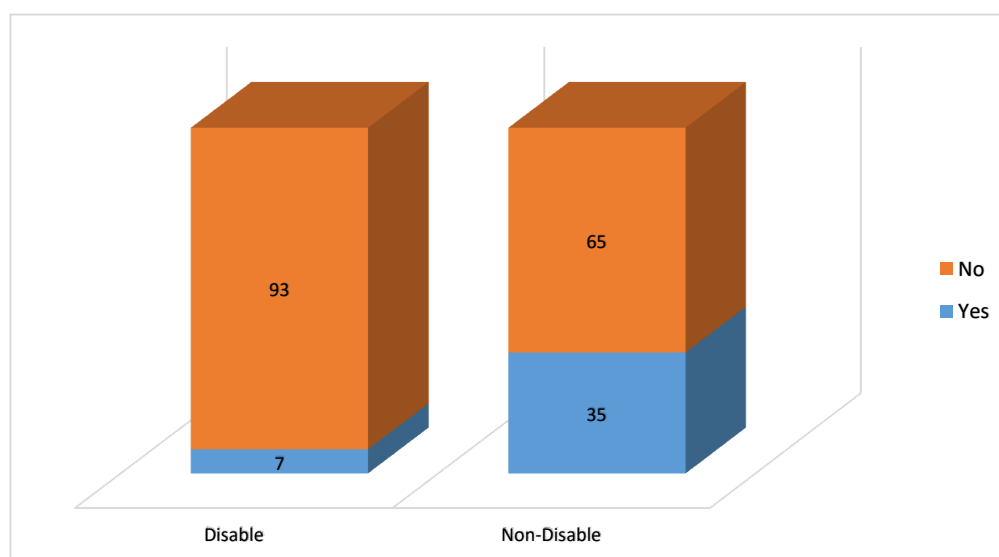
Analysis:

The above mentioned table represents about reservation in higher education for disabled. It is vibrant from table that maximum number of respondents answered positively. That means maximum number of the respondents are having unanimous thinking that disabled's are getting reservation in higher education. It is a matter of great pleasure. On the other hand, around eight per cent respondents are answered negatively. But their responses can be negated. Further, the provision of the Act is sufficient. Section 32 deals with reservation in higher education. It provides five per cent reservation in higher education. Therefore, it can be said that the provision of the Act is almost complied.

able 7.08

**Does magazine and books in Braille Script for visually impaired available in
university**

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	7	93	0
2.	Non-Disable	213	35	65	0



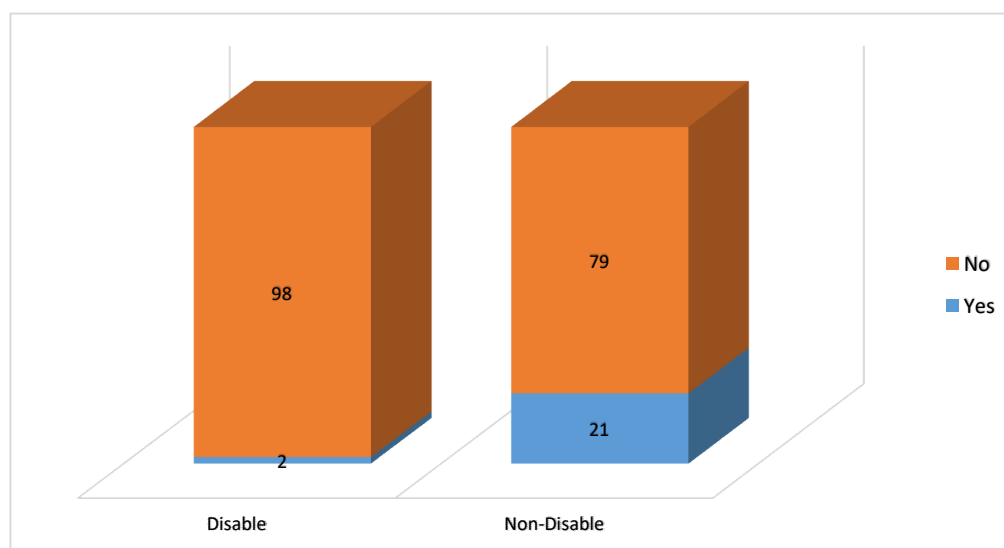
Analysis:

The above mentioned empirical data represents about availability of magazine and books in Braille Script for visually impaired in university. It is clear from the table that majority of the respondents from disabled and non-disabled section answered negatively. That means majority of the respondents are having unanimous thinking that magazine and books in Braille Script for visually impaired is not available in maximum universities. This can be seen in the responses given by disabled students. Around ninety-three per cent respondents belong to disabled section answered negatively. This is a matter of serious concern. Till now, blind students facing severe shortage of course books and magazine in Braille Script. In this context, it can be said that government has given less importance to this issue. The result shows that provision of the Act is highly neglected.

Table 7.09

**Does disabled cell for protection and security of disabled available in
university**

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	2	98	0
2.	Non-Disable	213	21	79	0



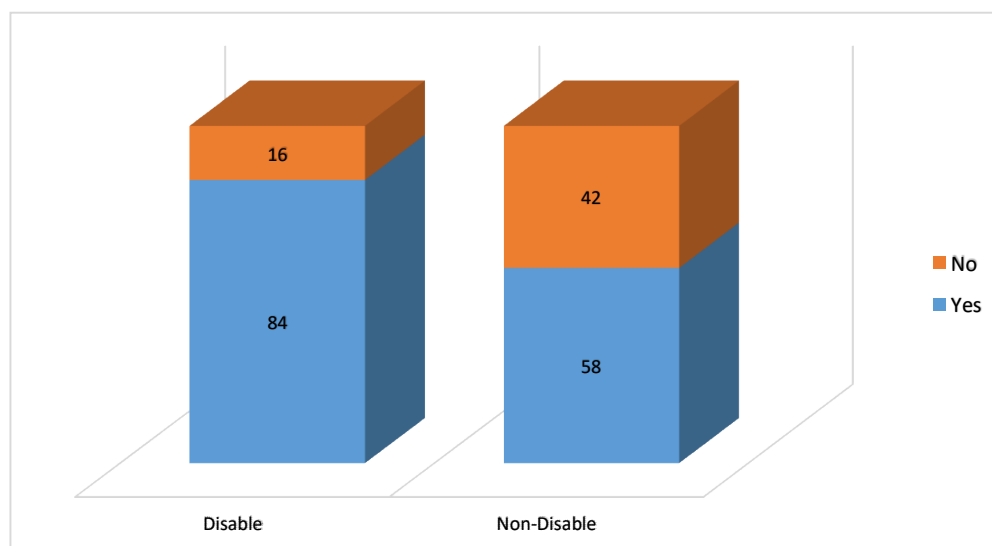
Analysis:

The above table represents about availability of disabled cell in university. From the above mentioned empirical data, it is evident that majority of the respondents are having unanimous thinking that disabled cell is not available in almost all the universities. It is a matter of serious concern that disabled students are fighting for disabled cell, which is the basic requirement for disabled students. Disabled cell is essential for counselling, facilitate admission, ensure quota and provides assistive devices. It is a matter of great sorrow that ninety-eight per cent respondents from disabled section answered negatively. This forecasts the real picture of disability cell in university. Therefore, it can be said that absence of disabled cell will accelerate the exclusion of disabled from mainstream education. The result shows that provision of the Act is mostly neglected.

