Chapter 7

Disabled People and Human Security in India: Including the Excluded

Do you know what people with disabilities want? Nothing special, nothing unusual. We want to be able to attend our neighbourhood school, to use the public library, to go to the movies, to get on to a bus, to visit friends and family across the country. We want to be able to get into our polling place to vote with everyone else on election-day. We want to be able to married. We want to be able to work. We want to be seen as real people, as part of society, not someone to be hidden away, or pitied, or given charity. We reject media portrayals that show us as evils, or pitiful, or super-cripples. We just want to seen as what we are – regular people.

—Adrienne Rubin Barhyd, Disability rights activist.

Some types of disabilities affect more than 500 million persons, i.e., 10 per cent of the world’s total population. In majority of countries, at least 1 out of 10 persons has physical, mental or sensory impairment, and at least 2.5 per cent of the entire population is adversely affected by the presence of disabilities. These figures demonstrate the enormity of the problem and in addition to its universal scope, highlight the well-known impact of this phenomenon on society as a whole. However, this quantification alone is not a sufficient basis for evaluating the actual gravity of the problem, since these persons frequently live in deplorable conditions owing to the presence of physical, social and cultural barriers which prevent their integration and full participation in the community as equal citizens and partners. As a result, millions of children and adults throughout the world are segregated and deprived of virtually all their rights, thereby forcing them to lead a wretched, marginal life. Disabled persons are perhaps the most excluded among the marginalised groups for whom human rights and securities are very crucial for their survival with dignity.
In this chapter, we propose to take up the issue of disability in India within the broad framework of human security. However, we must point out that the studies on disability in India, is relatively a recent phenomenon. “Those working in this area are acutely aware of the general apathy shown by Indian social scientists to the disability question and the paucity of academic literature in this regard” (Melhotra, 2005:528). However, owing to the proliferation of disability studies world over, and with disability rights movements and UN resolutions, gradual awareness building has begun?

Every one knows that the problem of disability is a serious one in India, but there is no precise and correct information about the exact number of disabled people in India. Because of constant pressure from the civil society and Disability Right Groups (DRG), the government of India has decided to accept people with disability as a separate category in the census enumeration. Accordingly, the Census of India 2001 for the first time recorded detailed information on disability in India. This has helped bridge the gap of information regarding the number of disabled people in India. On 9 August, 2004, the Census Commissioner for the first time revealed the census-based data on disability situation in India. Needless to say, disability can occur due to genetics, disease and malnutrition, ageing process, injury, accident and even socio-cultural

![Figure 7.1: Rural Urban Distribution of Disabled Population in India 2001](image)
stereotyping. The Indian Census 2001 included both physically as well as mentally disabled people. There were 21,906,769 disabled persons in India in January 2001 (Census of India, 2001). Disabled persons constitute 2.1 per cent of India’s billion plus population (Census of India, 2001). Though they appear to be only 2.13 per cent in terms of percentage of total population, when looked at it numerically this is an enormous number i.e., 21 million plus population in India suffer from some sort of disability. Out of the total disabled population, 16,388,382 belong to rural communities and the remaining 5,518,387 to urban areas (Census of India, 2001).

Visually impaired people alone account for 48.5 per cent, of the total disabled population. This is followed by physically disabled people, who make-up 27.9 per cent. Mentally challenged people account for 10.3 per cent, and people with speech and hearing disabilities account for the remaining 7.5 per cent and 5.8 per cent respectively (Census of India, 2001). The number of disabled people revealed in the 2001 Census is marginally higher than the National Sample Survey Organisation (NSSO) estimate of 18 million. The Registrar General and the Census Commissioner believes that census results are more precise as the NSSO

![Figure 7.2: Percentage-wise Distribution of Different Categories of Disabled Population in India 2001.](source: Census of India, 2004.)
figures are only a rough estimate (*The Telegraph*, 9 August, 2004). He also says India’s disability rate is 2.13 per cent lower than that of Pakistan’s 2.48 per cent. He also cautions that no one should blindly get into comparison as the definition of disability varies significantly from one country to another (*The Telegraph*, 9 August, 2004). Disability is not only a serious problem in India but is also an issue of utmost importance for the remaining countries of South Asia. Whatever way we look at the issue of disability in India, it is a very serious human problem. We would even venture to say that perhaps the number of disabled people in India is much larger than what the census has recorded. This is because many a situation, disability remains invisible and some of the disabled people too are reluctant to admit their disability. This is perhaps because existing culture, to a large extent, stigmatise disabled people, and consequently they encounter some form of exclusion and discrimination from the larger society. Hence, many disabled persons try to hide their disability as far as possible. This behaviour, perhaps can be safely assumed to be linked with one’s self-respect and quest for individual dignity.

It needs to be pointed out that persons with disabilities are usually more human than the rest of the people. The daily effort to overcome impediments, indignities and discriminatory treatments which they regularly experience usually provides them with special personality features, the most obvious and common of which are integrity, perseverance, and a deep spirit of understanding and patience. However, this last feature should not lead us to overlook the fact that as subjects of law they enjoy all the legal rights of human beings and hold specific rights in addition (Leandro, 1993:25).

