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Inaccessible Infrastructure: Ignored Right in the Ableist Society

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# INACCESSIBLE INFRASTRUCTURE: Ignored Right in The Ableist Society

Rohit Sharma<sup>1</sup> & Nutan Kanwar<sup>2</sup>

**Abstract:** *This paper delves into the intricate interplay between disability rights and accessible infrastructure within the context of an ableist society. The analysis commences with a historical overview of the evolving perceptions of disability, tracing a trajectory from outdated models to the contemporary human rights paradigm. Subsequently, the paper examines the legal framework governing disability rights in India, focusing on the Rights of Persons with Disabilities Act of 2016. It scrutinizes the act's provisions pertaining to accessibility, reasonable accommodation, and other fundamental rights. Central to the discourse is the assertion of accessibility as an intrinsic human right. The paper tries to understand the imperative of creating an inclusive environment free from barriers and ensuring equitable participation for individuals with disabilities. It explores the constitutional underpinnings of accessibility, tracing its roots in the principles of equality and non-discrimination. The analysis extends to the practical challenges encountered in implementing accessibility measures. It highlights the need for universal design in public infrastructure and the importance of addressing both physical and attitudinal barriers. The paper concludes by emphasizing the significance of accessibility as a cornerstone for building a just and equitable society.*

*Keywords: Accessibility, Disability rights, Ableism, Inclusive infrastructure, Human rights.*

## I.

### Introduction

Species of homo sapiens are diverse in themselves and this diversity makes them one of the beautiful members of a pluralistic society. However, when we concede this diversity, we need to accept them in toto without any disregard for their physical and genetic makeup, as this is the very basis of almost every civilized constitutional philosophy. Defying the physio-mental diversities they have proved their potential beyond the expectations of the so-called norms and the normal of the ableist society. Categorizing them as persons with disabilities and labeling them as less capable/productive without addressing the structural and environmental impediments in society is unjust on the part of ableist society as it goes against the human rights perspective as enshrined in the Universal

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Declaration of Human Rights and constitutional philosophy of the state. The Ableist society denies the first principle of UDHR and dignified life to their counterparts who've visualized persons with disabilities as less capable.

Law as an instrument of social change cannot perform the task of ensuring a fair ground to those with such diversity unless there is equality in terms of opportunities. It is, therefore, mandated to the appropriate governments to take such affirmative actions at their levels by making public places accessible to all. The structural modifications and improvements address the needs of persons with disabilities by providing accessible platforms. Literature suggests that persons with disabilities have been viewed from different perspectives and have been treated according to the diverse discriminating and promoting models of the time ranging from the models of charity to the 21st century human rights model. Historical past, state of affairs of the built structure in the society, and insensitivity in the state of mind of individuals with disabilities are some of those aspects that have been ignored by the so-called ableist society.<sup>3</sup>

Substantive recognition of significant proportion of ignored classes in society under the legislative progression acknowledges the identity of persons with disabilities at par with all other members of society. This legislative salutation provides firm ground to the Indian judicial set-up to evolve and ensure those basic human rights to persons with disabilities which were long awaited. The universalization of these basic human rights acknowledged in the form of a convention on the rights of persons with disabilities which is based on eight fundamental principles that intend to transform the social, economic, and public sphere of society into a just and equitable space for all. Moreover, reasonable accommodation as mandated under the constitutional philosophy embarks upon the state to restructure the society in such a manner to ensure an equitable space for long-ignored members of the society. 'by providing the accessible environment' and 'necessary and appropriate modifications and arrangements' the states can fulfill the mandate pointed out by the social model theory.<sup>4</sup>

Reasonable accommodation incorporates the idea that all men are born equal, confirming their dignity, liberty and freedom at par with others. This component of the equality guarantee has been recognized by the Supreme Court. The principle of reasonable accommodation postulates that the conditions that exclude the disabled from full and effective participation have to give way to the accommodative society which accepts the differences.<sup>5</sup> This tailoring mandates to accommodate different needs of all without discriminating against others as equal members of society. The National Legal Services Authority and the State Legal Services Authorities shall make provision including reasonable accommodation to

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<sup>3</sup> *Navtej Singh Johar v. Union of India* (2018) 1 SCC 791.

