

## Unit-2

### Essential Rights for Human Development

#### Chapter 3 - Equality of Opportunity

##### Introduction-

Amongst the various basic rights, the Right to Equality of Opportunity is the mainspring, as it encompasses in itself various other rights, such as, justice, liberty, rights, property etc. Majority of the people in the world believe that the right to equality should be provided unconditionally to all individuals, as 'all men are created equal' i.e., all human beings have similar attributes. Almost all religious traditions maintain that all humans must be considered to be equal, as they are all God's children. Various thinkers and intellectuals have also surmised that all human beings are equal and hence deserve to enjoy the basic human rights, especially right to equality. The majority of theorists of the world share the same belief regarding human beings. According to them all human beings share the same characteristic and needs, hence entitling them to enjoy the right to equality.



Our Constitution also guarantees Right to equality to all individuals and prohibits any kind of discrimination on the basis of class, caste, creed, race or sex. But this declaration is not enough to change the reality of the situation.

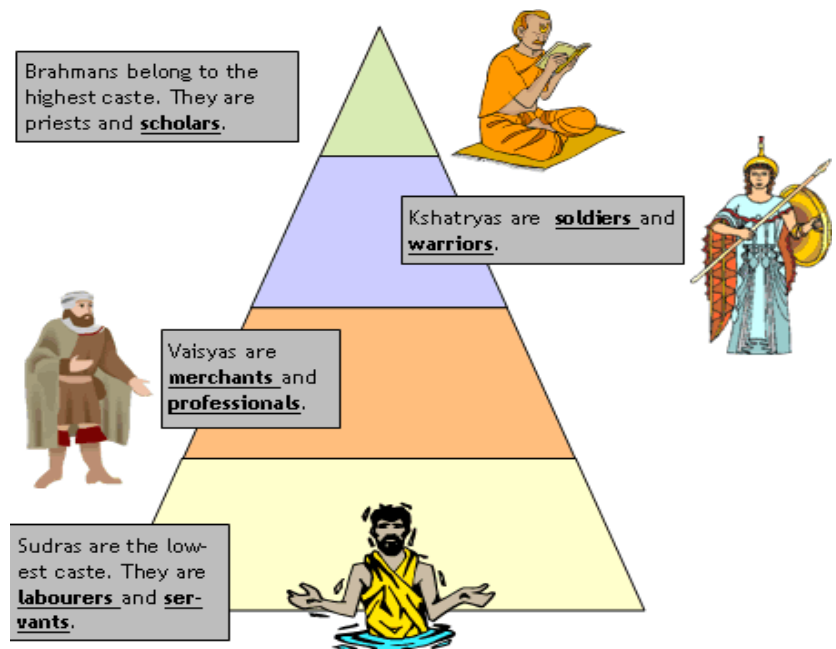


The prevalence of discriminatory social norms, e.g. the status and disposition of a family surely becomes the determinant of an individual's position and status. Thus generally the privileges received by an individual are determined by the status of his or her family in the society. Therefore it would not be wrong to conclude that as long as the family system exists, it is impossible to establish equality.

This rationale goes on to explain the prevalence of equality in the majority of ancient societies where the family was the smallest and most important unit of society. For instance inequality was highly prevalent in Classical Greece. According to Aristotle's description of ancient Greece, three social classes were present in Greece and there was a great imbalance in the treatment meted out between citizens and slave as well as between men and women. Only citizens were entitled to participate in the state activities.

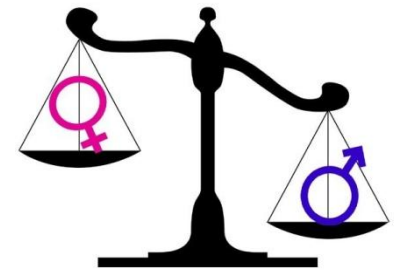
Similarly the ancient Hindu Society was divided into four castes, namely Brahmins, Kshatriyas, Vaishyas and Shudras. The lowest class Shudras faced extensive discrimination and were treated abominably

Similarly the feudalism prevalent in the medieval European society had established inequality in the society to a great degree. The Church also played an important part in cementing the inequality in society and it was observed that the clergy dominated the society. Thus legal privileges were prominently based upon status and birth. Inequalities were prevalent in majority of the



societies of the world during the ancient and medieval ages. In the pre-eighteenth century majority of the societies all over the world believed that nature had made men and women unequal in every sense. Besides this the prevalence of inequalities was justified by the various societies and dominant people, on the basis of traditional values, superior race, age, sex culture, wealth, religion etc.

In spite of the various efforts taken for the removal of inequality, it still exists in this contemporary world. It naturally exists in capitalist societies where there is a huge gap amongst various sections of the society on account of unequal distribution of wealth. But surprisingly it is also found to be prevalent in socialist societies, where many measures have been taken for redistribution of wealth and regulation of the economic market. In fact human societies all over the world are riddled with social inequality on the basis of power, status, class or gender.



## Why is Equality desirable?

Equality as a political and moral ideal has influenced human society since time immemorial. Every religion and faith of the world advocates equality of human beings, as they consider them to be the creation of God. Therefore they advocate equality without any discrimination on the basis of caste, color, sex, race, creed, religion etc.

The doctrine of equality has been a great source of inspiration for several people. For instance on July 4, 1776 the American colonies made a declaration of their independence. It said: "We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain inalienable rights, which among these are life, liberty and

the pursuit of happiness”. In the 1789 the National Assembly of France declared “All human beings are born free and equal in dignity and rights.”

Similarly the Universal Declaration of Human Rights reiterates:

“Inequality is most visible in the every area of part of the world .No part of the World is entirely free from social and economic inequalities. Even rich countries a face the problem of economic inequality and extreme poverty.

So just like liberty, the doctrine of equality too has been a source of great inspiration for the people. Since the French Revolution, equality has served as one of the leading ideals of the body politic. In this respect, it is at present probably the most controversial of the great social ideals. There is controversy concerning the precise notion of equality, the relation of justice and equality (the principles of equality), the material requirements and measure of the ideal of equality (equality of what?), the extension of equality (equality among whom?), and its status within a comprehensive (liberal) theory of justice (the value of equality).



The term "equality" can be defined as "parity," "equivalent," "fairness," "impartiality" or "egalitarianism." However, when the word is used in relation to human beings it is not intended to connote that all people are identical or at par with each other. In a human rights milieu, "equality" means that we are all equal in one crucial manner: despite of our differences we all have innate value. We are all equally entitled to human rights simply because we are human, and the individuality that make us distinctive as well as diverse should not make us superior or inferior with regard to human rights. The rule of equality hence requires that every human being and the societies must value and accommodate human differences without any discrimination. Another word, which is complimentary to equality, is non-discrimination. It is not easy to think about "non-discrimination" without understanding the meaning of "discrimination." In simple words, discrimination means to "discriminate", to "differentiate," to "distinguish," or to "treat differently,". Without the non- discriminative approach, you cannot have equality. So in other words we can say that occurrence of equality means failure of discrimination.

## **Human Nature and Inequality:-**

Human beings are most often disposed to discriminate between their fellow beings on the basis of social as well as economics factors which eventually promote inequalities. Several evidences



and incidents have highlighted the adverse effects of inequality. It is the need of hour to get rid of these age old inequalities which are harmful to all members of a society. To do so we need to assess the mechanism that would assist in this process. During the process we also need to analyse the main factors responsible for the human tendency of fostering inequality such as conscious or unconscious bias, social norms, prejudice, reason, emotion, free will etc. We must also inspect whether it is possible to alter these instincts. Besides this the role of the inner conscience and social instinct (such as altruism, empathy, language and cooperation) in the development of inequality, also need to be scrutinized. We should also analyse their role in eradicating inequality and establishing equality.

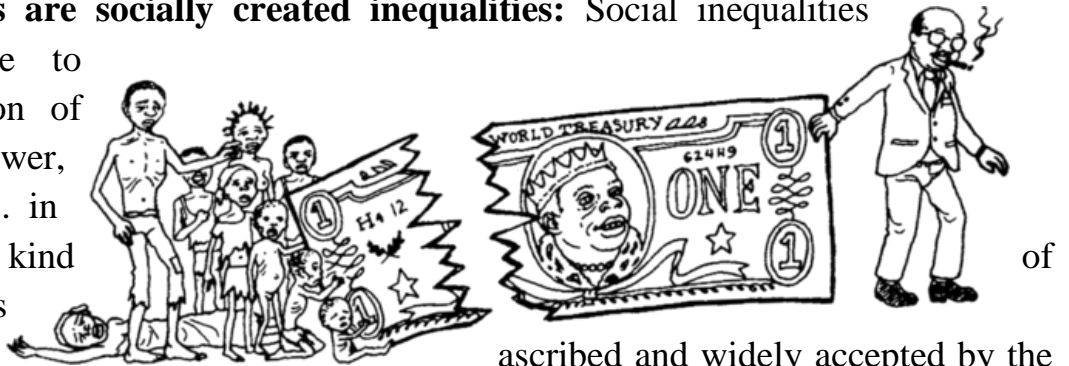
The greatest challenge of eradicating of inequality is in developing techniques for developing the positive sign of consciences.

Inequality prevalent amongst human beings is of two kinds:

1. **Natural inequality:** Natural inequality is the inequality faced since birth. It is mostly based on -physical characteristics such as colour, creed, gender, height, weight, etc. Natural differences do not create much injustice in the society. Whereas the social, religious, gender or racial differentiation create a great rift in society. Thus they should be shunned.

2. **Social inequalities are socially created inequalities:** Social inequalities

usually arise due to unequal distribution of wealth, power, prestige, status etc. in the society. These kind social inequalities are usually



ascribed and widely accepted by the society. For instance the concept of caste system and “untouchability” evolved during the ancient Indian society. The popular story behind this (as affirmed in the religious scriptures) was that Brahmins evolved from the mouth of the Supreme Being, due to which they were designated to be the highest class. Being the highest class they dominated the society and the rest of the lower classes were not allowed to mingle with them. This differentiation, known as the caste system was recognized as well as subscribed by the society. In addition to this, the various societies have also witnessed discrimination on the basis of natural differentiation. For instance South Africa witnessed

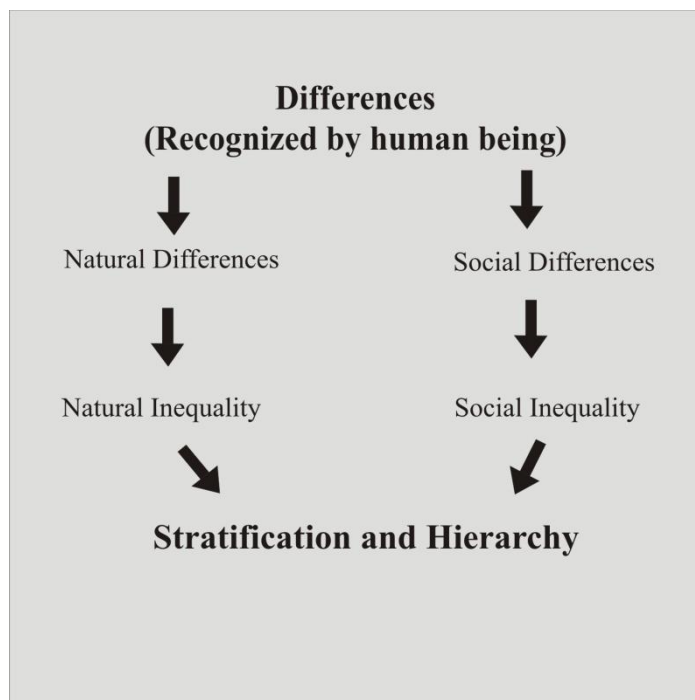
the apartheid system for several years, which was based on the belief of racial superiority of whites over Blacks.