7.1 NATURE AND ENORMITY OF THE PROBLEM

The Human Development Report 2000 of the United Nations Development Programme (UNDP) contains compendious data on all aspects of the human condition, with the exception of disability, on which it has remained conspicuously silent (UNDP, 2000).

According to conservative estimates, approximately 6 per cent of the Indian population is disabled. And if we go by estimates made by the United Nations and other experts, the figure could be in double digits. Australia officially estimates that some form of disability affects 18 per cent of its population. In United Kingdom, the disabled population is
estimated at 14.2 per cent whereas for the United States it is 9 per cent (Abidi, 2002). The numbers are higher for developed countries because their definition of disability is much broader than ours and would include even people with internal conditions where the disability of the person is not apparently visible. In Asia, statistics from the UN Manual for the Development of Statistical Information for Disability Programmes and Policies 1996 show that China has 5 per cent, Nepal has 5 per cent and Pakistan has 4.9 per cent disabled population. Disability affects a large number of people. If we convert the above percentage of disabled persons from percentage to actual number, it is going to be an enormous one.

The 1981 Census of India was the first twentieth century census to enumerate the number of disabled people. In it, however, they were classified very crudely as "totally blind", "totally dumb" and "totally crippled." Extreme criteria of impairments were used, for example, blindness required complete loss of sight in both eyes. As a result, only 1.1 million were identified as disabled. This obviously, was a gross underestimation. The National Sample Survey Organisation (NSSO) also surveyed "the disabled in 1981 and subdivided them into four classes: visually handicapped, loco-motor handicapped, speech handicapped and hearing handicapped." These were less restrictively defined than in the census, although only marginally so. The census took no account of the mentally handicapped and neither the census nor the NSSO includes those afflicted with leprosy. People suffering from leprosy too face discriminatory treatment from society, which is very similar to persons with disability. In this way, culture makes even lepers 'disabled'.

As regards age, it is estimated that 6 to 10 per cent of children in India are born disabled and, because of low life expectation, possibly a third of the total disabled population are children (ActionAid, 1991). In India as per NSSO survey on disability, there were nearly 16 millions persons with some physical disability in 1991 as against nearly 12 million persons in 1981. The Planning Commission puts the total number of disabled people in the country at 4.1 per cent. The Census 2001 has put the number of disabled people at nearly at 22 million. Obviously, this is a huge number. Undoubtedly, with the release of Census 2001 data very recently, it has become possible to have reasonably dependable data on the different aspects of disability in India, which we discussed earlier in this chapter.
The issue of disability is not as much about numbers as it is about the quality of life affecting the capability of an individual to function in a normal manner. This is particularly true for individuals with disabilities from birth or early childhood. In such cases, the access and means to acquire literacy, education and skills may be significantly reduced, thus affecting their capability to participate effectively and perhaps as productively as normal individuals. Not only does a disabled person require resources to overcome handicap(s), but he or she may also require additional resources to meet his or her specific needs of education, training and skill formation. The onset of disabilities with age, such as, the commonly seen visual, hearing and loco-motor disabilities have, in most cases a direct bearing on the economic well-being of the person through reduced work participation rates and a decline in productivity and efficiency of the affected persons. The problems of a disabled are compounded by many physical, social, cultural and attitudinal barriers that restrict their livelihood, opportunities and access to basic public services or social transfers. Disability severely affects and restricts basic human rights and security of disabled persons.

7.2 DISABILITY AND POVERTY: QUESTION OF PREVENTION

Disability and poverty are closely related. While disability causes poverty, in a country with mass poverty it is also possible that poverty causes disability (Rao, 1990: 147-59). The mechanisms are malnutrition, exposure to disabling diseases, inadequate access to preventive and curative health care and an enhanced risk of occupation-related accidents and environment-induced diseases among the poor. Disability increases poverty through lack of employment and limited access to means of living. Thus poverty, illness, disability and unemployment go round in a vicious circle, making people powerless, and depriving them of their dignity. The sight of a disabled beggar is the most direct and commonly understood link between poverty and disability for most of us in India. South Asia too is no exception.

It would be important to look into the problem of shelter of disabled people. The disabled children in urban India have no choice but to become street children. They are placed at the bottom of the hierarchy of disadvantaged and degraded urban street children. A large number of adults as well as child beggars whether in Dhaka or Delhi, Kolkata or Colombo, or in any other big cities or small towns in South Asia, are
may contain their own contradictions. Treatment and training may be viewed as defiance of Allah or as interference with a person's karma. In contrast alms-giving to beggars is seen a pious behaviour. Hindu religious organisations and temple trusts, many of them very wealthy indeed, do not think it part of their duties to help the handicap; rather they see the handicap to be suffering for misdeeds done in their previous life.

7.4 WOMEN AND DISABILITY

Disability has a strong gender dimension, which needs deeper understanding and analysis. Women of all ages, whether in urban or rural areas, suffer discrimination in health care, employment, education and basic human rights. If they are poor and disabled as well, the disadvantages are tripled. Gender bias has already imposed on them a subordinate status. And to top it all, their disability has further made them objects devoid of worth or feelings. There are about 20 million disabled women in India. Of them less than 200,000 (1 per cent) can avail health care and rehabilitation facilities. More than 98 per cent are illiterates (ActionAid, 2003:15). Women with disability are denied education and training skills by parents who try to keep disabled girls hidden and find them fit only for household chores, and by teachers who lack sensitivity and understanding, as well as by the community as a whole out of ignorance and prejudice.

