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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DISABILITY DISCOURSE AND THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016- THE ASSIMILATION OF DISABILITY DISCOURSE IN INDIAN LEGAL FABRIC

AUTHORED BY - SAKYASUDDHA SARKAR

ABSTRACT-

The Disable population of India so far the law of the land in general and the Constitution of India in particular is concerned stands in the equal footing with their fellow citizens and their rights shall also be protected in most jealous manner as the Constitution of India speaks unequivocally for the 'Social Justice' and this goal is achievable only after measures are taken to embody the rights of disable persons in the fabric of Indian legal system. Though it is the one side of the coin as at the end of the day 'Disability' as a discourse is a socio-legal phenomena and this fact ipso facto necessities the cognizance of the prevalent discourses about the very understanding of disability as without this the entire legal framework may be both misguided or misleading which ultimately will yield no fruitful result in this direction. The Medical and Social Model of Disability and the evolution of these discourses must be taken into cognizance to comprehend the issues faced by the disable population of the land to create a proper legal environment for the fullest protection of disable rights. The RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 is crucial as this particular law is the nodal legislation in the area of disable right protection.

KEY WORD- 1) Models of understanding disability, 2) Approach towards disability phenomena, 3) Assimilation of disability models in the Indian legal system, 4) The Rights of Persons with Disabilities Act, 2016, 5) Definition of disability and corresponding legal definitions.

The term 'Disability' derived from the term 'Disable' which means 'inability to do' ¹which both connotatively and figuratively points towards some able person, though this idea is somewhat misleading especially after the advent and introduction of 'Social Model of Disability' (hereinafter mentioned as Social Model) which is in sharp contrast with that of the 'Medical Model of

¹ CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org> (last visited on February 15, 2023).

Disability’ (hereinafter mentioned as Medical Model), which is actually the predecessor of the Social Model².

MEDICAL MODEL AND SOCIAL MODEL OF DISABILITY-IN THE INDIAN CONTEXT-

The ‘Medical Model of Disability’ as adopted by World Health Organization (WHO) through ‘International Classification of Impairments, Disabilities and Handicap (ICIDH)³ clearly tries to interpret the ‘Disability Phenomena’ from the aspect of the so called ‘normal society’ and it’s corresponding infrastructure which pave more stumbling blocks in the way to realize the basic human rights and fundamental rights of the disable peoples (which may include but not limited to Art. 14,21 of the Indian Constitution⁴, right to education as per Art. 26, Para- I of UDHR⁵ etc.)

The medical Model i.e. ICIDH also define the three terms it used to define ‘Disability’ in this line-

a) Impairment- It defined as loss or abnormality of psychological, physiological or anatomical structure or function of a body organ⁶.

b) Disability- It is defined as restriction or lack of ability to perform a given activity at per with their ‘normal counterpart’⁷.

c) Handicap- It is the disadvantage for an individual resulting from an impairment or a disability, which in turn limit or prevent his role in society⁸.

Thus, ICIDH⁹ and the corresponding Medical Model¹⁰ emphasized on two aspects of disability discourse viz. i) participation restriction and ii) comparison of two distinct individuals on the basis of participation and hence in the nomenclature of society it can safely be termed as ‘Comparison Model of Disability’, though without denying entirely the basic underlying truth inn this model however covert and pale is that, the direct impact of disability on a person, at least in the prima

² OCDF-001, BLOCK. 2, FOUNDATIONS OF EARLY CHILDHOOD DEVELOPMENT AND DISABILITY, DISABILITY AND SOCIETY 9 (SCHOOL OF CONTINUNING EDUCATION, INDIRA GANDHI NATIONAL OPEN UNIVERSITY, JUNE 2009).

³ Supra note 2.

⁴ INDIA CONST. art. 14, art. 21.

⁵ Dr. S.K. KAPOOR, INTERNATIONAL LAW & HUMAN RIGHTS, 819 (18th ed. CENTRAL LAE AGENCY 2011).