**Activity 1:** Find out in groups about the Apartheid system. Bring in at least two points on each of the questions given below and share with your groups.

1. Which year did this prevail?
2. How were the people divided?
3. What were the rights that were denied to the non-whites?
4. What was the aim of apartheid?
5. What is the present situation?
6. Who was the last President under apartheid?
7. What role did Nelson Mandela play?

## Causes of Rise in Inequalities

According to the law of nature all human beings are not the same. There are marked differences amongst human beings which in turn has generated various social groups in the society who discriminate amongst themselves. This leads to the development of inequality in the society.



However it has been observed that although some differences lead to the development of inequality, others do not. They linger on in the society as differences but people are in no way differentiated on that basis. For instance the caste system during the Early Vedic period was merely a difference as people could choose their occupation, according to which they were designated a class. But from the Later Vedic period the caste system became rigid, because people were designated castes according to their birth. They were soon immensely discriminated on this basis. This led to the development of inequality in the society.

In the contemporary world, social inequalities in society usually arise due to differences in gender, age, class, ethnicity structural factors,( such as geographical location, citizenship etc.) People are often discriminated on this basis with regard to access to a variety of rights in the society, such as facilities available, political representation, participation etc.

Various studies have revealed that socio-economic and political differences often lead to inequalities. For instance, high death rates and stress-related diseases often are a repercussion of unequal distribution of wealth in the sphere of income. Similarly democratic institutions in a society may cease to work effectively due to deepening inequalities, which may lead to the development of social conflict as well as political instability and may in turn lead to the establishment of authoritarian regimes.

It has been observed that the patterns of inequality have changed in the post cold-war era, [after-1991] as Eastern European countries have shifted from state controlled to market-based economies. Therefore the nature of social inequalities in the post-socialist regime has undergone a variety of significant changes. For example, although it has been relatively stable in the western-most countries, it rose significantly in many countries emerging from the former Soviet Union. These countries have ever since witnessed extreme poverty. This clearly indicates that inequality amongst various social groups has been developing in different ways across the world.

| Cold War (1945-1991)                  |                                     |
|---------------------------------------|-------------------------------------|
| (Between USA and USSR)                |                                     |
| Eastern European Countries            | Western European Countries          |
| Poland, Romania, Hungary, Latvia etc. | England, France, Germany, Spain etc |

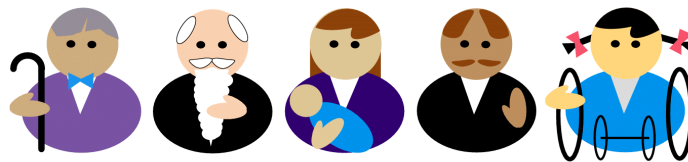


## Inequalities prevalent in India:

Various surveys conducted from time to time have revealed the inequalities prevalent in India. For instance, the 2011 census discloses that “the literacy rate in the country was 74.04 percent, 82.14 for males and 65.46 for females. After more than 66 years of the adoption of the new constitution, the derived goal of social justice has not been achieved. The political participation of the backward classes and poor people is negligible. The representation of the Dalits (SC), STs in Central Government Class one Services is less than 15%. 5% class C or Class D services.”



Activity 2:- For your knowledge list out the class C & D services.

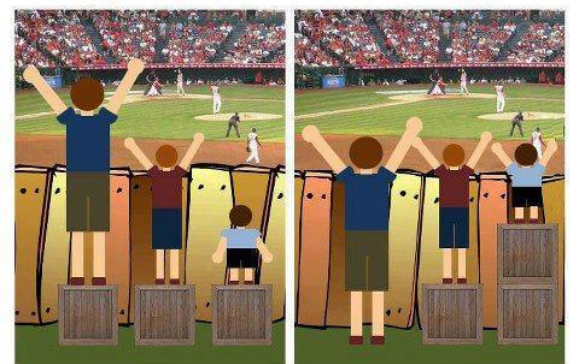


What Does **Equality** Mean to You?

## What is Equality?

- a. **Equality is not sameness:-**One of the longest running error in our society is that of equating equality with sameness. This error has been used and continues to be used for extremely destructive and malicious behaviours, for example thinking that everyone is the same, believing the same thing, living the same life and consequently exterminating anyone who in any way different. In fact equality was never meant to mean sameness and the use of the concept of equality to force sameness is a gross abuse of the concept of equality,

### Equality is not always Justice



This is **EQUALITY**

This is **JUSTICE**

is

Equality means this: equal rights and equal opportunities. That is it. It doesn't mean that everyone has to live the same life. It does not mean that everyone has to dress the same way, think the same way, speak in the same tone of voice or believe the same errors. It doesn't mean

that nobody can be distinct, or special, or eccentric, or different from people around them. To reiterate equality means: Equal rights, equal opportunities. That is it

In its original intent, the idea of equality was meant to assist freedom by leveling the field for people who come from rougher backgrounds. But the misuses of the idea of equality have been used instead to sabotage freedom. If everyone is forced to be the same and live the same way, then there is no freedom. And misuses of the idea of equality to mean sameness has been used just to do this destroy freedom in the communities in which this misuse of the idea of equality is being practiced.

The same is the case also for the idea of women's equality. Once again equality means: equal Rights, equal opportunities, in this case between women and men. But many feminists have again misused the concept of equality to mean sameness. So they have been teaching women to act like the worst of men. In the process they have been training women to deny themselves the better qualities that are more natural to women than they are to men: qualities such as beauty, tenderness, warmth, elegance and ability to produce as well as to nurture life. Instead they have put women into a race of becoming the same as the man, denying them the right to qualities that are uniquely feminine or what is more natural to women than to men.

In both cases, we see a vast misunderstanding of the concept. Equality does not mean sameness; equality means equal rights. Equal rights benefit freedom, fairness, and human advancement by creating a fair field for everyone. Coercion toward sameness destroys personal freedom by forcing everyone to be the same, even as it undermines human advancement by destroying what is at the root of human advancement: namely innovation. Innovative minds think differently from what is thought around them thereby bringing in progress. The error of confusing equality with sameness is sabotage to human society and undermines its best quality. And if a country is to live up to its promise of freedom, then this error must be confronted and overcome in every place that it exists.

#### **b. The Accepted View of Equality:- Equality of Opportunity**

Equality cannot be equated with uniformity. It is also not possible to establish absolute equality. Therefore equality means that "equals ought to be treated alike in the respect in which they are equal".

#### **Formal Equality of Opportunity**

Formal equality of opportunity means that every individual should be provided equal opportunity regarding higher positions and posts. In fact higher positions and posts should be concurred to deserving candidates on the basis of merit or fair competition.

The realization of Equality of opportunity will not be achieved in a particular environment only but can be achieved in various social environments. For instance there is a greater possibility of



achievement of Equality of opportunity in a democratic environment. But even in an autocratic society, it can be fulfilled if the post of autocrat is open to all individuals without any discrimination and the selection is fair, based on merit. In addition to this the rule of the autocrat may be based on equality of all individuals in the social, economic and political areas. Similarly a communist society may also provide equality of opportunity, if the head of the communist regime is the best qualified for the post of party membership.

Formal equality of opportunity can be established in a society which is free from guild restrictions and where there are no trade restrictions and open market policies. Similarly it would also include equal opportunity to all individuals regarding higher positions and posts, on the basis of merit or fair competition, in opposition to nepotism, where public offices are distributed to one's relatives and friends only.

Equality of opportunity can be concurred in a market economy only if the openings in business firms are publicized, so that any individual may apply for the job without any form of restriction or discrimination. In opposition to this Equality of opportunity is restricted in places where only current employees of a firm are eligible to apply to higher-level jobs. Similarly Equality of opportunity in a market setting means that loans would be provided to all individuals without any form of discrimination, on the basis of expected profit. It also requires that sale, purchase, sales of bonds, sales of shares and other economic activities, provide all firms and economic agents the same opportunities for gain. Moreover generally, equality of opportunity also requires that firms and individuals make transactions impartially for gain. In such a situation participants in a market setting regard their competitors as potential partners for interaction. Therefore market agents select those business partners who would help them to achieve their goals via interaction. The ideal of formal equality of opportunity is associated with public life and not private life. But there is a very thin line of difference between them and many issues related to them have often drawn up controversies. For instance issues related to inviting someone for dinner, choosing a marriage partner, formulating alliances etc, do not fall within the sphere of equality of opportunity. Although these kinds of personal issues may involve injustice and may be morally designated as wrong, these aspects of an individual's personal life cannot be included in Equality of Opportunity. Thus Equality of opportunity influences the political, economic and civil aspects of a society but not every aspect of the lives of individuals.

Equality of opportunity sometimes tends to be limited in scope , as it is implemented within the political boundaries of various nation states. This proves to be disadvantageous sometimes. For instance nobody will object if all the U.K universities are open to all the youth of UK but not the youth of China. On the contrary nobody would object if all the U.K universities are open to all the youth of U.K and also the youth of China. As in this case although Equality of opportunity can be limited in scope, formal equality of opportunity could also be broadened in

scope. For instance in this case the scope can be broadened by providing greater educational opportunity to Chinese students, by opening all the U.K. Universities also to Chinese students. Similarly although Equality of Opportunity regarding trade may be limited in scope,( as it is implemented within the political boundaries of various nation states) but its scope may be broadened by providing a global marketplace, in which all transactions conform to formal equality of opportunity applied world-wide.

## **2. Substantive Equality of Opportunity**

The most essential requirement for proper implementation of Equality of Opportunity, is to provide a genuine opportunity to become qualified. For instance in the earlier days, it was the nobles who were given the top positions in bureaucracy. It was much later that they were chosen through competitive examinations. Thus Equality of Opportunity was created.

To ensure the implementation provisions should be made for these competitive exams would be conducted all over the country, so all the bright educated persons are able to give these exams notwithstanding the fact that they are from villages or small towns or big cities. These kinds of provisions along with the formal announcement of Equality of Opportunity would satisfy the complaints of all the sections of the society. It would lead to the development of a general feeling in the society that sufficient or good enough opportunities to become qualified were provided to all.

The development of Equality of Opportunity in this manner would greatly help in summing the “good enough” level of opportunity provisions. This could be deduced by comparing the costs and benefits of greater provision of opportunities, with the costs and benefits measured in terms of other conflicting values. The “good enough” level of provisions deduced, would actually give a description of those classes of the society, who do not enjoy equality of opportunity. For instance there could be a class of children who in spite of being provided the provision of scholarship fail to enjoy equality of opportunity, because they are unable to compete with the wealthy children whose parents impart them private tuitions and trainings. Therefore in such cases the motive to achieve Equality of Opportunity is ruined.

In order to reduce the advantages that may be conferred to some wealthy individuals, several methods have been suggested. One such ideal suggested by John Rawl is popularly known as "equality of fair opportunity". Equality of fair opportunity (EFO) is a condition in which individuals possessing similar inborn talent and similar aim will witness prospects of success in competitions. They would receive benefits and posts according to their capability and performance in the competition. For instance there are two individuals Rajiv and Rakesh, who possess similar inborn talent and similar aim, but one belongs to a wealthy as well as educated family whereas the other to



poor and uneducated family. In spite of this if they have the same prospects of achieving their ambition of becoming a scientist at NASA, then this condition can be designated as Equality of fair opportunity (EFO). (But it should be taken into account that the specification of EFO is quite different from the specification given by Rawls in 2001. In this Rawls has explained that socio-economic status of an individual does not have much impact on one's competitive prospects. He also explains the broader ideal of EFO).

Thus EFO has led to the development of the idea of a classless society. For instance if in a society prominent positions and posts are passed on to other members of the social group from generation to generation, then such a society does not qualify the condition of EFO.