Employment is a crucial factor by which a disabled woman can achieve economic independence. However, the general belief is that women with disabilities cannot work outside the home, or if they do, they are worthy of only the most rudimentary vocational training and craft skills. If employed, they get low pay, have poor working conditions, and a low status. In India, one rarely sees disabled women in high posts whether in the government or the private sector.

Women with disability feel uncomfortable and unsafe in travelling by public transport. Most buildings are constructed with no thought of accessibility to the disabled. Physical facilities like ramps, special toilets, and special arrangements in public transport and private vehicles are also not available, making mobility difficult, painful and degrading. This prevents them from becoming independent and taking control of their lives. In Indian cities, when we speak of physical impediments in the outside world, we are talking about things like
composed of disabled people. This reflects the degrading aspect of disability, insensitiveness of the state and society. Unfortunately, census data remain silent on this crucial aspect of disability-related demography. If we include the information on shelter vis-à-vis the disabled people in the census data, it would go a long way in understanding the fundamental issues of disability in India and elsewhere in the world.

According to the World Health Organisation (WHO), about 50 per cent of the disability case is preventable and directly linked with the consequences poverty. It is estimated that only 2 per cent of people with disabilities in developing countries have access to rehabilitation and appropriate basic services. Poor nutrition, limited access to vaccination programme and health, maternity care, poor hygiene, bad sanitation, inadequate information about causes of impairment and natural disasters are some of the causes of disabilities in rural India. Most are easily preventable with proper care (NSSO, 2004). Only in recent times has the Government of India taken up a programme aimed at full eradication of polio in India. India should have taken up this kind of massive national programme much earlier to reduce the number of polio victims. But it is better to be late than never. Therefore, if this programme is carried forward to its logical end, it is bound to have a positive effect in reducing the number of persons with physical disability in India.

7.3 CULTURAL VALUES AND THEIR SOCIAL AND PSYCHOLOGICAL IMPLICATIONS

While low-esteem and conventions of passivity on the part of disabled individuals may hamper their social participation and reinforce their isolation, the social attitudes of the non-disabled are also known to affect the social integration of disabled people. “The more severe and visible the deformity is, the greater is the fear of contagion; hence the attitudes of aversion and segregation towards the crippled” (Desai, 1990:19). Ignorance of needs and capacities may hinder social relationship. Disabled people may be feared as evil, as cursed, spiritually afflicted. They may be segregated as contagious, particularly those afflicted with leprosy (Colridg, 1993:71). Additionally, or alternatively they are overprotected.

Attitudes reinforced by religious institutions may militate against rehabilitation or integration, although the great religious traditions
crowded streets, overflowing buses, hostile bus conductors, unwilling auto-rickshaw drivers, bumpy roads, the jeering public, and an occasional concerned citizen who says in a sympathetic tone, “Why do you need to travel like this? Better stay at home” (Hema, 1996).

Disabled women are less likely to marry or be given in marriage than disabled men. Disability raises questions of their capability to run the home and do household chores. Women with disabilities have no opportunities to share knowledge about sex and sexuality, mostly because they are not seen as marriageable. This is a denial of their rights. Most people believe that disabled women are not capable of meaningful sexual relationship with male; they are treated as asexual beings. They are not expected to express their love and emotions. If married to non-disabled persons, they are never considered equal partners, but are seen and treated as a financial burden and people who are sexually inadequate. Sometimes disabled daughters are married off to old men in poor health, or to man already married. They have no role in the control of their bodies and there have been several instances of forcible sterilisations or abortions of disabled women. Young women are forced to undergo sterilisations.

Disabled women experience high level of abuse, as they are often in situations of economic and social dependence. Whether they live in institutions, with relatives or with families, they are powerless, anonymous and isolated, making them highly vulnerable to abuse and violence. The common forms of abuse of women with disability can include criminal acts such as assault and sexual assault or negligence (not washing, feeding or toileting an individual); verbal taunting, degrading and humiliating behaviour, rough handling or isolation through silence. Abuse can take place once or as an on-going affair. Many offenders are sure they will never be punished. Take note of two recent incidents in South Delhi: in one incident a visually disabled woman was raped by a bus conductor, and in the other, a speech and hearing impaired minor was sexually abused by a young boy. Both incidents occurred in the same area and within a span of two weeks and are pointers to the vulnerability of women with disabilities.

Very recently, the findings of an Oxfam India-sponsored survey conducted by a Bhubaneswar based NGO Swabhiman on the disabled women in Orissa, was published (Mohanty, 2005). The findings are, of course, very distressing and disturbing. We must point out that Orissa has the third largest concentration of disabled people among Indian
states in terms of percentage. It has been estimated that the state of Orissa alone has some 40 lakhs disabled population out of whom 50 per cent are women. The survey team found that—

Trupti (name changed), a wheelchair-bound girl had not been taking dinner for the last eight years, Trupti's both legs are affected by polio. When she was approached by the survey team, she revealed that she did not feel hungry during the night. But after a few probing queries she disclosed that she was in the habit of going to toilet after dinner, which was an irritation for her parents. So the parents decided on a simple solution to the problem—to stop giving her food at night (Mohanty, 2005, emphasis added).