⁶ OCDF-001, BLOCK. 2, FOUNDATIONS OF EARLY CHILDHOOD DEVELOPMENT AND DISABILITY, DISABILITY AND SOCIETY 10 (SCHOOL OF CONTINUNING EDUCATION, INDIRA GANDHI NATIONAL OPEN UNIVERSITY, JUNE 2009).

⁷ Supra note 6.

⁸ Supra note 6.

⁹ Supra note 2.

¹⁰ Supra note 2.

facie stage lead to participation restriction as the presence of the infirmity in that person cannot be denied though which can be countered and the difficulty in participation can be minimized by adapting both legal framework the proper participation of the community in the assimilation process of the disable persons in the society.

On the contrast of the Medical model, the ‘Social Model and Human Right Approach’ (also termed as Social Model) tries to dilute the medical difficulty faced by the disable persons and also tries to endorse a wider picture than the concept solicited by Medical Model¹¹. The Social Model instead of concentrating on the underlying medical difficulties of the disable persons, tries to divert the discourse to the established though in most cases disregarded facts that, the human environment, so created by the human civilization itself and not by the mother nature specifically in the present industrialized era is more man-made than natural and the problems faced by disable persons which ultimately lead to participation restriction (either in higher or in a lesser degree depends upon the type of disability) and impairment is this non-adaptability of man-made infrastructure of the industrialized society and that of the disable persons¹².

Thus, on the closer scrutiny of these two aforesaid models about understanding disability, it can be safely inferred that, the Social Model is more suitable for the protection of rights and interest of disable persons, but the Medical Model on the other hand speaks some truth about the de facto medical condition of the disable persons (though that de facto medical condition may vary on the basis of type or degree or both of the impugned disability) and hence the truth lies somewhere between these two models as the total rejection of Medical Model in the legal framework may lead to absurd legal propositions which in turn may imperil the entire legal discourse for the coherent legal framework for the disable population of India.

On the other hand for the purpose of integration of these two models (i.e. Medical Model and Social Model) World Health Organization comes up with International Classification of Functioning, Disability and Health (ICF), 2002¹³, which use the term ‘Disability’ to typify these

¹¹ OCDF-001, BLOCK. 2, FOUNDATIONS OF EARLY CHILDHOOD DEVELOPMENT AND DISABILITY, DISABILITY AND SOCIETY 12 (SCHOOL OF CONTINUING EDUCATION, INDIRA GANDHI NATIONAL OPEN UNIVERSITY, JUNE 2009).

¹² Supra note 11.

¹³ OCDF-001, BLOCK. 2, FOUNDATIONS OF EARLY CHILDHOOD DEVELOPMENT AND DISABILITY, DISABILITY AND SOCIETY 18, 19 (SCHOOL OF CONTINUING EDUCATION, INDIRA GANDHI NATIONAL OPEN UNIVERSITY, JUNE 2009).

elements viz. a) **Body Function**¹⁴, b) **Body structure**¹⁵, c) **Impairment**¹⁶, d) **Activity Limitation**¹⁷, e) **Participation Restriction**¹⁸, f) **Environment Factor**¹⁹ (actually tries to set forth 'Environmental Barrier').

Thus, this ICF model is a clear coalescence of Medical Model and that of Social Model and the integration of human (i.e. man-made) environmental barrier in the course of defining disability helps to formulate proper legal framework for apt realization of rights of disabled persons.