Thus a society satisfies the condition of EFO if it is classless and no advantages are passed on generation by generation except genetic features and socialization that instils ambition. (Thus individuals gaining advantage by gifts and inheritance will be violating the ideal of EFO.) The concept of EFO completely eliminates the benefits (such as trainings, tuitions, better education, access to influential social network etc). In an EFO society, if certain individuals enjoy the benefits such as trainings and tuitions to enhance their skill on account of wealthy parents, then the society will provide the same benefits (such as public education provisions) to children of non-wealthy parents. But on the other hand an EFO society may have some parents, (wealthy or unwealthy) who are strongly motivated to help their children in achieving certain aims. These concerned parents do not harm the society in any way and can by all means continue to help these children. Thus a society fulfills the condition of being an EFO even if certain individuals are benefitted by the support of their parents, as long as their competitors with the same kind of talent and aim are also benefitted similarly by the society itself.

A society could provide more resources for the education of children belonging to poor and uneducated parents, because they take it for granted that the wealthy and educated parents will do it automatically for their children. Thus the enormous state expenditures on less privileged children by the state would be counterbalanced. Thus policies of these kinds would greatly help in establishing EFO. Thus there is no other greater ideal in a society than EFO, that needs to be achieved. This ideal is more precious than all the money in the world. Thus we should not keep waiting for reasonable and cost-effective measures for its realization as there is nothing as valuable as EFO.

Although it is unconvincing to eliminate the word ambition from the EFO formula, it is extremely essential to analyze the issue of differential ambition. Thus if any two individuals have the same ambition but one works hard to achieve it and the other does not, and then the ideal of EFO will not be applicable on them. For instance, two individuals, Molly and Sam have the same ambition in life, i.e. to gain admission into I.I.T. Molly does not work as hard as Sam, to achieve the ambition. Due to this Sam qualifies the I.I.T Entrance examination but Molly

does not. In such kind of cases the ideal of EFO will not be applicable. The concept of EFO enfoldes the division of responsibility between individual and society. This ideal upholds the ambition of an individual without placing any social responsibility on them.

### 3. The Scope of Equality of Opportunity

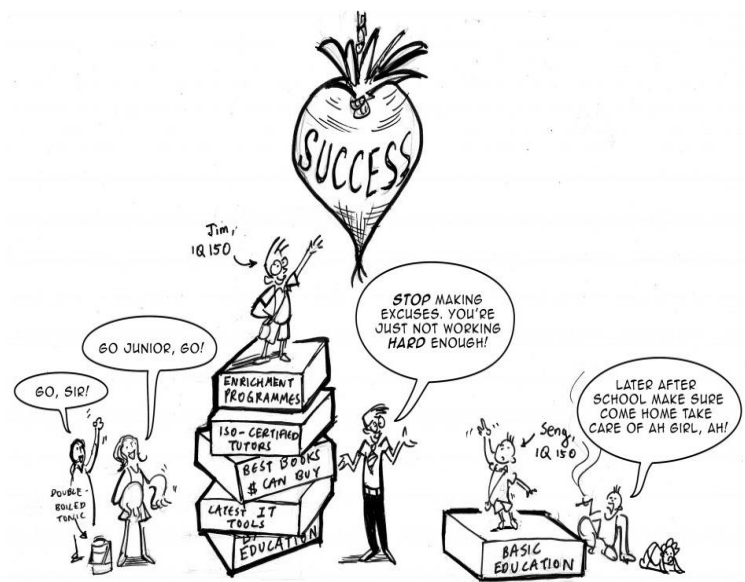
Another aspect needs to be analyzed to accomplish Equality of Opportunity. For the realization of Equality of opportunity, one more aspect needs to be analyzed. For instance in the age of kings there may have been a warrior society which must be fulfilling all the conditions of formal and substantive equality of opportunity, for recruitment to the warrior posts. In this society only warriors were encouraged and rewarded. Thus this warrior society cannot be designated as a society fulfilling Equality of Opportunity, as it does not provide any scope and opportunity for people having other talents and for those who want to pursue a career in other fields.( such as dancers, singers, story-tellers, teachers, rock musicians, artists etc.)

This reveals that Equality of opportunity can only be achieved when conditions of formal and substantive equality of opportunity are fulfilled for all kinds of human talents and careers. Thus a society that encourages develops and rewards a large variety of talents, is truly a society which fulfills equality of opportunity to the maximum.

Thus there are two views regarding the wide-scope of Equality of opportunity. The first view believes that Equality of opportunity can be realized only when all human talents are encouraged, developed, and rewarded. On the other hand, there are others who believe that the wide scope of Equality of opportunity can in no way be outlined but the processes that restrict the scope of opportunity should be abolished by all possible means.

### 4. Equality of Opportunity and Meritocracy

Formal and substantive equality of opportunity ideals only define the methods by which every individual can rise to important positions and posts of the society. But these ideals do not define the extent of inequality that would be acceptable in a society and would also benefit the society. Equality of opportunity would defeat its purpose if all social positions would be equally important and desirable. This issue has



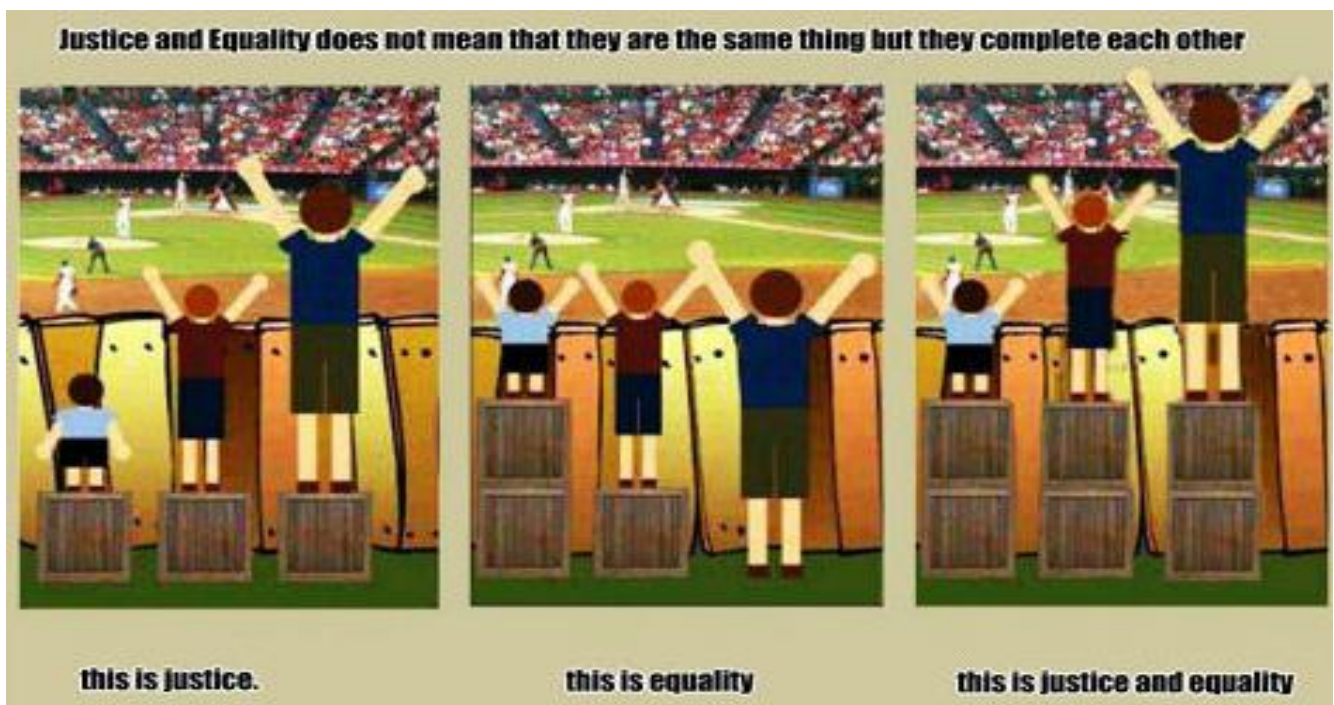
# MERITOCRACY

been addressed by the adoption of the term “meritocracy” for the fulfillment of Equality of Opportunity. The term "meritocracy" is often misinterpreted in term of fulfillment of the formal and substantive equality of opportunity ideals. But it actually refers to a broader ideal. Thus “meritocracy” actually refers to a society in which besides fulfilling the equality of opportunity, rewards and remuneration are received by those individuals who are capable and deserving. Thus according to it individuals should get what they deserve. Therefore if this ideal is ignored, the less qualified and less capable may gain what more qualified or more capable candidates would deserve.

## 5. Justifications of Equality of Opportunity

The Equality of Opportunity norms prohibit discrimination on the basis of caste, creed, race, ethnicity, religion, colour, sex, etc. But it must be taken into account that certain kinds of discrimination cannot be designated as unlawful. For instance a black man may be more comfortable in making black friends. This cannot be considered to be wrong morally. Therefore this cannot be considered as discrimination. But on the other hand if a firm is bent on employing only whites, this would tend to limit the employment opportunities of the blacks. Thus this kind of discrimination should be considered as unlawful and laws and social customs should be framed to prohibit this kind of discrimination.

In order to fulfill Formal and substantive equality of opportunity ideals, discrimination needs to be eradicated. These broader ideals should be valued morally and should be fulfilled unconditionally. They might also be justified on instrumental grounds. For instance the



discrimination between men and women should be eradicated in order to fulfill equality of opportunity.



Thus the ideals of equality of opportunity are not only desirable on the basis of morality but also for the establishment of effective governance. Therefore it should be considered and designated as a deontological requirement or as a valuable state of affairs which must be promoted.

## Human rights of persons with disabilities

“Disability is a human rights issue! I repeat: disability is a human rights issue.

Those of us who happen to have a disability are fed up being treated by the society and our fellow citizens as if we did not exist or as if we were aliens from outer space. We are human beings with equal value, claiming equal rights...”

*Speech by Bengt Lindqvist, Special Rapporteur on Disability of the United Nations Commission for Social Development, at the nineteenth Congress of Rehabilitation International, Rio de Janeiro, 25 – 30 August 2000*



## Disability and Persons with Disabilities

The civil, political, social, economic and cultural rights being provided to normal people should also be provided to people suffering from disabilities. Disability "summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature." (Standard Rules on the Equalization of Opportunities for Persons with Disabilities). People suffering from disabilities are often referred to different phrases. For instance they are often called as "differently-able people". This term indicates that disability should not be perceived as an abnormality. The term "disabled people" is often misinterpreted



in terms of the capability of the people, ( i. e. the person is not capable enough) therefore the United Nations (UN) also uses the term "persons with disabilities".

According to the report of the UN, the world comprises of around 500 million people with disabilities. This number is multiplying day by day due to a number of reasons such as, destruction due to wars and natural calamities, unhygienic living conditions, or the lack of knowledge about prevention and treatment of disabilities.

The less developed countries comprise of the majority of differently able people, due to the absence of essential services such as health care. In addition to this disabilities often tend to rise in the poverty stricken areas. Besides this a disabled family member also tends to make the family poor as his/her presence places higher demands on the family's resources.

It has also been observed that the most vulnerable groups that face discrimination on account of disabilities are- women, children, elders, victims of torture, refugees, displaced persons and migrant workers. The greatest irony is that these highly discriminated groups face even greater discrimination on account of disabilities.