<sup>4</sup> *Vikash Kumar v. UPSC*, (2021) 5 SCC 370.

<sup>5</sup> *Id.*, Para 63.

ensure that the persons with Disabilities have access to any scheme, or program offered by them at par with others.<sup>6</sup>

Equal access to justice is yet another fundamental aspect that is enshrined in the preamble to the constitution of India as well as legislative pearls of the substantive law. This calls upon the appropriate authorities to ensure that persons with disabilities can exercise the right to access any judicial or quasi-judicial authority invested with the investigative powers without any discrimination. As a substantive and positive duty on the appropriate government right to access to justice includes the right to receive documents to which the parties are entitled in the language and the means decipherable by them.<sup>7</sup>

India fulfilled its commitment to the Convention on Persons with Disabilities 2006 (CPRD) by enacting the Rights of Persons with Disabilities Act, 2016 (RPWD, Act). The RPWD Act,<sup>8</sup> 2016 has broad coverage in comparison to the PWD Act, 1995 which encompasses 21 specified types of disabilities in comparison to seven types of disabilities. The definition annexed to the schedule in the Act is not exhaustive leaving the scope for further inclusion.<sup>9</sup> Section 2 (s) of the Act defines 'person with disability' as 'a person with long term physical mental intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. Section 2 (zc) defines specified disability which points at the list of disabilities in the schedule annexed to the Act. The specified disabilities contained in the schedule covers physical, intellectual, mental disabilities caused due to chronic neurological conditions, multiple disabilities and any other category which the central government may notify. Different types of disabilities are covered under these generic heads which widens the scope and application of the welfare provisions under the Act.<sup>10</sup> Moreover, The fundamental postulate on which the act of 2016 is based is the principle of equality and non-discrimination. It is through the instrumentality of section 3 which casts

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<sup>6</sup> Section 12 (3) Rights of Persons with Disabilities Act, 2016.

<sup>7</sup> *Shivam Soni v. State (NCT of Delhi)*, 2022 SCC Online Del 996.

<sup>8</sup> The Rights of Persons with Disability, Act 2016 is a result of India being signatory to Convention on the Rights of Persons with Disabilities. The document was signed and ratified on 1<sup>st</sup> day of October 2007.

<sup>9</sup> The types of disabilities covered under the Act as contained in the Schedule 1 are blindness, low vision, leprosy cured patient, hearing impairment, locomotors disability, dwarfism, intellectual disability, autism spectrum disorder, cerebral palsy, muscular dystrophy, chronic neurological conditions, specific learning disabilities, multiple sclerosis, speech and learning disability, hemophilia, sickle cell disease, multiple disabilities, acid attack victims and Parkinson's disease. There is a scope of expansion of the present definition and the power of expansion lies with the Central government which may through notification add into the list of disabilities.

<sup>10</sup> The Rights of Persons with Disabilities Act, 2016 , available at [RPD\\_Act\\_2016.pdf \(and-india.org\)](#) (last visited 22 April, 2020).

an affirmative obligation on the government to ensure that persons with disabilities enjoy right to equality, dignity and respect for their integrity equally with others. It is a statutory recognition of the constitutional right embodied in Article 14, 19 and 21 among other provisions of the Indian Constitution.<sup>11</sup>

### *Disability Diversity*

The term disability is generic in the sense that it incorporates different Physio-medical conditions within its ambit. Looking into the categories classified as disabled under the act of 1995 we come across seven different categories with at least seven different needs. These needs of disability groups required reasonable accommodation on the part of the welfare state, that has been promised under the *social contract*. The needs and requirements of each category needs to be taken care of without ignoring any one of them. The ramps and lifts ignoring the universal designs won't suffice the needs and requirements of the entire disabled group/community as each person with a different physio-medical condition requires different forms of accommodation. With the coming into force of the Rights of Persons with Disabilities Act 2016 and the types of disabilities rising to twenty-one the accommodating requirements would be different taking a note of needs of different individuals with disabilities.