Table 7.10

Does people aware about scholarship for disabled education

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	84	16	0
2.	Non-Disable	213	58	42	0



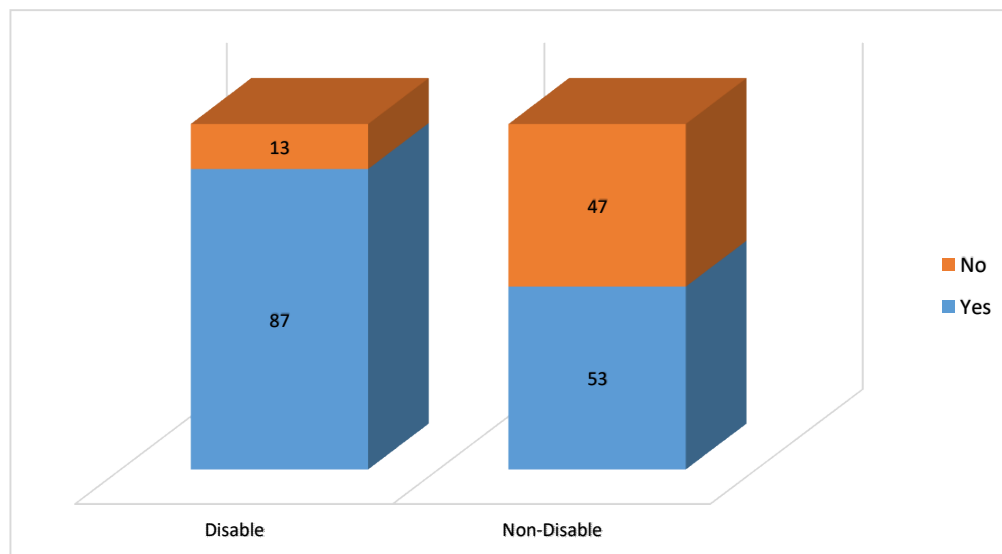
Analysis:

The above mentioned empirical data discuss about awareness of the people in context of scholarship for disabled education. In this regard, eighty-four per cent respondents from disabled section and fifty eight per cent respondents from non-disabled answered positively. That means majority of the respondents are aware about scholarship for disabled education. It is matter of great appreciation. On the other hand, around twenty nine per cent respondents from disabled and non-disabled section answered negatively. This is a serious concern that this much people are not aware about scholarship for disabled education. Further, the rate of awareness is very high among disabled respondents as compare to non-disabled respondents.

Table 7.11

Do you aware about law for the protection and security of disabled

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	87	13	0
2.	Non-Disable	213	53	47	0



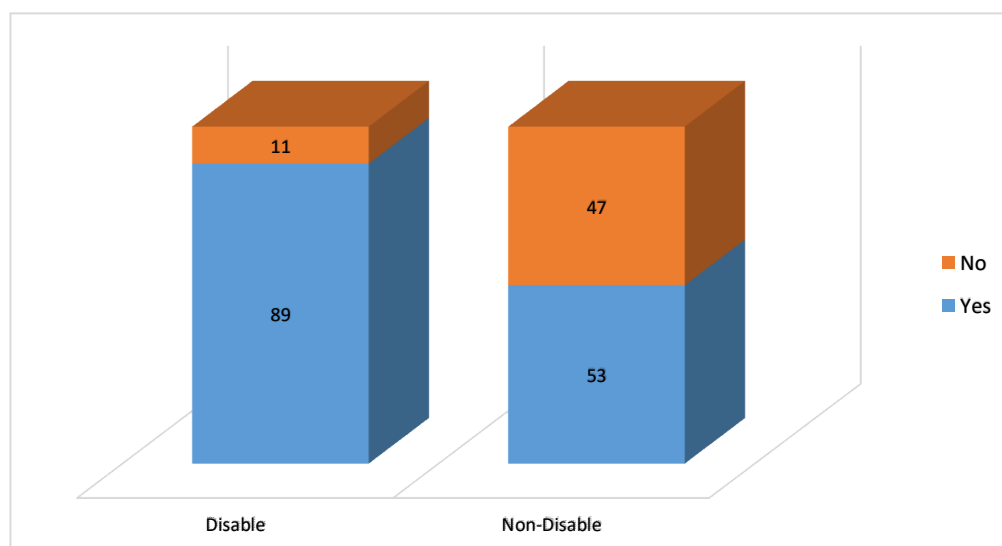
Analysis:

The above mentioned empirical data discuss about awareness of the people regarding law for the protection and security of disabled. It is evident from the table that maximum number of the respondents answered positively. That means, majority of the respondents are aware about law for the protection and security of disabled. It is a matter of utmost satisfaction that majority of the respondents are aware about law for the protection and security of disabled. On the other hand, it is a matter of serious concern that forty seven per cent respondents from non-disabled section are not aware about law for the protection and security of disabled. This is a big blot in the path of development of disabled.

Table 7.12

Do you know that there is a provision of reservation in higher education for disabled

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	89	11	0
2.	Non-Disable	213	53	47	0



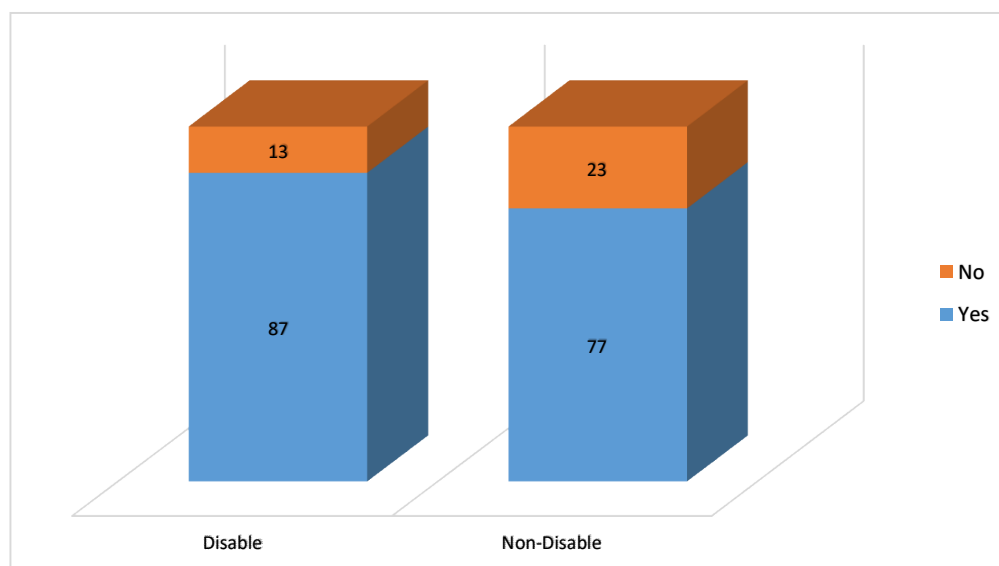
Analysis:

The above mentioned table represents about provision of reservation in higher education for disabled. It is clear from the table that majority of the respondents from disable and non-disable section answered positively. That means maximum number of respondents from both the segments are agree on the fact that provision of reservation for disabled is present in higher education. This is a matter of high appreciation that maximum number of the respondents are aware about reservation for disabled in higher education. But on other hand, this is a matter of serious concern that forty seven per cent respondents from non-disabled section are not aware about reservation for disabled in higher education. In this regard the provision of the Act is sufficient. Section 32 of the Act deals with reservation for disabled in higher education. The result shows that provision of the Act is partially neglected.