## **Development of Disability Policy**

In the international arena, the UN has strived hard to develop important policies for the people with disabilities. The first step taken in the direction was by the formulation of the Declaration on the Rights of Mentally Retarded Persons (in 1971), which was based on the International Bill of Rights. This was preceded by many other important policies, which were not legally binding. The most important step for the formulation of policies for the people with disabilities was taken in the 1980s. It was in 1981 that for the first time the General Assembly declared the first International Year of Disabled People. This was preceded by the World Programme of Action Concerning Disabled Persons in 1982 and the Decade of Disabled Persons in 1983-1992. The 1990s were also very important years for the people with disabilities, as the UN held a large number of conferences to deal with the rights of the people with disabilities and to formulate protective instruments for them. Some of the conferences held during this time were: World Conference on Human Rights 1993, Fourth World Conference on Women 1995, Habitat II 1996 etc. In the contemporary world the Ad Hoc Committee on Disabilities is working towards the development of a convention for the protection of people with disabilities, on an international level. Besides this



the European Union is also trying to generate awareness towards the rights of people with disabilities. To do so the year 2003 was declared as the European Year of People with Disabilities. Other important steps taken in this direction at the regional level are the observances of the Asian and Pacific Decade of Disabled Persons (1993-2002), the African Decade of Disabled People (2000-2009), and the Arab Decade of Disabled Persons (2003-2012).

### **Rights for the people with disabilities at the State Level**

People with disabilities often face a lot of differentiation in the society, on account of prejudice and ignorance. Besides this they often lack equal opportunities as compared to normal people , due to lack of facilities or essential services.

International human rights law assures the following rights to all people without any form of discrimination:

1. The right of equality before law
2. The right to non discrimination
3. The right to equal opportunity
4. The right to independent living
5. The right to full integration
6. The right to security

Therefore the policies formulated for people with disabilities often inculcates the notion of "equalization of opportunities", which is based on the belief that the resources of the society must be available to every individual, including persons with disabilities. Therefore people with disabilities should also be provided with an equal opportunity to participate in society.

### **International and Regional mechanism for Protection and Promotion of rights of people with disabilities**

International legal policies are formulated as treaties. (which are also called agreements, conventions, or protocol) The terms of the treaty are binding to the states signing it. Once the terms of the treaty have been formulated, the text of a treaty is considered to be authoritative and definitive and is "signed" by the representatives of the countries who agree to abide by it. A state can demonstrate allegiance to the treaty in a number of ways, the most common method being through ratification or accession. Ratification of a treaty can only be done by the countries who participated in its negotiation and formulation. The rest of the states who wish to

comply with it may accede to it at a later stage. The treaty becomes valid or comes into force only when a pre-determined number of states agree to it. (Through ratification or accession)

Sometimes a treaty may allow a state to make reservations to only one or more articles of the treaty through ratification or accession, which may also be withdrawn at any time. But sometimes these kinds of reservations are prohibited by the treaty. For the proper implementation of an international treaty it is extremely essential that the states acceding to it issue decrees, change existing laws or introduce new legislation, in order to give a ratified international treaty the force of a national law. However in some countries this is not required as international treaties take precedence over the national laws.

Thus the governments of the various states can be forced to provide the human rights to the people with disabilities, in order to fulfill the provisions of the binding treaties, that they may have ratified. They may also be driven to fulfill the provisions of the non-binding instruments, (such as declarations and resolutions) through negative public exposure. Thus many governments may consequently adapt these policies, in order to clean their international image and to become popular in the international arena.

In order to protect the rights of the people with disabilities and for providing equal opportunities to them, many international instruments have been formulated. Some of them are as follows:

## **United Nations**

Universal Declaration of Human Rights (1948) (article 3, 21, 23, 25)

In 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights (UDHR), for the realization of the basic human rights. The human right standards adopted by the UDHR, are accepted by all the member states of the UN. The UDHR also formulated the basic human right standards for people with disabilities. The socio-economic rights of people with disabilities, are outlined in Article 25 (1) of the UDHR. These include the right to an adequate standard of living, such as right to food, clothing, housing, social services, medical facilities, and the right to security. (In condition of unemployment, disability, sickness,



old age widowhood etc.) In addition to this it also guarantees equality before the law and equal protection by the law to all individuals, without any form of differentiation, in Article 7.

#### International Covenant on Civil and Political Rights (1966) (article 26)

This treaty outlines many rights for the people with disabilities. It also guarantees equality before the law and equal protection by the law, to all individuals, without any form of differentiation.

#### International Covenant on Economic, Social and Cultural Rights (1966) (article 2)

It does not outline any provisions especially for the people with disabilities. But

it indirectly includes the rights of the people with disabilities under "other status" in article 2 (2), which guarantees non-differentiation on the basis of race, colour, and "other status".



For the proper implementation of the rights outlined in the International Covenant on Economic Social and Cultural Rights, the Committee on Economic Social and Cultural Rights , (which is the monitoring body of the Covenant) outlined the following provisions:

#### Declaration on the Rights of Mentally Retarded Persons (1971)

The UN General Assembly adopted this declaration. In this it clearly outlines that: "The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings."

#### Declaration on the Rights of Disabled Persons (1975)

The UN General Assembly adopted this declaration. This declaration was the first international document to outline the term "disability." Besides this it also inculcates many social, economic, civil and political rights.

#### Declaration on the Rights of Deaf-Blind Persons (1979)

Article 1 of this Declaration outlines that "...every deaf-blind person is entitled to enjoy the universal rights that are guaranteed to all people by the Universal Declaration of Human Rights and the rights provided for all disabled persons by the Declaration of the Rights of Disabled Persons."

Convention on the Elimination of Discrimination Against Women (1979) (article 3)  
The Convention on the Elimination of Discrimination Against Women, (CEDAW) does not outline any provisions especially for the people with disabilities, but it indirectly includes the rights of the women with disabilities by providing protection to the rights of all women, without any discrimination.(even on the basis of disability). The greatest irony is that women with disabilities face double discrimination on the basis of gender as well as their disability. In General Recommendation 18 the Committee on the Elimination of Discrimination Against Women,(which is the monitoring body of the CEDAW convention) women with disabilities have been named as the most vulnerable group, on account of double discrimination. It recommends the governments of the various states to keep formulating periodical reports regarding information on disabled women. It also recommends them to adopt special measures to ensure that women with disabilities "have equal access to education and employment, health services and social security, and to ensure that they can participate in all areas of social and cultural life."

The greatest repercussion of the declaration of the International Year of Disabled Persons (1981), was that it led to the development of the World Programme of Action Concerning Disabled Persons (WPA) (1982). The WPA suggests strategies to the entire world for the prevention, rehabilitation and equalization of opportunities for the people with disabilities. It also ensures complete participation of people with disabilities in the social and national arena. The WPA recommends to resolve the issues regarding people with disabilities through a human rights perspective.

Convention (No. 159) concerning Vocational Rehabilitation and Employment (Disabled Persons) (1983)

This convention was formulated by the International Labour Organization (ILO), which is an agency of the UN. It recommends the member states on an obligatory basis to "formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons" (article 2). This treaty also ensures equal opportunity through: "positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers" (article 4).

Convention on the Rights of the Child (1989) (article 2, 6, 12, 23, 28)

This convention outlines disability as one of the most prominent reason for discrimination and thus prohibits it through article 2. Besides this the issues regarding the children with disabilities are directly addressed through article 23, which states that disabled children should be ensured a "full and decent life of dignity and participation in the community".

## Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care (1991)

The UN General Assembly has outlined standards for the protection of people with mental disabilities, in this document. It clearly states that every individual should be ensured the right to the best available mental health care. Therefore people with mental disabilities should be treated with humanity and respect. It also ensures the right to protection from economic, sexual and other forms of exploitation, to people with mental disabilities. It clearly directs non-differentiation on the basis of mental illness. It also guarantees the right to exercise all civil and political rights to people with mental disabilities. It also ensures the well-being of the people with mental disabilities, through the fair hearing by an independent and impartial tribunal established by domestic law, in case an issue arises.

## Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

In 1993 the General Assembly formulated the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, just after the adoption of the Decade of Disabled Persons. However these Standard Rules are not legally binding for the nations who are its members. In spite of this these Standard Rules are regarded as the most acceptable human right standards, regarding the people with disabilities. Thus they can be regarded as the moral and political commitment on the part of the Governments of the member states, for the realization of equalization of opportunities for people with disabilities. It encompasses the issues regarding equal participation (such as causes of unequal participation, target areas of equal participation, measures for realization and monitoring of equal participation).

The *UN Special Rapporteur on Disability* assesses the implementation of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities from time to time. Bengt Lindqvist (Sweden), was appointed as the first Special Rapporteur in 1994. Thereafter his tenure was renewed twice, in 1997 and 2000. After the completion of his tenure, Sheikha Hessa Khalifa bin al-Thani (Qatar) was appointed as the Special Rapporteur, in 2003.

## General Comment 5 (1994)

The Committee on Economic, Social and Cultural Rights issued the General Comment to eradicate differentiation regarding the people with disabilities in the areas of, equal rights for men and women ("double discrimination") (article 3 of the ICESCR), work (ICESCR articles 6-8), social security (article 9), protection of the family (article 10), adequate standard of living (article 11), right to physical and mental health (article 12), right to education (articles 13 and 14) and the right to take part in cultural life and enjoy the benefits of scientific progress (article 15).



Beijing Declaration on the Rights of People with Disabilities (2000)

At the World NGO Summit on Disability, the Beijing Declaration on the Rights of People with Disabilities was adopted in 2000, which calls for a higher standard of living, equal participation and the elimination of discriminatory attitudes and practices.

Convention on the Rights of Persons with Disabilities (2007)

This treaty on the Rights of the People with Disabilities came into force from May 2008.

## **African Union (Former Organization of African Unity, OAU)**

African Charter on Human and Peoples' Rights (1981) (Article 18)

The African Charter clearly states in its article 18 (4), that disabled people are entitled to special measures of protection. It further reiterates in article 16 (1) that every individual is entitled ‘ to enjoy the best attainable state of physical and mental health’.

## **Council of Europe**

The Council of Europe is a regional intergovernmental organization. Approximately 45 countries are members, including all the members of the European Union. It was specially formulated to defend human rights and parliamentary democracy. The Council of Europe has not directly worked for the realization of the rights of disabled people. Indirectly it has adopted two important treaties which contain the provisions for the protection of the rights of the people with disabilities. These are:



❖ *European Convention on the Protection of Human Rights and Fundamental Freedoms* (1950) (article 5)

This Convention in Article 5 clearly states that the right to liberty and security can be infringed upon grounds of mental disability: "No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

❖ *European Social Charter* (1961) (article 15)

This Charter is an extension of the Convention, which contains provisions for the

protection of various social and economic rights, (such as the right to work, or the right to social security). This Charter is considered to be important because it was the first human rights treaty to explicitly mention disability.

Besides these treaties the Parliamentary Assembly of Council of Europe adopted several recommendations, containing policies regarding disabled people, which are as follows:

*Recommendation (818) on the Situation of the Mentally Ill (1977)*

This recommendation encompasses provisions for protection of mentally ill people in the court. It also outlines the legislation rules regarding the punishment and detainment of mentally ill people.

*Recommendation (1185) on Rehabilitation Policies for the Disabled (1992)*

This recommendation encompasses provisions for ensuring active participation and equal opportunities for disabled people in the society.

*Recommendation No. R(92)6 on a Coherent Policy for the Rehabilitation of People with Disabilities (1992)*

This recommendation declares that the rights of disabled people are different from normal people. It further encourages complete integration and the right to independent living of the disabled people in the society.

## European Union

The European Union has also made a number of efforts for the realization of the rights of the disabled people. To do so a number of resolutions were adopted by the European Union, which are as follows:



❖ *Resolution on the human rights of disabled people (1995)*

This resolution via the European Commission, (which is the executive branch of the European Union) has made provisions for the realization of equal opportunities for disabled people.

❖ *Resolution on the threats to the right to life of disabled persons (1996)* works to protect the right to life. It reiterates that the European Union is "opposed to the practice of the active killing by doctors of patients in a persistent vegetative state and disabled new-born children."

- ❖ Resolution on the Commission's communication on equality of opportunity for people with disabilities (1997) accepts that "there are 37 million disabled people in the European Union who do not enjoy full civil and human rights". On this basis it recommends the member states to guarantee disability protection laws in their area of influence.