Generalizations about persons with disabilities can mislead due to numerous factors as they involve diversity, with differences in terms of, gender, age, socio-economic status, sexuality, ethnicity etc. Moreover, persons with disabilities are *disadvantaged differently*. Women with disability for instance may experience the combined disadvantage associated with gender as well as disability and may be less likely to marry than non-disabled women.<sup>12</sup> Universality in the definition of disability has been a challenging task so far because it is a complex, multi-dimensional and ever-evolving phenomenon. Disability misconceives common people through its *visible* and *invisible* features.<sup>13</sup> A Person using a wheelchair and a person with *specific learning disabilities* are two contrasting experiences that limit the participation of different categories of persons with disabilities at different platforms. The boundaries and contours of the disability dialogue are illustrated by its recognition as part of the human condition and its diversity. The variation in the definition of disability is evident across the globe.<sup>14</sup>

Before delving into the law on disability it is pertinent to understand the complexities involved in this generic term which is inadequate in itself to address

<sup>11</sup> *Vikash Kumar v. UPSC*, (2021) 5 SCC 370.

<sup>12</sup> World Health Organizations, *World Report on Disability 2011* (World Health Organizations Press, Geneva, 2011).

<sup>13</sup> Madans, J., Loeb, M. E., & Eide, A. H. Measuring disability and inclusion in relation to the 2030 Agenda on Sustainable Development (2017).

<sup>14</sup> V Sudhesh, National and International Approaches to Defining Disability, 50 (2) *JILI* 223 (2008).

the needs of a sub pluralistic society within this group. A person with visual impairment and a person with locomotor disabilities are some of the forms of visible and classic forms of disabilities which is very well known to society at large despite there being more of those to be identified and protected. However, other forms of invisible disabilities in themselves pose a challenge to the law and the lawmakers to evolve the mechanism to ensure fair and equal opportunity to such individuals who grapple with the challenges associated with such invisible disabilities. The legislative framework mandates appropriate government to create and restructure the built environment into a disable-friendly space that ensure fairness in the distribution of resources. Jurisprudential growth and development in disability studies have marched slow but some significant steps have been taken in the past fifty years. Disabilities that are given legislative recognition in developed and developing countries have made an unsuccessful attempt to consolidate and define the term for a group of individuals who have long been undervalued and discriminated in the ableist world of individuals.

Persons with disabilities have been subjected to various forms of discriminatory practices in ableist<sup>15</sup> society, which includes segregation, prejudice, neglect, sterilization, and challenges posed by environmental barriers.<sup>16</sup> Social isolation in the past led to an excluded growth and development of the society leaving behind a significant portion of our society.<sup>17</sup> The denial of reasonable accommodation invites the guilt of discrimination against the employer.<sup>18</sup> This fact is acknowledged in the Disability and Development Report of 2018 sustainable development goals which aim at building an equitable society for all through targets based on different indicators attached to every goal.<sup>19</sup> The right to live with human dignity assures a meaningful life and to its dismay differently-abled for their differences were excluded by our societies across the world. Sustainable

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<sup>15</sup> Britannica, T. Editors of Encyclopaedia (2023, November 3). ableism. Encyclopedia Britannica. <https://www.britannica.com/topic/ableism>.

<sup>16</sup> Parmanand Singh, 'Disability Discrimination and Equality of Opportunities: Comparative Analysis of the Legal Framework,' 45 *JILI* 2 2003 p. 173.

