



## CLRA Policy Brief for Parliamentarians

# Indian Disability Laws - an obsolete picture

### Introduction

India is party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). It is mandated for all countries that the substantive rights and principles of the Convention should reflect on the relevant laws of the land. The aim of this policy brief is to create awareness among parliamentarians, and also to promote and encourage them to respond proactively to the issues related to the disability sector in India today. We hope that this document will effectively inform and assist our representative bodies in working to secure the rights of people living with disabilities at the appropriate policy levels.

In a country where terms like disabled, physically/mentally challenged, handicapped, impaired are used interchangeably to address or refer to a person with disability, it is difficult to protect and affirm the rights and entitlements of persons with disabilities in government policy and laws. This can be easily sighted in all three relevant laws, which are heavily loaded with terms such as 'welfare' and 'endeavour', and aim to implement all objectives only 'within the economic capacity of state'.

#### The United Nations uses a definition of disability as:

**Impairment:** Any loss of abnormality of psychological or anatomical structure or function.

**Disability:** Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.

**Handicap:** A disadvantage for a given individual, resulting from an impairment or disability, that limits or prevents the fulfilment of a role that is normal, depending on age, sex, social and cultural factors, for that individual.

Handicap is therefore a function of the relationship between disabled persons and their environment. It occurs when they encounter cultural, physical or social barriers which prevent their access to the various systems of society that are available to other citizens. Thus, handicap is the loss or limitation of opportunities to take part in the life of the community on an equal level with others.

The principal reason for the inadequacies in existing policy can be attributed to the ambiguous approach of policy makers to disability. The existing law perceives a person with disability to have some sort of a 'deficit', in need of social compensations from the government:

he/she is not a productive human resource on a par with other members of society. So even if the Act pays lip service to **Equal Opportunities, Protection of Rights and Full Participation**, it still in principle adheres to the **welfare** approach.

#### Approaches to disability:

**Welfare based** - people with disabilities are **objects** of state charity in need of medical treatment and social protection.

**Rights based** - people with disabilities are **citizens** with rights, equally capable of claiming these rights and making autonomous decisions based on their free and informed consent as well as being active members of society.

### Status of disability laws in India- a few examples

The Census 2001 states that there are 2.19 crore persons with disabilities in India, constituting 2.13 per cent of the total population. However, this data is keenly disputed, with alternative estimates invariably much higher than the official ones. Compared to Indian statistics, the population of persons living with disability in India's neighbours is substantially higher: 5 per cent in China, 5 per cent in Nepal and 4.9 per cent in Pakistan. In the most developed countries this number raises to 18 per cent (Australia), 14.2 per cent (United Kingdom) and 9 per cent (the United States). One WHO report states that ten per cent of the entire world's population live with disability (650 million) and that there are more people living with disability in India than in any other country. The tragedy is that the Census Commission failed to make any attempt to collect statistics on disability until 2001. The assumption is simple: **no census, no statistics, and no problem**. And now with a 2.13 per cent estimate in the 2001 census, the contentious status of figures for disability raises a fundamental obstacle to framing and implementing effective policies throughout India.

The Persons with Disabilities Act, 1995 (PWDA) addresses the issue of education for children with disability as an 'endeavour' to promote their integration within mainstream schools. The focus is not on building the capacity of people living with disabilities, but rather on helping them cope within the existing mainstream

educational system.<sup>1</sup> A similarly lifeless approach continues through the chapters, whether concerned with participation of people with disabilities, prevention and early detection of the disabilities, employment, affirmative action, non discrimination, research and manpower, recognition of institutions for persons with severe disabilities, social security, etc. Here one clearly realises that the ACT which is at the heart of all policies pertaining to persons with disabilities is itself **conceptually flawed**; to expect a **Rights Based Policy** from a **Welfare Based Law** is therefore misplaced.

- Of all people living with disability, **35.9 per cent** belong to the 0 to 19 years age group, which in absolute terms amounts to 7 million young people. Across the subcontinent **90 per cent of India's 36 million children with physical and mental disabilities aged between 4-16 years are out of school (see figure 1)**. Currently, the education of disabled children does not fall within the purview of the Human Resource Development (Education) Ministry, but is instead the responsibility of the omnibus Ministry of Social Justice and Empowerment. The prime focus of the Union Ministry of Social Justice and Empowerment is rehabilitation, not education, and education is not part of its agenda. There is also no synchronisation between the ambitious dreams of **Education for All - Sarva Siksha Abhiyan (SSA)** - drawn up by the Ministry of Human Resource and Development, and the objective of integrated schooling outlined in the Persons with Disabilities Act, 1995.
- One more interesting case of social injustice through disability laws concerns people living with mental illness. The mental illness category has been officially recognised by the PWD Act. Yet, they are denied any employment quota: even free education is not accessible since mental illnesses are in most cases diagnosed after the age of 18, after which point free education is embargoed under PWDA. The definition of mental illness itself is loaded with concepts of illness and dysfunctionality more than functionality. The Mental Health Act, 1987,

explicitly states that a "Mentally ill person" means "a person who is in need of treatment"

### The Indian disability laws and Convention for the Rights of Persons with Disability (CRPD): an incompatible relationship

The Government of India has enacted three legislations for persons with disabilities viz.