In addition to this the European Union adopted a (binding) general Framework Directive on equal treatment in employment, in December 2000. This directive prohibits direct and indirect differentiation on the basis of religion, age, sex and disability. This Directive is binding upon the member states. In fact the member states are bounded to implement the directive in their nation, before joining the EU.

## **National Protection and Service Agencies**

In the contemporary world laws regarding anti-discrimination and full participation for people with disabilities have been implemented by several countries, such as the Australia, India, U K, USA etc.

For instance the Disability Discrimination Act was passed in Australia in 1992. This act aims "to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of: work, accommodation, education, access to premises, clubs and sport; and the provision of goods, facilities, services and land; and existing laws; and the administration of Commonwealth laws and programs; and to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community."

In India also two laws have been passed to protect the rights of people with disabilities. These are the protection of the *Rehabilitation Council of India Bill* and the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act*.

In UK, the Disability Discrimination Act was passed in 1995, for eradicating all kinds of discrimination, (such as in the areas of employment, access to goods, buying or renting land or property, access to facilities and services etc.) against people with disabilities.

In the United States the civil rights law regarding disabled people, is an amalgamation of numerous laws, especially the law concerning the Americans with Disabilities Act (ADA). The ADA attempts to eliminate discrimination against people with disabilities in all areas such as

employment, accommodation facilities, commercial facilities, transportation, telecommunications etc. In addition to the ADA the other national legislations regarding people with disabilities are the *Civil Rights of Institutionalized Persons Act*, the *Individuals with Disabilities Education Act* and the *Rehabilitation Act*.

**The Indian Constitution** ensures equality, freedom, justice and dignity of all individuals and completely mandates an inclusive society for all including the persons with disabilities. The Constitution in the schedule of subjects lays direct responsibility of the empowerment of the persons with disabilities on the State Governments.

Under the Union List (Article 253 -item No. 13), the Government of India passed “**The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**”, in an attempt to guarantee equal opportunities for persons with disabilities and their full participation in nation-building. The Act extends to whole of India except the State of Jammu and Kashmir. The Government of Jammu & Kashmir has enacted “The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1998”. As per the provisions of the Persons with Disabilities Act- 1995, persons having a minimum of 40% disability are eligible for entitlement of all benefits provided by the Government.

For the implementation of various provisions of the Act, Government of India adopts a multi-sectoral collaborative approach, involving all the Appropriate Governments i.e. Ministries of the Central Government, the State Governments/UTs, Central/State undertakings, local authorities and other appropriate authorities.

India adopted the National Policy for Persons with Disabilities in 2006. India signed the UN Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities on 30th March, 2007. India ratifies the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD) on 1<sup>st</sup> October, 2008.

India is a signatory to the Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region. India is also a signatory to the Biwako Millennium Framework for action towards an inclusive, barrier free and rights based society.

In India, at the central level, we have the Ministry of Social Justice & Empowerment(The Disability Division) which facilitates the empowerment of the persons with disabilities. However, the Constitution in the schedule of subjects lays direct responsibility of the empowerment of the persons with disabilities on the State Governments.

Hence, the Social Welfare Boards are established by the State Governments and Union Territories in India for the Persons with Disabilities. At village level, intermediary level and

district level, Panchayati Raj Institutions have been assigned for the welfare of persons with disabilities. The non –governmental and voluntary organisations also play a very significant role in providing welfare and rehabilitation services to the persons with disabilities.

Many acts are framed by the Government to ensure equal opportunities for persons with disabilities and their full participation in the process of nation-building. The Government of India has enacted the following legislations for Empowering the Persons with Disabilities and notified Rules & Regulations under the provisions of the Acts:

### **Acts and Policies-**

(i) **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act), 1995** - is one of the main Act which has the provisions for education, employment, creation of barrier free environment, social security etc. The Act extends to the whole of India except the State of Jammu and Kashmir. The Government of Jammu & Kashmir has enacted "The Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1998".

Presently, the Government is in the process of making some comprehensive amendments to this act to make it more inclusive as per the international conventions.

Some highlights of the proposed amendments are:

- Setting up of a national fund for persons with disabilities.
- Reorganization of the Central and State coordinating Committees as Advisory Boards with enhanced roles and responsibilities; creation of committees at district levels.
- Inclusion of new disabilities such as autism and expanding the scope of existing disabilities.
- Ensuring an inclusive environment in education, on roads and in built environment.
- Emphasis on means to prevent disabilities.
- Affirmative action, including reservation of dwelling units and shops for persons with disabilities.

### **(ii) Independent living as possible.**

The All India Service (Special Disability Leave) Regulations, 1957

These regulations may be called the All India Services (Special Disability Leave) Regulations, 1957.

### **(iii) Employees State Insurance Act, 1948**

This Act was made to provide certain benefits to employees in case of sickness, maternity, employment injuries and to make provision for certain other matters in relation thereto. The Act also guarantees reasonably good medical care to workers and their immediate dependants.

### **(iv) The Mental Health Act, 1987**

This Act deals with the laws and amendments of laws relating to the treatment and care of mentally ill persons to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

### **(v) Exemptions under Income Tax Act**

Section 80U, as it existed till the assessment year 1989-90 and earlier years, provided for a deduction in the case of a resident individual assessee suffering from a permanent physical disability (including total blindness). By an amendment made by the Finance Act of 1989, with effect from assessment year 1990-91, the deduction was also made applicable to the assessee who are suffering from mental retardation to the extent specified in the rules made in this behalf by the Board.

### **(vi) Rehabilitation Council of India Act, 1992**

This Act was formed for the purpose of developing the manpower for providing rehabilitation services, providing the constitution of the Rehabilitation Council of India for regulating the training of rehabilitation professionals and the maintenance of a Central Rehabilitation Register and for issues related with this.

### **(vii) National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999**

This act grants the constitution of a national body for the welfare of the persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. This Act has provisions for legal guardianship of the four categories and creating the enabling environment for them as much

#### **Extensive Infrastructure for Persons with Disability**

The government has developed extensive infrastructure in order to deal effectively



with the multi dimensional problems of persons with disability and for the development of manpower in different areas. The following seven national institutes have been setup in each major area of disability:

1. Pt. DeendayalUpadhyaya Institute for the Physically Handicapped, New Delhi
2. National Institute of Visually Handicapped, Dehradun
3. National Institute for the Orthopaedically Handicapped, Kolkata
4. Ali Yavar Jung National Institute for the Hearing Handicapped, Mumbai
5. National Institute of Rehabilitation Training & Research, Cuttack
6. National Institute for the Mentally Handicapped, Secunderabad.
7. National Institute for Empowerment of Persons with Multiple Disabilities, Chennai

### **Rules and Regulations**

#### **The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996**

These Rules provide detail information about evaluation and assessment of various disabilities and indicate the authorities, which are to give the Disability Certificate. The Rules also provide the procedure for holding Central Coordination Committee and Central Executive Committee meetings, procedure of notification of vacancies to Special Employment Exchanges, procedure to be followed by Chief Commissioner for Persons with Disabilities in handling the complaints of persons with disabilities, salary and allowances of Chief Commissioner for Persons with Disabilities and the manner in which annual report is to be submitted by him.

#### **Rehabilitation Council of India Regulations, 1997**

The Regulations offers details about powers and duties of the Chairperson, powers of the Council and about the meetings of the General Council and Executive Committee, their quorum and proceedings etc.

### **Rehabilitation Council of India (Standards of Professional Conduct, Etiquette and Code of Ethics for Rehabilitation Professionals) Regulations, 1998**

These Regulations set forth the standards of professional conduct, etiquette and code of ethics for rehabilitation professionals.

### **Rehabilitation Council of India (Conditions of Service of the Member-Secretary, the officers and other employees) Regulations, 1998**

The Regulations give details for the conditions of service of the Member Secretary, other officers and employees of the Rehabilitation Council of India.

### **The National Trust Rules, 2000**

These Rules provide information about the process of electing the Members of the Trust, Powers and Duties of its Chairperson and Chief Executive Officer etc.

### **The National Trust Regulations, 2001**

The Regulations provides the brief description of service of the Chief Executive Officer, other officers and staff of the Trust. It also elaborates form and manner in which application is to be made for registration of NGOs and the procedure for appointment of guardians etc.

**National Policy for Persons with Disabilities:** Declared in February, 2006. It acknowledges that Individuals with Disabilities are valuable human resource for the nation and seeks to generate an environment that provides them equal opportunities, protection of their rights and full participation in society to the fullest of their abilities. The focus of the policy is on (a) Prevention of Disabilities and (b) Rehabilitation Measures.

- The most important features of the National Policy are:
  - i. Physical Rehabilitation, which includes early detection and intervention, counseling & medical interventions and provision of aids & appliances. It also includes the development of rehabilitation professionals.
  - ii. Educational Rehabilitation including vocational training and
  - iii. Economic Rehabilitation for a dignified life in society.
- The policy specifically brings the focus on issues regarding women and children with disabilities.
- Various Ministries/Departments in Central Government and the State Governments and UT Administrations are implementing the policy, which is a continuous process.

**Press Information Bureau  
Government of India  
Ministry of Social Justice & Empowerment  
07-February-2014**

**Cabinet Approves Amendment to Rights of Persons with Disabilities Bill 2014**

The Cabinet on 6 February, 2014 approved the proposal of the Department of Disability Affairs to incorporate amendments in the proposed Rights of the Persons with Disabilities Bill, 2014, which are:-

- Definition of person with disability in terms of interaction with barriers also;
- High support needs person enabled to take independent and inform decision also;
- Definition of low vision will be notified by the Government;
- The appropriate Government to take necessary steps to ensure reasonable accommodation for persons with disabilities;
- No person with disability will be discriminated on grounds of disability;
- Appropriate Governments to ensure that the persons with disabilities enjoy legal capacity on an equal basis with others, in all aspects of life to have equal rights as any other person before law;
- Recognizing legal capacity of person with disability, limited guardianship would be the norm, to enable the person with disability to take joint decision with legal guardian;
- Person with disability would also have the right to appeal against the decision of appointment of legal guardian;
- Disability Certificate to be valid across the country;
- Educational institutions funded and recognized will have to provide inclusive education for children with disability;
- The appropriate Governments to constitute to expert committee with representation of persons with disabilities for identification of posts for Government employment for persons with disabilities;
- Review period shortened from 5 years to 3 years in case of identified posts;
- 5 per cent vacancies reserved for persons with disabilities will be computed against the total number of vacancies in the cadre strength;
- National Commission and State Commission will have power to exempt any post in an establishment from the

purview of reservation for persons with disabilities;

- For greater coverage and employability in Government sector, the appropriate Governments to prescribe relaxation for upper age limit for employment of PwDs;
- National Commission shall formulate and enforce regulations.

## **Reservation to the Persons with in Disabilities posts in Government Establishments**

Under Section 33 of the Persons with Disabilities Act, 1995 persons with disability gets reservation of not less than three per cent of vacancies in identified posts, by appropriate Governments, of which one per cent each is to be reserved for persons suffering from:

- i. blindness or low vision
- ii. hearing impairment
- iii. Locomotors disability or cerebral palsy.

### **Lists of identified posts for the Persons with Disabilities - 2007**

Ministry of Social Justice and Empowerment, in pursuance of the provisions of Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 {1 of 1996}, had constituted an Expert Committee on the 8th February, 2005 under the Chairmanship of Additional Secretary, Ministry of Social Justice and Empowerment.

The Expert Committee, with the help of three sub-committees, made an in-depth study of various jobs performed in Government offices, public sector undertakings and autonomous bodies including Universities. The Sub-committees also reviewed jobs notified through notification No.16-25/99-NI.I dated the 31st May, 2001 and prepared a detailed list of Groups A,B, C and D posts which were identified suitable for persons with disabilities. The lists have since been published vide Notifications No. 16-70/2004-DDIII dated 18th January, 2007, 15th March, 2007 and 22nd March, 2007.