Table 7.13

Does disabled get reservation at the time of appointment in every universities

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	87	13	0
2.	Non-Disable	213	77	23	0



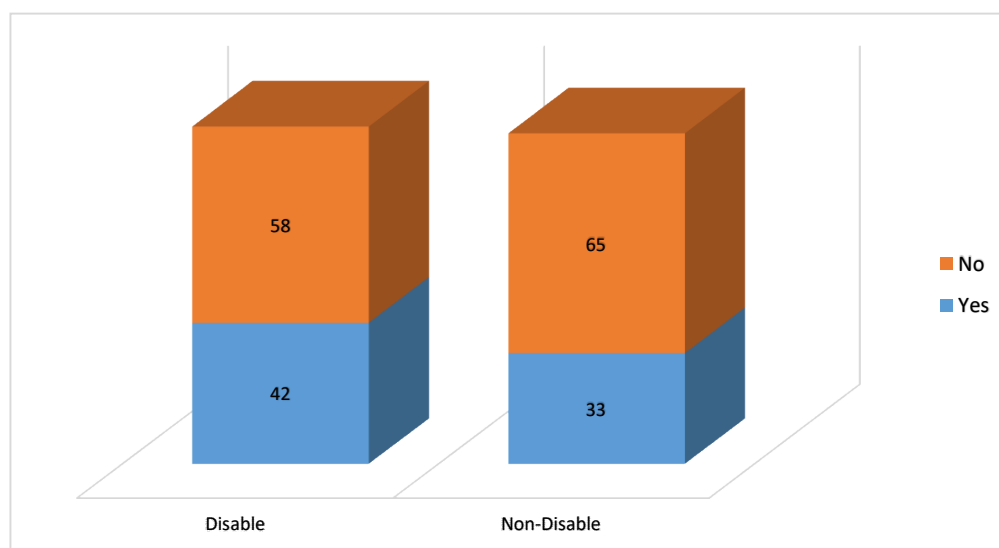
Analysis:

The above mentioned empirical data tells about reservation for disabled at the time of appointment in every universities. It is evident from table that maximum number of respondents from disabled and non-disabled section answered "YES". That means majority of the respondents are having unanimous thinking that disabled's are getting reservation at the time of appointment in every universities. It is a matter of great pleasure that maximum number of respondents are aware about reservation for disabled at the time of appointment in every universities. But on the other hand, around eighteen per cent respondents from disabled and non-disabled section answered negatively. That means they are not aware about reservation for disabled at the time of appointment. Although they are small in number but their responses cannot be negated. They need to sensitize. In this regard, the provision of the Act is sufficient. Section 34 of the Act deals with appointment in every universities. Section 34 provides four per cent reservation to disabled. The result shows that provision of the Act is partially neglected.

Table 7.14

Does any category left which comes under the category of disability or there is a need of amendment in the list of category mentioned in Rights of Persons with Disabilities Act,2016.

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	42	58	0
2.	Non-Disable	213	33	65	5



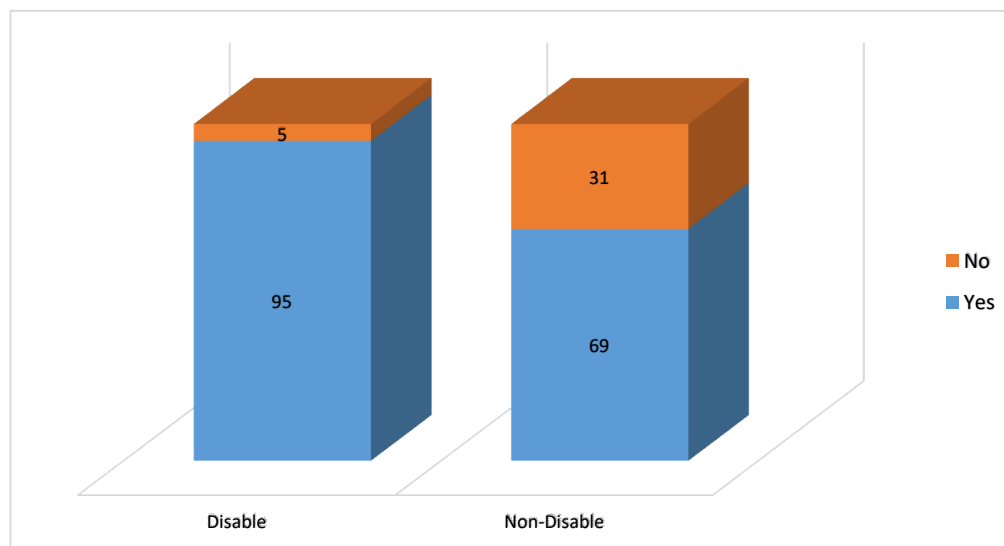
Analysis:

The above mentioned empirical data represents about the need of amendment in the list of category of disability mentioned in the 'Rights of Persons with Disabilities Act, 2016. It is evident from the table that majority of the respondents answered negatively. It indicates that majority of the respondents do not want any change in the list of disability. Some of the respondents answered positively. That means few of the respondents want some change in the list of disability to make it more relevant. In the above mentioned table, around two per cent respondents answered "OTHER". These respondents want to include heart patient, cancer patient and transgender in the list of disability.

Table 7.15

Does disabled need any Special Act like SC/ST Act

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	95	5	0
2.	Non-Disable	213	69	31	0



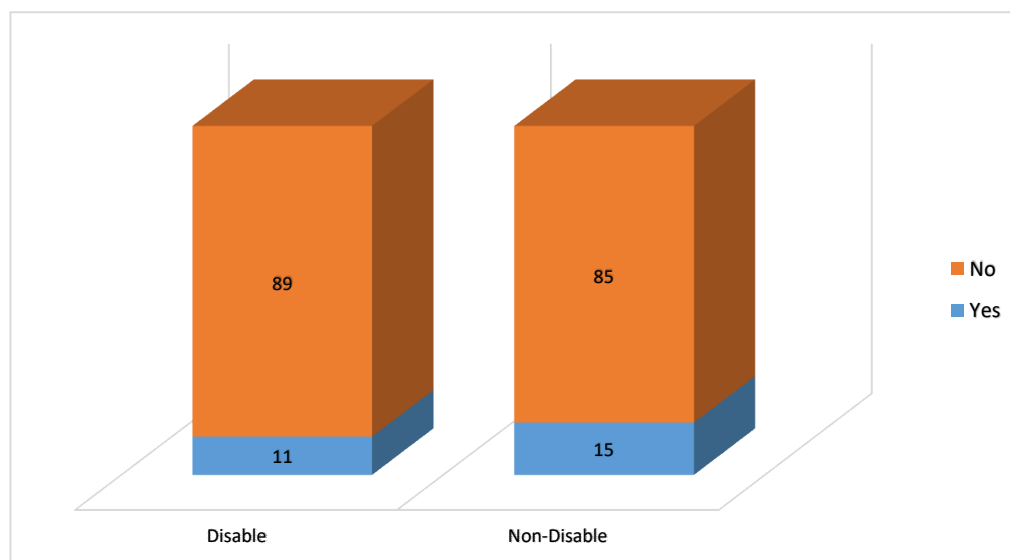
Analysis:

The above mentioned table represents about need of Special Act in the line of SC/ST Act. It is evident from the above mentioned empirical data that majority of the respondents answered "YES". It indicates that majority of the respondents prefer a Special Act for disabled in the lines of SC/ST Act. These respondents think that Special Act will protect disabled from manifold discrimination. On the other hand, some of the respondents answered "NO". That means these respondents do not want any change in the Rights of Persons with Disabilities Act, 2016. They think that Act is sufficient to protect disabled from discrimination.