The Orissa study surveyed 12 out of 30 districts of the state. The findings released in February 2005 show that 67 per cent of those with orthopaedic, visual and hearing impairment were beaten for no apparent reason. In case of the mentally challenged, the figure was higher. Of the 729 women interviewed during the survey, 595 of whom had physical disability and 134 with mental disability in the age group of 18 to 40, almost half said that they had been slapped, hit, kicked or beaten by their husbands at some point of time. Parents, husbands, and close family members were the most common perpetrators of emotional or physical abuse for both groups (Mohanty, 2005).

The same study further revealed that more than 12 per cent of the physically challenged women had been raped and 15 per cent molested while the count is 25 per cent and 19 per cent respectively for mentally challenged women. Horrifyingly, the abusers were often family members or people whom the girl trusted (Mohanty 2005, emphasis added).

These are just a few snapshots from a study of 12 districts of Orissa. One can well imagine the enormity of the problem in the rest of the states and the country. It seems that disabled women suffer much more than disabled men. Physical and emotional violence and abuse in the case of disabled people, and their resultant fear, has an undeniably strong gender bias.

7.5 EXCLUSIVE DEMOCRACY AND DISENFRANCHISEMENT OF DISABLED CITIZENS

Frequently hidden behind the walls of home and institutions, in every village and town across the length and breath of the country, are unsuspected large number of disabled people. As they struggle to realise their dreams of a fulfilled, dignified, secured and useful life, and to enjoy equal citizenship rights, they very often become victims of
extreme social prejudice and ostracism. For the disabled people some kind of apartheid continues to exist in India. India being the largest democratic country in the world, the state should have taken an all-inclusive policy to ensure the participation of all the citizens including disabled people in the democratic process. Rather in terms of participation in the democratic processes, disabled people are the most excluded and marginalised group. This ‘democratic exclusion’ is basically coercive in nature wherein disabled people have no control of their own.

Many of the existing obstacles and limitations occur in areas of fundamental importance to the disabled people’s situations as citizens. If a person in a wheel chair wants to attend a public meeting, be it social, cultural or political, and if s/he cannot get into the meeting room because the buildings are not accessible, her rights as a citizen is violated. A blind person interested in a public debate who has no access to the daily paper in which the discussion takes place is in a similar situation. When a person is excluded from employment because of the fact that s/he is disabled, s/he is discriminated against as a human being. If a general education system has been developed in a developing country and disabled children are excluded, their rights are being violated regularly (Leandro, 1993:25).

David Werner, himself a disabled person, in his seminal work Disabled Village Children, objects to the tendency to treat disabled persons ‘as objects to be worked upon, to be “normalised” or made as normal as possible’ (Werner, 1994, Voluntary Health Association of India). Instead, he sees that struggle for a better life for the disabled as part of a, “larger effort to create a world where more value is placed on being human than on being normal—a world where war and poverty and despair no longer disable the children of today, who are leaders of tomorrow” (Werner, 1994).

People with disabilities are full individual human beings with independent personalities, dreams, aspirations, interests, skills and potential—just like anyone else. They have the right, as well as the potential to lead fulfilled, productive and happy lives with dignity and relative self-reliance, as much as anyone else. The reasons why they very often are denied this potential of achieving a full life of dignity is not related so much to the limitations of their disabilities, as to the way society views and treats the disabled. We tend to look only at the inabilities of the disabled, but not their abilities. We see only what they
cannot do, not what they can do, and even more importantly, what they might be able to do. Even worse is that we tend to respond to disabled women and men, boys and girls, with ignorance, prejudice, revulsion and rejection, consciously or tacitly placing insurmountable economic, social, architectural, educational, legal, transport, cultural, health and other barriers. These prevent them from achieving a fulfilled life. Most disabled people, therefore, experience humiliation, segregation and indignity in many ways throughout their lives. Moreover, in the case of disabled persons, who also belong to traditionally socially discriminated categories such as women, backward castes, tribal and minorities, social ostracism is likely to be enhanced further.

Traditionally, the most positive response that society has been able to muster towards disabled has been pity, reducing them to passive objects of our charity. Interventions based on a philosophy of charity, however well-meaning, not only rob the disabled of their dignity, self-esteem and self-confidence, but perpetuate their dependence and obstruct the possibilities of their achieving a life of dignity and relative self-reliance. It also reinforces further prejudice in society about disability and the disabled. On the social welfare agenda of India, poverty, castes and gender-based disabled people are at the bottom. This low priority can be explained by the political weakness of disabled people due to high perceived economic costs and low-perceived political benefits for the political class in India.

The disabled population is a widely scattered group belonging to different socio-economic strata. Nearly 80 per cent of them are in rural areas and belong to the economically and socially disadvantaged strata. As such they do not constitute a viable and strong political constituency.