So far as the Indian context is concerned, the adaptation of ICF model²⁰ is required to be in fullest to materialize the rights of disable persons as enumerated in several domains like Constitution of India²¹, Universal Declaration of Human Rights 1948(UDHR)²², International Covenant on Civil and Political Rights 1966(ICCPR)²³, International Covenant on Economic, Social and Cultural Rights 1966(ICESCR)²⁴, Convention on the Rights of Persons with Disabilities²⁵ etc. The non-adaptation of ICF concept (in its fullest) and to be specific the element of human environmental barrier as enumerated in ICF²⁶ is clearly palpable inter alia in the arena of education which is clearly manifested in the Annual Report for the year 2021-2022 of the Department of Empowerment of Persons with Disabilities (Divyangjan) under the Ministry of Social Justice and Empowerment, Government of India²⁷. As per this report, the total number of disable population in India is 2,68,14,994²⁸ whereas only 1,46,18,353 is literate²⁹. Moreover the impact of comparison model is more evident in the higher education domain of disables in India, which is also clearly evident in this report as out of 1,46,18,353 literate disable population³⁰ only 12,46,857

¹⁴ Supra note 13.

¹⁵ Supra note 13.

¹⁶ Supra note 13.

¹⁷ Supra note 13.

¹⁸ Supra note 13.

¹⁹ Supra note 13.

²⁰ Supra note 13.

²¹ INDIA CONST. art. 14, 15, 16, 38,39,41,42,43,45,46, 51A (e), Art. 51A (j), 51A (k).

²² Dr. S.K. KAPOOR, INTERNATIONAL LAW & HUMAN RIGHTS, 815,817,818,819 (18th ed. CENTRAL LAE AGENCY 2011).

²³ id at 826,828,829.

²⁴ id at 830,831.

²⁵ UNITED NATIONS HUMAN RIGHTS OFFICE of THE HIGH COMMISSIONER, <https://www.ohchr.org> (last visited on February 15, 2023).

²⁶ Supra note 13.

²⁷ Department of Empowerment of Persons with Disabilities (Divyangjan), Ministry of Social Justice and Empowerment, Government of India, <https://disabilityaffairs.gov.in> ((last visited on February 15, 2023).

²⁸ Supra note 26.

²⁹ Supra note 26.

³⁰ Supra note 26.

came up to the level of graduation or above³¹ in any discipline. This clearly point out the non-adaptation of the ICF model³² and the stigma attached to disability, as the legal rights (to be specific the nomenclature of rights as provided by the Grundnorm³³ of the land³⁴, international instruments³⁵ and statutes of the land³⁶) of the disable population as whole and to be specific the education arena of disable persons and to be more specific the higher education arena of disable persons is far from materialization, which ipso facto put all the social and economic rights of disable persons (like the rights enumerated in inter alia, Convention on the Rights of Persons with Disabilities³⁷, Declaration on the Rights of Mentally Retarded Persons, 1971³⁸, Declaration on the Rights of Disabled Persons, 1975³⁹, Beijing Declaration on Disability-inclusive Development, 2012⁴⁰, ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159), 1983⁴¹, ILO Vocational Rehabilitation and Employment (Disabled Persons) Recommendation (No. 168), 1983⁴²) in jeopardy.

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016-

THE NEW LEGAL FABRIC IN DISABLE RIGHT

PROTECTION DOMAIN-

³¹ Supra note 26.

³² Supra note 13.

³³ LLOYD'S INTRODUCTION TO JURISPRUDENCE 253 (9th ed., South Asian edition, M.D.A. Freeman ed., SWEET AND MAXWELL, Reprinted in India by THOMSON REUTERS 2021).

³⁴ Supra note 21.

³⁵ Dr. S.K. KAPOOR, INTERNATIONAL LAW & HUMAN RIGHTS, 815,817,818,819,826,828,829,830,831 (18th ed. CENTRAL LAE AGENCY 2011).

³⁶ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016, NO. 49, Act of Parliament, 2016 (India), THE MENTAL HEALTHCARE ACT, 2017, NO. 10, Act of Parliament, 2017 (India), THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999, NO. 44, Act of Parliament, 1999 (India).

³⁷ UNITED NATIONS HUMAN RIGHTS OFFICE of THE HIGH COMMISSIONER, <https://www.ohchr.org> (last visited on February 15, 2023).

