

## **PREFACE**

Persons with disability are most neglected lot not only in the society but also in the family. It is unfortunate that till 2001-Census no serious effort was made in India even to know the number of persons suffering from disability. As per an estimate of the World Health Organisation, ten percent of the World's population suffers from one or other disabilities and almost one fifth of the disabled persons of the world lives in India. A country-wide survey conducted by the National Sample Survey Organisation (NSSO) reveals that in 1991, 16.5 million persons i.e., 1.9 percent of the country's population suffers from one or the other kind of disability. These figures only cover persons suffering from one of the four types of physical disabilities, namely, visual, speech, hearing and locomotive. It does not, however, cover the mentally handicapped persons. The mentally handicapped constitute two to five percent of the total population of the country. This is an alarming situation. In India major causes of disability are due to poor nutrition, communicable diseases, infections in early childhood and accidents at home and at work. Nutritional deficiencies, inadequate sanitation, insufficient or inaccessible health care services, accidents and injuries from poorly designed equipments and the practices like consanguineous marriages have all contributed to high prevalence of disabilities.

The international community debated the rights of persons with disabilities with concern since the inception of the United Nations. It was only in 1971 that the UN made concerted efforts for the first time and recognizing the need for adopting a Declaration on the Rights of the Mentally Retarded Persons. This has further led to the adoption of a detailed Declaration on the "Rights of the Disabled Persons" by the United Nations in 1975.

The adoption of these declarations and the concern shown by the international community had a steady impact on the Indian Government which was very receptive to international developments. The Government has taken several legislative and administrative measures for the persons with disabilities in the areas of employment, education, travel etc. For the first time in 1987, the Government of India enacted the Mental Health Act exclusively to deal with the mentally retarded persons. The Persons with Disabilities (Protection of Rights, Equal Opportunities and Full Participation) Act, was enacted in 1995 because of its limited scope and certain other lacunae in its implementation, the Act is under amendment.

This was followed by the Rehabilitation Council of India Act, 1992 which provided criminal action against the professionals who are not registered with the Council. This Act has led to lot of criticism from some of the professional groups. This was followed by the enactment of the National Trust for Persons with Mental Retardation Act in 1999. But certain troubling spots, however, remain in the composition, jurisdiction and functioning of the Trust under the Act which requires a fresh look at it. Simultaneously, with the increase in the number of disabled persons, several nongovernmental and social welfare organisations have also come up to cater to their needs. These organisations have from time to time highlighted the need of recognising and bringing the persons with various forms of disabilities to the main stream of life.

However, in spite of these legislative efforts by the Government and increased heightening in the awareness of the rights of the persons with disabilities, the desired sensitivities and awareness in the society is still lacking to absorb them in the mainstream of society. In this context, the Indian Law Institute seriously felt the need of calling a national seminar to deliberate on the issues with all the constitutional rights embedded in the concepts of equality and non-discriminating and to come out with concrete suggestions to create an environment in which the rights of the disabled are well respected and implemented and which should accord them a life of dignity. The ILI noted with concern that the legislative enactments for the persons with disabilities have failed to bring any substantial change due to the lacunae in the existing laws and their implementation. As a result a two-day National Seminar on "Towards an Enabling Environment: Rights of Persons with Disabilities" at Vigyan Bhawan New Delhi, on March 31 -April 1, 2000 was organized by the Indian Law Institute, which was sponsored by the National Human Rights Commission and co-sponsored by the Ministry of Social Justice and Empowerment- Institute for the Physically Handicapped and the Rehabilitation Council of India.

One of the major thrust of the Seminar was to have a fresh look on the socioeconomic and legal policy and in particular for reservation of seats in educational institutions and employment for persons with disabilities, and above all to provide them equal opportunities and full participation in all areas of human activity. The Seminar was also intended to review the existing legislations and institutional frame-work for the protection of rights of persons with disabilities. For this purpose, it invited eminent persons in the field from all over India which included ministers, bureaucrats - including secretaries heading various ministries and other institutions for the persons with disabilities, judges, advocates, academicians, medical, professionals, special schools for the persons with disabilities, bureaucrats, media personnel, police, nongovernmental organizations, affected persons and among others law teachers,

psychiatrists, sociologists, physiotherapists.

The First Technical Session on "International and National Legal Regime for the Protection of Persons with Disabilities" was chaired by Mr. M.C. Bhandare and cochaired by Dr. Poomima Advani. The speakers at the session were Prof. S.K.Venna, Mr. Santosh Rungta, Ms. Shabnam Agarwal and Dr. Sudharshan Vaid. In his introductory remarks, the chairperson said that the legal fraternity can play a greater role in the protection and empowerment of disabled persons. Dr. Poomima Advani stressed the need for gender sensitisation and awareness campaigns. Professor S.K. Verma while highlighting the international legal provisions, emphasised the need to convert the Declaration on rights of disabled into Conventions for greater accountability. Mr. Santosh Rungta highlighted the role of NGOs' and the legal professionals in empowering the disabled in the light of the *National Association for the Blind v. UPSC case*. Ms. Shabnam Agarwal narrated the difficulties being faced by the mentally challenged persons in the country and stressed the need to reform the mental health institutions. Dr. Sudarshan Vaid draw attention towards insensitivity of the government officials towards the problems being faced by the disabled, especially in obtaining disability certificates.