<sup>17</sup> Persons with disabilities are common in all civilized societies. It is estimated that one billion (15 percent) of the world's population is disabled. More than 785 million men and women with disabilities fall within the working age group but to its dismay, the majority of them do not work. Even the person with disabilities who are engaged in work, earn less than the common masses. Further 150 million children under the age of 18 years have a disability which increases the cost of living by about one-third of average income. India is one of a developing country and the data as presented by the United Nations which that 80 percent of the persons with disabilities live in developing countries highlights the gravity of the situation.

<sup>18</sup> *Vikash Kumar v. UPSC*, (2021) 5 SCC 370.

<sup>19</sup> United Nations, Department of Economic and Social Affairs, Disability and Development Report, 2018 United Nations, New York USA 2019.

Development Goals is an attempt to ensure inclusive growth towards differently abled in its future strategy.

## II.

### Estimation disability: A Challenge

There has been a significant variation in the global and Indian estimates of disability. With the global estimates projecting 16 percent of the global population as disabled/the Indian Estimate ranges around 2.2 percent of the national population as per the census of 2011. It is significant to note here that the global and Indian classification and categorization of disability may be one of the prime reasons behind such variation in the estimation of persons with disabilities. It is categorically significant to note that the major chunk of persons with disabilities as per the World Health Organization estimates reside in developing countries. India being one of the most populated developing countries may be home to a great proportion of persons with disabilities as per the projections of the World Health Organization's estimates. The Census of 2011 acknowledged the types of disabilities that were specifically placed within the Persons with Disabilities Act of 1995.<sup>20</sup> The disabilities covered under the Act of 1995 were inspired by the medical model of disability encompassing within its ambit Locomotor disability, Hearing Impairment, Visual impairment, Deafness, Mental Illness, Mental Retardation, and Multiple Disabilities.

It is therefore the number and diversity within the disabled population whose basic requirements need to be taken care of by a welfare State to ensure the enjoyment of basic human rights with dignity. The structural modifications within the built environment and the proposed environment make it pertinent for the State agencies to be sensitive to the minor changes within the structural makeup that might lead to an inclusive change in the mobilizing and channelizing the unused potential of such individuals.

Since India is a signatory to the United Nations Convention on the Rights of Persons with Disabilities, it has updated its mandate in line with the convention of 2006 which is based on eight fundamental principles one of them being Accessibility in addition to Gender Equality and Non-Discrimination. India ratified the convention in the year 2007 and proposed legislation inspired by the guiding principles of the Convention which replaced the persons with Disabilities Act of 1995. The jurisprudential growth from the year 1995 to 2016 in the field of

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<sup>20</sup> It is significant to mention here that the types of disabilities covered under the act of 1995 were seven in number.



Disability can't be undermined, however, the legislative accomplishment and the promises made under the Rights of Persons with Disabilities Act, 2016 are far higher in comparison to the previous Act of 1995. The legislative promises made under the act include accessibility, fair share in employment, inclusive education besides reasonable accommodation. Accessibility is one of the much-celebrated but grossly ignored human rights which has been executed half-heartedly by the local and appropriate authorities. This ignorance in terms of built infrastructure leads to the violation of not just one of the eight principles of the Conventions but one of the crucial rights in Part III of the Indian Constitution. Denial of access of movement in public places leads to the failure of the appropriate government to accomplish affirmative action in favor of persons with disabilities. This ignorance while constructing a building ensures equality to not just persons with disabilities but also to senior citizens whose movement is restricted as a result of physio-medical conditions.

### III.

#### **Disability perceptions in ableist societies: Model's view**

##### *The Religious Model*

The Religious model is one of the oldest and most extreme models. This model portrays disability as retribution to the acts committed in previous life. Disability under this theory is imposed punishment either on an individual or family. The person with impairment was considered to be demonic. Linked to ignorance, fear and prejudice, under Hindu mythology disability was the result of karmic practices of the past life.<sup>21</sup> Under Christianity, impairment is the wrath of God and persons with disabilities were considered to be associated with witchcraft and demonic practices. Besides this, institutions leading to segregation were established under Christianity for the institutional care of the persons with such impairments.<sup>22</sup> This model of disability views impairment as a retributive characteristic. The focal point of this model reasons disability with immoral/wrong action of past life leading to disability in subsequent life. This model remains silent on the course of action to be followed in response to such situation besides some religious restraints under cross-cultural experiences. These restraints limit the legal, social as well as religious positions considerably.