1. **Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995**, which provides for education, employment, creation of a barrier free environment, social security, etc.
2. **National Trust for Welfare of Persons with Autism, Cerebral palsy, Mental Retardation and Multiple Disability Act, 1999** has provisions for legal guardianship and creation of an enabling environment that will allow as much independent living as is possible.
3. **Rehabilitation Council of India Act, 1992** deals with the development of manpower for provision of rehabilitation services.

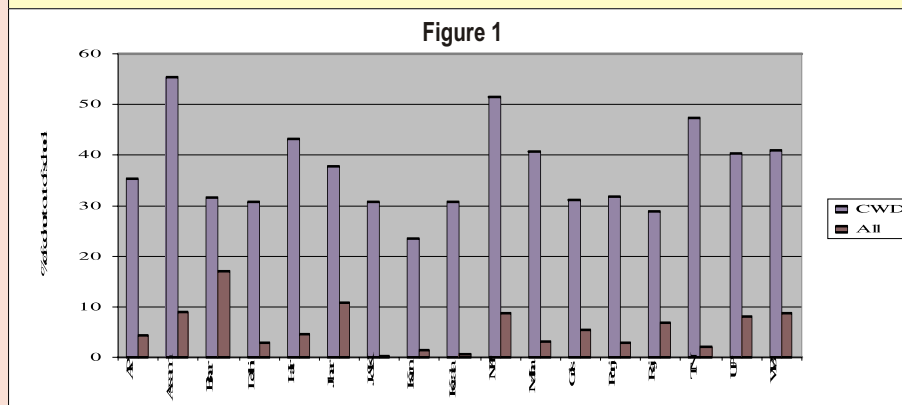
India has also both signed and ratified the Convention on the Rights of Persons with Disabilities (CRPD) on 30<sup>th</sup> March 2007 and 1<sup>st</sup> October 2007 respectively. It came into force on 3<sup>rd</sup> May 2008, and makes it obligatory on the part of the government to synchronise laws or legal provisions with the terms of the Convention. However, by not signing the optional protocol India has managed to safeguard itself in case of not fulfilling the commitments made under CRPD.

- The general principles of the Convention are: recognition of inherent worth and dignity; individual autonomy and independence; non discrimination; full and equal participation; respect and acceptance of human diversity; equality of opportunity; accessibility; equality for men and women, and respect for evolving the capacity of children with disabilities and their right to preserve their identities. Many of these principles appear in existing laws of disability, but the **welfare based** approach of the government presents major obstacles to all such concepts of empowerment.

- Besides the existing rights mentioned in the Acts, there are certain rights under the major themes of **life and liberty rights, equality of respect and opportunity, right to association and social participation, right to political participation, right to health and double discrimination in relation to children and women in disability** referred to in the CRPD but not appropriately incorporated within Indian disability laws and

Out of school rates for CWD are high in all states and CWD account for a higher proportion of all out of school children as overall attendance rates increase

Figure 1: Share of 6-13 year old CWD and all children out of school, 2005



Source: SRI survey, 2005.

provisions in other statutes. Interestingly a number of these rights are included in the fundamental rights of the citizen by the Constitution of India, but without mentioning **reasonable accommodation** for Persons with Disabilities.

**“Reasonable accommodation”** means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (Article 4, UN CRPD).

Article 15 and 16 of the Indian Constitution expressly prohibit discrimination on the basis of certain specified criteria such as sex, caste and ethnic origin. Disability is not included amongst the list of the prohibited criteria. Consequently legislations which discriminate on the ground of disability were not perceived as patently discriminatory and hence unconstitutional.<sup>2</sup>

### What parliamentarians need to do -

- With the signing and ratification of the CRPD, it is imperative for the legislative bodies to harmonise the existing statutes of laws with the Convention.
- In order to make this feasible, existing disability laws should be evaluated in the light of the CRPD with appropriate additions and amendments. Where the terms of the Act do not complement the conventions, these must be reframed and revisited.
- All those provisions in other statutes which deny equal rights to persons with disabilities should be reviewed and amended.

Technology could be an instrument of change and could range anywhere between callipers and computers. It is part and parcel of life today and the same goes for a person with disability. Jayalakshmi and Nagarathna who work at the HMT watch-making unit in Bangalore, both visually challenged, are debunking the myth that people who are blind cannot work at tasks that require a high degree of manual precision. They are both recognised as efficient and valuable employees by their supervisors. A visually challenged medical transcriptionist shares, in another episode, his belief that technology brought him in line with the mainstream workforce. Using special software that reproduces text into sound, Justin has a foothold in a cutting edge field and is recognised as the best team member by his manager.