Secondly, due to lack of access to information, transport, mobility and communication barriers and societal apathy, they are excluded from the political process of voting and decision-making. The hostile nature of electioneering and polling booths prevents them from exercising their most basic political right to vote with dignity and secrecy. In a sense, they are disenfranchised by the political system which is supposed to be the largest democracy in the world. For disabled people, elections, instead of becoming an all-inclusive process, excludes them. A wheel-chair user and disability rights activist, Javed Abidi, has this to say about his experience: “I went to the polling station to exercise my right to vote as a responsible citizen but it was
inaccessible due to wooden barricades. I could not reach the station and had to come back without casting my vote. Nobody wants to go through the humiliation and indignity of being picked up by four simply to cast vote” (*The Times of India*, 4 December, 2003). Another visually disabled voter, Om Prakash, had to take the help of election staff. He is still not sure if they had put the stamp where he had wanted them to do. The ballot papers are not in Braille nor are the EVMs accessible to the blind.

India's estimated 40 million disabled voters have been unable to vote properly for years together; many of them have been unable to exercise their fundamental rights to vote in the elections as they cannot access the polling booths, or in case of the blind, even read the instructions. “Although technology has ensured the move from ballot papers to electronic voting machines, no one has thought of incorporating instructions in Braille, in the new machines.... Things are worse for the physically—challenged who cannot access polling booths as stairs and security measures like barricades impede wheelchair-users” (NDTV, 2004).

The process of globalisation that had accelerated in the early 1990s has had both a negative as well as a positive impact on the condition of the disabled. The process of globalisation has brought the wave of “rights” discourse into the disability movement. Voices have started to be echoed, though not very loudly, to bring disability into the development agenda and to view disability as a human rights issue rather than a charity or welfare issue. With the recognition of disability as a human right issue and the realisation of the magnitude of the problem of exclusion and marginalisation of the millions of disabled people all over the world, and more so in developing countries, attempts are now made in the field of international law, both at the UN level and at regional levels, to mainstream disability rights into human rights discourse. Declarations, Standard Rules, Recommendations and Resolutions were made by bodies like the UN, the ILO, the UN High Commission on Human Rights, the World Bank, etc, with the intention to include disability perspective in their agendas. Various NGOs have also begun to share their experiences and expertise with their counterparts in other countries. This has led to the emergence and strengthening of national advocacy groups in India and has resulted in the demand for legislations to protect and promote the rights of the disabled. As a result, a couple of laws are not being implemented in true spirit,
thereby, defeating the purpose of these laws. There are also glaring weaknesses in some of these laws.

On the other hand, retreating, and shrinking of the state from its welfare responsibility due to the process of globalisation has resulted in further marginalisation of the disabled. In the field of education and employment, the disabled have received some sort of services and support only from the public sector in the form of reservations, concessions, age relaxations, and other mechanisms. The process of privatisation has reduced the scope of protection afforded by the state to the disabled in these two fields in particular and other areas in general. This is resulting in threat of loss of jobs by persons with disabilities because of the privatisation of public sector, and retrenchment in the government sector through voluntary retirement schemes, special voluntary schemes, declaration of staff as surplus, and in the worst scenario, of closure of PSUs (public sector units) (Rungta, 2002:144).

7.6 STATE POLICY

The idea to have a formulated disability policy is a recent notion. A historical approach is useful to understand current conditions. By the 1860s the colonial government endorsed asylums and 'sheltered homes' for 'destitute, beggars, and the handicapped'. The freedom struggle and parallel movements for social reform led to conditions conducive to the multiplication of private (charitable) institutions, which the post-independence state either took over or registered.

During the first three Five-Year Plans (1955-69), the sole support of the disabled comprised grants in aid to NGOs and the establishment of national training institutes. Later plans showed how support for the disabled declined in real terms as social development priorities, programmes and projects emerged. Under the Eighth Plans, prevention was stressed and the full panoply of anti-poverty claimed as relevant to disabled people. National preventive programmes and district vocational rehabilitation centres have been planned and instituted. The current official objectives of the Ministry of Social Justice and Empowerment, responsible for disabled people, are the following (a) prevention, (b) training, (c) and development of service (ActionAid, 1990).

International institutions have long played a (limited) role in domestic policy formation. As early as 1925, the International Labour Organisation (ILO) expressed concern over the vocational needs of
disabled people and officially recommended in 1925 that employers and
workers maximise the opportunities for disabled people to secure,
perform and retain suitable employment.

The international years of child (1979) and the Disabled Person
(1981) helped bring publicity to the plight of disabled persons,
expanding awareness of disability as a widespread social problem,
largely preventable or remediable, and stressing that attitudinal barriers
were among the most disabling factors. But they did little to improve
public policy. In terms of the agenda of social policy, disabled people are
lower than scheduled castes and tribes, lower than widows and more
likely to be socially ‘included’, discursively at the least, if they are also
in one of these other welfare categories.

The Indian Constitution offers no comprehensive or specific
In India, disabled people have been given concessions in two sector of
the economy: education and employment. The legal justification for
such reservation is beyond controversy. However, there is direct
provision in the constitution conferring a legal entitlement to such
reservation on disabled people. Disabled people’s rights were instead
protected by a class of administrative procedure called the Office
Memorandum, which virtually has no significance in law.