##### *Charity Model of Disability*

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<sup>21</sup> V. Sudesh "National and International Approaches in Defining Disability" 50 *JILI* 221 (2008).

<sup>22</sup> Jana M Bennet & Meddi N Vlope, "Models from disability from Religious Traditions" 22 *Journal of Disability and Religion* 121-129 (2018).

Undermining the concept of personal autonomy as described by John Rawls<sup>23</sup> the charity model as the name suggests, views the inability of the persons in accomplishing certain tasks of regular day to day activities. This offers a prismatic view of pouring in charity in the favor of the persons with disabilities. Under this model the person with impairment is perceived as an unfortunate being who is dependent as a result of his/her physical or mental situation for his/her survival. Emotions as a matter of appeal is involved under this model that positions differently-abled who requires care as well as protection. This approach to disability as a practice reduces the participation of the person with an impairment to social life, inciting dependency among such persons. Segregated schools, orphanages and protection homes are the results of such model of disability. The advantage of this model lies in the generation of funds. Dependency under this theory of disability invites charity as a measure to improve the socio-economic conditions. Under this theory the emotional outlook towards the subjects of disability invites relief in the forms of charity that outlines them as dependent. Howsoever, constricted in approach this model has lived the history, marking its presence in the study of disability.<sup>24</sup>

### *Medical Model of Disability*

The Medical Model is also known as bio-centric model. This view of disability takes into consideration physical and mental limitations of individuals as a cause of disability. This model of disability also identifies the problems associated with the individual under which the curative approach is applied in resolving individual's situation.<sup>25</sup> While describing disability the dictionaries as well as literatures advance a description which describes it as individual's disadvantage, deficit, and deficiency in the form of physical and intellectual impairment. This limitation obstructs their social participation leading to social exclusion. Biological identification of normality in human perspective deviates the understanding of ability and disability in terms of pathological perspective.<sup>26</sup> The issue under this model of disability apprehends the sick role of the individual and impairment as either physical or mental in nature which is addressed through the lens of medical science. Key stakeholders under this model of disability are the physicians who help in policy making for the subjects under this model. this model of disability has played a significant role in conceptualizing disability as a medical condition

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<sup>23</sup> Parmanand Singh, Human Rights of Persons with disabilities: Some Reflections XX Delhi Law Review 4 (1998).

<sup>24</sup> V. Sudesh "National and international approaches in defining disability" 50 (2) *JILI* 221 (2008).

<sup>25</sup> *Id.*

<sup>26</sup> C Raghava Reddy, "From Impairment to Disability and Beyond: Critical Explorations in Disability Studies" 60 (2) *Sociological Bulletin* 288 (2011). available at: [www.jstor.org/stable/23620921](http://www.jstor.org/stable/23620921) (last visited 8 January, 2021).

through medical application.

This approach approves the provision of medical and financial care for the subjects as a social security besides providing for custodial care and detention centers for the subjects.<sup>27</sup> The provision of institutional care and cure under this approach invites criticism on the grounds of social exclusion. However, the significance of this approach lies in its endeavor to realize the abilities of the physical and mentally challenged through the application of medical science. This model views disability in context of deficiency in human body as a result of which the individual is categorized as either normal, healthier and better in comparison to person with impairment viewing his physical or mental condition as deficiency, deficit and pathology.<sup>28</sup>