### **List of identified posts for the Persons with Disabilities - 2013**

Ministry of Social Justice and Empowerment, in pursuance of the provisions of Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation)

Act, 1995 {1 of 1996}, had constituted an Expert Committee on the 30th December, 2010 under the Chairmanship of Additional Secretary, Ministry of Social Justice and Empowerment.

The Expert Committee, with the help of three sub-committees, made an in-depth study of various jobs performed in Government of India Ministries/Departments, public sector undertakings and autonomous bodies including Universities. The Sub-committees also reviewed jobs notified in 2007 and prepared a detailed list of Groups A, B, C and D posts which were identified suitable for persons with disabilities. The Expert Committee submitted its report on 24th January, 2012. The Central Government accepted the report and the list of posts identified for Persons with Disabilities has been published vide Notification No.16-15/2010-DD-III dated 29th July 2013.

### **Lists of identified posts for the Persons with Disabilities - 2007**

Ministry of Social Justice and Empowerment, in pursuance of the provisions of Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 {1 of 1996}, had constituted an Expert Committee on the 8th February, 2005 under the Chairmanship of Additional Secretary, Ministry of Social Justice and Empowerment.

The Expert Committee, with the help of three sub-committees, made an in-depth study of various jobs performed in Government offices, public sector undertakings and autonomous bodies including Universities. The Sub-committees also reviewed jobs notified through notification No.16-25/99-NI.I dated the 31st May, 2001 and prepared a detailed list of Groups A,B, C and D posts which were identified suitable for persons with disabilities.

### **Activity 3**

- Do some research and find out the barriers/obstacles faced by People with Disabilities.
- What barriers have been removed or actions taken to ensure that this person with disability can enjoy equality of opportunity? What barriers have not been removed?
- Do you think people are aware about the provisions given to People with Disabilities? What can you do to spread the awareness among people?

### **Rights of Children with Special Needs**

The human rights of all children, including those with disabilities, are well considered in The Convention on the Rights of the Child (CRC). The Convention includes a specific article recognizing and promoting the rights of children with disabilities. Besides the CRC, the Convention on the Rights of Persons with Disabilities (CRPD), adopted by the United Nations

General Assembly in December 2006, presents a powerful momentum to promote the human rights of all children with disabilities.

Human rights recognize the need for an inclusive society and it provides both the motivation and the groundwork for the movement towards inclusion for children with disabilities. Inclusion requires the acknowledgment of all children as an important part of society and the respect of all of their rights, regardless of age, gender, language, ethnicity, poverty or impairment. For creating an inclusive society, we need to remove the barriers that might prevent the enjoyment of these rights, and involves the construction of encouraging as well as protective surroundings.

According to the UNESCO Convention Against Discrimination in Education (1966), “ *For the purpose of this Convention the term ‘discrimination’ includes distinction, exclusion, limitation or preference which being based on race colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education*”.

The UN Educational, Scientific and Cultural Organization (UNESCO) states that the inclusion of children who would otherwise be perceived as ‘different’ requires “changing the attitudes and practices of individuals, organisations and associations so that they can fully and equally participate in and contribute to the life of their community and culture. An inclusive society is one in which difference is respected and valued, and where discrimination and prejudice are actively combated in policies and practices.” The World Conference on Special Needs Education (SEN), organized by UNESCO and held in Salamanca, Spain, in 1994, recommended that inclusive education should be the norm. This has now been reaffirmed in the new Convention on the Rights of Persons with Disabilities.

When we talk about inclusion in the milieu of education, it means the creation of barrier-free and child-focused learning environments. It also requires providing proper supports to make sure that all children get education in non-segregated/ discriminated environment. Article 29 of the Convention on the Rights of the Child (CRC), mentions that the child’s education be intended for the development of their personality, talents, mental and physical abilities to their fullest potential; to the preparation of the child for responsible life in a free society, in the spirit of understanding and tolerance.

The process of inclusion not only involves ‘special’ children, but all children. It provides children with disabilities the experience of growing up in a diverse atmosphere. When the education system falls short to provide for or accommodate this diverse and encouraging environment, difficulties arise, leading to marginalization and segregation of children with disabilities.



Here, it is important to differentiate between inclusion and integration. In school setting, inclusion requires that schools adapt and provide the needed support to ensure that all children can work and learn together whereas integration means the placement of children with disabilities in regular schools without essentially making any adjustments to school organization or teaching methods. Inclusion is not the same as 'integration', which means bringing children with disabilities into a 'normal' mainstream or helping them to adapt to 'normal' standards rather than adapting and making modifications according to their requirements.

## **International principles and systems**

For the past four decades, the United Nations has made a strong commitment to the human rights of persons with disabilities. This obligation has been mirrored in major human rights mechanisms as well as within specific measures and programmes, which started with the 1971 Declaration on the Rights of Persons with Mental Retardation and now has concluded in the 2006 Convention on the Rights of Persons with Disabilities. There are many other examples of disability-focused initiatives which include the International Decades of Disabled Persons, the 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities and the 1994 Salamanca Statement and Framework for Action for Special Needs Education (SEN).

### **Human rights instruments and high-level decisions reinforcing the rights of persons with disabilities.**

Complementing the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, the following texts and international events specifically address the rights of persons with disabilities:

**1971 - Declaration on the Rights of Mentally Retarded Persons** stipulates that a person with an intellectual impairment is accorded the same rights as any other person

**1975 - Declaration on the Rights of Disabled Persons** proclaims the equal civil and political rights of all disabled persons, and sets standards for equal treatment and access to services

**1981 - International Year of Disabled Persons (United Nations)**

**1982 - World Programme of Action concerning Disabled Persons**

**1983–1992 - International Decade of Disabled Persons (United Nations)**

**1990 - World Declaration on Education for All and Framework for Action to Meet Basic Learning Needs** adopted at the World Conference on Education for All, in Jomtien, Thailand in March 1990, promotes “equal access to education to every category of disabled persons as an integral part of the education system”

**1993 - United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities** provide detailed guidelines for policy development and implementation

**1993–2002 - Asian and Pacific Decade of Disabled Persons**

**1994 - Salamanca Statement and the Framework for Action on Special Needs Education.** Adopted by the UNESCO World Conference on Special Needs Education: Access and Quality, Salamanca, Spain, 7-10 June 1994. Adopted by 92 governments and over 25 international organizations, putting the principle of inclusion on the educational agenda worldwide

**1995 - World Summit for Social Development, Copenhagen Declaration and Programme of Action** calls upon governments to ensure equal educational opportunities at all levels for disabled children, youth and adults, in integrated settings

**1998 - Human Rights of Persons with Disabilities, Commission on Human Rights Resolution 1998/31**

**2000 - World Education Forum, Dakar, Statement and Framework for Action** established attainable and affordable educational goals, including the goals of ensuring that by 2015 all children of primary age have better access to complete free schooling of an acceptable quality, that gender disparities in schooling are eliminated and that all aspects of educational quality are improved

**2000 - Human Rights of Persons with Disabilities, Commission on Human Rights Resolution 2000/51**

**2001–2009 African Decade of Disabled Persons**

**2002- UN General Assembly Resolution on The Rights of the Child**, following the World Summit on Children, calls upon States to take all necessary measures to ensure the full and equal enjoyment of all human rights and fundamental freedoms by children with disabilities, and to develop and enforce legislation against their

discrimination, so as to ensure dignity, promote

self-reliance and facilitate the child's active participation in the community, including effective

access to educational and health services

**2002 - 'A World Fit for Children'**, outcome document of the UN General Assembly Special Session on Children makes clear reference to the rights of children with disabilities, especially regarding protection from discrimination, full access to services, and access to proper treatment and care, as well as the promotion of family-based care and appropriate support systems for families

**2003–2012 Second Asian and Pacific Decade of Disabled Persons**

**2004–2013 Arab Decade of Disabled Persons**

**2006- UN Convention on the Rights of Persons with Disabilities**

**2006–2016 Inter-American Decade of Disabled Persons**

*<http://www.un.org>*

### **Convention on the Rights of the Child:-**

The United Nations Convention on the Rights of the Child (CRC) was approved collectively by the General Assembly on 20 November 1989. It was opened for signature on 26 January 1990 and came into force in record time on 2 September 1990. India is a signatory to the convention. Till now, it has been ratified by 191 States.

The 1989 Convention on the Rights of the Child (CRC) is the earliest obligatory mechanism in international law to deal with the human rights of children at length, and is distinguished for the enclosure of an article exclusively talks about the rights of children with disabilities. The Committee on the Rights of the Child monitors and supports the execution of the CRC.

The CRC categorizes four general principles that give the groundwork for the achievement of all other rights:

- The best interests of the child;
- Respect for the views of the child;
- Survival and development;

- Non-discrimination.

The principles of the CRC reviewed in article 7 of the Convention insist on the basic rights of all children with disabilities to the entire range of human rights inherent to all children. The wellbeing and the voice of children with disabilities are commonly ignored and underestimated. To overcome with this problem, the convention puts the obligation on the States to include children with disabilities in decision-making processes for the participation and the best interests of the children themselves. Both article 7 and article 24 put emphases on their right to appropriate support in making their voices heard.

## **Education for Special Children**

Article 24 of the Convention particularly has suggestions for children. It replicates a lucid obligation to the principle of inclusive education as a goal. It talks about the specific needs of children with severe and complex sensory impairments and how to help them with specific supports to learning such as sign language, low vision aids and Braille. There may be other children with disabilities who need changes in the curriculum, classroom setting, styles of teaching, etc. These modifications may not be suitable for all children with disabilities. The support and modifications have to be individually customized according to the needs of the child. It recognizes the right of all children with disabilities to be included in the general education systems and to receive the individual support they require. It also guides to make general change to eliminate barriers and give practical accommodation. It has to ensure that in providing support services required by children with disabilities, they are not excluded from mainstream educational opportunities.

Ensuring that children with disabilities receive good quality education in an inclusive environment should be a priority of all countries. The United Nations Convention on the Rights of Persons with Disabilities (CRPD) recognizes the right of all children with disabilities both to be included in the general education systems and to receive the individual support they require. Systemic change to remove barriers and provide reasonable accommodation and support services is required to ensure that children with disabilities are not excluded from mainstream educational opportunities.

The Need for the inclusion of children and adults with disabilities in education is important for the following reasons:

1. Education is the most important determinant of not only personal well-being and welfare but also contributes to human capital formation.
2. Excluding children with disabilities from educational and employment opportunities puts a heavy cost on social and economic factors Education will strengthen their earning capacity.
3. To achieve the aim of Education for All or the Millennium Development Goal of universal completion of primary education, the Countries need to ensure the access to education for children with disabilities.
4. Countries that are party to the CRPD have to fulfill their obligations under Article 24 which stresses the need for governments to ensure equal access to an “inclusive education system at all levels” and provide reasonable accommodation and individual support services to persons with disabilities to facilitate their education.

Education is fundamental in itself but also helpful for contributing in employment and other parts of social activity for all children including the children with disabilities.

Most of the societies lay emphasis on attending school as it helps individuals in becoming a complete and better person. Education helps a person to build good social relations which in turn can transform the condition of people with disabilities in society and help asserts their rights. Inclusive education/ society help children to be more familiar and sensitive towards children with a disability which can reduce the prejudice and discrimination in long run. Therefore, inclusive education is essential in creating and promoting inclusive and just societies.

#### **United Nations Convention on the Rights of Persons with Disabilities**

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.



#### **The rights and frameworks which focuses on Education and special needs children**

The United Nations’ Universal Declaration of Human Rights (1948) was the foremost instrument to define education as fundamental human right of all people. It was further included by different international conventions, including the Convention on the Rights of the Child and more recently in the CRPD.