The constitutional entitlement of disabled people has to be derived
indirectly from other legal labels which may be applied to such citizens:
for example, Article 15(3) enables the State to make special provision
for women, and children; Article 16(4) allows the State to make
provisions for the reservation of appointment or posts in favour of any
backward class of citizens which in the opinions of the State is not
adequately represented in the service of the state. But the condition of
disability cuts across gender, age, class and caste, and there is no
specific provision requiring the State to provide for disabled people.

Another possible constitutional buttress for the practice of
employment reservation for disabled people appears to be the ‘equality
clause’ under Article 14. This Article ensures equal opportunity for all
persons before the law and equal protection of the laws. It is quite
obvious that ‘equal opportunity’ and ‘equal protection’ can only be
between those who are equally situated. It is equally obvious that
treating an unequal as equal will result in injustice. So, though there is
no specific provision in the constitution, reservation is legally justified
on the ground that they are not equal with non-disabled people.
Article 41 is the only clause to mention disabled people explicitly: "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 disabled and in other cases of undeserved want." But it appears under Article 37, Part IV of the Indian Constitution, which concerns 'Directive Principle of State Policy.' Unlike fundamental rights, these directive principles are not directly enforceable through the courts even though they are 'fundamental in the governance of the country'. Nevertheless, it shall be the duty of the state to apply these principles in making laws.

The development of procedures to reserve employment for disabled people has been slow and piecemeal, lagging far behind the scheduled castes and tribes. From 1957-65 a 'sympathetic attitude' to disabled people was encouraged by a government order. Employment concession was introduced in 1965, reservation in the lower levels of central government service and on public sector enterprise from 1977-78, and discretionary 'preference' in upper levels in 1986. Promotion between the lowest two groups in government service had to wait until 1989 (Ram and Harris-White, 1995).

**Token Welfare**

The needs of the disabled are compartmentalised under the Ministry of Social Justice and Empowerment. Resources have always been meagre. In 1988-89, for instance, the Government of India’s Ministry of Welfare allocated a sum of Rs. 96 millions for disability-related programmes. The sum was less than the budget for a medium-sized municipality. It was even less than the short-term cooperative credit for a small district. It was also less than what neighbouring Sri Lanka spends on disability in the population. In 1990s, however, resources began to be expanded.

Access to Central Government services has also been extremely limited. As of January 1989, the National Institute of Mental Health funded 450 institutions providing services to 18,000 mentally retarded people out of the estimated maximum of four million eligible, with 30,000 mentally disabled children (under one per cent of 'eligible') catered for in some way in this system. In total 0.6 per cent of disabled children, less than three per cent of the total of physically disabled and one per cent of the total of mentally disabled are estimated to have
access to rehabilitation services of the state or of voluntary agencies (ActionAid, 1991; Coleridge, 1993:22, 47). While it may be counter-argued that people with disabilities use ‘ordinary’ state services, the NSSO reported that over half the disabled people they identified had never seen a qualified physician for any purpose.

Formal sector reservation is not guaranteed by the Indian constitution but one per cent of C and D category public sector employment (clerk, assistant, orderly and peon) is allowed to be blind, deaf and locomotor disabled people. In the public sector there are 22 special employment exchanges. They are urban in location. The only evidence to hand about their impact is extremely outdated. According to a report of the Ministry of Labour, at the end of 1983, of the 151,400 physically handicapped using these special employment exchanges, 6,400 had been placed. This amounts to only 4.2 per cent and is insignificant in relation to the total disabled population of the country as a whole. No evaluation of the system of reservations for disabled people has been found. It is said that reservation are not monitored, that quotas are not filled and that there is no congruence between resources and the population eligible for them.

It is plain that while the central and provincial governments have an agenda for disabled people, it is not a coherent one. Meanwhile, the legal frame of obligation is not of a binding kind and the institutional means whereby needs can be effectively translated into practical claims are severely under-developed. The resources devoted to alleviating disabilities, to which a tiny fraction of those needing support actually gain access, are on a trend of decline in real terms. The State also fails to regulate both the private sector and NGOs with any consistency. For the mass of disabled people, the state in effect does not exist.

7.7 LEGAL PROVISIONS FOR THE WELFARE OF THE DISABLED IN INDIA

Till recently, the Indian Lunacy Act, 1912, governed the fate of the mentally handicapped with disastrous outcomes. Fortunately, wisdom prevailed, and the Act was scrapped. The Mental Health Act of 1987 deals only with the mentally ill, leaving the mentally retarded in a legal limbo, causing problems in caring for persons with mental retardation.

In the 1990s, an era of social sector spending under the condition of structural adjustment, the government of India nevertheless passed
three Acts relevant to disabled people. In 1992 through the Rehabilitation Council of India (RCI) Act, the government of India established the RCI to usher in a degree of quality control in the work of rehabilitation volunteers and professionals. This means that only those rehabilitation professionals who possess degrees from universities and institutions recognised by the council would be entitled to registration with the council. Yet, it has been extensively criticised, first for requirement for all volunteers to be registered, which, it is said, stifles local initiatives while not providing for the screening out of charlatans. Second, the RCI is criticised for being dominated by medical practitioners and hence not embodying a holistic or social approach to disability.