### *Social Model of Disability*

The Social Model of Disability is familiar with yet another name as functional model of disability. Under this model individual's physical and mental limitations are undermined against the social limitations.<sup>29</sup> The societal barricades are framed as the barriers in the inclusive social participation of the disabled. In the words of Mike Oliver (Father of Social Model of Disability), for positive engagement of a class of individuals in society, responsibility lies upon the society and restructure the social spaces.<sup>30</sup> The approach addresses the subjects as able-bodied whose liberty to participate in social life is obstructed as a result of social and environmental barriers. As a result of this differently-abled have been historically isolated, discriminated and socially excluded in the community. Incapacity and ignorance of the society in addressing the biological conditions of the persons with disabilities is the ground that constitutes the basis of social model of disability. Differently-abled under this model are not categorized as stereotype on the basis of their physical or mental limitation. Differently-abled are forced to live a poor quality of life denying the right to liberty, civil and political rights that ensures a quality of life. In order to ensure the quality of life it is imperative for society to address the changes in socio-political environment so that the subjects of disability realize a life equal and dignified life at par with their counterparts. Rehabilitation is the phenomena under this theory of disability which is exercised for guaranteeing equal rights to differently-abled. Differently-abled are integral part of the society and it is therefore, discriminatory on the part of the state machinery

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<sup>27</sup> V. Sudesh "National and International Approaches in Defining Disability" 50 (2) *JILI* 221 (2008).

<sup>28</sup> Models of Disability, *available at*: <https://flexforward.pressbooks.com/chapter/models-of-disability/> (last visited 22 July, 2021).

<sup>29</sup> Anna Lawson & Angharad E. Beckett (2021) The social and human rights models of disability: towards a complementarity thesis, *The International Journal of Human Rights*, 25:2, 348-379.

<sup>30</sup> University of Kent, Canterbury *available at*: <https://alumni.kent.ac.uk/profile-mike-oliver/> (last visited on 09 January, 2021).

to deny them the rights which are exercised by the other members of the society. This integration has to be achieved by addressing the biological requirements of the individuals by improvements in society. This model de-links disability and impairment as exclusive notions<sup>31</sup> and views disability as imposition in the form of liability on the impairment of individual that remains maleficently invisible to the society. The social model of disability considers disability and impairments as two exclusive components. This theory draws similarity to the caste and gender discrimination theories.<sup>32</sup> Various authors have differentiated the theory of social and medical model on the basis of their foundations, calculability and political idea involved within<sup>33</sup>. Disability as a social phenomenon cannot be separated from an individual body on which it is inscribed.

The social model of disability outlines society as a perpetrator for the exclusionary practices against a class of individuals whose liberty to exercise their fundamental human rights are restricted through social, structural and environmental barriers.

### *Bio-Psychosocial Model of Disability*

Inability of the social model in addressing disability as a norm in the society has led to yet another perspective which led to the growth of a new model of disability that took into consideration the biological, psychological and social perspective for considering disability. Moving beyond social model of disability, defining disability, impairment and handicapped by World Health Organization led to a new outlook towards disability. The decade of 1980's saw yet another attempt in classification of 'disability' in the light of 'impairment' and 'handicap'. International Classification of Impairment Disability and Handicap (ICIDH) the trio in terms of a disadvantage has resulted from disability or impairment. Dependence of the theory on bio- physical aspects invited has invited criticism for ignoring social and environmental aspects in addressing disability issues. World Health Organization (WHO) renamed the body that defined disability, impairment and handicap ICIDH as International Classification of Functioning and Health (ICF) while advancing a new perspective in the study of disability in terms of functioning. Recognizing the complex interaction of physical, biological as well as social concepts as highlighted in medical and social welfare model this model is labelled as bio-psychosocial model of disability.

### *Human Rights Model*

Positioned as a noteworthy dimension of human culture this model, of disability regards disability as normal and differently-abled as equally competent with its compeers to enjoy certain inalienable and inherent rights as other members of the

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<sup>31</sup> C Raghava Reddy, "From Impairment to Disability and Beyond: Critical Explorations in Disability Studies" 60 (2) *Sociological Bulletin* 292 (2011).