Table 7.16

Does private sector provide due representation to disabled in employment

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	11	89	0
2.	Non-Disable	213	15	85	0



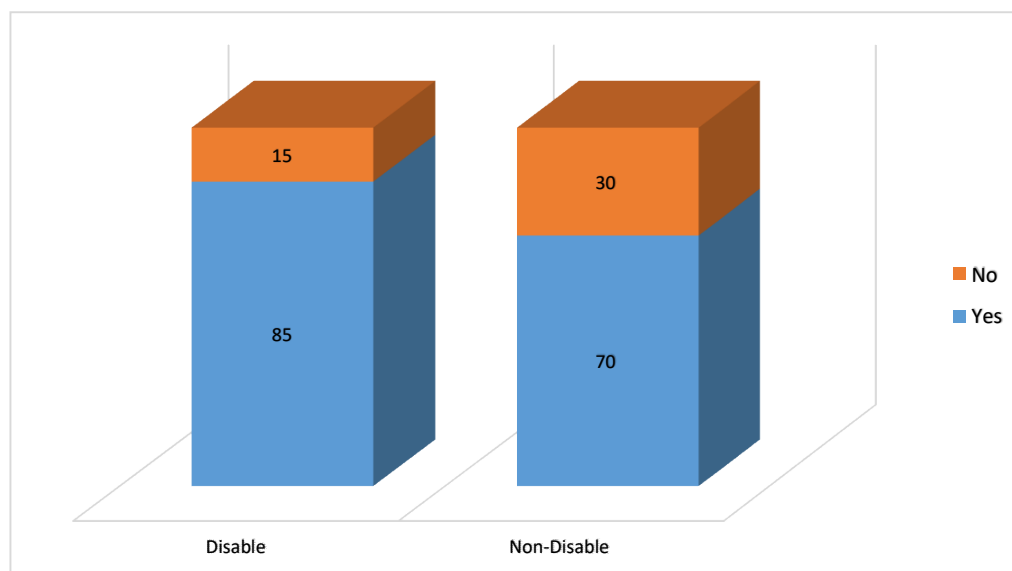
Analysis:

The above mentioned empirical data discuss about the role of private sector in employment of disabled. It is evident from the table that majority of the respondents answered "NO". That means majority of the respondents are having unanimous thinking that there is no role of private sector in employment of disabled. It is a matter of serious concern that the domain of private sector has been closed for disabled. It indicates that government and judiciary have given less attention on employment of disabled in private sector. In this regard, the provision of the Act is sufficient. Section 35 of the Act tells about employment of disabled in private sector. The section talks about incentives in the case of employment of disabled. The result shows that provision of the Act is highly neglected.

Table 7.17

Does the approach of judiciary is affirmative towards disabled

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	85	15	0
2.	Non-Disable	213	70	30	0



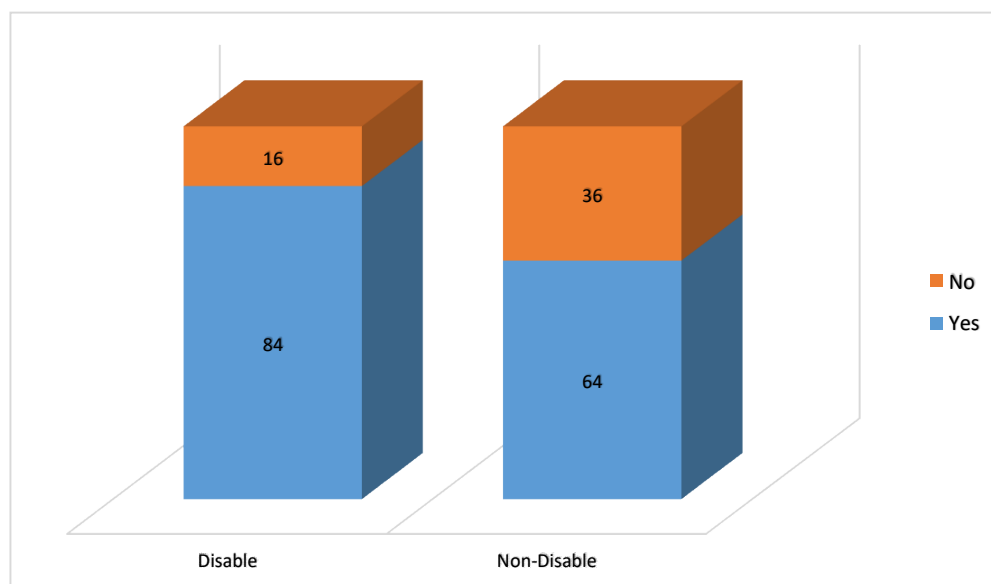
Analysis:

The above mentioned empirical data represents about affirmative approach of judiciary towards disabled. It is clear from the table that maximum number of respondents answered positively. That means majority of the respondents are having unanimous thinking that approach of judiciary is positive towards disabled. This is a matter of great appreciation. On the other hand, around twenty-two per cent respondents answered negatively. It indicates that some of the respondents are not agree with the fact that approach of judiciary is positive towards disabled. Their responses cannot negated. It seems that approach of judiciary is not fully positive. Judiciary is still guided by charity model.

Table 7.18

**Does the implementation of law related with protection and security of
disabled is week**

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	84	16	0
2.	Non-Disable	213	64	36	0



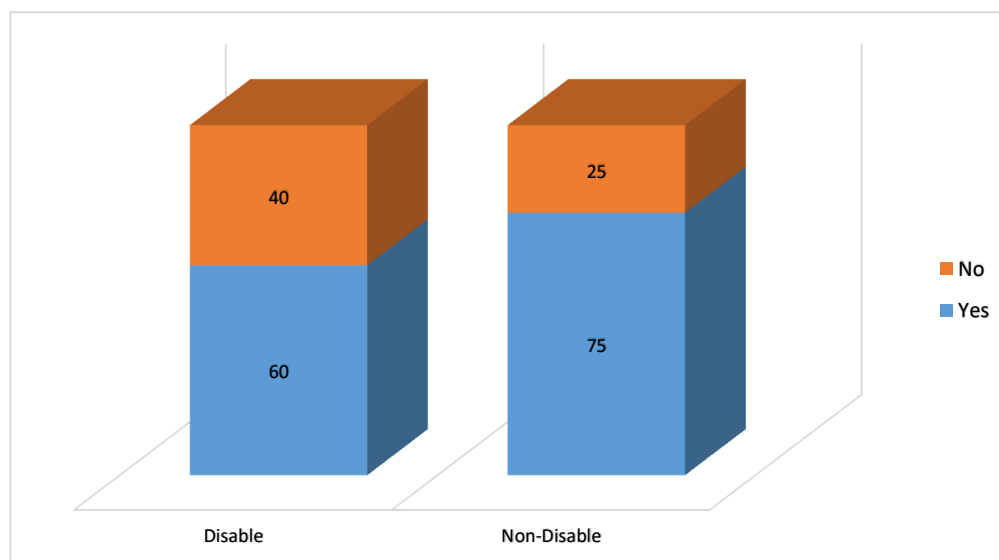
Analysis:

The above mentioned table represents about implementation of law for the protection and security of disabled. It is clear from the table that majority of the respondents answered "YES". It indicates that maximum number of respondents think that implementation of law for the protection and security of disabled is weak. It is a matter of serious concern. It proves that government has not given proper attention to this issue.