Then in 1995, the Government of India passed the Persons with Disabilities Act (Equal opportunities, Protection of Rights and Full Participation) whose objectives are obvious from its title. This Act is a combination of rights-based legislation and an enabling legislation. The Act was passed by Parliament on December 12, 1995 and notified on February 7, 1996. The Act elaborates the responsibility of the central and state governments, local bodies to provide services, facilities, and equal opportunities to people with disabilities for participation as equal citizens of the country. The Act lists the rights and facilities which are enforceable and are entitled to disabled persons. The Act provides for both preventive and promotional aspect of rehabilitation. The disabilities covered in the Act are: blindness, low vision, leprosy cured, hearing impairment, loco-motor disability, mental retardation, and mental illness.

The Act provides for a Central Coordination Committee and Executive Committee at the centre and a state Coordination and Executive Committee at the state level mainly to develop a National Policy to monitor and evaluate the impact of the policies and programmes for disabled to ensure a barrier-free environment, etc. Clause 25 of Chapter IV deals with 'preventions and early detection of disabilities. Chapter V covers the entire gamut of promotion of education of the disabled wherein the state shall provide not less than 3 per cent reservation in all educational institutions, transport facilities, remove architectural barriers, impart vocational training, grant scholarship etc.

Chapter VI provides for not less than 3 per cent reservation of identified posts in public employment. Government are mandated to frame schemes to give incentives to employers in public and private
sectors to ensure that at least 5 per cent of their work force is composed of persons with disabilities.

Chapter XII of the Act provides for a Chief Commissioner for persons with disabilities at the national level and a State Commissioner in each state and union territory. The commissioner will have the powers of a court of law under the Code of Civil Procedure, 1908 for summoning and enforcing attendance of witness, receiving evidence of affidavits, etc. They shall take up any complaint or *suo moto* cognisance regarding deprivation of rights of persons with disabilities and non-implementation of laws, rules, orders, and instructions issued by government and local bodies.

The Act also has specific provisions for affirmative action, non-discrimination, research and development and social security. Since the Disability Act, 1995 did not cover a distinct group of disabled population; the government of India passed the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act in 1999 to enable them to live as independently and as fully as possible within the community to which they belong.

The Persons with Disability Act, 1995 (henceforth referred to as PWD Act) is riddled with discretionary powers. It is criticised as tokenistic and the bureaucratic structure of boards and committees is found in practice to put 'much social distance between officials bureaucracy and the disabled person' (Susan and White, 2002).

Another important and vital area of this law where it is not only weak but also does not have any proper provision is the enforcement of the provisions of the Act. There is no disincentive for those who violate the provision of the Act or who do not discharge their duty that has been cast on them under the provisions of the Act. This Act guarantees various rights in different spheres of life to enable the disabled to enjoy equal citizenship but does not provide for any effective mechanism to enforce those rights. The fact that an amendment committee was constituted by the government merely after three years of its enactment was itself evident of the point that it was weak on many counts and needed strengthening to meet the bare minimum needs of the disabled.

The rights of the disabled Indians are not effectively guaranteed in law. Rights without obligation to provide have been concluded to be empty. The social value of the national and international law concerning the disabled people is largely symbolic.
7.8 ROLE OF CIVIL SOCIETY GROUPS

There are around 4,000 NGOs working for the welfare of disabled people, but most of them are into service delivery sector. Many more work for the welfare of a particular form of disability. But there has been very little sharing of information or experiences among the NGOs. However, the NGO sector too has gradually become sensitive to the need of the disabled. And they, too, are slowly embarking into sensitising the people about the disability issue and campaigning for the inclusion of disabled people in the larger society.

Disability Rights Groups (DRG)

In April 1994, a few like-minded people from the disability sector came together and formed the DRG. It was DRG’s intense lobbying that led to the enactment of the PWD Act in a single day by both houses of the parliament. It was a landmark in the disability movement in India. It was for the first time that integration, equality and rights with regards to disability were emphasised upon. However, a greater challenge was to ensure that the law got effectively implemented. The first step for that to happen was to ensure that the Disability Chief Commission was appointed and the Central Coordination Committee and the Central Executive Committee were constituted. These three simple tasks took the Government of India almost about three years! The two committees were constituted in 1996-97 but appointment of the Chief Commissioner could take place only on 1st September 1998.

The State seems to be in no hurry to implement the pious objective of this progressive legislation. In 1997, the Convener of DRG, himself a wheel-chair user, filed a PIL in the Supreme Court of India. It was this PIL that compelled the various departments of the Government of India and that of the States to begin to work for the implementation of the PWD Act, though at a snail’s pace. This PIL has its cascading effect in the sense that it was followed by other PILs and a large number of writ petitions by persons with disabilities to get the provisions of the Act implemented so as to avail the rights bestowed upon them by this Act.