Source: VOICES for Change/Daricha<sup>3</sup>

- In the entire exercise of harmonising the Convention, it is essential to build a working partnership with people living with disabilities. **“Nothing about us without us”** is the foundation to create a pro-people society for all, in which persons with disabilities are an integral part of the same.

### To facilitate these processes parliamentarians should:

- Take the initiative to sign the optional protocol of CRPD.
- Implement the Convention principles in the internal operations of the policy making bodies.
- Create awareness about the Convention and the rights of persons with disabilities within constituencies and among fellow parliamentarians.
- Develop needs based programmes that relate specifically to strengthening the rights of persons living with disabilities.
- Mainstream the rights of persons with disabilities into general development related programmes.
- Ensure that disability and development is mainstreamed into the human rights programmes.
- Ensure that funds are adequately allocated in budgets for the implementation of programmes and schemes meant for persons with disabilities.
- Take the initiative to translate the Convention into regional languages.
- In view of the resource crunch in the disability development sector, educate family caregivers in the meaning and implementation of rights based policies and programmes. The Preamble of the Convention lays substantial emphasis on the role of the family. It is preferable for the disabled person to be self dependent or interdependent with family members in providing lifelong support systems, which neither the State nor the NGO sector is able to sustain.
- In order to more realistically harmonise the Convention with disability laws, existing socio-cultural institutions like family, religion, education etc. must be integrated into the process.

*It is especially fitting that we do so in 2008 -- the year in which we celebrate the sixtieth anniversary of the United Nations Declaration for Human Rights. The theme of this anniversary is 'Dignity and Justice for all of us'. There can be no better way to give meaning to this slogan than through the entry into force of the Convention on the Rights of Persons with Disabilities.<sup>4</sup>*

*Mr. Ban Ki-Moon  
Secretary General of the United Nations*

### Can we ever achieve the Millennium Development Goals if persons with disabilities are excluded?

**At the United Nations summit the heads of states and governments agreed to work on the following goals:**

#### **GOAL 1 Eradicate extreme poverty and hunger**

Poverty as a cause of disability: well over 50 per cent of disabilities are preventable and directly linked to poverty. This is particularly true for disabilities arising



from malnutrition, maternal under-nourishment and infectious diseases.

Disability as a risk factor for poverty: over 85 per cent of persons with disabilities live in poverty.

#### **GOAL 2 Achieve universal primary education**

An estimated 98 per cent of children with disabilities in the developing world do not attend school.

#### **GOAL 3 Promote gender equality and empower women**

It is widely recognised that women with disabilities are doubly disadvantaged in society: they are excluded from various activities because of both their gender and their disability.

Women with disabilities are twice to three times more likely to be victims of physical and sexual abuse than women without disabilities.

#### **GOAL 4 Reduce child mortality**

Mortality rates for children with disabilities can be as high as 80 percent in some countries, even in those countries where mortality rates among children who have no disabilities is below 20 per cent.

#### **GOAL 5 Improve maternal health**

Approximately 20 million women become disabled each year as result of complications during pregnancy or childbirth.

Abnormal pre-natal events are a major cause of disability in children in the developing world. Such disabilities can often be prevented.

#### **GOAL 6 Combat HIV/AIDS, malaria and other diseases**

Persons with disabilities are particularly vulnerable to HIV/AIDS but typically lack the necessary services and access to information on prevention and treatment.

One in 10 children has a neurological impairment - including learning disabilities and loss of coordination and epilepsy - as a consequence of malaria.

#### **GOAL 7 Ensure environmental sustainability**

Poor environmental quality is a significant cause of ill health and disability.

Trachoma is the main cause of preventable blindness, and can be prevented with access to safe water.

#### **GOAL 8 Develop a global partnership for development**

Most persons with disabilities do not have access to new technologies, especially information and communications technology (ICT). The majority of websites are inaccessible and assistive technology is too expensive.

Source: Handbook for Parliamentarians on the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol. This handbook is available on the website <http://www.un.org/disabilities/>

#### **References:**

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#### **Policy brief series: No. 5; 2008 August Indian Disability Laws - an obsolete picture**

**Author:**

**Seema Tiwari\***

**Department of Social Work**

**Editorial inputs:**

**Laura Keenan, CLRA**

For private circulation only

**For more information, contact: Centre for Legislative Research and Advocacy (CLRA), 160, South Avenue, New Delhi-110011, Tel: 91-11-23792862, E-mail: [info@clraindia.org](mailto:info@clraindia.org), website: [www.clraindia.org](http://www.clraindia.org)**

\*Final year student of M.A in Social work, Dept. of Social work, University of Delhi, the brief was authored and brought out during her internship with CLRA/IMPF.

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#### **Published by:**

Vinod Bhanu, Executive Director, CLRA, 160, South Avenue, New Delhi-110011. Centre for Legislative Research and Advocacy (CLRA), an organisation of expertise in parliamentary affairs and legislative advocacy, is the hosting/ implementing organisation of the IMPF and PG-MDGs.

Printed at Apex Printing House, S-217 Bank Street, Munirka, New Delhi-110067, Ph: 9818114996.