Table 7.19

Does the attitude of teachers towards disabled in university, is affirmative

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	60	40	0
2.	Non-Disable	213	75	25	0



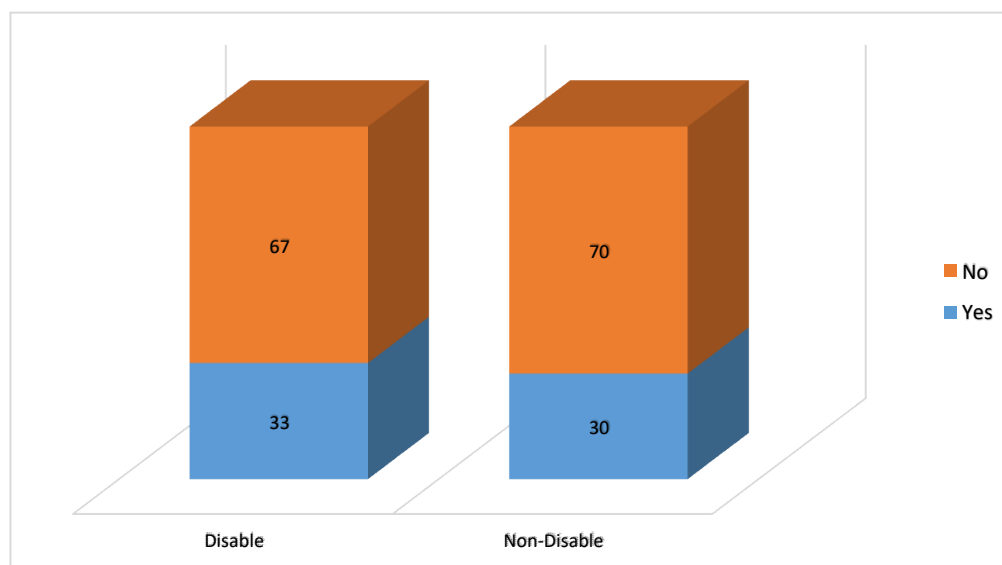
Analysis:

The above mentioned empirical data represents about attitude of teachers towards disabled in university. It is evident from the table that maximum number of the respondents answered positively. It means that majority of the respondents are having unanimous thinking that attitude of teachers towards disabled is positive. This is a matter of appreciation. But on the other hand, around thirty two per cent respondents answered negatively. This is a matter of serious concern. Their responses cannot be negated. They raised some questions regarding pattern of teaching and evaluation pattern.

Table 7.20

**Does the Central Government and States Governments are trying for the
security of disabled women**

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	33	67	0
2.	Non-Disable	213	30	70	0



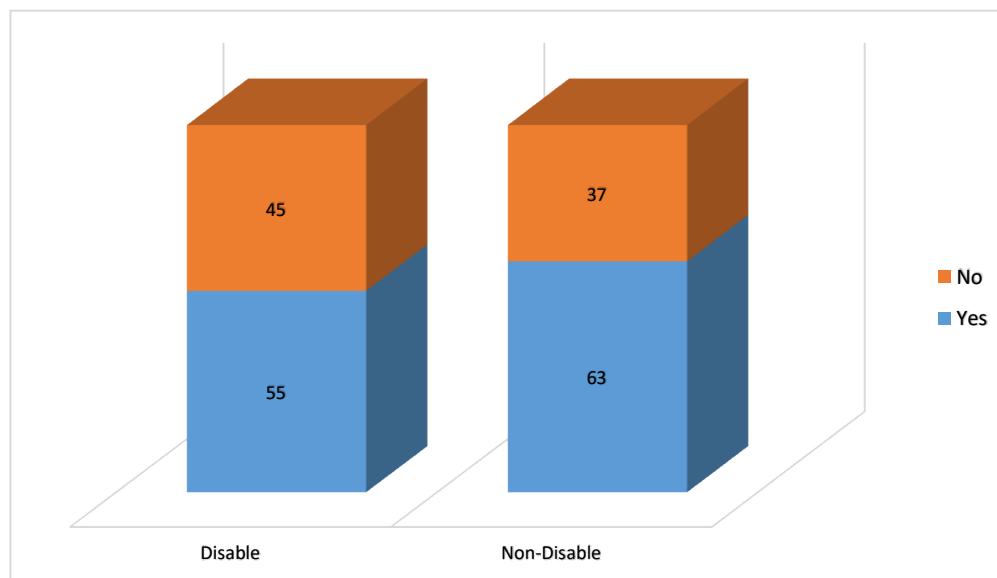
Analysis:

The above mentioned table represents about Central and State Governments attempt to provide security to disabled women. It is evident from the empirical data that majority of the respondents answered negatively. It indicates that majority of the respondents think that Central and State Government are not taking suitable measures to protect the disabled women. It is a matter of severe concern that majority of the respondents are not aware about government initiatives towards security of disabled women. The fact proves that discrimination is going on against disabled women. That means women with disabilities are regarded as secondary and useless. In this regard, the provision of the Act is sufficient. Section 4(1) and 4(2) relates to women with disabilities. This Section instructs the government to ensure that women with disabilities enjoy their life equally with others. But the result shows that provision of the Act is highly neglected.

Table 7.21

Does special provisions are there for disabled women and children

S. No.	Category	Total Sample	Responses (in %)		
			Yes	No	Others
1.	Disable	55	55	45	0
2.	Non-Disable	213	63	37	0



Analysis:

The above empirical data discuss about special provision for disabled women and children. It is clear from the table that majority of the respondents answered "YES". That means majority of the respondents are aware about special provision for disabled women and children. It is a matter of great pleasure that majority of the respondents are aware about special provision for disabled women and children. On the other hand, around thirty eight per cent respondents are not aware. This is a matter of serious concern. It indicates that large number of respondents need to sensitize. Their responses cannot be negated. In this context, the provision of the Act is sufficient. Section 4(1) and 4(2) deals with the special provision for disabled women and children. The result shows that provision of the Act is partially neglected.