The World Conference on Special Needs Education in Salamanca (1994), Spain produced a statement and framework for action. The Salamanca Declaration encouraged governments to design education systems that act in response to different needs so that all students can have access to regular schools that accommodate them in child-centred pedagogy.

The Education for All Movement is a global movement to provide quality basic education for all children, youth and adults. Governments around the world have made a commitment to achieve, by 2015, the six EFA goals: expand early childhood care and education; provide free and compulsory education for all; promote learning and life skills for young people and adults; increase adult literacy by 50%; achieve gender parity by 2005, gender equality by 2015; and improve the quality of education.

The Millennium Development Goal of universal primary completion stresses attracting children to school and ensuring their ability to thrive in a learning environment that allows every child to develop to the best of their abilities.

In Article 24 the CRPD stresses the need for governments to ensure equal access to an “inclusive education system at all levels” and provide reasonable accommodation and individual support services to persons with disabilities to facilitate their education.

**In India, Children with disabilities** are covered under Chapter 5-Education the Persons with Disabilities (Equal Protection of Rights and Full Participation) Act 1995. Education is the most effective medium of social and economic empowerment. According to the Census, 2001, fifty-one percent persons with disabilities were illiterate. This is an awfully large percentage. There is a great need for Inclusive education to mainstream the persons with disabilities in the general education system. Maintaining the spirit of the Article 21-A of the Constitution, guarantees education as a fundamental right, Section 26 of

**DISABILITY RIGHTS: THE BIG 5**

PROPOSED AMENDMENTS TO THE RIGHTS OF PERSONS WITH DISABILITIES BILL, 2014 TO BE TABLED ON MONDAY

1 New definitions of 'persons with disability', 'high support' and

**SPECIAL COURSE FOR TEACHERS**



1,140 teachers from 30 districts of Tamil Nadu will be trained to understand the educational needs of children with disability by SSA through distance mode.

The 90-day course will have 3-week contact classes and community work enabling teachers to understand all kinds of disability and importance of inclusive education.

Experts say that short-term disability courses, if implemented without accountability, can bring down the quality of special education.

Special focus is recommended on training the teachers to identify children with cranial anomalies, Down's Syndrome and learning disabilities.

PWD act 1995 provides free and compulsory education has to all children with disabilities up to the minimum age of 18 years.

The Government of India launched **SarvaShikshaAbhiyan (SSA)** with the goal of achieving eight years of elementary schooling for all children including those with disabilities in the age range of 6-14 years by 2010. There is also provision to give free education under Integrated Education for Disabled Children (IEDC) Scheme for Children with disabilities in the age group of 15-18 years. SSA ensures the availability of a variety of educational options, learning aids and tools, mobility assistance, support services etc. to students with disabilities. This includes education through an open learning system and open schools, alternative schooling, distance education, special schools, wherever necessary home based education, itinerant teacher model, remedial teaching, part time classes, Community Based Rehabilitation (CBR) and vocational education.

**Sections (26-31) under Chapter 5-Education the Persons with Disabilities (Equal Protection of Rights and Full Participation) Act 1995:-**

**Section 26** - Appropriate Governments and local authorities to provide children with disabilities free education, etc.

**Section 27**- Appropriate Governments and local authorities to make schemes and programmes for non-formal education, etc.

**Section 28**- Research for designing and developing new assistive devices, teaching aids, etc.

**Section 29**- Appropriate Governments to set up teachers' training institutions to develop trained manpower for schools for children with disabilities

**Section 30**- Appropriate Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc

**Section 31**- Educational institutions to provide amanuensis to students with visual handicap.

## **The Role of the Government, Voluntary Groups and NGO's in Affirmative Action**

The word "affirmative action" was first originated in 1960's in United States. It was used to decrease the discrimination and promote actions that achieve non-discrimination in employment. **Affirmative Action (AA)** is also recognized as **employment equity** in some countries. It refers to policies that take factors including "colour, caste, gender, sexual

orientation, religion, race, ethnicity, or national origin" into contemplation in order to help an underprivileged group "in areas of education, employment, and business", usually necessary to counter the effects of the past discrimination.

**Affirmative action** is sometimes described as "positive action." In simple words, affirmative action refers to the purposeful efforts to offer full and equal opportunities in education, employment, and other areas to minorities, women, and persons belonging to other conventionally deprived social groups. To ensure equal opportunity in education and employment, affirmative action can be planned in a form of program and policy that seeks to redress past discrimination through active measures.

Different nations have different policies concerning the nature of affirmative action. In India, it applies a quota system, where a specific percentage of vacancies or jobs are put aside for disadvantaged group while some other countries don't have specific quotas; but they give preference to the members of minorities group in selection processes.

### **Why there is a need for Affirmative action?**

Due to the continued discrimination against people with disabilities, they are not able to enjoy full equality as other people do. In order to reverse this situation, States require to take on measures that are known in different countries as "specific measures," "fair discrimination," "reverse discrimination," "positive discrimination" or "**affirmative action**." The main goal of these measures/actions is to achieve equality, and this is often achieved by giving them some relative benefit. For instance efforts to reward companies for employing people with disabilities would make this companies favour people with disabilities over other people. The workplace needs to make appropriate accommodations for the employees with disabilities because they require specific treatment that differs from that of other employees in order to conquer disadvantages, achieve equality, and promote the enjoyment of human rights rather than violating them. It is covered under Article 2 of the Convention on the Rights of Persons with Disabilities that the failure to offer reasonable accommodation would be considered a form of disability-based discrimination prohibited under the Convention.

In simple words, Affirmative action is proposed to increase the opportunities for the minority or underprivileged/vulnerable groups to give them equal treatment within a society to that of the privileged majority groups.

The Government has selected certain "minority groups" within a society and with the help of affirmative action; it tackles the existing inequity and facilitates the equilibrium for past discrimination, ill-treatment or abuse these minority groups have faced in the society.

### **United Nations and Affirmative Actions**



The International Convention on the Elimination of All Forms of Racial Discrimination (Article 2.2) affirms that countries that are part of the convention need affirmative action programs in order to eliminate prejudice or discrimination. It also states, though, that such programs "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved."The United Nations Human Rights Committee affirms that "the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination, in fact, it is a case of legitimate differentiation under the Covenant."

### **The Present Scenario in India Regarding Affirmative Actions:-**

In Indian milieu, affirmative action is intended to improve the welfare of backward classes/communities by implementing the reservation in jobs and education system. Prior to the independence of India, many leaders like Mahatma Gandhi and Dr. B R Ambedkar raised the issues of the marginalized and worked to advance their interests. Post independence, the affirmative action programmes in India targeted Scheduled Castes and Scheduled Tribes who were at the bottom of the caste hierarchy and the tribal communities.

In the Indian context, reservations have been the mainstay of the Affirmative Action (AA) agenda, which is driven by the constitution and the government. The ideals of AA for SCs and STs enshrined in the constitution ensured that the policies do not become a matter of legal dispute. The Indian government has, as part of the AA policy, reserved 15% and 7.5% posts in government agencies, government enterprises and educational institutions for SCs and STs respectively (in later years, 27.5% for Other Backward Castes (OBCs) as well).

The role played by the corporate sector in AA in India, in the pre Liberalization era, was limited to the mandatory reservation policies for the public sector enterprises. Besides this there were hardly a handful of company, which proclaimed their commitment to a diverse workforce and the upliftment of the marginalized. But with India's meteoric rise as an economic power house. After 1991, the dynamics of India changed drastically with the disadvantaged communities. However in the contemporary world, to eradicate the adverse effects of disparities on the income levels and the opportunities, the plea for an inclusive society is increasing day by day.

The Constitution of India addresses the widespread deprivation of the communities in a chapter titled "Special provisions relating to certain classes" in Part-XVI. Special provisions were made

for the Scheduled Castes and Scheduled Tribes in Part-X of the Constitution. The Constitution provides for the protection and promotion of their social, economic, educational, cultural and political interests to remove the disparities and to bring them on par with other sections of the society. In addition, many articles in Parts III, IV, IX, IX-A, Fifth and Sixth Schedule of the Constitution reinforce these arrangements. Article 14 provides that States shall not deny any person equality before law or the equal protection of laws within the territory of India. Article 15 operationalises the concept of equality in a manner which specifically touches upon the conditions of the Scheduled Castes and Scheduled Tribes.

Social safeguards like abolition of untouchability, access to religious institutions and prevention against atrocities are contained in Article 17, 23, 24 and 25(2)(b) of the constitution. The provisions of Articles 23, 24 and 46 form part of economic safeguards for Scheduled Castes and the Scheduled Tribes which prohibits bonded labour system and child labour. Article 46 notes that the State shall promote with special care the educational and economic interests of weaker sections of the people and, in particular, Scheduled Castes/Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. Article 15(4) empowers the State to make special provisions for the advancement of socially and economically backward classes or citizens and for Scheduled Castes/Scheduled Tribes. Article 16, which provides equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and prohibits any discrimination on grounds of religion, race, caste, sex, descent, place of birth, residence or any or all of them, has made a very special provision which permits Parliament to make any provision for reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. It is through this provision that reservations in appointments and promotions for Scheduled Castes and Scheduled Tribe and for OBCs in the matter of recruitment have been made.

In 2006, Prime Minister Dr. Manmohan Singh appealed to Indian industry to be the government's partner in creating a humane and just society by voluntarily committing to greater diversity in their work force. Responding to the PM's call, the heads of nodal agencies representing Indian industry including the Confederation of Indian Industry (CII), the Federation of Indian Chambers of Commerce and Industry (FICCI) and the Associated Chambers of Commerce and Industry of India (ASSOCHAM) outlined the basic criteria to be followed for affirmative action to be undertaken by companies via policy implementation and positive discrimination in the hiring of candidates.

The basic form of affirmative action as public policy in India has been in the form of reservations for government jobs and in public educational institutions for certain social groups defined as underprivileged. There have been no attempts to force or encourage private sector

reservation of a similar type. For most of the post Independence period, such reservation was confined to the Scheduled Castes and Scheduled Tribes, usually at just over one fifth of the total jobs/seats available. In the later 1980s, reservation was also introduced for social groups defined as “Other Backward Classes”, which were essentially socially lower castes who had achieved levels of political and economic voice far greater than their perceived social positions. These new reservations, which effectively meant that just above half the positions would be reserved, led to urban middle class outrage and protests at the time that they were introduced. Ironically, however, soon after the introduction of such new reservations, a freeze on new employment at the Central Government level and for most state governments effectively meant that such reservations became irrelevant. However, they did make some difference in terms of access to institutions of higher education for students from such groups.

### **Studying the laws arising out of violation of rights related to the equality of opportunity.**

#### **Legal enforcement of equality of opportunity:**

Judicial systems play an essential role in protecting and enforcing the right to education as an entitlement. The enforcement of legal mechanisms guaranteeing equality of opportunity in education is crucial in safeguarding such entitlement. In the case of violation of the right to education and denial of equality of opportunity, everyone must be able to have recourse before courts or administrative tribunals on the basis of international legal obligations as well as to existing constitutional provisions on the right to education. Decisions by courts across regions demonstrate how courts have upheld the right to education and equality of opportunities in education. Case law from several countries shows that individuals can claim their entitlement to equality of opportunity in education.

In India, jurisprudence also underlines State obligations relating to the right to education and the equality of educational opportunities. The Supreme Court of India has interpreted the provisions on equality before the law in article 14 of India’s Constitution to promote equality in law and in fact. Equality in law must ultimately find its *raison d’être* in equality in fact.<sup>57</sup> A Constitution Bench of the Indian Supreme Court held that “What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. [...] The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed.”<sup>58</sup>

## **Office of the Chief Commissioner for Persons with Disabilities, New Delhi**

The Office of the Chief Commissioner for Persons with Disabilities has been set up under Section 57 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and has been mandated to take steps to safeguard the rights and facilities to the persons with disabilities.