³⁸ Dr. U.CHANDRA, HUMAN RIGHTS, 295 (8th ed. ALLAHABAD LAW AGENCY PUBLICATION 2010).

³⁹ id at 296.

⁴⁰ UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC, <https://www.unescap.org> (last visited on February 15, 2023).

⁴¹ INTERNATIONAL LABOUR ORGANIZATION, <https://www.ilo.org> (last visited on February 15, 2023).

⁴² Supra note 41.

The RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 tries to infuse the Medical and that of the Social Model⁴³ about understanding the disability phenomena in the legal discipline as so far as the statutory protection of disable persons rights in India is concerned, the adaptation of the Medical Model⁴⁴ is required.

The long title of this Act clearly manifest that, this Act tries to incorporate within its ambit the basic proposition of the United Nations Convention on the Rights of Persons with Disabilities (adopted on 2006)⁴⁵ and this long title also provide the basic areas in the field of disable persons rights it intended to address, which are inter alia- i) inherent dignity⁴⁶, ii) freedom of one's own choice⁴⁷ (this particular point is tied directly with the concept of independence and the access to education-as free choice must inherently means informed choice), iii) non-discrimination⁴⁸, iv) full and effective participation⁴⁹, v) equality of opportunity⁵⁰, vi) accessibility⁵¹ etc.

Thus, this impugned Act of 2016 marks a paradigm shift from the Medical Model⁵² to the Social Model⁵³ of disability and moreover it also to inculcate, may not to be in fullest, the ICF Model⁵⁴ of understanding disability.

Apart from these broad aspects of rights of disable persons, this Act also define some major elements in this field, which also shows the inculcation of Social⁵⁵ and ICF Model⁵⁶ in the Indian legal domain. Those are-

A) Barrier-Sec.2(c)⁵⁷: It defines barrier from the participation restriction⁵⁸ viewpoint which include factors like communicational, cultural, economic, environmental, institutional,

⁴³ OCDF-001, BLOCK. 2, FOUNDATIONS OF EARLY CHILDHOOD DEVELOPMENT AND DISABILITY, DISABILITY AND SOCIETY 9,10,18,19 (SCHOOL OF CONTINUNING EDUCATION, INDIRA GANDHI NATIONAL OPEN UNIVERSITY, JUNE 2009).

⁴⁴ Supra note 2.

⁴⁵ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016, NO. 49, Act of Parliament, 2016 (India).

⁴⁶ Supra note 45.

⁴⁷ Supra note 45.

⁴⁸ Supra note 45.

⁴⁹ Supra note 45.

⁵⁰ Supra note 45.

⁵¹ Supra note 45.

⁵² Supra note 2.

⁵³ Supra note 11.

⁵⁴ Supra note 13.

⁵⁵ Supra note 11.

⁵⁶ Supra note 13.

⁵⁷ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(c), NO.49, Act of Parliament, 2016 (India).

⁵⁸ Supra note 13.

political, social, attitudinal or structural functions⁵⁹. This provision also enumerate that, these factors which eventually leads to participation restriction⁶⁰ and activity limitation⁶¹(as envisaged in ICF Model⁶²) may exists either independently or in any combination of these factors.

B) Discrimination-Sec.2 (h)⁶³: This provision define ‘discrimination’ in such a way that it consists of these elements viz. i) distinction, exclusion, restriction on the basis of disability⁶⁴; and
ii) such exclusion etc. impair or nullify the equal enjoyments of rights, which include Human Rights and fundamental freedom of the disable persons⁶⁵ at per with their so called ‘normal’ counterparts; and
iii) such right include political, civil, social, economic, cultural rights and also include denial of reasonable accommodation⁶⁶.