The Second Technical Session on the "Kinds of Tangles: Some Problem Areas" was chaired by Ms. Asha Das and co-chaired by Prof. Utpal Goswami. The other speakers for the session were Prof S.C. Srivastava, Ms. Rangashree Kishore, Ms. Manjula Gulati and Mr. M.K. Rastogi. Introducing the subject the chairperson mentioned the measures taken by the Government and emphasized on the need for collaborative action by the society at large. She said that the Government is making efforts to reach to the grass-roots with its policies and programmes towards empowerment of the disabled. Prof. Utpal Goswami called for greater sensitization among medical professionals to address the issue. Ms. Rangashree Kishore examined the role of libraries in dissemination of knowledge to the disabled and emphasized on the need to make the libraries disabled friendly. Prof S. C. Srivastava stressed on the need to widen the scope of the Employees State Insurance Act, 1948, the Workmen's Compensation Act, 1923 in order to provide greater protection to the persons with disability. He suggested various measures for providing greater social security and called for periodic review of the facilities available to workers under the relevant labour legislation. Ms. Manjula Gulati emphasized the need to train disabled women and girls facing problems of social ostracism, marriage, independent living and proper rehabilitation. Mr. M.K. Rastogi traced the evolution of legislative enactments in the defined area of employment and called upon the private sector also to implement the three percent reservation policy as stated in the persons with Disabilities Act, 1995.

The Third Technical Session on "From Aspiration to Reality: Enforcement Mechanism and Strategies" was chaired by Mr. Virendra Dayal and co-chaired by Mr. Jerry Pinto. The other speakers for the session were Ms. Vandana Bedi, Dr. D.K. Menon, Ms. R. Bhama, Prof. Amita Dhanda, Ms. Surinder Saini and Ms. Anuradha Mohit. The Chairperson, Mr. Virendra Dayal gave a brief account of the role being played by the National Human Rights Commission in the protection of rights of persons with disabilities. Mr. Jerry Pinto gave an outline of the Convention on the Rights of the Child and called for effective implementation of the Convention for the protection of rights of children with disabilities. Ms. Vandana Bedi while highlighting the various provisions of the Rehabilitation Council of India Act, 1992 emphasised the need to amend the Act, which in its present form exclude certain professionals possessing particular years of experience, from registration with the Rehabilitation Council. Dr. D.K. Menon felt that the constitution of a Trust as enunciated under the 1999 Trust Act would go a long way in empowerment of the disabled. Ms. R. Bhama highlighted the role of the National Commission for Women in protection of women with disabilities. Prof. Amita Dhanda said that the Mental Health Act 1987 guarantees limited rights and hence felt that there is a need to strengthen the 1995 - Disabilities Act for their real empowerment. She stated that the Committee formed by the Government to suggest amendments has given its recommendation to widen its scope. Ms. Surinder Saini called upon the NGO's to play a meaningful role including undertaking a door-to-door sensitisation campaign for generating awareness about the rights of persons with disabilities. Ms. Anuradha Mohit highlighted the role of office of Commissioner for Disabilities and stressed on the need to empower the Commissioner with more powers for effective action under the persons with Disabilities Act.

The Fourth Technical Session on "Need to Prioritise Health Rights of Persons with Disabilities", was chaired by Ms. Rant Jethmalani and co-chaired by Prof. Ranvir Singh. The speakers for the session were Prof. Gursharan Varandani, Mr. Ian Cardzo, Dr. D.K. Menon, Dr. Padma and Dr. S.C. Ranga. The chairperson emphasised the need for protecting the health rights to all and in particular to persons with disabilities by making "right to health care" a fundamental right. Prof. Gursharan Varandani stressed the need to create additional social security net for the protection and empowerment of persons with disabilities. Mr. Ian Cardozo called upon the government and society to provide disability friendly environment in the public offices and other places by constructing the buildings and other infrastructure suitable to them. Dr. D.K. Menon highlighted the role of government in protection of persons with mental disabilities. Dr. Padma gave an account of environmental hazards leading to disability and laid emphasis on protection of environment. Dr. S.C. Ranga described

the role of government in rehabilitation of persons with disabilities.

In order to give a proper shape to the ideas of the participants and the speakers at the Seminar, it was decided to put them in a book from as a part of an on-going work to create a conducive legal environment for persons with disability.

The present work titled "Rights of Persons with Disabilities" has been divided into those part. Part I is devoted to the proceedings of the various working sessions together with the inaugural session. Part II comprises the essays contributed by experts on the subject. Part III contains a list of annexure of various international and national legislations concerning rights of persons with disabilities which will provide a ready reference of the status and rights of persons with disabilities under various legislative enactments and International Conventions and Declarations.

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It is hoped that the deliberations of the seminar on the aforesaid themes of national importance would generate further interest among the scholars, administrators and statesmen in evolving a plan of action for protection of the most neglected and deprived section of the society.

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