Based on the complaints filed before the Presiding Officer, if the provisions of the Persons with Disabilities Act, any rules, bye-laws, regulations, executive orders or instructions are violated or are not implemented, the Chief Commissioner takes up the matters with the concerned authorities. The Act also empowers the Chief Commissioner to issue suo - moto notice of any such non-compliance.

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### **Advocacy, Educational and Training Materials**

*For advocates*

#### **Guide to Disability Rights :**

This guide deals with the issues of disabled people related to the system. It therefore provides the first hand information and practical remedies for issues related to employment, medication, social security, tax benefits and education.

#### **Training Materials for Lawyers and NGOs on the European Convention on Human Rights and the rights of people with mental health problems and/or developmental disabilities(Mental Disability Advocacy Center, Budapest, 2002):**

The Mental Disability Advocacy Center (MDAC) and its partner NGOs, prepared a training manual in 2002 for lawyers and NGOs invited to attend its training seminars. The manual was designed to provide an insight and first hand information on human and civil rights of the people with mental health and/or developmental disabilities. It also provided an overview of the European Convention on Human Rights of disabled people. Besides this it also explains the various definitions regarding mental health problems and developmental disabilities. It also lists the relevant



articles of the European Convention on Human Rights and case law of the European Court of Human Rights and the Council of Europe Committee for the Prevention of Torture.

*For teachers*

### **Ten messages about children with disabilities (UNICEF)**

It outlines several practical remedies, in order to provide a safe and equitable environment for children with disabilities.

### **The Disabled: "Making Our Own Charter" (by Richard Pierre Claude in: *Popular Education for Human Rights: 24 Participatory Exercises for Facilitators and Teachers*, HREA, 2000)**

These exercises are extremely beneficial as they can be adapted to diverse environments and cultures. These exercises lead to the development of a concise Preamble to a Charter for the Disabled, as these exercises help the participants to identify some of the special needs of people with disabilities. They are thus able to formulate a series of human rights for the disabled that reflect their needs and also comply with the existing international and national right standards. This further helps them to develop and implement an action plan which ensures that people with disabilities get to know about their human rights.



### **Activity 4**

1. Relate examples of discrimination and inequality, faced by people with disabilities in their everyday lives.
2. Do you think the people with disabilities face discrimination only on account of their disability? List some other kinds of discrimination due to which people with disabilities may suffer?
3. Discuss whether the discrimination faced by the people with disabilities affects their near and dear ones? (i.e. their friends and family).
4. Divide the class into small groups and discuss:
  - The causes of discrimination and inequality?

- People responsible for discrimination and inequality? (Individuals or society as a whole)
  - Whether discrimination is usually intentional or unintentional?
  - Remedies for making people aware of their discriminatory behavior towards people with disabilities.
- The impact on the disabled people and the society as a whole, if the root causes of discrimination and inequality are not addressed ?

## Activity 5

### *Discuss*

- a. The training for female recruits should be different from the male recruits in the armed forces?
- b. Do 'gender-free' work policies put people at risk?
- c. Do we require changing the 'equality of opportunity' legislation for some jobs and making them free from equality of opportunity?

## CASE STUDY 1

Kern v. Dynalelectron Corp. 577 F.Supp.1196 (N.D. Tex 1983)

Wade Kern, a white, Baptist male, applied for a job as a helicopter pilot with Dynalelectron. Under a contract with the Saudi Arabian government, Dynalelectron was recruiting pilots to fly patrol missions along the pilgrimage route to Mecca. Because such flights entered the holy area around Mecca, and since Saudi law specifies beheading as the penalty for non-Muslims entering this area, a condition of employment was that pilots be Muslim.

Kern understood and accepted this condition and was hired. However, three months after formally converting from Baptist to Muslim, he changed his mind. Dynalelectron offered him another position that would become available in four months. Kern declined that position and demanded that he be given another position immediately. The company refused.

### *Discuss*

What kind of discrimination Kern faced ? Find out about the International laws that have been formulated for the prevention of discrimination of this kind?

[http://www.leagle.com/decision/19831773577FSupp1196\\_11571.xml/KERN%20v.%20DYNALLECTRON%20CORP](http://www.leagle.com/decision/19831773577FSupp1196_11571.xml/KERN%20v.%20DYNALLECTRON%20CORP).

## Case Study 2

"I (**Jackson Gonmei , hailing from North East, India**) was working at call centre in Delhi associated with a California-based company since 2012. In June, they asked me to stop coming with no notice. But till date they did not clear my last month's salary.

"Every time I call they challenge me saying, 'try and do whatever you want.' They are rude and misbehave.

"I have started the legal process through the northeast helpline.

"For months I asked for an employment letter but they refused.

"Because we are treated as outsiders, they get away with suppressing us. I am not chasing the money; I think it is time that I have to speak up.

"On the streets people comment, 'Are you from Nepal or China?' Do you know Karate, Kung-fu? Do you eat snakes, dogs?"

### *Answer the following questions*

- a. Why do the North-Eastern people face discrimination in other parts of India?



- b. Search more case studies regarding discrimination against the North East people. List the ways in which they are discriminated.
- c. Suggest remedies for eradication of racial discrimination of this kind.

<http://www.aljazeera.com/indepth/features/2014/02/voices-from-india-northeast-201421811314600858.html>

### **Case Study 3**

#### **Age discrimination: New phenomenon emerging at the workplace**

“Companies don't want elderly or even middle-aged employees. Even if they are selected, they aren't provided equal opportunities for growth and training compared to younger employees,” laments 62-year-old KCV Georgie, a consultant with Vidya, an NGO based in Delhi. After running his father-in-law's business, Georgie started looking for a job that would earn him a comfortable salary and keep him busy. But at the ripe age of 55, opportunities were hard to come by.

- a. Talk to the elderly people around you to find out about the various kinds of discrimination they often face in the society.
- b. Is the discrimination of this kind against the elderly justified?
- c. Are there any laws in India for the prevention of inequality in opportunity for the elderly people ?

[http://economictimes.indiatimes.com/articleshow/9341329.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/9341329.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

#### Case study 4

In a matter heard at the Anti-Discrimination Tribunal (*McRostie v Boral Resources Qld Pty Ltd* [1999] QADT 4) a woman had been discriminated against at work on the basis of her gender. It was found that the employer had treated MsMcRostie less favourably by paying her less than male colleagues, and awarded her \$5,960 as loss of wages. The Tribunal also found that she was not given the same opportunities as men in the workplace, including relieving in more senior positions. MsMcRostie was awarded the sum of \$7,500 by way of general damages to compensate her for her hurt and humiliation.

**Discuss** - Besides unequal wages, what are other kinds of discrimination faced by women at the workplace?

#### Case Study 5

This case, *Youth Bowling Council v. McLeod*, was heard by a Tribunal and was then appealed to Divisional Court which dismissed the appeal. The Ontario Court of Appeal later endorsed the Divisional Court decision.

By age 11, Tammy had bowled for five years in the local recreation league. She and several others qualified to enter a province-wide competition sponsored by the Youth Bowling Council.

Tammy has cerebral palsy and uses a wheelchair, but she has some movement and coordination. So she could bowl, her father built a wooden ramp, the top of which rests in Tammy's lap. She lines up the ramp towards the bowling pins and lets the ball roll down the ramp.

Just before the competition, the Council ruled that Tammy was ineligible to take part. While the Council's rules allowed persons with disabilities to use special equipment to assist them in recreational bowling (provided the equipment did not add force or speed to the ball), they prohibited the use of such equipment in competitions.

The Tribunal and later the Supreme Court of Ontario heard Tammy's application. The Youth Bowling Council argued that it had not violated her rights under the *Code*, because Tammy wasn't capable of the essential requirement of bowling—manually releasing the ball. The Council also contended that the use of special devices would make competition between the bowlers unfair, because the skills assessed would not be common to all competitors.

Tammy's lawyers argued that Tammy was bowling—she was using the ball to knock down pins. Also, the Youth Bowling Council had a duty to accommodate her under the *Code* by allowing her to use the ramp. Speed and accuracy tests showed that Tammy did not gain any advantage over other bowlers. Her ball speed was too low for maximum results and her

accuracy no better than average.

*Group discussion questions:*

Could Tammy perform the essential requirement of bowling? Should this argument have been a factor in determining whether a violation occurred?

Should the Council have to accommodate Tammy (for example, should they allow her to bowl in competitions with the ramp)?

Would the Council experience undue hardship if it accommodated her in competitions? Would it change the sport too much? Give your reasons.

*Discussion points:*

This case, *Youth Bowling Council v. McLeod*, was heard by a Tribunal and was then appealed to Divisional Court. The Divisional Court decision was later endorsed by the Ontario Court of Appeal.

This was the issue: could Tammy perform the essential requirement of bowling, and should this have been a factor in determining whether a violation had occurred?

The Court agreed that manual control and release of the ball (that is, the physical activity in delivering the ball) were the essential requirements of bowling. Tammy needed the ramp to release the ball and thus could not perform the essential requirement.

Since Tammy could not perform the essential requirement without her ramp, did the Council have an obligation to accommodate her? The Tribunal said, “Yes, it did.” In effect, the rule that the ball must be manually controlled has an adverse impact on many people with disabilities such as Tammy, or people without full use of a hand or arm.

The *Code* says that an organization must accommodate a person with a disability who cannot meet essential requirements, unless it can prove undue hardship.

Would it cause undue hardship to accommodate Tammy in competitions? The Court said “no” for several reasons. Allowing Tammy to use her ramp would not give her an unfair advantage over other bowlers. As the tests proved, Tammy had no competitive advantage over others. While the Council said that skills should be common to all competitors, it did not account for other differences, such as height, weight or maturity, which also affect a person's ability to bowl.

The Court rejected the argument that special devices could be used in recreational bowling but not in competitive bowling.

Was it fair to welcome persons with disabilities in recreational bowling but not in competition, particularly when such persons would have no proven competitive advantage? As the Tribunal

pointed out, all participants strive to win, whether they are in recreational or competitive settings, and everyone should have the opportunity to take part in both settings.

The Court supported the Tribunal's decision that Tammy had been discriminated against based on her disability. The Court ordered the Council to allow Tammy to use the ramp in competitions. This effectively permits all bowlers with disabilities to use special equipment as long as the equipment does not mechanically add force or speed to the ball.

<http://www.ohrc.on.ca>

## **Unit End Comprehension**

- Q1. Why is Equality of Opportunity considered to be the most confusing right?
- Q2. Why can Equality not be equated with uniformity?
- Q3. Do you think that the greatest challenge for eradicating inequality is in developing techniques for developing the positive side of human nature?
- Q4. Describe the ideal of Formal Equality of Opportunity? Do you think that Formal equality of opportunity can be fulfilled in a democratic environment only?
- Q5. How can a society realize John Rawl's ideal of "equality of fair opportunity"(EFO)?
- Q6.Does the term "meritocracy" implies only the fulfillment of the formal and substantive equality of opportunity ideals?
- Q7. How can the fulfillment of Formal and substantive equality of opportunity ideals be justified?
- Q8. Why are the people with disabilities considered to be the most vulnerable groups that face discrimination?
- Q9. Describe the journey of the development of disability policies by the UN for the realization of Equality of Opportunity for the people with disabilities.
- Q10. Discuss the policy that you would consider to be a milestone in the realization of Equality of Opportunity for the people with disabilities.
- Q11. Describe some of the Advocacy, Educational and Training Materials adopted that greatly help in the proper implementation of the goal of Equality of Opportunity.
- Q12. How does the Indian Constitution guarantee Equality of Opportunity to the people with disabilities?
- Q13. Outline the International provisions adopted for the realization of Equality of Opportunity for children with special needs?

Q14. What is meant by the term "affirmative action"? Why do you think there is a need for Affirmative action?

Q15. Describe the legal enforcement of equality of opportunity in India?