In the same year, the National Centre for Promotions of Employment for Disabled People (NCPEDP) organised the National Advocacy Workshop on Speedy and Effective Implementation of the Disability Act. A positive development in India around this period is the
emergence of several advocacy and self-help groups in different parts of
country. A definitive indicator of the impending change is that these
groups are led by disabled people themselves. A two day ‘National
Disability Convention’ was organised by NCPEDP on 2nd and 3rd
December 1998 in New Delhi to mark the World Disability Day. For the
first time one massive cross disability gathering was organised at the
national level.

To spread the disability movement further, NCPEDP collaborated
with disability organisations and advocacy groups in a national
disability campaign. Subsequently, partners were identified in all the
25 States and 7 Union territories in India, thus creating a National
Disability Network in 1999. The NCPEDP has also organised a number
of regional workshops on Disability and Law to sensitisce and empower
lawyers, rights activists, disabled people, judges and government
functionaries over the last five years. DRG could also succeed in forcing
the Government to include disability in the Census, 2001, after a
prolonged and protected movement.

The DRG has put forth 12 demands before the Government in the
year 2002. Intense lobbying and protests were held. The demands
ranged from raising the limits of the income tax exemption for disabled
people, announcing the incentive scheme for private sector to promote
employment opportunities for disabled, standardisation of sign
language, revising the so-called ‘revised job list’, constituting a National
Disability Commission, passing the amendment to the PWD Act, shifting
‘special education’ from the Ministry of Social Justice and Empowerment to
the Ministry of HRD, and passing an ordinance to ensure barrier-free
design and access features for disabled people in all future constructions.

The other areas of invention by the DRG are lobbying with major
political parties for the inclusion of disability issues in their party
manifestoes. Towards this end, a National Political Convention of Persons
with Disabilities was held in Delhi in March 2004 just before the
General Elections 2004. To make disability a political issue, the Convener
of DRG has also contested the Lok Sabha elections from New Delhi
constituency. Another landmark victory for the disability sector was in
the matter of making polling stations barrier free. Repeated requests,
dharnas (squatting as a form of protest) and indefinite fast could not
move the Election Commission of India to make efforts to enable the
millions of disabled voters to exercise their basic political right as a
dutiful citizen. It was a last minute memorandum submitted to the Chief Justice of India, which was converted into a PIL that worked. The Supreme Court directed the Election Commission of India to make all arrangements to make the process of voting disabled friendly. This was indeed a great victory for the DRG.

Today a good number of organisations and individuals are taking the legal route to get the provisions of the PWD Act implemented in order to enjoy full and equal citizenship rights. Slowly, governments are making some efforts to come to terms with the provisions of the Act. However, a lot needs to be done at the central, state and local levels.

Since the last two years, the National Human Rights Commission (NHRC) has also begun to address disability issues as a priority area. The NHRC, in collaboration with the Canadian Human Rights Commission, is organising a "Training of Trainers' Project" to train law faculty and disability activists in the field of disability human rights. Assuring the commitment of the NHRC towards the protection and promotion of the rights of the disabled people, the Chairperson, Justice A.S. Anand declared that the Commission was fully aware of the situation in which disabled people live. He emphasised the need to integrate disability dimension in all basic structures that are fundamental to the organisation of every society.

7.9 CONCLUSION
The provisions of the Indian Constitution envisage a positive role for the state towards its vulnerable citizens. Unfortunately, despite the constitutional mandate and legal obligations, most state governments neither introduced State Policy on disability nor chalked out a programme for the earnest enforcement of recently enacted laws. Though some schemes have been introduced to provide scholarships, pensions, assistive devices, etc., their impact has been largely insignificant due to inadequacies in the implementation of schemes.

Indian democracy has to strive hard to become more inclusive. India must enhance further the participation of all citizens in the democratic processes so as to ensure the representation of all sections of the society, including all marginalised groups. It has to rise above vote-based allocation of resources. Being the most marginalised and politically powerless group of people, disabled persons need to be made the subjects of action and not objects of action. Disability has to be brought into the development agenda of all political parties. The
biggest mistake that Indian policy makers have made is to look at
disability as a welfare issue whereas it is and it should rightly be a
development issue and an economic issue. A nation cannot afford to
have 6% of its population live on charity. Mere passing of laws alone can
never mitigate the problems faced by the disabled in enjoying their
citizenship rights. The state has to play a sincere role to implement the
laws in letter and spirit. It is high time for the state to consider and
implement the amendments suggested by the Expert Amendment
Committee on PWD Act. A statutory National Disability Commission
along the lines of NHRC and a Disability Anti-Discrimination Tribunal
has to be constituted to promote and protect the rights of disabled
persons. All provisions of the PWD Act need to be speedily
implemented. High priority needs to be accorded to the core issues of
education, access and employment of the disabled. All this need strong
will from the triad i.e., the state, civil society and the disabled people.

Notwithstanding the gravity of the situation and severe form of
exclusion and marginalisation of disabled people in India, a new
positive trend is gradually emerging i.e., the agenda for action and
discourses on disability is distinctly moving forward from conventional
charity and welfare to rights and dignity of the disabled. This is likely
to enhance the human security of the disabled in India. Here lies the
hope for the future.

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