Concluding Observation

The empirical study brings forth the plight of the disabled in higher education institution of U.P. As observed by the researcher, the condition of disabled students in higher education is not up to the mark. The study on position of disabled students in higher education has revealed various issues that need to be quickly sort out to change the space of higher education. The space of higher education is not open for disabled in fullest sense. They do have limited entry into the domain of universities across the country. The research shows that universities compelled majority of the disabled into limited and controlled spaces. This excludes the disabled from the university system. Beyond any doubt, it can be said that exclusion of the disabled is deep injustice. Further, majority of the respondents speaking of the non-accessible nature of public transport. That means, non-accessible public transport prepare the grounds of exclusion for disabled students. The students suffering from disabilities still fighting against discrimination in home. This is a heart-breaking situation for disabled that they are not even safe in home. Again, majority of the buildings or universities are non-disabled friendly. Buildings and hostels are completely non-accessible. In this empirical study, majority of the respondents are agree on the fact. In the backdrop of the above, it is unequivocally clear that buildings of the university is beyond the reach of the students suffering from disabilities. Although, instructions have been given to Government of India as well as State Governments regarding accessibility of buildings but the net result is not very satisfactory. Further, attempt has been made to highlight the problem relating to employment of disabled in private.

The doors of the private sector is totally closed for disabled. More than 10,000 companies are the members of Nasscom but less than 1 per cent companies are disabled friendly. In this context, the Rights of Persons with Disabilities Act, 2016 is not supportive. Because the Rights of Persons with Disabilities Act, 2016 only talks about incentives and not about punitive action against those who failed to deliver. Till now, the condition of disabled has not been changed. This is a matter of grave concern. Further, the present teaching method is not disabled friendly. There are several hurdles to evaluation and

assessment. Lack of books and journal in Braille Script, dependence on ill-qualified scribe especially in spelling and long dictation and inaccessible screen reader software, further, compounded the problem of disabled. One of the perennial problem of disabled is identification of posts and reservation of post in favour of disabled students. In this context, Section 33 states about identification of suitable posts for disabled and Section 34 deals with reservation in favour of disabled. Identification of posts reservation are the major stumbling blocks. Till now, the process of identification of posts is arbitrary. Because no guideline is available that's by why and large the identification of posts is delicate and difficult issue. There is no uniformity in the process of identification of posts.

Disability cells are special designed space that are meant to provide guidelines and support to students with disabilities in university campus. Higher Education for Persons with Special needs Programme introduced by University Grant Commission under the Ninth Five Year Plan instructed the Government to establish 'Disability Cell'. In this context, the result of this empirical study telling the same thing. Regarding establishment of Disability Cell, majority of the respondents answered negatively. That means establishment of 'Disability Cell' is not a reality but is a dream.

In context of disability, the approaches of Judiciary are positive. In several cases, judicial pronouncement sets out some landmarks norms. But the decision of Supreme Court in Satish Prabhakar Padhye vs Union of India and V. Surendra Mohan vs State of Tamil Nadu, are exceptions. In the case of Satish Prabhakar Padhye, Supreme Court failed to include private sector under the term 'establishment'. That means space of private sector has been totally blocked for disabled. In the case of acquirement of disability during the course of employment, private employer has no responsibility. In the case of V. Surendra Mohan vs Government of Tamil Nadu, Supreme Court delivered a judgment against the visually impaired students. In the eyes of Supreme Court, person having more than 55 per cent of disability is not suitable for the post of Judicial Magistrate.

Conclusion

The persons with disabilities are also human being entitled to our respect and concern. The effects of disability are felt directly in the medical and health dimension and then indirectly in the sphere of education, transport physical access and the built environment, social and welfare schemes, housing, health services, leisure activities, social interaction and above all in the field of employment. The disadvantage suffered by the person with disabilities are largely the product of prejudice, ignorance neglect and sheer thoughtlessness.

The persons with disability are most neglected not only in the society but also in the family. They are bound to suffer numerous problems. Although, various measures have been taken to integrate them with the mainstream of society, but the efforts are not satisfactory. The number of persons with disabilities is increasing due to different reasons and since the entire world is becoming more self-centered and fast, therefore their plight is deteriorating day by day. It is to be noted that development over the past decade in both developed and developing countries have been especially unfavorable from the perspective of persons with disabilities. As the U.N. Secretary General has previously observed: '... current economic and social deterioration, marked by low growth rate, high rate of unemployment, reduce public expenditure, current structural adjustment programmes and privatization, have negatively affected programmes and services for the benefit of disabled. It is the present negative trends, segregation and other reasons have contributed to high prevalence of disabilities.'¹

It is important to note that global disability rights movement seems to have affected India's response to various disability issues. In India disability is largely seen as a product of cultural impediments such as beliefs and stereotypes as well

¹Javier Perez de Cuellar, General Comment No.3(Fifth session, 1990), para,12

as structural impediments like poverty, lack of education, unemployment and lack of development. In this context, the disability rights movement marked the phase where the disabled has been figured not as recipient but as participant in the development process.

Accordingly, the Rights of Persons with Disabilities Act, 2016 was passed on 27th December, 2016 to give effect to the United Nations Convention on the Right of Persons with Disabilities. The new Act on disability include reasonable accommodation, Special Courts and social environment, which were missing in the PWD Act, 1995.

The emergence of disability rights movement in India changed the perception of Government of India as well as other stake holders towards disability issues. The aspirations and expectations of person with disabilities in India are changing. Side by side, the policies and practices of governments are changing. Disability is now changing from charity to human rights issue, but, that does not mean that everything is moving in right direction in context of the disability. United Nations Convention on the Rights of Persons with Disabilities was adopted in 2006. The Government of India rectify it in 2007. Accordingly, Government of India repealed PWD Act,1995 and introduced Rights of Persons with Disabilities Act,2016. But, Rights of Persons with Disabilities Act,2016 is not free from charity. Several provisions of the United Nation Convention on Disability are missing in the Act. From earlier time till now, persons with disabilities facing neglect isolation, and ignorance Still, the disabled are fighting for recognition and personhood. So, it is very urgent to sort out prejudice, discrimination, isolation and other social barriers.

The study has come out with the following important findings: -

The constitution of India does not mention disability as a ground of discrimination under Article 15(1) and 16(1).

Women constitute almost 50 percent of the population, but women and girl with disabilities remain invisible The situation of women with disabilities is poignant as they face triple burden of oppression due to their disabilities, gender

and economic status. The matter is unfortunate that after 71 years of independence and in Presence of Art 15(3), the condition of disabled women still unchanged.

The Act of 2016 includes mental illness as a ground of disability but mental retardation has been forgotten. Mental hospitals are more like prisons than hospital, where mentally ill persons are admitted more for punishment rather caring. That's why they are considered as non-persons, lacking recognition before law.

Art 11 of the act of 2016 directs to the Election commissioner to ensure the disabled friendly polling stations. But the reality is different. Till now, the maximum number of booths are non-disabled friendly. Instead of making all the booths as disabled friendly, Election Commission is now thinking for postal ballot for disabled. This shows that how much our Government is sensitive. So, this is nothing but mockery of the disabled's right.

Beyond any doubt, the Rights of Persons with Disabilities Act, 2016, has made a concrete effort to place positive obligations on the state to provide for access to education, employment, barrier-free environment, social security and health care for differently Abled persons. It is the duty of the Government to ensure that the persons with disabilities enjoy the right to equality and life with dignity, but study reveals that differently Able persons are not getting equal treatment and dignity has no means for them.