<sup>32</sup> *Id.*

<sup>33</sup> *Id* at 293.

community. This model of disability approves the inalienability of certain rights to the underprivileged section of society who have been excluded as a result of either discrimination or ignorance on the part of society. This model of disability imbibes certain positive features from different models of disability to ensure inclusiveness, equality, reasonable accommodation, and barrier-free access to social as well as cultural life.<sup>34</sup> The Human Rights model aims to ensure the first- and second-generation rights to the subjects for complying with the inclusive approach in society.<sup>35</sup>

The jurisprudential progress has given rise to at least the visualization of persons with disabilities within societies and nations to the global sustainable development goals. How so ever, the past might have been there has been significant progress since 1995 from the formal acknowledgment of medical conditions as disabilities to a wider scope of disability in 2016. The formal recognition of twenty-one medical conditions in the light of the social welfare approach is an indication of progression made in right direction. There are many challenges of the equitable distribution of opportunities for all who fall within the generic terminology of disability. Placing all on equal footing requires a fair application of mind as the needs, challenges and equality for all is a staggering task as necessarily it seems important to answer the question, can a person with visual impairment and person with locomotor disability be treated equally atleast in terms of opportunity? Do they face the same challenges differently? Does the family/social life ensures equality in their developmental phases of life? Limiting our vision to a prismatic view of limited twenty-one specific disabilities would be yet another broken-down approach to ignore the social inclusion of invisible forms of disabilities. Invisible disabilities cannot be addressed with the current legislative mechanism which requires an overhaul to quench a thirst for equality.

#### IV.

##### **Accessibility: An Intrinsic Human Right**

The principle of accessibility as enshrined in two fundamentally significant documents i.e, UN Convention of the Rights of Persons with Disabilities and the Rights of Persons with Disabilities Act, 2016 provides a platform for the appropriate government to work in the direction of the cherished Constitutional Philosophy of Equality and Equal participation. It is rooted deep in the constitutional goals to ensure equality among all without any discrimination. Accessibility as a class-specific facet in favor of persons with disabilities has

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<sup>34</sup> V. Sudesh “National and international approaches in defining disability” 50 (2) *JILI* 221 (2008).

<sup>35</sup> Stein, Michael Ashley. “Disability Human Rights.” 95 (1) *California Law Review*, 75–121 (2007).

brought a new era that has resulted as a result of the social model of disability. The notion of Equal opportunity in diverse public premises opens the ground for dedicated governments to ensure affirmative action in accommodating differences and different needs of persons with disabilities.

Creating an environment devoid of opportunities is a discriminatory in the sense that denies opportunities to some sections of the society as they do not cater the needs and requirements of such individuals. Such ignorance has been in practice until the social models of disability triggered the understanding of barriers in societal make-up. Such discrimination in terms of *opportunities* leads to excluded and segregated growth in the society thereby creating social, economic and educational gaps. This segregated and excluded growth is against the constitutional principles of Equality and Equal opportunity. It is therefore pertinent to look into the designs that are universal in nature ensuring equitable use and flexibility accommodating a wide range of individual preferences and abilities.<sup>36</sup> Accessibility as a collective good facilitates full and effective participation by negotiating barriers that hinder the inclusive participation of persons with disabilities. It targets the Informational, physical, and attitudinal barriers thereby creating a just and equitable space for the enjoyment of life, liberty, and freedom with dignity.<sup>37</sup>

As affirmative action to bridge the unequal opportunities in the ableist society, these structural modifications and improvements uphold the constitutional philosophy. Accessibility as a feature of modern disability jurisprudence tries to incorporate the feature of equal opportunity with inherent dignity to persons with disabilities which was cherished in the title of persons with Disabilities Act (*Equal Opportunities, Protection of Rights and Full Participation*), Act of 1995. Here to ensure the equality of opportunity with inherent dignity, accessibility as a mandate of modern disability law imbibes the Human rights perspective of modern-day Jurisprudence. Moreover, the mandate of inclusivity may stands defeated without affording equal opportunities in terms of accessible platforms in social, economic and, cultural spheres to all sections of the persons with disabilities.