Hence the rights as enumerated in this provision include higher education rights also and thus any exclusion in the higher education rights may safely be termed as ‘discrimination’ within the meaning of this provision as Sec.2(y) of this Act while defining the term ‘Reasonable accommodation’ provides that, it means and include appropriate modification and adjustments to ensure the proper realization of the rights of disable persons⁶⁷.

C) Inclusive Education- Sec.2 (m)⁶⁸: It manifestly adapt the Project Integrated Education for the Disabled (PIED) 1987⁶⁹ and the more modern concept of Integrated Education for the Disabled (IEDC) 1992⁷⁰ and it contemplate that students with and without disability shall participate in the teaching-learning process equally and thus it also speaks for reasonable accommodation⁷¹ as some

⁵⁹ Supra note 57.

⁶⁰ Supra note 13.

⁶¹ Supra note 13.

⁶² Supra note 13.

⁶³ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(h), NO.49, Act of Parliament, 2016 (India).

⁶⁴ Supra note 63.

⁶⁵ Supra note 63.

⁶⁶ Supra note 63.

⁶⁷ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(y), NO.49, Act of Parliament, 2016 (India).

⁶⁸ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(m), NO.49, Act of Parliament, 2016 (India).

⁶⁹ MMD-014, BLOCK-5, INTRODUCTION TO DISABILITIES, ROLE OF VARIOUS AGENCIES IN THE EDUCATION OF DISABLED CHILDREN 12 (SCHOOL OF CONTINUING EDUCATION, INDIRA GANDHI NATIONAL OPEN UNIVERSITY, JULY 2011).

⁷⁰ id at 29.

⁷¹ Supra note 67.

changes are required to adopt inclusive education.

DEFINITION OF THE TERM ‘DISABLE’ UNDER THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016-

The definition of the term ‘Disable’ possess the utmost importance in this entire discourse. This Act of 2016 define ‘Persons with Disability’ in the following manner-

Persons with Disability- Sec.2(s)⁷²: This definition as provided under this provision basically contains two elements viz. i) the concerned person must have long term physical, mental, intellectual or sensory impairment and ii) these impairments as mentioned (all or any of them or any combination of them) create barriers and consequently hinder the full and effective participation of that person.

Thus, this definition evidently accept the ICF Model about understanding of disability⁷³.

Apart from this definition, this 2016 Act provides further classification of persons with disability and provides two subcategories for better understanding of the disability issue in the following terms-

- i) Person with Benchmark Disability- Sec. 2(r)⁷⁴**- This subcategory include in it’s fold the specified disabilities within the meaning of Sec. 2(zc) of this 2016 Act⁷⁵ and contemplate two possible cases viz. a) if the specified disability is defined in this enactment in measurable terms then the certificate is required from the certifying authority to come under the preview of this Act; b) if the specified disability is not defined in this Act in measurable terms then that disability must be of at least 40%.
- ii) Person with Disability having high support needs- Sec.2 (t)⁷⁶**- This is the more serious type of benchmark disability and to come within the preview of this provision, certificate from the certifying authority under Sec.58 of this 2016 Act⁷⁷ is sine qua non. Hence, in nutshell, the pivotal concept is ‘Person with Disability’⁷⁸. The concept of

⁷² THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(s), NO.49, Act of Parliament, 2016 (India).

⁷³ Supra note 13.

⁷⁴ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(r), NO.49, Act of Parliament, 2016 (India).

⁷⁵ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(zc), NO.49, Act of Parliament, 2016 (India).

⁷⁶ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(t), NO.49, Act of Parliament, 2016 (India).

⁷⁷ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 58, NO.49, Act of Parliament, 2016 (India).

⁷⁸ Supra note 72.

‘Specified Disability’⁷⁹ (as provided in Sec.2 (zc)⁸⁰ and the corresponding schedule of the 2016 Act) provides types of disability and on the basis of aggravation level disable persons are sub-divided into ‘Person with Benchmark Disability’⁸¹ and ‘Person with Disability having high support needs’⁸² and the last sub-category again is the more aggrieved version of ‘Person with benchmark Disability’⁸³.