Section 35 of the Rights of persons with Disabilities Act, 2016, provides that the appropriate and the local authorities shall, within the limit of their economic capacity and development arrange incentives to employer in private sector to ensure that at least 50 percent of their workforce is composed of persons with benchmark disabilities. Undoubtedly, this is a good move of Government of India to promote private sector so that they could enroll maximum no of disabled. But in context of disability, the language of section 35 is vague. The word within the limit of their economic capacity and development is the backbone of contention. This would empower the government to escape from responsibility. If such language will persist how the disabled will be empowered. This is a big question mark?

The study of the Rehabilitation Council of India Act the Persons with Disabilities Act and the National Trust Act reveals a significant change in the disability policy of the country and the impact of disability movements on the attitude of the Government. Although, these acts are nice endeavors in direction of protecting the rights of 'Disabled', nevertheless, owing to their inherent defects and shortcomings they have proved unable to fulfil the purposes and objectives for which they have been enacted.

The Rehabilitation Council of India Act attempts to cover all levels of service providers in urban and rural areas across the length and breadth of the country which is not practicable, it tends to violate the rights of persons with disabilities by being in contravention with specific clauses of the Rights of Persons with Disabilities Act, 2016. Some of the basic problems with respect to RCI Act, 1992, are-

1. Arbitrariness in formulation and implementation of rehabilitation programmes for disabled.
2. Inclusion of the clause of disciplinary action against those who failed to comply with the dictates of the Act.
3. Inadequate definition of the term rehabilitation professional.

After the landmark Judgment of Supreme Court in Unni Krishnan vs State of Andhra Pradesh, Art 21-(A) was interested in the Constitution in 2002 and their after, Right to Children to free and compulsory Education Act, 2009 was passed to provide for free and compulsory education to all Children between the age of 6 to 14 years. The RTE Act, 2009, requires all schools including private un-aided schools to admit 25 percent of children belonging to weaker and disadvantaged groups. But unfortunately, disabled children are not included within the definition of children from a disadvantaged group. In this context, the principle of inclusive education looks futile and baseless.

The UN Convention on Disability brought a paradigm shift in attitude as well as state- centric model of treaty negotiations. The Convention recognizes the persons with disabilities as subjects having human rights and fundamental freedoms and not as objects needing mere medical aids and social protection. However, the UN Convention on disability offer no protection for the religious

freedom of persons with disabilities. The UNCRPD ignores the term 'rehabilitation. One of the major loopholes of the UN Convention on Disability is that it is silent on the right of children at risk of abortion because of disabilities. Further, it lacks enforcement mechanism.

The Supreme Court and High Courts delivered land mark judgments which mostly went in favour of the persons with disability. The Supreme Court and High Courts compelled the authorities to start the implementation of the provisions. In maximum cases the courts laid down guidelines with regard to the betterment in government sector but failed to include private sector in the list of establishment.

The workmen's compensation Act, 1923, provides compensation for workers without disabilities who acquire disability during the course of employment. The Act denies compensation to workers who are callous of safety rules at the workplace, or those who are irresponsible at work. However, the safety measures do not include the measures that meet the special needs of workers with disabilities. This provision is totally against the principle of Social Justice and Constitutional right to livelihood for persons with disabilities.

Article 326 of the Indian Constitution along with Section 16(1) (b) of the Representation of People's Act 1950 is derogatory and discriminatory in context of persons suffering from unsound mind. Because it disqualifies a person suffering from unsound mind from being registered in an electoral roll. It is against of justice, and equality to retain such vague and mischievous provisions. So, it can be said that Article 326 is totally against the principle laid down in United Nation Convention on the Rights of Persons with Disability. In the same line, Section 11 of the Contract Act debarred permanently disabled persons from making contract. On the other hand, the provisions laid down in United Nation Convention on the Rights of Persons with Disability Act,2006 are vague and full of ambiguity. Article 12 of the General Comment shows inconsistencies about legal capacity and safeguards. On the one hand, Article 12(2) states that persons with disabilities should be recognized with legal capacity on an equal basis with others, and if necessary, a support should be provided in exercising their legal capacity. The fact has been discussed under Article 12(3)). In addition, Article

12(4) discuss about the safeguards that prevent abuse in accordance with international human rights law. Article 12(4) also demands respect for the rights, will, and preferences of the person, but it does not include any reference to the prospect that a person could lack capacity, for instance, when the person is unconscious or suffering severe cognitive impairment.

The higher education in India cordoned off through a series of intersecting obstructions in infrastructure segregation within institutional spaces. These barriers in higher education causes higher proportion of drop-out among students with disabilities. Further, little awareness among faculty regarding disability and absence of enabling class environment are the root cause of drop-out. The teaching staffs are unaware of institutional mechanisms and also rigid in changing the course content of methods of evaluation and assessment. Evaluation and assessment shows complete lack of planning and cooperation to understand the needs of the students with disabilities with respect to re-arranging examinations and absence of modularization of assignments. Non-availability of study materials in Braille and absence of assistive technologies increases the problem of disabled. Empirical study reveals that physical and attitudinal barriers are major hurdles to participation in higher education. In most of the cases society is indifferent or hostile towards disabled. Disabled students are not aware about the establishment of Equal Opportunity Cells in the University. Disability Cell is specially crafted spaces to offer support to persons with disabilities on university campuses. But in terms of Equal Opportunity Cell or Disabled Cells, the responses are not encouraging.

Transportation is a major issue for students with disabilities. Public transport systems are non-accessible for disabled and maximum building of Universities are non-accessible for disabled. Further, persons with disabilities facing discriminatory attitude inside home. Although they are getting scholarships as well as other financial support from the government and non-government organization, but these helps are not enough for empowerment of disabled. Even the mandated 5 percent reservation in educational institutions are not followed. That's why the percentage of disabled in higher education is around 0.5 percent. The extremely low presence of teachers with disabilities in Universities,

compounds the problem of shrinking learning opportunities for all students with disabilities in higher education.

Suggestions

Higher education in India faces its biggest challenge from students with disabilities. A student with disability studying in mainstream education institution experiences several difficulties. Education is very important for every person irrespective of age, caste, race, economic status and disability. Students with disability are usually regarded by societies as disadvantaged groups. That is why they are missing right to access equitable and quality education. In developing countries, person with disabilities have experienced narrow chances to enjoy school and university environment due to lack of teaching and learning materials, infrastructure and transport. This is the reason why students with disability remains on the edge. These problems leading to large scale exclusion of the group from quality education. This is totally against the principle of inclusive education. Despite the laws that are in favour of persons with disabilities when it comes to implementation of the law, governments and stakeholder show negative attitudes and lack of determination.