These *barriers* have been acknowledged in the minute details of the legislative mandate under section 2 (c) of the Act contemplating factors with diversity. Physical environment, transport and information and communication technologies are three prime platforms that have been prioritized under the legislative mandate to ensure equal opportunities to all despite their disabling

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<sup>36</sup> Disability Inclusion through Infrastructure and Cities Investments – Roadmap available at Microsoft Word - ICED Disability Inclusion Briefing Note\_Final - Mar\_18.docx (icedfacility.org) (last visited 17 Feburay,2024).

<sup>37</sup> *Id.*

conditions. Public platforms such as bus stands, railway stations, parking spaces and toilets are some public spaces that need to be designed in such a manner to ensure the constitutional, legislative, and human rights mandate in the welfare setup. The term appropriate government places the burden on the state governments to implement the accessibility mandate and ensure participative justice in favor of such individuals whose freedom, liberty and dignity was curtailed as a result of poor design of built infrastructure and public spaces.

As a nationwide campaign launched by the Department of Empowerment of Persons with Disabilities, the Accessible India campaign is one of the significant steps that would ensure disabled-friendly spaces ensuring a dignified and independent movement for all. As a signatory to the Convention of 2006, India showed its commitment in the direction of inclusive growth and equal opportunity to persons with disabilities. Chapter VIII of the Rights of Persons with Disabilities Act mandates the duties of the appropriate government in this regard. Accessibility<sup>38</sup> is a principle-based mandate that negotiates barriers<sup>39</sup> and promotes the idea of just and equitable *environments* for persons with Disabilities. Persons with Disabilities may constitute one of the small proportions of the human population but certain situations may lead to a disabling environment. Old age is one of such instances which traverses through every family thereby disabling at least one of the members of the family and increasing the dependability of such member on the others.

Accessibility is one of the closely connected and intertwined human rights which is fundamental to ensure a dignified and independent life. The Mandate under section 40 of the Act anticipates this feature of the human right to the physical environment, transportation, information and communication technologies, etc, to the entire nation without discriminating rural and urban spaces. The social contract here binds the governments to affirm and execute the steps in this direction by at least making some public spaces accessible. Two significant Rights namely accessibility and reasonable accommodation of persons with disabilities were emphasized by the court in one of the much-celebrated cases where the apex court highlighted that a disabled person has a right to life with human dignity.

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<sup>38</sup> Rights of Persons with Disabilities Act, 2016, Section 40. Accessibility.—The Central Government shall, in consultation with the Chief Commissioner, formulate rules for persons with disabilities laying down the standards of accessibility for the physical environment, transportation, information and communications, including appropriate technologies and systems, and other facilities and services provided to the public in urban and rural areas.

<sup>39</sup>*Id.*, Section 2 (c). “barrier” means any factor including communicational, cultural, economic, environmental, institutional, political, social, attitudinal or structural factors which hampers the full and effective participation of persons with disabilities in society.

## V.

### **Conclusion**

To bridge the inequalities in terms of opportunities in the ableist society the foundation has been laid down in the form of legislative enactments and campaigns but when it comes to the implementation of the principles there is a way forward to be travelled. Accessibility, as one of the significant features of human dignity, ensures liberty and opportunities to all, and it is to be understood as a sensitive issue that requires careful planning and execution of designs in terms of Infrastructure, information and communication technology, and transport. Designing infrastructure ensures equitable use of the public spaces making it marketable for all with diverse abilities. Flexibility in use is one that accommodates a wide range of individual preferences. Moreover, universal design, which ensures accessibility, minimizes the physical efforts, making it convenient for the diverse category of individual's use with minimum fatigue. It can therefore be concluded that planning and designing infrastructure in such a manner that accommodates the diverse needs would ensure just and equitable society for all thereby minimizing the chances of discrimination especially in terms of opportunities.