TYPES OF DISABILITY AS ENSHRINED IN THE 2016 ACT⁸⁴.

The types of disabilities accepted in the statutory framework hold a paramount importance as this will be the torchbearer provision in the disability discourse as different types of disability require different types of care and measures for effective materialization of their rights.

Sec. 2(zc) of the 2016 Act⁸⁵ and the corresponding Schedule⁸⁶ enumerated these types of disabilities-

1) Physical Disability- This include leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy, acid attack victim⁸⁷.

2) Visual Impairment- It include both blindness and low vision⁸⁸.

3) Hearing Impairment- It include deaf and hard of hearing⁸⁹.

4) Speech and Language Disability- It is a class by itself under the 2016 Act⁹⁰.

5) Intellectual Disability- It include specific learning disability and autism spectrum disorder⁹¹.

6) Mental Behaviour⁹²- This include surprisingly and substantially mental illness which invariably leads to mental disorder. The incorporation of this type signifies both the influence of Medical Model of Disability⁹³ and also an attempt to promote inclusive education⁹⁴.

7) Disability caused due to chronic neurological conditions and blood disorder- This include

⁷⁹ Supra note 75.

⁸⁰ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(zc), NO.49, Act of Parliament, 2016 (India).

⁸¹ Supra note 74.

⁸² Supra note 76.

⁸³ Supra note 74.

⁸⁴ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016, NO.49, Act of Parliament, 2016 (India).

⁸⁵ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016 § 2(zc), NO.49, Act of Parliament, 2016 (India)

⁸⁶ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016, NO.49, Act of Parliament, 2016 (India)

⁸⁷ Supra note 86.

⁸⁸ Supra note 86.

⁸⁹ Supra note 86.

⁹⁰ Supra note 86.

⁹¹ Supra note 86.

⁹² Supra note 86.

⁹³ Supra note 2.

⁹⁴ Supra note 68 & 69.

haemophilia, thalassemia, sickle cell disease, multiple sclerosis and parkinson's disease⁹⁵.

8) Multiple Disability⁹⁶- This can be any combination of these above discussed disabilities.

Thus, the 2016 Act tries to assimilate the ICF Model⁹⁷ to enable the paradigm shift to the social and human right approach⁹⁸ from the medical model⁹⁹ and the consequent charity approach¹⁰⁰ towards disability.

Apart from this 2016 Act¹⁰¹, another enactment also occupy this area called The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999¹⁰² which as the title of the Act itself suggests deals with few specific types of disabilities and apart from this Act The Mental Healthcare Act, 2017¹⁰³ and The Rehabilitation Council Of India Act, 1992¹⁰⁴ though operate in the same domain but in different sphere.

The understanding of the 2016 Act¹⁰⁵ along with corresponding models of understanding the disability phenomena is a sine qua non so far as the issue of materialization of rights of the disable persons is concerned and higher education rights of disable persons are not exception. The basic proposition must be kept in mind that, disability is not only a physical factor¹⁰⁶ but a socio-economic factor as well¹⁰⁷ which the legal discipline through its mechanism shall try to address as efficiently as possible as the social stigma attached to disability¹⁰⁸ is a major obstacle in the path of proper materialization of disable rights and the legal framework shall try to answer this

⁹⁵ Supra note 86.

⁹⁶ Supra note 86.

⁹⁷ Supra note 13.

⁹⁸ PROFESSIONAL TRAINING SERIES NO. 19, TRINING GUIDE 9,10 (THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, UNITED NATIONS HUMAN RIGHT, OFFICE OF THE HIGH COMMISIONER, NEW YORK AND GENEVA, 2014).

⁹⁹ Supra note 2.

¹⁰⁰ PROFESSIONAL TRAINING SERIES NO. 19, TRINING GUIDE 8 (THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, UNITED NATIONS HUMAN RIGHT, OFFICE OF THE HIGH COMMISIONER, NEW YORK AND GENEVA, 2014).