Although instructions have been given under section 45 and 46 of the Persons with Disability Act, 2016 in context of the barriers free university \ college campus environment. The instruction clearly states that where building is of more than two story lifts are must. The paths must be straight and barrier-free. There is a provision of ramps and special fittings/ adjustable furniture to facilitate mobility and comfort. After passing of the Disabilities Act, 2016, further instruction has been given regarding accessibility for colleges, universities and other higher education institutions, including pedagogical measures such as reasonable accommodation, aids and appliances for lecture, teaching materials, laboratories, libraries, classrooms and hotels. Apart from the national protection mechanism dismal and pathetic condition of disabled in higher education gained global attention too. Salamanca Statement by the United Nation Educational, Scientific and Cultural Organization, followed by Education for All and the United Nations Convention on the Rights of Persons with Disabilities throws the light on higher education and accessibility. But what about the reality? Till now,

students with disabilities fighting for physical access, reasonable accommodation, attitudinal barriers, transportation facilities and lack of support services. Due to above mentioned reasons, the students with disabilities are not able to reach the higher level of education. Disabled gets 0.5 percent of seats in higher education. Thus, the issue of addressing the social construction of disability by way of removing or eliminating negative attitudes, social barriers, discrimination and isolation of disabled from mainstream social activities is very important. Since India signed the United Nations Convention on the Right of Persons with Disabilities on 1st day of October, 2007, accordingly Government of India passed the Rights of Persons With Disabilities Act, 2016. It is important to highlight some of the broader legislative and policy measure that need to be given priority. In this context, some broader and important suggestions that can conclusively drawn from the present study are as follows:

1. Lack of infrastructure in Universities

Maximum Universities of India are not disabled friendly. Students with disabilities encounters physical barriers, such as lack of ramps, elevator in multi-story's buildings, heavy doors, in accessible washrooms. It is submitted that government should take measures to make universities accessible for disabled. The right to barrier free access and environments in higher education has increasingly been recognized as indispensable to the full participation of students with disabilities. Due to lack of physical access and reasonable accommodation, enrollment of disabled students is low and rate of drop-out is high. In order to ensure equal educational opportunities for disabled without discrimination or exclusion, it is the duty of all stake holders such as government and educational institutions to alleviate these problems. The Rights of Persons with Disabilities Act, 2016, indicates that students with disabilities should have access to education at all levels. For this purpose the Act provides five percent seats and an upper age relaxation of five years for students with bench mark disabilities in higher education. The UGC had started the scheme of assistance to Universities in the country to pursue special education activities to empower disabled students.

It is important to note down 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 make the Universities disabled friendly.

2. Lack of Disabled Cells in Universities

The Rights of Persons with Disabilities Act, 2016, discuss about five percent reservation for persons with benchmark 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. University Grant Commission recommended for establishment of Enabling Units in Universities, which will provide necessary guidance and counseling to differently-abled persons. This scheme was recommended by University Grants Commission during IX (2002-2007) Plan. As per the recommendations, the Enabling Units will be coordinate by a faculty to be nominated by the head of the institution. The unit will have a budgetary provision of Rs. 50,000/- per year stationery, counseling sessions and garnishing awareness programmes, but the real picture is terrific. Till now very few universities have enabling units. Whereas SC/ST cells are running in almost every Universities successfully. Why Government and other Stakeholders are mute or silent on the Question of Enabling Unit. So, it is the duty of Governments and other Stakeholders to introduce Enabling Units in every universities and colleges. It is submitted that government should instruct all the universities and colleges to introduce Disabled Cell.

3. Negative attitudes and stereotypes

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. people with schizophrenia may experience negative

attitudes from others. Around 40 percent of the person with disabilities reported use of objectionable language, being laughed at or pushed by man and people educational places. Majority of the people lacking knowledge and sensitivity to disability issues. That means non-disabled student lacking sympathy, repulsion contempt and aggression towards disabled students. It shows that there is a remarkable gap between policy and practice. The Rights of Persons with Disabilities, 2016, is totally against of negative attitudes and stereotypes. Section 16 and 17 deals with it. In this context the provisions of the Act are crystal clear. But what about the reality? Students with disabilities are still fighting against negative attitudes and stereotype and the Government is standing like a mute spectator. It is submitted that government should frame stern law to stop negative attitudes and stereotypes against disabled.

4. Lack of prudent teaching methodology

Providing accommodation to the students suffering from disabilities has become central point for higher education. 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. So it can be said that in order to provide reasonable accommodation to the student suffering from disabilities, stress should be given on oral examination, discussion and dialogues.

5. Lack of Study Materials in Accessible Form

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 software, lack of technical

facilities to fill out forms, lack of standing rules for use of scribes during examination, incompetency of scribes especially spelling and long dictation. It is recommended that Government should take appropriate measures.

6. Lack of Sign Language Teacher

Education is regarded as special tools for empowerment of disabled students, and higher education is considered a key factor in providing economic and social benefit. The Rights of Persons with Disabilities Act, 2016, directs Central Government and other service providers to formulate rules for persons with disabilities laying down the standards of information and communications, including appropriate technologies and systems. But in reality, students suffering from hearing impairment is totally excluded from higher education. Because they are facing communication problem.

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 life. So, it can be said that lack of sign language teacher means discrimination against deaf students in higher education. It is submitted that government should appoint sufficient number Sign language teachers. This will solve the problem of students suffering from hearing impairment. It is submitted that Government should take suitable measures to appoint Sign Language teachers in Universities.

7. Condition of public transport in India

Access to transport is a major problem for disabled in higher education in India. Majority of means of transport which are going on in Indian Universities, are completely of limit or incredibly difficult. In this context, it can be said that how the disabled students move from one place to another or one department to another. Section 41 of the Rights of the Persons with Disabilities Act, 2016, instructs Government to take suitable measure to provide access to all modes of

transport that conform the design standards, including retrofitting old models of transport. But in reality, the net result is zero. Till now, students with disabilities are fighting to access to transport and the Government and other stakeholders are silent. This shows the callous approach of government and other implementing agency.

Transportation for people with disabilities is one of the major access issues. Without inexpensive, efficient, transportation, the disabled will remain excluded from mainstream. But after independent till the enactment of PWD Act, 1996 and Rights of Persons with Disabilities Act, 2016, little attention has been paid to public transport and roads. Now, the million-dollar Question is that how the roads and public transport system will improve. Till now, the roads are inaccessible for disabled. In absence of accessible transport, access to higher education is baseless. Accessible public transport means accessible buses, trains, engraved Zebra crossing, auditory traffic signals, curb cuts and slopes on pavements. In this context, the language of section 41 of the Rights of Persons with Disabilities Act, 2016, is crystal clear. Till now, the Maximum roads of India has not been fitted with Zebra-crossing, auditory traffic signals, curb cuts and slopes on pavements. Maximum buses and other means of transport are not accessible for disabled. Because buses are not fitted with ramps. In this context, it can be said that access aisles serve a critical purpose for the students with disabilities. The access aisles provide extra room so people can safely and comfortably exit or enter their vehicles. The access aisles provide space for students with disabilities to lower the ramps of van. This process empowers persons with disabilities to navigate with wheel chairs, scooters, walkers or cane. The eight-foot-wide aisle provides much space for a student who uses ramp or lift equipped vehicle.

Till now, 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. It is recommended that

government should take rational and judicious measures to make means of transport accessible for disabled.

8. Lack of Web Content Accessibility

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.

The National informatics centre (NTC) is responsible for implementing information and communication technology in the government. The National informatics centre introduced guidelines for Indian Government Websites. The institution recommended for 'universal accessibility' means making website accessible to disabled. It recommends for keyboard navigation.

But the result is just opposite. Still, students suffering from visually impairment and hearing impairment, are fighting for accessible web-content. It is submitted that government should take appropriate measure to convert web content into accessible format for disabled.

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