¹⁰¹ THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016, NO.49, Act of Parliament, 2016 (India).

¹⁰² THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999, NO. 44, Act of Parliament, 1999(India).

¹⁰³ THE MENTAL HEALTHCARE ACT, 2017, NO. 10, Act of Parliament, 2017(India).

¹⁰⁴ THE REHABILITATION COUNCIL OF INDIA ACT, 1992, NO. 34, Act of Parliament, 1992(India).

¹⁰⁵ Supra note 101.

¹⁰⁶PROFESSIONAL TRAINING SERIES NO. 19, TRINING GUIDE 7 (THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, UNITED NATIONS HUMAN RIGHT, OFFICE OF THE HIGH COMMISIONER, NEW YORK AND GENEVA, 2014).

¹⁰⁷ Supra note 106.

¹⁰⁸ PROFESSIONAL TRAINING SERIES NO. 19, TRINING GUIDE 12 (THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, UNITED NATIONS HUMAN RIGHT, OFFICE OF THE HIGH COMMISIONER, NEW YORK AND GENEVA, 2014).

mischief through legal mechanism, pro bono publico^{109, 110} as disable persons are equally entitled to constitutional rights¹¹¹ and the basic human rights¹¹² along with the other so called ‘able’ persons. Again as disability concept consists of several layers of issues and factors¹¹³ the help of the external aids of interpretation of statutes like text books¹¹⁴ and the historical background^{115, 116} of this prevalent mischief (i.e. the social stigma towards disability) must be taken into cognizance to inter alia for better framing, modification and implementation of the rights of disable persons through the laws of the land.

Hence, in the legal plateau the discourse about the disable rights is not an alien one on the ground that the implementation of rights is a policy issue and nothing to do with the law as a discipline as Joseph Raz pointed out law as a social institution and also solicit that existence and content of every law is fully determined by social sources¹¹⁷ and this view is totally in consonance with the concepts enshrined in ‘aequitas est correctio legis generaliter lae, qua parte deficit’¹¹⁸, ‘aequitas factum habet quod fieri oportuit’¹¹⁹ and ‘aequum et bonum est lex legum’¹²⁰ and the issue of the rights of disable persons in general and higher education in particular can be comprehended only after paying meticulous attention to the models of understanding disability and the corresponding statutes as these model of disability must be metamorphose in the legal plateau.

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¹⁰⁹ Prof. T. BHATTACHARYYA, THE INTERPRETATION OF STATUTES, 29, 30(9th ed. CENTRAL LAW AGENCY, 2014).

¹¹⁰ See Bengal Immunity Company v State of Bihar AIR 1955 SC 661, Dineshchandra Jamnadas Gandhi v State of Gujarat AIR 1989 SC 1011, Girish Vyas v State of Maharashtra AIR 2012 SC 2043.

¹¹¹ Supra note 21.

¹¹² Supra note 22, 23, 24.

¹¹³ Supra note 106.

¹¹⁴ Prof. T. BHATTACHARYYA, THE INTERPRETATION OF STATUTES, 219(9th ed. CENTRAL LAW AGENCY, 2014).

¹¹⁵ Supra note 114.

¹¹⁶ See Herron v Rathmines and Rathgar Improvement Commissioners, 1892 AC 498.

¹¹⁷ LLOYD’S INTRODUCTION TO JURISPRUDENCE 331 (9th ed., South Asian edition, M.D.A. Freeman ed., SWEET AND MAXWELL, Reprinted in India by THOMSON REUTERS 2021).

¹¹⁸ Prof. T. BHATTACHARYYA, THE INTERPRETATION OF STATUTES, 306(9th ed. CENTRAL LAW AGENCY, 2014).

¹¹⁹ Supra note 118.

¹²⁰ Supra note 118.

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